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DEC - 3 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

LEHENRY S. RILEY,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

Appellate Case No. 2013-000653

APPENDIX

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U.S. District Court

INDEX

INDEX	i
MOTION HEARING TRANSCRIPT (DATED December 3, 2008)	1
GUILTY PLEA TRANSCRIPT (DATED December 12, 2008).....	28
APPLICATION FOR POST-CONVICTION RELIEF	45
RETURN.....	52
POST-CONVICTION RELIEF HEARING TRANSCRIPT (DATED March 2, 2011).....	57
ORDER GRANTING POST-CONVICTION RELIEF.....	92
MOTION TO ALTER OR AMEND W/ STATE'S PROPOSED ORDER OF DISMISSAL.....	108
ORDER DENYING MOTION TO ALTER OR AMEND	120
INDICTMENT AND SENTENCING SHEETS	123

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 09-CP-40-7428

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Le'Henry S. Riley,)
8 Defendant.)
9 December 3, 2008
10 Columbia, South Carolina

11
12 B E F O R E:

13 THE HONORABLE J. MICHELLE CHILDS, JUDGE.
14
15

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

17 DOLLY JUSTICE GARFIELD, ASSISTANT SOLICITOR
18 Attorney for the Plaintiff

19 JAMES D. COOPER, III, ASSISTANT PUBLIC DEFENDER
20 Attorney for the Defendant

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22

23

24

25

DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

DECEMBER 3, 2008

MS. GARFIELD: Le'Henry Riley. Your Honor, this is a motion.

THE COURT: Okay.

MS. GARFIELD: May it please the Court, Your Honor?

THE COURT: Yes.

MS. GARFIELD: Your Honor, Mr. Riley was charged with armed robbery and kidnapping in December of 2001.

At some point after that a bench warrant was issued for his arrest and that bench warrant has been active ever since.

He had sent a letter per the Interstate Compact Agreement in June of 2008 requesting disposition of his charges.

He was transported to the Richland County Detention Center August 5th, 2008.

I was assigned the case I believe in September. Mr. Cooper and I have been in negotiations ever since then. And he did inform me recently that this would definitely be a trial.

It was scheduled for the week of December 8th. Your Honor, the State at this time is requesting a continuance. We would request to be first up the

1 week of December 15th. As well, we are requesting
2 an extension.

3 As you are aware, the Interstate Compact
4 allows the State to dispose of these cases within
5 180 days. However, the State can ask the judge for
6 an extension based on reasonable circumstances. We
7 are asking for a continuance because his 180 days
8 actually expires December 15th.

9 A couple of problems. One is, my
10 understanding is Ms. Shipley is calling State v.
11 Jason Craig the week of December 8th. That is
12 expected to go the entire week, and I don't believe
13 we could get into the courtroom.

14 And, second of all, my victim is leaving
15 tomorrow for an out-of-state trip she has planned
16 for some time and she will not be returning until
17 December 10th.

18 So we would just ask if we could be please
19 first up and we would ask for an extension. And
20 just to cover all bases, Your Honor, if we could
21 have that extension until January because you never
22 know what might happen the week of the 15th. The
23 judge could end up not coming, or whatever, but
24 just to cover ourselves.

25 He is not expected to max out of the

1 Department of Florida -- I mean, the Department of
2 Corrections in Florida until February.

3 THE COURT: Okay. Mr. Cooper, do you oppose
4 the extension?

5 MR. COOPER: Yes, Your Honor, for several
6 reasons, if I can be heard.

7 First of all, the Interstate Agreement on
8 Detainers calls for a Defendant who has cause to be
9 delivered or request for disposition, as Mr. Riley
10 did -- I'll make this a Court Exhibit, if you don't
11 mind -- to be tried within 120 days of his arrival
12 in the state, okay? 120 days elapses tomorrow.

13 THE COURT: Okay. Let me ask you that, but he
14 still will be continuously incarcerated here beyond
15 that period of time?

16 MR. COOPER: Your Honor, well, what it says
17 is, is that once he has been delivered to our
18 state --

19 THE COURT: Sure.

20 MR. COOPER: He was delivered on August 5th.
21 The State has 120 days to try him, okay? They have
22 known about this for six months. They have had six
23 months to request any continuance. I haven't heard
24 a reasonable grounds for a continuance. I have
25 heard that they have other things they want to try,

1 but, Your Honor, that is not a good cause for
2 continuance of the case.

3 He has been in reliance on this statute for
4 six months. Just because they have other cases
5 they want to try, that is not good cause for a
6 continuance.

7 THE COURT: What is the prejudice to him if he
8 is not going to leave our facility?

9 MR. COOPER: Because he had -- the prejudice
10 is the statute requires that the State show good
11 cause for a continuance.

12 He, on his own volition, filed this motion
13 from Florida. He relied on it to be protected by
14 the statute. South Carolina has adopted this
15 agreement. Our position is that the State should
16 abide by it.

17 They have -- and we're the only state in the
18 union where they have complete control over the
19 docket. They can call whatever case they want
20 whenever they want it. They have known about this
21 for a long time.

22 Then they come to you now and say, oh, we have
23 other things to do, when Mr. Riley has done
24 everything he needed to do to abide by this act.

25 That is improper. That is not good cause.

1 Well, let me replace the word improper with
2 insufficient. It is not good cause for a
3 continuance for them 12 hours before the deadline
4 to say, we have other things we want to do.

5 He has done everything he needed to do. He
6 has been here since -- you know, for them to come
7 now and say, well, the deadline is up tomorrow, we
8 have other things we want to do. That is unfair to
9 Mr. Riley. And I don't think it shows good cause
10 at all.

11 THE COURT: Well, if the deadline was up
12 tomorrow -- and the way lead trials get scheduled
13 is by agreement of the parties, so the lead trial
14 would have been -- this particular case would have
15 been scheduled beyond that deadline anyway.

16 MR. COOPER: We never agreed -- no, we never
17 agreed on any date. We have not agreed on any date
18 for trial.

19 THE COURT: Okay, well, they don't get set
20 just randomly.

21 MS. GARFIELD: Your Honor, we had a status
22 conference, and Mr. Cooper asked for a date in the
23 spring, at which point I asked for a date in
24 December because I knew the 180 days was ticking.

25 At that status conference I wasn't aware of

1 the exact date of expiration. Mr. Cooper keeps
2 saying 120 days. The statute is clear that it is
3 180 days.

4 THE COURT: So 180 --

5 MR. COOPER: Your Honor, I will make the
6 statute part of the court record.

7 MS. GARFIELD: I have a copy as well.

8 MR. COOPER: I'm sorry if there was a
9 misunderstanding of the status conference, but even
10 if there was --

11 THE COURT: But this docket --

12 MR. COOPER: -- the State has the power --
13 excuse me, I'm sorry --

14 THE COURT: I was just saying, the docket gets
15 printed three months out at the minimum for
16 purposes of these lead trials.

17 MR. COOPER: Your Honor, our position is, is
18 that the State is in control of the docket. They
19 are the ones with the power to call the cases,
20 okay? They have not called this case. They had
21 120 days to do so. They have known about the
22 statute. Tomorrow they are in violation of the
23 statute. They have not shown good cause.

24 THE COURT: Okay. Is it 120 or 180 days?

25 MR. COOPER: It is Article 4(c). And I will

1 provide you with it.

2 MR. GARFIELD: I'm looking at Section 17-1110,
3 Subsection (a) under Article 3.

4 MR. COOPER: Under Article 4(c), I'll make
5 this part of the record, the trial shall be
6 commenced within 120 days of the arrival of the
7 prisoner in the receiving state but for good cause
8 shown. And they have failed to show good cause.

9 MR. GARFIELD: Your Honor, this was scheduled
10 by you as a back-up trial for December 8th.

11 THE COURT: Okay.

12 MR. COOPER: Your Honor, and again, to
13 reiterate our position, despite scheduling matters,
14 that is not -- the State has the power to call the
15 cases. They have supreme control of the docket.

16 THE COURT: I guess what I'm saying is I have
17 never received any resistance from you that
18 December 8th was not an okay date.

19 MR. COOPER: But we're not required to --

20 THE COURT: And that is why --

21 MR. COOPER: We have no burden under the
22 statute, Your Honor. They have the power of the
23 docket. I don't have to take any affirmative
24 action.

25 THE COURT: I understand your position to date

1 is a 120-day deadline, but that deadline when we
2 scheduled this case would have passed anyway at the
3 time when there was an agreement that that date was
4 okay. I mean, I print these things at least three
5 months out.

6 MR. COOPER: Yes, ma'am. What I'm saying is
7 we never agreed to that. Okay, I never --

8 THE COURT: But you didn't contest it.

9 MR. COOPER: We have no duty to contest it
10 under the statute. They have control of the
11 docket.

12 THE COURT: What I'm saying is that if you are
13 going to tell me today when it has to be done by
14 today --

15 MR. COOPER: Well, Your Honor, I'm not telling
16 you. The statute -- the statute is what it is,
17 okay? I'm not up here asking for anything.

18 THE COURT: You never said December 8th was
19 not sufficient.

20 MR. COOPER: Your Honor, but under the statute
21 I don't have to make any affirmative
22 representation.

23 THE COURT: If she had not been here today and
24 you were going forward with December 8th, would you
25 even be here?

1 MR. COOPER: Well, what I would do is pretrial
2 I would object and say that the time has lapsed,
3 which it would have.

4 Mr. Riley has no affirmative duty under the
5 statute to demand anything. He is protected by the
6 statute. They are the ones with control over the
7 docket. They are the ones whose duty is to call
8 the case.

9 THE COURT: The date is out three months, and
10 you are telling me that you would have waited until
11 December 8th to challenge it?

12 MR. COOPER: Well --

13 THE COURT: Okay.

14 MR. COOPER: -- I can't call their cases.
15 They have to call their case. So if they called
16 the case, what I would have done is objected. I
17 don't run their docket, trust me, they do.

18 THE COURT: I understand.

19 MR. COOPER: And I can't go up there and beg
20 them to call -- you know, they are the ones that
21 run the docket. They didn't call the case.

22 THE COURT: Okay, but tell me the other part.
23 If the case is not tried today, if it is not tried
24 December 8th, regardless, your client would still
25 be incarcerated until February 23rd, 2009, is that

1 correct?

2 MS. GARFIELD: That is my understanding.

3 MR. COOPER: He would be incarcerated on other
4 charges in Florida. This motion is about his
5 pending trial.

6 THE COURT: But I'm asking you, why would he
7 still be in South Carolina beyond today?

8 MR. COOPER: Well, basically if they did not
9 call his case in time, then I would make a motion
10 to dismiss the charge with prejudice as the statute
11 calls for. And my understanding is he would go
12 back to Florida at that point.

13 THE COURT: Okay. So what do we understand
14 then, Ms. Garfield, about why he would still be
15 here?

16 MR. GARFIELD: Because I'm asking for a
17 continuance. It is also my understanding there is
18 a bench warrant for burglary second violent that
19 has not been served on him yet. I just discovered
20 that yesterday.

21 THE COURT: Okay. But where do you get this
22 February 23rd date?

23 MS. GARFIELD: Oh, from when they originally
24 sent that letter for disposition, the Department of
25 Corrections in Florida sent -- I don't have a copy,

1 but I can share it with Defense counsel.

2 THE COURT: I am just trying to figure out why
3 he would still be in South Carolina.

4 MR. COOPER: Your Honor, if I may go ahead and
5 make these documents part of the record. I will
6 have them marked now.

7 One is Mr. Riley's Interstate Agreement
8 Retainer Form 3, which he sent -- yes -- which he
9 sent on June 11, '08.

10 The other is -- and there is also a copy of
11 his booking report in there -- and the other is a
12 copy of the Interstate Agreement on Detainers.

13 MS. GARFIELD: That was actually mailed
14 June 18th.

15 MR. COOPER: Well, the statute says cause to
16 be delivered. He signed it on June 11th, it is
17 dated June 11th.

18 MS. GARFIELD: The registered mail date is
19 June 18th.

20 MR. COOPER: Well, the actual Form 3 is dated
21 June 11th. Mr. Riley caused it to be delivered on
22 June 11th, Your Honor. And Section 4(c) calls for
23 120-day deadline.

24 The State of South Carolina has control of
25 their docket. They made that clear many times in

1 the past. I have no control over when they call
2 cases.

3 They were on notice by the statute. They knew
4 the whole time. And they have shown no good cause
5 in this hearing why this case should be continued.

6 THE COURT: I'm still trying to get down this
7 120 versus 180 days.

8 MR. GARFIELD: And I'm confused too. In one
9 section it says 180 days upon the prisoner being
10 delivered to a party state, the receiving state,
11 excuse me. And then the other situation it says
12 120 days within the time he is actually
13 incarcerated in our state.

14 MR. COOPER: Well, Your Honor, there are two
15 requirements. One is they have 180 days from the
16 time that he causes his request to be delivered to
17 the State of South Carolina.

18 The second is they have 120 days from the time
19 he is actually received in the state. He was
20 received in the state on August 5th, 2008. 120
21 days from August 5, 2008 is tomorrow.

22 So our position is that, you know, they will
23 be in violation of the 120 days tomorrow. If they
24 want a continuance today, they haven't shown good
25 cause why they should get one.

1 Just because they want to call other things,
2 and they have the power to call anything they want
3 by statute, isn't good cause and he should be
4 protected.

5 MR. GARFIELD: Your Honor, I just feel
6 compelled to put this on the record. For
7 Mr. Cooper to say that he chose just to keep quiet
8 I find to be very disingenuous. If this was a
9 civil courtroom, he would be sanctioned.

10 MR. COOPER: Well, I find that to be --

11 MS. GARFIELD: If I can finish please,
12 Mr. Cooper. Especially with the fact that in the
13 status conference when I asked for this to be heard
14 because I knew we had a timeline, he asked for it
15 to be in the spring. And then I went back and
16 asked you to move it up earlier.

17 I find it very offensive for him to then come
18 in here and say he would have chosen to keep quiet
19 and make a motion on the day of jury selection.

20 I don't act that way in court. I try to be
21 extremely ethical among my colleagues and my
22 adversaries. And I find it offensive that he would
23 do that in return.

24 MR. COOPER: Your Honor, all I'm doing is
25 asking them to abide by a statute, okay? I

1 don't -- I don't recall asking for this to be in
2 the spring, okay? And I'm sorry that this has
3 happened between me and Ms. Garfield because I have
4 supreme respect for her.

5 What I'm saying is, though, I cannot control
6 their docket. They were the ones bound by this
7 statute, not me. All I want them to do is to be
8 compelled to abide by it.

9 I will be doing my client a disservice if I
10 went around, you know, trying to do their job.

11 THE COURT: I don't disagree with that. I do
12 have a problem when I have worked so hard myself as
13 chief administrative judge to give you all dates,
14 and we have got dates out to June, so they don't
15 just call the cases in the old-fashioned way where
16 they say, here, we are going to try that next week,
17 are you ready?

18 I mean, you have got to admit that this system
19 gives you all time to plan. And that is the
20 Solicitors, they have to get their victims and
21 everybody in place, as well as you all have an
22 opportunity to respond through experts and other
23 things, so that that is why these dates get set.

24 And I'm constantly, weekly saying, are you
25 still on, is that still a good date. And I give

1 you all continuances on both sides. I understand
2 the life of a lawyer, I was there too. So I want
3 to work with you in terms of vacation, protections,
4 other big issues that have come in and interrupted
5 your life, I am going to give you an opportunity.

6 But this has been on here for that date for at
7 least three months, because unless you all have an
8 agreement, pretty much 60 to 90 days is what I
9 require before a lead trial can even hit this
10 docket to accommodate all your schedules because
11 the case I know is not the only one you are working
12 on, but it just as important to that client that I
13 expect that you respect and appreciate the time and
14 events and the talent that you need to give to them
15 for that particular matter.

16 So I agree with Ms. Garfield to the extent
17 that I would not expect that motion on that day
18 because you would have had an opportunity to let
19 the Court know something before then.

20 MR. COOPER: Your Honor, I --

21 THE COURT: I respect that you have to make
22 this argument, but I don't think that it would have
23 been appropriate if she had not brought this up,
24 been appropriate on December 8.

25 MR. COOPER: Your Honor, let me respond to a

1 couple of things, if I may, okay?

2 Number One, I don't want to do anything dirty
3 to them. I'm not out here to try to, you know,
4 like ruin anybody or play any dirty tricks, but I
5 have a duty to my client.

6 THE COURT: I --

7 MR. COOPER: He is the one -- well, I just
8 feel compelled to respond by some accusations by
9 Ms. Garfield.

10 He is the one that filed this on his own
11 volition. I would not be representing him to the
12 fullest if I didn't -- if I did not assist him in
13 that, okay? If I didn't help protect him under
14 that statute, okay?

15 So what I'm doing here isn't trying to like be
16 underhanded or, you know, do anything like that.
17 I'm trying to represent him because I believe there
18 is a statute out there that protects him. And if I
19 didn't do that, I wouldn't be doing my job to him.

20 What I'm saying is this state by statute in
21 calling these cases when they want to. We
22 appreciate your assistance with it, you do a lot
23 for it, but in the end they call the case. And
24 they haven't done so. And they've been on notice
25 this entire time.

1 I don't have a duty to go up there -- and I
2 would be doing Mr. Riley a disservice if I went up
3 to their office and said, hey, y'all better hurry
4 up, you know, time is running out. Then Mr. Riley
5 would have a real complaint against me as his
6 lawyer.

7 So I know Ms. Garfield is upset, but I want to
8 put on the record that is not how I play ball
9 either. What I do is I try to protect my client.
10 And that is -- and I'm defending him against this
11 motion because they have not shown good cause why
12 they should be given an out here. They just
13 haven't.

14 THE COURT: Okay. Are you ready for the week
15 of December 8th, but not before December 10th?

16 MS. GARFIELD: My issue with December 8th is
17 my victim will be in another state until the
18 evening of December 10th.

19 MR. COOPER: The victim will be on vacation.

20 MS. GARFIELD: She will be visiting family for
21 early Christmas.

22 MR. COOPER: Well, however you want to couch
23 it. Again, they had time to call it. They didn't.
24 We could have avoided these issues.

25 MS. GARFIELD: Your Honor, she is going to

1 Hawaii, which is where she was raised.

2 THE COURT: Okay. Mr. Ross, approach, because
3 you have a better understanding of the trial
4 docket.

5 MR. ROSS: But Jason Craig was the number one
6 trial.

7 THE COURT: Right.

8 MR. ROSS: This is the number two trial
9 scheduled for that week. Or further back than that
10 actually.

11 THE COURT: Right.

12 MR. ROSS: It was probably number four. So I
13 don't know what Mr. Cooper is talking about, about
14 we hadn't shown that it should be continued. We
15 can't try it if we wanted to. Jason Craig is going
16 forward. It is the number one trial. It was
17 scheduled by Your Honor. We didn't have control
18 over that.

19 If we want to go back to the way it was, I am
20 prepared to do that today. And I will go talk to
21 Solicitor Giese today about doing that.

