

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Berkeley County

Stephanie P. McDonald, Circuit Court Judge

---

**RECEIVED**

OCT - 9 2014

**S.O. Supreme Court**

STERLING BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000952

---

APPENDIX

---

DAVID ALEXANDER  
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 09-GS-08-0512
	)	
Sterling Brown,	)	
	)	
Defendant.	)	

**TRANSCRIPT OF HEARING**

The within Hearing was held in the above-captioned action on May 16, 2011, before The Honorable R. Markley Dennis, Jr. in Courtroom E of the Berkeley County Courthouse, 300 California Street, Moncks Corner, South Carolina; attended by Counsel, as follows:

**APPEARANCES:**

Andre Dejeu, Assistant Solicitor  
9<sup>TH</sup> JUDICIAL CIRCUIT SOLICITOR'S OFFICE  
300-B California Avenue  
Moncks Corner, SC 29416  
Appearing for State of South Carolina

Mitch Lanier, Esq.  
Attorney at Law  
215 California Avenue  
Moncks Corner, South Carolina 29461  
Appearing for Defendant

**DEBORAH GARRISON**  
*Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit*  
Post Office Box 901  
Johns Island, South Carolina 29457  
[dGarrison@secourts.org](mailto:dGarrison@secourts.org)

State of South Carolina v. Sterling Brown  
Case No. 09-GS-08-1683  
Hearing of May 16, 2011  
before The Honorable R. Markley Dennis, Jr.

1 THE COURT: You are Sterling Brown?  
2 DEFENDANT: Yes, sir.  
3 THE COURT: Mr. Brown, Indictment 09-  
4 GS-08-1683 charges you with the offense of armed  
5 robbery. Do you understand that?  
6 DEFENDANT: Yes, sir.  
7 THE COURT: You're standing with Mr.  
8 Lanier. Does he represent you?  
9 DEFENDANT: Yes, sir.  
10 THE COURT: Is that correct?  
11 DEFENDANT: Yes, sir.  
12 THE COURT: He has explained that  
13 charge to you?  
14 DEFENDANT: Yes, sir.  
15 THE COURT: Has he discussed with you  
16 the possible punishments?  
17 DEFENDANT: Yes, sir.  
18 THE COURT: Has he discussed with you  
19 what the State would have to prove to obtain a  
20 conviction?  
21 DEFENDANT: Yes, sir.  
22 THE COURT: Have you had a chance to  
23 talk with him about the investigation that he  
24 has conducted for you?

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3

1 DEFENDANT: Yes, sir.

2 THE COURT: He's answered all your  
3 questions?

4 DEFENDANT: Yes, sir.

5 THE COURT: And you've signed this  
6 sentencing sheet indicating to me that you want  
7 to enter a guilty plea?

8 DEFENDANT: Yes, sir.

9 THE COURT: You've also -- the  
10 sentencing sheet shows that this is a violent  
11 offense. Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Your lawyer has talked  
14 with you about that and also about a most  
15 serious offense, what that means?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that  
18 there is a maximum thirty-year sentence and a  
19 minimum ten-year sentence?

20 DEFENDANT: Yes, sir.

21 THE COURT: Understanding the nature  
22 of the offense, the possible punishment for the  
23 offense, what is your plea? Guilty or not  
24 guilty?

25 DEFENDANT: Guilty.

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4

1 THE COURT: Sir?

2 DEFENDANT: Guilty.

3 THE COURT: Are you satisfied with  
4 your lawyer?

5 DEFENDANT: Yes, sir.

6 THE COURT: Any complaints about the  
7 way that he has handled your case?

8 DEFENDANT: No, sir.

9 THE COURT: Solicitor, there is a  
10 recommendation?

11 SOLICITOR: Yes, Your Honor. The  
12 State is recommending the minimum of ten years.

13 THE COURT: Mr. Lanier, that's your  
14 understanding?

15 MR. LANIER: It is, Your Honor.

16 THE COURT: And you've had the chance  
17 and opportunity to discuss the matter fully with  
18 him?

19 MR. LANIER: I have, Your Honor.

20 THE COURT: You have shared the  
21 results of your investigation with him?

22 MR. LANIER: I have.

23 THE COURT: After fully discussing  
24 with you, he indicated an intention to enter the  
25 plea?

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1 MR. LANIER: He did.

2 THE COURT: Based on that, you've  
3 advised him of the rights that he would be  
4 relinquishing and the consequences?

5 MR. LANIER: I have, Your Honor.

6 THE COURT: Based on your  
7 investigation, do you concur with his decision?

8 MR. LANIER: I -- (affirmative nod),  
9 I do.

10 THE COURT: You and I have talked  
11 about that and I understand that you -- we were  
12 fortunate enough for me to practice and to be a  
13 judge for awhile when we had the benefit of some  
14 opportunities for sentencing persons in your  
15 client's position. But -- there's no question  
16 as to the technical aspects of this charge, of  
17 what he did.

18 MR. LANIER: He's guilty of armed  
19 robbery.

20 THE COURT: He's guilty of armed  
21 robbery?

22 MR. LANIER: (Affirmative nod).

23 THE COURT: Mr. Brown, do you  
24 understand that?

25 DEFENDANT: Yes, sir.

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1 THE COURT: And you understand that  
2 if I accept your plea that you won't have a jury  
3 trial?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that  
6 the State would have to prove you guilty beyond  
7 a reasonable doubt?

8 DEFENDANT: Yes, sir.

9 THE COURT: You also understand that  
10 you don't have to put up any evidence, you don't  
11 have to explain anything and you surely don't  
12 have to prove your innocence. Do you understand  
13 that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Do you also understand  
16 that in order to do that, if you had a trial  
17 that the State would present witnesses and you,  
18 through your lawyer, could challenge those  
19 witnesses; do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: We call that the right of  
22 confrontation. Because you've not going to have  
23 a trial, you're not going to confront the  
24 witnesses against you. Do you realize that?

25 DEFENDANT: Yes, sir.

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1 THE COURT: Also by entering this  
2 plea and admitting your guilt here today, you're  
3 giving up your right to remain silent. Do you  
4 realize that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Has anybody promised you  
7 anything or threatened you in any way to get you  
8 to plead guilty?

9 DEFENDANT: No, sir.

10 THE COURT: Are you under the  
11 influence of any alcohol or any medication here  
12 today?

13 DEFENDANT: No, sir.

14 THE COURT: Have you been treated in  
15 the past for any emotional problems, any mental  
16 illness?

17 DEFENDANT: No, sir.

18 THE COURT: And you are eighteen?

19 DEFENDANT: Yes, sir.

20 THE COURT: Have you had a chance to  
21 talk with your lawyer and ask him anything you  
22 -- about any concerns that you've had, and has  
23 he addressed those for you?

24 DEFENDANT: Yes, sir.

25 THE COURT: Have you had a chance to

State of South Carolina v. Sterling Brown  
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1 talk to any family members about what you're  
2 doing here today?

3 DEFENDANT: Yes, sir.

4 THE COURT: And are you satisfied  
5 with your decision here today?

6 DEFENDANT: Yes, sir.

7 THE COURT: Is this your decision?

8 DEFENDANT: Yes, sir.

9 THE COURT: Solicitor, if you would,  
10 tell me the facts, please.

11 SOLICITOR: This incident, on April  
12 the 17<sup>th</sup> of 2009 the defendant, along with Marcus  
13 Rainey, robbed the KFC located at 4011 North  
14 Highway 52 here in Moncks Corner. They took  
15 away around three thousand dollars.

16 The Moncks Corner police responded and  
17 as a result of their investigation, they were  
18 able to identify the perpetrators.

19 The defendant, Mr. Brown, provided the  
20 officers with a written statement on May 18<sup>th</sup>,  
21 2009, confessing and implicating other  
22 individuals in this incident.

23 He does not have a criminal record but  
24 he has a pending possession of a weapon on  
25 school property which we will dismiss as a

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before The Honorable R. Markley Dennis, Jr.

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1 result of this plea.

2 THE COURT: Are those facts correct,  
3 Mr. Brown?

4 DEFENDANT: Yes, sir.

5 THE COURT: Very well. I will accept  
6 the plea. Mr. Lanier, I will be delighted to  
7 hear from you, sir.

8 MR. LANIER: Your Honor, from my  
9 conversations you could tell that I -- I don't  
10 think my sentence (sic) -- I mean my client,  
11 that what he did warrants the minimum sentence,  
12 which was recommended to the court. He was  
13 sixteen when this happened, Your Honor. He did  
14 not have a gun. He was without someone who had  
15 a gun. He went in knowing what was going to  
16 happen. In fact, I think a couple of people  
17 inside the -- that worked at the Kentucky Fried  
18 Chicken had set this thing up and -- and they're  
19 all charged, and they're supposed to dispose of  
20 their cases this week also.

21 Adrian -- excuse me. Sterling is from  
22 New York, Your Honor. He's been down here -- he  
23 was here before the -- what?

24 DEFENDANT: (Sidebar with Mr.  
25 Lanier).

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1 MR. LANIER: Living with his grand-  
2 mother. His mother, his aunt and his sister are  
3 in the courtroom, Your Honor. I'd ask them to  
4 stand up.

5 THE COURT: Thank you.

6 MR. LANIER: They do live in New York,  
7 Your Honor. He's been -- he lived with his  
8 grandmother but she is now deceased, so he's  
9 been coming back and forth between New York.  
10 He's been to every appointment that I've given  
11 him, he's been in court every time that I've  
12 told him to be in court.

13 It's just a bad situation that he found  
14 himself in. I told you, you know, that the time  
15 to think about the consequences of something are  
16 before you do it, not afterwards. I said you  
17 can be as sorry as you want to be, but you --  
18 you've committed yourself to the mercy of the  
19 Court. I wish that they had the old youthful  
20 offender sentence of three years.

21 THE COURT: Absolutely.

22 MR. LANIER: He would be a perfect  
23 candidate for that.

24 THE COURT: You and I both wish that.

25 MR. LANIER: I'm sorry?

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Case No. 09-GS-08-1683  
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1 THE COURT: You and I both wish that.

2 MR. LANIER: I'm going to let it go at  
3 that. He knows that he is going to have to do  
4 eight-and-a-half years, Your Honor. I hope that  
5 he doesn't let this ruin the rest of his life.  
6 He'll be about twenty-six years old when he  
7 comes out and he will still have plenty of life  
8 ahead of him. I know that he doesn't understand  
9 that right now. Again, I just hope that he can  
10 learn from his experience and go on with his  
11 life.

12 He did get his GED since this happened.  
13 He was going to go to Tech but then his grand-  
14 mother died and he moved back to New York. So  
15 -- he's got a lot of potential.

16 THE COURT: Y'all approach just for a  
17 second.

18 (OFF RECORD BENCH CONFERENCE)

19 MR. LANIER: And I'd forgotten, Your  
20 Honor, that the prosecutor and I had agreed that  
21 he could report in two weeks, even though he  
22 lives in New York.

23 THE COURT: What day will that be?  
24 The 30<sup>th</sup> of May?

25 MR. LANIER: 30<sup>th</sup> of May, (affirmative

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1 nod).

2 THE COURT: Eight o'clock.

3 MR. LANIER: (Affirmative nod), eight  
4 o'clock.

5 THE COURT: At the Hill-Finklea  
6 Detention Center?

7 MR. LANIER: (Affirmative nod), 8:00  
8 a.m. Have long have you been in jail? (Sidebar  
9 with defendant), he's done altogether seven  
10 months, Your Honor, when he was -- first as a  
11 juvenile and then as an adult.

12 THE COURT: Right. Okay. Anything  
13 that you want to tell me, Mr. Brown?

14 DEFENDANT: (No verbal response).

15 THE COURT: You understand that it is  
16 a nonparolable offense?

17 DEFENDANT: Yes, sir.

18 THE COURT: That means that you have  
19 to serve eight-and-a-half years. Do you  
20 understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: And then there will be a  
23 two- and or three-year community supervision --  
24 two. Do you understand that?

25 DEFENDANT: Yes, sir.

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before The Honorable R. Markley Dennis, Jr.

13

1 THE COURT: If you aren't successful,  
2 they can sentence you up to a year for each  
3 violation, to the extent of the balance of your  
4 sentence, which would be a year and a half. Do  
5 you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: The sentence of the court  
8 is that you be committed to the Department of  
9 Corrections for a term of ten years. I give you  
10 credit for time served, of seven months. The  
11 sentence will be deferred until May 30<sup>th</sup>, 2011,  
12 at 8:00 a.m. when you must report to the  
13 Berkeley County detention center to begin  
14 serving your sentence. We trust you to report  
15 at that time. Good luck to you.

16 MR. LANIER: Thank you, Your Honor.

17 (HEARING CONCLUDED)

18

19

20

21

22

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24

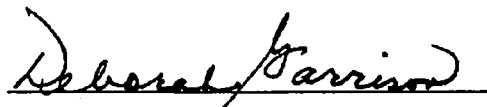
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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,  
official court reporter for the 9<sup>th</sup> Judicial  
Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true,  
accurate and complete transcript of the hearing  
held before The Honorable R. Markley Dennis,  
Jr., on May 16, 2011;

I further certify that I am neither kin nor  
counsel to any of the parties and have no  
interest in the outcome of this action.



Deborah Garrison  
Circuit Court Reporter  
9<sup>th</sup> Judicial Circuit

Charleston, South Carolina  
February 24, 2012

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 STERLING D. BROWN # 346227 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 MITCHELL J. LANIER )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

2012 - CP - 08 - 157

APPLICATION FOR  
 POST-CONVICTION RELIEF

FILED  
 2012 JAN 23 AM 11:50  
 CLERK OF COURT  
 BERKELEY COUNTY

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (eitherly 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 RIDGELAND CORRECTIONAL INSTITUTION P.O. BOX 2039
2. Name and location of Court which imposed sentence BERKELEY COUNTY COURT OF GENERAL SESSION  
RIDGELAND, SC 29336
3. Name(s) of co-defendant(s) (if any) EMMANUEL GAMBLE, SAOIEIL GIBBS, MARCUS RANIE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2010 - GS - 08 - 0512 (INDICTMENT NUMBER)
  - (b) \_\_\_\_\_ E - 674360 (WARRANT/TICKET NUMBER)
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) \_\_\_\_\_ MAY 16, 2011 / 10 YEARS VIOLENT
  - (b) \_\_\_\_\_

*Handwritten initials*

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓ \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

(a) TRAIL COUNSEL FAILED TO ADVISE ME OF

(b) MY APPEAL RIGHTS.

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

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

custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL,  
INVOLUNTARY GUILTY PLEA

- (a) \_\_\_\_\_
- b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- a) TRAIL COUNCEL FAILED TO ADVISE ME OF STIPULATIONS
- (b) BEHIND SIGNING GUILTY PLEN.
- (c) \_\_\_\_\_

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. \_\_\_\_\_  
(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

- i. \_\_\_\_\_
- ii. N/A
- 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) \_\_\_\_\_ TRAIL COUNCEL WAS INEPT AND FAILED
- (b) \_\_\_\_\_ TO FILE AN APPEAL IN APPLICANT'S CASE
- (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? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. MITCHELL, J. LANIER
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. \_\_\_\_\_ GUILTY PLEA HEARING
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:
- \_\_\_\_\_ TIME REDUCTION, VACATION OF SENTENCE AND INDICTMENTS.
20. Are you now under sentence from any other court that you have not challenged?
- NO

2012 - CP - 08 - 157

STATE OF SOUTH CAROLINA )  
 )  
County of \_\_\_\_\_ )

VERIFICATION

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

Healy Brown Gladys Brown

SWORN to and subscribed before me this 17<sup>th</sup>  
day of January, 2012.

\_\_\_\_\_  
(L.S.)  
Notary Public

My Commission Expires: \_\_\_\_\_

FILED  
2012 JAN 23 AM 11:50  
MARTY BERGMAN  
CLERK OF COURT  
BERKELEY COUNTY, SC

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 17 DAY OF January

2012  
Virginia Robinson

NOTARY PUBLIC  
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 20, 2011

20 ~~10~~ - CP - 08 - 157

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

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

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

STELLING BROWN ~~Stelling Brown~~  
Applicant

SWORN or affirmed to and subscribed before me this ~~3rd~~ day of ~~October~~, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

FILED  
2012 JAN 23 AM 11:50  
PARTY BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 17 DAY OF January  
2012  
Virginia Robinson  
NOTARY PUBLIC  
STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES May 20, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
County of BERKELEY	)	NINTH JUDICIAL CIRCUIT
	)	
Sterling D. Brown, 346227,	)	C/A No.: 2012-CP-08-0157
Applicant,	)	
-vs.-	)	
State of South Carolina,	)	AMENDMENT TO APPLICANT'S
Respondent.	)	POST-CONVICTION RELIEF APPLICATION
	)	

The Applicant, Sterling D. Brown, 346227, herein Amends and supplements his original Application for Post-Conviction Relief (APCR) filed January 23, 2012, of which a Return has not been made by the Respondent, pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedures (SCRCP).

The Applicant now brings forth and incorporates into his original application the following, while maintaining the remainder of the original application.

In regards to question Number Four (4) on Page One of the APCR:

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

- (a) 2009-GS-08-1683, arrest warrant number H-758428; Armed Robbery.

This 2 day of March, 2012.

Respectfully Submitted;

*Sterling Brown*  
 Sterling D. Brown, 346227  
 Applicant, Pro-se  
 RCI, PO Box 2039, SB-  
 Ridgeland, SC 29936

2012 MAR -5 AM 10:45  
 MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

FILED

303

*h*

Sterling D. Brown, 346227  
RCI, PO Box 2039, SB-41  
Ridgeland, SC 29936-2039

March 2, 2012

Mary P. Brown  
Clerk of Court  
Monks Corner, SC

Re: Amending of Post-Conviction Relief Application, 2012-CP-08-0157, Brown v.  
State.

Dear Ms. Brown:

I hope that this letter finds you and yours well and in good spirits. Enclosed please find an Amendment to my previously submitted application. I had inadvertently put the wrong indictment number in the application. Upon filing, could you return a clocked-stamped copy, please?

Would you also please send me a copy of my arrest warrant, indictment and sentencing sheet? I never received a copy of any of those documents before leaving the county.

I appreciate your time, assistance, and attention to this request. I look forward to a positive response. Have a good day!

Sincerely yours:

  
Sterling D. Brown

cc: File

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 County of BERKELEY ) NINTH JUDICIAL CIRCUIT  
 )  
 Sterling D. Brown, 346227, ) C/A No.: 2012-CP-18-0157  
 Applicant, )  
 -vs.- )  
 State of South Carolina, ) AMENDMENT TO APPLICANT'S  
 Respondent. ) POST-CONVICTION RELIEF APPLICATION  
 )

---

2012 FEB 21 AM 11:33  
 FILED  
 BERKELEY COUNTY SC  
 CLERK OF COURT  
 STERLING D. BROWN

The Applicant, Sterling D. Brown, 346227, proceeding pro-se, herein Amends and supplements his original PCR Application filed January 23, 2012, of which a Return/Answer has not been made by the Respondent, pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedures (SCRCP).

The Applicant now brings forth and incorporates into his original application the following, while maintaining the remainder of the original application.

In regards to question Number Ten (10) on Page Three of the Application for Post-Conviction Relief:

State concisely the Grounds on which you base your allegation(s) that you are being held in custody unlawfully.

- A. Unconstitutional Sentencing Scheme;
- B. Ineffective Assistance of Counsel;
- C. Not Knowingly, Intelligently, nor voluntary entering guilty plea.

13

In regards to question Number Eleven (11) on Page Three of the Application for Post-Conviction Relief:

[A]. APPLICANT'S PLEA WAS UNCONSTITUTIONALLY APPLIED USING A STATE STATUTORY SCHEME THAT WAS AMBIGUOUS AND BASED UPON CONFLICTING STATUTES.

When the Respondent indicted, then applied sentence to the Applicant, it did so unlawfully. The Applicant was sentenced pursuant to S.C. Code of Law §16-11-330(A). That statute dealt with the crime of armed robbery and included a specific sentencing scheme.

In the statute there is specific language regarding the mandatory minimum the Applicant could be sentenced to serve in prison. It stipulates that "no part of which may be suspended or probation granted." Then it further stipulates that, "A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence."

Upon entering the SCDC the Applicant was told by Classification that his offense was one of no parole because of S.C. Code of Law §24-13-100 which defines what are no parole offenses. Because Applicant's offense is classified by statutory law to be a Class A felony, pursuant to S.C. Code of Law §16-1-90(A), he could never be eligible for parole.

Under the rules of statutory construction, in interpreting statutes the Court demands that the intent of legislature be ascertained. Media General Communications, Inc. v. S.C. Public Services Com'n., 694 SE2d 525 (SC 2010). Unless there is something in a statute requiring a different interpretation, the words used in the statute must be given their ordinary meaning. Mullinax v. J.M. Amusement, Co., 485 SE2d 103, 106 (SC App. 1997). Subtle or force construction to limit or expand a statute's operation is not allowed. State v. Jacobs, 713 SE2d 621 (SC 2011).

If two statutes are in conflict, latest statute passed should prevail so as to repeal earlier statute to extent of repugnancy. Hair v. State, 406 SE2d 332 (SC 1991). But in this case, because the statute is penal in nature, it must be strictly construed against the State. State v. Thomas, 642 SE2d 724 (SC 2007), Thomas v. Davis, 192 F3d 445 (CA4, (SC) 1999). As such, any ambiguity should be resolved in favor of lenity granting the Applicant the benefit of the doubt. Id.

Inmates have a protected right to parole hearing. James v. SCDPPPS, 656 SE2d 399 (SC App. 2008), S.C. Code §24-21-620. One whose civil or political rights are directly affected by a statute may have the necessary interest to challenge the validity of the statute by a declaratory judgment proceeding. Lee v. Clark, 77 SE2d 485 (SC 1953).

Pursuant to S.C. Code of Law §17-27-20(6), the PCR Act, instead of an actual declaratory judgment proceedings, allows a hearing to be jurisdictionally held in this court, to achieve the same analysis.

To be sure, the specific statutes create a state-created liberty to be adhered to by its adoption and Due Process and Equal Protection of the Law. Sandin v. Conner, 115 S.Ct. 2293, 2300 (1995). Though the Applicant's rights may be diminished by the plight of his incarceration, he is not wholly stripped of constitutional protections when he is imprisoned for a crime; there is not iron curtain drawn between the constitution and the prisons of this Country. Al-Shabbaz v. State, 527 SE2d 742, 754 (2000), Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974).

[B]. APPLICANT'S PLEA WAS THE PRODUCT OF INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF BOTH STATE AND FEDERAL CONSTITUTION.

Applicant was denied his Sixth and Fourteenth Amendment Rights to an effective assistance of counsel insofar as his plea counsel failed to provide

competent representation and these omissions were prejudicial to his defense.

The Applicant's counsel failed to properly investigate the facts surrounding the circumstances that lead to his arrest. It has been clearly established that the amount of pre-trial research, or lack thereof, can most definitely affect the outcome of a criminal defendant's trial. Davis v. Alabama, 100 S.Ct. 1827 (1980).

Effective assistance of counsel, i.e., will satisfy the requirements of the Sixth Amendment, is counsel "reasonable likely to render and rendering reasonably effective assistance given the totality of the circumstances?" Washington v. Strickland, 693 F.2d 1243, 1250 (CA5, 1982)(en banc) Cert. Granted, 466 U.S. 668, 104 S.Ct. 2052 (1984); Lockhart v. Fretwell, 113 S.Ct. 1838 (1993); Mays v. Balkcom, 631 F.2d 48, 52, n.1 (CA5, 1980).

In considering the totality of the circumstances, a court must examine the quality of counsel's assistance from the time of initial retention, through the time of appeal. Goodwin v. Balkcom, 684 F.2d 794, 805 (CA 11), State v. Williams, 571 SE2d 703 (Ct. App. 2002).

It is the Court's responsibility under the Constitution to ensure that no criminal defendant, is left to the mercies of incompetent counsel. Padilla v. Kentucky, 130 S.Ct. 1473, 1486 (2010). Before deciding whether to plead guilty, the Applicant was entitled to the effective assistance of competent counsel. Id., at 1480.

Would not justice best be served once a criminal defendant raised the issue of ineffective assistance of counsel, and the court determines there is a question of whether the defendant received effective assistance of counsel, should not the court allow the Applicant be granted a hearing regarding the issue?

[C]. THE APPLICANT CONTENDS THAT HIS PLEA CANNOT BE CONSIDERED VOLUNTARY, DUE TO HIM BEING DENIED EFFECTIVE ASSISTANCE OF COUNSEL, AND THAT THE PLEA WAS BROUGHT ABOUT BY IGNORANCE, AND THE 'LACK' OF COMPETENCE ON THE PART OF HIS ATTORNEY, BY ISSUING "ERRONEOUS" ADVISE AS TO THE PLEA ENTERED BY THE APPLICANT. Padilla v. Kentucky, 130 S.Ct. 1473 (2010), Hinson v. State, 377 SE2d 338 (SC 1989).

