

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from York County  
John C. Hayes, III, Circuit Court Judge

---

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S.C. Supreme Court

JAMAR LAVERT BELK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001067

---

APPENDIX

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DAVID ALEXANDER  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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State of South Carolina) )  
 ) )  
County of York ) )

In the General Sessions  
Court of York  
Case No.: 2010-GS-46-03072  
2010-GS-46-03072A

State of South Carolina., )  
 )  
Plaintiff., )  
 )  
-vs- )  
 )  
Jamar Lavert Belk., )  
 )  
Defendant. )  

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Transcript of Record

October 4, 2012  
York, South Carolina

B E F O R E:

Honorable Michael Nettles, Judge.

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

Mr. Willy Thompson  
Deputy Solicitor  
Sixteenth Judicial Circuit  
Moss Justice Center  
1675-1A York Hwy.  
York, South Carolina 29745-7422  
[willy.thompson@yorkcountygov.com](mailto:willy.thompson@yorkcountygov.com)  
803-628-3020  
For the Plaintiff

Mr. Michael L. Brown  
Attorney at Law  
P.O. Box 1025  
Rock Hill, South Carolina 29731  
[waffenss06@yahoo.com](mailto:waffenss06@yahoo.com)  
803-328-8822  
For the Defendant

Wanda Nelson, CVR-M  
Circuit Court Reporter  
Sixteenth Judicial Circuit  
The Honorable John C. Hayes, III

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I N D E X

E-X-A-M-I-N-A-T-I-O-N

WITNESS                      BY:                      PAGE NO.

No witnesses were called.

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

NO.                      DESCRIPTION                      ID.                      EVD.

No Exhibits were Received into the Record.

1 (ON THE RECORD IN THE MATTER OF STATE V. JAMAR LAVERT  
2 BELK ON THURSDAY, OCTOBER 4, 2012 AT 05:25 P.M..)

3 SOLICITOR THOMPSON: Jamar Belk.

4 (DEFENDANT, JAMAR LAVERT BELK, BLACK MALE, ENTERING  
5 COURTROOM.)

6 THE COURT: Are we deferring sentencing on this, Mr.  
7 Thompson?

8 MR. THOMPSON: Yes, Your Honor.

9 May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 SOLICITOR THOMPSON: This is State of South Carolina  
12 versus Jamar Lavert Belk. It's Indictment 2010-GS-46-  
13 0-3-0-7-2 wherein the Defendant has been indicted for  
14 Murder; he's pleading guilty as charged. On court two of  
15 that indictment 0-3-0-7-2A Possession of a Firearm During  
16 the Commission of a Violent Crime that will be dismissed as  
17 part of the plea agreement.

18 And in 2010-GS-46-0-3-0-7-4 wherein he's charged with  
19 and indited with Armed Robbery; he's pleading guilty as  
20 charged. And he is pleading to count two as well for  
21 Possession of a Firearm During the Commission of a Violent  
22 Crime as it relates to that indictment.

23 And the final indictment he's pleading to is 2010-GS-  
24 46-0-3-0-7-5 wherein he's charged with Conspiracy and he's  
25 pleading guilty to that charge as well. One final

1 indictment that will be dismissed is a two-count indictment  
2 2010-GS-46-0-3-0-7-3 and 0-3-0-7-3A wherein he's charged  
3 with Kidnaping and Possession of a Firearm During the  
4 Commission of a Violent Crime.

5 He's represented by Michael Brown of the York County  
6 Bar who is appointed to represent Mr. Belk. The reason the  
7 negotiation in this case, Your Honor, and that's for a  
8 negotiated sentence of thirty years. However we are  
9 deferring sentencing on him today so that it'll allow the  
10 victim's family to be here during the sentencing.

11 THE COURT: Mr. Brown, you represent Mr. Belk?

12 MR. BROWN: Yes, sir, I do, Your Honor.

13 THE COURT: Have you explained to him the offense of  
14 Criminal Conspiracy, Possession of a Weapon during the  
15 Commission of a Violent Crime, Armed Robbery and Murder,  
16 and the elements of each of these offenses and the  
17 potential defenses and his constitutional rights?

18 MR. BROWN: Yes, sir.

19 THE COURT: And how does he wish to plead?

20 MR. BROWN: He informs me he wants to plead guilty and  
21 I concur with that decision.

22 THE COURT: Do you agree with his decision to do so?

23 MR. BROWN: Yes, sir.

24 THE COURT: Does he understand that Armed Robbery and  
25 Murder fall within a very special category of crimes in

1 that they are most violent and both most serious and they  
2 are both subject to the two and three strike rule?

3 MR. BROWN: Yes, sir, he does.

4 THE COURT: Does he understand these are non-parolable  
5 offenses of which he would have to serve his sentence day  
6 per day subject to the eighty-five percent rule?

7 MR. BROWN: Yes, sir, we've had several conversations  
8 about that.

9 THE COURT: And he understands those?

10 MR. BROWN: Yes, sir.

11 THE COURT: All right, let's place Mr. Belk under oath  
12 if we could.

13 MADAME CLERK: Please raise your right hand, place  
14 your left hand on the Bible.

15 (WHEREUPON: JAMAR LAVERT  
16 BELK, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
17 FOLLOWS:)

18 THE COURT: Mr. Belk, are you under the influence of  
19 any drugs or alcohol here today?

20 MR. BELK: No, sir.

21 THE COURT: Are you experiencing any kind of physical  
22 or mental problem that would prevent you from understanding  
23 what's going on here today?

24 MR. BELK: No, sir.

25 THE COURT: All right. I want you to pay very close

1 attention as the State summarizes the facts that bring us  
2 here today.

3 SOLICITOR THOMPSON: And as I begin to do that, Your  
4 Honor, one thing I would point out is, as to the Murder  
5 itself, I believe that the thirty years would be day per  
6 day as to the murder. Not eighty-five percent.

7 THE COURT: And all of them are non-parolable.

8 SOLICITOR THOMPSON: Correct but other than the  
9 conspiracy.

10 THE COURT: I mean, well right. But both of the most  
11 serious offenses are non-parolable?

12 SOLICITOR THOMPSON: That's correct.

13 THE COURT: Day per day.

14 SOLICITOR THOMPSON: Your Honor, this occurred on  
15 October the 8th of 2008, here in York County in Fort Mill.  
16 And as we've described in the two pleas of his brother's,  
17 one earlier today and one earlier this week, this happened  
18 at the Any Day Pay Day Lending where Mr. Joseph Fatigato  
19 was the proprietor of Any Day Pay Day who was working that  
20 day when Joshua Squires came in and basically scoped out  
21 the place. Joshua Squires had been in a conspiracy with  
22 Mr. Belk and his brothers, with Jamar Belk, Tyree Belk and  
23 Curtis Belk to commit an armed robbery at Any Day Pay Day.  
24 He was basically the look out initially to scope it out and  
25 when - and was the driver of the car that they later meet

1 up with when they ditched the van that was stolen in order  
2 to commit the robbery.

3 All three of the brothers ultimately got into that  
4 mini van that had been stolen, drove it to Any Day Pay Day  
5 which is in a little strip mall, parked several stores  
6 down, got out of the van ran into Any Day Pay Day Lending,  
7 all had mask and gloves, it was Jamar Belk though who had  
8 the pistol. When he came in with the pistol he put one man  
9 to the wall who was the FedEx guy who happened to be there  
10 at the time. He complied with their commands and put his  
11 head against the wall. His two brothers went behind the  
12 counter, Curtis Belk took the money from the cash drawer at  
13 that time. Tyree Belk grabbed Mr. Fatigato and forced him  
14 around behind the counter ultimately pushing him and  
15 hitting him during the course of the robbery and then  
16 ultimately bringing out - bringing him out in front of the  
17 actual counter. When he brought him out in front of the  
18 counter that is when after the money had been stolen that  
19 Jamar Belk fired one shot which was a fatal shot to Mr.  
20 Fatigato and ultimately killed him.

21 The men then ran out of the store at that time, the  
22 Any Day Pay Day Lending, and took off in the van and met up  
23 with Joshua Squires after they ditched the van and he drove  
24 them back into Charlotte where they were from.

25 As the investigation went on the police were able to

1 ultimately find out the identity of Jamar Belk as the  
2 shooter. They interviewed Mr. Squire when they realized he  
3 was because he had come in and actually had not disguise on  
4 and so they were able to identify him rather quickly. He  
5 gave Mr. Jamar Belk as the shooter as well at that point.

6 They began to investigate him for other charges I  
7 believe in Charlotte at that time that ultimately they  
8 ended up searching his - The Charlotte Mecklenburg Police  
9 Department searched his hotel room where he had been  
10 staying, and when they did so they found hidden under the  
11 bathtub the gun that was used in the - in this particular  
12 robbery. And when they found that gun they were able to  
13 match ballistically as to the bullet that was actually  
14 fired from that gun being the bullet that killed Mr.  
15 Fatigato.