22 THE COURT: I don't think you all want that.
23 I don't want that, okay? I'd like to still work
24 with you all.

25 MR. ROSS: If that is the fight that they want

1 to fight, I'm prepared to fight that.

2 THE COURT: Let me just have you approach a
3 second, all of you.

4 (WHEREUPON, a bench conference was
5 held.)

6 THE COURT: Okay, I heard the motion. I am
7 going to grant the extension by one week. I find
8 that there is good cause. The Court has put this
9 out in terms of being on the docket for three
10 months or so and that Jason Craig is the lead
11 trial, which is a murder.

12 I have confirmed today that it will take the
13 entire week and it will start right on Monday. It
14 is not even a day where they are going through all
15 the pretrial and starting on Tuesday. I was told
16 that we have to have the testimony start that day.

17 So -- but that will take the better part of
18 the week. Four days would be probably great if it
19 could, but I think it is going to take the whole
20 week.

21 So I am going to push this trial just one week
22 behind. We have got two judges coming that week.
23 We usually have a plea judge and a trial judge, but
24 sometimes we take the matter up and we have two
25 people trying a case and then we can let the other

1 judge go back before that.

2 But this will be set before Judge King to
3 start on Monday, December 15th. So, Solicitor,
4 adjust your schedule in accordance to that.

5 I respect the arguments made here by counsel,
6 but that is the Court's ruling.

7 MS. GARFIELD: Thank you.

8 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 3rd day of December, 2008.

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

March 12, 2010

Deborah M. McCurdy

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

	ahead [1] 13/4 allows [1] 4/4	11/20 11/21 12/9 14/1 15/2 16/15 18/23 19/23
'08 [1] 13/9	also [2] 12/17 13/10	called [3] 2/3 8/20 11/15
0	am [6] 13/2 17/5 20/19 21/6 21/21 23/16	calling [2] 4/10 18/21
09-CP-40-7428 [1] 1/2	among [1] 15/21	calls [3] 5/8 12/11 13/22
1	another [1] 19/17	can't [3] 11/14 11/19 20/15
10th [3] 4/17 19/15 19/18	any [8] 5/23 7/17 7/17 9/17 9/23 10/21 18/4 23/17	cannot [1] 16/5
11 [1] 13/9	anybody [1] 18/4	captioned [1] 23/13
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11th [4] 13/16 13/17 13/21 13/22	anyway [2] 7/15 10/2	case [17] 3/19 6/2 6/19 7/14 8/20 10/2 11/8 11/15 11/16 11/21 11/23 12/9 14/5 17/11 18/23 21/25 23/13
12 [2] 7/3 23/19	appeal [1] 23/13	cases [8] 4/4 6/4 8/19 9/15 11/14 14/2 16/15 18/21
120 [12] 5/11 5/12 5/21 8/2 8/21 8/24 9/6 14/7 14/12 14/18 14/20 14/23	appreciate [2] 17/13 18/22	cause [16] 5/8 6/1 6/5 6/11 6/25 7/2 7/9 8/23 9/7 9/8 13/15 14/4 14/25 15/3 19/11 21/8
120-day [2] 10/1 13/23	approach [2] 20/2 21/2	caused [1] 13/21
15th [4] 4/1 4/8 4/22 22/3	appropriate [2] 17/23 17/24	causes [1] 14/16
17-1110 [1] 9/2	argument [1] 17/22	Center [1] 3/18
180 [9] 4/5 4/7 7/24 8/3 8/4 8/24 14/7 14/9 14/15	arguments [1] 22/5	CERTIFICATE [1] 23/1
18th [2] 13/14 13/19	armed [1] 3/9	certify [2] 23/10 23/16
2	around [1] 16/10	challenge [1] 11/11
2001 [1] 3/10	arrest [1] 3/12	charge [1] 12/10
2008 [7] 1/9 3/1 3/15 3/18 14/20 14/21 23/15	arrival [2] 5/11 9/6	charged [1] 3/9
2009 [1] 11/25	Article [3] 8/25 9/3 9/4	charges [2] 3/16 12/4
2010 [1] 23/19	ask [4] 4/5 4/18 4/19 5/13	chief [1] 16/13
23rd [2] 11/25 12/22	asked [5] 7/22 7/23 15/13 15/14 15/16	CHILDS [1] 1/13
3	asking [6] 4/7 10/17 12/6 12/16 15/25 16/1	chose [1] 15/7
3rd [1] 23/15	assigned [1] 3/19	chosen [1] 15/18
5	assist [1] 18/12	Christmas [1] 19/21
5th [3] 3/18 5/20 14/20	assistance [1] 18/22	Circuit [2] 23/9 23/23
6	ASSISTANT [2] 1/17 1/18	circumstances [1] 4/6
60 [1] 17/8	at [11] 3/11 3/24 7/10 7/23 7/25 8/15 9/2 10/2 10/4 12/12 17/6	civil [1] 15/9
7	Attorney [2] 1/17 1/19	clear [2] 8/2 13/25
7428 [1] 1/2	August [4] 3/18 5/20 14/20 14/21	client [5] 11/24 16/9 17/12 18/5 19/9
8	August 5th [3] 3/18 5/20 14/20	colleagues [1] 15/21
8th [10] 3/23 4/11 9/10 9/18 10/18 10/24 11/11 11/24 19/15 19/16	avoided [1] 19/24	Columbia [1] 1/9
9	aware [2] 4/3 7/25	come [4] 6/22 7/6 15/17 17/4
90 [1] 17/8	B	coming [2] 4/23 21/22
A	back [6] 9/10 12/12 15/15 20/9 20/19 22/1	commenced [1] 9/6
abide [4] 6/16 6/24 15/25 16/8	back-up [1] 9/10	Compact [2] 3/15 4/3
accommodate [1] 17/10	ball [1] 19/8	compelled [3] 15/6 16/8 18/8
accordance [1] 22/4	based [1] 4/6	complaint [1] 19/5
accurate [1] 23/11	bases [1] 4/20	complete [2] 6/18 23/11
accusations [1] 18/8	basically [1] 12/8	concluded [1] 22/8
act [2] 6/24 15/20	because [15] 4/7 4/21 6/4 6/9 7/24 12/16 15/1 15/14 16/3 17/7 17/10 17/18 18/17 19/11 20/2	conference [5] 7/22 7/25 8/9 15/13 21/4
action [1] 9/24	been [13] 3/13 3/20 5/17 6/3 7/6 7/14 7/15 10/23 12/19 17/6 17/23 17/24 18/24	confirmed [1] 21/12
active [1] 3/13	before [6] 7/3 17/9 17/19 19/15 22/1 22/2	confused [1] 14/8
actual [1] 13/20	beg [1] 11/19	constantly [1] 16/24
actually [5] 4/8 13/13 14/12 14/19 20/10	behind [1] 21/22	contest [2] 10/8 10/9
adjust [1] 22/4	being [2] 14/9 21/9	continuance [10] 3/25 4/7 5/23 5/24 6/2 6/6 6/11 7/3 12/17 14/24
administrative [1] 16/13	believe [3] 3/19 4/12 18/17	continuances [1] 17/1
admit [1] 16/18	bench [4] 3/11 3/12 12/18 21/4	continued [2] 14/5 20/14
adopted [1] 6/14	better [3] 19/3 20/3 21/17	continuously [1] 5/14
adversaries [1] 15/22	between [1] 16/3	control [9] 6/18 8/18 9/15 10/10 11/6 13/24 14/1 16/5 20/17
affirmative [3] 9/23 10/21 11/4	beyond [3] 5/14 7/15 12/7	COOPER [8] 1/18 3/20 5/3 7/22 8/1 15/7 15/12 20/13
after [1] 3/11	big [1] 17/4	copy [4] 8/7 12/25 13/10 13/12
again [2] 9/12 19/23	booking [1] 13/11	correct [1] 12/1
against [2] 19/5 19/10	both [1] 17/1	Corrections [2] 5/2 12/25
agree [1] 17/16	bound [1] 16/6	couch [1] 19/22
agreed [4] 7/16 7/17 7/17 10/7	brought [1] 17/23	could [6] 4/13 4/18 4/20 4/23 19/24 21/19
agreement [8] 3/15 5/7 6/15 7/13 10/3 13/7 13/12 17/8	burden [1] 9/21	counsel [3] 13/1 22/5 23/17
	burglary [1] 12/18	COUNTY [4] 1/2 3/17 23/5 23/14
	C	couple [2] 4/9 18/1
	call [15] 6/19 8/19 9/14 11/7 11/14 11/15	court [11] 1/1 1/24 3/5 5/10 8/6 15/20 17/19 21/8 23/8 23/13 23/23

C	entire [3] 4/12 18/25 21/13 Especially [1] 15/12 ethical [1] 15/21 even [4] 8/9 10/25 17/9 21/14 evening [1] 19/18 events [1] 17/14 ever [2] 3/13 3/21 everybody [1] 16/21 everything [2] 6/24 7/5 evidence [1] 23/12 exact [1] 8/1 excuse [2] 8/13 14/11 Exhibit [1] 5/10 exhibits [1] 2/13 expect [2] 17/13 17/17 expected [2] 4/12 4/25 experts [1] 16/22 expiration [1] 8/1 expires [1] 4/8 extension [8] 4/2 4/6 4/19 4/21 5/4 21/7 extent [1] 17/16 extremely [1] 15/21	hard [1] 16/12 have [68] haven't [4] 5/23 14/24 18/24 19/13 Hawaii [1] 20/1 he [37] heard [5] 5/6 5/23 5/25 15/13 21/6 hearing [1] 14/5 held [1] 21/5 help [1] 18/13 her [1] 16/4 hereby [1] 23/10 hereto [1] 23/17 hey [1] 19/3 hit [1] 17/9 Honor [25] HONORABLE [1] 1/13 hours [1] 7/3 how [1] 19/8 however [2] 4/5 19/22 hurry [1] 19/3
D	date [13] 7/17 7/17 7/22 7/23 8/1 9/18 9/25 10/3 11/9 12/22 13/18 16/25 17/6 dated [2] 13/17 13/20 dates [3] 16/13 16/14 16/23 day [7] 10/1 13/23 15/19 17/17 21/14 21/16 23/15 days [20] 4/5 4/7 5/11 5/12 5/21 7/24 8/2 8/3 8/21 8/24 9/6 14/7 14/9 14/12 14/15 14/18 14/21 14/23 17/8 21/18 deadline [7] 7/3 7/7 7/11 7/15 10/1 10/1 13/23 DEBORAH [3] 1/24 23/8 23/23 December [22] 1/9 3/1 3/10 3/23 4/1 4/8 4/11 4/17 7/24 9/10 9/18 10/18 10/24 11/11 11/24 17/24 19/15 19/15 19/18 19/18 22/3 23/15 December 10th [3] 4/17 19/15 19/18 December 15th [3] 4/1 4/8 22/3 December 8 [1] 17/24 December 8th [9] 3/23 4/11 9/10 9/18 10/18 10/24 11/11 11/24 19/15 December of [1] 3/10 Defendant [3] 1/8 1/19 5/8 DEFENDER [1] 1/18 defending [1] 19/10 Defense [1] 13/1 definitely [1] 3/22 delivered [7] 5/9 5/17 5/20 13/16 13/21 14/10 14/16 demand [1] 11/5 Department [3] 5/1 5/1 12/24 despite [1] 9/13 Detainers [2] 5/8 13/12 Detention [1] 3/18 did [4] 3/21 5/10 12/8 18/12 didn't [7] 10/8 11/21 18/12 18/13 18/19 19/23 20/17 dirty [2] 18/2 18/4 disagree [1] 16/11 discovered [1] 12/19 disingenuous [1] 15/8 dismiss [1] 12/10 dispose [1] 4/4 disposition [3] 3/16 5/9 12/24 disservice [2] 16/9 19/2 docket [15] 6/19 8/11 8/14 8/18 9/15 9/23 10/11 11/7 11/17 11/21 13/25 16/6 17/10 20/4 21/9 documents [1] 13/5 doing [6] 15/24 16/9 18/15 18/19 19/2 20/21 DOLLY [1] 1/17 done [5] 6/23 7/5 10/13 11/16 18/24 down [1] 14/6 during [2] 2/4 2/14 duty [5] 10/9 11/4 11/7 18/5 19/1	I'd [1] 20/23 I'll [2] 5/10 9/4 I'm [22] 8/8 8/13 9/2 9/16 10/6 10/12 10/15 10/17 12/6 12/16 14/6 14/8 15/24 16/2 16/5 16/24 18/3 18/15 18/17 18/20 19/10 21/1 if [30] Ill [1] 1/18 important [1] 17/12 improper [2] 6/25 7/1 incarcerated [4] 5/14 11/25 12/3 14/13 inform [1] 3/21 insufficient [1] 7/2 interest [1] 23/17 interrupted [1] 17/4 Interstate [5] 3/14 4/3 5/7 13/7 13/12 into [1] 4/13 introduced [2] 2/13 23/12 isn't [2] 15/3 18/15 issue [1] 19/16 issued [1] 3/12 issues [2] 17/4 19/24 it [48]
E	facility [1] 6/8 fact [1] 15/12 failed [1] 9/8 family [1] 19/20 fashioned [1] 16/15 February [3] 5/2 11/25 12/22 February 23rd [2] 11/25 12/22 feel [2] 15/5 18/8 Fifth [2] 23/9 23/23 fight [3] 20/25 21/1 21/1 figure [1] 13/2 filed [2] 6/12 18/10 find [5] 15/8 15/10 15/17 15/22 21/7 finish [1] 15/11 first [3] 3/25 4/19 5/7 Florida [6] 5/1 5/2 6/13 12/4 12/12 12/25 foregoing [1] 23/10 Form [2] 13/8 13/20 forward [2] 10/24 20/16 four [2] 20/12 21/18 fullest [1] 18/12 further [2] 20/9 23/16	J JAMES [1] 1/18 January [1] 4/21 Jason [4] 4/11 20/5 20/15 21/10 job [2] 16/10 18/19 judge [8] 1/13 4/5 4/23 16/13 21/23 21/23 22/1 22/2 judges [1] 21/22 Judicial [1] 23/9 June [9] 3/15 13/9 13/14 13/16 13/17 13/19 13/21 13/22 16/14 June 11th [3] 13/16 13/21 13/22 June 18th [2] 13/14 13/19 jury [1] 15/19 JUSTICE [1] 1/17
	G GARFIELD [6] 1/17 12/14 16/3 17/18 18/9 19/7 GENERAL [2] 1/1 23/14 get [8] 4/13 7/12 7/19 12/21 14/6 14/25 16/20 16/23 gets [1] 8/14 Giese [1] 20/21 give [4] 16/13 16/25 17/5 17/14 given [1] 19/12 gives [1] 16/19 go [8] 4/12 11/19 12/11 13/4 19/1 20/19 20/20 22/1 good [15] 6/1 6/5 6/10 8/25 7/2 7/9 8/23 9/7 9/8 14/4 14/24 15/3 16/25 19/11 21/8 grant [1] 21/7 great [1] 21/18 grounds [1] 5/24 guess [1] 9/16	K keep [2] 15/7 15/18 keeps [1] 8/1 kidnapping [1] 3/9 kin [1] 23/16 King [1] 22/2 knew [3] 7/24 14/3 15/14 known [3] 5/22 6/20 8/21
	H hadn't [1] 20/14 happen [1] 4/22 happened [1] 16/3	L lapsed [1] 11/2

L lawyer [2] 17/2 19/6 Le'Henry [2] 1/7 3/2 lead [5] 7/12 7/13 8/16 17/9 21/10 least [2] 10/4 17/7 leave [1] 6/8 leaving [1] 4/14 let [6] 5/13 7/1 17/18 17/25 21/2 21/25 letter [2] 3/14 12/24 life [2] 17/2 17/5 long [1] 6/21 looking [1] 9/2 lot [1] 18/22	next [1] 16/16 nor [1] 23/17 not [33] notice [2] 14/3 18/24 now [3] 6/22 7/7 13/6 number [5] 18/2 20/5 20/8 20/12 20/16	protects [1] 10/10 provide [1] 9/1 PUBLIC [1] 1/18 purposes [1] 8/16 push [1] 21/21 put [3] 15/6 19/8 21/8
M ma'am [1] 10/6 made [2] 13/25 22/5 mail [1] 13/18 mailed [1] 13/13 make [8] 5/10 8/5 9/4 10/21 12/9 13/5 15/19 17/21 many [1] 13/25 March [1] 23/19 marked [1] 13/6 matter [2] 17/15 21/24 matters [1] 9/13 max [1] 4/25 may [3] 3/5 13/4 18/1 McCURDY [3] 1/24 23/8 23/23 me [14] 3/21 5/13 7/1 8/13 10/13 11/10 11/17 11/22 14/11 16/3 16/7 17/25 19/5 21/2 mean [3] 5/1 10/4 16/18 MICHELLE [1] 1/13 might [1] 4/22 mind [1] 5/11 minimum [1] 8/15 misunderstanding [1] 8/9 Monday [2] 21/13 22/3 months [8] 5/22 5/23 6/4 8/15 10/5 11/9 17/7 21/10 motion [8] 3/3 6/12 12/4 12/9 15/19 17/17 19/11 21/6 move [1] 15/16 Mr [2] 7/9 8/1 Mr. [15] 3/8 3/20 5/3 5/9 6/23 7/22 11/4 13/7 13/21 15/7 15/12 19/2 19/4 20/2 20/13 Mr. Cooper [6] 3/20 5/3 7/22 15/7 15/12 20/13 Mr. Riley [7] 3/8 5/9 6/23 11/4 13/21 19/2 19/4 Mr. Riley's [1] 13/7 Mr. Ross [1] 20/2 Ms. [6] 4/10 12/14 16/3 17/16 18/9 19/7 Ms. Garfield [5] 12/14 16/3 17/16 18/9 19/7 Ms. Shipley [1] 4/10 much [1] 17/8 murder [1] 21/11 my [13] 4/9 4/14 12/2 12/11 12/17 15/21 15/21 16/9 18/5 18/19 19/9 19/16 19/17 myself [1] 16/12	O object [1] 11/2 objected [1] 11/16 offensive [2] 15/17 15/22 office [1] 19/3 Official [2] 1/24 23/8 oh [2] 6/22 12/23 old [1] 16/15 old-fashioned [1] 16/15 on [33] once [1] 5/17 ones [5] 8/19 11/6 11/7 11/20 16/6 only [2] 6/17 17/11 opportunity [3] 16/22 17/5 17/18 oppose [1] 5/3 or [7] 4/23 5/9 8/24 18/4 18/16 20/9 21/10 originally [1] 12/23 other [14] 5/25 6/4 6/23 7/4 7/8 11/22 12/3 13/10 13/11 14/11 15/1 16/22 17/4 21/25 our [7] 5/17 6/8 6/15 8/17 9/13 14/13 14/22 ourselves [1] 4/24 out [12] 4/15 4/25 8/15 10/5 11/9 13/2 16/14 18/3 18/18 19/4 19/12 21/9 out-of-state [1] 4/15 over [4] 6/18 11/6 14/1 20/18 own [2] 6/12 18/10	Q quiet [2] 15/7 15/18 R raised [1] 20/1 randomly [1] 7/20 ready [2] 16/17 19/14 real [1] 19/5 reasonable [2] 4/6 5/24 reasons [1] 5/6 recall [1] 16/1 received [3] 9/17 14/19 14/20 receiving [2] 9/7 14/10 recently [1] 3/22 record [7] 1/6 8/6 9/5 13/5 15/6 19/8 23/11 regardless [1] 11/24 registered [1] 13/18 reiterate [1] 9/13 relative [1] 23/13 reliance [1] 6/3 relied [1] 6/13 replace [1] 7/1 report [1] 13/11 Reporter [4] 1/24 23/1 23/8 23/23 represent [1] 18/17 representation [1] 10/22 representing [1] 18/11 request [4] 3/25 5/9 5/23 14/16 requesting [3] 3/15 3/24 4/1 require [1] 17/9 required [1] 9/19 requirements [1] 14/15 requires [1] 6/10 resistance [1] 9/17 respect [4] 16/4 17/13 17/21 22/5 respond [3] 16/22 17/25 18/8 Retainer [1] 13/8 return [1] 15/23 returning [1] 4/16 RICHLAND [4] 1/2 3/17 23/5 23/14 Riley [10] 1/7 3/2 3/8 5/9 6/23 7/9 11/4 13/21 19/2 19/4 Riley's [1] 13/7 robbery [1] 3/9 Ross [1] 20/2 RPR [2] 1/24 23/23 ruin [1] 18/4 ruling [1] 22/6 run [2] 11/17 11/21 running [1] 19/4
N need [1] 17/14 needed [2] 6/24 7/5 negotiations [1] 3/21 neither [1] 23/16 never [7] 4/21 7/16 7/16 9/17 10/7 10/7 10/18	P part [5] 8/6 9/5 11/22 13/5 21/17 particular [2] 7/14 17/15 parties [1] 7/13 party [2] 14/10 23/17 passed [1] 10/2 past [1] 14/1 pending [1] 12/5 people [1] 21/25 per [1] 3/14 period [1] 5/15 place [1] 16/21 Plaintiff [2] 1/5 11/7 plan [1] 16/19 planned [1] 4/15 play [2] 18/4 19/8 plea [1] 21/23 please [3] 3/5 4/18 15/11 point [3] 3/11 7/23 12/12 position [5] 6/15 8/17 9/13 9/25 14/22 power [5] 8/12 8/19 9/14 9/22 15/2 prejudice [3] 6/7 6/9 12/10 prepared [2] 20/20 21/1 pretrial [2] 11/1 21/15 pretty [1] 17/8 print [1] 10/4 printed [1] 8/15 prisoner [2] 9/7 14/9 probably [2] 20/12 21/18 problem [1] 16/12 problems [1] 4/9 proceedings [4] 2/4 2/14 22/8 23/12 protect [2] 18/13 19/9 protected [3] 6/13 11/5 15/4 protections [1] 17/3	S sanctioned [1] 15/9 say [7] 6/22 7/4 7/7 11/2 15/7 15/18 16/16 saying [8] 8/2 8/14 9/16 10/6 10/12 16/5 16/24 18/20 says [4] 5/16 13/15 14/9 14/11 schedule [1] 22/4 scheduled [7] 3/23 7/12 7/15 9/9 10/2 20/9 20/17 schedules [1] 17/10 scheduling [1] 9/13 second [4] 4/14 12/18 14/18 21/3

