

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

BARON LEWIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000777

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) 2008-GS-40-0399
) 2008-GS-40-0398
) 2008-GS-40-0397
) 2008-GS-40-0396

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.)
)
 BARON LATON LEWIS,)
)
 DEFENDANT.)
)
 _____)

TRANSCRIPT OF RECORD

MARCH 15, 2010
COLUMBIA, SOUTH CAROLINA

B E F O R E:

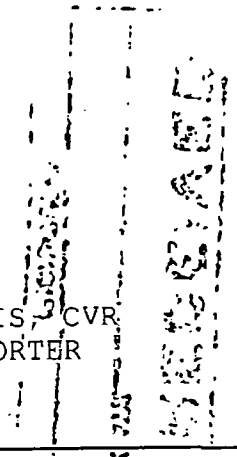
THE HONORABLE G. THOMAS COOPER, JR., JUDGE

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

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ATTORNEY FOR THE STATE

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NO EXHIBITS INTRODUCED.

1 (PRIOR TO GUILTY PLEA, DEFENDANT IS SWORN.)

2 MR. JOPHLIN: Standing before you is Laton Baron
3 Lewis, or also may be Baron Laton Lewis. He is standing
4 here today. He's charged with conspiracy to commit armed
5 robbery, attempted armed robbery, two counts of assault and
6 battery with intent to kill, and a charge of murder. The
7 state is dismissing the murder charge, and we have agreed
8 to a negotiated sentence, a range of between twelve and
9 fifteen years. He's represented by Mr. Tivis Sutherland
10 and Greg Collins.

11 THE COURT: Mr. Sutherland, you represent Laton Lewis?

12 MR. SUTHERLAND: Yes, I do, Your Honor.

13 THE COURT: And Mr. Collins?

14 MR. COLLINS: Yes, Your Honor.

15 THE COURT: You have, have you advised your client of
16 the charges contained in these indictments, and his right
17 to trial by jury?

18 MR. SUTHERLAND: Yes, sir.

19 THE COURT: How does your client indicate he wishes to
20 plead?

21 MR. SUTHERLAND: He wishes to plead guilty, Your
22 Honor.

23 EXAMINATION BY THE COURT:

24 Q. Mr. Lewis, you're charged in four indictments in front
25 of me. Two counts of assault and battery with intent to

1 kill, each of which carries a penalty of up to twenty years
2 in jail. You understand that?

3 A. Yes, sir.

4 Q. You're charged with conspiracy to commit armed
5 robbery, a charge which carries a penalty up to five years
6 in jail. Do you understand that?

7 A. Yes, sir.

8 Q. You're also charged with attempted armed robbery, a
9 charge that carries a penalty from ten to thirty years in
10 jail. Do you understand that?

11 A. Yes, sir.

12 Q. All right, understanding the charges you face and the
13 punishment you could receive, how do you wish to plead,
14 guilty or not guilty?

15 A. Plead guilty, sir.

16 Q. To all charges?

17 A. Yes, sir.

18 Q. You understand by pleading guilty, you're giving up
19 your right to remain silent?

20 A. Yes, sir, I do.

21 Q. Do you understand by pleading guilty, you're giving up
22 your right to a trial by jury?

23 A. Yes, sir, I do.

24 Q. If you requested or demanded a trial by jury, the
25 state would give you a trial. Do you understand that?

1 A. Yes, sir, I do.

2 Q. At that trial, you'd have the right to confront and
3 cross-examine all witnesses against you. You'd have the
4 right to present any witnesses and/or evidence in your own
5 defense. You'd have a right to testify in your own defense
6 if you wished to do so, but no one could make you testify
7 at your own trial.

8 If you decide to go to trial and not testify, the
9 judge would tell the jury they could not hold your failure
10 to testify against you. In fact, the jury could not even
11 consider your failure to testify in their deliberations on
12 your guilt or innocence. You'd be presumed innocent
13 throughout your trial.

14 State would have to prove you're guilty beyond a
15 reasonable doubt to a jury of twelve people. All twelve
16 people have to unanimously agree that you are guilty in
17 order for you to be convicted. Even if you were convicted,
18 you'd still have the right to appeal that conviction. Do
19 you understand your rights with regard to trial by jury?

20 A. Yes, sir, I do.

21 Q. All right. Has anyone promised you anything, held out
22 any hope of reward, or threatened you in any manner to make
23 you plead guilty?

24 A. No, sir. No one has.

25 THE COURT: Mr. Sutherland, has the solicitor .

1 correctly and completely stated all negotiations or
2 recommendations into the record?

3 MR. SUTHERLAND: Yes, sir, the negotiated twelve to
4 fifteen, Your Honor.

5 THE COURT: All right, and the reduction, or the ---

6 MR. SUTHERLAND: The dismissal of the ---

7 THE COURT: --- not -- dismissal of the murder charge.

8 Is that correct?

9 MR. SUTHERLAND: Yes, sir.

10 THE COURT: Is that all of it?

11 MR. SUTHERLAND: That's everything.

12 MR. JOPHLIN: Your Honor, if I may interrupt? I don't
13 believe the defendant's been sworn.

14 CLERK OF COURT: Yes, he was.

15 MR. COLLINS: He was.

16 MR. JOPHLIN: I apologize.

17 BY THE COURT:

18 Q. Mr. Lewis, are you...

19 THE COURT: No. It's all right if you need to confer
20 with your client.

21 (COUNSELORS CONFERS WITH DEFENDANT.)

22 Q. Are you satisfied with the manner in which your
23 attorneys have advised and represented you in this case?

24 A. Yes, sir, I am.

25 Q. You and your attorneys fully discussed these charges

1 against you?

2 A. Yes, sir, they have.

3 Q. Have they done everything you've asked them to do in
4 preparation for this plea?

5 A. Yes, sir, they have.

6 Q. Have they shared with you the information that the
7 state has, and the evidence the state has that they could
8 bring to trial to prove that you're guilty?

9 A. Yes, sir, they have.

10 Q. And are you satisfied with their advice?

11 A. Yes, sir, I am.

12 Q. Are you under the influence of any alcoholic
13 beverages, drugs, or prescription medications at this time?

14 A. No, sir, I'm not.

15 Q. Are you aware of any mental condition or nervous
16 condition that you have that would interfere with your
17 ability to understand what you are doing here today?

18 A. No, sir.

19 Q. You clearly understand what you're doing here today?

20 A. Yes, sir, I am.

21 Q. Are you pleading guilty of your own free will and
22 accord?

23 A. Yes, sir, I am.

24 Q. All right. It's my understanding that there's a
25 fairly complex factual basis for this plea, but I need to

1 have that on the record. And I need you to listen to what
2 the solicitor's going to tell me because at the end of it,
3 I'm going to ask you if that's what happened, and if that
4 is what you're pleading guilty to. Do you understand?

5 A. Yes, sir.

6 THE COURT: All right, Mr. Jophlin, give me a factual
7 basis for the plea.

8 MR. JOPHLIN: Yes, sir. Thank you, Your Honor.

9 This incident occurred on December 16, 2007, at 1744
10 Springwood Lake Drive here in Richland County. On that
11 evening, several citizens from the area, area, several
12 neighbors called into 9-1-1. Complained of gunshot.
13 Several gunshots had been fired.

14 Police responded to the area. They at first -- the
15 officer received another emergency call from a neighboring
16 house the next street over complaining of an individual who
17 had been shot and wounded. Officers arrived. They saw an
18 older gentleman in his mid forties laying in the backyard,
19 or early fifties laying in the backyard of the residence.
20 He had three, four gunshot wounds in his chest; he was
21 bleeding profusely.

22 EMS was contacted. Once they arrived, they
23 immediately transported him to the hospital for fear that
24 he would die that evening. And, in fact, he spent the next
25 few months in critical care at Richland Memorial trying to

1 recuperate from those wounds.

2 Officers also arrived to the neighboring next-street-
3 over house to find that man's son with injuries to both his
4 legs, and he had received a gunshot wound to his penis. He
5 was as well transported to Richland Memorial and spent a
6 couple of weeks there recuperating from his injuries.

7 Investigators were able to -- and once they set up the
8 perimeter in the area, they then saw a body lying on the
9 ground a short distance away from the house. The body was
10 without movement. EMS was told to respond to that body,
11 and when they got there, they found that it was -- the
12 person had died during the confrontation.

13 THE COURT: That's two people?

14 MR. JOPHLIN: Two people injured and then one person
15 dead.

16 At this juncture, investigators did not know what had
17 happened. All they knew was from talking to neighbors that
18 it was sort of a O.K. Corral moment in the neighborhood.
19 Several gunshots had been fired, wounded and dead all
20 around, but didn't know really who or what had transpired.

21 The crime scene investigators responded to that scene
22 that night and then the following day. They were able to
23 collect some bullet fragments, case jackets. There was a
24 lot of blood on the scene. They were -- swabs were taken.
25 They ultimately came back to being the young man's blood

1 who was injured and shot.

2 They were able to identify the dead body laying at the
3 scene as a Mr. William or Billy McGriff. He had a large
4 tattoo of McGriff on his chest, and they were able to
5 contact his sister, Ms. Sheila McGriff. At that time I
6 believe she did -- was able to identify her brother, and
7 his fiancee was contacted, Ms. Shamira Burris.

8 During the course of the investigation, the
9 investigators spoke with her, tried to figure out what --
10 who his contact had been, what had been going on the
11 previous couple of days before this had happened. She told
12 them that an old friend from Mr. McGriff's past had come
13 back into his life several weeks earlier. They had
14 actually saw each other at Auto Zone. Mr. McGriff referred
15 to this person as Chick or Chicken. He kept getting phone
16 calls from this same number, from this Chick person,
17 several times during this three, four, five-week period.

18 Finally, she said that she confronted her fiancé, Mr.
19 McGriff, about this. She was wondering -- you know, she
20 didn't want him to get back into the life he was when he
21 was younger. Apparently, he had sort of an unsavory past.
22 She's, like, who is this Chick person. You know, who are
23 you talking to. What is going on, and he told her about
24 basically this Chick person had approached him about
25 robbing some Jamaican citizens in the area. He heard they

1 had a large amount of drugs in their house, and that he
2 wanted McGriff to go along with him to rob this, rob this
3 house.

4 She wasn't pleased at hearing this. She threatened to
5 leave him. Said he didn't need to follow along with this,
6 but noticed immediately before this occurred, the
7 conversations between this Chick person and McGriff
8 escalated even more.

9 Finally, he left. McGriff left that night. She never
10 -- he never returned home, and she saw his car abandon at
11 an Exxon station the next morning.

12 Investigators were able to hear this name and put
13 together two and two from an incident that occurred years
14 prior where this nickname Chick had come up before. This
15 incident was ultimately dismissed. They were able to put
16 together a time when a Chick did a robbery, and this
17 person's Chick brother was shot during the robbery. May
18 have been by the victim in the robbery or by Chick, but the
19 charge was dismissed. But from that, they were able to
20 learn that Chick was Laton Lewis.

21 From there they were able to get in contact with Mr.
22 Lewis. One of the investigators with the sheriff's
23 department, Mr. Shawn, or Investigator Shawn McDaniels, had
24 built up a rapport with Mr. Lewis over the prior several
25 years. And he was able to meet with Mr. Lewis and talk to

1 him about the incident that occurred on Springwood Lake
2 Drive.

3 Asked him of his involvement, and Mr. Lewis ultimately
4 told Mr. McDaniels that he was involved. He had set it up.
5 He had talked to McGriff and some other persons about doing
6 this robbery. It was a mistake. No one was meant to be
7 hurt, but that he did set it up.

8 He ultimately reduced that statement to writing,
9 consisting of the same thing where he -- it says:

10 If it hadn't been for me, Billy and the
11 other person wouldn't have been involved in
12 what happened.

13 They had done surveillance on the house earlier in the
14 week. They knew to go when it was raining. So, they
15 didn't want the tracking dogs to come, be able to come
16 through and pick up any scents of the persons that were
17 there.

18 The plan was, the evidence would have shown, that the
19 plan was that Mr. Lewis drove everybody there. He had
20 gotten these walkie-talkies so they could all communicate
21 back and forth. Mr. Lewis parked a short ways away from
22 the house. Sent Mr. McGriff and this unknown third person
23 to do the robbery. Then they were going to go back to the
24 car and drive off.

25 Phone records that were subpoenaed of Mr. Lewis's cell

1 phone records show, and by the use of triangulation with
2 the different cell towers in the area, they were able to
3 pinpoint Mr. Lewis in the area of Springwood, Springwood
4 Lake Drive. Along with the statements, investigators felt
5 that he should be arrested and charged with the incident.

6 There has been some identification of some of the
7 other people involved in this. However, at this time there
8 is still enough evidence to establish probable cause for
9 their arrest for their involvement in this. So, that is
10 just simply through the cell phone records from that night
11 and some videotape footage from the Waffle House and some
12 different locations around the Springwood, Springwood Lake
13 Drive area where they were able see other people involved
14 in this.

15 Investigator Stan Smith, Brian Gwenn, and Shawn
16 McDaniels are here standing behind me in support of this
17 plea. Ms. Shamira Burris is Mr. McGriff's fiancée -- I'm
18 sorry, Shamira Burris and Shelia McGriff are here today.

19 THE COURT: But they went -- McGriff went with Lewis?

20 MR. JOPHLIN: Correct.

21 THE COURT: To try to do this lick?

22 MR. JOPHLIN: Correct.

23 THE COURT: And were any of the victims of the robbery
24 or attempted armed robbery, were they injured?

25 MR. JOPHLIN: Yes, sir. The two assault and battery

1 with intent to kills.

2 THE COURT: Oh, okay. Those two.

3 MR. JOPHLIN: They were -- well, ultimately it came
4 through after -- from statements and from the young son
5 predominantly. He said that he was studying. He came out
6 the door. He basically was going to McDonald's to get
7 something to eat while studying for school. When he came
8 out, two individuals approached him. Told him, you know,
9 they told him to give it up. He said no. One, one shot
10 him in the leg and tried to make him open the door so they
11 could get inside the house.

12 THE COURT: Was Mr. Lewis with his co-defendants at
13 all times, or was he -- you say he was ---

14 MR. JOPHLIN: The evidence would show that he was most
15 likely in the car waiting for these two other individuals.

16 THE COURT: Took them and was ready to take them away?

17 MR. JOPHLIN: Correct. He helped set it up, take
18 them, waited for them. He was going to drive them off.

19 Once the young man would not -- was not allowed back
20 inside, they then shot him again, which is where he
21 sustained injury to the penis. The father came running out
22 the back door and fired at the individuals who had just
23 shot his son. In response, he was shot three times in the
24 chest.

25 THE COURT: He survived?

1 MR. JOPHLIN: He survived, and as the two individuals,
2 assailants were fleeing, it is believed that the father got
3 off one shot to McGriff and killed him.

4 The victims of assault and battery with intent to kill
5 were notified of the proceeding today. They could not make
6 it, unfortunately, today because of scheduling. But they
7 are aware and feel the negotiated sentence range is
8 appropriate for Mr. Lewis's actions in this involvement.

9 THE COURT: And as it now stands, he is the only one
10 charged?

11 MR. JOPHLIN: Correct, and the state will be pursuing
12 under hand of one, hand of all theory he helped set it up,
13 was waiting. Was an active participant in this criminal
14 enterprise, and should be charged appropriately and
15 sentenced appropriately.

16 We did dismiss the murder charge based on the tenuous
17 nature of the legal arguments that would need be made.
18 There are very few states that -- and those states have
19 very specific statutes for being one -- allowing for a
20 co-defendant to be held responsible for another
21 co-defendant's murder when a victim shoots them. South
22 Carolina is not one of those states. We were prepared to
23 make those arguments, but ultimately we feel this is an
24 appropriate plea under the facts of the case. He does have
25 a prior record, Your Honor.

1 THE COURT: Just hold it.

2 MR. JOPHLIN: Okay.

3 EXAMINATION BY THE COURT RESUMES:

4 Q. Well, Mr. Lewis, that may have been a lot of facts,
5 but I do need to ask you if that's what happened, to the
6 best of your knowledge.

7 A. Well, Your Honor, you know, pretty much, like he said,
8 far as the planning part, you know, it just wasn't just my
9 plan, you know? Circumstances surrounding this situation
10 led me to say that I planned this robbery when we all
11 participated in this robbery, meaning...

12 As you know, Investigator McDaniels and I, you know,
13 as you say, has known each other. And during this
14 investigation, he, he, he asked me to meet with him. I met
15 with him, and he notified me that my name was brought up
16 during an investigation, in which I told him yeah, I
17 probably -- because I talked to -- a friend of mines got
18 killed, and I talked to him that night. Well, he asked
19 some way for me -- that a friend's fiancée said that, you
20 know, knew about the situation, dealing with my brother's
21 situation and whatnot, and my name came up.

22 He also informed me that this, this thing here, the
23 researcher, whoever did research it, it was very bad.
24 These people is very connected. Matter of fact, these
25 people also -- it's like a Jamaican mob or posse, and they

1 have people in from New York, and they was hurting people.
2 They was at my friends', riding up and down my friends'
3 neighborhood.

4 I'm at risk. My fiancée at risk. My family's at
5 risk. So, at, at this point, Your Honor, I felt like I
6 needed to say something to put the blame on me to get
7 myself off the street because I just lost a friend, you
8 know, in this situation, and I'm afraid.

9 I'm, I'm, I'm not perfect, Your Honor. I sit here,
10 and I take full responsibility, but I just, you know,
11 wanted you to know what led me to honestly, to say that I
12 planned everything, and I brought everybody together, and
13 this is all mine because I felt -- you know, somebody I
14 trusted, I, I, I trusted McDaniels. And he's telling me
15 that, you know, I done messed up. You know, this a
16 Jamaican posse, and they hurting people. They know about
17 me about me. Know what kind of car, know my name. So, I
18 feel like, okay, what I need to do is to get off the
19 street.

20 So, I say, well, look. I plan all of this. I plan
21 everything, and I took the brunt of everything. To even go
22 to show you, I felt like, you know, since I was taking the
23 brunt of everything and I felt like I was in jeopardy, I
24 ask the investigators is it possible me to go to the
25 detention center under the name of Laton Lewis instead of

1 Baron Lewis because, you know, he said that more than
2 likely the news people would get my name and put it out
3 there. So, I didn't -- I just wanted to protect myself.

4 Q. Well, it obviously went bad, whatever you ---

5 A. Yes, it did.

6 Q. Whatever you planned to do went terribly wrong, it
7 sounds like to me.

8 A. Yes. Yes, it did.

9 Q. But you're telling me you admit your involvement in
10 it?

11 A. Yes. I admit my involvement, sir.

12 Q. All right.

13 A. I take fully responsibility of, of my involvement.

14 THE COURT: All right, I find the decision of the
15 defendant, Laton or Laton Lewis, to be freely, voluntarily,
16 intelligently made. He's had the representation of
17 competent counsel in the persons of Mr. Sutherland and Mr.
18 Collins. I find the factual basis for his plea; therefore,
19 I will accept your plea, Mr. Lewis.

20 If you disagree with the sentence I give you, the
21 procedure we just completed, you have ten days from today's
22 date in which to file notice of intent to appeal. You
23 understand that?

24 DEFENDANT: Yes, sir. I do.

25 THE COURT: All right, what's his record look like,

1 solicitor?

2 MR. JOPHLIN: Thank you, Your Honor. In 1983, simple
3 possession of marijuana three times. In 1985, possession
4 of marijuana, concealed weapon. 1986, filing false
5 information. 1986, burglary second degree. 1987,
6 malicious injury to real property, resisting arrest, and
7 disorderly conduct. 1988, possession of marijuana, failure
8 to stop for police command, as well as receiving stolen
9 goods, and possession of cocaine. And finally in 2007, a
10 breach of peace.

11 I failed to mention, Your Honor. You were asking
12 about any other arrests involved in this. There was one
13 other arrest. Ms. Beverly Mitchell, his fiancée, was
14 arrested for, I believe, accessory after the fact due to
15 his communications with her out at Alvin S. Glenn asking
16 her to dispose of some of the papers, two-way radio box,
17 and other things that were ultimately found in her vehicle
18 upon a search warrant.

19 I've spoken with both these victims of the assault and
20 battery with intent to kill, as well as Ms. Burris and Ms.
21 McGriff out in the auditorium. I'll ask of this court, as
22 well as the state ask this court to impose the fifteen-year
23 top range of this negotiated sentence.

24 You know, because of Mr. Lewis's actions, a man, a
25 father ended up in the hospital for three months with three

1 bullets in his chest. A young man ended up with a bullet
2 in his leg and through his penis. And then ultimately his
3 co-defendant and supposed friend ended up dead laying on
4 the street. We would ask fifteen years, Your Honor. Not
5 to impose any type of minimum or leniency on him,
6 especially in light of his record, and this isn't his first
7 being here in front of a judge.

8 THE COURT: Mr. Sutherland.

9 MR. SUTHERLAND: I guess, Your Honor, in response to
10 the last part, I think his last time in front of a judge
11 was in nineteen-eighty -- '89, I think he said.

12 THE COURT: I noticed that.

13 MR. JOPHLIN: 2007.

14 MR. SUTHERLAND: Well, it's -- oh, a breach of peace.

15 THE COURT: Before that.

16 MR. JOPHLIN: Yes, sir.

17 MR. SUTHERLAND: Well, Your Honor, with, with respect
18 to the facts, we have substantial, there's substantial
19 agreement with the facts put forth by the solicitor. I
20 think what Baron was trying to say earlier, explaining why
21 he had initially taken everything on himself, was that he
22 was scared. He was informed by law enforcement that
23 Jamaican drug dealers had brought people down from New York
24 and they were looking for him, and his family was in
25 danger, and he left everybody else out of it. Ultimately,

1 you know, we were able to develop the facts in the case to
2 -- basically, so the sheriff's department, the solicitor,
3 and the victims themselves, and everybody involved could
4 understand truly what happened here and what everybody's
5 role was at this location.

6 His role was the driver. And I explained to him that,
7 you know, if my buddy Greg and I go knock off a liquor
8 store and I stay in the car, I may as well have gone in
9 and done it because we had a meeting of the minds together.

10 But I also explained to him with respect to the other
11 co-defendants who are still at large that it was my hope
12 that they could be apprehended so we could establish a
13 sliding scale of culpability whereby the driver is treated
14 a particular way, and the individuals who went up there and
15 who were actually armed could receive appropriate sentences
16 in that regard.

17 Your Honor, I want to tell you a little bit about
18 Baron. I do have something. He hasn't been wasting his
19 time down in the jail. He's a hard-working man. He'd got
20 a CDL. He had actually worked for one of my cousin's
21 companies, Haradaway Concrete, for two years up until he
22 was arrested. I think it was H.K. Steel prior to that as a
23 driver for four years. He had a great credit score, great
24 credit, a great life. He had put all of his troubles from
25 the late eighties behind him.

1 Once he got involved with this on that day -- he had
2 actually called Investigator McDaniels the week prior to
3 this, and they discussed that there were people from his
4 past that were trying to get him involved in something.
5 And he did look to Investigator McDaniels as a friend and
6 as a member of the same church. And he had, at that time,
7 decided he wasn't going to participate, and then later on
8 he made the fateful decision to go along and drive these
9 people to do this stuff.

10 But while he was down at the detention center -- this
11 is actually from Sheriff Lott, and I've shown it to the
12 solicitor, if I can hand it up to Your Honor.

13 THE COURT: Yes, sir. I'll be glad to.

14 MR. SUTHERLAND: But, Your Honor, they have -- they
15 called it the Scared Straight program, and they bring just
16 about every Saturday, they bring young people to the jail
17 who are at risk, and they give them tours of phase 3, the
18 dangerous parts of the jail.

19 And Baron was one of the people who would take these
20 kids around the dorm, and who would talk to them and tell
21 them about the decisions that you make can come back to
22 haunt you. Look at me. They're calling me a murder. I'm
23 charged with murder; I'm charged with armed robbery. I had
24 a job. I had a woman who loved me. I had a good family,
25 and look at where I'm at now because of my decisions on

1 that one day. And so each weekend, he's been doing
2 something to try and build back into his character and be
3 who he actually is, and to get back, to get back to who he
4 actually was before he made that decision.

5 So, Your Honor, what he did, there was a lot of damage
6 done. But I do honestly believe that in terms of
7 culpability of all the persons involved, even though they
8 have not arrested the co-felons in this case, he is
9 certainly at the bottom of the rung as far as culpability
10 goes.

11 I think a twelve-year sentence, Your Honor, would be
12 fair. I think it would be fair to everybody involved. It
13 was important to Baron that the McGriff family know that he
14 did not kill Billy. That he's, he's been down there for --
15 since 2007, and he's been charged with murder, and so all
16 this time they've been thinking that he killed Billy.

17 One of the things that can come out of today is what
18 -- the recitation of facts on the record and everything,
19 and with him being able to address the court and myself
20 being able to address the court on his behalf, is that they
21 know he did not kill him. He made a bad decision to go
22 with everybody, to try to rip off these guys who supposedly
23 had all this weed and all this money and had brought it in
24 from New York, and a bunch of local people made a mistake
25 in trying to take on these people from out of town.

1 Your Honor, I believe Baron would like to address the
2 court. It's just my hope that he will receive the
3 twelve-year sentence, the minimum of the range. Thank you,
4 sir.

5 THE COURT: Yes, sir.

6 DEFENDANT: Your Honor, thank you for allowing me to
7 speak. I wanted just to let you know who I am as a person.

8 I've been born and raised in Columbia all my life,
9 sir. Yeah, I'm not perfect. When I was young, I did make
10 some mistakes. I haven't been convicted of a crime since
11 1988. Once I got out of prison, I, you know, got my life
12 in order. Started, got my CDL. Went to school. Got my
13 GED. I started doing other things in my life trying to
14 discourage kids, even with Investigator McDaniels. We used
15 to do, go -- I used to go speak to kids.

16 I take fully responsibility for my actions, Your
17 Honor. I am a hard-working man. I want, first of all, I
18 want to apologize not only to, you know, Your Honor, but
19 to, you know, everybody that's involved with this thing.

20 But my life as I know it, it will never be the same,
21 sir. I lost tremendous -- you know, I'm about to lose my
22 freedom, you know. I'm forty-four years old. I just ask
23 Your Honor just to, you know, take and consider my age and
24 at least give me a chance to try to have some kind of life
25 when this, when this, you know, this thing is over with.

1 I want to apologize to, you know, Billy's family, the
2 victim's family, my family, the sheriff department, the
3 courts. You know, I'm truly sorry about putting myself in
4 this situation, sir.

5 (A PAUSE.)

6 DEFENDANT: I'm not this kind of person that be out
7 there and just try to hurt people and rob people, sir. I
8 don't do this. I work hard, and I done lost everything,
9 sir. And not only I have lost, but my family done lost. I
10 mean, these victims done lost. I mean, everybody loses in
11 this situation.

12 I come, I take full responsibility, sir. I'm truly
13 sorry for my actions. And I just, I just ask you, Your
14 Honor, just, just, I mean, I just want another chance to
15 have some kind of life. I want to be able to come and be
16 productive. I want to be able to come and be able to have
17 some type of life when all this is over, over with.

18 I'm truly sorry for my, my actions and role that
19 night, the day that I decided to drive these, these people
20 here. I just wanted to thank you, Your Honor, just for
21 allowing me to really express myself. I mean, it...

22 THE COURT: All right, let me do this. Y'all are
23 going to -- somebody -- y'all are going to have to leave if
24 you can't control your emotions now.

25 Solicitor and maybe law enforcement, Mr. Sutherland

1 asserts that of all the participants in this matter, Mr.
2 Lewis may be, may be the least culpable. Is there any way
3 that either one of the -- anybody from law enforcement or
4 the state solicitor's office can comment on that?

5 MR. SMITH: Yes, sir. If please court, Your Honor?

6 THE COURT: Yes.

7 MR. SMITH: We did receive some information regarding
8 co-defendants rather late in the game, rather late in the
9 day. The staleness of it was to the point, it's almost
10 uncorroborateable. At least one of the individuals ---

11 THE COURT: Well, you would have to, or would you
12 agree that it's not likely that Mr. Lewis did it all
13 himself?

14 MR. SMITH: Well, certainly, Your Honor, certainly.
15 The facts show there were multiple individuals involved.

16 THE COURT: Right.

17 MR. SMITH: But the assertion was is that basically
18 the co-defendants have been identified. That, that is
19 true. However, the lateness of it, the staleness of it has
20 almost made it virtually impossible for us to pursue it.
21 One of the individuals interviewed early on in the process,
22 when he invoked his attorney privilege basically shut that
23 door down. Now, saying that, the investigation still
24 continues, and if we're able to ---

25 THE COURT: Well, I know you do cold cases all the

1 time.

2 MR. SMITH: Yes, sir. We're able to develop probable
3 cause to charge individuals, we certainly will do that.

4 One point I think the court needs to understand,
5 there's been a number of references, references to
6 McDaniels's involvement. He was involved with Mr. Lewis
7 early on because he was the case officer in the previous
8 case which virtually had the same facts as the solicitor
9 pointed out earlier. It was a basically, a home invasion
10 that went bad, and I believe it was a relative of Mr. Lewis
11 that actually died in that, in that case.

12 THE COURT: How long ago was that?

13 MR. SMITH: 2001 or 2002.

14 MR. SUTHERLAND: Well, this, it was no billed by the
15 grand jury, Your Honor.

16 THE COURT: As to him?

17 MR. SUTHERLAND: Oh, absolutely.

18 THE COURT: But there was an event.

19 MR. SMITH: Yes, sir.

20 MR. SUTHERLAND: There was an incident, but the grand
21 jury no billed it, sir.

22 THE COURT: As to him?

23 MR. SUTHERLAND: Yes, sir.

24 MR. SMITH: Your Honor, the -- germane to this
25 investigation because it led to his identity. That was why

1 it was important with regard to this, this investigation.

2 THE COURT: All right.

3 MR. SMITH: The only reason Sergeant McDaniels met
4 with Mr. Lewis on the night in question was because I
5 directed him to. That I'm his captain. He's a, he's a
6 subordinate of mine. I knew about the relationship that he
7 had developed with Mr. Lewis to try to basically steer him
8 straight, and I directed him to do that, Your Honor.

9 THE COURT: I understand.

10 MR. SMITH: And as a result of that, he did elicit a
11 confession.

12 THE COURT: All right. My second question is, is
13 there such a thing as a Jamaican gang, or has Mr. Lewis got
14 this whole thing wrong?

15 MR. SMITH: During the course of this investigation
16 and other investigations, Your Honor, we have learned that
17 there are Jamaican ---

18 THE COURT: Nationals?

19 MR. SMITH: Jamaican element in the Columbia area ---

20 THE COURT: Jamaican nationals.

21 MR. SMITH: --- who are involved in the dealing of
22 drugs. And we have reason to believe that that could have
23 been happening here. It certainly was pointed out to us
24 that was the motive. That was the reason they were
25 targeted. We have no reason to disbelieve that.

1 THE COURT: Okay.

2 MR. SMITH: Of course, those victims did not volunteer
3 that information to us during the course of the
4 investigation.

5 THE COURT: Are both victims Jamaican nationals?

6 MR. SMITH: That is our understanding, Your Honor.
7 The son is -- was born in the United States, but originally
8 there's a New York connection. It's rather complicated.

9 THE COURT: Okay, so he, Mr. Lewis, didn't just make
10 this up out of his head?

11 MR. SMITH: No, sir.

12 THE COURT: Whatever took place ---

13 MR. SMITH: That's correct.

14 THE COURT: There were two sides to it, so to speak.

15 MR. SMITH: Yes, sir. They -- the investigation
16 showed basically, without getting into all the detail, that
17 they had developed some intel on this location, and figured
18 that it would be, quote, ripe for the picking, so to speak.
19 There would be money, and there would be drugs.

20 MR. JOPHLIN: And, Your Honor, Investigator Shawn
21 McDaniels would also like to address the court.

22 THE COURT: I'll be glad to hear from you, Mr.
23 McDaniels.

24 MR. MCDANIELS: Your Honor, I'm going to be honest
25 with you. I really don't want to be here.

1 THE COURT: I understand that.

2 MR. MCDANIELS: Mr. Lewis had become not just a fellow
3 church member, but he, he had become a friend of mine to
4 the point almost where I considered him to be like my
5 brother.

6 Everything they stated as far as his behavior as
7 pertains to trying to help out kids, he did just that.
8 Whenever I asked him come and speak to children, he did
9 just that. He also promised me that he would never, ever
10 return to that way of life.

11 He called me the week before, and he did ask for me to
12 talk to him again from a brotherly, fellow church member
13 standpoint. That is true. I watched this man get
14 baptized, and I'm hurting today because I honestly thought
15 that -- in this field that I'm in, that I found I help
16 reach someone. And it's been a struggle since to try and
17 help to that capacity someone else.

18 As I stated earlier, I don't want to be here, but as I
19 always stated to Baron, that if he ever did return there,
20 that I would do my job. And I asked him that, to never
21 force me to do that, and he promised me that he wouldn't.

22 I'm hurt. I'm upset, but I can't deny the fact that I
23 do care about this man as a fellow Christian. I have no
24 doubt that, and I've received word that he does help out
25 with juveniles in our Scared Straight program because

1 that's what he did prior to that, prior to being an inmate.
2 I just wanted to corroborate and confirm some things as it
3 pertains since my name was thrown up so often, to the
4 validity of -- the reason why I was mentioned.

5 THE COURT: All right. Thank you, Mr. McDaniels.

6 MR. JOPHLIN: And, Your Honor, the defense keeps
7 bringing up this sliding scale of culpability.

8 THE COURT: Well, it's always something I would
9 consider.

10 MR. JOPHLIN: Yes, sir, and I want to bring your
11 attention -- you know, Mr. Lewis is looking at
12 approximately sixty years on these charges. Hopefully when
13 the co-defendants are caught, there will be a scale that
14 will be in place, you known, but Mr. Lewis confessed. He
15 gave a written statement. He was the first to be arrested.

16 THE COURT: Did he ---

17 MR. JOPHLIN: And the state feels ---

18 THE COURT: Did he, did he voluntarily turn himself
19 in?

20 MR. SMITH: He voluntarily met Sergeant McDaniels that
21 night, Your Honor.

22 THE COURT: The night of the incident?

23 MR. SMITH: Yes, sir, and it was, again, it was set up
24 by myself. We had another -- we had a recording device on
25 Sergeant McDaniels, and we had another detective in the

1 area, and they accompanied Mr. Lewis that night.

2 THE COURT: And how soon thereafter did he give a
3 statement?

4 MR. SMITH: That same night.

5 THE COURT: That same night?

6 MR. SMITH: Yes, sir. He did not deny to another
7 investigator what he had told Sergeant McDaniels in that
8 private meeting. He basically reiterated ---

9 THE COURT: In the private meeting, but it was wired.

10 MR. SMITH: Yes, sir, but it was a one-on-one meeting.
11 It was wired. There was one -- another agent was nearby
12 for protection purposes. Again, set up. The whole thing
13 was set up, but he later gave a statement that night
14 basically reiterating the detail that he had provided
15 Sergeant McDaniels in that meeting.

16 MR. JOPHLIN: And, Your Honor, the state feels that,
17 you know, but for Mr. Lewis's actions, but for him, you
18 know, even by his own words helping set up this.

19 THE COURT: I understand. I understand that. Just
20 trying to look at all sides. How long has he been in jail?

21 MR. SUTHERLAND: He's been in since December...

22 MR. JOPHLIN: 21st.

23 MR. SUTHERLAND: December 21, 2007, Your Honor.

24 THE COURT: December 21, 2007?

25 MR. JOPHLIN: Yes, sir.

1 MR. SUTHERLAND: Yes, sir.

2 THE COURT: And the victims are not here?

3 MR. JOPHLIN: The two victims of the assault and
4 battery with intent to kill are not here. The family
5 members of the deceased, Mr. McGriff, are here. the
6 assault and battery victims were not able to maneuver their
7 schedule. We informed them this would most likely start
8 trial tomorrow. They were not able to free themselves this
9 afternoon, Your Honor.

10 THE COURT: Why not?

11 MR. JOPHLIN: I didn't ask the details of where they
12 were going or who they were going to see, Your Honor.

13 (A PAUSE.)

14 SENTENCE OF THE COURT:

15 THE COURT: All right, Mr. Lewis. Well, it's a sad
16 situation. I know you understand that.

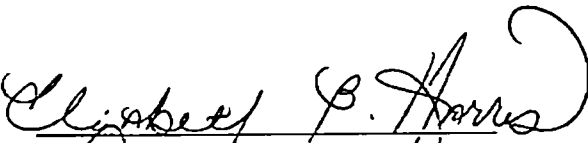
17 The sentence on all charges -- I beg your pardon.
18 Sentence of the court on your conspiracy charge is you be
19 committed to the State Department of Corrections for a
20 period of five years. On all three of your other charges,
21 sentence of the court is you be committed to the State
22 Department for a period of fourteen years. All sentences
23 to run concurrent. You're given credit for time served
24 since December 21, 2007. Good luck to you, sir.

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF MARCH, 2010.

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


ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

DECEMBER 18TH, 2010

DOCKET NO. 2008-GS-40-00396

WITNESSES
Ys) B. Gwyn - RCSD

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

42

THE STATE
vs.

LATON B. LEWIS

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment to

REC'D TRUE COPY
ORIGINAL FILED
JAN 20 2008
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

J-559809

ACTION OF GRAND JURY

TRUE BILL

Russella B. Smith
Foreperson of Grand Jury
Date: FEB 20 2008

VERDICT

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class FEL-C(V)

Foreperson of Petit Jury
Date:

WITNESSES

(S) B. Gwyn - RCSD

DOCKET NO. 2008-GS-40-00397

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

42

ARREST WARRANT NUMBER

J559810

THE STATE

VS.

LATON B. LEWIS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 29 2008

VERDICT

ATTEMPTED ARMED

ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 026

Class FEL-C(M)

After being duly advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment.

FILED TRUE COPY ORIGINAL FILED
FEB 29 2008
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 20, 2008, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That LATON B. LEWIS did in Richland County on or about December 15, 2007, attempt to commit robbery by feloniously attempting to take from the person or presence of Desmond Powell by means of force or intimidation goods or monies of Desmond Powell, such goods and monies being described as US Currency and/or other personal goods, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330.

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

Warren B. Giese

 WARREN B. GIESE, SOLICITOR

WITNESSES

VS/ B. Gwyn - RCSD

ARREST WARRANT NUMBER

J-559811

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury
Date: Feb 20 2008

VERDICT

DOCKET NO. 2008-GS-40-00398

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

42

THE STATE

VS.

LATON B. LEWIS

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class FEL(CIV)

I, the undersigned, Clerk of Court, do hereby certify that the within legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment of

TRUE COPY ORIGINAL FILED
JAN 20 2008
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Petit Jury

4

WITNESSES

(s) B. Gwyn - RCSD

DOCKET NO. 2008-GS-40-00399

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

42

ARREST WARRANT NUMBER

J559812

THE STATE

vs.

LATON B. LEWIS

ACTION OF GRAND JURY

TRUE BILL

Janella Brink
1 person of Grand Jury

Date: FEB 9, 2008

VERDICT

After being fully advised as to my legal rights, I hereby waive my right to the Grand Jury.

Defendant

I hereby appear in my own person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY OF ORIGINAL FILE
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

CONSPIRACY TO COMMIT ARMED ROBBERY
SC Code: 16-17-410
CDR Code: 049
Class FEL-F

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS. LATON B LEWIS
AKA:
Race: M Sex: M Age: 44
DOB: SS#:
Address:
City, State, Zip: COLUMBIA, SC 29201
DL#: SID#:

INDICTMENT/CASE#: 2008GS40396
A/W#: J559809
Date of Offense: 11/18/2009
S.C. Code §: 16-03-0620
CDR Code #: 0014

SENTENCE SHEET

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and battery with Intent to Kill (ABWIK)

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jupp.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. 12-15 years

ATTEST: Campbell, Clerk SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 14 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 12-21-07
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPS

Table with columns for Recipient, *Fine, and various S.C. Code sections (e.g., § 14-1-206, § 14-1-211(A)(1)) with corresponding dollar amounts.

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel
§ 47.12 requires \$500 to be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Jeanette W. McBride (KS)
Court Reporter: Harris

Presiding Judge
Judge Code: 2126
Sentence Date: 3-15-10

Handwritten signatures and stamps, including 'ORIGINAL FILED' and 'SOUTH CAROLINA'.

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2008GS40397

LATON B LEWIS

A/W#: J559810

AKA: _____

Date of Offense: 11/18/2009

Race: _____ Sex: M Age: 44

S.C. Code § : 16-11-0330(B)

DOB: _____ SS#: _____

CDR Code #: 0026

Address: _____

City, State, Zip: COLUMBIA, SC 29201

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. 12-1/2 year

ATTEST: [Signature] 71175 [Signature] 69698
Campbell, Luke SC Bar# [Signature] Defendant [Signature] Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 14 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 12-21-07
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

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

Clerk of Court/ Deputy Clerk Jeanette W. McBride
Court Reporter: Marisa
SCCA/217 (11/2009)

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel § 47.12 requires \$500 be paid to Clerk during probation.
Presiding Judge [Signature]
Judge Code: 2126
Sentence Date: 3-15-10
SOUTH CAROLINA

CERTIFIED TRUE COPY OF ORIGINAL FILED

46 COUNTY OF Richland STATE VS. LATON B LEWIS AKA: Race: Sex: M Age: 44 DOB: SS#: Address: City, State, Zip: COLUMBIA, SC 29201 DL#: SID#:

INDICTMENT/CASE#: 2008GS40398 A/W#: J559811 Date of Offense: 11/18/2009 S.C. Code §: 16-03-0620 CDR Code #: 0014

SENTENCE SHEET

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Assault / Assault and battery with Intent to Kill (ABWIK)

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. ATTEST: Garrison J. L. Harris, SC Bar# 71175, Laton Lewis, Defendant, Attorney for Defendant, SC Bar# 69165

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 14 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 12-21-07 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with columns for Recipient, *Fine, and various S.C. Code sections (e.g., § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 56-1-286, § 47.12, § 14-1-212, § 14-1-213, § 50-21-114, § 56-5-2942(J), § 90.7) with corresponding dollar amounts.

Clerk of Court/ Deputy Clerk: Jeanette W. McBride vs. Harris Court Reporter: SCCA/217 (11/2009)

Presiding Judge: Judge Code: 2126 Sentence Date: 3-25-10 COUNTY SOUTH CAROLINA

CERTIFIED TRUE COPY OF ORIGINAL FILED

COUNTY OF Richland
STATE VS.
LATON B LEWIS

47

INDICTMENT/CASE#: 2008GS40399
A/W#: J559812
Date of Offense: 11/18/2009
S.C. Code § : 16-17-0410
CDR Code #: 0049

AKA: _____
Race: _____ Sex: M Age: 44
DOB: _____ SS#: _____
Address: _____
City, State, Zip: COLUMBIA, SC 29201
DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. 12-15

ATTEST: Lauren J. Campbell 71175 Laton Lewis 6965
Campbell, Luck SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 12-21-07
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

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

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Clerk of Court/ Deputy Clerk Jeanette W. McBride (es)
Court Reporter: Harris
SCCA/217 (11/2009)

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.
PRESIDING JUDGE: _____
JUDGE CODE: 2126
SENTENCE DATE: _____
COLUMBIA COUNTY
SOUTH CAROLINA

CERTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
CLERK OF COURT
COLUMBIA COUNTY
SOUTH CAROLINA

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Richland)
)
Baron L. Lewis # 152591)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2010CP4007042

APPLICATION FOR
POST-CONVICTION RELIEF

JENNIFER W. MCBRIDE
 C.C.P. & G.S.
 2010 OCT 11 AM 11:49
 RICHLAND COUNTY
 FILED

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 Kirkland Reception & Evaluation center
4344 Broad River Rd. Columbia SC 29210
2. Name and location of Court which imposed sentence Richland County General
Sessions Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2008-GS-40-00396; 2008-GS-40-00397; 2008-GS-40-00398;
 (b) 2008-GS-40-00399. ABLIK, 2 counts; Armed Robbery;

20104458

ATTORNEY GENERAL'S OFFICE
 RECEIVED
 ADMINISTRATIVE INSTRUCTIONS
 FILE OPEN
 HAVE COMPLETION
 ROUTE TO
 ORDER TRANSPORT
 PER RECORDS CLERK INSTRUCTIONS
 OTHER

20104458

(c) Conspiracy to Commit Robbery

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

(a) March 15, 2010 - Term of 14 yrs Concurrent

(b) _____

(c) _____

6. Check whether a finding of guilty was made.

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) I was not advised of that option by my counsel

(b) _____

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

- (a) Ineffective Ass. of Counsel
- (b) Breach of Plea agreement
- (c) Involuntary Guilty Plea

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

- (a) My Counsel failed to object to the breach of the plea Bargain.
- (b) Prosecution breached out of plea agreement after I gave them detrimental cooperation.
- (c) Due to the ineffectiveness of counsel I felt trial was not an option.

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

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

N/A

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

N/A

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

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

- i. _____
- ii. N/A
- 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) I was not advised of opportunity to do so.
- (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? N/A
- (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? N/A

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. Tavis Sutherland 1811 Pickens St.
Columbia, SC 29201
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea
 - ii. Sentencing
 - iii. _____

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

The ability to receive the original bargain that was
agreed to.

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

No N/A

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, BARON LEWIS, 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.

Baron Lewis

SWORN to and subscribed before me this 6th
day of October, 2010.

L.P. Weiler (L.S.)
Notary Public

My Commission Expires: 10/8/2014

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

I, BARON LEWIS, 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.

Baron Lewis
Applicant

SWORN or affirmed to and subscribed before me this
6th day of October, 2010

J. W. Wealy
Notary Public

My Commission Expires: 10/8/2014

RICHLAND COUNTY
FILED
2010 OCT 11 AM 11:50
JEANNETTE W. HIGERIDE
CLERK & S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

LEWIS Baron L -
00152591,

2010CP4007042

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 11, 2010, 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 Richland County Clerk of Court. The Applicant was represented by Tivis Suterland, Esquire. On March 15, 2101, the Applicant pled guilty and was sentenced by The Honorable G. Thomas Cooper, Jr.. The Applicant had been indicted and/or pled guilty to the following:

<http://www4.rccgov.us/publicindex/PCCaseDetails.aspx?County=40+&Casenum=2010CP-042&CourtAgency=40002>

State's Return - (2010CP-1007042) - Applicant

Page 1 of 6

LEWIS Baron L

Conspiracy to Committ Armed Robbery, ABWIK (2 counts), Atempted Armed Robbery - (2008-GS-40-0399;98;97;96).²

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Attempted Armed Robbery
<u>Sentence Start Date</u>	12/21/2007
<u>Sentence Length</u>	14 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	03/18/2010
<u>Committing County</u>	Richland
<u>Location</u>	Kirkland
<u>Projected Release Date</u>	11/11/2019
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00152591&youth=N&type=F>

assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance

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

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis

that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Julie Thames, Esquire regarding when the hearing should be set.³


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 4, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2010CP4007042) – Applicant: LEWIS Baron L

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEWIS Baron L -)
00152591,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS


2010CP4007042

CERTIFICATE OF SERVICE

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

Julie Thames
Post Office Box 11742
Columbia, SC 29211

DATED February 4, 2011.



Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) 2010-CP-40-7042

Baron Laton Lewis,)
)
 Plaintiff/Applicant,)
)
 vs.) TRANSCRIPT OF RECORD
)
 The State of South Carolina,)
)
 Defendant.)
 _____)

May 23, 2012
 Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

ROLAND P. ALSTON, III, ESQUIRE
 Attorney for Plaintiff/Applicant

ROBERT D. CORNEY, ESQUIRE
 Attorney for the State

Crystal Holmes
 Official Court Reporter

E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
	(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE HEARING.)		

1 Wednesday, May 23, 2012:

2 MR. ALSTON: Beg the Court's indulgence, I'm
3 moving these files out.

4 THE COURT: Yes, sir, take your time.

5 (Pause.)

6 MR. CORNEY: Your Honor, this is the PCR
7 application of Baron Laton Lewis. It's docket number 2010-
8 CP-40-07042. Mr. Lewis was true bill indicted at the
9 February 2008 term of the Richland County Grand Jury for
10 conspiracy to commit armed robbery, attempted armed
11 robbery, two counts of assault and battery with intent to
12 kill and murder. He was represented by Tivis Sutherland on
13 the charges.

14 Mr. Lewis pled guilty March 15th, 2010 before
15 Judge Cooper as indicted pursuant to a negotiated
16 sentencing range between 12 and 15 years. Mr. Lewis was
17 sentenced to five years on the conspiracy charge, 14 years
18 -- 14 years each for the two counts of assault and battery
19 with intent to kill and the attempted armed robbery charge
20 and those sentences were all run concurrently which is a 14
21 year sentence. The murder charge was dismissed by the
22 State.

23 The PCR application was filed timely, April 30th,
24 2010. He is represented today by Mr. Roland Alston.

25 THE COURT: All right, Mr. Alston.

BARON LATON LEWIS -- DIRECT BY MR. ALSTON:

5

1 MR. ALSTON: Thank you, Your Honor. May it
2 please the Court, I call Baron Lewis to the stand.

3 THE COURT: Come around, Mr. Lewis.

4 (BARON LATON LEWIS, having first been duly sworn,
5 testified as follows:)

6 THE COURT: Mr. Lewis, please take a seat, tell
7 us your full name and spell your last name for the record.

8 THE WITNESS: My name is Baron Laton Lewis, L-e-
9 w-i-s.

10 THE COURT: All right.

11 DIRECT EXAMINATION

12 BY MR. ALSTON:

13 Q Good morning, Mr. Lewis.

14 A Good morning, sir.

15 Q Are you the Applicant in this post conviction relief
16 action.

17 A Yes, sir.

18 Q Okay. And am I your attorney?

19 A Yes, sir, you are.

20 Q And we have met on more than one occasion to discuss
21 your application?

22 A Yes, sir, we did.

23 Q And have we discussed all your concerns in detail?

24 A Yes, sir.

25 Q Okay. And have we conferred about whether or not you

1 want to go forward with this PCR?

2 A Yes, sir.

3 Q Okay. And is your understanding -- it's my
4 understanding that you want to tell the Court what
5 your grounds for relief are?

6 A Right.

7 Q Okay. What specific relief are you asking the Court
8 to grant?

9 A I want to be resentenced. I'm not trying to get a new
10 trial, I just want to be resentenced.

11 Q Okay. Would you please tell the Court why so?

12 A I feel that for my charge, what I'm charged with, and
13 for my participation in the crime that I'm charged
14 with, I was over-sentenced. And the reason -- reason
15 being I feel like that is because -- let me take my
16 time because I'm a little nervous.

17 THE COURT: Take your time, sir.

18 A I was charged with murder, two counts of assault and
19 battery, attempted armed robbery and conspiracy to
20 commit armed robbery. I did conspire with some guys
21 to commit a robbery. I was the driver of this. I
22 never been on the scene of the crime. I sat in the
23 car the whole time and I got arrested. I'm the only
24 one being charged and was charged with this crime
25 being the driver.

BARON LATON LEWIS -- DIRECT BY MR. ALSTON:

7

1 At the present time when I was locked up, I went
2 to so many lawyers, when I finally got Mr. Tivis
3 Sutherland to hear me out. Upon talking to Mr.
4 Sutherland, he, you know, told me, said, well, he
5 normally don't do this but he recommend that I
6 cooperated with the -- you know, with the officers,
7 you know, investigation.

8 So upon his advice telling me to cooperate, I
9 did. And this was two years later. In the beginning
10 of this matter, I took the blame on myself because I
11 didn't want to tell anybody, you know, just trying to
12 be, you know...

13 THE COURT: A nice guy.

14 A Yea, you know. I just gave a statement saying that I
15 planned everything and I did everything and I didn't
16 want to, you know, nobody else to go if I was going
17 down, I was going to go down by myself.

18 But later on after I talked to Mr. Tivis, you
19 know, he told me he normally don't do this and this is
20 what we did. So I cooperated and I let the
21 investigators know who all was involved, what my
22 involvement was and everybody was involved, not only
23 that but I also had another witness to collaborate
24 (sic) what I said.

25 Well, I'm thinking at the time once -- once I did

1 that, we -- my attorney was telling me that the Judge
2 was having status conferences about my case. So the
3 Solicitor said, well, it's new evidence is coming up
4 and they prolonged the case. Said the Defendant
5 wanted eight years. So my thinking was, okay, well
6 eight years, you know, that will be all right.

7 So once I cooperated, the Judge told the
8 Solicitor she got a week to get a statement from me
9 which would have been a third statement that would
10 have gave and which I did give a third statement
11 thinking that, all right, I would get some kind of
12 relief.

13 Upon doing this, the following year a new Judge,
14 Administrative Judge, came in and I was rushed to
15 court, you know, three months after. So once I got
16 rushed to court, there was never nothing said about
17 the eight years or nothing.

18 So my lawyer, you know, stated well, what about
19 you getting a 15 year cap and if you do, we can, you
20 know, negotiate and try to get eight to 10 years, and
21 they can ask for whatever they want. I said, well,
22 okay, I will agree to that.

23 While he was going to work on that, his co-
24 counsel spoke to me and he was like, well, look,
25 there's no need for you to try to go to trial because

BARON LATON LEWIS -- DIRECT BY MR. ALSTON:

9

1 if you go to trial, you done gave three statements.
2 One statement might be dismissed but you had your
3 lawyer present on the last statement and that's not
4 going to be dismissed. So I was like, okay.

5 So my lawyer came back, he asked, he said, well,
6 I got -- I got what you want, I got the 15 year cap.
7 They agreed to the 15 year cap, will you plead? I
8 said, yes, I will.

9 Upon going to plead, my lawyer came back to me,
10 he said, well, now they done took the 15 year cap
11 back, they want to give you a recommendation of 12 to
12 15 year recommendation. You can't get no less than
13 12, no more than 15, which he advised me he think it
14 was a good deal regardless. So I just went forward
15 with it.

16 My -- my thing is, you know, I cooperated with
17 them. I let them know who was involved. The State
18 didn't took upon itself to arrest nobody else in this
19 matter but me. They tried to say that I waited too
20 long to cooperate but the investigators, once they
21 arrested me in this time, nobody came and talked to me
22 to ask me to cooperate or nothing. And once I did
23 said what I had to say and cooperated with them, they
24 still was nothing. It was like, okay, well, we going
25 to -- we're going -- you -- I showed my hand to

1 cooperate and they said they was going to do something
2 and then at the last minute, they decided, well, I'm
3 not -- I'm not going to do it, you know.

4 I don't have nothing to bargain with. I'm 46
5 years old, I've got 14 years, you know. I'm a working
6 man, church going man, God fearing man. I was just
7 with the wrong people at the wrong time. I take full
8 responsibility of my actions. I'm not here to say I'm
9 innocent or nothing. I did conspire, you know.

10 So what I did was I accepted the 14 years but,
11 you know, I'll be 54, 55 years old when I do get home
12 and I just want to at least have a chance to have a
13 life, you know.

14 THE COURT: I understand.

15 A You know, I just wanted to give you a brief on what I
16 was going through. I sat down three years at the
17 county, almost three years at the county, and never
18 spoke to no investigators upon that time I was down
19 there. At my hearing, you know, the investigator was
20 like, well, he waited too long to cooperate and now
21 it's like it's nothing.

22 But my -- my thing is, is they've got cold cases.
23 If somebody -- me and somebody commit a crime and I
24 get locked up and they get away and two years later I
25 say, well, yeah, he was with me and I got another guy

BARON LATON LEWIS -- DIRECT BY MR. ALSTON:

11

1 to say, yeah, they was together. I mean, I felt that
2 that was more than enough to even place a arrest. But
3 I did my part and it was like, you know, whatever, we
4 don't want them, we wanted you and we got you and
5 that's it. And I don't think it was fair to me, you
6 know.

7 But like I said, I'm not seeking to try to get a
8 new case, you know. I just want a resentence.

9 THE COURT: All right.

10 Q Mr. Lewis ---

11 A Sure.

12 Q Of course, part of the -- the main part of the PCR is
13 ineffective assistance of counsel.

14 A Right.

15 Q Is it your position that your counsel was ineffective
16 in ensuring that you got a better a plea deal?

17 A Yes, sir. Yes, sir.

18 Q And that's the point of you telling the whole story to
19 the Court today?

20 A Yes, sir.

21 Q And that's why you want to be resentenced?

22 A Yes, sir.

23 Q Okay. Is there anything else you want to bring to the
24 Courts attention?

25 A No, just basically, I did my part and at the last

1 minute they took the deal that I was going to, you
2 know -- that was the first offer and gave me something
3 different and that's it.

4 Q Anything else?

5 A No, sir, that's it.

6 THE COURT: All right, Mr. Corney.

7 MR. CORNEY: Briefly, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. CORNEY:

10 Q Mr. Lewis, you were indicted on murder, weren't you?

11 A Yes, sir.

12 Q And the State dismissed that charge of murder?

13 A The reason being because counsel showed they couldn't
14 charge me, shouldn't have charged me with it in the
15 first place.

16 Q Okay. And they said in the plea that because of a
17 tenuous legal argument, they were going to dismiss
18 that case?

19 A Sir?

20 Q They said in the plea agreement, that that's --
21 essentially they said in the plea agreement on the
22 record that they were dismissing it because of a
23 tenuous legal argument in that regard, right?

24 A I'm assuming so.

25 Q All of these things you said up there about plea

BARON LATON LEWIS -- CROSS BY MR. CORNEY:

13

1 negotiations, 10 years, eight years, these are all
2 things you knew going into your plea, right?

3 A Yeah.

4 Q Okay. And you went in that day on the record and
5 accepted the plea, admitting your guilt and saying
6 that you understood you were going to be sentenced
7 between 12 and 15 years?

8 Q Yeah, because they took the 15 year cap off the table
9 at the last minute, took me from downstairs and I was
10 going to go in the Judge's chambers to plead and they
11 took it away from me and that's the reason why. I
12 felt like I was forced into a plea after I done
13 participated in cooperating with them.

14 Q You told Judge Cooper in your plea you were satisfied
15 with Mr. Sutherland's representation of you, is that
16 right?

17 A Yes, sir, I did.

18 MR. CORNEY: That's all the questions I have.

19 THE COURT: All right. Anything on redirect?

20 MR. ALSTON: No, sir.

21 THE COURT: All right, you may step down, sir.

22 THE WITNESS: Thank you, sir.

23 (The witness leaves the witness stand.)

24 THE COURT: Anything further, Mr. Alston.

25 MR. ALSTON: The Court's indulgence, Your Honor.

TIVIS SUTHERLAND -- DIRECT BY MR. ALSTON:

14

1 THE COURT: All right. Y'all aren't going to
2 have Mr. Sutherland come here and not put him up, are you?
3 It's up to you.

4 (Pause.)

5 MR. ALSTON: Your Honor, I call Tivis Sutherland
6 to the stand.

7 THE COURT: All right. Come around, Mr.
8 Sutherland.

9 (TIVIS SUTHERLAND, having first been duly sworn,
10 testified as follows:)

11 THE COURT: Please tell us your full name and
12 spell your last name for the record.

13 THE WITNESS: My name is Tivis Colley Sutherland
14 the IV. Last name is S-u-t-h-e-r-l-a-n-d.

15 DIRECT EXAMINATION

16 BY MR. ALSTON:

17 Q Mr. Sutherland.

18 A Yes, sir.

19 Q Were you the counsel for my client for the underlying
20 charges?

21 A I certainly was.

22 Q All right. Have you heard his testimony today?

23 A I have.

24 Q Could you please explain why he got the sentence that
25 he got under your representation?

TIVIS SUTHERLAND -- DIRECT BY MR. ALSTON:

15

1 A There was nothing that Baron said that I could really
2 disagree with. He had wanted eight years and I was
3 asking for eight years. I think we started out they
4 were at 15 to 30 or something along those lines.

5 THE COURT: Do you need some water, Mr.
6 Sutherland?

7 THE WITNESS: Perhaps, sir.

8 THE COURT: All right.

9 A It started out around 15 to 30. I think when I first
10 got on the case, he was supposed to go to trial and
11 plead, I think he was going to get 25 at that point.
12 The -- he had -- Shawn McDaniels (phonetic) at the
13 Sheriff's Department under orders from then Captain
14 Smith, I think, had worn a wire to meet Baron at a
15 park. They had developed him as a suspect in this
16 case. Shawn McDaniels was actually a friend of Baron
17 Lewis. And, you know, they went to church together, I
18 know their pastor, had dinners together. And
19 McDaniels wore this wire out there and unfortunately,
20 you know -- well, from the defense perspective, Baron
21 was open with him and he wasn't in custody or
22 anything, and basically laid out his role in the -- in
23 the events.

24 There was a second statement that Baron had made
25 which I believe I had a good chance to keep out. He

1 had -- the officers were driving him around, scaring
2 the heck out of his family. I could hear women
3 screaming on the tape. They were saying that Jamaican
4 hit squads, which was quite possible under those
5 circumstances, were looking for him and looking for
6 his family, they moved his family all around. And I
7 thought that, you know, Arizona versus Fulminante,
8 along those lines that we might be able to keep that
9 out. Ultimately, that depends on the ruling and so
10 forth.

11 At one point in speaking with Baron, it occurred
12 to me that he was a little nervous about the idea of
13 testifying. It occurred to me that if we were to go
14 and make a statement that would be all inclusive, in
15 other words, not just including, you know, inculpatory
16 but exculpatory matters that were at hand and that
17 would be helpful to him.

18 Also, we went in -- and it is the case that he
19 had been down there a couple of years. He did
20 identify the unindicted Co-Defendants in the case.
21 There was a witness who was a brother, Mr. Moore I
22 believe, who actually assisted law enforcement and was
23 working with the defense to try and get one of the Co-
24 Defendants on a wire recording confessing to his part
25 on the case.

TIVIS SUTHERLAND -- DIRECT BY MR. ALSTON:

17

1 It seemed to me, this business of them saying,
2 well, you know the case is too old, he waited too long
3 to cooperate, I believe I said to Judge Cooper, I
4 said, well, Judge, McDaniels is the head of the cold
5 case file. You know, it's not like this is something
6 that they don't do and it had just been a couple of
7 three years at that point.

8 We got up and we got up to where we just weren't
9 going anywhere. Baron had wanted -- they were still
10 messaging around with the 15 to 30 which just was not
11 going to happen period.

12 So on the date of the trial, Greg and I showed up
13 and you know, Greg was just sort of there to hold my
14 leash basically. We showed up and immediately started
15 talking to, I think he was still then Captain -- Major
16 Smith -- or Captain Smith or maybe he was recently
17 named Smith (sic), about the case. And I was laying
18 on them, listen, you all didn't -- basically guilt
19 tripping them which I do get along with these
20 investigators and everything. I said, listen, you
21 know, we did everything that we could do and, you
22 know, here you are coming at us with the same old
23 nonsense and it's not going to happen.

24 At one point, I believe Ms. Campbell agreed -- I
25 thought they agreed to that, to a cap of 15. I went

1 and I told Baron and then I came back and Major Smith,
2 whatever he was, said no, it's not a cap of 15, it's
3 12 to 15. And I was like, well, that's not going to
4 work. I just told my guy it was a cap of 15. Ms.
5 Campbell storms off and she refused to talk to me for
6 the rest of the case. And we ---

7 THE COURT: Are y'all talking now?

8 THE WITNESS: Oh, absolutely, we get along it's
9 just -- you know, I'm honest.

10 A Okay, I heard cap of 15, I heard it. And for them to
11 come back -- and I was torqued off and I was trying to
12 take care of my guy.

13 So I went to Baron, I think he was in D cell, and
14 I went, listen, I think they're coming back and
15 they're flimflamming around and now it's 12 to 15. I
16 said, you know, if we've got a cap of 15, I mean,
17 there's the dead dude and stuff, it probably would
18 have been towards the upper end of the thing anyways.

19 And, you know, that's what he decided to do that
20 but I don't disagree with anything he said. He told
21 me he wanted a -- I thought it was reasonable
22 particularly in light of the cooperation. They could
23 have -- they arrest people all the time on nothing, in
24 my opinion. They could have arrested all of these
25 guys based on his word, corroboration from the

TIVIS SUTHERLAND -- CROSS BY MR. CORNEY:

19

1 witness. And they didn't do it. I didn't think that
2 they were being -- you know, I didn't think they were
3 being fair with my guy. You know, the government
4 doesn't have to be fair, they do whatever they want
5 pretty much, so.

6 And that's how we got here.

7 MR. ALSTON: Nothing further, Your Honor.

8 THE COURT: All right.

9 MR. CORNEY: I just -- I guess I just want to
10 kind of flush it out.

11 CROSS-EXAMINATION

12 BY MR. CORNEY:

13 Q Was there ever an offer for eight years, 10 years, in
14 exchange for his testimony? There was a conversation
15 to ---

16 A That's what I was asking for.

17 Q Okay.

18 A And you know eight, eight, eight, and that's the way I
19 tend to do things and in the end, after all we had
20 done, I thought that was reasonable.

21 Q Okay.

22 A Because he -- when Baron testified, he was correct.
23 He was about half a mile or more away in a vehicle.
24 They had those dadgum Cobra radios or something where
25 they found the paperwork to it and all of that but he

1 was not there. And it wasn't a murder. I mean, I
2 think -- I convinced Judge Cooper that it wasn't a
3 murder because they admitted it on the record, so.

4 Q You were hoping by his cooperation you were going to
5 get a cap of 15 and ask for eight to 10 years?

6 A Well, I was hoping to get -- I wanted time served. I
7 mean, you know, whatever I could do for my guy. But,
8 you know, he was saying that he wanted eight and this
9 is what I was trying to get for him and it just didn't
10 work out.

11 Q And you said the State was just opposed to ever
12 offering him eight years, they were offering 15 to 30
13 you said? I just wanted to make sure I heard you.

14 A That's what initially. And see, I don't do the
15 dramatic stuff. But when she said that in her office
16 and Greg was like, well, I was like, well, absolutely
17 not, absolutely not, no. And then we just went on
18 from there.

19 Q So at the time he entered the courtroom to enter this
20 plea, he knew he was pleading between 12 and 15,
21 there's no question there?

22 A That's where -- that's where he was but it was
23 minimally the second thing that I had told him that
24 very same day.

25 Q Okay. And after you told him the first time, he

TIVIS SUTHERLAND -- CROSS BY MR. CORNEY:

21

1 didn't go give statements directly after being told
2 there was going to be a cap of 15, he didn't go give
3 statements based on the fact there was going to be a
4 cap of 15?

5 A We were -- yeah, we were already there and I mean, I
6 thought -- you know, we were there to try the case.

7 MR. CORNEY: I believe that's all I have, thank
8 you.

9 THE COURT: So basically y'all feel it was a
10 little excessive considering the totality of the
11 circumstances.

12 MR. SUTHERLAND: That was my thought, yes, sir.

13 THE COURT: I understand. Thank you, Mr.
14 Sutherland.

15 THE WITNESS: You're welcome, Your Honor.

16 (The witness leaves the witness stand.)

17 (Pause.)

18 MR. ALSTON: Well can I put something on the
19 record about this case?

20 THE COURT: Go ahead.

21 MR. ALSTON: I just wanted to state in closing
22 that the first, I think, plus the last thing that Mr.
23 Sutherland said was that he agreed with everything that my
24 client said. So on that basis, we request post conviction
25 relief in the form of resentencing.

1 THE COURT: All right. You want to say something
2 or not?

3 MR. CORNEY: Your Honor, there was no detrimental
4 reliance on the plea offer that was extended.

5 THE COURT: Thank you, sir, that's enough.

6 MR. CORNEY: Thank you.

7 THE COURT: All right. I'll be at ease. Y'all
8 let me know what's next.

9 ----- END OF TRANSCRIPT OF RECORD -----

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1 CERTIFICATE OF REPORTER

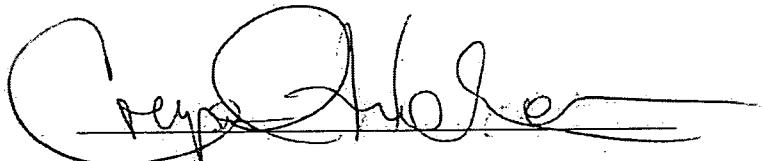
2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5
6 I, Crystal Holmes, Official Court Reporter for the
7 Fifth Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true,
9 accurate and Complete Transcript of Record of the
10 proceedings had and evidence introduced in the hearing
11 of the captioned case, relative to appeal, in the Court
12 of Common Pleas for Richland County, South Carolina, on
13 the 23rd day of May, 2012.

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

16
17 July 4, 2014

18
19 
20 Crystal Holmes, Court Reporter

21
22
23
24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Baron Lewis, #152591,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-07042

ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2013 SEP 17 PM 12:10
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 30, 2010. An evidentiary hearing into the matter was convened on Wednesday, May 23, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Rowland Alston, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Tivis Sutherland, Esquire. This Court had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the February 2008 term of the Richland County Grand Jury for Conspiracy to Commit Armed Robbery, Attempted Armed Robbery, Murder and two (2) counts of Assault and Battery with Intent to Kill (2008-GS-40-0396 through -0399). Tivis Sutherlands, Esquire, represented Applicant on the charges. On March 15, 2010,

Applicant appeared before The Honorable G. Thomas Cooper, Jr., where he pled guilty to the charges as indicted as part of a plea offer from the state setting forth a negotiated sentencing range between twelve (12) and fifteen (15) years imprisonment. Applicant was sentenced to five (5) years imprisonment for the Conspiracy, and fourteen (14) years imprisonment each for the two (2) ABWIK charges and the Attempted Armed Robbery, all to run concurrently. The Murder charge was *nolle prossed* by the state in return for the plea.

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

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Ass. of Counsel
 - (b) Breach of plea agreement
 - (c) Involuntary Guilty plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My Counsel failed to object to the breach of the plea bargain.
 - (b) Prosecution backed out of plea agreement after I gave them detrimental cooperation.
 - (c) Due to the ineffectiveness of counsel I felt trial was not an option.
I am pleading guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented by both parties at the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Secure More Advantageous Plea Deal

Applicant's sole allegation raised through the action is counsel was ineffective for failing to secure a more advantageous plea offer from the state on his behalf. Specifically, Applicant testified at the PCR hearing he did not want to have his pleas vacated to be sent back for a new trial, but rather is requesting a better sentence as he believes he was "over sentenced" by the original plea judge. Applicant stated he was "only the driver" for the other individuals involved and maintained he was "never on the scene" of the robbery, but said he was the only person charged in the crime. He said he cooperated with the police based on counsel's advice to do so in the hopes of receiving an eight (8) year plea offer, but once he cooperated and "ratted everyone else out", the police never mentioned that plea deal again. Applicant noted that the state had three (3) inculpatory statements against him and, therefore, he does not want to go back to General Sessions court on the indictments for re-trial.

On cross-examination, Applicant stated an indicted murder charge against him had been dismissed and agreed he knew prior to his plea that by entering such, he would receive at least twelve (12) years imprisonment under the negotiated terms of the plea, but went forward with the plea anyway because counsel told Applicant it "was a good deal".

Counsel testified similarly saying there was very little with Applicant's PCR testimony that he could disagree with. Counsel recalled that initially Applicant wanted a plea offer for about eight (8) years imprisonment, but the state offered only a plea for twenty-five (25) years. He went on to say the Sheriff's Department was able to obtain a recording of Applicant detailing the facts and his involvement in the case, which would have been damaging at trial. Counsel said he believed he had good grounds to have one (1) of the three (3) statements Applicant made to police, but not the other two. Counsel said Applicant was nervous about cooperating with police

in the beginning, but ended up cooperating and identifying his co-defendants in an attempt to obtain a more advantageous plea offer. Counsel noted that by the time Applicant decided to cooperate, the information he gave police was old and not helpful enough to elicit any plea offers from the state in Applicant's eight year range.

On cross-examination, counsel testified he requested an eight (8) year plea offer from the state, but was never concretely promised such a deal without Applicant's prior cooperation. He noted he was able to convince Judge Cooper that the murder charge was erroneous and got it thrown out. Counsel finished by saying he was confident Applicant knew he would receive at least twelve (12) years after entering his plea based on the negotiated range set forth.

This Court finds Applicant's allegation to be without merit. First, counsel's performance was not objectively unreasonable in failing to "secure a more advantageous plea offer". As a preliminary matter, this Court finds Applicant's testimony to not be entirely credible, while conversely finding counsel's testimony to be credible. First, it is important to note that there is no constitutional right to plea bargain. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (1999). Counsel, after being able to only secure a plea offer for twenty-five (25) years initially, advised Applicant to cooperate with the state's investigation to encourage the extension of better plea offers. Applicant, after hesitating for a while, did ultimately cooperate by providing the names of the other individuals involved in the robbery to law enforcement and by helping to try to set up a wiretapped conversation with them; however, according to counsel's credible testimony, by that time the information disclosed was not helpful and was insufficient to persuade the state to extend the eight (8) year plea offer Applicant sought. Counsel was able to have the murder charge dismissed prior to the plea hearing, but was unable to secure the eight (8) year offer Petitioner sought. Applicant has failed to establish that there was any valid, written plea offer

which he relied upon in disclosing the information to police and, according to counsel's credible testimony, no such formal offer existed. Therefore, Applicant has not proven he is entitled to an eight year plea offer, or that counsel was ineffective for "failing to secure" such a plea offer.

Further, this court finds Applicant entered the plea knowingly and voluntarily without any misconception about the range in which he was going to be sentenced. Applicant knew at the time he pled guilty that the offer from the State was for a negotiated twelve (12) to fifteen (15) year sentencing range, and not for any alleged eight (8) year plea offer as he had originally hoped to obtain by cooperating. Therefore, he was fully apprised of the direct consequences of his plea prior to electing to accept the offer and did so intelligently after being fully advised of such by competent counsel. See Mabry v. Johnson, 467 U.S. 504 (1984) (where a defendant pleads guilty voluntarily and intelligently with full awareness of the consequences, the inability to enforce the prosecutor's offer is without constitutional significance). Accordingly, this Court finds this application for PCR to be without merit and, therefore, denies and dismisses the action with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may

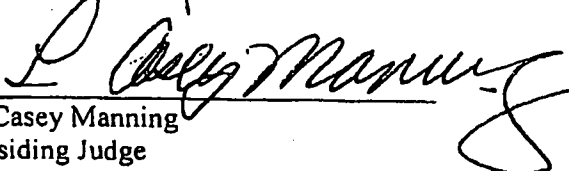
be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 12th day of September, 2012.


 L. Casey Manning
 Presiding Judge
 Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
Baron L. Lewis #152591,	)	Case No.: 2010-CP-40-7042
)	
Applicant,)	
)	
v.	)	NOTICE OF MOTION AND MOTION
	)	TO ALTER OR
State of South Carolina,	)	AMEND THE JUDGMENT
)	
Defendant.)	
)	
)	
)	

RICHLEIGH
 FILED
 2013 SEP 26
 JEANETTE W. BENTLEY
 C.C.P. &

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Applicant's Motion to Alter or Amend a Judgment of the Order of Dismissal, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, as to the within action. The Court entered an Order of Dismissal, filed on September 17, 2013, denying and dismissing with prejudice the Applicant's application for post-conviction relief. This Order was received by the undersigned on September 19, 2013 (less than ten (10) days from the filing of this motion).

The undersigned asks this Court to rule upon/reconsider the argument made at the hearing that there was a reasonably probability that, but for defense counsel's errors, the applicant would not have pled guilty. *See Turner v. State*, 335 S.C. 382 (1999).

The undersigned also asks this court to reconsider all rulings contained in the Order.

This motion is based upon the pleadings, testimony provided, the common and statutory laws of the State of South Carolina, and any other matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
 The Sullivan Firm, LLC
 907 Calhoun Street
 Columbia, SC 29201
 (803) 252-3663

September 26, 2013

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
Baron L. Lewis #152591,	)	Case No.: 2010-CP-40-7042
)	
Applicant,)	
)	
v.	)	CERTIFICATE OF SERVICE
)	
State of South Carolina,)	
)	
Defendant.)	
)	
)	
)	

RICHLAND
 FILED
 2013 SEP 26 PM 1:59
 JEANETTE W. TERRY
 C.C.P. & S.

I, the undersigned, do hereby certify that I have served the **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND A JUDGMENT** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney of record as indicated below:

The Hon. L. Casey Manning
 P.O. Box 192
 Columbia, SC 29202

Megan E. Harrigan, Esq.
 Office of the Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549



Rowland P. Alston III
 Attorney for the Applicant

September 26, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
)
Baron L. Lewis, #152591)
 Plaintiff,)
 vs.)
)
State of South Carolina)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-40-7042
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

RICHLAND COUNTY
 FILED
 2013 SEP 26 PM 1:52
 JEANETTE W. HARRIGAN
 C.C.P. # 20211

Plaintiff's Attorney: Rowland P. Alston III, Bar No. 69932 Address: 907 Calhoun Street, Columbia, SC 29201 Phone: (803) 252-3663 Fax (803) 254-5798 E-mail: rowlandalston@sc.rr.com Other: _____	Defendant's Attorney: Megan E. Harrigan, Bar No. ? Address: P.O. Box 11549, Columbia, SC 29211 Phone: (803) 734-5178 Fax (803) 734-4113 E-mail: mharrigan@scag.gov Other: _____
---	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)


SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion to Alter or Amend a Judgment
 Estimated Time Needed: 15 min. Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

Date submitted: 09-26-13

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

II.

Applicant filed an application for post-conviction relief on April 30, 2010. An evidentiary hearing into the matter was convened May 23, 2012, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Rowland Alston, III, Esquire. The Respondent was represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office. By written Order signed September 12, 2013 and filed September 17, 2013, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. A copy of this Order was served on Applicant by the Richland County Clerk of Court.

On September 26, 2013, Applicant filed a "Motion to Alter or Amend the Judgment." This Return follows.

III.

In his motion, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's motion should be denied.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

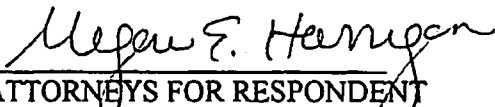
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

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


March 28th, 2014

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
	)	2010-CP-40-7042
)	
BARON L. LEWIS, #152591)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Rowland Alston, III, Esquire
Sullivan Law Firm
907 Calhoun Street
Columbia, South Carolina 29201

DATED this 28th day of March, 2014.



Kelly Oppenheimer, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Baron L. Lewis, #152591,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Case No. 2010-CP-40-7042)

**ORDER DENYING APPLICANT'S)
MOTION TO ALTER OR AMEND THE)
JUDGMENT)**

2010 APR -9 11:10:00
RICHLAND COUNTY
COURT CLERK
CHRISTINE H. HARRIS

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend the Judgment," asking this Court to alter or amend its Order of Dismissal denying Applicant's post-conviction relief.

I.

The records before this Court show that Applicant was indicted during the February 2008 term of the Richland County Grand Jury for: Conspiracy to Commit Armed Robbery, Attempted Armed Robbery, Murder and two counts of Assault and Battery with Intent to Kill (2008-GS-40-0396 through -0399). Tivis C. Sutherland, IV, Esquire, represented Applicant on the charges. On March 15, 2010, Applicant appeared before the Honorable G. Thomas Cooper, Jr., where he pled guilty to the charges as indicted to all charges but murder, which was dismissed pursuant to plea negotiations with the State. Judge Cooper sentenced Applicant to five years imprisonment for the Conspiracy, and fourteen years imprisonment each for the two ABWIK charges and the Attempted Armed Robbery, all to run concurrently, in accordance with the plea negotiations between Applicant and the State. Applicant did not appeal his conviction and sentence.

II.

Applicant filed an application for post-conviction relief on April 30, 2010. An evidentiary hearing into the matter was convened May 23, 2012, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Rowland Alston, III, Esquire. The Respondent was represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office. By written Order signed September 12, 2013 and filed September 17, 2013, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. A copy of this Order was served on Applicant by the Richland County Clerk of Court.

On September 26, 2013, Applicant filed a "Motion to Alter or Amend the Judgment." Respondent made a Return to this motion, asking that it be denied and dismissed.

III.

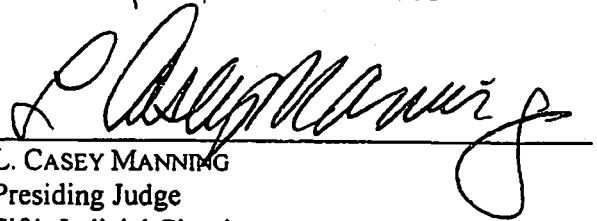
This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction

appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 1 day of April, 2014



L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4007042

Baron L #152591 Lewis

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant.

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9 April 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Baron L #152591 Lewis

Rowland P. Alston III

Megan E. Harrigan

Baron L #152591 Lewis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride