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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

PHILLIP JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000780

APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN WALT WHITMIRE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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State of South Carolina
County of Lexington

Court of General Sessions

State)
)
) Transcript of Record
 v.) 10-GS-32-2979
) 11-GS-32-1269
 Phillip Harold Jackson)
)
 Defendant.)

February 28, 2012
Lexington, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge.

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

Colleen E. Dixon, Assist. Solicitor
Attorney for the State

Charles E. Johnson, Sr., Esquire
Attorney for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

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I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

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NO.

DESCRIPTION

ID.

EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 February 28, 2012)

3 **THE CLERK:** 2010-GS-32-2979, State versus
4 Phillip Harold Jackson, indicted for murder. He is
5 pleading to voluntary manslaughter. Indictment
6 2011-GS-32-1269, State versus Phillip Harold
7 Jackson, indicted for armed robbery while armed with
8 a deadly weapon. He is pleading as charged. Both
9 indictments are true billed and he is represented by
10 Mr. Johnson.

11 **PHILLIP HAROLD JACKSON,**
12 having been duly sworn, testified as follows:

13 **PROBATION AGENT:** Your Honor, Mr. Jackson is on
14 probation. We have issued two warrants and we've
15 just served a citation on him for today's plea. It
16 will be a violation.

17 **THE COURT:** What's he on probation for?

18 **PROBATION AGENT:** Grand larceny.

19 **THE COURT:** Okay. Mr. Johnson, you represent
20 Mr. Jackson?

21 **MR. JOHNSON:** Yes, I do, Your Honor.

22 **THE COURT:** Have you explained the nature of
23 the charges against him, the possible punishment he
24 could receive, as well as his constitutional rights?

25 **MR. JOHNSON:** Yes, I have.

1 THE COURT: Does he understand those?

2 MR. JOHNSON: He indicates that he has -- that
3 he does.

4 THE COURT: Mr. Jackson, do you want to plead
5 guilty?

6 DEFENDANT: Yes, sir.

7 THE COURT: Have you had enough time to talk to
8 your lawyer about this decision?

9 DEFENDANT: Yes, sir.

10 THE COURT: Are you satisfied with his
11 representation?

12 DEFENDANT: Yes, sir.

13 THE COURT: You got any complaints against him?

14 DEFENDANT: No, sir.

15 THE COURT: You got any complaints against the
16 Solicitor's office?

17 DEFENDANT: No, sir.

18 THE COURT: Has anybody promised you anything
19 or threatened you -- this is a negotiated sentence?

20 MS. DIXON: It is, Your Honor, negotiated 25.

21 THE COURT: Outside of the negotiations that
22 your lawyer and the State have entered into, has
23 anybody promised you anything or threatened you in
24 any way to get you to plead guilty?

25 DEFENDANT: No, sir.

1 **MR. JOHNSON:** Your Honor, and just for
2 clarification, he's pleading guilty to the armed
3 robbery. He's pleading under North Carolina versus
4 Alford to the murder charge.

5 **THE COURT:** Okay. He's pleading straight up to
6 the armed robbery and an Alford plea to the murder?

7 **MR. JOHNSON:** That's correct.

8 **THE COURT:** Okay. Mr. Jackson, as far as these
9 two charges are concerned, your lawyer tells me you
10 want to plead under North Carolina versus Alford on
11 the manslaughter. You understand that under an
12 Alford plea, it is treated just like a guilty plea
13 as far as sentence is concerned and exposure and
14 everything else; you understand that?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** And the fact that this is a
17 negotiated plea between your lawyer and the State,
18 if I feel that I cannot follow those negotiations
19 after I hear the facts, I will allow you to withdraw
20 your plea. You understand that?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you have any complaints against
23 the Solicitor's office as far as discovery is
24 concerned? Do you feel like that you and your
25 lawyer have received whatever discovery is involved

1 in this case, you got any discovery issues?

2 DEFENDANT: No, sir.

3 THE COURT: Okay. Are you under the influence
4 of alcohol or drugs today?

5 DEFENDANT: No, sir.

6 THE COURT: Do you have any mental diseases
7 that would keep you from understanding what you're
8 doing here today?

9 DEFENDANT: No, sir.

10 THE COURT: By pleading to these charges,
11 you're giving up your right to remain silent under
12 the Fifth Amendment of the Constitution because
13 you're telling me you're guilty as far as the armed
14 robbery is concerned.

15 And as far as the manslaughter is concerned,
16 the State's going to give me a set of facts that
17 they intend to present at trial. And I assume that
18 you do not -- you want to take this deal that
19 they've offered you instead of going to trial for
20 murder; is that correct?

21 DEFENDANT: Yes, sir.

22 THE COURT: Okay. And by pleading to these
23 charges, you're giving up your right to a jury
24 trial. And the fact that they occurred on different
25 dates, you would be entitled to two different

1 trials. You understand that?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** And in those trials, you'll be able
4 to sit in the courtroom and confront the witnesses
5 that would testify against you. Your lawyer could
6 cross-examine the State's witnesses. He could
7 subpoena witnesses to testify in your behalf. He
8 could put up any defenses you may have to these
9 crimes. But when you plead guilty, you're giving
10 all that up. You understand?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** And you're giving up any appeals
13 that could come out of either one of those trials by
14 pleading guilty here today. Do you understand that?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** Do you have any questions you want
17 to ask me concerning your rights?

18 **DEFENDANT:** No, sir.

19 **THE COURT:** If you want to appeal this guilty
20 plea today, you or your lawyer must file that appeal
21 with the Clerk of Court's office within ten days or
22 you give up that right. Do you understand?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** All right. The Solicitor's going
25 to talk to me about the facts.

1 MS. DIXON: Thank you, Your Honor.

2 Standing with me is Laura Malone. She is the
3 sister of Jimmy Lybrand, who's the victim in the
4 manslaughter case. We also have two officers here,
5 Your Honor, Detective Terry Govan, who was the case
6 officer on the murder case, as well as Sergeant
7 Robby Lint from the major crimes at the sheriff's
8 department.

9 Your Honor, the manslaughter incident occurred
10 in the early morning hours of November 1st of 2009
11 on [REDACTED] here in Lexington County. The
12 defendant along with three co-defendants were
13 traveling back from a club in Orangeburg County
14 driving down [REDACTED].

15 The State would show at trial, Your Honor, that
16 the defendant was the passenger in the front seat of
17 that car, that there was some conversation between
18 the defendant and the driver of that car regarding
19 getting a body. The defendant and the
20 co-defendants, the State would show, Your Honor, are
21 self-proclaimed gang members, that there was some
22 discussion from the defendant that he wanted to get
23 a body.

24 They came upon Mr. Lybrand who was walking down
25 the road walking from his girlfriend's house back to

1 his mother's house, pulled over, Your Honor, called
2 Mr. Lybrand over to the car. And when he leaned
3 down to talk to the defendants, the State would
4 prove based on co-defendant testimony, that the
5 defendant shot Mr. Lybrand in the head killing him
6 instantly. His body was discovered a few hours
7 later, Your Honor. At first, they thought he had
8 been hit by a car. After the crime scene got there
9 and the coroner got there, realized that he had, in
10 fact, been shot.

11 Detectives with the Lexington County Sheriff's
12 Department were working the case, following leads
13 when three days later on November 4th, 2009, this
14 defendant along with five co-defendants went into a
15 house on [REDACTED], which is in the Pelion
16 area of Lexington County, planned this with five
17 co-defendants, Your Honor. They were all armed,
18 went to this house because the man who lived there
19 was a known drug dealer, went to that house with the
20 intention of robbing him of money and/or drugs that
21 he had in the home.

22 It's the State's position, Your Honor, that
23 this defendant was one of the people who helped to
24 plan this armed robbery, was one of the people who
25 helped to arm everyone else. He was not one of the

1 two individuals that actually went inside the house.
2 Two individuals went inside the house, the other
3 four stayed outside of the house ready to enter the
4 house when the robbery was about to take place.

5 The owner of the house or the person renting
6 the house there, Your Honor, Mr. Hendrix, is
7 currently in the department of corrections on some
8 unrelated charges. He actually was shot in the
9 head, but survived.

10 The way that this case was closed, Your Honor,
11 is because when the defendants fled from that armed
12 robbery, they were pursued by officers, ended up
13 getting into an accident. The defendant was
14 captured there along with some co-defendants, other
15 co-defendants were caught later, but the gun that
16 was used in the home invasion was found at the scene
17 of the accident and that gun was matched through
18 firearms and tool mark analysis as being the weapon
19 that had killed Mr. Lybrand on November 1st of 2009.

20 **THE COURT:** Thank you.

21 **MS. DIXON:** Ms. Malone does wish to address the
22 Court at the appropriate time, Your Honor.

23 **THE COURT:** Okay. Mr. Jackson, you heard the
24 facts the Solicitor gave me on the armed robbery; is
25 that correct?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** Are you pleading guilty because you
3 are guilty?

4 **DEFENDANT:** No, sir.

5 **THE COURT:** You're not guilty to armed robbery?

6 **DEFENDANT:** No, sir.

7 (Mr. Johnson confers with the defendant.)

8 **MR. JOHNSON:** Your Honor, please address that
9 again.

10 **THE COURT:** Okay. Mr. Jackson, I was asking
11 you about the armed robbery because your lawyer told
12 me and you told me earlier that you wanted to plead
13 guilty to this armed robbery. And the Solicitor
14 just gave me the facts of that armed robbery and
15 said that you were involved in it, that you were out
16 in the car. So under the theory of the hand of one
17 is the hand of all, you want to plead guilty to
18 this.

19 **DEFENDANT:** Yes, sir. You're right, yes, sir.

20 **THE COURT:** And you understand if this case
21 went to trial, that the facts the Solicitor just
22 gave me concerning this manslaughter case, and you
23 may be going to trial on the murder case if you
24 decide to go to trial, that those would be the facts
25 that they intended to present against you in trial?

1 DEFENDANT: Yes, sir.

2 THE COURT: And do you want me to accept your
3 plea for the manslaughter under North Carolina
4 versus Alford?

5 DEFENDANT: Yes, sir.

6 THE COURT: Then I find there's a factual basis
7 for your pleas, that they're freely and voluntarily
8 entered into and that you've had advice of competent
9 counsel whom you tell me you're satisfied and I will
10 accept the pleas.

11 Yes, ma'am.

12 MS. MALONE: Your Honor, my brother was 20
13 years old. He has two kids. They're five and
14 three.

15 I don't believe this young man has any remorse
16 for anything that he did. He comes in the courtroom
17 and he laughs, he smiles. He doesn't regret
18 anything. He doesn't have a conscience I don't
19 believe.

20 The only way that my nephews will ever know
21 their father is through pictures and videos. I
22 don't believe that 25 years of this young man of
23 being able to walk out and still live the rest of
24 his life is enough. I don't think a hundred years
25 is enough. I just -- I want my brother to rest.

1 **THE COURT:** Thank you, ma'am. I understand.
2 And I wish I could give you back what he's taken
3 from you, but I can't. But I appreciate you coming.
4 And I am sorry that you and your family have been
5 through this because it appeared from the facts, it
6 was a senseless killing and that your brother had
7 absolutely nothing to do with it. He was in the
8 wrong place at the wrong time and I'm really sorry.

9 Yes, sir -- anything else from the State?

10 **MS. DIXON:** Nothing from the State, Your Honor.

11 **THE COURT:** Yes, sir.

12 **MR. JOHNSON:** Thank you, Your Honor. Please
13 the Court.

14 Your Honor, first of all, my client -- on
15 behalf of my client, we wish to offer condolences to
16 the family. My client's contingency in the murder
17 has always been that he was not the shooter.

18 In this case, Your Honor, the armed robbery, as
19 stated, there was two individuals that entered the
20 house in the armed robbery. My client was not one
21 of them. There was a shooting that occurred inside
22 the house by some of the co-defendants. The gun
23 that was used in the armed robbery was also
24 connected to the murder. That gun, Your Honor, as
25 stated, was the gun that was used in the murder.

1 We ask the Court, because of North Carolina
2 versus Alford, it's our contention that while my
3 client was there, he was not actually the shooter,
4 Your Honor. He's always had that contingent. I
5 explained to him the theory of the hands of one is
6 the hand of all, as well as the possibility if he
7 went to trial, that a jury could probably find him
8 guilty. Therefore, in taking all those things into
9 consideration, we thought that a negotiated plea was
10 a reasonable solution to this -- to the whole case.

11 He understands, Your Honor, that he will be
12 given a 25-year sentence if the Court decided to
13 accept his negotiated plea. He understands that he
14 will spend roughly -- he's been in jail, Your Honor,
15 since October the 4th of 2009. We ask that he be
16 given credit for that. And we ask you to accept the
17 negotiated plea.

18 He's 24-years-old, Your Honor. He has -- his
19 mother is here today with some of his family
20 members, she's in the back. He was working at the
21 time. He has a GED. We ask you to accept the
22 negotiated plea, Your Honor.

23 Your Honor, my client would like to address the
24 Court as well.

25 **THE COURT:** Yes, sir.

1 **DEFENDANT:** I been in jail for two years. And
2 it was said that I didn't have any remorse for what
3 I was accused of doing. And, honestly, I didn't do
4 it. And to have remorse for something I didn't do,
5 I can't have, but I feel sorry for the situation
6 that took place for her brother and I feel sorry
7 that I was ignorant enough to hang with these
8 individuals and get myself caught up in this
9 nonsense because that took time away from my family
10 as well as my life, you know what I'm saying.

11 I apologize that I'm sitting here having to
12 look like an animal when I didn't do anything, but,
13 I mean, I just ask that you take this 25 plea for me
14 so I can get this all behind me, do my time and get
15 home with my family.

16 **THE COURT:** And you understand that on both of
17 these charges, they are no parolable offenses. You
18 understand that?

19 **DEFENDANT:** Could you repeat that, please?

20 **THE COURT:** The armed robbery and the
21 manslaughter is a no parolable offense, so you have
22 to serve at least 85 percent of the 25 years. You
23 understand that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** And I didn't talk to you about that

1 earlier, but I assumed your lawyer had.

2 Anything else from either side?

3 MS. DIXON: Nothing, Your Honor.

4 THE COURT: I'll follow the negotiations.

5 On indictment 2011-GS-32-1269 -- I'm sorry --
6 2979 for voluntary manslaughter, the sentence of the
7 Court is you're committed to the State Department of
8 Corrections for a term of 25 years. I'm giving you
9 credit for the time you served from October the 4th
10 of 2009.

11 On indictment 2011-GS-32-1269 for armed
12 robbery, the sentence is 25 years to run concurrent
13 with the manslaughter indictment and credit from
14 October 4th of 2009.

15 MS. DIXON: Thank you, Your Honor.

16 PROBATION AGENT: Judge, you want probation to
17 run concurrent?

18 THE COURT: Revoke the probation in full, yes.

19 PROBATION AGENT: And there was some
20 restitution to a civil judgment?

21 THE COURT: Yeah.

22

23

END OF PROCEEDINGS

24

25

C E R T I F I C A T E

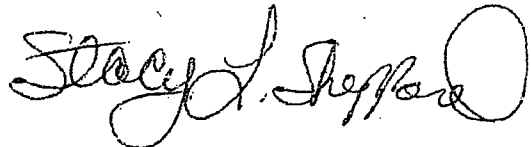
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the guilty plea of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 28th of February, 2012.

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

March 3, 2012



Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Lexington

2012 OCT 30 P 4:01

Phillip Jackson / #317505

Full name and prison number (if any) of Applicant

NETH A) CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2012CP3204378

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lexington County Detention Center
2. Name and location of Court which imposed sentence Lexington County Court, 205 East Main St, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) D'Marcus Thomas, Neo Haywood, Justin Jones, Clifton Sutton, Alvin Agnew
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011GS332012169
 - (b) 2010GS33202979

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 28, 2012; Negotiated 25 yrs / Concurrent
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty I recieved a negotiated 25 yrs.
 - (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 I filed for a "PCR" after arriving at Kirkland P3E

- 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) Time limit for appeal exceeded (10 days)
 - (b) seeking post conviction Relief.

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 CLERK OF COURT
 LEXINGTON SC

(c) _____

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

- (a) Violation of "hand of one hand of all," law
- (b) Ineffective Assistance of Counsel
- (c) Denial of "Due Process" & Denial of "equal protection of the law"

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

- (a) SC constitution Art I, sec 3, U.S. constitution VI
- (b) VI amendment, and XIV amendment violated
- (c) Violation of "hands of one hand of all," (sentencing law)

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

- (a) any petition in a State Court under South Carolina Law? _____
- (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? NO

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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 2012 OCT 30 P 4: 01
 BETHA GARRIGG
 CLERK OF COURT
 LEWISBURG SC

- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

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 2012 OCT 30 P 4:01
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 CLERK OF COURT
 LEANINGTON, SC

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. Charlie Jay Johnson Jr
1911 Pichens St, P.O. Box 11212, Columbia, SC 29211
- ii. _____
- iii. _____

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

- i. Arraignment & Plea; Sentencing, I recieved
25 yrs
- ii. _____
- iii. _____

FILED
 2012 OCT 30 2 41:01
 KETH A. CARRIGG
 CLERK OF COURT
 EXHIBIT SC

Revised 3/2003

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

I wish to have my sentence reduced to what my co-
defendants recieved. Or set aside/vacate sentence.
(Hinds of one Hinds of all law).

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

No

201 2CP3204378

STATE OF SOUTH CAROLINA)

VERIFICATION

County of lexington)

I, Phillip H Jackson, 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 19 day of Oct, 2012.

Mamrick Wilson (L.S.)
Notary Public

My Commission Expires: 3/8/2020

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

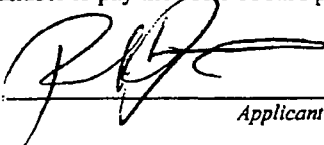
2012 OCT 30 2 4: 01

FILED

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

I, Phillip H. Jackson, 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.


Applicant

SWORN or affirmed to and subscribed before me this
19 day of Oct, 2003.

Mamie Wilson
Notary Public

My Commission Expires: 3/8/2000

FILED
2012 OCT 30 2 4: 01
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

201 2CP3204378

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No. 2012-CP-32-4378
)	
Phillip H. Jackson,)	
S.C.D.C. No. 317505)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 30, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the October 2010 term of the General Sessions for Lexington County for murder (2010-GS-32-02979) and was indicted May 2011 term of the Court of General Sessions for Lexington County for armed robbery while armed or allegedly armed with a deadly weapon (2011-GS-32-01269). Charles E. Johnson, Esquire, represented Applicant. On February 28, 2012, the Applicant pled guilty to armed robbery while armed or allegedly armed with a deadly weapon and to voluntary manslaughter. The Honorable R. Ferrell Cothran, Jr. sentenced Applicant to twenty-five years on each charge. The sentences to be served concurrently. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, and the transcript of the proceeding against the Applicant. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. "Ineffective Assistance of Counsel"
2. "Violation of 'Hand of one Hand of all' law"
3. "Denial of Due Process & Denial of equal protection of the law"

III.

The Applicant alleges ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." 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 a guilty plea, 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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant raises additional direct appeal allegations. These allegations are not proper matters for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 833 (1975). Therefore Applicant's direct appeal allegations must be summarily dismissed.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

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

IX.


WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
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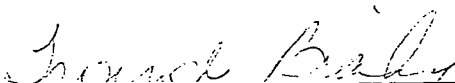
March 27th, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE ELEVENTH CIRCUIT
COUNTY OF LEXINGTON)	
)	
)	2012-CP-32-4378
)	
Phillip A. Jackson, # 317505)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent)	
)	

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

Ryan M. Wingard, Esquire
Post Office Box 489
Lexington, SC 29071

DATED this 22th day of March, 2013


 Troyeshi Brailey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	2012-CP-32-04378

PHILLIP JACKSON)	
APPLICANT)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA)	
RESPONDENT)	

November 14, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE.

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

CHARLES BROOKS, ESQ.
Attorney for the Applicant

WALTER WHITMIRE, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

CAROL M. THUEME, RPR
Official Court Reporter

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EXHIBITS

(There were no exhibits offered.)

1 MR. WHITMIRE: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. WHITMIRE: The last matter before the Court
4 for this morning's roster is Phil Jackson v State of South
5 Carolina.

6 Beg the Court's indulgence just one moment.

7 (Pause.)

8 THE COURT: Is that Phillip Jackson?

9 MR. WHITMIRE: Yes, Your Honor, 2012-CP-32-4378.
10 Mr. Jackson filed his application for post-conviction
11 relief October 30th, 2012. Mr. Jackson was indicted for
12 murder and armed robbery. He entered a guilty plea as
13 indicted for the armed robbery. He entered an Alford plea
14 to voluntary manslaughter, the lesser included of murder.
15 Mr. Jackson was sentenced to two 25-year terms of
16 imprisonment to be served concurrently by the Honorable
17 Judge Cothran. Mr. Jackson did not appeal his sentence or
18 conviction.

19 Mr. Jackson is present and represented by
20 Mr. Brooks. Mr. Jackson is proceeding today on an
21 allegation of failure to advise on the
22 hand-of-one-hand-of-all accomplice liability theory. He
23 was represented at his plea during the course of this case
24 by Mr. Charlie Johnson.

25 THE COURT: Mr. Brooks.

1 MR. BROOKS: Ready to proceed, Judge.

2 THE COURT: Any other grounds other than the
3 failure to advise of hand of one hand of all?

4 MR. BROOKS: That's it, Judge.

5 THE COURT: All right. Call your first witness,
6 please.

7 MR. WHITMIRE: Your Honor, I hate to interrupt.
8 We do have victims present. Ms. Harris, the victim's
9 mother, along with family are present to observe this
10 hearing.

11 THE COURT: Very good.

12 MR. BROOKS: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. BROOKS: We'll go ahead and call Mr. Jackson
16 to the stand, Judge.

17 THE COURT: Come around, please, sir.

18 PHILLIP JACKSON, after being duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat, please.

21 MR. BROOKS: Ready, Judge?

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q Mr. Jackson, how are you today?

1 A Fine. And yourself?

2 Q All right. Now, you are serving basically a 25-year
3 sentence?

4 A Right.

5 Q Okay. And you have filed this post-conviction relief
6 application. And you understand that the only power the
7 Court has if everything lines up for you and the Judge
8 agrees with you and overturns your guilty plea is to give
9 you a new trial?

10 A Right.

11 Q Okay. And you understand the risk that you run in
12 getting that?

13 A I do.

14 Q We talked about that. And just for the record, you
15 can go back and face a life sentence?

16 A Right.

17 Q You understand that?

18 A Right.

19 Q And you also understand that over here in Lexington
20 County they tend to hand out death penalties like people
21 hand out candy?

22 A Right.

23 Q You understand that?

24 A Right.

25 Q You understand that that could be a potential risk?

1 A Right.

2 Q Knowing all that, it is still your desire to go
3 forward; is that correct?

4 A Correct.

5 Q Okay. Now, you had Mr. Johnson represent you; is
6 that correct?

7 A That's right.

8 Q And he was appointed to you; is that right?

9 A Yes, sir.

10 Q Okay. And you ended up pleading guilty. And you're
11 saying now that this guilty plea should be overturned
12 because Mr. Johnson didn't properly advise you; is that
13 correct?

14 A Yes, sir.

15 Q Now, tell the Court what you mean and explain what
16 you mean how he didn't properly advise you.

17 A Well, initially I started off saying that I wanted to
18 go straight to trial because I told him several times I
19 was innocent, you know what I'm saying? But -- and
20 throughout the course of me being incarcerated he was
21 letting me know, okay, yeah, that's what's up, we going to
22 go through a trial. But then I got my motion and he
23 started seeing other things that I didn't see and he's
24 telling me some days it's good, some days it's bad. So I
25 got my motion from him. Out of the motion, it's

1 740-something-odd pages on the motion, but I only have --
2 only received 35 pages of that motion without the
3 ballistics or the autopsy report, and those things are
4 critical when I'm trying to go to trial or even if I
5 wanted to try to go to trial.

6 Q Well, let me ask you this now. In your transcript --

7 A Right.

8 Q -- that is about 20-some pages, I can't remember the
9 exact count, there is a lot of talk about hand of one is
10 the hand of all.

11 A Right.

12 Q Mr. Johnson and you in the transcript talk about you
13 not getting being the shooter.

14 A Right.

15 Q Obviously you were in the car and the hand of one is
16 the hand of all. What do you know now that had you known
17 last year when you did this plea deal that would have
18 caused to you turn down this plea, to not take this plea
19 in front of Judge Cothran?

20 A That if I would have been able to look at the
21 ballistic report and see that I didn't have no
22 fingerprints on the weapon.

23 Q Hold on a second. Listen to me carefully.

24 A Okay.

25 Q Listen to me carefully.

1 In the transcript it talks about -- at least
2 Mr. Johnson mentions and you talk about not being the
3 shooter?

4 A Right.

5 Q That's all over the transcript.

6 A Right.

7 Q How would the ballistics report and fingerprints on
8 the gun, how would having that have helped you?

9 A Because it would have showed I wasn't the shooter.
10 How can I be the shooter with no fingerprints on the gun?

11 Q Listen to me carefully again now. Listen to me
12 carefully.

13 In the transcript Mr. Johnson talks about you
14 not being the shooter?

15 A Right.

16 Q And you were basically pleading guilty under the
17 theory of the hand of one is the hand of all?

18 A Right.

19 Q Which means that you weren't the one that picked up
20 the gun to shoot, and that's how the plea was developed?

21 A Right.

22 Q Murder dropped down to manslaughter, negotiated plea
23 of 25 based on that whole idea that you were not the
24 shooter?

25 A Right.

1 Q So how would getting evidence such as a ballistics
2 report that would say you weren't the shooter, how would
3 that help you in a plea that's already been done where it
4 was talked about you not being the shooter? You follow me
5 now?

6 A Yeah, I got you.

7 Well, I had -- I didn't -- I didn't really
8 understand the law or really check my motion out enough to
9 really feel like I was -- I can't quite answer your
10 question the way I have it in my mind, right, but --

11 Q I understand. Have you learned anything about the
12 hand of one hand of all, have you learned anything?

13 A It's just a theory.

14 Q Have you learned -- what do you know now about that?

15 A About the hand of one hand of all?

16 Q You're asking this judge to overturn your guilty
17 plea?

18 A Right.

19 Q You pled guilty under that whole premise?

20 A Right.

21 Q Okay. Because in the transcript it talks about you
22 not being the shooter?

23 A Right.

24 Q You pled guilty about being involved --

25 A Right.

1 Q -- in the whole incident?

2 A Right.

3 Q Okay. What have you learned that would exonerate
4 you, exonerate, that would acquit you -- that means that
5 you wasn't involved -- that would make you innocent under
6 hand of one hand of all?

7 A Well, if we looking at the hand of one hand of all
8 and from my point of view if -- if that was what I was
9 going under and that's why I pled, then why not -- didn't
10 my codefendants receive the same exact amount of time as
11 me? Why did they receive seven years and 12 years and I
12 received 25 years if it's the hand of one hand of all?

13 Q Well, that's a very good point. But now you
14 understand that if you do win this PCR, and this kind of
15 brings it back to the first question --

16 A Right.

17 Q -- that those same codefendants, they could come back
18 and you would be on trial not for manslaughter but for
19 murder?

20 A Right.

21 Q And I'm going out on a limb, but I bet you those same
22 guys will be coming into this courtroom and they're going
23 to say Phillip is the shooter?

24 A More than likely.

25 Q Okay? You understand that danger?

1 A Yes.

2 Q That's danger?

3 A Right.

4 Q Okay. I don't -- I mean, what they got sentenced to,
5 we're just talking about your plea now?

6 A Right.

7 Q You understand that the Judge can't cut your time?

8 A Right.

9 Q He can't change 25 to 20 to 15. Do you understand
10 that?

11 A I understand.

12 Q I want to make sure you understand. It's like
13 pressing that reset button on the video game, same game.
14 Do you understand?

15 A I understand.

16 Q You still want this new trial?

17 A Yes.

18 Q Okay. Now, basically are you saying that Mr. Johnson
19 basically said that, hey, man, you need to just go on here
20 and take this deal?

21 A Yeah. In a nutshell, yeah.

22 Q Okay. And are you saying that under the hand of one
23 is the hand of all that you're not guilty of any of this?

24 A I mean, as far as the armed robbery I would be guilty
25 because I was there, guilty by association because of me.

1 being there, but as far as the murder, no, period.

2 Q Do you understand if you're saying you did the armed
3 robbery you can get 30?

4 A Right.

5 Q That's five more than what you got?

6 A Right.

7 Q You understand that even on that admission, you could
8 still get five more years than what you got?

9 A Right.

10 Q Okay. What else about Mr. Johnson's representation
11 do you want to tell Judge McIntosh here today that would
12 lead us to get you this new trial?

13 A Well, other than the fact that I didn't receive a
14 full and correct motion, which I felt like would have
15 helped me proceed in a better light than what I was when I
16 first started. I mean, he --

17 Q Let me ask you, do you think if you'd had all this
18 motion for discovery, all this information, that you could
19 turn back the hands of time and stand trial you would be
20 successful from what you know now?

21 A It's a possibility. I mean, it's -- we -- if you
22 want to be honest --

23 Q Do you think you would be successful if you could
24 turn back the hands of time, because that's what we're
25 asking Judge McIntosh to do?

1 A Right.

2 Q We're asking him to turn back the hands of time and
3 put you back at square zero?

4 A Right.

5 Q And you got all the stuff you want?

6 A Right.

7 Q The ballistics report, the discovery. Forget about
8 Mr. Johnson. You got the best lawyer in South Carolina,
9 whoever your hand-picked lawyer you want sitting at the
10 table here in Lexington County knowing your case, because
11 nobody knows your case better than you?

12 A Right.

13 Q Are you saying -- do you feel that you would be
14 successful?

15 A I mean, we -- as far as the law, nobody's going to be
16 a hundred percent. It's based on the jury. I can give
17 great evidence saying that I was not there and in the end,
18 if the jury's saying I'm guilty regardless of the fact,
19 it's a 50/50 chance, so I mean...

20 Q And you understand -- again, I hate to belabor the
21 point -- you do understand what happens if that 50 percent
22 come back?

23 A Right.

24 Q Okay. All right. Anything else you want to tell the
25 Court about Mr. Johnson's representation? This is the

1 day. Tell Judge McIntosh why Mr. Johnson was ineffective
2 and inefficient in representing you.

3 A No, that's -- that's -- basically he wasn't informing
4 me of the things I needed to know. And I was saying that
5 I wanted to go to trial, but we never really sat down and
6 came up with a trial concept on how we going to even
7 proceed in trial.

8 Q Okay. And you if knew what you knew now back then
9 you would have turned down the deal and proceeded to
10 trial, right?

11 A Right. If I had the knowledge that I have now, yes.

12 Q Okay. Is there anything else that we want to tell
13 the Judge that we haven't covered?

14 A No, sir.

15 MR. BROOKS: All right. Answer any questions
16 from the Attorney General.

17 MR. WHITMIRE: May it please the Court.

18 THE COURT: Mr. Whitmire.

19 CROSS-EXAMINATION

20 BY MR. WHITMIRE:

21 Q Mr. Jackson, five days separated two offenses that
22 you pleaded guilty for; is that correct?

23 A Yes, sir.

24 Q The second event you're saying clear-cut you did it;
25 is that correct?

1 A Say that again.

2 Q The armed robbery, you're saying that you absolutely
3 did it?

4 A No, I didn't. I said I was there, but I didn't do
5 it.

6 Q By being there, you and a codefendant went in the
7 house while several lookouts remained outside; is that
8 correct?

9 A No, sir. It has in my motion that I never even
10 entered into the house.

11 Q Didn't they catch you fleeing from the crime scene
12 red handed?

13 A They caught me fleeing from the crime scene, not the
14 house, sir.

15 Q Now, Mr. Jackson, the gun that was used to shoot the
16 second victim of the armed robbery, didn't it connect back
17 to the murder that occurred five days prior?

18 A Yes, sir.

19 Q And these are the same group of people that you were
20 hanging out with when these two events occurred?

21 A It was alleged that I hung out with them during the
22 murder, but during the armed robbery, yes, sir, those are
23 the same people.

24 Q Did Mr. Johnson review all of their statements and
25 stories with you during the course of representation?

1 A To my -- I can't remember quite if we went over -- I
2 remember we spoke on several things, but I can't -- not to
3 my recollection, I can't remember, sir.

4 Q You don't remember Mr. Johnson telling you that every
5 single one of those codefendants put you as the shooter in
6 the murder?

7 A I mean, he didn't have to tell me that. My motion
8 said that, sir.

9 Q So you knew this?

10 A Yes, sir.

11 Q And you and the codefendants, you're all in a gang,
12 right?

13 A Yes, sir.

14 Q Didn't one of your codefendants give a statement that
15 right before you executed the first victim, or someone in
16 your car, that you had said I want to get me a body?

17 A That's what he said.

18 Q So you're aware of that?

19 A Yes, sir.

20 Q And you're the leader of this gang; is that correct?

21 A I mean, that's what the evidence shows that I'm the
22 leader, but...

23 Q You're just trying to impress new recruits?

24 THE COURT: Answer the question.

25 THE APPLICANT: That's a rhetorical questions?

1 Was I trying to impress -- no.

2 BY MR. WHITMIRE:

3 Q When you said that statement, I want get me a body?

4 A No, I mean, I never made that statement because I
5 never was there.

6 Q If I recall correctly you said you were in the car
7 five days prior to the armed robbery when the first victim
8 was gunned down?

9 A No, I was in the car for the armed robbery. I
10 wasn't -- if you look in the motion it says that I was
11 never there. If you look in the article that when I was
12 in court, it shows that when I was in court it shows that
13 I'm saying I wasn't there, so...

14 Q So wait a second. So you're saying none of your
15 codefendants even put you there during the murder now?

16 A They did, but you asked me do I -- do I feel like I
17 was there. You was asking me was I there. You didn't ask
18 me what my codefendants said. You was asking me was I
19 there, and I'm telling you I wasn't there. What my
20 codefendants said, yes, they said that.

21 Q And you told Judge Cothran that you were pleading
22 guilty because you believe a jury would convict you?

23 A I mean, under the pretense of what my lawyer told me,
24 he said that would be the best plea to do. But as far as
25 me knowing the exact plea, I took it upon myself to follow

1 what my lawyer say because he is my lawyer and he's to
2 help me, so yes, that's what I did, not fully
3 understanding about that would hurt me if I was to come
4 back on PCR.

5 Q Now, Mr. Jackson --

6 A Yes, sir.

7 Q -- if you're the leader of this gang and the
8 codefendants put you in the car, did Mr. Johnson explain
9 to you that the jury could get you on the hand of one?

10 A Yes, sir.

11 Q Taking the facts as you present them today?

12 A I mean, I -- that I understand and that's why I'm
13 fighting this, the hands of one. How did I -- how did I
14 get 25, they got seven and 12 if it's the hands of one?
15 Does it only fit for those who tell on individuals, that
16 it's thrown out, and the ones who don't say anything gets
17 the hand of one hand of all theory?

18 Q Did your attorney explain to you that what a
19 codefendant gets in sentencing doesn't secure --

20 THE COURT: Move on. That is totally
21 irrelevant.

22 MR. WHITMIRE: Thank you, Your Honor.

23 BY MR. WHITMIRE:

24 Q How many times did you meet with your attorney?

25 A I don't quite know the number, but it was a few

1 times, more than two.

2 MR. WHITMIRE: No further questions, Your Honor.

3 THE COURT: Thank you.

4 Redirect?

5 MR. BROOKS: No, sir.

6 THE COURT: Step down, please, sir.

7 MR. BROOKS: We would call Mr. Charlie Johnson
8 to the stand.

9 THE COURT: Come around, Mr. Johnson, please.
10 Would you be sworn in, please, sir.

11 CHARLIE JOHNSON, JR., after being duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat, sir.

14 MR. BROOKS: May it please, Judge.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q How are you doing today, Mr. Johnson?

19 A I'm doing pretty good.

20 Q You were appointed to represent Mr. Jackson?

21 A Yes, I was.

22 Q Could you give a brief summary of what the State's
23 evidence was against him?

24 A Okay. I was initially appointed to represent him. I
25 went to see Mr. Jackson numerous times and we talked about

1 the evidence. He had two separate charges. One was an
2 armed robbery charge; the other was an incident where
3 there was a murder. I actually got a PI, a private
4 investigator to assist me, Amos Jones. He went with me a
5 number of times to assist me as well.

6 On the armed robbery charge what happened was
7 there was some individuals that went into a house, I guess
8 to rob some drug dealers or some other people. In that
9 case an individual went into the house, there was some
10 lookouts, and Mr. Jackson was in the car that took the
11 people there or was in the car that was leaving the scene.
12 I think the car wrecked or pulled to the side and
13 Mr. Jackson was arrested at that time along with the other
14 individuals. He never went inside the house, but he was
15 there. And the individuals say that Mr. Jackson was the
16 one that was directing them to go inside the house, okay?

17 Q Okay.

18 A That was the armed robbery charge.

19 Q Okay.

20 A They recovered a gun at the scene from -- that was
21 not on Mr. Jackson, but the gun was then related back to
22 the murder that happened days before. With that they went
23 to some of the people that was arrested at the armed
24 robbery. Those individuals gave statements saying
25 basically that we went to Orangeburg, we was on our way

1 back from Orangeburg, and the statements were that
2 Mr. Jackson said, I have to have a body, and he pulled
3 beside an individual that was walking home and just called
4 him to the car and shot him.

5 Q Okay.

6 A And he pulled away. And that's how Mr. Jackson then
7 was charged with the murder. The other individuals admit
8 to being there and being in the car and witnessing that.

9 Q All right.

10 A So when I got discovery I talked to Mr. Jackson about
11 the armed robbery and we looked at that. And basically as
12 he stated today, he's always been cooperative, he's always
13 listened to me, and I told him that under the armed
14 robbery with the evidence that was there, there was a very
15 likely chance that he would be convicted of it. And he
16 understood that. And I told him that he was looking at a
17 possible 30 years for that, just that alone. But I told
18 him my main worry was that if he got convicted for the
19 armed robbery, what the State would do would then be to
20 try him for the armed robbery, come back later and try him
21 for the murder, and if found guilty for the murder, it
22 would be a mandatory life sentence under the two-strike
23 laws. And I told him that my main concern was trying to
24 reduce his exposure to how much time he was exposed to.

25 Q Did you feel that you represented him to the best of

1 your ability according to the law?

2 A Yeah. I mean 25 years is a long time for anybody to
3 go to jail. I understand that. But under the
4 circumstances and the evidence that was there, I felt that
5 I did a real good job getting the 25 years and getting the
6 Solicitor's office to agree to that here in Lexington
7 County. And I explained to Mr. Jackson the reason.
8 Because as I stated, he never told me that he committed
9 the murder. He's always stated that he did not commit the
10 murder. And I told him that under the circumstances of
11 him being there in the car or allegedly being in the car I
12 didn't have any alibi witnesses that I could put up to say
13 he was somewhere else. We didn't have that. That under
14 those circumstances, an Alford plea would be the best plea
15 that I could come up with because I felt if we went to
16 trial he would have been convicted. And under that
17 scenario he could possibly be looking at a life sentence
18 or just for murder alone, it's a mandatory 30 years day
19 for day. Under voluntary at least he would be looking at
20 an 85 percent sentence. He got a 25-year sentence, but
21 realistically he would have to do about 22 -- I told him
22 21, 22 and a half years. So even at that it wouldn't
23 be --

24 Q That's before credit?

25 A Right.

1 Q Before the time credit?

2 A Well, after the time credit, it would be about 21
3 years on a 25-year sentence. So under that scenario I
4 felt that that was my advice to him. And I told him it
5 would be his call, but my advice to him would be to take
6 the plea.

7 Q Did you go through all the Rule 5 discovery?

8 A What I did was, the reason that I only give -- I went
9 through all the Rule 5s, but the reason I only give him 35
10 pages is because that was the only pages that referenced
11 him. There was nothing else in the discovery that
12 connected him to any of the crime. He was correct, there
13 was no fingerprints on the gun, no -- none of the other
14 evidence had connect to him at all, so there was no need
15 for him to even see that. I gave him all the information
16 that placed him at the scene, with all the statements of
17 what all the other codefendants made. Anything that was
18 connected to him he had and anything he wanted to see he
19 could see. I had my investigator come along with me and
20 talk about his investigation of the case and what he felt.

21 Q Did you -- now, I noticed Mr. Jackson talked about
22 disparity of sentences with his codefendants?

23 A Right.

24 Q Do you recall --

25 A I don't think -- I think the codefendants were

1 sentenced actually after Mr. Jackson pled guilty. So at
2 that time that wasn't a discussion to be had because no
3 one else had pled guilty that I was aware of.

4 Q All right. So basically the evidence against him
5 consisted of potential codefendant testimony?

6 A Potential codefendant testimony, his actual presence
7 at the scene of the armed robbery with those same
8 codefendants.

9 Q Where the gun was found?

10 A Where the gun was found as well as codefendants
11 stating that he was with them the night before because
12 there was -- I think one or two was saying they was being
13 initiated or they were with him or new members to a gang
14 which he was alleged to be the head of.

15 Q Did you tell him there was an uphill battle to win
16 this trial?

17 A Yes. I mean, I give him my fair opinion. But I also
18 told him that it was his call because at the end of the
19 day he was the one that would have to do the time and not
20 me.

21 Q Did you tell him about his right to appeal after the
22 plea?

23 A Yes, I did.

24 Q And you had Mr. Amos Jones as an investigator. Are
25 you saying that he investigated all the leads that

1 Mr. Jackson gave you, potential witnesses and things of
2 that sort?

3 A Yes, I had Mr. Amos Jones. I've always used Mr.
4 Jones. Mr. Jones has been like an investigator here in
5 this area for like 30, 40 years. I'm death penalty
6 qualified, Mr. Jones has always been my investigator for
7 death penalty, and we put a lot of time and effort into
8 this because as I said, as I told Mr. Jackson, I could not
9 tell him the outcome of this case or guarantee that he
10 will walk, but I wanted him to know that I was doing
11 everything I could to be his attorney, so at the end of
12 the day whatever time he got, if he got time, that he
13 would know I did everything I could.

14 MR. BROOKS: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. BROOKS: No further questions.

19 THE COURT: Thank you, sir.

20 MR. WHITMIRE: One question, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WHITMIRE:

23 Q Good morning, Mr. Johnson.

24 A Good morning.

25 Q All the codefendants, were their statements

1 consistent regarding Mr. Jackson's guilt?

2 A They were consistent in saying that Mr. Jackson was
3 the one that ultimately pulled the trigger in the murder.
4 In the armed robbery, they were consistent that he was
5 there with them at the armed robbery.

6 MR. WHITMIRE: No further questions, Your Honor.

7 THE COURT: Thank you. May Mr. Johnson be
8 excused?

9 MR. BROOKS: Yes, sir.

10 THE COURT: Thank you, sir.

11 MR. BROOKS: Judge, that is the applicant's
12 case.

13 THE COURT: Thank you very much.

14 I've listened to the testimony. The only ground
15 I have is failure to advise hand of one hand of all as
16 related on the record.

17 Number one, I find that that argument is without
18 merit, but Mr. Johnson's testimony that I just heard shows
19 me that he had a valid trial strategy in this case to try
20 to avoid the defendant getting life in prison. The
21 defendant made a valid choice of going to a plea as
22 opposed to trial to avoid the possible life in prison.
23 Even though 25 years is a long time and everybody
24 understands that, it's not as long as life and dying in
25 prison. With that being said, Mr. Johnson's testimony is

1 very credible. There's been no showing of deficiency in
2 performance. In fact, if you look through the transcript
3 of record, Judge Keesley goes through a full and proper
4 colloquy or question and answer, Mr. Jackson, between you
5 and Mr. Johnson in court whereby you waived your
6 constitutional rights on page eight of the transcript. He
7 advises that you've given up any defenses you may have.
8 So regardless of what you testified here in court today,
9 you freely, knowingly, intelligently waived your
10 constitutional rights including the right to assert any
11 defenses. Therefore, I'm denying your petition.

12 Good luck to you.

13 (The proceedings were concluded.)

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Phillip Jackson,
S.C.D.C. No. 317505,

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2014 MAR 31 A 11:46
Case No. 2012-CP-32-4378

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter reaches the Court by way of an Application for Post-Conviction Relief (PCR) filed October 30, 2012. Respondent made its Return on March 22, 2013. An evidentiary hearing was convened on November 14, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Charles T. Brooks, III, Esq. Respondent was present and was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the May 2011 term of the Court of General Sessions for Lexington County for armed robbery 2011-GS-32-01269) and murder (2010-GS-32-02979). Charles E. Johnson, Esq., represented Applicant. On February 28, 2012, Applicant pled guilty to armed robbery and he pled guilty pursuant to North Carolina v. Alford¹ to the lesser included offense of voluntary manslaughter. The Honorable R. Ferrell Cothran, Jr. sentenced Applicant to a twenty-five (25) year term of imprisonment on each offense. The offenses were to be served concurrently.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970)

Applicant did not appeal his sentence or conviction. At the PCR hearing, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. failure to adequately advise Applicant on the “hand of one” accomplice liability theory of guilt;
 - b. failure to review the State’s discovery disclosure in its entirety;
 - c. failure to object to Applicant receiving a disproportionate sentence to his co-defendants.

SUMMARY OF TESTIMONY

Applicant alleged counsel was ineffective for failing to review all of State’s discovery disclosures with him. Applicant testified that he initially wanted to proceed directly to trial. He stated that he only had the opportunity to review thirty-five of the nearly seven hundred pages of discovery provided to counsel. He testified that he was not able to look at the State’s ballistics and trace evidence that he asserted constituted exculpatory evidence on the murder charge. Applicant claimed that he would have proceeded to trial based on this information. He testified he met with counsel more than twice but was not certain the actual number. He testified that he believed he would have had a fifty-fifty shot at being acquitted of the murder charge had counsel taken the case to trial. Applicant’s assertion was based upon information he has recently learned.

Applicant alleged counsel was ineffective for failing to adequately advise him on the “hand of one” accomplice theory of guilt. He testified he told counsel that he was not present in the vehicle during the murder. He testified that he did not “understand the law” prior to entering the plea and now believes that the State could not prove “hand of one” based on the evidence. He did testify that counsel discussed the statements of all his co-defendants that placed him in the vehicle and at the crime scene at the time of the murder. He opined that his co-defendants made false statements against him in order to further their plea negotiations. He testified that his guilt

for armed robbery was not in question. Applicant claimed his attorney wanted him to take the negotiated plea offer because he was already looking at prison for the armed robbery. Last, Applicant alleged counsel was ineffective for failing to ensure he received a prison sentence proportional to the sentences that his co-defendant's received.

Counsel testified to the manner in which he handled Applicant's case. He employed an investigator and noted that the defense team expended a substantial amount of time and effort into Applicant's case. Counsel filed for discovery, reviewed the State's evidence, and then discussed his impressions with Applicant. Counsel noted that he only provided Applicant physical copies of the discovery documents that directly concerned him. Regarding the armed robbery, Applicant was caught fleeing the scene of the offense with his co-defendants. Applicant told counsel that he never entered the residence, yet he did not dispute his involvement in the offense. Regarding the murder, a firearm used in the armed robbery was identified as the same weapon used in a murder that occurred five days prior to the armed robbery. All of the co-defendants in the vehicle with Applicant and the victim gave statements to police that identified Applicant as the sole shooter. It was Applicant's version of the facts that he was not present in the vehicle at the time of the murder. Yet, Applicant never provided counsel an alibi during the course of the representation. Counsel discussed the strength of the State's evidence and expressed his concerns that the jury would most likely convict him of murder if he proceeded to trial. He stated that all the co-defendants gave consistent accounts of the murder. In route, Applicant told the others in the vehicle he wanted to commit a murder just for the sake of committing a murder. When Applicant noticed an unknown pedestrian walking along the rule road, he seized upon the opportunity to kill him. Counsel stated he explained the sentencing exposure Applicant was looking at if he did not consider entering favorable plea. Counsel stated

that Applicant was exposed to a mandatory life without the possibility of parole (LWOP) prison sentence or worse had the State pursued separate trials. The negotiated plea offer for an aggregate twenty-five year prison sentence was as far as the State was willing to bend. Counsel stated that under the circumstances of the case he felt as if he did a good job to get the State to agree to the twenty-five year prison sentence. Counsel discussed the constitutional implications attached to entering a guilty plea and the benefits and detriments of the State's offer with Applicant. Counsel advised Applicant to accept the offer but apprised him that he had to make the ultimate decision. Counsel stated Applicant's co-defendant's pled guilty after Applicant's plea.

APPLICABLE LAW

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, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 668, 104 S.Ct. at 2064. 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, *supra*.

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds counsel's testimony credible and notes that he certainly had a valid defense strategy during the representation to keep Applicant from spending the rest of his life in prison. This Court finds Applicant knowingly, intelligently, and voluntarily entered his plea pursuant to counsel's quality performance and as exhibited by the plea colloquy.

A.

This Court finds Applicant failed to meet his burden to prove counsel failed to properly advise him regarding the "hand of one" accomplice liability theory of guilt. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a

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." Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). This Court finds counsel's testimony substantially more credible than Applicant's testimony in light of the Record and a complete lack of credible evidence to corroborate Applicant's testimony. First, this Court finds the manner in which counsel reviewed the discovery disclosures and communicated them to Applicant to be sound. This Court notes Strickland does not mandate a *per se* duty on a criminal defense attorney to provide physical copies of all discovery materials their clients. Furthermore, Applicant ensured the Plea Judge that he was satisfied with the opportunity he had to review discovery. Even Applicant's allegation was facially lacking. He noticeably was unable to explain what beneficial impact the ballistics evidence would have rendered his defense had he decided to pursue a jury trial. Applicant was also unable to explain how an alleged lack of fingerprint evidence would call into question eye witness testimony and forensic evidence that established that the firearm discovered during the armed robbery was in fact the murder weapon.

Second, this Court finds Applicant's allegation that counsel failed to properly advise him on the application of "hand of one" to his case to be wholly without merit. Under the "hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). Applicant has produced no credible evidence that shows how the State would not be able to convincingly

prove his culpability as an accomplice for the armed robbery. The doctrine had no application on the murder charge where Applicant claimed he was not present at the scene in light of the State's clear evidence that he was the chief perpetrator. This Court finds Applicant's testimony not credible that counsel did not properly advise him of mitigating facts and potential defenses. That Court finds that Counsel is an accomplished criminal defense attorney who devoted significant time and resources in Applicant's case. Based upon counsel's testimony, this Court is convinced counsel met his threshold duty to discuss the appropriate law for potential defense theories. Applicant did not provide much for counsel to work with. Applicant claimed he was not involved in the murder because he was not at the scene but was unable to provide any alibi information. Notably, Applicant did not testify in particularity to the credibility of his co-defendants. As a result, this Court finds Applicant received effective assistance of counsel in counsel's performance in negotiating the lucrative plea offer. The Record clearly shows counsel met his duty to competently advise Applicant of his fundamental rights and options when Applicant decided to enter the negotiated plea agreement. Therefore, these allegations are denied and dismissed.

B.

This Court finds Applicant's allegation that counsel was ineffective for failing to ensure Applicant received a similar prison sentence as his co-defendants is without merit. This Court finds counsel's testimony credible and Applicant's testimony irrational. "Disparate sentences between co-defendants is not per se abuse of discretion." Griffin v. State, 361 S.C. 173, 177, 604 S.E.2d 394, 396 (2004) (citing State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974)). "[W]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of

sentences and that no promises have been made.” Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). The Record clearly shows that Applicant was substantially more culpable than his co-defendants. Furthermore, Applicant has no constitutional right to a plea bargain. Applicant voluntarily entered a negotiated plea agreement with the State. See Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding the applicant's claim lawyer misadvised him). Therefore, this allegation is denied and dismissed.

E.

Except as discussed above, this Court finds that Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

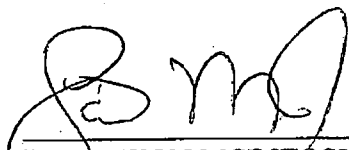
Based on all the forgoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his Application for Post-Conviction Relief. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 27 day of March, 2014.



 R. LAWTON MCINTOSH
 Presiding Judge
 Eleventh Judicial Circuit

Anderson, South Carolina

FILED
 2014 MAR 31 A 11:46
 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

WITNESSES

Lexington County Sheriffs Department

Terry Govan

Law Enforcement Case #: 09101124

DMS

ARREST WARRANT NUMBER

J849808

ACTION OF GRAND JURY

Tom Beavis

Foreperson of Grand Jury

Date: 10/4/10

VERDICT

DOCKET NO. 2010GSS3202979

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2010

**THE STATE
vs.**

Phillip Harold Jackson

CDR #: 0116

Indictment for

Murder

§ 16-03-0010; 16-03-0020

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder

§ 16-03-0010; 16-03-0020

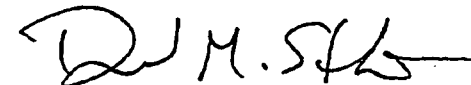
At a Court of General Sessions, convened on October 2010, the Grand Jurors of Lexington County present upon their oath:

That Philip Harold Jackson, along with Neo Desmond Colin Haywood, Justin Lavar Jones, and D'Marqus Laquen Thomas, on or about November 1, 2009, in Lexington County, South Carolina did commit the offense of Murder in that he did, feloniously, willfully and with malice aforethought, kill the victim James Wilbur Lybrand III, to wit: Defendant shot the victim in the face with a .38 caliber handgun, in violation of Section 16-3-10 of the South Carolina Code Of Laws, (1976, as amended).

A TRUE COPY


Lex. Co. C.C.C.P., C.S. & F.O.

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


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Michael S. Ellis

Law Enforcement Case #: 09102260

CED

ARREST WARRANT NUMBER

J849699

DOCKET NO. 2011GSS3201269

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE
vs.

Phillip Harold Jackson

ACTION OF GRAND JURY
PROEBILL

Chad R. Green
Foreperson of Grand Jury
Date: 5/9/11

VERDICT

CDR #: 0139

Indictment for

ARMED ROBBERY WHILE ARMED OR
ALLEGEDLY ARMED WITH A DEADLY
WEAPON

§ 16-11-0330(A)

EDONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
ARMED ROBBERY WHILE ARMED OR
ALLEGEDLY ARMED WITH A DEADLY
WEAPON

§ 16-11-0330(A)

At a Court of General Sessions, convened on MAY 2011, the Grand Jurors of Lexington County present upon their oath:

That Phillip Harold Jackson did in Lexington County, South Carolina on or about November 4, 2009 knowingly and willfully while armed with a deadly weapon, to wit: a shotgun did feloniously take from the person or presence of Winslow Hendrix, by means of force, threats or intimidation goods or monies with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & E.G.

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 Lexington)
 STATE VS.)
Phillip Harold Jackson)
 AKA: _____)
 Race: _____ Sex: M Age: 24)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3202979
 A/W#: J849808
 Date of Offense: 11/17/2009
 S.C. Code § : 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Manslaughter / Voluntary manslaughter

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
 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: _____

W. W. W. Solicitor B. B. B. SC Bar# P. P. P. Defendant Charles J. Johnson Attorney for Defendant 9001 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 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:
 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. Oct 4 2009
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

A TRUE COPY

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-68 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

Lex: Co. C.C.C.P., G.S. & P.C

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: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$100
§ 56-5-2995 (DUI Assessment)	\$12	\$12
§ 56-1-286 (DUI Breath Test)	\$25	\$25
Proviso 47.9 (Public Def/Prob)	\$500	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$40
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)		\$
TOTAL		\$320

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.
 Presiding Judge H. Jewel Holby
 Judge Code: 2144
 Sentence Date: 2-28-12

Clerk of Court/ Deputy Clerk Beth A. Laughlin
 Court Reporter: B. Sheppard
 SCCA217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Phillip Harold Jackson

AKA:

Race: Sex: M Age: 24

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: SID#: [REDACTED]

*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, 25/3 Recommendation by the State.

ATTEST: Ch. Oliver Solicitor 73731 SC Bar# [Signature] Defendant Charles D. Johnson Attorney for Defendant 9001 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 25 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: 2010-85-32-2975

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. ed. 4, 2009

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
§ 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(BUI 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	\$130

Clerk of Court/ Deputy Clerk: Beth A. [Signature]
Court Reporter: J. Sheppard
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3201269

A/W#: J849699

Date of Offense: 11/4/2009

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

PTUP [Signature] Lex. Co. C.C.O.P., G.S. & P.G.
_____ 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.

Presiding Judge: [Signature]

Judge Code: 2144

Sentence Date: 2-28-12

AIR COPY