16 In addition a number of items of clothing were  
17 recovered, of course, some of them specifically matching  
18 his brother Curtis and others being at least of extremely  
19 similar to the clothing that was worn during the course of  
20 the robbery and in particular some gloves that had - that  
21 were white rather than black that had little grip things,  
22 black grip things on the palm of the glove that had been  
23 described by Joseph Squire and were recovered from the  
24 hotel room, and are seen as being obviously on the video.

25 Ultimately, Your Honor, as the Court knows both Curtis

1 Belk and Tyree Belk entered pleas agreeing to testify if  
2 necessary regarding the crime implicating their brother  
3 Jamar and saying that he was and confirmed that he was the  
4 shooter in this particular offense, and that's what brings  
5 us before the Court today.

6 THE COURT: Mr. Belk, are those facts true and  
7 accurate?

8 MR. BELK: Yes, sir.

9 THE COURT: Are you indeed guilty of Criminal  
10 Conspiracy?

11 MR. BELK: Yes, sir.

12 THE COURT: Are you indeed guilty of Possession of a  
13 Weapon During the Commission of a Violent Crime?

14 MR. BELK: Yes, sir.

15 THE COURT: Are you guilty of Armed Robbery?

16 MR. BELK: Yes, sir.

17 THE COURT: Are you guilty of Murder?

18 MR. BELK: Yes, sir.

19 THE COURT: You stand before me pleading guilty but  
20 you don't have to plead guilty to anything. You could  
21 exercise your right to a jury trial. In that process the  
22 jury would determine whether or not the State can actually  
23 prove you guilty beyond a reasonable doubt. I would charge  
24 the jury as a matter of law that you're presumed to be  
25 innocent; no one can require that you take the witness

1 stand. However if you wanted to you could and you could  
2 subpoena witnesses on your own behalf. In addition to that  
3 you and your lawyer could cross-examine the State's  
4 witnesses. You'd have the opportunity to eyeball them and  
5 confront them as they testified against you. Do you  
6 realize that by pleading guilty you're giving up all these  
7 rights?

8 MR. BELK: I understand that, sir.

9 THE COURT: Do you still wish to plead guilty?

10 MR. BELK: Yes, sir.

11 THE COURT: Are you indeed guilty?

12 MR. BELK: Yes, sir.

13 THE COURT: Plea negotiations from the State?

14 SOLICITOR THOMPSON: The negotiated thirty-year  
15 sentence, your Honor, as well as the charge that we are  
16 dismissing.

17 THE COURT: Is that your understanding, Mr. - -

18 MR. BROWN: Yes, sir, Your Honor. It's a negotiated  
19 plea for thirty years.

20 THE COURT: All right. Is that your understanding,  
21 Mr. Belk?

22 MR. BELK: Yes, sir.

23 THE COURT: All right. Mr. Belk, are you satisfied  
24 with your lawyer?

25 MR. BELK: Yes, sir.

1 THE COURT: You need to answer up so I can hear you.

2 MR. BELK: Yes, sir.

3 THE COURT: Have you understood all your conversations  
4 with him?

5 MR. BELK: Yes, sir.

6 THE COURT: Particularly those having to do with the  
7 elements of all these offenses and potential defenses and  
8 your constitutional rights?

9 MR. BELK: Yes, sir.

10 THE COURT: And you understand the collateral  
11 consequences of your plea, the fact these are violent  
12 offenses that adversely affects your custody status? And  
13 that two of these are most serious offenses, and one of  
14 which you'll serve day per day, the thirty years. Do you  
15 understand that don't you?

16 MR. BELK: Yes, sir.

17 THE COURT: All right. Do you have any complaints  
18 against your lawyer?

19 MR. BELK: No, sir.

20 THE COURT: All right. Do you need any additional  
21 time to discuss this matter with your lawyer?

22 MR. BELK: No, sir.

23 THE COURT: All right. Has anybody promised you  
24 anything, threatened you, pressured you, mistreated you in  
25 any way shape or form in an effort to get you to plead

1 guilty here today?

2 MR. BELK: No, sir.

3 THE COURT: It's been your decision to plead guilty?

4 MR. BELK: Yes, sir.

5 THE COURT: Are you indeed guilty?

6 MR. BELK: Yes, sir.

7 THE COURT: Have you understood all of my questions?

8 MR. BELK: Yes, sir.

9 THE COURT: Have your answers been truthful?

10 MR. BELK: Yes, sir.

11 THE COURT: Do you understand you have ten days to  
12 appeal any decision I might render here today?

13 MR. BELK: Yes, sir.

14 THE COURT: Based on your testimony I find there is a  
15 substantial factual basis for your plea, that your decision  
16 was freely and voluntarily entered into knowingly and  
17 intelligently with the consent of a competent counsel with  
18 whom you say you are satisfied. I'll accept your plea and  
19 I understand we're gonna defer this sentence until October  
20 the 15th; is that correct?

21 SOLICITOR THOMPSON: As soon as the victims can be  
22 here, Your Honor. They are both from Texas.

23 MR. BROWN: Your Honor, can I have a word with Mr.  
24 Thompson?

25 (SIDE BAR BETWEEN SOLICITOR THOMPSON AND ATTORNEY

1 MICHAEL BROWN.)

2 MR. BROWN: Your Honor, I have an order of protection  
3 for that week but I'll be back my birthday week. I'll be  
4 back from that trip on Wednesday so I was just informing  
5 the Solicitor's office of that.

6 THE COURT: They will work it out. Very good.

7 SOLICITOR THOMPSON: We simply need to arrange a time  
8 because they have to fly in from Texas and Illinois to  
9 attend the plea. So we're going to work that out within  
10 the next few days and then we'll have a day that we'll  
11 mutually agree upon, Your Honor.

12 THE COURT: Anything else that needs to be put on the  
13 record, Mr. Brown?

14 MR. BROWN: No, sir.

15 Anything you want to say?

16 No, sir.

17 THE COURT: Would you like to say anything, Mr. Belk?

18 MR. BELK: No, sir.

19 THE COURT: You will be allowed to be heard at a later  
20 day and time. Anything you want to say here today?

21 MR. BELK: No, sir.

22 THE COURT: All right, Mr. Thompson, anything you want  
23 to put on the record?

24 SOLICITOR THOMPSON: No, Your Honor.

25 THE COURT: All right, we'll stand at ease until 9:30

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in the morning.

MR. BROWN: Thank you, Your Honor.

(END OF TRANSCRIPT OF RECORD )

(COURT IN EVENING RECESS AT 05:40 P.M..)



FORM 5

STATE OF SOUTH CAROLINA )

County of York )

JAMAR LAVERT BELK # 353088 )

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

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2013 CP46-2984

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution,  
Ridgeville S.C. 29472 P.O. Box 205
2. Name and location of Court which imposed sentence general session court,  
York county
3. Name(s) of co-defendant(s) (if any) Tyree Belk, Curtis Belk,  
Joshua Squire.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2010 - 65 - 46 - 03072  
(B) 2010 - 65 - 46 - 03072 A1

FILED-RECEIVED  
2013 SEP 30 PH 3:25  
DAVID HADLITON  
CLERK OF COURT  
YORK COUNTY, SC

CERTIFIED TRUE COPY  
2013 OCT - 11 AM 8:11  
DAVID HADLITON  
CLERK OF COURT  
YORK COUNTY, SC

(C) 2010 - 65 - 46 - 03074

(D) 2010 - ~~65~~ 46 - 03074 A

(E) 2010 - 65 - 46 - 03075

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

(a) 30 years

(b) October 4, 2012

(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.

iii. N/A

(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.

iii. N/A

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

(a) I wrote to the clerk of courts in York county

requesting for an appeal. But after the 10 day time, they

- (b) wrote me back saying that I wrote to the wrong
- (c) address.

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

- (a) Ineffective Assistance of counsel
- (b) prosecutorial misconduct
- (c) \_\_\_\_\_

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

- in (10): Counsel refused to prepare petitioner's case for trial against petitioner's wishes; counsel instead seeked to plea; counsel failed to offer alibi; counsel failed to use co-defendant conflicting statement as evidence towards petitioner's innocence; counsel verbally admitted that since petitioner was not paying he would not be fully represented. Counsel's representation fell below standard. See attached sheet!
- (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

*petitioner reserves right to amend.*

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

from Q. # 11

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

(11). After sentencing of petitioner, co-defendant confessed that solicitor refused to let him withdraw giving testimony favorable to the state; petitioner was denied due process by an unreasonable delay of indictment, defective indictment and defective arrest warrant.

iv. \_\_\_\_\_

(c) the disposition thereof:

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

ii. \_\_\_\_\_

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

iv. \_\_\_\_\_

N/A

(d) the date of each such disposition:

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

ii. \_\_\_\_\_

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

iv. \_\_\_\_\_

N/A

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

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

ii. \_\_\_\_\_

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

iv. \_\_\_\_\_

N/A

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

No

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

(a) which grounds have been presented:

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

ii. \_\_\_\_\_

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

N/A

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

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

ii. \_\_\_\_\_

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

N/A



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

I want my sentence vacated or remanded for a new trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of York )

VERIFICATION

I, Jamar L. Bell, 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.

Jamar Bell

SWORN to and subscribed before me this 18<sup>th</sup> day of September, 2013.

Quedraun Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

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

I, Jamar L. Bell, 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.

Jamar Bell  
Applicant

SWORN or affirmed to and subscribed before me this  
18<sup>th</sup> day of September, 2013.

Judiean Bryant  
Notary Public

My Commission Expires: May 26, 2020

COUNTY OF YORK

Jamar L. Belk #353088

Plaintiff

v.

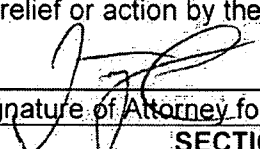
State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2013-CP-46-2984

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Leah B. Moody, Esquire, Bar No. Address: 235 East Main St.; Ste 100 Rock Hill, SC 29731 phone:                      fax: e-mail:                      other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail:                      other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed:                      Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	February 4, 2014 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE  CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	
Jamar Lavert Belk, #353088,	)	2013-CP-46-2984
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 30, 2013, 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 York County Clerk of Court. The Applicant was indicted at the August 2010 term of the York County Grand Jury for Murder (2010-GS-46-3072), Armed Robbery (2010-GS-46-3074), Possession of a firearm during the commission of a violent crime (2010-GS-46-3074A) and Criminal Conspiracy (2010-GS-46-3075). Michael Brown, Esquire, represented him. On October 4, 2012, the Applicant pled guilty before the Honorable Michael G. Nettles to all charges as indicted. On November 7, 2012, the Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated sentence, to thirty (30) years for murder, thirty (30) years, concurrent, for Armed Robbery, five (5) years, concurrent, for possession of a firearm during the commission of a violent crime, and five (5) years, concurrent, for Criminal Conspiracy. The Applicant did not appeal his conviction and sentence.

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

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel refused to prepare Petitioner's case for trial against Petitioner's wishes; counsel instead seeked(sic) to plead"
  - b. "Counsel failed to offer alibi"
  - c. "Counsel failed to use co-defendant conflicting statement as evidence towards Petitioner's innocence"
  - d. "Counsel verbally admitted that since Petitioner was not paying he would not be fully represented"
  - e. "Counsel's representation fell below standard"
2. "Prosecutorial Misconduct"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCPP(a).

## III.

Respondent interprets all of Applicant's claims as being claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## IV.

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

## V.

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

## VI.

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

Respectfully submitted,

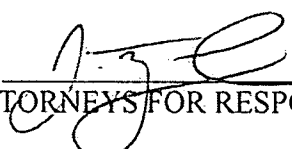
ALAN WILSON  
Attorney General

JOHN W. McINTOSH

Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

*February 4, 2014*

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS

2013-CP-46-2984

JAMAR L. BELK, 353088 )  
Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

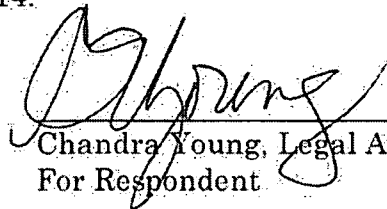
STATE OF SOUTH CAROLINA, )  
Respondent. )  

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

Leah B. Moody, Esquire  
235 East Main Street; Suite 100  
Rock Hill, SC 29731

DATED this 4<sup>th</sup> day of February, 2014.

  
Chandra Young, Legal Assistant  
For Respondent

State of South Carolina., )  
 )  
 )  
 County of York., ) Case No. 2013-CP-46-02984

Camar Lavert Belk., )  
 )  
 Applicant., )  
 )  
 -vs.- ) Transcript of Record  
 ) Post Conviction Relief

State of South Carolina., )  
 )  
 Respondent. )  
 )  
 )

April 15, 2014  
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, Judge.

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

Ms. Leah B. Moody  
 Law Officers of Leah B. Moody  
 235 East Main Street, Suite 115  
 P.O. Box 1015  
 Rock Hill, South Carolina 29730  
 803-327-4192  
[lbmatty@comporium.net](mailto:lbmatty@comporium.net)  
 For the Applicant

Mr. J. Rutledge Johnson  
 Assistant Attorney General  
 Office of Attorney General  
 State of South Carolina  
 P.O. Box 11549  
 Columbia, South Carolina 29211-1549  
 803-734-1867  
 803-734-4113  
[rjohnson@scag.gov](mailto:rjohnson@scag.gov)  
 For the Respondent

**ORIGINAL**

Wanda Nelson, CVR-M  
 Official Court Reporter  
 Sixteenth Judicial Circuit  
 To the Honorable John C. Hayes, III

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<u>Witness</u>	<u>By:</u>	<u>Page No.</u>
Jamar Belk	Ms. Moody	P.8-19
	Mr. Johnson	P.19-25
Michael Brown	Mr. Johnson	P.25-31
	Ms. Moody	P.32-36
Court Reporter Certificate Page . . . . .		P.38

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION TUESDAY, APRIL 15, 2014, AT 02:05  
2 P.M..)

3 MR. JOHNSON: Belk.

4 (APPLICANT JAMAR BELK, BLACK MALE, ENTERS COURTROOM.)

5 THE COURT: All right, Counsel.

6 MR. JOHNSON: May it please the Court, Your Honor.

7 This is the case of Jamar Belk versus State of South  
8 Carolina. It's Case No. 2013-CP-46-2984.

9 Mr. Belk was indicted at the August 2010 term of the  
10 York Count Grand Jury for murder, armed robbery, possession  
11 of a firearm during the commission of a violent crime and  
12 criminal conspiracy.

13 On October 4th, 2012 he pled guilty before the  
14 Honorable Michael G. Nettles to all charges as indicted.  
15 And on November 7th, 2012 the Honorable Lee S. Alford  
16 sentenced the applicant. It was a negotiated sentence,  
17 thirty years for murder, thirty years for armed robbery,  
18 five years for the possession charge, and five years for  
19 the criminal conspiracy charge.

20 There was no appeal, however, there was a timely PCR  
21 Application filed September 30th, 2013. And the State  
22 filed it's return February 4th, 2014. He is represented  
23 here today by Ms. Leah Moody.

24 THE COURT: All right. Ms. Moody.

25 MS. MOODY: Thank you, Your Honor, may it please the

1 Court. I apologize to the Court, my client ask me when we  
2 were back in the back to ask for a continuance. He  
3 indicates that he wants to have his brothers transported  
4 here. In the course of this plea in the transcript - and I  
5 believe the Court may have already read this one - but he  
6 pled and at the time that his lawyer - his lawyer  
7 represented him it was under the understanding that his  
8 brothers would be - would be pleading but they would be  
9 testifying against him and that influenced his entering  
10 into the plea.

11 His brothers have submitted to him or stated to him  
12 that they did not know that they were signing - I don't  
13 have those transcripts to verify that that they were  
14 signing that they would be testifying against him and  
15 labeling him as the trigger person.

16 THE COURT: All right.

17 MS. MOODY: So based on that, Your Honor, he would  
18 like for his brothers to be here to testify on his behalf.

19 And that's the basis for the request, Your Honor.

20 THE COURT: You kind of lost me a little bit.

21 He pled guilty.

22 MS. MOODY: Yes, sir.

23 THE COURT: And his brothers testimony would effect  
24 that plea how?

25 MS. MOODY: He'S saying that the reason why he went

1 forward is he was one, not only was he scared but his  
2 brother's testimony labeling him as the trigger person  
3 would have caused him to go forward. Well he would have  
4 gotten the conviction based on them testifying. He says  
5 that they did not understand that they would have to  
6 testify against him.

7 THE COURT: Well this happened and he believed -  
8 almost two years ago, 2012, and he's just now calling that  
9 to your attention?

10 MS. MOODY: Yes, sir, Your Honor, based on the  
11 correspondence I have from him.

12 THE COURT: Well absent that what is his ground?

13 MR. JOHNSON: And, Your Honor, just to respond to  
14 that. That is in the transcript that Your Honor was  
15 provided on Page 8 of the October 4<sup>th</sup> transcript the bottom  
16 as the Court knows both Curtis Belk and Tyree Belk his  
17 brothers and co-defendants entered pleas agreeing to  
18 testify if necessary regarding the crime implicating this  
19 Mr. Belk, Jamar, and saying that he was and affirmed that  
20 he was the shooter in this particular offense, and that's  
21 what brings us before the court today.

22 THE COURT: Well I'm gonna deny the motion for a  
23 continuance. We will hear his concerns today. And tell me  
24 again exactly what that is so I will know what to listen  
25 for.

1 MS. MOODY: Well over all, Your Honor, he alleges  
2 ineffective assistance of counsel. He indicates that his  
3 counsel refused to prepare his case for a trial against his  
4 wishes. His counsel instead sought for a plea in his case  
5 which is the basis of why he had a plea, Your Honor.

6 He then indicates that his counsel failed to offer the  
7 alibi witnesses'; that counsel failed to use the co-  
8 defendants conflicting statements as evidence towards the  
9 petitioner's innocence.

10 Further, his counsel verbally admitted that since the  
11 petitioner was not paying he would not being fully  
12 represented.

13 And then the last, Your Honor, would be the counsel's  
14 representation failed below the standard. As to the  
15 prosecutorial misconduct, Your Honor, he would move to  
16 withdraw that from his application.

17 THE COURT: Call your first witness.

18 MS. MOODY: Your Honor, we would call Mr. Belk, Jamar  
19 Belk.

20 THE COURT: If you'll step up here there's a Bible.

21 If you'll put your left hand on it and raise your  
22 right as best you can.

23 (JAMAR LAVERT BELK, BEING  
24 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION

1 JAMAR BELK BY MS. MOODY:

2 Q. Mr. Belk, can you state your full name for the record  
3 please?

4 A. Jamar Lavert Belk.

5 Q. And where are you currently being held?

6 A. Lieber Correctional Institution.

7 Q. And you're there based on the charges of the murder as  
8 well as the possession of a firearm during the commission  
9 of a violent crime and armed robbery - - -

10 A. Yeah.

11 Q. - - - and criminal conspiracy?

12 A. Yeah.

13 Q. Okay. So I need you to talk into that microphone.

14 A. Yes, ma'am.

15 Q. Okay. And so you filed a post conviction relief  
16 action against your attorney in that case. Correct?

17 A. Correct.

18 Q. And that attorney was Michael Brown?

19 A. Correct.

20 Q. And when did you meet - When was the first time you  
21 met with Mr. Brown on your case?

22 A. I don't - It's been about - I don't remember.

23 Q. And is that because you were ill for four years?

24 A. Yes.

25 Q. So at some point in time in that four years you met

JAMAR BELK: DIRECT BY MS. MOODY

-9-

1 with Mr. Brown to represent you on these charges?

2 A. Yes, ma'am.

3 Q. Okay. And you are not originally from Rock Hill or  
4 York County. Right?

5 A. No. Charlotte, North Carolina.

6 Q. And so was he your first attorney?

7 A. No. Dan D'Agostino was.

8 Q. Okay. And did you have an opportunity to meet with  
9 Dan D'Agostino on your case?

10 A. Yes, ma'am.

11 Q. And what's the reason why Mr. D'Agostino's  
12 representation ended?

13 A. I got a new - Cause he wasn't representing me  
14 properly I got him off my case.

15 Q. And so that's when you had Mr. Brown?

16 A. Mr. Brown, yes, ma'am.

17 Q. And at the time that Mr. D'Agostino was representing  
18 you had you all planned which way or which direction you  
19 all wanted to go on your case?

20 A. No, ma'am.

21 Q. And when you met with Mr. Brown what if any direction  
22 did you all decide on your case?

23 A. Nothin really.

24 Q. Why do you say nothing?

25 A. He ain't really come and see me like that.

1 Q. Did you have correspondence with him?

2 A. Yeah I did.

3 Q. Okay. And what kind of correspondence did you  
4 receive from him?

5 A. Uh pretty much he was just telling me man, take the  
6 plea.

7 Q. So had you been offered a plea offer prior to Mr.  
8 Brown?

9 A. No. No.

10 Q. So when Mr. Brown indicated you needed to take a plea,  
11 what was his reasons for why you needed to go take a plea?

12 A. Cause he was tellin me if I didn't take it I was gonna  
13 get life in prison and I ain't want that.

14 Q. Okay. Did he tell you anything else as to what - as  
15 to why you needed to take the plea?

16 A. No, ma'am, that's pretty much it.

17 Q. So you indicate that your attorney did not prepare for  
18 a trial?

19 A. No, ma'am. He ain't you know alibi witness for me,  
20 he failed to do that. He failed come see me and go over  
21 the case like he was - like he was supposed to.

22 Q. Well now let me ask you this. Did you give him any  
23 information as to an alibi?

24 A. Yes.

25 Q. And what did you give him?

JAMAR BELK: DIRECT BY MS. MOODY

-11-

1 A. I told - I told him my mother she could a - she could  
2 a been an alibi and all my other family members out there.

3 Q. And what was his response to your alibi?

4 A. Nothin.

5 Q. So he didn't discuss it with you?

6 A. No. No, ma'am.

7 Q. Okay. Now as the use of your co-defendants  
8 conflicting statements as evidence towards your  
9 innocence.

10 A. Yes, ma'am.

11 Q. Can you please explain to the Court what you mean  
12 by that?

13 A. Well my co-defendant Joshua Squire at first he had  
14 wrote - At first he had made a statement saying that I was  
15 the - I was involved in all of this. Then I got - Then  
16 when we was in the County - when we was in the County  
17 together and he wrote a statement saying that I ain't had  
18 nothin to do with none of this. And I gave it to my lawyer  
19 Dan D'Agostino and I ask him where it was at he said he  
20 don't know.

21 Q. So did you explain to him what that statement was?

22 A. Yes I told him it could a help me out.

23 Q. And what was his response to that?

24 A. He said he didn't know where it was.

25 Q. And so did you ask Mr. Dan - Mr. D'Agostino to send

1 that to your attorney?

2 A. Yes, ma'am.

3 Q. Okay. And to your knowledge did he do that?

4 A. Not that I know of cause if he ain't have it he must  
5 not get it.

6 Q. So but these statements or these - this one statement  
7 were there any other statements from your co-defendants?

8 A. Uh no, ma'am.

9 Q. You also indicate your counsel failed to admit -

10 Excuse me, you indicate your counsel verbally admitted  
11 that because you were not paying him that you would not be  
12 fully represented. Can you explain to the Court what  
13 you're referring to?

14 A. Well he was pretty much tellin me, man, when you use  
15 to come see me pretty much he would just - I was trying to  
16 explain to him my case and everything and he would pretty  
17 much blowin me off.

18 Q. What were you trying to explain to him about your  
19 case?

20 A. What - What could a help me if I go to trial. I'm  
21 trying to make a defense that would help me if I go to  
22 trial and everything and he pretty much blowin me off like  
23 it wasn't no chance that I was gonna win in trial.

24 Q. So what was it that would help you if you went to  
25 trial?

JAMAR BELK: DIRECT BY MS. MOODY

-13-

1 A. My alibi. The alibi could a helped me.

2 Q. And the alibi would have been what?

3 A. That I wasn't - I wasn't the one that did none of  
4 this.

5 Q. So you realize when you're talking about an alibi it  
6 means that you were somewhere else?

7 A. Yes, ma'am.

8 Q. Okay. And what did you tell your lawyer as far as  
9 you were somewhere else?

10 A. That I wasn't there. I was at home.

11 Q. And the persons who would have testified to that  
12 would have been your mother you said?

13 A. No. My family they not here right now like me  
14 sister's and them. My sisters and my mother she could a  
15 helped me cause she know I was at home.

16 Q. Well to your knowledge what if any conversations did  
17 your attorney have with your mother?

18 A. I don't know. I don't think he really talked to her  
19 like that.

20 Q. Okay. What other information did you provide to  
21 your attorney that you felt that he didn't use?

22 A. Uh like he pretty much really ain't even go over my  
23 case with me. He really didn't go over my case with me  
24 cause every time he came to see me we was either going back  
25 and forth. Were going back and forth and everything like

1 he was pretty much trying to tell me to take a plea.

2 Q. What do you mean by going back and forth?

3 A. Well telling me that I don't have a chance. And I  
4 tell him if we study this and we really go over this here  
5 he'll see it's a lot of things in here that they - that  
6 wasn't right.

7 Q. So did you have a copy of the discovery?

8 A. Of my discovery?

9 Q. Yes.

10 A. Yes, ma'am, it's out there. I ain't bring it in.

11 Q. So what do you recall would have helped you?

12 A. If he would talk to my alibi, that statement that  
13 Joshua Squires made and it's a lot like indictin my  
14 warrants something was wrong. The indictment delay was -

15 Q. What was the indictment delay?

16 A. It took them like a whole year to indict me. I set  
17 in the County without an indictment the whole year.

18 Q. Is there anything else?

19 A. No, ma'am. Pretty much is he ain't really prepare my  
20 case.

21 THE COURT: All right. Before you said indictment  
22 delay, what was the other word?

23 What did he say?

24 MS. MOODY: They didn't indict his case.

25 THE COURT: I got that but he said alibi, Joshua's

JAMAR BELK: DIRECT BY MS. MOODY

-15-

1 statement and he said something else before he said alibi.

2 MS. MOODY: Oh, his warrants were wrong.

3 A. My warrants were wrong.

4 THE COURT: Thank you.

5 BY MS. MOODY:

6 Q. So you indicated as your counsel's representation  
7 failed below the standard.

8 A. Yes, ma'am.

9 Q. What is the standard that you felt your attorney  
10 should have represented you on?

11 A. That he should a represented me fully, fully and came  
12 to see like he was supposed to and prepare my case like he  
13 was supposed to.

14 Q. And how - I'm asking you how is that.

15 A. Came and talked to me more and went and talked to my  
16 alibi defense and tried to find the statement that Joshua  
17 Squires made.

18 Q. The second statement?

19 A. Yes, ma'am.

20 Q. Okay. Now you entered into this plea based off of the  
21 advice of your attorney?

22 A. Yes, ma'am.

23 Q. And you entered into the plea after your brothers?

24 A. Yes, ma'am.

25 Q. Okay. And what at the plea did you find was incorrect

1 with your lawyer?

2 A. At the plea I find incorrect with my lawyer?

3 Q. Or what should he have done at the plea. I'm sorry.

4 A. I mean he pretty much man he was tellin me if I ain't  
5 takin the plea I was gettin a life sentence and I ain't  
6 wantin no life sentence so I scared me up.

7 Q. And so you're saying that's the reason why you took  
8 the plea?

9 A. Yes, ma'am.

10 MR. JOHNSON: Your Honor, to the extent that he is  
11 saying that his plea is involuntary, that is not in his  
12 application. The State would ask you to strike that  
13 allegation.

14 THE COURT: I'll be glad to listen to what he has to  
15 say but I'll have to base my decision on what he's alleged.

16 MR. JOHNSON: Thank you, Your Honor.

17 THE COURT: Go ahead.

18 MS. MOODY: Thank you.

19 Q. So, Mr. Belk, you're - the information that you've  
20 related to the Court thus far, you're indicating that was  
21 deficient performance on your lawyer's part?

22 A. Yes, ma'am.

23 Q. Okay. And how were you prejudiced by entering your  
24 plea and not going forward on a trial?

25 A. How was I prejudiced?

JAMAR BELK: DIRECT BY MS. MOODY

-17-

1 Q. Yes.

2 A. As far as him - As far as him telling me that if I  
3 ain't taken the plea I was gonna take life in prison. I  
4 would a got life sentence if I would a took the trial.

5 Q. So you're saying that you wanted to take the plea or?

6 A. No, ma'am, I didn't want to. I wanted to go to trial.  
7 I wanted to go to trial.

8 Q. And so you're saying that you lost the opportunity to  
9 go to trial because of what your attorney was telling you?

10 A. And I ain't really - And we ain't really go over our  
11 case like that. We ain't really go over our case.

12 Q. When you say you didn't go over your case, you never  
13 reviewed all of the things that they would use against you?

14 A. No, ma'am.

15 Q. So what relief are you seeking from the Court today?

16 A. Pretty much I done done six years already. I got a  
17 thirty year sentence. I ain't - I mean I know if they can  
18 cut it in half and give me - I mean that would be fine but  
19 I ain't - man I ain't - I know I ain't do - I ain't do what  
20 they said I did. You know what I mean. I ain't do what  
21 they said I did but I'm pretty much asking for a time cut.

22 Q. Do you understand that in this court today the Court  
23 can only grant you relief that your attorney was  
24 ineffective assistance of counsel?

25 A. Yes, ma'am.

1 Q. And that you would be asking the Court for a new  
2 trial?

3 A. Well if we gotta go - a new trial I got to do a new  
4 trial too.

5 Q. And you realize you're exposing yourself to that life  
6 sentence?

7 A. Yes, ma'am.

8 Q. And you still want the Court to grant your relief?

9 A. I really want a continue this right now.

10 Q. I understand.

11 A. . So we can discuss all this, go over it cause some I  
12 don't really understand.

13 Q. Now you indicated that your brothers would be  
14 testifying on your behalf?

15 A. Yes, ma'am.

16 Q. I'm sorry.

17 A. Yes, ma'am.

18 Q. Okay. And to your knowledge what they indicated  
19 they would testify on your behalf?

20 A. They saying that - They saying that they ain't they  
21 wasn't fully aware of what they was signing.

22 Q. And when you say what they were signing, what are you  
23 referring to?

24 A. They was saying a paperwork saying that uh what it  
25 said in the transcript that they was gonna testify against

JAMAR BELK: DIRECT BY MS. MOODY  
CROSS BY MR. JOHNSON

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1 me.

2 Q. The paperwork that they signed was something you said  
3 they would testify against you?

4 A. I mean they said - they told me that they ain't know  
5 what it was really. You know they saying they was signing  
6 something before a ten year plea.

7 MR. JOHNSON: Objection to hearsay, Your Honor.

8 THE COURT: I over rule your objection but I recognize  
9 it's hearsay.

10 MR. JOHNSON: Thank you.

11 BY MS. MOODY:

12 Q. Is there anything else you would like to tell the  
13 Court here today?

14 A. No, ma'am.

15 MS. MOODY: No further questions.

16 THE COURT: Cross?

17 MR. JOHNSON: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 JAMAR BELK BY MR. JOHNSON:

20 Q. Mr. Belk, do you remember pleading guilty on October  
21 4th, 2012?

22 A. Yeah.

23 Q. And at that plea you agreed with the facts as they're  
24 cited by the solicitor. Correct?

25 A. Yeah.

1 Q. And those facts state that you were the shooter in  
2 this case.

3 A. Everything that - Everything that I agreed with like  
4 I just said I ain't - I wasn't fully aware. I was just goin'  
5 with what he told me to go with. He was telling me to go  
6 with everything in the courtroom in order to get thirty  
7 years.

8 Q. Okay. But you do realize this is your life and your  
9 case?

10 A. Yes I do.

11 Q. It's not Mr. Brown going to prison?

12 A. Yes I do.

13 Q. Okay. So now you're saying that you disagree with  
14 the facts as the solicitor recited them. Correct?

15 A. I mean I had to go along with it in order not to get  
16 a life sentence. That was pretty much what he was tellin'  
17 me.

18 Q. So your fear is that you'd get a life sentence.  
19 Right?

20 A. Right.

21 Q. Okay. Now if you go back to trial more than likely  
22 if they convict you they're gonna give you a life sentence.

23 A. Right.

24 Q. You're willing to take that chance?

25 A. I wanted to go to trial at first.

JAMAR BELK: CROSS BY MR. JOHNSON

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1 Q. Okay. But you plead guilty. Correct? Yes?

2 A. Right.

3 Q. And at no point during the guilty plea did you stop  
4 the judge and say, listen, actually I want a trial I don't  
5 want to plead guilty did you?

6 A. Cause he was telling me I had to go with everything  
7 that was saying.

8 Q. But when the judge gave you a chance to speak you  
9 didn't say that did you?

10 A. I was scared.

11 Q. You apologized for your actions didn't you?

12 A. No I didn't.

13 MR. JOHNSON: Your Honor, on the second sentencing  
14 transcript of November 7<sup>th</sup> at Page 11 Mr. Belk said I want  
15 to apologize to all of ya'll.

16 A. I apologized to them for their loss. I didn't  
17 apologize to nothin that I did. I ain't said nothin that I  
18 did nothin. I was sorry there for their loss.

19 Q. So what you're telling me is that when you agreed  
20 with the facts as the solicitor stated at your guilty plea,  
21 you lied under oath?

22 A. No.

23 Q. But you agreed with the facts. Correct?

24 A. No.

25 Q. You didn't agree with the facts? Did you not state

1 that during the guilty plea?

2 MR. JOHNSON: Your Honor, that's the October 4<sup>th</sup>  
3 transcript. May I show it to Mr. Belk?

4 THE COURT: You may.

5 MR. JOHNSON: Let the record reflect I am showing  
6 Mr. Belk his October 4, 2012 transcript.

7 (MR. JOHNSON APPROACHES THE WITNESS WITH TRANSCRIPT.)

8 THE COURT: I got two November 7's.

9 THE COURT: You don't have the October 4<sup>th</sup>?

10 THE COURT: No. I've got two November 7's.

11 MR. JOHNSON: I'll have to get a copy for you.

12 Q. Mr. Belk, do you recognize that as your transcript?

13 A. Yeah I recognize it.

14 Q. All right, can you please read to me Page 9, Line 6  
15 through 8 out loud please, sir?

16 A. "Are you indeed guilty of criminal conspiracy?"

17 Q. Line 6.

18 A. They say "Are those facts true and accurate?"

19 Q. And your response is?

20 A. I said yes.

21 Q. So you said yes. So you agreed with the facts as  
22 recited by the solicitor. Correct?

23 A. Going on what I was just saying. What I been telling  
24 you.

25 Q. The court also ask you later on if it is your decision

JAMAR BELK: CROSS BY MR. JOHNSON

-23-

1 to plead guilty and you said yes. Correct?

2 A. I mean I was going with everything my lawyer told me  
3 in this case.

4 Q. But then its your decision to go with everything that  
5 he says in that case. Right? Correct? Yes or no. I need  
6 an answer.

7 A. I was goin with everything my lawyer told me to say.

8 Q. The judge ask you if there were any promises or  
9 threats to get you to plead guilty and you said no.  
10 Correct?

11 A. I was goin with everything my lawyer told me to say.

12 Q. The judge ask you if you were guilty and you said yes.

13 A. I was going with everything my lawyer told me to say.

14 Q. The judge ask you if you were satisfied with your  
15 attorney. This is nothing that Mr. Brown could have told  
16 you and you still said yes. Correct?

17 A. Why he couldn't a told me that?

18 Q. That's an answer that he can't tell you. Are you  
19 satisfied with Mr. Brown. It was a yes or no question and  
20 you answered yes.

21 A. I was scared of gettin a life sentence that's why  
22 I was goin with everything he told me to say.

23 Q. But you never stopped the judge to tell him that did  
24 you?

25 A. No I didn't

1 Q. Okay. So when you answered that you had been truthful  
2 to the judge at the guilty plea, you lied. Right?

3 A. I guess you could say that.

4 MR. JOHNSON: No further questions, Your Honor.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 JAMAR BELK BY MS. MOODY:

8 Q. Mr. Belk, when you say you were going along with  
9 everything your lawyer said, are you referring to prior to  
10 the plea your discussion of the case?

11 A. Yes, ma'am. He was telling me that in order for me -  
12 He was tellin me that in order for me to take this  
13 plea I had to go with everything. And I was scared of  
14 goin and gettin a life sentence cause he wasn't fully  
15 representing me I couldn't get another attorney. I  
16 couldn't get another attorney and he wasn't fully  
17 representing me like I wanted - like he was supposed to so  
18 I was scared I would get a life sentence so he told me in  
19 order to go get the thirty years I had to go with  
20 everything that being said.

21 Q. When you say go with everything, you're saying  
22 answer in the affirmative or a negative as to the questions  
23 that the judge ask you?

24 A. Yeah.

25 Q. And that meant that you had to in terms of you had

JAMAR BELK: CROSS BY MR. JOHNSON  
MICHAEL BROWN: DIRECT BY MR. JOHNSON

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1 to admit your guilt in order to get this plea accepted by  
2 the Court?

3 A. I mean I had to go with like he was tellin me to get  
4 the thirty years.

5 Q. Right. Meaning you had to admit your guilt.

6 A. I ain't - -

7 Q. . You had to say yes you were guilty when the judge  
8 ask you that.

9 A. Oh, yeah.

10 MS. MOODY: No further questions.

11 THE COURT: You can step down and have a seat with  
12 your attorney.

13 (WITNESS LEAVING WITNESS STAND.)

14 THE COURT: Call your next witness.

15 MS. MOODY: No further witnesses', Your Honor.

16 THE COURT: Mr. Johnson.

17 MR. JOHNSON: Yes, sir.

18 We call Michael Brown to the stand.

19 (WHEREUPON, MICHAEL BROWN,

20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 MICHAEL BROWN BY MR. JOHNSON:

23 Q. Good afternoon, Mr. Brown.

24 A. Good afternoon.

25 Q. Would you please explain to the Court how you

1 became involved in this case?

2 A. . I think I was the third court appointed attorney  
3 after Mr. D'Agostino got relieved for making sexual  
4 advances toward Mr. Belk. Or allegedly making sexual  
5 advances toward Mr. Belk.

6 Q. About how many times did you meet with Mr. Belk?

7 A. Eight to ten. Also had Scott Bernard retained as a  
8 private eye no on my dime but on the Indigent funds dime as  
9 investigator. I know he visited with Jamar at least to  
10 twenty or thirty occasions by my best guess and from my  
11 notes.

12 Q. And when you met with him did you - And did you have  
13 discovery?

14 A. Yes, sir.

15 Q. And did you - -

16 A. Mr. D'Agostino to his credit he indexed and it was  
17 all put together.

18 Q. And did you discuss that discovery with him?

19 A. Yes. I sent him a copy of it.

20 Q. And did you have any statements from witnesses?

21 A. The - This was a four man - allegedly a four man  
22 operation to rob a Pay Day lending place in Fort Mill. The  
23 look out got caught fingered the other three co-defendants.  
24 And they also found the murder weapon - If my memory serves  
25 right under a bath tub in a motel in Charlotte and that

MICHAEL BROWN: DIRECT BY MR. JOHNSON

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1 evidence was over whelming at least as far as the gun goes  
2 because they recorded - and I may have this a little wrong  
3 - they recorded a visit or a telephone conversation Mr.  
4 Belk had with his girlfriend at the time to get rid of the  
5 gun blah, blah, blah. Charlotte police went there with a  
6 warrant and got the gun.

7 And let me add this. What ultimately ended up in the  
8 plea was when his brother rolled on him and agreed to  
9 testify against him and that was the coup-de-gras for lack  
10 of a better term for Mr. Belk. Prior to that I had Mr.  
11 Thompson almost talked into twenty-five years on assault  
12 and battery with intent to kill which would have saved him  
13 seven or eight years but he was convinced that wasn't going  
14 to happen.

15 Q. And did you relay that offer to him?

16 A. I couldn't have been any more emphatic than I was in  
17 trying to get him to do that.

18 Q. And he refused to take that?

19 A. He didn't believe his brother was gonna roll on him.

20 Q. And at the - when the solicitor Willy Thompson I  
21 believe you were speaking of, found out that another Mr.  
22 Belk was about to turn State's evidence was there an offer  
23 still on the table?

24 A. In my humble opinion I was to get the thirty back  
25 then.

1 Q. And did you relay the thirty years to Mr. Belk?

2 A. There was initially an offer of thirty years when I  
3 got involved in the case for murder. And I'm talking off  
4 the top of my head but my recollections when I researched  
5 it that is a day for day statute. The assault and battery  
6 with intent to kill or attempted murder - It was an  
7 attempted murder, I stand corrected, I'm in my old time  
8 frame here. The attempted murder charge would a been  
9 eighty-five percent plus the roll back so it would a saved  
10 not a great deal of time but a couple of two or three  
11 years.

12 Q. And you discussed that with Mr. Belk?

13 A. In great detail.

14 Q. And did he seem to want to accept that?

15 A. The attempted murder?

16 Q. Yes.

17 A. He did not. He didn't want to accept that because  
18 he didn't believe his brother was gonna roll on him.

19 Q. And when his brother did, he learned that his brother  
20 did roll on him, did he change his tune at all?

21 A. Changed his tune a hundred and eighty degrees agreed  
22 to accept the thirty years.

23 Q. Did you ever force or threaten him to accept that?

24 A. I'm fifty-one years old and I just got out of the  
25 hospital, I'm not capable of threatening him in any shape

MICHAEL BROWN: DIRECT BY MR. JOHNSON

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1 manner or form.

2 Q. So that would be a no?

3 A. That would be a no.

4 Q. Did you ever promise him anything?

5 A. No, sir.

6 Q. Did you ever tell him how to answer the judge's  
7 questions?

8 A. No, sir. I told him what they would be. I didn't  
9 tell him how to answer them as I do all my clients, you're  
10 gonna get ask this, this and this. Most of the answers  
11 were self explanatory.

12 Q. Did you explain to him that if he were to take this  
13 case to trial he would in fact be exposed to a life without  
14 parole sentence?

15 A. In my humble opinion he would have gotten that. He  
16 was the trigger man in a three man - or actually a four man  
17 crime. To this day I'm still amazed to a certain degree  
18 why they didn't notice this with a death penalty on this.

19 That's the one thing that worried me is why they  
20 didn't notice him with a death penalty cause I thought I  
21 was missing something in the file so I went over it with  
22 extra care.

23 Q. Were you prepared for a trial?

24 A. I would have been. At that point in time I was not.

25 We had a two month window out for the trial was gonna

1 come up and we were gonna have to subpoena campus witnesses  
2 from Charlotte so we were given a dead line for  
3 negotiations. I had been through all the written  
4 discovery. I think I was still waiting on the  
5 transcription from I think Phyllis Barrett. There were a  
6 number of audio CD tapes. They were too voluminous for us  
7 to watch at the jail with him that would a taken fifty - I  
8 think it was like eighty or ninety hours so my court order  
9 or the court funded Indigent Defense funded her to do the  
10 transcription and that was the one thing I had not  
11 reviewed.

12 Q. Going to a specific allegation in this case, did he  
13 ever discuss with you a potential alibi witness?

14 A. He did discuss that with me. As I said, Scott Bernard  
15 is my private investigator on this case. He's the one who  
16 met his mother and sister which that led to no where in a  
17 nut shell.

18 Q. And please explain that.

19 A. They just didn't corroborate his part of the story.

20 And Mr. Bernard told me in a colloquially something  
21 about what if I said this or what if I said that, he  
22 explained to her perjury and how that works. I was not  
23 privy to that conversation. Mr. Bernard reported that back  
24 to me. I have no reason to question that.

25 Q. He also brings up of Mr. Squires in his conflicting

MICHAEL BROWN: DIRECT BY MR. JOHNSON

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1 statements that he gave to Dan D'Agostino. Did you ever  
2 see those conflicting statements?

3 A. I did not find that. And that's one of the few - I  
4 mean I remember him distinctly raising that issue with me  
5 at a meeting at the jail cause I remember going back  
6 through the file and I couldn't find it anywhere.

7 Q. In the ball park do you remember how many discussions  
8 did you have with Mr. Belk about this case?

9 A. Ten, twelve.

10 Q. Did he seem to understand those discussions?

11 A. He did. Two of those visits were a hour, two hour  
12 plus. The contact visit in the high security wing in  
13 the jail over there with me, him, I think his brothers were  
14 there, Phillip Jamieson, the other co-counsel's name slips  
15 my memory.

16 Q. He also claims that his warrants were wrong and that  
17 you did not prepare the case and that he went a whole year  
18 without an indictment. Do you have any recollection of  
19 those allegations?

20 A. I reviewed those documents, I see nothing in there  
21 with those documents.

22 Q. And you base that on your research of the case and  
23 your experience as a criminal defense attorney?

24 A. Thirty-one years.

25 MR. JOHNSON: That's all the questions I have at this

1 time, Your Honor.

2 THE COURT: Cross?

3 MS. MOODY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 MICHAEL BROWN BY MS. MOODY:

6 Q. Mr. Brown, as it relates to the alibi witness I  
7 understand you have a report back from Scott Bernard?

8 A. That's correct.

9 Q. And in - You said that in trying to corroborate his  
10 story what was his original story about what happened?

11 A. Answer as to what happened at Pay Day?

12 Q. Yes. Whether he was the shooter or he was  
13 alleged to be the shooter?

14 A. The alibi, I didn't write this exactly when that  
15 came up. If I had my best guesstimate it would be half way  
16 through my representation was the first I heard of a alibi.

17 Q. Okay. And so before that had you all had  
18 conversations about what occurred at the Pay Day?

19 A. He always denied it until the end.

20 Q. Okay. And as far as his brother - -

21 A. And to the best of my recollection.

22 Q. Okay. So he always denied it pretty much until the  
23 end?

24 A. All three of them did.

25 Q. Okay. And so at the end when his brothers were

MICHAEL BROWN: CROSS BY MS. MOODY

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1 gonna testify, at the meeting that you all had was that  
2 when you learned that they were gonna testify against him?

3 A. This is where for lack of a better term my frustration  
4 came in with him. I told him after the last meeting we all  
5 had in the high security wing face to face meeting in the  
6 jail, I said your brother is fixin to roll, please let me  
7 go back with Mr. Thompson and get this twenty-five years on  
8 attempted murder for you. He didn't believe his brother  
9 was gonna roll. I think the following day, the day after,  
10 I got the phone call, his brother's rolled for five years  
11 and agreed to testify against him.

12 And as it would if any brother turned on you no matter  
13 what the circumstances it would be a little more he was  
14 upset, wouldn't come out of his cells, and he agreed to  
15 take the thirty years and that's when he admitted to pretty  
16 much everything that was in the indictment.

17 Q. So before you all went on break before the judge he  
18 admitted to everything?

19 A. Correct.

20 Q. Okay.

21 A. And subsequently wrote a letter to the victims which  
22 I had a copy of. I received a copy of it from Mr. Bernard  
23 apologizing to them for his actions.

24 Q. And so when you went for the plea on that day that  
25 was not the first time that he admitted it?

1 A. No, ma'am.

2 Q. Okay. So did you - -

3 A. I don't have the times down pat. Within a two week  
4 when there from the time his brother rolled until it was  
5 set up in that window is when he first admitted it.

6 Q. So - -

7 A. To tell you the truth I thought I was gonna end up  
8 trying this case.

9 Q. You thought you what?

10 A. I thought I was gonna wind up trying it until his  
11 brother rolled.

12 Q. Okay. Well let me ask you about that. When - How  
13 did you know that his brother was going to decide to - -

14 A. Roll?

15 Q. Yes roll.

16 Q. Thirty-one years doing this, the brothers looking at  
17 five years, he's doing four, he will walk out in two or  
18 three months after he goes down the road. He's not going  
19 to jail for the rest of his life.

20 Q. And so when - -

21 A. Common sense.

22 Q. Okay. So at that point did you - you said you were  
23 not ready for trial at that time, but had you and he  
24 discussed, you know, what would be presented on his behalf  
25 at trial other than his brother's testifying against him?

MICHAEL BROWN: CROSS BY MS. MOODY

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1 A. That didn't come up. After his brother agreed to  
2 testify the trial was no longer an issue as far as he  
3 was concerned. That - And I think this is what kind of  
4 bothered the State a little bit. It was all three of them  
5 were hanging together. You know we didn't do this. But  
6 when his brother rolled that kind of took the wind out of  
7 his sails and it made the evidence against him over  
8 whelming.

9 Q. And the evidence against him overwhelmingly was the  
10 gun that they found based off of a taped recording on the  
11 phone call from the jail?

12 A. Either a tape recording or a telephone where they met  
13 cause they were - I can't remember which one it was.  
14 That's how they got the search warrant for the gun under  
15 the bath tub in that motel.

16 Q. Okay. All right. So and it's a little unclear from  
17 the transcript, what was the evidence on the gun? Were  
18 there any fingerprints on that gun that linked him to the  
19 gun?

20 A. I don't remember. The video from the thing along with  
21 the ID of the watch out and of course the brother's  
22 statements tells that he was the trigger man.

23 MS. MOODY: I beg the Court's indulgence please.

24 (PAUSE.)

25 Q. Okay. So as to the - You had the gun. And I'm sorry

1 for repeating this, but you had the gun, the video, the  
2 gloves on the video, did you all discuss that?

3 A. I don't remember. Honestly it's not coming back to  
4 me right now.

5 Q. So in essence you all had an opportunity to talk about  
6 all the evidence?

7 A. Oh yes, ma'am.

8 Q. Okay.

9 A. And in all objectivity to him, the trial was set two  
10 months out. I mean these events occurred very quickly so  
11 to answer your question if I was prepared to go to trial  
12 that day or to plead no it wasn't one of those scenarios.  
13 The trial was set two months out so it wasn't like I had to  
14 plead him that day or go to trial.

15 Q. Okay.

16 A. So there's more work I would have done.

17 Q. Okay.

18 MS. MOODY: No further questions for this witness,  
19 Your Honor.

20 MR. JOHNSON: No redirect, Your Honor.

21 THE COURT: You can step down.

22 MR. BROWN: May I be excused, Judge?

23 THE COURT: You can be excused. We appreciate your  
24 time. Thank you.

25 MR. BROWN: You all have a good day.

1 (WITNESS LEAVING WITNESS STAND.)

2 THE COURT: Any further witnesses on behalf of the  
3 State?

4 MR. JOHNSON: No, sir, the State rest.

5 THE COURT: Is that it?

6 MS. MOODY: Yes, sir, Your Honor.

7 THE COURT: You can take Mr. Belk back to the holding

8 --

9 I'll take the case under advisement.

10 (APPLICANT JAMAR BELK, LEAVING COURTROOM.)

11 (COURT AT EASE AT 02:46 P.M..)

12 - END OF TRANSCRIPT OF RECORD -

13

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CERTIFICATE OF REPORTER

State of South Carolina )  
 )  
 County of York )

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 Common Pleas Court of York County, South Carolina, on the 15th day of April, 2014.

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

Wanda Nelson

Wanda Nelson, CVR  
 Certified Verbatim Reporter,  
 Official Court Reporter,  
 Notary Public, in and for  
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 11 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Jamar Lavert Belk, #353088, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-2984

ORDER

FILED-RECEIVED  
 2014 APR 16 PM 4:02  
 DAVID HAMILTON  
 CLERK & G.S.  
 YORK COUNTY, SC

This Post-Conviction Relief case was heard by the undersigned on April 15, 2014. The applicant was represented by Leah B. Moody, Esquire; the Respondent by J. Rutledge Johnson, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2010 term of the York County Grand Jury for Murder (2010-GS-46-3072), Armed Robbery (2010-GS-46-3074), Possession of a Firearm During the Commission of a Violent Crime (2010-GS-46-3074A), and Criminal Conspiracy (2010-GS-46-3075). Michael Brown, Esquire, represented him. On October 4, 2012, the Applicant pled guilty before the Honorable Michael G. Nettles to all charges as indicted. On November 7, 2012, the Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated sentence, to thirty (30) years for Murder, thirty (30) years, concurrent, for Armed Robbery, five (5) years, concurrent, for Possession of a Firearm During the Commission of a Violent Crime, and five (5) years, concurrent, for Criminal Conspiracy. The Applicant did not appeal his conviction and sentence.

*JC*

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel refused to prepare Petitioner's case for trial against Petitioner's wishes; counsel instead seeked(sic) to plead"
  - b. "Counsel failed to offer alibi"
  - c. "Counsel failed to use co-defendant conflicting statement as evidence towards Petitioner's innocence"
  - d. "Counsel verbally admitted that since Petitioner was not paying he would not be fully represented"
  - e. "Counsel's representation fell below standard"
2. "Prosecutorial Misconduct"<sup>1</sup>

Respondent's claims are claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application.

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

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

<sup>1</sup> This ground withdrawn by Applicant at commencement of his hearing.

*J. H. #2*

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).

As to ground 1a, Applicant's testimony at the PCR hearing and the Transcript of his plea and sentencing, clearly establish that at the time he entered his plea, Applicant did so freely, voluntarily, knowingly and intelligently. The thrust of Applicant's argument here is that trial counsel strongly recommended Applicant plead guilty, especially after his two brothers (co-defendants) "rolled" on him and agreed to testify for the prosecution.

Applicant moved for a continuance prior to the hearing on the grounds that there exists statements of his brothers in which they stated they did not know part of their plea deal was to testify against Applicant. Applicant has had plenty of time to obtain any such statement and bringing up this unsupported suggestion at the time of his hearing is simply unacceptable.

The record establishes, whether the brothers knew they had agreed in signed statements to testify against Applicant or not, Applicant knew they had agreed to testify against him. He was informed by trial counsel and the prosecuting solicitor stated in the record at the time of Applicant's plea that the two had, as part of their guilty plea, agreed to testify against Applicant

JF 11/13

(10/4/12 Plea Transcript, p. 8, L 25 through p. 9, L5). Applicant, at the plea, agreed to the accuracy and truth of the fact regarding the brothers intentions to testify against him (10/4/12 Plea Transcript, p. 9 LL 6-8).

Save Applicant's testimony that his brothers would state they were "not fully aware of what they signed" saying they would testify against him and there is no evidence in the record to support such assertion. Applicant did not testify that his brothers would not have complied with their plea agreement and testify against Applicant, but rather that they were unaware of their having so committed. At any rate, as set forth above, at the time of the Applicant's plea, the brothers had agreed to testify against Applicant as a contractual obligation of their plea bargain and Applicant was aware of this. Unfortunately for Applicant, his brothers, acting in their own, and not his, best interest, in common criminal arena parlance, "rolled" on the Applicant.

Applicant testified that trial counsel failed to investigate and failed to call alibi witnesses on his behalf.

Applicant alleges a co-defendant, Joshua Squires, had given a statement exonerating Applicant and the existence of such statement was favorable to his defense. Trial counsel testified that he has never found such a statement and the well-organized file he received from Applicant's prior appointed attorney did not contain any such statement. Absent the statement for the Court's review and in the absence of any evidence that trial counsel ever had possession of or ever saw such statement, the Court finds no ineffective assistance of counsel regarding the Squire statement.

Applicant testified his mother and sisters would have provided him an alibi. Applicant's mother and sisters did not testify at his PCR hearing. Trial counsel testified that his investigator interviewed Applicant's mother and sisters and they would not have provided alibi defense

testimony on behalf of Applicant. Applicant has failed to carry his burden of proof and trial counsel was not only not ineffective for not presenting alibi witnesses, but had none to call to testify.

Applicant testified in addition to the matters set forth above that his arrest warrants were "wrong" and that there was a "delay" in his indictment. Applicant offered no evidence on either of these issues save his assertion that these are issues he had regarding trial counsel's representation. These allusions to the warrant's problem and the delayed indictment are facially without merit.

Applicant complains that trial counsel strongly recommended that Applicant accept a plea to murder for a negotiated thirty year sentence. Trial counsel acknowledges that he did strongly so advise, but it was Applicant who freely, voluntarily, knowingly and intelligently entered his plea of guilty. Applicant acknowledges repeatedly that he accepted the plea bargain and entered his plea of guilty because he was "scared" of receiving a life sentence, which he did not want.

The hearing testimony establishes that trial counsel represented Applicant within reasonable professional norms and without any deficiency.

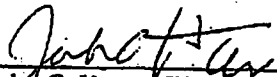
I find Applicant has failed to carry his burden of proof and has failed to prove his allegations of ineffective assistance of counsel as I find that his application for post-conviction should be, and hereby is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention

*Jc H45*

is directed to Rule 243, SCACR, for the procedures following the filing and service of the  
Petition.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge

April 16<sup>th</sup>, 2014  
York, South Carolina

WITNESSES

YFSSO / YEAGER

DOCKET NO. 2010-GS-46-03072  
2010-GS46-03072A

The State of South Carolina  
County of York

COURT OF GENERAL SESSIONS

AUGUST 19, TERM 2010

ARREST WARRANT NUMBER

COUNT ONE : J166812

THE STATE

vs.

JAMAR LAVERT BELK

Witness:  
*Stephanie Wells, Crim. Sgt.*  
C.D.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Forperson of Grand Jury *[Signature]* 8-19-10

Indictment for

COUNT ONE: MURDER

SC Code: § 16-3-10  
CDR Code: 0116

~~COUNT TWO: POSSESSION OF A  
FIREARM DURING THE COMMISSION  
OF A VIOLENT CRIME~~

~~SC Code: 16-23-0490  
CDR Code: 0549~~

VERDICT

Forperson of Petit Jury  
Date:

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

Defendant

*Jamar L. Belk*

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

*Murder*

*Jamar L. Belk*  
Defendant

76  
Type  
Date

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

INDICTMENT  
2013 OCT -1 PM 12:09

At a Court of General Sessions convened on August 19, 2010, the Grand Jurors of York County present upon their oath:

**COUNT ONE: MURDER**

Jamar Lavert Belk did in York County on or about October 8, 2008, feloniously, willfully and with malice aforethought, kill one Joseph Sam Fatigato by means of shooting him and that Joseph Sam Fatigato died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at Anyday Payday Lending located at 3312 Highway 21 North in Fort Mill, South Carolina.

**COUNT TWO: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**

Jamar Lavert Belk did in York County on or about October 8, 2008, possess a firearm while committing the violent crime of murder against Joseph Sam Fatigato in Fort Mill, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended

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

*Willy Thompson*  
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA )  
 ) CERTIFIED TRUE COPY INDICTMENT

COUNTY OF YORK

2013 OCT 14 PM 12:09

At a Court of General Sessions, convened on August 19, 2010, the Grand Jurors  
 of York County present upon their oath.  
 CLERK OF COURT  
 YORK COUNTY, SC

**COUNT ONE: ARMED ROBBERY**

Jamar Lavert Belk did in York County on or about October 8, 2008, feloniously steal US Currency and/or other items of value from Anyday Payday Lending located at 3312 Highway 21 North in Fort Mill, South Carolina. Jamar Lavert Belk stole said items by means of force or intimidation by holding Anyday Payday Lending owner/operator Joseph Fatigato at gunpoint. Jamar Lavert Belk committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO: POSSESSION OF A FIREARM DURING THE  
 COMMISSION OF A VIOLENT CRIME**

Jamar Lavert Belk did in York County on or about October 8, 2008, possess a firearm while committing the violent crime of armed robbery while at the Anyday Payday Lending at 3312 Hwy. 21 North in Fort Mill, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

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

*Willy Thompson*  
 DEPUTY SOLICITOR

WITNESSES  
YCSO / YEAGER

DOCKET NO. 2010-GS46-03074  
2010-GS46-03074A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 19th, TERM 2010

THE STATE

vs.

JAMAR LAVERT BELK

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

Defendant

I Jamar L. Belk  
hereby appear in my own proper person and plead guilty to the within indictment or to Armed Robbery & Possession of a firearm during the commission of a violent crime

Defendant

Witness:  
Debra S. P. ...  
C.C.C.P.L.S. AND G.S.

ARREST WARRANT NUMBER

COUNT ONE - J166791  
COUNT TWO - J200097

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury J. ...  
Date: 8.19.10

VERDICT

Indictment for

COUNT ONE: ARMED ROBBERY  
SC Code: § 16-11-0330  
CDR Code: 0139

COUNT TWO: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME  
SC Code: 16-23-0490  
CDR Code: 0549

Foreperson of Petit Jury

Date: 78

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

FILED TRUE COPY  
2010 OCT -1 PM 12:09

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions convened on August 19, 2010, the Grand Jurors of York County present upon their oath:

**COUNT ONE: ARMED ROBBERY**

Jamar Lavert Belk did in York County on or about October 8, 2008, feloniously steal US Currency and/or other items of value from Anyday Payday Lending located at 3312 Highway 21 North in Fort Mill, South Carolina. Jamar Lavert Belk stole said items by means of force or intimidation by holding Anyday Payday Lending owner/operator Joseph Fatigato at gunpoint. Jamar Lavert Belk committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**

Jamar Lavert Belk did in York County on or about October 8, 2008, possess a firearm while committing the violent crime of armed robbery while at the Anyday Payday Lending at 3312 Hwy. 21 North in Fort Mill, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

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

*Willy Thompson*  
DEPUTY SOLICITOR

WITNESSES

FCSO / YEAGER

DOCKET NO. 2010-GS-46-03075

The State of South Carolina

County of York

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

Defendant

COURT OF GENERAL SESSIONS

AUGUST 19, TERM 2010

I Jamar L. Belk hereby appear in my own proper person and plead guilty to the within indictment or to as charged

ARREST WARRANT NUMBER

J166808

THE STATE

vs.

JAMAR LAVERT BELK

George L. Bell  
Defendant

Witness:  
Stephanie Myles, Urban Supt  
C.C.C. PLS. AND GS.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury 8-19-10

VERDICT

Indictment for

CRIMINAL CONSPIRACY

Foreperson of Petit Jury

Date:

SC Code: 16-17-410  
CDR Code: 0049

STATE OF SOUTH CAROLINA )

INDICTMENT

COUNTY OF YORK )

2013 OCT - 10 PM 12:10

At a Court of General Sessions, convened on August 19, 2010, the Grand Jurors of York County present upon their oath:

### CRIMINAL CONSPIRACY

Jamar Lavert Belk did in York County on or about October 8, 2008, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have a tacit understanding with Curtis Belk, Tyree Belk, and/or Joshua Squire for the purpose of committing Armed Robbery against Joseph Sam Fatigato of Anyday Payday Lending. The Armed Robbery occurred at Anyday Payday Lending located at Highway 21 North in Fort Mill, South Carolina, all in violation of Section 16-17-410, *Code of Laws of South Carolina, 1976*, as amended.

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

  
DEPUTY SOLICITOR