S	19/1 21/8 these [9] 2/4 2/14 4/4 8/16 10/4 13/16/23 18/21 19/24 they [61] they've [1] 18/24 things [8] 5/25 6/23 7/4 7/8 10/4 15/1 16/23 18/1 think [4] 7/9 17/22 20/22 21/19 this [40] this has [1] 17/6 though [1] 16/5 three [5] 8/15 10/4 11/9 17/7 21/9 through [2] 16/22 21/14 ticking [1] 7/24 time [16] 3/24 4/16 5/15 6/21 10/3 11/2 12/9 14/4 14/12 14/16 14/18 16/19 17/13 18/25 19/4 19/23 timeline [1] 15/14 times [1] 13/25 today [9] 10/13 10/14 10/23 11/23 12/7 14/24 20/20 20/21 21/12 told [1] 21/15 tomorrow [7] 4/15 5/12 7/7 7/12 8/22 14/21 14/23 too [2] 14/8 17/2 TRANSCRIPT [3] 1/6 22/23 23/11 transported [1] 3/17 trial [15] 3/22 7/13 7/18 9/5 9/10 12/5 17/9 20/3 20/6 20/8 20/16 21/11 21/21 21/23 23/12 trials [2] 7/12 8/16 tricks [1] 18/4 tried [3] 5/11 11/23 11/23 trip [1] 4/15 true [1] 23/11 trust [1] 11/17 try [8] 5/21 5/25 6/5 15/20 16/16 18/3 19/9 20/15 trying [6] 13/2 14/6 16/10 18/15 18/17 21/25 Tuesday [1] 21/15 two [4] 14/14 20/8 21/22 21/24	W 27
section [3] 9/2 13/22 14/9 Section 4 [1] 13/22 selection [1] 15/19 sent [5] 3/14 12/24 12/25 13/8 13/9 September [1] 3/20 served [1] 12/19 SESSIONS [2] 1/1 23/14 set [3] 7/19 16/23 22/2 several [1] 5/5 shall [1] 9/5 share [1] 13/1 she [7] 4/15 4/16 10/23 17/23 19/20 19/25 20/1 Shipley [1] 4/10 should [6] 6/15 14/5 14/25 15/3 19/12 20/14 show [2] 6/10 9/8 shown [6] 8/23 9/8 14/4 14/24 19/11 20/14 shows [1] 7/9 sides [1] 17/1 signed [1] 13/16 since [3] 3/13 3/21 7/6 situation [1] 14/11 six [3] 5/22 5/22 6/4 SOLICITOR [3] 1/17 20/21 22/3 Solicitors [1] 16/20 some [3] 3/11 4/16 18/8 something [1] 17/19 sometimes [1] 21/24 sorry [3] 8/8 8/13 16/2 SOUTH [11] 1/1 1/4 1/9 6/14 12/7 13/3 13/24 14/17 23/4 23/9 23/14 spring [3] 7/23 15/15 16/2 start [3] 21/13 21/16 22/3 starting [1] 21/15 state [28] status [4] 7/21 7/25 8/9 15/13 statute [23] 6/3 6/10 6/14 8/2 8/6 8/22 8/23 9/22 10/10 10/16 10/16 10/20 11/5 11/6 12/10 13/15 14/3 15/3 15/25 16/7 18/14 18/18 18/20 still [9] 5/14 11/24 12/7 12/14 13/3 14/6 16/25 16/25 20/23 Subsection [1] 9/3 sufficient [1] 10/19 supreme [2] 9/15 16/4 Sure [1] 5/19 system [1] 16/18	under [7] 9/3 9/4 9/21 10/10 10/20 11/4 18/13 underhanded [1] 18/16 understand [4] 9/25 11/18 12/13 17/1 understanding [5] 4/10 12/2 12/11 12/17 20/3 unfair [1] 7/8 union [1] 6/18 unless [1] 17/7 until [8] 4/16 4/21 5/2 11/10 11/25 19/17 up [14] 3/25 4/19 4/23 7/7 7/11 9/10 10/17 11/19 15/16 17/23 19/1 19/2 19/4 21/24 upon [1] 14/9 upset [1] 19/7 usually [1] 21/23	waited [1] 11/10 want [19] 5/25 6/5 6/19 6/20 7/4 7/8 14/24 15/1 15/2 16/7 17/2 18/2 18/21 19/7 19/22 20/19 20/22 20/23 20/25 wanted [1] 20/15 warrant [3] 3/11 3/12 12/18 wasn't [1] 7/25 way [4] 7/12 15/20 16/15 20/19 we [38] we're [2] 6/17 9/19 week [14] 3/23 4/1 4/11 4/12 4/22 16/16 19/14 20/9 21/7 21/13 21/18 21/20 21/21 21/22 weekly [1] 16/24 well [18] 4/1 5/16 7/1 7/7 7/11 7/19 8/7 10/15 11/1 11/12 12/8 13/15 13/20 14/14 15/10 16/21 18/7 19/22 went [3] 15/15 16/10 19/2 what [16] 4/22 5/16 6/7 9/16 10/6 10/12 10/16 11/1 11/16 12/13 16/5 17/8 18/15 18/20 19/9 20/13 whatever [2] 4/23 6/19 when [9] 6/23 10/1 10/3 10/13 12/23 14/1 15/13 16/12 18/21 whenever [1] 6/20 where [5] 6/18 12/21 16/15 20/1 21/14 WHEREUPON [4] 2/3 2/13 21/4 22/8 which [6] 7/23 11/3 13/8 13/8 20/1 21/11 who [1] 5/8 whole [2] 14/4 21/19 whose [1] 11/7 why [8] 9/20 12/6 12/14 13/2 14/5 14/25 16/23 19/11 will [15] 4/16 5/14 8/5 8/25 13/5 14/22 16/9 19/17 19/19 19/20 20/20 21/12 21/13 21/17 22/2 will be [1] 5/14 within [4] 4/4 5/11 9/6 14/12 witnesses [1] 2/3 word [1] 7/1 work [2] 17/3 20/23 worked [1] 16/12 working [1] 17/11 wouldn't [1] 18/19
T	U	Y
take [5] 9/23 21/12 21/17 21/19 21/24 talent [1] 17/14 talk [1] 20/20 talking [1] 20/13 tell [2] 10/13 11/22 telling [2] 10/15 11/10 terms [2] 17/3 21/9 testimony [1] 21/16 than [1] 20/9 Thank [1] 22/7 that [98] their [8] 11/14 11/15 11/17 13/25 16/6 16/10 16/20 19/3 them [8] 7/3 7/6 11/20 13/6 15/25 16/7 17/14 18/3 then [10] 3/21 6/22 12/9 12/14 14/11 15/15 15/17 17/19 19/4 21/25 there [13] 8/8 8/10 10/3 11/19 12/17 13/10 13/11 14/14 17/2 18/17 18/18	vacation [2] 17/3 19/19 versus [1] 14/7 very [2] 15/8 15/17 victim [3] 4/14 19/17 19/19 victims [1] 16/20 violation [2] 8/22 14/23 violent [1] 12/18 visiting [1] 19/20 volition [2] 6/12 18/11	y'all [1] 19/3 yes [4] 3/7 5/5 10/6 13/8 yesterday [1] 12/20 yet [1] 12/19 you [51]

State of South Carolina)
)

County of Richland)
)

State of South Carolina,
Plaintiffis

vs.

General Sessions
02-GS-40-731, 732

LeHenry Riley,
Defendant

December 12, 2008
Sumter, S.C.

Before The Honorable Clifton Newman, Judge.

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

Assistant Solicitor for the State

Mr. James Cooper,
Attorney for Defendant

Mr. Rhodes Bailey,
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

1 ASSISTANT SOLICITOR: MAY IT PLEASE THE COURT,
2 YOUR HONOR.

3 THE COURT: YES.

4 ASSISTANT SOLICITOR: STANDING BEFORE YOU
5 IS MR. LEHENRY RILEY. HE IS WITH HIS
6 ATTORNEYS FROM THE PUBLIC DEFENDER'S OFFICE,
7 MR. JAMES COOPER AND MR. RHODES BAILEY.

8 YOUR HONOR, MR. RILEY WAS CHARGED WITH ONE
9 COUNT OF ARMED ROBBERY AND KIDNAPPING FROM AN
10 INCIDENT THAT STEMMED FROM DECEMBER 2001. HE
11 IS PLEADING GUILTY TODAY TO ONE COUNT OF
12 KIDNAPPING AS CHARGED. AND A REDUCED CHARGE OF
13 STRONG ARMED ROBBERY. IN EXCHANGE FOR HIS
14 GUILTY PLEA, YOUR HONOR, THE STATE IS
15 DISMISSING A NON-RELATED BURGLARY SECOND
16 CHARGE. AND WE ARE ALSO MAKING A
17 RECOMMENDATION CAP OF 10 YEARS INCARCERATION.

18 THE COURT: MR. RILEY, THE ASSISTANT
19 SOLICITOR SAYS YOU WANT TO WANT TO PLEAD GUILTY
20 TO KIDNAPPING AND STRONG ARMED ROBBERY, IS
21 THAT RIGHT?

22 THE DEFENDANT: YES, YOUR HONOR.

23 THE COURT: FOR KIDNAPPING YOU CAN RECEIVE
24 A SENTENCE OF UP TO 30 YEARS. FOR STRONG ARMED
25 ROBBERY IS THAT 15?

1 ASSISTANT SOLICITOR: THAT'S CORRECT.

2 THE COURT: UP TO 15 YEARS. DO YOU
3 UNDERSTAND THAT?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: AND DO YOU UNDERSTAND THAT
6 KIDNAPPING IS CLASSIFIED AS A VIOLENT CRIME. IT'S
7 CLASSIFIED AS A SERIOUS OFFENSE. AND IF YOU
8 COMMIT ANOTHER MOST SERIOUS OFFENSE, YOU CAN BE
9 SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF
10 PAROLE? DO YOU UNDERSTAND THAT, SIR?

11 THE DEFENDANT: YES, YOUR HONOR.

12 THE COURT: AND YOU UNDERSTAND THAT WHERE
13 THE STATE WOULD MAKE A RECOMMENDATION CONCERNING A
14 SENTENCE, THE SOLE AUTHORITY FOR SENTENCING IS FOR
15 THE TRIAL JUDGE. AND I MAY ACCEPT THE
16 RECOMMENDATION, AND I MAY NOT ACCEPT IT.

17 THE DEFENDANT: YES, I UNDERSTAND.

18 THE COURT: HAS ANYONE PROMISED YOU
19 ANYTHING TO GET YOU TO PLEAD GUILTY?

20 THE DEFENDANT: NO, THEY HAVE NOT, YOUR
21 HONOR.

22 THE COURT: AND, COUNSEL, HAVE YOU
23 REVIEWED WITH HIM THE FACTS OF THIS CASE AND
24 DISCUSSED WITH HIM HIS GUILTY PLEA AND HIS
25 CONSTITUTIONAL RIGHTS, INCLUDING THE RIGHT TO HAVE

1 A JURY DETERMINE HIS GUILT OR INNOCENCE?

2 THE DEFENDANT: YES, YOUR HONOR.

3 THE COURT: DO YOU BELIEVE THAT HE
4 UNDERSTANDS ALL THAT?

5 MR. COOPER: I DO, YOUR HONOR.

6 THE COURT: MR. RILEY, WHEN YOU PLEAD
7 GUILTY, YOU GIVE UP CERTAIN IMPORTANT
8 CONSTITUTIONAL RIGHTS; INCLUDING, YOUR PRESUMPTION
9 OF INNOCENCE, YOUR RIGHT TO BE SILENT, YOUR RIGHT
10 TO A JURY TRIAL, YOUR RIGHT TO REQUIRE THE STATE
11 TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT TO A
12 JURY. YOUR RIGHT TO CONFRONT ANY WITNESSES
13 AGAINST YOU, AND YOUR RIGHT TO HAVE YOUR LAWYER
14 CROSS EXAMINE ANY OF THE STATE'S WITNESSES, AND
15 PRESENT ANY DEFENSE THAT YOU MAY HAVE IN THIS
16 CASE. AS WELL AS CHALLENGE ANY OF THE EVIDENCE
17 THE STATE MAY HAVE AGAINST YOU. DO YOU UNDERSTAND
18 THAT, SIR?

19 THE DEFENDANT: YES, I DO.

20 THE COURT: YOU WANT TO GIVE UP THOSE
21 RIGHTS?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: HAS ANYONE PROMISED YOU
24 ANYTHING TO GET YOU TO PLEAD GUILTY?

25 THE DEFENDANT: NO, THEY HAVE NOT, SIR.

1 THE COURT: WHAT DID YOU DO THAT MAKES YOU
2 GUILTY OF THESE TWO THINGS?

3 THE DEFENDANT: I CAN'T RECALL THE EXACT
4 DATE. WHAT THEY ALLEGE, I DID WILFULLY GO IN
5 TO THE BUSINESS AND TAKE MONEY THAT DID NOT
6 BELONG TO ME, YOUR HONOR. AND I ABDUCTED
7 MS. MITCHELL FROM THE PLACE SHE WAS, AND TOOK
8 HER A FEW FEET FROM THE BUSINESS, YOUR HONOR.

9 THE COURT: UNDERSTANDING THE NATURE OF
10 THE CHARGE AND THE POSSIBLE PUNISHMENT THEN AS
11 TO THESE TWO OFFENSES, HOW DO YOU PLEA?

12 THE DEFENDANT: GUILTY, YOUR HONOR.

13 THE COURT: AND DO YOU BELIEVE THAT IF YOU
14 WERE TO HAVE A JURY TRIAL, YOU MOST LIKELY WILL BE
15 FOUND GUILTY?

16 THE DEFENDANT: YES, I DO, YOUR HONOR.

17 THE COURT: SOLICITOR.

18 ASSISTANT SOLICITOR: THANK YOUR HONOR.
19 MAY IT PLEASE THE COURT, THIS INCIDENT DID
20 OCCUR ON DECEMBER 23RD OF 2001. ON THIS
21 PARTICULAR DATE, THERE WAS A WITNESS BY THE
22 NAME OF TAMMY ROBINSON, WHO WAS CLERK AT THE
23 COUNTRY INN SUITES ON EAST EXCHANGE. THAT'S
24 RIGHT OFF OF GARDNER'S FERRY ROAD HERE IN
25 RICHLAND COUNTY NEAR JIM HUDSON DEALERSHIP.

1 SHE WAS WORKING THE NIGHT SHIFT. ABOUT, AROUND
2 3:30, 4 O'CLOCK IN THE MORNING, THIS DEFENDANT
3 APPROACHED HER HOTEL ASKING TO MAKE CHANGE. HE
4 HAD A BANDANNA AROUND HIS NECK. IT WAS NOT
5 PULLED UP OVER HIS FACE. SHE DEEMED HIM TO BE
6 SUSPICIOUS AND TOLD HIM TO GO AWAY.

7 HE THEN LEFT, GOING TOWARDS THE, AT THE
8 TIME WAS THE BEST WESTERN HOTEL, WHICH WAS
9 RIGHT BEHIND THE COUNTRY INN SUITES. AT THAT
10 TIME TAMMY ROBINSON CALLED 911 AND GAVE A
11 DESCRIPTION OF A SUSPICIOUS PERSON. AT THAT
12 TIME LAW ENFORCEMENT RESPONDING TO THE COUNTRY
13 INN SUITES, THE DEFENDANT IS WALKING IN TO THE
14 BEST WESTERN WHERE ANNA MITCHELL, THE VICTIM IN
15 THIS CASE, IS WORKING THE NIGHT HOURS AT THE
16 HOTEL.

17 HE APPROACHED HER AT THE COUNTER. PUT HIS
18 HAND IN HIS POCKET AND WHAT ANNA MITCHELL
19 BELIEVED TO BE THE GUN. HE ASKED FOR ALL THE
20 MONEY. SHE OPENED THE CASH REGISTER, AND HE
21 DID LEAN OVER, AND TAKE CASH OUT OF THE DRAWER.
22 APPROXIMATELY \$160. HE THEN ASKED HER TO OPEN
23 THE SAFE. HOWEVER, SHE DID NOT HAVE ACCESS TO
24 THE SAFE. AT THAT TIME, HE TOOK HER OUTSIDE
25 THE HOTEL, AND WALKED. I AM NOT VERY GOOD,

1 YOUR HONOR, AT MEASURING THINGS BY FEET. BUT I
2 WOULD SAY IT WOULD BE FROM HERE TO AT LEAST THE
3 ELEVATORS OUTSIDE IN THE HALLWAY. TOOK HER
4 TOWARDS SOME DUMPSTERS. AT THIS TIME, YOUR
5 HONOR, I CAN TELL YOU SHE WAS ABSOLUTELY IN
6 FEAR OF HER LIFE. FEELING THAT HE WAS GOING TO
7 KILL HER AND THEN THROW HER IN THE DUMPSTERS.

8 ONCE THEY GOT TO THE DUMPSTERS, HE TOOK
9 OFF FLEEING BEHIND, THROUGH SOME BUSHES THAT
10 WERE BEHIND THE DUMPSTERS THAT EVENTUALLY LED
11 INTO THE BACK OF YET ANOTHER HOTEL PARKING LOT
12 OFF OF GARDNER'S FERRY ROAD. SHE WAS WALKING
13 BACK INTO THE HOTEL AND RECEIVED A CALL FROM
14 TAMMY ROBINSON WHO WAS CALLING HER TO WARN HER
15 THAT THIS WAS THE PERSON WHO WAS COMING. AND
16 SHE WAS LIKE, "TOO LATE, HE'S ALREADY GOT ME."
17 AT THAT TIME A COLUMBIA POLICE OFFICER WAS
18 PULLING IN TO THE BEST WESTERN, JUST TO SEE IF
19 HE SAW ANYONE SUSPICIOUS. WHEN HE DID
20 ENCOUNTER MS. MITCHELL, AND SHE GAVE HIM A
21 DESCRIPTION OF THE DEFENDANT.

22 THAT LAW ENFORCEMENT OFFICER, OFFICER
23 BENNETT, THEN GOES ON HIS DISPATCH GIVING A
24 BOLO OF THE DEFENDANT. HE IS APPREHENDED A
25 SHORT WAYS THROUGH THOSE WOODS IN A PARKING

1 LOT. HE APPEARED TO BE INTOXICATED BY THE
2 OFFICERS. HE WAS WEARING, HE DID MATCH THE
3 DESCRIPTION OF THAT GIVEN BY BOTH MS. MITCHELL
4 AND MS. ROBINSON.

5 HE WAS TAKEN EVENTUALLY TO THE POLICE -- I
6 MEAN TO THE JAIL. AND WHEN HE WAS TAKING HIS
7 CLOTHES OFF, A \$100 BILL AND A \$10 DID FALL
8 FROM HIS PERSON AND WAS APPREHENDED. YOUR
9 HONOR, THE DEFENDANT GAVE A STATEMENT SOMEWHAT.
10 HE INDICATES THAT IT WASN'T HIM. AND THEN WHEN
11 HE WAS APPROACHED WITH THE POSSIBILITY THAT
12 THERE MAY BE FINGERPRINTS INSIDE THIS HOTEL, HE
13 DID ADMIT THAT HE HAD BEEN IN THERE EARLIER
14 INQUIRING ABOUT A ROOM. HE NEVER DID GIVE ANY
15 SORT OF CONFESSION AT THE TIME.

16 HE WAS AT THAT TIME CHARGED. YOUR HONOR,
17 JUST FOR PROCEDURAL PURPOSES, ABOUT A YEAR
18 LATER HE WAS CHARGED WITH UNRELATED BURGLARY
19 SECOND THAT WE ARE DISMISSING. A MONTH AFTER
20 THAT HE DID FAIL TO APPEAR WHEN CALLED TO COURT
21 ON BOTH THESE CHARGES. HE WAS PLACED ON BENCH
22 WARRANT STATUS AT THAT TIME. WE LEARNED THIS
23 PAST SUMMER THAT HE WAS INCARCERATED IN THE
24 FLORIDA DEPARTMENT OF CORRECTIONS ON A DRUG
25 CHARGE. HE SENT US A LETTER ASKING FOR

1 DISPOSITION OF THESE CHARGES. AND THAT IS WHY
2 WE ARE ALL HERE TODAY. I BELIEVE YOUR HONOR IS
3 AWARE, THIS WAS THE FIRST TRIAL TO BE CALLED ON
4 MONDAY. THE STATE WAS PREPARED TO GO. AND
5 MR. COOPER INFORMED ME, I BELIEVE, YESTERDAY
6 THAT MR. RILEY WAS WILLING TO ENTER A PLEA. WE
7 ARE RECOMMENDING A CAP OF 10.

8 MS. MITCHELL IS NOT PRESENT. YOUR HONOR,
9 SHE IS VERY RELIEVED TO NOT HAVE TO GO FORWARD.
10 SHE HAS BEEN FEARING FOR 7 YEARS FOR THIS TO
11 COME UP AND HAVE TO TESTIFY AND COME TO COURT
12 AND FACE THE DEFENDANT. YOUR HONOR, HIS PRIOR
13 RECORD CONSISTS FROM THE YEAR 2000, FRAUDULENT
14 CHECK CONVICTIONS. 2001, POSSESSION OF CRACK
15 AND DISORDERLY CONDUCT. AND THEN FROM THE
16 STATE OF FLORIDA, 2003, HE HAS A PUBLIC DRUNK
17 CONVICTION. 2004, RESISTING ARREST. AND SOME
18 SORT OF TAMPERING WITH EVIDENCE CHARGE. I
19 DON'T KNOW WHAT THAT IS. AND THEN IN 2008,
20 CONTROLLED SUBSTANCE VIOLATION THAT HE IS
21 CURRENTLY SERVING TIME FOR IN THE STATE OF
22 FLORIDA.

23 YOUR HONOR, I WOULD LIKE TO PRESENT TO YOU
24 THE TWO BENCH WARRANTS. ONE FOR THE CASE WE
25 ARE HERE TODAY. AND ONE FOR THE BURGLARY AND

1 ASK YOU TO VACATE THESE AT THIS TIME. AND JUST
2 SO YOUR HONOR WHEN HE WAS CHARGED WITH THE
3 BURGLARY HE DID GIVE A NAME OF JAMES TOLLIVER.
4 SO THE BENCH WARRANT REFLECTS JAMES TOLLIVER.
5 WE WERE LATER ABLE TO IDENTIFY THAT JAMES
6 TOLLIVER WAS IN FACT LEHENRY RILEY.

7 THE COURT: ARE ALL THOSE FACTS TRUE, MR.
8 RILEY?

9 THE DEFENDANT: YES, THEY ARE, YOUR HONOR.

10 THE COURT: I WOULD ACCEPT THE GUILTY
11 PLEAS.

12 MR. COOPER: THANK YOU, YOUR HONOR. MAY
13 IT PLEASE THE COURT, YOUR HONOR, MR. LEHENRY
14 RILEY ACTUALLY TURNED 29 YEARS OLD TODAY.
15 TODAY IS HIS BIRTHDAY. I HAVE REPRESENTED HIM
16 FOR SEVERAL MONTHS NOW. I HAVE ENJOYED
17 REPRESENTING HIM. I FIND HIM TO BE AN
18 INTELLIGENT INDIVIDUAL. ALWAYS COURTEOUS WITH
19 ME DURING MY REPRESENTATION OF HIM. I WILL SAY
20 THAT HE IS NOT HERE TODAY TO OFFER EXCUSES FOR
21 HIS BEHAVIOR. BUT BY WAY OF EXPLANATION, I
22 THINK THAT DURING THE TIME THAT THIS HAPPENED,
23 HE WAS GOING THROUGH SOME SUBSTANCE ABUSE
24 ISSUES.

25 THIS IS A PERSON WHO GRADUATED FROM DREHER

1 HIGH SCHOOL AND SERVED HONORABLY FOR 3 YEARS IN
2 THE UNITED STATES ARMY. HE WAS A TANK DRIVER.
3 HE WAS HONORABLY DISCHARGED. AND I THINK AFTER
4 THAT I THINK HE RAN IN TO SUBSTANCE ABUSE
5 PROBLEMS AFTER THAT. AND HE MADE SOME REALLY
6 BAD CHOICES. YOUR HONOR, HE HAS THREE
7 CHILDREN. A 1-YEAR-OLD, A 4-YEAR-OLD AND A
8 9-YEAR-OLD. AND I KNOW FROM MY CONVERSATION
9 WITH HIM THAT HE WANTS TO AT SOME POINT BE A
10 PART OF THEIR UPBRINGING. AND HOPEFULLY
11 DISSUADE FROM THE KIND OF BEHAVIOR AND KIND OF
12 MISTAKES THAT HE HAS MADE.

13 AND, YOUR HONOR, I WILL TELL YOU THAT I
14 KNOW THAT HE REGRETS THIS. AND WE REALLY DO
15 APPRECIATE THE STATE'S RECOMMENDATION OF THE
16 CAP. YOUR HONOR, I RESPECTFULLY REQUEST THAT
17 YOU FOLLOW THAT RECOMMENDATION. AND I WOULD
18 ASK YOU IN LIGHT OF HIS MILITARY SERVICE, AND
19 IN LIGHT OF THE FACT THAT WHEN HE BECAME AWARE
20 OF THESE CHARGES, HE REQUESTED TO COME BACK AND
21 FACE THEM. YOUR HONOR, I WOULD REQUEST A
22 SENTENCE SOMEWHERE IN THE RANGE OF 5 OR 6
23 YEARS. THANK YOU, JUDGE.

24 THE COURT: YES, SIR.

25 THE DEFENDANT: WELL, YOUR HONOR, I DO

1 REGRET MY ACTIONS ON DECEMBER 23RD 2001. THAT
2 WAS NEARLY 7 YEARS AGO. SINCE THEN I HAVE DONE
3 NOTHING TO EVEN, THE THOUGHT OF EVEN DOING SUCH
4 A THING NEVER OCCURRED INTO MY MIND. AND I
5 HAVE BEEN OUT OF SOCIETY SINCE THEN FOR THE
6 PAST 16 MONTHS WHERE I HAVE BEEN INCARCERATED.
7 I MEAN I HAVEN'T EVEN TAKEN SO MUCH AS A PIECE
8 OF CANDY OUT OF THE STORE.

9 THE COURT: WHERE WERE YOU INCARCERATED?

10 THE DEFENDANT: BEFORE I BECAME, WAS
11 BROUGHT HERE, I WAS INCARCERATED AT THE
12 DEPARTMENT OF CORRECTIONS IN FLORIDA FOR A
13 PROBATION VIOLATION, YOUR HONOR.

14 THE COURT: FOR WHAT?

15 THE DEFENDANT: FOR FAILING A VIOLATION
16 FOR DRUG OFFENDER PROBATION.

17 THE COURT: WHAT WERE YOU ON PROBATION
18 FOR?

19 THE DEFENDANT: POSSESSION OF DRUGS.
20 CRACK POSSESSION.

21 THE COURT: ARE YOU THROUGH DOING YOUR
22 TIME IN FLORIDA?

23 THE DEFENDANT: NO, YOUR HONOR. FROM MY
24 UNDERSTANDING, I AM ENTIRELY COMPLETED WITH
25 THAT, YOUR HONOR.

1 MR. COOPER: YOUR HONOR, MY UNDERSTANDING,
2 YOUR HONOR, IS THAT HIS RELEASE DATE IS JANUARY
3 18TH. THAT'S WHAT THE DEPARTMENT OF CORRECTIONS
4 ASKED FOR.

5 THE DEFENDANT: AND I HAVE HAD DRUG
6 COUNSELING SINCE I WAS IN TO DRUGS. I AM
7 NOW -- WELL PRIOR TO MY INCARCERATION, I WAS
8 LIVING WITH MY CHILDREN. I WAS WORKING AND
9 TAKING CARE. AS I SAID, MY LIFE IS NO WHERE
10 NEAR WHERE IT WAS 7 YEARS AGO. AND I WAS OUT
11 IN SOCIETY. I WAS NOT -- THIS IS NOTHING THAT
12 WAS A REPEATED OCCURRENCE, SIR. I NEVER SO
13 MUCH AS EVEN GOT INTO A FIGHT BEFORE BESIDES
14 THIS INCIDENT. I DO TAKE FULL RESPONSIBILITY
15 FOR---

16 THE COURT: WHAT DID YOU PLAN TO DO WITH
17 THAT LADY?

18 THE DEFENDANT: YOUR HONOR?

19 THE COURT: WHAT DID YOU PLAN TO DO WITH
20 THAT LADY?

21 THE DEFENDANT: ABSOLUTELY NOTHING, YOUR
22 HONOR. I DIDN'T EVEN -- AT THAT TIME, I KNOW
23 IT DOESN'T MATTER NOW BUT I DIDN'T EVEN HAVE A
24 GUN, YOUR HONOR. I DIDN'T -- I HAD NO
25 INTENTIONS OF HARMING HER AT ALL. AND IF SHE

1 WOULD HAVE SCREAMED, I PROBABLY WOULD HAVE RAN
2 BECAUSE I WAS SO SCARED.

3 THE COURT: WHAT WERE YOU DOING? WHY DID
4 YOU HAVE TO GO OUT BY THE DUMPSTER? WHAT WERE YOU
5 DOING?

6 THE DEFENDANT: SIMPLY TO PREVENT HER FROM
7 CALLING THE POLICE BEFORE I GOT A CHANCE TO
8 RUN AWAY, YOUR HONOR. THAT'S ALL. I REGRET MY
9 ACTIONS SO MUCH. NOT JUST THE FACT, I MEAN, OF
10 COURSE THE FACT I WAS FACING 60 YEARS DUE TO
11 THE REPERCUSSIONS OF MY ACTIONS. WELL JUST THE
12 FACT THAT I WOULD CAUSE THAT KIND OF FEAR IN
13 SOMEONE HAS MADE A TURN FOR ME. THIS HAS
14 HAPPENED TO ME ALSO. SINCE THIS OCCURRED, I
15 HAVE BEEN ROBBED AT GUNPOINT. AND SO I DO KNOW
16 THE FEAR OF IT HAPPENING. AND I WOULDN'T WANT
17 TO WISH THAT ON ANYBODY ELSE AGAIN IN MY LIFE.
18 AND I JUST RESPECTFULLY THROW MYSELF AT THE
19 MERCY OF THE COURT.

20 THE COURT: ANYTHING ELSE ON BEHALF OF THE
21 DEFENSE?

22 MR. COOPER: THE ONLY OTHER THING IS, WE
23 WOULD REQUEST THAT WHATEVER SENTENCE YOU IMPOSE
24 THAT HE GETS CREDIT FOR THE TIME HE HAS SERVED
25 SINCE JANUARY 11TH. THAT WAS THE DAY THAT HE

1 FILED THE PETITION, AND HE BECAME AWARE -- HE
2 FILED A PETITION TO COME BACK TO SOUTH CAROLINA TO
3 FACE THESE CHARGES.

4 THE COURT: HOW DO I DO THAT?

5 MR. COOPER: WELL I THINK IF YOU ORDER
6 CREDIT FOR TIME SERVED SINCE THEN---

7 THE COURT: HOW DO I GIVE HIM CREDIT FOR
8 TIME THAT HE HAS NOT SERVED?

9 MR. COOPER: WELL HE SERVED, HE HAS BEEN
10 INCARCERATED SINCE JANUARY 11TH.

11 THE COURT: THAT'S IN ANOTHER STATE.

12 MR. COOPER: YES, SIR. AND I'M JUST
13 ASKING THE COURT TO CONSIDER DOING THIS, BECAUSE
14 THAT'S THE DAY HE INITIATED TRYING TO COME AND
15 FACE THESE CHARGES.

16 THE COURT: DO YOU THINK THAT IS
17 EQUIVALENT, SHOULD BE CONSIDERED TO BE EQUIVALENT
18 TO ACTUALLY SERVING TIME SINCE HE WROTE A LETTER?

19 MR. COOPER: WELL WHEN HE BECAME AWARE OF
20 THE DETAINER AGAINST HIM.

21 THE COURT: MR. BAILEY, ANYTHING ELSE?

22 MR. BAILEY: NOTHING ELSE.

23 THE COURT: ANYTHING ELSE FROM THE STATE?

24 ASSISTANT SOLICITOR: YOUR HONOR, JUST SO
25 YOU ARE FAMILIAR, HE HAS BEEN IN OUR JAIL SINCE

1 AUGUST 5TH OF THIS YEAR. IF YOU WILL ALSO MAKE
2 A SPECIFIC FINDING THAT THIS DOES NOT INVOLVE
3 THE SEX OFFENDER REGISTRY FOR THE KIDNAPPING
4 CONVICTION. AND, YOUR HONOR, NO WEAPON WAS
5 RECOVERED.

6 THE COURT: SENTENCE FOR STRONG ARMED
7 ROBBERY IS 10 YEARS. THE SENTENCE FOR
8 KIDNAPPING IS 7 YEARS. SENTENCES WILL RUN
9 CONCURRENT. HE IS TO BE GIVEN CREDIT FOR TIME
10 SERVED SINCE AUGUST 5TH 2008.

11 MR. COOPER: YOUR HONOR, MAY HE RECEIVE
12 CREDIT FOR TIME SERVED IN THE RICHLAND COUNTY
13 JAIL BACK IN 2000?

14 THE COURT: WHY DON'T YOU ALL DETERMINE
15 THE NUMBER OF DAYS THAT THAT IS, AND LET ME
16 KNOW. AND WE WILL GO FROM THERE.

17 MR. COOPER: YES, SIR. THANK YOU. I'LL
18 DETERMINE THAT AS SOON AS I CAN.

19 THE COURT: I AM GOING TO SENTENCE HIM
20 NOW.

21 MR. COOPER: YES, YOUR HONOR.

22 ASSISTANT SOLICITOR: JUST GIVE ME ABOUT
23 10 MINUTES.

24 END OF REQUESTED TRANSCRIPT OF RECORD.
25

Certificate

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the above captioned case, relative to appeal, in General Sessions Court, on December 12, 2008, for Richland County, Columbia, South Carolina.

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

1-20-10

DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 10-03-11

9

2009CP4007428 45th BP

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Le'Henry Shaundel Riley #332689
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2009 OCT 19 AM 10:25
JEROME
U.S.

FILED

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Kershaw Correctional Institution / Kershaw, SC
2. Name and location of Court which imposed sentence Richland County Judicial Center 1701 Main St. Columbia, SC 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 02GS40731
 - (b) 02GS40732
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 12, 2008 10 yrs. SCDC
 - (b) December 12, 2008, 7 yrs SCDC
 - (c) _____

5. 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

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) Was not sure grounds were strong enough to justify a direct appeal

(b) Did not know steps necessary to initiate a direct appeal

(c)

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

(a)

(b)

(c)

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

(a)

(b)

(c)

9.
 - ④ Court lacked subject matter jurisdiction
 - ⑤ Ineffective assistance of counsel
 - ⑥ Prosecutorial Misconduct
 - ⑦ Denied due process
10.
 - ④ Violations of 17-11-10 articles IV(c), V(d)
 - ⑤ Counsel advised plea in violation of Interstate Agreement on Detainers / Counsel failed to reasonably investigate witness / Attorney's services fell short of that of reasonably proficient counsel / Counsel never produced discovery after repeated requests / Counsel failed to argue any points of law during motion for extension hearing / Counsel allowed inflammatory remarks to be made during plea hearing with no objections or rebuttal
 - ⑥ State made improper and inflammatory remarks regarding a witness's testimony. The witness was not present and the remarks were inconsistent with the witness's statement set forth in discovery

10.⑩ The State filed a misleading Motion for extension in that she neglected to mention the 120-day time limit specified in the Interstate Agreement on Detainers and instead opted to use a date that signified the end of the 180-day time limit which was no longer valid due to the fact that I was already in the state/State failed to bring timely indictment to the charge of Burglary 2nd which I accrued separately from the Robbery and Kidnapping charges but 6 years prior to these proceedings.

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?

No

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

(a) the specific nature thereof:

- i. _____
- 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

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
 ii. N/A
 iii. _____

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

- i. _____
 ii. N/A
 iii. _____

15. If any ground set forth in (9) 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) Applicant has not filed any petitions or motions prior to this one.

(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? N/A

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. James Cooper, ESQ., Richland Co. Public Defender's Office
1701 Main St, Suite 103, Columbia, SC 29202

ii. _____

iii. _____

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

- i. plea hearing + sentencing 12/12/08

ii. _____

iii. _____

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

Revocation and/or Reduction

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Le'Henry S. Riley, 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.

Le'Henry S. Riley

SWORN to and subscribed before me this 22day of Sept, 18 2009

Florence M. Kline (L.S.)
Notary Public

My Commission Expires: 1/31/18

2009 OCT 19 AM 10:25
C.C.R.C.B.
RICHLAND COUNTY

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

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

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

Le'Henry S. Riley
Applicant

SWORN or affirmed to and subscribed before me this

22 day of Sept, 18 2009

Florence M. Kline
Notary Public

My Commission Expires 1/31/18

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RILEY Le'Henry S, # 332689,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-400-7428

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed 10/19/2009, 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 Richland County Clerk of Court. The Applicant was (according to the application) represented by James Cooper, Esquire. On 12/12/2008, the Applicant pled guilty before The Honorable Clifton Newman. The Applicant had been indicted and/or pled guilty to the following: Armed Robbery and Kidnapping - (2002-GS-40-781;732). According to the South Carolina Department of Corrections, the Applicant is serving a 10 year sentence for Kidnapping.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to

amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

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

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Jeremy A. Thompson, Esquire regarding when the hearing should be set.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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March 19, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-7428

Le'Henry L. Riley, 332689

Applicant,

vs

State of South Carolina,

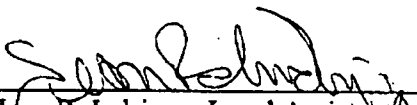
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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

Jeremy A. Thompson, Esquire
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

DATED this 30th day of March, 2010.



Jean R. Indriago, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 LEHENRY RILEY,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 STATE OF SOUTH CAROLINA,) 2009-CP-40-07428
9 DEFENDANT.)

10

11 MARCH 2, 2011

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 JERMERY THOMPSON, ESQ.

20

21 FOR THE DEFENDANT:

22 BRIAN PETRANO, ESQ.

23

24

25 I-N-D-E-X

1 PG.

2 PCR: 3

3

4 CERTIFICATION: 35

5

6

7

8 E-X-H-I-B-I-T-S

9 PG

10 PLAINTIFF'S

11 1. PROVISIONS OF CONSTITUTION.

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1 (The following proceedings were held on
2 March 2, 2011.)

3 THE COURT: You all ready.

4 MR. PETRANO: Ready, Your Honor.

5 THE COURT: All right. You may proceed.

6 MR. PETRANO: This is 2009-CP-40-07428, this is
7 LeHenry Riley. It's a PCR application filed October 19th,
8 2009. It is a Richland County case. He plead guilty in
9 front of Judge Newman on December 12th, 2008. He was
10 represented by the Public Defender's Office, Mr. Jay Cooper
11 who is present. He had been indicted by the May 2002 of the
12 Richland County Grand Jury. That's 2002-GS-40-00731, that
13 one was a common law stong armed robbery and --

14 THE COURT: He plead to the common law?

15 MR. PETRANO: No, Your Honor, he plead to --
16 excuse me, Your Honor. It's an indictment for armed robbery
17 he plead to common law.

18 THE COURT: That's what I said.

19 MR. PETRANO: Sorry about that.

20 THE COURT: That's all right.

21 MR. PETRANO: 0732 was the kidnapping, he got
22 seven for that. The records aren't perfectly clear but I'm
23 sure we can clear it up. In exchange for the plea, he nol
24 pros a related second degree burglary and there -- that was
25 a cap of ten. I don't have any speciefies on the second

1 degree burglary because it was not pros.

2 THE COURT: All right.

3 MR. PETRANO: There was no direct appeal.

4 THE COURT: All right.

5 MR. THOMPSON: May it please the court, Your
6 Honor. For the record my name is Jeremy Thompson I have
7 been court appointed to represent the applicant on the PCR
8 application. In general, he alleges that he received
9 ineffective assistance of counsel in violation of his 6th
10 and 14th Amendments -- Amendment Rights under the United
11 States Constitution as well as -- for provisions of the
12 South Carolina Constitution and that his plea was not
13 knowingly and voluntarily made.

14 Your Honor, just -- I am going to hand up -- in
15 fact, I went over this -- mark this as Plaintiff's 1.

16 (Plaintiff's Exhibit 1 marked for
17 identification.)

18 THE COURT: This is a motion only?

19 MR. THOMPSON: No, that is the motion that was
20 filed by the Solicitor's Office to get his case continued
21 back when he -- when the charges were pending. This issue
22 pretty much -- my client's case pretty much is -- revolves
23 around the interstate agreement on detainers.

24 THE COURT: All right.

25 MR. THOMPSON: And whether or not --

1 THE COURT: What part of Florida? What part of
2 Florida?

3 MR. THOMPSON: And the reason why --

4 THE COURT: What part of Florida were you in?

5 MR. THOMPSON: What part of Florida?

6 THE DEFENDANT: I was living there or prison?

7 THE COURT: Both.

8 THE DEFENDANT: I was living in Tampa, Florida and
9 I was in prison in -- right outside of Panama City.

10 THE COURT: Okay.

11 All right, go ahead, Mr. Thomas.

12 MR. THOMPSON: This motion was filed by the
13 Solicitor's Office and pretty much sets forth the basic facts
14 of the case and the statute is just either interstate -- on
15 retainers.

16 My client would basically have two allegations,
17 Your Honor. First to begin is that is that defense counsel
18 was ineffective for failing to advise him that if he
19 proceeded to trial -- well, let me backtrack.

20 THE COURT: Grace -- go ahead.

21 MR. THOMPSON: Basically, my client sent a to be
22 transported to South Carolina to be -- to resolve his
23 outstanding charges. He was brought back. The state filed
24 -- he was brought back on August 5th, 2008. The case was
25 set for trial week of December 8th. The state had a

1 continuance request, that's the motion.

2 THE COURT: Uh-huh.

3 MR. THOMPSON: That Judge Childs granted on
4 December 3rd, 2008 and then he ended up pleading guilty on
5 December 12th, 2008 in front of Judge Newman.

6 Essentially, Your Honor, my client is arguing
7 that, that, his attorney was ineffective for failing to
8 advise him that if he proceeded to trial that he could argue
9 that the continuance was improperly granted that his case
10 should be dismissed pursuant to the IED and that failing
11 that he could appeal that motion, the denial of that motion
12 to the appellate court and try to get a reversal that way as
13 well as, Your Honor --

14 THE COURT: You mean, appeal the granting of the
15 continenence?

16 MR. THOMPSON: Yes, Your Honor.

17 THE COURT: All right.

18 MR. THOMPSON: And as well, Your Honor, I freely
19 admit I have absolutely no authority to back this
20 proposition up.

21 THE COURT: It was in the sound discretion of the
22 trial judge, the tundra -- go ahead.

23 MR. THOMPSON: Is that -- is that, my clients,
24 he's, alleging under the PCR Act that the -- that the IED
25 was violated.

1 THE COURT: All right.

2 MR. THOMPSON: As a substantive allegation not
3 related to ineffective assistances of counsel.

4 THE COURT: Okay.

5 MR. PETRANO: So with that background of mine,
6 Your Honor, I would call the appellant as his own first
7 witness.

8 THE COURT: Come around, Mr. Riley.

9 THEREUPON,

10 LEHENRY RILEY,
11 after having been duly sworn, testified as follows:

12 THE COURT: All right. Please take your seat,
13 Mr. Riley, tell us your full name and spell your last name
14 for the record.

15 THE DEFENDANT: My name is LeHenry S. Riley,
16 R-I-L-E-Y.

17 THE COURT: What does the S stand for?

18 THE DEFENDANT: Shondel.

19 THE COURT: LeHenry Shondel Riley?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You parents named you Shondel?

22 THE DEFENDANT: (Mr. Riley smiles.)

23 THE COURT: Go ahead, Mr. Thompson.

24 DIRECT EXAMINATION

25

1 BY MR. THOMPSON:

2 Q Mr. Riley, how you doing this morning?

3 A All right.

4 Q This afternoon actually. I -- in speaking with you at

5 your institution I know that you're a pretty soft

6 spoken individual but you generally speak pretty

7 clearly and consciously. I would just ask that you

8 speck up. Speak clearly for the judge and the court

9 reporter sitting next to you has to take down

10 everything that you say, okay.

11 THE COURT: Judge, Newman only gave him ten years?

12 MR. THOMPSON: Yes.

13 THE COURT: Okay. He must have been in a good

14 mood. Go ahead.

15 BY MR. THOMPSON:

16 Q Mr. Riley, when were you arrested and charged on these

17 charges to begin with?

18 A December 23rd, 2001.

19 Q Did you make bound?

20 A Yes, I did.

21 Q Did you then leave the state?

22 A Yes, I did.

23 Q And when were you charged in Florida?

24 A With?

25 Q With your crimes in Florida that you ended up doing the

1 time on?

2 A (There was no response.)

3 THE COURT: Is it sometime in 2001 for example?

4 BY MR. THOMPSON:

5 A No, it was around 2004 I was charged with my crimes in
6 Florida.

7 Q And how soon after you were charged there were you
8 convicted in Florida? When did you start serving your
9 time?

10 A I actually I was sentenced to probation the first and
11 then I actually ended up going to prison for violation
12 of probation.

13 Q And when you got to prison, did you learn that you
14 still had those other charges outstanding in South
15 Carolina?

16 A Well, I -- I had been informed that I had the charges
17 but I was told to complete my probation then come back
18 and handle the charges but I didn't complete the
19 probation. So when I went to prison I said told that I
20 had detainers on me. And as per the statue on the
21 detainers the classification officer came to me and
22 gave me the packet to afford me the opportunity to
23 dispose of the charges. And so that's when I filed for
24 request for final disposition.

25 Q And when did you file that request?

1 A I can look. I believe -- hold on --

2 THE COURT: While you're looking for that. Was
3 the sentence that Judge Newman imposed consecutive to the
4 time he served in Florida --

5 Well, you can answer it. Was it consecutive or
6 concurrent?

7 THE DEFENDANT: I did not get credit for time
8 served in Florida.

9 THE COURT: I'm sorry. Go ahead.

10 MR. THOMPSON: I believe it's in the transcript
11 that he was --

12 THE COURT: Okay. Go ahead.

13 MR. THOMPSON: He can testify to that.

14 THE COURT: All right. That's fine.

15 BY MR. THOMPSON:

16 A Okay. I filed -- I filed -- request a final
17 disposition June 11th, 2008.

18 Q And when would -- when did you get transported to South
19 Carolina?

20 A August 5th, 2008.

21 Q Did you receive any paperwork from the Solicitor's
22 Office bringing you over to South Carolina while you
23 were at Florida -- in the Florida court in the court --
24 references?

25 A The only paperwork I received was the packet -- the

1 same packet that you have here which was the packet
2 about the detainers I had which were for armed robbery
3 and kidnapping. And so I agreed to come and dispose of
4 those two charges and that was the only paperwork that
5 I received.

6 Q Who was your attorney in South Carolina?

7 A Mr. Cooper was my attorney. There was another fellow
8 also but I don't recall his name right.

9 Q Mr. Rhodes Bailey, does that sound correct?

10 A Yeah.

11 Q Were these gentleman with the Public Defender's office?

12 A Yes, they were.

13 Q How soon after you got back to South Carolina did you
14 meet with either of these two (indicating) gentleman?

15 A Within the first 30 days I believe I met with Mr.
16 Cooper.

17 Q Over the course of the representation, how many times
18 did you meet with Mr. Cooper?

19 A I'd say round five.

20 Q And did you know that your case had been scheduled for
21 a trial?

22 A I had no idea that my case had been -- I didn't know
23 the trial date I should say.

24 Q Did they tell you that you had been scheduled for the
25 trial but you just didn't know when?

1 A No, I don't recall them saying I had been scheduled for
2 a trial.

3 Q When was the first time you had learned that you had a
4 trial date?

5 A The first time I recall learning that I had a trial
6 date was at the motion for extension trial.

7 Q And that was on December 3rd, 2008?

8 A Yes.

9 MR. THOMPSON: And, Your Honor, I believe you have
10 the copy of the continuance.

11 THE COURT: Yes, sir.

12 MR. THOMPSON: The packet.

13 BY MR. THOMPSON:

14 Q Did -- had you discussed with your defense attorney
15 before this hearing your requirements under the IED and
16 how long they had to try you?

17 A I believe I discussed initially when I came into the
18 state our first meeting I discussed what I believed the
19 requirements were. And then for about a week or so,
20 maybe, two weeks before we had the motion for extension
21 hearing I told him I believe that we were nearing the
22 end of the 120 days of me being in the state and other
23 than that we talked mostly about the case because at
24 the time I had -- I indicated that I wanted to go to
25 trial.

1 Q Did you -- so you had told Mr. Cooper about, you know,
2 the 120 days, you thought your time was running out?

3 A Correct.

4 Q Is that correct?

5 A Correct.

6 Q And so when he was making those arguments at your -- at
7 the continuance hearing that the time was about to run
8 out, you understood what he was taking about?

9 A I did, yes.

10 Q And what was the result of that hearing?

11 A A motion for -- she granted the continuance.

12 Q Judge Childs granted the continuance?

13 A Yes.

14 Q Now, after the --

15 THE COURT: That was the state that requested the
16 continuance?

17 MR. THOMPSON: Yes, Your Honor.

18 THE COURT: Ms. Dolly Garfield?

19 MR. THOMPSON: Yes, Your Honor.

20 THE COURT: All right.

21 BY MR. THOMPSON:

22 Q Now, after -- after that proceeding, did you then meet
23 with defense counsel again regarding the case going to
24 trial?

25 A Yes, I did.

- 1 Q Did they talk to you -- when I say "they", did
2 Mr. Cooper, Mr. Bailey talk to you about pleading
3 guilty?
- 4 A Yes. We had numerous discussions about pleading
5 guilty.
- 6 Q And did they -- did Mr. Cooper try to convince you to
7 plead guilty?
- 8 A I mean, I wouldn't say he tried to convince me to pled
9 guilty. He discussed the evidence, discussed the case
10 and he told me in his professional opinion it would
11 best to -- it might be better if we -- if we didn't
12 take it to trial.
- 13 Q Did y'all have any discussions about making any further
14 IED motions at the trial?
- 15 A No, we did not that I recall.
- 16 Q Did he -- did y'all have any discussions about possibly
17 asking the court to dismiss your charges because of IED
18 violation?
- 19 A No.
- 20 Q At your trial?
- 21 A No that I recall.
- 22 Q And did you have any discussions about possibly being
23 able to appeal that ruling if it was unfavorable at
24 your trial?
- 25 A Based on the IED?

1 Q Yeah.

2 A Not that I recall. Right -- not too long after the
3 motion for extension came the plea agreement and so
4 when he -- when I actually -- I only had one time I
5 told him yes I have willing to plea. It wasn't -- it
6 wasn't like it was a plea that we were negating over
7 and over. It was basically just him telling me what he
8 believed professionally was right. And I just want to
9 say that I'm not questioning what he was doing as far
10 as his tactic toward how he handled the case. I'm only
11 saying that I -- that my rights were violated under the
12 interstate agreement on detainers. So we discussed
13 the -- the plea agreement and then I finally came to
14 the point where I said, Well, I'm willing to discuss a
15 plea.

16 Q Had you known that you could make an IED motion -- the
17 trial was unsuccessful appeal that decision, would you
18 have pled guilty?

19 A No, I would not have.

20 Q You would have gone to trial?

21 A Yes.

22 Q And you just mentioned that you were arguing that --
23 that your rights were violated under the IED. You also
24 want the judge to consider that the substantive IED
25 violation under the PRC statute, that without talking

1 about ineffective assistance of counsel, that your
2 right were just violated under the IED?

3 A Correct.

4 THE COURT: So are you bootstrapping saying that
5 either I guess it would have been Mr. Bailey or Mr. Cooper
6 who -- whom should have made that or renewed that motion?

7 MR. THOMPSON: Should have -- yes, should have
8 renewed that motion and that even if you were to find that
9 they weren't ineffective that the PCR statute allows us to --

10 THE COURT: Okay.

11 MR. THOMPSON: Argue today.

12 THE COURT: All right.

13 MR. THOMPSON: That it was allowed.

14 THE COURT: Very well.

15 BY MR. THOMPSON:

16 Q All right. I think I've covered everything that we've
17 talked about but this is your one and only chance of a
18 PCR hearing and so if you have anything else you want
19 to tell this judge now is the time to do it. Okay, you
20 have anything else?

21 A Yes, I do. What lead me to file this application was
22 that I received this paperwork in January or February
23 of 2008. I spent a few months looking into it before I
24 actually filed a request for final disposition. And my
25 understanding due to other Supreme Court cases that

1 were -- that handled this situation was that the only
2 way that an extension would be granted we if we
3 indicated we were not ready or extraordinary
4 circumstances.

5 THE COURT: And if it's you and not the state?

6 THE DEFENDANT: If -- correct. And okay. It
7 specifically address the fact that calendar congestion was
8 not enough to grant a continuance there are cases that
9 specifically address this issue and so that is what lead me
10 to file a request for final disposition because I believe
11 that we were going -- I was going to come down here and the
12 case was going to be handled in a timely manner. When the
13 extension was granted that basically made me think I didn't
14 understand what I had gotten myself into as far as the IED
15 or how the rules apply altogether.

16 THE COURT: All right.

17 THE DEFENDANT: And I'm here now because I believe
18 that I was correct in my initial understand that my rights
19 were violated and that the motion of continuance was not --

20 THE COURT: It was an abuse of discretion?

21 THE DEFENDANT: Correct. Correct.

22 THE COURT: Okay. That's fine.

23 All right. You may --

24 BY MR. THOMPSON:

25 Q And what were the basis for the state asking for a

1 continuance?

2 A Specifically that the calendar didn't permit it to be
3 tried when they had scheduled it and that the witness
4 needed to go on vacation to Hawaii.

5 MR. THOMPSON: I have nothing further at this
6 time.

7 THE COURT: All right. Mr. Petrano.

8 CROSS-EXAMINATION

9 BY MR. PETRANO:

10 Q You said you filed it on June 11th?

11 A Correct.

12 Q How did you do that?

13 A Simply in the prison the way it the way the doom is
14 setup is there's a case worker's office. I just went
15 by her office and said, I'd like to sign the papers and
16 send them off.

17 Q And certified mail or regular mail or do you know?

18 A I didn't have anything to do with that. There was -- I
19 filed it with her and then it has to go through the
20 warden and then he sends it off.

21 Q Okay. And so, you have no idea when it was actually
22 mailed or do you know?

23 A I know now but I didn't know then.

24 Q And thank you for explaining that. Tell us with what
25 you know now when was it mailed and received by the --

1 A Well, according to the solicitor -- let's see, and the
2 motion for extension hearing she said that it was time
3 stamped and she said that he received it on -- give me
4 one second.

5 Q Take your time, sir. I think you're looking for page
6 13.

7 A Where she says the mail day was June 18th.

8 Q Nothing further. Thank you.

9 THE COURT: All right, Mr. Thompson, anything on
10 redirect?

11 MR. THOMPSON: Just one thing I wanted to bring
12 up.

13 DIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q Did -- are you currently being required -- well, does
16 your SCDC information currently have you required to
17 register as a sex offender upon your release from
18 prison?

19 A At this point in time it does even though at the plea
20 hearing the solicitor requested for the judge that I
21 not be --

22 THE COURT: We'll take care of that. The
23 solicitor's office will do that not the AG office. The AG's
24 office -- it's not a PCR issue. They are very kind here in
25 issuing a form order that takes him off.

1 MR. THOMPSON: Nothing else.

2 THE COURT: What?

3 MR. THOMPSON: That's it.

4 THE COURT: All right. You may step down, sir.

5 Call your next witness, Mr. Thompson.

6 MR. THOMPSON: The applicant calls James Cooper.

7 THE COURT: All right. Is it David? What's your
8 middle name?

9 MR. COOPER: Daniel.

10 THE COURT: Daniel?

11 MR. COOPER: Yes, sir.

12 THE COURT: That's all right. That's a good name
13 from the old testament. Daniel in the lion's den and you
14 can get in the witness chair now.

15 (Laughter.)

16 THEREUPON,

17 JAMES COOPER,

18 after having been duly sworn, testified as follows:

19 THE COURT: All right. Please take a seat,

20 Mr. Cooper. Tell us your full name and tell us your last
21 name for the record.

22 MR. COOPER: My full name is James Daniel Cooper,
23 the third.

24 DIRECT EXAMINATION

25 BY MR. THOMPSON:

1 Q Mr. Cooper, thank you for being here today. Do you
2 recall your representation of applicant?

3 A I do.

4 Q And early on in the case, did you expect this case to
5 be a plea or a trial?

6 A Well, first I didn't know, of course, I talked with the
7 client and initially in our first few conversations I,
8 you know, treated it like it was going to be a trial
9 because he didn't indicate that he was going to pled so
10 I hired an investigation, got Mr. Bailey's help and I
11 treated the case as if it were going to trial.

12 Q And during your discussions with the applicant, did he,
13 I guess, appear knowledgeable about the interstate
14 agreement on detainers?

15 A He did. I mean, he brought it to my attention and I
16 certainly told him that I would investigate it. We
17 discussed it and I did so.

18 Q And so you were aware of the time requirements in place
19 from the IED?

20 A I was. I looked at the IED and I realized that he had
21 potential issues involving that.

22 Q Now, did the case get scheduled for a trial?

23 A It did. And I looking at my notes they reflect that on
24 October 30th I told Mr. Riley that apparently the
25 solicitor planned to try him in December so they wanted

1 to try him in December and that's what lead to the, you
2 know, the state's motion for a continuance.

3 Q And if you recall, do you remember what the state's
4 basis for a continuance was?

5 A Well, yes. The witness the, you know, the clerk
6 apparently had a vacation lined up in Hawaii and also,
7 you know, this happened sometimes the solicitor like
8 based on seniority over there somebody gets to try
9 their case ahead of somebody else. You know, I think
10 Ms -- there was another case that they wanted to try
11 more so that they kind of bumped my guy out of the way
12 and that was -- that was basically what happened, as I
13 recall it.

14 Q Did -- did there arise during the -- during the
15 continuous hearing a dispute between yourself and the
16 solicitor about the time requires about the IED?

17 A Yes, there did. You know, looking at it subsequently
18 back then it was kind of confusing but my position was
19 that there's a -- the -- either the 120 day or the 180
20 day applied to him, okay. I thought that the -- also
21 her grounds for a continuance either way were not
22 sufficient and that's what I argued at the -- at the
23 motion and as Mr. Riley indicated we --

24 THE COURT: That was in front of Judge Childs?

25 MR. COOPER: Yes, sir.

1 THE COURT: Okay.

2 BY MR. THOMPSON:

3 Q And did you specifically argue that the 120 day time
4 limit applied?

5 A I did. I believe I did. Yes.

6 Q Now, did the case go to trial?

7 A No, it did not.

8 Q Would -- well, I guess talk about the plea offer. What
9 plea offer did you get from the state after the
10 continuance?

11 A Well, as I recall it, after that motion, everybody
12 was -- the solicitor was quite unhappy with me and she
13 didn't want to do the case because of her --

14 THE COURT: She was unhappy with you because of
15 the motion or was she unhappy with you in general, Mr.
16 Cooper?

17 MR. COOPER: Probably in general, Your Honor.

18 THE COURT: All right. Just double checking.

19 BY MR. THOMPSON:

20 A But anyway, I think we came to an agreement that if he
21 would plea she'd recommend a cap of ten years for
22 everything and dismiss a pending burglary second
23 charge.

24 Q If the case had gone to trial would you have been
25 prepared to argue that your client's rights under the

1 IED had been violated that the case should be
2 dismissed?

3 A Yes, I mean, we discussed that I was going to keep
4 bringing it up. I mean, just because I had lost that
5 first time, I mean, it was something that I was going
6 to renew probably not to the judge's liking but, I
7 mean, I was just going to keep renewing it until he
8 made me be quite basically.

9 Q And you had those discussions with the applicant?

10 A As I recall I did, yes, sir.

11 THE COURT: Let me ask you, gentleman, did Judge
12 Child rule -- under Rule 4 would it have matter what Judge
13 Newman would have done one way or the other? Would you have
14 been stuck with Judge Child's ruling?

15 MR. THOMPSON: Probably would have.

16 THE COURT: Yeah.

17 MR. THOMPSON: That's why the argument is more --

18 THE COURT: Okay --

19 MR. THOMPSON: Appeal --

20 BY MR. THOMPSON:

21 Q Did you advise your client if he had -- if you had made
22 the motion knowing that you're probably going to loose
23 that he could have appealed the denial of that motion
24 to a higher court?

25 A I don't specifically recall saying those words but I do

1 remember telling him that, you know, Henry, we're going
2 to keep bringing this up as often as we can. To be
3 perfectly honest which I'm trying to be, I do not
4 recall saying we can specifically appeal that but I
5 remember telling him we're going to keep bringing this
6 up as long as we can.

7 THE COURT: Would that be interlocutory, Mr.
8 Thompson?

9 MR. THOMPSON: No. The client would actually have
10 to go through with the trial, get convicted and then appeal.

11 THE COURT: Okay, go ahead.

12 BY MR. THOMPSON:

13 Q What is your understanding of the law with IED? If you
14 had been successful what would have happened with the
15 charges?

16 A I mean, my position would be that they should be
17 dismissed.

18 Q And is that your understanding based on the law of this
19 state that with an IED violation charges should be
20 dismissed?

21 A If -- my understanding is, if -- if a court finds that
22 there's been a substantive violation that the court has
23 discretion to dismiss the charges.

24 MR. THOMPSON: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 MR. THOMPSON: Nothing further of this witness,

2 Your Honor.

3 THE COURT: All right, Mr. Petrano.

4 CROSS-EXAMINATION

5 BY MR. PETRANO:

6 Q After he got the ten year offer you wanted to plead,
7 right?

8 A Well, I mean, not immediately after I gave it to him.
9 But after we discussed it and as his testimony reflects
10 we talked about it. He agreed that -- he -- well, he
11 wanted to do that and that's what we did.

12 Q And that was his decision?

13 A Ultimately, yes. It was his decision.

14 MR. PETRANO: Nothing further.

15 THE COURT: All right. Anything further, Mr.
16 Thompson?

17 MR. THOMPSON: Nothing further of this witness,
18 Your Honor.

19 THE COURT: All right. You may step down,
20 Mr. Cooper.

21 MR. COOPER: Thank you, Your Honor.

22 THE COURT: You going to call Mr. Bailey?

23 MR. PETRANO: I'm actually going to move for a
24 directed verdict and I know you routinely deny those but I
25 actually --

1 THE COURT: I might not. Go ahead.

2 MR. PETRANO: On this one, Your Honor.

3 THE COURT: Yes, sir.

4 MR. PETRANO: If I may, first, he plead guilty.

5 That's a waiver.

6 THE COURT: My question to my law clerk now is
7 this, can he retroactively waive a right? Help me out.

8 MR. PETRANO: No. Your Honor, and I don't
9 think -- and I'm relying on State versus Lawrence Marcus
10 Tucker. I don't think that -- here's -- by waiving --

11 THE COURT: All right. Guilty plea usually waives
12 everything. The guilty plea came after the denial by Judge
13 Childs. So can you retroactively waive a right is my
14 question?

15 MR. THOMPSON: Our argument is that it's not
16 necessarily retroactively un-waiving the right is that under
17 the PCR statute which says that that you can raise claims
18 based on violations of state law that this is a state law
19 that can have that violation.

20 THE COURT: This issue be jurisdictional at all,
21 Mr. Thompson?

22 MR. THOMPSON: I guess it would be in that regard
23 that if you can't raise it under the PCR statute then it's
24 got to be raised as ineffective assistance of counsel.

25 THE COURT: I'm sorry. Go ahead. And I'm not

1 trying to say one way or the other. I was just -- some of
2 these things were just floating around in my mind. I'm
3 sorry, Mr. Petrano.

4 MR. PETRANO: No, no. And the real meat of my
5 directed verdict motion is that there was nothing improper
6 here. Allow me to walk through the dates.

7 THE COURT: Sure.

8 MR. PETRANO: If you look at the interstate
9 agreement on detainer -- he applies under Article 3(a)
10 because it was the defendant's request to have the charges
11 resolved. The other section, the 125 page section, is when
12 the state requests the defendant from another state.
13 Because he requested it it's Article 3(a), it's 180 days.

14 Now, when I asked him when the actual IED request
15 was first filed he said he filed it on June 11th but if you
16 look at the transcript and if you -- he himself admitted
17 that it was actually received by the state by Richland
18 County on June 18th, 2008.

19 Now, there's the United States Supreme Court case
20 it's FEX, F-E-X, that case is very, short.

21 THE COURT: Is that out of Wayne County, Michigan?

22 MR. PETRANO: I don't remember.

23 THE COURT: Okay, I'm sorry. Go ahead.

24 MR. PETRANO: That case is very clear. It's the
25 date that's caused to be delivered, that's the date that

1 it's actually delivered. Not just they tossed it in the
2 mail. They were really good --

3 THE COURT: He likes everybody.

4 MR. PETRANO: Yeah. That means that June 18th, is
5 the state date.

6 THE COURT: All right.

7 MR. PETRANO: June 18, 2008 plus 180 days, it is
8 December 15th, 2008.

9 THE COURT: We're talking about December 8th.

10 MR. PETRANO: When on December 12th --

11 THE COURT: Twelfth, okay.

12 MR. PETRANO: There's no violation none, zero;
13 direct verdict.

14 THE COURT: Three days.

15 MR. PETRANO: Solid. I stand by my directed
16 verdict motion.

17 THE COURT: Okay, Mr. Thompson.

18 MR. PETRANO: Just plan math.

19 THE COURT: I understand.

20 MR. THOMPSON: It was Jackson County that was,
21 Your Honor.

22 I don't -- I understand the -- the --

23 Mr. Petrano's argument. We would argue, Your Honor, that --

24 that Article 4 applies and I will admit as I did at the

25 beginning of this proceeding that I don't have much law to

1 support this argument.

2 THE COURT: That's all right. I hear that a lot
3 from both sides. Go ahead.

4 MR. THOMPSON: Your Honor, both -- both the
5 solicitor's office and -- well, I said solicitor's office
6 not during the during -- durning the continuance hearing but
7 the solicitor's office in their motion on the second page of
8 the motion, Your Honor, for extension. It says the state is
9 requesting a continuance in the interstate agreement on
10 detainers, Articles 3 and 4 so that we are arguing that the
11 solicitor's office clearly thought that it was under Article
12 4. There must be some reason for that. And that --

13 THE COURT: So you're saying that Mr. Petrano's
14 position that if it's under a different article he can't
15 claim now because the solicitor went first with the other
16 one, something like that?

17 MR. THOMPSON: Yes, Your Honor. The timeline if I
18 recall correctly Mr. Petrano didn't go down, what the
19 requirements were on Article 4.

20 THE COURT: Uh-huh.

21 MR. THOMPSON: The 120 days starts to run the day
22 he gets into South Carolina which was August 5th, 2008.

23 THE COURT: All right.

24 MR. THOMPSON: The day that that would have
25 expired by my account was December 3rd, 2008 the day of the

1 continuance hearing. So the argument is that the
2 continuance was improperly granted because the -- because
3 the docket congestion and the victim being on vacation are
4 just not sufficient reasons to grant a continuance under the
5 IED.

6 THE COURT: All right.

7 MR. THOMPSON: They might have in general be --

8 THE COURT: Within the discretion of --

9 MR. THOMPSON: But with the IED there were
10 specific requirements more sequentially applied across the
11 board, across all of the states and the federal government
12 that you need more than just we can't go then, Your Honor,
13 to get a continuance.

14 Again, Your Honor, Article 4 is mentioned in
15 the -- in the state's motion that that's what they were
16 subjected to. It was argued at the continuance hearing that
17 Article 4 applied. And that because the continuance was
18 improperly granted his right under the IED on Article 4 were
19 violated. I have -- I do not disagree with him at all that
20 Article 3 that -- that the 180 day that Article 3 was not
21 violated.

22 THE COURT: Okay.

23 MR. THOMPSON: And that they were planning on the
24 continuance was granted until December 15th. So had they
25 gone to trial they wouldn't have been in violation of that

1 article either. So we don't have any argument that that is
2 just that Article 4 applied to this case that it was
3 violated by the continuance either under ineffective
4 assistance of counsel for failing to advise him that he
5 could appeal it or a substantive violation under the PCR
6 act.

7 THE COURT: All right. Thank you, Mr. Thompson.

8 MR. PETRANO: Just very briefly, Your Honor. If
9 Your Honor were to find that the state now is bound by
10 Article 4 because that's what was mentioned by the solicitor
11 then my analysis is two-fold. One, that's not really what
12 the solicitor argued --

13 THE COURT: Okay.

14 MR. PETRANO: But in substance, it's actually not
15 violated once again because if it's 120 the date of the
16 continuance request -- the reasons for granting a
17 continuance were legitimate and within her discretion, Judge
18 Childs's, discretion specifically a main witness having
19 longstanding plans to go outside of the -- United States on
20 vacation I submit is a legitimate reason.

21 THE COURT: Nevermind. Go ahead.

22 MR. PETRANO: Back to the -- back to the original
23 argument that the state is now bound by the solicitor's
24 mention of Article 4.

25 THE COURT: I just raised that as a question. I

1 don't know if that's his position now but go ahead.

2 MR. PETRANO: Your Honor, the solicitor was merely
3 reapplying to the defense's argument that this was Article
4 4.

5 THE COURT: Okay.

6 MR. PETRANO: It doesn't change the facts that
7 there's no -- and my point being, what you had was the
8 solicitor saying I believe and I hope I can read this into
9 the record, even if you were saying it was the 120 we're
10 still okay but again it's very clear, Your Honor, this is
11 180. He pled before the 180 expired there's no debate
12 and --

13 THE COURT: And he plead -- three days shy of the
14 180, okay. All right.

15 MR. PETRANO: And he waived by pleading even if
16 there was a problem.

17 THE COURT: All right. Thank you for your
18 presentation. I'm going to let y'all submit proposed
19 orders. I don't want to give y'all any additional work but
20 I think I want, you know, check verify read it and have my
21 law clerk do something about it and I'll make a decision in
22 due course. Y'all decide 30 days, 40 days I really don't
23 care. I know you're kind of jammed up, Mr. Petrano. May it
24 at your leisure. Mr. Thompson probably has a little more
25 time probably than you do. Y'all can discuss it and then

1 let me know.

2 MR. PETRANO: Thank you, Your Honor.

3 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled LeHenry Riley Vs. State of SC
5 Case No. 2009-CP-40-07428, at the Richland County
6 Courthouse, March 2, 2013.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 35 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 11th day of July, 2013.

15

16 _____
17 Crystal Holmes, Court Reporter
18 and Notary Public for the
19 State of South Carolina my
20 Commission Expires:
21 April 21 2014
22
23
24
25

92-*thick*

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4007428

Le Henry Shaundel #332689 Riley

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (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 43(k), SCRPC (Settled); ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
 - ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):**
 - ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Bankruptcy;
 - ☐ Rule 40(j), SCRPC; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

RICHLAND COUNTY
FILED
2013 MAR -4 AM 11:09
JEANETTE W. ABRIDE
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Le Henry Shaundel #332689
Riley

Brian T. Petrano

Le Henry Shaundel #332689
Riley

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. Abride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
LEHENRY S. RILEY, #332689,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 09-CP-40-7428

ORDER

RICHLAND COUNTY
FILED
2013 MAR -4 AM 11:08
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed October 19, 2009. The State made its Return on March 19, 2010. An evidentiary hearing was convened in this case on March 2, 2011. The Applicant was present and was represented by Jeremy A. Thompson, Esquire. The State was represented by Brian T. Petrano, Assistant Attorney General.

