

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

DEC 5 2014

Appeal from Lancaster County
William Jeffrey Young, Circuit Court Judge

S.C. Supreme Court

AARON J. DONALDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002108

APPENDIX

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Appellate Defender

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Attorney General

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
2013-GS-29-35

State of South Carolina
vs.
Aaron Donaldson

Lancaster, South Carolina
April 15, 2013
Before the Honorable Ernest Kinard

APPEARANCES

For the State: Bill Nowiki
For the Defendant: William Frick

Reported by: Michael C. Watkins
Official Court Reporter

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NO EXHIBITS

1 MR. NOWIKI: Case number 2013-GS-29-35, State versus
2 Aaron Donaldson, it is an indictment for armed robbery, and
3 this is a negotiated sentence -- or plea. He is going to
4 plead guilty to that charge and it's a negotiated ten years.

5 THE COURT: Okay. Mr. Donaldson, how long have you
6 been knocked up?

7 THE DEFENDANT: Six months.

8 THE COURT: Here is the situation. Armed robbery
9 carries up to 30 years, it's a minimum of ten, they say
10 they've negotiated ten, that means I can't give you 30. I
11 can refuse to accept it but if I accept it what you get is
12 ten years, do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And unfortunately armed robbery is a
15 violent crime, a most serious crime and all of that.
16 Mr. Frick has explained that to you I'm sure. What that
17 means, you've heard that one strike you're out, two strikes
18 you are out and so forth. This is a strike.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If in the future you commit a crime that
21 the legislature classifies as violent the State can ask for
22 life without parole even though the maximum period of
23 incarceration for the crime might just be like a sentence of
24 ten years, do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you want a jury trial?

2 THE DEFENDANT: No, sir.

3 THE COURT: If you plead guilty you waive your right to
4 a trial which includes your presumption of innocence. The
5 burden of proof is on the State beyond a reasonable doubt,
6 12 jurors would have to find you guilty, do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You could question everybody, object to the
10 admissibility of testimony or evidence, put up a defense or
11 not. Your defense could simply be they got the wrong
12 person, you know, but if you plead guilty you basically
13 waive any right to any defense that you have. Of course,
14 during a trial you could testify or not, that would be your
15 choice, your lawyer has been over all of that with you.
16 It's all explained on this advisement of rights form that
17 you signed. Do you understand everything?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All of the answers correct on here?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay, Mr. Nowiki.

22 MR. NOWIKI: Your Honor, the incident occurred on
23 October the 18th of 2012, at approximately 12:10 in the
24 afternoon, it was at 123 East Richland Street in Kershaw
25 here in Lancaster County, and that is the location of

1 Williams Financial Services. Officers went to that location
2 in reference to an armed robbery. They did meet with the
3 victim, Judy Baker, who had informed officers that a light
4 skinned black male in his twenties came in the front door
5 and had indicated that he needed to pay an account of Anita
6 Baker. There was no such person in their account in the
7 system and that's when he pulled a handgun, put it to her
8 head and said, "Give me all your money," and also had went
9 behind the desk and actually put the gun to Ms. Baker's head
10 and again asked for the money and threatened her, did get
11 the money and left the building. Officers were able to view
12 the videotape and on the videotape the -- there's a
13 codefendant in this matter, a Rebecca Cauthen. Ms. Cauthen
14 is seen coming into the -- I'm sorry, coming into Williams
15 Financial in a white truck. She goes into Williams
16 Financial, conducts some business, leaves. There's also
17 another person that was in Williams Financial, they leave,
18 get in the car, Ms. Cauthen goes back to the truck, shortly
19 after you can see a person getting out of that truck and
20 going into Williams Financial. And based on -- or I should
21 say through investigation of Ms. Cauthen they were able to
22 determine in a prior incident that the defendant, Aaron
23 Donaldson, had been with Ms. Cauthen at another time and so
24 they were also at that point thinking that Mr. Donaldson is
25 a suspect. I believe a BOLO went out on the white truck

1 which was found about four hours later and that was I
2 believe close to the residence of Ms. Cauthen who also lives
3 in Kershaw, South Carolina here in Lancaster County. And
4 when officers got there they were talking with both the
5 defendant and the codefendant, they did locate some money
6 that was in the white truck on the passenger side. They
7 asked both of them if they would come and give statements,
8 both said they would. The defendant in his statement
9 initially said that Ms. Cauthen had picked him up in Rock
10 Hill at 3:00 in the afternoon, they had gone to Camden I
11 believe to the Wal-Mart. Well, when Ms. Cauthen gave a
12 statement she had indicated that Mr. Donaldson had been with
13 her pretty much all morning prior to going to Williams
14 Financial, they had gone to the Dollar General in Kershaw
15 approximately about 11:30 in the morning and there is video
16 showing both Ms. Cauthen and the defendant in the Dollar
17 General at that time, and within about ten minutes from when
18 they left Dollar General they are seen at the Williams
19 Financial. Ms. Cauthen indicated that she did not know what
20 Mr. Donaldson was going to do when he went in to Williams
21 Financial. But anyway, she puts him there, he's the only
22 one that goes in there. We have a witness who also
23 mentioned that they did see what they believed to be a white
24 individual that was in the truck and had a hat on and sun
25 glasses and -- but again like I said, being a light skinned

1 black male. Also the clothing that he was found in, I
2 believe a black shirt is similar to what he was wearing at
3 the time. He did have a hoodie on and black pants and the
4 black pants and black T-shirt that he was wearing --

5 THE DEFENDANT: I had on shorts.

6 MR. NOWIKI: Correct me if I'm wrong but I believe he
7 had pants on at the Dollar General. But anyway, that's
8 really the facts of the case. And the victim has been
9 contacted, Ms. Baker, as well as one of the owners, Rhonda
10 Gardner, and they are happy with what's going on today,
11 that's why they're not here. And that's about it. As far
12 as his record goes, it looks like in 2011 he had a burglary
13 second degree which he got six years suspended to five years
14 probation, also a grand larceny greater than 2,000, less
15 than 10,000, I believe he got 90 days on. Also breaking
16 into an automobile in 2011 where I believe it might have
17 been a probation violation which he got 90 days revoked and
18 then was supposed to serve 18 months. And that is the
19 extent of his record?