(1). Counsel did not actually or substantially assist him in deciding whether to plead guilty or not;

(2). Counsel did not familiarize himself with the facts of the case;

(3). Counsel did not impart to the Applicant an understanding of the law in relationship to the facts;

(4). Counsel issued erroneous advice to the Applicant as to the length of sentence he would receive by entering his plea;

(5). Counsel issued advice to the Applicant to the effect that no defense was possible to his charge;

(6). Counsel "coerced" the Applicant into entering his plea, by making threats as to the length of sentence he would receive by not pleading guilty.

For a plea to be entered knowingly and voluntarily, a criminal defendant must possess an understanding of the law in relation to the facts. Cf: McCarthy v. U.S., 89 S.Ct. 1171 (1969). Providing this "understanding" of the law in relation to the facts, is the function of the accused's counsel.

Counsel is needed so that the accused may know precisely what he is doing, so that he is "fully aware" of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution. This is what recent precedent has declared in, Rothgery v. Gillespie Cty., Tx, 128 S.Ct. 2578 (2008), counsel is to be made available at the time adversarial judicial criminal proceedings begin.

In Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55 (1933), the Court stated: "the right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel." Note: Nor should we ignore the Supreme Court's admonition in Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006 (1972), to the effect that, "Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor as well as felony cases."

Defense counsel has a duty to bring to bear such skills and knowledge as will render the trial a reliable adversarial testing process. Strickland, 466 U.S. at 690.

Though this was a guilty plea hearing, counsel can not go into it ignoring constitutional concerns of the plea bargain, nor whether the plea would violate the constitutional rights of the Applicant. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000).

Applicant recognizes that once a defendant enters a plea on the advice of counsel, it may only be attacked to show the voluntary and intelligent character by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the Applicant would not have pled guilty, but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58 (1985), Holden v. State, 713 SE2d 611 (SC 2011).

To find a guilty plea is not voluntarily and knowingly entered into, the record must establish the Applicant had not a full understanding of the consequences of his plea and the charges against him. Id., Roddy v. State, 528 SE2d 418, 421 (SC 2000). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent

choice among the alternative course of action open to the defendant." Hill, 474 U.S. at 56 (quoting N.C. v. Alford, 400 U.S. 25, 31 (1970)).

The Applicant further recognizes that the determination of guilty plea issue will be through both the guilty plea transcript and the specific inquiries made at the PCR hearing. Holden, supra, Suber v. State, 640 SE2d 884, 886 (SC 2007).

#### CONCLUSION

The Applicant through the use of precedent, and testimony at the PCR hearing, believes this Court will find that the Applicant's Constitutional rights were diminished through an illegal sentencing scheme, ineffective assistance of counsel, and the uttering of an involuntary guilty plea. As such this Court should vacated the sentence with prejudice and release the body.

THIS THE APPLICANT HUMBL Y PRAYS!

This 23 day of February, 2012.

Respectfully Submitted;

Sterling D. Brown

Sterling D. Brown, 346227

Applicant, Pro-se

RCI, PO Box 2039, SB-

Ridgeland, SC 29936

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Sterling D. Brown, #346227, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-08-157

RETURN

FILED  
 2012 MAR 16 AM 11:54  
 HARRY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 23, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the August 2009 term of the Berkeley County Grand Jury for armed robbery (2009-GS-08-1683). J. Mitchell Lanier, Esquire, represented the Applicant. On May 16, 2011, Applicant pled guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for ten (10) years. Applicant did not appeal the guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject convictions, the records of the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel in that counsel failed to advise Applicant of stipulations behind signing the guilty plea and failed to file an appeal.
2. Involuntary guilty plea.

### III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that 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, 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 plea. However, allegations the voluntary nature of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

March 15, 2012.

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS

2012-CP-08-157

STERLING D. BROWN, #346227 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )

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

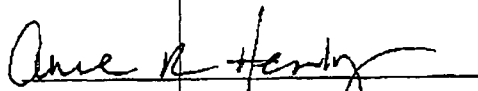
**Pamela J. Polzin, Esquire**  
Pamela J. Polzin Attorney at Law  
PO Box 62255  
N. Charleston, SC 29419-2255

HARRY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2012 MAR 16 AM 11:54

FILED

DATED this 15th day of March, 2012

  
Anne Henley, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 ----- )

IN THE COURT OF  
 COMMON PLEAS  
 2012-CP-08-0157

STERLING BROWN, )  
 ) APPLICANT )  
 vs. )  
 )  
 THE STATE OF SOUTH )  
 CAROLINA; )  
 ) RESPONDENT )  
 ----- )

TRANSCRIPT OF RECORD

NOVEMBER 20, 2013  
 MONCKS CORNER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD

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

PAMELA J. POLZIN, ESQUIRE  
 ATTORNEY FOR APPLICANT

ASHLEIGH R. WILSON, ASSISTANT ATTORNEY GENERAL  
 ATTORNEY FOR THE STATE

SHARON VIZER,  
 OFFICIAL COURT REPORTER

## I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
STERLING BROWN				
BY MS. POLZIN	3			
BY MS. WILSON		23		
ADRIAN DEJUE				
BY MS. WILSON	23			
BY MR. POLZIN			--	
CERTIFICATE PAGE	29			

\*\*\* NO EXHIBITS WERE ENTERED \*\*\*



STERLING BROWN -- DIRECT BY MS. POLZIN

1 duly sworn, testified as follows:

2 THE CLERK: If you could please take a seat and  
3 state your name, spelling your last name for the  
4 record.

5 THE WITNESS: Sterling Brown.

6 THE COURT: All right. And, Counsel, I know  
7 you've talked to your client about this, but I want to  
8 make sure he understands what he's asking for today.  
9 He's asking that his guilty plea to be withdrawn, is  
10 that correct?

11 MS. POLZIN: That's correct, Your Honor.

12 THE COURT: And he faced 10 to 30, is that right?

13 MS. POLZIN: Yes, Your Honor.

14 THE COURT: And he was sentenced to 10?

15 MS. POLZIN: That's correct, Your Honor.

16 THE COURT: Sir, do you understand that you could  
17 get 30 years if you go to trial on this?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: And you want to proceed with this?

20 THE APPLICANT: Yes, ma'am.

21 THE COURT: All right. Go ahead.

22 MS. POLZIN: Thank you, Your Honor. Just for the  
23 record, with regard to the applications that have been  
24 filed, Mr. Brown initially filed his application on  
25 January 23, 2012. And thereafter, he filed an amended

STERLING BROWN -- DIRECT BY MS. POLZIN

1 application on February 27, 2012 in the Berkeley County  
2 Clerk of Court and the AG has received a copy of that  
3 and has accepted proper service of that.

4 THE COURT: Okay. Thank you.

5 DIRECT EXAMINATION BY MS. POLZIN:

6 Q. Mr. Brown, in your amendment, you have  
7 indicated three allegations that you are being held in  
8 custody unlawfully for, is that correct?

9 A. Yes, ma'am.

10 Q. All right. And the first one is an  
11 unconstitutional sentencing scheme, is that correct?

12 A. Yes, ma'am.

13 Q. Do you wish to go forward on that allegation

14 --

15 A. Yes, ma'am.

16 Q. -- after speaking with me -- you do? All  
17 right.

18 THE COURT: Well, before we do that, explain to me  
19 why that would not have been the subject of a direct  
20 appeal or why it should not have been the subject of a  
21 direct appeal, and why it's even properly before this  
22 court.

23 MS. POLZIN: I would -- I had advised Mr. Brown to  
24 withdraw that.

25 THE COURT: And he chose not to?

STERLING BROWN -- DIRECT BY MS. POLZIN

1 MS. POLZIN: And he chose not to, Your Honor.

2 THE COURT: Okay. That's fine.

3 BY MS. POLZIN:

4 Q. Okay. Mr. Brown, you allege that the statute  
5 under which you were sentenced is illegal and  
6 unconstitutional, is that right?

7 A. Yes, ma'am.

8 Q. Okay.

9 THE COURT: Based on what?

10 BY MS. POLZIN:

11 Q. Based on what? That's exactly right. Thank  
12 you.

13 A. The statute 16-11-338 is a specific statute  
14 which states --

15 THE COURT: I don't need to know what the statute  
16 says. I know what it says. Did a jailhouse lawyer  
17 tell you that that would be a good idea to put in your  
18 petition?

19 A. No.

20 THE COURT: What made you think of that?

21 A. When I looked up the different statutes.

22 THE COURT: And you just decided that one was  
23 unconstitutional?

24 A. Yes, ma'am.

25 THE COURT: Okay. Well, tell your lawyer why

STERLING BROWN -- DIRECT BY MS. POLZIN

1 briefly.

2 A. Because the 24-13-100 statute states the A, B,  
3 C crimes are non-parolable offenses.

4 THE COURT: I don't think that's what 24 says, but  
5 okay.

6 A. And --

7 THE COURT: Why, in layman's terms, is it  
8 unconstitutional?

9 A. Because it's -- the statutes conflict.

10 THE COURT: There are two statutes in conflict is  
11 what you think?

12 A. Yes.

13 THE COURT: Okay. Did you file an appeal from  
14 your guilty plea?

15 A. No, ma'am.

16 THE COURT: Challenging the statute?

17 A. No, ma'am.

18 THE COURT: Okay. Counsel, do you want to probe  
19 that with him or move on to the next ground?

20 BY MS. POLZIN:

21 Q. All right. You did not -- no appeal was filed  
22 in your case by Mr. Lanier?

23 A. No, ma'am.

24 Q. Did you request that he file an appeal?

25 A. I mean, he never mentioned anything about the

STERLING BROWN -- DIRECT BY MS. POLZIN

1 appeal. Because when I got sentenced, I was sentenced  
2 May 16, 2011. And they deferred my sentencing to May  
3 31st.

4 Q. And did you ever request that Mr. Lanier file  
5 an appeal?

6 A. No, ma'am.

7 Q. Okay. Do you believe -- do you have anything  
8 else where -- with regard to the sentencing -- I'm  
9 sorry -- the statutory scheme?

10 A. No, that's it.

11 Q. Do you -- do you remember when we discussed  
12 this?

13 A. Yes, ma'am.

14 Q. Okay. And I've advised you that the statute  
15 under which you were charged had one penalty; do you  
16 recall that?

17 A. I do.

18 Q. And then another statute got filed, which we  
19 call the Omnibus Crime Control Act. And that set  
20 penalties on top of that. Do you remember me  
21 discussing that with you and sending you a letter about  
22 that?

23 A. No, ma'am.

24 Q. You do not? Okay. Well, do you recall that I  
25 advised you that unfortunately your sentence of eight

STERLING BROWN -- DIRECT BY MS. POLZIN

1 and a half years, that you would have to serve eight  
2 and a half years of ten is the appropriate sentence  
3 under the law, and that we could not challenge that?

4 A. Yeah. I remember you said that.

5 Q. Okay. But you disagree with me, is that  
6 right?

7 A. Yes, ma'am.

8 Q. You believe that it's wrong, one statute said  
9 seven and a half years and another says eight and a  
10 half, so that's not fair. And that's why you believe  
11 it's unconstitutional?

12 A. Yes, ma'am.

13 Q. Thank you. On the next -- is there anything  
14 else on that issue that you want to tell the Court?

15 A. No, that's it.

16 Q. Okay. Did I explain our discussion clearly?

17 A. (Nodded affirmatively.)

18 Q. Is there anything I left out that you want to  
19 add?

20 A. No.

21 Q. Under B, you also allege that Mr. Lanier was  
22 ineffective assistance of counsel. Would you please  
23 explain to the court why Mr. Lanier was ineffective  
24 assistance of counsel?

25 A. I mean, he really -- he failed to put up any

STERLING BROWN -- DIRECT BY MS. POLZIN

1 type of defense.

2 Q. He what? I'm sorry.

3 A. He failed to put up any type of defense. Like  
4 he -- he really didn't do anything for me. And he kept  
5 trying to -- I asked him about the YOA. He told me I  
6 didn't qualify for that. And he ain't really -- he  
7 ain't try to help me.

8 Q. Did you ask him to do certain things and he  
9 didn't do them?

10 A. Yes, ma'am.

11 Q. Can you tell us what they are -- what they  
12 were?

13 A. I asked -- I asked him about -- if he would  
14 try to get me a YOA or probation. And he said he was  
15 just going to try to get me probation.

16 Q. Okay. Anything else that you asked him to do  
17 that he did not do?

18 A. I asked him if he could try to get it dropped,  
19 the strong armed robbery, but he didn't do that either.

20 THE COURT: He got the minimum sentence on armed  
21 robbery, correct?

22 A. Yes, ma'am.

23 THE COURT: Okay. Yes, ma'am.

24 MS. POLZIN: Thank you.

25

STERLING BROWN -- DIRECT BY MS. POLZIN

1 BY MS. POLZIN:

2 Q. Anything else, Mr. Brown, that he -- you asked  
3 him to do that he did not do?

4 A. No, that's it.

5 Q. Okay. And number C, you say that your guilty  
6 plea was not voluntary, knowingly and intelligently  
7 made. Could you please explain -- and in your brief  
8 you have six different items under C. So could you  
9 please explain these. The one -- and I'll read it out  
10 to help you, "Counsel did not actually or substantially  
11 assist you in deciding whether to plead guilty or not";  
12 Could you please explain that ground?

13 A. It was more of a coercion. Because he --  
14 like, this was my first time being in the court period  
15 throughout the whole situation. And at that moment  
16 right then and there, he told me -- you have to make a  
17 decision. He said, either you can take the plea and  
18 take this 10, or you are going to get 30.

19 THE COURT: Well, let me just ask you a question  
20 about that. I think Judge Dennis asked you on page 7  
21 in the transcript "has anybody promised you anything or  
22 threatened you in any way to get you to plead guilty".  
23 Do you remember what your response was?

24 A. (Nodded affirmatively.)

25 THE COURT: What was it?

STERLING BROWN -- DIRECT BY MS. POLZIN

1 A. No.

2 THE COURT: "No, sir." Correct?

3 A. Yes, ma'am.

4 THE COURT: Okay.

5 MR. POLZIN: Thank you, Your Honor.

6 BY MS. POLZIN:

7 Q. The next ground that you stated is that  
8 Counsel did not familiarize himself with the facts of  
9 the case. Could you explain that, please?

10 A. I mean, really every time I would go to his  
11 office to see him he -- he just like -- he just skimmed  
12 through it, and asked me the same questions every time  
13 like who is this person or who was that person, or who  
14 did this and who did that. He ain't really...

15 Q. He didn't what?

16 A. He ain't really do -- I feel like he could  
17 have did better for me than he did.

18 Q. Okay. Can you be more specific?

19 A. Like -- what you mean by that?

20 Q. Can you be more specific by saying exactly  
21 what it was that he could have done for you that he did  
22 not do?

23 A. He ain't really investigate the case. I never  
24 even seen my Rule 5. He never even showed it to me.

25 Q. All right. Let's move on to number three.

STERLING BROWN -- DIRECT BY MS. POLZIN

1 "Counsel did not impart to the applicant an  
2 understanding of the law in relationship to the facts."  
3 You are saying he did not explain the law to you in  
4 relation to the facts. Could you explain what you mean  
5 by that?

6 A. I mean he ain't really explain to me nothing  
7 too much about the charge until that day, May 16th,  
8 right before I went in front of the judge.

9 Q. Anything else on that point?

10 A. (Nodded negatively.)

11 Q. On number four, Counsel gave erroneous advice  
12 to you as to the length of the sentence you would  
13 receive by entering your plea. What do you mean by  
14 that? Could you explain it, please?

15 A. Well, with that one, he -- he --

16 Q. He explained to you that the charge of armed  
17 robbery carried a sentence of 10 to 30 years, is that  
18 right?

19 A. Yes, ma'am.

20 Q. Okay. Did you understand that?

21 A. I did, but in a sense I didn't. Because he  
22 didn't -- like I said, that was my first time in a  
23 courtroom throughout that whole situation. And the  
24 only thing that was really going through my mind at the  
25 time was him telling me if I didn't take the plea, I

STERLING BROWN -- DIRECT BY MS. POLZIN

1 was going to get 30 years.

2 Q. Did you -- how did you understand -- what did  
3 you understand that to mean?

4 A. If I didn't take the 10, I was going to get  
5 30.

6 Q. Did you understand that you were going to go  
7 to trial if you did not take the offer of 10 years?

8 A. Yes, ma'am.

9 Q. And if you went to trial, there was a  
10 possibility you would be sentenced to 30 years, the  
11 maximum term?

12 A. Yes, ma'am.

13 Q. If you were convicted, so you understand that  
14 now?

15 A. (Nodded affirmatively.)

16 Q. And you did not understand that back then?

17 A. No.

18 THE COURT: I'm sorry, yes or no?

19 A. No, ma'am. No.

20 BY MS. POLZIN:

21 Q. You did not?

22 A. No.

23 Q. Number five, Counsel gave advice to you to the  
24 effect that no defense was possible to your charge.  
25 Could you please explain that?

STERLING BROWN -- DIRECT BY MS. POLZIN

1 A. Say that one more time, please?

2 Q. Your lawyer told you that no defense was  
3 possible to your charge of armed robbery. Could you  
4 explain that? That's your 5th point under the guilty  
5 plea being involuntary.

6 A. Like he -- he ain't really -- he ain't tell me  
7 -- he didn't -- he told me it wasn't really no type of  
8 effort, but he didn't really look into the fact that  
9 they didn't have no type of evidence, because he -- all  
10 he had was hearsay from co-defendants.

11 Q. That was your understanding?

12 A. (Nodded affirmatively.)

13 Q. Number six, you say that your attorney coerced  
14 you into entering your plea by making threats as to the  
15 length of the sentence you would receive by not  
16 pleading guilty. That's number six. Could you please  
17 explain that?

18 A. Like beginning with the 30 years, he is  
19 telling me if I ain't take the 10, I'm going to have to  
20 do 30.

21 Q. And when was that conversation?

22 A. May 16, 2011.

23 Q. The day that you went to court for the plea?

24 A. Yes, ma'am.

25 Q. Do you remember where you were when that was

STERLING BROWN -- DIRECT BY MS. POLZIN

1 said?

2 A. Berkeley County Courthouse.

3 Q. You were in the courthouse?

4 A. We was like right outside the door, sitting on  
5 the bench.

6 Q. Were you in custody or were you out on bond?

7 A. No. I flew in from New York.

8 Q. So you were on bond and he talked with you in  
9 the courtroom or outside the courtroom?

10 A. Outside the courtroom.

11 Q. Do you remember what was said as best you can  
12 recall?

13 A. I mean, the best I can put it from my  
14 understanding, my memory, he told me he said, all your  
15 co-defendants signed a guilty plea. If you don't sign  
16 this guilty plea, they are going to testify against you  
17 and you are going to get 30 years.

18 Q. Okay. And did you understand that to be a  
19 threat?

20 A. I --

21 THE COURT: Be careful asking him about this. He  
22 already testified under oath about what he told Judge  
23 Dennis and what he told me earlier.

24 MS. POLZIN: Yes, Your Honor.

25

STERLING BROWN -- CROSS BY MS. WILSON

1 BY MS. POLZIN:

2 Q. Could you explain why you felt that was a  
3 threat?

4 A. Really, I was more intimidated about the 30.

5 Q. Because you were inexperienced?

6 A. Yeah, I didn't really understand.

7 Q. You were nervous?

8 A. Yes, ma'am.

9 Q. Anything else?

10 A. (Nodded negatively.)

11 Q. Is there anything else you'd like to tell the  
12 court?

13 A. No, that's it.

14 MS. POLZIN: Thank you, Your Honor. Nothing  
15 further.

16 THE COURT: Thank you. Cross-examination.

17 CROSS EXAMINATION BY MS. WILSON:

18 Q. Good morning, Mr. Brown.

19 A. Good morning.

20 Q. Do you recall how many times you met with Mr.  
21 Lanier before you pled guilty?

22 A. Two or three or four times.

23 Q. Did he go over your -- go over with you your  
24 Rule 5 discovery from the State?

25 A. No, ma'am.

STERLING BROWN -- CROSS BY MS. WILSON

1 Q. Did you ever see your Rule 5 discovery?

2 A. No, ma'am.

3 Q. Did you discuss with him any statement your  
4 co-defendants made or any evidence that the State had  
5 against you?

6 A. No, ma'am.

7 Q. What did you discuss with him?

8 A. Like, when we went to the office, it was more  
9 silence than anything. Like me and my aunt or my  
10 mother or somebody who would come with me, we'd just be  
11 sitting in his office. He would look at some papers.  
12 And he'll ask me a question like who is this person.  
13 He'll ask me one of my co-defendant's names. He'll go  
14 how do you pronounce that and all like that. He would  
15 be like okay, and just keep looking through it. He  
16 would leave the office and come back in, like all  
17 right. I'll see y'all another time.

18 Q. Did you discuss possible defenses with Mr.  
19 Lanier?

20 A. Excuse me?

21 Q. Did you discuss possible defenses with Mr.  
22 Lanier?

23 A. Kind of, but not really. He was like -- I  
24 just asked him if it was possible that I could get YOA  
25 or probation or something.

STERLING BROWN -- CROSS BY MS. WILSON

1 THE COURT: You know, because he was very  
2 inexperienced, didn't know anything about the court  
3 system.

4 MS. WILSON: Okay.

5 BY MS. WILSON:

6 Q. Did you give your attorney any leads or people  
7 to investigate your case?

8 A. No, ma'am.

9 Q. And ultimately you decided to plead guilty, is  
10 that correct?

11 A. Yes, ma'am.

12 Q. You've got to say yes or no.

13 A. Yes, ma'am.

14 Q. Okay. And was it your decision to plead  
15 guilty?

16 A. Not really.

17 Q. Did you tell the court that you wished to  
18 plead guilty?

19 A. Yeah. I told the court that, but I didn't  
20 really want to plead guilty.

21 Q. Do you recall agreeing with the facts that the  
22 State presented against you during your guilty plea?

23 A. The facts?

24 Q. During your guilty plea, when the Solicitor  
25 told the court about the incident, did you agree to the

STERLING BROWN -- CROSS BY MS. WILSON

1 facts and say that's what happened?

2 A. Yeah. Mr. Lanier told me he had -- he told me  
3 he was, like, they are going to ask you this question  
4 and this question and this question. Say yes to these,  
5 say no to these. He trained me in answering the  
6 questions a certain way.

7 Q. So are you saying the answers you gave to the  
8 court during your guilty plea were untruthful?

9 A. Some of them.

10 Q. Are you telling the truth here today?

11 A. Yes, ma'am.

12 Q. And do you recall waiving your different  
13 constitutional rights at your guilty plea?

14 A. Don't I waive my rights when I plead guilty?

15 Q. Did you -- or do you recall that, waiving your  
16 right to a jury trial, right to remain silent, do you  
17 recall that?

18 A. Yes. Yes.

19 Q. Do you recall telling the judge that you were  
20 satisfied with Mr. Lanier's services?

21 A. That's how he told me to answer that question.

22 Q. But you told the court yes?

23 A. Yeah, I did.

24 Q. And do you recall telling the court that you  
25 didn't have any complaints with Mr. Lanier's

STERLING BROWN -- CROSS BY MS. WILSON

1 representation?

2 A. Yes. I remember saying that.

3 Q. Okay. He also recalled the court telling you  
4 that your sentence for armed robbery was a  
5 non-parole -- that armed robbery is a non-parolable  
6 offense?

7 A. I remember.

8 Q. And today you're saying that Mr. Lanier didn't  
9 put up a defense for you, what defenses did you want  
10 him to put up?

11 A. It was no type -- excuse me -- it was no type  
12 of evidence. They didn't have a gun. There wasn't no  
13 cameras, no nothing. It was just hearsay.

14 Q. And today you're saying that you were  
15 threatened and coerced by Mr. Lanier, but you told the  
16 court that you weren't threatened, is that correct?

17 A. Yeah.

18 Q. And it was -- you said -- you testified that  
19 Mr. Lanier explained the charges and guilty plea to you  
20 before you pled guilty; is that still correct?

21 A. (Nodded affirmatively.)

22 Q. And the court told you that you could be  
23 facing up to 10 -- from 10 to 30 years for armed  
24 robbery; do you recall that?

25 A. Yes.

1 MS. WILSON: Thank you.

2 MS. POLZIN: Nothing further, Your Honor.

3 THE COURT: All right. Well, I just have one  
4 question. I know you say there was no evidence just  
5 hearsay and such, but my understanding is that you, Mr.  
6 Brown, provided the officers with a written statement  
7 on May 18, 2009, confessing to the crime and  
8 implicating the other individuals in the incident. And  
9 that although you didn't have a criminal record at the  
10 time, you had another pending charge for possession of  
11 a weapon on school property that was dismissed as a  
12 result of this plea; is that correct?

13 A. I never wrote that statement.

14 THE COURT: You never gave a statement?

15 A. No, ma'am. I mean, that's what it says, but  
16 no. Because --

17 THE COURT: So when the court said are these facts  
18 correct, Mr. Brown, and you said "yes, sir", you were  
19 lying that day or this day?

20 A. No. That was how he told me to answer the  
21 questions.

22 THE COURT: Okay. Thank you, sir. All right..  
23 Sir, you may step back to the table. All right. Yes,  
24 ma'am. Any further witnesses?

25 MS. POLZIN: No, Your Honor.

ADRIAN DEJEU -- DIRECT BY MS. WILSON

1 THE COURT: All right. Anything further from the  
2 State?

3 MS. WILSON: Yes, Your Honor. The State would  
4 like to call Adrian Dejeu. And we would just like to  
5 put on the record that Mr. Lanier is not here because  
6 he has passed away.

7 THE COURT: I understand. Thank you, ma'am. All  
8 right, Counsel, if you'll come on up and we'll swear  
9 you in.

10 ADRIAN DEJEU, after having been  
11 duly sworn, testified as follows:

12 THE CLERK: If you could please have a seat, state  
13 your name, spelling your last name for the record.

14 THE WITNESS: Adrian Dejeu. Last name, D-e-j-e-u.

15 DIRECT EXAMINATION BY MS. WILSON:

16 Q. Good morning, Mr. Dejeu.

17 A. Good morning.

18 Q. How long have you been practicing law?

19 A. Since 2008.

20 Q. Can you kind of give the court a little  
21 history of your experience in criminal law?

22 A. I started working with the Solicitor's Office  
23 in the 8th Judicial Circuit in March of 2008. And then  
24 I started in January 2011, I took a position with the  
25 9th Judicial Circuit in Berkeley County.

ADRIAN DEJEU -- DIRECT BY MS. WILSON

1 Q. So, essentially, all your experience as a  
2 lawyer has been in criminal law?

3 A. Except for a brief time between the two, I was  
4 a criminal defense attorney.

5 Q. And you were the solicitor assigned to Mr.  
6 Dejeu's case?

7 A. Mr. Brown's case?

8 Q. Yes. Sorry.

9 A. Yes.

10 Q. Mr. Brown's case. Could you briefly describe  
11 the State's evidence against Mr. Brown?

12 A. This was an armed robbery that happened in  
13 Moncks Corner at the KFC. There were four individuals  
14 involved in planning and two individuals executed the  
15 armed robbery. The defendant, Mr. Brown, and another  
16 defendant, Marcus Rainey (ph), went inside the store  
17 with a shotgun. And at gun point, asked the manager to  
18 give up the money from the cash registry and the safe.

19 During the investigation, the defendant -- two  
20 of the co-defendants were outside looking out. And  
21 throughout the investigation, the Moncks Corner Police  
22 Department developed this defendant and the others as  
23 suspects. One of the co-defendants was actually a  
24 former employee of KFC and he provided the information  
25 as to how to get inside store, what would be the best

ADRIAN DEJEU -- DIRECT BY MS. WILSON

1 time to do it.

2 The officers, through the investigation, were  
3 able to arrest and -- the defendant -- this defendant  
4 Sterling Brown did provide a statement confessing and  
5 implicating the other co-defendants. The others also  
6 provided statements and all of them were just  
7 corroborating statements and that's pretty much it.

8 Q. Thank you. Did you turn over all discovery  
9 materials to Mr. Lanier?

10 A. I did.

11 Q. And about when did you engage in any plea  
12 negotiation with Mr. Lanier on Mr. Brown's behalf?

13 A. I went back since this PCR and looked at the  
14 file and checked the notes. I have a note from January  
15 13, 2011 that I talked to Mr. Lanier. He was asking  
16 about strong armed robbery. He was trying to come to  
17 an agreement as to a resolution of the case, to a plea.  
18 And he did ask for strong armed robbery. I told him I  
19 would think about it. But, you know, based on the  
20 facts and the other -- and this defendant's  
21 involvement, I thought that a minimum of 10 years for  
22 the armed robbery would be appropriate.

23 Again, I have another note from April 2011 where  
24 Mr. Lanier and I again talked about it. And he again,  
25 Mr. Lanier, also asked me for -- to reconsider a strong

1 armed robbery.

2 Q. Thank you. Was the State interested in  
3 providing you a sentencing for the Youthful Offender  
4 Act or a probationary sentence in this case?

5 A. No.

6 Q. Was the state interested in any dismissal of  
7 any of this armed robbery charge?

8 A. No. We did dismiss the possession of a weapon  
9 on school property -- on school premises.

10 Q. Do you recall anything that -- anything  
11 outside of the ordinary taking place during Mr. Brown's  
12 guilty plea?

13 A. I know that Mr. Lanier relentlessly pursued a  
14 strong armed robbery charge, but I told him I cannot  
15 agree with it. He also asked the court and asked me if  
16 I would consider -- defer sentence so the defendant can  
17 meet with the family, I believe. And I think he was  
18 given until the -- May 30th to turn in -- turn himself  
19 in and come -- turn himself in to the Berkeley County  
20 Sheriff's Office.

21 MS. WILSON: Thank you.

22 THE COURT: All right. Cross-examination?

23 MS. POLZIN: No questions, Your Honor.

24 THE COURT: All right, sir. Thank you, sir. You  
25 may step down. And be excused if you are not here for

1 any other matter.

2 THE WITNESS: I have one more.

3 MS. WILSON: Nothing further from the State, Your  
4 Honor.

5 THE COURT: All right. Anything by way of reply?

6 MS. POLZIN: Nothing by way of reply, Your Honor.

7 THE COURT: All right. The application for  
8 post-conviction relief is denied. I've reviewed the  
9 transcript and heard the evidence. And obviously in  
10 the guilty plea context, the inquiry on the claim of  
11 ineffective assistance of counsel turns on whether the  
12 plea was voluntarily, knowingly and intelligently made.  
13 Here it obviously was under the transcript I've  
14 reviewed it.

15 My greatest concern here is the untruthfulness  
16 of the defendant in his testimony under oath, but I am  
17 not aware that we are pursuing -- I've yet to go after  
18 somebody for perjury in one of these PCR cases. I'm  
19 probably not going to make a habit of it.

20 But, sir, you got the minimum sentence. Your  
21 lawyer did an excellent job for you. You weren't  
22 truthful with me today on the stand, but we'll let that  
23 go and send you back to SCDC. The motion -- the claim  
24 is denied. Thank you.

25 MS. WILSON: Thank you.

1 THE COURT: Counsel, I appreciate the work you did  
2 for your client.

3 MS. POLZIN: Thank you.

4 MS. WILSON: Your Honor, would you like the State  
5 to submit a proposed order?

6 THE COURT: Yes. Thank you.

7 Whereupon, the hearing adjourned.)  
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STERLING BROWN V. STATE OF SC

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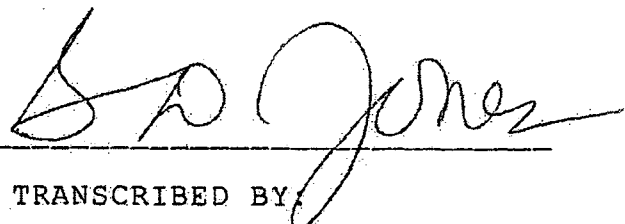
CERTIFICATE OF REPORTER

I, SHARON D. JONES, OFFICIAL COURT REPORTER FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR BERKELEY COUNTY, SOUTH CAROLINA, ON THE 20TH DAY OF NOVEMBER, 2013.

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

JULY 7, 2014

2012-CR-08-0157



TRANSCRIBED BY:  
SHARON JONES,  
OFFICIAL COURT REPORTER

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF BERKELEY )  
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 Sterling Brown, #346227, )  
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 Applicant, )  
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 v. )  
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 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2012-CP-08-0157

**ORDER OF DISMISSAL**

FILED  
 2014 MAR 26 AM 11:35  
 HONORABLE P. McDONALD  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

Presiding Judge:	The Honorable Stephanie P. McDonald
Applicant's Attorney:	Pamela Polzin, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	J. Mitchell Lanier, Esquire
Date of Hearing:	November 20, 2013
Court Reporter:	Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 23, 2012. The Respondent made its Return on March 15, 2012. An evidentiary hearing into the matter was convened on November 20, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Pamela Polzin, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also present to testify was Adrian Dejeu, Esquire- the assistant solicitor assigned to the Applicant's case.<sup>1</sup> This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

<sup>1</sup> The Applicant's defense attorney J. Mitchell Lanier passed away before the scheduling of the evidentiary hearing.

*OPM*  
*P. Polzin*  
*A. Wilson*

*B*

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ADMINISTRATIVE INSTRUCTIONS

FILE  OPEN

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ROUTE TO

RESPONSE

OTHER:

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the August 2009 term of the Berkeley County Grand Jury for armed robbery (2009-GS-08-0157). J. Mitchell Lanier, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable R. Markely Dennis sentenced the Applicant to confinement for ten (10) years- the minimum sentence.<sup>2</sup> The Applicant did not appeal his conviction or sentence.

**ALLEGATIONS**

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

- 1. Ineffective assistance of counsel.
  - a. Trial counsel failed to advise of the stipulations behind signing a guilty plea.
- 2. Involuntary guilty plea.

At the evidentiary hearing, the Applicant alleged the following grounds for relief:

- 1. Ineffective assistance of counsel.
- 2. Involuntary guilty plea.
- 3. Unconstitutional sentencing scheme.

This Court finds the Applicant waived all claims for relief except those raised at his evidentiary hearing by failing to present any testimony or argument in support of any other claims.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the

<sup>2</sup> In exchange for the Applicant plea of guilty, the State also *nolle prossed* a charge for carrying a weapon on school property (2010-GS-08-0512).

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relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified at the evidentiary hearing that his sentencing was unconstitutional. He testified he looked up the different statutes related to his charge and the statutes were in conflict. The Applicant testified he discussed this issue with his attorney. The Applicant testified he did not appeal his case and his attorney did not appeal his plea. He testified his attorney never mentioned an appeal because his sentencing was deferred. He testified he never requested his attorney file an appeal.

The Applicant testified he met with his attorney three or four times before his guilty plea. He testified he did not recall reviewing discovery with his attorney. He testified he did not give his attorney any leads or potential witnesses to investigate. The Applicant testified his attorney never put up a defense on his behalf. The Applicant testified his defense should have been there was no evidence against him. He testified he asked counsel to request a youthful offender sentence or probation and his attorney told him he did not qualify for a youthful offender sentence. The Applicant testified counsel was not familiar with his case and would ask who people were. He also testified counsel failed to investigate his case. The Applicant testified he never saw his Rule 5 materials.

The Applicant testified further <sup>that</sup> his guilty plea was involuntary. He testified he was coerced to plead guilty because it was his first time in court. He testified counsel told him he could plead guilty or go to trial and get thirty (30) years. He testified further <sup>that</sup> trial counsel did not explain the charge until before his guilty plea. He testified trial counsel did explain that armed robbery carried ten to thirty years. The Applicant testified he told the Court during his plea he had not been threatened to plead guilty. The Applicant testified he recalled agreeing with the

facts presented by the State at his guilty plea. He testified he also recalled waiving his constitutional rights and telling the judge that he was satisfied with his attorney's representation. Lastly, the Applicant testified some of the answers he gave during his guilty plea were untruthful. He testified the answers he gave at the evidentiary hearing were truthful.

The State called to testify Adrian Dejeu, Esquire, the assistant solicitor assigned to the Applicant's case. Mr. Dejeu testified he has been practicing law since 2008, and has spent most of his career doing criminal work. He testified the Applicant was charged with the armed robbery of a KFC restaurant in Moncks Corner. He testified the State's evidence would show that there were four persons involved. Two actually went inside, Marcus Rannie, a co-defendant, and Sterling Brown, the Applicant. Mr. Rannie was carrying a shotgun and asked the manager to give up money. Applicant Brown went in after Mr. Rannie. Two others were outside the restaurant. Applicant Brown gave a confession implicating himself and the three codefendants in the robbery. Mr. Dejeu testified that he turned over all discovery materials requested by the Applicant's attorney.

Mr. Dejeu testified he spoke with the Applicant's attorney several times about allowing the Applicant to plead guilty to strong armed robbery but he refused to allow the Applicant to plead to the lesser included offense. He testified the State was also not interested in offering the Applicant probation or a youthful offender sentence. He testified further the dismissal of the armed robbery charge was never a consideration.

#### Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds the Applicant's testimony at the evidentiary hearing was not credible. In a post-conviction relief action, the applicant has the burden of proving the allegations in the

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the

charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, and provided thorough representation. This Court finds persuasive the Applicant's statement at his guilty plea that he was satisfied with counsel's representation and had no complaints. (Tran. 4:3-8). This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation

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does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). This Court finds the Applicant has failed to show what further investigation by counsel would have discovered. This Court declines to accept this allegation when it is supported by mere speculation as to result. This Court also finds persuasive counsel's statement during the Applicant's guilty plea proceeding that after sharing the results of his investigation with the Applicant, the Applicant indicated he wanted to plead guilty. (Tran. 4:30-5:1). This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective in his investigation of the Applicant's case.

This Court finds that trial counsel was not ineffective for failing to request a sentence under the Youthful Offender Act (YOA). This Court finds the Applicant was not eligible for a YOA sentence and counsel's performance was not deficient in this regard. It appears from the record that the Applicant was 16-years-old when the offense was committed. S.C. Code §24-19-10(d)(ii) defines "Youthful Offender" as a defendant "under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210 for allegedly committing an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of fifteen years or less."

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The record reflects the Applicant was indicted for armed robbery. This Court finds armed robbery is classified as a violent crime (S.C. Code §16-1-60), a felony, and has a potential sentence of ten to thirty years (S.C. Code §16-11-330(a)). Based on the nature of this offense, the Applicant was ineligible for sentencing under the Youthful Offender Act. Counsel's knowledge of the Applicant's ineligibility is evidenced in the record when counsel tells the plea court "I wish that they had the old youthful offender sentence of three years." (Tran. 10:19-20). This Court finds that this allegation is without merit and that the Applicant has failed to carry his burden of proving counsel was ineffective for failing to request a sentence under the Youthful Offender Act.

#### Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant 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, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should

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be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds the Applicant's guilty plea was entered freely and voluntarily. This Court finds further and the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights during his guilty plea. He was advised of his right to a jury trial (Tran. 6:1-4), his right to remain silent (Tran. 7:1-5), and his right to confront his accusers (Tran.6:15-25). The record reflects the Applicant at his plea proceeding told the Court that he wished to plead guilty (Tran. 3:21-25). The record also reflects that the Applicant told the Court that he had not been promised anything or threatened by anyone to get him to plead guilty. (Tran. 7:6-9). The Applicant also told the Court he did not suffer from any mental illnesses and was not under the influence of drugs or alcohol. (Tran. 7:10-17). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made.

#### Unconstitutional Sentence

The Applicant alleges his sentence for armed robbery is unconstitutional. This Court finds this allegation is wholly without merit and the Applicant has provided no basis for the unconstitutionality of the statute outlining the sentence for armed robbery. S.C. Code Sec. 16-11-330(a) states a person convicted of armed robbery "must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence."

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This Court finds the Applicant was sentenced to imprisonment for ten years- the minimum sentence allowed under the statute. This Court finds the Applicant's sentence was constitutional and within the range of sentences allowed under the statute. This Court finds further the Applicant was properly advised of his parole eligibility for the charges he was facing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically, that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any argument or testimony regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 14<sup>th</sup> day of March, 2014.

  
The Honorable Stephanie P. McDonald  
Presiding Judge  
9th Judicial Circuit

Charleston, South Carolina.

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DCB2009-05-06112

WITNESSES

Michael Roach  
Moncks Corner Police Department

AGENCY CASE NUMBER

090685

ARREST WARRANT NUMBER

H-758428

DATE OF ARREST

May 18, 2009

ACTION OF GRAND JURY

True Bill

*Barbara M. Malee*  
Foreperson of Grand Jury

Date: 8-8-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-1683

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

August Term 2009

THE STATE

vs.

Sterling Devonte Brown

DOB:

B/M

Indictment for

Armed Robbery

\$16-11-0330(A)  
CDR: 0139

2009 AUG -5 PM 12:08  
MARY F. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

FILED

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✓

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )

## INDICTMENT

At a Court of General Sessions, convened on August 5, 2009 the Grand Jurors of Berkeley County present upon their oath:

**Armed Robbery**

That Sterling Devonte Brown did in Berkeley County, South Carolina, on or about April 17, 2009, while armed with a deadly weapon, to wit: a gun, take and carry away personal property of Kentucky Fried Chicken for or in the immediate presence of Kentucky Fried Chicken employees, with intent to deprive Kentucky Fried Chicken of possession by use of force, threats or intimidation. This being in violation of §16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

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

  
 DORIE C. BIAGIANTI  
 ASSISTANT SOLICITOR