

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Dorchester County  
Edgar Dickson, Circuit Court Judge

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S.C. Supreme Court

CURTIS BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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A P P E N D I X

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STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
: )  
COUNTY OF DORCHESTER ) CASE NO. 2006-GS-18-1761

STATE OF SOUTH CAROLINA ) TRANSCRIPT OF RECORD  
Plaintiff, )  
 )  
-versus- ) GUILTY PLEA/SENTENCING  
 )  
CURTIS BRYANT, ) June 12, 2007  
Defendant. ) St. George, South Carolina

B E F O R E:  
The Honorable Diane S. Goodstein

A P P E A R A N C E S:  
B. Harrison Bell, Jr., Esquire  
For the State

Marva A. Hardee-Thomas, Esquire  
For the Defendant

Robin L. Herrera, CSR, RMR  
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State v. Curtis Bryant

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(June 12, 2007.)

THE COURT: Please be seated.

MR. BELL: If it please the Court. Your Honor, this would be in reference to docket number 2006-GS-18-1761, the State v. Curtis Lee Bryant. He would plead guilty to the charge of armed robbery. Represented by Ms. Hardee-Thomas. The victims are present, or the victim.

THE COURT: Great. Thank you.

All right. You are Curtis Lee Bryant?

MR. BRYANT: Yes, ma'am.

THE COURT: Mr. Bryant, Ms. Ethredge is going to swear you in.

THE CLERK: Please stand and raise your right hand and give us your full name to be sworn.

MR. BRYANT: Curtis Lee Bryant.

(Whereupon, the defendant is duly sworn.)

THE CLERK: Thank you. Have a seat.

THE COURT: All right. Mr. Bryant, you are represented by Ms. Hardee-Thomas?

MR. BRYANT: Yes, ma'am.

THE COURT: Ms. Hardee-Thomas, have you

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1 advised your client of the nature of this  
2 offense, the maximum possible penalty, the  
3 minimum penalty and his constitutional  
4 rights, including his right to a jury trial?

5 MS. HARDEE-THOMAS: I have, Your Honor.

6 THE COURT: And in your opinion does he  
7 understand the nature of this offense, the  
8 maximum possible penalty and his rights?

9 MS. HARDEE-THOMAS: He does.

10 THE COURT: Tell me how he wishes to  
11 plead.

12 MS. HARDEE-THOMAS: Guilty, Your Honor.

13 THE COURT: And do you concur with his  
14 decisions?

15 MS. HARDEE-THOMAS: I do.

16 THE COURT: From your investigation of  
17 the facts and circumstances of your client's  
18 case, do you believe the State could produce  
19 sufficient evidence to convict and establish  
20 your client's guilt beyond a reasonable doubt  
21 and, if he was to stand trial, that his  
22 conviction would be probable?

23 MS. HARDEE-THOMAS: Yes.

24 THE COURT: Do you have any questions  
25 regarding Mr. Bryant's competency?

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1 MS. HARDEE-THOMAS: None.

2 THE COURT: Mr. Bryant, I have many  
3 questions to ask of you. The reason that I'm  
4 asking you these questions is to be sure that  
5 you're entering into these proceedings  
6 freely, voluntarily, knowingly, and  
7 intelligently. If at any point in time you  
8 do not understand my question, don't answer  
9 it, but do let me know that you don't  
10 understand my question. And if you need to  
11 take a break for any reason, particularly to  
12 speak to Ms. Hardee-Thomas, I want you to  
13 feel free to do that.

14 And we are going to begin this  
15 process now. Tell me how old you are.

16 MR. BRYANT: Forty-four.

17 THE COURT: How far did you go in  
18 school?

19 MR. BRYANT: Twelfth.

20 THE COURT: Did you graduate?

21 MR. BRYANT: Yes, ma'am.

22 THE COURT: How long have you been  
23 locked up?

24 MR. BRYANT: Since October 12th.

25 THE COURT: Of 2006?

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1 MR. BRYANT: 2006.

2 THE COURT: Okay. And before that time  
3 did you work outside your home?

4 MR. BRYANT: Yes, ma'am.

5 THE COURT: Where did you work?

6 MR. BRYANT: I worked at construction  
7 sites, heavy equipment operator.

8 THE COURT: Okay. All right. Are you  
9 married?

10 MR. BRYANT: No, ma'am.

11 THE COURT: Do you have children?

12 MR. BRYANT: Yes, ma'am.

13 THE COURT: How many?

14 MR. BRYANT: Two.

15 THE COURT: How old?

16 MR. BRYANT: Seven and 13.

17 THE COURT: Have you ever been treated  
18 for alcohol, drug abuse, or mental illness?

19 MR. BRYANT: No, ma'am.

20 THE COURT: Within the last 72 hours  
21 have you had any alcohol, drugs, or any kind  
22 of medication?

23 MR. BRYANT: No, ma'am.

24 THE COURT: Are you aware of any problem  
25 that you have, a physical problem, a mental

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1                   problem, a nervous problem, a drug or alcohol  
2                   problem, any problem that might, that could  
3                   interfere with your ability to know exactly  
4                   what you're doing here today?

5                   MR. BRYANT:   No, ma'am.

6                   THE COURT:   All right.  Let's talk about  
7                   this charge, Mr. Bryant.  Do you understand  
8                   that the offense, the charge of armed robbery  
9                   carries a maximum possible penalty of 30  
10                  years in prison?

11                  MR. BRYANT:   Yes, ma'am.

12                  THE COURT:   Do you understand that it  
13                  has a minimum sentence of ten years in  
14                  prison?

15                  MR. BRYANT:   Yes, ma'am.

16                  THE COURT:   All right.  Do you also  
17                  understand that armed robbery is a violent  
18                  offense?

19                  MR. BRYANT:   Yes, I do.

20                  THE COURT:   As a violent offense that  
21                  has to do with whether or not you'll be able  
22                  to earn educational or work or any other kind  
23                  of credits while incarcerated.  Do you  
24                  understand that?

25                  MR. BRYANT:   Yes, ma'am.

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THE COURT: All right, sir. Do you understand that this is a no parole offense?

MR. BRYANT: Yes, ma'am.

THE COURT: And what that means is, is that only after you have served 85 percent of your sentence would you even be eligible for what's called community supervision.

Community supervision is a creature which has been created by the legislature and what that says is, is that if you are granted community supervision then you must remain in the community without any issues whatsoever for a period of two years. If you fail to do that, then you will be placed back into the Department of Corrections for the period of a year and then you will -- would then come back out on community supervision and begin anew a two-year period where your conduct must be pretty exemplary. You must follow all the rules and all the requests and all the directions of the folks at probation and parole that would govern your community supervision. Do you understand that this is a consequence of your plea here today?

MR. BRYANT: Yes, ma'am.

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1 THE COURT: However, having said that,  
2 there is no guarantee that you would ever be  
3 given community supervision. And whatever  
4 sentence I give you here today you need to  
5 rely on the fact that that is the sentence  
6 that you will serve. Do you understand?

7 MR. BRYANT: Yes, ma'am.

8 THE COURT: All right. Now, this is  
9 also, Mr. Bryant, this is a most serious  
10 offense. And in South Carolina we have a  
11 recidivism statute, it's found at 17-25-45.  
12 And what the recidivism statute says is that  
13 if you are convicted over the course of your  
14 lifetime of two most serious offenses, that  
15 upon the conviction of the second most  
16 serious offense that you will spend the rest  
17 of your life in prison without the  
18 possibility of parole. Do you understand  
19 what I mean when I tell you that this is a  
20 most serious offense?

21 MR. BRYANT: Yes, ma'am.

22 THE COURT: All right. Tell me what you  
23 understand life without the possibility of  
24 parole means.

25 MR. BRYANT: As you just stated, I would

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1 spend the rest of my life in prison.

2 THE COURT: Yes, sir. You would come  
3 out in a box, you would come out horizontal,  
4 you would die there. Do you understand?

5 MR. BRYANT: Yes.

6 THE COURT: All right. Now, also I  
7 would tell you that the recidivism statute  
8 has another part of it and what that portion  
9 of the statute says is that if you are over  
10 the course of your lifetime convicted of one  
11 most serious offense and two serious  
12 offenses, crimes that have that particular  
13 classifications pursuant to statute, then  
14 upon the conviction of the third offense,  
15 under that scenario, one most serious and two  
16 serious offenses, that upon notice from the  
17 solicitor if you are convicted of that third  
18 offense in that scenario then you would spend  
19 the rest of your life in prison without the  
20 possibility of parole. Do you understand  
21 that?

22 MR. BRYANT: Yes, ma'am.

23 THE COURT: All right, sir.

24 Now, and I'll begin by asking  
25 Mr. Bell, Mr. Bell, have you done a review of

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1 Mr. Bryant's record?

2 MR. BELL: Yes, Your Honor.

3 THE COURT: What strike, what most  
4 serious strike is this?

5 MR. BELL: This would be his first most  
6 serious strike that I'm aware of.

7 THE COURT: Yes, sir. And does  
8 Mr. Bryant have any serious strikes?

9 MR. BELL: My review of his record is he  
10 has no serious strikes either.

11 THE COURT: All right. Ms.  
12 Hardee-Thomas, have you had a chance to look  
13 at his record?

14 MS. HARDEE-THOMAS: Yes, Your Honor, I  
15 have.

16 THE COURT: And do you concur with what  
17 Mr. Bell is telling me, this would be his  
18 first most serious strike?

19 MS. HARDEE-THOMAS: That's correct.

20 THE COURT: Does he have any serious  
21 strikes?

22 MS. HARDEE-THOMAS: None.

23 THE COURT: Very well. Most  
24 importantly, Mr. Bryant, is this your  
25 understanding this would be your first most

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serious strike?

MR. BRYANT: Absolutely.

THE COURT: All right, sir. Do you have any serious strikes? In other words, have you been convicted of any crimes in the past which are classified as a serious offense, to your knowledge?

MR. BRYANT: No, ma'am.

THE COURT: If you were to go to the South Carolina Department of Corrections and they were to say that, in fact, you had other strikes either serious or most serious, would you be surprised?

MR. BRYANT: Very much so.

THE COURT: Would you be shocked?

MR. BRYANT: Absolutely.

THE COURT: Would you want to have the opportunity to look again at your plea here today?

MR. BRYANT: Sure.

THE COURT: Yes, very well, all right. Now, very well. Do you understand that you will make a contribution of your own DNA and it will be placed into the DNA database?

MR. BRYANT: Yes, I'm aware.

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THE COURT: And you will be responsible for the cost of the collection of your own DNA?

MR. BRYANT: Yes.

THE COURT: Are you on probation or parole currently?

MR. BRYANT: No, ma'am.

THE COURT: All right. All right, sir. Let's review. We've talked about the nature of this offense, the maximum possible penalty, the minimum penalty and the consequences of your plea here today.

MR. BRYANT: Yes.

THE COURT: Keeping all of this in your mind, how do you plea to armed robbery?

MR. BRYANT: Guilty.

THE COURT: All right. And do you understand that when you plead guilty that you give up certain very important constitutional rights?

MR. BRYANT: I'm aware.

THE COURT: We're going to talk about some of them, we will not talk about them all, but we will talk about some of them. You give up the right to reman silent, the

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1 right against self-incrimination, the  
2 presumption of innocence, you give up your  
3 right to require the State to prove you  
4 guilty beyond a reasonable doubt if they can,  
5 your right to compel the attendance of  
6 witnesses in your defense, your right to  
7 confront witnesses who might testify against  
8 you, your right to present defenses, your  
9 right to challenge any incriminating  
10 statements that you may have made in your  
11 case, your right to challenge any stops,  
12 searches and seizures that you think were not  
13 appropriate and your right to a jury trial.  
14 And if you wish to have a jury trial there's  
15 a jury panel right outside in the courtroom  
16 and the State, your lawyer, are prepared to  
17 go to trial this morning, there will be a  
18 trial.

19 And at that trial it would be your  
20 decision, Mr. Bryant, whether or not you wish  
21 to testify or you wish not to testify. Of  
22 course in the event that you chose not to  
23 testify, that would be an exercise of your  
24 Fifth Amendment right under the United States  
25 and South Carolina constitutions and I would

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1 tell the jury that they could not even --  
2 they could not consider your decision not to  
3 testify; in fact, they couldn't even mention  
4 it in the jury room because you were  
5 exercising your constitutional rights and  
6 that belonged only to you and you had no  
7 obligation to prove anything. The obligation  
8 to prove you guilty beyond a reasonable doubt  
9 was and remained on the State of South  
10 Carolina.

11 So I ask if you understand your  
12 constitutional rights?

13 MR. BRYANT: Yes, ma'am.

14 THE COURT: And as I've said there are  
15 others. These rights are preserved for you  
16 at trial and you waive them when you plead  
17 guilty. Do you understand that?

18 MR. BRYANT: Yes, ma'am.

19 THE COURT: And is that what you wish to  
20 do?

21 MR. BRYANT: Yes, ma'am.

22 THE COURT: And do you clearly  
23 understand that when you plead guilty that  
24 you give up your right to have a jury  
25 determine whether or not you are guilty or

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1 not guilty and, if I accept your plea, I will  
2 sentence you?

3 MR. BRYANT: Yes, ma'am.

4 THE COURT: Let's review. You've told  
5 me that you understand the nature of this  
6 offense, the maximum possible penalty, the  
7 minimum penalty and your constitutional  
8 rights. Keeping all of this in your mind, do  
9 you still wish to continue with your plea of  
10 guilty?

11 MR. BRYANT: Yes, ma'am.

12 THE COURT: All right. Listen very  
13 carefully to what Mr. Bell is going to talk  
14 to me, to tell me, because he's going to go  
15 over the facts. Wait for Norfolk Southern  
16 (train.)

17 And now is the part of the process  
18 when I need to understand, I need to have the  
19 factual basis for your plea. When Mr. Bell  
20 is finished, I'm going to ask you is that  
21 what you did or is that what happened. I  
22 want you to be prepared to correct anything  
23 that he tells me that is not correct because  
24 it is important that I have an accurate  
25 picture of what occurred. I will begin by

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1 asking you did these events occur in  
2 Dorchester County?

3 MR. BRYANT: Yes, ma'am.

4 THE COURT: All right. Please listen  
5 carefully to Mr. Bell.

6 MR. BELL: If it please the Court. Your  
7 Honor, this occurred on October 12th, 2006.  
8 This occurred about approximately 3:30 in the  
9 afternoon. This occurred at 5000 Ashley  
10 Phosphate Road in the city of North  
11 Charleston, Dorchester County, which is  
12 Frankie's Fun Park.

13 The victim, Mr. Joe Camosa, who is  
14 seated right there, was playing some games  
15 inside the game room, he game out to smoke a  
16 cigarette, he noticed somebody kind of  
17 hanging over in the shadows. At some point  
18 thereafter the individual came up to him,  
19 started chitchatting, pulled a kitchen knife,  
20 what he described as a kitchen knife on him,  
21 got his cell phone out of his pants, got his  
22 car keys and took off with his 1999 Honda  
23 Civic sedan.

24 As soon as the sedan was gone it  
25 was reported to the North Charleston Police

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Department. Some officers came there, he gave them a description of a tall black male that had on a blue shirt and a mustache. There was -- that -- I think they BOLO'ed it out, be on the look out for, over the radio.

There was an officer who was coming along Dorchester Road near Forest Hills Avenue in Charleston County and he was coming towards Dorchester County and he figured that one of the ways that he could get off of Ashley Phosphate was get on Cross County at the come-around to Dorchester, so he turned around, went back. Just as he got to Cross County he saw a white Honda Civic which raised his interest. When he got a little closer he saw the driver was wearing a blue shirt as described. The license tag that was BOLO'ed out was off by one letter, I think it was, but he got in behind it.

He then put his blue light on, the car went on up, turned no an apartment's drive just past the Air Force base, went in there, kind of went around the loop. He noticed the individual, he thought was in his experience, was getting ready to bail out of

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1 the car because he saw the passenger door  
2 kind of open up, the car went to a parking  
3 lot. He moved his car to a position close on  
4 the driver's side, he got around before the  
5 individual could leave and he found that  
6 Mr. Bryant was the driver of the vehicle. He  
7 also saw a cell phone in the seat and there  
8 was a knife in the floorboard of the  
9 passenger side of the vehicle.

10 Once he got Mr. Bryant into  
11 custody, he checked the license plate and it  
12 came back to Joseph Camosa. He radioed back,  
13 they brought Mr. Camosa up, they took him out  
14 of his vehicle and Mr. Camosa positively  
15 identified him as the individual. This was  
16 about 30 minutes after the incident occurred.

17 THE COURT: All right. All right. Is  
18 that what happened?

19 MR. BRYANT: Yes, except it wasn't a  
20 sedan, a coupe.

21 MR. BELL: A coupe.

22 THE COURT: Very well. Has anyone  
23 promised you anything or held out any hope of  
24 a reward to get you to plead guilty?

25 MR. BRYANT: No, ma'am.

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1 THE COURT: Has anyone tried to force,  
2 threaten, pressure, or intimidate you to make  
3 you plead guilty?

4 MR. BRYANT: No.

5 THE COURT: Have you had enough time to  
6 make up your mind that this is what you want  
7 to do?

8 MR. BRYANT: Oh, yes. Yes, ma'am.

9 THE COURT: And are you pleading guilty  
10 freely and voluntarily?

11 MR. BRYANT: Absolutely.

12 THE COURT: And are you satisfied with  
13 the services of Ms. Hardee-Thomas?

14 MR. BRYANT: Yes. She's a great lawyer.

15 THE COURT: Have you and she fully  
16 discussed the charges against you?

17 MR. BRYANT: Yes, ma'am.

18 THE COURT: Have you spoken with her for  
19 as often and for as long as you feel  
20 necessary for her to properly represent you?

21 MR. BRYANT: Yes.

22 THE COURT: Do you need any more time to  
23 talk to her?

24 MR. BRYANT: No, ma'am.

25 THE COURT: Have you understood your

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1 talks with her?

2 MR. BRYANT: Yes.

3 THE COURT: Has Ms. Hardee-Thomas done  
4 everything for you in your case that you feel  
5 she should have done or could have done to  
6 properly represent you?

7 MR. BRYANT: Yes, ma'am.

8 THE COURT: Has she done anything in her  
9 representation of you that you feel she  
10 should not have done?

11 MR. BRYANT: No.

12 THE COURT: And are you completely  
13 satisfied with her services?

14 MR. BRYANT: Yes, ma'am.

15 THE COURT: Now, has anyone associated  
16 with your case, your lawyer, the solicitor,  
17 any of the police officers involved in your  
18 arrest or any of the employees of the  
19 detention facility, has anyone associated  
20 with your case mistreated you in any way?

21 MR. BRYANT: No.

22 THE COURT: Have you understood my  
23 questions?

24 MR. BRYANT: All of them.

25 THE COURT: Is there anything that you

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1 would like to ask me about what we've just  
2 been over?

3 MR. BRYANT: No, ma'am. No.

4 THE COURT: Do you understand that you  
5 have a right to appeal the guilty plea and  
6 sentence of the Court, and that you or your  
7 lawyer must do that within ten days?

8 MR. BRYANT: Yes, ma'am.

9 THE COURT: Do you understand if you  
10 wish Ms. Hardee-Thomas to appeal this matter  
11 that you should let her know immediately, and  
12 you would be wise to put that in writing, but  
13 there is a ten-day window of opportunity and  
14 so you should let her know that immediately,  
15 all right?

16 MR. BRYANT: Yes.

17 THE COURT: Now, with respect to each  
18 and every answer that you have given me here  
19 today, have you been absolutely candid and  
20 truthful?

21 MR. BRYANT: Oh, yes. Yes.

22 THE COURT: And have your answers been  
23 your very own answers?

24 MR. BRYANT: Yes, ma'am.

25 THE COURT: I find that there is a

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1 substantial factual basis for this plea, I  
 2 find that the decision of Mr. Bryant to plead  
 3 guilty is freely, voluntarily, knowingly, and  
 4 intelligently made, that he has had the  
 5 advice and counsel of Ms. Hardee-Thomas with  
 6 whom he says he is satisfied and I'll accept  
 7 the plea.

8 Let me hear about his record.

9 MS. HARDEE-THOMAS: Thank you.

10 MR. BELL: Your Honor, his record starts  
 11 back in August of 1989 when he was convicted  
 12 of receiving stolen goods, he got five years  
 13 suspended to five years' probation,  
 14 restitution and public service. He also at  
 15 the same time had a forgery offense that he  
 16 got five years suspended to five years'  
 17 probation, 500 hours of public service.

18 In December of '89 he had a  
 19 shoplifting conviction, he got five days or a  
 20 fine, as well as in 1990 a shoplifting  
 21 conviction he got fine or time. In 1990 he  
 22 had five counts of forgery which he received  
 23 a seven-year sentence that was consecutive,  
 24 but suspended while he was on probation. In  
 25 1991 he had petty larceny, he had ten days or

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1 \$75, another petty larceny in '91, 15 days or  
2 public service.

3 In '92 he had a criminally  
4 receiving goods fraudulently obtained, I  
5 think that's under the financial transaction  
6 card fraud section, that he got two years  
7 suspended on one year and two years'  
8 probation, another petty larceny in '91, then  
9 he got \$134, 30 days; shoplifting in '92, six  
10 months suspended on time served. Driving  
11 under suspension in 1992 he got two months,  
12 shoplifting in '93 he got 30 days or \$500, he  
13 got a 1994 forgery for 30 days, he had four  
14 counts of fraudulent checks in '94, he got  
15 120 days and 18 counts, he got 360 days,  
16 shoplifting and false information to police  
17 he got five years suspended to five years --  
18 60 days and five years' probation,  
19 shoplifting in 1997, he got six years,  
20 contributing to the delinquency of a minor he  
21 got three years, \$500 fine suspended upon two  
22 years' probation, then another shoplifting  
23 which was a third, certainly a third property  
24 crime that he got three years, he got credit  
25 for 88 days.

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1                   And that appears -- use of vehicle  
2                   without permission in 2004, he got 139 days.  
3                   I think that's the balance of his record.  
4                   2005 he had a possession of marijuana, he got  
5                   30 days, and driving under suspension he got  
6                   180 days.

7                   I don't know if the victim or  
8                   victim's family wanted to say anything, they  
9                   didn't last time.

10                  THE COURT: Very well. All right. Yes,  
11                  ma'am.

12                  MS. HARDEE-THOMAS: Your Honor, we've  
13                  heard Mr. Bryant's record and I believe that  
14                  it was his decision to take this plea when I  
15                  spoke to him yesterday. He's had a lot of  
16                  time in jail and as he indicated he's been  
17                  here since October. He's got a very  
18                  supportive family and they are very upset at  
19                  him with regards to these charges, so upset I  
20                  think if his mother sees him she would kill  
21                  him before anything else and I think he's  
22                  more fearful of than anything.

23                  It was his choice to get this  
24                  behind him; he indicated he wanted to take  
25                  responsibility. And I think he wants to have

## State v. Curtis Bryant

1 an opportunity to speak to the victim in this  
2 particular matter which he indicated to me  
3 that he wanted to do.

4 Your Honor, I just ask that -- I'm  
5 looking at the fairness of what's happened to  
6 him and what's happened to the victim. Of  
7 course he's very apologetic for what has  
8 happened to the victim, he's not going to  
9 take that away.

10 But he's 44 years of age, you've  
11 heard what he's done in his lifetime and I  
12 mean what you see and what you hear with  
13 regards to people coming forth to the jail is  
14 that I guess younger people have an  
15 opportunity. And we had this discussion,  
16 this is what we were discussing in this  
17 particular matter. He said, What is there  
18 for the older people? I hate to say that,  
19 but he said it seems like the system is a  
20 little bit more discriminatory. I said,  
21 Well, you know, you may look at it as you're  
22 a little bit older and you should know better  
23 and the younger people who have an  
24 opportunity to get a Y and get another  
25 chance, they have another chance to decide

## State v. Curtis Bryant

1 whether or not they want to be career  
2 criminals or not.

3 He's asked me to ask the Court to  
4 consider the most lenient amount. He  
5 understand he's 44 years of age. And before  
6 he ever gets out, if he gets the minimum,  
7 he's going to be 54 years of age. He's got  
8 two kids, they could possibly see him in  
9 prison but they would not see the father  
10 until he gets the minimum done, whatever that  
11 is.

12 He just wanted me to express that  
13 and I think he wanted to express something to  
14 the victim in this particular matter.

15 THE COURT: That's fine. Just direct  
16 your attention, just direct your comments to  
17 me.

18 MR. BRYANT: Okay. Well, this is not  
19 some whimsical apology. I apologize to  
20 Joseph and his family for putting him through  
21 this. This is not my MO, so to speak, I  
22 don't, you know, go around doing things that  
23 happened on that day. And I know I put his  
24 family through some stuff so, you know, I  
25 just wanted to apologize to him and his

## State v. Curtis Bryant

1. family and as well as, you know, thank Ms.  
2. Hardee-Thomas for what she did and, you know,  
3. everything I've done in my life is not all  
4. wrong. I've done some good things.

5. THE COURT: Tell me about those.

6. MR. BRYANT: Well, I'm prior military,  
7. it's not like I've been out stealing and  
8. doing things.

9. THE COURT: Unfortunately you've been  
10. doing that since 1989 and you're 44.

11. MR. BRYANT: I'm 44, yes. Yes, ma'am.

12. THE COURT: So tell me -- tell me what  
13. you did that's good because I'm looking at a  
14. fellow that's been stealing and taking things  
15. from people and leaving a pretty good swarth  
16. of, you know, victims for about 18 years, so  
17. tell me the good, look at the good.

