

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

---

**RECEIVED**

OCT 20 2014

**S.C. Supreme Court**

ANTONIO CALLOWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000353

---

APPENDIX

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

KAREN RATIGAN  
Senior Assistant Deputy Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....i

GUILTY PLEA TRANSCRIPT ..... 1

APPLICATION FOR POST-CONVICTION RELIEF .....23

RETURN ..... 31

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 18, 2013.....36

APPLICANT’S EXHIBIT # 1 .....58

ORDER OF DISMISSAL .....59

INDICTMENTS .....68

1 STATE OF SOUTH CAROLINA ) THE COURT OF GENERAL SESSION  
 2 COUNTY OF GREENVILLE ) 2010-GS-7919  
 3 )  
 4 State of South Carolina ) TRANSCRIPT OF RECORD  
 5 )  
 6 -vs- )  
 7 Antonio Calloway )

8 May 14, 2012  
 9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE C. VICTOR PYLE, Judge.

12 A P P E A R A N C E S

13 Mark Moyer, Esquire  
 14 Attorney for the State

15 Scott Robinson, Esquire  
 16 Attorney for the Defendant

17 CAROLINE HISKELL  
 18 Thirteenth Circuit Court Reporter  
 19  
 20  
 21  
 22  
 23  
 24  
 25

I N D E X

(There were no witnesses or exhibits admitted.)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

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

1  
2 Your Honor, this is Case No. 2012-GS-23-826,  
3 Daquan Seymore, indictment for possession of a weapon and  
4 commission of a violent crime. He is pleading to armed  
5 robbery. It is a True Bill. 2012-GS-23-828, indictment  
6 for armed robbery, pleading to armed robbery. It is a  
7 True Bill. 2012-GS-23-830, indictment for attempted  
8 murder, pleading to the same. It is a True

9 Bill. 2012-GS-23-852, indictment for armed  
10 robbery pleading to the same. It is a True Bill.

11 2012-GS-23-853, indictment for kidnapping, pleading to the  
12 same. It is a True Bill. 2012-GS-23-855, indictment for  
13 attempted armed robbery, pleading to the same. It is also  
14 a True Bill.

15 2010-GS-23-7919, Antonio Courvesier Calloway,  
16 indictment for possession of a weapon during the  
17 commission of a violent crime, pleading to the same. It  
18 is a True Bill. 2010-GS-23-7920, indictment for armed  
19 robbery, pleading to the same. It is a True Bill.

20 2010-GS-23-7923, indictment for attempted armed robbery,  
21 pleading to the same. It is a True Bill. 2010-GS-  
22 23-7926, indictment for kidnapping, pleading to the same.  
23 It is a True Bill. 2010-GS-23-7931, indictment for armed  
24 robbery, pleading to the same. It is a True Bill.

25 2010-GS-23-7932, indictment for possession of a weapon

1 during the commission of a violent crime, pleading to the  
2 same. It is a True Bill. 2010-GS-23-7949, indictment for  
3 attempted murder, pleading to the same. It is a True  
4 Bill. 2010-GS-23-7955, indictment for armed robbery and  
5 possession of a weapon during the commission of a violent  
6 crime, pleading to armed robbery. It is a True Bill.

7                   Would you raise your right hand, please  
8                   DAQUAN SEYMOUR AND ANTONIO CALLOWAY,  
9 having been duly sworn, testified as follows:

10                   Thank you.

11                   THE COURT: You are Anthony Seymour?

12                   DEFENDANT SEYMOUR: Yes, sir.

13                   THE COURT: Can you come in a little closer  
14 to the microphone and speak so we can all hear you.

15                   How old are you, Mr. Seymour?

16                   DEFENDANT SEYMOUR: Eighteen, sir.

17                   THE COURT: How much education do you have?

18                   DEFENDANT SEYMOUR: Ninth grade education.

19                   THE COURT: Have you ever worked?

20                   DEFENDANT SEYMOUR: No, sir.

21                   THE COURT: Mr. Robinson is your lawyer; is  
22 that correct?

23                   DEFENDANT SEYMOUR: Yes, sir.

24                   THE COURT: You are Antonio Calloway?

25                   DEFENDANT CALLOWAY: Yes, sir.

1 THE COURT: And how old are you?  
2 DEFENDANT CALLOWAY: Nineteen.  
3 THE COURT: How much education do you have?  
4 DEFENDANT CALLOWAY: Tenth grade.  
5 THE COURT: Have you ever worked?  
6 DEFENDANT CALLOWAY: No, sir.  
7 THE COURT: Mr. Posey is your lawyer?  
8 DEFENDANT CALLOWAY: Yes, sir.  
9 THE COURT: Now, anyone used any force or  
10 threats against you in order to get you to plead guilty?  
11 Mr. Seymour?  
12 DEFENDANT SEYMOUR: No, sir.  
13 THE COURT: Mr. Calloway?  
14 DEFENDANT CALLOWAY: No, sir.  
15 THE COURT: Has anyone promised you anything  
16 for pleading guilty?  
17 DEFENDANT SEYMOUR: No, sir.  
18 DEFENDANT CALLOWAY: No, sir.  
19 THE COURT: You are pleading guilty  
20 voluntarily, that is of your own free will?  
21 DEFENDANT SEYMOUR: Yes, sir.  
22 DEFENDANT CALLOWAY: Yes, sir.  
23 THE COURT: Do you understand that the  
24 maximum sentence on each of the armed robberies is 30  
25 years in prison?

1 DEFENDANT SEYMOUR: Yes, sir.

2 DEFENDANT CALLOWAY: Yes, sir.

3 THE COURT: Five years consecutive on each of  
4 the possessions of a weapon during the commission of a  
5 violent crime, do you understand that, maximum sentence?

6 DEFENDANT SEYMOUR: Yes, sir.

7 DEFENDANT CALLOWAY: Yes, sir.

8 THE COURT: Kidnapping is up to 30 years in  
9 prison. Do you understand that?

10 DEFENDANT SEYMOUR: Yes, sir.

11 DEFENDANT CALLOWAY: Yes, sir.

12 THE COURT: Burglary first is not less than  
13 15 up to life, do you understand that?

14 MR. MOYER: If it please the Court, Your  
15 Honor, there should not be a burglary first charge in  
16 front of you. It may have been given to you in error.

17 THE COURT: What is it?

18 MR. MOYER: There should be three counts of  
19 armed robbery each, one count each of attempted armed  
20 robbery.

21 THE COURT: No burglaries?

22 MR. MOYER: There's no burglaries, no, sir.

23 THE COURT: There's an attempted armed  
24 robbery on Mr. Seymour maximum 20 years.

25 MR. MOYER: Yes, sir.

1 THE COURT: Do you understand that?

2 DEFENDANT SEYMOUR: Yes, sir.

3 THE COURT: Assault and battery first ---

4 MR. MOYER: That charge is not going forward.

5 THE COURT: Okay. Attempted murder, that's  
6 on both and that's up to 30 years. Do you understand  
7 that?

8 DEFENDANT SEYMOUR: Yes, sir.

9 DEFENDANT CALLOWAY: Yes, sir.

10 THE COURT: You do not have to plead guilty.  
11 You have a perfect right to a jury trial, do you know  
12 that?

13 DEFENDANT SEYMOUR: Yes, sir.

14 DEFENDANT CALLOWAY: Yes, sir.

15 THE COURT: If you stood trial, your lawyers  
16 could cross-examine all witnesses who testified against  
17 you. You wouldn't have to take the stand and testify or  
18 present evidence because that's your constitutional right.  
19 Do you understand that?

20 DEFENDANT SEYMOUR: Yes, sir.

21 DEFENDANT CALLOWAY: Yes, sir.

22 THE COURT: The burden would be on the State  
23 to prove you guilty beyond a reasonable doubt. Do you  
24 understand that?

25 DEFENDANT SEYMOUR: Yes, sir.

1 DEFENDANT CALLOWAY: Yes, sir.

2 THE COURT: Now, each of you satisfied with  
3 the services of your lawyer?

4 DEFENDANT SEYMOUR: Yes, sir.

5 DEFENDANT CALLOWAY: Yes, sir.

6 THE COURT: Have they done everything for you  
7 that you asked them to do?

8 DEFENDANT SEYMOUR: Yes, sir.

9 DEFENDANT CALLOWAY: Yes, sir.

10 THE COURT: Have they done anything you don't  
11 like?

12 DEFENDANT SEYMOUR: No, sir.

13 DEFENDANT CALLOWAY: No, sir.

14 THE COURT: So you're satisfied with their  
15 services and no complaint to make against your lawyer,  
16 correct?

17 DEFENDANT SEYMOUR: Yes, sir.

18 DEFENDANT CALLOWAY: Yes, sir.

19 THE COURT: Either one of you under the  
20 influence of any alcohol drug or any substance right at  
21 this moment?

22 DEFENDANT SEYMOUR: No, sir.

23 DEFENDANT CALLOWAY: No, sir.

24 THE COURT: You're sober, you know what your  
25 doing and you want to plead guilty?

1 DEFENDANT SEYMOUR: Yes, sir.

2 DEFENDANT CALLOWAY: Yes, sir.

3 THE COURT: Solicitor, tell me about it,  
4 please.

5 MR. MOYER: Thank you, Your Honor, may it  
6 please the Court.

7 Before we go into the facts, the possession  
8 of a firearm during the commission of a violent crime, I  
9 just want to point out that that no longer by statute has  
10 to be consecutive. It can be consecutive or concurrent.

11 As far as the facts, these charges that are  
12 before the Court all stem from three different armed  
13 robberies that occurred on the same night, July 25, 2010  
14 between the hours of about 3:00 and 6:00 o'clock in the  
15 morning.

16 These two defendants along with a third  
17 co-defendant that already pled guilty a while ago  
18 committed three robberies. The first incident occurred at  
19 an apartment on Cleveland Street in the City of  
20 Greenville. There were actually 10 victims in that case.  
21 They were all high school young people 16 to 17 years of  
22 age.

23 One of the young persons lived at that  
24 apartment. Her mother was away for the night so a number  
25 of her friends came over to spend the night there with

1 her. Between about 3:00 and 4:00 that morning, two of the  
2 victims went out into the parking lot. At that time the  
3 defendants were driving by in their automobile and they  
4 stopped.

5 They all got out of the vehicle and one of  
6 them pulled out a pistol. We later determined that the  
7 person who pulled the pistol was Antonio Calloway and he  
8 was the one that was armed during this robbery and the  
9 other two.

10 The defendants told the victims to take them  
11 into the apartment where they were. So the victims, then  
12 at gunpoint, took the three defendants into the apartment.  
13 When they all entered, the defendants told all 10 victims  
14 to get on the floor and then asked them to give up drugs  
15 and money.

16 Now it is apparent both from the defendants  
17 actions in the apartment that night and from what they  
18 later told me during interviews last week that the  
19 defendants realized -- they thought they were going to be  
20 going into a different house than they ended up in. They  
21 were looking for an apartment of a drug dealer. After  
22 finding no drugs or money in the apartment, they realized  
23 they were in the wrong apartment. At that time, they took  
24 the victim's cell phones and a little bit of cash and then  
25 they made the victims go two by two into a back bedroom.

1                   They then talked to the victims, told them  
2 that they had the wrong apartment and gave all but three  
3 of the cell phones back to the victims. They kept three  
4 along with the little bit of money and left with that.  
5 Before they left, they told the victims not to call the  
6 police. One of them also said that they would normally  
7 shoot the homeowner in the leg before leaving but because  
8 the victims cooperated with them, they wouldn't do so and  
9 they threatened the victims not to call the police and  
10 then they left.

11                   The next incident occurred outside a mobile  
12 home on Anderson Road. The victims in that case were Jose  
13 Massa and Francisco Cruz. They were returning home after  
14 being out at some bars that night.

15                   When they got out of their truck in front of  
16 their residence, they walked to the porch and at that time  
17 these two defendants approached them during this robbery.  
18 The third co-defendant was the driver. Again, Antonio  
19 Calloway had the pistol. They robbed the victims of some  
20 cash and a cell phone. Before they left, Antonio Calloway  
21 shot one of the victims in the leg just above the knee.

22                   The bullet went through the fleshy part of  
23 his leg. It did not break a bone, however, the victim was  
24 treated at the hospital and he told me that it still hurts  
25 him some to this day.

1           The third incident took place at the  
2 convenience store, a Citgo on Piedmont Highway. This  
3 incident happened somewhere between 6:00 and 6:30 in the  
4 morning. On this occasion, defendant Daquan Seymour took  
5 over driving the car, and the third co-defendant stood by  
6 the door as a look out and Antonio Calloway was the one  
7 who entered the store with the gun again.

8           He approached the two clerk, pointed the  
9 pistol, made them go to the cash register, he robbed the  
10 store of somewhere around \$75 cash. He took one of the  
11 lady's pocketbook and the other lady's truck keys.

12           The investigation was conducted by Greenville  
13 County and Greenville Police Department officers which  
14 lead to the arrest of Mr. Seymour about five days after  
15 the incident and Mr. Calloway about ten day after the  
16 incident.

17           Your Honor, I also will go into this in just  
18 a minute but the extent of the negotiations is that in  
19 exchange for their cooperation that we agreed to dismiss  
20 the burglary charge and as well tell Your Honor the extent  
21 of the cooperation that they give. That's the facts as  
22 would come out in trial.

23           THE COURT: Mr. Seymour and Mr. Calloway, is  
24 that basically what happened on those days?

25           DEFENDANT SEYMOUR: Yes, sir.

1 DEFENDANT CALLOWAY: Yes, sir.

2 THE COURT: I'll accept the plea as being  
3 voluntarily made and having an actual factual basis. Who  
4 wants to go first?

5 MR. POSEY: I will, Your Honor. Your Honor,  
6 I've represented Mr. Calloway since he was charged with  
7 these incidents. He is 19 years of age and he's a  
8 lifelong resident of Greenville.

9 Judge, until the age of 15 was doing very  
10 well in school. He and his mother and two younger  
11 siblings lived with his grandmother. At the age of 15,  
12 his grandmother passed away. His mother turned to drugs  
13 at that time, basically abandoned he and his younger  
14 siblings. He became the caretaker and the provider for  
15 his younger siblings.

16 He dropped out of school. Unfortunately, he  
17 made a poor choice of turning to drugs at that time and  
18 selling drugs. It was an easy way for him to make money.  
19 He basically did provide and took care of his younger  
20 siblings up until about a year-and-a-half ago. He  
21 provided for them, provided the food and shelter and  
22 everything. He was in control.

23 Unfortunately, those poor choices led to the  
24 poor choice he made this night to become involved in this  
25 incident. I think it all started, Your Honor, that they

1 were going to what they thought was a drug dealers house  
2 to rob somebody of their drugs and their money and it  
3 snowballed from there. As the solicitor stated the facts  
4 are what they are.

5 Judge, Antonio is a bright young man. I  
6 checked in his academic record prior to him dropping out  
7 of school. He was basically a B student taking normal  
8 classes, no behavior problems other than little mischief.  
9 It seems to be the death of his grandmother kind of spun  
10 his life in a bad direction.

11 He has not had a father in the home. He's  
12 really had no parental guidance since the age of 15.  
13 That's not an excuse and he understands that. He and I  
14 have discussed that extensively. It's just has  
15 background, Judge.

16 Judge, I think he's a young man who knows  
17 he's got to pay a price. Your going to give him an  
18 substantial sentence today. Of course, the minimum he  
19 could get is 10 years and he understands that. I would  
20 ask you to be as lenient as possible. I would ask you for  
21 the minimum sentence being that it's a nonparolable  
22 sentence. He plans on taking advantage of every  
23 opportunity that he's afforded academically while in  
24 prison.

25 He is an enthusiastic reader which I have

1 encouraged him and I told him I would even help assist him  
2 with that to continue that in any way I could. He does  
3 have a future, Judge, and I don't think it's all a bad  
4 one. It could be a good one.

5           He understands what he did was horrible. He  
6 makes no excuses for it. He made the choice to enter into  
7 that behavior. I'm not sure if he had all the proper  
8 guidance to make proper decisions, but he's not even  
9 relying on that. He has accepted full responsibility. He  
10 said that with Mr. Moyer in detail every aspect that took  
11 place that night. I would ask you for the minimum  
12 sentence or somewhere close to it, allow him to come out  
13 and prove that he can be productive and conforming member  
14 of our society again.

15           He has the intelligence and the desire to.  
16 He has not been out of jail since he's been arrested for  
17 this incident. I think he's come to realize this is not  
18 the place he wants to spend the rest of his life which is  
19 where he's headed if he continues this type behavior.