**I.
PROCEDURAL HISTORY**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the May 15, 2002, term of General Sessions for Armed Robbery (02-GS-40-0731) and Kidnapping (02-GS-40-0732). On December 12, 2008, the Applicant pleaded guilty as charged to the kidnapping offense and pleaded guilty to the lesser-included offense of common law robbery. He was represented at this proceeding by James D. Cooper, III, Esquire, and J. Rhodes Bailey, Esquire, both with the Richland County Public Defender's Office. The Honorable Clifton Newman, presiding circuit judge, sentenced the Applicant to ten years imprisonment on the robbery charge and seven years imprisonment for the

SCANNED

kidnapping charge, with the sentences to run concurrently. The Applicant did not appeal his convictions or sentences.

II. ALLEGATIONS RAISED

In his Application for Post-Conviction Relief, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, were violated prior to and during his plea.

In his Application, the Applicant also alleged "[v]iolations of 17-11-10 articles IV(c), V(d)" and that "[c]ounsel advised plea in violation of Interstate Agreement on Detainers." At the evidentiary hearing convened in this case, the Applicant proceeded on these arguments, specifically alleging:

1. The Interstate Agreement on Detainers was violated by Judge Childs' granting the State's motion for a continuance and by his subsequent pleas of guilty;
2. Defense counsel was ineffective in failing to advise the Applicant that he could move to dismiss his charges due to a violation of the Interstate Agreement on Detainers, and for failing to advise the Applicant that he could appeal an unfavorable ruling on such a motion; and
3. The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered inasmuch as they were entered without the knowledge that he could continue to argue that the Interstate Agreement on Detainers was violated during trial and on appeal.

The Applicant also argued that his SCDC records improperly have him listed as an individual who will have to register as a sex offender following his release from prison.

III. EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case on March 2, 2011, the Applicant presented his own testimony, as well as testimony from defense counsel James D. Cooper, III, Esquire. In addition to this testimony, this Court has before it a transcript of the guilty plea, a transcript of the continuance hearing held December 3, 2008, a copy of the records of the Richland County Clerk of Court regarding the subject convictions, a copy of the Applicant's records with the South Carolina Department of Corrections, along with the exhibits submitted by the parties in this case. What follows below are the findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 *et seq.* (1985).

IV. FINDINGS OF FACT

The facts in this case are not in significant dispute. The Applicant was arrested for armed robbery and kidnapping on December 23, 2001. He was subsequently released on bond. The Applicant then traveled to Florida where he was arrested for, and convicted of, additional charges there. He served approximately a year-and-a-half on his Florida sentence before he made a request to dispose of his charges pursuant to Article III of the Interstate Agreement on Detainers ("IAD").¹ The Florida Department of Corrections sent a letter dated June 18, 2008, to the Fifth Circuit Solicitor's Office that notified the Solicitor of the Applicant's request to dispose of his charges. The Applicant was then transported to South Carolina by the Columbia Police Department. He arrived in South Carolina on August 5, 2008. See Applicant's Exhibit 1.

¹ The IAD is codified at S.C. Code Ann. §17-11-10 *et seq.*

At an indeterminate point in time, the Applicant's case was scheduled for trial the week of December 8, 2008. On December 1, 2008, the State filed a Notice of Motion and Motion for Extension, requesting a continuance until the week of December 15, 2008, or after, because

[T]he Victim in this case is unavailable due to an out of state vacation planned until December 11, 2008. Further, it is the State's understanding that the lead trial, State v. Jason Craig, will be proceeding and will last the entire week. Therefore, this trial would not have court opportunity to be heard.

Applicant's Exhibit 1. The State's motion also stated that it requested the continuance pursuant to "Article III and IV" of the IAD. Applicant's Exhibit 1.

On December 3, 2008, the continuance motion was heard by the Honorable J. Michelle Childs. At the outset of that hearing, the State restated the reasons for the continuance and argued to schedule the case for trial the week of December 15, 2008, because the 180-day time requirement of Article III of the IAD would expire on that date. See 12/3/08 Tr. p. 3, line 23-p. 4, line 24. In response, defense counsel argued that not only did the 180-day requirement of Article III apply, but that the 120-day requirement of Article IV also applied. See 12/3/08 Tr. p. 5, lines 5-12. Defense counsel argued that under Article IV, the 120-day time limit would expire on December 4, 2008. Defense counsel also argued that the State's grounds for a continuance did not rise to the level of "good cause" because the State knew about the trial date for several months. See 12/3/08 Tr. p. 6, lines 17-25. After an extensive argument, Judge Childs granted the State's motion for a continuance. See 12/3/08 Tr. p. 21, line 6-p. 22, line 6. The Applicant then pleaded guilty on December 12, 2008.

At the PCR hearing, the Applicant testified that he was unaware that he could continue to argue that the IAD was violated in his case at trial and, if unsuccessful at trial, on appeal. Defense counsel testified that he informed the Applicant that the chances of success at trial were

small, but that he could not remember specifically informing the Applicant of his right to appeal an unsuccessful IAD motion at trial. The Applicant testified that had he known he could appeal the denial of the IAD motion, he would not have pleaded guilty but would have instead insisted upon proceeding to trial.

V. STANDARD OF REVIEW

The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief proceeding. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP. In order to prevail in a PCR action challenging the effective assistance of guilty plea counsel, the operative question is whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Further, the Applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006). In other words, a defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing (1) that counsel was ineffective; and (2) that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

VI. CONCLUSIONS OF LAW

The Applicant's allegations in this case stem from his contention that Article IV of the IAD was violated by Judge Childs' grant of a continuance to the State on December 3, 2008, and by his subsequent plea on December 12, 2008.² In order to properly resolve the Applicant's

² It should be noted that the Applicant stated that he was not arguing that Article III of the IAD was violated in his case during the PCR hearing. In any event, under Article III's 180-day time requirement, the Applicant's trial would

arguments, the Court must decide several matters. First, the Court must determine whether or not Article IV of the IAD applies to the Applicant's case. Second, the Court must determine whether or not the State's motion for a continuance was properly granted by Judge Childs. Third, the Court must determine whether or not counsel was ineffective in failing to advise the Applicant to plead guilty. Fourth, the Court must determine whether or not a violation of the IAD is cognizable under the PCR Act. The Court will address each matter in turn.

A. The Application of Article IV of the IAD

This Court will begin its discussion with an overview of the IAD. The IAD is an interstate compact between virtually every state, including South Carolina, and the federal government that "creates uniform procedures for lodging and executing a detainer, *i.e.*, a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime." Alabama v. Bozeman, 533 U.S. 146, 148 (2001). The IAD provides two methods by which a detainer may be resolved. The first method is set forth in Article III, which states that a defendant, upon notification that a detainer exists, may request the disposition of his pending charges. If a defendant requests disposition pursuant to Article III, then the receiving State has 180 days in which to try the defendant after "the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him." Fex v. Michigan, 507 U.S. 43, 52 (1993).

The second method to resolve a detainer is set forth in Article IV, which requires the prosecutor to make "a written request" that the defendant be brought to the prosecutor's jurisdiction to dispose of the detainer. §17-11-10, Article IV(a). If Article IV's procedures are

have needed to commence on or before December 15, 2008. Since that is when the trial was scheduled to start, and the Applicant pleaded guilty prior to that date, there could have been no Article III violation in this case. There is no evidence that the State sought to continue the case beyond the December 15, 2008, trial date.

used, then the State has 120 days after the defendant has returned to the State's jurisdiction to dispose of the defendant's charges. The "120 day time limitation imposed under Article IV(c) is mandatory." State v. Holbrook, 274 S.C. 4, 6, 260 S.E.2d 181, 182 (1979).

Article V(c) of the IAD provides that

[I]n the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

In other words, if either time limit provided by Article III or Article IV applies and the State fails to try the defendant within the applicable time limit, then the charges must be dismissed with prejudice. See generally Holbrook, supra, at 6, 260 S.E.2d at 182.

On the one hand, courts have required that criminal defendants follow the procedure outlined in Article III—including the use of the appropriate forms provided by the IAD—in order for Article III's time limit to apply. See generally State v. Johnson, 278 S.C. 668, 301 S.E.2d 138 (1983) (finding that the defendant's letter to the prosecutor did not trigger Article III's time limit because it did not provide completely accurate information regarding his location and it was not accompanied by a certificate required by the IAD). On the other hand, courts have imposed Article IV's time limit on prosecutors when the prosecutor has not used the IAD's specific procedure to obtain custody of the defendant. See generally United States v. Mauro, 436 U.S. 340, 364 (1978) (holding that the use of a writ of habeas corpus *ad prosequendum* by the United States Attorney's Office to bring a state inmate to trial in federal court can trigger Article IV's time limit when the detainer has been lodged against the defendant, even though Article IV does not mention the use of such writs). In the case of Article IV, the United States Supreme

Court has held the less-stringent standard is required because “[a]ny other reading of this section would allow the Government to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the [IAD] intended to arise from such an action.” *Id.* (internal footnotes omitted).

Turning to the present case, there is no question that the Applicant met the requirements of Article III. The Applicant filed the documents required by the IAD upon learning of his South Carolina detainer while in Florida’s custody, and he properly transmitted those documents to the Fifth Circuit Solicitor’s Office. Furthermore, this Court finds that the State invoked the requirements of Article IV by requesting and obtaining custody of the Applicant following his Article III request. While the mere transfer of the Applicant to South Carolina would not invoke Article IV’s time limits, the fact that the State specifically stated that Article IV applied in its continuance motion is significant evidence that the State requested custody of the Applicant pursuant to Article IV. *See* Applicant’s Exhibit 1 at 2. Additionally, when confronted with defense counsel’s argument that Article IV applied, the assistant solicitor never once replied that Article IV was not applicable; instead, she stated that she was acting under the assumption that Article III applied. When all of these factors are considered in conjunction with the lesser standard required of the State to trigger Article IV, this Court concludes that the State triggered the 120-day time limit of Article IV by requesting the Applicant’s transfer to South Carolina.

As a final matter, courts have split on the question of which IAD request should be enforced when both Article III and Article IV apply. *See generally State v. Almly*, 216 Ariz. 41, 162 P.3d 680 (Ariz. App. 2007) (discussing cases on all three approaches); *Ullery v. State*, 988 P.2d 332, 340 (Okla. Crim. App. 1999) (same). The first approach holds “that where the defendant initiates Article III proceedings he invariably waives his Article IV rights (including

the shorter time limit)." Ullery at 340. The second approach looks to "which party first initiates [IAD] procedures." Id. Finally, the third approach "appl[ies] both Articles when both parties initiate [IAD] procedures and look to see which, if any, provisions have been violated in determining which time limit applies." Id. at 341. While South Carolina has not yet had an opportunity to decide this issue, this Court finds that the third approach is consistent with the overall application of the IAD. If this Court were to apply either the first or the second approach, the Court would have to "hold that one article of the IAD necessarily preempts the other." Almly at 45, 162 P.3d at 684. This Court finds that Articles III and IV are not "mutually exclusive of one another ... because there is nothing in the text of the IAD to support such an interpretation." Id.

This Court finds that Article IV was applicable in this case. Since the Applicant was returned to the custody of the State on August 5, 2008, his 120-day time limit for disposing of his charges would have expired on December 3, 2008, the date of the continuance hearing. Therefore, the Court will turn to the question of whether or not Judge Childs properly granted the State's motion for a continuance.

B. The Continuance Motion

Both Article III and Article IV provide that "for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." §17-11-10, Article III(a); Article IV(c). As a general matter, scheduling conflicts do not constitute "good cause" to extend the IAD's time limits. See State v. Brown, 157 N.H. 555, 565-566, 953 A.2d 1174, 1183 (2008) (discussing several cases on what constitutes "good cause" under the IAD). "[P]rosecuting authorities should not only be

attentive to the IAD deadlines and procedures, but also should bear in mind their burden of showing compliance with the IAD.” *Id.* at 566.

This Court finds that Judge Childs improperly granted the State’s motion for a continuance. The two grounds asserted by the State for the continuance were that the docket was overcrowded and that the victim was going to be out-of-town for a vacation. Neither ground is sufficient to sustain a continuance under the IAD, especially when the deadline under the IAD is approaching because the State is subject to the requirements of Article IV. The State’s “grounds” for the continuance were problems created by the State. Furthermore, Judge Childs stated that under the system for scheduling cases for trial, the cases are scheduled months ahead of time to “give[] you all time to plan.” 12/3/08 Tr. p. 16, lines 11-23. Given the length of time that this case had been scheduled for trial, and the State’s knowledge of the IAD’s time requirements, the State should not have been allowed to continue the case beyond the 120-day time limit of Article IV.³ Accordingly, inasmuch as the IAD requires a heightened standard for obtaining a continuance to schedule the trial, this Court finds that Judge Childs improperly granted the State’s motion for a continuance. Consequently, since the Applicant’s plea on December 12, 2008, was made nine days after the expiration of time under Article IV of the IAD, Article IV of the IAD was violated in this case.

C. Defense Counsel’s Ineffectiveness

Having determined that defense counsel correctly objected to the State’s continuance request, this Court turns to the question of whether or not defense counsel was ineffective when

³ A significant dispute arose during the continuance hearing about whether or not defense counsel had agreed to schedule the trial for the week of December 8, 2008, which would have been outside Article IV’s time limits. The United States Supreme Court has held that a defense attorney can agree to a trial date outside the IAD’s time limits without running afoul of the IAD when agreeing to schedule a case for trial. *New York v. Hill*, 528 U.S. 110 (2000). This case is distinguishable from *Hill* because defense counsel clearly objected to the case being continued to the December 15, 2008, term of court, and his earlier “consent” to the December 8, 2008, trial date would not have extended to December 12, 2008, the date of the Applicant’s plea.

he advised the Applicant to plead guilty to kidnapping and common law robbery. The Applicant argues that defense counsel was ineffective in this regard due to the clear violation of the IAD. This Court agrees.

Following the continuance hearing, the Applicant and defense counsel discussed the Applicant's options at trial. Defense counsel testified that it was his opinion that any IAD motion would be unsuccessful at trial, since the motion would necessarily relitigate the continuance request. However, the testimony is clear that defense counsel did not advise the Applicant that an unsuccessful motion at trial *could* be successful if raised on appeal. Since the Applicant had been pressing the IAD issue since his arrival in South Carolina,⁴ defense counsel's responsibility to fully advise the Applicant on how to pursue the IAD motion was heightened. It is undeniable that the Applicant would have continued to pursue his rights under the IAD had he known he would have been able to do so.⁵ This is especially true when it is considered that the IAD motion would have in all likelihood been granted on appeal, given this Court's conclusion that the IAD was violated in this case. Consequently, his failure to advise the Applicant that the IAD motion could be successful on appeal, even if the motion was unsuccessful at trial, constituted deficient performance.

It is equally clear that the Applicant was prejudiced by defense counsel's performance. As noted above, the Applicant wanted the IAD issue litigated. Had defense counsel properly advised the Applicant that there was a strong likelihood that the IAD motion would have been successful on appeal, there can be no question that the Applicant would have exercised his right

⁴ The Applicant testified before this Court that he had done research on the IAD before filing his Article III transfer request, and that he knew the State would need to try him before the 180-day time limit expired. Defense counsel testified that the Applicant was very knowledgeable about the IAD. Simply because the Applicant was knowledgeable about the IAD, however, does not mean that the Applicant was knowledgeable about appellate procedure and the method by which he would need to bring an IAD allegation to an appellate court.

⁵ This Court finds support for this conclusion in the Applicant's *pro se* PCR application, which continued to argue that the IAD was violated in this case.

to trial. See generally Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (stating that a PCR applicant challenging the validity of a guilty plea must demonstrate “something that would have affected counsel’s advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”). Consequently, this Court finds that the Applicant has met his burden of proof with regard to this issue, and his convictions and sentences should be vacated.⁶

D. The Application of the PCR Act

In addition to his ineffective assistance of counsel argument, the Applicant argues that this Court can find a substantive violation of the IAD independent of a Sixth Amendment violation. Specifically, the Applicant contends that a violation of the IAD is a “violation of the ... laws of this State” recognizable on collateral review. S.C. Code Ann. §17-27-20(a)(1). This Court agrees.

This Court recognizes that virtually all claims brought on PCR are allegations of ineffective assistance of counsel. However, the Uniform Post-Conviction Procedure Act (“the PCR Act”) does not limit PCR claims to those of ineffective assistance of counsel. Instead, §17-27-20(a) recognizes six different methods by which a PCR applicant can bring a PCR:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

⁶ Given the violation of the IAD in this case, the proper remedy on remand should be the trial court entering “an order dismissing the [charges] with prejudice.” §17-11-10, Article V(c).

- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

Only the first of those provisions provides a method for bringing a PCR based on ineffective assistance of counsel. Furthermore, §17-27-20(a)(1) provides that a violation of the “laws of this State” can be used as a basis for filing a PCR. As the Supreme Court held in Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000), the PCR Act is appropriate where the PCR applicant is challenging “the validity of his conviction[s] or sentence[s].” Since a violation of the IAD would necessarily render the Applicant’s convictions and sentences invalid, this Court finds that a violation of the IAD can be made separate from a claim of ineffective assistance of counsel pursuant to §17-27-20(a)(1).

This Court has found that Judge Childs improperly extended the time in which the State was allowed to try the Applicant. The Applicant’s pleas of guilty occurred nine days after the expiration of time under Article IV of the IAD, which rendered his convictions invalid. Therefore, this Court finds that the Applicant’s convictions and sentences should be vacated pursuant to §17-27-20(a)(1), and that the charges against the Applicant should be dismissed with prejudice. See §17-11-10, Article V(c).

E. The Applicant Does Not Need to Register as a Sex Offender

The Applicant argues that he should not be required to register as a sex offender pursuant to S.C. Code Ann. §23-3-430.⁷ This Court agrees.⁸

⁷ The Applicant’s SCDC records currently state that he is required to register as a sex offender.

The record is unmistakable on this issue. The Applicant pleaded guilty to the offense of kidnapping. Pursuant to §23-3-430(C)(15), an individual must register as a sex offender following a conviction for kidnapping unless "the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense." Had no issue been raised about the sexual nature of the kidnapping during the plea, the Applicant would be required to register as a sex offender pursuant to this statute. However, the parties explicitly agreed during the Applicant's plea that the kidnapping was not sexual in nature. See 12/12/08 Tr. p. 16, lines 1-4 ("If you will also make a specific finding that this does not involve the sex offender registry for the kidnapping conviction"). Therefore, this Court explicitly finds that the Applicant's kidnapping conviction was not sexual in nature, and that the Applicant does not need to register as a sex offender pursuant to S.C. Code Ann. §23-3-430.

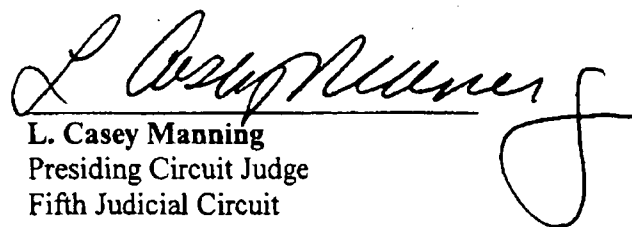
VII. CONCLUSION

This Application for Post-Conviction Relief is hereby granted. The Applicant's convictions and sentences are vacated, and the Applicant's charges are dismissed pursuant to Article V(c) of the Interstate Agreement on Detainers. See S.C. Code Ann. §§17-11-10; 17-27-20(a)(1). In the alternative,⁹ the Applicant's convictions and sentences are vacated and this matter is remanded to the Richland County Court of General Sessions for dismissal of the Applicant's charges pursuant to Article V(c) of the Interstate Agreement on Detainers. The Applicant is not required to register as a sex offender pursuant to S.C. Code Ann. §23-3-430.

⁸ While this Court's rulings on the Applicant's other arguments render this ruling moot, since the Applicant's conviction for kidnapping no longer stands, this Court evaluates this claim in the event of a successful appeal by the State on those issues.

⁹ This alternative should only take effect should the State successfully appeal the grant of Post-Conviction Relief on the grant of relief pursuant to this Court finding a substantive violation of the IAD.

IT IS SO ORDERED.


L. Casey Manning
Presiding Circuit Judge
Fifth Judicial Circuit

This 1 day of March, 2013.
Cata, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Le Henry S. Riley, # 332689,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2009-CP-40-7428

**MOTION TO ALTER OR
AMEND A JUDGMENT PURSUANT
TO RULE 59(e), SCRPC**

The Respondent, State of South Carolina, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves this court to alter/amend its March 4, 2013, order granting Applicant's request for post-conviction relief. Respondent received written notice of this Court's order granting relief on March 8, 2013.

As a brief background, this matter originally came before the Court by way an application for post-conviction relief (PCR) filed October 19, 2009. A hearing on the matter was convened before this Court on March 2, 2011, at which Applicant was present with counsel, Jeremy Thompson, Esquire. The State was represented by Brian T. Petrano of the South Carolina Attorney General's Office. By order dated March 1, 2013, and filed with the clerk March 4, 2013, this court granted the application and ordered Applicant's underlying charges be dismissed with prejudice based upon the requirements of the Interstate Agreement on Detainers.

Attached hereto and incorporated herein is a copy of Respondent's previously submitted proposed order denying Applicant's request for post-conviction relief. Respondent respectfully submits the analysis set forth therein properly addresses the allegations raised through this action and requests this Court reconsider its decision to grant relief based upon such. Further, Respondent respectfully requests the attached proposed order be incorporated into the record of

the PCR hearing as a Court's Exhibit to properly preserve the state's argument for appellate review.

WHEREFORE, the Respondent respectfully requests the court enter an order denying the current request for post-conviction relief or, in the alternative, incorporate the attached proposed order of dismissal into the record of the PCR hearing to properly preserve Respondent's arguments for appellate review.

Respectfully submitted,

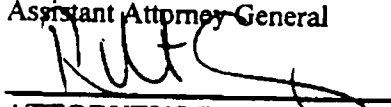
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By:


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

March 11, 2013


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2009CP4007428
LEHENRY S. RILEY, #332689,	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
State of South Carolina,	)	
Respondent.	)	

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed October 19, 2009. The State made its Return on March 19, 2010. An evidentiary hearing was convened in this case on March 2, 2011. The Applicant was present and was represented by Jeremy A. Thompson, Esquire. The State was represented by Brian T. Petrano, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the May 15, 2002, term of General Sessions for Armed Robbery (02-GS-40-0731) and Kidnapping (02-GS-40-0732). On December 12, 2008, the Applicant pleaded guilty as charged to the kidnapping offense and pleaded guilty to the lesser-included offense of common law robbery. He was represented at this proceeding by James D.

LEHENRY S. RILEY, #332689 - Order of Dismissal (2009CP4007428)

Cooper, III, Esquire, and J. Rhodes Bailey, Esquire, both with the Richland County Public Defender's Office. The Honorable Clifton Newman, presiding circuit judge, sentenced the Applicant to ten years imprisonment on the robbery charge and seven years imprisonment for the kidnapping charge, with the sentences to run concurrently. The Applicant did not appeal his convictions or sentences. This Court had the following documents at the hearing, the December 12, 2008 plea transcript, the December 3, 2008 motion transcript, the PCR Application, the State's Return, the Applicant's records from SCDC, and the Richland County Clerk of Court's records (the indictment(s) and sentencing sheet(s)).

ALLEGATIONS RAISED

In his Application for Post-Conviction Relief, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, were violated prior to and during his plea.

In his Application, the Applicant also alleged "[v]iolations of 17-11-10 articles IV(c), V(d)" and that "[c]ounsel advised plea in violation of Interstate Agreement on Detainers." At the evidentiary hearing convened in this case, the Applicant proceeded on these arguments, specifically alleging:

1. The Interstate Agreement on Detainers was violated by Judge Childs' granting the State's motion for a continuance and by his subsequent pleas of guilty;

2. Defense counsel was ineffective in failing to advise the Applicant that he could move to dismiss his charges due to a violation of the Interstate Agreement on Detainers, and for failing to advise the Applicant that he could appeal an unfavorable ruling on such a motion; and
3. The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered inasmuch as they were entered without the knowledge that he could continue to argue that the Interstate Agreement on Detainers was violated during trial and on appeal.

The Applicant also argued that his SCDC records improperly have him listed as an individual who will have to register as a sex offender following his release from prison.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

The following relevant dates are part of this Court's analysis:

June 11, 2008	Applicant executed Interstate Agreement on Detainer (IAD) paperwork. ¹
June 18, 2008	IAD paperwork served on Richland County Solicitor's Office. ²
December 3, 2008	Hearing with the Honorable J. Michelle Childs for a continuance.

¹ December 3, 2008 transcript, p. 13.

² December 3, 2008 transcript, p. 13 L. 13 - 14.

December 12, 2008

Guilty Plea with the Honorable Clifton Newman.

The Interstate Agreement on Detainers (IAD) is S.C. Code § 17-11-10.

Initially, this Court notes that despite the arguments made at the guilty plea, the relevant section of the IAD for the purposes of this case is Article III(a). Article III is applicable when the prisoner initiates the IAD request for disposition.³ Because this was an inmate request for disposition pursuant to the IAD, the applicable time period is 180 days. S.C. Code § 17-11-10(Article III)(a). The phrase "caused to be delivered" as used in the IAD has been interpreted to mean the date delivered to the recipient, not the date mailed. Fex v. Michigan, 507 U.S. 43 (1993). Accordingly, the applicable start date per the IAD in this case is June 18, 2008 and the applicable time period is 180 days.

This case is hereby dismissed because the Applicant has failed to satisfy his burden of proof and demonstrate any prejudice as it relates to the IAD. 180 days from June 18, 2008 is December 15, 2008. His case was disposed prior to December 15, 2008 - he pled guilty on December 12, 2008.

The Applicant's other arguments are similarly without merit. The Applicant pled guilty, by doing so he waived his supposed IAD claims. "We hold that by proceeding with his guilty plea, [defendant] waived any and all defects regarding his return to state custody under the IAD." State v. Tucker, 376 S.C. 412, 418, 656 S.E.2d 403, 406 (S.C. Ct. App. 2008). Finally, the State did timely request a continuance, and Judge Childs, in her discretion, granted that continuance.

³ When it is the State (the word "State" is being used by this Court to represent any jurisdiction such as a county, city, or state that has pending charges) that makes the IAD request, Article IV applies. Under an Article IV (State) request, the time period for disposition is 120 days. S.C. Code § 17-11-10(Article IV)(c).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The Applicant's reference to his status as a sex offender is not a PCR matter and is not properly before this Court. The code section requiring registration is a civil statute whose purpose is to protect the public from sex offenders who may re-offend, not a criminal penalty. Hazel v. State, 377 S.C. 60, 659 S.E. 2d 137 (2008). The Supreme Court of South Carolina has stated that the Court of Common Pleas may make a declaratory judgment pursuant to § 15-53-20 on whether or not an individual is subject to registering with SLED for the Sex Offender's Registry. However, a PCR action, as a statutorily created action, is a hybrid action. It is considered a "civil case," but only for purpose of distinguishing it from a criminal proceeding, to which attach more constitutional protections. Wade v. State, 348 S.C. 255, 559 S.E.2d 843 (2002). citing Smith v. Angelone, 111 F.3d 1126 (4th Cir. 1997), cert. denied. As a hybrid, statutorily created action, Post-Conviction Relief can only address issues provided in the creating legislation. "[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by Section 17-27-20(a)." Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Therefore, while an individual could always file a petition for declaratory judgment in the Court of Common Pleas stating that they were not subject to registration, the appropriate remedy for PCR Applicants who have been convicted of kidnapping after the registry became law is to have their case remanded to the Court

of General Sessions for re-sentencing solely for a finding to be made on the record concerning whether or not the kidnapping was sexual in nature.

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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the 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. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief 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 ____ day of _____, 2011.

The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina.

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

FORM 4

JUDGMENT IN A CIVIL CASE

120

Le Henry Shaundel #332689 Riley

CASE NUMBER: 2009CP4007428

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (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 _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Le Henry Shaundel #332689 Jeremy Adam Thompson
Riley

Robert Daniel Corney

Le Henry Shaundel #332689
Riley

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No: 2009-CP-40-7428

LeHenry S. Riley, #332689,
Applicant

vs.

State of South Carolina,
Respondent.

ORDER

RICHLAND COUNTY
FILED
2013 MAR 20 AM 10:31
JEANETTE M. McBRIDE
C.C.P. & G.S.

The Respondent, State of South Carolina, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves this court to alter/amend its March 4, 2013, order granting Applicant's request for post-conviction relief. This matter originally came before the Court by way of an application for post-conviction relief (PCR) filed October 19, 2009. A hearing on the matter was convened before this Court on March 2, 2011, at which Applicant was present with counsel, Jeremy Thompson. The State was represented by Brian Petrano of the South Carolina Attorney General's Office. Following a hearing on the matter and review of the arguments submitted by all parties, this Court granted the application for post-conviction relief. Respondent then filed a Motion to Reconsider.

IT APPEARS THAT:

1. By order dated March 1, 2013, and filed with the clerk March 4, 2013, this court granted the application and ordered Applicant's underlying charges be dismissed with prejudice based upon the requirements of the Interstate Agreement on Detainers.
2. Respondent submits the 59(e) Motion along with the previously submitted proposed order denying Applicant's request for post-conviction relief and submits the analysis set

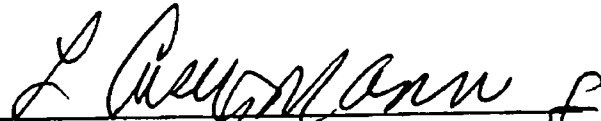
SCANNED

forth therein properly addresses the allegations raised through the 59(e) and requests this Court reconsider its decision to grant relief based upon such.

3. Further, Respondent respectfully requests the previously submitted proposed order denying Respondent's PCR, which is attached to the 59(e) Motion be incorporated into the record of the PCR hearing as a Court's Exhibit to properly preserve the state's argument for appellate review.

THEREFORE, after review of the motion and arguments therein, The Motion to Reconsider is hereby **DENIED**. The previously submitted proposed order denying Respondent's PCR is hereby made a part of the record of the PCR hearing and is to be made a Court's Exhibit to properly preserve the state's argument for appellate review.

AND IT IS SO ORDERED this 19th day of March, 2013



The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE

VS.

AKA: Lenny Riley

Race: _____

Sex: _____

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Strong Arm Robberyin violation of 16-11-325(A) of the S.C. Code of Laws, bearing CDR Code # 0139 0137☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. cap of 10

ATTEST: _____

Deafield
SolicitorLenny Riley
Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 279 days credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
SPECIAL CONDITIONS:☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
§90.11 TP (SCCJA Surcharge)	\$5 \$ _____
TOTAL	\$ _____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
☐ Requires \$500 be paid to Clerk during probation.Amy W. McCulloch
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

Court Reporter: M. Sullivan

SCCA/217 (07/2008)

CERTIFIED TRUE COPY
OF ORIGINAL FILEDRICHLAND COUNTY
SOUTH CAROLINA

123

INDICTMENT/CASE#: 02 GS 40 731A/W#: H-067008 H087058Date of Offense: 12/23/01S.C. Code §: 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

WTA 58829

ALVINSON 750

Rev. J. H. [unclear]

ARREST WARRANT NUMBER

H987088

ACTION OF GRAND JURY

TRUE BILL

Willie M. [unclear]

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2002-08-48-731

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2002

84

THE STATE
vs.

LEHENRY RILEY

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0130
Class FEL-A(V)

After being fully advised as to his legal rights, I hereby waive proceedings to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
Rev. J. H. [unclear]

C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 15 2002 the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That LEHENRY RILEY in Richland County on or about December 23, 2001, commit robbery by attempting to feloniously take from the person or presence of Anna Mitchell by means of force or intimidation goods or monies of Best Western, such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor or other deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

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

Warren B. Gies
WARREN B. GIES, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Jeanette W. McBride
S.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

NO07008 H-087058 0144481

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
COLUMBIA

THE STATE
against

LEHENRY RILEY

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 01 Weight: 175
DL State: SC DL # _____
DOB: 12/23/2001 Agency ORI # SC0400100
Prosecuting Agency: CITY OF COLUMBIA
Prosecuting Officer: VINSON MW
Offense: ARMED ROBBERY

Offense Code: ARC
Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the
☐ County ☒ Municipality of
COLUMBIA The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Lehenry Riley
on 12-27-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant MW VINSON
being duly sworn deposes and says that defendant LEHENRY RILEY
did within this county and state on 12/23/2001 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County ☒ Municipality of COLUMBIA)
in the following particulars: ARMED ROBBERY 16-11-330
DESCRIPTION OF OFFENSE:

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

THE DEFENDANT DID AT 240 EAST EXCHANGE BLVD., COLUMBIA, S.C. RO-
THE BEST WESTERN OF APPROXIMATELY \$160 WHILE THE DEFENDANT CLAIMED
TO HAVE A GUN. THE DEFENDANT THEN FORCED THE CLERK ANNA MITCHELL TO
GO OUTSIDE WITH HIM AND WALK TO THE END OF THE PARKING LOT. THE DEF
WAS ARRESTED AFTER BEING IDENTIFIED BY THE VICTIM IN A SHOW-UP.

Sworn to and subscribed before me
on 12/23/2001
Signature of Affiant (L.S.): [Signature]

Signature of Affiant M.W. Vinson
Affiant's Address 01 JUSTICE SQ
U.S.A. SC. 29201
Affiant's Telephone 73384111

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
COLUMBIA

ARREST WARRANT

CLERK OF COURT
CRIMINAL DIVISION

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/23/2001 defendant LEHENRY RILEY
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County ☒ Municipality of COLUMBIA) as set forth below
DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330

Now therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
(defendant) at the time of its execution, or as soon thereafter as is practicable.

Signature of Judge (L.S.): [Signature]
Judge's Address CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202
Judge's Telephone _____
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

Form Approved
SC Attorney General's Office
JAN 11 2002
CERTIFIED TRUE COPY
ORIGINAL FILED
JAN 11 2002
C.C.C.P.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

127

COUNTY OF Richland
STATEINDICTMENT/CASE# 02 -GS- 40 - 732VS.
Dehenry RileyAW#: H-087059AKA: _____
Race: _____ Sex: _____ Age: _____Date of Offense: 12/23/01

DOB: _____ SS#: _____

S.C. Code §: 16-3-910

Address: _____

CDR Code #: 0095

City, State, Zip: _____

SENTENCE SHEET

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. Cap of 10

ATTEST:

A. Sanford Solicitor W. H. S. Riley Defendant James Attorney for Defendant SC Bar # _____WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 ~~years~~ months or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. credit for 279 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

\$14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$ _____ paid to Public Defender Fund

\$56-5-2995 (DUI Assessment) \$12 \$ _____

Other: _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 18 TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 18 TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

\$90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.Amy W. McCulloch Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Court Reporter: M. Sullivan

Judge Code: _____

Sentence Date: _____

SCCA/217 (07/2008)

C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

M VINSON CPD

David J. Phillips

ARREST WARRANT NUMBER

H007059

ACTION OF GRAND JURY

TRUE BILL*Willie M Bowers*

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-08-40-732

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2002

84

THE STATE
vs.

LEHENRY RILEY

Indictment for
KIDNAPPINGSC Code: 16-3-910
CDR Code: 0006
Class FEL/A(V)After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL
James W. Bowers
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 15, 2002 the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That LEHENRY RILEY did in Richland County on or about December 23, 2001, unlawfully and feloniously seize, confine, inveigle, decoy, kidnap, abduct and/or carry away Anna Mitchell without authority of the law and against the victim's will.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeanette W. Wade
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

ARREST WARRANT

H087059 H=087059 0144481

STATE OF SOUTH CAROLINA

☐ County ☐ Municipality of
COLUMBIATHE STATE
against

LEHENRY RILEY

Address: [REDACTED]
 Phone: [REDACTED] SSN: [REDACTED]
 Sex: M Race: B Height: 6 01 Weight: 175
 DL State: [REDACTED] DL #: [REDACTED]
 DOB: [REDACTED] Agency ORI: SC0400100
 Prosecuting Agency: CITY OF COLUMBIA
 Prosecuting Officer: VINSON MW
 Offense: KIDNAPPING

Offense Code: HAC
 Cod-/Ordinance Sec. 16-3-910

This warrant is CERTIFIED FOR SERVICE in the
☐ County ☐ Municipality of
 COLUMBIA The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant Lehenry Riley
 on 12-23-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
 MUNICIPAL COURT
 P.O. BOX 644
 COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA

☐ County ☐ Municipality of
COLUMBIA

AFFIDAVIT

MW VINSON

Personally appeared before me the affiant
 being duly sworn deposes and says that defendant LEHENRY RILEY
 did within this county and state on 12/23/2001 violate the criminal
 State of South Carolina (or ordinance of ☐ County ☐ Municipality of COLUMBIA
 in the following particulars: KIDNAPPING 16-3-910

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

THE DEFENDANT DROD AT 240 EAST EXCHANGE BLVD., COLUMBIA, S.C. FOR
 THE BEST WESTERN OF APPROXIMATELY \$160 WHILE THE DEFENDANT CLAIMED
 TO HAVE A GUN. THE DEFENDANT THEN FORCED THE CLERK ANNA MITCHELL TO
 GO OUTSIDE WITH HIM AND WALK TO THE END OF THE PARKING LOT. THE DEF
 WAS ARRESTED AFTER BEING IDENTIFIED BY THE VICTIM IN A SHOW-UP.

Sworn to and subscribed before me on
12/23/2001

Signature of Affiant (L.S.)
[Signature]

Signature of Affiant

Affiant's Address

COLUMBIA, SC. 29201

Affiant's Telephone

#1 JUSTICE SQ

29201

7338415

STATE OF SOUTH CAROLINA

☐ County ☐ Municipality of
COLUMBIA

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 12/23/2001 defendant LEHENRY RILEY
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County ☐ Municipality of COLUMBIA I as set forth below
 DESCRIPTION OF OFFENSE: KIDNAPPING 16-3-910

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

Signature of Issuing Judge (L.S.)
[Signature] Judge's Address: CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202

Signature of Issuing Judge
 Judge Code: 403003

Judge's Telephone

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 C.C. H. G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA