

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Spartanburg County  
J. Derham Cole, Circuit Court Judge

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**RECEIVED**

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**S.C. Supreme Court**

XAVIER LALORD PERRY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000653

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APPENDIX

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2 COUNTY OF SPARTANBURG ) COURT OF GENERAL SESSIONS

3  
4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
5 )  
6 PLAINTIFF, ) OF  
7 )  
8 vs. ) RECORD  
9 CHADWICK DEAN ANDERSON AND ) 2011-GS-42-1763, 3055, 3057  
XAVIER LALORD PERRY, ) 2011-GS-42-3059, 3061, 3063  
DEFENDANT. ) 2011-GS-42-3067, 3066, 4356

10  
11 July 15<sup>th</sup>, 2011  
12 Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

15  
16 A P P E A R A N C E S:

17 MICHAEL MORIN  
18 ASSISTANT SOLICITOR  
Attorney for the State

19  
20 JAMES CHEEK  
21 ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

22  
23  
24 PAMELA E. GREEN  
25 Circuit Court Reporter  
Seventh Judicial Circuit

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Court's Exhibit</u>		
C-1	List of Indictments	51	

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

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THE COURT: Are you ready to call the roll, Ms. Jordan?

SOLICITOR JORDAN: Yes, sir, I believe we have one walk-in.

THE COURT: All right. Let's be sure she's ready. You ready, Pam?

COURT REPORTER: Yes, sir.

THE COURT: All right. I'm gonna ask the solicitor to call the roll of the individuals who are present to offer guilty pleas today. If you're in the box, your name is called, please stand up, remain standing until we've completed the process.

If you're in the gallery and your name is called, come forward to the box and remain standing in the jury box.

You may proceed.

SOLICITOR JORDAN: Thank you, Your Honor.

Chadwick Anderson.

(Defendant stands.)

SOLICITOR JORDAN: Jerome Brandon.

(Defendant stands.)

SOLICITOR JORDAN: Jeffrey Brockman.

(Defendant stands.)

SOLICITOR JORDAN: Candice Fowler.

(Defendant stands.)

1 SOLICITOR JORDAN: Armondo Gonzalez.

2 (Defendant stands.)

3 SOLICITOR JORDAN: Shinadore Harris.

4 (Defendant stands.)

5 SOLICITOR JORDAN: Kenneth Johnson.

6 (Defendant stands.)

7 SOLICITOR JORDAN: Johnny Jones.

8 (Defendant stands.)

9 SOLICITOR JORDAN: Xavier Perry.

10 (Defendant stands.)

11 SOLICITOR JORDAN: And then joining us from the gallery  
12 is Rachel Childs.

13 THE COURT: Come forward please, ma'am.

14 All right, Madam Clerk. If you would, please swear the  
15 defendants that are standing.

16 (WHEREUPON, all defendants were placed under oath at  
17 this time.)

18 THE COURT: All right. Be seated please.

19 (Defendants comply.)

20 THE COURT: All right. If there were any of you who  
21 failed or refused to take the oath that was just  
22 administered by the clerk, please stand.

23 (No response.)

24 THE COURT: All right. The record will reflect then  
25 that all defendants whose names have been called have been

1 sworn for purposes of my discussion at this time.

2 I'm going to go over some matters at this time that  
3 would be common or the same in all of your cases should you  
4 later decide to offer a guilty plea. I've been informed  
5 that you're here for that purpose.

6 Later on we're going to call your name individually,  
7 and you'll be coming in front of me, and, at that time, I'll  
8 go over your specific case and the issues that are involved  
9 in that case, in the case.

10 Now, at that time I will be asking for your plea. At  
11 this time I am not asking for your plea. Again, I'm  
12 determining factors that would qualify you or put you in a  
13 position to offer a plea should you decide to do that later  
14 on.

15 Now, your attorney is present in the courtroom at this  
16 time. If, at anytime, if you're represented, and if, at  
17 anytime during our discussion you feel that you need to  
18 discuss any matter with your lawyer, please let me know.  
19 I'll be more than happy to stop and let you consult with  
20 your attorney. You have every right, at every stage of the  
21 proceeding, to consult with your lawyer should you wish to  
22 do so.

23 Now, the first thing I'm going to mention to you is you  
24 have a Constitutional right to have your case considered by  
25 a Grand Jury before it is presented to this Court for either

1 a trial or a plea.

2 Now, the Grand Jury does not determine the question of  
3 guilt or innocence. They decide whether the State has  
4 enough evidence to justify the case coming forward to this  
5 Court for a trial. If they determine that this, that the  
6 State does not have sufficient evidence to justify the case  
7 moving forward, they write true bill or stamp it on there  
8 with a stamp, and sign it, and send it here for this Court  
9 to dispose of the case.

10 Now, I don't have jurisdiction -- I can't take up your  
11 case until the Grand Jury has issued a true bill in your  
12 case or you are willing to sign a document or initial a  
13 document indicating that you're willing to waive or give up  
14 that right. So, when you come in front of me a little later  
15 on I'll take a look at your indictment.

16 If the Grand Jury has acted on it, and issued a true  
17 bill, we'll go forward. It's properly before the Court. If  
18 the case is not yet gone to the Grand Jury, then I'll be  
19 asking you as to whether or not you wish to waive that step  
20 of the proceeding and go forward today.

21 Now, also, when you come in front of me individually,  
22 I'll be going over your relationship with your lawyer to be  
23 sure that you're satisfied with your representation.

24 Now, I'm going to go over some matters, as I said, that  
25 would be common to your cases, all of your cases should you

1 later on decide to plead guilty. If you have a response to  
2 my inquiries I'll be asking that you stand, and I will need  
3 to get your name on the record before we discuss those  
4 inquiries with you.

5 The first question I have of you today is do any of you  
6 currently, today, suffer from any mental, physical, nervous  
7 conditions, drug problems, any other conditions that would  
8 affect your ability to reason, make good decisions, or  
9 handle a plea today, if that's true, please stand.

10 (No response.)

11 THE COURT: If any of you have taken any drugs or other  
12 substances that would have that same effect, in other words,  
13 affect your ability to make good decisions, reason, or  
14 handle a plea today, please stand.

15 (No response.)

16 THE COURT: Now, if anyone has threatened you, coerced  
17 you, put pressure on you, tried to intimidate you, in other  
18 words, done anything to you to try to force you or get you  
19 to offer a plea in your case, please stand.

20 (No response.)

21 THE COURT: Now, your plea must be offered freely and  
22 voluntarily by you. That means it's something you've  
23 thought about, and, of your own free will, you've decided to  
24 go forward with a plea. You believe it's in the best  
25 interest and best way to handle your case. It's in your

1 best interest and it's the best way to handle your case.

2 Now, if any of you were to be brought in front of me  
3 later on to offer a plea, if it's your belief somehow that  
4 that would be something that you didn't want to do or  
5 something that would be done against your wishes, please  
6 stand.

7 (No response.)

8 THE COURT: If any of you feel that you haven't had  
9 enough time in which to consider your case or prepare a  
10 defense to the charges, please stand.

11 (No response.)

12 THE COURT: If anyone has made any promises,  
13 guarantees, or assurances to you about any matters  
14 whatsoever in connection with your plea, in other words, in  
15 an effort to get you to plead, please stand.

16 (No response.)

17 THE COURT: Specifically, if anyone has made any  
18 promises, guarantees, or assurances to you about such  
19 matters as pardon, parole, probation, early release, or  
20 length of sentence in an effort to get you to offer a plea,  
21 please stand.

22 (No response.)

23 THE COURT: Now, if you later on decide to plead guilty  
24 and I decide to accept the plea you will be giving up most  
25 of your Constitutional rights as they relate to the charges

1 that are before the Court. I have to be sure that you do  
2 that knowingly and intelligently.

3 In other words, that you understand your rights, you  
4 understand what you're giving up and you've made a conscious  
5 decision to proceed with a plea in spite of the fact or even  
6 though you're giving up those Constitutional rights. I want  
7 to be sure, therefore, that you understand them. So, I'm  
8 going to explain them, and, when I finish, if you have any  
9 questions whatsoever, let me know. I'll be glad to go back  
10 over these matters with you.

11 First of all, I've told you you have a right to have  
12 your case considered by a Grand Jury. We'll discuss that  
13 when I see your indictment and I see the status of it. You  
14 have a right to your lawyer, and I've already told you your  
15 lawyer's available to you at any stage of this proceeding.

16 You have a right to request or demand a jury trial. At  
17 the jury trial you would be presumed to be innocent until  
18 the State prove your guilt beyond a reasonable doubt. You  
19 see, the State has the only burden of proof in criminal  
20 trials. That's because you're presumed to be innocent.

21 At the trial and under the Constitution, they're  
22 several things you can do. You can have subpoenas issued to  
23 witnesses to require that they attend the trial and possibly  
24 testify. You would have the right to confront or question  
25 anyone who might testify against you. You would have the

1 right to present all the evidence that you have at the  
2 trial, any defenses that you might have to the charges, and  
3 you'd be given the opportunity to try to suppress any and  
4 all evidence the State may have against you. That includes  
5 statements that you might have made prior to the time of the  
6 trial.

7 You, at all stages of a criminal proceeding, have the  
8 Constitutional right to remain silent, and, at a trial, if  
9 you chose to remain silent, the judge would instruct the  
10 jury that your silence could not be used against you in any  
11 manner whatsoever. Those are your rights under the  
12 Constitution.

13 If you have any questions about any of them, please  
14 stand.

15 (No response.)

16 THE COURT: If you would like for me to explain them  
17 any further, please stand.

18 (No response.)

19 THE COURT: Now, if you decide to plead guilty and I  
20 decide to accept you'll be waiving or giving up all of those  
21 Constitutional rights with the exception of the right of  
22 having your lawyer represent you until your plea is  
23 completed.

24 Now, if there's any of those rights that you do not  
25 wish to give up in connection with a guilty plea today,

1 please stand.

2 (No response.)

3 THE COURT: I will advise each of you that you have ten  
4 days from the date that you enter a guilty plea and receive  
5 your sentence in which to appeal the plea if you wish to do  
6 so.

7 I'll declare that these defendants are qualified to  
8 proceed with a plea should they decide to do that.

9 (WHEREUPON, other guilty pleas were completed at this  
10 time.)

11 SOLICITOR MORIN: Please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 SOLICITOR MORIN: Before you is Xavier Perry, he's  
14 closest to me, and next to him is Chadwick Anderson.  
15 They're each pleading guilty to eight indictments. They all  
16 stem out of eight separate incidents. They're both  
17 represented by Mr. Cheek.

18 Mr. Perry is pleading guilty to eight armed robberies.  
19 They are 2011-3069, 3044, 3070, 2353, 3072, 3075, 3076, and  
20 2011-2354.

21 Mr. Anderson is pleading to I believe it's six armed  
22 robberies and two accessory after the fact of a felony. His  
23 indictments are 2011-3063, 4356. Your Honor, he's pleading  
24 no contest to that, and he's waiving presentment on that  
25 one. I have a chart I'm gonna hand up as well, Your Honor.

1 Mr. Cheek has a copy of it already.

2 3061 is armed robbery.

3 3066 is accessory after the fact.

4 3059 is armed robbery.

5 3057 is armed robbery.

6 3055 is armed robbery.

7 3067 is accessory after the fact.

8 Your Honor, they're representatives from Li'L Cricket  
9 as along, as well as some victims in the courtroom who may  
10 wish to speak. The chart that I'm handing up, as I stated,  
11 I handed to Mr. Cheek as well. There is a separate charge  
12 on there that I've marked out that Mr. Cheek has convinced  
13 me needs to be dismissed as a part of this plea, and I  
14 agree.

15 THE COURT: All right. Any objection to my seeing the  
16 chart, Mr. Cheek?

17 MR. CHEEK: No objection, Your Honor. We ask that be  
18 made a part of the record, Your Honor.

19 THE COURT: I will have that done.

20 All right. You are Mr. Perry?

21 DEFENDANT PERRY: Yes, sir.

22 THE COURT: And you are Mr. Anderson?

23 DEFENDANT ANDERSON: Yes, sir.

24 THE COURT: Mr. Perry, I'm reminding you that you  
25 remain under oath for purposes of my discussion with you at

1 this time.

2 Do you understand that, sir?

3 DEFENDANT PERRY: Yes, sir.

4 THE COURT: Mr. Anderson, I'll remind you of that same  
5 fact. You're also still under oath at this time.

6 Are you aware of that fact?

7 DEFENDANT ANDERSON: Yes, sir.

8 THE COURT: All right. Now, Mr. Perry, you're here  
9 before me on several charges. I'm going to go over the  
10 charges with you. I'll also be going over the maximum  
11 sentences that are involved in these cases so that you will  
12 understand what the total penalty might be for these cases.

13 All right. Mr. Perry, the first case I'm gonna discuss  
14 with you is 2011-3069. That is an armed robbery case. It  
15 has been indicted by the Grand Jury. It's properly before  
16 the Court.

17 It is classified as a violent and most series offense.  
18 As such, it would constitute a strike against you under the  
19 law, and, in the future, if you were to be found guilty of  
20 or plead guilty to other such similarly classified crimes as  
21 violent, serious, or most serious offenses, the plea in this  
22 case could be used in connection with those future cases to  
23 make the penalties more severe. In those future cases it  
24 could result in a sentence of life imprisonment without the  
25 possibility of ever being paroled.

1 Do you understand that, Mr. Perry?

2 DEFENDANT PERRY: Yes, sir.

3 THE COURT: Now, armed robbery, excuse me, carries a  
4 sentence of at least ten years, up to thirty years. You  
5 would not be eligible for parole for seven years, and there  
6 can be no suspended sentences issued for armed robbery.

7 Do you understand the charge?

8 DEFENDANT PERRY: Yes, sir.

9 THE COURT: Do you understand the penalty?

10 DEFENDANT PERRY: Yes, sir.

11 THE COURT: The next case is Case Number 2011-3044,  
12 also an armed robbery. It is a, again, a violent and most  
13 serious offense and I've explained what that means.

14 Do you understand that?

15 DEFENDANT PERRY: Yes, sir.

16 THE COURT: It has been indicted by the Grand Jury. It  
17 carries the same potential sentence. Again, ten years  
18 minimum, up to thirty, ineligible -- you're not eligible for  
19 parole for seven years, and there's no suspended sentence.

20 You understand that about that charge?

21 DEFENDANT PERRY: Yes, sir.

22 THE COURT: The next case is 2011-3070, again, an armed  
23 robbery. Same circumstances as before. Serious and -- most  
24 serious and a violent offense, constitutes a strike, has  
25 been indicted by the Grand Jury, carries the same potential

1 sentence.

2 You understand that, Mr. Perry?

3 DEFENDANT PERRY: Yes, sir.

4 THE COURT: Next is Case Number 2011-2353. Same thing.  
5 It's an armed robbery. Same potential sentence. Classified  
6 again as a violent and most serious offense, and has been  
7 indicted by the Grand Jury.

8 Are you aware of that, sir?

9 DEFENDANT PERRY: Yes, sir.

10 THE COURT: Next is Case Number 2011-3072. Again, an  
11 armed robbery. That is, again, classified as a violent and  
12 most serious offense. It has been indicted by the Grand  
13 Jury. Carries the same potential sentence. Again, that is  
14 a ten years up to thirty, not eligible for parole for seven.  
15 No suspended sentences.

16 Next is Case Number 2011-3075. Again an armed robbery.  
17 Classified the same, as a violent and most serious offense.  
18 Has been indicted by the Grand Jury, and carries the same  
19 potential sentence.

20 Are you aware of that charge?

21 DEFENDANT PERRY: Yes, sir.

22 THE COURT: Next is Case Number 2011-3076. Again, an  
23 armed robbery. Same potential sentence, ten to thirty. Not  
24 eligible for parole for seven. No suspended sentences,  
25 classified as violent and most serious, and has been

1 indicted by the Grand Jury.

2 Finally, for you is Case Number 2011-2354. Again, an  
3 armed robbery. Violent and most serious is the  
4 classification of the crime. Has been indicted by the Grand  
5 Jury. It carries the same potential sentence as I indicated  
6 earlier.

7 I have eight armed robberies, is that right, for you?

8 SOLICITOR MORIN: That's correct, Your Honor.

9 THE COURT: That means the maximum sentence that you're  
10 facing is 240 years in prison.

11 Do you understand that, sir?

12 DEFENDANT PERRY: Yes, sir, I do.

13 THE COURT: Now, on all of these charges I will tell  
14 you the eligibility for parole is also restricted on these  
15 cases.

16 Do you understand that?

17 DEFENDANT PERRY: Yes, sir.

18 THE COURT: In other words, you have to serve most of  
19 the sentence before you would ever be eligible for parole.

20 Do you understand that as well?

21 DEFENDANT PERRY: Yes, sir.

22 THE COURT: You discussed that with your lawyer?

23 DEFENDANT PERRY: I did.

24 THE COURT: Now, Mr. Anderson, let me go over your  
25 charges with you.

1 In your case I have 2011-3063. It's an armed. It  
2 has -- it is a violent and most serious offense.

3 Do you understand that classification?

4 DEFENDANT ANDERSON: Yes, sir.

5 THE COURT: Do you understand that would constitute a  
6 strike against you under the law?

7 DEFENDANT ANDERSON: Yes, sir.

8 THE COURT: It has been indicted by the Grand Jury.  
9 All of the armed robberies I will talk with you about carry  
10 the same potential sentence. That is ten years minimum up  
11 to thirty years, not eligible for parole for seven. No  
12 suspended sentences are allowed.

13 Do you understand all of that?

14 DEFENDANT ANDERSON: Yes, sir.

15 THE COURT: The next one is Case Number 2011-4356. It  
16 is an armed robbery as well. It has not been indicted by  
17 the Grand Jury. It appears that you are waiving presentment  
18 at this time.

19 Is that correct?

20 DEFENDANT ANDERSON: Yes, sir.

21 THE COURT: You're asking the Court to go forward today  
22 in this case?

23 DEFENDANT ANDERSON: Yes, sir.

24 THE COURT: I explained to you earlier about that.

25 Do you remember me explaining to you about Grand Jury

1 presentment. You act like you're a little confused. I want  
2 to be sure you understand.

3 DEFENDANT ANDERSON: Yes, sir.

4 THE COURT: So, you are giving up presentment on this  
5 case, is that correct?

6 DEFENDANT ANDERSON: Yes, sir.

7 THE COURT: All right. It carries that same  
8 designation as the other cases. It is considered violent  
9 and serious and also carries the same sentence.

10 The next case is 2011-3061, an armed robbery. It is  
11 also classified violent and most serious, has been indicted  
12 by the Grand Jury. It carries the same potential sentence.

13 Are you aware of that charge and penalty?

14 DEFENDANT ANDERSON: Yes, sir.

15 THE COURT: Next is an armed robbery, Case Number  
16 2011-3059. That is a violent and most serious offense. It  
17 has been indicted by the Grand Jury. It carries the same  
18 potential sentence.

19 Next is 2011-3057, an armed robbery. It's classified  
20 as violent and most serious, has been indicted by the Grand  
21 Jury, came, carries the same potential sentences as I've  
22 told you earlier.

23 Are you aware of that charge?

24 DEFENDANT ANDERSON: Yes, sir.

25 THE COURT: Next is 2011-3055, another armed robbery.

1 It's classified as violent and most serious, has been  
2 indicted by the Grand Jury, carries the same potential  
3 sentence.

4 Do you understand that, sir?

5 DEFENDANT ANDERSON: Yes, sir.

6 THE COURT: Next are two accessory after the fact of a  
7 Felony A, B, or C, or murder. They each carry up to 15  
8 years in prison. Those are cases 11-30, 3066, 11-3067.  
9 They were indicted by the Grand Jury.

10 Do you understand those charges, sir?

11 DEFENDANT ANDERSON: Yes, sir.

12 THE COURT: For you I have, let's see, one, two, three,  
13 four, five, six armed robberies. That would carry 180 years  
14 in prison, and two accessories after the fact. They would  
15 each carry 15 years potentially. So, you're facing a  
16 potential 210 years in prison on these charges.

17 Do you understand that, sir?

18 DEFENDANT ANDERSON: Yes, sir.

19 THE COURT: On the armed robberies are you aware that  
20 those particular charges, again, have a limited possibility  
21 of ever receiving a parole.

22 Do you understand that, sir?

23 DEFENDANT ANDERSON: Yes, sir.

24 THE COURT: Now, Mr. Perry, you are represented by  
25 Mr. Cheeks on all these charges, is that right?

1 DEFENDANT PERRY: Yes, sir.

2 THE COURT: Have you discussed them fully with Mr.  
3 Cheek?

4 DEFENDANT PERRY: I have.

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

6 DEFENDANT PERRY: Yes, sir.

7 THE COURT: Is there anything else you need to discuss  
8 with him at this time?

9 DEFENDANT PERRY: No, sir.

10 THE COURT: And is there anything else that you feel  
11 that he ought to do for you at this time?

12 DEFENDANT PERRY: No, sir.

13 THE COURT: Mr. Anderson, you also are represented by  
14 Mr. Cheek on these charges, is that correct?

15 DEFENDANT ANDERSON: Yes, sir.

16 THE COURT: And have you consulted with him?

17 DEFENDANT ANDERSON: Yes, sir.

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

19 DEFENDANT ANDERSON: Yes, sir.

20 THE COURT: Is there anything else that you want him to  
21 do for you?

22 DEFENDANT ANDERSON: No, sir.

23 THE COURT: Is there anything else that you feel that  
24 you need to discuss with him before we go forward?

25 DEFENDANT ANDERSON: No, sir.

1 THE COURT: All right. Now, Mr. Perry, I have here the  
2 sheet given to me by the solicitor --

3 DEFENDANT PERRY: Yes, sir.

4 THE COURT: -- that describes the various events.

5 DEFENDANT PERRY: Yes, sir.

6 THE COURT: Have you seen that?

7 DEFENDANT PERRY: I have.

8 THE COURT: And have you reviewed it?

9 DEFENDANT PERRY: Yes, sir.

10 THE COURT: Is there any need in me reading all of the  
11 charges to you?

12 DEFENDANT PERRY: No, sir.

13 THE COURT: You have the right to plead either guilty  
14 or not guilty to those charges.

15 How do you plead?

16 DEFENDANT PERRY: I plead guilty.

17 THE COURT: To all of them?

18 DEFENDANT PERRY: Yes, sir.

19 THE COURT: Now, Mr. Anderson, again I've gone over the  
20 sheets here and I've gone over your cases. There is an  
21 indication on one of these charges, that is Case Number  
22 2011-4356, that on that case you're pleading no contest.

23 Is that correct?

24 DEFENDANT ANDERSON: Yes, sir.

25 THE COURT: Now, as to the other charges, it appears

1 that you are here to offer a plea of guilty.

2 Have you reviewed the sheet the solicitor provided  
3 concerning the facts in this matter?

4 DEFENDANT ANDERSON: Yes, sir.

5 THE COURT: And are you familiar with the charges that  
6 they've made against you?

7 DEFENDANT ANDERSON: Yes, sir.

8 THE COURT: As to the cases other than the one that I  
9 just mentioned, that's Case 2011-4356, how do you plead?

10 DEFENDANT ANDERSON: Guilty.

11 THE COURT: And as to Case Number 2011-4356, it's my  
12 understanding that you are going to offer a plea of no  
13 contest.

14 Is that true?

15 DEFENDANT ANDERSON: Yes, sir.

16 THE COURT: Do you understand that a no contest plea  
17 carries the same effect, as far as sentencing, as a guilty  
18 plea.

19 Do you understand that?

20 DEFENDANT ANDERSON: Yes, sir.

21 THE COURT: Now, sir, what that means to me is that, on  
22 that case, you and your lawyer have reviewed the facts that  
23 are, the evidence that's in the possession of the State, and  
24 after a review of that evidence, it's your belief that if  
25 that evidence were presented to a jury at a trial that you

1 would more than likely be found guilty of the offense, and,  
2 therefore, you have chosen to, while not admitting guilt,  
3 guilt, not to contest those charges.

4 Is that true?

5 DEFENDANT ANDERSON: Yes, sir.

6 THE COURT: So, are you pleading no contest?

7 DEFENDANT ANDERSON: Yes, sir.

8 THE COURT: Now, Mr. Cheek, as to Mr. Perry and Mr.  
9 Anderson, have you been able to consult with both of them?

10 MR. CHEEK: I have, with both of these gentlemen, Your  
11 Honor.

12 THE COURT: And have, excuse me, have they been able  
13 to, you think, understand the discussions you've had with  
14 them?

15 MR. CHEEK: Yes, sir, Your Honor.

16 THE COURT: I would think, that among the many things  
17 you would of discussed with them, you would of discussed the  
18 statutes under which they've been charged, the elements that  
19 were required to be proven in order for these charges to be,  
20 for them to be convicted of the charges, any defenses they  
21 may of had to the charges, any possible lesser included  
22 offenses that might be available to them, their rights under  
23 the Constitution, as well as the fact that most of these  
24 charges carry with them a limited possibility of ever  
25 receiving parole.

1 Have you discussed all of those matters with them?

2 MR. CHEEK: I have, Your Honor.

3 THE COURT: And are you satisfied that Mr. Perry and  
4 Mr. Anderson understood your advice on those points?

5 MR. CHEEK: Yes, Your Honor, both Mr. Perry and Mr.  
6 Anderson.

7 THE COURT: And have they both been able to assist you  
8 in their defense as this case went along?

9 MR. CHEEK: Yes, sir, Your Honor.

10 THE COURT: Now, Mr. Perry, do you agree that Mr. Cheek  
11 discussed the things I just went over with him---

12 DEFENDANT PERRY: He did.

13 THE COURT: ---with you?

14 And is that the advice that you're satisfied with?

15 DEFENDANT PERRY: Yes, sir.

16 THE COURT: And, Mr. Anderson, do you agree that  
17 Mr. Cheek has gone over the things I just discussed with him  
18 with you?

19 DEFENDANT ANDERSON: Yes, sir.

20 THE COURT: And is that the advice that you're  
21 satisfied with?

22 DEFENDANT ANDERSON: Yes, sir.

23 THE COURT: Now, Mr. Perry, you are 22 years of age?

24 DEFENDANT PERRY: Correct.

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

1 DEFENDANT PERRY: I didn't finish, but I have my GED.

2 THE COURT: Are you married?

3 DEFENDANT PERRY: No, sir.

4 THE COURT: Do you have any children?

5 DEFENDANT PERRY: I have one on the way.

6 THE COURT: And do -- were you working before you got  
7 arrested?

8 DEFENDANT PERRY: Yes, sir.

9 THE COURT: And where did you work?

10 DEFENDANT PERRY: Southeast Gold Exchange.

11 THE COURT: And what were you doing there?

12 DEFENDANT PERRY: They buy gold and sell it to gold  
13 refineries, jewelry stores, and things like that.

14 THE COURT: All right. Mr. Anderson, you're 24?

15 DEFENDANT ANDERSON: Yes, sir.

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

17 DEFENDANT ANDERSON: I went to the 12<sup>th</sup>.

18 THE COURT: Did you ever get your GED?

19 DEFENDANT ANDERSON: Yes, sir.

20 THE COURT: Are you married?

21 DEFENDANT ANDERSON: Yes, sir.

22 THE COURT: Do you have children?

23 DEFENDANT ANDERSON: I have two.

24 THE COURT: And what ages are they?

25 DEFENDANT ANDERSON: Three.

1 THE COURT: Both -- so, it's twins?

2 DEFENDANT ANDERSON: No, sir.

3 THE COURT: Oh, you had two children the same year?

4 DEFENDANT ANDERSON: Yes, sir.

5 THE COURT: All right. Now, sir, did you have a job  
6 before you got arrested?

7 DEFENDANT ANDERSON: Yes, sir.

8 THE COURT: And what kind of job did you have?

9 DEFENDANT ANDERSON: I was working at Magnolia Manor as  
10 in laundry.

11 THE COURT: Okay, sir. Now, I'm going to ask the  
12 solicitor to go over the facts in this case.

13 Are you gonna do these separately for the defendants or  
14 are they all intertwined?

15 SOLICITOR MORIN: They're all -- they're intertwined,  
16 Your Honor, and, and I'll explain that when I go over the  
17 facts.

18 THE COURT: Okay. Then I'll ask you to go over the  
19 facts.

20 Mr. Perry, Mr. Anderson, if you'll listen to the facts  
21 as the solicitor goes over these. I'm going to ask you  
22 about these facts in just a few minutes.

23 Mr. Morin.

24 SOLICITOR MORIN: Thank you, Your Honor.

25 Your Honor, all of these incidents occurred between

1 August 31<sup>st</sup>, 2010, and January 30<sup>th</sup>, 2011. The State's  
2 position and understanding and evidence that we have is that  
3 Mr. Perry entered all of the stores with intent to rob. For  
4 the most part Mr. Anderson was the driver. There were  
5 occasions when Mr. Anderson also entered the store. That's  
6 why I knew that Mr. Perry was closest to me. The witnesses  
7 described a tall and then the few times is a shorter fellow  
8 that they described, which I knew must be Mr. Anderson.

9 Nonetheless, the first incident occurred on  
10 August 31<sup>st</sup>, 2010, at the Kangaroo Express at 1245 Asheville  
11 Highway. The defendant entered the store wearing a bandanna  
12 on his face, pointed a gun at the victim, demanded money.  
13 He got \$49.53.

14 THE COURT: Yes, sir.

15 SOLICITOR MORIN: Then on September 3<sup>rd</sup>, 2010, that  
16 occurred at the Li'L Cricket on 2053 Southport Road in  
17 Spartanburg County. The defendant entered the store,  
18 pointed a gun at the victim, demanded money. Because the  
19 deposit had already been made, he basically got ones and  
20 fives. There was a witness at the scene who described a van  
21 that was there that he saw someone come in and they drove  
22 away. That van was consistent in other places along the  
23 way.

24 On September 30<sup>th</sup>, 2010, at 9075 Fairforest Road  
25 another Li'L Cricket in Spartanburg County, the defendant

1 entered the store wearing a black ski mask, pointed a gun at  
2 the victim, and said give me all your money, you think I'm  
3 playing, want to die. At this store, Your Honor, he took  
4 money and he also demanded Newport cigarettes, cartons of  
5 them. The amount of money was not really ascertained, but,  
6 once again, it was a small amount.

7 On November 1<sup>st</sup>, 2010, at the Li'L Cricket, back at  
8 Southport Road, again, 2053, Spartanburg, dark ski mask  
9 semiautomatic handgun this time, taken money from the  
10 register and nine cartons of cigarettes. Getaway was made  
11 in a van. That victim, Latasha Robinson, quit her job after  
12 that. Mr. Chad -- Mr. Anderson is charged with an accessory  
13 after the fact in that case.

14 On November 9<sup>th</sup>, 2010, the Li'L Cricket at 370---

15 THE COURT: Now, when you say an accessory after the  
16 fact, does that mean you think that he or you have evidence  
17 to believe that he did something?

18 SOLICITOR MORIN: Officers seem to indicate that he may  
19 have given Mr. Perry a ride, but didn't realize that was  
20 gonna happen at that time. But, obviously, when he came  
21 back out, he had it and drove away.

22 THE COURT: Okay. Go ahead.

23 SOLICITOR MORIN: November 9<sup>th</sup>, 2010, was at 370  
24 Bryant Road in Spartanburg, a Li'L Cricket, the defendant  
25 wearing a ski mask, pointed the victim, pointed a gun at the

1 victim, demanded money and Newport cigarettes. He didn't  
2 get any cigarettes because some sort of case had been locked  
3 and he abandoned that. He got between fifty and a hundred  
4 dollars.

5 November 12<sup>th</sup>, 2010, at 1997 Nazareth Road, the Li'L  
6 Cricket there, here in Spartanburg County, wearing a ski  
7 mask, pointed a gun at the victim and said give me all of  
8 the money, baby girl. Also demanded Newport cigarettes.  
9 She couldn't retrieve them, probably for a similar reason.  
10 Fled in a van. Got about \$50 at that one.

11 November 16<sup>th</sup>, 2010, the Li'L Cricket at 250 Garner  
12 Road in Spartanburg County. Ski mask, pointed a pistol,  
13 demanded money, defendant also asked for Newport cigarettes  
14 there. However, in that case the victim, Choe Vang, said  
15 that when that demand was made a car drove up in the parking  
16 lot and he fled. It looks like he got \$82 at that one.

17 And then, finally, the last one occurred at the Li'L  
18 Cricket at 2053 Southport Road in Spartanburg. He entered  
19 with his face covered by a yellow and black mask at that  
20 time, give me all the money. Carmittis Herst, I probably  
21 mispronounced her first name, was the victim in that case.  
22 She's present in the courtroom. He got \$34 on that  
23 occasion, and, Mr. Anderson, that is the other charge that  
24 Mr. Anderson is charged with accessory after the fact.

25 Your Honor, as -- while officers were investigating

1 this case Mr. Perry was developed as a suspect. They went  
2 to his house at . . . They spoke to his  
3 mother or at least a Barbara Perry who I believe is his  
4 mother.

5 She stated that he had, she had seen Mr. Perry around  
6 Christmas with several cartons of Newport cigarettes. They  
7 were able to ascertain at that time that Mr. Perry also had  
8 a Mercury Villager van consistent with what had been seen at  
9 several of the locations. It had been sold. This was in  
10 March of 2011.

11 They got a search warrant for the residence. They  
12 recovered masks consistent with what was seen on the  
13 videotapes at the various stores along with both pellet  
14 guns, toy guns, and various types of implements that were  
15 consistent with the different guns that were seen at the  
16 different residence, different robberies.

17 The State agreed to run, to recommend concurrent  
18 sentences in that. These clearly are one course of conduct.  
19 I know that there's a representative from the district  
20 office at Li'l Cricket who may wish to speak at the  
21 appropriate time.

22 THE COURT: Mr. Perry, did you hear the solicitor go  
23 over the facts in your case?

24 DEFENDANT PERRY: I did.

25 THE COURT: Did you understand what he said?

1 DEFENDANT PERRY: I did.

2 THE COURT: Do you agree that those facts are the  
3 truth?

4 DEFENDANT PERRY: Somewhat. Except for the dialogue I  
5 agree. I agree.

6 THE COURT: I'm sorry?

7 MR. CHEEK: He said he agreed with everything except  
8 for the supposed dialogue, Your Honor.

9 THE COURT: Oh, so, you don't agree with what was  
10 necessarily said or reported that you said?

11 DEFENDANT PERRY: No, sir.

12 THE COURT: Okay.

13 DEFENDANT PERRY: But I think that's irrelevant.

14 THE COURT: Well, it is relatively not important in  
15 this matter, but I understand that you want to be truthful  
16 and I'm asking you to do that.

17 But as to the other facts you agree that they're true?

18 DEFENDANT PERRY: Yes, sir.

19 THE COURT: Now, Mr. Anderson, as to the facts in all  
20 of the cases except Case Number 2011-GS-42-4356, do you  
21 agree that those facts are true?

22 DEFENDANT ANDERSON: Yes, sir.

23 THE COURT: Now, as to that case, it's your position  
24 apparently that you're pleading no contest.

25 Are those the facts upon which you and your attorney

1 have based the decision not to contest the charges?

2 DEFENDANT ANDERSON: Yes, sir.

3 THE COURT: All right. Now, Mr. Perry, have you told  
4 me the truth today?

5 DEFENDANT PERRY: I have.

6 THE COURT: Did anyone tell you how to answer the  
7 questions I've asked?

8 DEFENDANT PERRY: No, sir.

9 THE COURT: So, if I were to ask all the same questions  
10 I asked earlier again, would I get the same answers verbally  
11 this time?

12 DEFENDANT PERRY: Yes, sir.

13 THE COURT: Are you, in fact, waiving your  
14 Constitutional rights as they relate to these charges?

15 DEFENDANT PERRY: Yes, sir.

16 THE COURT: Are you pleading guilty to these charges  
17 because you are guilty of the charges?

18 DEFENDANT PERRY: I am.

19 THE COURT: And, Mr. Anderson, have you told me the  
20 truth today?

21 DEFENDANT ANDERSON: Yes, sir.

22 THE COURT: Did anyone tell you how to answer my  
23 questions that I asked?

24 DEFENDANT ANDERSON: No, sir.

25 THE COURT: So, the answers I've received, those were

1 all your own answers, is that right?

2 DEFENDANT ANDERSON: Yes, sir.

3 THE COURT: Now, is there any part of what we've  
4 discussed today that you'd like to go back and change  
5 anything you've told me?

6 DEFENDANT ANDERSON: No, sir.

7 THE COURT: If I were to ask those same questions  
8 again, would I get the same answers verbally at this time?

9 DEFENDANT ANDERSON: Yes, sir.

10 THE COURT: Are you, in fact, waiving the  
11 Constitutional rights that I've explained to you in  
12 connection with these pleas?

13 DEFENDANT ANDERSON: Yes, sir.

14 THE COURT: And as to the charges you're pleading  
15 guilty of, are you pleading guilty because you are guilty?

16 DEFENDANT ANDERSON: Yes, sir.

17 THE COURT: And as to the one that you're pleading no  
18 contest on, do you continue to plead no contest?

19 DEFENDANT ANDERSON: Yes, sir.

20 THE COURT: Mr. Perry, the answers that I've gotten  
21 today, were those all your own answers?

22 DEFENDANT PERRY: Yes, sir.

23 THE COURT: Did anyone tell you how to answer my  
24 questions?

25 DEFENDANT PERRY: No, sir.

1 THE COURT: All right. In both cases it appears to the  
2 Court and I find that the pleas are freely and voluntarily  
3 given. The defendants are aware of the charges. They're  
4 aware of the facts that have been related and have agreed  
5 that they are, are true with the exception of the one that  
6 pled no contest. It's my finding that they've had legal  
7 advice and they're satisfied with their legal advice. It's  
8 my further findings that there's a factual basis or reason  
9 for these pleas to be entered.

10 Mr. Cheek, it's your opportunity to speak on behalf of  
11 either Mr. Perry or Mr. Anderson or both of them.

12 MR. CHEEK: Your Honor, I will speak to both of them  
13 probably intermittently, but I would just ask the Court to  
14 consider that a number of family and friends are present in  
15 the courtroom. Most everyone left in the courtroom is, in  
16 some way, connected in this matter either as the victim and  
17 the companies that was involved or the family members seated  
18 to the, to the judge's left in the gallery, Your Honor.

19 Your Honor, we ask the Court to consider that at least  
20 one or two of the members present in the community would  
21 like to come forward to speak on behalf of these young men.

22 Your Honor, I would tell the Court that some things in  
23 life are just baffling. When you talk to these young men  
24 and you have questioned them earlier in their preparation  
25 for entering the plea and just now in going over the facts,

1 in my entire time of speaking with Mr. Xavier Perry I never  
2 used the term irrelevant, Your Honor. That is something he  
3 understood himself. He was alert. He was responsive. The  
4 vocabulary's astounding. The vision that is one that I wish  
5 many of our young people in the community had when it comes  
6 to being gifted.

7 I'm a, I'm a child of the 60's, and one of the songs  
8 that we and poems we all recited was to be young, gifted,  
9 and black, and what that meant as far as our futures were  
10 concerned.

11 Your Honor, before you are two young men who are young,  
12 gifted, regardless of race. These young men have grown-up  
13 in a society where things have been much different for them,  
14 and yet they still have the ability to make something of  
15 their lives. It depends on the sentence today, what length  
16 of time they would have left in their lives to make  
17 something more positive than what they've done and  
18 demonstrated thus far, Your Honor.

19 I hope that in my comments I do not give the impression  
20 that I think that it's all over for them. I've told them I  
21 think this is just the beginning for them. We would hope  
22 that the Court, after listening to everything involved and  
23 reviewing everything involved and listening to all the  
24 persons concerned in this, that the Court might impose a  
25 concurrent sentence as has been suggested by the solicitor's

1 office, by the State in this matter, and the Court might be  
2 lenient and merciful on them to sentence near the lower  
3 range as opposed to what is allowed in the discretion of the  
4 Court, Your Honor.

5 Your Honor, we just beg mercy for them. A number of  
6 stores and victims and property have been violated, and  
7 these young men are both young and they're both gifted.  
8 They are talented young men. Both of them have the skill --  
9 they're skilled artists. They sing. They write. Their  
10 poetry, their song lyrics are excellent. They had, in this  
11 community prior to this, made appearances at festivals, made  
12 appearances at a club that's one block from here across from  
13 the Marriott, Ferguson's. These young men were in with  
14 managers who had great plans for them.

15 Your Honor, they were diligent. They were artistic.  
16 They were able. They were hard working. Each of them had  
17 jobs in the community. The one thing they did not have,  
18 Your Honor, was patience. They were not willing to wait and  
19 continue to apply and live at a low level income and then  
20 keep plowing away until they could achieve the success that  
21 each of them are capable of making in the entertainment  
22 industry.

23 And, so, Your Honor, because of that, they chose other  
24 routes to meet their immediate needs that were not and are  
25 not condoned in community. We plead mercy. I won't belabor

1 it, Your Honor, as to say that the main question that each  
2 of them had was Mr. Cheek, what do you think of me, and I  
3 explained to them it doesn't matter what I think of you at  
4 this point on. It's what you think of yourselves because if  
5 you still value yourselves, value who you are, value your  
6 families, value your future, value your experience you're  
7 about to go through, and then you can overcome that.

8 We would just ask the Court for mercy on their behalf.

9 They'll be at least two people who would like to speak  
10 on their behalf I believe.

11 THE COURT: All right. If they want to come -- the  
12 first one can come forward. Someone who wants to speak on  
13 behalf of the defendants, come forward please, sir.

14 DEFENDANT PERRY: Your Honor?

15 THE COURT: Just one second. I'm gonna give you a  
16 chance to talk once I've heard from everybody else.

17 MR. JEFFERSON: Good morning, Your Honor.

18 THE COURT: Good -- well, it's gotten to the afternoon.  
19 But that's okay.

20 MR. JEFFERSON: well, good afternoon.

21 THE COURT: What's your name, sir?

22 MR. JEFFERSON: My name is Mr. Jeffery Jefferson,  
23 Senior, Your Honor.

24 THE COURT: Yes, sir.

25 MR. JEFFERSON: I've been in the court system many

1 times, but I've changed my life. I like to say, Your Honor,  
2 my son was in the system when he came home last year. He  
3 did a whole ten years because of some problems. He went  
4 down when he was 17, about their age.

5 Also have been the victim of robbery at gunpoint, shot  
6 at. So, I know what the victims are feeling in this case.  
7 I can, I can relate with all of them.

8 Also, though, I know that these two young men, given  
9 the chance, they can do many things. One thing is that one  
10 of them's about to have a baby. The other one has two  
11 children. So, the family and us, we come here today and we  
12 put ourself in the mercy of the Court. At the same time  
13 these two young men offered to those victims in these crimes  
14 their humble apologies to please forgive them for what they  
15 have done.

16 In our society, Your Honor, as you know, we have a low  
17 scale, a medium scale, and an upper scale, you know, and  
18 then also there's always that mention of that word. Well,  
19 some get some, some get none, some get a few. But some get  
20 a whole lot when they apply their self, and I think that's  
21 what we have here.

22 With a minium sentence, Your Honor, I think these two  
23 young men can come out and be productive citizens, and they  
24 can take care of their families. Their babies won't be too  
25 old for them to handle, and their babies will be able to use

1 them as a what not to do because they'll be able to tell  
2 their babies about the experiences that they've had, and  
3 that's why I'm here, Your Honor, and that's why these  
4 families are here. And like we said, we do offer our humble  
5 apologies to anyone and the people for anything that has  
6 transpired.

7 THE COURT: Thank you, sir.

8 MR. JEFFERSON: You welcome.

9 THE COURT: I believe someone else wanted to speak on  
10 their behalf.

11 MR. CHEEK: Your Honor, I think that they all agreed  
12 that Mr., that Jeffery would speak on behalf of everybody  
13 involved.

14 THE COURT: All right. Mr. Perry, I told you I'd give  
15 you an opportunity to speak. This is your chance to do so.

16 DEFENDANT PERRY: Yes, sir, I know that I'm, I'm here  
17 today because of my own mistakes, and I'm not denying any of  
18 them. I didn't even deny the facts when they arrested me.  
19 I just came.

20 I'm a young man who made extreme mistakes like  
21 countless other young men. But at the time that I committed  
22 these crimes I was without a job. I was staying with my  
23 mother. It made me feel like less of a man in not being  
24 able to, to give my mother money, which she needs.

25 So, I committed these robberies for these petty

1 dollars. They help me put food in my mama's house and help  
2 her with bills she had. And, so, I just ask you to show  
3 mercy on me because the next portion of my life will be  
4 dictated by you, and I ask you to have mercy.

5 THE COURT: Mr. Anderson, anything you want to tell me?

6 DEFENDANT ANDERSON: Yes, sir, Your Honor. Just have  
7 mercy on me, you know. Like I said, I'm, you know, if -- I  
8 went by, I went by everything the right way. I lost my job  
9 in '08. I got unemployment in '09. Brick mason job, you  
10 know, they, they just, they just, just fell apart. The  
11 economy got bad. I had my own detailing business. You  
12 know, we had, we had problems with the economy, and we had  
13 the water drought. So, you know, when I go to people house,  
14 I use they water.

15 I asked them, you know. They people like, you know, we  
16 can't, we can't afford to pay you no more because, you know,  
17 I done lost my job and my employment, you know, they was,  
18 they was unemployed at the time too, you know. And, so, I  
19 just -- so, I asked them, I said, could you go down on the  
20 prices. They said no, because we feel like that's highway,  
21 highway robbery against you.

22 So, at the, at the time, you know, my family, my mama,  
23 you know, she was struggling. She always struggling. Till  
24 today she's struggling, and I always been her backbone. I  
25 always told my mama, since I was young, I told her, mama,

1 I'm gonna take care of you no matter what, you know, no  
2 matter what I got to go through I want to take care of you.

3 Then, you know, I got, I got married, you know, and I  
4 feel, you know, I went by, I went by everything the right  
5 way. My kids, they ran out of diapers, had bills and stuff  
6 to pay. My wife, she got a job. But, you know, work,  
7 working here and there, they don't pay much, you know. They  
8 pay minimum wage, and, you know, I feel like, you know, and  
9 my, my little girl mama, you know, she, she work too, you  
10 know.

11 They still, they still -- I commend them, you know,  
12 cause they still give me that authority as being a father.  
13 They don't take that from me because I always took care of  
14 them. I always took care of them and my kids. If I don't  
15 take care of my kids, who's gonna take care of my kids, and  
16 I went by it the right way.

17 I went to Total Ministries. I went to all these  
18 churches, and they said that they couldn't help me. You  
19 know, they said you got to apply, you got to be approved.  
20 My kids got to be approved in this world, you know, for  
21 somebody to take care of them.

22 You know, me and, me and Xavier, we came down here. We  
23 always went on, went on the computers looking for jobs,  
24 filled out applications. We go to the job. We got to wait.  
25 You know, we go to another job, they want to know your

1 whole, your whole background from when you was an infant,  
2 and you give it to them, and, you know, it's just like you  
3 know, you just basically, you know, when you signed it, you  
4 sign it, you probably signing your life away to them. You  
5 know, it didn't matter, it didn't matter to me at the time,  
6 and, you know, we couldn't, we couldn't, we couldn't find no  
7 jobs.

8       So, I told my kids, you know, hey I'm always, I'm  
9 always gonna take care of y'all. I'm always gonna take care  
10 of y'all. My kids, they very intelligent. They very smart  
11 to be their age, but they look up, they look up to they  
12 daddy, you know.

13       And they physically, physically, about the whole  
14 situation, I feel bad. But spiritually I feel good, you  
15 know, cause they got -- that gave me a chance to get closer  
16 with the Lord, you know. I always been close, but I never  
17 really just read the Bible like that, you know.

18       But, you know, physically, you know, all this, they  
19 want to work, you know, want to work for my kids. But, you  
20 know, they always -- you know, spiritually, spiritually, you  
21 know, I feel like, you know, I just said now, now that I  
22 know I'm gonna be incarcerated, I was like how can you be a  
23 father if you don't know the Father?

24       How can you be a good husband if you not a good wife on  
25 to God?

1           How can I ask my wife to submit herself onto me if I  
2 can't submit myself onto God?

3           You know, I -- that's, that's, that's what I learned,  
4 you know. I feel like everything happened for a reason, you  
5 know, for His good and for His glory.

6           And as far as the victims, you know, I'll just, I'll  
7 just -- you know, I'm sorry. I'm sorry for what they had,  
8 they had to go through. You know, but the whole intention  
9 was not to hurt nobody. The whole intention was to take  
10 care of your family.

11           If you go to the family also, you ain't got your  
12 father, that's just history, that's just history repeating  
13 each other, repeating itself, you know. That's a generation  
14 curse. I'm trying, I'm trying to break that curse. We  
15 both.

16           If you see your mother, your mother crying every night  
17 because she can't pay your bills, she out there struggling,  
18 about to get put out, you feel like, you feel, you feel less  
19 of a man cause you feel like you got to take, you got to  
20 step up to the plate and take care of your mother, take care  
21 of your wife, take care of your kids by any means necessary.  
22 That's how, that's how I felt, you know.

23           All these robberies occurred at, at a certain time when  
24 we didn't have no job. But, you know, after all, after all  
25 this occurred, we felt like hey, you know, I got to quit

1 this. My life, my life gonna go down the wrong path, you  
2 know.

3 So, after that we, we was, we was -- we quit. We  
4 started, we started doing music. We got, we got our  
5 computer and our studio equipment. So, we start doing  
6 music, you know, start putting our music out there. One man  
7 ran across us that I knew, he said y'all sound good, you  
8 know. How can I be y'all's manager.

9 So, we looked over, we looked over the management  
10 situation, and, you know, so we -- and by the time, you  
11 know, we had, we had time to show we was doing it. By the  
12 time we was gonna go to Columbia and get a record, record  
13 deal, you know, everything blew up in our face. But, you  
14 know, by any means necessary though, you know, I'll take, I  
15 take care of my kids, you know.

16 I just went by -- I went by, I went by it the wrong  
17 way, you know, by being impatient, you know, at the time,  
18 and then, and then---

19 THE COURT: Does---

20 DEFENDANT ANDERSON: ---we not no threat to society.  
21 We're not no threat to the community. If you ask anybody  
22 about us, they'll tell you they had nothing but good things  
23 to say about us. Anybody, you know. They got nothing but  
24 good things, good things to say about us --

25 THE COURT: Okay.

1           DEFENDANT ANDERSON: -- even as little, even as kids  
2 cause the Lord say he'll take the foolish things of the  
3 world to desire the mind.

4           But, you know, our situation that we going through, if  
5 you just have mercy on us, on us, Your Honor, you know,  
6 we'll come out, we'll come out a better man. We probably  
7 can take -- I know, I know, through our music and through  
8 our education, that what we have learned since we been at  
9 Spartanburg County, you know, we can take that, apply it to  
10 the people, other young people off the street because young  
11 kids respect us, you know.

12           when I saw myself in the paper, we saw ourself in the  
13 paper, we just like wow, you know. That's not us, you know.  
14 I started crying, you know, because I know what the world,  
15 what the world gonna, what the world gone think about me.  
16 But, you know, in the Bible Paul prosecuted the churches,  
17 but God didn't punish him. God saw through his faults, and  
18 now Paul worked through -- Paul worked two, two-third of the  
19 New Testament, and now he -- Paul was the apostle that  
20 worked overtime for the Lord.

21           Lord, have mercy on him. You know---

22           THE COURT: Thank you, sir.

23           DEFENDANT ANDERSON: I just ask that you have mercy on  
24 us.

25           THE COURT: All right. Mr. Cheek, anything further

1 from the defense?

2 MR. CHEEK: Just plead mercy, Your Honor.

3 DEFENDANT PERRY: Your Honor?

4 THE COURT: Sir?

5 DEFENDANT PERRY: I think, all in all, we just made an  
6 irrational decision to try to compensate for our financial  
7 peril trying to help our family. I just beg you to have  
8 mercy on us.

9 THE COURT: Thank you, sir.

10 Yes, sir, Mr. Morin.

11 SOLICITOR MORIN: I think -- I know that the -- I'm not  
12 sure. I was told that I had at least the district manager  
13 of Li'L Cricket.

14 THE COURT: All right. If you'd come forward, please.  
15 Your name is please, ma'am?

16 MS. RINGLE: Sam Ringle.

17 THE COURT: And your position?

18 MS. RINGLE: District manager of Li'L Cricket.

19 THE COURT: I'll be happy to hear from you.

20 MS. RINGLE: I would just like to let everybody know  
21 that we, our policy is to lock them up. We would like to  
22 have them locked up. We have other -- I mean I understand  
23 their claim as victims, but what about the victims that were  
24 there. They had families.

25 One of them, she quit because she's got six kids, a gun

1 drew in her face. I mean she's terrified of ever coming in  
2 a convenience store anymore. I mean we -- there's more  
3 victim that's out here that wouldn't there, but, you know,  
4 when you talk about it, it scares them, and I, I just like  
5 for you, you know, to give them the maximum for robbery.

6 THE COURT: Thank you, ma'am.

7 Your name is?

8 MS. WHITEMIRE: Marquisha Whitemire.

9 THE COURT: Yes, ma'am, your, your position.

10 MS. WHITEMIRE: I'm location manager of 1997 Nazareth  
11 Road, Wellford, South Carolina.

12 THE COURT: Yes, ma'am.

13 MS. WHITEMIRE: Again, personally, I wanted to let you  
14 and the Court know as well, as victims, I have an employee,  
15 mother of six kids, came in to work to provide for her kids  
16 as well. Come at gunpoint, get robbed at gunpoint. You're  
17 terrified. You quit your job. You can't provide for your  
18 kids.

19 The, the victims that continue to come to work every  
20 day go through, what is it, post-stress syndrome?

21 You got to be scared every time somebody walks through  
22 that door. You're uncomfortable at work. That's no way to  
23 live your life and try to make a living.

24 I understand these guys and I know these two guys  
25 personally. They been thinking, been doing this, and I'm

1 not gonna say they're bad people. They've been good people.  
2 But to come in and beg for mercy for something, robberies  
3 you committed over months, over numerous of victims, not  
4 including the customers that was in the store who scared to  
5 come to the store, the businesses that are losing money  
6 because people don't want to come in there and getting  
7 robbed.

8 I, I, I ask for the maximum on that, and I'm sure that  
9 everyone that I speak for speaks the same thing cause we  
10 have kids and families to provide for as well, but we do it  
11 honestly.

12 THE COURT: I understand.

13 Now, ma'am, the -- let me ask you a question -- I'll  
14 ask -- or the district manager can speak.

15 The State's made a recommendation that I run the  
16 sentences concurrently.

17 Any comment on that?

18 MS. RINGLE: I wouldn't. I wouldn't run it  
19 concurrently. I mean -- they did it separate jobs. I mean  
20 it's separate -- it's separate different cases over a period  
21 of time. I mean if it was a every, an hour, next door, next  
22 door, I would say yes, but it was over a months period of  
23 time.

24 THE COURT: Thank you.

25 Prior record for these gentlemen.

1 SOLICITOR MORIN: Mr. Perry has an unlawful pistol in  
2 2009.

3 Unlawful pistol from 2009.

4 Mr. Anderson has a CDV and DUS from 2008.

5 Habitual traffic offender from 2010.

6 THE COURT: All right. It will take a minute for me to  
7 write sentences in the case. I'm gonna take a short recess.

8 Thank you very much.

9 (WHEREUPON, a short recess was taken in this case at  
10 this time.)

11 THE COURT: Bring Mr. Perry and Mr. Anderson back  
12 before the Court.

13 (Parties comply.)

14 THE COURT: All right. Before I announce the sentences  
15 in this case, I realize that there's some strong feelings in  
16 the courtroom. If anybody has any problem in controlling  
17 their emotions concerning matters like this, I'd advise you  
18 to leave the courtroom at this time because the Court won't  
19 tolerate any outbursts.

20 There are no winners in these cases. There are no  
21 losers in these cases. This is a tragic situation.

22 Mr. Perry, Mr. Anderson, you've articulated to me  
23 various reasons for your conduct and why you conducted  
24 yourself in that fashion, and while, to a certain degree  
25 those reasons are somewhat understandable, that to embark on

1 a series of eight armed robberies over a month, several  
2 months period of time, can't be explained simply by need to  
3 do well by your families.

4 People come to this country, some of them come here  
5 illegally, and are able to find employment or able to, to  
6 support their families. So, for you to say that it, that  
7 over that period of time there was a need to continue to  
8 conduct yourself in that fashion, is beyond belief by this  
9 Court.

10 The course of action that you embarked on not only  
11 terrorized a community, it terrorized a company. To have  
12 eight different -- well, eight different occasions where  
13 their stores were subject to armed robberies is difficult  
14 for this Court to comprehend what affect that might have on  
15 a company, on its employees, and on the people who use and  
16 frequent those locations.

17 So, there's really no excuse for what happened, and  
18 there wasn't really an excuse advanced of the -- but the  
19 sentence of this Court is to indicate that that type of  
20 behavior can not be tolerated in this community or any other  
21 community. It's not tolerated by civilized society. Let's  
22 put it that way.

23 All right. Mr. Perry, in your case, the Sentence on  
24 Case Number 2011-2354 is an armed robbery, it's ten years.  
25 That one is run consecutively to other sentences given in

1 this case.

2 On all other charges before this Court, which are armed  
3 robberies, the Sentence is 30 years run concurrently.

4 Mr. Anderson, in your case, Case Number  
5 2011-GS-42-3055, armed robbery, the Sentence is ten years  
6 run consecutively.

7 On all other armed robberies, the Sentence is 30 years  
8 run concurrently. On the two accessory charges, the  
9 Sentence is 15 years run concurrently.

10 Good luck to you gentlemen.

11 MR. CHEEK: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (WHEREUPON, the list of indictments was marked as  
14 Court's Exhibit No. 1 for identification purposes only at  
15 this time.)

16

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18 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 15<sup>th</sup> day of July, 2011.

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

September 25<sup>th</sup>, 2012

*Pamela E. Green*

PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA  
(Spartanburg)  
County of Spartanburg  
Xavier La-Lord Perry  
Full name and prison number (if any) of Applicant

IN THE COURT OF COMMON PLEAS

2012-CP-42-2121

v.  
State of South Carolina

APPLICATION FOR  
POST-CONVICTION RELIEF  
Evidentiary Hearing Requested

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.

- Place of detention Perry Correctional Institution  
430 Oaklawn Road, Pelzer, S.C. 29669
- Name and location of Court which imposed sentence Spartanburg
- Name(s) of co-defendant(s) (if any) Chadwick Anderson
- The indictment number or numbers (if known) upon which and the offense for which sentence was imposed:  
(a) 11-CS-42-02353  
(b) 11-CS-42-02354

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- (d.) 11-ES-42-03069
- (e.) 11-ES-42-03070
- (f.) 11-ES-42-03072
- (g.) 11-ES-42-03075

(c) 11-ES-42-03044

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

- (a) July 15, 2011 - Thirty (30) years Concurrent
- (b) July 15, 2011 - Ten (10) years Consecutive
- (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. \_\_\_\_\_

(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 "no" to (7), state your reasons for not so appealing:

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

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10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (c) \_\_\_\_\_ (d.) Unprepared for Trial

(a) Ineffective assistance of Counsel

(b) Conflict of Interest

(c) Due Process

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

(a) " See attached memorandum "

(b) " "

(c) " "

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

(a) the specific nature thereof:

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

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

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

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

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

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

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

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

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

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(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?

No

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. \_\_\_\_\_

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

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

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

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

- i. James a. Cheek, 7th Judicial Cir. Public Defenders Ofc., 366 North Church St. Ste. 3000, Spartanburg, SC.

- ii. \_\_\_\_\_
- iii. Robert B. Hall, 7th Judicial Cir. Public Defenders Ofc., 366 N. Church St., Ste. 3000, Spartanburg, S.C.

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

- i. Retrial Process, Plea & Sentencing
- ii. \_\_\_\_\_
- iii. Originally my appointed attorney but never spoke with me.

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

I am requesting that my sentence be reversed and remanded for a new trial.

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

No

STATE OF SOUTH CAROLINA )

County of Spartanburg )

VERIFICATION

Xavier Perry

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.

Xavier Perry

SWORN to and subscribed before me this 14th day of May, 2012.

Stuart Mulachy (L.S.)  
Notary Public

My Commission Expires: January 7, 2016

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

I, Xavier Perry, 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.

I leave this application open to amend.

Xavier Perry  
Applicant

SWORN or affirmed to and subscribed before me this 14th day of May 2012.

Steve T. Mulvaney  
Notary Public

My Commission Expires: January 7, 2016

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PCR Memorandum

Xavier Perry # 346891

Case No. 12 - DEL - L - 0325

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L.E.2d 674 , 692 ( 1984 )

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Staggs v. State , 372 S.C. 549 , 551 , 643 S.E.2d 690 , 692 ( 2007 )

Jackson v. State , 329 S.C. 345 , 495 S.E.2d 768 , 773 ( 1998 )

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US v. Holman , 314 F3d 837 ( 7th Cir. 2002 )

Lomax v. State , Opinion No. 26525 ( 2008 )

Cherry v. State , 300 S.C. 115 , 386 S.E.2d 624 ( 1989 )

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Mitchell v. Mason , 325 F3d 732 ( 6th Cir. 2003 )

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Constitutional Provisions

Applicant was denied the effective assistance of counsel which deprived him of his Sixth and Fourteenth Amendment rights. Resulted in a sentence being imposed upon Applicant that was unconstitutional.

Overview of the Facts

The Applicant plead guilty on July 15 , 2011 along with his codefendant. Counsel , James A. Cheek , represented both the Applicant and his codefendant during the pretrial process and the plea proceedings.

Counsel knew that there was an conflict of interest in him representing both the applicant and his codefendant because Applicant's codefendant had given statements that were adverse to the Applicant.

Argument 1. :

Applicant was denied adequate assistance of counsel by counsel , James A. Cheek , because of his failure to pretrial investigation by not interviewing witnesses. Strickland v. Washington ; also see Butler v. State )

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Argument 2. : Conflict of Interest

Applicant argues that he was hurt by plea counsel's representation of both him and his codefendant during the pretrial process and the plea proceedings.

The Applicant's and his codefendant's interest were contrary to one another being that the Applicant's codefendant had given unfavorable statements against him.

Plea counsel was aware of this but did not remove himself as counsel from neither the Applicant or his codefendant. Had Applicant elected to go to trial ; plea counsel would have had to pit the Applicant against his codefendant or vice versa. this yeilds an obvious conflict of interest. ( see Jackson v. State )

The Applicant's Sixth Amendment right to counsel includes the right to be represented by an attorney with undivided loyalty ( see Lockhart v. Terhune )

A conflict of interest existed between the Applicant , his codefendant , and his attorney which is a violation of the Sixth Amendment of The United States Constitution and entitles the Applicant to relief. ( see US v. Holman ; also see Tomax v. State )

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Argument 3. : Due Process Violation

Applicant was denied due process by plea counsel because counsel did not conduct an adequate pretrial investigation and because the conflict of interest between the Applicant , his counsel , and his codefendant deprived him of due process of law.

Applicant insists that there is a reasonable probability that he would not have plead guilty and insisted on going to trial had it not been for plea counsel's unprofessional errors. ( see Cherry v. State )

Argument 4. : Unprepared for Trial

applicant's counsel was unprepared to go to trial had the Applicant elected to do so because counsel failed to do an adequate pretrial investigation and failed to communicate reasonably with Applicant. Counsel failed to meet with applicant long enough to review possible defense strategies.

Due to plea counsel's gross negligence of his professional duty he was unprepared to go to trial if applicant had elected to go to trial. ( see Mitchell v. Mason ; also see US v. Scott )

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(3.)

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Type of Relief Requested

Applicant is requesting that his sentence be reversed and remanded for a new trial ; and any other relief this court deems necessary.

I'm leaving my arguments open to amend.

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open to amend.

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State of South Carolina  
County of Spartanburg

Court of Common Pleas

C/A. 2012-CP-42-2121

Xavier L. Perry #346891

Applicant,

v.

State of South Carolina

Respondent.

Amended P.C.R. Application

Applicant Xavier L. Perry moving pro se Pursuant to Rule 15.3 of the SC Rules of Civil Procedure hereby Amends as follows:

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Argument I.: Due Process

Applicant argues that his 5th and 14th Amendment Rights to due process were violated by his counsel. Applicant's counsel did not conduct an adequate pretrial investigation because he failed to interview witnesses involved with the Applicant's case. Neither did counsel petition the court for funds for an private investigator or expert witnesses.

Applicant's counsel also failed to present to the Applicant his Brady v. Maryland (Rule 5). Applicant was unable to learn of all the information and facts pertaining to his case.

Had Applicant been given the opportunity to view his Brady v. Mary (Rule 5) he would have been able to...

Fraudulent indictments before pleading guilty to the indictments.

### Argument II. : Involuntary Plea

Applicant argues that his guilty plea was made involuntarily. Applicant met with counsel James A. Cheek only twice prior to pleading guilty on July 15, 2011. Both of these meetings lasted for a duration of about fifteen (15) minutes each. One of the meetings took place on July 15, 2011; only fifteen (15) minutes prior to entering the plea proceeding Applicant's codefendant was also present at this meeting. During this meeting Applicant's counsel assured him that he would be sentenced to no more than ten (10) years for all of his charges combined if he would plead guilty to the charges. At that time Applicant's counsel also advised him that if he did not sign the plea agreement and chose to go to trial; he would receive

Applicant was under the impression that he would receive more than ten (10) years for his plea of guilty and was afraid that had he chosen to go to trial he would be sentenced to life in prison. Therefore, Applicant signed a plea agreement but was not made aware of the ramifications of the plea agreement. Subsequently, Applicant was sentenced to forty (40) years in the SCOC.

Under the above stated circumstances the Applicant was not able to make an informed and intelligent decision. Had it not

been for counsel's advice the Applicant would not have plead guilty and would have insisted on going to trial.

### Argument III. : Conflict of Interest

Applicant argues that a conflict of interest existed between his counsel, his codefendant, and himself.

Counsel James A. Cheek represented both the Applicant and his codefendant during the plea proceedings and pretrial period.

The Applicant's codefendant had given statements that were not favorable to the Applicant. Counsel was aware of these statements and the obvious conflict of interest that existed. Yet, counsel did not remove himself as counsel Applicant or his codefendant.

Counsel's loyalty was in question as in which client he was loyal to. Had Applicant elected to go to trial; counsel would have had to pit one defendant against the other.

### Argument IV. : Ineffective Assistance of Counsel

Applicant argues that his counsel was ineffective. Counsel James A. Cheek failed to communicate and consult with the Applicant adequately. Counsel only met with the Applicant twice

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prior to Applicant pleading guilty. Each meeting lasted for about fifteen (15) minutes each. At no time during the two meetings did counsel discuss any evidence against the Applicant or possible defense strategies. Therefore, had Applicant elected to go to trial counsel was not prepared to defend him.

Counsel also failed to conduct an adequate pretrial investigation. Counsel did not speak with any witnesses or persons who gave statements involved with the Applicant's case. Had counsel spoken with Applicant's codefendant he would have learned that Applicant's codefendant had no intentions on testifying against the Applicant had he chosen to go to trial. (see Affidavit of Chadwick Anderson.)

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Applicant also argues that counsel was ineffective by allowing Applicant to plead guilty to two (2) questionable indictments. The indictments (11-GS-42-2353 & 11-GS-42-2354) were invalid being that they were not signed by a member of the Grand Jury. Nor were either of the indictments signed "True Bill" or "No Bill".

Counsel knew that the indictments were invalid but he did not refute them or make the Applicant aware of the questionable indictments. Subsequently, the Applicant was sentenced to

ten (10) years consecutive for indictment 11-GS-42-2354 and Thirty (30) years ran concurrent with related charges for indictment 11-GS-42-2353.

Applicant argues that had it not been for counsel's gross negligence of his reasonable duties or advice he would not have plead guilty and insisted on going to trial instead.

7.18.12  
dated

X. Xavier Perry  
Xavier L. Perry #346891  
450 Oaklawn Road  
Pelzer, SC 29669

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2012 JUL 23 PM 2:34  
M. HOPE BLACKLEY

Sworn to before me this  
18th day of July, 2012  
Stewart M. Mearns (U.S.)

My Commission Expires: November 7, 2016

Spartanburg Co. / Clerk  
P.O. Box 3483  
Spartanburg, S.C. 29304-3483

PCR  
2012-CP-42-2121

KL

Re: Amended P.C.R. Application

Clerk;

Enclosed for your filing is a Amended P.C.R. Application.  
Please return to me a stamp / filed copy of same, and  
place the case number on it.

7.18.12

Thank You,

x. Xavier L. Perry

Xavier L. Perry #346891  
Perry Court Inst. Q2-B220  
430 Oaklawn Road  
Pelzer, S.C. 29669

FILED  
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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

Xavier L. Perry  
Applicant,

South Carolina, Spartanburg Co.  
Court of Common Pleas  
7th Circuit

DM

Case No: 2012-CP-42-2121

v.  
State of South Carolina  
Respondent.

Amended Grounds to  
P.C.R. Application

This is an additional ground to amend to original P.C.R. application, case no. 2012-CP-42-2121, filed on July 23, 2012.

Lack of Subject Matter Jurisdiction - Ground.

After further research and discovery, Applicant states that he was denied a right to a preliminary hearing pursuant to S.C. Criminal Rule 2. Applicant was initially arrested on March 17, 2011; on separate dates within a week was served a total of 13 warrants [m. 752936. 37., m125268.09.10.11.18. 19.20. 21. 26. 27.28.] All warrants were recorded by Court of General Sessions on March 22, 28, 2011. Upon the proper request and notice upon all warrants a Summary Courts summons was issued for a preliminary hearing on April 28, 2011. Applicant was never granted such a hearing at least not in his person if one was had. As the record purports though ever occurred.

Pursuant to S.C. Criminal Rule 2.C., State v. Funderburke 191 SE 2d 230, State v. Sanders 163. SE 2d 230, The Court of General Sessions without jurisdiction over the subject matter upon notice or right to preliminary hearing the case could not be transferred over the jurisdiction of magistrate court.

Applicant also wants to note that Criminal (Rule 2.B or E.) does not apply in that preliminary hearing was scheduled for April 28, 2011 and indictments were allegedly issued almost 2 months later on June 17, 2011. Well

2012 OCT 28 AM 10:28  
Spartanburg County  
Clerk of Court  
XAVIER L. PERRY  
2012 OCT 28 AM 10:28

after the proper request were made and granted. Moreover, The Grand Jury criminal jurisdiction is coextensive with the General Sessions jurisdiction. Any act without jurisdiction is void.

Additional Relief: That all judgments based on cases 11-GS-42-2353, 2354, 3044, 3069, 3070, 3072, 3075, 3076] are void and should be vacated at once.

Applicant

Xavier L. Perry

Xavier L. Perry #346891  
 Perry Corr. Inst. D-X-8  
 430 Oaklawn Road  
 Pelzer, S.C. 29669

[cc] Clerk of Court, Spartanburg Co.

P.O. Box 3483

Spartanburg, S.C. 29304

S.C. Attorney Generals Office

P.O. Box 11549

Columbia, S.C. 29211

M. HUFF BLAUCKLEY

2012 OCT 24 AM 10:33

CLERK OF COURT  
 SPARTANBURG COUNTY

DM

Proof of Service

That I did place in the U.S. mail postage pre-paid on this  
16<sup>th</sup> day of October, 2012, A copy  
 of a motion to amend P.C.R. with additional ground  
 on the below listed parties.

\* Sworn to and subscribed before me under penalty of perjury  
 pursuant to 28 U.S.C. § 1746. \*

I am,

Xavier L. Perry

Applicant, Xavier L. Perry

[cc] Clerk, of Court, Spartanburg Co.  
 P.O. Box 3483  
 Spartanburg, S.C. 29304

S.C. Attorney General's Ofc.

P.O. Box 11549

Columbia, S.C. 29211

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 SPARTANBURG COUNTY  
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 M. HOPE BLACKLEY

PER

Xavier L. Perry  
Applicant,

South Carolina, Spartanburg Co.  
Court of Common Pleas  
7<sup>th</sup> Circuit

v.  
State of South Carolina  
Respondent.

Case No. 2012-CP-42-2121

Motion For The  
Grand Jury Empanelment Documents

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SPARTANBURG COUNTY  
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MI HOPE BLACKLEY

Now comes the Applicant whom respectfully moves the Respondents to produce  
The Grand Jury Empanelment Documents which include But is not limited to

[ The states petition, supporting materials, The judges order Empaneling The jury,  
List of Venire Facias § 14.7.1920, Jurors Excused 14.7.1930, The names  
of the jury commisioners, and the jury lists of qualified voters. All  
This Shall Be maintained. By The Clerk of Court S.C. code § 14.7.595.]

Indictment / Cases: 11-GS-42-2353, 11-GS-42-2354, 11-GS-42-3044, 11-GS-42-3049,  
11-GS-42-3070, 11-GS-42-3072, 11-GS-42-3075, 11-GS-42-3076

All cases being investigated on June 17, 2011. Applicant asserts that he has a right  
to obtain and review the documents in reference to the Grand Jury proceedings.  
Also trial counsel should have motioned the court prior to any plea to see that  
the Grand Jury in which indicted Applicant was properly empaneled and if not  
the court would lack subject matter jurisdiction.

Applicant moves pursuant to (S.C. Const.  
ART. 1 § 3.)

U.S. Const. 5<sup>th</sup> Amend. Due process clause, U.S. Const. 6<sup>th</sup> Amend., The State Const. that  
mandates that all courts be public. S.C. Const. ART. 1 § 9, and public policy as  
expressed in the state Information Act § 30.4.15-165, which supports his  
entitled to **OPEN**

Also cited cases which supports and states that Applicant is entitled to such is  
 State vs. Evans 611 SE2d 510 (2005), State vs. Edwards 47 SE 2d 847 (1963),  
 S.C. code ANN. § 14-7-1770, 1720, . . . .

This motion runs in conjunction with my P.C.R. Case No. (2012-CR-46  
 2121) which is being filed and submitted on the Below listed parties.

FILED  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 2012 OCT 30 AM 9:28  
 M. HOPE BLACKLEY

Date: 10/16/12 Xavier L. Perry

Xavier L. Perry # 346891

430 Oaklawn Rd.

Perry Corr. Inst. D-X-8

Pelzer, S.C. 291669

[CC] S.C. Attorney Generals Ofc.

P.O. Box 11549

Columbia, S.C. 29211

Clerk of Court, Spartanburg Co.

Proof of Service

That I Xavier L. Perry did place in the U.S. mail postage pre-paid on this 16<sup>th</sup> day of October 2012. A motion for the Grand Jury Empanelment Documents on the below listed parties.

\* Sworn to under penalty and purjury pur. 28. U.S.C. § 1746. \*

I am

Xavier L. Perry

[cc] Clerk of Court, Spartanburg Co.

S.C. Attorney General

P.O. Box 11549

Columbia, S.C. 29211

FILED  
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SPARTANBURG COUNTY  
2012 OCT 30 AM 9:29  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

Case No. 2012-CP-42-2121

Xavier L. Perry (#346891) )

v. )

AMENDMENT TO P.C.R. APPLICATION

State of South Carolina )

Xavier L. Perry ("Applicant") hereby amends his Application for Post-Conviction Relief in the above-referenced matter to include lack of subject matter jurisdiction as an additional ground for his allegation that he is being held in custody unlawfully on the basis that a preliminary hearing pursuant to SC Code § 22-5-320 was never held, despite Applicant's timely demand therefor.

*Reid Wildman*  
 Reid Wildman (S.C. Bar No. 00288)  
 Johnson, Smith, Hibbard & Wildman  
 Law Firm, L.L.P.  
 220 North Church Street, Suite 4030  
 P.O. Drawer 5587  
 Spartanburg, SC 29304  
 Telephone: (864) 582-8421  
 Facsimile: (864) 585-5328  
 Attorney for Applicant

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 SPARTANBURG COUNTY  
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Spartanburg, South Carolina  
November 16, 2012

19

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Xavier L. Perry (#346891) )  
 )  
v. )  
 )  
State of South Carolina )

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-42-2121

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the Amendment to P.C.R. Application was served upon the following via United States Mail this date, with sufficient postage affixed thereto, and addressed as follows:

South Carolina Attorney General's Office  
c/o Suzanne White  
P.O. Box 11549  
Columbia, SC 29211

*Reid Wildman*

Reid Wildman (S.C. Bar No. 100266)  
Johnson, Smith, Hibbard & Wildman  
Law Firm, L.L.P.  
220 North Church Street, Suite 4 (29306)  
P.O. Drawer 5587  
Spartanburg, SC 29304  
Telephone: (864) 582-8121  
Facsimile: (864) 585-5328  
Attorney for Applicant

Spartanburg, South Carolina  
November 16, 2012.

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SPARTANBURG COUNTY  
2012 NOV 19 AM 10:16  
M. HOPE BLACKLEY

*Handwritten initials and scribbles at the bottom left of the page.*

10-2-13  
NOW

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2012-CP-42-2121
	)	
Xavier L. Perry (#346891)	)	
	)	
v.	)	AMENDMENT TO P.C.R. APPLICATION
	)	
State of South Carolina	)	

Xavier L. Perry ("Applicant") hereby amends his Application for Post-Conviction Relief ("Application") in the above-referenced matter by alleging that his guilty pleas were rendered involuntary due to plea counsel's ineffective assistance in the following respects: (i) failing to conduct a sufficient investigation into Applicant's charges; (ii) failing to interview Applicant's co-defendant; (iii) advising Applicant that he would receive a life sentence if he went to trial; and (iv) advising Applicant that if he did not plead guilty to the charges against him, Applicant should be prepared to go to trial the following week.

Applicant further amends his Application to add an additional argument in support of Applicant's allegation of lack of subject matter jurisdiction. Applicant alleges that Indictments 11-GS-42-2353 and 11-GS-42-2354 lack a stamp of "true bill" or "no bill" and that neither contains a signature from the grand jury foreperson. As such, Indictments 11-GS-42-2353 and 11-GS-42-2354 were insufficient and the Court was therefore not properly vested with subject matter jurisdiction with regard to those indictments.

Spartanburg, South Carolina

June 4, 2013

*Reid Wildman*  
 Reid Wildman (S.C. Bar No. 100246)  
 Johnson, Smith, Hibbard & Wildman  
 Law Firm, L.L.P.  
 220 North Church Street, Suite 4030  
 P.O. Drawer 5587  
 Spartanburg, SC 29304  
 Telephone: (864) 582-8121  
 Facsimile: (864) 585-5328  
 Attorney for Applicant

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 SPARTANBURG COUNTY  
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*NON*

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

Case No. 2012-CP-42-2121

Xavier L. Perry (#346891) )

v. )

CERTIFICATE OF SERVICE

State of South Carolina )

IT IS HEREBY CERTIFIED that a copy of the Amendment to P.C.R. Application was served upon the following via United States Mail this date, with sufficient postage affixed thereto, and addressed as follows:

**South Carolina Attorney General's Office  
c/o Suzanne White  
P.O. Box 11549  
Columbia, SC 29211**

*Reid Wildman*

Reid Wildman (S.C. Bar No. 100266)  
Johnson, Smith, Hibbard & Wildman  
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220 North Church Street, Suite 4 (29306)  
P.O. Drawer 5587  
Spartanburg, SC 29304  
Telephone: (864) 582-8121  
Facsimile: (864) 585-5328  
Attorney for Applicant

Spartanburg, South Carolina

June 4, 2013

**FILED  
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SPARTANBURG COUNTY  
2013 JUN -4 PM 2:08  
MIRIAM E. BLACKLEY**

S  
Spartanburg Co. / Clerk  
P.O. Box 3483  
Spartanburg, S.C. 29304-3483

PCR  
2012-CP-42-2121

KL

Re: Amended P.C.R. Application

Clerk;

Enclosed for your filing is a Amended P.C.R. Application.  
Please return to me a stamp / filed copy of same, and  
place the case number on it.

7.18.12

Thank You,

x. Xavier L. Perry

Xavier L. Perry #346891  
Perry Court. Inst. Q2-B220  
430 Oaklawn Road  
Pelzer, S.C. 29669

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

State of South Carolina  
County of Spartanburg

Court of Common Pleas

C/A. 2012-CP-42-2121

Xavier L. Perry #346891

Applicant,

v.

State of South Carolina

Respondent.

Amended P.C.R. Application

Applicant Xavier L. Perry moving pro se Pursuant to Rule 15, S.C.P. hereby  
Amends as follows:

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Argument I. : Due Process

Applicant argues that his 5th and 14th Amendment Rights to due process were violated by his counsel. Applicant's counsel did not conduct an adequate pretrial investigation because he failed to interview witnesses involved with the Applicant's case. Neither did counsel petition the court for funds for an private investigator or expert witnesses.

Applicant's counsel also failed to present to the Applicant his Brady v. Maryland (Rule 5). Applicant was unable to learn of all the information and facts pertaining to his case.

Had Applicant been given the opportunity to view his Brady v. Mary (Rule 5) he would have been able

Fraudulent indictments before pleading guilty to the indictments.

Argument II. : Involuntary Plea

Applicant argues that his guilty plea was made involuntarily. Applicant met with counsel James A. Cheek only twice prior to pleading guilty on July 15, 2011. Both of these meetings lasted for a duration of about fifteen (15) minutes each. One of the meetings took place on July 15, 2011; only fifteen (15) minutes prior to entering the plea proceeding Applicant's codefendant was also present at this meeting. During this meeting Applicant's counsel assured him that he would be sentenced to no more than ten (10) years for all of his charges combined if he would plead guilty to the charges. At that time Applicant's counsel also advised him that if he did not sign agreement and chose to go to trial; he would receive

Applicant was under the impression that he would receive more than ten (10) years for his plea of guilty and that had he chosen to go to trial he would be sentenced to life in prison. Therefore, Applicant signed a plea agreement but was not made aware of the ramifications of the plea agreement. Subsequently, Applicant was sentenced to forty (40) years in the SCOC.

Under the above stated circumstances the Applicant was not able to make an informed and intelligent decision. Had it not

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MELISSA BLACKLEY

been for counsel's advice the Applicant would not have plead guilty and would have insisted on going to trial.

### Argument III. : Conflict of Interest

Applicant argues that a conflict of interest existed between his counsel, his codefendant, and himself.

Counsel James A. Cheek represented both the Applicant and his codefendant during the plea proceedings and pretrial period.

The Applicant's codefendant had given statements that were not favorable to the Applicant. Counsel was aware of these statements and the obvious conflict of interest that existed.

Yet, counsel did not remove himself as counsel for the Applicant or his codefendant.

Counsel's loyalty was in question as in which client he would be loyal to. Had Applicant elected to go to trial; counsel would have had to pit one defendant against the other.

### Argument IV. : Ineffective Assistance of Counsel

Applicant argues that his counsel was ineffective. Counsel James A. Cheek failed to communicate and consult with the Applicant adequately. Counsel only met with the Applicant twice

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J. M. HOPE BLACKLEY

prior to Applicant pleading guilty. Each meeting lasted for about fifteen (15) minutes each. At no time during the two meetings did counsel discuss any evidence against the Applicant or possible defense strategies. Therefore, had Applicant elected to go to trial counsel was not prepared to defend him.

Counsel also failed to conduct an adequate pretrial investigation. Counsel did not speak with any witnesses or persons who gave statements involved with the Applicant's case. Had counsel spoken with Applicant's codefendant he would have learned that Applicant's codefendant had no intentions on testifying against the Applicant had he chosen to go to trial. (See Affidavit of Chadwick Anderson.)

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M. HOPE BLACKLEY

Applicant also argues that counsel was ineffective by allowing Applicant to plead guilty to two (2) questionable indictments. The indictments (11-GS-42-2353 & 11-GS-42-2354) were invalid because they were not signed by a member of the Grand Jury. Nor were either of the indictments signed "True Bill" or "No Bill".

Counsel knew that the indictments were invalid but he did not refute them or make the Applicant aware of the questionable indictments. Subsequently, the Applicant was sentenced to

ten (10) years consecutive for indictment 11-GS-42-2354 and Thirty (30) years ran concurrent with related charges for indictment 11-GS-42-2353.

Applicant argues that had it not been for counsel's gross negligence of his reasonable duties or advice he would not have plead guilty and insisted on going to trial instead.

7.18.12

dated

X. Xavier L. Perry  
 Xavier L. Perry #346891  
 450 Oaklawn Road  
 Pelzer, SC 29669

Sworn to before me this  
~~7th~~ day of July, 2012  
Stewart M. Mearns (L.S.)

My Commission Expires: November 7, 2016

FILED  
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 SPARTANBURG COUNTY  
 2012 JUL 23 PM 2:34  
 M. HOPE BLACKLEY

Xavier L. Perry  
Applicant,

South Carolina, Spartanburg Co.  
Court of Common Pleas  
7th Circuit

DM

Case No: 2012-CP-42-2121

v.  
State of South Carolina  
Respondent.

Amended Grounds to  
P.C.R. Application

This is an additional ground to amend to original P.C.R. application, case no. 2012-CP-42-2121, filed on July 23, 2012.

Lack of Subject Matter Jurisdiction - Ground.

After further research and discovery, Applicant states that he was denied a right to a preliminary hearing pursuant to S.C. Criminal Rule 2. Applicant was initially arrested on March 17, 2011; on separate dates within a week was served a total of 13 warrants [m. 752936, 37, mias208, 09, 10, 11, 18, 19, 20, 21, 26, 27, 28.] All warrants were recorded by Court of General Sessions on March 28, 28, 2011. Upon the proper request and notice upon all warrants a Summary Courts Summons was issued for a preliminary hearing on April 28, 2011. Applicant was never granted such a hearing at least not in his person if one was had. As the record purports though ever occurred.

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 SPARTANBURG COUNTY  
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 MR. J. P. BLAKEY

Pursuant to S.C. Criminal Rule 2.C., State v. Funderburke 191 S.E.2d 200, State v. Sanders 163 S.E.2d 220, The Court of General Sessions without jurisdiction over the subject matter upon notice of right to preliminary hearing the case could not be transferred over the jurisdiction of magistrate court.

Applicant also wants to note that Criminal (Rule 2 B or E) does not apply in that preliminary hearing was scheduled for April 28, 2011 and indictments were allegedly issued almost 2 months later on June 17, 2011. Well

after the proper request were made and granted. Moreover, The Grand Jury criminal jurisdiction is coextensive with the General Sessions jurisdiction. Any act without jurisdiction is void.

Additional Relief: That all judgments based on cases 11-GS-42-2353, 2354, 3044, 3069, 3070, 3072, 3075, 3076] are void and should be vacated at once.

Applicant

Xavier L. Perry

Xavier L. Perry #346891  
 Perry Corr. Inst. D-X-8  
 430 Oaklawn Road  
 Pelzer, S.C. 29169

[CC] Clerk of Court, Spartanburg Co.  
 P.O. Box 3483  
 Spartanburg, S.C. 29304

S.C. Attorney Generals Off.  
 P.O. Box 11549  
 Columbia, S.C. 29211

FILED  
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 SPARTANBURG COUNTY  
 2012 OCT 24 AM 10:33  
 M. HOPE BLACKLEY

DM

Proof of Service

That I did place in the U.S. mail postage pre-paid on this  
16<sup>th</sup> day of October, 2012, A copy  
 of a motion to amend P.C.R. with additional ground  
 on the below listed parties.

\* Sworn to and subscribed before me under penalty of perjury  
 pursuant to 28 U.S.C. § 1746. \*

I am,

Xavier L. Perry

Applicant, Xavier L. Perry

[cc] Clerk of Court, Spartanburg Co.  
 P.O. Box 3483  
 Spartanburg, S.C. 29304

S.C. Attorney Generals Ofc.

P.O. Box 11549

Columbia, S.C. 29211

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 SPARTANBURG COUNTY  
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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Xavier La-Lord Perry, #346891,	)	2012-CP-42-2121
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 18, 2012, and amended application filed July 23, 2012<sup>1</sup>, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the June 2011 term of the Spartanburg County Grand Jury for eight (8) counts of armed robbery (11-GS-42-2353, -2354, -3044, -3069, -3070, -3072, -3075, and -3076). He was represented by James A. Cheek, Esquire. On July 15, 2011, the Applicant pled guilty to the charges as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for concurrent terms of thirty (30) years for seven (7) counts of armed robbery, and a consecutive term of ten (10) years for the remaining armed robbery charge (11-2354). The Applicant did not appeal his guilty plea or sentence.

---

<sup>1</sup> Respondent notes that Applicant filed numerous documents following the appointment of counsel on July 31, 2012. Therefore, Respondent does not address any documents filed following counsel's appointment, pursuant to the rules against hybrid representation. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

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

## II.

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

1. Ineffective assistance of counsel, in that;
  - a. Counsel engaged in a conflict of interest by representing both Applicant and his co-defendant.
  - b. Counsel failed to conduct an adequate pretrial investigation by not spending adequate time with Applicant before plea hearing, and by failing to interview potential witnesses, or make a motion to request funding for investigator or expert witness.
  - c. Counsel failed to provide Applicant with discovery pursuant to Brady v. Maryland in advance of plea hearing or sentencing.
  - d. Counsel failed to make Applicant aware of ramifications of plea agreement.
2. Involuntary guilty plea in that;
  - a. Applicant was under the impression that he would receive no more than ten (10) years for his plea and that he would receive life in prison if he proceeded to trial.
3. The Court lacked subject matter jurisdiction because a preliminary hearing was not held pursuant to S.C. Code Ann. § 22-5-320.

## III.

Respondent construes all allegations not specifically addressed below to be allegations that plea counsel rendered ineffective assistance. 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.

Respondent submits that Applicant's allegation that plea counsel did not conduct an adequate pre-trial investigation is without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980).

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); United States v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

Here, the Applicant failed to identify any specific matters counsel failed to discover, or any defenses that could have been pursued had counsel been more fully prepared, such that he would have proceeded with a jury trial instead of pleading guilty.

#### V.

The Applicant further alleges that counsel failed to resolve a conflict of interest. However, the mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual

conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). The Respondent submits that the Applicant cannot establish that a conflict of interest existed. However, the allegation of a conflict of interest 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).

## VI.

Applicant further alleges that counsel failed to share discovery material with Applicant. The Respondent construes this as an allegation that State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

## VII.

The Respondent submits that the Applicant's allegation that the plea court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Respondent submits that the Court should dismiss this allegation.

## VIII.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the

competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

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

IX.

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

X.

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

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

March 26, 2013.

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Navier La-Lord Perry, )

2012-CP-42-2121

Applicant, )

v. )

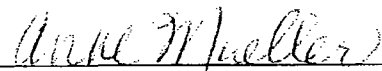
**CERTIFICATE OF SERVICE BY MAIL**

State of South Carolina, )

Respondent. )

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

W. Reid Wildman, Esquire  
 Johnson Smith Hibbard & Wildman, LLP  
 P.O. Box 5587  
 Spartanburg, South Carolina 29304

  
 \_\_\_\_\_  
 Anne A. Mueller  
 Legal Assistant for the Respondent

DATED this 26<sup>th</sup> day of March, 2013.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Xavier L. Perry (#346891) )  
 )  
 )  
 )  
 v. )  
 )  
State of South Carolina )

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-42-2121

MOTION FOR USE OF  
DISCOVERY PROCEDURES

Comes now Post-Conviction Relief ("PCR") Applicant Xavier L. Perry ("Applicant"), who by and through his undersigned attorney, moves pursuant to S.C. Code Ann. § 17-27-150(A) for authorization from the Court to utilize the discovery process set forth in the South Carolina Rules of Civil Procedure in order to obtain documentation relevant to the grounds for relief set forth in his Application for Post-Conviction Relief filed with the Spartanburg County Clerk of Court on May 18, 2012 and subsequently amended on November 19, 2012 (the "Application").

Applicant specifically seeks permission from the Court to serve Requests for Production upon the South Carolina Attorney General's Office and/or to issue a subpoena to the Spartanburg County Clerk of Court requesting documents related to the grand jury impanelment with respect to the indictments at issue in Applicant's PCR proceeding. These documents would include the State's petition, supporting materials, and the judge's order impaneling the grand jury which indicted Applicant, as well as any records from the Clerk of Court's file book for General Sessions dates of June 17, 2011 and June 20, 2011 that would confirm that the grand jury met on those dates to consider Applicant's case.

WHEREFORE based on the foregoing and S.C. Code Ann. § 17-27-150(A), Applicant hereby moves for authorization from the Court to serve Requests for Production upon the South

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 SPARTANBURG COUNTY  
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 MURPHY BLDG

Carolina Attorney General's Office and/or issue a subpoena to the Spartanburg County Clerk of Court requesting the above-mentioned documents.

*Reid Wildman*

Reid Wildman, S.C. Bar # 100266  
Johnson, Smith, Hibbard and Wildman  
Law Firm, L.L.P.  
220 North Church Street, Suite 4 (29306)  
Post Office Drawer 5587  
Spartanburg, South Carolina 29304  
Telephone: (864) 582-8121  
Facsimile: (864) 585-5328  
Email: [rwildman@ishwlaw.com](mailto:rwildman@ishwlaw.com)  
Attorney for Applicant

May 21, 2013

Spartanburg, South Carolina

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SPARTANBURG COUNTY  
2013 MAY 21 AM 11:25  
M. HUNTER GLAUCHELEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2012-CP-42-2121
	)	
Xavier L. Perry (#346891)	)	
	)	
v.	)	MOTION AND ORDER INFORMATION
	)	FORM AND COVERSHEET
State of South Carolina	)	

Attorney for Petitioner: Reid Wildman, Bar No. 100266 Address: P.O. Drawer 5587 Spartanburg, SC 29304 Phone: 864-582-8121 Fax 864-585-5328 E-mail: <a href="mailto:rwildman@jshwlaw.com">rwildman@jshwlaw.com</a> Other: _____	Attorney for State: Suzanne White, Bar No. Address: P.O. Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____										
<input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III) <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)											
<b>SECTION I: Hearing Information</b>											
Nature of Motion: Motion for Use of Discovery Procedures Estimated Time Needed: 15 Minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO											
<b>SECTION II: Motion/Order Type</b>											
<input 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 type="checkbox"/> Defendant Date submitted _____											
<b>SECTION III: Motion Fee</b>											
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> <b>EXEMPT:</b> (check reason) <table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td><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</td> <td></td> </tr> </table> Name of Court Reporter: _____ <input type="checkbox"/> Other: _____		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input checked="" type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Sexually Violent Predator Act	<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	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party										
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<input type="checkbox"/> Sexually Violent Predator Act	<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											
<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: _____  Judge Signature: _____										
<b>CLERK'S VERIFICATION</b>											
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____											

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2012-CP-42-2121
	)	
Xavier L. Perry (#346891)	)	
	)	
v.	)	AMENDMENT TO P.C.R. APPLICATION
	)	
State of South Carolina	)	

Xavier L. Perry ("Applicant") hereby amends his Application for Post-Conviction Relief ("Application") in the above-referenced matter by alleging that his guilty pleas were rendered involuntary due to plea counsel's ineffective assistance in the following respects: (i) failing to conduct a sufficient investigation into Applicant's charges; (ii) failing to interview Applicant's co-defendant; (iii) advising Applicant that he would receive a life sentence if he went to trial; and (iv) advising Applicant that if he did not plead guilty to the charges against him, Applicant should be prepared to go to trial the following week.

Applicant further amends his Application to add an additional argument in support of Applicant's allegation of lack of subject matter jurisdiction. Applicant alleges that Indictments 11-GS-42-2353 and 11-GS-42-2354 lack a stamp of "true bill" or "no bill" and that neither contains a signature from the grand jury foreperson. As such, Indictments 11-GS-42-2353 and 11-GS-42-2354 were insufficient and the Court was therefore not properly vested with subject matter jurisdiction with regard to those indictments.

Spartanburg, South Carolina  
June 4, 2013

*Reid Wildman*  
 Reid Wildman (S.C. Bar No. 100246)  
 Johnson, Smith, Hibbard & Wildman  
 Law Firm, L.L.P.  
 220 North Church Street, Suite 4030  
 P.O. Drawer 5587  
 Spartanburg, SC 29304  
 Telephone: (864) 582-8121  
 Facsimile: (864) 585-5328  
 Attorney for Applicant

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STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

Case No. 2012-CP-42-2121

Xavier L. Perry (#346891) )

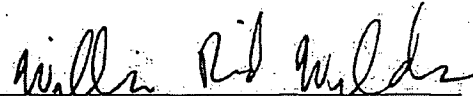
v. )

CERTIFICATE OF SERVICE

State of South Carolina )

IT IS HEREBY CERTIFIED that a copy of the Amendment to P.C.R. Application was served upon the following via United States Mail this date, with sufficient postage affixed thereto, and addressed as follows:

South Carolina Attorney General's Office  
c/o Suzanne White  
P.O. Box 11549  
Columbia, SC 29211

  
Reid Wildman (S.C. Bar No. 100266)  
Johnson, Smith, Hibbard & Wildman  
Law Firm, L.L.P.  
220 North Church Street, Suite 4 (29306)  
P.O. Drawer 5587  
Spartanburg, SC 29304  
Telephone: (864) 582-8121  
Facsimile: (864) 585-5328  
Attorney for Applicant

Spartanburg, South Carolina

June 4, 2013

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1 STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 2 COUNTY OF SPARTANBURG )  
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 4 Xavier L. Perry, )  
 ) TRANSCRIPT OF RECORD  
 Applicant, ) 2012-CP-42-2121  
 5 -vs- )  
 )  
 6 The State, )  
 )  
 7 Respondent. ) June 25, 2013  
 Spartanburg, South Carolina

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11 B E F O R E:

12 HONORABLE R. LAWTON MCINTOSH, JUDGE

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

16 W. REID WILDMAN, ESQUIRE  
 Attorney for the Applicant

17

18 SUZANNE H. WHITE, ESQUIRE  
 Attorney for the Respondent

19

20

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Margaret A. Woods  
 Circuit Court Reporter

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1 MS. WHITE: Your Honor, I'm gonna approach with this is a  
2 motion for discovery so I've got a copy of the motion instead  
3 of a full packet for ya.

4 (Whereupon, counsel handed the document to the Court.)

5 THE COURT: Alright, is this your motion?

6 MS. WHITE: No, Your Honor, this is, uh, the applicant's  
7 motion.

8 THE COURT: It was filed when?

9 MS. WHITE: It was filed May 21st -- well, excuse me, is  
10 that correct? I believe he filed but we didn't ---

11 MR. WILDMAN: (Indiscernible cross-talk.)

12 MS. WHITE: --- get a copy of it ---

13 MR. WILDMAN: We've -- we did a proposed order and  
14 then ---

15 MS. WHITE: Oh, yes, a proposed ---

16 MR. WILDMAN: --- substituted ---

17 MS. WHITE: --- order but no motion have actually been  
18 filed so this was, um, I requested they file an actual motion  
19 and I believe that was just filed, uh, within the last month.

20 THE COURT: Okay. I don't have the second page of the  
21 motion, I just -- it ends with ---

22 (Cough interruption.)

23 THE COURT: --- a statute number, mutual authorization to  
24 preserve, uh, served with request for production, ---

25 MS. WHITE: Hmm.

1 THE COURT: --- I've got that. So what all Mist -- Mr.,  
2 uh, Wildman, what discovery are you seeking that doesn't  
3 have ---

4 MR. WILDMAN: Your Honor, I've got a copy for you if  
5 you'd like to ---

6 THE COURT: Sure.

7 MR. WILDMAN: --- if I may approach.

8 (Whereupon, counsel handed the document to the Court.)

9 MR. WILDMAN: And, Your Honor, the motion in particular,  
10 uh, seeks the grand jury empanelment documents that are  
11 relevant to his indictments. Uh, there's a case, South  
12 Carolina Supreme Court case *Evans v. State*, uh, the cite on  
13 that is 363 S.C.495 and that particular case held that certain  
14 grand jury empanelment documents which, uh, include the  
15 State's petition, supporting materials, the judge's order  
16 impaneling the grand jury which indict a, uh, indicted the  
17 applicant that those, uh, in that case they were held, it was  
18 held that those may be released to an applicant in a PCR  
19 proceeding. Uh, my client has asked to, uh, attempt to obtain  
20 copies of those if possible so we can investigate that matter  
21 further and see if there are any issues with ---

22 THE COURT: When was this matter filed?

23 MR. WILDMAN: The the case overall?

24 THE COURT: Yes.

25 MR. WILDMAN: Uh, I believe -- let's see, Suzanne, do you

1 have ---

2 MS. WHITE: Yeah, I'm pullin' up my spreadsheet right  
3 quick and, Your Honor, I will note this was a guilty plea, uh,  
4 in this case as well, pled guilty to all of the charges and if  
5 I can get the date up I can ---

6 MR. WILDMAN: Believe it was ---

7 MS. WHITE: --- tell you ---

8 (Indiscernible cross-talk.)

9 MR. WILDMAN: --- sometime in the fall of 2011 ---

10 MS. WHITE: Yeah.

11 MR. WILDMAN: --- seems to be what I recall.

12 (Whereupon, a discussion was held off the record.)

13 MS. WHITE: Your Honor, this application was actually  
14 filed, uh, May 18th of 2012.

15 THE COURT: So we're over a year we're just getting  
16 discovery motion? Mr. Wildman, if this is a guilty plea, ---

17 MR. WILDMAN: Yes, sir.

18 THE COURT: --- uh, now I I don't wanna deprive that  
19 could have happened relevant information, I'm not sure what  
20 you were possibly thinking might be able to delve from that.

21 MR. WILDMAN: Right, Your Honor, and and initially what  
22 we discovered, uh, was that there were two indictments in  
23 particular which at first we couldn't find the originals for  
24 in the clerk of court's files, since then we've been provided  
25 with, uh, copies of what what appears to be the originals of

1 those documents and, uh, that was one of our reasons for for  
2 filing the the motion was because we suspected perhaps, ya  
3 know, there were issues with the the documents that we would  
4 need to look into, uh, but we still would like to to inspect  
5 those if we can, uh, pursuant to the the case I cited just  
6 to ---

7 THE COURT: Give me that case, I'm gonna take that ---

8 MR. WILDMAN: Yes, sir, it's, uh, ---

9 THE COURT: --- in consideration. I I don't think that  
10 it's -- I'm not gonna continue this matter and grant the  
11 motion if there's just we'll we'll go on a fishing expedition.

12 MR. WILDMAN: Yes, sir, it's, uh, *Evans v. State*.

13 THE COURT: What is it?

14 MR. WILDMAN: *Evans v. State* and the cite ---

15 THE COURT: What's that cite, please.

16 MR. WILDMAN: --- it's 363 S.C.495.

17 (Whereupon, a discussion was held off the record.)

18 MR. WILDMAN: And, Your Honor, I ha ---

19 THE COURT: Just one second, please.

20 MR. WILDMAN: Yes, sir.

21 (Pause.)

22 THE COURT: Alright, clarify for me, Mr. Wildman, what it  
23 is you're seeking to find in these grand jury documents. The  
24 the the case you cited was a statewide grand jury ---

25 MR. WILDMAN: Yes, Your Honor.

1 THE COURT: --- as opposed to bein' a Spartanburg County,  
2 right?

3 MR. WILDMAN: Right, Your Honor, that's correct.

4 THE COURT: Okay.

5 MR. WILDMAN: Uh, there's nothing specifically that we're  
6 we're -- we have in mind that we're looking for, we're simply  
7 trying to see if there are any issues that that there could  
8 be, uh, which would -- shoulda been raised, uh, at the time a  
9 the plea if there were any sufficiency issues regarding the  
10 indictments.

11 THE COURT: Okay. Alright, Ms. White.

12 MS. WHITE: Your Honor, the State would, uh, argue that  
13 obviously without good cause that discovery doesn't need to be  
14 granted in non-capital post-conviction relief and in this case  
15 we would argue that grand jury empanelment documents,  
16 anything, he pled guilty to all the charges, they were all  
17 true billed and, uh, I think the standard is is that there's a  
18 presumption of regularity on those and we would just argue  
19 that there's not been good cause set forth to allow discovery  
20 in this situation.

21 THE COURT: Uh, I agree. I'm gonna deny that motion,  
22 Mr. Wildman. Uh, ya know, if there's somethin' more specific,  
23 I'd be glad to entertain it but basically just at this late  
24 hour it seems, you know, to me to be somethin' more delayin'  
25 tactic than anything else or a fishin' expedition, I'm gonna

1 just deny it on -- deny your motion on that basis ---

2 (Indiscernible cross-talk.)

3 THE APPLICANT: Excuse me, Your Honor.

4 MS. WHITE: Thank Your Honor.

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CERTIFICATE OF REPORTER

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I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 25, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 7, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

June 5, 2014

*Margaret A. Woods*

Margaret A. Woods, Court Reporter  
in and for the State of South Carolina at Large.

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COMMON PLEAS COURT

Xavier Perry, )  
Applicant, )

TRANSCRIPT OF RECORD  
2012-CP-42-2121

-vs- )  
The State. )

October 1, 2013  
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

W. REID WILDMAN, ESQUIRE  
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE  
Attorney for the State

Linda D. Moffitt  
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Letter	14	15

1 MS. WHITE: Your Honor, this is the case of Xavier  
2 Perry vs. the State. It's case No. 2012-CP-42-2121. He's  
3 represented today by Mr. Reid Wildman.

4 Mr. Perry was indicted in June of 2011 for eight  
5 counts of armed robbery. He was represented by Mr. James  
6 Cheek at a plea on July 15th of 2011, at which point he  
7 pled guilty as indicted, was sentenced to current --  
8 concurrent counts of 30 years for seven of the charges and  
9 a consecutive term of ten on one of the remaining charges  
10 for a total of 40 years.

11 He's filed an application with an amendment alleging  
12 counsel was ineffective for failing to conduct sufficient  
13 investigation, failing to interview his codefendant, for  
14 advising him that he would receive a life sentence if he  
15 went to trial, and advising him that if he did not plead  
16 guilty to the charges he should be prepared to go to trial  
17 the next week. He also alleged lack of subject matter  
18 jurisdiction.

19 And I believe that is all, and I will turn it over to  
20 Mr. Wildman at this time.

21 MR. WILDMAN: Your Honor, Reid Wildman on behalf of  
22 the applicant, Xavier Perry. I would now call Mr. Perry to  
23 the stand.

24

25



Xavier L. Perry  
Direct examination by Mr. Wildman

1 about your case?

2 A No, sir, he didn't.

3 Q So the only attorney from the public defender's office  
4 you had contact with really was Mr. Cheek?

5 A Yes. I spoke with Mr. Cheek on three separate  
6 occasions. I spoke with him twice while I was at the  
7 Spartanburg County Public -- I mean -- Spartanburg County  
8 Detention Facility. And that was on two occasions. Then I  
9 spoke with him again at the county courthouse on  
10 July 15th of 2011.

11 Q Okay. Tell us a little more about what -- what went on  
12 at those meetings with Mr. Cheek. What did y'all discuss at  
13 those meetings?

14 A Well, in our first meeting, I don't remember the exact  
15 date, but it was between March of 2011 and the actual date  
16 that I pled guilty.

17 And at our first meeting me and Mr. Cheek discussed  
18 briefly the circumstances of my case, things of that nature.  
19 But at that time he advised me that the solicitor had sent a  
20 plea offer, which was an open plea offer for between 10 and  
21 30 years. And it was a non-negotiated plea.

22 Of course the judge wouldn't have had to adhere to the  
23 ramifications of it, which is I suppose a suggestion. But  
24 at that time I told him I didn't want to plead guilty or  
25 accept that plea offer.

Xavier L. Perry  
Direct examination by Mr. Wildman

1           And Mr. Cheek said that he would try to negotiate for a  
2 better plea. I advised him that I would maybe consider  
3 pleading guilty if he had procured a more favorable plea  
4 agreement from the solicitor. And that was the end of that  
5 meeting.

6           A second meeting which was also at the detention  
7 facility, me and Mr. Cheek, we didn't discuss my case at  
8 all. But he did advise me that the solicitor did not want  
9 to further negotiate. So I told him that I didn't think it  
10 was best for him to continue to handle my case at the time.  
11 And I didn't want to plead guilty at the time.

12           So Mr. Cheek at that time seemed like he dissuaded me  
13 from not wanting to plead guilty. He felt that it was in my  
14 best interest to plead guilty, but I didn't want to accept  
15 an open plea offer because never -- unfavorable for me.

16           So I had told Mr. Cheek that I wanted to obtain my own  
17 private counsel because I felt that it was in my better  
18 interest. And it didn't seem that Mr. Cheek had my best  
19 interest at hand. And I felt that it'd be better for me to  
20 have private counsel and to proceed to trial. And that was  
21 the end of our second meeting.

22           And the third time, the last meeting that we had, was  
23 on July 15th of 2011. And Mr. Cheek met with me and my  
24 codefendant, Mr. Anderson, Chadwick Anderson.

25           And he advised me and Mr. Anderson that if we were to

Xavier L. Perry  
Direct examination by Mr. Wildman

1 plead guilty that day we'd be sentenced to no more than ten  
2 years. But that was in error. He was in error that he gave  
3 us that advice because there was no plea agreement on the  
4 table for a -- a sentence -- well, a sentence -- sentencing  
5 that stipulated those ram -- ramifications. What I'm saying  
6 is there was no negotiated plea for ten years or under.  
7 Nothing of that nature.

8 The only thing that was on the table was the open plea  
9 agreement for 10 to 30 years. So I told Mr. Anderson that I  
10 still did not want to plead guilty and I still wanted to  
11 obtain my own counsel.

12 And Mr. Cheek advised me that if I didn't plead guilty  
13 that day I would have to go to trial on the following  
14 wednesday.

15 He also told me that if I proceed to trial I faced a  
16 life sentence, but in all actuality I didn't face a life  
17 sentence. I faced 240 years in prison possibly. But I  
18 could have been sentenced to as short as ten years in  
19 prison. So he was erroneous in his sentencing advice.

20 If it had not have been for him advising me that if I  
21 went to trial I faced a life sentence, which is untrue, I  
22 would not have pled guilty. But I would rather proceeded to  
23 trial as I wanted to do in the first, beginning. That was  
24 my initial intentions. If it hadn't been for him advising  
25 me that I faced a life sentence I would not have -- I would

Xavier L. Perry  
Direct examination by Mr. Wildman

1 not have pled guilty.

2 Q Okay. Let's -- let me stop you and kind of go back  
3 through some of what you just told us.

4 A Yes, sir.

5 Q First of all, you mentioned that your codefendant --  
6 who is your codefendant?

7 A Mr. Chadwick Anderson.

8 Q Okay. And is he here today in the courtroom?

9 A He is, yes.

10 Q Okay. And was Mr. Anderson charged with the same  
11 charges that you were charged with?

12 A Right. We were both arrested on related charges and  
13 indicted on related charges of armed robbery.

14 Q Okay. And did Mr. Anderson plead guilty to those  
15 charges as well?

16 A Yes, he did.

17 Q Who is his attorney if he had one?

18 A Well, Mr. James Cheeks was both of our attorney. And I  
19 would like to state for the record that I'm also alleging  
20 today that Mr. Anderson -- not Mr. Anderson -- but Mr. Cheek  
21 actively represented a conflict of interest in representing  
22 both me and Mr. Anderson simultaneously.

23 Q So, and you mentioned that Mr. Cheek met with you and  
24 Mr. Anderson together --

25 A Yes.

Xavier L. Perry  
Direct examination by Mr. Wildman

1 Q -- on the day of your plea hearing, is that right?

2 A Yes, sir. On the day that we pled guilty Mr. Cheek met  
3 with me and Mr. Anderson at the courthouse. That's at the  
4 time that he advised both me and Mr. Anderson that if we  
5 pled guilty that day we'd be sentenced to no more than ten  
6 years.

7 And he also advised me that if I proceeded to trial  
8 that I faced a life sentence. But I was not facing a life  
9 sentence. I faced up to 240 years in prison possibly. But  
10 since then of course it would have been at the discretion of  
11 the judge. So I could have been sentenced to as short as  
12 ten years.

13 So he was in error in the advice that he gave me. But  
14 if he hadn't told me that I faced a life sentence I wouldn't  
15 have pled guilty. I would have proceeded to trial.

16 Q And you also mentioned something about that he told you  
17 you would have to potentially go to trial the following  
18 Wednesday if you wanted to go to trial?

19 A Right. Yes, sir. He told me that if I didn't plead  
20 guilty that day that I would have to go to trial the next  
21 Wednesday.

22 I want to state for the record that July 15th, 2011,  
23 that was on a Friday. So essentially he's telling me that I  
24 have less than five days to obtain a lawyer and be prepared  
25 to go to trial.

Xavier L. Perry  
Direct examination by Mr. Wildman

1           So naturally this is frightening to me to be facing a  
2 life sentence as he's telling me, which he was in error,  
3 that I didn't face a life sentence if I proceeded to trial.  
4 So that's what induced my plea of guilty. The overriding  
5 factor in me pleading guilty was the prospect of a life  
6 sentence, life in prison.

7 Q     To your knowledge did Mr. Cheek do any kind of  
8 investigation about the background facts of your case other  
9 than interviewing you and your codefendant?

10 A    No, sir. He didn't conduct any pretrial investigations  
11 or interview any witnesses or things of that nature.

12 Mr. Cheeks only met with me and interviewed my codefendant.  
13 That was as far as he went in his pretrial investigation.

14 Q     Okay. And -- and did he have any discussions with you  
15 at any of your meetings about potential defenses or defense  
16 strategies you might have if you decided you wanted to go to  
17 trial instead?

18 A     He didn't. He really -- he only briefly discussed the  
19 circumstances of my case at all in our first meeting. We  
20 talked about it briefly.

21           But other than that, it was that Mr. Cheeks wanted me  
22 to plead guilty. And I was -- I constantly reiterated to  
23 Mr. Cheek that I didn't want to plead guilty. And I  
24 certainly wasn't wanting to plead guilty to a unfavorable  
25 agreement such as an open plea to 10 to 30 years. I didn't

Xavier L. Perry  
Direct examination by Mr. Wildman

1 think that was in my best interest.

2 Q Okay. And with your codefendant did Mr. Cheek ever  
3 talk to you about the potential for a conflict of interest  
4 that might exist since he was representing you both?

5 A At the time I actually -- I didn't know that he was  
6 representing me and Mr. Anderson at the same time. But  
7 he -- he didn't speak with me about the conflict of interest  
8 at all. Neither did the judge at the trial, the plea,  
9 proceeding. He didn't address it either. But Mr. Cheek  
10 never addressed the conflict of interest.

11 He never obtained any kind of written waiver addressing  
12 or covering it, any potential or actual conflict in -- in  
13 him representing me and Mr. Anderson.

14 Q Okay. So when was it that you first learned he was  
15 representing your codefendant as well?

16 A When he brought us to the meeting on the plea day.

17 Q Okay.

18 A July 15th of 2011.

19 Q So the day of your plea is when you learned that.

20 A Yes, sir.

21 Q Okay. What were your thoughts when you learned that he  
22 was representing your codefendant also?

23 A Well, I felt that it made him in -- ineffective in his  
24 assisting -- assistance inadequate, because it was obviously  
25 a conflict of interest in him representing me and my

Xavier L. Perry  
Direct examination by Mr. Wildman

1 codefendant simultaneously, because of course his loyalties  
2 were divided because he owed -- he owed a duty to  
3 Mr. Anderson and he owed a duty to me. So how could he  
4 possibly represent both of us adequately?

5 And there was things that he couldn't do in  
6 representing me because he was representing Mr. Anderson.  
7 He couldn't negotiate for a favorable plea for me and not be  
8 detrimental to Mr. Anderson, and vice versa.

9 And he also couldn't prepare any kind of defense in  
10 refuting what statements Mr. Anderson had given, which I'd  
11 like to state for the record that Mr. Anderson gave at first  
12 statements about me in regards to the armed robberies and  
13 all related charges.

14 Mr. Anderson also gave statements saying that he had  
15 the knowledge of crimes that I had committed that he was not  
16 involved with.

17 So our interests were inherently adverse, and I felt  
18 that it was a conflict of interest in him, Mr. Cheek,  
19 representing both me and Mr. Anderson and that made his  
20 performance deficient because he couldn't adequately --  
21 adequately represent me and Mr. Cheek -- Mr. Anderson at the  
22 same time.

23 Q Did you -- so you felt that -- that he couldn't fully  
24 represent you both? Is that what you're saying?

25 A Exactly. He owed a duty to Mr. Anderson to assert the

Xavier L. Perry  
Direct examination by Mr. Wildman

1 same thing that Mr. Anderson had asserted, that  
2 Mr. Anderson -- Mr. Anderson had asserted -- excuse me.

3 Mr. Anderson basically essentially presented himself as  
4 the less culpable defendant and I as the more culpable, or  
5 present himself as not having as much to do with those  
6 crimes than I.

7 And that's the same thing that Mr. -- Mr. Cheek  
8 convinced the solicitor of. And the solicitor advised the  
9 trial judge of the same things. And I want to state for the  
10 record that the plea transcript reflects that same thing on  
11 page 28, lines 12 through 22.

12 Q Okay.

13 (Letter marked Applicant's Exhibit No. 1 for  
14 Identification.)

15 MR. WILDMAN: I'm now handing the applicant what has  
16 been marked for identification as Applicant's Exhibit 1.

17 Q Mr. Perry, do you recognize that document?

18 A Yes, sir, I do.

19 Q Could you tell us what that is?

20 A This is a notification of a preliminary hearing that  
21 was scheduled by the magistrate court for my case. And it  
22 was scheduled for April 28th of 2011 at 9:00 a.m. But I was  
23 never taken to a preliminary hearing.

24 MR. WILDMAN: Okay. And I would move to introduce  
25 this document into evidence as Exhibit 1.

Xavier L. Perry  
Direct examination by Mr. Wildman

1 MS. WHITE: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Letter marked Applicant's Exhibit No. 1.)

4 Q Mr. Perry, did you ever attend any sort of preliminary  
5 hearing regarding the charges against you in this case?

6 A Well, I had asked for a preliminary hearing at my bond  
7 hearing of course -- in my initial bond hearing. And I  
8 properly requested one, but I never received it. Like it  
9 says in the paper, it was scheduled for April 28th of 2011,  
10 but I was detained at the time in the Spartanburg County  
11 Detention Facility. And I was never taken to the  
12 preliminary hearing. And I never received the notice

13 because they sent it to my home address, which of course the  
14 summons reflects that because it has my home address on it.

15 Q And if I may give this back -- I should have asked you  
16 a moment ago when you had this.

17 A Yes, sir.

18 Q Could you tell us what the address is on that document?

19 A It's addressed to me at \_\_\_\_\_ which was  
20 my current home address.

21 Q Okay. And what's the date on that document?

22 A April the 12th of 2011. And I was detained at that  
23 time.

24 Q Okay. You were detained on April 12th of 2011.

25 A Yes, sir.

Xavier L. Perry  
Direct examination by Mr. Wildman

1 Q So you didn't receive this document then?

2 A I didn't. I also want to state for the record that  
3 Mr. Cheeks never even asked me about my preliminary hearing,  
4 nor did he go to the preliminary hearing.

5 Q Okay. Is there anything else you'd like to share with  
6 us today about your case that we haven't talked about  
7 already?

8 A I would -- I would like to just state for the record  
9 that Mr. Cheeks represented me and Mr. Anderson. And there  
10 was actual conflict there because Mr. Anderson's interests  
11 were adverse to my own, because from the very beginning  
12 Mr. Anderson had given statements about me.

13 Mr. Anderson presented himself as the less culpable  
14 defendant. And he worked with law enforcement, I suppose to  
15 mitigate the circumstances of his involvement with those  
16 crimes.

17 But because of that -- because Mr. -- Mr. Cheek  
18 represented us simultaneously, his assistance was  
19 inadequate. So he was constitutionally ineffective. And I  
20 was denied my 6th Amendment right to the effective  
21 assistance of counsel.

22 And I also want to state for the record that had it not  
23 been for Mr. Cheeks advising me that I faced a life sentence  
24 had I gone to trial I would not have pled guilty.

25 I wasn't facing a life sentence. The actual

Xavier L. Perry  
Direct examination by Mr. Wildman

1 circumstances of my case was I was charged with eight counts  
2 of armed robbery. And because of the statute that defines  
3 armed robbery, statute 16-11-330, I could have been charged  
4 or I could have been sentenced to no less than ten years but  
5 no more than 30 years.

6 So I faced the potential sentence as severely as 240  
7 years in prison, but I could have been sentenced to as less  
8 as ten years in prison. So I didn't face an actual life  
9 sentence.

10 But it was that advice that I did face a life sentence  
11 that induced my pleading guilty. Had it not been for that I  
12 wouldn't have gone to trial -- I would have gone to trial,  
13 and I would have retained -- retained my own counsel to go to  
14 trial with.

15 I told Mr. Anderson -- Mr. -- Mr. Cheek -- excuse me.  
16 I told Mr. Cheek on several occasions, on two occasions  
17 actually, that I no longer wanted his assistance because I  
18 felt that he didn't have my -- my best interest at heart and  
19 I didn't want to accept a plea offer that the solicitor had  
20 sent. And neither did I want to plead guilty at the time  
21 because I also felt that that wasn't in my best interest.

22 But the prospect of going to trial in less than four  
23 days with possibly -- with no representation, because I told  
24 Mr. Cheek that I didn't want his representation any more,  
25 and at the time I hadn't retained my own counsel, so that's

Xavier L. Perry  
Cross-examination by Ms. White

1 frightening to be facing a life sentence, as Mr. Cheek would  
2 say, which actually I was not facing a life sentence.

3 That's all I wanted to state for the Court.

4 Q Okay. Thank you Mr. Perry.

5 MR. WILDMAN: No further questions.

6 CROSS-EXAMINATION

7 BY MS. WHITE

8 Q Mr. Perry, just a couple of questions.

9 I know you said that you weren't facing life, you were  
10 facing up to 240 years. But do you not think that maybe  
11 that's what he meant when he was telling you life because of  
12 the amount of time?

13 A It's -- well, I can't speculate as to what he meant. I  
14 can only tell you what he said, and he said affirmantly --  
15 affirmatively that I faced a life, a potential life,  
16 sentence if I would have proceeded to trial. And that was  
17 his exact words.

18 He didn't say that you face up to 240 years and that  
19 could be your life in prison but that I -- I faced a  
20 potential life sentence as if that was in the statute, which  
21 it is not.

22 Q Okay. You were how old at the time of the plea?

23 A I was 22 years old.

24 Q Okay. So even if you had gotten 60 years you would  
25 have been in your 80's, correct?

Xavier L. Perry  
Cross-examination by Ms. White

1 A Yes, ma'am.

2 Q And you were facing charges for eight charges, is that  
3 right?

4 A Yes, ma'am.

5 Q Okay. Now, did he talk with you about the fact that  
6 they didn't have to try all eight at one time, they could  
7 have tried each separately?

8 A He did.

9 Q Okay. So you didn't talk about the fact that if you  
10 were convicted of the first two as most serious and you got  
11 a third that'd be your third strike?

12 A No, ma'am, he didn't.

13 Q Okay. In regards to talking about the fact that this  
14 was a conflict of interest, you told the Court that you  
15 apologized. And you said you didn't deny that you had done  
16 any of this, you didn't deny any of the facts, and that you  
17 didn't even deny it when they had arrested you, is that  
18 right?

19 A I did.

20 Q I'm sorry? Did you say you did?

21 A Yes, ma'am. I said I did.

22 Q Okay. So at the time there was no question of your  
23 involvement when Mr. Cheek was representing you.

24 A No question as to my involvement with those crimes?

25 Q Correct.

Xavier L. Perry  
Cross-examination by Ms. White

1 A No, ma'am.

2 Q Okay. And when he presented the plea you said that  
3 they had originally had an offer of a 10-to-30 but it was an  
4 open plea and so you didn't want that.

5 At the time though you knew you were facing, you said,  
6 up to 240 years potentially, or at least spending your  
7 entire life in prison.

8 So coming back -- when they came back with I guess the  
9 second plea offer or continued that plea offer of the  
10 10-to-30, was that not your discussion with Mr. Cheek?  
11 Since you had not denied that, what was your defense? And  
12 that was a very long question. I apologize.

13 A And I think the best way I could answer it is if I --  
14 if I take your question right, is that when he first advised  
15 me of the first plea agreement I did not know what I did  
16 face potentially.

17 I was actually ignorant of the potential sentence then  
18 until the actual day that we met on July the 15th of 2011.  
19 That was the first time that I was aware of what I actually  
20 faced if I proceeded to trial. And he was telling me that I  
21 faced a life sentence if I proceeded to trial, which I  
22 didn't.

23 Q Okay. But you did talk -- you said the first time you  
24 met with him you talked about a potential plea offer.

25 A Yes. It was an open plea for between 10 and 30 years

Xavier L. Perry  
Cross-examination by Ms. White

1 that -- that we spoke about.

2 Q Okay. And you said that you tried to get Mr. Cheek  
3 twice. You told him you didn't want to have him because you  
4 didn't feel like he was representing you well. But you said  
5 you didn't know that he was representing Mr. Anderson until  
6 the day of the plea.

7 A That's right.

8 Q So what was it about the representation, just the fact  
9 that he couldn't get a better plea deal?

10 A That was only a part of the inadequate representation.  
11 I didn't know about him representing me and  
12 Mr. Anderson until July 15th when he met with me and  
13 Mr. Anderson.

14 But he -- I felt that he wasn't representing me well,  
15 because, yes, he couldn't get a favorable -- favorable plea  
16 agreement for -- a plea offer from the solicitor, which  
17 could have been because he couldn't negotiate for one  
18 because he was representing me and Mr. Anderson.

19 So it would have been prejudicial to Mr. Anderson or  
20 detrimental to Mr. Anderson had he tried to negotiate for a  
21 better plea for me, and vice versa.

22 Q Did you mention to the Court at all on the day of your  
23 plea your concern over the fact that Mr. Cheek was now  
24 representing you and Mr. Anderson?

25 A Could I hear your question again? I'm sorry. I didn't

Xavier L. Perry  
Cross-examination by Ms. White

1 understand.

2 Q Did you ever mention anything to the Court or express  
3 any concern over the fact that when you got there to plead  
4 guilty Mr. Cheek was representing both you and Mr. Anderson?

5 A You're asking me did I address the Court about that?

6 Q Yes.

7 A I didn't because Mr. Cheek -- after me and Mr. Anderson  
8 signed the sentencing sheets after we -- a plea -- agreed to  
9 plead guilty, Mr. Cheek advised us on how to conduct  
10 ourselves in the plea hearing. He just told us to answer  
11 all of the judge's questions affirmatively and that we would  
12 make the judge mad if we would do anything other than that.

13 And he told us that we should beg for mercy and not be  
14 afraid to cry. That's what he was telling me. And just  
15 answer the judge's questions yes, answer affirmatively. And  
16 so that's what I did, because that's what my attorney  
17 directed me to do. And me being the named defendant, I did  
18 what my attorney told me.

19 Q Okay. And you did answer questions from the judge  
20 about what kind of -- what level of education you had and  
21 whether or not you were married.

22 A Yes, ma'am.

23 Q You gave actual answers to those.

24 A Yes, ma'am, I did.

25 Q Okay. And Mr. Cheek did speak positively on your

Xavier L. Perry  
Cross-examination by Ms. White

1 behalf at the end of the plea about how intelligent you were  
2 and how talented he thought you were and, you know, that he  
3 thought that this was not the end of your life. And he  
4 asked for a minimum sentence, didn't he?

5 A He did.

6 Q Okay.

7 MS. WHITE: Your Honor, I think that's all I have at  
8 this time.

9 MR. WILDMAN: No redirect, Your Honor.

10 THE COURT: You may step down.

11 MR. WILDMAN: Your Honor, the applicant would now call  
12 Chadwick Anderson to the stand.

13 MS. WHITE: Your Honor, may we approach?

14 THE COURT: Yes, ma'am.

15 (Bench conference held off the record.)

16 THE COURT: They have got to make a phone call first.  
17 We are going to take ten minutes.

18 (Whereupon, a recess was taken.)

19 THE COURT: Okay.

20 MS. WHITE: Your Honor, Mr. Chris Brough is actually  
21 the attorney for Chad Anderson, and he is talking with him  
22 and going to bring him in for -- we're going to put  
23 something on the record I think about a limited purpose,  
24 limited nature of the questions.

25 THE COURT: Okay.

1 MS. WHITE: So when he gets in here.

2 THE COURT: Well, are you going to call Mr. Cheek  
3 back?

4 MS. WHITE: I think Mr. Anderson had just been called,  
5 and we hadn't gotten Mr. Cheek.

6 THE COURT: Well, I know that, but we're just sitting  
7 here waiting on him.

8 We could go ahead and start with Mr. Cheek. Oh, here  
9 we are.

10 MR. BROUGH: Sorry, Your Honor. Informed me until I  
11 got a call from his wife --

12 THE COURT: That's all right. I understand.

13 MR. BROUGH: I've spoken with Mr. Anderson and the  
14 attorneys involved.

15 I don't have an objection to him testifying for the  
16 limited purpose of what the conversation that took place  
17 was with Mr. Cheek and the two codefendants.

18 However, I think we've all agreed that it would not go  
19 into anything beyond that conversation, in other words,  
20 nothing about who was responsible for what and underlying  
21 offenses, as, Your Honor, I think everybody is on that same  
22 page.

23 MS. WHITE: Yes. Agreed.

24 THE COURT: Okay.

25 MR. BROUGH: That will be fine.

Chadwick Anderson  
Direct examination by Mr. Wildman

1 THE COURT: Do you want to stay while he testifies?

2 MR. BROUGH: Yes, sir.

3 THE COURT: Okay.

4 CHADWICK ANDERSON, having been  
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. WILDMAN

7 Q All right. Mr. Anderson, if you would, state your name  
8 for the record, please.

9 A For the record, my name is Chadwick Anderson.

10 Q And I'm just going to ask you a couple of very quick  
11 questions here.

12 Are you a codefendant of Mr. Perry in this matter?

13 A Yes, sir.

14 Q Okay. And you met with -- did you meet with Mr. Perry  
15 and Mr. Cheek on the date of your plea?

16 A Yes, sir.

17 Q Okay. At that meeting what did Mr. Cheek say to you  
18 and Mr. Perry with regard to what your sentence would be if  
19 you went to trial and what did he say with regard to what  
20 your sentence would be if you pled guilty?

21 A Mr. Cheeks said that we would not receive more than ten  
22 years --

23 THE COURT: Speak up a little bit, please.

24 A Mr. Cheek said we -- we would not receive no more than  
25 ten years if we plead guilty. He said that if we was to go

James A. Cheek  
Direct examination by Ms. White

1 to trial we would receive a life sentence.

2 Q Okay. Thank you, Mr. Anderson. That's all my  
3 questions for you.

4 MS. WHITE: The state has no questions, Your Honor.

5 THE COURT: Okay. You can step down.

6 Thank you, Mr. Brough.

7 (Whereupon, the witness and Mr. Brough were excused.)

8 MR. WILDMAN: Yes, Your Honor. No further witnesses.

9 THE COURT: Okay.

10 MS. WHITE: Your Honor, the state would call James  
11 Cheek.

12 THE COURT: Okay.

13 JAMES A. CHEEK, having been  
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. WHITE

16 Q Mr. Cheek, a couple of things that have been addressed.

17 Mr. Perry and Mr. Anderson have both stated that you  
18 told them if they went to trial they would get life. Can  
19 you explain what your conversations were with them about the  
20 potential for receiving life?

21 A I can. I spoke with both Mr. Perry and Mr. Anderson  
22 separately; then together.

23 I explained to them that these charges are violent and  
24 most serious; that the state would have eight chances of  
25 convicting them; that Mr. Morin, the prosecutor, informed me

James A. Cheek  
Direct examination by Ms. White

1 that he would try the cases one by one; that if he got two  
2 convictions out of eight or let's -- if he got two  
3 convictions out of those eight charges, on the third trial  
4 he would serve them with life-without-the-possibility-of-  
5 parole notice. And on the third conviction they would be  
6 looking at life. That's how I explained it to them.

7 I never said to them that on the first case you're  
8 looking at life or the second one that you're looking at  
9 life.

10 what I did say -- and Mr. Morin made it very explicit  
11 he was making an offer to them. And the offer would be open  
12 until the middle of the following term of court and that it  
13 was for a concurrent sentencing among all charges.

14 And it was also reflected on each sentencing sheet --  
15 concurrent sentencing among all charges. And for the armed  
16 robberies there were 10 to 30 years. That was the only  
17 offer.

18 Q And did you ever tell either one of the defendants that  
19 if they pled guilty they would receive a sentence of ten  
20 years?

21 A Absolutely not, because if that were the case I would  
22 have negotiated that.

23 There were no further negotiations. The state was not  
24 going to enter into any further negotiations. Mr. Morin was  
25 very excited at the thought of trying them and getting a

James A. Cheek  
Direct examination by Ms. White

1 conviction for life. That would have been a feather in his  
2 cap.

3 I advised them they needed to seriously consider both  
4 going in, entering their pleas together and hoping the Court  
5 would accept the recommendation of 10 to 30 years,  
6 concurrent sentencing.

7 In addition, the only other assurance I had from Mr.  
8 Morin was that if they entered their pleas that the victims  
9 in the case would be present in the courtroom. But they had  
10 expressed no interest in addressing the Court. And that he  
11 would put on the record that he told them they could address  
12 the Court. And if one of them changed their mind, they  
13 could do that.

14 But at the point we entered the courtroom the  
15 understanding was that the victims did not intend to address  
16 the Court and we'd get a chance to address the Court.

17 In preparation of that I cautioned both of them when  
18 you go into the courtroom speak clearly, don't be so hard,  
19 don't come across hard, don't come across rough, if you feel  
20 that the emotionalism rises to a level that you want to cry,  
21 don't worry about somebody that's in that courtroom, what  
22 those people think, because this is you and your future and  
23 you should feel free to express emotion, express remorse and  
24 to address the Court. But keep it brief. Say you're sorry.  
25 And just come out of there in hopes that the Court would

James A. Cheek  
Direct examination by Ms. White

1 sentence you concurrently.

2 Of course that didn't happen, but that's what the  
3 theory was. And I cautioned them both together in that  
4 courtroom, don't turn each other in the courtroom if you can  
5 avoid going it, don't turn each other at this point because  
6 if you go in, hopefully you both will get the same  
7 sentencing.

8 Q And at the time that you represented them at the plea  
9 there was no denial of involvement on either person or  
10 pointing the finger at the other?

11 A On either party.

12 The state's case against Mr. Perry arose first. He  
13 apparently had had some confrontation that was brought to  
14 the attention of the criminal domestic violence people over  
15 in the city.

16 Investigator McCullough with the city had a  
17 conversation with Mr. Perry's girlfriend. She shared with  
18 Ms. McCullough conversations she had overheard and things  
19 she'd seen that would have linked Mr. Perry to those armed  
20 robberies.

21 They started an investigation. They did a search  
22 warrant at Mr. Perry's residence.

23 They found a lot of incriminating evidence, had a  
24 conversation with a Ms. Perry at that residence who  
25 indicated she'd seen around Christmastime a large amount of

James A. Cheek  
Direct examination by Ms. White

1 Newport cigarettes, as well as things that really stuck out  
2 about all of the robberies. The large amount of Newport  
3 cigarettes were taken. I recall they found masks, other  
4 items that would be implicit in the robberies.

5 And then they went and interviewed Chadwick Anderson  
6 after Ms. Perry told them that Chadwick Anderson was the  
7 co-conspirator and the co-perpetrator in the robberies --  
8 described the vehicles that was driven and in addition told  
9 law enforcement that the vehicle that was used in the  
10 robberies had been sold by Mr. Perry -- a minivan -- the  
11 week before she made her disclosures to law enforcement.

12 Q In your conversations with Mr. Perry did he ever  
13 indicate to you that he was concerned about your  
14 representation of him and wanted to fire you or have you  
15 relieved as counsel?

16 A This is what I assured both of the -- not only  
17 Mr. Perry but Mr. Anderson.

18 I don't try the cases. I bring the offers that are  
19 made by the state. Then our office, the other attorneys,  
20 have an ethical responsibility to share with them any offer  
21 made by the state in a case.

22 And the only offer in this case was a recommendation of  
23 concurrent sentencing. And we have to convey that  
24 recommendation, that offer, to the defendants. And that's  
25 what I was doing.

James A. Cheek  
Direct examination by Ms. White

1 I wasn't going to speak one way or another about  
2 whether they should accept the offer. It had to be their  
3 decision.

4 But I wanted to reiterate to them that Mr. Morin made  
5 it very clear what his strategy was going to be if they did  
6 not accept the offer. They'd be looking at going to trial,  
7 and then going to trial. That we needed to start preparing  
8 for trial, get whatever witness they had to get together.

9 But at this point I didn't know that a trial would be  
10 necessary in this case because of the incriminating evidence  
11 found at Mr. Perry's house and with the comments that  
12 Mr. Anderson had made to law enforcement.

13 Q And based on that information you were never given any  
14 defenses to the crimes.

15 A No. No defenses, no denials, no lack of involvement,  
16 no protestations of innocence, none of that. Just wanted  
17 the best offer they could get.

18 And I went back and talked with the prosecutor and came  
19 back and told them this is the offer, it will not change.  
20 And the offer was made, the recommendation was made to the  
21 Court.

22 And of course during the course of the mitigation phase  
23 something happened I was not expecting. I didn't expect  
24 Mr. Anderson to come in and become recansitent [sic] or  
25 become very repugnant in his conversations to the extent

James A. Cheek  
Direct examination by Ms. White

1 that the Court then inquired of the solicitor if the victims  
2 had comments. And of course at that point the victims were  
3 enraged about some things that Mr. Anderson had said.

4 I commended Mr. Perry then as I do now. He handled  
5 himself very well in the courtroom. He was very respectful;  
6 he was very intelligent, articulate. He was everything I  
7 said about him in that courtroom.

8 And we had hope for them. Those two young men had good  
9 careers, could have had good careers in music. They're very  
10 talented. That's what I told the Court.

11 One of the victims came forward who knew them  
12 personally, who had seen them perform, reiterated it to the  
13 Court.

14 But then she said to the Court, "These young men had  
15 alternatives, and I'm sorry to be here to say it today."  
16 But she then told the Court that they robbed her store.  
17 They robbed the young woman who had three children, a single  
18 mother who quit her job the day after the robberies.

19 And things went south after that to the point that the  
20 judge asked if anyone had anything else to say. And then at  
21 that point one of the other people involved with the Li'L  
22 Cricket stores came forward.

23 And then the judge imposed consecutive sentencing,  
24 which I was hoping would not happen because I had really  
25 cautioned my clients on how to present themselves to the

James A. Cheek  
Direct examination by Ms. White

1 Court.

2 I didn't tell them what to say. I told them don't go  
3 in there being hard, coming across thuggish. Go in there  
4 and show that you are talented young men who can have a  
5 chance to turn your lives around if you're given the  
6 opportunity to do it.

7 I cautioned both of them that if they came out with 20  
8 years or less they'd be doing well.

9 I never, ever gave any impression that with eight armed  
10 robberies that you would get only ten years. Not ever.

11 Q And with the information of potential sentences, what  
12 would happen if they proceeded to trial with them  
13 separately, was your impression that they pled of their own  
14 volition based on their information, the information they  
15 had received?

16 A It was my impression that they always intended to plead  
17 guilty. They just wanted the best offer they could get.  
18 would have loved to have had something to negotiated. But  
19 there's no way the state would have even thought about  
20 negotiating ten years.

21 That -- that conversation was cut very short with the  
22 prosecutor's office. They said no, nothing like that.

23 Q I think that's all I have. Thank you, Mr. Cheek.

24 A Thank you.

25

James A. Cheek  
Cross-examination by Mr. Wildman

1 CROSS-EXAMINATION

2 BY MR. WILDMAN

3 Q Mr. Cheek, you just stated that you felt that my client  
4 never -- that he always intended to plead guilty.

5 Did he not state to you several times that he did not  
6 actually want to plead guilty?

7 A Not ever.

8 Q Okay. And are you asserting that he and Mr. Anderson  
9 are misleading the Court when they say that you said that  
10 they would --

11 A I'm not saying what they're doing. I'm not saying what  
12 impression they're making upon the Court. I'm not accusing  
13 them of anything.

14 I'm just telling you what I said and what I did. And  
15 the Court can make its own determination of what they're  
16 trying to do.

17 I will tell you this. I told both of them I won't be  
18 trying your cases, feel free to say anything you want to say  
19 to me because I will not be testifying against you in court,  
20 I will let you go back to your trial attorneys, trying to  
21 point the finger back one to the other, if you back out of  
22 this plea agreement right now, if you don't want to plead  
23 guilty, you don't have to, I will notify your trial  
24 attorneys to prepare for trial, and they will each  
25 individually come and talk with you about trial.

James A. Cheek  
Cross-examination by Mr. Wildman

1           There's no conflict there because I would not have said  
2 anything to anyone beyond what they told me that would have  
3 been used in trial against them. Not ever would I do that.

4           In fact, we're cautioned by our chief public defender  
5 don't create a conflict. And I don't do that.

6 Q       And did you talk to them about -- about the fact that  
7 you were representing both of them or have them sign  
8 anything to that effect or --

9 A       I told them if you don't want to accept the plea offer  
10 I'll refer your cases back to your trial attorneys, they  
11 will come and talk to you and prepare you for trial.

12           There is no conflict at the end of a plea, especially  
13 in it together. No conflict.

14 Q       Okay. Did you inform Mr. Perry that if he did choose  
15 to go to trial that he would have to potentially do so that  
16 following week?

17 A       No. I told him the offer could remain open awhile  
18 longer, possibly another week, and then they would have to  
19 prepare to start going to trial.

20 Q       Okay.

21 A       Mr. Perry understood that. I mean, I'm sorry that he  
22 has given you any other impression.

23           The only difference between me and Mr. Perry is that  
24 I'm sure that I.Q. testing, he would test higher than I  
25 would. So his intelligence is superior to mine.

James A. Cheek  
Cross-examination by Mr. Wildman

1           But my words were very clear to him that if you don't  
2 want to accept the offer, you don't have to do it, but you  
3 need to start preparing to go to trial. And why you would  
4 do that, I don't know, because your own woman that you slept  
5 with, you impregnated, is going to come to court and repeat  
6 in court things that you told her that were later  
7 substantiated with the service of a search warrant at your  
8 residence.

9 Q     Did Mr. Perry mention to you that he wanted to retain  
10 his own private counsel?

11 A     Never.

12 Q     Okay.

13           MR. WILDMAN: I have no further questions of  
14 Mr. Cheek.

15           MS. WHITE: The state has nothing further, Your Honor.

16           THE COURT: You may step down.

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

18           MR. WILDMAN: Your Honor, we have no further  
19 witnesses, although Mr. Perry has requested if he would be  
20 able to make an additional statement to the Court. And  
21 he's also requested permission or leave from the Court to  
22 file a post-hearing brief to clarify some of the issues in  
23 this case.

24           THE COURT: Well, he's not permitted to do that  
25 because he has counsel representing him.

Xavier L. Perry  
Direct examination by Mr. Wildman

1 MR. WILDMAN: Then he's asked for leave for me to --

2 THE COURT: Oh, sure. I'll allow you to do that.

3 MR. WILDMAN: And he also has requested to make an  
4 additional statement if you would allow that.

5 THE COURT: You mean he wants to testify to reply to  
6 something that's been testified to by Mr. Cheek?

7 MR. WILDMAN: I believe he wanted to just simply raise  
8 an additional point.

9 THE APPLICANT: Your Honor, I would like --

10 THE COURT: Well, there are not going to be any  
11 further amendments because this case has already been  
12 heard.

13 THE APPLICANT: I don't want --

14 THE COURT: You need to talk to Mr. Wildman. He's  
15 your lawyer.

16 (Pause.)

17 MR. WILDMAN: Yes, Your Honor. He would like to  
18 respond to something that Mr. Cheek --

19 THE COURT: All right. Come back around. You remain  
20 under oath.

21 XAVIER L. PERRY, having been  
22 previously duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. WILDMAN

24 Q All right. Mr. Perry, what would you like to share  
25 with us in response to Mr. Cheek's testimony?

Xavier L. Perry  
Direct examination by Mr. Wildman

1 A well, Mr. Cheek testified at length about his  
2 sentencing advice, and I just want to state for the record  
3 that at the time I wasn't familiar with the criminal laws  
4 system. And my record reflects that I actually was not --  
5 having been in trouble as much as many.

6 And though he did testify at length about how he  
7 understood the plea agreement, that was not how he conveyed  
8 it to me.

9 So he stated affirmaly that -- affirmatively -- I'm  
10 sorry -- that if I proceeded to trial that I faced a life  
11 sentence.

12 He did not convey to me how he did when he came on the  
13 stand a few minutes ago. He did not break it down as in  
14 terms of convictions or how that would affect me.

15 And I'd also like to state for the record that it  
16 couldn't have been determined if I would have been convicted  
17 or not or how many armed robberies had I proceeded to trial.

18 Also, Mr. Cheek stated that he didn't -- that I didn't  
19 advise him that I wanted to get my own counsel. But I did  
20 on two occasions advise Mr. Cheek that I thought it was in  
21 my best interest to get my own counsel.

22 At the time my father was trying to obtain counsel for  
23 me, and I was entertaining different counselors throughout  
24 the city to see who I could afford and who would be in my  
25 best interest to represent me to either further negotiate

Xavier L. Perry  
Direct examination by Mr. Wildman

1 for pleas or proceed to trial.

2 Now, Mr. Cheek was right about -- Mr. Cheek was  
3 right -- excuse me. Mr. Cheek was right about him not  
4 saying anything about the conflict of interest.

5 Now, he -- he was representing me and Mr. Anderson in  
6 the plea negotiations. And Mr. Anderson's interests were  
7 adverse to my own. So there's an actual conflict there.

8 And according to Supreme Court Justice Jean Toal  
9 prejudice is already presumed. And that's according to the  
10 case of Duncan vs. the State.

11 And I also want to state for the record, for Your  
12 Honor, that my case in terms of the sentencing, the  
13 erroneous sentencing, advice that Mr. Cheek provided me with  
14 is exactly identical to the case of Ray vs. State, which is  
15 cited at -- I won't state the cite, but I'm sure there is  
16 the case of Ray vs. State.

17 And that's all I really wanted to refute about what  
18 Mr. Anderson said -- excuse me -- what Mr. Cheek said.

19 Q All right. Thank you, Mr. Perry. No further  
20 questions.

21 MS. WHITE: The state has nothing.

22 THE COURT: You may step down.

23 All right. Mr. Wildman, how much time do you need to  
24 do the memo?

25 MR. WILDMAN: I can have that to you by the end of

1 this week if that's all right.

2 THE COURT: That will be Friday. That will be fine.

3 MR. WILDMAN: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. WHITE: And, Your Honor, just if necessary, would  
6 you allow the state to have a chance to reply to that?

7 THE COURT: Well, sure.

8 MS. WHITE: Okay. Thank you, Your Honor.

9 THE COURT: All right. Nothing further, y'all are  
10 excused.

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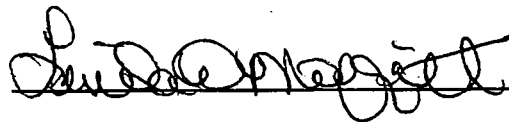
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CERTIFICATE

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

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

March 1, 2014



Linda D. Moffitt  
Circuit Court Reporter

## SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

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April 12, 2011

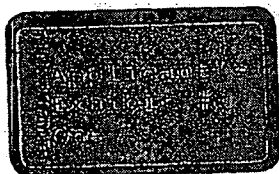
Xavier Perry  
213 Collins Ave  
Spartanburg, SC 29306**RE: State vs. Xavier Lalord Perry**Charges: ARMED ROBBERY (8 COUNTS); KIDNAPPING; POSS. WPN. DURING VIOL.  
CRIME (5 COUNTS)Warrants: M752936; M125628; M125593; M125609; M125610; M125618; M125621; M125626;  
M125608; M125611; M125619; M125620; M125627; M752937

Dear Mr. Perry:

The Preliminary Hearing in your case has been set in the Magistrate Court, Spartanburg County Judicial Center (Court house), 180 Magnolia Street, Spartanburg, South Carolina. Please report to Magistrate Courtroom #1 on April 28, 2011 at 9:00 A.M.

The purpose of the preliminary hearing is to determine if there is probable cause for the offenses listed above. Because the magistrate is required to look at the evidence in the light most favorable to the prosecution, the defense will not call witnesses or present testimony. However, it is our opportunity to listen to some of the evidence against you and to question the witness.

Please also be aware that the preliminary hearing does not take the place of the Initial Appearance. You received your Initial Appearance date when the magistrate set your bond or when you were released from jail. You must also appear for the Initial Appearance at the date and time as originally provided to you. Because I have been assigned to represent, please contact me if you have any questions.

Sincerely,  
Robert B. Hall, Esq.  
Seventh Judicial Circuit Public Defender's Office

12-2121

AM

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Xavier L. Perry (#346891) )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-42-2121

**POST-HEARING MEMORANDUM  
 IN SUPPORT OF APPLICATION FOR  
 POST-CONVICTION RELIEF**

COMES NOW the above-named Applicant, Xavier L. Perry (" Mr. Perry"), who, by and through his undersigned counsel, submits this Post-Hearing Memorandum in Support of Application for Post-Conviction Relief ("PCR").

**BRIEF PROCEDURAL HISTORY**

Mr. Perry was indicted at the June 2011 term of the Spartanburg County Grand Jury for eight (8) counts of armed robbery (11-GS-42-2353, -2354, -3044, -3069, -3070, -3072, -3075, and -3076). Mr. Perry pled guilty to the charges as indicted on July 15, 2011 and was sentenced by the Honorable Roger L. Couch to confinement for concurrent terms of thirty (30) years for seven (7) counts of armed robbery, and a consecutive term of ten (10) years for the remaining armed robbery charge (11-2354). James A. Cheek, Esquire represented Mr. Perry at his plea hearing.

Mr. Perry filed an application for post conviction relief (PCR) on May 18, 2012 and, through his court-appointed counsel, filed two amendments to his PCR application on November 16, 2012 and June 4, 2013, respectively. In his application and its two subsequent amendments, Mr. Perry asserted, among other grounds for relief, that his guilty pleas were involuntary due to

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erroneous advice from his plea counsel, Mr. Cheek, and that Mr. Cheek's representation of Mr. Perry at Mr. Perry's plea hearing was ineffective due to a conflict of interest created by Mr. Cheek's simultaneous representation of Mr. Perry's co-defendant. On or about March 26, 2013, Respondent served its Return to Mr. Perry's Application and requested that an evidentiary hearing be held on Mr. Perry's allegations.

### ARGUMENT

#### A. INVOLUNTARY GUILTY PLEA

In order to establish that a guilty plea was made involuntarily, it must be shown that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial instead, *see Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001); *Richardson v. State*, 310 S.C. 360, 426 S.E.2d 795 (1993).

The facts and circumstances in this matter support the conclusion that Mr. Perry's guilty pleas were involuntary. At his PCR hearing, Mr. Perry testified that his decision to plead guilty was heavily influenced by advice given to him and to his co-defendant, Chadwick Anderson, by Mr. Cheek at a meeting on the day of their plea hearings. Mr. Perry testified that he was advised by Mr. Cheek that he would receive no more than a ten (10) year sentence if he plead guilty to the charges against him and that he would receive a sentence of life in prison if he chose to proceed to trial. Mr. Perry's codefendant, through his own testimony at Mr. Perry's PCR hearing, confirmed that these statements were made to him and to Mr. Perry by Mr. Cheek.

Mr. Cheek's statement to Mr. Perry that he would receive no more than a ten (10) year sentence if he plead guilty would clearly fall below an objective standard of reasonableness. A single conviction for armed robbery in South Carolina carries a mandatory minimum sentence of

not less than ten years in prison and no more than thirty years in prison (S.C. Code § 16-11-330 (A)); as such, it is objectively unreasonable to assert that Mr. Perry, who was charged with eight counts of armed robbery, would receive only a ten (10) year prison sentence if he plead guilty to all eight armed robbery charges. It is also not objectively reasonable to definitively state that Mr. Perry would have received a life sentence had he chosen to proceed to trial. While it is possible that Mr. Perry *could have* received a life sentence had he proceeded to trial, he may also have been found not guilty at trial or could have potentially received a sentence of as little as ten years if all charges were tried together and the sentences run concurrently. Mr. Perry testified at his PCR hearing that he would have chosen to proceed to trial were it not for Mr. Cheek's statements regarding the sentence Mr. Perry would receive if he plead guilty and the sentence he would receive if he elected to go to trial. Accordingly, the facts and circumstances demonstrate that Mr. Perry's guilty pleas were involuntary.

### **B. CONFLICT OF INTEREST**

Mr. Perry also asserts that his Sixth Amendment right to effective assistance of counsel was violated due to a conflict of interest that arose out of his plea counsel's joint representation of both Mr. Perry and Mr. Perry's co-defendant. In order to establish a violation of the Sixth Amendment right to effective assistance of counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768, 773 (1998) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)); *Duncan v. State*, 281 S.C. 435, 315 S.E.2d 809 (1984)); *Padgett v. State*, 324 S.C. 22, 484 S.E.2d 101 (1997).

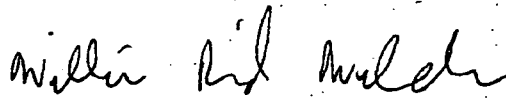
A defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811, citing *Cuyler v. Sullivan*, 446 U.S. 335, 348-350, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980). An actual conflict of interest occurs "when a defense attorney places himself in a situation inherently conducive to divided loyalties... If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client." *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811, quoting *Zuck v. State of Alabama*, 588 F.2d 436, 439 (5<sup>th</sup> Cir. 1979).

Mr. Cheek's representation of both Mr. Perry and Mr. Perry's co-defendant at their respective plea hearings (which took place on the same day) is a textbook example of "a situation inherently conducive to divided loyalties". *Id.* Both men were facing charges stemming out of the same set of incidents. Mr. Perry stated in his PCR application that his own interests and the interests of his co-defendant were adverse because his co-defendant had given unfavorable statements against him. Additionally, Mr. Perry asserted in his Application that Mr. Cheek was aware of this situation but did not remove himself as plea counsel for either Mr. Perry or Mr. Perry's co-defendant. By representing both Mr. Perry and Mr. Perry's co-defendant, Mr. Cheek owed a duty to both of his clients which he could not fully comply with by actively representing both defendants. For example, Mr. Cheek could not have actively negotiated for a lesser sentence or a better plea deal for one of the two defendants without potentially harming the other defendant's case.

Clearly, Mr. Cheek's representation of both Mr. Perry and Mr. Anderson created an actual conflict of interest which adversely affected Mr. Cheek's performance. Accordingly, Mr. Perry does not need to demonstrate prejudice to be entitled to relief due to a conflict of interest on the part of his plea counsel. *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811, citing *Cuyler v. Sullivan*, 446 U.S. 335, 348-350, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980).

### CONCLUSION

As set forth above, Mr. Perry has demonstrated that his guilty pleas were involuntary and that his Sixth Amendment right to effective assistance of counsel was violated due to a conflict of interest that arose out of his plea counsel's representation of both Mr. Perry and Mr. Perry's co-defendant. Accordingly, Mr. Perry's pleas should be vacated.



Reid Wildman, S.C. Bar # 100266  
 Johnson, Smith, Hibbard and Wildman  
 Law Firm, L.L.P.  
 220 North Church Street, Suite 4 (29306)  
 Post Office Drawer 5587  
 Spartanburg, South Carolina 29304  
 Telephone: (864) 582-8121  
 Facsimile: (864) 585-5328  
 Email: [rwildman@jshwlaw.com](mailto:rwildman@jshwlaw.com)  
 Attorney for Applicant.

October 4, 2013

Spartanburg, South Carolina

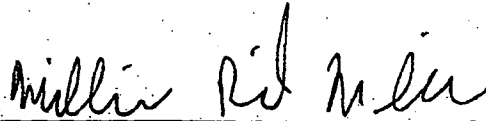
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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that the undersigned caused a copy of the foregoing **Post-Hearing Memorandum in Support of Application for Post-Conviction Relief** to be served upon Suzanne White, Assistant Attorney General for the State of South Carolina, this 4<sup>th</sup> day of October, 2013, via certified mail, return receipt requested, delivery restricted to addressee, with sufficient postage affixed thereto and addressed as follows:

**South Carolina Attorney General's Office  
c/o Suzanne White  
P.O. Box 11549  
Columbia, SC 29211**



Reid Wildman, S.C. Bar # 100266  
Johnson, Smith, Hibbard and Wildman  
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Email: [rwildman@jshwlaw.com](mailto:rwildman@jshwlaw.com)

October 4, 2013

Spartanburg, South Carolina

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Xavier La-Lord Peiry, #346891,  
Applicant,

2012-CP-42-2121

v.

ORDER OF DISMISSAL

State of South Carolina,  
Respondent.

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SPARTANBURG, SC  
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This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 18, 2012, and amended applications filed July 23, 2012, and June 4, 2013. The Respondent made its Return on or about March 26, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by W. Reid Wildman, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

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

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the June 2011 term of the Spartanburg County Grand Jury for eight (8) counts of

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armed robbery (11-GS-42-2353, -2354, -3044, -3069, -3070, -3072, -3075, and -3076). He was represented by James A. Check, Esquire. On July 15, 2011, the Applicant pled guilty to the charges as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for concurrent terms of thirty (30) years for seven (7) counts of armed robbery, and a consecutive term of ten (10) years for the remaining armed robbery charge (11-2354). The Applicant did not appeal his guilty plea or sentence.

### ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
  - a. Counsel engaged in a conflict of interest by representing both Applicant and his co-defendant.
  - b. Counsel failed to conduct an adequate pretrial investigation by not spending adequate time with Applicant before plea hearing, and by failing to interview potential witnesses, or make a motion to request funding for investigator or expert witness.
  - c. Counsel failed to provide Applicant with discovery pursuant to Brady v. Maryland in advance of plea hearing or sentencing.
  - d. Counsel failed to make Applicant aware of ramifications of plea agreement.
2. Involuntary guilty plea in that;
  - a. Applicant was under the impression that he would receive no more than ten (10) years for his plea and that he would receive life in prison if he proceeded to trial.
3. The Court lacked subject matter jurisdiction because a preliminary hearing was not held pursuant to S.C. Code Ann. § 22-5-320.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

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

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he pled guilty on July 15, 2011, to eight counts of armed robbery. Applicant testified that he was originally represented by Robert Hall from the Seventh Circuit Public Defender's office, but never met with Mr. Hall. Instead, Applicant testified that he met with Mr. James Check ("Counsel") twice at the detention center and once at the courthouse regarding a plea. Applicant testified that he informed Counsel at the second meeting that he wished to retain counsel and thought that it was in his best interest to hire another attorney. Applicant testified that he also discussed the facts and circumstances of the case with Counsel and turned down an initial offer for an open plea between ten and thirty years because he wanted a more favorable offer. However, Applicant testified that he was not aware of all of the charges he faced at the time of this first plea discussion. Applicant testified that Counsel informed him that the Solicitor's office did not want to negotiate any further.

Applicant testified that Counsel also represented his co-defendant, Chad Anderson, at his plea, which Applicant claimed is a conflict of interest. However, Applicant acknowledged that he did not mention any concerns over the alleged conflict of interest at his plea. Applicant testified that he did not think that Counsel conducted any investigation into the case other than meeting with the Applicant and his co-defendant.

Applicant's co-defendant, Chad Anderson, also testified. Anderson testified that he also met with Counsel and with the Applicant on the day of the plea. Anderson testified that Counsel told them that if they pled guilty, they would receive no more than ten years, but if they proceeded to trial, they would receive a life sentence.

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Counsel testified that he did represent both the Applicant and his co-defendant, Anderson. Counsel testified that he spoke with each of them separately, but then also spoke to them both together. Counsel testified that the charges they faced were classified as violent and most serious and the State would not have to try all charges at the same time. Counsel testified that there were eight chances for convictions and the State might seek a life without parole sentence after the second conviction. Counsel testified that the offer for an open plea between ten and thirty years concurrent on each charge was open until the middle of the next court term. Counsel testified that he never told Applicant or Anderson that they would receive ten years if they pled guilty. Counsel did tell Applicant and Anderson that if they did not want to accept the plea offer, Counsel would refer the case back to a trial attorney. Counsel informed them both that he did not handle trials, but only conveyed plea offers and handled pleas. Counsel also told both that at that time the victims had expressed no desire to speak at the guilty plea. However, Counsel testified that after Anderson spoke at the plea, the victims commented to the court.

Counsel testified that Applicant's girlfriend shared information with the police to link Applicant to the city investigation and the police found incriminating evidence following the search of Applicant's home. Counsel testified that based on the evidence, the Applicant would have come out great with a sentence of twenty years or less. Counsel testified that the Applicant never informed him that he wished to hire another attorney.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant or his co-defendant, Chad Anderson. This Court finds that the Applicant has failed to meet his burden of proof as to the allegation that Counsel operated under a conflict of interest. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the

Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). No evidence or testimony was presented to support this claim or that would indicate that Counsel's performance was adversely affected by a conflict of interest. Therefore, this claim is denied and dismissed.

The Applicant's allegation that Counsel did not conduct an adequate investigation is without merit. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

The Applicant also alleged that Counsel failed to provide Applicant with discovery materials in advance of the plea hearing. Although this allegation was raised in his application,

the Applicant did not proceed on this allegation at the hearing. Therefore, this Court finds that the Applicant voluntarily waived this allegation.

### Involuntary Guilty Plea

The Applicant also alleges that he did not plead guilty freely and voluntarily. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds that the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea to each charge. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795

(1993).

Applicant testified that Counsel informed him that Applicant faced life in prison, but even if the sentences were to run consecutively, it was not life, but 240 years. Applicant also testified that Counsel did not fully explain each of the charges and consequences of the convictions prior to the plea. Applicant testified that he would have proceeded to trial on all of the charges, but for Counsel's telling him he faced life.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. Furthermore, this Court does not find the Applicant's testimony credible. The Applicant was facing eight charges of armed robbery and a possibility of life without parole if he were to be tried and convicted separately on the charges. The plea colloquy is thorough and the Applicant indicates that he was pleading freely and voluntarily and with full knowledge of the consequences and risks. Therefore, this claim is denied and dismissed.

#### Lack of Subject Matter Jurisdiction

The Applicant alleged that the court lacked subject matter jurisdiction because a preliminary hearing was not held. Applicant testified that he never had a preliminary hearing, even though he requested one. Applicant introduced a letter regarding his preliminary hearing as Applicant's Exhibit #1.

A defendant's right to request a preliminary hearing is not required either by the State or Federal Constitution and is not necessary before a grand jury can indict a person for a crime. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982) (citing State v. Irby, 166 S.C. 430, 164 S.E.2d 912 (1932)). A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment.

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State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Spartanburg County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986).

This Court finds that this allegation lacks merit and it is clear from the record that the Applicant was properly indicted. The court had jurisdiction to accept the Applicant's plea, even though he claims he was not provided with the opportunity to have a preliminary hearing. Therefore, this claim is denied and dismissed.

#### *Summary*

This Court finds in regards to the allegations, Counsel's testimony is more credible than the Applicant's testimony. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

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

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

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

**CONCLUSION**

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


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

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**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 20 day of February, 2014.

  
\_\_\_\_\_  
J. Derham Cole  
Presiding Judge

WITNESSES

173

Spartanburg Public Safety Department

*[Signature]*

ARREST WARRANT NUMBER

M752936

ACTION OF GRAND JURY

**The Bill**

Foreperson of Grand Jury

MAY 5 2011

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

**11-GS-42-2353**  
The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 03 2011

TERM

THE STATE

VS.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class: FEUA

A CERTIFIED COPY  
W. Thompson  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY *[Signature]*  
DATED 5/10/11

SPARTANBURG COUNTY  
BY *[Signature]*  
DATED 5/10/11

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

At a Court of General Sessions, convened on                     MAY 05 2011                     the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That Xavier Lalord Perry, did in Spartanburg County on or about November 1, 2010, while armed with a pistol, or other 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 reasonably believed to be a deadly weapon, feloniously take from the person or presence of Lil Cricket located at 2053 South Port Rd., Spartanburg, South Carolina, by means of force, violence, and/or intimidation, goods or monies such goods or monies being described as follows: nine cartons of Newport cigarettes and a sum of cash money from the clerk, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 STATE VS. )  
 Xavier Lalord Perry )  
 AKA: )  
 Race: BLACK Sex: M Age: 22 )  
 DOB: 11-28-1988 SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: Spartanburg, SC 29306 )  
 DL#: SID#: )

INDICTMENT/CASE#: 2011GS4202353  
 A/W#: M752936  
 Date of Offense: 11/1/2010  
 S.C. Code § : 16-11-0330(A)  
 CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The pleas:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTORNEY: MORIN, MICHAEL D SC Bar# 5094 Defendant Xaire Perry Attorney for Defendant SC Bar# 1207

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_  
 \*Fine: \$ \_\_\_\_\_  
 § 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
 § 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 § 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
 Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
 § 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
 § 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00  
 3% to County (if paid in installments) \$ 3.90  
 TOTAL \$ 135.90

\_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk T. Camp  
 Court Reporter: P. Green

Presiding Judge \_\_\_\_\_  
 Judge Code: 2135  
 Sentence Date: 7/15/11

For

WITNESSES

Spartanburg Public Safety Department

*[Signature]*

ARREST WARRANT NUMBER

MM752937

ACTION OF GRAND JURY

**True Bill**

Foreperson of Grand Jury

MAY 5 2011

Date:

VERDICT

76

Foreperson of Petit Jury  
Date:

DOCKET NO. **42-2354**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 09 2011

TERM

THE STATE

VS.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

A CERTIFIED COPY  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY *[Signature]*  
DATED 6-10-12

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

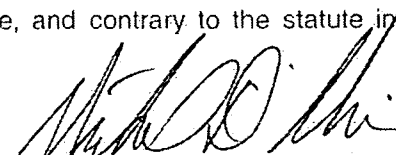
MAY 05 2011

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

**ARMED ROBBERY**

That Xavier Lalord Perry, did in Spartanburg County on or about January 30, 2011, while armed with a pistol, or other 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 reasonably believed to be a deadly weapon, feloniously take from the person or presence of Lil Cricket located at 2053 South Port Rd., Spartanburg, South Carolina, by means of force, violence, and/or intimidation, goods or monies such goods or monies being described as follows: a sum of cash money from the clerk, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

178  
COUNTY OF SPARTANBURG  
STATE VS.  
Xavier Lalord Perry  
AKA:  
Race: BLACK Sex: M Age: 22  
DOB: [REDACTED] SS#: [REDACTED]  
Address: [REDACTED] Ave  
City, State, Zip: Spartanburg SC 29306  
DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4202354  
A/W#: M752937  
Date of Offense: 1/30/2011  
S.C. Code §: 16-11-0330(A)  
CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] MORIN, MICHAEL D SC Bar# 65094 Xavier Perry Defendant [Signature] Attorney for Defendant SC Bar# 1207

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk T. Camp  
Court Reporter: P. Green  
SCCA/217 (03/2011)

Presiding Judge [Signature]  
Judge Code: 2135  
Sentence Date: 7/15/11

WITNESSES

Spartanburg Public Safety Department

*[Signature]*

ARREST WARRANT NUMBER

M125593

ACTION OF GRAND JURY

**True Bill**

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **11-GS-42-3044**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

VS.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

CLASS FEL/A

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY

2011 JUN 21 PM 4:54

M. HOPE BLACKLEY

\* CERTIFIED COPY

CLERK OF COURT

*[Signature]*

SPARTANBURG  
BY: *[Signature]*  
DATE: 6/1/11

H

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF SPARTANBURG )

INDICTMENT

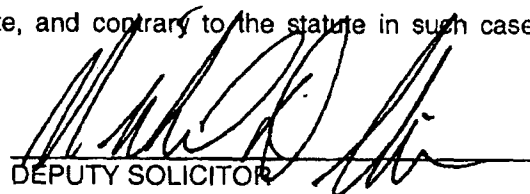
JUN 17 2011

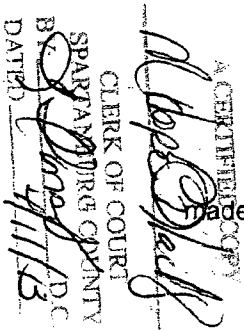
At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That the Defendant, Xavier Perry, did in Spartanburg County, on or about September 3, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Lil Cricket, located at 2053 Southport Rd. SC 29306, by means of force or intimidation goods or monies of Lil Cricket, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), 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

A CERTIFICATE  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY   
DATED 4/11/13

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 STATE VS. )  
 Xavier Lalord Perry )  
 AKA: )  
 Race: BLACK Sex: M Age: 22 )  
 DOB: 11-28-1988 SS#: 200 05 0111 )  
 Address: )  
 City, State, Zip: Spartanburg, SC 29306 )  
 DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4203044  
 A/W#: M125593  
 Date of Offense: 9/3/2010  
 S.C. Code §: 16-11-0330(A)  
 CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTORNEY: MORIN, MICHAEL D 65094 SC Bar# Xavier Perry Defendant John S. Green 1207 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
 \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 56-5-2942(J) (SCCJA Surcharge)	\$5	\$ 5.00
§ 56-5-2942(J) (if paid in installments)		\$ 2.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Presiding Judge \_\_\_\_\_  
 Judge Code: 2135  
 Sentence Date: 7/15/11

BY: [Signature]  
 Clerk of Court Deputy Clerk  
 Court Reporter  
 SCCA 2/17/03/2011

T. Camp  
P. Green

WITNESSES

Spartanburg County Sheriff's Office

*M. H. Blackley*

ARREST WARRANT NUMBER

M125609

ACTION OF GRAND JURY

Foreperson of Grand Jury  
Date:

SENTENCE MADE  
VERDICT  
**Computer**

- 1. REPORT ENDED
- 2. CARD PULLED
- 3. INDEXED
- 4. CHECKED WARRANTS
- 5. CHECKED SIGNATURES

ASSESSMENT BY  
FINE CARD MADE  
**Computer**

TRAFFIC VIOLATIONS COPY

DOCKET NO. **11-GS-42-3069**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

VS.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)  
CDR Code: 139  
Class: FEL/A

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:56  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

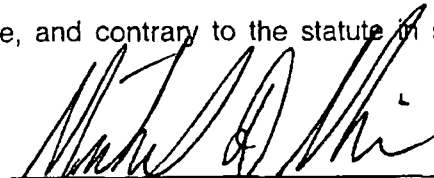
INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That the Defendant, Xavier Perry, did in Spartanburg County, on or about August 31, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Kangaroo Express, by means of force or intimidation goods or monies of Kangaroo Express, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG  
STATE VS.

INDICTMENT/CASE#: 2011GS4203069

Xavier Lalord Perry

A/W#: M125609

AKA:

Date of Offense: 8/31/2010

Race: BLAC Sex: M Age: 22

S.C. Code §: 16-11-0330(A)

DOB: SS#: [REDACTED]

CDR Code #: 0139

Address: [REDACTED]

City, State, Zip: Spartanburg, SC 29306

DL#: SID#:

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Robbery / Armed Robbery; robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45

w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTORNEY: MORIN, MICHAEL D (SC Bar# 65094) Defendant; Attorney for Defendant (SC Bar# 1207)

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: T. Camp  
Court Reporter: P. Green  
SCCA/217 (03/2011)

Presiding Judge: [Signature]  
Judge Code: 2135  
Sentence Date: 7/15/11

185

WITNESSES

Spartanburg County Sheriff's Office

*[Signature]*

ARREST WARRANT NUMBER

M125610

ACTION OF GRAND JURY

*[Signature]*  
Foreperson of Grand Jury  
Date: 6/19/2011

Defendant's Name

Computer

REPORT ENDED

CARD PULLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSIGNED TO JURY

TRAFFIC VIOLATIONS COPY

Computer

DOCKET NO  
11-GS-42-3070

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

vs.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:56  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the Grand  
 Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That the Defendant, Xavier Perry, did in Spartanburg County, on or about September 30, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Lil Cricket, by means of force or intimidation goods or monies of Lil Cricket, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

187

COUNTY OF SPARTANBURG )  
STATE VS. )

INDICTMENT/CASE#: 2011GS4203070

Xavier Lalord Perry )

A/W#: M125610

AKA: )

Date of Offense: 9/30/2010

Race: BLACK Sex: M Age: 22 )

S.C. Code § : 16-11-0330(A)

DOB: [REDACTED] SS#: [REDACTED] )

CDR Code #: 0139

Address: [REDACTED] Ave )

City, State, Zip: Spartanburg, SC 29306 )

DL#: [REDACTED] SID#: [REDACTED] )

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation  Negotiated Sentence  Recommendation by the State.

ATTORNEY: MORIN, MICHAEL D 65094 SC Bar# Xavier Perry Defendant [Signature] Attorney for Defendant [Signature] 1207 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]  
Judge Code: 7  
Sentence Date: 7/15/11

Clerk of Court/ Deputy Clerk T. Camp  
Court Reporter: P. Green

WITNESSES

Spartanburg County Sheriff's Office

*M. H. Blackley*

ARREST WARRANT NUMBER

M125618

ACTION OF GRAND JURY

For person of Grand Jury

Date:

VERDICT  
**Computer**

- 1. REPORT ENDED
- 2. CARD PULLED
- 3. INDEXED
- 4. CHECKED WARRANTS
- 5. CHECKED SIGNATURE

PROCESSMENT BY Jury

DECLINE CARD MADE **Computer**

TRAFFIC VIOLATIONS COPY

DOCKET # **11-GS-42-3072**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

VS.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:56  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

JUN 17 2011

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

**ARMED ROBBERY**

That the Defendant, Xavier Perry, did in Spartanburg County, on or about November 9, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Lil Cricket, by means of force or intimidation goods or monies of Lil Cricket, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG  
STATE VS.

Xavier Lalord Perry

AKA:

Race: BLACK Sex: M Age: 22

DOB: [REDACTED]

Address: [REDACTED]

City, State, Zip: Spartanburg, SC 29306

DL#: SID#:

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: MORIN, MICHAEL D 65094 SC Bar# Defendant Xavier Perry Attorney for Defendant 1207 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk T. Camp  
Court Reporter: P. Green  
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4203072

A/W#: M125618

Date of Offense: 11/9/2010

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or  PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: MORIN, MICHAEL D 65094 SC Bar# Defendant Xavier Perry Attorney for Defendant 1207 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Presiding Judge [Signature]  
Judge Code: 2135  
Sentence Date: 7/15/11

WITNESSES

61

Spartanburg County Sheriff's Office

*J. H. Tillotson*

ARREST WARRANT NUMBER

M125621

ACTION OF GRAND JURY

JUN 20 2011

Foreperson of Grand Jury

Date:

1. REPORT ENDED

VERDICT

**Computer**

2. CARD PULLED

**21**

3. INDEXED

**21**

4. CHECKED WARRANTS

**21**

5. CHECKED SIGNATURE

**21**

FOR ASSESSMENT BY GRAND JURY  
Date: FINE CARD MADE

**Computer**

TR & FINEC VIOLATIONS COPY

DOCKET NO.

**11-GS-42-3075**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

VS.

Xavier Lalord Perry

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class: FEL/A

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY

2011 JUN 21 PM 4:56

H. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

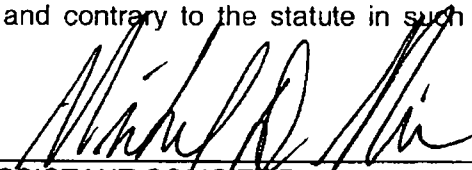
JUN 17 2011

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

**ARMED ROBBERY**

That the Defendant, Xavier Perry, did in Spartanburg County, on or about November 12, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Lil Cricket, by means of force or intimidation goods or monies of Lil Cricket, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 STATE VS. )  
 Xavier Lalord Perry )  
 AKA: )  
 Race: BLACK Sex: M Age: 22 )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: Spartanburg, SC 29306 )  
 DL#: [REDACTED] SID#: [REDACTED] )

IN THE COURT OF GENERAL SESSIONS 193

INDICTMENT/CASE#: 2011GS4203075  
 A/W#: M125621  
 Date of Offense: 11/12/2010  
 S.C. Code § : 16-11-0330(A)  
 CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 65094 [Signature] [Signature] 1307  
 MORIN, MICHAEL D SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 7/15/11  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 days/hours Public Service Employment

Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_  
 § 14-1-206 (Assessments 107.5 %) \_\_\_\_\_ \$ \_\_\_\_\_  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
 § 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 § 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
 § 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
 § 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00  
 3% to County (if paid in installments) \$ 3.90  
 TOTAL \$ 133.90  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk T. Camp  
 Court Reporter: P. Green  
 SCCA/217 (03/2011)

Presiding Judge \_\_\_\_\_  
 Judge Code: 2135  
 Sentence Date: 7/15/11

WITNESSES

Spartanburg County Sheriff's Office

*J.R. Thurston*

ARREST WARRANT NUMBER

M125626

ACTION OF GRAND JURY

**True Bill**

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

194

DOCKET # **M-GS-42-3076**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

vs.

Xavier Lalord Perry

Indictment for

**ARMED ROBBERY**

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:56  
M. HOPE BLACKLEY

A CERTIFIED COPY  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY: *M Hope Blackley*  
DATED 6/21/11

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

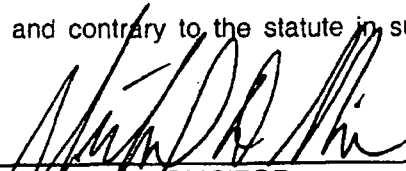
INDICTMENT

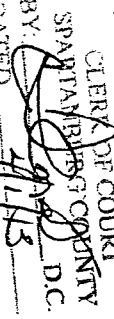
At a Court of General Sessions, convened on JUN 17 2011, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That the Defendant, Xavier Perry, did in Spartanburg County, on or about November 16, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Lil Cricket, by means of force or intimidation goods or monies of Lil Cricket, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

CLERK OF COURT  
SPARTANBURG COUNTY  
D.C.  
BY:   
DATED: 7/1/11  
CERTIFIED COPY

STATE OF SOUTH CAROLINA )
COUNTY OF SPARTANBURG )
STATE VS. )
Xavier Lalord Perry )
AKA: )
Race: Sex: M Age: 22 )
DOB: SS#: 5- )
Address: Ave )
City, State, Zip: Spartanburg, SC 29306 )
DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4203076
A/W#: M125626
Date of Offense: 11/16/2010
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTORNEYS: MORIN, MICHAEL D SC Bar# 65094 Defendant New Perry Attorney for Defendant SC Bar# 1207

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 7/15/11
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (DUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk T. Camp
Court Reporter: P. Green
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2135
Sentence Date: 7/15/11

DATE: 7/15/11