

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

NOV 13 2014

The Honorable George C. James, Jr., Circuit Court Judge **S.C. Supreme Court**

Appellate Case No. 2014-001252

Johnny R. Carraway,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

ALAN WILSON
Attorney General

KATHRINE H. HUDGINS
Appellate Defender

JOSHUA L. THOMAS
Assistant Attorney General
SC Bar No. 100777
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

S. C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1230

ATTORNEYS FOR PETITIONER

ATTORNEY FOR RESPONDENT

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
10-GS-26-01552

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.)
)
 JOHNNY RAY CARRAWAY,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD

NOVEMBER 3, 2010
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, STEVEN H. JOHN, JUDGE

APPEARANCES:

BY: ELIZABETH V. TILLEY, ESQ.
ATTORNEY FOR STATE

BY: JAMES C. GALMORE, OFFICE OF PUBLIC DEFENDER
ATTORNEY FOR JOHNNY RAY CARRAWAY

BRENDA R. BABB
Circuit Court Reporter

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GUILTY PLEA - NOVEMBER 3, 2010

3

1 MS. TILLEY: YOUR HONOR, THIS IS THE STATE V.
2 JOHNNY CARRAWAY. HE IS PLEADING TO A TRUE BILLED
3 INDICTMENT FOR ARMED ROBBERY, TRUE BILL INDICTMENT NUMBER
4 2010-GS-26-1552. THERE'S NO RECOMMENDATION IN THIS CASE.
5 AS YOU'RE AWARE THIS WAS ON THE ROSTER TO BE CALLED ON
6 MONDAY. IT'S MY UNDERSTANDING THAT THE DEFENSE IS READY TO
7 GO FORWARD WITH A GUILTY PLEA WITH NO RECOMMENDATION.

8 THE COURT: THANK YOU, MA'AM.

9 **EXAMINATION OF DEFENDANT CARRAWAY REGARDING RIGHTS**

10 THE COURT: ALL RIGHT, MR. CARRAWAY, YOU COME
11 BEFORE THE COURT PLEADING GUILTY TO THE CRIME OF ARMED
12 ROBBERY; IS THAT CORRECT?

13 DEFENDANT CARRAWAY: YES, SIR.

14 THE COURT: YOU UNDERSTAND THE POTENTIAL
15 SENTENCE HERE COULD GO FROM 10 TO 30 YEARS; YOU UNDERSTAND
16 THAT?

17 DEFENDANT CARRAWAY: YES, SIR.

18 THE COURT: YOU ALSO UNDERSTAND THAT THIS IS
19 LISTED AS A VIOLENT AND A MOST SERIOUS OFFENSE BY THE STATE
20 OF SOUTH CAROLINA; YOU UNDERSTAND THAT?

21 DEFENDANT CARRAWAY: YES, SIR.

22 THE COURT: YOU UNDERSTAND THAT THIS MATTER DOES
23 QUALIFY FOR THE 85 PERCENT SENTENCE; YOU UNDERSTAND THAT?

24 DEFENDANT CARRAWAY: YES, SIR.

25 THE COURT: YOU'VE TALKED ABOUT THAT WITH MR.

GUILTY PLEA - NOVEMBER 3, 2010

4

1 GALMORE, CORRECT?

2 DEFENDANT CARRAWAY: YES, SIR.

3 THE COURT: THAT YOU'D HAVE TO SERVE 85 PERCENT
4 OF YOUR SENTENCE BEFORE YOU'D BE ELIGIBLE FOR PAROLE; YOU
5 UNDERSTAND THAT? SIR?

6 DEFENDANT CARRAWAY: YES, SIR.

7 THE COURT: YOU ALSO UNDERSTAND THAT IT'S LISTED
8 AS A MOST SERIOUS OFFENSE? NOW THE CONSEQUENCE OF THAT IS
9 IF YOU ARE CONVICTED OR PLED GUILTY IN THE FUTURE TO A MOST
10 SERIOUS, ANOTHER MOST SERIOUS OFFENSE, OR YOU HAVE A
11 COMBINATION OF THAT AND TWO OTHER SERIOUS OFFENSES THE
12 STATE CAN ASK FOR LIFE IN PRISON WITHOUT THE POSSIBILITY OF
13 PAROLE; DO YOU UNDERSTAND THAT?

14 DEFENDANT CARRAWAY: YES, SIR.

15 THE COURT: JUST TO USE THIS AS AN EXAMPLE,
16 CAUSE OBVIOUSLY YOU'RE NOT FACING THAT NOW, BUT ARMED
17 ROBBERY CARRIES 10 TO 30 YEARS. IF THIS WAS YOUR SECOND
18 MOST SERIOUS OFFENSE THE STATE COULD BE ASKING FOR LIFE IN
19 PRISON WITHOUT THE POSSIBILITY OF PAROLE EVEN THOUGH THE
20 SENTENCE IS SUPPOSED TO BE 10 TO 30 YEARS; YOU UNDERSTAND
21 THAT?

22 DEFENDANT CARRAWAY: YES, SIR.

23 THE COURT: ALL RIGHT, SIR, THE MATTER COMES
24 BEFORE THE COURT WITHOUT NEGOTIATIONS OR RECOMMENDATIONS AS
25 TO THE SENTENCE; YOU UNDERSTAND THAT?

GUILTY PLEA - NOVEMBER 3, 2010

5

1 DEFENDANT CARRAWAY: YES, SIR.

2 THE COURT: UNDERSTANDING ALL THIS DO YOU WANT
3 TO GO FORWARD WITH YOUR GUILTY PLEA AT THIS TIME?

4 DEFENDANT CARRAWAY: YES, SIR.

5 THE COURT: ARE YOU CURRENTLY UNDER THE
6 INFLUENCE OF ANY DRUGS OR INTOXICANTS OF ANY KIND OR
7 CURRENTLY HAVE THEM IN YOUR SYSTEM?

8 DEFENDANT CARRAWAY: NO, SIR.

9 THE COURT: ARE YOU SUFFERING FROM ANY KIND OF
10 PHYSICAL, MENTAL, EMOTIONAL PROBLEM THAT WOULD KEEP YOU
11 FROM UNDERSTANDING WHAT WE'RE DOING HERE TODAY?

12 DEFENDANT CARRAWAY: NO, SIR.

13 THE COURT: WHEN YOU PLEAD GUILTY YOU GIVE UP
14 CERTAIN CONSTITUTIONAL RIGHTS, AMONG THOSE ARE THE RIGHT TO
15 REMAIN SILENT SO WHEN YOU SPEAK TO ME YOU GIVE THOSE RIGHTS
16 UP; YOU UNDERSTAND THAT?

17 DEFENDANT CARRAWAY: YES, SIR.

18 THE COURT: OTHER RIGHTS ARE THE PRESUMPTION OF
19 INNOCENCE, THE RIGHT AGAINST SELF INCRIMINATION AT A TRIAL.
20 THE STATE HAS TO PROVE YOUR GUILT BEYOND A REASONABLE
21 DOUBT. WHEN YOU PLEAD GUILTY YOU GIVE THOSE RIGHTS UP; YOU
22 UNDERSTAND THAT?

23 DEFENDANT CARRAWAY: YES, SIR.

24 THE COURT: YOU ARE ENTITLED TO A JURY TRIAL.
25 TWELVE MEN AND WOMEN WOULD LOOK AT THE FACTS PRESENTED BY

GUILTY PLEA - NOVEMBER 3, 2010

6

1 THE STATE TO SEE IF THERE ARE INDEED ENOUGH FACTS TO PROVE
2 YOU GUILTY BEYOND A REASONABLE DOUBT. WHEN YOU PLEAD
3 GUILTY YOU GIVE THOSE RIGHTS UP; YOU UNDERSTAND THAT?

4 DEFENDANT CARRAWAY: YES, SIR.

5 THE COURT: IN THAT JURY TRIAL YOU HAVE THE
6 RIGHT TO CONFRONT YOUR ACCUSERS SO WITH YOUR ATTORNEY YOU
7 COULD QUESTION THE WITNESSES AND THE EVIDENCE PRESENTED BY
8 THE STATE AND IF YOU WANTED TO YOU COULD PRESENT A DEFENSE.
9 YOU COULD TESTIFY; YOU COULD CALL WITNESSES ON YOUR OWN
10 BEHALF, BUT WHEN YOU PLEAD GUILTY YOU GIVE THOSE RIGHTS UP;
11 YOU UNDERSTAND THAT?

12 DEFENDANT CARRAWAY: YES, SIR.

13 THE COURT: NOW WHEN YOU PLEAD GUILTY YOU GIVE
14 UP, I'M SORRY, YOU'RE PLEADING GUILTY HERE TO THE CRIME OF
15 ARMED ROBBERY. ARE YOU PLEADING GUILTY TO THAT CRIME
16 FREELY AND VOLUNTARILY?

17 DEFENDANT CARRAWAY: YES, SIR.

18 THE COURT: OF YOUR OWN FREE WILL AND ACCORD?

19 DEFENDANT CARRAWAY: YES, SIR.

20 THE COURT: PLEADING GUILTY BECAUSE YOU ARE
21 GUILTY OF THIS CRIME?

22 DEFENDANT CARRAWAY: YES, SIR.

23 THE COURT: DID ANYBODY PROMISE YOU ANYTHING OR
24 THREATEN YOU OR FORCE YOU IN ANY WAY TO GET YOU TO PLEAD
25 GUILTY?

GUILTY PLEA - NOVEMBER 3, 2010

7

1 DEFENDANT CARRAWAY: NO, SIR.

2 THE COURT: NOW YOU'RE HERE WITH YOUR ATTORNEY
3 MR. GALMORE, IS THAT RIGHT?

4 DEFENDANT CARRAWAY: YES, SIR.

5 THE COURT: DID YOU TELL HIM EVERYTHING YOU
6 NEEDED TO TELL HIM ABOUT THIS CASE?

7 DEFENDANT CARRAWAY: YES, I HAVE.

8 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO
9 HIM?

10 DEFENDANT CARRAWAY: YES, I HAVE.

11 THE COURT: DO YOU NEED ANY MORE TIME TO TALK TO
12 HIM?

13 DEFENDANT CARRAWAY: NO, SIR.

14 THE COURT: ARE YOU SATISFIED WITH HIS HELP AND
15 REPRESENTATION?

16 DEFENDANT CARRAWAY: YES, I AM.

17 THE COURT: ANY COMPLAINTS ABOUT HIS HELP AND
18 REPRESENTATION?

19 DEFENDANT CARRAWAY: NO, SIR.

20 THE COURT: DO YOU BELIEVE HE'S DONE EVERYTHING
21 YOU'VE EXPECTED OF HIM THAT YOU WANTED HIM TO DO TO TRY TO
22 HELP YOU IN THIS CASE?

23 DEFENDANT CARRAWAY: YES, SIR.

24 THE COURT: ALL RIGHT, MR. GALMORE, YOU
25 REPRESENT THE INTEREST OF YOUR CLIENT MR. CARRAWAY IN THIS

GUILTY PLEA - NOVEMBER 3, 2010

8

1 MATTER?

2 MR. GALMORE: YES, SIR.

3 THE COURT: HE COMES BEFORE THE COURT TO TENDER
4 HIS PLEA OF GUILTY TO THE OFFENSE NAMED; DO YOU CONCUR?

5 MR. GALMORE: YES, SIR.

6 THE COURT: AND DO YOU BELIEVE HE'S COME BEFORE
7 THE COURT OF HIS OWN FREE WILL AND ACCORD?

8 MR. GALMORE: YES, SIR.

9 THE COURT: HAVE YOU EXPLAINED TO HIM HIS
10 CONSTITUTIONAL RIGHTS, ANY DEFENSES HE MIGHT HAVE, AS WELL
11 AS THE INFORMATION, THE EVIDENCE IN THE POSSESSION OF THE
12 STATE?

13 MR. GALMORE: YES, SIR.

14 THE COURT: THANK YOU VERY MUCH, ALL RIGHT,
15 SOLICITOR, THE FACTS OF THE CASE, PLEASE, MA'AM.

16 MS. TILLEY: ON JANUARY 11TH OF 2010 OFFICERS OF
17 THE MYRTLE BEACH POLICE DEPARTMENT RECEIVED A COMPLAINT OF
18 AN ARMED ROBBERY AT 2006 NORTH OCEAN BOULEVARD HERE IN
19 Horry COUNTY. FURTHER INVESTIGATION REVEALED THAT THE
20 DEFENDANT ENTERED THE MOTEL AND BRANDISHED A FIREARM AND
21 DEMANDED THE VICTIM TO GIVE HIM ALL HIS MONEY, ALL THE
22 HOTEL'S MONEY. THE VICTIM FURTHER STATED ABOVE THAT THE
23 DEFENDANT TOOK THE MONEY AND LEFT. THE DEFENDANT WAS
24 LOCATED A SHORT TIME LATER AND HAD IN HIS POSSESSION THE
25 CLOTHING ITEMS THAT MATCHED AS WELL AS THE BANK BAG TAKEN

GUILTY PLEA - NOVEMBER 3, 2010

9

1 DURING THE ROBBERY AND THE VICTIM ALSO POSITIVELY
2 IDENTIFIED THE DEFENDANT.

3 THOSE ARE, ALSO, YOUR HONOR, THERE WAS A
4 CONFESSION. THESE ARE THE FACTS THAT WOULD BE PRESENTED AT
5 TRIAL AND ALSO THE DEFENDANT HAS A PRIOR RECORD.

6 THE COURT: AND WHAT MIGHT THAT BE, PLEASE,
7 MA'AM?

8 MS. TILLEY: YOUR HONOR, HE HAS PRIOR RECORDS
9 FROM FOUR DIFFERENT STATES. IN SOUTH CAROLINA IN '89 A
10 TRESPASS AFTER WARNING; IN 2006 A SHOPLIFTING; IN 2007 A
11 SHOPLIFTING; ALSO IN NEW JERSEY IN '83 POSSESSION OF
12 MARIJUANA; '84 BURGLARY AND LARCENY; '85 LARCENY; IN
13 FLORIDA '92 GRAND THEFT AUTO; '93 GRAND THEFT, SIMPLE
14 POSSESSION OF MARIJUANA, DISTRIBUTION OF COCAINE, A FAILING
15 TO APPEAR AND PETTY THEFT; IN '94 POSSESSION OF COCAINE; IN
16 '99 A DRIVING WHILE SUSPENDED, A TRESPASS AND A HABITUAL
17 TRAFFIC OFFENDER OFFENSE; IN 2001 A CRIMINAL MISCHIEF; IN
18 2003 A PROBATION VIOLATION; IN 2008 A PETTY THEFT FIRST
19 DEGREE; AND IN NORTH CAROLINA IN 2007 THERE WAS A COMMON
20 LAW ROBBERY.

21 ALSO I'D LIKE TO MAKE THE COURT AWARE THAT THE
22 VICTIM IN THIS CASE, CRYSTAL DEAR, IS HERE FROM ARKANSAS.
23 SHE HAS BEEN HERE SINCE MONDAY. I DON'T BELIEVE AT THIS
24 TIME SHE WISHES TO ADDRESS THE COURT.

25 ALSO HERE IS DETECTIVE CURRY FROM THE MYRTLE

GUILTY PLEA - NOVEMBER 3, 2010

10

1 BEACH POLICE DEPARTMENT WHO WORKED THAT CASE. HE'S BEEN
2 HERE THIS MORNING AND ALSO MONDAY MORNING ALONG WITH AGENT
3 RANDY MILLER AND OFFICER K.J. MANN, AND CSU AGENT
4 WILLIAMSON. THEY WERE HERE THIS MONDAY AND THEY WOULD HAVE
5 ADDRESSED THE COURT BUT THEY CANNOT BE HERE TODAY BUT
6 DETECTIVE CURRY IS BUT I DON'T BELIEVE HE WISHES TO ADDRESS
7 THE COURT AT THIS TIME.

8 THE COURT: ALL RIGHT, THANK YOU, MA'AM. ALL
9 RIGHT, MR. CARRAWAY, YOU HEARD THOSE FACTS STATED BY THE
10 SOLICITOR, FURTHER THOSE ARE THE FACTS THAT ARE SET FORTH
11 IN YOUR INDICTMENT. ARE THOSE FACTS TRUE AND CORRECT?

12 DEFENDANT CARRAWAY: YES, SIR.

13 THE COURT: AND YOU UNDERSTOOD WHEN YOU ENGAGED
14 IN THOSE KIND OF ACTIVITIES YOU WERE COMMITTING A CRIME;
15 YOU UNDERSTOOD THAT?

16 DEFENDANT CARRAWAY: YES, SIR.

17 THE COURT: HAVE YOU UNDERSTOOD MY QUESTIONS
18 HERE TODAY?

19 DEFENDANT CARRAWAY: YES, I HAVE.

20 THE COURT: HAVE ALL YOUR ANSWERS BEEN THE
21 TRUTH?

22 DEFENDANT CARRAWAY: YES.

23 THE COURT: ANYBODY TELL YOU HOW TO ANSWER MY
24 QUESTIONS?

25 DEFENDANT CARRAWAY: NO.

GUILTY PLEA - NOVEMBER 3, 2010

11

1 THE COURT: AND YOU UNDERSTAND YOU HAVE THE
2 RIGHT TO APPEAL YOUR GUILTY PLEA WITHIN 10 DAYS?

3 DEFENDANT CARRAWAY: YES.

4 THE COURT: I FIND THERE'S BEEN A SUBSTANTIAL
5 FACTUAL BASIS FOR THE PLEA. I FIND THE DEFENDANT'S
6 DECISION TO PLEAD GUILTY HAS BEEN DONE FREELY AND
7 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE. HE'S HAD
8 THE ADVICE OF COMPETENT COUNSEL WITH WHOM HE'S SATISFIED,
9 THEREFORE, MR. CARRAWAY'S DECISION TO PLEAD GUILTY TO THE
10 CRIME OF ARMED ROBBERY IS ACCEPTED.

11 ALL RIGHT, MR. GALMORE, I'LL BE GLAD TO HEAR FROM
12 YOU, SIR?

13 MR. GALMORE: YES, SIR, YOUR HONOR, MR. CARRAWAY
14 IS 46 YEARS OLD.

15 DEFENDANT CARRAWAY: FORTY-SEVEN.

16 MR. GALMORE: FORTY-SEVEN, HE'S SINGLE AND HAS
17 SIX CHILDREN. HE IS FROM DARLINGTON COUNTY, YOUR HONOR,
18 AND JUST RECENTLY STARTED LIVING HERE IN HORRY COUNTY. HE
19 HAS HIS HIGH SCHOOL EDUCATION. HE TELLS ME THAT HE WAS IN
20 SOME SPECIAL EDUCATION CLASSES.

21 YOUR HONOR, HE HAS WORKED AS A COOK MOST OF HIS
22 LIFE. HE'S WORKED AT DENNY'S AND GOLDEN CORRAL,
23 PICADILLYS. YOUR HONOR, THERE HAS BEEN, THERE IS A MENTAL
24 HEALTH COMPONENT TO MR. CARRAWAY'S CHARACTER, WOULD NOT TRY
25 TO PUT THAT OUT THERE AS AN EXCUSE OR A DEFENSE OR

GUILTY PLEA - NOVEMBER 3, 2010

12

1 ANYTHING, BUT HE HAS SEEN, HE HAS BEEN SEEN AT SEVERAL
2 MENTAL HOSPITALS THROUGHOUT HIS LIFE. HE TELLS ME THAT
3 THERE'S BEEN PERHAPS 17 VARIOUS COMMITMENTS AT VARIOUS
4 TIMES.

5 YOUR HONOR, HE HAS BEEN AT THE DETENTION CENTER
6 NOW SINCE JANUARY 11TH OF THIS YEAR, THAT'S 296 DAYS. WHAT
7 HAPPENED, YOUR HONOR, IS THAT HE WAS, HE AND A LADY FRIEND
8 WERE LIVING IN THE HOTEL ROOM VERY CLOSE TO BREAKERS
9 RESORT. THEY HAD GOTTEN BEHIND ON THEIR RENT AND HE WAS, I
10 GUESS HE DESCRIBED AS DRINKING AND GETTING HIGH THAT DAY,
11 AND NEEDED TO DO SOMETHING ABOUT THE RENT. HE HAD IN HIS
12 POSSESSION A FLARE GUN AND WENT OVER TO THE BREAKERS RESORT
13 AND HELD THE HOTEL UP FOR, FOR THE MONEY BAG. JUST TO LET
14 THE COURT KNOW THERE WASN'T A POINTING OF THE FLARE GUN, IT
15 WAS MORE OF A PRESENTING. WE EXAMINED THE VIDEO, HE DID
16 PULL OUT THE GUN AND DISPLAYED IT AND KIND OF LAID IT ON
17 THE COUNTER, BUT IT WASN'T WHAT WE MIGHT PERCEIVE FROM,
18 FROM TELEVISION OR THINGS LIKE THAT.

19 AFTER, AFTER HE GOT THE MONEY THE POLICE OFFICERS
20 WENT TO THE HOTEL. THEY GOT A DESCRIPTION OF THE CLOTHING
21 AND THEY PRETTY MUCH JUST LOOKED UP AND DOWN THE STREET AND
22 SAW A PERSON SIMILARLY DRESSED AND IDENTIFIED HIM BASED ON
23 THAT. ONCE THEY WENT OVER AND CONFRONTED MR. CARRAWAY
24 ABOUT WHAT HAPPENED HE DID GIVE A CONFESSION. IN VERY
25 SHORT ORDER HE ADMITTED HIS INVOLVEMENT AND HE WAS ARRESTED

GUILTY PLEA - NOVEMBER 3, 2010

13

1 PROBABLY WITHIN 30 MINUTES OF WHEN, WHEN THE ROBBERY TOOK
2 PLACE.

3 YOUR HONOR, JUST TO LET THE COURT KNOW THIS IS AN
4 85 PERCENT OFFENSE AND WHATEVER TIME THE COURT IMPOSES HE'S
5 GOING TO HAVE TO DO A SIGNIFICANT PORTION OF THAT TIME.
6 YOUR HONOR, WE ARE ASKING THE COURT TO CONSIDER A MINIMUM
7 10-YEAR SENTENCE ON THIS CASE. MR. CARRAWAY AGAIN
8 CONFESSED, YOU KNOW, WITHIN 30 MINUTES OF THE ROBBERY.
9 HE'S NEVER ASKED FOR A TRIAL IN THIS MATTER. AS RECENTLY
10 AS OCTOBER 25TH, JUST ABOUT 10 DAYS AGO, HE TOLD ME TO LET
11 THE SOLICITOR'S OFFICE KNOW THAT HE WANTED TO PLEAD TO THE
12 CHARGE AND I DID SO ON HIS BEHALF. SO JUST TO LET THE
13 COURT KNOW HE WASN'T, HE HASN'T BEEN TRYING TO WASTE
14 ANYONE'S TIME WITH ANY OF THIS. HE ADMITTED FROM DAY ONE
15 THAT HE WAS RESPONSIBLE FOR WHAT HAPPENED, HE'S ADMITTING
16 HERE TODAY THAT HE'S RESPONSIBLE FOR WHAT HAPPENED. WE'D
17 ASK YOU TO CONSIDER THAT, YOU KNOW, IF THE COURT GIVES HIM
18 THE MINIMUM SENTENCE OF 10 YEARS HE IS GOING TO HAVE TO DO
19 85 PERCENT OF IT SO HE IS GOING TO SPEND A SIGNIFICANT
20 PERIOD OF TIME IN JAIL. WE'D JUST ASK FOR THE MERCY OF THE
21 COURT IN THIS REGARD.

22 THE COURT: ALL RIGHT, PREVIOUSLY THE COURT
23 ISSUED AN ORDER FOR AN EVALUATION, WAS ONE EVER DONE?

24 MR. GALMORE: YES, SIR, THE EVALUATION WAS DONE,
25 IT CAME BACK COMPETENT TO STAND TRIAL.

GUILTY PLEA - NOVEMBER 3, 2010

14

1 THE COURT: ALL RIGHT, IS THERE, DO WE HAVE A
2 COPY OF IT ANYWHERE, SOLICITOR?

3 MS. TILLEY: YES, YOUR HONOR, YOU WERE THE JUDGE
4 THAT PRESIDED OVER THE HEARING TO HAVE HIM EVALUATED AND
5 ALSO WHEN HE CAME BACK HE WAS, THIS ISSUE WAS BROUGHT
6 BEFORE YOU TO MAKE SURE THERE WERE NO ISSUES IN COMPETENCY
7 IN TERMS OF TRIAL. IT WAS AT THAT POINT WE THOUGHT IT WAS
8 GOING TO BE A TRIAL. I HAVE A COPY OF THE ORDER.

9 THE COURT: THE EVALUATION, OKAY, CAUSE I'VE GOT
10 THE CLERK'S FILE, I'VE GOT A COPY OF THE ORDER. I JUST
11 DON'T HAVE A COPY OF THE EVALUATION, SO I'D LIKE TO MAKE
12 THAT, IS THERE ANY PROBLEM WITH MAKING THAT A PART OF THE
13 RECORD, MR. GALMORE?

14 MR. GALMORE: NO, SIR.

15 THE COURT: AND THIS IS THE EVALUATION OF THE
16 DEPARTMENT OF MENTAL HEALTH AND DATED THE EVALUATION WAS
17 AUGUST 25TH, 2010, SIGNED BY JESSE A. RALEY, M.D., FORENSIC
18 PSYCHIATRY FELLOW AT THE UNIVERSITY OF SOUTH CAROLINA
19 SCHOOL OF MEDICINE.

20 IN THIS PARTICULAR MATER AND AS YOU DID INDICATE,
21 MR. GALMORE, THEY DID FIND HIM COMPETENT TO STAND TRIAL,
22 THAT THEY DID NOT FIND HIM, THE DEFENDANT CURRENTLY
23 EXPERIENCING ANY SYMPTOMS OF MENTAL ILLNESS OR DEFICITS
24 THAT WOULD COMPROMISE HIS PRESENT CAPACITY TO UNDERSTAND
25 THE PROCEEDING AGAINST HIM OR ASSISTING IN HIS DEFENSE AND

GUILTY PLEA - NOVEMBER 3, 2010

15

1 HE HAS THE SUFFICIENT FACTUAL KNOWLEDGE OF THE LEGAL SYSTEM
2 AND A PRESENT RATIONALABILTY TO CONSULT WITH HIS ATTORNEY
3 REGARDING THE DEFENSE AND THAT, THEREFORE, IT'S OPINED THAT
4 MR. CARRAWAY IS CURRENTLY COMPETENT TO STAND TRIAL.

5 ALL RIGHT, 2010-GS-26-1552, AND I'M SORRY,
6 SOLICITOR, YOU INDICATED TO ME THAT NEITHER THE VICTIM OR
7 THE REPRESENTATIVE POLICE OFFICE WANTED TO ADDRESS THE
8 COURT. DO YOU NEED TO CHECK WITH THEM AGAIN TO MAKE SURE?

9 MS. TILLEY: NO, YOUR HONOR, THEY JUST WANTED TO
10 BE HERE TO WATCH.

11 THE COURT: VERY GOOD. I JUST WANTED TO MAKE
12 SURE, THOUGH, THAT THEY HADN'T CHANGED THEIR MIND AND
13 WANTED TO ADDRESS TO COURT, THANK YOU.

14 MS. TILLEY: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT, 2010-GS-26-1552 THE STATE
16 OF SOUTH CAROLINA COUNTY OF HORRY V. JOHNNY RAY CARRAWAY
17 REGARDING ARMED ROBBERY THE SENTENCE OF THE COURT IN THIS
18 PARTICULAR MATTER, I HEARD FROM THE STATE AND THE DEFENSE
19 AND UNDERSTAND THE MATTERS PRESENTED BY THE DEFENSE. THE
20 COURT TAKES INTO CONSIDERATION MR. CARRAWAY'S RECORD,
21 THOUGH THE MAJORITY OF IT DOES NOT SEEM TO BE OF AN
22 EXTREMELY SERIOUS MATTER, THE MULTIPLICITY OF CRIMES
23 OBVIOUSLY IS OF CONCERN TO THE COURT IN THIS PARTICULAR
24 MATTER, THEREFORE, THE DEFENDANT IS COMMITTED TO THE STATE
25 DEPARTMENT OF CORRECTIONS FOR A DETERMINATE TERM OF 18

GUILTY PLEA - NOVEMBER 3, 2010

16

1 YEARS. THE DEFENDANT IS GIVEN CREDIT FOR THE TIME HE HAS
2 ALREADY SERVED, THANK YOU VERY MUCH.

3 MS. TILLEY: THANK YOU.

4 END OF REQUESTED TRANSCRIPT.....

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR Horry COUNTY, SOUTH CAROLINA.

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

March 11, 2011

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

18
Original

STATE OF SOUTH CAROLINA)
County of HORRY)
#543576)

Johnny RAY CARRAWAY)
Full name and prison number, if any, of applicant.)

v.)

County of HORRY)
Name of Respondent General sessions)
FIFTEENTH JUDICIAL CIRCUIT)

In the Court of Common Pleas

APPLICATION FOR

POST-CONVICTION RELIEF

2011-155

FILED
HORRY COUNTY
2011 JAN -6 PM 1:28
MELANIE HUBBINS-WARD
CLERK OF COURT

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention Kirkland Correctional Institution

2. Name and location of Court which imposed sentence HORRY COUNTY COURT OF
General sessions - FIFTEENTH JUDICIAL CIRCUIT - 1301 Second Ave Conway
S.C. 29586

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

- (a) 2010-GS-2601553
- (b) S.C. code 16-11-0330(A)
- (c) CDR code #0139

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

- (a) NOVEMBER 4TH 2010
- (b) 18 year sentence
- (c) FINES TOTAL 173.90

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Imposition of sentence / yes I have

7. If you answered "yes" to (6), list

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

- i. Attorney General's office
- ii. Clerk of Courts Court of Appeals
- iii. Horry County Clerk of Courts

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

- i. Horry county clerk of court Forwarded copy of
- ii. LETTER TO SOLICITOR'S OFFICE AND TO THE ATTORNEY IN
- iii. THE CASE AND I HAVE FILED FOR P.C.R.

(c) the date of each such result:

- i. LETTER RECEIVED FROM Horry county clerk OF COURT
- ii. 12-18-2010
- iii. P.C.R Filed on 12-20-2010 (mailed Date)

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

- i. NONE AT THIS TIME
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

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

- (a) OFFER WAS made FROM SOLICITOR'S OFFICE
- (b) PRIOR TO my guilty plea and sentence and I WAS
- (c) NOT INFORMED OF such OFFER

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) OFFER WAS MADE ON 3-12-2010 FROM SOLICITORS OFFICE WITH A DEADLINE DATE OF 5-7-10 / 10 YEARS TO SERVE
- (b) MY LAWYER NEVER GAVE ME THE OFFER AND I NEVER SIGNED THE OFFER - TRIAL OR GUILTY PLEA
- (c) IF I HAD KNOWN OF THIS OFFER, I WOULD NOT HAVE BEEN IN COURT ON 11-4-10 PLEADING GUILTY TO 10 YEARS

11. Prior to this application have you filed with respect to this conviction no

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? yes
POST CONVICTION RELIEF
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) no
- (d) any other petitions, motions or applications in this or any other Court? yes
Horry County, FIFTEENTH JUDICIAL CIRCUIT COURT

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. P.C.R on Sentence
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Horry County, FIFTEENTH JUDICIAL CIRCUIT COURT
 - ii. 1301 Second Ave
 - iii. CONWAY S.C. 29526
 - iv. _____
- (c) the disposition thereof:
 - i. none at this time
 - ii. _____
 - iii. _____
 - iv. _____

(d) the date of each such disposition:

- i. None at this time
- ii. _____
- iii. _____
- iv. _____

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

- i. None at this time
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) I was made a offer on 3-12-2010 but was never told
- (b) of offer, I believe the court was not made aware of
- (c) offer prior to my sentencing on 11-4-10

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

- (a) your arraignment and plea? YES - Public Defenders Office
- (b) your trial, if any? _____
- (c) your sentencing? YES - Public Defenders Office
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes - S.C. Commission on Independent

Defence / Division of Appellate Defense
D.O. Box 11588, Columbia S.C. 29211-1588

17. If you answered "yes" to one or more parts of (16), list:

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

i. James Galmore Public Defenders Office Horry County

ii. 203 Laurel St Conway, S.C. 29526

iii. S.C. Commission on Indigent Defence - Division of Appellate

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

i. Defence, P.O. BOX 11589 Columbia S.C. 29211-1589

ii. James Galmore/P.D.O. - arraignment and plea

iii. and plea of guilty and sentencing /

S.C. Commission on Indigent Defence on P.C.R.

18. State clearly the relief you seek in filing this application.

Respectfully Request That the offer made to me
on 3-12-2010 be given on the grounds that I was not told of this

19. Are you now under sentence from any other court that you have not challenged? no

18. offer, if I was made aware of such a offer
By my lawyer Mr. Galmore I would have taken
the offer and not have been given 18 years on
11-11-2010. Mr. Galmore sent me a copy of this
offer after the fact when I was here at Department
of Corrections. I would have never known of
this offer if Mr. Galmore did not send me a
copy, for that I am grateful.

261-155

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

VERIFICATION

I, Johnny Ray Carraway, 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.

[Signature]

Sworn to and subscribed before me
This 26th day of December, 2010.

[Signature] L.S.
Notary Public for South Carolina
My Commission Expires 10/8/2014

FILED
Horry COUNTY
2011 JAN -6 PM 1:28
KELANIE HIGGINS-WARD
CLERK OF COURT

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

I, Johnny Ray Carraway, 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 or 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 proceeding or give security therefor.

[Signature]
Applicant

Sworn to and subscribed before me
This 26th day of December, 2010.

[Signature] L.S.
Notary Public for South Carolina
My Commission Expires: 10/8/2014

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
)
 Johnny Ray Carraway, # 343576,)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-0155

RETURN
(Attorney Appointment Requested)

Respondent, making its Return to the Application for post-conviction relief filed January 6, 2011, by Johnny Ray Carraway, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in March 2010 for armed robbery (2010-GS-26-1552).¹ He was represented by James C. Galmore, Esquire. On November 3, 2010, the Applicant pled guilty before the Honorable Steven H. John. Judge John sentenced the Applicant to eighteen (18) years. A direct appeal was filed, but the appeal was dismissed pursuant to Rule 203(d)(1)(B)(iv), SCACR, on or about December 10, 2010. The matter was remitted to the circuit court on or about January 12, 2011.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction. The Applicant’s SCDC records and the guilty plea transcript will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. –Allegations and Relief Sought

In his Application, Mr. Carraway alleges that his custody is unlawful for the following reason(s):

¹ The PCR Application incorrectly lists the indictment number as 2010-GS-26-1553 instead of –1552.

- (1) Offer was made from solicitor's office on 3-12-10 with a deadline date of 5-7-10 for 10 years to serve. My lawyer never gave me the offer and I never signed the officer – trial or guilty plea. If I had known of this offer, I would not have been in court in November 2010 pleading guilty to 18 years.

The Applicant stated that he is seeking to have the offer made on 3-12-10 (for a ten-year sentence) be given to him.

The Applicant submitted an **Amended Application** which was filed on February 16, 2011.² In this Amended Application, Mr. Carraway raised the following allegations:

- (1) Ineffective assistance of counsel:
 - a. failed to properly review the Applicant's arrest warrant to determine that it was invalid;
 - b. failed to file the appropriate preliminary hearing request and motions on behalf of the Applicant;
 - c. failing to periodically update the Applicant on his case development which resulted in the Applicant not receiving knowledge of the State's plea offer for 10 years; and
 - d. failing to negotiate with the State and transmit the 3/12/10 plea offer to the Applicant.

He states that his guilty plea must be overturned based upon his claims of ineffective assistance of counsel.

III.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where an 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).

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's

² Attached to his Amended Application was a "Motion for Discovery." Generally, there is no discovery in PCR. The State objects to the Motion until such time as the Applicant establishes "good cause" for discovery pursuant to S.C. Code Ann. § 17-27-150(A) and obtains a court order setting forth the parameters of any such discovery.

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); Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). However, a guilty plea is a solemn, judicial admission of the truth of the charges against a defendant. Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during the plea will be considered conclusive unless the defendant presents persuasive reasons why he should be allowed to depart from the truth of those statements. See Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record will support that the Applicant's guilty plea was freely and voluntarily given, and that the Applicant did not receive ineffective assistance of counsel. Nevertheless, the allegations may raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve any issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. – The Relief Sought is not Available under Davie v. State

Even assuming that the Applicant's first allegation is true, i.e., that counsel failed to inform him of a prior more favorable plea offer, the Applicant cannot be "given back" the previous plea offer. The solicitor cannot be compelled to reinstate the prior offer, nor can a trial judge be required to accept it. Davie v. State, 381 S.C. 601, 616, 675 S.E.2d 416, 424 (2009). At best, the Applicant could receive a new sentencing hearing. See id.

V.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is hereby DENIED.

VI.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held.

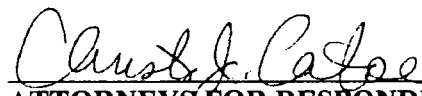
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

March 3, 2011

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF HORRY) CASE NO: 2011-CP-26-155
PCR HEARING

B E F O R E: The Honorable George C. James
March 17, 2014

JOHNNY R. CARRAWAY,
Claimant/Applicant,

vs.

ORIGINAL

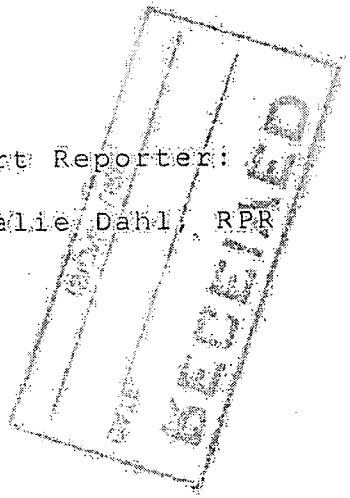
STATE OF SOUTH CAROLINA,
Respondent.

APPEARANCES:

Daniel A. Selwa, II, Esq.
For the Claimant/Applicant.

Joshua L. Thomas, Esq.
For the Respondent.
(Office of the Attorney General)

Court Reporter:
Natalie Dahl, RPR



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I N D E X

WITNESS

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JAMES GALMORE, ESQ.

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EXHIBITS

APPLICANT'S

MARKED

ADMITTED

1 Plea offer dated 3/12/10 9 30

CALL OF THE CASE
P R O C E E D I N G S

1

2

THE COURT: This was a plea?

3

MR. THOMAS: It was. It was a November 3 --

4

THE COURT: Let's wait for him to get out.

5

(Whereupon, Mr. Carraway enters the courtroom.)

6

THE COURT: 2011-CP-26-0155, Johnny Ray Carraway.

7

Mr. Thomas.

8

MR. THOMAS: Your Honor, this is a November 2010

9

plea in front of Judge John for armed robbery. He got

10

18 years. He filed this PCR in January of 2011

11

alleging a failure to convey a plea offer, failure to

12

investigate and failure to request a preliminary

13

hearing. He's represented by Daniel Selwa.

14

THE COURT: Mr. Selwa, you are going to go

15

forward on all those grounds?

16

MR. SELWA: No, Your Honor. We'll focus the main

17

claim to failure to deliver a plea offer.

18

THE COURT: Okay.

19

MR. SELWA: I would call Johnny Carraway to the

20

stand.

21

(JOHNNY CARRAWAY, having been duly sworn,

22

testified as follows:)

23

THE CLERK: State your name and spell your

24

last.

25

THE WITNESS: Johnny Ray Carraway,

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA
1 C-A-R-R-A-W-A-Y.

2 DIRECT-EXAMINATION

3 BY MR. SELWA:

4 Q Mr. Carraway, what were you charged with in 2010?

5 A Strong arm robbery.

6 Q Did you have a trial on that?

7 A No, sir.

8 Q Pled guilty?

9 A Yes, sir.

10 Q What did you plead guilty to?

11 A Strong arm robbery.

12 Q So you pled guilty to exactly what you were
13 charged with?

14 A Yes.

15 Q Who represented you for that?

16 A Mr. Gilmore (sic).

17 Q Mr. Galmore?

18 A Yes.

19 Q How many times did you get to meet with Mr.
20 Galmore?

21 A Two, three times.

22 Q Do you think that you had sufficient time to talk
23 with him about your case?

24 A Not really.

25 Q In your conversations with him, did he discuss

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 the elements of the crime and the evidence against you?

2 A He spoke to me about the charges that I was
3 facing, but he never told me anything other than that,
4 just said that we got to wait to go to court.

5 Q Did he go over any of the evidence that the
6 prosecutor had in their case?

7 A No.

8 Q So you didn't see any evidence in the case?

9 A No.

10 Q At any point did you start questioning what the
11 evidence was?

12 A Well, I was -- it was already cut and dry. It
13 was on video camera.

14 Q So he did discuss some part of the evidence?

15 A Right.

16 Q That was a video?

17 A Yes.

18 Q Did you actually get to see the video?

19 A Yes.

20 Q Based on that video, was that the basis of you
21 wanting to plea?

22 A Yes.

23 Q Tell me about how your plea went.

24 A I just -- he came and seen me and told me I'm
25 going to court, and I asked him what for, and he said

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 he didn't know. I stood there and the judge asked
2 me -- he said -- read the case and everything and asked
3 me how do I plead, and I said I plead guilty.

4 Q When was this?

5 A This was in November 2010. He said that he gave
6 me 18 years. I said, 18 years? First, I asked
7 Mr. Gilmore (sic) what was we here for, and he told me
8 he didn't know.

9 Q Did he explain the plea process to you?

10 A No.

11 Q At any point during the plea did you stand up and
12 say, Hey, Your Honor, I didn't realize that I was going
13 forward, I'm not ready to plead guilty?

14 A No. He just told the judge that I have five kids
15 and a wife.

16 Q What were you sentenced to?

17 A Eighteen years.

18 Q Did you appeal that?

19 A Yes.

20 Q Did the judge ask you all kinds of questions
21 about whether you were doing the plea freely and
22 voluntarily?

23 A Yes.

24 Q Were you?

25 A Yes.

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 Q Were you under the influence of any intoxicants?

2 A No.

3 Q Had you had enough time with your attorney at
4 that point?

5 A I don't believe I had, no.

6 Q Did you tell the Court that you did?

7 A I didn't know it was going -- it was so fast, I
8 didn't know what was going on.

9 Q What was the outcome of your appeal?

10 A It was -- my appeal was denied. I found that out
11 when I got to Kirkland. When I went through the
12 paperwork and everything, I looked in the papers and I
13 pulled a sheet of paper out and it said that the
14 prosecutor offered me ten years, and I said when did
15 this happen.

16 Q Did you ever get a plea offer from Mr. Galmore?

17 A No, I hadn't.

18 Q At any point did he discuss a plea deal as far as
19 terms of length of sentence?

20 A No, sir.

21 Q Did he discuss the possibility of the maximum for
22 the crime that you were charged with?

23 A No, sir.

24 Q What was your understanding of the charges that
25 you were facing?

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 A From my -- I understood that -- when I got the
2 plea, it was ten years. You know, I would have taken
3 the ten years instead of 18 any day.

4 Q But prior to that I mean, did you have any
5 understanding of what you could be facing by pleading
6 guilty?

7 A Yes.

8 Q What was that?

9 A I thought I was getting ten years.

10 Q Okay. So you thought this afterwards, or
11 beforehand?

12 A Afterwards.

13 Q Okay. When exactly did you get the plea offer in
14 that case?

15 A When I got to prison.

16 Q After?

17 A After I was sentenced.

18 Q Were you in jail prior to that?

19 A Yes.

20 Q Couldn't get out on bond?

21 A No. I was in prison after that.

22 Q Okay. What can you tell me about that plea
23 offer?

24 A What I read?

25 Q Uh-huh.

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 A I read the thing saying that the prosecutor
2 offered me ten years, and I was overwhelmed because I
3 was like how did I get 18 and nobody told me anything
4 about the ten years.

5 Q Did you talk to Mr. Galmore about that?

6 A No. Everything was out of his hands after that.
7 I was in prison, you know, appeal was denied.

8 Q So this is your only remedy at this point?

9 A Yes.

10 (Applicant's Exhibit 1 marked.)

11 Q (BY MR. SELWA) Can you take a look at this?

12 A Yes.

13 Q Do you know what this is?

14 A Yes.

15 Q What is this?

16 A That is the plea offer.

17 Q And when did you get that plea offer?

18 A When I got to prison.

19 Q That was after your appeal?

20 A That was after the sentence. I got to Kirkland,
21 and the appeal papers came back and I was denied. I
22 was running through the papers reading everything of
23 what was going on, and that is when I found this piece
24 of paper amidst everything.

25 Q What was the date on that paper?

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 A March 12, 2010.

2 Q Who is it from?

3 A James Galmore, Esquire.

4 THE COURT: It was from him?

5 THE WITNESS: No. From Elizabeth Tilley,
6 Assistant Solicitor.

7 Q (BY MR. SELWA) Who was it addressed to?

8 (A brief pause in the proceedings.)

9 Q Who did the prosecutor send it to?

10 A To me.

11 Q Is your address on there? Is your name --

12 A Yes, Johnny Ray Carraway, State versus Johnny Ray
13 Carraway.

14 Q Is there anybody else listed up there?

15 A No.

16 Q Did she send that to your attorney?

17 A Yes -- well, it says date 12/2010 to James
18 Galmore, Esquire, from Elizabeth V. Tilley, Assistant
19 Solicitor, State versus me, Johnny Ray Carraway.

20 Q What was the offer of that in that letter?

21 A The State is offering the following: Ten years.

22 Q If you plead --

23 A If I pled guilty.

24 Q When was the deadline for that offer?

25 A 5/7/2010.

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 Q Did you receive that prior to that date?

2 A The only time I received that is when I got to
3 Kirkland.

4 Q When was that?

5 A In November.

6 Q Of 2010?

7 A Yes.

8 Q At the bottom there is a notation for signatures,
9 correct?

10 A Yes.

11 Q Is there any signature on any of those lines?

12 A None.

13 Q Do you recall having anything sent to you at
14 SCDC -- or wherever you were held -- regarding anything
15 that looked like that?

16 A No. This is the only paper that I received, the
17 appeal papers.

18 Q Did you have any discussion in correspondence
19 with Mr. Galmore concerning that?

20 A No.

21 Q So this is the first time after you were
22 convicted that you ever saw this?

23 A Yes.

24 Q Is this a plea you would have accepted?

25 A Of course, yes.

JOHNNY CARRAWAY - DIRECT EXAMINATION BY MR. SELWA

1 Q You felt like you were guilty?

2 A Yes.

3 Q You were submitting to the Court --

4 A Yes.

5 Q Did your attorney explain to you the difference
6 in pleas?

7 A No.

8 Q Did he go over the fact there is negotiated pleas
9 and recommendations from the State?

10 A No.

11 Q Had you known you could have accepted that and
12 gotten ten years as opposed to plead without any
13 recommendation, would you have done that?

14 A I would have taken the ten years, yes.

15 Q And you ultimately got 18?

16 A Yes.

17 Q What are you asking the Court today?

18 A Kindly asking if they'll take away the eight and
19 leave me with the ten.

20 Q Do you feel like that would have been something
21 you would have been opened to do had your attorney
22 provided that for you?

23 A Yes, I would.

24 MR. SELWA: Nothing further, Your Honor.

25 CROSS-EXAMINATION

JOHNNY CARRAWAY - CROSS-EXAMINATION BY MR. SELWA

1 BY MR. THOMAS:

2 Q You pled to armed robbery, not strong arm
3 robbery; is that correct?

4 A Yes, it is, I'm sorry.

5 Q This was not the first time you ever pled to an
6 offense; isn't that correct? You had some priors in
7 New Jersey and in South Carolina, some thefts; isn't
8 that correct? You've been involved in the court
9 system?

10 A Yes.

11 Q How many meetings did you have with Mr. Galmore?

12 A Two, three, if I'm not mistaken.

13 Q And you went over the discovery with him then,
14 the videotape they had of you going into the Breaker's
15 Hotel? Did you review that with him?

16 A No. The only person I went over any discovery
17 with is the officer that arrested me.

18 Q You had a chance to tell Mr. Galmore your version
19 of the events and what happened that night?

20 A Yeah.

21 Q Did you discuss with him any defenses you might
22 have to those charges?

23 A No.

24 Q As far as the evidence was concerned, you gave a
25 taped confession when you were arrested, didn't you?

JOHNNY CARRAWAY - CROSS-EXAMINATION BY MR. SELWA

1 A Yes.

2 Q Did you ever ask Mr. Galmore for a trial?

3 A No.

4 Q So you always wanted to plead in this case?

5 A From my understanding, the officer that arrested
6 me -- I asked how much time does this charge carry, he
7 told me ten years. So that is what I was assuming I
8 was getting, ten years.

9 Q But the judge explained to you the range was
10 between 10 and 30?

11 A Yes.

12 Q And you understood when you pled that day that
13 you weren't pleading to a negotiated number, but that
14 it was up to the judge?

15 A Yes.

16 Q Did Mr. Galmore promise you a certain number of
17 years you would get for your plea?

18 A No.

19 MR. THOMAS: Beg the Court's indulgence.

20 THE COURT: Okay.

21 (A brief pause in the proceedings.)

22 MR. THOMAS: That's all I have.

23 THE COURT: Redirect?

24 MR. SELWA: No redirect.

25 THE COURT: Any other witnesses? Are you

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 offering that exhibit?

2 MR. SELWA: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. THOMAS: I ask we do it through Mr. Galmore
5 to lay the foundation.

6 (JAMES GALMORE, having been duly sworn,
7 testified as follows:)

8 THE CLERK: State your name.

9 THE WITNESS: James Galmore, G-A-L-M-O-R-E.

10 DIRECT-EXAMINATION

11 BY MR. SELWA:

12 Q Mr. Galmore, you represented Mr. Carraway; is
13 that correct?

14 A Yes, sir.

15 Q And you were the attorney on his case the whole
16 time?

17 A That's correct.

18 Q For the strong arm robbery?

19 A Armed robbery.

20 Q Armed robbery, okay. When did you get an offer
21 from the solicitor's office on that case?

22 A Plea offer was dated March 12, 2010. It was
23 received March 18, 2010. The plea offer was for armed
24 robbery and ten years. The offer was due to expire on
25 May 7th, 2010. Like I said, we received it in the

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 office March 18, 2010. That same day a copy of the
2 offer was made and was hand-delivered to the detention
3 center by one of the investigators in our office.

4 Q And which investigator was that?

5 A Gerald Vallen, V-A-L-L-E-N.

6 Q Were you present when Mr. Vallen conveyed that?

7 A No. He deliveries -- I guess we have multiple
8 clients at the jail, and whenever any of them have mail
9 that needs to be sent to them, instead of putting it in
10 the post office and paying 44 cents a stamp, or
11 whatever, we have Mr. Vallen collect all of the mail
12 and drive it out to the jail and drop it off.

13 Q So you didn't actually see him deliver it to
14 Mr. Carraway?

15 A No.

16 Q Did you subsequently go and talk to Mr. Carraway
17 about the plea offer?

18 A That's kind of the problem in this case. He
19 wanted to take that offer, but he moved a little too
20 slow. By the time that he wanted to take the offer,
21 the State had withdrawn the offer. Like I said, the
22 plea offer was set to expire in May of 2010, and his
23 plea was November 3rd, 2010. Mr. Carraway contacted me
24 on October 25, 2010 and told me that he would take the
25 ten years, and I told him that it was armed robbery and

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 it would be 85 percent. Unfortunately, the State did
2 not have the offer out there for him at that time.

3 Q So when did the State withdraw that?

4 A I don't know exactly when they withdrew it. The
5 written plea offer says May 7th, but Elizabeth Tilley
6 and I were discussing it well after that May deadline.

7 Q Do you have any correspondence to Mr. Carraway
8 wherein you state the deadline is near and you need any
9 kind of response?

10 A I have it. I just read it, I just need to find
11 it.

12 (A brief pause in the proceedings.)

13 A I sent a letter dated October 21, 2010, and he
14 pled on November 3, but this letter to Mr. Carraway
15 said, I've now been informed that your case has been
16 scheduled Number 2 for trial for the week of
17 November 1, 2010. At this point you need to either
18 accept the plea for ten years, or you need to take the
19 case to trial. We are out of time, and we are out of
20 choices. Please call me when you receive this letter
21 so we can discuss what you want to do.

22 Q But that was after --

23 A This is October 21, yes.

24 Q Is there any indication on that plea offer that
25 is written that Mr. Carraway may have seen it or

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 rejected it or accepted it?

2 A No, there isn't.

3 Q Is there a place for that?

4 A Yes. At the bottom of the plea sheet there is a
5 place for --

6 THE COURT: The plea sheet, or the plea offer?

7 THE WITNESS: Plea offer, I'm sorry.

8 A The offer -- the response section says that the
9 defendant can check that he wants to take the guilty
10 plea or take it to trial, and there is a place for the
11 defendant's signature and for the attorney's signature.

12 Q (MR. SELWA) What kind of plea did Mr. Carraway
13 actually enter into?

14 A He actually entered into an open plea. No plea
15 offer at all. He pled as charged to the armed robbery
16 charge without any recommendations or negotiations.

17 Q Okay. And had that been conveyed to him?

18 A Yes.

19 Q That that is what was occurring?

20 A Yes. I didn't like it one bit, so I made sure to
21 explain to him, You understand that you are pleading
22 guilty without the plea offer. They had taken it off
23 the table. I think it is dirty dealing that they took
24 it off the table, but they are allowed to take them off
25 the table. So I explained clearly he was pleading

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 straight up to armed robbery and exposing himself to 10
2 to 30.

3 Q And was that in your -- within your
4 recommendation to him that that was a good idea?

5 A Well, the State had pretty good evidence against
6 him. He could have had a trial and he would still be
7 facing 10 to 30. You know, they had a statement from
8 Mr. Carraway admitting his involvement in this robbery.
9 They had a gun recovered. I think they recovered a
10 substantial portion of the cash. It would have been to
11 his advantage to take a plea.

12 Q At any point did he express that he wanted a
13 trial?

14 A No, sir.

15 Q Did he think that he was going to do better than
16 ten years?

17 A Well, he and I were discussing the possibility of
18 getting the State to allow him to plead to strong arm
19 robbery and put him in the Life Recovery Program or a
20 drug rehabilitation program, and that's because he
21 explained to me that this crime involved drug
22 addiction. Throughout our conversations there was a
23 history of mental health issues also. So we were
24 hopeful that the State would recognize that it was not
25 an actual gun used in the robbery, it was a flare gun,

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 and we were hopeful the State would reduce the charge
2 to strong arm robbery, but they did not.

3 Q So you are telling me that the plea offer went
4 from ten years to a situation where he essentially
5 would enter a drug treatment program?

6 A No. That was never offered. We were trying to
7 get an offer for drug treatment. His only plea (sic)
8 was ten years to armed robbery.

9 Q So it went from ten to an open-ended --

10 A No. The State never made an offer for drug
11 rehab.

12 Q I recognize that. Basically, it went from ten
13 years being offered, to a situation where you felt it
14 was necessary to ask for drug court, and then he didn't
15 want that; is that what it was?

16 A He wanted the drug court, but the State wasn't
17 offering drug court.

18 Q Okay. So they bumped it up to an open-ended
19 plea?

20 A Right. Once his case was on the trial roster,
21 they said no plea offers at all, he can plead straight
22 up or go to trial.

23 Q You felt pleading straight up would be a better
24 situation than going to trial?

25 A I felt that had he gone to trial he would have

JAMES GALMORE, ESQ - DIRECT EXAMINATION BY MR. SELWA
1 been convicted, and I don't know what the judge would
2 have sentenced him to, but he would have been facing
3 the maximum of 30 years in jail.

4 Q Is it a possibility -- since you didn't see the
5 actual transfer -- that you didn't actually transfer
6 the offer to Mr. Carraway?

7 MR. THOMAS: Objection, calls for speculation.

8 THE COURT: He said that he didn't see him
9 deliver it to him.

10 MR. SELWA: Withdrawn, Your Honor.

11 THE COURT: The Applicant said he didn't get it,
12 so I think it is on Mr. Galmore's part to testify to
13 that.

14 Q (MR. SELWA) Mr. Galmore, at any point did
15 Mr. Carraway want you off the case?

16 A Yes, he wanted me off the case.

17 Q At what point did that happen?

18 A I know that he complained a few times about it,
19 but my boss told me to remain on the case, and I did.

20 Q Do you know when those complaints occurred?

21 A I have one dated January 28, 2011. I think that
22 would have been after his plea.

23 Q Let me focus the question. Do you remember
24 having that discussion with your boss prior to him
25 pleaing?

JAMES GALMORE, ESQ - CROSS-EXAMINATION BY MR. THOMAS

1 A Just a moment.

2 (A brief pause in the proceedings.)

3 A I have two letters after he pled that complain
4 about me. I'm looking to see if there is any complaint
5 made prior his plea.

6 Q (MR. SELWA) Do you know what the contents of those
7 complaints were?

8 A Yes. He said I smelled of alcohol when I came to
9 interview him at the jail, and he made that complaint.
10 Like I said, he made that complaint after he pled.

11 MR. SELWA: No further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. THOMAS:

14 Q Do you remember what date you were appointed to
15 this case?

16 A January of 2010.

17 Q And getting to background information, how long
18 had you been practicing law at that time?

19 A I began practicing in 1995, so that would have
20 been 15 years.

21 Q Did you file any discovery motions in this case?

22 A Yes. I filed a request for a disclosure pursuant
23 to Brady and Rule 5.

24 Q Did you go over that, the State's response, with
25 Mr. Carraway?

JAMES GALMORE, ESQ - CROSS-EXAMINATION BY MR. THOMAS

1 A Yes. I went over the discovery with him and I
2 showed him the video of the alleged armed robbery.

3 Q So is it fair to say that the State's evidence
4 consisted largely of video, his taped statement and
5 evidence recovered in his hotel room?

6 A That's correct.

7 Q As far as the plea offer goes, before he pled did
8 you discuss the rights he was giving up by pleading
9 guilty?

10 A Yes, sir.

11 Q And did he ever ask for a trial?

12 A No.

13 Q If he had asked for a trial, would you have been
14 prepared for one?

15 A Yes, I would have been prepared for a trial.

16 Q As far as the plea offer goes, the plea sheet
17 that is Exhibit 1, you said you sent that over to the
18 jail via your investigator?

19 A Yes, sir.

20 Q That was on March 28th?

21 A March 18th, 2010.

22 Q What was your next communication with
23 Mr. Carraway after March 18th?

24 A I met him at a jail on March 23, 2010. We
25 discussed background information about him growing up

JAMES GALMORE, ESQ - CROSS-EXAMINATION BY MR. THOMAS
1 and things like that, and that's when I started to
2 realize that there was mental health issues concerning
3 Mr. Carraway. We met on many more occasions. Met
4 April 21, 2010 --

5 THE COURT: What date was it?

6 THE WITNESS: April 21st, 2010.

7 A We met February 16th, 2010, we met July 27, 2010,
8 September 20, 2010. We met again, and then his trial
9 came closer so we met October 25, 2010, November 20,
10 2010.

11 Q (MR. THOMAS) During any of those meetings, did you
12 have an opportunity to discuss a ten-year plea offer?

13 A Well, the ten-year plea offer was out there. I
14 can't remember specifically when we discussed it. I do
15 -- I did make a note that on October 25, 2010 he said
16 he wanted to take the ten-year plea offer. I have a
17 note that says -- sorry, October 20th. October 20th he
18 was advised that they would not be putting him in drug
19 court, and at that point we tried to see if we could
20 maybe get a strong arm robbery out of it. Then, five
21 days later, the 25th, that is when he said he would
22 take the ten years. At this point, it is October 25.
23 His case is scheduled for November 1st, and we're in
24 that window where once a case is on the trial roster
25 and ready to go in the next week, the solicitors take

JAMES GALMORE, ESQ - CROSS-EXAMINATION BY MR. THOMAS
1 the plea offers off the table, and that is what
2 happened in his case.

3 Q So he was aware prior to October 20th that there
4 was a ten-year plea offer? You discussed it,
5 obviously. If he told you on the 20th that he wanted
6 to take a plea for ten --

7 A Yes, we talked about the plea offer. I sent him
8 a letter October 21st telling him he needed to take the
9 ten or get ready for trial.

10 Q And so it's fair to say that your discussions
11 with the solicitor about the ten years was ongoing past
12 the May deadline?

13 A Yes, sir. We were discussing -- trying to get
14 him into drug rehab, mostly. Once they said no to
15 that, then you look at the best option, strong arm
16 robbery. What is the next best option? Minimum ten
17 years for the armed robbery. That is where the plea
18 offer was, and that is where the letter to him on
19 October 21st and the response on October 25 about the
20 ten years. The solicitor's office took the ten-year
21 plea offer off the table.

22 Q They took that off --

23 A I don't know when exactly they took it off.
24 Typically speaking, they take the plea offers off like
25 ten days prior to trial. Just in the week or so

JAMES GALMORE, ESQ - CROSS-EXAMINATION BY MR. THOMAS
1 immediately prior to trial they'll cancel the plea
2 offers, which is consistent with us discussing it ten
3 days before. But they had taken the plea offer off the
4 table, and it wasn't available. Once he said he didn't
5 want to take it, it was too late. It was gone.

6 Q So he was aware that he was pleaing to an open
7 plea, 10 to 30?

8 A Yes. I explained that clearly.

9 MR. THOMAS: Beg the Court's indulgence.

10 THE COURT: Okay.

11 (A brief pause in the proceedings.)

12 Q (MR. THOMAS) If Mr. Carraway told you at any point
13 before ten days before the trial that he was willing
14 to accept that ten-year plea offer, do you think the
15 solicitor would have gone along with it?

16 A Each solicitor is different. Some of them --
17 even at this point where he tells me on
18 October 25th that he wants to take a deal, and the case
19 is scheduled for trial November 1st, some solicitors
20 will still make the deal available. Some judges will
21 say, Solicitor, I want you to make the deal available
22 again. In this case, that did not happen.

23 Q Had Mr. Carraway told you he wanted to plea in
24 June or July, was that offer still on the table as far
25 as you understood it?

JAMES GALMORE, ESQ-REDIRECT EXAMINATION BY MR. SELWA

1 A The deadline on the offer was for May 7, 2010,
2 however, oftentimes they will honor the plea even past
3 the deadline.

4 Q So if he told you on, say, May 6th he wanted the
5 ten-year offer, he would have gotten it?

6 A Yes.

7 Q Did he do anything while in lockup in terms of
8 cooperating with police, taking any actions that would
9 have been to his detriment in reliance on a plea offer
10 for ten years?

11 A No. He didn't give a statement or anything like
12 that, no.

13 Q So that ten years was just on the table for him?
14 If he decided at any point to take it, it would have
15 been there?

16 A Yes. It is there until they withdraw it.

17 THE COURT: Redirect?

18 REDIRECT-EXAMINATION

19 BY MR. SELWA:

20 Q You are stating that the plea offer deadline is a
21 recommendation?

22 A It's elastic.

23 Q Elastic?

24 A It's flexible.

25 Q You stated that, basically, you met a couple days

JAMES GALMORE, ESQ - EXAMINATION BY THE COURT

1 after the offer and one time after that, correct?

2 A I met with him on several different occasions.

3 MR. SELWA: No further questions.

4 THE COURT: Anything else?

5 MR. THOMAS: Nothing.

6 THE COURT: Any objection to me asking questions?

7 MR. SELWA: No.

8 MR. THOMAS: No, none.

9 EXAMINATION

10 BY THE COURT

11 Q You said you met with him on March 23, which is
12 after the investigator took the offer to the jail, and
13 also on April 21; is that correct?

14 A Yes, sir. I met with him on March 23rd and
15 April 21.

16 Q Is there anything in your notes that reflected
17 that you discussed the ten-year offer with him on those
18 dates, either one of those dates?

19 A No, sir. It looks like once we started talking
20 on the 23rd it became a mental health issue.

21 Q And how about April 21?

22 A Same thing. My notes to myself are about getting
23 HIPAA forms signed and medical records.

24 Q And the July 27 or September 20 meetings?

25 A September 20th we met at the jail and I gave him

CLOSING ARGUMENTS

1 instructions for what to do with the drug court
2 coordinator. What happens in drug --

3 Q Was there any discussion in your notes about the
4 plea offer?

5 A No, sir. No discussion about the plea offer.
6 And the other date you said was?

7 Q July 27th.

8 A July 27th. We met at the detention center,
9 discussed the reduced charge and trying to get him into
10 drug rehab. Again, these notes are about trying to get
11 him into a halfway house or a drug program.

12 THE COURT: Any follow-up, Mr. Selwa?

13 MR. SELWA: No, sir.

14 MR. THOMAS: No, Your Honor.

15 THE COURT: You may step down. Thank you. Any
16 other witnesses from the Applicant?

17 MR. SELWA: No, sir.

18 THE COURT: Any witness or witnesses from the
19 State?

20 MR. THOMAS: No, Your Honor.

21 THE COURT: Mr. Selwa, do you have any closing
22 comments?

23 MR. SELWA: Your Honor, I think that the law
24 states that the plea offers have to be conveyed, and
25 obviously Mr. Galmore testified that he wasn't the one

CLOSING ARGUMENTS

1 that conveyed it. There is no notes of him conveying
2 or speaking about it. The form actually has lines
3 where you can sign, and it clearly spells out the
4 deadline, and that wasn't even done for precautionary
5 measures.

6 THE COURT: Does it say "accept" or "reject"? I
7 haven't seen the exhibit. It is not in evidence. Is
8 someone going to offer it? Anybody object to it
9 coming in?

10 MR. THOMAS: I don't object to it coming in.

11 (Applicant's Exhibit 1 admitted.)

12 THE COURT: It says "response," and he has as
13 choice of "trial" or "plea." Okay. I see what you
14 are talking about.

15 MR. SELWA: Right, Your Honor. So that is
16 basically our case. I don't think he would have pled
17 had he known the possibility of 18 years was there if
18 10 had previously been offered to him. I think he's
19 maintained that he was guilty and was interested in
20 pleaing, and that was always his goal from the
21 forefront.

22 THE COURT: All right. Mr. Thomas, is there any
23 evidence -- Mr. Galmore's notes don't reflect he
24 discussed the offer with him before the deadline or
25 after.

CLOSING ARGUMENTS

1 MR. THOMAS: I think the sum total of the
2 testimony indicates that there was discussion about
3 the ten-year offer. I mean --

4 THE COURT: Well, that was what I was looking
5 for, and he never said it. He said the plea offer was
6 out there, and I don't know what that means.

7 MR. THOMAS: The way I interpreted it is that he
8 got the plea offer from the State. Mr. Galmore was
9 aware of it. He had an opportunity to go discuss it
10 with Mr. Carraway, and at no point did he ever want to
11 take that plea until once it got on the schedule and
12 got on the docket. I think at that point Mr. Galmore
13 was still trying to get him to accept the ten years,
14 and then it just -- time expired. It was Mr. --

15 THE COURT: That is not what Mr. Galmore said.
16 He said they were trying to get a reduced charge of
17 strong arm so he could get some drug rehab.

18 MR. THOMAS: In the context of plea negotiations.
19 Obviously, he was trying to get it below ten years,
20 strong --

21 THE COURT: Where is it in the record that Mr.
22 Galmore at any time spoke to Mr. Carraway about a
23 ten-year offer before October of 2010?

24 MR. THOMAS: Your Honor, I would just say you
25 have to interpret his testimony that he did discuss it

CLOSING ARGUMENTS

1 with him.

2 THE COURT: Okay. Anything else, Mr. Selwa?

3 MR. SELWA: Nothing further.

4 THE COURT: Mr. Carraway, I'm going to make a
5 decision in this case. If I decide in your favor, the
6 State can appeal. If I decide in the State's appeal,
7 in either case, I'll sign an order. If you do not
8 like what is in the order, you'll have 30 days from
9 your lawyer's receipt of that order to appeal. Do you
10 understand that?

11 MR. CARRAWAY: Yes, sir.

12 THE COURT: He has the right -- both sides have
13 the right to move for reconsideration on certain
14 findings, but that is generally what I'll be doing.
15 I'll decide in your favor, or the State's favor. Do
16 you understand that?

17 MR. CARRAWAY: Yes, sir.

18 THE COURT: Thank you.

19 (Whereupon, the proceedings concluded.)
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CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 17th day of March, 2014.

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

May 23, 2014



Natalie Dahl, RPR
Court Reporter

EX 1

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



Francis A. Humphries, Jr.
Deputy Solicitor

Robert B. Bryan
Deputy Solicitor

REPLY TO

REPLY TO

P.O. BOX 1276
CONWAY, SC 29528
843-915-5460
FAX: 843-915-6461

P.O. BOX 1688
GEORGETOWN, SC 29442
843-545-3169
FAX: 843-545-3268

J. GREGORY HEMBREE
Solicitor

DATE: March 12, 2010
TO: James Galmore, Esquire
FROM: Elizabeth V. Tilley, Assistant Solicitor
RE: State vs. Johnny Ray Carraway Case # 10H00284

Pending Charge(s) Armed Robbery Warrant M346367

Upon reviewing the above referenced case(s) the State makes the following offer regarding the disposition of the charge(s):

If the Defendant will plead guilty to: ARMED ROBBERY.

The State offers the following: TEN YEARS.

Your client has a consistent criminal record beginning in 1986.

The Defendant must accept the offer by 5/7/10 or it is considered rejected and the State will not make the offer again. Should the defendant accept the offer, he or she must enter the plea before or during the MAY term of court. Please review the offer with your client, sign and date as indicated below, and return to me no later than 5/7/10. Please call me at 915-8635 if I may be of service.

DEFENDANT'S RESPONSE

TRIAL _____ GUILTY PLEA _____

Attorney's Signature _____

Date: _____

Defendant's Signature _____

Date: _____

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Johnny R. Carraway, #343576,)

Case No. 2011-CP-26-155

Applicant,)

v:)

**ORDER GRANTING
POST-CONVICTION RELIEF**

State of South Carolina,)

Respondent.)

HORRY COUNTY
CLERK OF COURT
JANUARY - 6 PM 1:26

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 6, 2011. Respondent made a timely Return on or about March 3, 2011. The Court convened an evidentiary hearing into the matter on March 17, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, James C. Galmore, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. Applicant was indicted in March 2010 for armed robbery (2010-GS-26-1552). He was represented by James C. Galmore, Esquire. On November 3, 2010,

WILLOBERA CEMENTARY OLEIC

Applicant pled guilty before the Honorable Steven H. John. Judge John sentenced the Applicant to eighteen (18) years. A direct appeal was filed, but the appeal was dismissed pursuant to Rule 203(d)(1)(B)(iv), SCACR, on or about December 10, 2010. The matter was remitted to the circuit court on or about January 12, 2011.

II. ALLEGATIONS

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

1. "Offer was made from solicitor's office on 3-12-10 with a deadline date of 5-7-10 for 10 years to serve. My lawyer never gave me the offer and I never signed the offer - trial or guilty plea. If I had known of this offer, I would not have been in court in November 2010 pleading guilty to 18 years."

Applicant filed an Amended Application on February 16, 2011. In this Amended Application, Applicant raised the following allegations:

1. Ineffective assistance of counsel
 - a. failed to properly review the Applicant's arrest warrant to determine that it was invalid;
 - b. failed to file the appropriate preliminary hearing request and motions on behalf of the Applicant;
 - c. failing to periodically update the Applicant on his case development which resulted in the Applicant not receiving knowledge of the State's plea offer for 10 years; and
 - d. failing to negotiate with the State and transmit the 3/12/10 plea offer to the Applicant.

At the PCR hearing, the Applicant proceeded on only the allegations of ineffective assistance of plea counsel for failure to convey the State's ten (10) year plea offer.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe

each witness who testified at the hearing, and to closely pass upon their credibility. The 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).

A. Summary of Testimony

Applicant testified he does not believe he met with plea counsel enough. He alleged plea counsel explained the charges, but did not go over the evidence or the plea process. Applicant further testified he was never informed of a ten (10) year plea offer. He claimed he only discovered this offer after reviewing his file when he arrived at Kirkland Correctional Institution. Applicant testified plea counsel never discussed a ten (10) year offer with him. However, he maintained he would have accepted a ten (10) year offer had one been relayed to him.

Plea counsel testified he received a written plea offer from the State for ten (10) years and identified Exhibit #1 as the offer sheet. Plea counsel testified he gave the offer to the public defender's office's investigator to deliver to Applicant in the detention center. He testified he met with Applicant many times and discussed the State's evidence. However, plea counsel could not recall specifically discussing the ten (10) year plea offer. Plea counsel reviewed his notes, and testified he made no notation of discussing the offer with Applicant before May 7, 2010.

Plea counsel did testify he recalled continuing to negotiate with the State after receiving the initial offer. Plea counsel recalled attempting to get the State to reduce the charge to strong arm robbery. Plea counsel testified an offer deadline is usually flexible, and he believed the ten (10) year offer was still on the table at the time the case was scheduled for trial. He recalled the offer once the case was on the trial docket was to plead to ten (10) years or go to trial. He admitted Applicant never indicated a desire to accept a plea offer until October 5, 2010. He

testified the State had withdrawn the ten (10) year offer by that time. However, plea counsel could not identify exactly when the offer was withdrawn.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

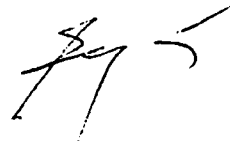
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a

P2/4

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. 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, 59 (1985).

The Court finds Applicant has met his burden of showing counsel was ineffective in failing to convey the ten (10) year plea offer. In Davie v. State, 381 S.C. 601, 617, 675 S.E.2d 416, 424 (2009), the applicant was granted post-conviction relief based upon ineffective assistance of counsel because counsel did not communicate to the applicant a plea offer made by the State. The South Carolina Supreme Court held the standard to be successful on such a claim required the applicant prove that: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) the applicant was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted he original plea offer. Id. at 608, 675 S.E.2d at 420. The Supreme Court held that, generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422.

In Lafler v. Cooper, ___ U.S. ___, 132 S.Ct. 1376 (2012) and Missouri v. Frye, ___ U.S. ___, 132 S.Ct. 1399 (2012), the Supreme Court of the United States analyzed ineffective assistance of counsel in the context of lapsed or rejected plea offers. In Frye, the Court determined a criminal defendant must prove three things to demonstrate prejudice for ineffective assistance of counsel for a plea that lapsed:



[D]efendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Frye, 132 S.Ct. at 1409. The Court articulated a similar standard for prejudice in Lafler. Lafler, 132 S. Ct. at 1385. The Lafler Court went on to say “[t]he correct remedy in these circumstances [...] is to order the State to reoffer the plea agreement.” Id. at 1391. Once the plea is re-offered, the sentencing judge can then “exercise [his] discretion in determining whether to vacate the convictions and resentence respondent pursuant to the plea agreement, to vacate only some of the convictions and resentence respondent accordingly, or to leave the convictions and sentence from trial undisturbed. Id.

Here, the greater weight of the evidence establishes plea counsel did not effectively communicate the plea offer to Applicant or otherwise discuss it with him before the May 7, 2010, deadline. Plea counsel testified his investigator delivered the letter containing the plea offer to the detention center with other mail going to other inmates. There is no evidence plea counsel ever talked to Applicant about the plea offer and there is no evidence Applicant received the plea offer. It is clear Applicant would have accepted the ten (10) year offer because he has never denied guilt for his crime. It seems most of plea counsel's efforts were aimed at investigating mental health issues and trying to get a reduction in the charge from armed robbery to strong arm robbery. Plea counsel wrote Applicant on October 21, 2010 – five (5) months after the offer expired – and advised him that he would either have to take the 10 year offer or go to

trial. Four days later, Applicant told plea counsel he would accept the offer. However, by that time the offer had been officially off the table for five (5) months. Therefore, the Court finds plea counsel was ineffective for failing to communicate the plea offer to Applicant. Furthermore, Applicant has shown prejudice in that he has demonstrated a reasonable probability he would have accepted the plea offer. There is also a reasonable probability the plea would have been entered without the prosecutor cancelling the agreement or the trial court refusing to accept it. Pursuant to Lafler, the State will be required to reoffer the ten (10) year plea, and sentencing will be left to the discretion of the sentencing judge.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, this application for post-conviction relief must be granted and the State will be required to reoffer the ten (10) year plea, and sentencing will be left to the discretion of the sentencing judge.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is granted; and
2. The State will be required to reoffer the ten (10) year plea, and sentencing will be left to the discretion of the sentencing judge.

AND IT IS SO ORDERED this 24 day of April, 2014.

[Signature]
THE HONORABLE GEORGE C. JAMES, JR.
Presiding Judge

[Signature], South Carolina

[Signature] 8

DOCKET NO. 2010-GS-26- 0155a

C

The State of South Carolina
County of Horry

Elizabeth V. Tilley 10H00284

COURT OF GENERAL SESSIONS

MARCH, 2010 TERM

THE STATE

vs.

Johnny Ray Carraway
B/ M
2202 North Ocean Blvd
Myrtle Beach, SC 29577
DOB: 1963-08-04
SSN:

ATTORNEY: Galtmore, James Cullen

Indictment for

ARMED ROBBERY

J. Gregory Hembree, Solicitor

ORIGINAL

WITNESSES

M Curry Myrtle Beach Police Department

ARREST WARRANT NUMBER

M346367

CDR: 0139 16-11-0330(A)

DOA: 1/12/2010

ACTION OF GRAND JURY

TRUE BILL

Matthew Stelm

Foreperson of Grand Jury MAR 25 2010

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)


INDICTMENT

At a Court of General Sessions, convened on MARCH 24 2010, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY**CDR: 0139 16-11-0330(A)**

That **Johnny Ray Carraway** did in Horry County on or about January 11, 2010, while armed with a deadly weapon, to wit: a firearm, or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away property of the Breakers Resort from or in the immediate presence of the Breakers Resort with intent to deprive Breakers Resort of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

72
 STATE OF SOUTH CAROLINA
 COUNTY OF Horry
 STATE VS.
Johnny Ray Carraway
 AKA:
 Race: B Sex: M Age: 47
 DOB: 08-04-1963 SS#: _____
 Address: 2202 North Ocean Blvd
 City, State, Zip: Myrtle Beach, SC 29577
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2601552
 A/W#: M346367
 Date of Offense: 1/11/2010
 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 (10-30)

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: Elizabeth V. Tilley 71146 SC Bar# _____ Defendant
James Johnson 8396 SC Bar# _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 18 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 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:
 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 \$ 25.00 beginning 12/03/2028
 \$ _____ 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	\$ 85.00
§ 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
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Condition Discharge. § 44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins-Ward
Brenda Bahls

Presiding Judge [Signature]
 Judge Code: _____
11/3/10

The South Carolina Court of Appeals

The State,

Respondent,

RECEIVED

JAN 12 2011

v.

Johnny Carraway,

Appellant.

**ATTORNEY GENERALS
OFFICE**

The Honorable Steven H. John
Horry County
Trial Court Case No. 2010-GS-26-01552

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated December 9, 2010,

IT IS SO ORDERED that the above appeal be and hereby is remitted.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina

Original to: The Honorable Melanie Huggins

cc: Chief Appellate Defender Robert M. Dudek
James Cullen Galmore, Esquire
Assistant Attorney General Salley W. Elliott
Elizabeth Vaughn Tilley, Esquire

FILED
1/7/11

The South Carolina Court of Appeals

The State,

Respondent,

v.

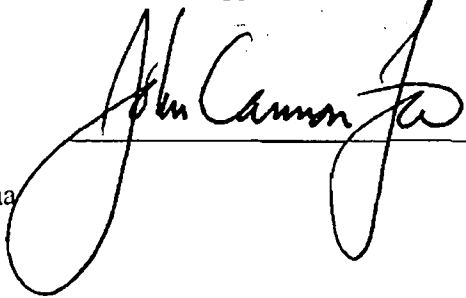
Johnny Carraway,

Appellant.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2010-GS-26-01552

ORDER

Appellant appeals his guilty plea and conviction imposed by Judge Steven H. John. Rule 203 (d)(1)(B)(iv), SCACR, requires "a written explanation showing that there is an issue(s) which can be reviewed on appeal...including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." After careful review, we find Appellant failed to show how any issue was preserved for our review. Therefore, due to Appellant's failure to establish any preserved issues for appellate review, the appeal is dismissed.

 _____, C.J.

Columbia, South Carolina

cc: Chief Appellate Defender Robert M. Dudek
James Cullen Galmore, Esquire
Assistant Attorney General Salley W. Elliott
Elizabeth Vaughn Tilley, Esquire

FILED
12/9/10 