

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

SEP 19 2014

S.C. Supreme Court

BOBBY MACK MATHIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000405

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)
5)
6) PLAINTIFF,)
7)
8) vs.)
9) BOBBY MATHIS,)
10)
11) DEFENDANT.)
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TRANSCRIPT
OF
RECORD
2012-GS-42-378
2012-GS-42-379

January 1st, 2012
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

JENNIFER JORDAN and PRINA TAILOR
ASSISTANT SOLICITOR
Attorney for the State

JAMES CHEEK
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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

(There were no exhibits marked during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: All right. I'm gonna ask that the
4 solicitor call the roll, and if you're in the box and your
5 name is called, stand up and remain standing. If you're in
6 the gallery and your name is called, walk forward to the box
7 and remain standing in the jury box to my right, your left.

8 You may proceed.

9 SOLICITOR JORDAN: Karim Hudani.

10 (Defendant stands.)

11 SOLICITOR JORDAN: James Young.

12 (Defendant stands.)

13 SOLICITOR JORDAN: Bobby Mathis.

14 (Defendant stands.)

15 SOLICITOR JORDAN: Then Andrean Smith.

16 (Defendant stands.)

17 SOLICITOR JORDAN: Marc William.

18 (Defendant stands.)

19 SOLICITOR JORDAN: Daniel Strevel.

20 (Defendant stands.)

21 SOLICITOR JORDAN: And then joining us from the gallery
22 is John Nichols.

23 (Defendant stands.)

24 SOLICITOR JORDAN: Your Honor, I believe the two that
25 are remaining, that remain seated are Travis Washington and

1 Kenneth Sullivan from yesterday.

2 THE COURT: Thank you. Y'all can remain seated.

3 That's fine. Thank you, sir.

4 Skip a seat. Thank you.

5 You may swear the defendants that are standing.

6 CLERK: Yes, sir.

7 (WHEREUPON, all defendants were placed under oath at
8 this time.)

9 THE COURT: You can be seated.

10 (Defendants comply.)

11 THE COURT: If any of you failed or refused to just
12 take the oath that was just administered by the clerk,
13 please stand.

14 (No response.)

15 THE COURT: It appears that all defendants have been
16 sworn for purposes of my discussion with you this morning.

17 I've been informed that you are here, you are here to
18 offer a guilty plea. I'm going to go over matters that
19 would be common to all of your cases should you decide to
20 plead guilty.

21 Now, later on -- I'm not going to -- excuse me. Later
22 on we'll be calling your name individually. You'll come in
23 front of us with your lawyer if you're represented, and at
24 that time we'll discuss what your plea is going to be in the
25 case.

1 Now, I want to go over a couple of things with you this
2 morning. First of all, I have not seen the paperwork in
3 your cases. I do not know the status of your indictments.

4 I will tell you that, under the Constitution, you have
5 a right to have your indictment considered by a Grand Jury
6 before that case is taken up by this Court. The Grand Jury
7 determines if there is enough evidence to justify the case
8 coming forward for either a trial or a plea.

9 Now, they, they are testing or checking the solicitor's
10 or the prosecutor's evidence against you. For that reason
11 neither you or your lawyer is allowed to be present at those
12 hearings. Those are conducted in secret. They do not
13 determine your guilt or your innocence.

14 Now, I can not take up the case unless the Grand Jury
15 has considered the case and issued a true bill, sent it
16 forward to be disposed of. I also could take up your case
17 if you are willing to give up that right, waive presentment,
18 and proceed directly to a plea. I'll discuss the status of
19 your indictment with you when you come in front of me later
20 on.

21 At the same time I will go over your relationship with
22 your lawyer if you're represented to be sure that you're
23 satisfied with your legal representation.

24 Now, I'm going to ask a series of questions. If you
25 have a response to the questions, I'll be asking that you

1 stand. I'll need to get your name from you before I discuss
2 your response.

3 First of all, do any of you suffer from any mental,
4 physical, nervous conditions, or any other conditions that
5 would affect your ability to make good decisions or handle
6 your plea today, if that's true, please stand.

7 (No response.)

8 THE COURT: Have any of you taken or used any drugs or
9 other substances that might have that effect, that is affect
10 your ability to reason or make good decisions or handle your
11 plea today, if that's true, please stand.

12 (No response.)

13 THE COURT: If anyone has done anything to you to try
14 to force you or get you to offer a plea in your case, please
15 stand.

16 (No response.)

17 THE COURT: When you offer a guilty plea it has to be
18 done freely and voluntarily. That means it's something that
19 you thought about and you decided it's the best way to
20 proceed in your case.

21 Now, if any of you were to be brought in front of me
22 today to offer a plea, if somehow it would be your feeling
23 or belief that that's something that you did not want to do
24 or it would be something that you'll be doing involuntarily,
25 please stand.

1 (No response.)

2 THE COURT: If any of you feel that you've not had
3 enough time in which to think about your case or prepare a
4 defense to the charges, please stand.

5 (No response.)

6 THE COURT: If anyone has made any promises,
7 guarantees, or assurances to you about any matters in
8 connection with your plea, including but not limited to such
9 things as pardon, parole, probation, early release, or
10 length of sentence, so if there's been any promises or
11 guarantees made to you in an effort to get you to offer a
12 plea, please stand.

13 (No response.)

14 THE COURT: Now, if you offer a guilty plea you will be
15 waiving or giving up your Constitutional rights as they
16 relate to the charges that are before the Court. I have to
17 be sure that you do that knowingly and intelligently. In
18 other words, you know your rights and you have made a
19 conscious decision to move forward with a plea in spite of
20 the fact that you have to give up those rights.

21 In order for me to be sure you're doing that knowingly
22 I have to explain your rights to you and be sure you have no
23 questions. So, I'm going to go over the rights with you.
24 When I finish, if you have any questions about them, please
25 ask. I'll be glad to offer additional explanation.

1 First of all, I've told you you have a right to have
2 your case go to the Grand Jury, and we'll take -- we'll talk
3 about that when I see your indictments.

4 You have a right to an attorney and your attorney is
5 available to you at all times including now, and I'll
6 discuss your relationship with your lawyer with you at that
7 time.

8 You have a right to a trial by jury. At that trial
9 you'd be presumed to be innocent until the State proved your
10 guilt beyond a reasonable doubt. The State has the only
11 burden of proof in criminal trials. That is to prove guilt
12 beyond a reasonable doubt. A defendant is not required to
13 prove anything at the trial. You are presumed to be
14 innocent.

15 At the trial and under the Constitution you do have a
16 right to do several things. First of all, you could have
17 the clerk issue subpoenas to witnesses to require that they
18 appear at the hearing. You would have the right to confront
19 or question anyone who might testify during the hearing.
20 You would have the right, at the trial, to present all the
21 defenses that you might have to the charges that are before
22 the Court. You also would be given the opportunity to try
23 to suppress any and all evidence that the State may have
24 against you. That includes statements that you might have
25 made prior to the time of the trial.

1 You-all -- at all times you have the right to remain
2 silent, and, at a trial, if you decided to remain silent,
3 the judge is required to instruct the jury that your silence
4 would not be used against you in any manner or fashion
5 whatsoever.

6 Those are your rights under the Constitution. If you
7 do not understand any of them, please stand.

8 (No response.)

9 THE COURT: If you want me to explain them any further,
10 please stand.

11 (No response.)

12 THE COURT: Now, later on, if you plead guilty and I
13 accept the plea, you will be waiving or giving up all of
14 those Constitutional rights that I just discussed with you
15 as they relate to the charges that are before the Court with
16 the exception of the right of having your lawyer represent
17 you until your plea is finished.

18 Now, if there's any of those rights that you do not
19 wish to give up or do not want to give up in connection with
20 your plea today, please stand.

21 (No response.)

22 THE COURT: I will advise you of several things.

23 First of all, you have ten days from the date you enter
24 the plea and receive a sentence in which to file an appeal
25 of the plea if you choose to do so.

1 when you come in front of me later on, the oath that
2 you've taken at this time will apply to that discussion with
3 the Court at that time. So, the oath that you've taken
4 continues throughout your conversations with the Court.

5 If you have a recommendation concerning a sentence in
6 your case I will tell you it is a recommendation. I will
7 consider it. I am not required to accept it. I have the
8 right and the authority, once I've heard all the facts and
9 circumstances, to sentence anybody up to the maximum allowed
10 by the law in that particular case.

11 I'll declare that these defendants are qualified to
12 proceed if they choose to do so.

13 (WHEREUPON, other guilty pleas were completed at this
14 time.)

15 THE COURT: Yes, ma'am.

16 SOLICITOR TAILOR: Bobby Mathis who's here on
17 Indictment Number 2012-GS-42-378 for resisting arrest, and
18 Indictment Number 2012-GS-42-379 for throwing bodily fluids.
19 Your Honor, he's pleading to both of these charges. He has
20 initialed waiving presentment on both of the charges. The
21 State is making a recommendation of a cap of five years,
22 Your Honor.

23 THE COURT: Thank you.

24 You are Bobby Mathis?

25 DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Mr. Mathis, you're in front of me on two
2 charges. One is Case Number 2012-GS-42-378. That is
3 resisting arrest. That carries up to one year and/or a
4 fine.

5 The other case is throwing bodily fluids on a law
6 enforcement officer. That carries up to 15 years in prison.
7 That's Case Number 2012-379.

8 Are you aware of those charges?

9 DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Are you aware of the penalty, penalties?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, both of those cases -- neither of them
13 have gone to the Grand Jury. You've initialed the paper it
14 looks like agreeing to go forward today without Grand Jury
15 presentment.

16 DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Is that what you want to do?

18 DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: You're here with Mr. Cheek.

20 Is he your lawyer?

21 DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Are you satisfied with what he's done?

23 DEFENDANT: Yes, sir.

24 THE COURT: Is there anything else you want him to do
25 for you?

1 DEFENDANT: No, sir, Your Honor.

2 THE COURT: Is there anything else that you need to
3 talk with him about?

4 DEFENDANT: Not as I know of, no, sir, Your Honor.

5 THE COURT: All right. Mr. Mathis, you understand the
6 charges, don't you?

7 DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: How do you plead?

9 DEFENDANT: I plead guilty on the resisting.

10 THE COURT: Yes, sir.

11 DEFENDANT: But on the spitting, I was maced before I
12 spit. I didn't know I was spitting on him. I was spitting
13 the mace out my mouth.

14 THE COURT: Sit him down, Mr. Cheek. He's presented a
15 defense.

16 DEFENDANT: I'm pleading no contest, Your Honor.

17 MR. CHEEK: He signed to plead no contest to that, Your
18 Honor. This was---

19 THE COURT: It's not on the sheet.

20 MR. CHEEK: I apologize, Your Honor. I just -- I did
21 discuss no contest with him on that particular charge.

22 THE COURT: Is the State willing to allow him to plead
23 no contest?

24 SOLICITOR TAILOR: Without objection, Your Honor.

25 MR. CHEEK: I apologize, Your Honor.

1 THE COURT: All right. Excuse me. Just a second, Mr.
2 Mathis.

3 (Pause.)

4 THE COURT: All right. I made that change in the
5 sentencing sheet.

6 Mr. Mathis, as to that charge, are you pleading no
7 contest?

8 DEFENDANT: Yes, sir.

9 THE COURT: What that means, Mr. Mathis, is that you
10 and your lawyer have reviewed the evidence that's in the
11 possession of the State, and after a review of that
12 evidence, it's your belief that, if that evidence were
13 presented to a jury during a trial, that you would more than
14 likely be convicted, and, therefore, you've made the
15 decision not to contest the charge. So, you're not
16 admitting guilt.

17 Is that the situation?

18 DEFENDANT: I'm -- yes, sir, I reckon so.

19 THE COURT: Sir?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, sir, I'm gonna advise you
22 that a no contest plea carries the same sentencing
23 possibilities as a guilty plea.

24 Do you understand that?

25 DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Now, Mr. Mathis, you are 33 years of age?

2 DEFENDANT: Yes, sir, Your Honor.

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

4 DEFENDANT: Made it to the tenth, but I have my GED,
5 and I have vocational trade school.

6 THE COURT: Are you married?

7 DEFENDANT: No, sir.

8 THE COURT: Children?

9 DEFENDANT: No, sir.

10 THE COURT: Did you have a job?

11 DEFENDANT: No, sir, I recently got laid off from Shaw
12 Group.

13 THE COURT: Okay. What were you doing there?

14 DEFENDANT: I was an iron worker.

15 THE COURT: All right. Now the solicitor's gonna go
16 over the facts in your case with me, and then I'm gonna ask
17 you some questions about the facts.

18 Ms. Tailor.

19 SOLICITOR TAILOR: Thank you, Your Honor.

20 On 11/26 of 2011 Officer James Gowans with the Cowpens
21 Police Department responded to a disturbance call on Main
22 Street in Cowpens, which is here in Spartanburg County. The
23 defendant came running out of the building and began to
24 scream I'm going to run, I'm going to run, and an officer
25 told him to stop. At that time the defendant had silver

1 paint on his face, Your Honor.

2 The defendant would not stop running and continued to
3 scream. The officer caught the defendant and told him he
4 was under arrest and the defendant began to jerk away and
5 act violently. The officer then pepper sprayed the
6 defendant and the defendant continued to swing and kick at
7 the officer. The defendant also began to spit on the
8 officer, and the officer had to continue to pepper spray the
9 defendant until he was finally able to subdue the defendant
10 and complete the arrest, Your Honor.

11 THE COURT: All right. Now, I'm not asking about the
12 spitting portion because I know you dispute that.

13 DEFENDANT: Yes, sir.

14 THE COURT: But as to the remainder of the facts that
15 were told to me about your coming out of the store, running,
16 having to be subdued---

17 DEFENDANT: Yes, sir, I did run and---

18 THE COURT: Is that true?

19 DEFENDANT: He did subdue me and I was -- the fact I
20 was resisting is he wanted me to lay in front---

21 THE COURT: Just answer my question.

22 DEFENDANT: Yes, sir.

23 THE COURT: Did he, did he have to subdue you?

24 DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: All right. Now, as to the spitting portion

1 of what I've just heard, it's my understanding, again, that
2 you reviewed that evidence and you and your lawyer have,
3 based on that evidence, decided to plead no contest to that
4 particular issue?

5 DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: All right. Now, Mr. Mathis, have you told
7 me the truth?

8 DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Any did anyone tell you how to answer the
10 questions that I've asked?

11 DEFENDANT: No, sir, Your Honor.

12 THE COURT: If I were to ask the same questions I asked
13 earlier again at this time, would I get the same answers?

14 DEFENDANT: Yes, sir.

15 THE COURT: Are you pleading guilty to the resisting
16 because you are guilty?

17 DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: And are you continuing to plead, plead no
19 contest to the bodily fluids charge?

20 DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: All right, sir. I'll accept your plea as
22 having been freely and voluntarily given. You're aware of
23 these charges. You've had the advice of counsel. You're
24 satisfied with the advice, and I find sufficient facts to
25 base, base an, an opinion or base guilt in and no contest in

1 these cases.

2 Mr. Cheek.

3 MR. CHEEK: Your Honor, we ask the Court to take into
4 consideration, particularly regarding the no contest charge,
5 my client fully admits the facts that have been related in
6 the incident report. He doesn't dispute the facts at all.

7 His only explanation is that he would like to ask the
8 Court to consider is that he had just been maced and he was
9 spitting, but he did cooperate after they gave him something
10 to wash his mouth out. Your Honor, he spit that on the
11 ground. He did not try again to direct any towards the
12 officer. The report says that, during that period of time,
13 he did spit and it was lodged on the officer's shirt. So,
14 we ask the Court to take that into consideration.

15 Your Honor, the facts of that case is not the worst
16 thing for my client, and I've explained that to him. He has
17 a criminal history, and most of what he has over the, over
18 the years arises out of him huffing paint or glue, and that
19 stuff might get you high, but it affects your ability to, to
20 think and actually it kills brain cells.

21 So, Your Honor, we ask the Court to take all that into
22 consideration.

23 THE COURT: Another one of those mind altering things.

24 MR. CHEEK: It is and it makes you somebody you don't
25 even know. You don't even know that you were doing that

1 kind of stuff.

2 At any rate, Your Honor, he acknowledged that his
3 behaviors and engaging in those kind of things made him a
4 nuisance in the community. But he's asking the Court to
5 consider to take all that into consideration when the Court
6 fashions a sentence. He assures me that he knows and
7 understands that, although things, things are sold in the
8 stores, that they are illegal to be used in that manner, and
9 you shouldn't be huffing paint or sniffing glue cause there
10 are laws against that kind of thing, and we ask the Court to
11 be as moderate in sentencing as possible.

12 THE COURT: Is that -- does that explain the silver
13 face?

14 MR. CHEEK: Yes, sir, absolutely, Your Honor. That is
15 caught in the act.

16 THE COURT: All right. Mr. Mathis, anything you want
17 to tell me?

18 DEFENDANT: No, sir, I just want to say that it's a
19 little habit I got when I was in prison the first time I
20 went to prison, and I got out of PI at Tyger River, and I
21 got a liken to it when I was down there. It's a habit that
22 I picked up from time to time when I get real depressed
23 instead of drinking and stuff like that, and I'm trying to
24 quit and it, come off it. And I want to actually thank this
25 officer for getting me that night cause I could of harmed

1 myself or everybody.

2 THE COURT: Prior record.

3 SOLICITOR TAILOR: Yes, sir, Your Honor.

4 1997, inhaling hydrocarbons.

5 1998, grand larceny 1,000 to 5,000 and armed robbery.

6 THE COURT: 1997?

7 SOLICITOR TAILOR: The 1997 charge is the hydrocarbons
8 charge, Your Honor.

9 1998 is grand larceny---

10 THE COURT: Okay.

11 SOLICITOR TAILOR: ---and armed robbery with a deadly
12 weapon.

13 2007, public disorderly conduct.

14 2008, entering premises after warning.

15 2009, two counts of glue sniffing and driving without a
16 license.

17 2010, failure to stop.

18 2011, resisting arrest.

19 THE COURT: Mr. Mathis, one question I have before I
20 talk to the officer.

21 You indicated to me that you got this habit of huffing
22 or whatever they call that---

23 DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: ---while you were at Tyger River?

25 DEFENDANT: Yes, sir, in PI.

1 THE COURT: The very first criminal record is that you
2 were inhaling hydrocarbons.

3 DEFENDANT: Well---

4 THE COURT: How did you get into Tyger River without a
5 conviction?

6 DEFENDANT: No, I had a conviction. The armed robbery,
7 Your Honor.

8 THE COURT: Well, is there an armed robbery before the
9 sniffing, sniffing hydrocarbons?

10 SOLICITOR TAILOR: No, Your Honor.

11 DEFENDANT: I got the armed robbery and was convicted
12 and---

13 THE COURT: Well, I understand that. But in 1997---

14 SOLICITOR TAILOR: Inhaling hydrocarbons.

15 THE COURT: That's the reason I had you repeat it
16 because he just told me he developed that habit while he was
17 in prison.

18 You weren't in prison?

19 DEFENDANT: I was on butane. I did butane one time
20 before I went.

21 THE COURT: Oh.

22 DEFENDANT: But I got on the paint with the wood stain
23 workers at Tyger River PI.

24 THE COURT: You see -- are you making a distinction
25 between those two?

1 DEFENDANT: Yeah, they -- I don't do no butane no more,
2 and I'm trying to quit them off. But it's -- just it was I
3 see it around me, and it's a habit of drinking. Instead of
4 drinking and getting drunk---

5 THE COURT: Well, I understand that. I understand what
6 you're saying, but it just -- what you told me appears not
7 to have been accurate and I'll just leave it at that.

8 DEFENDANT: I couldn't remember back that far. I told
9 you the truth, Your Honor.

10 THE COURT: Well, that's possible. I agree, I agree
11 with that.

12 Do you wish to speak, officer?

13 OFFICER GOWANS: Yes, sir.

14 THE COURT: Your name is?

15 OFFICER: Officer Gowans.

16 THE COURT: Yes, sir, be happy to hear from you.

17 OFFICER: Mr. Mathis, we, myself and the rest of the
18 officers are very familiar with Mr. Bobbie. On several
19 occasions we had to go out there and he's very violent. His
20 family is scared to death of him. We have to watch our P's
21 and Q's out there with him. He's tried to run us over with
22 a car, on several occasions resisting, and I'd like you to
23 take that into consideration.

24 He's been dealing with his paint, this glue, for a long
25 time. He's admitted to you several times that custody,

1 that, you know, that he did this in jail as well as outside.
2 But if we don't put him somewhere where he's gonna be safe,
3 he's either gonna hurt somebody or hurt one of us.

4 THE COURT: I understand.

5 All right. Anything further from the State?

6 SOLICITOR TAILOR: No, Your Honor.

7 THE COURT: Mr. Cheek?

8 MR. CHEEK: Nothing further from the defense, Your
9 Honor.

10 THE COURT: Did you indicate how many, how much time
11 he's already served, Mr. Cheek?

12 MR. CHEEK: Forty-nine days, Your Honor.

13 THE COURT: Thank you.

14 Mr. Mathis, there's a recommendation in your case --

15 DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: -- and I'm aware of that. I've considered
17 it. I've also considered the fact that you either tried to
18 mislead the Court or you just don't remember. In either
19 case I'm concerned that you are a danger to the community.

20 DEFENDANT: Yes, Your Honor. I been trying to get some
21 kind of rehab, but I don't have any funds to pay for it.

22 THE COURT: Well, sir, I'm gonna try to refer you to a
23 place that you can get that --

24 DEFENDANT: Yes, Your Honor.

25 THE COURT: -- where you won't be a danger to the

1 community.

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Sentence on the resisting is one year to
4 run concurrent.

5 The Sentence on the throwing bodily fluids is ten years
6 run concurrent.

7 Good luck to you, sir.

8 DEFENDANT: Yes, sir.

9 THE COURT: I've recommended the Addiction Treatment
10 Unit.

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. Good luck.

13 SOLICITOR TAILOR: Thank you, Your Honor.

14

15 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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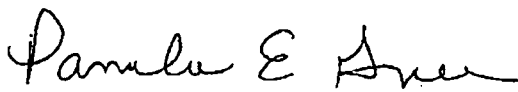
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the
Seventh 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
Spartanburg County, South Carolina, on the 13th day of
January, 2011.

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

November 2nd, 2012

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

(25)

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)

Bobby Mack Mathis)

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

v.)

2012-CP-42-3109

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Livesay B N6- P.O. Box 580
UNA, S.C. 29378
2. Name and location of Court which imposed sentence Spartanburg County
Court of General Sessions 7th Judicial Circuit
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012 GS4200379 = 10 yrs conc Gfts 49 dys, ATO
(b) 2012 GS4200378 = 1 yr conc

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- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1/13/12 10 yrs conc. cfts 49 days, Atv
- (b) 1/13/12 1 yr conc.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere Alford Plea / NO Contest
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO My Attorney failed to do so
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to each results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attorney failed to do so within 10 days
- (b) _____

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(c) _____

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

- (a) INSUFFICIENT COUNSEL
- (b) PROSECUTORIAL MISCONDUCT
- (c) MALICIOUS PROSECUTION

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

- (a) My Counsel was not present, sent someone else for co
- (b) Read of past criminal history, spoke of charges that I was not convicted of
- (c) Dates on warrants/indictments are wrong

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

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

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

(a) the specific nature thereof:

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

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

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

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2012-CP-42-3109

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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

NO

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

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

(a) NO

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(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

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

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

- i. Charles W. Snyder, III ~~29303~~ ~~29303~~
366 North Church St. Suite 3000, Spartanburg SC,
29303
- ii. James Checks Bar # 1207
366 North Church St. Suite 3000, Spartanburg SC,
29303
- iii. _____

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

- i. trial
- ii. Pre trial negotiations, Initial conference
- iii. _____

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

VACATE AND REMAND

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

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Bobby Mack Mathis, 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.

Bobby Mathis

SWORN to and subscribed before me this 20
day of July, 2012.

Christie C. Smith (L.S.)
Notary Public

My Commission Expires: 8/29/15

FILED
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SPARTANBURG COUNTY
2012 JUL 25 PM 2:12
M. HOPE BLACKLEY

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

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

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

Bobby Mathis
Applicant

SWORN or affirmed to and subscribed before me this

20 day of July, 2012.

Christie C. Donita
Notary Public

My Commission Expires: 8/29/15

FILED
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COBB COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-3109
Bobby Mack Mathis, #248562,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 25, 2012, 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 Spartanburg County Clerk of Court. He was indicted at the January 2012 term of the Spartanburg County Grand Jury for resisting arrest (2012-GS-42-0378) and throwing of bodily fluids (2012-GS-42-0379). The Applicant was represented by James A. Cheek, Esquire. On January 13, 2012, the Applicant pled no contest before the Honorable Roger L. Couch and was sentenced to confinement for one year for resisting arrest and ten years, concurrent, for throwing of bodily fluids. Applicant did not appeal his conviction and sentence.

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

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel was not present during plea and sent someone else,
2. Prosecutorial misconduct and malicious prosecution, in that;
 - a. Prosecutor read past criminal history and spoke of charges the Applicant was not convicted of,
 - b. Dates on the warrants and indictments are incorrect.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

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

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

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201 (1989).

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.

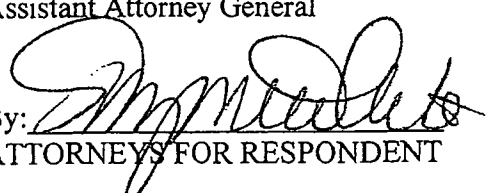
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

July 25, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Bobby Mack Mathis,

)
)

2012-CP-42-3109

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

)
)

Respondent.

)
)

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

Kristin B. Barber, Esquire
Johnson Smith Hibbard & Wildman, LLP
PO Drawer 5587
Spartanburg, South Carolina 29304-5587



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 25th day of July, 2013.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3 Bobby Mack Mathis,)
4 Applicant,) TRANSCRIPT OF RECORD
5 v.) 2012-CP-42-3109
6 The State.) october 1, 2013
Spartanburg, South Carolina

7
8
9
10 B E F O R E :
11 HONORABLE J. DERHAM COLE, JUDGE
12
13

14 A P P E A R A N C E S :
15 SHANE WILLIAM ROGERS, ESQUIRE
16 Attorney for the Applicant
17 SUZANNE H. WHITE, ESQUIRE
18 Attorney for the State
19

20 Linda D. Moffitt
21 Circuit Court Reporter
22
23
24
25

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Bobby Mack Mathis
Direct examination by Mr. Rogers

1 MS. WHITE: Your Honor, this is the case of Bobby Mack
2 Mathis v. the State. It's case No. 2012-CP-42-3109. He
3 was represented by Mr. James Cheek. And Mr. Mathis is
4 represented today by Mr. Shane Rogers.

5 He was indicted January of 2012 for resisting arrest
6 and throwing of bodily fluids. He pled straight up to the
7 resisting arrest charge and pled no contest to the throwing
8 of bodily fluids. He received one year on resisting arrest
9 and a concurrent ten years of throwing bodily fluids. The
10 state had recommended a cap of five.

11 He's alleged ineffective assistance of counsel, that
12 counsel was not present during the plea and sent someone
13 else, and the dates on the warrants and indictment are
14 correct -- incorrect, and prosecutorial misconduct,
15 malicious prosecution because the prosecutor read his
16 criminal history and included charges that the applicant
17 was not convicted of.

18 So at this time I'll turn it over to Mr. Rogers.

19 MR. ROGERS: Thank you, Your Honor. May it please the
20 Court. I'd call Bobby Mathis to the stand.

21 BOBBY MACK MATHIS, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. ROGERS

24 Q Mr. Mathis, I'm going to stand over here. If you
25 can't hear me for any reason, please let me know.

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 Can you state your full name for the record, please?

2 A Bobby Mack Mathis.

3 Q Mr. Mathis, where are you currently incarcerated at?

4 A Livesay Correctional Institution.

5 Q How long have you been at Livesay?

6 A Since June of 2012.

7 Q Prior to that where were you at?

8 A Kirkland Intake.

9 Q Okay. And then before that where?

10 A Tyger River for maybe a week.

11 Q Okay. And then were you in the Spartanburg County
12 Detention Center before that?

13 A Yes, sir.

14 Q The charges that we're here today that you filed your
15 P.C.R. application with regard to, what were the two
16 charges you were facing?

17 A Throwing of bodily fluids on a local law enforcement
18 or correctional officer and a resisting arrest.

19 Q Okay. And you filed a P.C.R. application, and it was
20 filed with the court on July 25th of 2012, correct?

21 A Yes, sir.

22 Q All right. And you raised a number of issues in your
23 application with regard to -- the first thing,
24 insufficient -- insufficiency of counsel or ineffective
25 assistance of counsel is one of your claims that you

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 raised, correct?

2 A Yes, sir.

3 Q All right. Who was your attorney or attorneys that
4 represented you with regard to the charges at issue?

5 A It was Charles Snyder, III -- the second or third --
6 and then Mr. Cheeks. I met him in the courtroom on the day
7 of the hearing.

8 Q Okay. And Mr. Snyder -- is he with the public
9 defender's office at the time?

10 A Yes, sir.

11 Q All right. And you did ever meet with Mr. Snyder?

12 A One time. He told me to waive my preliminary, that
13 the bigger charge was going to be thrown out. So I waived
14 it, and the bigger charge still stayed, which was the
15 throwing of bodily fluids. And that's the only time I ever
16 seen him.

17 Q And at the time you waived your right to a
18 preliminary, or to a preliminary hearing, your
19 understanding was they were going to drop the bodily --
20 throwing bodily fluids.

21 A Yeah. I -- I come all the way over here for it, and
22 he talked me out of it.

23 Q But you did waive that at that time.

24 A I did waive, yes, sir.

25 Q And then you said you saw Mr. Cheek for the first time

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 at the plea hearing.

2 A Yes, sir.

3 Q Had you ever meet with Mr. Cheek before with regard to
4 these charges?

5 A With regard to these charges, he come and told me that
6 Mr. Snyder should be in the courtroom when I went to court,
7 I should be going to court soon and that the charge carried
8 zero to 15. And that's all -- because he wasn't my lawyer
9 at the time and he -- and that's the only time I talked to
10 him. I called myself out to speak with him.

11 Q And when you say you called yourself out, where were
12 you at the time?

13 A I was in Pod 4 in the new jail.

14 Q Okay. And was Mr. Cheek -- did he have an office or
15 was he there frequently?

16 A He come in frequently and called people out that he
17 was I reckon doing their cases.

18 Q At any time did Mr. Snyder or Mr. Cheek provide you
19 with any of the evidence against you?

20 A No, sir.

21 Q At the plea hearing when you did arrive, did you
22 know -- did you know what that hearing was for when you
23 arrived in January of 2012?

24 A Yeah. I was going to get sentenced. And I was
25 figuring that -- I was told that I'd probably get

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 probation, that the state was recommending
2 zero-to-five-year cap. So I went ahead along with it but
3 got double -- double what the cap, what I was looking for.

4 Q All right. Let's go back a little bit then.

5 Your -- the transcript from your plea, do you remember
6 what day it happened? Do you recall?

7 A November the 26th.

8 Q You're talking about the charges.

9 A The charge, yeah.

10 Q All right.

11 A The plea happened on January -- Friday, January the
12 13th.

13 Q Okay. And the reason why I was a little confused, the
14 transcript has some different dates in it. But it's your
15 recollection and based on the sentencing sheet that you
16 went and pled on January 13th of 2012.

17 A January 13th of 2012.

18 Q Was it you alone, or was there a group of individuals?

19 A There was a group of people.

20 Q Who was the judge at the sentencing or at the plea
21 hearing?

22 A Judge Couch.

23 Q At some point Judge Couch went through discussions
24 with the group as a whole, correct?

25 A Yes, sir. There was I think maybe four or five of us

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 in a group.

2 Q And you were brought up individually?

3 A Yes, sir.

4 Q All right. When did you first talk to Mr. Cheek about
5 the plea, the state's recommendation, any of that, before
6 you appeared before Judge Couch?

7 A When I was in the courtroom.

8 Q And how did that take place?

9 A Well, he was -- he didn't lie about the state. He
10 said the state was recommending zero to five cap. And he's
11 defended me before in the past on another charge. I
12 can't -- I believe it was a resisting arrest -- and on the
13 same officer. And I got I believe 90 days for it. But I
14 talked to him, and he said that the state was recommending
15 a zero-to-five-year cap, which they did. And he thought
16 that I may have got probation.

17 Q And that took place in the courtroom?

18 A In the courtroom.

19 Q Did he take you to the side? How did he convey that
20 information to you?

21 A Come over to the jury stand and talked to me.

22 Q All right. And prior to that you'd seen Mr. Cheek one
23 time at the jail.

24 A That's it.

25 Q And during that did y'all discuss any plea offers or

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 anything at that time?

2 A No, sir.

3 Q All right. Do you remember what you discussed with
4 Mr. Cheek at that time at the jail?

5 A It was just that -- that my lawyer would probably be
6 here and it carried zero to 15. One carried zero to 15 and
7 one carried zero to one.

8 Q When you met with Mr. Check in the courtroom did he
9 show you any of the records related to the charges against
10 you?

11 A No, sir.

12 Q Do you remember going over any documents or any forms
13 of any kind with him at that time?

14 A No, sir.

15 Q And when you did approach and were asked specific
16 questions by the judge just directed at you, you did plead
17 to the resisting arrest, correct?

18 A Resisting arrest, yes. I was guilty of it.

19 Q And you pled no contest or an Alford plea with regard
20 to the throwing bodily fluids.

21 A Yes, because I figured it was an accident. I was
22 maced. I was spitting up mace. So I pled no contest on
23 it, but I knew I wouldn't have enough to win in a jury
24 trial on it.

25 Q In as much as you only were able to speak with

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 Mr. Cheek in the courtroom the day you were coming to enter
2 a plea, did you feel that you had adequate time to assess
3 what was being proposed to you?

4 A No, sir, I didn't feel -- because 49 days. Most of
5 the time I'd think you go to court in 49 days. I had been
6 in jail -- you going home, probation or something lenient.
7 But usually if you're going to get like time I got, ten
8 years, you're going to be there six months to a year or
9 better before you even go to court.

10 Q And let me see if I've got this straight.
11 When you were brought to the court on January the
12 13th did you know why you were being brought to court that
13 day?

14 A Not really. I thought it may have been a what they
15 call transfer court or something like that.

16 Q So you didn't actually know until you were in the
17 courtroom that were there for a plea.

18 A Yeah, there for a plea.

19 Q Now, you mentioned a cap, a 5-year cap was recommended
20 by the solicitor's office. That was, in fact, recommended,
21 correct?

22 A Yes, sir.

23 Q All right.

24 A And I have it in my transcript, and I'll hold it up.

25 Q And you got sentenced to what with regard to the

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 resisting arrest?

2 A One year.

3 Q And with regard to the throwing bodily fluids, what
4 was the sentence?

5 A Ten years.

6 Q So you got credit for your 49 days that you were
7 incarcerated.

8 A Credit for 49 days.

9 Q Was there anything else that took place during the
10 plea hearing that you thought was ineffective assistance as
11 far as Mr. Cheek?

12 A Well, he -- the officer -- he didn't stop the officer
13 on saying I was a threat to my family. My family never
14 said I was a threat to them.

15 There was nobody there, so it was false, might as
16 wells say, allegation, whatever, from the officer against
17 me. And my family -- there was nobody, no statements,
18 nobody from our community saying this.

19 And he was just making me look like a monster out
20 there in society. And no -- no statements or anything. It
21 was just what the officer was saying. And he didn't object
22 to that, which I think he should have.

23 And I just got -- I hadn't been out of jail ten days
24 where I'd served a 90-day sentence in jail for resisting
25 arrest with the same officer where they tased me, two

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 officers had tased me.

2 That's why I was -- just had got out. I'd been ten
3 days. So I believe that was racial profiling me that he --
4 we already had conflict when he come to get me to mace me
5 again.

6 Q So you're talking about the same officer. What was
7 the arresting officer's name?

8 A James Owens of the Cowpens Police Department.

9 Q And that was the same officer that you had had some
10 runs-in with in the past.

11 A Yeah. I just got out of jail for it. I just served
12 63 days.

13 Q Who had represented you with regard to the prior
14 charges dealing with Mr. Owens?

15 A I'm wanting to say Mr. Cheeks did. I had it and
16 several other charges. I had the two resisted here in
17 Spartanburg, because it was two officers that they both of
18 them tased me. So it was resisting on two officers. And I
19 had misdemeanor charges in Cowpens, and they gave me 90 and
20 run it concurrent with the 90 that I was serving for the
21 resisting on two officers.

22 Q Was that a plea?

23 A That was a -- more or less a plea in transfer court.

24 Q And you think Mr. Cheek represented you on that?

25 A I believe he did if I'm not mistaken.

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 Q If it wasn't Mr. Cheek would it have been somebody
2 from the public defender's office?

3 A It would have been somebody from the public defender's
4 office.

5 Q So is it your testimony that Mr. Cheek knew or at
6 least should have known of your prior run-ins with the
7 arresting officer, Mr. Owens?

8 A Yes, sir.

9 Q Did Mr. Cheek make any statements during the plea
10 hearing in an attempt to try to point out or note to the
11 Court any potential bias there might have been with regard
12 to the arresting officer?

13 A No, sir.

14 Q With regard to Mr. Cheek's role in the hearing, did he
15 make any statements on your behalf to try to help to
16 mitigate what the sentence might be?

17 A We stated that drugs -- I needed help on the drugs,
18 which I'd said myself I needed some -- I asked him, the
19 judge, for some rehabilitation that I couldn't afford out
20 there.

21 But like since I've been in I've been taking A.A.,
22 N.A. and Jump Start and got my gold certificate in work
23 keys and taken vocational training since I've been on this.
24 I'm trying to help myself the best that I can right now.
25 And he recommended A.T.U. And I'm waiting for it also to

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 go to complete an A.T.U. program.

2 Q So Mr. Cheek did make some statements to try to
3 advocate for you.

4 A Yeah. That it alters my mind that I don't know what
5 I'm doing correctly and all when I'm on it.

6 Q But your primary concern as far as during the course
7 of the hearing is, one, that you didn't have adequate
8 notice of the plea or an opportunity to consider it?

9 A Yes, sir.

10 Q And then during the hearing that after you had entered
11 your plea when the judge allowed the officer to speak that
12 Mr. Cheek didn't object or at least point out some
13 potential bias with that officer.

14 A Yes, sir.

15 Q All right. Is there any other things that took place
16 during the plea hearing or prior to the plea hearing that
17 you believe rose to the level of ineffective assistance of
18 counsel of Mr. Cheek or anyone else in the public
19 defender's office?

20 A Well, I -- I don't know if he could have, but I was
21 thinking that he maybe should have withdrawn my plea on the
22 zero-to-five cap when he seen things wasn't going our way
23 or whatever.

24 And I put in a request. But like I left on a Friday.
25 Well, I got tried on Friday. And I put in a request at the

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 county on Saturday and got -- Monday was Martin Luther
2 King's birthday. So I got shipped out on Tuesday morning.
3 And I don't know what happened to my request, because, like
4 I asked you, you said that they didn't have no statement of
5 it on an appeal on my behalf, because I figured I would
6 have went up on appeal but --

7 Q well, let me go back then. That's after the plea
8 hearing.

9 A Yes, sir.

10 Q So prior to the plea hearing and during the plea
11 hearing have we discussed everything you think that
12 Mr. Cheek or the public defenders failed to do on your
13 behalf?

14 A Yes, sir.

15 Q Is there anything else with regard to that timeframe
16 that you think the Court needs to know about as far as
17 ineffective assistance of counsel?

18 A No, sir.

19 Q After the hearing you talked about a request. What
20 type of request was it that you were making?

21 A A request for him -- for him or somebody from the
22 public defender's office to file an appeal on my behalf,
23 because I had ten days. I only had ten days to do it. I
24 only had ten days. And I was leaving the following week.

25 So I put in an appeal, and I never got no mail at --

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 at Kirkland. I stayed at Kirkland five months in intake.

2 And I never got a request back there.

3 So I finally wrote to get my P.C.R. package and/or
4 P.C.R. and habeas corpus package. And I wrote for it
5 myself. I said I'll just go on and file a P.C.R. since I
6 didn't hearing nothing back on an appeal. That's how I got
7 here.

8 Q So the request. How did you go about doing that?

9 What did you submit or how did you submit your request?

10 A I wrote a dear-public-defender's-office. I put Cheeks
11 on it, I believe, James Cheek because he is one that was
12 here with me. James Cheeks or Charles Snyder. And I put,
13 "I was found guilty of my charges." And I put, "I would
14 like to file an appeal on these because I was looking for a
15 state -- a recommendation of zero-to-five-year cap. So I'd
16 like to file an appeal on it."

17 And I never got nothing back on it. But, like I said,
18 I did go to -- I left and went to Perry and then Kirkland
19 that following Tuesday. So I don't know if they had
20 adequate time to get it.

21 Q Let me -- let me go back quickly on the timeline then.
22 Friday you enter your pleas to both charges.

23 A Right.

24 Q One no contest with regard to throwing bodily fluids.
25 You were returned to the Spartanburg County Detention

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 Center.

2 A Yeah. I returned to Spartanburg and stayed there
3 Friday, Saturday and Sunday and Monday night and left
4 Tuesday.

5 Q All right. While you're there you say you write this
6 out. What do you write? Is there a specific form or is it
7 just notebook paper, a piece of paper you had?

8 A No. It's a -- you just tell them you'd like to
9 have -- it's like a grievance form pretty much. And you
10 write your request on it too. You write requests and
11 everything on it.

12 Q So it's a request form that you had access to.

13 A Request form. You ask the officer for one of them.

14 Q What do you do with it after you write out what you
15 want to request?

16 A Put it at the officer's station for them to put in the
17 mailbox.

18 Q Right. Had you used that process in the past with
19 regard to communicating with public defenders?

20 A Yes. I've used it to mail my mail to my family and
21 the public defenders or anything like -- anything such.

22 Q Is there any reason why you believe that that would
23 not have been delivered to the public defender's office?

24 A It was a weekend, a long weekend. Maybe they
25 misplaced it and ended up throwing it away, run around, may

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 have threw away, something like that as far as I can -- I
2 can think of because --

3 Q I'm sorry.

4 A Because it wasn't four -- a Friday, Saturday, Sunday,
5 Monday weekend -- well, Saturday, Sunday, Monday weekend
6 for Martin Luther King's birthday.

7 Q Did you -- do you have a copy of that request form
8 that you submitted?

9 A No, sir. I didn't have no way of making no copies
10 unless I would have just drew up two of them, but I wasn't
11 thinking of it at the time.

12 Q As you understand it has there ever been an appeal
13 filed on your behalf?

14 A No, sir, not as I know of.

15 Q And what are some of the issues that you think at
16 least would have been something you should have discussed
17 with your attorney about what could have been appealed?

18 A The issue that -- that this was a pure mistake. I
19 mean, it -- anybody that would be maced would spit. And
20 like it says in my transcript, my statement and everything
21 from the officer, that I spit -- that I was fighting, and
22 he started spraying me. And then he sprayed me several
23 more times until I stopped and started spitting. Of course
24 I was going to spit. I had mace all in my mouth.

25 And then it says that E.M.S. arrived. They give me

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 something to wash my mouth out with, and I spit it on the
2 ground. I didn't even attempt to try to spit at anybody.
3 So I wasn't intentionally spitting on anybody. And it
4 wasn't like his face. It was a shirt, landed on a shirt
5 sleeve.

6 Q You mentioned the 10-day window to appeal. How did
7 you know about that?

8 A It was -- I was told about it in the courtroom before
9 that we had ten days to appeal it if we didn't agree with
10 it.

11 Q So that was during the plea hearing the judge informed
12 you of that?

13 A Yeah. Judge Couch informed us of that, yeah.

14 Q Did you have any discussions with anybody from the
15 public defender's -- whether it's Mr. Cheek or Mr. Snyder
16 -- with regard to the appeal, the appellate process, at
17 all?

18 A No, sir.

19 Q Did they inform you of what the timeframes were or
20 what issues might potentially be appealed?

21 A No, sir. The only person I heard from was Judge Couch
22 when he talked about ten days.

23 Q Now that we've discussed prior to and during the plea
24 hearing and now the request for appeal after the plea
25 hearing, is there anything else specifically you think you

Bobby Mack Mathis
Direct examination by Mr. Rogers

1 want to bring to the Court's attention with regard to
2 ineffective assistance of counsel?

3 A No, sir. I believe that about sums it up.

4 Q All right. You also pointed a few extra things in
5 your -- your petition for prosecutorial misconduct and
6 malicious prosecution. Those are issues that you put in
7 there, and I want to have an opportunity to explain to the
8 Court why you included those.

9 what was it specifically that you were referencing
10 when you put that in your P.C.R. application?

11 A That -- on the prosecutorial misconduct?

12 Q Yes, sir.

13 A I didn't think it was -- well, it was more or less --
14 I think it was a heavy sentence on the situation and that
15 it could have been sought differently than what it was in
16 a -- in a more timely manner because the -- than the way it
17 was sought about in it and that maybe more evidence should
18 have been presented during the case.

19 Q Did that also have to do with anything with regard to
20 the arresting officer, Mr. Owens?

21 A Yeah. Me and him had -- pretty much had conflict. It
22 was a racial profiling pretty much, what I want to say.
23 And I believe that that should have been looked into a
24 little more on -- on the hearing.

25 Q Is there anything else that you believe the Court

Bobby Mack Mathis
Cross-examination by Ms. White

1 should know about with regard to your P.C.R. application?
2 Anything we haven't discussed that you think the Court
3 needs to be brought -- brought to the Court's attention as
4 to why you think you're entitled to your P.C.R.?

5 A I believe I've about, just about, covered it all
6 there, Mr. Rogers.

7 Q All right. And have you had an opportunity to meet
8 with me and another attorney from our office on a number of
9 occasions?

10 A Yes, I have.

11 Q Have I provided you with all the information that you
12 wanted from us?

13 A Yes, sir.

14 MR. ROGERS: Your Honor, that's all I have.

15 MS. WHITE: Just briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. WHITE

18 Q Mr. Mathis, essentially you filed a P.C.R. because
19 you're unhappy that you received ten years over the
20 recommendation of five, is that right?

21 A Yes, sir -- I mean yes, ma'am.

22 Q Okay. And the Court explained to you the difference
23 in that, didn't they, that if you have a recommendation,
24 it's a recommendation, I can -- I'm consider it -- I can
25 consider it but I'm allowed to sentence you up to the

Bobby Mack Mathis
Cross-examination by Ms. White

1 maximum?

2 A Yes, ma'am.

3 Q So the Court told you that and you still wanted to
4 proceed with this.

5 A Yes, ma'am.

6 Q All right. And you were aware that that charge
7 actually carried up to 15 years that you could have
8 received.

9 A Yes, ma'am.

10 Q All right. And Mr. Cheek did go over with you. It
11 says -- you said no contest, and you said -- the Court
12 said, "What that means is you and your lawyer have reviewed
13 the evidence. After a review it's your belief that if the
14 evidence were presented to a jury you'd be more than likely
15 convicted. But you're not admitting guilt."

16 And you said, "Yes, sir. I reckon so."

17 So when you said earlier that nobody reviewed any of
18 the evidence with you, you were aware of the evidence. It
19 was essentially the officer's statement and the incident
20 report, right?

21 A Well, yeah. But I hadn't received. I hadn't even
22 got -- you never get an incident report until after I was
23 sentenced and I put in for my P.C.R. That's when --

24 Q You didn't get a copy and you didn't get to keep a
25 copy but --

Bobby Mack Mathis
Cross-examination by Ms. White

1 A It wasn't read to me.

2 Q It wasn't ever even reviewed to you.

3 A No.

4 Q Okay. So that wasn't entirely accurate when you told
5 the Court you had reviewed the evidence and felt like you
6 might get convicted?

7 A Right. Yes, ma'am.

8 Q Okay.

9 A I knew that it was going to be on the officer's
10 statement when he got up, but I didn't -- had no copy of an
11 incident report or anything myself.

12 Q And when the Court asked you about the facts, you
13 talked with him about it. And he acknowledged that you
14 were contesting the spitting.

15 In fact, Mr. Cheek talked with you -- talked to the
16 Court about the fact that you had been maced and spit just
17 to wash your mouth out on the ground and things like that,
18 isn't that right?

19 A Yes, yes, ma'am.

20 Q Okay. And he asked them to take all of that into
21 consideration and to follow the -- the recommendation based
22 on the fact that you were affected by the drugs that you
23 had been sniffing.

24 Now, in regards to -- do you recall being interviewed
25 by the public defender's office when you first were

Bobby Mack Mathis
Cross-examination by Ms. White

1 arrested at the end of November of 2011?

2 A No, ma'am.

3 Q You don't remember meeting with anybody to sign up
4 from the public defender's office and having an interview
5 with them?

6 A Oh, when I went to -- the only time I remember was
7 signing when I went to the bond hearing. I signed right
8 then. That was it.

9 Q So I'm going to ask you real quick. I show you this.
10 This is an affidavit of indigency, application for counsel.
11 You don't remember ever having to file one of those and go
12 over with somebody that?

13 A The only time I've ever done is sign it. I never -- I
14 don't remember that.

15 Q Okay. And you've written to the public defender's
16 office since your sentence and never mentioned anything
17 about wanting to file an appeal, right?

18 A Well, I was told that ten days. And ten days has been
19 way up since I wrote the public defender's office.

20 Q So you would not disagree that you had written the
21 office March 29th of 2012 or July 24th of 2012 and never
22 mentioned anything about an appeal?

23 A Right.

24 Q Okay.

25 A Because I was in the process of a P.C.R.

Bobby Mack Mathis
Redirect examination by Mr. Rogers

1 MS. WHITE: Your Honor, that's all I have of this
2 witness.

3 MR. ROGERS: Your Honor, just briefly.

4 REDIRECT EXAMINATION

5 BY MR. ROGERS

6 Q There was a question just a moment ago about whether
7 or not you'd actually seen the facts and evidence against
8 you. Did you ever actually see the indictment before you
9 pled?

10 A No, sir.

11 Q Did you see any of the records with regard to the
12 arresting officer's reports or anything that he might have
13 written up before you --

14 A No, sir.

15 Q And in your P.C.R. application you refer to some dates
16 being wrong. When did you first determine those dates were
17 wrong?

18 A After I wrote the clerk of court and got them it
19 showed that -- or after I wrote the clerk of court or the
20 probation officer, one, and they sent them, and it was
21 showing more -- November of 2010 on it when it happened
22 November of 2011. I was looking at the dates on the
23 indictments. And I reckon it'd be the indictments. And
24 the sentencing sheet also, November of 2010. And it
25 happened November of 2011.

Bobby Mack Mathis
Redirect examination by Mr. Rogers

1 Q Is that something that you were able to discuss at all
2 with either Mr. Snyder or Mr. Cheek?

3 A No, because I didn't have it at the time. I didn't
4 get it until after I was already sentenced and in the state
5 department of corrections.

6 Q With regard to the subsequent letters that you
7 apparently sent to the public defender's office, did you
8 see any reason to ask them to appeal again when they'd
9 already failed to appeal?

10 A No. I wrote them and asked them for stuff that I
11 needed for a P.C.R. in my letters and telling them I was
12 filing a P.C.R. and I was needing certain stuff to help me
13 fill it out.

14 Q Do you think that there would have been an opportunity
15 at least for you to have a day in court had the appeal been
16 filed?

17 A Yes, I do.

18 Q All right. And do you believe that if Mr. Cheek had
19 objected or done some things differently with regard to the
20 statements that were made by the arresting officer that
21 that may have limited the sentences you received?

22 A Yes. I believe I could have got a lesser sentence.
23 It may have been five, seven. But it would have most
24 definitely I believe would have been under ten.

25 Q That's all I have. Thank you.

Bobby Mack Mathis

1 MS. WHITE: Nothing further, Your Honor.

2 THE COURT: Mr. Mathis, let me ask you this.

3 You indicated some desire to appeal. What would have
4 been the ground for your appeal?

5 THE WITNESS: Oh, I would have done it on that I
6 thought it was a harsh sentence, and that it was double my
7 recommendation, and that I'd like to try -- tried it with a
8 different judge or something like that, because I believe
9 you get a different judge when you go on appeal if I ain't
10 mistaken. I'm kind of new to it, to this, but/and I
11 would've tried to go up on a different date and try to get
12 a plea bargain on it, on a signed plea instead of a verbal
13 plea.

14 THE COURT: So your ground for appeal would have been
15 that the sentence was too harsh and it was twice what the
16 recommendation was?

17 THE WITNESS: Yes, sir, and that I'd like to try --
18 try on a lesser, try to go back and get a lesser -- maybe a
19 lesser charge, to plead into a lesser charge than what I
20 was actually charged with.

21 THE COURT: All right. Any other ground you'd have?

22 THE WITNESS: That'd be about it.

23 THE COURT: Okay. Thank you. Step down.

24 THE WITNESS: Yes, sir.

25 MR. ROGERS: No further witnesses for the applicant,

James A. Cheek
Direct examination by Ms. White

1 Your Honor.

2 THE COURT: Okay.

3 MS. WHITE: Just very briefly, Your Honor, the state
4 would call James Cheek.

5 JAMES A. CHEEK, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. WHITE

8 Q Mr. Cheek, I just have a couple of questions for you.
9 You took over the representation of Mr. Mathis from
10 Mr. Snyder from your office.

11 A I did.

12 Q And at the time had you met with Mr. Mathis in the
13 jail prior to as he mentioned?

14 A I did.

15 Q Did you have any chance to talk with him about the
16 case at that point?

17 A I did.

18 Q And before his plea did you ever have a chance to
19 review with him the evidence that the state had against
20 him?

21 A I did.

22 Q And what did that consist of?

23 A There was a statement from the officer regarding there
24 having been a -- a call of a domestic disturbance. They
25 recognized the address. They went out. They had had

James A. Cheek
Direct examination by Ms. White

1 problems with Mr. Mathis in the past.

2 He approached. Mr. Mathis was -- approaching the
3 incident location, Mr. Mathis came out from an outbuilding
4 and indicated he was going to run, he was going to run.

5 And then there was a foot chase. Mr. Mathis was
6 apprehended by the officers. There was a tussle.

7 Mr. Mathis was maced twice basically.

8 And then there was the spitting incident. He
9 indicated he was trying to clear his mouth of the -- of the
10 mace.

11 Q Was there ever any question in your mind that -- that
12 he was aware of what the evidence was against him and the
13 charges that he was facing before he pled guilty?

14 A None whatsoever, not at the jail or prior to in the
15 plea that day.

16 We actually talked in the jail room adjacent to the
17 courtrooms. That's when I go over everyone's rights with
18 them in a group and make sure that everybody has had a
19 second or third chance to hear their rights and ask
20 questions about their rights.

21 We came into the courtroom and then he entered his
22 plea. We talked about North Carolina v. Alford, in fact,
23 because he -- see, he didn't intentionally spit on the
24 officer, but I asked if he went to trial would a jury most
25 probably find him guilty, did he have a defense to it, all

James A. Cheek
Direct examination by Ms. White

1 of that.

2 He wanted to enter the plea. And as the transcript
3 reflects, between the time he left the jail room and came
4 in the courtroom I did not note on the sentencing sheet it
5 was going to be entered under Alford. But during the
6 middle of the plea we clarified all of that and it was
7 actually entered under Alford vs. North Carolina.

8 Q Okay. And was it your understanding as well there was
9 a five -- zero-to-five recommendation from the state?

10 A Yeah, a cap of five.

11 We had talked about the case. I think Prina Taylor
12 was the prosecutor in the case. There was a cap of five
13 offered. And of course we wanted to accept that chance at
14 a much lesser sentence because it carried up to 15 years
15 and had pretty much had gotten through the plea when there
16 was some comments made by Mr. Mathis to the Court that the
17 Court called into question. And the judge indicated that
18 the sentencing probably would result in being different
19 because of misrepresentations and the fact that the judge
20 felt that Mr. Mathis had not been completely honest with
21 him about the development of his addiction, his use of
22 hydrocarbons, the source of that, all of those kind of
23 things, then became into question.

24 Q Are you representing when he indicated that he picked
25 up the habit while he was at Tyger River, but then the

James A. Cheek
Direct examination by Ms. White

1 dates really didn't -- he was arrested prior to that as
2 well for that?

3 A Yeah. He -- he apparently decided that during the
4 course of the plea that he would convince the Court not to
5 send time back to prison by saying that all of this
6 behavior was acquired in prison, while he was in prison
7 industries.

8 The Court went into detail and questioned him about
9 that response, especially after his record was introduced
10 into court showing that he had his first conviction
11 involving hydrocarbons prior to ever going to prison.

12 Q And you think that affected how felt -- how the judge
13 felt about the sentencing possibly?

14 A Absolutely one hundred percent. I just feel like we
15 would have had an opportunity within the cap of five had
16 Mr. Mathis not made some misrepresentations to the Court.

17 Q And overall though before you went there did you have
18 any question in your mind that he was pleading on his own
19 freely and voluntarily?

20 A Freely and voluntarily. Even during the initial
21 interview with our office investigator where the clients
22 are processed and qualified for representation in his
23 conversation with Mr. Teague. Mr. Teague noted that the
24 report states that the defendant became angry and
25 aggressive toward the officer, so he was maced.

James A. Cheek
Cross-examination by Mr. Rogers

1 "Defendant states that he had trouble breathing and
2 began to spit trying to relieve himself from the mace."

3 That was done on -- the interview was done on
4 November the 29th of 2011 after Mr. Mace [sic] was booked
5 into the detention facility on November the 27th of 2011.

6 Q And in regards to an appeal, did you ever receive a
7 request for you to file an appeal in this case?

8 A No, not -- did not see one in my review of the jail's
9 file. Copies are made of those inmate request forms and a
10 copy sent back to the inmate, so the inmate has that as
11 part of his file. And had that been done Mr. Mace -- I
12 mean Mr. Mathis should have had a copy of that inmate
13 request form showing it'd been received and going through
14 the forwarding process.

15 Q And even without him requesting did you see anything
16 that would cause you concern or think -- cause you to think
17 that you needed to file an appeal on his behalf?

18 A I saw no appealable issue.

19 Q Okay. Thank you. That's all I have.

20 MR. ROGERS: May it please the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. ROGERS

24 Q Mr. Cheek, what type of prior involvement had you had
25 with Bobby Mathis?

James A. Cheek
Cross-examination by Mr. Rogers

1 A I had represented Mr. Mathis before involving his
2 behaviors and some charges brought against him over in the
3 Cowpens area.

4 Q So this wasn't the first time you were involved with
5 him on any kind of --

6 A No. And when he approached me at the jail I
7 recognized him. He knew me. We'd prior I felt good
8 association.

9 Q During the plea hearing you never objected to anything
10 that was being said by officer Owens, correct?

11 A I did not because my understanding from conversations
12 I had with Mr. Mathis in the past, what was said about him
13 was true, so I saw no reason to object to that. I mean,
14 his family is very concerned about his behavior, as you
15 would anyone who is huffing paint.

16 Q And at no point did you try to point out to the Court
17 that there was some prior history between the arresting
18 officer and with Mr. Mathis.

19 A No. I thought -- I thought and I think had I done
20 that that would have further incensed and exacerbated the
21 situation on Mr. Mathis' behalf because it shows a total
22 lack of regard and respect for officers.

23 Q Well, you indicated earlier too in response to direct
24 examination that the judge sentenced him to a harsher
25 sentence above the 5-year cap because of some dialogue

James A. Cheek
Cross-examination by Mr. Rogers

1 between Mr. Mathis and Judge Couch, correct?

2 A I can't say that's why the judge did that. I would
3 say that I felt things were going well until that happened.

4 Now, the judge would have to -- the sentencing judge
5 could tell you if that's why he did it. But the judge does
6 make some reference in the transcript that he had great
7 concerns about my client's veracity and honesty to the
8 Court.

9 Q He also made a comment that I'm concerned that you're
10 a danger to the community. And that was directly related
11 to what he just heard from Mr. Owens, correct?

12 A I don't know.

13 Q But that followed right after Mr. Owens had spoken to
14 the Court.

15 A The Court made that comment after Mr. Owens spoke.

16 Q And that's the comments that you didn't object to or
17 try to point out any type of bias, correct?

18 A I don't know if there was any bias. I don't know of
19 any bias I could point it towards.

20 Q Was there a prior incident of failure to stop for a
21 blue light involving the arresting officer, Mr. Owens?

22 A I don't -- I don't recall.

23 Q Okay. You weren't involved in those charges?

24 A I don't recall that charge. I don't remember that
25 charge. I can't say if I was involved or not. At this

James A. Cheek
Cross-examination by Mr. Rogers

1 point I don't remember.

2 Q And you have reviewed those files with regard to past
3 representation with regard to Mr. Mathis.

4 A No. I have not.

5 Q All right. And you never filed an appeal nor did you
6 ever discuss with Mr. Mathis the appeal process or
7 potential issues that he might could have appealed,
8 correct?

9 A I didn't see any.

10 Q I understand. You said you didn't see any. My
11 question is did you ever discuss those with Mr. Mathis.

12 A No.

13 Q And do you know of anybody at the public defender's
14 office that ever talked to him about the possibility of
15 appealing anything related to the plea hearing?

16 A No.

17 MR. ROGERS: That's all I have, Your Honor. Thank
18 you.

19 MS. WHITE: Nothing further, Your Honor.

20 THE COURT: You may step down.

21 MS. WHITE: The state has no other witnesses.

22 MR. ROGERS: Your Honor, if I may just briefly, I had
23 drafted a memorandum to hand up, but I wanted to wait and
24 see how the facts fell out. There are a few little things
25 I'd like to change before submitting that to the Court if I

1 could submit that within the next -- I mean, quite
2 honestly, I can probably have it here by tomorrow morning.

3 I understand the state will probably want some time to
4 respond or at least review it and decide whether they want
5 to respond.

6 I'm not opposed to that, but I do think at least with
7 regard to some of these issues that I'd like to put some of
8 the case law that I've looked at in front of the Court.

9 THE COURT: All right. I'll accept those memos not
10 later than Friday afternoon.

11 MR. ROGERS: Thank you, Your Honor.

12 THE COURT: All right. I'll review the transcript and
13 the memos and then issue an order.

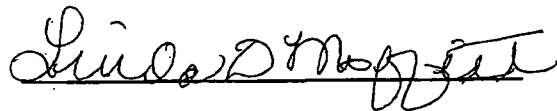
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 1st day of October 2013.

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

April 17, 2014



Linda D. Moffitt
Circuit Court Reporter

Rec'd 2-25-2014

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bobby Mack Mathis, #248562,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-3109

ORDER OF DISMISSAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 20 PM 4:50
M. HOPE BLUM

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 25, 2012. The Respondent made its Return on or about July 25, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Shane W. Rogers, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript, and Applicant's memoranda.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the January 2012 term of the Spartanburg County Grand Jury for resisting arrest (2012-GS-42-0378) and throwing of bodily fluids (2012-GS-42-0379). The Applicant was represented by James Cheek, Esquire. On January 13, 2012, the Applicant pled no contest before the Honorable

SCANNED

Roger L. Couch and was sentenced to confinement for one year for resisting arrest and ten years, concurrent, for throwing of bodily fluids on local law enforcement officer. Applicant did not appeal his conviction and sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel was not present during plea and sent someone else,
 - b. Counsel failed to file an appeal, and
2. Prosecutorial misconduct and malicious prosecution, in that;
 - a. Prosecutor read past criminal history and spoke of charges the Applicant was not convicted of,
 - b. Dates on the warrants and indictments are incorrect.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 20 PM 4:50
M. HOPE S. ACHLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he was originally appointed Charles Snyder III to represent him and met with Mr. Snyder once, but then Counsel represented Applicant at the plea. Applicant testified that he met Counsel on the day of the plea. However, Applicant acknowledged that Counsel had represented him before on a similar charge. Applicant testified that he knew his plea was scheduled for January 13, 2012, and that there was a recommendation by the State for a five year cap. Applicant testified that Counsel did not object when the officer spoke to the court and indicated that Applicant was a threat to Applicant's family. Applicant testified that he

believed Officer Owens used racial profiling when arresting him. Applicant also testified that he wanted an appeal of his guilty plea.

Counsel testified that he had previously represented the Applicant. Counsel testified that he reviewed the evidence the State had against the Applicant, which essentially consisted of the statement from the Officer. Counsel testified that he met with the Applicant in the jail room, which is adjacent to the courtroom. Counsel testified that he discussed pleading guilty pursuant

to Alford and the recommendation for a cap of five years and the Applicant wanted to plead guilty. Counsel testified that he did not object to the Officer's statements because the statements were true. Counsel testified that he believes that the reason Applicant was sentenced over the recommended cap was because he lied to the plea court about his addictions and how and when he started huffing paint. Counsel testified that he never received a request for an appeal from the Applicant and Counsel saw no reason for an appeal.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or met with him

more often. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

Regarding Applicant's allegations that Counsel failed to object to statements made by the Officer, this Court finds that this allegation lacks merit. This Court reviewed plea transcript and found no deficiency that would have provided a basis for any objection. As the transcript reflects, the Applicant informed the court prior to the officer's statements that he thanked the officer because he "could have harmed [himself] or everybody." (Tr. p. 18-19). Furthermore, the plea judge indicated on the record that he had considered both the recommendation and the fact that the Applicant "either tried to mislead the Court or [...] just don't remember." (Tr. p. 22). There is no indication that Counsel's failure to object to Officer Owens' statement affected the Applicant's plea. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. The Applicant has failed to establish that he would have proceeded to trial, but for, alleged deficiencies of Counsel. The Applicant informed the plea court that he was satisfied with Counsel and there was nothing more he needed to talk with or meet with Counsel about. (Tr. p. 11-12). Therefore, this claim is denied and dismissed.

The Applicant has also alleged that he is entitled to a belated review of direct appeal

issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). This Court finds that the Applicant failed to meet his burden of proof as to this allegation. This Court finds Counsel's testimony to be more credible than Applicant's testimony. This Court finds that the Applicant did not request an appeal and that there was no basis for Counsel to believe that Applicant wished to appeal. Therefore, this claim is denied and dismissed.

Prosecutorial Misconduct

Although raised in his application, the Applicant did not pursue these claims to the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned these claims.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not

met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

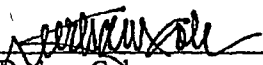
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20 day of February, 2013.


J. Derham Cole
Presiding Judge

CLERK OF COURT
PARTLAND COUNTY
2014 FEB 20 PM 4:50
M. HOPE BLANKENHORN

WITNESSES

TENDANCE JIM

REPORT MADE

Cowpens PD

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

M756770

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **12-GS-42-** 0378

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS
JAN 13 2012

TERM

THE STATE

vs.

Bobby Mathis

Indictment for
RESISTING ARREST

SC Code: 16-9-320 (A)

CDR Code: 326

Class MIS-c

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

MAY 11, 2012

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

RESISTING ARREST

That Bobby Mathis, did in Spartanburg County, on or about November 26, 2010 knowingly, willfully and unlawfully oppose and/or attempt to resist the effort of Officer James Owens, law enforcement officers of this State, to make a lawful arrest of the said defendant, in violation of §16-09-320 (A), *THE 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.

 ASSISTANT SOLICITOR

WITNESSES

Cowpens PD

REPORT MADE

REPORT MADE

CHIEF DETECTIVE

DETECTIVE

DETECTIVE

DETECTIVE

ARREST WARRANT NUMBER

CHIEF DETECTIVE

M756771

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-

0379

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 9 2012

TERM

THE STATE
VS.

Bobby Mathis

Indictment for

THROWING OF BODILY FLUIDS

SC Code: 24-13-470

CDR Code: 2526

Class FEL/UNC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Spartanburg County present upon their oath:

THROWING OF BODILY FLUIDS

That Bobby Mathis did in Spartanburg County on or November 26, 2010, being a person taken into custody or a person under arrest, attempt to throw or threw bodily fluids including saliva on Officer James Owens, a local law enforcement officer, in violation of §24-13-470 of *THE 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.

 ASSISTANT SOLICITOR