20 MR. FRICK: Your Honor, as you heard my client is on
21 probation but I think he is on probation in York County,
22 it's not anything we can deal with today, I will check and
23 see if there's anything that we could deal with this week.
24 But my client understands, this obviously is a violation of
25 his probation. Your Honor, I would ask you to follow the

1 negotiations. I do want to tell you about my discussions
2 with Mr. Donaldson. We have met several times at the jail,
3 couple the times within the last couple of weeks talking
4 about this case. This case was set for trial this week and
5 I think was the number one case for trial. We have gone
6 over what the videos show, what evidence is available. My
7 client accepts full responsibility and in that would like to
8 exonerate his codefendant. He stated that while he was a
9 passenger in the car she had no idea what he was going to do
10 when he went into this establishment, she went in there for
11 other reasons and he went in on his own and did what he did,
12 went to ask to go to the bathroom and then robbed the
13 establishment. I know he is remorseful, we talked about
14 that. He, in fact, asked as we were coming out if anybody
15 was here, he did want to apologize for his actions. He is
16 19, he is going to be an older man but still a young man
17 when he puts this behind him. He is, in fact, a native of
18 Belize and the family moved him up there to get away from
19 the environment down there. I know Your Honor has been to
20 Central America, I don't know if you have been to Belize but
21 beautiful country that's got a lot of troubles and
22 unfortunately he found himself in troubles when he got up
23 here. I know it's difficult for him to understand what
24 happened, I know his family has a hard time. I know his mom
25 is present in the courtroom, I believe she does want to

1 address you so I would ask you to hear from her at this
2 time.

3 THE COURT: All right.

4 THE WITNESS: Yes, Your Honor, my son, he was raised in
5 a Christian home. I know he has been having some troubles
6 as a teen as do other teens. And I spoke with Aaron when he
7 started seeing Ms. Cauthen because she is way older than
8 him, she is 36 years old. When she met him I began seeing a
9 lot of trouble in different things with Aaron. He started
10 using medication and as I spoke with Ms. Cauthen's mother
11 she had a problem with Ms. Cauthen robbing her own family
12 and being on a whole bunch of pills and stuff like that.
13 And I asked her to stay away from my son and I asked my son
14 to stay away from her and they both chose to not listen to
15 me. She came to Rock Hill and picked my son up, he had no
16 way of getting here to put himself in this trouble that he's
17 in right now. But my son is a good person but he just did
18 some things that just got him the wrong -- down the wrong
19 path and instead of using his better judgment that I put
20 into him he let somebody else influence him and get him in
21 drugs or whatever else that's got him to acting the way he's
22 acting. But he is a good person.

23 THE COURT: Okay.

24 MR. FRICK: Your Honor, I think that's all. I don't
25 know if Mr. Donaldson has anything he wants to say. The

1 only other thing I want to say is he has been in the
2 detention center since October 18th of last year, I just ask
3 you to credit him appropriately.

4 THE COURT: Mr. Frick, have you explained to him if he
5 went to trial he could move to suppress the confession and
6 all of that stuff?

7 THE DEFENDANT: We did. Don't know what the results of
8 that would be but I think we are still doing the right
9 thing.

10 THE COURT: You understand, Mr. Donaldson, at a trial
11 you could move to keep out the confession. You might not
12 win, I don't know the facts, but if you plead guilty today
13 you can't raise that later, do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Another thing, if you're from Belize, I
16 don't know whether you are here legally or not but if you
17 are not here legally this could result in deportation just
18 as a caveat.

19 THE DEFENDANT: I don't think that's an issue in this
20 matter but we understand.

21 THE COURT: I don't know. I will follow the
22 negotiations of ten years. You will get credit for the time
23 you have been incarcerated. And the mother needs to
24 understand that is the minimum period that could be imposed.

25 MR. FRICK: Yes, sir.

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 15th day of April,
8 2013.

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


11

12

December 5, 2013

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Michael C. Watkins
Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA)

County of Lancaster)

Aaron Jami Donaldson # 355c77)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013 CP 29-1198

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Ridgeland Correctional Institution, Post Office Box 2039, Ridgeland, SC 29936-2039
2. Name and location of Court which imposed sentence Court of General Sessions, Lancaster Co. Court, 104 N. Main Street, Lancaster, SC 29720
3. Name(s) of co-defendant(s) (if any) Rebecca Cauthen
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-29-35
 - (b) _____

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OF COURT
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CLERK OF COURT
LANCASTER, SC

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 15 April 2013 - Ten years incarceration (violent)
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

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

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

- (a) the name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals Case No.: 2013-000853
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. The matter was dismissed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. 02 July 13
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. "Appellant has failed to provide a sufficient explanation as required by
 - ii. Rule 203(d)(1)(B)(iv)
 - iii. _____

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

(c) _____

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

(a) Ineffective Assistance of Counsel: Use of threats + coercion by State

(b) Ineffective Assistance of Counsel: Not properly investigating defendant's case

(c) _____

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

(a) See attached Memorandum of law

(b) See attached Memorandum of law

(c) _____

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

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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) this is the first PCR application and first motion filed after
- (b) the dismissal from the Court of Appeals.
- (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? Yes
- (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. William Erick, Esq. Lancaster Co. Public Defender's Office,
Post Office Box 1809, Lancaster, SC 29721
- ii. _____

iii. _____

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

- i. Arraignment, Plea, and Sentencing.
- ii. He also initially filed appeal

iii. _____

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

I, Aaron Jami Donaldson, 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.

Aaron J. Donaldson
Applicant

SWORN or affirmed to and subscribed before me this

3 day of Sept., 2013.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

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

Overturn of Sentence or what the Court deems necessary

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

No

STATE OF SOUTH CAROLINA)
)
County of Jasper)

VERIFICATION

I, Aaron Jami Donaldson, 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.

Aaron Jami Donaldson

SWORN to and subscribed before me this 3 day of Sept, 2013.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

In the Court of Common Pleas
In and for the Sixth Judicial Circuit
for Lancaster County, SC

Aaron J. Donaldson, SCDC# 355077 Applicant,

v.

State of South Carolina Respondent.

Memorandum of Law in
Support of the
Post-Conviction Relief Application

Aaron J. Donaldson, SCDC# 355077
Ridgeland C.I. / CB30
Post Office Box 2039
Ridgeland, SC 29936-2039

"The defense counsel was ineffective for allowing the State to use intimidation, coercion, and threats to attack the Defendant's girlfriend to obtain a plea."

The Defendant, Aaron J. Donaldson, entered a guilty plea under duress. The defense counsel told the Defendant that if he did not agree to the plea bargain offered by the State, the State was going after his girlfriend (and co-defendant) Rebecca Coulter. The State said that if the Defendant would plea - the charges against Ms. Coulter would be dropped.

The Defendant felt intimidated by the Solicitor through coercion and threats to attack the Defendant's girlfriend, how can the plea possibly be voluntary or intelligent. See Kirkpatrick v. South Carolina, 412 S.E. 2d 389 (1991).

"The defense counsel was ineffective for not properly investigating the Defendant's case before the plea bargaining process started."

During interviews with witnesses at the scene, several mentioned a strange looking gray vehicle moving slowly in the area before the robbery happened. This was never investigated. Also during this same investigation, no one saw the Defendant (who could describe him) entered the building and/or left. The cameras did not show who entered the institution, but did show the Defendant's girlfriend enter - made inquiries about her account - and exited the building leaving in a truck.

The Defendant advised counsel of these statements when he went through his discovery. Defense counsel was not interested in the information - only in the plea.

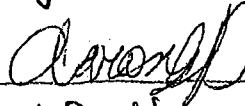
The evidence that the Defendant's case was not adequately investigated by counsel related to claim of ineffectiveness of counsel and that claim had to be reserved for post-conviction

relief. State v. Elmore, 386 S.E. 2d 769, 300 S.C. 130 (Sc. 1989).

Post-conviction relief process is specifically designed to allow for inquiry in to relevant facts surrounding adequacy of the Defendant's information . . . appropriate remedy is to remand for hearing . . .

See Cartrette v. State, 448 S.E. 2d 553, 323 S.C. 15 (Sc. 1994).

Respectfully submitted,



Aaron J. Donaldson, SCDC# 355017

Ridgeland C.I. / CB-38

Post Office 2039

Ridgeland, SC 29936-2039

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER)	
)	
)	2013-CP-29-1198
)	
Aaron Jami Donaldson, #355077,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 6, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted for Armed Robbery (2013-GS-29-0035). He was represented by William P. Frick, Esquire. On April 15, 2013, the Applicant pled guilty to before the Honorable J. Ernest Kinard, Jr. Pursuant to a negotiated sentence, he was sentenced to the minimum ten (10) years imprisonment.¹ A notice of appeal was filed. The appeal was dismissed by Order dated July 23, 2013. The remittitur was sent July 23, 2013.

Attached herewith and incorporated herein are the records of the Lancaster County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

¹ A charge of conspiracy was nol prossed pursuant to the plea (2013-GS-29-0034).

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective assistance of counsel: Use of threats: coercion by State."
 - a. "The defense counsel was ineffective for allowing the State to use intimidation, coercion, and threats to attack the Defendant's girlfriend to obtain a plea."
2. "Ineffective assistance of counsel: Not properly investigating defendant's case."
 - a. "The defense counsel was ineffective for not properly investigating the Defendant's case before the plea bargaining process started."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

3/19, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)
)
)
)
 AARON JAMI DONALDSON)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE SIXTH CIRCUIT

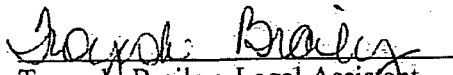
2013-CP-29-1198

AFFIDAVIT OF SERVICE BY MAIL

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W. Michael Hemlepp, Jr.
 3027 S. Paraham Rd.
 York, SC 29745

DATED this 19th day of March, 2014


 Troyesh Brailey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF LANCASTER) IN THE COMMON PLEAS COURT
 3
 4 Aaron Jami Donaldson,)
 5 Applicant,) TRANSCRIPT OF RECORD
 6 -vs-) 2013-CP-29-1198
 7 The State.) July 29, 2014
 8) Lancaster, South Carolina
 9
 10

11 B E F O R E :

12 HONORABLE W. JEFFREY YOUNG, JUDGE
13

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

15 W. MICHAEL HEMLEPP, JR., ESQUIRE
16 Attorney for the Applicant

17 CROOM HUNTER, ESQUIRE
18 Attorney for the State
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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No exhibits entered into evidence.

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 THE COURT: All right. This is the case of Aaron Jami
2 Donaldson vs. the State of South Carolina.

3 Present -- and this is under docket
4 No. 2013-CP-29-1198.

5 Present in a hearing is the plaintiff being
6 represented by his attorney, Mr. Michael Hemlepp. And the
7 state is ready to proceed represented by Mr. Croom Hunter.

8 Mr. Hemlepp, are you ready to go?

9 MR. HEMLEPP: Ready to proceed, Your Honor.

10 THE COURT: You may call your first witness.

11 MR. HEMLEPP: Thank you, Your Honor. I would call the
12 applicant, Mr. Aaron Donaldson.

13 THE COURT: Mr. Donaldson, please come forward and be
14 sworn.

15 AARON JAMI DONALDSON, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. HEMLEPP

18 Q Mr. Donaldson...

19 MR. HEMLEPP: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. HEMLEPP: Thank you.

22 Q Aaron, please tell us your full name. And could you
23 spell your last name for the court reporter and for the
24 record?

25 A Aaron Jami Donaldson, D-O-N-A-L-D-S-O-N.

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 Q Okay. And how old are you, Aaron?

2 A Twenty-one years old.

3 Q And you're currently in the Department of Corrections,
4 are you not?

5 A Yes, sir.

6 Q Which facility?

7 A MacDougall.

8 Q Okay. And how long have you been in the Department of
9 Corrections?

10 A For a year and a half.

11 Q And are you in the Department of Corrections because
12 you were convicted or pled guilty to a crime?

13 A Because I was convicted and pled guilty to a crime.

14 Q Okay. And what crime was that?

15 A Armed robbery.

16 Q Where did that hearing occur, what city?

17 A In Lancaster County.

18 Q Okay. Was it in this courthouse?

19 A Yes, sir.

20 Q Okay. At the time of -- did you go to trial or did
21 you plead guilty?

22 A I pled guilty.

23 Q Okay. And at the time were you represented by a
24 lawyer?

25 A Yes, sir.

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 Q who was your lawyer?

