

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

AUG - 9 2012

S.C. Supreme Court

JOSEPH JENNINGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-208014

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

GUILTY PLEA TRANSCRIPT1

APPLICATION FOR POST-CONVICTION RELIEF19

RETURN AND MOTION TO DISMISS26

POST-CONVICTION RELIEF HEARING TRANSCRIPT29

ORDER OF DISMISSAL57

CLERK OF COURT RECORDS62

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

JOSEPH JENNINGS,

PLAINTIFF,

v.

STATE OF SOUTH CAROLINA,

DEFENDANT.

TRANSCRIPT OF RECORD
C/A #: 2007-GS-43-0672
2008-GS-43-1057

SUMTER COUNTY COURTHOUSE
January 19, 2010

BEFORE:
HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:
Martin Spratlin, Esquire
Assistant Solicitor, Sumter County

Timothy Murphy, Esquire
Attorney for Plaintiff

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

1 Bailiff: State your full name for the record.

2 Defendant: Joseph Jennings.

3 (Defendant was sworn in)

4 The Court: All right. I've got the indictment for
5 which the jury has been selected 2008-GS-43-1057. The
6 new indictment is 2007-672. Mr. Murphy, you represent
7 Mr. Jennings on both of these cases?

8 Mr. Murphy: Yes, sir.

9 The Court: Does he understand what the State would
10 have to prove, does he understand his rights and does he
11 understand the punishment that he faces?

12 Mr. Murphy: Yes, sir.

13 The Court: Based on your knowledge of the facts in
14 regard to the Armed Robbery charge do you think there is
15 enough evidence for which the jury could find him guilty?

16 Mr. Murphy: I believe they could convict him, sir,
17 yes.

18 The Court: All right. And with regard to the
19 misprision of a felony, do you think the same thing?

20 Mr. Murphy: Yes, sir.

21 The Court: Do you agree with his overall decision to
22 enter these pleas?

23 Mr. Murphy: Yes, sir. We've discussed it.

24 The Court: Are both of these Alford pleas?

25 Mr. Murphy: Yes, sir.

1 The Court: Does he understand that he will be
2 sentenced just as if he had entered the standard guilty
3 plea?

4 Mr. Murphy: Yes, sir.

5 Mr. Jennings - Questions by the Court:

6 Q: All right, your name, sir?

7 A: Joseph Jennings.

8 Q: Mr. Jennings, listen carefully to these questions.
9 I cannot accept your pleas unless you enter them
10 freely, voluntarily, knowingly and intelligently.
11 If at any time you want to talk to your lawyer, let
12 me know and we will take a break and you can do
13 that, do you understand?

14 A: Yes, sir.

15 Q: If somebody says something that you do not
16 understand or agree with, you let him know and he
17 will let me know, do you understand that?

18 A: Yes, sir.

19 Q: All right. How old are you, sir?

20 A: Thirty.

21 Q: How far did you go in school?

22 A: To the eleventh grade.

23 Q: How long have you been in jail?

24 A: On this one almost 19 months.

25 Q: The robbery?

- 1 A: Yes, sir.
- 2 Q: How long did you spend in jail on the misprision of
3 a felony?
- 4 A: Two years.
- 5 Q: Have you ever been treated for alcohol abuse, drug
6 abuse or mental illness?
- 7 A: Since I been incarcerated I've got some treatment
8 for all that.
- 9 Q: Are you under the influences of any substances
10 today?
- 11 A: No, sir.
- 12 Q: All right. Have you ever been treated for any
13 mental problems?
- 14 A: No, sir.
- 15 Q: Do you take medication?
- 16 A: No, sir.
- 17 Q: Do you have any condition today that will keep you
18 from understanding what you're doing?
- 19 A: No, sir.
- 20 Q: Mr. Murphy here tells me that you understand both of
21 these charges, is he correct?
- 22 A: Yes, sir.
- 23 Q: Are you satisfied with the representation provided
24 to you by Mr. Murphy?
- 25 A: Yes, sir.

HEARING

1 Q: Have you talked to him long enough and often enough
2 about both of these charges?

3 A: Yes, sir.

4 Q: Have you understood those conversations?

5 A: Yes, sir.

6 Q: Do you think he has done everything within reason to
7 represent you properly?

8 A: Yes, sir.

9 Q: All in all do you have any complaints at all about
10 his services?

11 A: No, sir.

12 Q: Has anybody promised you anything to get you to plea
13 guilty to these two charges?

14 A: No, sir.

15 Q: Has anybody used any threat, force or intimidation?

16 A: No, sir.

17 Q: Is your lawyer forcing you to plead guilty?

18 A: No, sir.

19 Q: Have you had enough time to make up your mind?

20 A: Yes, sir.

21 Q: When it gets right down to it are you entering these
22 pleas based on your freewill?

23 A: Yes, sir.

24 Q: The indictment for misprisionment of a felony, which
25 is the 2007 indictment says that on or about

1 November 1 of 2005, you criminally neglected to
2 prevent a felony from being committed or you
3 criminally neglected to bring a felony to justice
4 after that person had committed a crime of murder.
5 Do you understand that charge?

6 A: Yes, sir.

7 Q: It carries up to ten years, do you understand?

8 A: Yes, sir.

9 Q: All right. The indictment for which the jury has
10 been selected there is one count, as I understand it
11 that you want to plead guilty to, that's Armed
12 Robbery?

13 A: Yes, sir.

14 Q: That count says that on or about July 8, 2008, you
15 while you were armed with a handgun did feloniously
16 take from Willie Lowery in his presence by means of
17 force or intimidation United States currency, money.
18 Do you understand that charge?

19 A: Yes, sir.

20 Q: That carries from ten to thirty, do you understand
21 that?

22 A: Yes, sir.

23 The Court: Is there a negotiated sentence here?

24 Mr. Spratlin: There is, Your Honor.

25 The Court: What is it Mr. Spratlin?

1 Mr. Spratlin: The negotiation with regard to the 08-
2 1057 is that the Defendant receive ten years to serve and
3 that he be given credit for the time that he has served
4 already. On indictment 07-0672, Your Honor, the
5 negotiation disposition is ten years to serve, Your
6 Honor, concurrent with 08-1057 and that he be given
7 credit for the time that he has served on that charge as
8 well.

9 The Court: Is that correct, Mr. Murphy?

10 Mr. Murphy: Yes, Your Honor.

11 The Court: Is that your understanding Mr. Jennings?

12 Mr. Jennings: Yes, sir.

13 Q: If I impose that negotiated sentence do you
14 understand that you would get credit for the time
15 that you have served?

16 A: Yes, sir.

17 Q: And do you understand that I don't calculate it. I'm
18 not permitted to calculate it. I don't have any
19 means to calculate it, do you understand that?

20 A: Yes, sir.

21 Q: That will be solely done by the Department of
22 Corrections, do you understand that?

23 A: Yes, sir.

24 Q: They would take into account the time you have
25 served locally and in any other detention facility

- 1 state or local, do you understand that?
- 2 A: Yes, sir.
- 3 Q: All right. The Armed Robbery ...
- 4 The Court: You said that's ten?
- 5 Mr. Spratlin Yes, Your Honor. A negotiated ten
- 6 years.
- 7 Q: Okay. Do you understand Mr. Jennings that Armed
- 8 Robbery is what is called a most serious offense?
- 9 A: Yes, sir.
- 10 Q: Has Mr. Murphy explained to you our two strikes law?
- 11 A: Yes, sir.
- 12 Q: In the future if you are ever convicted of another
- 13 most serious offense as the law sits now the
- 14 prosecutor will be required, in other words, forced
- 15 even if he didn't want to, to seek life without
- 16 parole on your next most serious conviction. Do you
- 17 understand that?
- 18 A: Yes, sir.
- 19 Q: In addition to that if you in the future have two
- 20 serious offenses, likewise you could be facing life
- 21 without parole, do you understand that?
- 22 A: Yes, sir.
- 23 Q: Also, the Armed Robbery conviction would require
- 24 service of at least eighty-five percent of your
- 25 time. Do you understand that?

HEARING

1 A: Yes, sir.

2 Q: Of course, taking into account you get credit for
3 the time you have served, do you understand that?

4 A: Yes, sir.

5 Q: All right. Mr. Jennings, when you plead guilty, you
6 give up some rights, I'm going to go over them with
7 now. By the way, you're not on probation or parole
8 now are you?

9 A: No, sir.

10 Q: All right. Some rights that you give up are, there
11 are essentially three that I'm going to talk to you
12 about. You have a right to have a jury trial. You
13 probably understand that first hand because you have
14 selected a jury in the Armed Robbery case. That
15 jury would not be able to find you guilty unless
16 there was enough evidence to convince all twelve
17 people on the jury find your guilty without a
18 reasonable doubt. As you heard me tell the jury you
19 are not required to prove or disprove anything. The
20 State would have to present that evidence and you
21 would not have to present anything, do you
22 understand that?

23 A: Yes, sir.

24 Q: Also, you have the right to remain silent. That
25 means you have the right to say nothing. Third you

1 have the right to be present when witnesses testify.
2 You've heard all the names of the people that were
3 listed in the robbery trial ...

4 A: Yes, sir.

5 Q: You have the right to be present when they testify.
6 You can look at them and listen to them and your
7 lawyer gets to question them. And even though you
8 wouldn't have to you could subpoena witnesses to
9 testify for you, do you understand that?

10 A: Yes, sir.

11 Q: You have the same rights with regard to misprision
12 of a felony even though with regard to the jury
13 issue there would be a separate jury, do you
14 understand that?

15 A: Yes, sir.

16 Q: Do you understand all those rights I've just
17 explained to you?

18 A: Yes, sir.

19 Q: Do you want to give up each one of those rights and
20 plead guilty today?

21 A: Yes, sir.

22 Q: If you have any defenses to the charges, do you
23 understand that if you plead guilty you give those
24 up?

25 A: Yes, sir.

1 Q: And if you made any statements to the police you
 2 give up the right to challenge the admissibility of
 3 those statements?

4 A: Yes, sir.

5 Q: There's a United States Supreme Court case called
 6 North Carolina vs. Alford. It is a case that
 7 recognizes the right of someone like you who is
 8 accused of a crime to negotiate with the prosecutor.
 9 If you enter a plea under North Carolina vs. Alford,
 10 you are telling me that you're not guilty but you
 11 are willing to plead guilty to receive the benefit
 12 of some bargain.

13 The Court: Did I state that correctly, Mr. Murphy?

14 Mr. Murphy: Yes, sir.

15 The Court: Mr. Spratlin?

16 Mr. Spratlin: Yes, sir. Your Honor.

17 Q: In addition, you would also be acknowledging that it
 18 is likely enough evidence by which you could be
 19 found guilty, do you understand that?

20 A: Yes, sir.

21 Q: The bargain of this case as I see it would be the
 22 dismissal of counts 2 through 5 in the 2008
 23 indictment and an recommendation of the mandatory
 24 minimum Armed Robbery sentence and also a concurrent
 25 negotiated sentence and I said recommendation I

1 meant negotiation and a concurrent ten years on the
2 misprision of a felony.

3 The Court: Is that a correct statement on the
4 bargain?

5 Mr. Spratlin: Yes, sir.

6 The Court: Mr. Murphy?

7 Mr. Murphy: Yes, sir.

8 Q: Mr. Jennings, with regard to the Armed Robbery
9 charge do you want to enter a plea under North
10 Carolina vs. Alford?

11 A: Yes, sir.

12 Q: Do you understand that the law treats that as a
13 guilty plea?

14 A: Yes, sir.

15 Q: All right. On the indictment of misprision of a
16 felony, do you want to enter a plea under North
17 Carolina vs. Alford?

18 A: Yes, sir.

19 Q: And do you understand that the law treats that
20 likewise as a guilty plea?

21 A: Yes, sir.

22 Q: Okay. Has anybody used any threat to get you to do
23 all this?

24 A: No, sir.

25 Q: Have you understood everything we've been over?

HEARING

1 A: Yes, sir.

2 Q: You have ten (10) days to appeal either one or both
3 of these pleas, do you understand that?

4 The Court: All right.

5 Mr. Spratlin: Thank you, Your Honor. In regards to
6 08-1057, Your Honor, the sole count of the indictment
7 which the Defendant is pleading guilty to is Armed
8 Robbery. Your Honor, on July 8, 2008, here in Sumter
9 County, South Carolina Mr. William Lowery was over at the
10 residence of Ms. Stacy Drake located at [REDACTED]
11 [REDACTED] here in Sumter. Mr. Lowery had gone outside to
12 use the restroom when he was approached by the Defendant
13 who had a handgun in his possession. He actually placed
14 that handgun in the chest of Mr. Lowery, asked for money
15 or to give him what was in his pocket, I believe was the
16 actual language. Mr. Lowery initially refused to. At
17 some point there was movement between the two parties and
18 the gun was fired between the foot of Mr. Lowery. There
19 is substantial medical evidence as well as photographic
20 evidence demonstrating that Mr. Lowery suffered a gun
21 shot wound to the foot. After Mr. Lowery was shot, the
22 Defendant reached into his pockets taking money and a
23 cell phone from Mr. Willie Lowery. Your Honor, in fact,
24 there was a dollar bill found wadded up on the ground
25 where all this occurred as well as a spent shell casing

1 found at the scene. Your Honor, the physical evidence, the
2 presence of the gun shot wound coupled with the
3 testimonial evidence of Mr. Willie Lowery, the State
4 feels would be sufficient to prove the Defendant guilty
5 beyond a reasonable doubt in a trial of this matter. It
6 is basically established the basis for the Alford plea.

7 The Court: What about misprisonment of a felony?

8 Mr. Spratlin: Your Honor, court's indulgence on this
9 case. I'm not as familiar with the facts of this case as
10 I was with the other one.

11 The Court: While you are looking at all that to
12 refresh your mind, does Mr. Lowery or either Mr. Sanders
13 want to speak on this?

14 Mr. Spratlin: No, Your Honor. They do not.

15 The Court: All right. I'll just say for the record,
16 gentlemen, you do have the right under the law to speak.
17 You don't have to, but I want to make sure you understand
18 that. Do they understand that Mr. Miller?

19 Mr. Miller: Yes, sir.

20 The Court: All right. Their rights have been
21 protected.

22 Mr. Spratlin: Your Honor, as to the indictment 07-
23 672 the misprision of a felony. Your Honor on November
24 1st, 2005, in Sumter County South Carolina there was a
25 murder that took place. Mr. Antonio Curtis McMillan, I

HEARING

1 believe struck William Nolan in the back of the head
 2 resulted in him dying and that was without provocation
 3 and without any defense and I believe he has in fact been
 4 convicted of murder. He plead guilty to murder. Your
 5 Honor, Mr. Joseph Jennings was present at the scene of
 6 this murder and in fact DNA evidence was recovered from
 7 the body which showed that there was urine of Mr. Joseph
 8 Jennings present on the body of Mr. William Nolan. Mr.
 9 Jennings, Your Honor, when questioned by law enforcement
 10 officers at the time of this incident have provided them
 11 with several misleading statements in his information to
 12 law enforcement, which was precluding their ability to
 13 bring a felony to Antonio Curtis McMillan to justice for
 14 the murder of Mr. William Nolan. Your Honor, again,
 15 given the physical evidence found at the body, the DNA
 16 evidence of Mr. Jennings, along with the substance of the
 17 statement that he made to law enforcement, the State felt
 18 in trial we would be able to prove that he made those
 19 statement with the intent to basically help Mr. Antonio
 20 Curtis McMillan avoid justice, which would constitute
 21 misprision of a felony.

22 The Court: All right. Again, Mr. Jennings, I want
 23 to make sure that you understand. The sentences that
 24 have been negotiated, if I accept those pleas and impose
 25 those sentences you have to assume that the rest of the

1 time you serve, you'll serve that sentence, do you
2 understand that? Do you understand?

3 A: Yes, sir.

4 The Court: What is his record, by the way?

5 Mr. Spratlin: Your Honor, the only conviction, he
6 has a distribution or manufacturing crack cocaine
7 conviction from 1999. That may have been plead down to
8 possession given the length of sentence in that case and
9 he had a driven under suspension, interference with
10 police officers in 2000. He had a strong armed robbery
11 conviction in 2000 as well, Your Honor, 2001.

12 The Court: Okay. All right. Mr. Murphy.

13 Mr. Murphy: Your Honor, Mr. Jennings has had the
14 opportunity to contemplate these actions and we would
15 just request that you abide by the negotiated sentence.

16 The Court: All right. Anything you want to tell me
17 Mr. Jennings?

18 Mr. Jennings: I just want to apologize to the
19 victim, that's it.

20 The Court: Okay. I'll accept both pleas. They are
21 entered freely, voluntarily, knowingly and intelligently.
22 There is a substantial factual basis for both. Mr.
23 Jennings is represented by a lawyer with whom he is
24 satisfied. This will result in the dismissal of counts
25 two through five?

HEARING

1 Mr. Spratlin: Yes, Your Honor. I've already given
2 Ms. Haynesworth the paperwork on two of those charges.
3 The other two charges I believe the disposition sheets
4 are down in my office. I am going to need to fill those
5 out and bring them up here to her.

6 The Court: All right. Ten years for the armed
7 robbery at the State Department of Corrections. You'll
8 be given credit for the time you have served. They will
9 be concurrent with the ten year sentence on Indictment
10 07-672, which I've also imposed a ten year sentence,
11 credit for time served.

12 Mr. Spratlin: Thank you, Your Honor.

13 Mr. Murphy: Thank you, Your Honor.

14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the hearing in the matter of State of South Carolina vs. Jacob Jennings, consisting of Nineteen (19) Pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of February, 2010.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

RECORDED

2010 MAY 27 AM 11:44

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA

County of Sumter

In the Court of Common Pleas

2010-CP-43-1141

Joseph Jennings # 298765
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

1. Place of detention Evans Correctional Institution
610 Hwy 9 West, Bennettsville, S.C. 29512

2. Name and location of Court which imposed sentence Sumter County Court of
General Sessions, Sumter, South Carolina

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

- (a) 07-GS-43-0672, Misdemeanor of 2 Felony
- (b) 08-GS-43-1057, Armed Robbery
- (c) _____

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

- (a) January 19, 2010; 10 years to serve on each count.
- (b) Concurrent; credit for jail time (21 months) on 07-GS-43-0672
- (c) and (18 months) on 08-GS-43-1057

5. Check whether a finding of guilty was made

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere YES

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

NO

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) I did not believe that the Department of Corrections and my
- (b) attorney would fail to apply my jail time as ordered by the Courts,
- (c) pursuant to S.C. Code 24-13-40, I did not know my Civil right was violated.

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

- (a) that my attorney provided me with ineffective assistance of
- (b) counsel in failing to ensure that my Court ordered sentence would
- (c) be credited with all of my pre-detention jail time.

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

- (a) SEE ATTACHMENT
- (b) " "
- (c) " "

RECORDED
 2010 MAY 27 AM 11:44
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

10.

ATTACHMENT

(a) I was arrested on 11-28-2005 and incarcerated until August (not sure of date) 2007, on Misprision of Felony Charge # 07-GS-43-0672, released on bond and then re-arrested on July 12, 2008 for Armed Robbery # 08-GS-43-1057 and incarcerated in Sumter County Detention Center until January 19, 2010, which was date of sentence, at which time I was sentenced by Judge James to 10 years for Misprision of Felony and 10 years for Armed Robbery, both sentences were concurrent and Judge James ordered on both sentence sheet, 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. S.C.D.C. has failed to give me all jail credit ordered by the Judge, S.C.D.C. has only given me 556 days jail credit, which is the time I was incarcerated on Armed Robbery Charge July 12, 2008 til January 19, 2010. I haven't been given any credit for 21 months I was incarcerated on Misprision of Felony Charge, which I should according to S.C. Code 24-13-40, (5. Multiple Arrests) I'm entitled

RECORDED

2010 MAY 27 AM 11:44

ATTACHMENT

JAMES C. CAMPBELL
CLERK OF COURT
SUMMER COUNTY, S.C.

to credits for Misprision of Felony following
second arrest pursuant to plain terms of
statute governing computation of time served,
where i was still awaiting trial and sentencing
on all offenses at time of second arrest and
was not escapee. Allen vs State (S.C. 2000)

339 S.C. 393, 529, S.E. 2d 541

(b) I have written Attorney Timothy Murphy in
regard to above matter, who told me at time
of sentencing if i had any problems with
what was ordered by judge to contact him
Mr Murphy has done nothing to assist me
in regard to above matter, also Mr. Murphy
has failed to make sure all charges be
removed from system, S.C.D.C. system still
have warrant # J-296074 as pending
when it was dismissed by state

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth ground, and state concisely the reasons why such ground has not previously been presented:

- (a) All grounds currently known to the applicant are
- (b) being raised within this original application.
- (c) reserve my right to supplement or amend this application

16. 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? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

- i. Thomas Moody
107 North Main Street
- ii. Sumter, South Carolina 29150
- iii. _____

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

- i. plea and sentencing
- ii. _____
- iii. _____

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

That my sentence be modified or corrected to reflect my jail time credit. Any and all available relief deemed just and proper.

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

N/A

RECORDED 2010-CP-43-114

2010 MAY 27 AM 11:44

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA-

County of Sumter

I, Joseph Jennings # 288765, being duly sworn up oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that cludes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in application; and that the matters and allegations therein set forth are true.

Joseph Jennings

SWORN to and subscribed before me this 13
day of May, 2010

Pamela Dyer Meddell (L.S.)
Notary Public

My Commission Expires: August 18, 2018

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

I, Joseph Jennings # 288765, 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 therefor.

Joseph Jennings
Applicant

SWORN or affirmed to and subscribed before me this

_____ day of _____, 19____

Notary Public.

STATE OF SOUTH CAROLINA)	
COUNTY OF SUMTER)	IN THE COURT OF COMMON PLEAS
)	
)	2010-CP-43-1141
Joseph Jennings, #288765,)	
)	
Applicant,)	
)	
v.)	RETURN AND MOTION TO DISMISS
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed on May 27, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Misprision of a Felony (2007-GS-43-0672). Applicant was also indicted for (1) Armed Robbery, (2) Assault and Battery with Intent to Kill ("ABWIK"), (3) Possession of Firearm or Knife During the Commission of a Violent Crime, (4) Burglary 1st, and (5) Resisting Arrest (2008-GS-43-1057). Timothy Murphy, Esquire, represented him. On January 19, 2010, the Applicant entered an Alford¹ plea of guilty to Misprision of a Felony and Armed Robbery. The Honorable George C. James, Jr., sentenced him to the negotiated term of ten (10) years imprisonment on each charge, sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of

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

Court regarding the subject convictions, 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.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant not being credit for time served.

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

III.

Respondent submits that the application should be summarily dismissed because the Applicant's allegation is not cognizable in a post-conviction relief application. Aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. Furthermore, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Pursuant to Rule 12(b)(6), SCRCF, this Court should summarily dismiss this allegation because it does not state a claim for which relief may be granted.

IV.

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

V.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

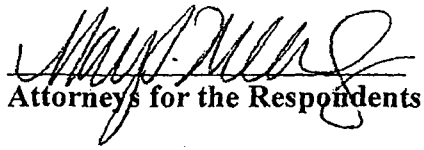
ALAN WILSON
Attorney General

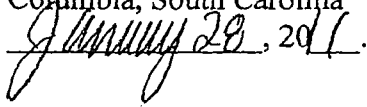
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

Columbia, South Carolina
 28, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Court of Common Pleas
2010-CP-43-01141

Joseph Jennings :
 :
 -vs- : Transcript of Record
 :
 State of South Carolina :

Tuesday, October 25, 2011
Sumter, South Carolina

B E F O R E:

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

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

Charles T. Brooks, III, Esquire
Attorney for the Applicant

Rutledge Johnson, Assistant Attorney General
Robert D. Corney, Assistant Attorney General
Attorneys for the State

Dianne A. Rutledge
Circuit Court Reporter

1		I N D E X			
2	WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
3	Joseph Jennings				
4	Mr. Brooks	15			
5	Mr. Johnson		18		
6	Timothy W. Murphy				
7	Mr. Brooks	19			
8	Mr. Johnson		26		
9	Certificate of Court Reporter		28		

10

11

12

13

14

15

16

17

E-X-H-I-B-I-T-S

18

19 (No Exhibits were introduced during the hearing.)

20

21

22

23

24

25

1 MR. JOHNSON: May it please The Court.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: Your Honor, this is the case of Joseph
4 Jennings, Docket No. 2010-CP-43-1141. He had 2 Alford
5 pleas on January 19, 2010 in front of George C. James, Jr.
6 The charges were attempted to commit burglary. He pled to
7 an armed robbery and misprision of a felony. He got a
8 negotiated sentence of 10 years to run concurrent.

9 He filed an application in due time on May 27, 2010.

10 Your Honor, what he is claiming is he is not being
11 credited for time served. Unfortunately, that is not a
12 P.C.R. issue under Alshabaz versus State; that is an
13 administrative issue with the South Carolina Department of
14 Corrections. And the state moves to dismiss his
15 application.

16 THE COURT: What's your position?

17 MR. BROOKS: Our position, Judge, I talked to my
18 client. He indicated he has gone the Alshabaz route.
19 However, this situation he was actually incarcerated on
20 some other charges which Mr. Murphy, I believe, is going to
21 corroborate with some testimony. And he got 600 days when
22 he was sitting in the county for some murder charges that
23 were then reduced, and he was allowed to get out on a PR
24 bond. After he was out, he got into some other charges
25 that he ended up pleading guilty to, along with the

1 misprision of a felony that the murder charge was reduced
2 to. And he only got credit for the 500 days that he was in
3 jail on the subsequent charges awaiting trial.

4 So what he is asking for -- and I think this is why he
5 brought his petition, because I think Your Honor might be
6 able to clarify that because it's not clarified on this
7 Alshabaz petition where he went to the administrative law
8 judge, was that he should be entitled to those 600 days
9 that he was incarcerated and waiting trial first, then he
10 got bonded out after the charges were reduced, to allow him
11 to bond out, which he then pled with those reduced charges
12 to the subsequent charges that he sat in jail for about --
13 if that makes any sense.

14 THE COURT: But how can I fix that? I mean, how can I
15 fix -- I mean, I can either grant him a new trial and start
16 all over again. I mean, how can I change those days?

17 MR. BROOKS: Well, Judge, I think if Your Honor would
18 maybe did an order just clarifying -- because I think the
19 way this plea sheet was written up, it just said
20 concurrent. It didn't clarify when he pled.

21 THE COURT: But that's the sentencing judge's -- how
22 can I clarify him?

23 MR. BROOKS: Well, Judge, there have been times in the
24 past when a P.C.R. judge may have just clarified that he
25 pled to the misprision of a felony -- in this particular --

1 I use this one for an example. He pled to the misprision
2 of a felony, and then did 600 days for that, along with the
3 500 days. So what happens was the judge didn't say he
4 should get credit for 1100 days, and that should have been
5 done at sentencing.

6 THE COURT: My understanding of the Department of
7 Corrections is they credit you for only one sentence. You
8 get it -- you get the credit if you're in jail 600 days,
9 they give you only one sentence. You're not entitled to
10 that for subsequent sentences on the sentencing sheet is
11 what they tell me. They don't calculate it that way.

12 So, how ---

13 MR. BROOKS: He ended up pleading guilty to, you know,
14 whatever, a charge from the first set of charges that he
15 sat in jail for 600 days. And that's not what he was given
16 -- even though the judge said we'll give you credit for
17 time served. The sentencing sheet never clarified that he
18 should get ---

19 THE COURT: But he pled guilty to armed robbery, and
20 he got 10 years?

21 MR. BROOKS: Correct.

22 THE COURT: And he pled guilty to misprision of a
23 felony?

24 MR. BROOKS: Correct.

25 THE COURT: He got all the credit he's going to get

1 for the armed robbery is what you're telling me?

2 MR. BROOKS: They gave him 500 days.

3 THE COURT: For the armed robbery?

4 MR. BROOKS: Right.

5 THE COURT: So how -- how ---

6 MR. BROOKS: But he also sat in jail for the 600 days
7 totally separate before got the armed robbery.

8 THE COURT: I understand that. But he doesn't get
9 credit on the armed robbery for those 600 days, right?

10 MR. BROOKS: But it's also -- but he also had pled to
11 misprision of a felony. I think ---

12 THE COURT: I don't think the Department of
13 Corrections is holding him jail on the misprision of a
14 felony is what they tell me; that the armed robbery is
15 what's keeping him there.

16 So even if he got credit for the misprision of the
17 felony, it's not going to get him out any quicker, is it?

18 MR. JENNINGS: Yes.

19 MR. BROOKS: If he gets the -- if he gets the 600
20 days.

21 THE COURT: For the misprision?

22 MR. BROOKS: Right.

23 THE COURT: But the armed robbery is keeping him
24 there.

25 (Pause.)

1 MR. BROOKS: He's saying that S.C.D.C. just told him
2 it needs to be clarified.

3 THE COURT: I understand that. But my understanding
4 with S.C.D.C., if he hadn't even committed the armed
5 robbery yet and he sat in jail for 600 days or other charge
6 -- ultimately he was charged with murder, and he pled to
7 misprision of a felony. He hadn't committed the armed
8 robbery yet, so he can't get credit for those 600 days when
9 it hadn't been committed yet.

10 MR. BROOKS: Right.

11 THE COURT: Is that the facts in this case?

12 MR. BROOKS: But that was a part of his plea deal.

13 THE COURT: But you can't -- that ain't no plea deal.

14 MR. BROOKS: Your Honor, the plea deal was for him to
15 get all -- all credit for all the time he served; that's
16 what I had asked Mr. Murphy about, which -- I mean.

17 THE COURT: But ---

18 MR. BROOKS: He corroborates that, Judge.

19 THE COURT: You can't -- you can't cut a deal on
20 getting credit for time on a crime that hadn't even been
21 committed yet.

22 MR. BROOKS: But I think that's -- that's what
23 S.C.D.C. has told him that it just needs to be clarified
24 for.

25 THE COURT: I understand that.

1 MR. BROOKS: And I'd ask Mr. Murphy for corroboration.

2 THE COURT: But -- assuming -- and if I'm wrong, let
3 me know. But he's locked up for a murder and he serves 600
4 days for murder. He only -- they drop that charge to
5 misprision of a felony.

6 MR. BROOKS: But he didn't plead to it.

7 MR. JENNINGS: I didn't plead to misprision of a
8 felony.

9 THE COURT: I understand that.

10 MR. BROOKS: They let him out ---

11 THE COURT: He got out on a PR bond. Then he comes
12 back on an armed robbery?

13 MR. JENNINGS: Right. When I was incarcerated, the
14 misprision of a felony charge came back, so I was in
15 custody at that time on all my offenses.

16 THE COURT: I understand. But my understanding the
17 way the Department of Corrections works, they're treating
18 the armed robbery. You got 10 years on the armed robbery.
19 They're going to give you all the credit you're entitled to
20 on the armed robbery. But the misprision is not going to
21 keep you in any longer than the armed robbery is. If you
22 get 600 days on the misprision that you're entitled to
23 earlier, that -- that's not going to affect your parole
24 date or your max-out date, is it?

25 MR. JENNINGS: Well, under -- well, under the Albert

1 (phonetic) versus State case that I read about, it doesn't
2 -- that's not -- that's not -- the law doesn't state that.
3 But I was -- I was incarcerated and I came back to the
4 county, I was back incarcerated that time on all the
5 offenses. And when I pleaded guilty, they told me, look if
6 you plead guilty today to this 10 years, you'll be given
7 credit for this -- the time -- for the misprision of a
8 felony as well as the 500 days that you spend. They both
9 go concurrent. They go against the 10 years that you got
10 to serve; that's the understanding I got from the lawyers
11 -- my lawyer when I was pleading guilty to this charge.

12 THE COURT: Normally, if -- it's my understanding of
13 the law, and if I'm wrong, you all correct me. If you had
14 committed all the crimes at one time and got arrested and
15 you got all these crimes pending, you're entitled to all
16 that from both of them.

17 But your scenario is you did 600 days. You got out
18 and committed another crime. In the second, you don't get
19 credit for those 600 days for the armed robbery. Even if
20 you'd gotten credit for the 600 days for the misprision,
21 that's not going to change your parole date, is it? You
22 can't get credit for something ---

23 MR. JENNINGS: That would -- that would change -- that
24 would change my max-out date.

25 THE COURT: How?

1 MR. JENNINGS: Had I known this -- had I known I
2 couldn't get it, I wouldn't plead guilty. I plead guilty
3 due to the fact that they told me I would get this time,
4 credit. So I take the plea. So now S.C.D.C. is saying,
5 look, we just need clarify -- I went through everything,
6 everybody. They told me that I need -- this some
7 clarification where the judge say, look, this is what time
8 we already sentence.

9 THE COURT: All right. Okay. And we can proceed. My
10 understanding though if you had been in jail on all these
11 charges and the deal was you get credit for the full time
12 served, you're entitled probably to full time served.

13 But if you committed a crime after that, you can't get
14 credit for that. If that's not the facts, you all need to
15 let me know.

16 Now, your other option is I can grant your P.C.R. and
17 you start all over again and go to jail -- you know, you're
18 looking at 25 years plus -- 35 years.

19 You know, I can't -- well, does the state disagree
20 with this? Have I got the facts wrong?

21 MR. JOHNSON: No. That's correct. Judge, on page 8
22 of the transcript that, you know, the time served is
23 supposed to run concurrent. And then the judge states that
24 he has no way of calculating it, that's S.C.D.C.'s purview.

25 MR. CORNEY: And, Your Honor, if I may. I think

1 you've got the right analysis there. He can't get credit
2 for time served on something he hadn't even committed yet.
3 These previous days will not be added onto something he
4 committed after the fact. They can be added to the
5 misprision of a felony. But like you said, the armed
6 robbery is going to hold him there either way.

7 So credit for time served on a misprision of a felony
8 isn't going to get his max-out date or parole date any
9 different.

10 (Pause.)

11 MR. JENNINGS: When I was rearrested, what I'm saying
12 I was incarcerated on misprision of a felony and the armed
13 robbery. Those are the charges I pled for at the same
14 time.

15 (Pause.)

16 MR. JOHNSON: Your Honor.

17 THE COURT: Yes.

18 MR. JOHNSON: I think the one of the problems is Mr.
19 Jennings feels like he should get consecutive credit for
20 time served of 600 days and then the 500 days.

21 My understanding is they run together. The max he's
22 going to get is the 600 days credit before the armed
23 robbery for the misprision of a felony to run concurrent
24 with the armed robbery conviction; if that clarifies
25 anything.

1 THE COURT: Well, there's a case, Allen versus State,
2 339 SC 291, which basically says -- 393. And so
3 technically, under that case he may get credit for 600 days
4 and the 500 days for the misprision of a felony, because it
5 seems to apply in that case if he's out on bond, gets
6 rearrested, then he gets credit for the whole thing.

7 But in that case it's my understanding the crime --
8 the misprision of a felony, every day he's incarcerated
9 after he commits that, he gets credit for that, which is
10 500 and 600.

11 But the armed robbery he doesn't get credit for the
12 first 600 days because the armed robbery hadn't occurred.
13 If the armed robbery had occurred back when the misprision,
14 then he'd get credit for the whole nine yards.

15 What's keeping him in prison is the armed robbery.

16 I'll give him credit for 1100 days for the misprision
17 of a felony, because I think he's entitled to that under
18 State versus Allen. But I don't think that's going to
19 change his parole date, because he doesn't get the first
20 600 for the armed robbery, because my understanding is the
21 armed robbery had not occurred. If the armed robbery had
22 occurred, it would have been different. But you all tell
23 me it hadn't even occurred yet.

24 There's no way you can get credit for a crime that
25 hasn't occurred yet. If that's the case, everybody been to

1 prison on all of them.

2 (Pause.)

3 THE COURT: Do you all disagree with any of that?

4 MR. CORNEY: Your Honor, I agree with you. And the
5 point is, if that was the law, you'd never go to jail twice
6 because you'd always get credit for the time you served on
7 other charges.

8 MR. JENNINGS: On the Allen versus State case, where
9 Allen was arrested once -- he was arrested the first time,
10 and he bond out, right. He got re-arrested 4 days later.

11 THE COURT: Right. But the crime had occurred, my
12 understanding -- my understanding now, the crime had
13 occurred, they arrested him on a crime that had already
14 occurred. And so he's being incarcerated on crimes that he
15 committed, he committed these crimes. He got incarcerated.
16 He got out on bond and they re-arrested him. But all those
17 crimes had already occurred.

18 You can't get credit for a crime that hadn't occurred
19 yet. And in your scenario, the armed robbery hadn't even
20 occurred -- at least what you all are telling me -- when
21 you did your 600 days. So there's no way you can get
22 credit on a crime that hadn't occurred.

23 If your crime had occurred, if you'd have committed
24 armed robbery before that, then you would have got credit
25 under State v. Allen.

1 (Pause.)

2 THE COURT: If your armed robbery had occurred at or
3 prior to the murder, you'd have got credit for the whole
4 1100 days. But you can't get credit for a crime that
5 hadn't occurred yet.

6 And I'll give you credit for 1100 on the misprision.

7 (Pause.)

8 MR. JOHNSON: Your Honor, if I could put Mr. Murphy on
9 the stand. He has just informed me that he has talked to
10 Probation, Pardon and Parole and he has gotten credit for
11 these 1100 days for the misprision of a felony. And so ---

12 THE COURT: And I assume he has. And I'll do whatever
13 to give him credit for that benefit. I just -- me or Mr.
14 Murphy nor anybody can give him credit for a crime that
15 hadn't occurred.

16 MR. JENNINGS: This is what I was saying -- he knew
17 when I plead guilty what he told me -- told me. I mean,
18 that's all I'm saying.

19 THE COURT: I understand that.

20 (Pause.)

21 MR. BROOKS: Judge, in light of that, my client wants
22 to go forward and ask The Court for a new trial, because
23 that obviously had an impact on him deciding to plead
24 guilty.

25 THE COURT: Okay.

Mr. Jennings - Direct by Mr. Brooks

15

1 MR. BROOKS: We call Mr. Jennings to the stand.

2 JOSEPH JENNINGS, being first
3 duly sworn, testified as follows:

4 CLERK: State your name and spell your last name for
5 the record please.

6 MR. JENNINGS: Joseph Jennings, J-e-n-n-i-n-g-s.

7 DIRECT EXAMINATION BY MR. BROOKS:

8 Q Joseph, you were in jail on a murder charge at first?

9 A Yeah.

10 Q And you got out. You were in there for about 500
11 days; is that correct?

12 A 556 days.

13 Q 556 days. That murder charge was then reduced to a
14 misprision of a felony; is that correct?

15 A Yes, sir.

16 Q And you were able to make -- you got a PR bond and you
17 got out?

18 A Yes, sir.

19 Q Now, the armed robbery, which is what you got the 10
20 years on?

21 A Yes.

22 Q Did that armed robbery occur before you went to jail
23 on the murder or after you got out of jail ---

24 A After.

25 Q --- on a reduced charge?

1 A After.

2 Q After.

3 A It wasn't on the armed robbery charge. I had some
4 other charges with it.

5 Q But that is where the armed robbery came from?

6 A Yeah.

7 Q Those -- what we call a second set of charges?

8 A Yeah.

9 Q Okay. And then you went to jail and you sat in there
10 for about 600 days?

11 A 610 days.

12 Q 610 days?

13 A Yeah.

14 Q And then you ended up pleading guilty, took a 10-year
15 deal. Is it your understanding you took that deal with the
16 understanding that you would get credit for 1100-some-odd
17 days; is that correct?

18 A When I -- when I was -- at first when I was in -- when
19 I was in the bull pen, Mr. Murphy came back. We negotiated
20 some other stuff first. Then he came back saying, look,
21 this is the deal. All right. You plead guilty to this 10
22 years for the misprision of a felony and the armed robbery.
23 You will get -- you will get 10 years, but you'll get
24 credit for time served for the times that you've been
25 locked up.

Mr. Jennings - Direct by Mr. Brooks

17

1 See, I was -- at the time I took this plea, I didn't
2 -- I was ignorant. I didn't know what was -- what I could
3 and couldn't have as far as jail credit. The only thing I
4 know is S.C.D.C., look you can give me these jail credits
5 from this crime -- both of these crime. You can -- you can
6 -- that would be honored; that's what I thought. And
7 that's what I understood coming -- not only from Mr.
8 Murphy. He say he talk to the solicitors, and that's what
9 they said.

10 Q So that if you had known what the judge explained to
11 you today, would you have pled guilty?

12 A I wouldn't have pled guilty to misprision of a felony
13 charge. I pleaded guilty to that charge just to get
14 credits off of.

15 Q Okay. Would you have pled guilty to the armed
16 robbery?

17 A No, I wouldn't plead the armed robbery. No.

18 Q Knowing what ---

19 A Not with -- yeah, with the credit, the jail credit
20 issue; that's what I -- I really took it because I say,
21 well, if they give me these credits, I'll have about 5 or 6
22 more years to go, and I'll have to take it.

23 Q And so in light of that, in light of what you learned
24 here, you're now asking the judge to set aside your guilty
25 plea and start over and give you a new trial; is that

1 right?

2 A Yes.

3 Q Okay. Now, and that is the sole reason that you ended
4 up pleading guilty; is that correct?

5 A The reason that I plead guilty was because of the fact
6 that I thought I would be given credits for 1156 days that
7 I was locked up.

8 Q And that's the reason why you pled guilty?

9 A Yeah.

10 Q Okay. In light of that, in light of knowing that
11 you're not getting credit for that because of what The
12 Court has explained, you're now asking The Court to grant
13 you a new trial?

14 A Yes.

15 Q Because you wouldn't have pled to something?

16 A No, sir.

17 MR. BROOKS: Okay. No other questions.

18 THE COURT: Does the state have any questions?

19 MR. JOHNSON: Just a few, Your Honor.

20 THE COURT: Okay.

21 CROSS EXAMINATION BY MR. JOHNSON:

22 Q Mr. Jennings, during your Alford pleas, the judge told
23 you that misprision of a felony carries up to 10 years,
24 correct?

25 A Yes, sir.

Mr. Murphy - Direct by Mr. Brooks

19

1 Q And you took that plea?

2 A Yes.

3 Q All right. And you understand that armed robbery
4 carries 30 years?

5 A Yes.

6 Q But you pled down to 10?

7 A Yeah.

8 Q The armed robbery happened after the misprision of a
9 felony charge, correct?

10 A Yes.

11 MR. JOHNSON: No further questions.

12 THE COURT: Okay. Anything else?

13 MR. BROOKS: No other questions.

14 THE COURT: You can step down.

15 (The witness leaves the witness stand.)

16 MR. BROOKS: We call Mr. Murphy to the stand.

17 Timothy W. Murphy, being

18 first duly sworn, testified as follows:

19 CLERK: State your name, spell your last name for the
20 record please.

21 MR. MURPHY: Timothy W. Murphy, M-u-r-p-h-y.

22 DIRECT EXAMINATION BY MR. BROOKS:

23 Q Mr. Murphy, can you shed some light on this for us?

24 A I hope so.

25 Q What was Joseph's situation?

1 A Mr. Jennings -- I was appointed to represent Mr.
2 Jennings after I retired from the Air Force. He was
3 already in jail on a murder indictment. After talking to
4 him over -- and looking at discovery and kind of
5 campaigning with the solicitor, we reached a resolution
6 where it was clear Mr. Jennings was more a witness to a
7 murder than being a participant in a murder. And Ms. Fant
8 who was the solicitor on his case agreed that in exchange
9 for his testimony regarding the murder, they would kind of
10 hold this charge of misprision of a felony and allow Mr.
11 Jennings to be released from jail after the 600-and-
12 whatever days that it was that he served on a PR bond. And
13 that's what occurred.

14 Some point later -- and I can't remember exactly the
15 time frame. I think it was months, probably 8 months or
16 so, Mr. Jennings was re-arrested and charged with armed
17 robbery, a burglary first, use of a weapon in the
18 commission of a violent crime, resisting arrest.

19 And the facts centered on a situation where Mr.
20 Jennings was alleged to have approached an individual, got
21 into an argument. Kind of like he came out of a car.
22 There was an individual walking down the street. He came
23 out of a car, approached the individual. They got into a
24 kind of a struggle. Mr. Jennings shot the guy in the foot,
25 took some money supposedly from his pocket, and then ran.

Mr. Murphy - Direct by Mr. Brooks

21

1 When the police showed up, Mr. Jennings ran away and broke
2 into this home and hid from police. There was like a cord
3 around this house. And the charges result from that.

4 Over time ---

5 Q Let me ask you. Did that incident occur before he
6 went to prison on the murder?

7 A No. After. After. This was the activity that
8 allegedly occurred after he was out on bond. Okay.

9 Now, in examining the discovery, there were some
10 issues with the state's case in regard to the burglary
11 first, because the home was a crack house. And, you know,
12 I think there was some evidence there that Mr. Jennings had
13 had access to it before, and -- and it wasn't clear that he
14 didn't have a right to be there. I mean, he had some
15 personal items there.

16 In regard to the robbery, it was unclear that an
17 actual item was taken. I mean, there was no real dispute
18 that the victim was shot. But whether something was taken
19 from him was subject to dispute.

20 So as a result of that, Mr. Jennings and I -- the
21 state came to us with some various offers. The initial
22 offer focused on 15 to 20, somewhere around there.

23 And we decided that -- I mean, Mr. Jennings decided
24 that a trial would be appropriate on these second charges.
25 So that Mr. Spradley handled these second charges, the

1 murder-slash-misprision charge was handled by Ms. Fant.
2 Mr. Spradley called the case for trial and we went to
3 trial.

4 And a jury -- we got to the point where a jury was
5 selected, and we were going to start opening statements
6 after lunch. My recollection is we broke for lunch after
7 the jury was selected.

8 During the lunch break -- there had been some
9 discussions with the state about a deal for 10 years. What
10 Mr. Spradley told me was that the solicitor's office and
11 law enforcement wanted a strike as part of any negotiated-
12 type deal. And they were willing to allow Mr. Jennings to
13 plead to the armed robbery instead of the burglary first --
14 because the burglary first carried the 15. They were
15 willing to dismiss all the charges except for the armed
16 robbery for 10.

17 And that had been -- we had discussed that before the
18 trial and Mr. Jennings had rejected that.

19 I mean, the primary reason why -- why he rejected that
20 in my opinion was because -- and he had told me on a number
21 of occasions that the victim in the armed robbery case was
22 not going to show up for trial. On more than one occasion
23 throughout this entire process, this guy is not going to
24 show up for trial.

25 I'd sent an investigator out to talk to the victim,

Mr. Murphy -- Direct by Mr. Brooks

23

1 who assured my investigator he was going to show up for
2 trial.

3 But nevertheless, Mr. Jennings was convinced this guy
4 is not going to show.

5 When we were picking the jury, the victim's sitting
6 right there, and I think that had an impact on the
7 suddenness of the decision to accept the plea.

8 He approached me saying he wanted to talk to me. I
9 got a short break, short lunch. I went in and talked to
10 him. He said he wanted to take the deal.

11 And my recollection is it was at that point that I
12 said, All right. Look -- well, up until then we had talked
13 a little bit about this misprision charge. But it was at
14 that point, my recollection is, that I said well, what are
15 we going to do with it? You've still got this misprision
16 charge out there. Why don't we just take care of that too.
17 If you're going to plead to one, you might as well plead to
18 the other.

19 And then we had some discussions about that. You
20 know, and then we also talked about whether he could plea.
21 And based on his comments to me, I approached Mr. Spradley
22 about Alford pleas to both.

23 Now, we did talk a little bit about the credits. And,
24 you know, to be frank, you know, I'm not an expert on
25 credits. He did ask me, well, what -- you know, am I going

1 to get credit for this time?

2 And I did say, well, you'll get credit on the
3 misprision charge. You should get credit for the time you
4 spent under the murder warrant for the misprision charge.
5 And you should get -- you'll get -- you're getting a
6 concurrent 10-year sentence. You're going to get credit
7 for the misprision. You're going to get credit for the
8 armed robbery. And I don't -- you know, I don't know how
9 the credits work. I mean, I was as much in the dark as Mr.
10 Jennings was.

11 And, quite frankly, every time I go to one of these
12 conferences, it doesn't really enlighten me. So I make it
13 a practice not to get into the weeds when it comes to
14 credits.

15 And so part of that also is it's part of my normal
16 course to say -- and I'm confident I told Mr. Jennings the
17 same, is you've got to assume you're going to serve the
18 whole thing, but you should be getting some credit.

19 Now, I would dispute Mr. Jennings in regard to the
20 armed robbery. I don't think the credit issue had anything
21 to do with his plea to the armed robbery. I do -- I will
22 concede it may have had something to do with his plea to
23 the misprision of a felony, because quite frankly, you
24 know, the misprision charge I thought was kind of weak.
25 And in my opinion he was basically just a witness. But it

Mr. Murphy -- Direct by Mr. Brooks

25

1 was hanging out there. It was something that needed to be
2 dealt with. And my view was it could be dealt with this
3 way.

4 But I -- I -- I did not specifically tell him that he
5 would get credit for 1100 days. I couldn't even remember
6 how many days he got. I told him that there would be
7 credits. The jail would have to figure it out. And, you
8 know, if he needed -- if he needed clarification, he could
9 contact me afterwards, which he did.

10 Q Do you think he may have been under the impression he
11 was getting credit for the whole thing?

12 A He could have. I mean, to be frank, he could have.

13 Q And do you think that that might have had an impact on
14 him entering the plea?

15 A On the misprision charge I think it could have, not on
16 the armed robbery. The armed robbery was going to get done
17 in my view without regard to the misprision charge. And
18 the reason for the plea for the armed robbery was because
19 the victim showed up at trial. I mean, we had picked the
20 jury and -- and -- I mean, we picked the jury. It's
21 obvious to me when the victim walked in and sat behind the
22 solicitor, Mr. Jennings' demeanor totally changed. And at
23 that point, it was like, look, you know, I want to deal
24 something.

25 (Pause.)

1 MR. BROOKS: No other questions.

2 MR. JOHNSON: Just a few questions, Your Honor.

3 CROSS EXAMINATION BY MR. JOHNSON:

4 Q Mr. Murphy, do you feel like you had sufficient
5 time and information to relay to Mr. Jennings in this
6 case?

7 A Yes.

8 Q Whose decision was it to enter the Alford pleas?

9 A Mr. Jennings.

10 Q And he did understand he could get credit for time
11 served on the armed robbery charge?

12 A Yes.

13 Q And is it your understanding that if he gets a new
14 trial here today, he goes back and faces the ABWIK, the
15 armed robbery, the burglary first and could get well over
16 50 years if he was convicted?

17 A Yes.

18 MR. JOHNSON: No further questions, Your Honor.

19 THE COURT: Okay. You can step down.

20 (The witness leaves the witness stand.)

21 THE COURT: Anything else?

22 MR. BROOKS: Judge, that's the applicant's case.

23 THE COURT: Okay. Anything from the state?

24 MR. JOHNSON: Nothing from the state.

25 THE COURT: All right. Gentlemen, I'll review

1 these notes and the appropriate case law and let you
2 all know.

3 MR. BROOKS: Thank you, Judge.

4 --- End of transcript of record ---

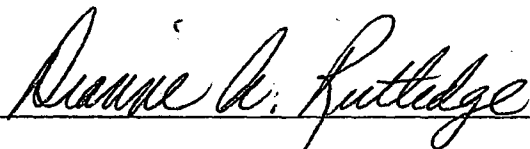
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 I, the undersigned Dianne A. Rutledge, official court
 2 reporter for the Fifth Judicial Circuit of The State of
 3 South Carolina, do hereby certify that the foregoing is a
 4 true, accurate, and complete transcript of the record of
 5 the proceedings had and evidence introduced in the hearing
 6 of the captioned case, relative to appeal, in the Circuit
 7 Court for Sumter County, South Carolina on the 25th day of
 8 October 2011.

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

11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

April 18, 2012



 Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2012 FEB 10 PM 12:34

Joseph Jennings, #288765,

Applicant,

v.

State of South Carolina,

Respondent.

JANE CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2010-CP-43-1141 CERTIFIED TRUE COPY
OF ORIGINAL FILED

Jerry Whitson
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 27, 2010. The Respondent made at Return on January 28, 2011. A hearing was convened on October 25, 2011, before this Court to review the issue at hand. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Applicant testified on his own behalf; also testifying was Timothy Murphy, Esq., the Applicant's guilty plea counsel. The Respondent was represented by Rob D. Corney and J. Rutledge Johnson of the South Carolina Attorney General's Office.

This Court had before it the records of the Sumter County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the September 2007 term of the Sumter County Grand Jury for murder, misprision of a felony (2007-GS-43-0672) and at the May 2009 term of the Sumter

County Grand Jury for armed robbery, assault and battery with intent to kill, possession of a firearm or knife during the commission of a violent crime, burglary 1st degree, and resisting arrest (2009-GS-43-1057). Timothy Murphy, Esquire, represented him. On January 19, 2010, the Applicant entered an Alford plea of guilty to misprision of a felony and armed robbery. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970). The Honorable George C. James, Jr. sentenced him to a negotiated term of ten (10) years imprisonment on each charge, sentences to be served concurrently. The Applicant did not appeal his conviction or sentence.

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

1. Applicant not being credited for time served.

At the PCR hearing, the Respondent moved to dismiss the Applicant's application pursuant to Al-Shabazz v. State because the Applicant's allegation is not cognizable in a post-conviction relief application. 338 S.C. 354, 527 S.E.2d 742 (2000).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

Credit for time served

The Applicant alleges he has not received credit for time served while awaiting trial for misprision of a felony. Aside from two matters specifically mentioned in the statute, post-conviction

relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz. A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id.

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given... **when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.**

Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (emphasis added).

At the PCR hearing, the Applicant testified that he was arrested on a murder charge on which he spent five hundred and fifty-six (556) days in jail. He was then released on bond. The Applicant also testified and admitted that he was arrested on charges of armed robbery, assault and battery with intent to kill, possession of a firearm or knife during the commission of a violent crime, burglary 1st degree, and resisting arrest after he was out on bond for the first charge. He claimed that he spent six hundred and ten (610) days in jail on the second set charges before his Alford plea. The Applicant then testified that he was under the impression that he would receive full credit for one thousand one hundred and sixty-six (1,166) days in jail for both sets of charges.

The Applicant's defense counsel, Timothy Murphy, took the stand and testified that the Applicant was released on bond pursuant to an agreement to testify on the State's behalf concerning the murder/misprision of a felony charge. He also testified that the Applicant was subsequently arrested on the second set of charges. Mr. Murphy entered into plea negotiations with the State which ultimately culminated in the Applicant pleading, pursuant to Alford, to a ten-year prison sentence on both the misprision of a felony and armed robbery charges on the day of trial set for the

armed robbery charge. All other charges were nolle prossed in exchanged for the Applicant's pleas. Mr. Murphy, further, testified that he did not understand credits for time served under the South Carolina Department of Corrections guidelines as well as he should, but told the Applicant to assume he (the Applicant) would serve the entire sentence. While Mr. Murphy testified that the credits for time served might have induced the Applicant to plead guilty to the misprision of a felony, he (Mr. Murphy) did not think the credits influenced the Applicant's decision to plead to armed robbery. It was the victim of the armed robbery showing up to testify at the trial that heavily influenced the Applicant pleading to the armed robbery.

This Court finds that whether the South Carolina Department of Corrections will accord the Applicant credit for his jail time is a collateral consequence of his plea. Furthermore, the Court finds the Applicant was arrested on the armed robbery set of charges after he was on bond for the misprision of a felony charge. As such, according to Allen, the Applicant should not receive credit for time served for the misprision of a felony charge as to reduce his sentence for armed robbery. Accordingly, this allegation is dismissed.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

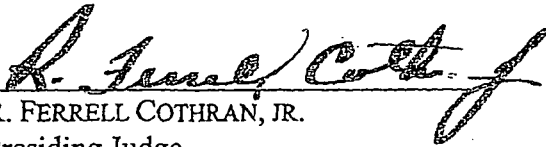
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.


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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of Feb, 2012


 R. FERRELL COTHRAN, JR.
 Presiding Judge
 Third Judicial Circuit

, South Carolina.

WITNESSES

DOCKET NO. 2007-GS-43- 672

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

THE STATE

vs.

JOSEPH JENNINGS

ANTONIO CURTIS McMILLAN

ARREST WARRANT NUMBER

077383; H977386

A: 11/23/05

ACTION OF GRAND JURY

rueBill

Wm Holloman

Foreperson of Grand Jury

Date: *8-30-07*

VERDICT

Indictment for

MURDER, MISPRISION OF FELONY

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER) MURDER, MISPRISION OF FELONY

At a Court of General Sessions, convened on August 30, 2007, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE - MURDER

That ANTONIO CURTIS McMILLAN did in Sumter County on or about November 1, 2005, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one William Nowlin by means of striking him in the head with a large stick or axe handle, and that the said William Nowlin did die as a proximate result thereof.

COUNT TWO - MISPRISION OF FELONY

That JOSEPH JENNINGS did in Sumter County on or about November 1, 2005, criminally neglect to prevent a felony from being committed or to bring a felon to justice after he committed the crime of murder, in violation of the common law crime of misprision of a felony.

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

P. Kelly Jackson

 SOLICITOR

STATE OF SOUTH CAROLINA)
)
 64 COUNTY OF)
 STATE)
 VS.)
 JOSEPH JENNINGS)
 AKA:)
 Race: Black) Sex: Male) Age:)
 DOB:) SS#:)
 Address:) Sumter, SC 29150)
)
 DL#) SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-43-0672

AW#: H977386
 Date of Offense: November 01, 2005
 S.C. Code §: ~~16-03-0010, 0020~~
 CDR Code #: 0446 0781

not more
 Than 10 yr.
 CL & 17-25-30

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Misprision of a felony

in violation of § CL & 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 0, 7, 8, 1

- 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 initial) AL
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Marci Sprate 77061 Solicitor Joseph Jennings Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 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: 08-GS-43-1057

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

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

Recipient:		
*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

James C. Campbell
 Clerk of Court/Deputy Clerk
 Court Reporter: M. Sengatory

PRESIDING JUDGE
 Judge Code: _____
 Sentence Date: 1-19-10

10
6

WITNESSES

SPD

Culick

ARREST WARRANT NUMBER

J304456; J304457

D/A: 07/12/08

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: *21 MAY 2009*

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2008-GS-43- 1057

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE

vs.

JOSEPH JENNINGS

Indictment for

ARMED ROBBERY, ASSAULT AND
BATTERY WITH INTENT TO KILL,
POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF A VIOLENT
CRIME, BURGLARY 1st, RESISTING
ARREST

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 ARMED ROBBERY, ASSAULT AND BATTERY
 WITH INTENT TO KILL, POSSESSION OF
 FIREARM OR KNIFE DURING COMMISSION OF
 A VIOLENT CRIME, BURGLARY 1st, RESISTING
 ARREST

At a Court of General Sessions, convened on May 21, 2009, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – ARMED ROBBERY

That JOSEPH JENNINGS did in Sumter County on or about July 8, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Willie Lowery in the presence of Willie Lowery, by means of force or intimidation goods or monies of the said Willie Lowery, such goods or monies being described: U. S. currency.

COUNT TWO – ASSAULT AND BATTERY WITH INTENT TO KILL

That JOSEPH JENNINGS did in Sumter County on or about July 8, 2008, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an unlawful act of a violent nature to the person of another, to-wit: Willie Lowery, with malice aforethought, either express or implied, by shooting the said Willie Lowery in the foot with a handgun.

✓ COUNT THREE – POSSESSION OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

That JOSEPH JENNINGS did in Sumter County on or about July 8, 2008, was in possession a of and did visibly display a firearm or knife during the commission of a violent crime, to-wit: armed robbery, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT FOUR – BURGLARY 1st

That JOSEPH JENNINGS did in Sumter County on or about July 11, 2008, enter the dwelling of Sherman Sanders, 221 [REDACTED] without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

✓ COUNT FIVE – RESISTING ARREST

That JOSEPH JENNINGS did in Sumter County on or about July 11, 2008, violate Section 16-9-320(A) of the Code of Laws of South Carolina (1976), as amended, in that he did resist the efforts of Det. Curtis Hodge and Det. Billy Lyons of the Sumter Police Department, whom he knew or reasonably should have known was a law enforcement officer of this State, to make a lawful arrest of the said JOSEPH JENNINGS..

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

P. Kelly Jackson

 SOLICITOR

COUNTY OF SUMTER

INDICTMENT/CASE#: 2008-GS-43-1057

67

STATE VS.

JOSEPH JENNINGS

AW#: J304456

not more than 20 years

AKA:

Date of Offense: July 08, 2008

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0330(A)

DOB:

SS#:

CDR Code #: 0139

10 years - 30x

Address: Sumter, SC 29150

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: ~~Armed Robbery~~ Armed Robbery

in violation of § 16-11-330 (A) of the S.C. Code of Laws, bearing CDR Code # 1, 3, 9

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 initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. *AL Fed*

ATTEST:

Mari Sprath (77061)
Solicitor

Joseph Jay
Defendant

[Signature]
Attorney for Defendant
74057
SC Bar #

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

for a determinate term of 10 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: 07-GS-43-0672

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.40

§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

James C. Campbell
Clerk of Court/ Deputy Clerk

Court Reporter: *M. Singletary*

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: _____

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21413

Sentence Date: 7-19-10