18. MR. BRYANT: Actually, like I said,  
19. first of all I graduated from high school, I  
20. do not have a GED. I went into the military,  
21. I'm honorably discharged.

22. THE COURT: Okay. I agree with you  
23. completely.

24. MR. BRYANT: I do volunteer work down at  
25. the Navy Hospital. All this stuff that

## State v. Curtis Bryant

1 you've seen, I've paid my debt to society on  
2 that stuff and, you know, I'm not perfect  
3 and, you know, I do work.

4 THE COURT: Well, you're a heavy  
5 equipment operator and in our part of the  
6 country you're worth your weight in gold, so  
7 tell me why does a man, why does a man pull a  
8 knife on a kid and take his car when you can  
9 clearly support yourself in a very good way?

10 MR. BRYANT: I have no idea what I was  
11 thinking that day. I mean, I can't express  
12 it, it's just, you know, and I was wrong.  
13 And I'm obviously going to pay for it, so  
14 I'm --

15 MS. HARDEE-THOMAS: Your Honor, I have  
16 to interject. It just doesn't make sense for  
17 someone to do something like that unless  
18 someone is under substance. I don't know if  
19 that's come out or anything like that. I  
20 don't know if he wants to admit to that.

21 THE COURT: Yeah.

22 MS. HARDEE-THOMAS: The family is -- his  
23 mother's under the understanding that had to  
24 be the case, but otherwise she would not have  
25 thought her son would do something like that

## State v. Curtis Bryant

1 without being under some type of substance.

2 THE COURT: Well, that makes sense, I  
3 mean just even as Mr. Bryant has said, he's  
4 exactly right, it takes a lot of -- it takes  
5 a lot of strength and a lot of honor to be  
6 honorably discharged from the military and I  
7 respect that. To be a heavy equipment  
8 operator takes an awful lot of skill and  
9 they -- those folks make wonderful money and  
10 so I agree with you completely it makes no  
11 sense. It makes absolutely no sense.

12 But I must also tell you that my  
13 heart hurts. How old are you?

14 THE VICTIM: I'm 19 years old.

15 THE COURT: You're 19 years old. You  
16 got a 19-year-old kid at Frankie's Fun Park  
17 he's, you know, doing what a -- maybe not  
18 smoking those cigarettes, but doing what a  
19 young person is supposed to do, go to  
20 Frankie's Fun Park and play games, that's  
21 what -- he's 19 years old, he's supposed to  
22 be able to do that safely. He's not supposed  
23 to do that and get a knife pulled on him,  
24 that's just -- that doesn't happen in an  
25 ordered society.

## State v. Curtis Bryant

1 THE VICTIM: It's awful.

2 THE COURT: It is awful. It is awful  
3 and that moment, the fear that you  
4 experienced is absolutely unthinkable and not  
5 anything that a 19-year-old person minding  
6 his own business at Frankie's Fun Park ought  
7 to ever have to experience and it will be  
8 with you for a very long time.

9 THE VICTIM: Yes, ma'am.

10 THE COURT: And to call your parents and  
11 have your parents think, Oh, my God. Oh, my  
12 God, I have to have gratitude that my child  
13 wasn't killed at Frankie's Fun Park? I mean,  
14 what kind of world is this? People who  
15 experience what you have experienced, that  
16 kind of instantaneous fear is overwhelming.  
17 It's overwhelming.

18 THE VICTIM: I agree.

19 THE COURT: So if you're having some  
20 leftovers from it, be a little gentle with  
21 yourself, truly, because human beings are  
22 not -- we're not -- it's so out of the norm  
23 that we don't have experience to give us how  
24 to cope with that. You have to sort of --  
25 you have to get that on-the-job training, you

## State v. Curtis Bryant

1 have to sort of learn how to cope with that  
2 once it's happened to you and that is just  
3 unthinkable. Unthinkable.

4 All right. Very well. All right.  
5 Mr. Bryant, I'm going to commit you to the  
6 State Department of Corrections for a period  
7 of 15 years, giving you credit for the time  
8 that you have served. Good luck to you.

9 And I am so sorry. I am so sorry  
10 this happened to you, I really am. I really  
11 know that that's not something that you  
12 should have had to experience. All right.

13 MS. HARDEE-THOMAS: Thank you, Your  
14 Honor.

15 THE COURT: We'll be adjourned in this  
16 matter. I'm going to go cut our jury loose,  
17 right? Goodbye to the jury?

18 - - - o0o - - -

19

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25

STATE OF CALIFORNIA )  
 : C E R T I F I C A T E  
 COUNTY OF KERN )

I, Robin L. Herrera, Texas Certified Shorthand Reporter and Registered Merit Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 15th day of July 2009.

*Robin L. Herrera*  
 \_\_\_\_\_  
 Robin L. Herrera, CSR, RMR

FORM 5

FILED-RECORDED

STATE OF SOUTH CAROLINA

2008 JUN 12 PM 3:19

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

Curtis L. Bryant, #276403

CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

2008-CP-18-1516

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

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst., P.O. Box 205, Ridgeville S.C
2. Name and location of Court which imposed sentence General Sessions, Dorchester, S
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) 2006-GS-18-1761
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 6/12/2007, Fifteen (15) years.
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No.

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

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Counsel failed to inform me of right to appeal, and
- (b) failed to inform me that if I could not afford counsel
- (c) the state would provide counsel at no cost.

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

- (a) Ineffective Counsel because no appeal filed.
- (b) Ineffective counsel because he failed to have plea bargain enforced.
- (c) Plea was involuntary due to ineffective counsel.

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

- (a) Counsel failed to file notice of appeal when requested to do so or consult with applicant.
- (b) Counsel failed to ensure that the court was aware of the plea bargain and enforcement of same.
- (c) Applicant's counsel was ineffective because he failed to inform his client of defenses and direct consequence of plea.

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? \_\_\_\_\_

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. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (c) the disposition thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. N/A \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. N/A \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
No.

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
    - i. N/A \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the proceedings in which each ground was raised:
    - i. N/A \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

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

- (a) All grounds listed in section 10 and 11 above because
- (b) ineffective counsel.
- (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? Guilty plea
- (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? No

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. MRS. MARVA A. HARDGE-THOMAS
  - ii. P.O. Box 50503
  - iii. SOMMERVILLE, S.C. 29485 See Exhibit A attached
- (b) the proceedings at which each such attorney represented you:
  - i. ALL OF THE ABOVE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

~~New trial and sentence or in the alternative enforcement of the plea agreement as outlined in attached~~ Exhibit.

20. Are you now under sentence from any other court that you have not challenged?  
No.

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

#276403, Curtis L. Bryant

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

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

*Curtis L. Bryant*  
 \_\_\_\_\_  
 Curtis L. Bryant Applicant

SWORN or affirmed to and subscribed before me this  
3 day of April, 2008

*Debra J. Walker*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 4/4/2011

FILED-RECORDED  
 2008 JUN 12 PM 3:19  
 CHERYL GRAHAM  
 CLERK OF COURT  
 DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
 )  
County of DORCHESTER )  
Curtis L. Bryant

VERIFICATION

I, #276403 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.

Curtis L. Bryant  
Curtis L. Bryant, Applicant

SWORN to and subscribed before me this 3  
day of April, 2008.

Dorcas J. Walker (L.S.)  
Notary Public

My Commission Expires: 4/4/2011

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2008 JUN 12 PM 3:20  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

Attachment to PCR Application Grounds for Relief §§ 10 and 11.

10. (a) The Applicant was denied the effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution through his failure to consult and advise his client as to his right to appeal and/or consult with his client about his desire to appeal.

11 (a) Trial counsel failed to properly advise client to his right to an appeal or consult with his client concerning his desire to appeal.

The accused is entitled to be made aware of his right to appeal, as an element of effective assistance of counsel. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

The Applicant was not consulted or advised of his right to appeal here, doubtless because at the time of the plea, both the Applicant and his counsel were satisfied with the sentence then imposed, based on the erroneous impression of both counsel and the accused as to the impact or effect of the sentence.

Nonetheless, even if his advice on this point would have amounted to a mere formality, the accused was nonetheless entitled to at least be made aware of his right to appeal and counsel should have consulted with his client, even in the wake of his plea.

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 CLERK OF DISTRICT COURT  
 GRAHAM COUNTY

10. (c) Applicant's plea was not given voluntarily and intelligently because the trial court failed to inquire as to whether his plea was based on a plea bargain.

11. (c) The trial court erred in failing to ask applicant about whether a plea agreement was reached in the case. The record of the plea proceeding does not include any questioning from the court to applicant about the existence of a plea bargain.

In Medmin v. State, 276 S.C. 540, 280 S.E.2d 648 (1981), the Court held that a trial judge should not accept a plea of guilty or *nolo contendere* without first inquiring as to whether the parties have arrived at a plea agreement, and if so, requiring that its terms, conditions, and reasons be disclosed, and publication of the fact that the agreement will or will not be endorsed by the court according to such circumstances so that the plea could be withdrawn.

Clearly, had the trial court followed Mendlin, supra, the plea agreement, under which applicant operated, would have been exposed, and applicant and trial counsel would have been able to voice their respective standings in accordance with their interpretations of plea negotiations. Also, applicant would have been able to withdraw his plea or not enter his plea after learning the status of the plea bargain between the parties. Therefore, applicant's plea was given involuntarily under Mendlin, supra; Boykin v. Alabama, 395 U.S. 238 (1969) and 18 U.S.C.A. Rule 11.

s/ Curtis L. Bryant  
Curtis L. Bryant, Applicant

EXHIBIT - A



Tel: (843) 873-8622  
 Fax: (843) 873-4123

East Richardson Avenue  
 Summerville, SC 29483

Dorchester County Public Defender  
 Marva A. Hardee-Thomas

Box 50503  
 Summerville, SC 29485



March 6, 2007

**ATTORNEY/CLIENT PRIVILEGE**

Curtis Bryant A-9  
 100 Sears Street  
 St. George, SC 29472

Re: **Dorchester County Public Defender**

Dear Bryant:

I have spoken with the Solicitor's Office regarding your case and they are offering the following: 10 years Armed Robbery on **MARCH 12, 2007 at 2:00 p.m.**

Please note that the next term of General Session begins on March 12, 2007 and you must be present before the term ends on March 16, 2007 if you wish to take this offer.

With kind regards, I remain.

Sincerely,

*Marva A. Hardee-Thomas, Esq.*

Marva A. Hardee-Thomas, Esquire  
 Dorchester County Public Defender

MAHT/s

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                                    |
|                          | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF DORCHESTER     | ) |                                    |
|                          | ) |                                    |
|                          | ) | 2008-CP-18-1516                    |
|                          | ) |                                    |
| Curtis Bryant, # 276403, | ) |                                    |
|                          | ) |                                    |
| Applicant,               | ) |                                    |
|                          | ) |                                    |
| v.                       | ) | <b>RETURN</b>                      |
|                          | ) | (Appointment of Counsel Requested) |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent.              | ) |                                    |
| <hr/>                    |   |                                    |

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 12, 2008, 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 Dorchester County Clerk of Court. The Applicant was indicted at the December 2006 term of the Dorchester County Grand Jury for Armed Robbery (2006-GS-18-1761). He was represented by Marva Hardee-Thomas, Esquire. On June 12, 2007, the Applicant pled guilty before the Honorable James C. Williams, Jr., and was sentenced to fifteen (15) years incarceration. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department

of Corrections, and the guilty plea transcript.<sup>1</sup> 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 because no appeal filed."
2. "Ineffective assistance of counsel because he failed to have plea bargain enforced."
3. "Plea was involuntary due to ineffective counsel."

## 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).

---

<sup>1</sup> The plea transcript was ordered on September 22, 2008, but as of the date of this return has not yet been received. Respondent will forward the transcript immediately upon receipt.

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.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

*[Signatures on next page.]*

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By: Mary S. Williams  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Feb. 16, 2009.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 )  
 )  
 CURTIS BRYANT, 276403 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

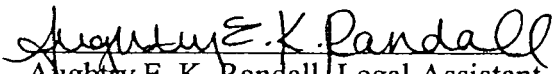
2008-CP-18-1516

AFFIDAVIT OF SERVICE BY MAIL

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

**Charles T. Brooks, III, Esquire**  
**Law Office of Charles T. Brooks, III**  
**309 Broad Street**  
**Sumter SC 29150**

DATED this 11th day of March, 2009.

  
 Aughtly E. K. Randall, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

CASE NO. 2008-CP-18-1516

CURTIS BRYANT,  
APPLICANT

versus

STATE OF SOUTH CAROLINA,  
DEFENDANT

)  
)  
) POST CONVICTION  
) RELIEF HEARING  
) TRANSCRIPT OF RECORD  
)  
) DATE:  
)  
) DECEMBER 9, 2009  
)

BEFORE:

HONORABLE EDGAR DICKSON, PRESIDING JUDGE

APPEARANCES:

CHARLES T. BROOKS, ESQUIRE  
ATTORNEY AT LAW  
FOR THE APPLICANT

MARY S. WILLIAMS, ESQUIRE  
ASSISTANT ATTORNEY GENERAL  
FOR THE STATE

HARRY A. WALKER (MRS.)  
COURT REPORTER, FIRST JUDICIAL CIRCUIT  
POST OFFICE BOX 127  
ROWESVILLE, SOUTH CAROLINA 29133



I N D E X

| <u>WITNESS</u>      | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|---------------------|---------------|--------------|-----------------|----------------|
| CURTIS BRYANT       |               |              |                 |                |
| MR. BROOKS          | 5             |              |                 |                |
| THE COURT           | 12            |              |                 |                |
| MS. WILLIAMS        |               | 16           |                 |                |
| MARVA HARDEE-THOMAS |               |              |                 |                |
| MS. WILLIAMS        | 22            |              | 38              |                |
| MR. BROOKS          |               | 26           |                 | 33             |
| THE COURT           | 28            |              |                 |                |

E X H I B I T S

| <u>NUMBER</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EV.</u> |
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DATE:

DECEMBER 9, 2009

THE COURT: ARE YOU READY?

MS. WILLIAMS: MAY IT PLEASE THE COURT. THIS IS CURTIS BRYANT, 2008-CP-18-1516. MR. BRYANT WAS CHARGED WITH ARMED ROBBERY AND HE WAS REPRESENTED BY MARVA HARDEE-THOMAS. ON JUNE TWELFTH, TWO THOUSAND SEVEN, HE PLED GUILTY BEFORE JUDGE GOODSTEIN. HE RECEIVED A SENTENCE OF FIFTEEN YEARS. THIS PCR WAS FILED ON JUNE THE TWELFTH, TWO THOUSAND EIGHT, AND HE HAS ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO FILE A DIRECT APPEAL AND FAILURE TO HAVE A PLEA BARGAIN ENFORCED. HE'S ALSO ASSERTED INVOLUNTARY PLEA IN THAT COUNSEL FAILED TO INFORM THE APPLICANT OF DEFENSES AND CONSEQUENCES OF HIS PLEA. HE'S REPRESENTED TODAY BY MR. BROOKS.

THE COURT: ALRIGHT, MR. BROOKS, LET ME HEAR FROM YOU. YES, SIR.

MR. BROOKS: WE'LL GO AHEAD AND CALL MR. BRYANT TO THE STAND.

THE COURT: ALRIGHT, SIR. MR. BRYANT, IF YOU'D COME FORWARD, PLEASE, SIR. MR. BRYANT, IF YOU'D COME UP HERE, I'M SORRY, YOU'RE GOING TO TAKE THE ACTUAL WITNESS STAND RIGHT THERE. IF YOU COULD PUT YOUR LEFT HAND ON THE BIBLE, PLEASE, SIR.

1 (Whereupon, Curtis Bryant  
2 is duly sworn.)

3 THE COURT: ALRIGHT, SIR, IF YOU'D JUST HAVE A  
4 SEAT, AND IF YOU'D SPEAK UP SO THAT I CAN HEAR YOU AND  
5 MR. BROOKS AND MS. WILLIAMS CAN HEAR YOU.

6 MR. BRYANT: YES, SIR.

7 THE COURT: THANK YOU, SIR.

8 MR. BROOKS.

9 (NOTE: Blank lines on this page do not indicate any  
10 part of record has been omitted. Headers on testimony  
11 pages and hard page breaks between testimony are now  
12 required by the Court. See next ensuing page for  
13 sequential continuation of record.)

DIRECT - CURTIS BRYANT BY MR. BROOKS

DIRECT EXAMINATION OF CURTIS BRYANT

BY MR. BROOKS:

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Q. MR. BRYANT, AS YOU HEARD, AND I'M SURE YOU'LL RECALL, YOU HAD PLED GUILTY TO THIS ARMED ROBBERY, IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU RECEIVED A SENTENCE OF FIFTEEN YEARS?

A. YES, SIR.

Q. OKAY, NOW, YOU UNDERSTAND THAT THE ONLY THING, THE ONLY RELIEF YOU CAN GET HERE TODAY IS TO HAVE YOUR SENTENCE VACATED AND IN ESSENCE START OVER, IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU UNDERSTAND THAT YOU COULD BE FACING EXPOSURE OF THIRTY YEARS IF THAT HAPPENED?

A. YES, SIR.

Q. AND WE TALKED ABOUT THAT AND YOU STILL WANT TO GO FORWARD, IS THAT CORRECT?

A. YES, SIR.

Q. OKAY. NOW, AND BASICALLY THE ESSENCE OF YOUR APPLICATION IS THAT WHEN YOU PLED GUILTY YOU THOUGHT YOU WERE GOING TO RECEIVE TEN YEARS, IS THAT CORRECT?

A. THAT IS CORRECT, SIR.

Q. AND YOU GOT A LETTER FROM MS. THOMAS, AS YOUR

1 COURT APPOINTED LAWYER, THAT THERE WAS A PLEA  
2 BARGAIN OF TEN YEARS, IS THAT YOUR UNDERSTANDING?

3 A. YES, SIR, A NEGOTIATED PLEA.

4 Q. I'M SORRY?

5 A. A NEGOTIATED PLEA.

6 Q. ALRIGHT. AND THAT'S YOUR -- YOU THOUGHT YOU WERE  
7 GETTING A NEGOTIATED DEAL OF TEN YEARS, IS THAT  
8 CORRECT?

9 A. YES, SIR.

10 Q. AND YOU RECEIVED A LETTER FROM HER DATED MARCH  
11 SIXTH, WHICH IS ACTUALLY IN YOUR APPLICATION  
12 WHICH IS IN THE COURT FILE, THAT YOU WERE GETTING  
13 TEN YEARS?

14 A. YES, SIR.

15 Q. OKAY. AND THE SENTENCING SHEET, YOU SIGNED IT  
16 AND IT WAS BLANK WHEN YOU SIGNED IT. IS THAT  
17 CORRECT?

18 A. YES, SIR. ONLY MARVA THOMAS-HARDEE'S SIGNATURE  
19 WAS ON THERE. SHE INSTRUCTED ME TO SIGN IN THE  
20 MIDDLE.

21 Q. GO AHEAD, CURTIS.

22 A. SHE INSTRUCTED ME TO SIGN IN THE MIDDLE AND SHE  
23 SAID THAT WHEN THE SOLICITOR ARRIVED THAT HE  
24 WOULD THEN, IN TURN, SIGN IT.

25 Q. OKAY. AND I'M GOING TO SHOW YOU THIS SENTENCING

1 SHEET, WHICH IS ALREADY A PART OF THE RECORD.

2 THAT'S WHERE YOU SIGNED IN THE MIDDLE THAT YOU'RE  
3 TALKING ABOUT?

4 A. YES, SIR.

5 Q. AND ALSO YOU SAID THAT IT WAS CHECKED, INITIALLY  
6 CHECKED AS A NEGOTIATED SENTENCE, IS THAT  
7 CORRECT?

8 A. YES, SIR.

9 Q. AND THERE IS SOME WRITING IN THAT SPOT, IS THAT  
10 CORRECT, WHERE THE BOX OF A NEGOTIATED SENTENCE  
11 IS?

12 A. YES, SIR.

13 Q. AND AFTER THAT THERE WAS SOME WRITING, AFTER YOU  
14 HAD SIGNED THERE IS SOME WRITING WHERE THE BOX OF  
15 RECOMMENDATION IS CHECKED, IS THAT CORRECT?

16 A. YES, SIR, WHERE THE THIRD PARTY SIGNED.

17 Q. OKAY. AND YOU DIDN'T HAVE THAT BEFORE YOU  
18 SIGNED, IS THAT CORRECT?

19 A. NO, SIR.

20 Q. AND SO, WHEN YOU PLED GUILTY IN FRONT OF JUDGE  
21 GOODSTEIN YOU THOUGHT YOU WERE GOING TO GET THE  
22 TEN YEARS, IS THAT CORRECT?

23 A. YES, SIR.

24 Q. AND YOU ENDED UP GETTING FIFTEEN?

25 A. YES, SIR.

1 Q. IS THAT BASICALLY THE ISSUE IN YOUR POST  
2 CONVICTION RELIEF APPLICATION?

3 A. BASICALLY, YES, IT IS, OTHER THAN THE FACT THAT I  
4 BELIEVE THAT COUNSEL SHOULD HAVE SPOKEN UP DURING  
5 THE HEARING TO INFORM THE JUDGE AND TO REMIND THE  
6 SOLICITOR OBVIOUSLY THAT I - - -

7 Q. THAT YOU WERE MAKING THIS PLEA WITH THE  
8 IMPRESSION, THE UNDERSTANDING THAT YOU WERE  
9 GETTING TEN YEARS?

10 A. THAT I HAD A NEGOTIATED SENTENCE, YES, SIR.

11 Q. OKAY. SO WHEN THIS -- WHAT YOU'RE SAYING IS  
12 THAT SHE SHOULD HAVE REALIZED THAT THAT WAS THE  
13 WHOLE REASON WHY YOU WERE PLEADING, THAT YOU  
14 THOUGHT YOU WERE GETTING A NEGOTIATED TEN, AND  
15 THAT ONCE IT BECAME APPARENT -- IN THE RECORD  
16 THERE WAS NO TALK ABOUT THE NEGOTIATED TEN, THAT  
17 SHE SHOULD HAVE PULLED YOU ASIDE, IS THAT  
18 CORRECT?

19 A. YES, SIR.

20 Q. AND STOPPED AND SAID, AT LEAST SAID, CURTIS - - -

21 A. DO YOU WANT TO GO FORWARD?

22 Q. --- DO YOU WANT TO GO FORWARD, - - -

23 A. YES.

24 Q. --- THE JUDGE DOESN'T HAVE TO ACCEPT, THIS IS A  
25 RECOMMENDATION, NOT A NEGOTIATED SENTENCE?

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A. RIGHT.

Q. BECAUSE THERE'S A DIFFERENCE, AND YOU UNDERSTAND THERE'S A DIFFERENCE BETWEEN A RECOMMENDATION AND A NEGOTIATED SENTENCE?

A. YES.

Q. OKAY. GO AHEAD, ANYTHING ELSE YOU WANT TO ADD?

A. YES. YOUR HONOR, THE COURT, -- I KNOW I'M HERE TODAY TO BEAR THE BURDEN OF PROOF THAT COUNSEL WAS INEFFECTIVE. I HAVE GROUNDS TO PRESENT THAT AND TO SHOW THAT COUNSEL WAS INEFFECTIVE, AND IT'S MY UNDERSTANDING THAT PRESENT CASE LAW, THAT THAT IS BUT ONE OF THE WAYS OF FINDING RELIEF AT THIS LEVEL. THE CASE I'M REFERRING TO IS BUTLER VERSUS STATE, WHICH MEANS THAT I HAVE TO BEAR THE BURDEN OF PROOF THAT COUNSEL WAS INEFFECTIVE. ALONG WITH BUTLER I UNDERSTAND STRICKLAND VERSUS WASHINGTON BEING A TWO PART INQUIRY IN DETERMINING INEFFECTIVE ASSISTANCE OF COUNSEL. I HAVE TO BEAR THE BURDEN OF PROOF THAT COUNSEL, NUMBER ONE, FELL BELOW THE REASONABLE NORM, AND BUT FOR COUNSEL'S INEFFECTIVENESS THE OUTCOME WOULD HAVE BEEN DIFFERENT.

Q. IS THERE ANYTHING ELSE TO ADD, CURTIS?

A. YES, SIR.

Q. GO AHEAD.

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1 A. THESE ALLEGATIONS THAT COUNSEL'S, TRIAL COUNSEL'S  
2 FAILURE TO CHALLENGE THE SENTENCING WAS  
3 INEFFECTIVE SINCE THIS FAILURE PRECLUDED ME FROM  
4 RAISING THIS ISSUE ON APPEAL WHICH I REQUESTED  
5 DIRECTLY AFTER THE HEARING. A LETTER WAS SENT TO  
6 MS. HARDEE'S OFFICE, MY PARENTS TRIED TO CONTACT  
7 MS. HARDEE TO ASK IF SHE HAD FILED THE DIRECT  
8 APPEAL IN THE TEN DAY PERIOD. NO RESPONSE WAS  
9 EVER MADE BY TRIAL COUNSEL.

10 Q. AND SHE DIDN'T FILE A MOTION FOR RECONSIDERATION  
11 EITHER?

12 A. NO.

13 Q. OKAY.

14 A. IT'S WELL ESTABLISHED THAT A CHALLENGE TO  
15 SENTENCING MUST BE RAISED BY COUNSEL AT TRIAL OR  
16 HEARING OR THE ISSUES IS NOT PROPERLY PRESERVED  
17 FOR APPELLATE REVIEW. FOR THE RECORD, THE  
18 TRANSCRIPT IS CLEAR THAT COUNSEL DID NOT MAKE A  
19 CHALLENGE TO SENTENCING AT THE HEARING OR THROUGH  
20 A POST TRIAL MOTION. I WOULD SUBMIT THAT TRIAL  
21 COUNSEL WAS INEFFECTIVE WHEN SHE FAILED TO RAISE  
22 AND PRESERVE VIABLE CHALLENGES TO THE TRIAL  
23 COURT'S SENTENCING. ALSO AS A RESULT OF THIS  
24 FAILURE THE RECORD DOES NOT PROPERLY REFLECT THE  
25 TRIAL COURT'S REASONING IN SUPPORT OF THE

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SENTENCE, NOR WAS THE ISSUE PRESERVED AND  
CONSIDERED BY THE APPELLATE COURT. AND LAST,  
YOUR HONOR, AS TO EACH ISSUE I'VE PRESENTED HERE  
TODAY I AM OFFICIALLY REQUESTING UNDER SUBSECTION  
SEVENTEEN, TWENTY-SEVEN, EIGHTY, AND MORE  
RECENTLY, WITH MARLA VERSUS STATE THAT YOU PLEASE  
MAKE SPECIFIC FACTS OF FINDINGS AND STATE  
EXPRESSIVELY ITS CONCLUSION OF LAW RELATING TO  
EACH ISSUE PRESENTED. IN SHORT, PLEASE GIVE  
BASIS OF LAW AND FINDING OF FACT AS TO EACH  
INDEPENDENT ISSUE PRESENTED BY MY TESTIMONY  
ALLEGATION. THIS IS ONLY TO INSURE A RULING SO  
THAT MY APPELLATE RIGHTS ARE PRESERVED IF THE  
OUTCOME IS NOT OF MY EXPECTATIONS.

Q. IS THAT IT?

A. I AM DONE.

MR. BROOKS: OKAY.

THE COURT: MR. BRYANT, I WANT TO ASK YOU A  
COUPLE OF QUESTIONS TO MAKE SURE I'VE GOT EVERYTHING  
STRAIGHT.

A. YES, SIR.

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EXAMINATION OF CURTIS BRYANT

BY THE COURT:

Q. OKAY. THE FIRST THING THAT YOU'RE COMPLAINING ABOUT, ABOUT YOUR COUNSEL BEING INEFFECTIVE IS, SHE DID NOT ADVISE THE JUDGE OF A NEGOTIATED SENTENCE?

A. NUMBER ONE, YES, SIR.

Q. AND SHE SENT YOU A LETTER ON MARCH THE SIXTH OF TWO THOUSAND AND SEVEN - - -

A. YES, SIR.

Q. --- ADVISING YOU THAT YOU COULD, THAT THEY WERE OFFERING YOU TEN YEARS FOR ARMED ROBBERY?

A. YES, SIR.

Q. AND MY LETTER, THE COPY OF THE LETTER THAT I HAVE SAYS THAT, "THEY'RE OFFERING YOU THE TEN YEARS OF ARMED ROBBERY ON MARCH THE TWELFTH, TWO THOUSAND AND SEVEN, AT TWO P.M."

A. YES, SIR.

Q. "AND THAT THAT TERM ENDS ON MARCH THE SIXTH, TWO THOUSAND AND SEVEN IF YOU WISH TO TAKE THAT OFFER."

A. YES, SIR.

Q. NOW, I NOTICE, YOU DID NOT PLEAD UNTIL JUNE. DID YOU ADVISE THEM IN MARCH THAT YOU WANTED TO GO TO TRIAL?

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A. I ADVISED HER IN MARCH THAT I NEEDED TO SPEAK WITH HER. I HAD ASKED MS. HARDEE-THOMAS TO DO MORE INVESTIGATION ON THE CASE, AND SHE TOLD ME SHE WOULD. AND THEN, THE NEXT THING I REALIZED SHE WAS APPROACHING ME AT THE COUNTY JAIL TELLING ME THAT WE HAD A TRIAL, SHE HAD SET UP A TRIAL. I TOLD HER AT THAT POINT, I SAID, YOU KNOW WHAT, LET'S JUST GO WITH THE RECOMMENDATION OF TEN YEARS AND, YOU KNOW, I ACCEPT THAT.

Q. AND WHEN WAS THAT, WAS THAT IN MARCH?

A. THAT WAS IN JUNE.

Q. OH, THAT WAS IN JUNE?

A. THAT WAS IN JUNE, YEAH, WE SPOKE AFTER THAT.

Q. DID ANYBODY EVER TELL YOU THAT THE SOLICITOR'S OFFICE WAS GOING TO WITHDRAW THAT OFFER IF YOU DIDN'T ACCEPT IT IN THE MARCH TERM?

A. NO, SIR, NO, SIR.

Q. OKAY. SO, YOU'RE TELLING ME THAT WHEN YOU WENT TO COURT ON JUNE TWELFTH YOU THOUGHT YOU HAD A NEGOTIATED PLEA OF TEN YEARS?

A. YES. WE SPOKE ABOUT, ME AND MY ATTORNEY SPOKE ABOUT THE NEGOTIATED PLEA.

Q. BEFORE YOU WENT BEFORE JUDGE GOODSTEIN AND PLED?

A. YES, SIR, YES, SIR.

Q. OKAY.

1 A. AND I ACTUALLY SIGNED THE SENTENCING SHEET BEFORE  
2 ANYONE, IT WAS JUST ME, MY ATTORNEY AND THE  
3 BAILIFF. WE WERE IN THE CONFERENCE ROOM. WE  
4 NEVER WENT INTO THE COURTROOM, WE WERE IN THE  
5 CONFERENCE ROOM.

6 Q. IS THAT BECAUSE THE JURY WAS SITTING OUTSIDE?

7 A. YES, YES.

8 Q. OKAY. AND YOU WERE GETTING READY TO GO TO TRIAL  
9 ON THIS? THEY WERE GETTING READY TO PICK A JURY  
10 IN YOUR CASE?

11 A. I DON'T KNOW IF THEY HAD PICKED ONE OR IF THEY  
12 WERE ABOUT TO PICK ONE, BUT I KNOW I WASN'T READY  
13 TO GO TO TRIAL, I WAS IN JAIL HOUSE CLOTHES. I  
14 WAS GOING FOR A PLEA HEARING.

15 Q. OKAY. SO, THEY WERE NOT PICKING A JURY ON YOUR  
16 CASE?

17 A. NOT TO MY KNOWLEDGE.

18 Q. OKAY. IN OTHER WORDS, YOU HADN'T SAT OUT THERE  
19 WITH YOUR ATTORNEY TO VIEW THE JURY PANEL OR  
20 ANYTHING LIKE THAT?

21 A. NO, SIR.

22 Q. OKAY. AND THEN, ONCE YOU GOT THE FIFTEEN YEARS,  
23 YOU SAID YOU REQUESTED THAT MS. HARDEE-THOMAS  
24 FILE A NOTICE OF APPEAL?

25 A. NO, SHE DID NOT.

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Q. THAT'S NOT MY QUESTION.

A. OH, I'M SORRY, SIR.

Q. THAT'S OKAY. I JUST WANT TO MAKE SURE YOU UNDERSTAND MY QUESTION. MY QUESTION WAS, DID YOU ASK HER TO FILE A NOTICE OF APPEAL, DID YOU ASK HER THAT?

A. YES, I DID.

Q. OKAY. AND YOU KNEW YOU HAD TEN DAYS?

A. YES, SIR.

Q. OKAY. AND TO YOUR KNOWLEDGE SHE NEVER FILED A NOTICE OF APPEAL?

A. NO, SIR.

Q. OKAY. ALRIGHT.

THE COURT: THANK YOU, SIR.

A. THANK YOU, SIR.

THE COURT: NO, YOU STILL NEED TO -- I INTERRUPTED BEFORE MS. WILLIAMS COULD GET TO YOU. SO, MS. WILLIAMS.

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CROSS-EXAMINATION OF CURTIS BRYANTBY MS. WILLIAMS:

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3 Q. MR. BRYANT, YOU UNDERSTOOD THAT THIS CHARGE  
4 CARRIED A MINIMUM OF TEN YEARS AND A MAXIMUM OF  
5 THIRTY, IS THAT CORRECT?

6 A. YES, THAT'S CORRECT.

7 Q. OKAY. NOW, DID JUDGE GOODSTEIN EVER MENTION  
8 DURING OUR PLEA ANYTHING ABOUT THERE BEING A  
9 RECOMMENDED OR NEGOTIATED SENTENCE AT ANY POINT?

10 A. NO, SHE DID NOT.

11 Q. AND DID YOU TELL HER YOU KNEW, YOU SAID THERE  
12 WERE NO PROMISES MADE TO YOU IN THIS REGARD?

13 A. WHEN WE WERE TALKING ABOUT, SHE DID ASK ME IF  
14 THERE WERE PROMISES. MY UNDERSTANDING WAS DID  
15 SOMEBODY TRY TO COERCE ME OR SOMEONE, YOU KNOW,  
16 AT THE JAIL HOUSE, YOU KNOW, TRY TO TALK TO ME  
17 ABOUT THE TRIAL AND THINGS OF THAT NATURE. I WAS  
18 UNDER THE UNDERSTANDING THAT I HAD A PLEA IN  
19 PLACE.

20 Q. OKAY. NOW, WHAT DID YOU THINK WHEN YOU HEARD MS.  
21 HARDEE-THOMAS SAY, HE'S ASKED ME TO ASK THE COURT  
22 TO CONSIDER THE MOST LENIENT AMOUNT. DOES THAT  
23 SOUND LIKE A NEGOTIATED SENTENCE?

24 A. I READ MY TRANSCRIPT, AND I DID SEE THAT IN THE  
25 TRANSCRIPT. I REALLY DON'T KNOW WHAT MS. HARDEE-

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THOMAS WAS ACTUALLY IMPLYING AT THAT TIME. IF, IF I SIGNED A SENTENCING SHEET THAT'S BEEN NEGOTIATED I AM RELYING ON TRIAL COUNSEL TO BRING UP THE FACT THAT THERE IS A NEGOTIATED PLEA IN PLACE.

Q. NOW, DOES THIS NEGOTIATED, DOES THIS SENTENCING SHEET SAY TEN YEARS ON IT?

A. IT SAYS, NEGOTIATED PLEA, THE LETTER SHE SENT ME SAID TEN YEARS.

Q. YEAH. AND THAT WAS BACK IN MARCH, RIGHT? THE LETTER SHE SENT WAS IN MARCH?

A. YES, AS I EXPLAINED TO THE JUDGE, IT WAS IN MARCH, BUT TO MY KNOWLEDGE IT WAS NEVER WITHDRAWN.

Q. EVEN THOUGH THE LETTER SAID, BY THE END OF MARCH SIXTEENTH?

A. I HAVE, I HAVE NO IDEA WHY THE LETTER SAYS AT THE END OF COURT TERM OR ANYTHING OF THAT NATURE. MS. HARDEE-THOMAS NEVER CAME TO SPEAK TO ME TO TELL ME THAT THE NEGOTIATED PLEA WAS NOT IN PLACE ANYMORE. SHE HAD AMPLE OPPORTUNITY TO TELL ME ON THE DAY OF THE PLEA HEARING.

Q. NOW, DID SHE SEND YOU ANYMORE LETTERS AFTER THIS ONE IN MARCH?

A. NO.

1 Q. AND YOU'RE TELLING ME TODAY THAT SHE TOLD YOU  
2 THIS WAS A NEGOTIATED SENTENCE ON THE DAY OF YOUR  
3 PLEA. WHEN DID SHE TELL YOU THAT?

4 A. SHE TOLD ME THAT WHEN SHE BROUGHT THE SENTENCING  
5 SHEET TO ME, AND SHE SAID, CURTIS, I SIGNED HERE,  
6 YOU SIGN HERE. WHEN THE SOLICITOR GETS HERE  
7 HE'LL SIGN HERE.

8 Q. AND SHE SAID, WHAT EXACTLY DID SHE TELL YOU?

9 A. SHE TOLD ME THAT THE PLEA WAS STILL IN PLACE.  
10 AND I LOOKED OVER THE INDICTMENT AND THE CHECK,  
11 THE BOX MARKED NEGOTIATED PLEA WAS STILL, IT WAS  
12 CHECKED. THERE WAS NO OTHER MARKINGS ON THAT  
13 PAPER.

14 Q. AND YOU BELIEVED THAT INDICATED TEN YEARS, IS  
15 THAT CORRECT?

16 A. YES, SHE SAID TEN YEARS.

17 Q. OKAY. THAT'S WHAT I WAS TRYING TO UNDERSTAND.

18 A. YES, SIR, YES, MA'AM, EXCUSE ME.

19 Q. NOW, YOU, AT YOUR PLEA YOU AGREED WITH THE FACTS  
20 OF THIS CASE, IS THAT CORRECT?

21 A. YES.

22 Q. AND YOU REAL -- WOULD YOU LIKE TO TAKE ADVANTAGE  
23 OF THE TEN YEAR PLEA OFFER NOW?

24 A. YES. THE, THE VICTIM WAS IN LINE WITH THE PLEA,  
25 THE SOLICITOR WAS IN LINE WITH THE PLEA AS THE

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LETTER STATED, AND THIS IS WHAT WAS TOLD TO ME BY MS. HARDEE-THOMAS. IT WAS A SHOCK TO ME TO GET, TO RECEIVE FIFTEEN YEARS AT THAT TIME, AND AT THE TIME IT SEEMED LIKE IT WAS ALSO A SHOCK TO MS. HARDEE-THOMAS.

Q. DID YOU THINK, IT SEEMED LIKE THE JUDGE WAS LITTLE BIT CONCERNED WITH THE PRIOR RECORD, IS THAT ACCURATE?

A. I BELIEVE THE JUDGE WAS MORE CONCERNED WITH IF I HAD A PRIOR MOST SERIOUS BECAUSE SHE ASKED THE SOLICITOR A COUPLE OF TIMES, SHE ASKED MS. HARDEE-THOMAS A COUPLE OF TIMES, AND SHE ASKED ME A COUPLE OF TIMES.

Q. WERE ANY OF THESE PRIOR SENTENCES NEGOTIATED SENTENCES?

A. NO. THIS IS MY FIRST VIOLENT CRIME. MOST OF -- ALL OF THE OTHER CRIMES WERE NON-VIOLENT AND PROBATION VIOLATIONS AND OF THAT SORT.

Q. NOW, WHERE WERE YOU WHEN YOU ASKED HER TO FILE AN APPEAL FOR YOU.

A. WE WERE STILL IN THE CONFERENCE ROOM AFTER THE SENTENCE WAS GIVEN.

Q. SO, YOU GUYS HAD AN OPPORTUNITY, I GUESS, TO DEBRIEF AFTERWARDS?

A. WE TALKED.

1 Q. OKAY. NOW, BECAUSE YOU MENTIONED THIS AND YOU  
2 WANT TO MAKE SURE THAT YOUR ORDER COVERS  
3 EVERYTHING, I WANT TO MAKE SURE THAT I AM CLEAR,  
4 THAT YOU HAVE TWO ISSUES TODAY.

5 A. UH-HUH.

6 Q. ONE OF THOSE IS THE ISSUE ABOUT THE PLEA DEAL,  
7 AND THE SECOND ISSUE IS ABOUT YOUR APPEAL, IS  
8 THAT CORRECT?

9 A. YES, MA'AM.

10 Q. AND WHAT ISSUE WOULD YOU HAVE LIKED TO HAVE  
11 RAISED ON YOUR APPEAL?

12 A. ON THE APPEAL THAT I HAD A NEGOTIATED PLEA IN  
13 PLACE THAT WASN'T ENFORCED.

14 Q. AND WHAT DID MS. HARDEE-THOMAS TELL -- YOU SAID  
15 YOU CAME BACK, YOU TALKED TO HER. DID YOU ASK  
16 HER WHY THAT NEGOTIATED SENTENCE WASN'T GIVEN?

17 A. BRIEFLY, BECAUSE LIKE I SAID, WE WERE, THE JUDGE  
18 HANDED DOWN HER SENTENCE, SHE ROSE AND SHE EXITED  
19 THE CONFERENCE ROOM. WE SPOKE BRIEFLY ABOUT THE  
20 APPEAL. SHE ASKED ME IF I WANTED HER TO APPEAL.  
21 MY REPLY WAS, YES. THE NEGOTIATED PLEA DIDN'T  
22 COME UP IN OUR CONVERSATION AT THAT POINT IN  
23 TIME.

24 Q. SO, YOU DIDN'T ASK HER, HEY, WHY DID I GET  
25 FIFTEEN YEARS?

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A. SHE PRETTY MUCH WAS LIKE, SHE PRETTY MUCH WAS LIKE SHE WAS SURPRISED I RECEIVED THAT SENTENCE. SHE WAS JUST AS SHOCKED AS I WAS, OR SHE ACTED LIKE SHE WAS.

MS. WILLIAMS: ALRIGHT. THANK YOU VERY MUCH.

THE COURT: ANYTHING ON REDIRECT, MR. BROOKS?

MR. BROOKS: NO, JUDGE.

THE COURT: OKAY. THANK YOU, MR. BRYANT, YOU CAN STEP DOWN.

MR. BRYANT: THANK YOU, SIR.

THE COURT: I APPRECIATE IT.

MR. BROOKS: JUDGE, THAT'S THE APPLICANT'S CASE.

THE COURT: ALRIGHT, MS. WILLIAMS.

MS. WILLIAMS: YES, YOUR HONOR, THE STATE WILL CALL MS. MARVA HARDEE-THOMAS.

THE COURT: OKAY.

(Whereupon, Marva Hardee-Thomas is duly sworn.)

THE COURT: THANK YOU, MA'AM. IF YOU'LL PLEASE BE SEATED AND SPEAK UP, PLEASE, MA'AM.

MS. HARDEE-THOMAS: YES.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court.)

DIRECT EXAMINATION OF MARVA HARDEE-THOMASBY MS. WILLIAMS:

1 Q. MS. HARDEE-THOMAS, CAN YOU TELL ME HOW YOU CAME  
2 TO REPRESENT MR. BRYANT IN THIS CASE?

3 A. WORKING WITH THE PUBLIC DEFENDER'S OFFICE. HE WAS  
4 AN ASSIGNMENT.

5 Q. OKAY. AND I CAN SEE FROM THIS LETTER THAT YOU  
6 WERE REPRESENTING HIM MARCH. DO YOU HAVE ANY  
7 IDEA WHEN YOU WOULD HAVE BEEN APPOINTED, OR CAN  
8 YOU GUESS? IF YOU DON'T REMEMBER, THAT'S OKAY.

9 A. WHAT I WOULD USUALLY DO IS SEND OUT A REQUEST FOR  
10 DISCOVERY IMMEDIATELY UPON GETTING APPOINTED, AND  
11 THAT'S HOW I WOULD KNOW.

12 Q. OKAY. NOW, IN THIS CASE I CAN SEE FROM YOUR  
13 LETTER THAT THERE WAS A PLEA OFFER. IS THAT YOUR  
14 RECOLLECTION AS WELL, WAS THAT THE FIRST PLEA  
15 OFFER IN THIS CASE?

16 A. IF THERE WERE OTHERS, I KNOW THAT THIS IS ONE  
17 THAT WAS SENT TO HIM WITH REGARDS TO THIS  
18 PARTICULAR TERM OF COURT.

19 Q. OKAY. AND MR. BRYANT HAS STATED THAT HIS  
20 RECOLLECTION IS THAT HE ASKED YOU TO DO SOME MORE  
21 INVESTIGATION AT THAT TIME AND THAT THIS PLEA WAS  
22 NOT TAKEN IN MARCH OF TWO THOUSAND SEVEN. IS  
23 THAT, DOES THAT JIVE, I GUESS, WITH WHAT YOUR  
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MEMORY OF THE CASE WOULD BE?

A. MY ASPECT IS THAT IF THE SOLICITORS GIVE ME OFFERS I'M OBLIGATED TO GIVE THEM TO MY CLIENTS AND TO LET THEM KNOW WHEN THAT TERM OF COURT ENDS. IF THEY ARE NOT INTERESTED THEN THEY DON'T GO FORWARD ON THE PARTICULAR PLEA AND THEN IT'S DROPPED.

Q. SO, IN YOUR EXPERIENCE THE PLEA OFFER IS NO LONGER ON THE TABLE AFTER THE TERM OF COURT EXPIRES?

A. CORRECT.

Q. OKAY.

A. AND IN THIS SITUATION THEY INDICATED WHEN THEY WANTED HIM TO PLEA IF HE WAS INTERESTED.

Q. SO, IN, TO YOUR RECOLLECTION THAT IS CONSISTENT WITH WHAT HAPPENED HERE, THIS PLEA WAS NO LONGER AVAILABLE ONCE THAT MARCH TERM HAD EXPIRED?

A. EXACTLY.

Q. OKAY. NOW, I NOTICED HERE THAT YOU ASKED JUDGE GOODSTEIN TO CONSIDER THE MOST LENIENT SENTENCE, AND YOU MENTIONED THAT HE UNDERSTANDS THAT IF HE GOT THE MINIMUM HE IS GOING TO BE FIFTY-FOUR YEARS OF AGE. DID YOU TELL HIM HE WAS GOING TO GET THE MINIMUM OR WAS THIS SOMETHING YOU HAD JUST BEEN EXPLAINING THE SENTENCE?

1 A. IF I'M TALKING LIKE THAT TO THE JUDGE THERE IS,  
2 FROM MY UNDERSTANDING THERE IS NO NEGOTIATION.

3 Q. AND YOU DON'T REMEMBER ANYTHING ABOUT THE SIGNING  
4 OF THIS PLEA SHEET OR, BECAUSE IT DOES, I DO SEE  
5 WHERE IT'S IN, THE LINE WAS MARKED OUT.

6 A. THE ONLY THING I HAVE IS WHAT WE HAVE BEFORE US.

7 Q. OKAY.

8 A. AND IN SITUATIONS WHERE THE CLIENT IS NOT IN  
9 AGREEMENT WITH WHAT'S GONE ON THEY WOULD HAVE THE  
10 COURT PROCEEDINGS STOPPED SO THAT IT COULD GET  
11 ADDRESSED.

12 Q. DID HE EVER BRING IT TO YOUR ATTENTION AFTER THIS  
13 PLEA THAT THERE WAS A NEGOTIATED SENTENCE AND IT  
14 HADN'T PANNED OUT HERE?

15 A. FROM MY RECOLLECTION I CANNOT REMEMBER HIM  
16 STOPPING ME SO THAT I COULD STOP. I'M JUST GOING  
17 BY THE TRANSCRIPT.

18 Q. OKAY. DO YOU REMEMBER HIM ASKING YOU FOR AN  
19 APPEAL IN THIS CASE?

20 A. FROM MY RECOLLECTION I HAVE NO RECOLLECTION OF  
21 THAT.

22 Q. OKAY. IF HE HAD ASKED FOR AN APPEAL DID YOU HAVE  
23 A GENERAL PRACTICE TO FILE THOSE? HOW WOULD THAT  
24 WORK?

25 A. JUST DO IT.

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Q. OKAY. NOW, IF YOU HAD RECEIVED A PHONE CALL FROM A FAMILY MEMBER WOULD THAT HAVE BEEN DONE?

A. IF I HAD RECEIVED A PHONE CALL FROM A FAMILY MEMBER I WOULD BE OBLIGATED IN GETTING IN CONTACT WITH THE CLIENT TO ASK HIM DIRECTLY. EVEN THOUGH IT'S PINGING ON ONE TO TEN DAYS, IT WOULD GIVE ME AN IDEA THAT MY CLIENT WANTED TO SPEAK TO ME.

Q. OKAY.

MS. WILLIAMS: I DON'T THINK I HAVE ANY OTHER ISSUES.

THE COURT: MR. BROOKS.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

1 CROSS-EXAMINATION OF MARVA HARDEE-THOMAS2 BY MR. BROOKS:3 Q. MS. THOMAS, YOU DO ACKNOWLEDGE SENDING HIM A  
4 LETTER TALKING ABOUT TEN YEARS?

5 A. YES.

6 Q. OKAY. AND YOU DON'T RECALL TALKING TO HIM AFTER  
7 THAT TO LET HIM KNOW THAT DEAL WAS NO LONGER ON  
8 THE TABLE, DID YOU?9 A. WELL, IF HE DIDN'T TAKE IT I WOULD HAVE HAD TO  
10 HAVE SPOKEN TO HIM TO LET HIM KNOW THAT, YOU  
11 KNOW, IT'S - - -

12 Q. YOU DON'T RECALL THAT?

13 A. NO, NO.

14 Q. AND YOU'VE HAD A CHANCE TO LOOK BACK AT THE  
15 SENTENCING SHEET, HAVE YOU NOT?

16 A. YES.

17 Q. AND ON THIS SENTENCING SHEET IT DOES HAVE A CHECK  
18 MARK BY, NEGOTIATED SENTENCE, DOES IT NOT?

19 A. IT DOES. WHEN IT WAS DONE I HAVE NO IDEA.

20 Q. AND IT ALSO HAS ANOTHER CHECK MARK BY, WITHOUT  
21 NEGOTIATIONS OR RECOMMENDATIONS?

22 A. RIGHT. BUT WHEN IT WAS DONE I HAVE NO IDEA.

23 Q. AND I UNDERSTAND. YOU DON'T HAVE ANY IDEA WHICH  
24 ONE WAS DONE FIRST, SECOND, THIRD, WHATEVER?

25 A. EXACTLY.

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Q. DO YOU RECALL WHETHER OR NOT ALL OF THIS WAS  
BLANK BEFORE CURTIS GOT IT?

A. I HAVE NO IDEA. BASICALLY, IF I HAD GONE TO SEE  
HIM TO HAVE HIM WRITE IT FIRST, OR WRITING WAS ON  
THERE AND THEN HAVE HIM GO AND SIGN IT, I WOULD  
NOT HAVE A CLUE AT THIS POINT.

Q. OKAY.

A. I MEAN, I JUST DON'T JOT DOWN THE NARRATIVE IN  
REGARDS TO HOW THE PLEA IS DONE.

Q. CORRECT. AND AGAIN, YOU DON'T RECALL HAVING A  
CONVERSATION WITH HIM AFTER YOUR LETTER ABOUT TEN  
YEARS -- AFTER YOUR LETTER WENT OUT IN MARCH YOU  
DON'T RECALL HAVING A CONVERSATION IN APRIL, MAY  
OR JUNE PRIOR TO THE PLEA ABOUT THE PLEA OFFER,  
WHETHER OR NOT IT WAS STILL IN EXISTENCE OR NOT?

A. NO, NOT EVEN WHEN HE SAID THAT HE WANTED ME TO DO  
SOME MORE INVESTIGATION. INVESTIGATION OF WHAT?

Q. OKAY.

MR. BROOKS: I BEG THE COURT'S INDULGENCE, YOUR  
HONOR. NO OTHER QUESTIONS, JUDGE.

THE COURT: MS. HARDEE-THOMAS, LET ME ASK YOU A  
COUPLE OF QUESTIONS.

A. YES.

(NOTE: Blank lines on this page do not indicate any  
part of record has been omitted.)

EXAMINATION OF MARVA HARDEE-THOMAS

BY THE COURT:

Q. HAVE YOU GOT THE SENTENCING SHEET IN FRONT OF YOU?

A. YES, I DO.

Q. OKAY. RIGHT IN THE MIDDLE OF THE PAGE ABOUT DESCRIBING THE PLEA, IT DOES APPEAR TO BE CHECKS OR INITIALS ABOVE, NEGOTIATED SENTENCE, IS THAT, DOES YOUR COPY HAVE THAT?

A. YES, IT SEEMS TO BE A MARK, A LINE.

Q. BUT YOU CAN'T TELL WHOSE INITIALS THEY ARE OR ANYTHING LIKE THAT?

A. NO.

Q. OKAY.

A. IT'S JUST A LINE WITH SOME SCRIBBLES. I DON'T EVEN KNOW WHAT'S ON THERE. BUT I CAN TELL, HARRISON BELL, B.H.B., THAT'S HARRISON BELL CIRCLED WHERE IT SAYS, WITHOUT NEGOTIATIONS.

Q. BUT NOBODY ELSE INITIALED THAT, WITHOUT NEGOTIATIONS, HE'S THE ONLY ONE THAT DID THAT?

A. RIGHT.

Q. OKAY. OKAY. NOW, WERE Y'ALL GETTING READY TO GO TO TRIAL THAT DAY?

A. SIR, I COULD NOT TELL YOU. IF WE WERE READY TO GO TO TRIAL I BELIEVE I WOULD, YOU KNOW, BE SET

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TO GO TO TRIAL.

Q. OKAY. BUT HE WOULDN'T HAVE BEEN WEARING HIS JAIL CLOTHES?

A. NO.

Q. OKAY. SO, AT THE END OF THE TRANSCRIPT WHEN JUDGE GOODSTEIN LETS THE JURY GO, IT DOESN'T HAVE ANYTHING TO DO WITH THIS CASE?

A. NO.

Q. OKAY. HE WAS ACTUALLY THERE TO DO A PLEA?

A. RIGHT.

Q. OKAY. IN MARCH YOU WERE, HE WAS OFFERED A TEN YEAR PLEA ON THIS?

A. THAT'S CORRECT.

Q. OKAY. NOW, THE LETTER DOESN'T SAY -- THE LETTER GIVES YOU THAT TERM, WHETHER YOU WANT TO COME AND PLEA DURING THAT WEEK TERM. IT DOESN'T SPECIFICALLY SAY THAT THE PLEA IS WITHDRAWN?

A. NO. WHAT I WRITE IS, PLEASE NOTE THAT THE NEXT TERM OF GENERAL SESSIONS BEGINS ON MARCH TWELFTH, TWO THOUSAND AND SEVEN, AND YOU MUST BE PRESENT BEFORE THE TERM ENDS ON MARCH SIXTEENTH, TWO THOUSAND SEVEN IF YOU WISH TO TAKE THIS OFFER.

Q. RIGHT. NOW, YOU WERE DEALING WITH MR. BELL THE WHOLE TIME?

A. YES.

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Q. WAS THERE ANY, DID MR. BELL TELL YOU BEFORE Y'ALL WENT TO COURT IN JUNE THAT THE OFFER HAD BEEN WITHDRAWN?

A. IT'S MY UNDERSTANDING THAT IF THEY WANTED HIM TO TAKE THE OFFER ON MARCH THE TWELFTH, THAT WAS IT.

Q. OKAY.

A. ANY OTHER TIME, THEN THAT'S ON HIM.

Q. OKAY. SO IF THEY WAITED UNTIL MARCH THE EIGHTEENTH TO DO THE PLEA THEY WOULDN'T ACCEPT IT, MR. BELL WOULDN'T ACCEPT IT?

A. THAT'S CORRECT.

Q. OKAY. SO, BEFORE YOU WENT TO COURT ON JUNE TWELFTH TO DO THIS PLEA YOU MADE MR. BRYANT AWARE THAT HE COULD GET ANYTHING BETWEEN TEN AND THIRTY YEARS?

A. WELL, MY LETTER SAYS, THE QUESTION IS BEFORE -- WHAT NOW?

Q. BEFORE YOU WENT TO HAVE HIM PLEA IN FRONT OF JUDGE GOODSTEIN ON JUNE TWELFTH OF O-SEVEN.

A. OKAY. JUNE TWELFTH, OKAY.

Q. JUNE TWELFTH OF O-SEVEN, YOU TOLD HIM THAT HE WAS FACING ANYWHERE FROM TEN TO THIRTY YEARS IN JAIL?

A. YES. BECAUSE, THIS IS MY CONCERN. IN THE TRANSCRIPT, IF IT WAS NEGOTIATED WHY WOULD I BE TALKING TO THE JUDGE ABOUT LENIENCY. IF IT WAS

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1 PLANNED THEN HE'S GOING TO GET WHAT HE'S GOING TO  
2 GET.

3 Q. RIGHT.

4 A. WHY WOULD I BE TALKING ABOUT LENIENCY WITH  
5 REGARDS TO GOING TO THE LOWER END COMPARED TO  
6 WHERE SHE COULD EVER GO?

7 Q. BUT YOUR FILES AND RECORD DO NOT REFLECT THAT ANY  
8 TRIAL DATE HAD BEEN SET AT THIS TIME, RIGHT?

9 A. RIGHT. MEANING, HE WAS NOT DRESSED FOR TRIAL  
10 THAT DAY.

11 Q. YEAH. BUT I MEAN, YOU DON'T HAVE ANYTHING IN  
12 YOUR FILE THAT INDICATES IT WAS GOING TO BE  
13 CALLED FOR TRIAL DURING THE TERM IN JUNE OR JULY,  
14 AUGUST, OR ANYTHING LIKE THAT?

15 A. IT COULD HAVE BEEN CALLED THAT WEEK. HOWEVER - -  
16 -

17 Q. IT COULD HAVE BEEN CALLED THAT WEEK IN JUNE?

18 A. RIGHT.

19 Q. OKAY. BUT IT JUST WAS NOT ON DECK FOR THAT DAY?

20 A. EXACTLY.

21 Q. SO, YOU HAD GOTTEN READY, HAD YOU GOTTEN READY  
22 FOR TRIAL THE WEEK BEFORE?

23 A. NO. IF I WAS TAKING HIM FOR A PLEA THEN THE  
24 TRIAL MORE AND LIKELY WOULD HAVE BEEN THAT WEEK  
25 BECAUSE HE WOULD EITHER PLEA THAT WEEK OR WE

1           WOULD GET READY FOR TRIAL.

2           Q.    OKAY.  I'M WITH YOU.  OKAY.

3           A.    AND SO, THEY WERE TAKING THE PLEAS THAT WERE  
4           INTERESTED SO THAT THEY COULD GET READY FOR WHO  
5           DID NOT WANT TO PLEA THAT WEEK.

6           Q.    OKAY.  AND YOU BELIEVE MR. BRYANT UNDERSTOOD THAT  
7           HE WAS FACING ANYWHERE FROM TEN TO THIRTY YEARS  
8           BEFORE HE WENT BEFORE JUDGE GOODSTEIN?

9           A.    YES.

10          Q.    OKAY.  AND HE SHOULDN'T HAVE ANY EXPECTATION THAT  
11          HE WOULD BE SENTENCED TO TEN YEARS?

12          A.    CORRECT.

13          THE COURT:  OKAY.  DID MY QUESTIONS LEAD TO ANY  
14          OTHER QUESTIONS?

15          MR. BROOKS:  MAYBE, JUDGE.

16          THE COURT:  OKAY.  MR. BROOKS.

17          (NOTE:  Blank lines on this page do not indicate any  
18          part of record has been omitted.  Headers on testimony  
19          pages and hard page breaks between testimony are now  
20          required by the Court.  See next ensuing page for  
21          sequential continuation of record.)

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RECROSS-EXAMINATION OF MARVA HARDEE-THOMAS

BY MR. BROOKS:

Q. YOU DON'T HAVE ANYTHING, ANY MEMORY OF LETTING MR. BRYANT KNOW THAT THAT DEAL WAS NO LONGER ON THE TABLE?

A. THE ONLY THING I HAVE IS THIS LETTER, THAT'S ALL. THAT'S THE ONLY THING. IF I DIDN'T HAVE THIS I WOULD REALLY NOT KNOW.

Q. AND THAT LETTER SETS OUT SOME PARAMETERS THAT ARE ACTUALLY WITHIN ONE WORK WEEK, ISN'T THAT CORRECT?

A. THAT'S RIGHT, BECAUSE WE HAD TWO TERMS, TWO WEEKS. THEY WANTED HIM THAT FIRST WEEK. IF HE WENT TO THE SECOND WEEK IT WAS OFF.

Q. AND DID YOU TELL HIM THAT?

A. I FELT THAT THIS WAS SUFFICIENT, BUT IN REGARDS TO ME REMEMBERING WHETHER OR NOT I COMMUNICATED, YOU'VE GOT THIS WEEK TO PLEA, I DON'T HAVE ANYTHING IN WRITING TO SHOW THAT.

Q. OKAY. NOW, AND DURING THIS TIME MR. BRYANT WAS LOCKED UP IN JAIL, ISN'T THAT CORRECT?

A. FROM MY UNDERSTANDING, AT THE DORCHESTER COUNTY DETENTION CENTER.

Q. OKAY. SO, HE WASN'T ON THE STREET TO COME TO YOUR OFFICE AND SIT DOWN FACE TO FACE?

1 A. RIGHT.

2 Q. AND YOU DON'T RECALL GOING TO HIM AND SAYING,  
3 HEY, THE DEAL'S OFF THE TABLE, MAN.

4 A. I DON'T HAVE ANYTHING SHOWING WHERE I WOULD HAVE  
5 GONE TO HIM AND SAID THAT. I JUST HAVE THIS .  
6 THIS IS ALL I HAVE.

7 Q. AND IN CONJUNCTION WITH THAT WE ALSO DO HAVE A  
8 CHECK MARK ON THE SENTENCING SHEET WHERE IT HAS,  
9 NEGOTIATED SENTENCE, AND THEN WE ALSO HAVE  
10 ANOTHER CHECK MARK WHICH IS INITIALED BY THE  
11 SOLICITOR, WITHOUT NEGOTIATIONS OR  
12 RECOMMENDATIONS.

13 A. EXACTLY. WITH A NAME UNDERNEATH THE, WITHOUT  
14 NEGOTIATION, B. HARRISON BELL.

15 Q. OKAY.

16 A. THAT'S THE SOLICITOR.

17 Q. AND AS THE JUDGE INDICATED, YOU DON'T HAVE IN  
18 YOUR LETTER THAT, IF YOU DON'T PLEAD BY THIS DAY  
19 THE PLEA IS WITHDRAWN, I MEAN, THE OFFER IS  
20 WITHDRAWN. YOU DON'T HAVE ANYTHING LIKE THAT IN  
21 YOUR LETTER?

22 A. THE ONLY THING I WROTE WAS THIS, WHICH BASICALLY  
23 INDICATES THEY WANTED HIM TO TAKE THE PLEA OFFER  
24 DURING THIS TERM, MARCH, RIGHT HERE, MARCH  
25 TWELFTH. ANYTHING ON THE SECOND TERM ...

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Q. OKAY. DID YOU REALIZE THAT HE HAD THE PERCEPTION THAT HE WAS GETTING TEN YEARS IN JUNE WHEN HE WAS PLEADING GUILTY?

A. NO. WHEN I GAVE HIM THE OFFER IN MARCH - - -

Q. I'M NOT SAYING THAT, IN JUNE, WHEN Y'ALL WERE GOING UP IN FRONT OF THE JUDGE DID YOU REALIZE THAT HE HAD THE PERCEPTION, I'M TAKING A TEN YEAR DEAL BECAUSE THERE'S AN OFFER ON THE TABLE?

A. NO.

Q. AND ITS YOUR TESTIMONY THAT YOU DIDN'T HAVE ANY CONVERSATION WITH HIM SHORTLY PRIOR TO THAT PLEA ABOUT, HEY, I THINK THIS IS TEN YEARS, I'M GETTING TEN YEARS, OR YOU DON'T RECALL?

A. I DON'T RECALL GOING TO HIM AND SAYING, LOOK, WE'RE GETTING TEN YEARS. MY ASPECT WITH MR. BRYANT, HE'S VERY ARTICULATE, HOW TO SAY THIS, HE'S NOT DUMB TO THE COURT PROCEEDINGS. HE UNDERSTANDS GENERAL PLAIN LANGUAGE, AND I DON'T UNDERSTAND, MY THING IS, IF THE JUDGE HAD GONE THROUGH THE SOLILOQUY WITH REGARDS TO THE PLEA AND ANYTHING THAT HE HEARD THAT WASN'T WHAT HE WANTED HE WOULD HAVE ADDRESSED IT RIGHT THEN. HE'S NOT ONE TO, YOU KNOW, TO SAY, OKAY, LET'S GO ALONG WITH THIS, AND AT THE END -- HE WOULD SAY, ADDRESS THIS RIGHT NOW. BUT I DON'T REMEMBER



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1 DOING THAT, I DON'T REMEMBER HAVING THAT DONE OR  
2 EVEN SEEING THAT IN THE TRANSCRIPT WITH HIM.

3 Q. DO YOU RECALL BEING A LITTLE SURPRISED BY THE  
4 SENTENCE?

5 A. WHEN YOU SAY, SURPRISED, WHAT'S SURPRISE?

6 Q. EXPECTING HIM TO GET LESS THAN WHAT HE GOT.

7 A. WELL, THIS IS THE THING. IF I ASKED THE JUDGE TO  
8 BE LENIENT I'M ASKING THE COURT TO BE CONSIDERATE  
9 WITH REGARDS TO THE LOWER END. I UNDERSTOOD THAT  
10 WHATEVER THE JUDGE GAVE THE JUDGE WAS GOING TO  
11 GIVE. NOW, SHOCKING TO ME WOULD BE THE THIRTY  
12 YEARS, THAT'S SHOCKING TO ME. SHE WENT FROM TEN  
13 TO FIFTEEN. I DON'T UNDERSTAND HOW THAT WOULD BE  
14 SHOCKING. SHOCKING TO ME WOULD BE JUST, I CAN'T  
15 UNDERSTAND WHY SHE GAVE YOU THE WHOLE AMOUNT.

16 Q. I UNDERSTAND. BUT YOU DO ACKNOWLEDGE THAT YOU  
17 DID NOT FILE AN APPEAL?

18 A. I WASN'T ASKED TO DO AN APPEAL.

19 Q. I UNDERSTAND.

20 A. IT WOULD HAVE BEEN FILED.

21 Q. RIGHT. AND YOU DIDN'T ASK THE JUDGE TO  
22 RECONSIDER HER SENTENCE?

23 A. IF I HAD BEEN ASKED TO DO A RECONSIDERATION IT  
24 WOULD HAVE BEEN DONE.

25 MR. BROOKS: NO OTHER QUESTIONS, JUDGE.

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THE COURT: THANK YOU, SIR.

MS. WILLIAMS, ANYMORE QUESTIONS?

MS. WILLIAMS: JUST BRIEFLY.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

1 REDIRECT EXAMINATION OF MARVA HARDEE-THOMAS

2 BY MS. WILLIAMS:

3 Q. CAN YOU TELL ME A LITTLE BIT ABOUT WHAT YOUR  
4 PRACTICE WAS IN TERMS OF VISITING THE JAIL WHEN  
5 YOU WERE A PUBLIC DEFENDER?

6 A. WE WOULD HAVE TO VISIT THE JAIL INMATES, SAY,  
7 MONTHLY. HOWEVER, IF THERE WAS A SITUATION LIKE  
8 THIS WHERE THERE WAS AN OFFER, THEN YOU WOULD  
9 BASICALLY SEND A LETTER OUT TO THEM AND BASICALLY  
10 GET TO THEM BEFOREHAND TO SEE WHETHER OR NOT THEY  
11 WANTED TO DO THE PLEA OR NOT.

12 Q. AND WAS IT YOUR, A FAIRLY REGULAR PRACTICE TO  
13 SEND A LETTER IF THERE WAS A PLEA OFFER?

14 A. OH, YEAH, WHAT DO THEY CALL IT, COVER YOUR  
15 BEHIND? YEAH, I THINK SO. AND THIS COVERED MY  
16 BEHIND, BECAUSE THEY GAVE ME AN OFFER AND I SENT  
17 IT TO MY CLIENT. I DIDN'T JUST GO AND TELL HIM.  
18 I HAD SOMETHING LIKE TANGIBLE FRUIT TO SHOW THAT  
19 IT WAS WRITTEN.

20 Q. SO, YOU BELIEVE IT WOULD HAVE BEEN YOUR REGULAR  
21 PRACTICE THAT IF THERE WAS ANOTHER OFFER FOR TEN  
22 YEARS AGAIN, SAY, THAT ANOTHER LETTER WOULD HAVE  
23 BEEN SENT?

24 A. YES, OH, YES.

25 MS. WILLIAMS: THANK YOU.

1           THE COURT: ALRIGHT, THANK YOU, MA'AM.

2           MS. HARDEE-THOMAS: YOU'RE WELCOME.

3           THE COURT: I APPRECIATE IT.

4           MS. HARDEE-THOMAS: YOU'RE WELCOME.

5           THE COURT: ALRIGHT, MS. WILLIAMS, IF YOU'D CALL  
6 YOUR NEXT WITNESS.

7           MS. WILLIAMS: THAT'S THE CONCLUSION OF THE  
8 STATE'S CASE. THANK YOU, SIR.

9           THE COURT: OKAY. ALRIGHT, WHAT I'M GOING TO DO  
10 IS, I'M GOING TO READ OVER EVERYTHING AND CONSIDER  
11 THIS AND GET BACK TO Y'ALL WITH MY DECISION. OKAY?  
12 THANK Y'ALL.

13           GOOD LUCK TO YOU, MR. BRYANT.

14           MR. BROOKS: THANK YOU, YOUR HONOR.

15           MR. BRYANT: YES, SIR, THANK YOU FOR YOUR TIME.

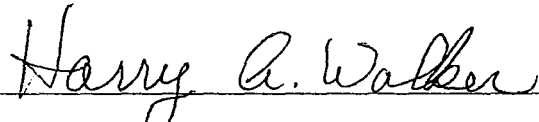
16           THE COURT: YES, SIR.

CERTIFICATE

1  
2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF  
3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER  
4 FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH  
5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A  
6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF  
7 ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE  
8 POST CONVICTION RELIEF HEARING IN THE CAPTIONED CAUSE,  
9 RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR  
10 DORCHESTER COUNTY, SOUTH CAROLINA, ON THE NINTH DAY OF  
11 DECEMBER, 2009.

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

14  
15 DATE: MAY 25, 2011

16  
17 

18 (MRS.) HARRY A. WALKER  
19

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 Curtis Bryant, # 276403, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS

2008-CP-18-1516

**ORDER OF DISMISSAL**

2011 MAR 11 PM 12:43  
 C. Brooks  
 P. Williams

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 12, 2008. An evidentiary hearing into the matter was convened on December 10, 2009, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Marva Hardee-Thomas, Esquire ("Counsel"). This Court had before it the records of the Dorchester County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the December 2006 term of the Dorchester County Grand Jury for Armed Robbery (2006-GS-18-1761). He was represented by Marva Hardee-Thomas,

Esquire. On June 12, 2007, the Applicant pled guilty before the Honorable Diane S. Goodstein and was sentenced to fifteen (15) years incarceration. The Applicant did not appeal his guilty plea or sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel because no appeal filed."
2. "Ineffective assistance of counsel because he failed to have plea bargain enforced."
3. "Plea was involuntary due to ineffective counsel."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

#### **Ineffective Assistance of Counsel/Involuntary Guilty Plea**

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, supra). 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). 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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d

391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

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

#### *Sentence*

Applicant asserts that his plea was involuntary because he thought he would be sentenced to a ten (10) year negotiated term. Applicant had received a plea offer for ten (10) years in March. Applicant stated that in March he told Counsel he wanted her to perform further investigation. Counsel stated that the letter conveying the plea offer stated that it was for the March term of court; if Applicant did not accept, the offer would expire. Counsel did not recall discussing a plea offer after the March offer. There is no evidence that any additional plea offer was made. Counsel stated that she did inform Applicant prior to his plea that he faced ten (10) to thirty (30) years. Counsel noted that she requested the court to consider "the most lenient amount," ten (10) years, on Applicant's behalf. (Tr. p. 26, lines 3-4.) Counsel stated that Applicant was familiar with court proceedings, understood plain language, and was likely to speak up if there was any concern.

Applicant was informed during the plea colloquy that he faced a minimum of ten (10) years and a maximum of thirty (30) years. (Tr. p. 6, lines 7-15.) Applicant informed the plea judge that he had not been made any promises inducing his plea. (Tr. p. 18, lines 22-25.) No mention is made during the plea of a negotiated sentence. At PCR hearing, Applicant stated that he wanted to accept the plea offer now.

Based on the foregoing, I find Applicant has failed to establish ineffective assistance of counsel rendering his plea involuntary. Counsel testified that she informed Applicant of the range of sentence he faced prior to his plea. It appears that the plea offer made in March had expired and no new offer was made. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165-166, 485 S.E.2d 367, 371 (1997). While Applicant may have hoped for a sentence of ten (10) years, I find Counsel's testimony and the plea transcript convincing that Applicant was not misinformed regarding the potential sentence he faced.

*Belated Direct Appeal*

Applicant testified that he requested an appeal following his hearing by way of a letter and that his parents contacted Counsel. Counsel did not file an appeal. Counsel did not recall being asked to file an appeal and felt that she would have if Applicant had asked.

Because Applicant testified that he requested an appeal and Counsel was uncertain as to whether the request was made, the Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled

to a belated review of his conviction. A petition for belated review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) can remedy the Applicant's lack of a direct appeal. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his or her appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243, SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).<sup>1</sup>

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **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 finds that the grant of a belated direct appeal is proper.

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

#### **IT IS THEREFORE ORDERED:**

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.

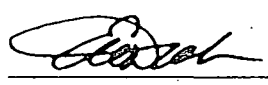
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<sup>1</sup> "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

2. That the Applicant is granted a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 243 for the appropriate procedure for securing belated appellate review.

3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1st day of March, 20 11.



EDGAR W. DICKSON  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina.

WITNESSES

Stone, R.

NCPD

Agency Case #: 06-038798

ARREST WARRANT NUMBER

1099796

Arrested: Oct 12, 2006

ACTION OF GRAND JURY

**TRUE BILL**

DATE

11/30/06

Foreperson of Grand Jury

Date: November 30, 2006

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006GS18-1761

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

December 11, 2006 TERM

THE STATE

vs.

Curtis Lee Bryant

Indictment for

ARMED ROBBERY

SC Code: 16-11-330

CDR Code: 0139

Class: FEL-A

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDED  
2007 JAN 12 AM 10:11  
CHIEF CLERK  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )

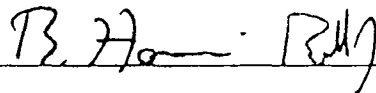
INDICTMENT  
 2006GS18-1761

At a Court of General Sessions, convened on December 11, 2006 the Grand Jurors of Dorchester County present upon their oath:

**ARMED ROBBERY**

The defendant, Curtis Lee Bryant, did in Dorchester County on or about October 12, 2006, feloniously take from the person or presence of the victim, Joseph Komosa, by means of force or intimidation and while armed with a deadly weapon being a knife or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, goods or monies of the said victim, being described as the victim's car and cell phone. This offense being a violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



B. Harrison Bell Jr., SOLICITOR