2 A William Frick.

3 Q Okay. And you see Mr. Frick in the courtroom today.

4 A Yes, sir.

5 Q Okay. How did Mr. Frick come about representing you?

6 A Well, I don't think he represented me to the -- to the
7 best, you know, because the whole time I wanted to go to
8 trial, but every time he would come to me and would tell me
9 to take a plea or take this plea. And I don't want to take
10 a plea. I wanted to go to trial.

11 And I was -- and I was told that maybe the jury, may
12 find me guilty. And he'd been working here long enough to
13 know how corrupt the system is.

14 And being the age I was, I was scared and intimidated.
15 And there was a possibility I could have went to court and
16 had received 45 years. And so that's not what I wanted.

17 And then I had asked him. I said can we have a little
18 bit more time, because my mother was going to bond me out
19 of jail the next month and help me to get a lawyer. And he
20 said you have to take this plea today or you're going to
21 trial the next day.

22 Q Okay. Let's back up. Mr. Frick was your lawyer.

23 A Yes, sir.

24 Q Do you remember -- well, when you were arrested on
25 this crime you were taken to the detention center.

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 A Yes, sir.

2 Q Did you remain in the detention center?

3 A Yes, sir.

4 Q Up until the date of the plea?

5 A Yes, sir.

6 Q Okay. Do you remember the date that you pled guilty?

7 A April the 15th.

8 Q of 2013?

9 A Yes, sir.

10 Q Okay. So you were in jail the entire time.

11 A Yes, sir.

12 Q Did Mr. Frick come and visit you?

13 A Like two or three times.

14 Q Okay. And did you have an opportunity to talk to him
15 about the case that was pending against you?

16 A Yes, sir.

17 Q Okay. And when you talked to Mr. Frick did he talk to
18 you about a trial and what would be involved in a trial?

19 A No. It was mainly to a plea, and this is what they're
20 coming at me with. And a majority of the time I was, like,
21 trying to state some facts in the case that could have
22 helped in trial.

23 But he really was not trying to hear what I was --
24 what I was saying and rather me take this plea or so and so
25 might happen in court where you might be found guilty. And

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 I wanted to go to trial at the time because I felt like my
2 case was strong and there was a lot of facts in my case
3 that would have proved me not guilty.

4 Q So you believed that had you gone to trial you would
5 have had a defense to this charge.

6 A Yes, sir.

7 Q Okay. And you don't -- nobody knows whether you would
8 be found guilty or not guilty. That's speculation. But
9 you believe you had a defense.

10 A Yes, sir.

11 Q Okay. Did you talk to Mr. Frick about your defense?

12 A Yes, sir.

13 Q Okay. Tell me what you told Mr. Frick about the
14 defense.

15 A I was telling him there was a witness that was -- that
16 wrote a statement saying that I didn't match description --
17 match the description. And there was a camera, and the
18 camera seen the individual going to the store and put his
19 hands on -- on the -- on the door. And the prints came
20 back. They weren't my prints.

21 I was not caught with a weapon and -- and -- and I
22 didn't have nothing to do with it. And the victim, I
23 believe she also said that I did not match the description.
24 And there was no photo lineup; there was no voice lineup;
25 and there was nothing. And I was trying to aware him of

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 this, but all he would say is that in court I could
2 probably be found guilty. And I felt like I had a strong
3 belief that I would not have been found guilty.

4 Q So why did you plead guilty?

5 A I pled guilty because he told me that jury could be --
6 could be paid to find me guilty, and he been working here
7 long enough to know how corrupted the system is. And at
8 the age I was, I was scared. And I -- I did not know at
9 the time that I could have fired him or I would have fired
10 him.

11 And when he came to me he said that my codefendant,
12 which is my wife, was -- he said the possibility on the day
13 you go to trial she's going to say you did it.

14 But the whole time she was telling her lawyer that she
15 was going to get on the stand and let them know that it was
16 not me who did it. And I did not know of this until I went
17 to prison. And if I knew I could have fired him, I would
18 have fired him before I would have -- before I had went to
19 court. And I wouldn't -- I would have never took this
20 plea.

21 Q Okay. Had Mr. Frick given you different advice would
22 you have gone to trial?

23 A Yes, sir. If I felt like he was -- if I felt like
24 he -- every time he visit me, he was like, well, you know,
25 there is certain -- certain things in this case that --

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 that -- that if brought in front of a jury that you would
2 be found not guilty of the charge, if he would have told me
3 that which -- which I felt inside my heart that if a lot of
4 things were brought up in front of a jury people -- that
5 the 12 jurors -- that I would have been found not guilty.

6 Q You ended up going before the judge, before Judge
7 Kinard, and pled guilty on the 15th. Tell me what sentence
8 you received.

9 A Armed robbery, 10-year sentence.

10 Q Okay. And under the law in South Carolina you do
11 recognize that ten years is the minimum.

12 A Yes, sir. I'm aware of that.

13 Q Okay. You and I had a discussion prior to this
14 hearing today --

15 A Yes, sir.

16 Q -- where I explained to you the authority that Judge
17 Young has in this case.

18 A Yes, sir.

19 Q That Judge Young cannot -- all he can do is leave this
20 case as is or overturn it completely and you will be facing
21 your charges again. Do you understand that?

22 A I understand that, sir.

23 Q Do you understand that by going forward today if Judge
24 Young agrees with you --

25 A Yes, sir.

Aaron Jami Donaldson
Direct examination by Mr. Hemlepp

1 Q -- and overturns your case the possibility exists that
2 you could go to trial and get a much more serious sentence
3 than you have now?

4 A Yes, sir. I'm aware of this.

5 Q And yet you still would like to do this.

6 A Yes, sir.

7 Q Okay. Why?

8 A I would like to do this because I feel -- and I know
9 my mother and my fiance will help me get a better lawyer
10 and I will not be represented by a public defender and
11 it -- it will be somebody who actually will take their time
12 and go over my case and do what they're supposed to do
13 and -- and bring up these facts in my case in front of a
14 jury that -- that will help me be found not guilty of this
15 crime. And I feel like I would have a better chance at
16 having a real lawyer.