20           I think he grasps the seriousness of this  
21 situation and the ramifications should he get out and not  
22 conform to society.

23           Again, I think he's a young man who deserves  
24 another chance after he pays the price that he does, Your  
25 Honor, and I would ask the impose a sentence of that

1 nature.

2 THE COURT: Anything you want to say,  
3 Mr. Calloway?

4 DEFENDANT CALLOWAY: Yes, sir. I just want  
5 to apologize. I know what I did was wrong and I just want  
6 to go on with my life when it's over with.

7 THE COURT: Mr. Robinson.

8 MR. ROBINSON: Your Honor, I echo what  
9 Mr. Posey says in accepting responsibility and I have with  
10 me today his mother Amy Seymour. She's a home health  
11 nurse in Brooklyn, New York. She's come down here to  
12 support her son.

13 Your Honor, he has cooperated in this case.  
14 He gave statements at the beginning of this case. We met  
15 with the prosecutor last week in the cooperation mode to  
16 assist them. We met with Mr. Conroy who is a deputy here  
17 as well as Mr. Moyer and he was very cooperative.

18 Your Honor, he knows that he made a mistake,  
19 a large mistake that affected a lot of people and it's an  
20 aberration because he has no record to speak of, I don't  
21 believe. He's come from a good mother. She's going to  
22 tell you in a few moments about what he told her and how  
23 he's changed.

24 He was 16 at the time this happened and it  
25 just goes to show the fateful mistakes people make. But,

1 Your Honor, we'd ask for the minimum sentence in this case  
2 based on his cooperation and his remorse and he's going to  
3 express that to you in a second.

4 Your Honor, I'd like to have his mother speak  
5 on his behalf. Would that be okay with the Court?

6 THE COURT: About one minute.

7 MS. SEYMOUR: Hi, I'm Amy Seymour, Daquan's  
8 mom. Daquan is a good kid. He gets with the wrong crowd  
9 sometimes and he's a follower. I didn't raise him like  
10 that. He was raised better than that. He knows right  
11 from wrong. I'm a single parent and I tried to do my best  
12 for my kids. I had to have to meet under these  
13 circumstances.

14 He's told me that he's learned his lesson and  
15 he looks forward to making his life better and hope to  
16 come out to be a better man.

17 THE COURT: You live in New York?

18 MS. SEYMOUR: Yes, sir.

19 THE COURT: And why is he down here? He was  
20 16 at the time of these were committed, why was he down  
21 here and not in New York with you?

22 MS. SEYMOUR: I used to live down here.

23 THE COURT: You lived down here when these  
24 were committed?

25 MS. SEYMOUR: Yes, sir.

1 MR. ROBINSON: Your Honor, Mr. Seymour would  
2 like to address the Court.

3 DEFENDANT SEYMOUR: Your Honor, I would like  
4 to apologize to the Court and the families. I take full  
5 responsibility for what I've done. I was 16 then and now  
6 that I'm 18 I realize I made a mistake. I wish I could  
7 take it back. I just grew up in the time being and  
8 realized life was too short for doing stupid stuff like  
9 that.

10 THE COURT: Alright, prior records?

11 MR. MOYER: Neither of them have prior  
12 records, Your Honor. They were both, as you heard,  
13 Mr. Seymour was 16 and Mr. Calloway was 17 when this  
14 happened. I believe a couple of the victims would like to  
15 address the Court.

16 THE COURT: Very shortly.

17 MS. MCCLENTON(ph): Your Honor, my name is  
18 Sharon McClenton(ph), and I would like to say my son had a  
19 loaded gun put to his head that night. His life could  
20 have very well been taken. In my opinion, these two  
21 defendants have absolutely no regard for life and I would  
22 hope that they would serve every single second of their  
23 time.

24 MS. RAY: My name is Caroline Ray. It was my  
25 home that you came into on Cleveland Street. I was not

1 there because we had buried my father that day, so the  
2 defendants did cause a lot of pain to a lot of people and  
3 there was also a gun put to my daughter's leg -- to my 16  
4 year old daughter's leg. I know that all of those kids  
5 were very afraid, and I also know that the defendants were  
6 kids, and I would like to say that my heart goes out to  
7 their family and my wish and my hope is that while the  
8 defendants are incarcerated that a change comes. I would  
9 also like to say I would accept your apology.

10           It did change our lives and I am afraid in my  
11 home. I am a single mother with four children, but  
12 bitterness and hate I can not live with. I'm standing  
13 here for my daughter. I would like to thank you very much  
14 for letting me speak.

15           MR. MOYER: A couple of other remarks, Your  
16 Honor. I told the defense attorneys that I would tell  
17 Your Honor the extent of the cooperation that was made.  
18 We dismissed the burglary charges because they came  
19 forward last week and said they would plead guilty. We  
20 made an initial plea offers in this case conditional on  
21 the willingness of each defendant to cooperate with the  
22 prosecution.

23           Up until the case was placed on the trial  
24 docket, neither one of them would agree to cooperate.  
25 Once the case was put on the trial docket, I came forward

1 to each defense attorney and said I would dismiss the  
2 burglary charge if they would agree to cooperate and  
3 testify. Mr. Robinson came to us first and said  
4 Mr. Seymour would. We met with him about a week and a  
5 half ago and he gave a full confession. And then a couple  
6 of days later, Mr. Posey's client indicated that he wanted  
7 to cooperate was well and so we met with him last week and  
8 he gave a full confession.

9           When Mr. Seymour was arrested in 2010, he  
10 initially gave a statement admitting he was present in  
11 identifying the co-defendants, however, he subsequently  
12 attempted to retract that identification and didn't agree,  
13 but, again, once it was put on the trial docket he did  
14 come forward and agree to cooperate.

15           THE COURT: Anything else?

16           MR. POSEY: No, sir.

17           MR. ROBINSON: No, Your Honor.

18           THE COURT: Are they entitled to credit  
19 served?

20           MR. MOYER: They are, Your Honor. I made the  
21 calculations. Mr. Calloway is 647 days and Mr. Seymour  
22 655 days.

23  
24           MR. POSEY: Judge, if I might just put on the  
25 record I did explain to Mr. Calloway about the two

1 strikes, three strikes law, and the nature of his offenses  
2 and he understands should he get arrested again for any  
3 Serious or Most Serious.

4 THE COURT: Mr. Calloway, on the indictment  
5 for attempted murder, the sentence of the Court is you be  
6 committed to the Department of Corrections for a period of  
7 25 years. On the indictment for kidnapping, 25 years,  
8 concurrent. On the three armed robberies 20 years  
9 concurrent, on the two indictments for possession of a  
10 weapon during the commission of a violent crime five years  
11 concurrent and on the attempted armed robbery 10 years  
12 concurrent and you are entitled to credit for the time  
13 that you've been in jail.

14 Mr. Seymour, on the indictment for attempted  
15 murder, the sentence of the Court is that you be committed  
16 to the Department of Corrections for a period of 15 years,  
17 15 concurrent on the kidnapping, 10 years on the  
18 indictment for attempted armed robbery, and on each of the  
19 the armed robberies 15 years concurrent.

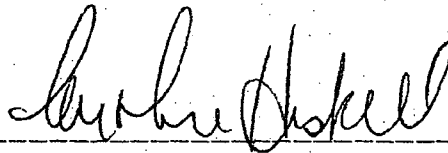
20 MR. MOYER: Thank you, Your Honor.

21 ---END OF TRANSCRIPT RECORD---

22  
23  
24  
25

1  
2 I, the undersigned Caroline Hiskell, Official  
3 Court Reporter for the Thirteenth Judicial Circuit of the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate, and complete transcript of  
6 record of all the proceedings had and evidence introduced  
7 in the trial of the captioned case, relative to appeal, in  
8 the Court of General Sessions, Greenville, South Carolina  
9 on the 14th day of May, 2012.

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

12  
13  
14 

15 Caroline Hiskell  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FORM 5

STATE OF SOUTH CAROLINA )

County of Greenville )

Antonio C. Calloway )

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

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2012-CP-23-0678

APPLICATION FOR

POST-CONVICTION RELIEF

3.850

FILED  
CLERK OF COURT  
JAN 25 PM 1:43

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention State Department of Corrections (S.C.D.C.)  
Kirkland Reception Ctr, 4344 Broad River Rd, Columbia
2. Name and location of Court which imposed sentence Greenville General  
Sessions Court, Greenville, S.C.
3. Name(s) of co-defendant(s) (if any) ~~Joseph S. Crowe~~  
Joseph S. Crowe, and DaQuan Segmore
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) "May 14, 2012", on all counts of indictments,

~~(X)~~ Case #s I-481771, I-481769, I-481770, I-481772,  
~~(X)~~ M-383738, M-383742, M-383740, M-383759.

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) On all Courts, May 14, 2012
- (b) ~~\_\_\_\_\_~~
- (c) ~~\_\_\_\_\_~~

6. Check whether a finding of guilty was made:

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

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

NO

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
  - i. ~~\_\_\_\_\_~~
  - ii. ~~\_\_\_\_\_~~
  - iii. ~~\_\_\_\_\_~~
- (b) the result in each such Court to which you appealed:
  - i. ~~\_\_\_\_\_~~
  - ii. ~~\_\_\_\_\_~~
  - iii. ~~\_\_\_\_\_~~
- (c) the date of each such result:
  - i. ~~\_\_\_\_\_~~
  - ii. ~~\_\_\_\_\_~~
  - iii. ~~\_\_\_\_\_~~
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. ~~\_\_\_\_\_~~
  - ii. ~~\_\_\_\_\_~~
  - iii. ~~\_\_\_\_\_~~

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) Seeking P.C.R. Relief, 3850

(b) N  
(c) A

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

(a) Hand of one / Hand of all Sentencing law violation  
~~(b) Due process of law, Ineffective Assistance of~~  
~~(c) Counsel, and Equal protection of the law~~

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

(a) S.C. Statute 23: Hand of one / Hand of all law, by  
~~(b) and through "Equal protections" of the law U.S. Const,~~  
~~(c) XIV Sec. # 1, S.C. Const. Article I - Sec. # 3, and~~  
the U.S. Const. VI amendment.

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

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

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

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

iv. \_\_\_\_\_  
(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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?

\_\_\_\_\_  
\_\_\_\_\_

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) ~~Pending 3.550 this cause only. (First attempt to resolve)~~
- (b) ~~N/A~~
- (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 Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Christopher Posey Esquire  
ATTN: Greenville Public Defenders office
  - ii. Greenville, S.C.
  - iii. ~~\_\_\_\_\_~~
- (b) the proceedings at which each such attorney represented you:
  - i. Christopher Posey Esquire  
Greenville Public Defenders office
  - ii. Greenville S.C.
  - iii. ~~\_\_\_\_\_~~

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

Defendant sentenced in violation of Hand of one/Hand of all  
all additional constitutional claims requests the Court  
to "Set aside" and "Vacate" Sentence, or in the alternative

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

re-sentence the defendant to that of his co-defendant  
NO - 10-15 yr range

(Continued)

\* See Reverse side (# 7A)  
this page.

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Richland )

VERIFICATION

I, Antonio C. Calloway, 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.

Antonio C. Calloway  
Antonio C. Calloway

, Applicant, Prose

SWORN to and subscribed before me this 6th  
day of September, 2012.

[Signature] (L.S.)  
Notary Public

My Commission Expires  
October 8, 2014

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

I, Antonio C. Calloway, 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.

Antonio C. Calloway  
Applicant

SWORN or affirmed to and subscribed before me this  
6th day of September, 2012.

[Signature]  
Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

Honorable Clerk of Court  
 Paul B. Wickensimer  
 305 East North Street  
 Greenville, South Carolina  
 29601.

Antonio C. Callaway  
 S.C.D.C. # 343102,  
 Wickland RSE Center, 4344 Broad River  
 Columbia, SC 29210

Date: 9-6-12 201

In Re: P.C.R. Application - 3-850 (Post Conviction Reli

Case Warrant # I-481771, I-481769, I-481770,  
 I-481772, IA-383738, M-383740, M-383759.

Dear Honorable Clerk,

I have enclosed my  
 Completed P.C.R. Application, pursuant to Rule -  
 3-850, Post-Conviction Relief.

Please file, stamp and provide me with  
 a receipt to this effect, as well as place this  
 matter on the docket to be brought before the  
 Court judge for review.

Thank you kindly for your attention and  
 cooperation in the filing of my Application.

Sincerely,

Antonio C. Callaway  
 Applicant, Prose

Sworn to and subscribed before me this  
 6th day of September 2012

[Signature]  
 Notary Public For South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-6181
COUNTY OF GREENVILLE	)	
	)	
Antonio Courvesier Calloway,	)	
S.C.D.C. No. 343102,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed September 25, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2011 term of General Sessions for possession of a weapon during the commission of a violent crime (2010-GS-23-7919, -7932), armed robbery (2010-GS-23-7920), and attempted murder (2010-GS-23-7949). The Grand Jury issued amended indictments at the February 2012 term for attempted armed robbery (2010-GS-23-7923), kidnapping (2010-GS-23-7926), and two counts of armed robbery (2010-GS-23-7931, -7955, count 1). Christopher T. Posey, Esquire represented the Applicant.

On May 4, 2012, the Applicant pled guilty.<sup>1</sup> The Honorable C. Victor Pyle, Jr., sentenced the Applicant to concurrent terms of five years for each count of possession of a

<sup>1</sup> The State also dismissed several charges.

weapon during the commission of a violent crime, twenty years for each count of armed robbery, twenty-five years for attempted murder, ten years for attempted armed robbery, and twenty-five years for kidnapping. The Applicant did not appeal.

## II.

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

1. Ineffective assistance of counsel.
2. "S.C. Statue [sic] Eg: Hand of one/Hand of all law, by and through 'Equal protections' of the law U.S. Const., XIV, Sec. #, S.C. Const. Article I – Sec. #3...."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

The Respondent notes the Applicant has also made several allegations about the violation of his Constitutional rights. The Applicant, however, does not specify the grounds upon which these alleged constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (2003). Before the Court will hold an evidentiary hearing, the

Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). These allegations are so vague that it is impossible for the Respondent to respond.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

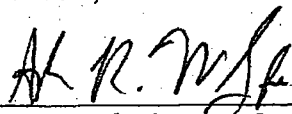
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

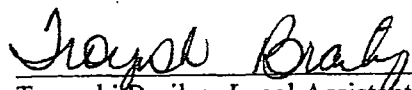
January 31, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2012-CP-23-6181
	)	
ANTONIO COURVESIER CALLOWAY,	)	
S.C.D.C. No. 343102	)	
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:

**Antonio Courvesier Calloway, 343102  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010**

DATED this 31<sup>st</sup> day of January, 2013.

  
Troyeshi Brailey, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

ANTONIO CALLOWAY, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2012-CP-23-06181

DECEMBER 18, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

RODNEY W. RICHEY, ESQUIRE  
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS  
CIRCUIT COURT REPORTER

**INDEX**

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Antonio Calloway Richey Ratigan	4	11		
Christopher T. Posey Richey Ratigan	15	18	20	
				<b>PAGE</b>
Certificate of Reporter				22

**PLAINTIFF'S EXHIBITS**

NO	DESCRIPTION	ID	EV
P-1	Statement of Daquan Seymour	9	9

**DEFENDANT'S EXHIBITS**

	(NONE)		

**COURT'S EXHIBITS**

	(NONE)		

---



---



1 Mr. Calloway.

2 THE CLERK: Mr. Calloway, please place your  
3 left hand on the bible and raise your right hand as  
4 best you can.

5 You do solemnly swear or affirm that the testimony  
6 you're about to give in this case will be the truth,  
7 the whole truth and nothing but the truth, so help you  
8 God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you. Please state your  
11 full name for the record.

12 THE WITNESS: Antonio Calloway.

13 THE CLERK: Thank you. You may be seated.

14 **ANTONIO CALLOWAY,**

15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION**

17 **BY MR. RICHEY:**

18 Q. Mr. Calloway, you are currently in the South  
19 Carolina Department of Corrections; is that right?

20 A. Yes, sir.

21 Q. You need to speak up.

22 A. Yes, sir.

23 Q. And what charges are you in the department of  
24 corrections for?

25 A. Attempted armed robbery, armed robbery,

1 kidnaping, attempted murder.

2 Q. Okay. And you were convicted in Greenville  
3 County; is that correct?

4 A. Yes, sir.

5 Q. And who represented you on those charges?

6 A. Mr. Chris Posey.

7 Q. You have filed an application to this court for  
8 post conviction relief and you allege that Mr. Posey  
9 did not effectively represent you; is that correct?

10 A. Yes, sir.

11 Q. And you believe that had you had proper  
12 representation, the outcome would have been different;  
13 is that correct?

14 A. Yes, sir.

15 Q. Okay. You have alleged that Mr. Posey did not  
16 present adequate mitigation testimony; is that correct?

17 A. Yes, sir.

18 Q. You pled guilty to all these charges; right?

19 A. Yes, sir.

20 Q. Okay. But you believe that he did not provide  
21 effective mitigation evidence in your case; is that  
22 correct?

23 A. Yes, sir.

24 Q. Tell me, tell me what that means?

25 A. *Wiggins versus State*, a criminal offense attorney

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Antonio Calloway - Direct Examination by Mr. Richey*

6

1 has the duty to conduct a reasonable investigation to  
2 discover all reasonable mitigating evidence and all  
3 reasonable other evidence to rebuke any aggravating  
4 evidence introduced by the state. As a part of this  
5 case, the state relied on me being the principal ---

6 Q. No. I need you to tell me what mitigation  
7 testimony that you wanted him to present?

8 A. My background and record.

9 Q. Okay. What does that consist of?

10 A. DJJ, DSS, social history, mental health.

11 Q. Okay. And how do you believe that that would  
12 have assisted him in your case? Mr. Posey?

13 A. My diminished capacity of what I've experienced  
14 from birth, my early age, early childhood.

15 Q. And you believe if he had presented sufficient  
16 mitigation testimony your sentence would have been  
17 different or ...

18 A. Yes, sir. The outcome would have been different.

19 Q. Okay. The outcome. You believe that Judge Pyle  
20 would have sentenced you to less time; is that what  
21 you're saying?

22 A. Yes, sir.

23 Q. Okay. So you're saying that you're not satisfied  
24 with Mr. Posey's representation; correct?

25 A. Yes, sir.

1 Q. Okay. Now, you are aware that on this transcript  
2 on some of this -- on this transcript that you, in  
3 fact, told Judge Pyle that you were satisfied with his  
4 representation; correct?

5 A. I was satisfied?

6 Q. Yeah. That you were satisfied with the services  
7 of Mr. Posey. Why did you answer that question that  
8 way?

9 A. To be fair, I was going to received a ten year,  
10 eighty-five percent, sentence.

11 Q. Okay. You thought you were going to receive ten  
12 years?

13 A. That's why I thought I signed off. That's why I  
14 thought I signed off on it.

15 Q. Okay. And who told you you were going to get ten  
16 years?

17 A. Mr. Christopher Posey.

18 Q. Okay. Did he say you were going to get ten years  
19 or he believed you were going to get ten years or did  
20 he just flat out tell you you were going to get ten  
21 years?

22 A. He said there was a possibility I was going to  
23 receive ten years when we went in front of the judge  
24 that day.

25 Q. Okay. All right. Also, ---

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Antonio Calloway - Direct Examination by Mr. Richey*

8

1 MR. RICHEY: Can I approach the witness, Your  
2 Honor, please?

3 THE COURT: You may.

4 Q. --- you have a -- can you tell me what this is?

5 A. This right here is a recanted statement from a  
6 witness.

7 Q. Okay. And when you -- okay. Let's go back.

8 It's a recanted statement from a witness.

9 A. Yes, sir.

10 Q. And who was this witness?

11 A. My co-defendant that was supposed to testify on  
12 me if I was going to trial.

13 Q. Okay. So this witness gave a statement against  
14 you; is that correct?

15 A. Yes, sir. And the only statement that they had  
16 to file the arrest warrant on me. That's the only  
17 evidence they had.

18 Q. Okay. So this witness gave a statement saying  
19 that you were involved in these crimes; correct?

20 A. Yes, sir.

21 Q. And this witness gave a subsequent statement that  
22 you have; correct?

23 A. Yes, sir.

24 Q. And where he said you were not involved in the  
25 crime; correct?

1 A. Yes, sir.

2 Q. Okay. Did you show this statement to Mr. Posey?

3 A. Yes, sir. I also sent him a written letter as  
4 far as what I believed that he should do and present to  
5 the courts.

6 Q. Okay. So you're saying that you are actually  
7 innocent of the charge; is that correct?

8 A. Yes, sir.

9 Q. Okay. Did you and Mr. Posey discuss this  
10 statement?

11 A. Well, he discussed it. As far as going all into  
12 details, he told me that the witness -- well, basically  
13 this witness will still be a reliable witness if I was  
14 going to trial.

15 Q. Okay. We'd offer this statement, Your Honor, as  
16 Applicant's Number 1.

17 MS. RATIGAN: I have no objection, Your  
18 Honor.

19 THE COURT: Without objection, Exhibit 1 is  
20 admitted.

21 (WHEREUPON, Plaintiff Exhibit Number 1 was marked  
22 and admitted into evidence.)

23 Q. Well, tell me, sir, if you had a statement that  
24 exonerates you and says that you were innocent, why  
25 would you plead guilty in front of Judge Pyle?

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Antonio Calloway - Direct Examination by Mr. Richey*

10

1 A. Because Christopher Posey told me if I was to  
2 take it to trial and try to present the statement, that  
3 I was going to still receive twenty-five to thirty  
4 years if I was to go to trial. That's why I wrote him  
5 a letter. I never printed it out or made no contact,  
6 but I wrote him a letter stating that I would be able  
7 to take a ten year to twelve year plea that he told me  
8 that was on the table at the time. So he came and  
9 interviewed me and we went over the plea negotiations,  
10 so I was asking him as far as the sentence range from  
11 ten to twenty-five, I was asking him why the numbers on  
12 the plea negotiation papers? He was just telling me  
13 that's the minimum and the high rate I could get if I  
14 was to go to trial. So at that time, from my  
15 knowledge, from what I was being advised by trial  
16 counsel, Mr. Posey, that I would receive a ten year  
17 plea, pleading out of trial.

18 Q. Okay. You testified earlier that he said it was  
19 a possibility. Did he say that you were going to get  
20 ten years or did he say that it was a possibility the  
21 judge could give you ten years?

22 A. He said I was going to get ten years and there  
23 was a possibility that I could receive ten years.

24 Q. Okay. Thank you. Answer any questions Ms.  
25 Ratigan has.

1 **CROSS EXAMINATION**

2 **BY MS. RATIGAN:**

3 Q. Did you review the state's evidence with Mr.  
4 Posey?

5 A. Could you repeat that.

6 Q. Did you review the state's evidence against you  
7 with Mr. Posey?

8 A. Yes, ma'am.

9 Q. Okay. And did he tell you the minimum and  
10 maximum sentences that you could get on some of these  
11 charges?

12 A. Yes, ma'am.

13 Q. Okay. And did you tell Mr. Posey your version of  
14 what happened?

15 A. As far as in the case?

16 Q. Yes.

17 A. Yes, ma'am.

18 Q. And you told him you were innocent?

19 A. Yes, ma'am.

20 Q. And you said at one point there was a ten year  
21 plea offer?

22 A. Yes, ma'am.

23 Q. Did you see a letter or an email about that or is  
24 that just something Mr. Posey told you?

25 A. That's what he told me during negotiations.

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Antonio Calloway - Cross Examination by Ms. Ratigan*

12

1 Q. Okay.

2 A. The solicitor had stated that -- I think it was  
3 Mark Moyer -- he had stated that the ten year plea was  
4 already on the table.

5 Q. Okay. So when you went to court that day, you  
6 thought you were pleading to that ten year offer?

7 A. Yes, ma'am.

8 Q. But the judge asked you if you had been made any  
9 promises and you said no. Why didn't you tell him at  
10 that point that you had been promised this ten years?

11 A. Why I didn't tell him at that point I'd been  
12 promised ten years?

13 Q. Yeah.

14 A. During plea negotiations, that's why I thought  
15 that he was advised that I was just about to receive  
16 ten years. That's what I thought the court had already  
17 decided.

18 Q. Okay. So that's why you told the judge there had  
19 been no promises?

20 A. Yes, ma'am.

21 Q. Because you thought the court already knew about  
22 it?

23 A. Yes, ma'am.

24 Q. And this statement that was marked as Exhibit 1,  
25 did you discuss that with Mr. Posey?

1 A. Yes, I did. I sent him a copy of it.

2 Q. But did you discuss it with him? Did y'all talk  
3 about it?

4 A. Yes, ma'am.

5 Q. And when you talked about it, what did Mr. Posey  
6 say?

7 A. Mr. Posey let me listen to an interview with an  
8 investigator and his lawyer that was interviewing him  
9 stating why did he recant and take back his statement?  
10 He said they asked him was you forced by anybody, did  
11 he force you or did he send anybody else to force you?  
12 He told them, no, I didn't. And he said for the simple  
13 fact he didn't want to see me get no time for nothing I  
14 didn't do.

15 Q. Okay. But what did Mr. Posey say he would do  
16 with this statement and this ---

17 A. He never presented it.

18 Q. Okay. So he didn't say he was going to do  
19 anything? He just did nothing?

20 A. He did. He went up for a bond hearing during  
21 plea negotiation and trial for a new error on my case  
22 and they denied it.

23 Q. Okay. And you're stating today before this court  
24 that you're innocent on these charges?

25 A. Yes, ma'am.

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Antonio Calloway - Cross Examination by Ms. Ratigan*

14

1 Q. Well, then why did you give a confession after  
2 the case to put it on the trial docket?

3 A. Could you repeat that?

4 Q. Why did you get a confession after the case was  
5 put on the trial docket?

6 A. Because the fact Mr. Posey advised me to do, to  
7 show guilt, so the judge can be lenient on me to give  
8 me the ten year plea, to go easy.

9 Q. So Mr. Posey told you to go ahead and confess to  
10 something you didn't do so that you could get some kind  
11 of better sentence?

12 A. Yes, ma'am.

13 Q. Okay..

14 MS. RATIGAN: That's all I have, Your Honor.

15 MR. RICHEY: No questions.

16 THE COURT: Okay. Thank you, sir. You can  
17 step down.

18 MR. RICHEY: Call Mr. Posey.

19 THE CLERK: You do solemnly swear or affirm  
20 that the testimony you're about to give in this case  
21 will be the truth, the whole truth and nothing but the  
22 truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Please state your  
25 full name for the record.

1 THE WITNESS: Christopher Todd Posey.

2 CHRISTOPHER TODD POSEY,

3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWED:

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q. Mr. Posey, do you remember representing Antonio  
7 Calloway?

8 A. Yes. I believe I was appointed to represent him  
9 on like thirty-nine charges.

10 Q. The charges that he, in fact, pled to, you  
11 represented him on those charges?

12 A. Yes.

13 Q. I think you were in the courtroom for his  
14 testimony. And I'm going to ask you, first, this ten  
15 year plea or negotiation, was that ever offered to him  
16 to plead to ten years?

17 A. No. In fact, this case was on the trial docket.  
18 He pled off the trial docket, as well as Mr. Seymour,  
19 whose statement you made an exhibit, Defendant's  
20 Exhibit 1. They pled at the same time off the trial  
21 docket.

22 Q. Do you have any reason to believe why Mr.  
23 Calloway would think he would get ten years?

24 A. We discussed it. I asked for the minimum, which  
25 was a ten year sentence. But he was never told he was

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Christopher Todd Posey - Direct Examination by Mr. Richey*

16

1 going to get ten years.

2 Q. As to the mitigation, Mr. Calloway has alleged  
3 that you did not present proper mitigation. In  
4 reviewing the transcript you talked about his  
5 background somewhat. Did you have any discussions  
6 about his background?

7 A. Yeah. But most of the information I spoke of  
8 came from my discussions with him. He did not have  
9 much family support, so -- or anybody else I could  
10 really talk to, so most of the information I gathered  
11 about him came from Mr. Calloway.

12 Q. Is this a case where you would go out and hire a  
13 mitigation expert?

14 A. No. I saw no cause to do that, nor did I have  
15 support to allow for that.

16 Q. Mr. Calloway stated also the fact in reliance  
17 upon the statement -- I'm sure you've seen this  
18 statement that's been Exhibit 1?

19 A. Yes.

20 Q. You've reviewed that?

21 A. Yes.

22 Q. In terms of this statement where the guy -- this  
23 guy gave a statement against Mr. Calloway; correct?

24 A. We actually used the statement to get another  
25 bond hearing, which was again denied. But Seymour who

1 gave that statement at the end was represent by, I  
2 think, Mr. Robinson, Scott Robinson. He was Mr.  
3 Calloway's co-defendant and in the end he reverted back  
4 to his original statements and was prepared to testify  
5 against Mr. Calloway should we have went on to the jury  
6 trial.

7 Q. Did Mr. Calloway tell you, in fact, he was  
8 actually innocent of these charges?

9 A. I think at the beginning he denied all the  
10 charges. In the end, he made the decisions after  
11 discussions and finding out that Mr. Seymour was, in  
12 fact, willing to testify against him at that time, he  
13 made the decision to talk with Mr. Moyer and give a  
14 full -- give his version of the events as they  
15 occurred.

16 Q. And when was it that he talked to Mr. Moyer about  
17 the case?

18 A. It was about a week to ten days before the actual  
19 trial that he spoke with Mr. Moyer and the  
20 investigating officer of the case.

21 Q. Did, did -- was he -- on this transcript, was he  
22 forced or coerced in anyway to answer these questions  
23 in a certain way?

24 A. Not to my knowledge.

25 Q. Did you discuss with him how to answer these

*Antonio Calloway -vs- State of South Carolina (2012-CP-23-06181)*  
*Christopher Todd Posey - Cross Examination by Ms. Ratigan*

18

1 questions, whether to answer them yes or no, ---

2 A. I think the only thing I told him when he  
3 answered them to make sure he said yes, sir or no, sir  
4 to Judge Pyle.

5 MR. RICHEY: One moment, Your Honor.

6 Q. Mr. Posey, do you recall the interview that he  
7 gave to Mr. Moyer and the investigator, do you recall  
8 that day that he gave that interview?

9 A. Not any specifics about it. I know he met with  
10 Mr. Moyer and the investigator.

11 Q. Do you know whether there was any discussion  
12 about ten years during that meeting?

13 A. I think at some point in time he asked Mr. Moyer  
14 could he get ten and Mark told him he was not making  
15 any recommendation; what he got would be up to the  
16 judge. He would not argue against any. And I don't  
17 think Mark really did argue for a particular sentence  
18 in the transcript. And we did ask for the minimum  
19 sentence, which, you know, Judge Pyle then made the  
20 decision to impose the sentence he did.

21 Q. Thank you. Answer any questions Ms. Ratigan has  
22 for you.

23 **CROSS EXAMINATION**

24 **BY MS. RATIGAN:**

25 Q. Mr. Posey, did you file the usual *Brady* and Rule

1 5 motions?

2 A. Yes.

3 Q. Did you receive those materials from the state?

4 A. Yes. I have a large stack of them.

5 Q. Did you review all those materials with Mr.

6 Calloway?

7 A. Yes.

8 Q. Did you review with him his version of what

9 happened related to these particular charges?

10 A. Yes.

11 Q. Did you review with him -- well, did he -- strike

12 that. Did you review with him the minimum amounts of

13 sentence ranges on all these charges?

14 A. Yes.

15 Q. Did the state ever make any kind of an offer?

16 A. Not any -- well, I take that back. I think at

17 one time they may have offered, early on, around a

18 twenty year plea, I think, eighteen to twenty year

19 plea, which was not accepted at that time.

20 Q. So by the time that Mr. Calloway went to plead

21 guilty, would you have told him he was pleading

22 straight up without a recommendation?

23 A. Yes. From what we discussed, I thought he had

24 some good mitigation. I thought based on his age and

25 lack of record, I was hoping he would not get that

1 substantial of a sentence. But again, Judge Pyle saw  
2 it a little different.

3 Q. Did you tell Mr. Calloway to confess or is that  
4 something he decided to do on his own?

5 A. What we discussed is Mr. Moyer still offered him  
6 a chance to cooperate because he was not sure Mr.  
7 Seymour would go through with his cooperation and plea,  
8 so he wanted to be prepared should either one decide at  
9 the last minute they were not going to plea. So I did  
10 advise Mr. Calloway at that time if he was going to, in  
11 fact, enter a plea, it would be best to cooperate and  
12 help put himself in the best light possible in front of  
13 the court.

14 Q. Did you tell him to confess to something that he  
15 did not do?

16 A. No.

17 Q. In your opinion, would obtaining funds for  
18 mitigation, independent mitigation expert, have changed  
19 the outcome of the case?

20 A. No.

21 MS. RATIGAN: That's all I have, Your Honor.

22 MR. RICHEY: One moment, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. RICHEY:**

25 Q. Mr. Posey, even though if the co-defendant was

1 going to testify, supposedly testify, at trial, could  
2 this statement have been used to impeach his testimony?

3 A. Oh, I think you could have tried. I think you  
4 could have used it, yes.

5 Q. Thank you.

6 MS. RATIGAN: I have no recross, Your Honor.

7 THE COURT: Okay. Mr. Posey, you may step  
8 down.

9 You may call your next witness, Mr. Richey.

10 MR. RICHEY: No other witnesses.

11 THE COURT: Anything from the state?

12 MS. RATIGAN: Nothing from the state. We  
13 would rest on the record and Mr. Posey's testimony.

14 THE COURT: Okay. I'll review the transcript  
15 and issue an order.

16 MS. RATIGAN: Thank you, Your Honor.

17

18 [END OF REQUESTED TRANSCRIPT OF RECORD]

*Antonio Callaway -vs- State of South Carolina (2012-CP-23-06181)*  
*Certificate of Reporter*

22

1

## CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official  
3 Court Reporter for the Thirteenth Judicial Circuit of  
4 the State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate, and complete transcript  
6 of record of all the proceedings had and evidence  
7 introduced in the trial/hearing of the captioned case,  
8 relative to appeal, in the Court of Common Pleas for  
9 Greenville County, South Carolina, on the 18th day of  
10 December, 2013.

11 This transcript may contain quoted material. Such  
12 material is reproduced as read by the speaker.

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

15

May 13, 2014

16

17

18

19



Circuit Court Reporter

I Daquan Seymour would like to waive my statement against Antonio Catterway. I really don't know who he is, i heard somebody talking bout him and what he was bout. I use his name because i was scared and still is scared. i never knew i could be facing this much time just for riding with somebody. When i first got caught the investigator told me his name and force me to tell them something i dont even know bout. They told me if i didnt write what they wanted me to, that i was facing alot of time. They also promise me if i went along with that i wasnt going to be in this much trouble, thats why i wrote that statement. Most of my statement is what i heard from the streets so i dont know if its true or not. I put myself at the scene to seem cool and fit in with everybody. I really didnt know what was going on at that time being.

January 11, 2012  
 \* Daquan Seymour

Daquan Seymour

Jimmie Thompson

My Commission Expires  
 April 1, 2021



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Antonio Courvesier Calloway, )  
 S.C.D.C. No. 343102, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-23-6181

**ORDER OF DISMISSAL**

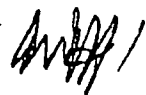
FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 FEB 17 AM 11 32

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 25, 2012. The Respondent made its return on January 31, 2013. An evidentiary hearing into the matter was convened on December 18, 2013 at the Greenville County Courthouse. The Applicant was present and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Christopher T. Posey, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2011 term of the Greenville County Grand Jury for two counts of possession of a

1 

weapon during the commission of a violent crime (2010-GS-23-7919, -7932), armed robbery (2010-GS-23-7920), and attempted murder (2010-GS-23-7949). The Grand Jury issued amended indictments at the February 2012 term for attempted armed robbery (2010-GS-23-7923), kidnapping (2010-GS-23-7926), and two counts of armed robbery (2010-GS-23-7931, -7955, count 1). He was represented by Christopher T. Posey, Esquire.

On May 4, 2012, the Applicant pled guilty.<sup>1</sup> The Honorable C. Victor Pyle, Jr., sentenced the Applicant to concurrent terms of five years for each count of possession of a weapon during the commission of a violent crime, twenty years for each count of armed robbery, twenty-five years for attempted murder, ten years for attempted armed robbery, and twenty-five years for kidnapping. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. "S.C. Statue [sic] Eg: Hand of one/Hand of all law, by and through 'Equal protections' of the law U.S. Const., XIV, Sec. #, S.C. Const. Article I – Sec. #3...."

The Applicant, through counsel, submitted an amendment to his application filed September 18, 2013, in which he alleged the following:

1. Ineffective assistance of counsel:
  - a. Failed to conscientiously discharge professional responsibilities.
  - b. Failed to effectively challenge search and seizure.
  - c. Failed to act as a diligent and conscientious advocate.
  - d. Failed to give complete loyalty.
  - e. Did not have Applicant's best interest in mind.
  - f. Failed to serve the cause in good faith.
  - g. Neglected necessary investigations and preparation.

<sup>1</sup> The State also dismissed several charges.

<sup>2</sup> 

- h. Did not do necessary factual investigations.
- i. Did not do necessary legal research.
- j. Did not conscientiously gather information to protect rights.
- k. Did not try to have the case settled in a manner that would have been to my best advantage.
- l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
- m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
- n. Never properly consulted with me or kept me informed.
- o. Never explained to me or discussed with me any of the elements.
- p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charged or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he met with plea counsel and reviewed the evidence and sentence ranges for the charges. The Applicant stated he told plea counsel his version of events and that he was innocent. The Applicant stated his co-defendant gave a second statement in which he

recanted the first statement (where he stated the Applicant was involved). The Applicant stated he discussed this second statement with plea counsel but counsel did not do anything with it. The Applicant stated he gave a confession in this case because plea counsel told him to do so. The Applicant stated there was a ten-year plea offer in his case and he believed he was pleading guilty to that offer. The Applicant stated he pled guilty because plea counsel said he would receive a 25-30 year sentence if he went to trial. The Applicant admitted he did not tell the plea judge that he was pleading guilty in exchange for a ten-year plea offer. The Applicant stated plea counsel did not provide effective mitigation evidence – mental health and social history – to the plea judge. The Applicant stated he was not satisfied with plea counsel but told the plea judge he was satisfied because he believed he would receive a ten-year sentence.

Plea counsel testified he was appointed to represent the Applicant on 39 charges. Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they reviewed the sentence ranges for the charges and the Applicant's version of events. Plea counsel testified he used the co-defendant's recanted statement to get another bond hearing for the Applicant. Plea counsel testified, however, that the co-defendant reverted back to his original statement and would have testified against the Applicant at trial. Plea counsel testified the Applicant originally denied involvement but – after his co-defendant flipped on him – the Applicant decided to speak to the assistant solicitor and tell him what happened. Plea counsel testified the Applicant asked the assistant solicitor for a ten-year plea offer and that the assistant solicitor stated he would not make a recommendation but would not argue against ten years. Plea counsel testified there was never a ten-year plea offer in this case and that the Applicant knew that he was pleading guilty without a sentence recommendation. Plea counsel noted the Applicant did not have a lot of family support and

testified he gave mitigation to the plea judge based on what the Applicant told him. Plea counsel testified a mitigation expert would not have changed the outcome of the Applicant's case.

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 the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. See Bennett v. State, 371 S.C. 198, 204 S.E.2d 673 (2006).

The Applicant admitted to the plea judge that the facts recited by the solicitor were true. (Plea transcript, pp.12-13). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, p.5; pp.7-8).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly address the issue of the co-defendant's recanted statement. Plea counsel testified he was aware of this statement and, in fact, used it to secure another bond hearing. Plea counsel also testified the co-defendant reverted back to his first statement. This Court finds the Applicant has failed to articulate what more plea counsel could have done with the co-defendant's second statement. While plea counsel could have used that statement to impeach the co-defendant if the case went to trial, the Applicant chose to confess and plead guilty to several of his charges.

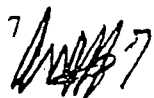
This Court finds the Applicant failed to meet his burden of proving plea counsel somehow misadvised him about the sentence he was facing if he entered a guilty plea. Both plea counsel and the Applicant testified they discussed the sentence ranges for the charges. While the

6  


Applicant he pled guilty pursuant to a ten-year plea offer, plea counsel testified there was never a ten-year plea recommendation in this case. Plea counsel explained the Applicant confessed and asked the assistant solicitor for a ten-year deal but that no recommendation was made. Plea counsel testified the Applicant knew he was pleading guilty without a sentence recommendation. This Court finds plea counsel's testimony is credible. This Court notes a sentence recommendation was not made at the guilty plea hearing and the Applicant stated he had not been made any promises in exchange for his guilty plea. (Plea transcript, p.5). This Court further notes that plea counsel urged the plea judge to sentence the Applicant to the minimum sentence of ten years imprisonment. (Plea transcript, pp.14-16).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have presented more thorough mitigation or obtained a mitigation expert. This Court notes plea counsel presented a detailed mitigation argument to the plea judge, including that the Applicant: had no prior record, became the sole caretaker of his younger siblings at a young age, and performed well academically with no history of behavior misconduct at school. (Plea transcript, pp.13-16). This Court notes that, as the Applicant has failed to present either mitigation evidence or a mitigation expert, it cannot speculate as to whether such information would have had an impact upon the Applicant's case. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, "it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense"); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding-of prejudice is merely speculative").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

7  
  
7

Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### **CONCLUSION**

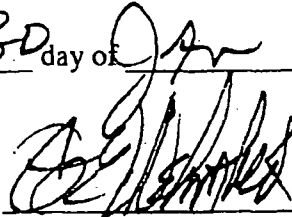
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application 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 this Order if he wants 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 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 30 day of Jan, 2014.



G. Edward Welmaker  
Thirteenth Judge  
Thirteenth Judicial Circuit

Bilbo, South Carolina.

WITNESSES

Michael Fortner 

Greenville County Sheriff's Office

8/6/2010

DOCKET NO. 2010-GS-23-  
LMM

The State of South Carolina

County of Greenville

007919

COURT OF GENERAL SESSIONS

July TERM 2006-2011

THE STATE

VS.

ANTONIO COURVESIER CALLOWAY

ARREST WARRANT NUMBER  
1481771

ACTION OF GRAND JURY

**TRUE BILL**

Forperson of Grand Jury 

VERDICT

Indictment for  
0549

POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-23-0490

Forperson of Petit Jury

Date:

**RECEIVED**

OCT - 8 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF A WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME

JUL 19 2011

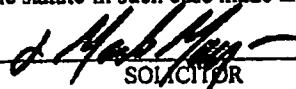
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ANTONIO COURVESIER CALLOWAY did in Greenville County, on or about the 25th day of July, 2010, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: armed robbery and/or attempted murder. This is in violation of §16-23-490 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.

  
SOLICITOR

WITNESSES

Michael Fortner

Greenville County Sheriff's Office

8/6/2010

DOCKET NO. 2010-GS-23-

LAMM

The State of South Carolina

County of Greenville

007920

COURT OF GENERAL SESSIONS

July

TERM 2010 2011

THE STATE

vs.

ANTONIO COURVESIER CALLOWAY

ARREST WARRANT NUMBER

1481769

ACTION OF GRAND JURY

TRAVIS WATKINS

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

RECEIVED

AUG - 8 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
ARMED ROBBERY

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville  
County present upon their oath:

That ANTONIO COURVESIER CALLOWAY did in Greenville County, on or about the 25th day of July, 2010,  
while armed with a deadly weapon, or while alleging either by action or words he was armed while using a  
representation of a deadly weapon or any object which a person present during the commission of the robbery  
would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies  
described as U.S. currency and/or a Samsung cell phone from the person or presence of FRANCISCO CRUZ.  
This is in violation of §16-11-330 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.

  
SOLICITOR

WITNESSES

T M Conroy

*KWC*

Greenville Police Department

8/6/2010

AMENDED INDICTMENT  
DOCKET NO. 2010-GS-23-007923  
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2012

THE STATE

vs.

ANTONIO CORVSA CALLOWAY

ARREST WARRANT NUMBER

M383751

ACTION OF GRAND JURY

*TRUE BILL*

*John L. Davis*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Amended Indictment for  
0026

ATTEMPTED ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF GREENVILLE )

AMENDED INDICTMENT FOR  
ATTEMPTED ARMED ROBBERY


FEB 21 2012

At a Court of General Sessions, convened on  
County present upon their oath:

the Grand Jurors of Greenville

That ANTONIO CORVSA CALLOWAY did in Greenville County, on or about the 25th day of July, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force or intimidation, goods or monies from the person or presence of REECE McCLINTOCK, MADISON WADE, STONE DANIELS, CHRISTINA SCHNEIDER, and/or CHE KENDALL. This is in violation of §16-11-0330 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.

  
SOLICITOR

WITNESSES

T M Conroy

JCMS

Greenville Police Department

8/6/2010

AMENDED INDICTMENT  
DOCKET NO. 2010-GS-23-007926

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2012

THE STATE

VS.

ANTONIO CORVSA CALLOWAY

ARREST WARRANT NUMBER

M383745

ACTION OF GRAND JURY

ORDEE BELL

*Joseph F. Bell*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Amended Indictment for  
0095

KIDNAPPING

VIOLATION § 16-03-0910

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )


AMENDED INDICTMENT FOR  
KIDNAPPING

At a Court of General Sessions, convened on FEB 21 2012 the Grand Jurors of Greenville  
County present upon their oath:

That ANTONIO CORVSA CALLOWAY did in Greenville County, on or about the 25th day of July, 2010,  
unlawfully seize, abduct, confine, inveigle, decoy or carry away MADISON WADE, DAVIS HARRINGTON,  
ANDREW SIPES, REECE MCCLINTOCK, CHRISTINA SCHNEIDER, STONE DANIELS, MADISON  
YODER, TIMOTHY JAMES, CHE KENDALL, and/or MICHAEL CHATELAIN, without the authority of law.

This is in violation of §16-3-910 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.

  
SOLICITOR

WITNESSES

T M Conroy

Greenville Police Department

8/6/2010

*TCMS*

AMENDED INDICTMENT  
DOCKET NO. 2010-GS-23-007931  
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2012

THE STATE

VS.

ANTONIO CORVSA CALLOWAY

ARREST WARRANT NUMBER

M383740

ACTION OF GRAND JURY

*Joseph L. Davis*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for  
0139

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

AMENDED INDICTMENT FOR  
ARMED ROBBERY

At a Court of General Sessions, convened on FEB 21 2012 the Grand Jurors of Greenville

County present upon their oath:

That ANTONIO CORVSA CALLOWAY did in Greenville County, on or about the 25th day of July, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as wallets, money, and/or cell phones from the person or presence of MADISON YODER, DAVIS HARRINGTON, MICHAEL CHATELAIN, ANDREW SIPES, and/or TIMOTHY JAMES. This is in violation of §16-11-0330 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.

  
SOLICITOR

WITNESSES

*[Signature]*

T M Conroy

Greenville Police Department

8/6/2010

DOCKET NO. 2010-GS-23-

LAMM

The State of South Carolina

County of Greenville

007932

COURT OF GENERAL SESSIONS

July TERM 2010 2011

THE STATE

VS.

ANTONIO CORVSA CALLOWAY

ARREST WARRANT NUMBER

MS83747

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*  
Foreperson of Grand Jury

VERDICT

0549

Indictment for

POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-23-0490

Foreperson of Petit Jury

Date:

RECEIVED

OCT - 8 2010

Clerk of Court  
Greenville County



WITNESSES

Michael Fortner

Greenville County Sheriff's Office

8/6/2010

DOCKET NO. 2010-GS-23-  
LMM

007949

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2010

THE STATE

VS.

ANTONIO COURVESIER CALLOWAY

ARREST WARRANT NUMBER

1481770

ACTION OF GRAND JURY

TRUE BILL

FOREPERSON GRAND JURY

Foreperson of Grand Jury

VERDICT

3410

Indictment for

ATTEMPTED MURDER

VIOLATION § 16-03-0029

Foreperson of Petit Jury

Date:

RECEIVED

OCT - 8 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
ATTEMPTED MURDER

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville  
County present upon their oath:

That ANTONIO COURVESIER CALLOWAY did in Greenville County on or about the 25th day of July 2010,  
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Jose Mesa. This is in violation  
of § 16-03-0029 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.

  
SOLICITOR

WITNESSES

Michael Fortner

Greenville County Sheriff's Office

8/8/2010



**AMENDED INDICTMENT**  
DOCKET NO. 2010-GS-23-007955

LRM

The State of South Carolina

County of Greenville

**FEDERAL COURT GENERAL SESSIONS**

TERM 2012

THE STATE

vs.

ANTONIO COURVESIER CALLOWAY

ARREST WARRANT NUMBER  
1481774 and 1481776

ACTION OF GRAND JURY  
**PRELIMINARY**

  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

✓ Amended Indictment for  
0139 and 0549

ARMED ROBBERY and POSSESSION OF A  
WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME

VIOLENT CRIME  
VIOLATION § 16-11-0330 and § 16-23-0490

Foreperson of Petit Jury

Date:

