

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Colleton County

D. Craig Brown, Circuit Court Judge

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S.C. Supreme Court

SAMUEL T. JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

MATTHEW J. FRIEDMAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF COLLETON) CASE NO.'S: 2008-GS-15-0425
 2008-GS-15-426, 2008-GS-15-427
 2008-GS-15-428, 2008-GS-15-429
 2008-GS-15-430, 2008-GS-15-446

STATE OF SOUTH CAROLINA,)
)
 THE STATE,)
)
 v.) TRANSCRIPT OF RECORD
)
 SAMUEL T. JOHNSON,)
)
 DEFENDANT.)

JANUARY 13th, 2009
 WALTERBORO, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

DEPUTY SOLICITOR SEAN P. THORNTON, ESQUIRE
 14TH CIRCUIT SOLICITOR'S OFFICE
 POST OFFICE BOX 1725
 WALTERBORO, SOUTH CAROLINA 29488
 Attorney for the State of South Carolina

MR. HARRIS S. BEACH, ESQUIRE
 PUBLIC DEFENDER FOR THE 14TH JUDICIAL CIRCUIT
 115 BENSON STREET
 WALTERBORO, SOUTH CAROLINA 29488
 Attorney for the Defendant

Rebecca H. Hill
 Official Court Reporter
 522 Dowling Avenue
 Walterboro, SC 29488

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EXHIBITS

NONE.

1 **DEP. SOL. THORNTON:** Your Honor, may it please the
2 Court? We are before you on the State v. Travis Samuel
3 Johnson. Mr. Johnson is here. He's represented by his
4 attorney, Mr. Beach. Mr. Johnson is here on several counts,
5 Judge: 2008-GS-15-425, burglary in the first degree. 2008-
6 GS-15-426, which is armed robbery. 2008-GS-15-427, 428, 429
7 and 430, all for kidnapping. 2008-GS-15-446, which is
8 escape, or attempted escape.

9 The State, Your Honor, for the record, is nol prossing
10 2008-GS-15-431, 432, 433, 434, which are assault with intent
11 to kills, and a criminal conspiracy charge at 447.

12 **THE COURT:** All right. There are three kidnappings?

13 **DEP. SOL. THORNTON:** Four kidnappings, Your Honor.
14 427, 428, 429 and 430.

15 **THE COURT:** Four kidnappings, one armed robbery, one
16 burglary first, and one escape?

17 **DEP. SOL. THORNTON:** Yes, sir.

18 **THE COURT:** All the other charges are being nol prossed
19 against Mr. Johnson?

20 **DEP. SOL. THORNTON:** As a result of this incident, yes,
21 sir. And I have two requests to change the indictment, which
22 Mr. Beach has indicated he did not object to. On indictment
23 number 2008-GS-15-426, the indictment had ADDRESS
24 Court, and it should be ADDRESS that change has been
25 made. And Tanaya Finley, the spelling of her name in 2008-

1 GS-15-428, has been changed. All of that I've already
2 talked to Mr. Beach.

3 **THE COURT:** Any objection to the motion to amend the
4 indictments to reflect the changes expressed on the record
5 by Mr. Thornton, Mr. Beach?

6 **MR. BEACH:** None, Your Honor.

7 **THE COURT:** So ordered, without objection.

8 **DEP. SOL. THORNTON:** Your Honor, I'll hand the Court
9 the sentencing sheets and the indictments.

10 **THE COURT:** Are there any negotiations or
11 recommendations, Mr. Thornton?

12 **DEP. SOL. THORNTON:** There is, Your Honor. This would
13 be a negotiated sentence of 20 years, and of course, it is
14 violent. There are several, almost all the charges are
15 violent, and most serious, but that has been marked on your
16 sentencing sheet, Your Honor. But it would be for a
17 negotiated 20-year sentence to run concurrent.

18 **THE COURT:** Concurrent? All right. Now, let me ask
19 you this, Mr. Thornton, obviously, I'm not sure about the
20 escape, but it would be a concurrent sentence, what does it
21 carry?

22 **DEP. SOL. THORNTON:** I think it carries up to 10,
23 Judge.

24 **THE COURT:** I think it carries up to 15.

25 **DEP. SOL. THORNTON:** I believe it's been placed on top

1 of the sheet by Ms. Stilley.

2 THE COURT: You've got 15 on that.

3 DEP. SOL. THORNTON: Yes, sir. Up to 15 years, Judge,
4 but there's nothing that requires ---

5 THE COURT: That's right. You're talking about a
6 maximum sentence of 20 years on any offense that carries
7 less than 20?

8 DEP. SOL. THORNTON: Yes, sir.

9 THE COURT: Is that right?

10 DEP. SOL. THORNTON: That is correct, Judge.

11 THE COURT: All these sentences are to run concurrent?

12 DEP. SOL. THORNTON: Yes, sir.

13 THE COURT: All right. Is that any and all
14 negotiations?

15 DEP. SOL. THORNTON: That is, Judge.

16 THE COURT: And he's pleading as indicted?

17 DEP. SOL. THORNTON: Pleading as indicted to each
18 charge, Your Honor.

19 THE COURT: And all indictments have been true-billed
20 by the Grand Jury?

21 DEP. SOL. THORNTON: Yes, sir.

22 THE COURT: Is that everything now?

23 DEP. SOL. THORNTON: Yes, sir.

24 THE COURT: Mr. Beach, I ask you on behalf of Mr.
25 Johnson, has the Solicitor accurately stated any and all

1 negotiations for the record?

2 **MR. BEACH:** He has, Your Honor.

3 **THE COURT:** Very well. Madame Clerk -- I'd ask you if
4 you would please raise your right hand, Mr. Johnson, and
5 stand up for me.

6 **MADAME CLERK:** Please raise your right hand.

7 **WHEREUPON, DEFENDANT JOHNSON WAS DULY SWORN.**

8 **MADAME CLERK:** Thank you. You may be seated.

9 **THE COURT:** Put your hand down and have a seat for me.
10 I'm going to ask you certain questions, Mr. Johnson.
11 If you can't hear me, let me know. I think because we're in
12 a small room and the record will reflect that we're outside
13 the presence of the jury, that we are in one of the jury
14 rooms in the Colleton County Courthouse. That present in
15 this jury room is the court reporter, Becky Hill, myself, my
16 law clerk, Mr. Thornton, Ms. Stilley, for the State; Mr.
17 Beach and the defendant.

18 There are others present, other than the Clerk of
19 Court, Pat Grant, and security personnel with the Colleton
20 County Sheriff's Office, and bailiff's here. There are no
21 jurors in this room. We have two double doors shut to the
22 jury room. One entering into the courtroom where the jury
23 is waiting for the trial of this case and also a second door
24 shut so the jury cannot hear what is being said in this
25 room. But I want to make sure, Mr. Johnson, that you can

1 hear me. If you have any problem, you let me know. I'm
2 going to be asking you questions under oath. You watched
3 yesterday when I did this. I need for you to give me a yes
4 or no answer. Don't nod your head like you just did when
5 you acknowledging that you can hear me. Say yes or no so
6 Ms. Hill can take down what you say. Use the words "yes" or
7 "no". Don't say uh-huh or unh-unh. Say yes or no, so I'll
8 understand what you're telling me and the court reporter
9 will be able to accurately take down your answers. Have you
10 understood what I've just told you?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Can you hear me alright?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Very well. State your full name for the
15 record.

16 **DEFENDANT:** Samuel Johnson.

17 **THE COURT:** Mr. Johnson, how old are you?

18 **DEFENDANT:** Twenty-four years old.

19 **THE COURT:** Twenty-four. How far have you gone in
20 school?

21 **DEFENDANT:** Up to 11th Grade.

22 **THE COURT:** Why did you quit school?

23 **DEFENDANT:** I got kicked out.

24 **THE COURT:** Why were you kicked out of school?

25 **DEFENDANT:** Can't -- it's been so long ago, I can't --

1 honestly, I can't remember.

2 **THE COURT:** You don't remember why you were kicked out?

3 **DEFENDANT:** I mean -- I mean -- I know I used to miss a
4 lot of days, and stuff like that.

5 **THE COURT:** What kind of work do you do?

6 **DEFENDANT:** Line cook.

7 **THE COURT:** How long have you done that?

8 **DEFENDANT:** About five years.

9 **THE COURT:** And where did you last work as a line cook?

10 **DEFENDANT:** Jim and Nick's BBQ, Jim and Nick's.

11 **THE COURT:** Jim and Nick's. And is that in Bluffton or
12 in Charleston?

13 **DEFENDANT:** Charleston.

14 **THE COURT:** Are you married?

15 **DEFENDANT:** No, sir.

16 **THE COURT:** Do you have any children?

17 **DEFENDANT:** Three.

18 **THE COURT:** How old?

19 **DEFENDANT:** Both of them -- my boys, they are three
20 years old, and my daughter, she one.

21 **THE COURT:** Do you pay child support?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you pay it through the Family Court or
24 directly to the mother?

25 **DEFENDANT:** Family Court.

1 **THE COURT:** Have you ever been treated in the past for
2 drug abuse, alcohol abuse, or mental illness?

3 **DEFENDANT:** No, sir.

4 **THE COURT:** Have you taken any drugs, alcohol, or
5 anything else within the past 24 hours that might keep you
6 from understanding what you're doing in Court today?

7 **DEFENDANT:** No, sir.

8 **THE COURT:** All right. Mr. Beach, I understand that
9 you represent Mr. Johnson; have you advised him of the
10 charges in each of these indictments that have now been
11 handed to me by the Solicitor? Have you advised him of the
12 maximum possible penalty of punishment, and its direct
13 consequences? Have you advised him of his constitutional
14 rights?

15 **MR. BEACH:** I have, Your Honor.

16 **DEFENDANT:** In your opinion, Mr. Beach, does Mr.
17 Johnson understand each of the charges against him? Does he
18 understand the maximum penalty or punishment for each of
19 those charges, as well as its direct consequences, and his
20 constitutional rights?

21 **MR. BEACH:** Yes, sir. I believe he does.

22 **THE COURT:** And how does he indicate to you, Mr. Beach,
23 that he desires to plead, guilty or not guilty?

24 **MR. BEACH:** Guilty, Your Honor.

25 **THE COURT:** All right. Mr. Johnson, you've heard your

1 lawyer tell me that he's advised you of the charges in each
2 of these indictments. I've been handed seven different
3 indictments, each is a different piece of paper in my hand,
4 by the Solicitor. Your lawyer tells me he's advised you of
5 these. I know there were other charges the Solicitor tells
6 me that were nol prossed; but as to these seven, which
7 according to the Solicitor are burglary first, armed
8 robbery, four kidnappings, and an escape. Your lawyer tells
9 me that he's advised you as to the nature in each of these
10 indictments. He's advised you of the maximum penalty or
11 punishment for each of those charges, and he's advised you
12 of your constitutional rights, and according to your
13 attorney you understand each of the charges in those
14 indictments, the maximum penalty or punishment, and your
15 constitutional rights; is that correct?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** All right, sir. I've been handed, first,
18 Indictment Number 2008-GS-15-0425, the State v. Samuel T.
19 Johnson, it's an indictment for burglary, first degree.
20 This indictment has been true-billed by the Grand Jury of
21 Colleton County. This indictment is entitled the State v.
22 Samuel T. Johnson, and it alleges that you did, in Colleton
23 County, on or about April 29th, 2008, that you, Samuel T.
24 Johnson, did enter the dwelling of Tiffany Finley, located
25 at ADDRESS Court, without consent, and with the intent

1 to commit a crime therein, and that this entry occurred in
2 the nighttime. Do you understand this charge against you?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** Do you understand if I accept your plea to
5 that charge, that is burglary in the first degree, that I
6 could sentence you to a maximum term of imprisonment of not
7 less than 15 years, up to life in prison?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Do you understand that burglary, first
10 degree, is both violent and most serious? Do you understand
11 what I mean by those terms?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Mr. Beach, I ask you for the record, have
14 you advised your client on each of these indictments as to
15 whether the crime is violent, non-violent, serious, or most
16 serious?

17 **MR. BEACH:** I have, Your Honor.

18 **THE COURT:** What have you told him, Mr. Beach, for the
19 record, as to each of the indictments?

20 **MR. BEACH:** I have told him that I believe with regard
21 to each of the indictments, other than the escape, that
22 they're all most serious and violent.

23 **THE COURT:** Have you told him, Mr. Beach, that because
24 they are violent, he would have to serve at least 85 percent
25 of any type of imprisonment that I might impose, before

1 being eligible for any time for early release, good time,
2 probation or parole?

3 **MR. BEACH:** I have, Your Honor.

4 **THE COURT:** And have you told him because they are most
5 serious and serious, if he were to be convicted at a later
6 point in time, other than the charges today, of a
7 combination of serious or most serious offense, that he
8 could face the possibility of life imprisonment without any
9 possibility of life without parole.

10 **MR. BEACH:** I have, Your Honor.

11 **THE COURT:** Is what Mr. Beach just told me that I've
12 asked him, correct, Mr. Johnson?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** You understand that if I accept your plea
15 to burglary, first degree, violent, that it is violent and
16 most serious and that you would have to serve at least 85
17 percent of any sentence I might impose, if I accept your
18 plea, and because it is most serious, if you are to be
19 convicted at a later point in time of a combination of
20 either serious or most serious offenses, that you could
21 face, in the future, the possibility of life imprisonment
22 without any possibility of parole? Do you understand that?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Are there any other direct consequences of
25 that plea in which counsel for the State is aware?

1 burglary, first degree, Mr. Johnson, because it is violent,
2 you would have to serve 85 percent of any sentence I might
3 impose before being eligible for any type of early release,
4 probation and parole, or good time, and because it is most
5 serious, if you are convicted at a later point in time of a
6 combination of serious or most serious offenses, as set
7 forth in our code of laws, that you could, in the future,
8 face the possibility of life imprisonment without any
9 possibility of parole; you understand that?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** And you've advised him concerning violent
12 and most serious on this charge as well, Mr. Beach?

13 **MR. BEACH:** Yes, sir, I have.

14 **THE COURT:** Mr. Thornton, any other direct consequences
15 of that plea in which counsel for the State is aware?

16 **DEP. SOL. THORNTON:** No, sir.

17 **THE COURT:** Mr. Beach, any other direct consequences of
18 that plea in which counsel for the defendant is aware?

19 **MR. BEACH:** No, sir.

20 **THE COURT:** Next, I've been handed Indictment 2008-GS-
21 15-0427, the State v. Samuel T. Johnson, indictment for
22 kidnapping and true-billed by the Colleton County Grand
23 Jury. This indictment, Mr. Johnson, alleges that you did in
24 Colleton County, South Carolina, on or about April 29th,
25 2008, unlawfully seized, confined, inveigled, decoyed,

1 kidnapped, abducted or carried away the victim, Timothy
2 Brown, without authority of law in violation of our statutes
3 in South Carolina or code of laws. Do you understand that
4 charge against you for the offense of kidnapping?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Do you understand if I accept your plea for
7 the offense of kidnapping that I could sentence you to a
8 maximum term of imprisonment of up to 30 years?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Do you understand that the offense of
11 kidnapping is also a violent offense and a most serious
12 offense, and as I advised you earlier, of burglary first,
13 violent, and armed robbery, that if I accept your plea to
14 the offense of kidnapping because it is violent, you would
15 have to serve at least 85 percent of any sentence of
16 imprisonment I might impose before being eligible for any
17 type of early release, probation and parole, or any good
18 time, and because it is most serious, that you could, in the
19 future, if convicted of a combination of most serious or
20 serious offense, face the possibility of life imprisonment
21 without any possibility of parole? Do you understand that,
22 Mr. Johnson, as to kidnapping?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Are there any other direct consequences of
25 that plea in which counsel for the State is aware?

1 **DEP. SOL. THORNTON:** No, sir.

2 **THE COURT:** Any other direct consequences of that plea
3 in which counsel for the defendant is aware?

4 **MR. BEACH:** No, sir.

5 **THE COURT:** Next, Mr. Johnson, I've been handed
6 Indictment 2008-GS-15-0428, the State v. Samuel T. Johnson,
7 an indictment of kidnapping, true-billed by the Colleton
8 County Grand Jury. It alleges that you did in Colleton
9 County, South Carolina, on or about April 29th, 2008, that
10 you, Samuel T. Johnson, unlawfully did seize, confine,
11 inveigle, decoy, kidnap, abduct, or carry away the victim --
12 Mr. Thornton, I can't read your writing on the first name.
13 Would you spell that for the record so I can ask Mr. Beach?

14 **DEP. SOL. THORNTON:** T-A-N-A-Y-A, Tanaya.

15 **THE COURT:** Mr. Beach, you agree that that's the proper
16 spelling?

17 **MR. BEACH:** I agree, Your Honor.

18 **THE COURT:** Tanaya Finley, F-I-N-L-E-Y, without
19 authority of law. Do you understand that charge against
20 you, Mr. Johnson, for the offense of kidnapping in this
21 indictment?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you understand, as I advised you earlier
24 for kidnapping, that if I accept your plea, that I could
25 sentence you to a maximum term of imprisonment of up to 30

1 years for kidnapping?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** You understand, again, that this
4 kidnapping, as I advised you earlier, is violent and most
5 serious?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** And you understand because it's violent
8 that you would have to serve 85 percent, and because it's
9 serious, you could face the possibility of life
10 imprisonment; I mean, because it's most serious, if you're
11 convicted in the future of a combination of most serious and
12 serious offenses, you could face the possibility of life
13 imprisonment without any possibility of parole; do you
14 understand that?

15 **DEFENDANT:** Yes, sir; well, when you say as far as --
16 you say "later on down the line" ---

17 **THE COURT:** Hold on one second and I'll make sure that
18 you understand it. I'll give you one moment to speak to Mr.
19 Beach and then I'll go over that with you. Tell Mr. Beach
20 your question. Just whisper it to him so that you don't
21 have to say anything on the record and I'll give you the
22 chance to talk to your lawyer and then I'll explain it.

23 (SOTTO VOICE DISCUSSION BETWEEN MR. BEACH AND
24 DEFENDANT, MR. JOHNSON.)

25 **THE COURT:** Now, Mr. Johnson, because I want to make

1 sure -- we've been over this several times and I want to
2 make sure it's not confusing to you. That's the whole
3 reason I ask the questions. Now that you've had the
4 opportunity to talk to Mr. Beach, do you understand about
5 most serious now?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** All right. And again, I want to make sure
8 so you will understand, and I'm going to say again, and if
9 you don't understand what I say, you let me know and I'll
10 let you talk to Mr. Beach or ask me a question after you
11 have talked to him.

12 Because the offense of kidnapping, because the offense
13 of armed robbery, because the offense of burglary first,
14 each of those offenses are most serious and you are telling
15 me you wish to plead guilty to those offenses today.
16 Because they are most serious, and I'm accepting your plea
17 today, what I'm advising you is that if later on in your
18 life, at a later point in time, you are convicted of a most
19 serious offense or, according to our statute, a combination
20 of serious and most serious offenses, I'm advising you today
21 that you could face the possibility of a sentence of life
22 imprisonment without any possibility of parole because you
23 are pleading today to a most serious offense. Do you
24 understand that now?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** All right. Now, next I've been handed
2 Indictment 2008-GS-15-0429, the State v. Samuel T. Johnson,
3 indictment for kidnapping, true-billed by the Colleton
4 County Grand Jury. This indictment alleges that you did in
5 Colleton County, South Carolina, on or about April 29th,
6 2008, that you, Samuel T. Johnson, unlawfully did seize,
7 confine, inveigle, decoy, kidnap, abduct, or carry away the
8 victim, Timetriae, T-I-M-E-T-R-I-E-A, Brown, without
9 authority of law. Do you understand that charge against
10 you?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you understand, as I advised you
13 earlier, if I accept your plea to kidnapping, I could
14 sentence you to a maximum term of imprisonment of up to 30
15 years; do you understand that?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand, again, as I advised you
18 earlier, that kidnapping is violent and most serious, and
19 because it is violent, you would have to serve 85 percent of
20 any sentence I might impose, if I accept your plea, before
21 being eligible for any type of early release, good time,
22 probation or parole? Because it is most serious, you could,
23 in the future, if convicted of a most serious offense or
24 serious offense, face the possibility of life imprisonment
25 without any possibility of parole? Do you understand that?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** Next, I've been handed Indictment 2008-GS-
3 15-0430, the State v. Samuel T. Johnson, indictment for
4 kidnapping and true billed by the Colleton County Grand
5 Jury. This indictment alleges that you did in Colleton
6 County, South Carolina, on or about April 29th, 2008, that
7 you, Samuel T. Johnson, did seize, confine, inveigle, decoy,
8 kidnap, abduct, or carry away the victim, Tiffany Finley,
9 without authority of law. Do you understand that charge
10 against you for the offense of kidnapping?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** You understand if I accept your plea to
13 that offense, that I could sentence you to a maximum term of
14 imprisonment of up to 30 years?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** You understand that it is violent and most
17 serious, and because it is violent, you have to serve at
18 least 85 percent of any sentence of imprisonment I might
19 impose before being eligible for any type of early release,
20 probation and parole or good time early release program?
21 Because it is most serious, you could, in the future, if
22 convicted of a most serious offense or a combination of most
23 serious offenses, face the possibility of life imprisonment
24 without any possibility of parole. Do you understand that?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Finally, I've been handed Indictment 2008-
2 GS-15-0446, the State v. Samuel T. Johnson, indictment for
3 escape, or attempted escape, true billed by the Colleton
4 County Grand Jury. This indictment alleges that you did in
5 Colleton County, South Carolina, on or about April 30th,
6 2008, that you, Samuel T. Johnson, while lawfully confined
7 in the custody of the Colleton Jail, unlawfully did escape,
8 attempt to escape, or had in your possession tools or
9 weapons, which may be used to facilitate an escape, in
10 violation of the code of laws of South Carolina. Do you
11 understand that charge against you for the offense of
12 escape, attempted escape, or having in your possession,
13 tools or weapons, which may be used to facilitate an escape?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** You understand if I accept your plea to
16 that charge, that I could sentence you to a term of
17 imprisonment of up to 15 years?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Counsel, there is no check on here
20 concerning -- I assume that that's not violent; is that
21 right?

22 **DEP. SOL. THORNTON:** That's correct, Judge.

23 **THE COURT:** Do you agree?

24 **MR. BEACH:** Yes, sir.

25 **THE COURT:** All right. And he's pleading as indicted,

1 Solicitor?

2 **DEP. SOL. THORNTON:** Yes, sir. I'm sorry, Judge. I
3 did miss the check.

4 **THE COURT:** That's all right. Solicitor, any other
5 direct consequences of that plea?

6 **DEP. SOL. THORNTON:** None that I'm aware of, Judge.

7 **THE COURT:** Does this offense require that the sentence
8 be consecutive?

9 **DEP. SOL. THORNTON:** No, sir.

10 **MR. BEACH:** That's my understanding is that it does not
11 require that.

12 **THE COURT:** All right. No other direct consequences?

13 **DEP. SOL. THORNTON:** No, sir.

14 **THE COURT:** Do you want to tell me something?

15 **DEP. SOL. THORNTON:** Judge, I believe the law used to
16 be that it required it, but when they changed it to a 15
17 year charge, it does not require -- it's not required that
18 it be consecutive.

19 **THE COURT:** Do you agree, Mr. Beach?

20 **MR. BEACH:** I did not see that in any statute. I think
21 that is correct.

22 **THE COURT:** It's 24-13-0410, do you want to check it or
23 are you satisfied that Mr. Thornton's correct, since it
24 works to your client's benefit?

25 **MR. BEACH:** I am satisfied, Your Honor.

1 **THE COURT:** Any other direct consequences of the plea
2 which counsel for the defendant is aware, as to escape?

3 **MR. BEACH:** No, Your Honor.

4 **THE COURT:** Very well. All right, Mr. Johnson, we've
5 been over each indictment, now. We've been over the maximum
6 penalty of punishment; we've been over the direct
7 consequences. I ask you, now, how do you wish to plead,
8 guilty or not guilty?

9 **DEFENDANT:** Guilty.

10 **THE COURT:** Do you understand by pleading guilty that
11 you're giving up your constitutional right to remain silent?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Do you understand by pleading guilty that
14 you're giving up your constitutional right to a trial by
15 jury?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand if you had a jury trial,
18 you'd have the right to confront any witnesses or evidence
19 which the State may have against you, and if you had a jury
20 trial, the State would be required and have the burden of
21 proving your guilty beyond a reasonable doubt, and if you
22 had a jury trial, you could put up any witnesses or evidence
23 in your defense. Do you understand you have each and every
24 one of those right as to a jury trial?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** All right. Understanding your rights as to
2 a jury trial, do you now want a jury trial or do you wish to
3 plead guilty?

4 **DEFENDANT:** Guilty.

5 **THE COURT:** Mr. Johnson, you've heard the Solicitor
6 tell me at the outset of this hearing, and it was confirmed
7 to me by your attorney, Mr. Beach, that there have been
8 negotiations in regards to your plea. Those negotiations
9 were published to me as a sentence of 20 years, except for
10 the escape, which would be a sentence, maximum, of 15 years.
11 All sentences to run concurrent; is that your understanding
12 of any and all negotiations?

13 **DEFENDANT:** Twenty years is what I'm facing, right?

14 **THE COURT:** Twenty years is what Mr. Thornton told you
15 were the negotiations and that's what Mr. Beach told you.
16 I'm asking you if that's your understanding of the
17 negotiations.

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** All right. You understand that
20 negotiations are a contract between the Solicitor and your
21 attorney. I cannot change those negotiations, but I do not
22 have to accept your plea of guilty if I determine that it
23 isn't voluntary and intelligent; do you understand that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Other than those negotiations, which I've

1 placed on the record with my court reporter today, has
2 anybody promised you anything in order to try to get you to
3 plead guilty?

4 **DEFENDANT:** No, sir.

5 **THE COURT:** Has anybody threatened you in any manner in
6 order to get you to plead guilty?

7 **DEFENDANT:** No, sir.

8 **THE COURT:** Are you fully satisfied with the services
9 of your attorney, Mr. Beach?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Have you had enough time to talk to your
12 lawyer? **DEFENDANT:** Yes, sir.

13 **THE COURT:** Have you understood all of your talks with
14 your lawyer?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** Are you completely satisfied with your
17 lawyer's services?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Do you have any complaints against any law
20 enforcement officers, court officials, or members of the
21 Solicitor's Office?

22 **DEFENDANT:** No, sir.

23 **THE COURT:** Are you pleading guilty to each of these
24 offenses of your own free will and own accord?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** You understand you have the right to appeal
2 my sentence and this plea, if I accept your plea, but you
3 must do so within 10 days of today by filing a notice of
4 intention to appeal; do you understand that?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** You understand as to any sentence of
7 imprisonment I might impose, if I accept your plea of
8 guilty, that you would have to assume that you would have to
9 serve day for day as to any sentence of imprisonment I might
10 impose? Do you understand that?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Have your answers to each of my questions
13 been truthful answers?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Have they been your own answers and not
16 suggested to you by anyone else?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** They were your own answers?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** Are you, in fact, guilty of the offense of
21 escape in Colleton County on or about April the 30th, 2008,
22 from the Colleton Jail?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Are you, in fact, guilty of kidnapping in
25 Colleton County involving the victim, Tiffany Finley?

1 Court, which is here in Colleton County. I gave you the
2 facts in the co-defendant's case yesterday who pled and were
3 ready to testify, if necessary, but I will go over them
4 briefly again.

5 On April the 29th, 2008, Mr. Johnson, along with co-
6 defendant, Mr. Ricardo Hall, went into the home of Mr. Brown
7 and Ms. Finley, who are seated here with us in the jury
8 room, and basically, Judge, when they walked in, they went
9 into the living room. Mr. Johnson had a pistol; I believe
10 it was a Lorcin pistol 9mm.

11 **THE COURT:** Spell the name for the court reporter for
12 the record.

13 **OFFICER BUCHANAN:** Yes, sir. It's Lorcin, L-O-R-C-I-N.

14 **THE COURT:** You're welcome. All right. Go ahead.

15 **DEP. SOL. THORNTON:** Mr. Johnson was armed with that
16 pistol when he went in, Judge. Mr. Johnson proceeded to
17 grab the kids and they took them to the back part of the
18 home where the bathroom was, where Ms. Finley was taking a
19 bath. He forced her to get out of the bathtub, would not
20 allow her to put any clothes on. Mr. Johnson and Mr. Hall,
21 at that point, I believe, removed a shotgun and a
22 Playstation III from the home and in the process of leaving,
23 Mr. Brown had gone to get help. He saw them when they came
24 in, he ran next door and got help, and as Mr. Johnson and
25 Mr. Hall were leaving the main part of the house to go out

1 to one of the sheds, Mr. Brown came up along with, I
2 believe, with some neighbors, and Mr. Johnson and Mr. Hall
3 then scattered.

4 Mr. Johnson was caught a short time later in the
5 neighborhood and Mr. Hall was also caught. He gave a
6 statement and, of course, Mr. Hall and Mr. Henderson both
7 pled guilty to their roles yesterday. Again, all of this
8 did occur April the 29th, 2008, Your Honor, here in Colleton
9 County.

10 **THE COURT:** Make sure that you've covered now as to
11 each victim of the kidnappings. This all occurred on April
12 29th?

13 **DEP. SOL. THORNTON:** Yes, sir.

14 **THE COURT:** It involved Tiffany, involved Mr. Brown,
15 also had two others ---

16 **DEP. SOL. THORNTON:** Yes, sir. They were children,
17 Timothy, the fourth, Timothy Brown, the fourth, was the son,
18 of course, of Mr. Brown who is here with us; also, Tanaya
19 Finley and Timetria Finley. Those are the four. As to the
20 escape, Judge, I'm going to have to get Detective Crosby to
21 give the facts. . . Tony Buchanan is here with the Sheriff's
22 Department and he can give the facts on that case, Judge, on
23 the escape.

24 **THE COURT:** Mr. Buchanan?

25 **OFFICER BUCHANAN:** Your Honor, I was serving warrants,

1 going through warrants that were for the kidnapping, the
2 burglary and everything, and as soon as I walked through the
3 door ---

4 **THE COURT:** Certain ones on Mr. Johnson?

5 **OFFICER BUCHANAN:** Mr. Johnson, yes, sir. My apology.
6 When I went into the booking area, Detective Scott was in
7 there. Mr. Johnson walked up to me and before the final
8 door had closed, he run towards the door, and when he run
9 towards to door, it shut on him before he could get there
10 and he run into the door. And I asked him, I said, "What
11 are you doing? Why are you trying to escape? I'm just here
12 to read these warrants to you, Mr. Johnson." And he come
13 back over and we read the warrants, and then I had a warrant
14 served on him for attempted escape.

15 **THE COURT:** And that occurred when? On April the 30th,
16 the ---

17 **OFFICER BUCHANAN:** Yeah, the next day, Sir, April 30th.

18 **THE COURT:** Actually, two days later, I believe. It
19 was ---

20 **DEP. SOL. THORNTON:** No, sir. It was April the 29th.
21 It was the next day.

22 **THE COURT:** April 29th, okay. You're right. Very
23 well.

24 **DEP. SOL. THORNTON:** Those are the facts, Judge, as the
25 State has put forth unless the Court needs further detail, I

1 will tell you the defendant's record.

2 **THE COURT:** Please.

3 **DEP. SOL. THORNTON:** He has one conviction, Judge, from
4 2004 for disorderly conduct.

5 **THE COURT:** And that's his only record?

6 **DEP. SOL. THORNTON:** Yes, sir.

7 **THE COURT:** Very well. All right. Solicitor, I find
8 that there is a sufficient factual basis for each of the
9 pleas. Mr. Johnson, I find that your decision to plead
10 guilty to each of these charges is freely, voluntarily,
11 knowingly and intelligently made, and that you've had the
12 advice and the counsel of a competent lawyer, with whom you
13 tell this Court you are totally and completely satisfied. I
14 will accept your plea of guilty.

15 Mr. Beach, I'll be happy to hear from you in
16 mitigation.

17 **MR. BEACH:** Thank you, Your Honor. May it please the
18 Court?

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

20 **MR. BEACH:** Your Honor, my client is 24 years old. He
21 has three children to whom he pays child support for, and
22 from what I've been able to understand from his family that
23 he interacts with them also. He's a resident of Charleston
24 County and he was working at the time that this occurred as
25 a cook. He was a soldier in this situation, Your Honor. He

1 was -- he was recruited by Mr. Hall who told the police in
2 the recorded statement that he thought there was drug money
3 at this house. He was taken to the house. He had never
4 been there before where he did participate in it. He's
5 admitted to all of that and wanted to apologize to the
6 family for what he had done and his participation in the
7 entire event.

8 He was concerned because they brought him in at the
9 last minute and that, of course, led to the lateness of this
10 plea and the lateness of the negotiations with the State.
11 He is a young man. I think this will give him a chance to
12 make something out of his life. It's a terrible pill for
13 him to fight, but -- but he has admitted his guilt and we
14 would ask the Court to accept the negotiations. I believe
15 that they are in his best interest and in the best interest
16 of everyone involved.

17 **THE COURT:** Thank you, Mr. Beach. Mr. Johnson, is
18 there anything you would like to tell the Court before
19 sentencing?

20 **DEFENDANT:** I'd like -- I'd like to apologize to the
21 victims from the heart before you sentence me, Your Honor.

22 **THE COURT:** You look at me. They're listening to you.
23 You're talking to me, but they're listening. Go ahead.

24 **DEFENDANT:** This is my first time ever being in court,
25 apologize in front the judge. I apologize. Jesus Christ

1 gave -- I never meant to harm nobody. I have a child
2 support and really in debt, probably like four or five
3 grand, and I'm struggling all my life. I been in DSS
4 custody up until the age of eight and my father he passed
5 like a younger fellow. My mother, she ain't never been
6 there for me and I just -- I just trying to work hard all my
7 life. I just been trying to come up with some money and
8 make some money to take care of my kids. The devil got the
9 best of me and I made the wrong choice and now I got to pay
10 the consequences. From the heart, though, I just want to
11 ask the victims, please forgive me, because Jesus Christ
12 forgave me for all my sins.

13 **THE COURT:** Mr. Johnson, the only thing -- I understand
14 you say you try to work hard. I understand you had some
15 problems in your life; everybody does. I understand you
16 feel those are significant. The only person who can do
17 anything about your life is you. These officers can't
18 change your life. I can't change your life, only you can.
19 When you pull a gun and you go into somebody's house and
20 take advantage, whether or not you were told they had money
21 doesn't mean anything. You knew when you did that and you
22 put these people in fear of losing their life, or harm, you
23 knew you were going to have to face the consequences for
24 that.

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Now, you've admitted your guilty today and
2 that's the first step, maybe, toward you doing something
3 about your life, but only you can do it, and it's cost you
4 where you're not going to see your children for a long time;
5 do you understand that?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** You've given up your liberty because of
8 what you've put this family through. I hope that you'll
9 remember your words today in apologizing to the family, so
10 when you complete your sentence as Mr. Beach says, you're
11 young, that when you get out that you won't decide that's
12 the way to get some money for your family because if you do,
13 you'll find that your life is going to be one where you
14 don't have any liberty; do you understand that?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** Anything further from the State?

17 **DEP. SOL. THORNTON:** Your Honor, for the record, I've
18 talked to both of the victims who are present in the
19 courtroom, and they've indicated that they are satisfied
20 with the way that we've handled the case, and they have
21 nothing further to add, Judge.

22 **THE COURT:** Let the record reflect, I did not point out
23 when I was pointing out who was present in the room that the
24 victims were present in the room. If you would identify
25 them for me, for the record, so that the record is complete

1 as to who was present.

2 **DEP. SOL. THORNTON:** Yes, sir. It's Tiffany Finley and
3 Timothy Brown. I believe Mr. Brown's the third, if memory
4 serves me correctly.

5 **MR. BROWN:** That's right.

6 **DEP. SOL. THORNTON:** Yes, sir. Timothy Brown, the
7 third, Judge.

8 **THE COURT:** Thank you very much for being here.
9 Anything further from the defendant?

10 **MR. BEACH:** Nothing, Your Honor.

11 **DEFENDANT:** Um, hello?

12 **THE COURT:** Just a moment, now. If there's something
13 you want to say, say it to Mr. Beach, and then let me hear
14 it, because if you need to tell me something about this
15 matter, because we're at the end of the hearing. Mr. Beach,
16 talk to your client if he has something he wants to say.

17 (SOTTO VOICE DISCUSSION BETWEEN MR. BEACH AND
18 DEFENDANT.)

19 **DEFENDANT:** Your Honor, I'm sorry. Jesus just speaking
20 -- speaking to my soul right now and that, you know, I'm --
21 I ---

22 **THE COURT:** Mr. Beach, anything further?

23 **MR. BEACH:** Nothing, Your Honor.

24 **THE COURT:** Mr. Thornton, is the State ready to
25 proceed?

1 **DEP. SOL. THORNTON:** Yes, sir.

2 **THE COURT:** Mr. Beach, is the defendant ready to
3 proceed?

4 **MR. BEACH:** We are, Your Honor.

5 **THE COURT:** Very well. On Indictment 2008-GS-15-0429,
6 the State v. Samuel T. Johnson, indictment for kidnapping.
7 The sentence of this Court is defendant is committed to the
8 State Department of Corrections for a term of 20 years.

9 Indictment 2008-GS-15-0430, the State v. Samuel T.
10 Johnson, indictment for kidnapping. The sentence of this
11 Court is defendant is committed to the State Department of
12 Corrections for a term of 20 years.

13 On Indictment 2008-GS-15-0446, the State v. Samuel T.
14 Johnson, indictment for escape, attempted escape. The
15 sentence of this Court is defendant is committed to the
16 State Department of Corrections for a term of 15 years.

17 On Indictment 2008-GS-15-0428, the State v. Samuel T.
18 Johnson, indictment for kidnapping. The sentence of this
19 Court is the defendant is committed to the State Department
20 of Corrections for a term of 20 years.

21 On Indictment 2008-GS-15-0427, the State v. Samuel T.
22 Johnson, indictment for kidnapping. The sentence of this
23 Court is defendant is committed to the State Department of
24 Corrections for a term of 20 years.

25 On Indictment 2008-GS-15-0426, the State v. Samuel T.

1 Johnson, indictment for armed robbery. The sentence of this
2 Court is defendant is committed to the State Department of
3 Corrections for a term of 20 years.

4 On Indictment 2008-GS-15-0425, the State v. Samuel T.
5 Johnson, indictment for burglary, first degree. The
6 sentence of this Court is defendant is committed to the
7 State Department of Corrections for a term of 20 years.

8 Those sentences will run concurrent to each other.

9 Thank you and good luck to you, sir. This concludes the
10 hearing in connection with this matter.

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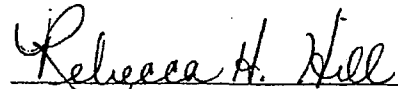
STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of General
Sessions for Colleton County, South Carolina, on the 13th
day of January 2009.

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

February 17, 2010



Rebecca H. Hill,
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of COLLETON)

IN THE COURT OF COMMON PLEAS

09-CP-15-517

Samuel Travis Johnson)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2009 JUN 18 AM 9:31
CLERK OF COURT
COLLETON PLEAS

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst. PO BOX 205, Ridgeville South Carolina.
2. Name and location of Court which imposed sentence Colleton County General Sessions Court.
3. Name(s) of co-defendant(s) (if any) Richardo Hall and Henry Anderson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Armed Robbery, 08-GS-15-0426

CERTIFIED TRUE COPIES OF RECORDS
Patricia L. Grant
CLERK OF COURT, COMMON PLEAS COURT
COLLETON COUNTY, SOUTH CAROLINA
DATE: 6/19/09

(b) _____

(c) _____

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

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. **N/A**

ii. _____

iii. _____

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

i. **N/A**

ii. _____

iii. _____

(c) the date of each such result:

i. **N/A**

ii. _____

iii. _____

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

i. **N/A**

ii. _____

iii. _____

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

(a) **counsel did not appeal at my request**

- (b) 08-GS-15-0425, Burglary
- (c) 08-GS-15-427, kidnapping and 08-GS-15-0446; Escape Attempt.

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

- (a) unlawful and unconstitutional sentence
- (b) prosecutor's misconduct
- (c) ineffective assistance of counsel, and involuntary plead

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

- (a) Prosecutor had no authority to negotiate plea
- (b) plea involuntary because of indicted offenses lacked probable cause
- (c) counsel did not warn me that certain charges were not indicted

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? _____

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

- iv. _____
- (c) the disposition thereof: **N/A**
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: **N/A**
- 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: **N/A**
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised: **N/A**
 - 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) counsel never object before my plea
- (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? n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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. Mr. Beeche Colleton county public defender
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea and sentencing
 - ii. _____
 - iii. _____

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

specific sentence performance
reduce sentence to the minimum for Burglary

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Colleton County)

VERIFICATION

I, Samuel Johnson, 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.

Samuel Johnson

SWORN to and subscribed before me this 27
day of May, 89.

Yvonne Blue (L.S.)
Notary Public

My Commission Expires: 8/20/2016

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

I, Samuel Johnson, 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.

Samuel Johnson
Applicant

SWORN or affirmed to and subscribed before me this
27 day of May, 07.

[Signature]
Notary Public

My Commission Expires: 8/20/2016

ISSUES BEFORE THIS COURT

1. Plea was involuntary due to ineffective assistance of counsel before and during the guilty pleas.

2. Prosecutor made no authority to secure a sentence that exceed the maxim minimum sentence of the office applicant was allowed to plea in violation of the Due Process and Equal Protection Clause of the 14th Amendment to the United States Constitution.

3. Applicant's sentence is unlawful and unconstitutional and violates sentence procedure according to South Carolina Constitution , statutes, and case law.

MEMORANDUM OF LAW

The test for determining the validity of a guilty plea based upon alleged ineffective assistance of counsel is whether counsel's advice was within the range of competence demanded of attorney in criminal case and whether there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Carter v State 329 S.C. 355, 360, 495 S.E.2d 773, 775 (1998)(quoting Hill v Lockhart 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed 2d 203 (1985)).

A defendant who pleads guilty upon advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing the advice he received from counsel was not in range of competence demanded of attorney in criminal case. Richardson v. State 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993). Because the defendant waives several constitutional rights by pleading guilty, the due process clause demand that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v Alabama 395 U.S. 238 (1969).

The long standing test for determining the validity of a guilty pleas is 'whether the plea represents a voluntary and intelligent choice among the alternative coarse of action open to the defendant, Hill supra quoting North Carolina v Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 164, (1970).

In the absence of an indictment, there must be a valid waiver of presentment for courts to have subject matter jurisdiction of the offence. Odom v. State 566 S.E.2d 528, 529 (S.C. 2002). South Carolina Code Ann. § 17-23-130 (1985) provides that "the clerk shall have the defendant sign a waiver of the presentment by the grand jury and his plea of guilty.

PLEAS AGREEMENT

When the prosecutor and defendant enter into a binding plea agreement for a guilty plea in exchange for a nolle prosequi on the remaining charges, and the court accepts the guilty plea and the defendant complies, the state is barred from any further prosecution on the charges so nol-prossed, even under a new charging document, the nolle prosequi under such circumstances being tantamount to a dismissal of that charged. 22 C.J.S. § 225.

DISCUSSION

Here applicant pled guilty to multiple charges that lacked probable cause and was made to sign a sentence sheet before indictment was issued. The question of law, does signing the sentencing outside the court forum is considered a valid waiver of presentment and must this waiver be on record?

The United States Supreme Court has declared that waiver of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences, Brady v United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 1469. 25 L.Ed. 2d 747, 756 (1970). Moreover, counsel lacks authority to consent to a guilty plea on a clients behalf. Brookhart v. Janis 384 U.S. 1, 6-7, 86 S.Ct. 1245 (1966). Public defender are held to the same standards of competence and integrity as private lawyers. Polk County v. Dodson. 102 S.Ct. 445, 454 U.S. 312 (1981).

Wherefore applicant request an evidentiary hearing on this claim and all claims within this application pursuant to the Uniform Post Conviction Act.

Respectfully submitted

May-----2009

Samuel Travis Johnson
Samuel Travis Johnson#

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON)	
)	
Samuel T. Johnson, #332718,)	2009-CP-15-517
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 11, 2009, 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 Colleton County Clerk of Court. The Applicant was indicted at the June 2008 term of the Colleton County Grand Jury for burglary – 1st degree (2008-GS-15-425), armed robbery (2008-GS-15-426), four counts of kidnapping (2008-GS-15-427-430), and attempted escape (2008-GS-15-446). Harris S. Beach, Esquire, represented the Applicant. On January 13, 2009, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Perry M. Buckner sentenced him to confinement for fifteen (15) years for attempted escape and twenty (20) years for each other offense. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel in that counsel did not warn Applicant that certain charges were not indicted.
2. Involuntary guilty plea in that indicted offenses lacked probable cause.
3. Unlawful and unconstitutional sentence.
4. Prosecutor's misconduct in that prosecutor had no authority to negotiate plea.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the 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, 286 S.C. 441, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

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

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

IV.

The Applicant alleges that his guilty plea was not voluntarily entered. The State submits that this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the

charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

The Applicant also alleges that his sentence was unlawful and unconstitutional. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression, or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257

S.E.2d 748 (1979). Here, the Applicant was sentenced within the applicable sentencing range for each offense.

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). The Court should summarily dismiss this ground for relief.

VI.

The Applicant alleges prosecutorial misconduct, but he fails to specify how the State acted improperly. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VIII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

2/25, 2010.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)
)
 SAMUEL T. JOHNSON, 332718,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

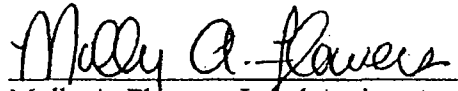
2009-CP-15-517

AFFIDAVIT OF SERVICE BY MAIL

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 of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J.D. Bryan, Esquire
Post Office Box 1111
Walterboro, SC 29488

DATED this 25th day of February, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF COLLETON)	
Samuel T. Johnson,)	
)	
Applicant,)	
)	
vs.)	Case No. 09-CP-15-0517
)	
State of South Carolina,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned action was held on April 21, 2011, before The Honorable D. Craig Brown, in the Court of Common Pleas for Colleton County, South Carolina; attended by Counsel, as follows:

APPEARANCES:

J.D. Bryan, Esq.
Appearing for Applicant

Matthew J. Friedman, Assistant Attorney General
OFFICE OF ATTORNEY GENERAL
P O Box 11549
Columbia, SC 29211-1549
Appearing for State of South Carolina

VIVIAN CROSS, CIRCUIT COURT REPORTER

transcribed by:

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

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Samuel T. Johnson v State of South Carolina
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Hearing of April 21, 2011
Before The Honorable D. Craig Brown

3

1 APRIL 21, 2011 10:40 A.M.

2

3

(APPLICANT PRESENT)

4

5

THE COURT: Are we ready to proceed
on these other cases?

6

7

MATTHEW FRIEDMAN: Your Honor, this
is Samuel Johnson.

8

9

10

THE COURT: This is Samuel T. Johnson
against the State of South Carolina, 517. Mr.
Bryan, are you ready to proceed?

11

12

13

MR. BRYAN: I am, Your Honor.

14

15

16

THE COURT: Mr. Friedman, are you
ready to proceed?

MATTHEW FRIEDMAN: Yes, Your Honor.

THE COURT: Mr. Bryan, call your
first witness.

17

18

MR. BRYAN: I will call Mr. Beach
first.

19

20

THE COURT: Mr. Beach, come around
and be sworn, please.

21

(WITNESS TAKES STAND)

22

23

24

HARRIS BEACH, being duly sworn to tell
the truth, the whole truth and nothing but the
truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. BRYAN:

3 Q. Mr. Beach, did you represent Mr. Johnson?

4 A. Yes, sir, I did.

5 Q. I note that there were several indictments
6 that were not pled to. They were -- was that
7 assault with intent to kill or assault and
8 battery with intent to kill?

9 A. Uh, I -- I do not recall.

10 Q. You can consult your file if you wish.

11 A. (Reviewing file).

12 THE COURT: Before we go any further,
13 let me ask -- I'm reviewing my client's
14 application for post-conviction relief. Was
15 there a new application filed?

16 MR. BRYAN: No, sir.

17 THE COURT: Okay. In his prayer for
18 relief he asked for reduction of the sentence to
19 the minimum. Have you talked with him about
20 that?

21 MR. BRYAN: Yes, sir. I've advised -
22 --

23 THE COURT: That that is not what
24 this court can do here today?

25 MR. BRYAN: Yes, sir. I've advised

1 him that basically what happens is that if the
2 relief is granted that we start over at square
3 one.

4 THE COURT: Do you understand that,
5 Mr. Johnson?

6 APPLICANT: Yes, sir.

7 THE COURT: Do you understand that
8 what you're asking for in your application is
9 for your sentence to be reduced to the minimum
10 for burglary? That's what you've asked for. Do
11 you understand that?

12 APPLICANT: Now to have -- now I have
13 a better understanding, sir. Now I understand.

14 THE COURT: Do you understand that
15 that is not something that this court can do?

16 APPLICANT: Yes, sir.

17 THE COURT: In this PCR matter, I can
18 either decide that you're not entitled to the
19 relief that you're asking for, that relief being
20 -- if I decide that you're not entitled to post-
21 conviction relief, you've got to go do the rest
22 of your sentence, whatever sentence you have
23 remaining. You understand that?

24 If I decide that you are entitled to
25 post-conviction relief, I can simply vacate your

Samuel T. Johnson v State of South Carolina
Case No. 09-CP-15-0517
Hearing of April 21, 2011
Before The Honorable D. Craig Brown

1 plea and sentence and you start back at square
2 one.

3 That's the only two things that I can
4 do. Do you understand that?

5 APPLICANT: Yes, sir.

6 THE COURT: All right. Understanding
7 that, you want to proceed here today with this
8 post conviction relief?

9 APPLICANT: Yes, sir.

10 THE COURT: Thank you. You may be
11 seated, Mr. Brown. I apologize. You may
12 continue.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. BRYAN:

15 Q. You had several counts of assault with
16 intent to kill.

17 You advised him of that?

18 A. Yes.

19 Q. What did you advise him?

20 A. I don't recall exactly what I advised --
21 that was under the old statute.

22 Q. You have a note in your file, where you
23 might have written it down?

24 A. (Upon review), no, sir. I advised him of
25 whatever the statute said. I don't have an

1 exact note on what I actually advised him.

2 Q. Do you remember what it was?

3 A. No.

4 Q. The penalty?

5 A. No.

6 Q. You don't remember the penalty for assault
7 with intent to kill?

8 A. No.

9 Q. Now, there was -- the underlying case here
10 is based on Mr. Johnson being charged with first
11 degree kidnaping, armed robbery. It was kind of
12 a home invasion-type situation, wasn't it?

13 A. That's correct.

14 Q. And when he was found, he was not found in
15 the house, was he?

16 A. I don't believe that he was.

17 Q. And the victim described the attacker as a
18 man wearing a mask, essentially, didn't she?

19 A. I think that's correct.

20 Q. Now, the arrest warrant, do you have that
21 in your file?

22 A. (Upon review), I am having difficulty
23 finding it in all of this paperwork.

24 Q. On which charge?

25 A. Well, any of them really.

1 Q. Do they list the sources on the affidavit?

2 A. The sources?

3 Q. The sources is the information for the
4 affidavit, based on victim's statement and ---

5 A. Yes.

6 Q. Okay. --- evidence recovered from the
7 crime scene?

8 A. Yes.

9 Q. Apprehension of defendants?

10 A. Yes.

11 Q. And self-incriminating statement provided
12 by codefendant?

13 A. Yes.

14 Q. If that right?

15 A. That's correct.

16 Q. But they do describe that as a black man
17 wearing a mask, right?

18 A. I believe that's correct.

19 Q. And pretty much the main evidence against
20 Mr. Johnson is that the was found in the area
21 with a gun; right?

22 A. Yes.

23 Q. But his gun was black, wasn't it?

24 A. Yes.

25 Q. And the gun described by the victim was

1 black and brown, wasn't it?

2 A. I think that's correct.

3 Q. The statements of -- wasn't the self-
4 incriminating statements of the codefendants put
5 into evidence?

6 A. I'm sorry, I didn't understand the
7 question.

8 Q. When the self-incriminating statements of
9 the codefendant come into evidence against a
10 third party, or against someone else other than
11 the self-incriminator.

12 Q. Uh, -- (pause). They were -- according to
13 the reports, he had made some sort of self-
14 incriminating statement. But when did it become
15 evidence?

16 Q. Well, it was used to get a warrant against
17 him; wasn't it?

18 A. Yes.

19 MR. BRYAN: No further questions of
20 this witness. The State may have some.

21 THE COURT: Mr. Friedman?

22 MATTHEW FRIEDMAN: Thank you, Your
23 Honor.

24 CROSS EXAMINATION

25 BY MATTHEW FRIEDMAN:

1 Q. Mr. Beach, how long have you been
2 practicing law?

3 A. Since 1972.

4 Q. How much of that time has been in criminal
5 law?

6 A. I practiced -- I was in general practice
7 from '72 to 2003. That was probably about
8 twenty-five percent during that period. After
9 that I went with the public defenders office and
10 that was a hundred percent.

11 Q. Were you appointed or retained in this
12 case?

13 A. This was an appointment.

14 Q. Do you recall about how many times that you
15 met with the applicant in this case?

16 A. No, I don't. It was several times. He was
17 incarcerated.

18 Q. You met with him in the jail?

19 A. Yes.

20 Q. Do you recall if you discussed the elements
21 of the charges and what the State was required
22 to prove?

23 A. Yes, I did.

24 Q. Do you recall if you discussed potential
25 defenses?

1 A. Yes.

2 Q. How many charges was he facing, do you
3 remember?

4 A. He was facing a number of them. He had
5 four counts of assault with intent to kill, four
6 counts of kidnaping, I think one count of armed
7 robbery and one count of burglary first degree.
8 He also had a conspiracy.

9 Q. Do you recall if he gave a statement in
10 this case?

11 A. No, I don't.

12 Q. Do you mind describing if there were any
13 plea negotiations with the solicitor's office?

14 A. There were plea negotiations. We went back
15 and forth for a good while, and finally ended up
16 with what he had pled to.

17 Q. Was that for twenty years, concurrent?

18 A. Yes.

19 Q. Did you explain to him what a negotiated
20 sentence was?

21 A. Yes, I did.

22 Q. Did you explain the consequences of a plea
23 to him?

24 A. Yes, I did.

25 Q. Whose decision was it to plead guilty?

1 A. His decision.

2 COURT REPORTER: I'm sorry? The
3 answer again?

4 THE WITNESS: His decision.

5 CROSS EXAMINATION CONTINUED

6 BY MATTHEW FRIEDMAN:

7 Q. Did he ever indicate that he wanted to go
8 to trial?

9 A. No.

10 Q. Did you see any problems with any of the
11 indictments?

12 A. No, I did not.

13 MATTHEW FRIEDMAN: I have nothing
14 further, Your Honor.

15 THE COURT: All right, Mr. Beach.
16 You may step down.

17 THE WITNESS: Thank you, Your
18 Honor.

19 THE COURT: Call your next witness.

20 MR. BRYAN: We call Samuel Travis
21 Johnson to the stand, Your Honor.

22 (WITNESS TAKES STAND)

23 SAMUEL TRAVIS JOHNSON, being duly sworn
24 to tell the truth, the whole truth and nothing
25 but the truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. BRYAN:

3 Q. State your full name for the record.

4 A. Samuel Travis Johnson.

5 Q. How long have you been sentenced to?

6 A. Twenty years.

7 Q. Who was your lawyer?

8 A. Mr. Harris Beach.

9 Q. Did you have a trial?

10 A. No, sir.

11 Q. Did you want a trial?

12 A. Yes, sir.

13 Q. Why didn't you get a trial?

14 A. I have the Motion that Harris Beach put in
15 for the speedy trial Motion. I have it --
16 showing, proving that, you know, that I did want
17 to go to trial and he filed a Motion for a
18 speedy trial.

19 Q. When all this came down to it, there wasn't
20 a trial; was there?

21 A. Yes, sir.

22 Q. What happened?

23 A. Okay, uh, Mr. Harris Beach, he advised me
24 to plead guilty and I -- I only pled guilty on
25 his advice.

1 Q. Did he tell you what kind of sentences that
2 you were looking at, potentially?

3 A. My main -- no, sir. My main question, I
4 have for him was what was the elements of the
5 crime. He never -- he never discussed it, the
6 elements of the crime. For what I have already
7 been presented dealing with the evidence, there
8 was no evidence. There was no evidence.

9 Q. Okay. Did he tell you that the State would
10 have to prove each and every element of the
11 crime?

12 A. No, sir. No, sir. If he had told me that,
13 I would have went to trial.

14 Q. And didn't he tell you that the State also
15 had to prove not only each and every element of
16 the crime with which you were charged but also
17 connecting these crimes with you.

18 A. He never discussed that with me.

19 Q. I also have an alibi witness that I wanted
20 subpoenaed and they wrote statements verifying
21 that April 29th I was at their residence, stated
22 by that gentlemen, and they let me call my
23 family to come pick me up. I had these
24 statements also, besides the Motion.

25 Q. Those statement were actually part of the

1 police report, aren't they?

2 A. Yes, sir.

3 Q. And you went to these ladies house -- and
4 what did you tell them?

5 A. I told them that I got jumped and ---

6 Q. Be a little more specific about "I got
7 jumped."

8 A. I told them that I got into scuffle, a
9 misunderstanding with some individuals who I'd
10 come around there to see and that in the process
11 of them jumping me, you know, keys, wallet and
12 everything got taken.

13 I needed some help, so I was -- I was right
14 in the area of my alibi witness'
15 house/residence, so I went and knocked on their
16 door and I let them know, you know, that I got
17 jumped and stuff like that. You know, I was
18 dirty and, uh, the back of my head and all, you
19 know, was bruised up and stuff like that. So
20 they was, like, 'Okay, we'll let you use the
21 phone to call your family to come pick you up.'

22 So in the process of doing that, the lady's
23 mom, she called the police. So when she called
24 the police, they also says in their statement
25 that one of the reasons that I left was because

1 she also called her next-door neighbor and they
2 ran me off the porch. So when they ran me off
3 the porch, that's why I left the residence. But
4 my intention was to stay there until higher
5 authority came.

6 But when they ran off they (sic) porch,
7 when they caught up with me like fifteen minutes
8 later, that's when they caught me, you know, I
9 had a gun in my possession.
10 And the gun that I had in my possession was a
11 .380 semiautomatic. They questioned me and
12 asked me why did I leave and I told them that I
13 got ran off the porch, and that's why I left.
14 And I told them that the gun was registered in
15 my name. So they ran the serial number and the
16 gun came back clean, in my name. So they --
17 they put that in the annex as evidence against
18 me.

19 Now, the State's -- the transfer -- the
20 transcript, at page one, -- let me see,
21 (searching through papers). On page one -- not
22 on page one, -- I want to discuss page one also
23 without -- it states on page twenty-eight of the
24 transcript -- it states, "Mr. Johnson had a
25 pistol, that I believe was a Larson pistol, nine

1 millimeter." Then the solicitor said that Mr.
2 Johnson was armed with that pistol when he went
3 in. But in my Motion it clearly states that I
4 had a .380. So that proves that I was framed.

5 Q. That it was obviously another gun?

6 A. Right. Absolutely. That proves that I was
7 framed with a pistol that I never had. And it
8 clearly states in my Motion what type of pistol
9 that I got arrested with, a .380, and Mr. Harris
10 Beach was aware of all of this. And he's
11 ineffective and prejudiced my case because he
12 failed to investigation my case under *Strickland*
13 *v. Washington*.

14 Q. Now, on another matter -- we will go to --
15 the charges being based on false allegations,
16 did anyone ever pick you out of a photo lineup?

17 A. No, sir.

18 Q. How about a show-up, did they throw you in
19 a car and said 'is that him?'

20 A. No, sir.

21 Q. So then -- you read the reports and it said
22 that the man that came in the house was wearing
23 a mask. Right?

24 A. Yes, sir.

25 Q. Yet the arrest warrant says that this is

Samuel T. Johnson v State of South Carolina
Case No. 09-CP-15-0517
Hearing of April 21, 2011
Before The Honorable D. Craig Brown

1 based on taking testimony?

2 A. Yes, sir.

3 Q. The -- obviously your investigator, when he
4 signed these warrants, knew that the victim had
5 identified you?

6 A. Absolutely. And something else that I
7 want to bring forth also.

8 Q. Okay. You were arrested on the 29th,
9 weren't you?

10 A. Yes, sir.

11 Q. And the victims gave a written statement on
12 the next day, the 30th, didn't they?

13 A. Yes, sir.

14 Q. After the arrest?

15 A. (Affirmative nod), after the arrest.

16 Q. Now, did Mr. Beach challenge the basis of
17 the evidence behind this warrant?

18 A. No, sir.

19 Q. Did he file a Motion to dismiss these
20 charges based on a lack of evidence?

21 A. No, sir.

22 Q. Was there a suppression hearing for the
23 .380?

24 A. No, sir.

25 Q. There wasn't?

1 A. No, sir.

2 Q. The gun at the trial, that the State wanted
3 to present, was that a nine millimeter or a
4 .380?

5 A. That was a nine millimeter.

6 Q. Did you know anything about any nine
7 millimeter?

8 A. No, sir.

9 Q. Now, that gun that you had was found when
10 you were arrested, wasn't it?

11 A. Yes, sir.

12 Q. And did they have any probable cause to
13 arrest you?

14 A. No, sir.

15 Q. Did he move to suppress this gun on the
16 basis of the fruit of the poisonous tree?

17 A. No, sir.

18 Q. Did Mr. Beach discuss any exculpatory
19 evidence with you?

20 A. No, sir.

21 Q. Did he file Brady and Rule 5 Motions?

22 A. No, sir.

23 Q. Did you have a preliminary hearing?

24 A. No, sir.

25 Q. Did Mr. Beach ask for a preliminary

1 hearing?

2 A. No, sir.

3 Q. There was an amendment of the indictment
4 during the plea. Did Mr. Beach object to that?

5 A. No, sir. I can show you on page -- page
6 two in the transcript.

7 Q. Yet, even in the police report, the
8 sheriff's department's report it, it said that
9 you were found with a .380, right?

10 A. Yes, sir.

11 Q. And not a nine millimeter?

12 A. Yes, sir.

13 Q. Is there anything else that you would like
14 to ---

15 A. Yes, sir.

16 Q. Okay.

17 A. (Reviewing papers) -- no, that's all.

18 Q. That's it?

19 A. Yes, sir.

20 MR. BRYAN: Okay. We have no further
21 questions of this witness, Your Honor.

22 THE COURT: Mr. Friedman?

23 MATTHEW FRIEDMAN: Thank you, Your
24 Honor.

25 CROSS EXAMINATION

1 BY MATTHEW FRIEDMAN:

2 Q. Mr. Johnson, you pled guilty, didn't you?

3 A. Yes, sir.

4 Q. So you pled guilty, is that right?

5 A. Yes, sir.

6 Q. Do you remember telling the plea judge that
7 you understood the nature of the charges and the
8 possible punishments that you were facing?

9 A. I only said that on advice of counsel.

10 Q. You also told the Court that you understood
11 your Constitutional rights, including your right
12 to a jury trial; do you remember that?

13 A. I remember that but -- like I said before,
14 my plea wasn't voluntary because I only pled
15 guilty on counsel's advice. If counsel hadn't
16 advised me of these things ahead of time, I
17 would have went to trial.

18 Q. Okay. You told the court that you
19 understand the terms of the negotiated sentence,
20 do you remember that?

21 A. Yes, sir.

22 Q. And I believe that the negotiated sentence
23 was for twenty years, is that what you remember?

24 A. Yes, sir. In fact in the transcript at one
25 point you say "twenty years is what I am

1 facing", right?

2 A. (No verbal response).

3 Q. So you already knew that you were getting
4 twenty years? Right?

5 A. Yes, sir.

6 Q. Do you remember telling the plea court that
7 no one had threatened you or promised you
8 anything to get you to plead guilty?

9 A. Yes, sir. I was ignorant to a lot at that
10 point in time. If I had -- if I had knew the
11 law, I wouldn't have never pled guilty. I would
12 have went to trial. But my Sixth Amendment
13 states effective assistance of counsel. Due to
14 me failing to have effective assistance of
15 counsel, I only pled because counsel advised me
16 that the evidence -- that the evidence that 'is
17 being brought forth against you, and the
18 elements of the charges is something that the
19 State is going to be able to find you guilty
20 on.' But that error prejudiced me because
21 Harris Beach failed to properly investigate, he
22 failed to challenge the evidence, he failed to
23 do these things, so I was -- I was under the
24 assumption of these things being done, and he
25 advised me that -- (pause) -- that the State had

1 a case on me, in other words.

2 Q. Do you remember the judge asking you if all
3 of your answers during the plea hearing were
4 truthful answers?

5 A. Yes, sir.

6 Q. And he also asked you if anyone had
7 suggested to you how you should answer the
8 question and you said 'no.' Do you remember
9 that?

10 A. The only thing that I can say is that I
11 didn't know the law.

12 Q. And at that time you also told the court
13 that you were fully satisfied with your
14 attorney, do you remember that?

15 A. I was ignorant to the law.

16 Q. You told the court that you were in fact
17 guilty of these offenses, is that right?

18 A. Due to what Harris Beach told me, he made
19 me believe that the evidence that they had --
20 and the elements that they had, he made me
21 believe that what they had was what made me
22 guilty. But to them failing to do these things,
23 I wasn't guilty. So -- so I only did it, what
24 he advised me to do.

25 Q. Do you remember also on the record that you

1 apologized to the victims?

2 A. Yeah, I remember that.

3 Q. I believe that you testified earlier that
4 you had an alibi witness, is that right?

5 A. Yes, sir.

6 Q. Is that witness here today?

7 A. Uh, I wrote -- my lawyer who is on my case
8 now, Mr. Bryan, I have the letters to prove it.
9 I wrote him a letter asking for my alibi witness
10 to be subpoenaed because I really needed my
11 alibi to testify to the statement.

12 And I also have case law stating that if --
13 if an alibi places you somewhere other than the
14 crime scene, that's your defense. You can use
15 your alibi in your defense, *State v. Beckingham*.
16 Now, I advised my lawyer ahead of time -- I have
17 letter to show and prove that I advised him
18 ahead of time to please have my alibi witnesses
19 here to testify today on my behalf.

20 Q. Did you tell Mr. Beach about this alibi
21 witness?

22 A. Yes, I did.

23 MATTHEW FRIEDMAN: Nothing further,
24 Your Honor.

25 THE COURT: Mr. Bryan?

1 MR. BRYAN: Just one question.

2 REDIRECT EXAMINATION

3 BY MR. BRYAN:

4 Q. Do you have a police report?

5 A. Yes, sir.

6 Q. With that statement?

7 A. Yes, sir.

8 Q. Can you grab that real quick?

9 A. Okay.

10 MR. BRYAN: I will show it to the
11 attorney general. He may not object to it.

12 MATTHEW FRIEDMAN: (Review).

13 REDIRECT EXAMINATION CONTINUED

14 BY MR. BRYAN:

15 Q. Is this it?

16 A. Yeah, and your mother, Ann Willis.

17 Q. Catherine ---

18 A. --- Creech.

19 MR. BRYAN: These were statements
20 made to the Sheriff's Department by these
21 witnesses. The defendant wasn't there, but I
22 think we can pretty much see -- I would move to
23 introduce them if the State has no objection.

24 MATTHEW FRIEDMAN: That one?

25 MR. BRYAN: No, no, no, just this

1 one.

2 MATTHEW FRIEDMAN: All right.

3 THE COURT: Do you have any
4 objection?

5 MATTHEW FRIEDMAN: I have no
6 objection, Your Honor.

7 THE COURT: Without objection, so
8 entered. How many statements is it?

9 MR. BRYAN: Two statements, one page
10 each, Your Honor. I will have to staple them.

11 COURT REPORTER: Do you mark them
12 together or separately?

13 MR. BRYAN: You can do it together.
14 Two statements, one page each, Glenn and Creech.
15 Ms. Creech's statement does run over -- one
16 page. And I guess that I will move to publish
17 to the Court. No further questions of this
18 witness, Your Honor.

19 (SO ENTERED AS APPLICANT'S EXHIBIT 1)

20 THE COURT: You may step down, Mr.
21 Johnson. (Upon review), all right. Plaintiff's
22 Exhibit 1 is actually three total pages, two
23 separate statements.

24 Anything further, Mr. Bryan?

25 MR. BRYAN: Nothing further, Your

Samuel T. Johnson v State of South Carolina
Case No. 09-CP-15-0517
Hearing of April 21, 2011
Before The Honorable D. Craig Brown

27

1 Honor.

2 THE COURT: Mr. Friedman, anything
3 further?

4 MATTHEW FRIEDMAN: Your Honor, I
5 would like to briefly recall Mr. Beach just for
6 a few minutes based on the Applicant's
7 testimony.

8 THE COURT: Yes, sir. Mr. Beach,
9 please come back around. I would remind you
10 that you are still under oath.

11 (WITNESS TAKES STAND)

12 HARRIS BEACH, having been previously
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MATTHEW FRIEDMAN:

16 Q. Mr. Beach, did you hear the Applicant
17 testify about a potential alibi witness?

18 A. Yes.

19 Q. Did he inform you of that alibi witness?

20 A. Yes.

21 Q. Did you look into it at all?

22 A. Yes.

23 Q. Did that pan out?

24 A. No, it did not.

25 Q. I believe that he also testified that you

1 did not file any Brady or Rule 5 Motions. Is
2 that true?

3 A. No, it's not true. At the beginning of the
4 representation, we filed a request for discovery
5 under Brady and received a considerable amount
6 of information back from the -- from the State.

7 Q. Did you review that material with the
8 Applicant?

9 A. Yes, I did.

10 Q. The Applicant also testified about some
11 indictments that were amended, at the beginning
12 of the plea Hearing. Do you recall that?

13 A. Yes.

14 Q. Do you recall why they were amended?

15 A. I do not.

16 Q. Do you have a copy of the plea transcript,
17 by chance?

18 A. Yes, I do. In my file.

19 Q. I can give a copy.

20 A. Thank you.

21 Q. Page 3, Line 20, there's some discussion
22 about amending the indictments. If you won't
23 mind looking at that.

24 A. Okay, (reviewing). Yes, the indictments
25 were amended.

1 Q. Does it state why they were amended?

2 A. (Reviewing).

3 Q. Specifically Page 3, Line 23, there is some
4 discussion?

5 A. There were name problems in the
6 indictments.

7 Q. Do you recall if any of those amendments
8 changed the nature of the offense?

9 A. No, the nature of the offense was not
10 changed.

11 MATTHEW FRIEDMAN: I have nothing
12 further, Your Honor.

13 THE COURT: Mr. Bryan, any cross-
14 examination?

15 MR. BRYAN: No, Your Honor.

16 THE COURT: All right, Mr. Beach, you
17 may step down.

18 (WITNESS STEPS DOWN)

19 THE COURT: Anything further, Mr.
20 Bryan?

21 MR. BRYAN: Quite often we will see
22 situations -- it's common enough in movie scrips
23 and it also happens in real life. Quite often
24 the person finds themselves in the wrong place
25 at the wrong time, looking like they've done

1 something at first glance, when you delve deeper
2 into the matter it's very plain that they were
3 not.

4 You look at the testimony, and the
5 statements of these alibi witnesses, and it's
6 obvious that instead of being a perpetrator of
7 this crime that, at almost the exact time that
8 this crime was occurring, that he himself was a
9 victim. He'd been jumped, his wallet taken, he
10 was trying to use his cell phone to call people
11 to get help. This is just tragic. He just
12 happened to be, you know, a stranger in this
13 area. He's got a .380 and they see a nine
14 millimeter and it -- it just -- a thorough job
15 would have cleared his name instead of his doing
16 twenty years in prison, Your Honor. He'd be out
17 a free man, enjoying life. This is just -- when
18 you look at one error after another after
19 another error, of this nature, it is the
20 cumulative effect of all these mistakes. I
21 think it shows the denial of his Constitutional
22 guarantee to counsel, Your Honor. I thank you
23 for your time.

24 THE COURT: Anything from the State?

25 MATTHEW FRIEDMAN: Just briefly,

1 Your Honor. The State would submit that there
2 is nothing to indicate that Mr. Beach's
3 representation was deficient.

4 He testified that he went over the
5 elements of each charge of what the State was
6 required to prove, that he looked at the alibi
7 defense, testified that that did not pan out.

8 He was able to negotiate a favorable
9 plea on behalf of the applicant. To get twenty
10 years, concurrent, on all those charges, I would
11 submit that that was a favorable result for the
12 Applicant compared to how much time that he was
13 facing.

14 As far as involuntary guilty plea, we
15 would submit that the record reflects that his
16 plea was entered freely and voluntarily. He
17 testified that he understood the terms of the
18 negotiated sentence. He even, on the record,
19 says twenty years is what I am facing, so he
20 knew exactly how much time he was facing.

21 He said that he was pleading guilty of
22 his own free will and accord and that he was in
23 fact guilty of all these offenses.

24 For those reasons, we ask the Court to
25 deny and dismiss the application.

1 THE COURT: Thank you, Gentlemen. I
2 will let you know my decision.

3 (HEARING CONCLUDED)
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1 CERTIFICATE OF REPORTER

2
3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable D. Craig Brown on
9 April 21, 2011, as prepared from the audio
10 recordings prepared by Vivian Cross, Circuit
11 Court Reporter;

12 I further certify that I am neither kin nor
13 counsel to any of the parties and have no
14 interest in the outcome of this action.

15
16 

17 Deborah Garrison

18 Circuit Court Reporter

19 9th Judicial Circuit

20
21
22
23
24 Charleston, South Carolina

25 February 26, 2012

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Samuel T. Johnson, #332718,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-15-517

ORDER OF DISMISSAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 MAY 13 AM 11:02

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 11, 2009. The Respondent made its Return on February 25, 2010. An evidentiary hearing into the matter was convened on April 21, 2011 at the Colleton County Courthouse. The Applicant was present at the hearing and was represented by J.D. Bryan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Harris Beach, Esquire, also testified at the hearing. This Court had before it the records of the Colleton County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application, Respondent's Return thereto, and statements from Sonya Glenn and Catherine Creech.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the June 2008 term of the Colleton County Grand Jury for burglary - 1st degree (2008-GS-15-425), armed robbery (2008-GS-15-426), four counts of kidnapping (2008-GS-15-

427-430), and attempted escape (2008-GS-15-446). Harris S. Beach, Esquire, represented the Applicant. On January 13, 2009, the Applicant pled guilty as indicted. The State also dismissed five charges in exchange for the plea, including four counts of assault with intent to kill (AWIK) and criminal conspiracy. Pursuant to a negotiated plea agreement, the Honorable Perry M. Buckner sentenced him to confinement for fifteen (15) years for attempted escape and twenty (20) years for each other offense. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel in that counsel did not warn Applicant that certain charges were not indicted.
2. Involuntary guilty plea in that indicted offenses lacked probable cause.
3. Unlawful and unconstitutional sentence.
4. Prosecutor's misconduct in that prosecutor had no authority to negotiate plea.

At the hearing, Applicant alleged ineffective assistance of counsel for failure to discuss the elements of the charges, failure to inform Applicant that the State had to prove each element, failure to pursue alibi witnesses, failure to file a Brady/Rule 5 motion, and failure to object to the amendment of the indictments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the

relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified that he filed a speedy trial motion and wanted to go to trial. He asserted that he pled guilty on counsel's advice. He testified that he and counsel never discussed the elements of the crimes or what the State had to prove. He testified that he had statements from alibi witnesses. He admitted that these alibi witnesses were not available to testify at the PCR hearing, but he claimed that he asked his attorney to subpoena them for the PCR hearing. Applicant testified that plea counsel failed to move to dismiss based on lack of evidence and failed to move to suppress the gun. He contended that counsel failed to file a Brady/Rule 5 motion. Applicant also testified that counsel failed to properly investigate and failed to object to the amendment of the indictments.

Plea counsel testified that Applicant was facing twelve total charges, and he ultimately pled guilty to seven charges. Counsel testified that he did not object to the amendment of the indictments because the amendments merely corrected names and did not change the nature of the offense. He testified that he discussed with Applicant the elements of each charge and what the State was required to prove. He asserted that Applicant informed him of some potential alibi witnesses, but these witnesses did not pan out. Counsel testified that he requested and received discovery, and he reviewed the material with Applicant. Counsel asserted that it was Applicant's decision to plead guilty after counsel informed Applicant of the consequences of the plea and the significance of a negotiated sentence.

Ineffective Assistance of Counsel / Involuntary Guilty Plea

The Applicant alleges that he received ineffective assistance of counsel and that his plea was not entered freely and voluntarily. In a post-conviction relief action, the applicant has the

burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (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, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct.

1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citations omitted).

This Court finds that counsel's testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

The record reflects that Applicant understood the nature of the charges and the possible punishments. At the plea hearing, he indicated that he was fully satisfied with counsel and that no one threatened him or promised him anything to get him to plead guilty. He told the court that he understood the terms of the negotiated sentence. He also admitted guilt at the plea hearing. This Court finds that Applicant's plea was entered voluntarily and intelligently with a full understanding of the consequences. This Court finds that Applicant understood the terms of the negotiated sentence and that it was Applicant's decision to plead guilty.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation

that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Burley, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with him, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel obtained a favorable negotiated sentence of twenty (20) years for Applicant considering that Applicant was facing twelve charges, including five charges that carried a maximum sentence of thirty (30) and one charge that carried a maximum sentence of life. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly investigated Applicant's potential alibi witnesses. Counsel testified that these witnesses did not pan out. Moreover, these potential alibi witnesses did not appear at the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). An applicant's mere speculation as to what witnesses would have testified to at trial cannot, by itself, satisfy his burden of showing prejudice. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of

proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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, including unlawful sentence and prosecutorial misconduct, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

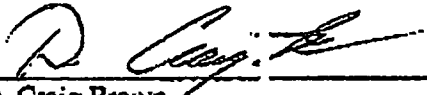
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9th day of May, 2011.



 D. Craig Brown
 Presiding Judge
 14th Judicial Circuit

Florence, South Carolina.

WITNESSES

Jeff Scott

Stallings

ARREST WARRANT NUMBER

J11727

May 1, 2008

ACTION OF GRAND JURY

TRUE BILL

Jacqueline Callender

Foreperson of Grand Jury

Date: *06/12/08*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0425

The State of South Carolina

County of Colleton

COLLETON COUNTY
GENERAL SESSIONS COURT

2008 JUN 13 AM 8:22

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code:0079

Samuel T Johnson

WITNESSES

Jeff Scott

Stallinger

ARREST WARRANT NUMBER

J771730

April 30, 2008

ACTION OF GRAND JURY

TRUE BILL

Jacqueline Callender

Foreperson of Grand Jury

Date: *06/12/08*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0426

The State of South Carolina

COLLETON COUNTY
GENERAL SESSIONS COURT

County of Colleton

2008 JUN 13 AM 8:22

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly ar

SC Code: 16-11-0330(A)
CDR Code:0139

Handwritten signature/initials

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Colleton)

INDICTMENT

2008-GS-15-0426

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of Colleton County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly ar

That on or about April 29, 2008, in Colleton County, South Carolina, at _____ by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a gun, the Defendant, Samuel T Johnson, did take and carry away goods and/or monies from the person or immediate presence of Tiffany Brown with the intent to permanently deprive he of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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



Isaac M. Stone
 Solicitor

WITNESSES

Jeff Scott

Stalling

ARREST WARRANT NUMBER

J77-1736

April 30, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *06/12/08*

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0427

The State of South Carolina

COLLETON COUNTY
GENERAL SESSIONS COURT

County of Colleton

2008 JUN 13 AM 8:22

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910

CDR Code:0095

Samuel T Johnson

WITNESSES

Jeff Scott

Stallings

ARREST WARRANT NUMBER

JY 1737

April 30, 2008

ACTION OF GRAND JURY

TRUE BILL

Jeanelle Callender

Foreperson of Grand Jury

Date: *06/12/08*

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0428

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910

CDR Code:0095

COLLETON COUNTY
GENERAL SESSIONS COURT

2008 JUN 13 AM 8:22

Samuel T Johnson

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Colleton)

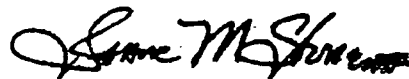
INDICTMENT
 2008-GS-15-0428

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of Colleton County present upon their oath:

Kidnapping / Kidnapping

That in Colleton County, South Carolina, on or about April 29, 2008, the Defendant, Samuel T Johnson, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Tanayana Finley, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

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



Isaac M. Stone
 Solicitor

WITNESSES

Jeff Scott

Stallings ✓

ARREST WARRANT NUMBER

J777738

April 30, 2008

ACTION OF GRAND JURY

True bill

Angeline Callender

Foreperson of Grand Jury

Date: *6/12/2008*

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0429

The State of South Carolina

County of Colleton

COLLETON COUNTY
GENERAL SESSIONS COURT

2008 JUN 13 AM 8:22

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910

CDR Code:0095

Francis M. Johnson

WITNESSES

Jeff Scott

Stallings

ARREST WARRANT NUMBER

J77739

April 30, 2008

ACTION OF GRAND JURY

True Bill

Justine Callender

Foreperson of Grand Jury
Date: *6/11/2008*

INDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2008-GS-15-0430

The State of South Carolina

County of Colleton

COLLETON COUNTY
GENERAL SESSIONS COURT

2008 JUN 13 AM 8:22

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for
Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

Samuel T Johnson

WITNESSES

A. D. Buchanan

Stallings

ARREST WARRANT NUMBER

J771744

May 1, 2008

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: *6/12/2008*

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0446

The State of South Carolina

County of Colleton

COLLETON COUNTY
GENERAL SESSIONS COURT

2008 JUN 13 AM 8:23

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Samuel T Johnson

Indictment for

Escape / Escape, attempted escape or possess
tools to escape

SC Code: 24-13-0410

CDR Code:2527

Samuel T Johnson

STATE OF SOUTH CAROLINA)
)
COUNTY OF Colleton)

INDICTMENT

2008-GS-15-0446

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of Colleton County present upon their oath:

Escape / Escape, attempted escape or possess tools to escape

That in Colleton County, South Carolina, on or about April 30, 2008, the Defendant, Samuel T Johnson, while lawfully confined in the custody of Colleton Jail, unlawfully did escape, attempt to escape or have in his possession tools or weapons which may be used to facilitate an escape, to wit: ; all in violation of Section 24-13-410, Code of Laws of South Carolina (1976, as amended).

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



Isaac M. Stone
Solicitor

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Colleton County

D. Craig Brown, Circuit Court Judge

RECEIVED

APR 30 2012

S.C. Supreme Court

SAMUEL T. JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

MATTHEW J. FRIEDMAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

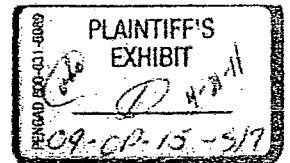
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PLAINTIFF'S EXHIBIT 1 VOLUNTARY STATEMENT 1

Colleton County Sheriff's Office

VOLUNTARY STATEMENT



Date 5/1/08 Place Ivanhoe Apts Apt #3 Time Started 1412 m.

I, the undersigned Sonja Glenn, am _____ years of age, having been born on _____ at _____, my social security number being _____ and my level of education is GED.

I now live at _____.

I have been duly warned and advised by Det. J. Scott, a person who has identified himself as an officer/deputy with the Colleton County Sheriff's Office.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency, by any person or persons whomsoever.

A young black male showed up on my mother's back porch saying he was jumped and his wallet and keys were taken. I offered to call the police and refused and let him supposedly call his mother which turned out to be his girl friend. I refused to let him in the house and he kept asking for help and we refused to leave the house and Mom called the police. My neighbors across the street came over and chased him off the porch. We told them how to get out the neighbor hood and he disappeared. He stood about 5'8" Medium colored skin with a black sweat shirt jacket, dark pants. He appeared to be highly upset and agitated. After we called the police, claimed he had a car up the street with no keys. Claimed he was lost in our neighbor hood and couldn't get back to Charleston.

Q: what is your mother's address?

A: 91 Palmation Ct Round O SC 29474

End of statement

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1425 M. on the 5 day of May 2008.

Sworn before me on this _____ day of _____ 20____.

NOTARY PUBLIC FOR SOUTH CAROLINA

Sonja K Glenn
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

My Commission Expires: _____

Witness: 391

Colleton County Sheriff's Office

VOLUNTARY STATEMENT

Date 5/1/08 Place 91 Dalmation ct Time Started 1310 m.

I, the undersigned Catherine Czech, am _____ years of age, having been born on _____ at _____, my social security number being _____ and my level of education is 12th.

I now live at _____

I have been duly warned and advised by Det. J. Scott, a person who has identified himself as an officer/deputy with the Colleton County Sheriff's Office.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency, by any person or persons whomsoever.

I was at home with my daughter around 9:43 PM. A young black man rapped on our porch door and we looked out and we opened the door and he told us that he had been jumped and needed help - he needed to get hold of his family we offered him the use of our phone and kept him on the porch while he used the phone. Then when he was done we took the phone back and he began to get agitated saying he doesn't know his way out of here - we tried to explain how to ^{come} get out but he became more agitated that he didn't want to go that way he said he needed us to help him - we started getting nervous and told him that we would call the ^{come} police he didn't like that idea saying police ask too many questions while my daughter talked with him. I called 911 they kept me on the phone while we waited for police, my daughter called our neighbours who came right over meanwhile this young man started leaving mumbling under his breath - after he left we redialed the number the young man called a young lady called and said 'is that you Travis' I hung up the phone but wrote down the

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1330 M. on the 1 day of May 2008.

Sworn before me on this _____ day of _____ 20_____

NOTARY PUBLIC FOR SOUTH CAROLINA _____

My Commission Expires: _____

Catherine Czech
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

Witness: [Signature] 781

Colleton County Sheriff's Office

VOLUNTARY STATEMENT

Date 5/1/08 Place _____ Time Started 1310 m.

I, the undersigned _____, am _____ years of age, having been born on _____, at _____, my social security number being _____ and my level of education is _____.

I now live at _____.

I have been duly warned and advised by Det. J. Scott, a person who has identified himself as an officer/deputy with the Colleton County Sheriff's Office.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency, by any person or persons whomsoever.
number the guy had called - The young man was about 5'8" in height medium build dressed in black. hair cut short to head.

I later gave the phone number and name from verifying the number to Detective Stephens.

END OF STATEMENT

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1330 M. on the 1 day of May 2008.

Sworn before me on this _____ day of _____ 20____.

NOTARY PUBLIC FOR SOUTH CAROLINA _____

My Commission Expires: _____

[Signature]
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

Witness: [Signature] 391