17 Q Okay. Now, Aaron, before we conclude is there
18 anything else that you believe in this case Judge Young
19 needs to know before he rules on this matter? Is there
20 anything else you think Judge Young needs to know?

21 A No, sir.

22 Q Okay. The attorney general will have some questions
23 for you. Please answer his questions as well.

24 MR. HEMLEPP: Thank you, Your Honor.

25 THE COURT: Thank you.

Aaron Jami Donaldson
Cross-examination by Mr. Hunter

1 Mr. Hunter.

2 CROSS-EXAMINATION

3 BY MR. HUNTER

4 Q Mr. Donaldson, you knew this was a negotiated plea,
5 right?

6 A Yes, sir.

7 Q So you knew going into it that you'd get ten years.

8 A Yes, sir.

9 Q Okay. And you understood that the charge carried up
10 to 30 years.

11 A Yes, sir.

12 Q Okay. So Mr. Frick explained all of that to you.

13 A Yes, sir.

14 Q Okay. Do you recall the judge at your plea asking you
15 if you wanted a jury trial?

16 A I do not -- yes, sir, yes, sir. He did ask me.

17 Q Okay. And he told -- do you recall telling the judge
18 that, no, sir, you did not want a jury trial?

19 A Yes, sir.

20 Q Okay. So you're saying now that you wish you had had
21 a jury trial.

22 A Yes, sir.

23 Q Okay. Why didn't you tell the judge that at your
24 plea?

25 A Because Mr. Frick had told me that the jury could be

Aaron Jami Donaldson
Cross-examination by Mr. Hunter

1 paid to find me guilty and he's been working here long
2 enough to know how corrupt the system is. And I did not
3 know I could have fired him.

4 Q well, what makes you think that if -- I mean, if it's
5 a corrupt system, what makes you think if you go back and
6 get another trial that that jury won't be paid to find you
7 guilty again?

8 A Because I would have a paid lawyer, a paid attorney,
9 who will actually help me and will let me know this is --
10 this is what's happening and this is what's going on
11 instead of trying to get me to plea -- plea to something
12 instead of getting me a fighting chance in court.

13 Q Okay. Now, are you saying that you're innocent?

14 A Yes, sir.

15 Q Okay. But do you recall when the solicitor recited
16 the facts of the case to the -- to the plea judge?

17 A Yes, I do remember.

18 Q Okay. Do you remember telling the judge that the only
19 thing you disagreed with was that you thought you were
20 wearing shorts and he said you were wearing long pants?

21 A There was more things I was going to say until I was
22 told to be quiet.

23 Q Okay.

24 A But I --

25 Q Do you recall the judge telling you that by pleading

Aaron Jami Donaldson
Cross-examination by Mr. Hunter

1 guilty you were giving up your right to challenge the
2 evidence?

3 A Yes, sir.

4 Q Okay. And you did give a confession in this case,
5 didn't you?

6 A No, I did not.

7 Q You did not.

8 MR. HUNTER: Beg the Court's indulgence.

9 (Pause.)

10 Q So you're saying you didn't give a confession in this
11 case to the police?

12 A No. You mean a statement?

13 Q Yes, a statement.

14 A Yes, I did write it. They did ask me questions, and I
15 did answer some questions they had asked me.

16 Q Okay.

17 MR. HUNTER: No further questions, Your Honor. Thank
18 you.

19 THE COURT: Any redirect?

20 MR. HEMLEPP: None, Your Honor. Thank you. Thank
21 you, your Honor.

22 THE COURT: You may step down.

23 MR. HEMLEPP: Your Honor --

24 THE COURT: Yes, sir.

25 MR. HEMLEPP: If I could beg the Court's indulgence to

1 make sure the Court has a complete record.

2 THE COURT: Okay. I'll tell you. I've got the
3 transcript; I've got the plea sheet; I've got the
4 remittitur; and I've got the order setting bond and the
5 preliminary stuff.

6 There were several cases involved with this, weren't
7 there? I've got several plea sheets.

8 I've got the P.C.R. application; I've got the return;
9 I have four -- five true bill -- six true-billed
10 indictments. Were some other charges dropped along with
11 this plea?

12 MR. HEMLEPP: Yes, sir.

13 THE COURT: Those would be back on the table if I were
14 to agree with the defendant.

15 MR. HEMLEPP: Yes, sir.

16 THE COURT: So if I were to grant his post conviction
17 relief he could also be charged with -- let's see --
18 possession of a pistol by a person convicted of a violent
19 crime, armed robbery -- which that's what he pled to --
20 conspiracy, another armed robbery, possession or displaying
21 a firearm during the commission of a violent crime. Is
22 that correct?

23 MR. HEMLEPP: That is correct, Your Honor. All of
24 that --

25 THE COURT: And they would be back on the table.

William P. Frick
Direct examination by Mr. Hunter

1 MR. HEMLEPP: Yes, they would be back on the table.

2 Thank you. And the Court does have a transcript.

3 THE COURT: I do, yes, sir.

4 MR. HEMLEPP: Thank you, Your Honor.

5 THE COURT: A very short transcript.

6 MR. HEMLEPP: It is.

7 THE COURT: But it does reference an affidavit, which
8 I -- I do not have as part of my record.

9 MR. HUNTER: Yes, Judge. We don't have that as part
10 of our record either, Your Honor.

11 MR. HEMLEPP: Thank you, Your Honor. With that, the
12 applicant rests.

13 THE COURT: All right. Thank you.

14 MR. HUNTER: Your Honor, the state would call
15 Mr. William Frick.

16 THE COURT: Mr. Frick, come forward and be sworn.

17 WILLIAM P. FRICK, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. HUNTER

20 Q Good morning, Mr. Frick.

21 A Good morning.

22 Q How long have you been practicing law?

23 A Over a dozen years.

24 Q Okay. And out of -- out of all of that time how long
25 have you been practicing criminal law?

William P. Frick
Direct examination by Mr. Hunter

1 A All of those.

2 Q Okay. And how did you come to represent Mr. Donaldson
3 on this case?

4 A I was an attorney with the public defender's office,
5 and he was assigned to me.

6 Q Okay. Do you recall how many times you met with
7 Mr. Donaldson prior to his plea?

8 A Specifically, I don't. I do recall that I went out
9 and talked to him after I was appointed.

10 I think we spoke before a bond hearing. We spoke a
11 couple of times before a plea and here at the courthouse
12 before court hearings.

13 I know we spoke before the plea because I had to do
14 the sentencing sheets. And Judge Kinard's got a plea
15 affidavit that you've got to go through explaining your
16 rights. So we had to go through that. So we met -- I know
17 he said three or four times. I would say it was a couple
18 more than that, but I can't specifically remember how many.

19 Q Okay. Did you file Brady, Rule 5, motions in this
20 case?

21 A Yes, sir.

22 Q So you didn't have any trouble obtaining discovery?

23 A No. No trouble.

24 Q Okay. Did you go over the discovery with
25 Mr. Donaldson?

William P. Frick
Direct examination by Mr. Hunter

1 A I did. What we had initially was incident report and
2 statements.

3 What was key in this case were a couple of videos.
4 First times I talked to Mr. Donaldson we did not have the
5 videos.

6 He did give a statement. He did not confess to it.
7 However, as we went along in the case his statement was
8 inconsistent with much of the evidence as I was seeing the
9 case. We talked about that.

10 I did review -- I did review. He did not see because
11 he was incarcerated and I couldn't get the -- get the
12 mechanism to get him to see the D.V.D. of the incident.
13 There were two of them at the incident location.

14 It was some kind of financial institute. Someone went
15 inside there. You couldn't identify who the person was.
16 But there was one outside that clearly showed someone
17 getting out of the passenger side of a truck that was
18 parked in the parking lot and going in. To me that was the
19 key one.

20 If all I had to worry about was the incident report
21 and that one video from the inside, I think we probably had
22 a fair shot at a trial.

23 The problem was the second video showed him getting
24 out of the truck, which they could identify as his
25 codefendant.

William P. Frick
Direct examination by Mr. Hunter

1 My understanding was -- and I didn't have --
2 obviously, I was not a party to the conversations that she
3 had with her attorney. But in my discussions with her
4 attorney indication was if push came to shove she was going
5 to testify against him, because she was charged with armed
6 robbery as well.

7 So with this information we discussed that, and he
8 decided that entering a plea would be in his best interest.
9 And I agreed. I mean, I didn't think we had a good shot at
10 a trial.

11 Q Did you ever tell Mr. Donaldson that if he went to
12 trial a jury could be paid to find him guilty?

13 A It was actually Mr. Donaldson who suggested that, that
14 he had heard that from folks in the jail, that Lancaster
15 was crooked and juries get paid.

16 I don't know whether they get paid or not. I know
17 they get paid by the clerk of court, but that's not what he
18 was talking about. I didn't disabuse him of that notion.
19 I don't agree with it.

20 My issue was based on the evidence we had and what was
21 going to be presented, I was very concerned the jury was
22 going to convict him of the armed robbery and he was going
23 to get more than the minimum.

24 Q And as part of his plea were a number of other charges
25 dropped?

William P. Frick
Direct examination by Mr. Hunter

1 A He had charges dropped. And at his suggestion -- one
2 of the reasons why he wanted to plead guilty was to have
3 his codefendants' cases dropped. And the solicitor agreed
4 to do that, and that was part of the plea negotiations.

5 Q Did you discuss the elements of the charges that he
6 was facing with Mr. Donaldson?

7 A We did.

8 Q And his possible exposure?

9 A Yes.

10 Q Okay. I believe you said you had signed an affidavit
11 and went over his constitutional rights.

12 A Yeah. Judge -- Judge Kinard -- I don't have one
13 personally, but if you do a plea in front of Judge Kinard
14 he's got a 2-page affidavit that goes over your trial
15 rights and what you're giving up and what the sentence is.
16 And if you don't have that filled out and signed, you're
17 not going to get a plea done in front of him.

18 So we -- because of his practice we had to go over all
19 of that information. We've done it previously, but before
20 we could enter the plea we had to go over it. And he
21 signed it and I signed it and passed it up to the judge.

22 Q In all of your dealings with Mr. Donaldson did he
23 always appear to understand what was going on?

24 A He did understand what was going on. I don't think
25 he -- he had any lack of understanding.

William P. Frick
Direct examination by Mr. Hunter

1 He is correct. He wanted to go to trial, but as we
2 talked about it -- this was one of those cases that as we
3 looked at it, it was just getting worse and worse. And his
4 chances were going from what I thought was a pretty fair
5 shot at having a good chance at a jury trial to after a
6 preliminary hearing where the police officer testified
7 extremely well and I thought would be very compelling to
8 the jury, and had dotted his I's and crossed his T's as
9 well as any investigator I'd ever seen in Lancaster
10 County -- no shot at anybody. He just did an excellent job
11 on this case.

12 He was -- Mr. Donaldson was doing to be in real
13 trouble in front of the jury.

14 Q So was it Mr. Donaldson's ultimate decision to plead
15 guilty?

16 A I may have suggested it. I thought he would be
17 convicted, but I don't decide whether you -- I mean, you
18 tell me you want to go to trial, I can disagree with you,
19 that's my job. We go to trial.

20 Q So you would have tried the case if he had asked you
21 to.

22 A Absolutely.

23 MR. HUNTER: No further questions.

24 THE COURT: Mr. Hemlepp.

25 MR. HEMLEPP: May I approach the witness?

William P. Frick
Cross-examination by Mr. Hemlepp

1 THE COURT: You may.

2 CROSS-EXAMINATION

3 BY MR. HEMLEPP

4 Q Good morning, Mr. Frick.

5 A Good morning.

6 Q Do you recognize this?

7 A Yeah. That's the plea.

8 Q Is that the affidavit?

9 A That is.

10 Q This is the one that Judge Kinard requires?

11 A Yes, sir.

12 Q Well, is that your signature?

13 A That is.

14 Q Do you recognize this as the affidavit in this case?

15 A I do. That's my handwriting.

16 MR. HEMLEPP: Your Honor, I would move to admit as
17 Applicant's 1.

18 THE COURT: Any objection?

19 MR. HUNTER: Your Honor, no objection. It should
20 already be in the record. I didn't realize it was attached
21 to the indictments.

22 You should have a copy as well.

23 MR. HEMLEPP: Your Honor, in my file it was stapled to
24 the -- to 2013-GS-29-35, the indictment for armed robbery,
25 and the sentence sheet, the warrant.

William P. Frick
Cross-examination by Mr. Hemlepp

1 THE COURT: I do have it -- I do have it.

2 MR. HEMLEPP: Wonderful. Thank you.

3 THE COURT: It's already in the record. I just saw
4 that in the indictment. Very good.

5 BY MR. HEMLEPP

6 Q How early in the process of representing Mr. Donaldson
7 did the solicitor's office -- it was Assistant Solicitor
8 Nowicki?

9 A That's correct.

10 Q Okay. How early in the process did he make an offer?

11 A Specifically, I don't know. He and I had talked about
12 it very early, as we did with every case.

13 Q Sure.

14 A I was trying to see if we could get an offer of strong
15 arm. He kicked it around for a little while but decided he
16 could not offer me that.

17 So I was never able to convince the solicitor to come
18 off of armed robbery, just able to negotiate the minimum on
19 it. And up until the end we were still trying to see if he
20 would come down to strong arm. But this was just not a
21 case that he was going to come off of it.

22 Q And was Mr. Nowicki agreeable to the minimum from an
23 early point in this negotiation or --

24 A Yes.

25 Q -- did that -- is that something you had to work hard

William P. Frick
Cross-examination by Mr. Hemlepp

1 on to get later on?

2 A No. He was agreeable. I think everybody in this case
3 had some empathy for Mr. Donaldson. He was a young man and
4 got caught up in a bad situation. And, quite frankly, from
5 my point of view I think he -- he may -- the evidence
6 suggested he was the one that walked in there. But I don't
7 know that it was his idea. And I think that was kind of a
8 summary of the case. And he was the one that got stuck
9 with it because he had the gun. But everyone wanted to
10 kind of help him out. And, unfortunately, that was the
11 best deal we could get.

12 Q Okay. Mr. Donaldson testified a little while ago --
13 and I believe you were in the courtroom and were able to
14 hear -- that he gave you the names of some witnesses who
15 would be able to testify that he was not the person who
16 went into the store, the bank, the institution, the
17 location.

18 Did you have a chance to interview any of those
19 witnesses?

20 A He didn't give me any names of any witnesses. He told
21 me there were possibly witnesses.

22 The problem was Mr. Donaldson's story was not
23 consistent. He told -- the statement that he gave didn't
24 comport with what he was starting to tell me, and it wasn't
25 comporting with what the evidence was suggesting. And,

William P. Frick
Cross-examination by Mr. Hemlepp

1 specifically, any names of people, I didn't have any to go
2 track down.

3 Q Did he have any possible defenses?

4 A Yes. He initially had an alibi defense. The initial
5 statement was that he was not present in the vehicle or
6 that they had gone to a different location. I can't
7 remember whether it was up to Rock Hill or over to Camden.
8 But it was one of the two. I think at some point I was
9 told both.

10 But it was pretty clear once we saw the video or I saw
11 the video and reviewed the evidence inside -- whoever got
12 out of that truck and walked inside was the person who
13 robbed the place. And it was very clear that the state was
14 going to not have very much trouble at all convincing the
15 jury that Mr. Donaldson was the person who got out of that
16 drive -- that passenger side of the car.

17 So, initially, as I said, I was -- I thought maybe we
18 had a fair shot, something worth arguing. Once that
19 evidence came in about the video though I didn't think we
20 were going to stand a chance in front of the jury. And I
21 know that's what I told Mr. Donaldson.

22 Q Did Mr. Nowicki from the solicitor's office, did he
23 serve you with notice of request of alibi defense?

24 A I don't think he did, no.

25 Q Okay. So --

William P. Frick
Cross-examination by Mr. Hemlepp

1 A But I discussed basically this is where we were
2 heading.

3 Q Okay. If I were to tell you the record shows that
4 there was --

5 A Okay.

6 Q -- that request would you dispute that?

7 A No. I would not dispute that.

8 Q I know you have a lot of cases.

9 Did you have an opportunity to provide that information
10 to the solicitor's office, that alibi defense?

11 A I didn't have any information to provide other than
12 saying that we weren't there. I did not have names.

13 Q Okay. Did your client provide you with any?

14 A Not that I recall.

15 Q Okay. Who represented the codefendant?

16 A Mark Grier.

17 Q Okay. Mr. Grier.

18 A Yes.

19 Q Thank you. Thank you, Mr. Frick.

20 MR. HEMLEPP: Thank you, Your Honor. I have no
21 further questions.

22 THE COURT: Yes.

23 Any redirect?

24 MR. HUNTER: I don't think so, Your Honor.

25 THE COURT: All right. Thank you. You may step down.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Any other witnesses?

3 MR. HUNTER: No, Your Honor.

4 THE COURT: All right. I'll take this matter under
5 advisement. I will notify the attorneys when I make my
6 ruling.

7 END OF REQUESTED TRANSCRIPT OF RECORD

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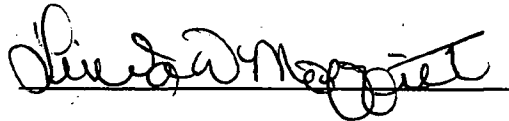
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Lancaster County, South Carolina, on the 29th day of July 2014.

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

October 14, 2014



Linda D. Moffitt
Circuit Court Reporter

imprisonment.¹ A notice of appeal was filed. The appeal was dismissed by Order dated July 23, 2013. The remittitur was sent July 23, 2013.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. "Ineffective assistance of counsel: Use of threats: coercion by State."
 - a. "The defense counsel was ineffective for allowing the State to use intimidation, coercion, and threats to attack the Defendant's girlfriend to obtain a plea."
2. "Ineffective assistance of counsel: Not properly investigating defendant's case."
 - a. "The defense counsel was ineffective for not properly investigating the Defendant's case before the plea bargaining process started."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, William P. Frick, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Lancaster County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by William P. Frick, Esquire. Applicant testified he is twenty-one years old. Applicant testified he pled guilty to armed robbery. Applicant testified he wanted a jury trial, but Counsel made him plead guilty. Applicant testified he pled guilty because he did not want to receive a forty-five year sentence. Applicant testified he was told that if he did not take the plea, he would have to go

¹ A charge of conspiracy was not pressed pursuant to the plea (2013-GS-29-0034).

to trial the next day. Applicant testified Counsel met with him two or three times to discuss the case. Applicant testified they talked about pleading guilty the majority of the time. Applicant testified he would have had a viable defense at trial. Applicant testified he did not match the description given in the witness statement. Applicant testified he was not the person on the surveillance tape, and no weapon was ever found. Applicant testified Counsel told him the jury would find him guilty because the court system is corrupt, and someone would have paid the jury to find him guilty. Applicant testified he would have gone to trial if Counsel had done more to prepare his case. Applicant testified that he received a sentence of ten years, which is the minimum possible sentence for armed robbery. Applicant testified that he knew he was entering a negotiated plea. Applicant testified he answered the plea judge's questions the way Counsel told him to. Applicant testified he acknowledged to the plea judge that he was aware he was giving up his constitutional rights by pleading guilty.

Following Applicant's testimony, William P. Frick, Esquire (Counsel) testified. Counsel testified he has been practicing law since 2001. Counsel testified he received Applicant's case while he was working for the Sixth Circuit Public Defender's Office. Counsel testified he met with Applicant several times to discuss his case. Counsel testified he advised Applicant of the charges and potential sentences he was facing. Counsel testified he attempted to negotiate a plea to a lesser charge, but the solicitor would not come off the armed robbery charge. Counsel testified Applicant received the minimum possible sentence for armed robbery. Counsel testified Applicant was caught on the surveillance tape, but it was hard to tell the person in the video was Applicant. Counsel testified that he watched the tapes. Counsel testified that he received discovery and went over it with Applicant. Counsel testified the evidence suggested Applicant committed the robbery, but it may not have been his idea. Counsel testified Applicant wanted to

raise an alibi defense, but Applicant never gave Counsel any names of alibi witnesses. Counsel testified the surveillance tapes showed that whoever exited the vehicle prior to the robbery was the offender, and the tapes showed Applicant was the person who exited the vehicle. Counsel also testified that the charges against Applicant's co-defendant, who was also his girlfriend, were also dismissed as part of the plea. Counsel testified that he advised Applicant of the rights he would waive by pleading guilty and had Applicant sign a waiver of rights affidavit. Counsel testified Applicant's story was inconsistent. Counsel testified that initially Applicant wanted to go to trial, but once he went over all of the evidence, Applicant decided to plead guilty.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional

norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court further finds that Counsel thoroughly investigated and prepared Applicant's case. This Court notes that Counsel's testimony that Applicant never provided him with the names of any alibi witnesses is credible. This Court further finds that Applicant waived any constitutional challenges by pleading guilty. This Court further finds that Counsel thoroughly explained the trial process to Applicant, as well as the consequences of pleading guilty. This Court finds that Counsel was fully prepared to proceed to trial, but his advice to Applicant to plead guilty was well reasoned and based upon many years of trial experience. This Court finds Counsel attempted to obtain a more favorable plea deal from the solicitor. This Court finds the solicitor's unwillingness to offer a better plea deal in no way reflects upon Counsel's effectiveness. This Court notes that Applicant received the minimum possible sentence he could

for a plea to armed robbery. This Court finds Counsel's opinion that there was sufficient evidence to convict Applicant had he proceeded to trial was well-reasoned. This Court finds further that Counsel was prepared to go to trial, had Applicant decided not to plead guilty. This Court finds no evidence in the record to suggest the State forced or coerced Applicant to plead guilty, or that counsel's performance was somehow deficient in this regard. Finally, this Court finds Counsel's representation of Applicant and handling of this case were well within the standards required for effective representation.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal

defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily. Once again, this Court finds Counsel's testimony to be credible and Applicant's testimony to be not credible.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant was well aware that by pleading guilty he waived his ability to challenge the evidence against him. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court finds that Applicant made a well-reasoned decision to plead guilty, rather than proceed to a jury trial on the armed robbery charge, based upon the video evidence against Applicant. This Court further finds that Applicant pled guilty voluntarily and of his own free will. This Court finds there is no evidence to suggest Applicant's plea was forced or coerced. This Court finds Applicant's claims that Counsel told him the jury could be bribed to find him guilty is wholly not credible. This Court further finds that Applicant was aware the charges against his co-defendant would be dropped as part of his plea. As such, Applicant's claims are without merit.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily

entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

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.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

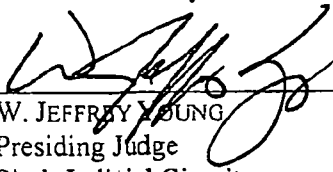
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 16 day of Sept, 2014.



W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

WITNESSES

Boykin - LCSO #12-38364

ARREST WARRANT NUMBER/DOA

2012A2910100639 (DOA 10-19-12)

ACTION OF GRAND JURY

TRUE BILL

Appendix Subpart

Foreperson of Grand Jury
Date: JAN 10 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-29-35

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

THE STATE
vs.

Aaron Jami Donaldson

Ravena Robinson

Indictment for
Armed Robbery

SC Code: §16-1-0330(A)
CDR Code: 0139
Class: Felony, A

FILED
OFFICE OF CLERK
OF COURT

2013 JAN 10 PM 12:44

CLERK OF COURT
LANCASTER, SC

CERTIFIED TO BE A TRUE COPY

Jeff Hammond

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on January 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

ARMED ROBBERY

That Aaron Jami Donaldson did in Lancaster County on or about October 18, 2012, while armed with a deadly weapon, to wit: a handgun feloniously take and carry away from the person or presence of Judy Baker by means of force, threats or intimidation goods or money of Williams Financial Services such goods or monies being described as follows: money, with the intent to deprive the owner permanently of such property, in violation of § 16-11-0330(A), *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR