

VOL II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

RECEIVED

JAN 23 2015

S.C. Supreme Court

JERMEL ANTHONY ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001315

APPENDIX

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1 can basically show behavior behind me.

2 Sir, as a -- as I said, Mr. Wimberly and
3 Mrs. Wimberly, I truly apologize for the loss of your
4 son. And like I say, I know it's -- it's just words
5 that can't express that.

6 I can never -- I can never emotionally tell you
7 how much I truly mean that because you can hear I'm
8 sorry, I apologize every day, but that can never.

9 MR. WIMBERLY: Well, I accept your apology.

10 MRS. WIMBERLY: I do, too.

11 MR. WIMBERLY: But you took Dominique from us as
12 a part of me, part of my wife, and part of his
13 sister, can never replace that. But if -- it's a
14 lesson learned, you know. While you sit in there
15 reading your Bible, you live because you make the
16 wrong mistake.

17 DEFENDANT ROBINSON: But I'm saying--

18 MRS. WIMBERLY: We accept your apology and we
19 can love you. God bless you.

20 DEFENDANT ROBINSON: Thank you. And before I
21 say -- this is the last thing I'll say to the family.
22 And I know it's a -- as I speak on the case once
23 again, I'm not trying to -- but sir, everything that
24 took place that night, anything that could have
25 happened, I can honestly tell you I never had

1 anything to do with your -- your son's death as far
2 as the killing behind anything or triggers, bullets,
3 anything. I never took any of them.

4 MR. WIMBERLY: All right.

5 THE COURT: Thank you. Mr. Murphy?

6 MR. MURPHY: Your Honor, Mr. Jackson is here
7 with his grandmother. He was -- been raised by his
8 grandmother. His father is absent and has never been
9 a part of his life. His mother passed away a number
10 of years ago. He's raised by his grandmother.

11 I got the opportunity to speak to the
12 grandmother as well as an aunt and a couple of
13 cousins, and you know, I think as is the case with
14 the Robinsons here, there's kind of a -- at least
15 from their perspective kind of a shock as to what
16 happened.

17 They're -- there's no indication from their
18 perspective that anything like this could have
19 happened.

20 Again, as with Mr. Sullivan's case, I'd ask you
21 to take into account he's 17 and had no prior
22 criminal record. You know, I knew, you know, as Mr.
23 Sullivan, I mean, we -- we have been around long
24 enough to know that this was the likely result.

25 You know, I have thought about what I would say

1 on behalf of my client. And you know, one of the
2 components I guess or one of the things that we talk
3 about is mercy. And mercy sometimes isn't deserved,
4 and -- but it's given nonetheless.

5 I mean, my client is facing the rest of his
6 natural life in prison for -- for what he did that
7 night. And I guess what I would ask on his behalf --
8 and I have had a number of conversations with him --
9 is, you know, those -- those of us that are older
10 know that life goes by in a blink of an eye really.

11 I mean, 30 years, 40 years, 50 years, it just
12 goes by, and you look back and wonder, wow, what
13 happened. I would ask on behalf of my client that
14 you give him some hope that he will walk out of
15 prison at some time a free man. Not because he
16 deserves it, but because -- but because of the
17 element of mercy.

18 That's really all, you know, I can ask on his
19 behalf given the situation and given the age he was
20 at that time.

21 You know, like Mr. Sullivan said, you know, I
22 look at him sometimes and, you know, you look at some
23 other clients you have and you're wondering what the
24 heck, what happened. I mean, you know, it's -- it's
25 astounding to me. There's no explanation. You

1 struggle for it.

2 And you know, I don't know if there is one. It
3 was an evil act and that's what it was. I don't
4 believe his grandma really wants to say anything. Do
5 you want to say anything? Okay. Want to say
6 something?

7 *GRANDMOTHER OF DEFENDANT JACKSON:* I can say I
8 raise him from a baby, and I try to raise him the
9 best I can. And he's a good child. And I'm just,
10 you know, had no idea, you know, what was going on.

11 After a certain age, you know, they get out,
12 going to be out in the element and stuff like that.
13 But he always had manners and respect and stuff like
14 that. And I try to teach him the right thing.

15 And I do sympathize with the Wimberly family
16 because I know what it's like to lose a child. And I
17 really sympathize with you on that. And I am sorry,
18 so sorry for what happened. But if I could have
19 prevent it, I certainly would have.

20 And like I say, I will always remember, you
21 know, remember that, just like he would, you know.
22 And I know he's sorry for what he did, but I am
23 telling you from my point of view how I feel about --
24 because I'm sorry and I sympathize with you on that.
25 And I just hope you can give him a chance, you know,

1 to get some hope, you know, in life.

2 *THE COURT:* Thank you ma'am.

3 *GRANDMOTHER OF DEFENDANT JACKSON:* Thank you.

4 *DEFENDANT JACKSON:* I want to say I'm sorry to
5 the Wimberlys. I know they done heard it over a
6 million times, but truly from my heart I am sorry. I
7 apologize for everything that happened, you know.

8 I'm human. I make mistakes also. So I want
9 to -- you to accept my apology and you forgive me
10 because I do read the Bible and the Bible said you
11 must forgive to be forgiven.

12 So I want you to look in my eyes and tell me do
13 you accept my apology..

14 *MRS. WIMBERLY:* Yes, sir. We accept your
15 apology. But the Bible also says, if you take a life
16 a life, a life should be taken from you. But I do
17 accept your apology.

18 *MR. WIMBERLY:* And it wasn't a mistake. It was
19 a plan.

20 *MRS. WIMBERLY:* Y'all planned it.

21 *DEFENDANT JACKSON:* I want to say the same thing
22 Mr. Robinson said. I mean, I truly am sorry. That's
23 all I have to say. Thank you.

24 *THE COURT:* Thank you. I have taken into
25 consideration your age, the fact that neither one of

1 y'all have a record that I'm aware of. And I'm not
2 real sure that this whole thing started out you
3 planned to murder anybody.

4 But you didn't act -- you are the ones that
5 brought the guns to this. You should have realized
6 any time you deal with an armed robbery, somebody is
7 going to get killed. That's exactly what happened.
8 You made some terrible decisions that ruined a lot of
9 peoples lives.

10 Any way, the Sentence of the Court on Mr.
11 Jackson, on count two, attempted armed robbery,
12 you're sentenced to the State Department of
13 Corrections for a term of 20 years. That's to run
14 concurrent with count one. You be given credit for
15 whatever time you served toward it.

16 Count four, possession of a firearm during the
17 commission of a violent crime, is you're sentenced to
18 the State Department of Corrections for a term of
19 five years to run concurrent with count one and be
20 given credit on that as well.

21 Possession of a pistol by someone less than 18
22 years of age you're sentenced to five years to run
23 concurrent with count one. It's to run
24 consecutive -- I mean -- concurrent with count one.
25 You're given credit for time served.

1 On count one, murder, the sentence of the Court
2 is you're committed to the State Department of
3 Corrections for a term of 37 years.

4 On Mr. Robinson, attempted armed robbery is 20
5 years to run concurrent with count six. On both of
6 the weapons charges is five years to run concurrent
7 with count six. You're given credit for time served.

8 And on lynching, count six, you're sentenced to
9 the -- committed to the State Department of
10 Corrections for a term of 37 years. Good luck to
11 you.

12 MRS. WIMBERLY: Thank you, Your Honor.

13 (End of requested transcript of record.)
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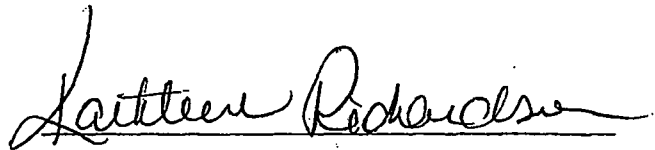
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

I, Kathleen Richardson, RPR, CRR, Official Court Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the twenty-second day of April, 2009.

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

August 5, 2009



KATHLEEN RICHARDSON, RPR, CRR

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

JERMEL ANTHONY ROBINSON,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by refusing to direct a verdict acquitting Robinson of lynching, as the State failed to establish that he and Jackson had assembled "for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another," as required by S.C. Code Section 16-3-230.

STATEMENT OF THE CASE

On April 15 through 22, 2009, Teron Jackson and Jermel Robinson stood trial in Sumter County, before Judge R. Ferrell Cothran Jr. and a jury, on indictments charging them each with murder, two counts of attempted armed robbery, first-degree lynching, possession of a firearm during the commission of a violent crime and unlawful possession of a firearm by someone under eighteen years of age.

Jackson and Robinson decided to rob another teenager, Dominique Wimberly, because, Jackson later told the police, "We just know the person has money." R. 244, ll. 23-25. Armed with handguns, they approached Wimberly's automobile from either side and demanded his valuables. Wimberly drew his own gun and shot Robinson in the chest. Jackson then shot Wimberly five times. Robinson later told the police, "I never fired my gun. ... I didn't mean for that to happen at all." R. 365, ll. 4-5; R. 366, ll. 19-23.

The jury convicted Jackson of everything but lynching and one count of armed robbery. They found Robinson guilty of everything except murder and one count of armed robbery. The judge sentenced each to concurrent terms of imprisonment totaling thirty-seven years.

ARGUMENT

The trial judge committed reversible error by refusing to direct a verdict acquitting Robinson of lynching, as the State failed to establish that he and Jackson had assembled "for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another," as required by S.C. Code Section 16-3-230.

At the conclusion of the State's case, defense counsel unsuccessfully moved for a directed verdict. R. 409, ll. 11-19. Neither Jackson nor Robinson testified, nor did they call any other witnesses.

A trial judge must direct a verdict of acquittal when the State fails to produce any evidence, direct or circumstantial, of any element of the offense charged. *State v. McCombs*, 368 S.C. 489, 629 S.E.2d 361 (2006). A directed verdict motion is concerned solely with the existence or nonexistence of evidence, not its weight. *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004).

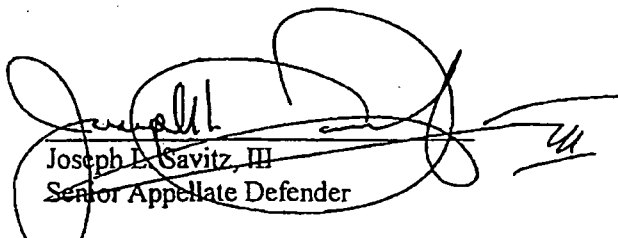
First-degree lynching is defined as "[a]ny act of violence inflicted by a mob upon the body of another person which results in the death of the person." S.C. Code Section 16-3-210. A mob is defined as an "assemblage of two or more persons ... for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." Section 16-3-230.

"[T]o sustain a conviction for lynching, the State must produce at least some evidence of premeditation." *State v. Smith*, 352 S.C. 133, 572 S.E.2d 473, 475 (Ct. App. 2002). "The common intent to do violence to the person of another may be formed before or during the assemblage." *State v. Barksdale*, 311 S.C. 201, 428 S.E.2d 498, 500 (Ct. App. 1993), certiorari denied October 21, 1993.

Although there was evidence Jackson and Robinson assembled with the intent to rob Wimberly at gunpoint, the State introduced no direct or circumstantial evidence that they possessed a common intent to do him violence. Jackson shot Wimberly only after Wimberly shot Robinson. Robinson specifically told the police that he and Jackson had not intended for Wimberly to be harmed. R. 366, ll. 22-23. This evidence did not support Robinson's conviction for first-degree lynching.

For this reason, the Court of Appeals should direct a verdict acquitting Jermel Robinson of his conviction for lynching.

Respectfully submitted,



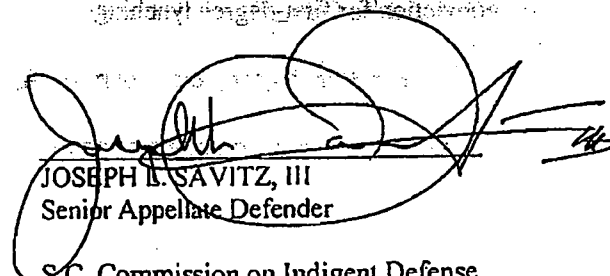
Joseph L. Savitz, III
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ATTORNEY FOR APPELLANT

This 11th day of October, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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STATE OF SOUTH CAROLINA
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R. Ferrell Cothran, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

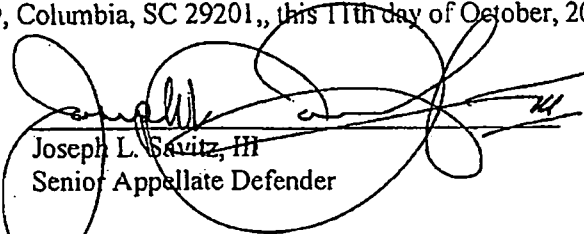
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APPELLANT,

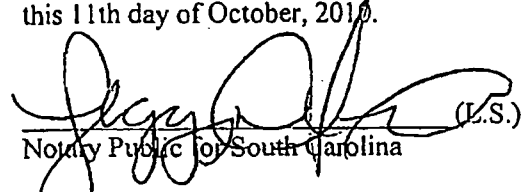
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201,, this 11th day of October, 2010.


Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of October, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

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Cases:

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Statutes:

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S.C. Code Ann. § 16-3-230	5-6

STATEMENT OF ISSUE ON APPEAL

The issue raised on appeal is not preserved for review; but, in any event, the trial court properly denied a directed verdict regarding the lynching charge where the State presented substantial circumstantial evidence from which the jury could infer premeditation and intent.

STATEMENT OF THE CASE

Appellant was indicted in February 2009 in Sumter County for murder, two counts of attempted armed robbery, possession of a firearm during commission of a crime of violence, possession of a pistol by a person under age eighteen, and lynching in the first degree. (See R. p. 509-11). Appellant was tried on April 15-22, 2009, along with co-defendant Teron Jackson, before the Honorable R. Ferrell Cothran, Jr. (See R. p. 1-507). The jury found Appellant guilty of first-degree lynching, one count of attempted armed robbery, and both of the pistol charges. Judge Cothran sentenced Appellant to twenty (20) years for attempted armed robbery, thirty-seven (37) years for first-degree lynching, and five (5) years on each pistol charge. (R. p. 507, lines 4-10). All sentences were to run concurrently. (R. p. 507, lines 4-7). A Notice of Appeal was timely served and filed.

ARGUMENT

The issue raised on appeal is not preserved for review; but, in any event, the trial court properly denied a directed verdict regarding the lynching charge where the State presented substantial circumstantial evidence from which the jury could infer premeditation and intent.

The Issue is Not Preserved

First, the issue of denial of a directed verdict regarding first-degree lynching was not preserved below. Appellant made only a general directed verdict motion at the conclusion of the State's case, stating: "We would move for directed verdicts. We believe that the State has not met its presumption." (R. p. 409, lines 11-13). Appellant presented nothing further in support of his directed verdict motion. (See R. p. 409-15; see also p. 490, lines 7-20). Therefore, the issue he now raises on appeal is not preserved for review. See e.g., State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (issues not raised to the trial court in support of directed verdict are not preserved for appellate review) (citation omitted); State v. Adams, 332 S.C. 139, 144-145, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (argument not preserved for appeal where precise issue not presented to the trial court) (citations omitted); State v. Caldwell, 378 S.C. 268, 283, 662 S.E.2d 474, 482 (Ct. App. 2008) (a party may not argue one ground at trial and another on appeal).

Directed Verdict was Properly Denied

Even assuming the issue had been properly preserved, the trial court properly denied a directed verdict where substantial evidence was presented to support the elements of first-degree lynching. First-degree lynching is an act of violence by a mob upon another person resulting in that person's death. See S.C. Code Ann. § 16-3-210. A "mob" is defined as the unlawful assemblage of two or more people for the premeditated purpose and intent of committing an act of violence on another person. See S.C. Code

Ann. § 16-3-230. "Premeditated purpose and intent" signifies a degree of forethought sufficient to show intent to commit an act. See State v. Smith, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). The State may demonstrate premeditated purpose and intent through testimonial evidence or through circumstantial inferences. See id. at 138, 572 S.E.2d at 476; State v. Barksdale, 311 S.C. 210, 214, 428 S.E.2d 498, 500 (Ct. App. 1993). Since criminals rarely advertise their nefarious intentions, premeditation and intent must usually be inferred from the circumstances. See, e.g., State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.").

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Appellant argues that the trial court should have directed a verdict of acquittal on the lynching charge due to a lack of evidence regarding the "premeditated purpose and intent" element. However, taken in the light most favorable to the State, there was ample evidence presented from which the jury could have inferred premeditated purpose and

intent. The record supports that Appellant and his co-defendant, after assembling and conspiring in advance, both donned masks and dark clothes concealing their identities; that they knowingly and intentionally armed themselves with illegally-purchased loaded firearms; that they performed reconnaissance of the victim for an hour or more while he sat in his car; and finally, that they besieged the victim from both sides of the car while brandishing their loaded deadly weapons. (See R. p. 148-149; p. 184-196; p. 252-292; p. 319-329; p. 354-365; p. 392-394; p. 407-408). Then, after allowing the female in the car to run away, the co-defendant shot the victim at close range five times in the chest and torso. (R. p. 253-256; p. 260, line 6; p. 300-308; p. 359-365). The co-defendant and Appellant immediately fled the scene and attempted to conceal their involvement. (See R. p. 287-92; p. 306-308; p. 319-321; p. 326-329; p. 255-262; p. 321-322; p. 407-408). The victim died two hours later at the hospital. (See R. p. 300-11).

The jury could properly infer from the above evidence that Appellant and his co-defendant possessed a common premeditated intent to ambush and shoot the victim. Although the defendants' statements made after the fact claimed that they intended only to rob the victim, the jury could properly disregard self-serving portions of the defendants' statements and believe other portions of the statements. (See R. p. 441, lines 11-23). See State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991). The trial judge was not, at the directed verdict stage, required to evaluate the evidence or determine which version was more likely; instead, the judge's sole concern was with the *existence* of evidence. See, e.g., State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006); State v. Barksdale, *supra*, at 215, 428 S.E.2d at 501. Further, contrary to Appellant's argument, the fact that Appellant was prevented from using his own gun because the victim managed to grab it first does not detract from the evidence regarding

premeditation and intent. (See R. p. 172-173; p. 292, lines 1-3; p. 378, line 22 – p. 379, line 9). Therefore, where substantial evidence was presented from which the jury could find all the elements of first-degree lynching, the trial court properly submitted the charge to the jury.

CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction for first-degree lynching.

Respectfully submitted,

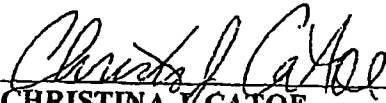
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October 11, 2010

STATE OF SOUTH CAROLINA

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THE STATE OF SOUTH CAROLINA,

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JERMEL ANTHONY ROBINSON,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.


CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

October 11, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

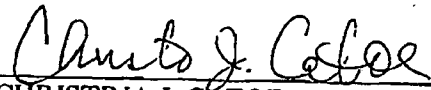
v.

JERMEL ANTHONY ROBINSON,

APPELLANT.

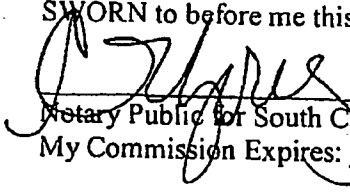
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **JOSEPH L. SAVITZ, III**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 11th day of October, 2010.


CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 11th day of October, 2010.


Notary Public for South Carolina
My Commission Expires: 10/28/2014

cc
aim

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

October 27, 2011

REMITTITUR

The Honorable James C. Campbell
141 N. Main Street., Rm 308
Sumter, SC 29150-4965

Re: The State v. Robinson, Jermel Anthony
2007-GS-43-00816

Dear Mr. Campbell:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Administrative Specialist

Vet
TAG/rj

cc: Senior Appellate Defender Joseph L. Savitz, III
Assistant Attorney General Christina Catoe
Ernest Adolphus Finney, III, Esquire

OTHER
RECORDED
INDEXED
FILED
ADMINISTRATIVE INSTRUCTIONS
FILED
ATTORNEY GENERAL'S OFFICE

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Jermel Anthony Robinson,

Appellant.

Appeal From Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-435
Submitted October 1, 2011 – Filed October 11, 2011

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Christina Catoe, all of
Columbia; and Solicitor Ernest A. Finney, III, of
Sumter, for Respondent.

PER CURIAM: Jermel Anthony Robinson appeals his conviction for first-degree lynching. On appeal, he argues the trial court erred in denying his motion for a directed verdict. We affirm.¹

"Any act of violence inflicted by a mob upon the body of another person which results in the death of the person shall constitute the crime of lynching in the first degree." S.C. Code Ann. § 16-3-210 (2003). A "mob" is "the assemblage of two or more persons . . . for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." S.C. Code Ann. § 16-3-230 (2003).

In the instant case, the State proffered evidence Robinson and Teron Hakeen Jackson, in an attempt to rob the victim, surreptitiously observed the victim sitting in his parked car for more than an hour in order to conduct surveillance and plan the robbery, donned dark clothes and masks, armed themselves, and charged the victim from either side with their guns drawn. Jackson confessed to shooting the victim multiple times, resulting in his death. In light of this evidence, it was reasonable for the jury to infer Robinson's premeditated intent to commit an act of violence upon the victim and to disbelieve Robinson's assertion he did not intend to harm the victim. See State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred."). Accordingly, the State proffered sufficient evidence to overcome Robinson's motion for a directed verdict on his first-degree lynching charge. See State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) (holding "[w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight").

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of

SumterJermal Anthony Robinson

Full name and prison number (if any) of Applicant

#334393

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012 APR -3 AM 11:57

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.2012-CP-43- 648

APPLICATION FOR

CERTIFIED TRUE COPY

OF ORIGINAL FILE

POST-CONVICTION RELIEF

Brian Mays
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAINSTRUCTIONS - 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 Lee Correctional Institution 990
Wisacky Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Sumter County
Court of General Sessions, Sumter, South Carolina 29150
3. Name(s) of co-defendant(s) (if any) Teron Hokeen Jackson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-43-00816; Lynching in the First Degree
 - (b) 2007-GS-43-00816; Attempted Armed Robbery

(c) 207-GS-43-00816; Possession of a Firearm during

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

(a) April 22, 2009; Thirty-seven (37) Years

(b) April 22, 2009; Twenty (20) Years

(c) April 22, 2009; Five (5) Years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

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

Yes, I did.

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

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

i. South Carolina Court of Appeals

~~ii.~~ _____

~~iii.~~ _____

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

i. Affirmed

~~ii.~~ _____

~~iii.~~ _____

(c) the date of each such result:

i. October 11, 2011

~~ii.~~ _____

~~iii.~~ _____

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

i. UnPublished Opinion 2011-UP-435

~~ii.~~ _____

~~iii.~~ _____

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

(a) N/A

~~(b)~~ _____

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

- (a) 5th Amendment, United States Constitution Violation
 (b) 6th Amendment, United States Constitution Violation
 (c) 14th Amendment, United States Constitution Violation

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

- (a) Denial of Protection against Double Jeopardy
 (b) Denial of Effective Assistance of Counsel
 (c) Denial of Equal Protection of the Law and

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. 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.~~ _____

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?

Yes, there has.

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

(a) which grounds have been presented:

i. (10)(c) Fourteenth Amendment Violation

~~ii.~~ _____

~~iii.~~ _____

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

i. Motion to Vacate Sentence or for New Trial

~~ii.~~ _____

~~iii.~~ _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (10)(a); First Collateral Attack
 (b) (10)(b); First Collateral Attack
 (c)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? Yes, I were.
 (c) your sentencing? Yes, I were.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I were.
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes, I were.

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. David Sullivan, 141 North Main Street,
Sumter, South Carolina 29150
 ii. Robert M. Dudek, Post Office Box 11589
Columbia, South Carolina 29211
 iii.
 (b) the proceedings at which each such attorney represented you:
 i. Trial, Sentencing, Post-Trial Motion
 ii. South Carolina Court of Appeals
 iii.

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

Based on the above, Conviction of Lynching in
the First Degree be Vacated in the Interest of
Justice, Vacate Sentence and Remand for Resentencing

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

No, I am not.

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Jermel Anthony Robinson, #334393, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 29
 day of May 2012)

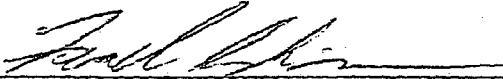
[Signature] (L.S.)
 Notary Public

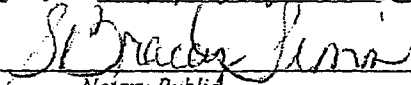
My Commission Expires: 5-16-14

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

I, Jerme/ Anthony Robinson, #334873, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
29 day of Mar, 2002

Notary Public

My Commission Expires: 5-16-17

STATE OF SOUTH CAROLINA RECORDED IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2014 JAN 13 AM 11:17
 2010-CP-43-648

Jermel Anthony Robinson, 334393
 JAMES J. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Applicant,

vs.

State of South Carolina,

Respondent.

**ADDENDUM / SUPPLEMENT TO
 APPLICATION FOR
 POST CONVICTION RELIEF**

The Applicant, Jermel Anthony Robinson, provides this addendum / supplement to his Application for Post Conviction Relief which he filed on April 3, 2012. He provides the information contained in the following pages and paragraphs by way of an addendum and supplement to his Application, which he would ask that the Court consider at the time of the hearing in this matter. He incorporates all of the attached pages and paragraphs herein as if fully set forth herein verbatim.

JONES, SETH, SHULER & JONES, LLP



Richard T. Jones
 Attorney for Applicant
 5 Law Range – P. O. Box 1268
 Sumter, South Carolina 29151
 (803) 773-8676



Jermel Anthony Robinson
 Applicant

Sumter, South Carolina
January 8, 2012⁴

PCR ATTACHMENT PAGE 1

POST CONVICTION RELIEF ISSUES

10-A: APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND PURSUANT TO ART. I, § 3, 9, AND 14 OF THE S.C. CONSTITUTION:

11-A, ETC: COUNSEL'S REPRESENTATION WAS UNREASONABLE AND PREJUDICIAL ACCORDING TO STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), COUNSEL'S UNDERTAKEN ACTIONS AND FAILURES INCLUDED, AND NOT LIMITED TO THE FOLLOWING CHARGES:

1) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO VIOLATION OF THE LYNCHING IN THE FIRST DEGREE. S.C. SECTION 16-3-210/16-3-230 REQUIRES THAT THE LYNCHING ITSELF BE COMMITTED BY A MOB. MOB IS THE ASSEMBLAGE OF TWO OR MORE PERSONS... APPLICANT'S CO-DEFENDANT WAS ACQUITTED OF LYNCHING IN THE FIRST DEGREE AT THE SAME TRIAL. WHEN TWO DEFENDANTS ARE JOINTLY TRIED FOR LYNCHING BY

PCB ATTACHMENT PAGE 2

REASON OF A MOB, THE CONVICTION OF ONE CANNOT STAND IF THE OTHER HAS BEEN ACQUITTED.

2) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO VIOLATION OF THE LYNCHING IN THE FIRST DEGREE STATUE. S.C. SECTION 16-3-210 MANDATES THAT "ANY PERSON FOUND GUILTY OF LYNCHING IN THE FIRST DEGREE SHALL SUFFER DEATH UNLESS THE JURY, SHALL RECOMMEND THE DEFENDANT TO THE MERCY OF THE COURT..." "THE JURY WAS NEVER GIVEN THE OPPORTUNITY TO EXEROSE IT'S "MERCY DISCRETION." TRIAL COUNSEL SHOULD HAVE BROUGHT TO THE COURT'S ATTENTION, THE RECOMMENDATION OF MERCY, AND REQUESTED THAT MERCY BE GRANTED AS REQUIRED BY STATUE, UPON A FINDING OF GUILTY.

3) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT ON DOUBLE JEOPARDY GROUNDS, TO THE INDICTMENT. TRIAL COUNSEL FAILED TO PROPERLY MOVE TO QUASH THE INDICTMENT IN ACCORDANCE WITH S.C. CODE ANN. § 17-19-90 (2003). THE CHARGES OF LYNCHING IN THE FIRST DEGREE AND MURDER WERE SUBMITTED TO THE JURY, RESULTING IN A DOUBLE JEOPARDY VIOLATION AND INCONSISTENT VERDICT. UNDER THE FIFTH AMENDMENT, THE DOUBLE JEOPARDY CLAUSE BARS SECOND PROSECUTION FOR THE SAME OFFENCE AFTER

PCR ATTACHMENT PAGE 3

ACQUITTAL. NOR SHALL ANY PERSON BE SUBJECTED FOR FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB. MURDER AND LYNCHING IN THE FIRST DEGREE REQUIRE THE SAME FINDINGS FOR GUILT.

4) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY PRESERVE APPLICANT'S ISSUES FOR APPELLATE REVIEW. TRIAL COUNSEL ONLY STATES "WE FEEL THE STATE HASN'T PROVED ITS PRESUMPTION." TR. P. 409 LINES 11-19.

5) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE IMPROPER JURY INSTRUCTION. THE JUDGE'S INSTRUCTION WERE, "NEITHER DEFENDANT CAN BE GUILTY OF LYNCHING IN THE FIRST DEGREE AND MURDER ON THE SAME DEATH. TRIAL COUNSEL'S ERRORS HAD UNDERMINE THE TRIAL PROCEEDING AND PROVIDED THE JURY WITH TWO OPPORTUNITIES TO CONVICT THE APPLICANT OF OFFENSES WHICH REQUIRE THE SAME FINDINGS FOR GUILT.

6) TRIAL COUNSEL FAILED TO OBJECT TO ADMISSION OF THE CO-DEFENDANT'S CONFESSION AGAINST THE APPLICANT. COUNSEL ALLOWED THE STATE TO ADMIT REDACTED CONFESSIONS OF THE APPLICANT AND HIS CO-DEFENDANT INTO EVIDENCE. THE REDACTED

PCB ATTACHMENT PAGE 4

CONFESSIONS DID NOT MEET THE REQUIREMENTS OR STANDARDS AS REQUIRED BY THE SIXTH AMENDMENT CONFRONTATION CLAUSE AND THE FOURTEENTH AMENDMENT DUE PROCESS.

7) APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO BRIEF ALL PROPERLY PRESERVED ISSUES IN THE TRIAL RECORD. APPELLATE COUNSEL'S FAILURE TO BRIEF ALL ISSUES THAT TRIAL COUNSEL OBJECTED TO, DEPRIVED THE APPLICANT OF HIS RIGHTS TO A FULL AND FAIR REVIEW OF THE ERRORS OF LAW COMMITTED DURING HIS TRIAL. THOSE CLAIMS WHICH WERE SIGNIFICANT SHOULD HAVE BEEN BRIEFED.

PCR MEMORANDUM OF LAW

1) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO VIOLATION OF THE LYNCHING IN THE FIRST DEGREE STATUTE, SEC. SECTION 16-3-210/16-3-230... A VIOLATION SUCH AS THIS RENDERES THE CONVICTION "IMPOSSIBLE AT LAW," BECAUSE WHEN A TRIAL INVOLVE CONVICTIONS OF CRIMES THAT ARE MUTUALLY EXCLUSIVE, AN ACQUITTAL OF ALL DEFENDANTS OF THE MOB BUT ONE MEANS THAT THERE COULD HAVE BEEN NO LYNCHING, BECAUSE THERE MUST HAVE BEEN AT LEAST TWO PARTICIPANTS. MOREOVER, THE VIOLATION AROSE IN A JOINT TRIAL FOR A CRIME THAT REQUIRES A UNITED ACT. THE JURY FUNDAMENTALLY MISUNDERSTOOD THE NATURE OF THE CRIME CHARGED AND CONVICTED THE APPLICANT EVEN THOUGH THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT, NAMELY THE CONCERTED ACTION OF AT LEAST TWO PEOPLE. THE LEGISLATURE HAS INCLUDED MOB AS A STATUTORY ELEMENT OF LYNCHING. DUE PROCESS DEMANDS THAT THE PROSECUTOR PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF THE OFFENSE CHARGED. TRIAL COUNSEL'S INEFFECTIVENESS CONTRIBUTED TO APPLICANT'S DENIAL OF A FAIR TRIAL, AND NOT BEING ACQUITTED OF LYNCHING IN THE FIRST DEGREE.

2) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO VIOLATION OF THE LYNCHING IN THE FIRST DEGREE STATUE S.C. SECTION 16-3-210 AS THE STATE DID NOT FOLLOW ANY OF THE SAFEGUARDS OR PROCEDURES SET OUT IN THE STATUE WHICH VIOLATED APPLICANT'S RIGHTS TO A FAIR TRIAL AND DUE PROCESS. THE STATUE HAS ABSOLUTELY NONE OF THE SAFEGUARDS AND PROCEDURES MANDATED BY THE U.S. SUPREME COURT UNDER GREGG V. GEORGIA AND IS, THUS IN VIOLATION OF THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT PROVIDED FOR IN THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION. THE LYNCHING IN THE FIRST DEGREE STATUE IS UNCONSTITUTIONAL BECAUSE IT SHIFTS THE BURDEN FROM THE STATE TO THE DEFENDANT. PRIMARILY, TRIAL COUNSEL NEVER OBJECTED TO THE APPLICANT BEING SENTENCED TO AN UNCONSTITUTIONAL STATUE, THE JURY INSTRUCTIONS OR REQUESTED THAT THE JURY BE PROVIDED WITH THE OPPORTUNITY TO EXERCISE ITS "MERCY" DISCRETION.

3) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT ON DOUBLE JEOPARDY GROUNDS, TO THE INDICTMENT. TRIAL COUNSEL FAILED TO PROPERLY MOVE TO QUASH THE INDICTMENT IN ACCORDANCE WITH S.C. CODE ANN. § 17-19-90 (2003). AN OBJECTION TO DEFECTS WHICH APPEAR ON THE FACE OF AN INDICTMENT MUST BE RAISED BEFORE THE

JURY IS SWORN. S.C. CODE ANN § 17-19-90 (1985).
AFTER ACQUITTAL FOR MURDER, PROSECUTION FOR LYNCHING
IN THE FIRST DEGREE VIOLATED THE DOUBLE JEOPARDY
CLAUSE, REASONING THAT A DEFENDANT SHOULD NOT BE
REQUIRED TO RUN ESSENTIALLY THE SAME GUNNET TWICE.
THERE IS NO DISTINCTION BETWEEN THE REQUIRED FINDINGS
FOR GUILT FOR LYNCHING IN THE FIRST DEGREE AND MURDER.
THE EVIDENCE NEEDED TO CONVICT A DEFENDANT FOR,
MURDER IS THE SAME EVIDENCE NEEDED TO OBTAIN A CONVICTION
FOR LYNCHING IN THE FIRST DEGREE. IN *BLACKBURGER V. U.S.*,
THE UNITED STATES SUPREME COURT STATED: THE APPLICABLE
RULE IS THAT, WHERE THE SAME ACT OR TRANSACTION CONSTITUTES
A VIOLATION OF TWO DISTINCT STATUTORY PROVISIONS, THE TEST
TO BE APPLIED TO DETERMINE WHETHER THERE ARE TWO
OFFENSES OR ONLY ONE IS WHETHER EACH PROVISION REQUIRES
PROOF OF AN ADDITIONAL FACT WHICH THE OTHER DOES NOT.
TRIAL COUNSEL SHOULD AT THE VERY OUTSET, HAVE CHALLENGED
THE INDICTMENT FOR THE CHARGES LYNCHING AND MURDER AND
HAVE HAD ONE COURT REMOVED.

4) TRIAL COUNSEL SHOULD HAVE SPECIFICALLY STATED HIS GROUNDS
FOR OBJECTION AND REQUESTED A DIRECTED VERDICT ON THE GROUNDS
THAT THE STATE VIOLATED CONSTITUTIONAL AND STATUTORY
REQUIREMENTS CONCERNING LYNCHING IN THE FIRST DEGREE

THAT EVERY FACT NECESSARY TO CONSTITUTE THE CRIME BE PROVED BEYOND A REASONABLE DOUBT. TRIAL COUNSEL'S REQUEST WOULD HAVE PRODUCED A DIFFERENT END RESULT OR PRESERVED THE APPLICANT'S ISSUE FOR APPELLATE REVIEW.

5) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE IMPROPER JURY INSTRUCTIONS. APPLICANT'S RIGHT TO A FAIR TRIAL WAS VIOLATED WHEN HE WAS PLACED ON TRIAL FOR BOTH MURDER AND LYNCHING. TRIAL COUNSEL SHOULD HAVE OBJECTED TO THE INSTRUCTIONS AND REQUESTED THAT ONE OFFENSE BE DISMISSED ON THE GROUNDS THAT LYNCHING AND MURDER REQUIRE THE SAME FINDINGS FOR GUILT AND BOTH ARE NOT NECESSARY. ALSO, BOTH CHARGES DERIVED FROM ONE ACT, AND THE SAME COURSE OF CONDUCT, SUPPORTED BY THE SAME EVIDENCE. THIS ERROR PREJUDICED THE APPLICANT'S TRIAL.

6) TRIAL COUNSEL FAILED TO OBJECT TO ADMISSION OF THE CO-DEFENDANT'S CONFESSION AGAINST THE APPLICANT AND ALLOWED THE STATE TO ADMIT REDACTED CONFESSIONS OF THE APPLICANT AND HIS CO-DEFENDANT INTO EVIDENCE. THE REDACTION WAS FUTILE AND DID NOT SERVE ANY PURPOSE IN DISGUIISING WHO THE APPLICANT OR CO-DEFENDANT WERE

REFERRING TO IN THEIR CONFESSIONS. BOTH CONFESSIONS WERE INCRIMINATING AND IMPLICATED APPLICANT AND HIS CO-DEFENDANT. THOUGH THE STATE REPLACED APPLICANT'S AND CO-DEFENDANT'S NAME WITH THE OTHER PERSON, THE JURY CLEARLY KNEW AND UNDERSTOOD WHO WAS BEING REFERRED TO, WHICH DID NOT MEET THE REQUIREMENTS OF THE CONSTITUTION AND DENIED APPLICANT HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL AND THE EFFECTIVE ASSISTANCE OF COUNSEL.

7) APPELLATE COUNSEL FAILED TO BRIEF ALL PROPERLY PRESERVED ISSUES THAT THE TRIAL COUNSEL PLACED OBJECTIONS TO IN THE TRIAL RECORD. THE APPLICANT WAS PREJUDICED BY APPELLATE COUNSEL'S REFUSAL TO BRIEF ISSUES THAT ARE PROPERLY PRESERVED IN THE TRIAL RECORD WHEREAS THE TRIAL COUNSEL PLACED OBJECTIONS TO THEM TO HAVE THE ISSUES PRESERVED FOR APPELLATE COURT REVIEW, VIOLATING THE APPLICANT'S 6TH AND 14TH AMENDMENT RIGHTS, AND CAUSING APPLICANT'S TRIAL ISSUES TO BE DEEM ABANDONED FOR FAILURE TO BRIEF THEM.

PCR ATTACHMENT TABLE OF AUTHORITIES

CASES

CLAIM 1; APPRENDI V. NEW JERSEY, 530 U.S. 466 (2000);

BLAKELY V. WASHINGTON, 542 U.S. 296 (2004);

U.S. V. CRONIC, 104 S.C.T. 2039 (1984);

COMMONWEALTH V. MEDEIROS, SJC - 10442

STATE V. BROWN, 360 S.C. 581, S.E. 2d 392

CLAIM 2; CHUB V. STATE, 401 S.E. 2D 159 (1991);

SIMMONS V. STATE, 503 S.E. 2D 164 (1998);

PATRICK V. STATE, 562 S.E. 2D 609 (2002);

U.S. V. CRONIC, 104 S.C.T. 2039 (1984)

CLAIM 3; BLOCKBURGER V. U.S., 284 US 299 (1932);

U.S.V. OSTEEN, 254 F.3D 521 (2001);

U.S. V. CRONIC, 104 S.C.T. 2039 (1984)

CLAIM 4; DRAYTON V. EVATT, 430 S.E. 2D 517 (1993)

CLAIM 6; BRAYTON V. U.S., 391 U.S. 123 (1968);

LILLY V. VIRGINIA, 119 S.C.T. 1887 (1999);

GRAY V. MARYLAND, 523 US 185 (1998);

STATUTES

S.C. SECTION 16-3-210 AND S.C. SECTION 16-3-230

PCR ATTACHMENTS TRANSCRIPT EVIDENCE PAGE 1

CLAIM 1; THE SOLICITOR STATES "LYNCHING
IS WHEN TWO OR MORE PEOPLE GET
TOGETHER."

TR. P. 130 LINES 21-23

THE JUDGE'S INSTRUCTIONS TO THE JURY
WERE "THE STATE MUST PROVE BEYOND
A REASONABLE DOUBT; ONE, ACT OF
VIOLENCE, TWO INFLECTED BY A MOB."

TR. P. 474 LINES 1-9

CLAIM 2; BEGINNING OF JURY INSTRUCTIONS
TR. P. 456 - 480

BEGINNING OF SENTENCING

TR. P. 490 - 507

CLAIM 3; TRIAL COUNSEL'S FAILURE TO OBJECT
TO THE INDICTMENT
TR. P. 99 LINES 9-19, TR. P. 118 LINES 6-15
TR. P. 119 LINE 1

CLAIM 4; TRIAL COUNSEL'S FAILURE TO PRESERVE ISSUE
FOR APPELLATE REVIEW.

PCR ATTACHMENT TRANSCRIPT EVIDENCE CONT'D PAGE 2

SEE: STATE'S FINAL BRIEF (COURT OF APPEALS);
AND TR. P. 409 LINES 11-19

CLAIM 5; TRIAL COUNSEL WAS INEFFECTIVE FOR
FAILING TO OBJECT TO THE IMPROPER
JURY INSTRUCTION
TR. P. 477 LINES 2-25

PCR ATTACHMENT

PLAIN ERROR; FEDERAL RULES OF Crim. Proc. 52(B)
AND S.C. RULES OF CIVIL PROC. RULE 61

FAILURE TO OBJECT TO SENTENCING ERRORS IN THE DISTRICT COURT CONSTITUTES WAIVER OF THE RIGHT TO APPEAL THOSE ISSUES, IN THE ABSENCE OF "PLAIN ERROR."
U.S. V. WALKER, 112 F.3d 163, 166 (4th Cir. 1997);
U.S. V. GRUBB, 11 F.3d 426, 440 (4th Cir. 1993);

PLAIN ERROR IN THE SENTENCING CONTEXT IS ERROR "SO OBVIOUS AND SUBSTANTIAL THAT FAILURE TO NOTICE AND CORRECT IT WOULD AFFECT THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS."
U.S. V. KANT, 974 F.2d 559, 565 (4th Cir. 1992).

FEDERAL RULE OF CRIMINAL PROCEDURE 52(B) PROVIDES:
 "PLAIN ERRORS OR DEFECTS AFFECTING SUBSTANTIAL RIGHTS MAY BE NOTICED ALTHOUGH THEY WERE NOT BROUGHT TO THE ATTENTION OF THE COURT."

RULE 52(B) DEFINES A SINGLE CATEGORY OF FORFEITED-BUT-REVERSIBLE ERROR.

PCR ATTACHMENT (PLAIN ERROR CONT'D)

PLAIN ERROR IN THE SENTENCING PHASE OF APPLICANT'S TRIAL WAS ERROR SO OBVIOUS AND SUBSTANTIAL THAT FAILURE TO NOTICE IT AND CORRECT IT RESULTED IN PREJUDICE.

THIS ERROR VIOLATED THE APPLICANT'S 6th and 14th AMENDMENT RIGHTS. THE JURY IN THIS CASE WAS NEVER INFORMED OF THE RECOMMENDATION OF MERCY NOR WERE THEY PROVIDED WITH THE OPPORTUNITY TO EXERCISE DISCRETION IN GRANTING MERCY TO THE APPLICANT.

THIS CONSTITUTED PLAIN ERROR IN VIOLATION OF THE LYNCHING IN THE FIRST DEGREE S.C. SECTION 16-3-210 BECAUSE THE STATUTE MANDATES THAT "ANY PERSON FOUND GUILTY OF LYNCHING IN THE FIRST DEGREE SHALL SUFFER DEATH UNLESS THE JURY, SHALL RECOMMEND THE DEFENDANT TO THE MERCY OF THE COURT..." TRIAL COUNSEL FAILED TO ARGUE MERCY FOR THE APPLICANT OR TO REQUEST A JURY INSTRUCTION REGARDING THE RECOMMENDATION OF MERCY. THE APPLICANT'S RIGHTS TO A FAIR SENTENCING AND SUBSTANTIAL RIGHTS WERE EXTREMELY AFFECTED, IN WHICH HAD THE JURY BEEN GIVEN THE OPPORTUNITY TO EXERCISE THE RECOMMENDATION OF MERCY, THE APPLICANT COULD HAVE RECEIVED A LESSER SENTENCE.

PCR ATTACHMENT (PLAIN ERROR CONT'D)

SEE CHUB V. STATE, 303 S.C. 395, 401 S.E. 2d 159 (1991);
SIMMONS V. STATE, 331 S.C. 333, 503 S.E. 2d 164 (1998);
PATRICK V. STATE, 562 S.E. 2d 609 (2002). THIS
 ERROR SERIOUSLY UNDERMINED THE SENTENCING PHASE
 OF THE APPLICANT'S TRIAL. AN ERROR IN LAW AND
 PROCEDURE THAT IS MANDATED BY STATUTE, AND MOST
 IMPORTANTLY AN ERROR WHICH SERIOUSLY AFFECTED
 THE FAIRNESS OF THE APPLICANT'S SENTENCING.

IF LEGAL RULES WAS VIOLATED DURING DISTRICT COURT
 PROCEEDINGS AND IF THE DEFENDANT DID NOT WAIVE
 THE RULE, THERE HAS BEEN "ERROR" WITHIN THE MEANING
 OF PLAIN ERROR RULE DESPITE THE ABSENCE OF TIMELY
 OBJECTION. FED. RULES CR. PROC. RULES 52(B) 18 USCA

WHEN AN IMPROPER JURY INSTRUCTION IS GIVEN,
 THE DEFENDANT MUST OBJECT TO PRESERVE THE RIGHT
 TO FULL REVIEW (APPELLATE). IF THE DEFENDANT
 FAILS TO OBJECT, THE OBJECTION WILL BE DEEMED
 WAIVED IN THE ABSENCE OF "PLAIN ERROR" SEE
FED. R. CRIM. P. 52(B) AND U.S. V. OLANO, 507 U.S. 725,
731-32 (1993).

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT
2007-GS-43-816

The State of South Carolina,

CL -
SUMMIT, S.C.

vs.

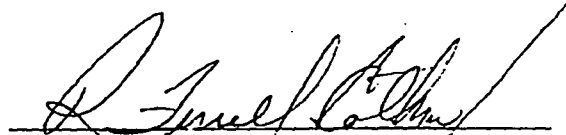
ORDER

Jermel Anthony Robinson,

Defendant.

This matter came before me by way of a motion filed by the Defendant on May 1, 2009 to vacate sentence and for a new trial. The Defendant was found guilty by a jury of Attempted Armed Robbery While Armed with a Handgun, Possession of a Firearm During the Commission of a Violent Crime, Possession of a Pistol by One less than 18 Years of Age, and Lynching in the 1st Degree. After considering the Defendant's Motion and memoranda submitted in its support, the Motion is DENIED.

AND IT SO ORDERED.



The Honorable R. Ferrell Cothran, Jr.
THIRD JUDICIAL CIRCUIT

Manning, South Carolina

May 15, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

The State,)

vs.)

Jermel Anthony Robinson,)

Defendant)

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRD JUDICIAL CIRCUIT
2007-GS-43-816**MOTION TO VACATE SENTENCE
OR FOR NEW TRIAL****TO: W. HARRY CONNER, JR., ASST. SOLICITOR, THIRD JUDICIAL CIRCUIT**

WHEREAS, the above-named defendant was indicted for Murder, Attempted Armed Robbery While Armed with Handgun (2 counts), Possession of a Firearm During Commission of a Crime of Violence, Possession of Pistol by One Less Than 18 Years of Age, and Lynching (1st degree); and

WHEREAS, said defendant was found guilty by a jury of Attempted Armed Robbery While Armed With Handgun (1 count), Possession of a Firearm During Commission of a Crime of Violence, Possession of Pistol by One Less Than 18 Years of Age, and Lynching 1st degree; and

WHEREAS, the defendant believes that the sentence for the Lynching (1st degree) charge in this case should be vacated or that, in the alternative a new trial should be granted to the defendant;

NOW, the defendant moves this Honorable Court for an Order to Vacate the sentence for Lynching (1st degree) or, in the alternative, for a new trial. The defendant submits the following grounds for its motion:

I. THE COURT SENTENCED THE DEFENDANT PURSUANT TO AN UNCONSTITUTIONAL STATUTE

A. *The South Carolina Lynching (1st Degree) Statute Violates the Eighth and Fourteenth Amendments of the United States Constitution*

Section 16-3-210 of the South Carolina Code of Laws – “Lynching in the First Degree” is unconstitutional under the Eighth and Fourteenth Amendments of the Constitution of the United States. The Supreme Court of the United States in *Gregg v. Georgia*, 428 U.S. 153, 9 S.Ct. 2909 (1976) examined the constitutionality of the imposition of the sentence of death for the crime of murder under Georgia law. The petitioner in that case, Troy Gregg, was convicted of armed

robbery and murder and sentenced to death. Georgia law provided for a bifurcated scheme whereby the jury first determined the guilt or innocence of the petitioner. Then, after the jury having found the defendant guilty of armed robbery and murder, "the trial judge instructed the jury that it could recommend either a death sentence or a life prison sentence on each count." *Id* at 161. The judge instructed the jury that it must find beyond a reasonable doubt at least one of a number of aggravating circumstances before recommending the death penalty for the petitioner. The Court upheld the sentence of death in part because Georgia law had been amended after the case of *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 to provide for certain safeguards and procedures so that mitigating and aggravating factors could be considered before imposing the most harsh penalty of death. Referring to *Furman* the Court explained that "the concerns expressed in *Furman* that the death penalty not be imposed arbitrarily or capriciously can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance, concerns best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of that information." *Id* at 2917, 2918.

The South Carolina Lynching in the First Degree statute mandates that "any person found guilty of lynching in the first degree shall suffer death unless the jury shall recommend the defendant to the mercy of the court." *Section 16-3-210 of the S.C. Code of Laws*. The statute has absolutely none of the safeguards and procedures mandated by the United State Supreme Court under *Gregg v. Georgia* and is, thus, in violation of the prohibition against cruel and unusual punishment provided for in the Eighth and Fourteenth Amendments of the Constitution.

B. The South Carolina Lynching First Degree Statute is Unconstitutional Because it Shifts the Burden of Proof from the State to the Defendant

In mandating death upon a verdict of guilty unless the jury recommends the defendant to the mercy of the court, the Lynching (1st degree) statute places an unconstitutional burden on the defendant. Rather than requiring the State to present reasons, aggravating circumstances, etc., for the jury to recommend imposing the death penalty, the statute places the burden on a

defendant to show why he or she should be granted mercy and not be executed. Moreover, in the trial of the State of South Carolina vs. Jermel Robinson, the Court did not follow any of the procedures set out in the statute. Primarily, the Court never provided the jury with the opportunity to exercise its "mercy" discretion.

II. THE COURT IMPROPERLY SUBMITTED THE CHARGES OF BOTH LYNCHING 1ST DEGREE AND MURDER TO THE JURY, RESULTING IN A DOUBLE JEOPARDY VIOLATION AND A NONSENSICAL VERDICT

Since there were two defendants who were charged in the same incident, there is essentially no distinction between the requirements for Lynching (1st degree) and for Murder in this case. For the count of Murder the indictment in this case required that either Jackson or Robinson "did...feloniously, willfully and with malice aforethought, either expressed or implied, kill one Dominique Wilson." The Lynching (1st degree) charge in the indictment required that Robinson or Jackson "did assemble without authority of law with a premeditated purpose and intent of committing an act of violence which result in...death." Thus, in both counts the defendants had to basically have some plan to do harm to the victim (e.g. rob him at gunpoint) which resulted in the victim's death.

The submission of the charges of both Lynching (1st degree) and Murder to the jury is analogous to having submitted both the charges of both Attempted Murder and Assault and Battery with Intent to Kill to a jury. In *State v. Sutton*, 340 S.C., 293, 532 S.E.2d 283 (2000) Michael Sutton, the Respondent, was indicted for and convicted of Assault and Battery and Attempted Murder. The Court of Appeals determined there was a double jeopardy violation since the two charges are essentially the same. The South Carolina Supreme Court agreed. Further, the South Carolina Supreme Court "declined to recognize a separate offense of attempted murder" as both were unnecessary. Similarly, the offenses of Lynching (1st degree) and Murder are duplicative under South Carolina law and both are not necessary.

The defendant, also, moves to have the sentence for Lynching (1st degree) vacated because the jury's verdict is nonsensical. In finding Robinson not guilty of murder the jury

determined that he did not "feloniously, willfully and with malice aforethought, either expressed or implied" kill Dominique Wimberly, which is inconsistent with its finding that Robinson is guilty of Lynching (1st degree). The defendant asserts that, in light of these contradictory findings by the jury, that the Court should err in favor of the Robinson and vacate the sentence for Lynching (1st degree), particularly give the Constitution's presumption of innocence requirement for criminal defendants.

The defendant respectfully submits that the Court was in error in submitting two different charges which, in this case, essentially require the same findings for guilt, to the jury. Further, the defendant submits that the jury's verdict insofar as a finding of not guilty for Murder and guilty for Lynching (1st degree) is nonsensical and contradictory and the Court should, therefore, vacate the sentence.

For the reasons set forth, the defendant moves the Court to vacate the sentence for Lynching (1st degree) or, in the alternative, to grant a new trial.

Respectfully Submitted,



David Sullivan
Attorney for Defendant Jermel Robinson
Office of the Sumter County Public Defender
141 North Main Street, Rm. 102
Sumter, SC 29150
803-436-2424 phone
803-436-2423 fax

Sumter, SC
May 1, 2009

16-3-95. Infliction or allowing infliction of great bodily injury upon a child; penalty; definition; corporal punishment and traffic accident exceptions.

(A) It is unlawful to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

(B) It is unlawful for a child's parent or guardian, person with whom the child's parent or guardian is cohabitating, or any other person responsible for a child's welfare as defined in Section 20-7-100(3) knowingly to allow another person to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in loco parentis in a manner which does not cause great bodily injury upon a child.

(E) This section does not apply to traffic accidents unless the accident was caused by the driver's reckless disregard for the safety of others.

HISTORY: 2000 Act No. 261, § 2.

Cross References—

Classification of offense specified in subsections (2) and (3) of this section as Class C felony, see § 16-1-501(c).

Classification of offense specified in subsection (1) of this section as Class F felony, see § 16-1-501(f).

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see § 20-7-123.

Foster care placement with certain persons prohibited, see § 20-7-1612.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see § 20-7-2800.

As to denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see § 20-7-2810.

As to denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see § 20-7-2830.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see § 20-7-2900.

Commission of this crime within specified radius of child day care center as separate offense, see § 20-7-3093.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see § 20-7-3007.

Post conviction check prior to initial employment of teachers, see § 20-20-40.

Research and Practice References— **EXHIBIT 2**

Infants 6-13, 20.

WEX LAW Topic No. 211

1 N. Infants §§ 5, 92 to 94, 95 to 98, 100 to 102.

ARTICLE 3

LYNCHING.

- 16-3-210 Lynching in the first degree
- 16-3-220 Lynching in the second degree
- 16-3-230 "Mob" defined
- 16-3-240 Members of mob guilty as principals
- 16-3-250 Bureaus of sheriff and volunteer with respect to acts of violence committed by mob
- 16-3-260 School's student's power to conduct investigation
- 16-3-270 Last liability of members of mob

§ 16-3-210. Lynching in the first degree.

Any act of violence inflicted by a mob upon the body of another person which results in the death of the person shall constitute the crime of lynching in the first degree and shall be a felony. Any person found guilty of lynching in the first degree shall suffer death unless the jury shall recommend the defendant to the mercy of the court in which event the defendant shall be confined at hard labor in the State Penitentiary for a term not exceeding forty years or less than five years at the discretion of the presiding judge.

HISTORY: 1982 Code § 16-57; 1982 Code § 16-57; 1951 (47) 235.

Cross References—

Liability of county for lynching, see § 15-51-210.

Offenses specified in this section as exempt from classification of felonies and misdemeanors, see § 16-1-104(f).

Severing, see §§ 17-25-20 et seq.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see § 20-7-123.

Foster care placement with certain persons prohibited, see § 20-7-1612.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see § 20-7-2800.

As to denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see § 20-7-2810.

As to denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see § 20-7-2830.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see § 20-7-2900.

Note 1. By firing his gun at least three times and hitting three other persons, petitioner committed three separate violations of § 16-3-250, for which the plain text of the statute indicates the General Assembly has indicated multiple punishments. *Nuovo v. Exalt*, 1993, 831 F. Supp. 518.

§ 16-3-240. Members of mob guilty as principals.
It is permissible to infer that all persons present as members of a mob when an act of violence is committed have aided and abetted the crime and are guilty as principals.
HISTORY: 1962 Code § 16-59.1; 1952 Code § 16-59.1; 1951(47) 233; 1987 Act No. 95 § 1.

Cross References—

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see § 20-7-123.
Foster care placement with certain persons prohibited, see § 20-7-1642.
Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see § 20-7-2890.
As to denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see § 20-7-2810.
As to denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see § 20-7-2850.
No license or registration will be issued in any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see § 20-7-2900.
Commission of this crime within specified radius of child day care center as separate offense, see § 20-7-3093.
No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see § 20-7-3097.
Past conviction clerk prior to initial employment of teachers, see § 50-26-40.

Research and Practice References—

Criminal Law § 80.
WESTLAW Topic No. 110.
33A Am Jur 2d, Mobs and Riots § 31.
C.J.S. Criminal Law §§ 142, 143.

§ 16-3-250. Duties of sheriff and solicitor with respect to acts of violence committed by mob.

When any mob commits an act of violence the sheriff of the county wherein the crime occurs and the solicitor of the circuit wherein the county is located shall act as speedily as possible to apprehend and identify the members of the mob and bring them to trial.

HISTORY: 1982 Code § 16-59.2; 1952 Code § 16-59.2; 1951 (47) 233.

Research and Practice References—

Director and Prosecuting Attorney § 8.
Sheriffs and Constables § 86.
WESTLAW Topic Nos. 131, 353.
C.J.S. Sheriff and Prosecuting Attorneys § 20 to 21, 29 to 30.

§ 16-3-230. "Mob" defined.

A "mob" is defined for the purpose of this article as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another.

HISTORY: 1962 Code § 16-59; 1952 Code § 16-59; 1951 (47) 233.

Research and Practice References—

Riot § 1.
WESTLAW Topic No. 341.
33A Am Jur 2d, Mobs and Riots § 7 et seq, 53 et seq.
C.J.S. Riot; Insurrection §§ 2 to 10.

CASE NOTES

In general

Persons are assembled. *State v. Barksdale* (S.C. App. 1993) 311 S.C. 210, 428 S.E.2d 498, rehearing denied.

1. In general

In a prosecution for first degree lynching, § 16-3-210, the defendants were not entitled to a directed verdict based on the state's failure to show that they had assembled as part of a mob for the purpose and with the intent of committing an act of violence, even though one of the state's key witnesses testified that "it was just a fight," where the defendants returned to the victim after their initial confrontation with the intent of fighting. *State v. Barksdale* (S.C. App. 1993) 311 S.C. 210, 428 S.E.2d 498, rehearing denied.

To constitute a mob as defined by § 16-3-230 for purposes of first degree lynching, § 16-3-210, an assemblage need not have formed with the premeditated purpose and intent of committing an act of violence on the person of another, but may form the requisite purpose and intent after the partici-

Arson

SECTION 3. Section 16-11-110 of the 1976 Code, as last amended by Act 224 of 2002, is further amended to read:

"Section 16-11-110. (A) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, building, structure, or any property whether the property of himself or another, which results, either directly or indirectly, in the death of a person is guilty of the felony of arson in the first degree and, upon conviction, must be imprisoned not less than thirty years.

(B) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, building, structure, or any property whether the property of himself or another, which results, either directly or indirectly, in serious bodily injury to a person is guilty of the felony of arson in the second degree and, upon conviction, must be imprisoned not less than three nor more than twenty-five years.

(C) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, building, structure, or any property, whether the property of himself or another, which results, either directly or indirectly, in bodily injury to a person or damage to the property is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

(D) For purposes of this section, 'damage' means an application of fire or explosive that results in burning, charring, blistering, scorching, smoking, singeing, discoloring, or changing the fiber or composition of a building, structure, or any property specified in this section."

~~Lynching~~ assault and battery by mob

SECTION 4. Section 16-3-210 of the 1976 Code is amended to read:

"Section 16-3-210. (A) For purposes of this section, a 'mob' is defined as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another.

(B) Any act of violence inflicted by a mob upon the body of another person, which results in the death of the person, shall constitute the felony crime of assault and battery by mob in the first degree and, upon conviction, an offender shall be punished by imprisonment for not less than thirty years.

(C) Any act of violence inflicted by a mob upon the body of another person, which results in serious bodily injury to the person, shall constitute the felony crime of assault and battery by mob in the second degree and, upon conviction, an offender shall be punished by imprisonment for not less than three years nor more than twenty-five years.

(D) Any act of violence inflicted by a mob upon the body of another person, which results in bodily injury to the person, shall constitute the misdemeanor crime of assault and battery by mob in the third degree and, upon conviction, an offender shall be punished by imprisonment for not more than one year.

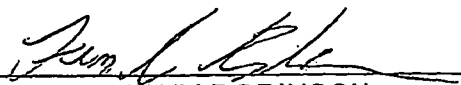
(E) When any mob commits an act of violence, the sheriff of the county where the crime occurs and the solicitor of the circuit where the county is located shall act as speedily as possible to apprehend and

STATE OF SOUTH CAROLINA)

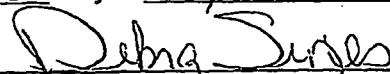
COUNTY OF SUMTER)

VERIFICATION

PERSONALLY APPEARED Jermel Anthony Robinson, who, being duly sworn deposes and says that he has read the foregoing Addendum / Supplement to Application for Post Conviction Relief and the facts stated therein are true of his own knowledge; save for those facts stated on information and belief and as to them, he believes them to be true.


JERMEL ANTHONY ROBINSON

SWORN to before me this 14
8 day of Jan., 2013.

 L.S.
Notary Public for South Carolina
My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

2014 JAN 13

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

AM 11:18 2012-CP-43-648

JERMEL ANTHONY ROBINSON

Plaintiff,

vs.

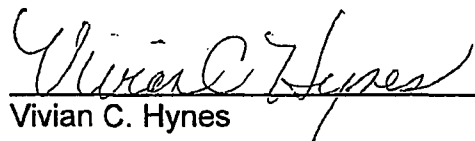
STATE OF SOUTH CAROLINA,

Defendant.

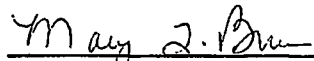
CERTIFICATE OF SERVICE
BY MAIL

The undersigned employee of Jones, Seth, Shuler & Jones, LLP, does hereby certify that service of the Addendum / Supplement to Application for Post Conviction Relief in the above-captioned matter was made upon the following counsel of record by placing a copy of same in the United States Mail, postage prepaid, and return address clearly indicated on said envelope on January 13, 2014, to the following address:

Daniel Gourley, Esquire
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211


Vivian C. Hynes

SWORN to before me this
13th day of January, 2014.


Notary Public for South Carolina L.S.
My Commission Expires: 3/9/2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

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

Jermel Anthony Robinson, 334393,

) Case No. 2012-CP-43-648
)

) Applicant,
)

) v.
)

) RETURN
)

) State of South Carolina,
)

) Respondent.
)

In response to the post-conviction relief application filed April 3, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was indicted during the February 2009 term of the Sumter County Grand Jury for murder, two counts of attempted armed robbery (2007-GS-43-0816B), possession of a firearm during the commission of a crime of violence (2007-GS-43-0816C), possession of a pistol by one less than 18 years of age (2007-GS-43-0815D), and lynching – 1st degree (2007-GS-43-0816A). David Sullivan, Esquire, represented him. Applicant proceeded to trial, and on April 22, 2009, he was convicted by a jury of lynching, attempted armed robbery, and the two gun charges. The Honorable R. Ferrell Cothran, Jr. sentenced the Applicant to thirty-seven years for lynching, twenty years for attempted armed robbery, and five years each for the gun charges. The sentences are to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Robinson, Unpublished Op. No. 2011-UP-435 (S.C. Ct. App. filed October 11, 2011).

II.

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

1. "5th Amendment, United States Constitution Violation"
 - a. "Denial of Protection against Double Jeopardy"
2. "6th Amendment, United States Constitution Violation"
 - a. "Denial of Effective Assistance of Competent"
3. "14th Amendment, United States Constitution Violation"
 - a. "Denial of Equal Protection of the law and"

For the purpose of this Return, the Respondent incorporates the Sumter County Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript, and the appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Applicant contends that he was subjected to double jeopardy. This issue is not one that can be raised in a post-conviction relief proceeding. Post-conviction relief is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellars v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). Nevertheless, Respondent submits that Applicant's allegation of a double jeopardy violation is without merit.

The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, Respondent moves for a summary dismissal of the double jeopardy allegation because it is a direct appeal issue and because no constitutional violations occurred in this case.

IV.

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).

V.

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

VI.

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

[signature page to follow]

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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By:

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Attorneys for the Respondents

July 26, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2012-CP-43-648

JERMEL ANTHONY ROBINSON, 334393,))

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Richard T. Jones, Esquire
Jones Seth Shuler & Killen, LLP
Post Office Box 1268
Sumter, SC 29151-1268

DATED this 6th day of August, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)

2) IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF SUMTER)

4
5 JERMEL ANTHONY ROBINSON,)

6 Plaintiff,)

7 Vs.) CASE NO. 2012-CP-43-648

8 THE STATE,)

9 Defendants.)

10
11 FEBRUARY 24, 2014

12 SUMTER, SOUTH CAROLINA

13
14 HONORABLE GEORGE C. JAMES, JR, JUDGE

15
16 A P P E A R A N C E S:

17 BY: RICHARD T. JONES, ESQUIRE

18 Attorney for the Plaintiff

19 BY: DANIEL F. GOURLEY, ESQUIRE

20 Attorney for the Defendants

21
22
23 KATHERINE F. TIBBS

24 REGISTERED PROFESSIONAL REPORTER

25

1			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
3	JERMEL ROBINSON				
4	Mr. Jones	1		42	
5	Mr. Gourley		39		
6	DAVID SULLIVAN				
7	Mr. Gourley	45		58	
8	Mr. Jones		50		
9	Ruling of the Court		65		
10	Certificate of Reporter		69		
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EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
2				
3	D-1	Order		8
4	D-2	Motion		8
5	D-3	Table of case law		45
6				
7				
8				
9				
10				
11				
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JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 THE COURT: This is Jermel Anthony Robinson. State
2 your name, please.

3 MR. ROBINSON: Jermel Anthony Robinson.

4 JERMEL A. ROBINSON,
5 being first duly sworn, was examined and testified as
6 follows:

7 THE BAILIFF: State your name and spell your last
8 for the record.

9 A Jermel Anthony Robinson. R-O-B-I-N-S-O-N.

10 DIRECT EXAMINATION BY MR. JONES:

11 Q All right. Mr. Robinson, where are you now
12 incarcerated?

13 A Lee Correctional Institution.

14 Q All right. And how long have you been there?

15 A About five years now.

16 Q Okay. What is your education level?

17 A I made it to my junior year in high school.

18 Q Where did you go to high school?

19 A Sumter High.

20 Q Are you from Sumter?

21 A Yes, I am.

22 Q Your family from Sumter?

23 A Yes, sir, they are.

24 Q Okay. Now ---

25 MR. JONES: Judge, I talked to Mr. Gourley about

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 this before we started.

2 THE COURT: Okay.

3 MR. JONES: In Mr. Robinson's application, he
4 indicated his grounds. One of them, of course, is
5 denial affect of assistance of counsel. But he also has
6 in there denial of equal protection of double jeopardy
7 and denial of equal protection of the law.

8 I've talked to Mr. Robinson about that and he
9 understands that's not a proper issue for a PCR. What
10 he explains to me is that would be part of his argument
11 as to the affect of assistance of counsel.

12 THE COURT: All right.

13 Q Now, Mr. Robinson, you were before the Sumter Court
14 sometime back in 2009; is that correct?

15 A Yes, sir, I was.

16 Q Okay. And you were convicted of certain crimes; is
17 that correct?

18 A Yes, sir.

19 Q And who was your attorney?

20 A Mr. Sullivan.

21 Q David Sullivan?

22 A David Sullivan.

23 Q All right. And was he -- did you retain him as a
24 lawyer or was he a public defender or how did he ---

25 A He was appointed as a public defender.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 Q Okay. All right. And what charges were you
2 convicted of?

3 A Lynching in the first degree; one count of
4 attempted armed robbery; two possessions of a handgun;
5 and that's all.

6 Q All right. And what did you receive as a sentence?

7 A Thirty-seven years.

8 Q Okay.

9 A Concurrent.

10 Q Sir?

11 A Thirty-seven years ran concurrent. Twenty years
12 for the attempted armed robbery and five years for both
13 handguns. All sentences were ran concurrent.

14 Q All right. Did you go through with a trial or did
15 you plead guilty?

16 A Jury trial.

17 Q All right. All right. Now, you have indicated
18 that you feel that Mr. Sullivan did not represent you
19 adequately in your application. Tell us the different
20 grounds from which you feel that your application should
21 be granted.

22 A Okay. Before I begin, I have one request and it's
23 kind of for the record. It's under Article 1, Section
24 14, That's any person charged with an offense -- with an
25 offense shall enjoy the rights to be fully heard in his

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES.

1 defense by himself or by his counsel or by both." And I
2 just respectfully request that can exercise that right
3 today.

4 Q Say that again, I'm sorry.

5 A All right. I said, under Article 1, Section 14, it
6 states, "Any person charged with an offense shall enjoy
7 the rights to be fully heard in his defense by himself,
8 by his counsel, or by both." And I'm just requesting to
9 let me exercise that right.

10 Q All right.

11 A Thank you. In regards to my first claim, claim
12 one, this violation, it pertains to the recommendation
13 of mercy ---

14 THE COURT: Now, if you're going to read, you're
15 going to have to read slowly.

16 A Yes, sir.

17 THE COURT: Because if you want it to be on the
18 record, you're going to have to read slowly enough for
19 her to hear.

20 A Yes, sir.

21 THE COURT: And follow you. So don't read it as if
22 you were reading it to yourself because that's way too
23 fast.

24 A Yes, your Honor.

25 THE COURT: Okay.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 A I'll start over.

2 THE COURT: All right.

3 A In regards to this first claim, this violation
4 pertains to the recommendation of mercy that is mandated
5 by the lynching in the first degree statute, Section
6 16-3-210, and that's before it was amended in the year
7 2010.

8 My trial counsel was ineffective for failing to
9 argue for mercy in **Chubb verses State**. During the
10 course of my trial and sentencing, the State did not
11 follow any of the safeguards or procedures setout in
12 that statute. And my trial counsel never made any
13 objections or requests pertaining to the recommendation
14 of mercy which I was entitled to. You can see **Padgett**
15 **verses State** and **Gregg verses Georgia**.

16 Also the transcript will reflect the jury
17 instructions on transcript page 456 through 480 and
18 sentencing on the transcript page 490 through 507. And
19 you will see my counsel never made any objections or
20 requests in regards to mercy.

21 THE COURT: Mercy?

22 A Yes.

23 Q You're talking about the lynching charge?

24 A Yes, sir, that's what I'm talking about.

25 Q Okay.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 A All right. This technical error, it denied me due
2 process and my rights to a fair trial and sentencing.
3 My counselor's errors had prejudiced the outcome of my
4 trial and sentencing because the jury was never given
5 the opportunity to exercise mercy discretion.

6 Now, I have trial counsel argue for mercy or at the
7 time for objection to do so, the outcome of the
8 proceeding could have been different because I could
9 have received a lesser sentence. And you can see
10 **Simmons verses State and Blakely verses Washington.**

11 Furthermore, this error was not the result of trial
12 strategy or a strategic decision because my trial
13 counsel was aware that the determination of guilt and
14 the recommendation of mercy should have been made in the
15 proceeding by the same jury.

16 THE COURT: You need to back off a little bit from
17 the microphone. Okay.

18 A All right.

19 THE COURT: Go ahead.

20 A You can see -- see Exhibits 1, 2, and 3. I have
21 those here.

22 THE COURT: Are they in my packet?

23 MR. JONES: No, your Honor, I don't have any copies
24 of those.

25 A I do have copies.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 MR. JONES: These are actually -- is the order --
2 it's a motion to vacate sentence from new trial filed by
3 Mr. Sullivan and looks like an order of Judge Cothran
4 denying that. And then -- let me hand you this.
5 They're attached to the addendum that I've served. And
6 they're in the Court's file.

7 THE COURT: They are. Could you tell me what they
8 are a part of?

9 MR. JONES: Yes, sir. They're a part of the -- it's
10 titled addendum -- addendum/supplement the application
11 for postconviction relief filed January 13, 2014.

12 THE COURT: Okay. Well, I don't have that. Now, it
13 maybe in the local Clerk of Court's file, but all I've
14 got is what the attorney general has presented.

15 MR. JONES: Okay.

16 THE COURT: Are they going to bring the files in
17 here?

18 THE BAILIFF: I don't think so, Judge. You want me
19 to go check with them?

20 THE COURT: Yes. It probably would help to have
21 that if somebody's going to try to introduce it. It's
22 2012-648. Okay. Are you going to offer those into
23 evidence, Mr. Jones?

24 MR. JONES: Yes, Your Honor.

25 THE COURT: Any objection from the State?

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 MR. GOURLEY: No, Your Honor.

2 THE COURT: Okay. Those can be marked and I'll
3 receive those into evidence.

4 (WHEREUPON, Defendant's Exhibits 1 and 2 was marked
5 and entered)

6 THE COURT: All right. Exhibit 1 is an order signed
7 by Judge Cothran May 15, 2009. Exhibit 2, appears to be
8 a motion to vacate sentence or for new trial. And is
9 there an Exhibit 3 or just 2?

10 MR. JONES: Judge, if the Court's okay with it, we
11 can make them all one exhibit.

12 THE COURT: We'll just keep them separate.

13 MR. JONES: Okay.

14 THE COURT: Since the stickers are on there.
15 Exhibit 1 is the order denying the motion for new trial.
16 Exhibit 2 is the motion to vacate sentence or for a new
17 trial.

18 All right. You can continue.

19 MR. JONES: Thank you, Judge.

20 RESUME DIRECT EXAMINATION BY MR. JONES:

21 Q Mr. Robinson, you've entered those into evidence,
22 now, have you discussed the lynching claim -- go on with
23 your ---

24 A All right. I was going -- Your Honor, you said you
25 was going to have those all together as one exhibit?

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 THE COURT: No, they're two separate exhibits.
2 Order and the motion.

3 A Right. The reason I ask that is because I
4 submitted Exhibit 2, I have it marked. I was marking
5 the motion to vacate and for a new trial, that was
6 marked as Exhibit 1. Exhibit 2 is the lynching in the
7 first degree statute.

8 THE COURT: Well, that's not what I've marked. The
9 order is number one. The motion and the legal citations
10 are number two. Okay?

11 A Okay. I apologize, Your Honor.

12 THE COURT: All right.

13 A In relation to that offense, the lynching in the
14 first degree, I admitted that exhibit. That Exhibit 1,
15 it would display or it would show that my trial counsel,
16 he filed the post-trial motion. And in that post-trial
17 motion is where he was pretty much arguing the issue of
18 mercy as well. However, he was stating that it was
19 trial error. In that motion, he stated moreover in the
20 trial of the State of South Carolina verses Jermel
21 Robinson, the Court did not follow any of the procedures
22 setout in the statute. Primarily the Court never
23 provided the jury with the opportunity to exercise his
24 mercy discretion. I admitted that to him.

25 THE COURT: Okay.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 A In regards to claim two. My trial counsel was also
2 ineffective for failing to object to the lynching in the
3 first degree statute during the sentencing phase of my
4 trial. My attorney was ineffective for failing to
5 object and allowing me to be sentenced to an
6 unconstitutional statute.

7 The statute was unconstitutional because it has
8 absolutely none of the safeguards or procedures mandated
9 by the United States Supreme Court under **Gregg verses**
10 **Georgia**. And it's thus in violation of the Eighth and
11 Fourteenth Amendments of the United States Constitution.
12 And because it improperly shifts the burden from the
13 State to the defendant requiring the defendant to
14 present mitigating factors ---

15 THE COURT: You need to slow down.

16 A All right. Requiring the defendant to present
17 mitigating factors as to why he should be granted mercy.
18 My trial counsel's errors prejudiced the sentencing
19 phase of my trial. Because had my counsel made a timely
20 objection, the outcome of my sentencing could have been
21 different. Because under the statute, the lynching in
22 the first degree conviction was in violation of the
23 Constitution of the United States and the Constitution
24 or laws of South Carolina.

25 And had counsel conducted a reasonably substantial

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 investigation prior to my trial ---

2 THE COURT: Is this a third ground?

3 A This is the second one, Your Honor.

4 THE COURT: All right. Investigation you said?

5 A Right.

6 THE COURT: It's just kind of hard to follow you
7 when you're reading it. So, I'm the one that you've got
8 to convince. So you need to make sure you read it
9 slowly so I can understand it and the court reporter can
10 hear it.

11 A Yes, Your Honor.

12 THE COURT: Okay. Start that part over again.

13 A Okay. Had counsel conducted a reasonably
14 substantial investigation prior to my trial, it would
15 have revealed that the lynching in the first degree
16 statute is not in compliance with the United States
17 Constitution and the United States Supreme Court mandate
18 under **Gregg verses Georgia**.. Therefore, the outcome of
19 my sentencing could have been different.

20 But, however, my attorney's errors were not the
21 result of trial strategy or a strategic decision because
22 his post-trial motion shows he was aware of these
23 violations. And that goes back to Exhibit 1 which I've
24 admitted into evidence already.

25 THE COURT: Okay.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 Q Now, let me ask you this. If your attorney make a
2 motion for a directed verdict at trial?

3 A Yes, he did.

4 Q All right. And do you recall what his motion was
5 like?

6 A When the jury was sent to deliberate, I remember my
7 trial counsel moving for a directed verdict motion and
8 he only stated, "Your Honor, we feel the State hasn't
9 proved this presumption." That was all he stated. That
10 is an issue that I have raised in my application as
11 well.

12 Q Do you need to expand on that issue anymore than
13 what you have said?

14 A Yes, I do.

15 Q Okay.

16 A I'll get to it later on unless you need me to
17 address that right now.

18 THE COURT: You got to answer his questions. This
19 isn't a situation where the floor is turned over to you.
20 This is a question and answer session.

21 A Yes, sir.

22 THE COURT: Mr. Jones, you can either tell him to go
23 the way he wants or answer your questions. But let's
24 have a little flow to it.

25 MR. JONES: Yes, sir.

1 A Yes, Your Honor.

2 Q Go ahead and talk about that point about the
3 directed verdict. What complaints you have on that
4 position.

5 THE COURT: Are we doing three? This is the third
6 ground?

7 MR. JONES: This would be another third.

8 A Yes, Your Honor, it would.

9 THE COURT: Talk to me about the directed verdict
10 motion.

11 A In regards to the directed verdict, when I stated
12 this violation pertains to my trial counsel's failure to
13 preserve my issues for appellate review, my trial
14 counsel was ineffective for failing to properly preserve
15 my issues for appellate review. You can see **Brayton**
16 **verses Evatt**. My counsel only stated to the Judge, we
17 feel the State hasn't proved its presumption. You can
18 see transcript page 409 lines 11 through 19. My trial
19 counsel should have specifically stated his grounds for
20 objection and requested that I be acquitted of lynching
21 in the first degree on the grounds that the State
22 violated constitutional and statutory requirements.
23 That every fact necessary to constitute that crime be
24 proved beyond a reasonable doubt.

25 My trial counsel's errors prejudiced the outcome of

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 my trial because I would have been acquitted of lynching
2 in the first degree or the issue could have been
3 preserved for appellate review and could have been
4 raised on direct appeal.

5 If you see the State's final brief, you'll see that
6 they state the issue isn't properly preserved for
7 appellate review. That's in the State's final brief on
8 direct appeal.

9 Q Now, what complaints other than what you've already
10 discussed would you have about any objections or lack
11 thereof that your attorney made or didn't make as to the
12 jury instructions that the Judge gave to the jury?

13 This would be another claim, Your Honor.

14 THE COURT: Okay.

15 A This would be claim four. In regards to the jury
16 instruction, this violation pertains to my trial
17 counsel's failure to object to the improper jury
18 instruction. My trial counsel was ineffective for
19 failing to object to the improper jury instruction. The
20 Judge's instructions were neither defendant can be
21 guilty of murder and lynching in the first degree on the
22 same death. Neither was it fair to be on trial for
23 murder or lynching.

24 However, my trial counsel should have objected to
25 the instruction and requested that one offense be

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 dismissed on the grounds that the lynching in the first
2 degree -- on the grounds that lynching in the first
3 degree and murder required the same findings for guilt
4 and both were not necessary. The instruction was
5 imbalanced and confusing to the jury and it left me with
6 no option to be found not guilty of both charges.

7 My trial counsel's errors prejudiced the outcome of
8 my trial because it provided the jury with two
9 opportunities to convict me of an offense -- of offenses
10 that are duplicated under South Carolina law and that
11 required the same findings for guilt.

12 Furthermore, the Fifth Amendment requirement is
13 that no one shall be twice put in jeopardy of life or
14 acquitted for an offense and then convicted for the same
15 offense. The charge is murder and lynching derives from
16 one act in the same course of conduct supported by the
17 same evidence. This error was in violation of the Sixth
18 and Fourteenth Amendments.

19 Q All right. Now, if I'm not mistaken, you were
20 found not guilty of murder, but guilty of lynching;
21 correct?

22 A Yes, sir.

23 Q There was a codefendant, too, wasn't there?

24 A Yes, sir.

25 Q A guy named Jackson?

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 A Yes, sir.

2 Q What was Jackson convicted of?

3 A My codefendant, he was convicted for murder; one
4 count of attempted armed robbery; and the two handgun
5 charges.

6 Q Was he convicted of lynching?

7 A No, sir, he wasn't.

8 Q Okay. All right. And how does the fact that he
9 was not convicted of lynching, but you were play into
10 your complaint here about your ---

11 A This would be a separate claim, Your Honor.

12 THE COURT: Number five? Okay.

13 A Yes.

14 THE COURT: And the question, again, please,
15 Mr. Jones, was how does what play a part in the
16 complaint?

17 MR. JONES: The fact that his codefendant was not
18 convicted of lynching, but he was.

19 THE COURT: All right.

20 A This violation arose in a joint trial for a crime
21 that requires the assemblage of two or more people or a
22 united act. My trial counsel was ineffective because he
23 failed to make an objection to the violation of the
24 lynching in the first degree statute. The elements of
25 that offense and that the jury simultaneously acquitted

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 the only other member of the mob. You can see **State**
2 **verses Brown.**

3 My attorney should have requested that I be
4 acquitted of lynching in the first degree specifically
5 on the grounds that the State did not prove this burden
6 beyond a reasonable doubt or that the jury misunderstood
7 the nature of the offense charged. Because the
8 legislature has included mob as a necessary element of
9 lynching in the first degree. And due process demands
10 that the prosecution prove beyond a reasonable doubt
11 every element of the offense charged. See **Commonwealth**
12 **verses Medeiros.** Medeiros is spelled M-E-D-E-I-R-O-S.

13 This error prejudiced me -- my trial counsel's
14 errors prejudiced me in denying me a fair trial under
15 statutory law of the State and the Sixth and Fourteenth
16 Amendments of the United States Constitution.

17 Because my codefendant was acquitted at a joint
18 trial for an offense that requires two or more people to
19 commit an error like this is prejudicial and impossible
20 at law. Because there were two defendants charged in
21 the same incident for a crime that requires two or more
22 people to commit in a joint trial.

23 The transcript will reflect the Solicitor states
24 lynching is when two or more people ---

25 THE COURT: You need to back off from the

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 microphone.

2 A Okay. The Solicitor states, lynching is when two
3 or more people get together. Transcript page -- see
4 transcript page 130, lines 21 through 23. The Judge's
5 instructions to the jury where the State must prove
6 beyond a reasonable doubt, one, act of violence; two,
7 inflicted by a mob. See transcript page 474, lines 1
8 through 9.

9 The outcome of the trial -- the outcome of my trial
10 would have been different because I would not have been
11 convicted of lynching in the first degree and I would
12 not have received the sentence of 37 years.

13 Furthermore, this error was not the result of trial
14 strategy or its strategic decision because my counsel
15 was aware that there were two defendants involved in the
16 same incident concerning the offense lynching in the
17 first degree.

18 My counsel knew there was a requirement of the
19 participation of at least two or more people mandated by
20 statute. My exhibits admitted earlier will reflect that
21 -- will show and prove that.

22 More importantly, my acquittal of murder is
23 contradicting with the findings that I'm guilty of
24 lynching in the first degree.

25 Q And your attorney never raised that issue before

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 the Court?

2 A No, sir, he didn't.

3 Q All right. He didn't raise that in his post-trial
4 motion either?

5 A He made references to it. He stated that the
6 findings as I just stated in the end. He stated that
7 the acquittal of murder and the conviction -- the guilty
8 verdict of lynching in the first degree he stated that
9 it was a contradictory finding. Because the fact that
10 you acquit him for murder, then he turn around and said
11 he's guilty of lynching. They require the same findings
12 for guilt. The elements in those crimes are the same.
13 So he argued that in that motion, but it wasn't
14 presented at trial.

15 Q Okay. You -- in your application you've also
16 listed this attorney Robert Dudek on the appeal. What
17 complaint do you have about your appeal to the appellate
18 attorney? This was appealed to the South Carolina Court
19 of Appeals, I believe.

20 A Yes, sir, it is.

21 Q And that appeal was denied if I'm not mistaken?

22 A Yes, sir, it was.

23 Q Okay. What claim do you have against Mr. Dudek?

24 A Okay. This would be a separate claim, Your Honor.

25 THE COURT: Okay.

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1 A And it's pretty long, so kind of bear with me.

2 THE COURT: How long is it?

3 A About a three -- about five ---

4 THE COURT: Mr. Jones, as long as he understands
5 effective presentation includes perhaps not reading it,
6 but if he wants to read it, I'll listen. But sometimes
7 if I can't understand him, I'm not going to ask him
8 again to speak up. Okay.

9 A Yes, sir.

10 Q Why don't you summarize to the Court, you know your
11 argument, why don't you tell the Court what your claim
12 is on this?

13 A All right.

14 THE COURT: And you can read it if you want. I'm
15 not saying you can't read it, but I've got to be
16 convinced.

17 A Right.

18 THE COURT: Go ahead and read it.

19 A This error pertains to my appellate counsel's
20 failure to brief on direct appeal all properly preserved
21 issues in the trial record pertaining to the redacted
22 confessions and my pretrial hearing. My appellate
23 counsel was ineffective for failing to brief or raise on
24 direct appeal all properly preserved issues by my trial
25 counsel which my trial counsel placed objections to

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1 during pretrial and trial pertaining to my trial
2 counsel's motions for a severance the suppression of
3 both confessions and his objection to the admission of
4 my confession at trial.

5 THE COURT: All right. See, I've lost that. I
6 heard him say motion for a severance and then he kept
7 going so I didn't hear the last two.

8 A Okay I'll restate it, Your Honor.

9 THE COURT: All right.

10 A The last two is the suppression of both
11 confessions.

12 THE COURT: Okay.

13 A And his objections to the admission of my
14 confession at trial.

15 THE COURT: All right.

16 A Me and my codefendant ---

17 Q I don't mean to cut you off. You say, "his
18 objection," your trial attorneys made an objection --

19 A My trial attorney made an objection.

20 Q -- to an admission you made; is that right?

21 A I was confessing, they were redacted and they were
22 admitted at trial and my trial counsel, he made several
23 objections to the confessions. That's what I'm talking
24 about.

25 Q Okay.

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1 A Me and my codefendant, we were tried jointly. My
2 trial counsel sought a severance. Because me and my
3 codefendant had made confessions to law enforcement that
4 implicated both of us. My counsel's request was
5 unsuccessful and the trial Judge denied this motion.
6 Denied his motion to sever me and my codefendant's
7 trial.

8 However, the severance should have been granted.
9 Because where the un-redacted out-of-court confession of
10 a nontestifying codefendant clearly implicates a
11 defendant, a severance is required to preserve that
12 defendant's Sixth Amendment right to confront his
13 accuser.

14 The trial Judge's ruling to redact the confessions
15 was futile. Because the jury clearly saw and heard
16 several references in the confessions that directly
17 pointed to me and my codefendant.

18 My codefendant's trial counsel argued in the
19 pretrial that the trial should be severed because I
20 shifted the blame to my codefendant stating it was his
21 idea or that he was the shooter. And you can see
22 transcript page 88 through 91.

23 More importantly, there was insufficient evidence
24 to convict me or my codefendant without the confessions.
25 Mainly me because law enforcement's probable cause to

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1 arrest or charge me was due to the confession my
2 codefendant made to law enforcement implicating himself
3 and me in the crime. Therefore, the motion to sever
4 should have been granted.

5 My appellate counsel's ineffective performance
6 resulted in prejudice because my trial counsel had
7 properly preserved this issue in the pretrial record.
8 And it could have been argued or raised in my initial
9 brief. The trial Judge's abusive discretion amounted to
10 an error of law which violated my Sixth Amendment right
11 to confrontation and the hearsay rules. You can see
12 **State verses Crawley.** That's C-R-A-W-L-E-Y, Crawley.

13 The trial Judge's refusal to grant a severance was
14 an obvious and meritorious claim. My appellate counsel
15 could have raised on direct appeal and it could have
16 produced a different result. So my appellate counsel's
17 failures, it deprived me of a full and fair review
18 resulting in Sixth and Fourteenth Amendment violation.
19 That pertains to the severance that my trial counsel
20 motion for -- that my appellate counsel did not raise.

21 Concerning the suppression of both confessions. Me
22 and my codefendant's trial counsel's, they sought
23 suppression of both confessions and the trial Judge
24 denied both of our attorney's motions that our
25 confessions not be admitted at our joint trial. He

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1 denied their request that they not be admitted.

2 My appellate counsel was ineffective for failing to
3 brief or raise the issue of the suppression of the
4 confessions in my initial brief on direct appeal. To be
5 begin with, my confession was unreliable because it was
6 only given after the detectives told me my codefendant
7 had already implicated me in the crime. You can see
8 transcript page 377 lines 14 through 15.

9 The redaction itself was unconstitutional and it
10 did not fall within Bruton's Rule -- Bruton's Protective
11 Rule to be admissible at trial. The trial Judge's
12 refusal to suppress both confessions, it violated Bruton
13 by allowing nontestifying codefendants to inculcate each
14 other. Since neither me nor my codefendant did not
15 testify, both of us was denied the ability to confront
16 or cross examine each other in violation of the
17 confrontation clause and the hearsay rule.

18 Under Bruton, a nontestifying codefendant ---

19 THE COURT: That's a legal issue.

20 MR. JONES: Yes, sir.

21 THE COURT: Okay. I'm not -- I don't want to hear
22 legal arguments from him. Okay. You can testify to
23 facts.

24 MR. JONES: Yes, sir.

25 THE COURT: You can make the legal arguments.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 MR. JONES: Yes, sir.

2 THE COURT: I know what Bruton is.

3 A The confession should have been suppressed because
4 it was clear to see even if redacted, they would still
5 be facing incriminating. And because it was obvious
6 that the jury would have seen and heard several
7 references in the confessions that directly pointed to
8 me and my codefendant.

9 My appellate counsel was ineffective and his errors
10 resulted in prejudice because his failure to brief or
11 raise on direct appeal and obvious and meritorious
12 claim, it deprived me of the Sixth -- of my Sixth and
13 Fourteenth Amendment rights as well as a full and fair
14 review.

15 The trial Judge's failure to suppress both
16 confessions, it violated constitutional law and hearsay
17 rules. However, had my appellate counsel raised and
18 argued this claim, the end result of my direct appeal it
19 could have been different.

20 And in relation to my confession being admitted at
21 trial which is the last part of this claim. My
22 appellate counsel was ineffective for failing to
23 challenge on direct appeal the admission of me and my
24 codefendant's confession at trial. This issue was
25 properly preserved for appellate review. It could have

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1 been raised in my initial brief. See transcript page
2 232, line 7 through 22. And transcript page 352, lines
3 15 through 24.

4 The trial Judge had ruled that our pretrial -- at
5 our pretrial that the confessions with the references to
6 me and my codefendant would be redacted and admissible
7 at our joint trial. Appellate counsel's errors --
8 excuse me. The errors of the confessions, it resulted
9 in a violation of the confrontation clause and hearsay
10 rule because it denied me and my codefendant the ability
11 to confront each other. Things that he was saying in
12 his confession and things that I was stating, it became
13 hearsay once identity or our presence was established or
14 figured out by the jury is what I'm saying. It pointed
15 the finger to both of us so that's why I say that it
16 denied us -- it denied me my right to confrontation and
17 it violated the hearsay rule.

18 Q He didn't raise that on appeal?

19 A No, sir, he didn't.

20 Q Okay.

21 A Like I said, the redaction, it was -- the
22 redaction, it was futile and the confessions were
23 basically incriminating, unconstitutional, and they did
24 not fall within the protective rule. The jury was
25 provided with copies of me and my codefendant's redacted

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1 confessions and they were told to read along as the
2 State witness read our confessions from the stand. The
3 jury clearly saw and heard several references in the
4 confessions that directly pointed to me and my
5 codefendant. You can see United States verses -- I
6 believe that's ---

7 Q You don't need to cite the case law.

8 A Okay.

9 THE COURT: What page in the transcript was that?
10 Jury given copies of the redacted confession and reading
11 along.

12 A Yes, Your Honor. I didn't mark it, but it's in
13 here.

14 THE COURT: All right. I'll find it.

15 A All right. Thank you. The redaction served no
16 purpose in disguising who was being talked about or
17 referred to. The incriminating references in our
18 confessions, it effectively told the jury that me and my
19 codefendant's un-redacted confessions named each other.

20 During our joint trial, at no point did the Judge
21 charge the jury that my codefendant's confession could
22 only be used as evidence against himself. And my
23 appellate counsel's errors resulted in prejudice and
24 ineffective performance. Because this was also an
25 obvious and meritorious claim that he could have

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1 presented on direct appeal.

2 THE COURT: All right. Mr. Jones, was it objected
3 to that Judge Cothran did not charge that? Did the
4 trial counsel object to it?

5 MR. JONES: Was it the attorney ---

6 Q Did your trial attorney object to that?

7 A To the confessions being admitted?

8 Q That it wasn't charged by the Judge?

9 A No. No objection was made to that.

10 Q All right. Is that a problem you have with
11 Mr. Sullivan's representation as well?

12 A Yes, sir. That -- yes, sir.

13 Q All right. And you're still talking about the
14 appellate ---

15 A That's what I'm talking about as of right now.

16 Q Okay.

17 A The admission of both confessions as I stated
18 earlier that resulted in confrontation and hearsay
19 violations. My appellate counsel's failure to brief or
20 raise these issues in my initial brief, it was a denial
21 of my Sixth Amendment rights of the effective assistance
22 of counsel and it deprived me of my Fourteenth Amendment
23 right to a full and fair review.

24 In support of -- in support -- the transcript will
25 support everything that I've stated as far as the

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1 incriminating references in the confessions. However, I
2 would have to go through and read each page and state
3 what was being said in the confession and how it was
4 incriminating. I have a list of all of them if you
5 would allow me.

6 THE COURT: It's your questions, Mr. Jones.

7 Q No, sir. I don't believe you need to go through
8 all of them.

9 A Okay.

10 Q So you feel that the trial or the appellate
11 attorney should have appealed those issues?

12 A Yes. Just like to state a few, I won't go through
13 all of them because there are so many.

14 Q Yes, sir.

15 A But, however, the transcript will reflect
16 everything that was said in the confessions. Like for
17 example on transcript page 130, lines 13 through 15.
18 The prosecutor -- that's where the prosecutor during the
19 opening statement of our trial, he informs the jury
20 about what gun belonged to me stating Robinson was
21 carrying a 40-caliber. What side of the vehicle I
22 approached. What apartment I lived. In he stated ■■■
23 That I was with my codefendant and we were riding bikes.
24 He stated the other person.

25 THE COURT: I'm not clear. What's this complaint

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1 about now?

2 A All right. Your Honor, my complaint about that is
3 that several references were -- they kept referring to
4 our -- where I lived, what weapon I was carrying, who's
5 my best friend, and what bikes who was riding. So in
6 our confessions, they redacted them and replaced -- they
7 replaced our names with the other person. So even
8 though they're saying the other person, it's clear that
9 everything else is being presented at trial, testimony,
10 anything that's being given from the stand or that's in
11 physical evidence is pointing the finger right back at
12 me or my codefendant.

13 Q And that should have been appealed is what you're
14 saying?

15 A Yes, sir, it should have been appealed because the
16 redaction like I say was futile and it didn't meet the
17 constitutional requirements to be admitted. Because it
18 still didn't disguise who was being talked about. The
19 jury clearly knew.

20 Q All right.

21 A So we were basically like witnesses against one
22 another. We never took the stand.

23 THE COURT: So let me get it straight. Mr. Robinson
24 confessed to his own involvement; is that correct,
25 Mr. Jones?

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1 MR. JONES: It was a confession, yes.

2 THE COURT: Did you confess to your own involvement?

3 A Yes, Your Honor.

4 MR. JONES: Yes, sir. As I understand Mr. Sullivan
5 objected to those confessions coming into evidence at
6 trial.

7 THE COURT: And the basis for the objection,
8 Mr. Sullivan was that it was on the confession of
9 Mr. Robinson was only given after he was told that the
10 other guy implicated him?

11 MR. JONES: Honestly, Judge, I'm not sure about the
12 basis.

13 THE COURT: Is that correct, sir?

14 A Yes, Your Honor. I've stated that.

15 THE COURT: All right. And is that illegal for the
16 police to tell you that the other defendant's confessed?
17 Is that what you're saying?

18 A Yes, Your Honor. And a lot of it I read and I
19 understand he's going to quote, it's a particular case
20 and that's where they held the confession was unreliable
21 because they -- the defendant -- the codefendant was
22 already incarcerated, locked up.

23 THE COURT: Okay. I'm clear on that. Go ahead,
24 Mr. Jones.

25 Q All right. Now, do you have any other arguments or

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 claims against your appellate attorney other than what
2 you've already mentioned?

3 A No, sir.

4 Q And have you covered all of the complaints that you
5 have against your trial attorney Mr. Sullivan?

6 A I have another claim that I've raised against my
7 trial counsel.

8 Q Okay. All right.

9 A This is a separate claim, Your Honor.

10 THE COURT: Is this the last one?

11 A I have one more after this one pertaining to trial
12 counsel.

13 THE COURT: All right.

14 A This violation pertains to the double jeopardy
15 clause. The elements of lynching in the first degree
16 and the elements of murder. My trial counsel's failure
17 to raise a straight forward and obvious double jeopardy
18 claim resulted in ineffective performance. In
19 objections to defects which appear on the face of an
20 indictment must be raised before the jury is sworn.
21 That's Section 17-19-90. Double jeopardy ---

22 Q He didn't do that?

23 A No, sir, he didn't. Double jeopardy attaches the
24 moment the jury is sworn. That's **United States verses**
25 **Osteen**. My trial counsel should at the very outset

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 before the jury was sworn had objected to the indictment
2 concerning the offenses of murder and lynching in the
3 first degree. Because it was apparent that those two
4 charges were essentially the same under South Carolina
5 law and both were not necessary.

6 The transcript will reflect my trial counsel's
7 failure to object to the indictment. That's on
8 transcript page 99, lines 9 through 19. Also transcript
9 page 118, lines 6 through 15 and 19 through 25. And the
10 last page is transcript page 119, line 1.

11 The Judge's instructions were neither defendant can
12 be guilty of both murder and lynching on the same death.
13 That's on transcript page 477, lines 13 through 18.

14 My trial counsel's failure to object to the
15 indictment prejudiced the outcome of my trial. Because
16 had my counsel made a timely objection and requested
17 that one of the two offenses be dismissed, mainly
18 lynching in the first degree, I could have received only
19 a maximum sentence of 20 years due to the attempted
20 armed robbery conviction. And because I was acquitted
21 of murder, I couldn't have received a maximum sentence
22 higher than what the attempted armed robbery statute
23 prescribed.

24 Also, the fact that the same evidence had served
25 for both offenses or was served for either conviction

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 regardless of whether those offenses are under statutes
2 that satisfy Blockburger's same elements test, the
3 double jeopardy clause was violated. You can see
4 **Blockburger verses United States**. This error violated
5 my right to the effective assistance of counsel that's
6 guaranteed by the Sixth Amendment. And moreover, my
7 counsel's errors were not the result of trial strategy
8 or its strategic decision because in his post-trial
9 motion, he states or he chose that he's aware of the law
10 pertaining to this violation. And that's in Exhibit 1.

11 THE COURT: Are we still on the double jeopardy
12 argument?

13 A Yes, Your Honor, we are.

14 THE COURT: Okay.

15 A And in that exhibit that I admitted already, you
16 will see on the last argument in that motion, that trial
17 motion. The last argument in that post-trial motion,
18 you will see that my trial counsel, he stated that the
19 Court improperly submitted the charges of both lynching
20 in the first degree and murder to the jury and resulting
21 in a double jeopardy violation in a non-sensible
22 verdict. But that was another issue that he addressed
23 in Exhibit 1 was another issue.

24 Q All right. Let's move on to the last claim.

25 A Yes, sir. This is the last claim, Your Honor.

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1 This error pertains to the redacted confessions of me
2 and my codefendant that was admitted. It's evidence at
3 trial by the State. My trial counsel was ineffective
4 for failing to object and requesting mistrial motion
5 after a State's witness committed a Bruton error
6 resulting in a violation of the confrontation clause in
7 the hearsay rule.

8 THE COURT: Page number of transcript where this
9 happened?

10 A I believe I have it here, Your Honor, one second.
11 Transcript page 372, lines 1 through 13. And transcript
12 page 380, lines 1 through 23.

13 Q Let's make sure I'm not getting confused. You're
14 saying that your trial attorney did not object to the
15 confessions coming into evidence?

16 A He did not object -- I stated that he failed to
17 object and request for a mistrial motion. He objected
18 to the statements being admitted. However, I said he
19 failed to request for a mistrial motion after a State's
20 witness had committed a Bruton error.

21 Q Okay.

22 A And my trial counsel, he was ineffective for
23 failing to object a motion for a mistrial on the ground
24 that the State witness had violated Bruton by allowing
25 nontestifying codefendants to inculcate each other.

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1 Since neither me nor my codefendant did not testify,
2 both of us was denied the ability to confront or cross
3 examine each other in violation of the constitution of
4 the hearsay rules.

5 THE COURT: Were you shot in the chest?

6 A Yes, Your Honor.

7 THE COURT: During this event?

8 A Yes.

9 THE COURT: Okay.

10 A The State's witness Detective Culick, she named my
11 codefendant Jackson as present and participating when my
12 codefendant was not even named in the redacted
13 confession and this error created a hearsay violation.
14 Because it effectively told the jury that me and my
15 codefendant's un-redacted confessions named each other.
16 Simply after she made that statement, it established our
17 identity which supposedly -- was suppose to have been
18 hidden by the redaction. So she's stating that she
19 don't know if I was shot by the victim, she don't know
20 if my codefendant Jackson shot me, she named that twice.
21 She don't know what happened. That right there told
22 them immediately after every -- okay. One was saying
23 the other person was on this side. One was saying he
24 was here. He said he had this gun. That immediately
25 told them that the un-redacted confessions named us.

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 And my trial counsel, he should have objected to that
2 error.

3 Like I said, the result of that error, it made it
4 clear to the jury that the redacted confessions
5 obviously referred to the existence of me and my
6 codefendant and implicated both of us. This error was
7 prejudicial because the redaction itself was
8 unconstitutional and did not fall within Bruton's
9 Protective Rule. But the confession when combined with
10 the State's witness identification of me and my
11 codefendant in the crime was an error requiring that my
12 trial counsel object and request a mistrial motion.
13 Because the evidence violated the hearsay rules as well
14 as my Fifth, Sixth -- Fifth and Six constitutional
15 rights.

16 Q All right. Have you covered everything in your
17 application?

18 A Yes, sir, we have.

19 Q What are you asking this Court to do?

20 A I'm asking this Court to vacate my conviction of
21 lynching in the first degree and remand for a new trial
22 or a new sentencing or vacate the conviction based on
23 the following grounds -- the following issues that I
24 presented today.

25 THE COURT: Remand for a new trial on lynching and

JERMEL ROBINSON - DIRECT EXAMINATION BY MR. JONES

1 murder? Is that what it would be?

2 Q You understand that -- Mr. Robinson, you and I have
3 had a discussion about that that all charges could be
4 back before the Court if the Court does given what you
5 say?

6 A Yes, Your Honor. I was requesting to vacate -- to
7 vacate the conviction of lynching in the first degree as
8 I stated the claim that the statute is unconstitutional
9 ---

10 THE COURT: Okay. I know your grounds, but what are
11 you asking me to do?

12 A To vacate the conviction of lynching in the first
13 degree.

14 THE COURT: Well, don't all these same issues
15 implicate him on the attempted armed robbery, too?

16 MR. JONES: Well, I think he's talking about every
17 single issue before the Court.

18 THE COURT: But the only thing he's talking about
19 today is lynching. He evidently doesn't want a new
20 trial on the attempted armed robbery; is that right?

21 A Yes, Your Honor.

22 THE COURT: You want a new trial on attempted armed
23 robbery?

24 A No. What I specifically stated in my application,
25 I don't have it, I was stating vacate the conviction of

JERMEL ROBINSON - CROSS EXAMINATION BY MR. GOURLEY

1 -- I didn't raise any claims in regards to attempted
2 armed robbery. I was just wanting to do away with the
3 lynching in the first degree conviction. That was the
4 only claim that I acknowledge was ---

5 THE COURT: But you understand in-doing away with it
6 if I grant your relief, you will go back before a jury
7 on murder and lynching; you understand that?

8 A Yes, Your Honor, I understand that.

9 THE COURT: All right. Go ahead, Mr. Jones.

10 MR. JONES: I have no other questions for him, Your
11 Honor.

12 THE COURT: Cross examination?

13 MR. GOURLEY: Yes, Your Honor.

14 CROSS EXAMINATION BY MR. GOURLEY:

15 Q Mr. Robinson, how are you?

16 A I'm fine. How are you?

17 Q Doing well. How many times did you meet with
18 Mr. Sullivan prior to your trial?

19 A Two or three times. I can't remember. He came out
20 two or three times.

21 Q And did y'all review the discovery in the case?

22 A Yes, we did.

23 Q Did y'all discuss any possible defenses?

24 A My attorney's argument of defense that I can
25 remember was just basically he wanted to demonstrate to

JERMEL ROBINSON - CROSS EXAMINATION BY MR. GOURLEY

1 the Court how I didn't play a role in the actual
2 killing. That I was harmed in the crime and that -- I'm
3 trying to remember. That I was harmed in the crime, but
4 my role was not major. That was his defense that I
5 remember.

6 Q But you were involved in the crime; right?

7 A Yes, I was.

8 Q And you admitted to having a 40-caliber pistol with
9 you as you approached the victim's car?

10 A Yes, I did.

11 Q Okay. And that your codefendant had a .38?

12 A Yes.

13 Q And, again, you gave a confession in the crime
14 admitting your involvement?

15 A Yes, I did.

16 Q So you are guilty; correct?

17 A Yes, I am. Yeah.

18 Q And you apologized to the victim's family for the
19 death of the victim?

20 A Yes, I did.

21 Q Okay. Did you give your counsel any leads or
22 witnesses to investigate on your behalf?

23 A I apologize. I didn't hear you.

24 Q Did you give your counsel any kind of leads or
25 witnesses to look into?

JERMEL ROBINSON - CROSS EXAMINATION BY MR. GOURLEY

1 A No, I didn't.

2 Q All right.

3 MR. GOURLEY: Beg the Court's indulgence, Your
4 Honor.

5 THE COURT: Okay.

6 Q In regards to your claim of ineffective assistance
7 of counsel regarding the directed verdict motion, you're
8 aware that the Court of Appeals did rule on that, they
9 found the issue preserved; correct?

10 A As stated in the final brief, it stated that the
11 issue ---

12 Q Right. That's what the State argued, but the Court
13 of Appeals found that it was preserved and addressed the
14 merits inappropriately?

15 A Okay. That's why I presented that claim because
16 ---

17 Q I'm aware of that.

18 A I understand.

19 Q All right. And both you and your codefendant were
20 arguing the same thing at trial; correct? That
21 basically the victim was the shooter in the case?

22 A No. We didn't have the same argument.

23 Q Okay.

24 A No. We didn't have the same argument. As I
25 remember, I believe my codefendant's argument was that

JERMEL ROBINSON - REDIRECT EXAMINATION BY MR. JONES

1 he shot in self-defense or that, you know, out of panic.
2 He panicked and shot or something like that. It was
3 differences in our defenses.

4 Q Okay.

5 THE COURT: So your primary defense was that you
6 didn't play an actual role in the killing, you were just
7 there to do the robbery?

8 A Yes, Your Honor.

9 THE COURT: Okay.

10 MR. GOURLEY: No further questions, Your Honor?

11 THE COURT: Did he testify at trial, Mr. Jones?

12 MR. JONES: No, sir.

13 THE COURT: Any objection to me asking him a
14 question?

15 MR. JONES: No, Your Honor.

16 THE COURT: Who shot you?

17 A The victim, Your Honor.

18 THE COURT: Okay. All right. Go ahead. Go ahead,
19 Mr. Jones, redirect?

20 MR. JONES: Thank you, Judge.

21 THE COURT: Yes, sir.

22 MR. JONES: Just one quick question.

23 REDIRECT EXAMINATION BY MR. JONES:

24 Q Mr. Robinson, I want to make sure you understand
25 this is something we talked about. That this briefly

JERMEL ROBINSON - REDIRECT EXAMINATION BY MR. JONES

1 touched on the end of our direct, but if the Court does
2 grant the relief you're seeking which basically vacates
3 the entire action which talks about armed robbery, all
4 charges, that you could very well be back before the
5 Court on all charges including murder -- on the murder
6 charge; do you understand that?

7 A Yes.

8 Q You and I have talked about that, have we not?

9 A Yes, sir, we have.

10 Q You're asking the Court to vacate the entire --
11 every charge; is that correct?

12 A If necessary. I didn't specifically state that in
13 my application. If you have my application, you will
14 see that I stated exactly to vacate the convicted --
15 vacate the lynching in the first degree conviction and
16 remand for a new trial or a new sentencing on the
17 attempted armed robbery. My request was simply I wanted
18 to vacate the lynching in the first degree conviction
19 because as I stated in one of my claims that the statute
20 was unconstitutional. Furthermore, that I was never
21 given the recommendation of mercy. So it's that offense
22 that I wanted my sentence corrected. I wanted the
23 conviction done away with. Because it's actually been
24 amended already anyway, the statute.

25 But if necessary that the Court has to vacate all

JERMEL ROBINSON - REDIRECT EXAMINATION BY MR. JONES

1 convictions or every offense in relation to my crime,
2 then I'm willing to accept that, Your Honor.

3 Q And, again, you understand that all charges will be
4 brought back before you most likely including murder?

5 A Yes, sir, I do understand that.

6 Q If the Court grants your position?

7 A Yes, I understand.

8 Q Okay. Thank you.

9 THE COURT: Yes, sir. Mr. Gourley?

10 MR. GOURLEY: No further questions, Your Honor.

11 THE COURT: Thank you, sir, you can step down.

12 A Thank you, Your Honor.

13 THE COURT: Next witness, Mr. Jones?

14 MR. JONES: We have no other witnesses.

15 THE COURT: All right. Anything from the State.

16 MR. GOURLEY: Yes, Your Honor, we call Mr. Sullivan
17 to the stand, please.

18 THE COURT: All right. Give him a little bit of
19 time to collect his belongings.

20 MR. ROBINSON: Your Honor, before I sit down, may I
21 admit Exhibit 4 into evidence?

22 THE COURT: It will have to be requested by your
23 lawyer. So you can take a look at it, Mr. Jones, and
24 see if that's something y'all want to admit or offer.

25 MR. JONES: Judge, I believe we stipulate this

DAVID SULLIVAN - DIRECT EXAMINATION BY MR. GOURLEY

1 coming into evidence. What it is, is a table of
2 authorities for case law that he's put together.

3 THE COURT: Okay. Staple it together and mark it as
4 number three.

5 (WHEREUPON, Defendant's Exhibit 3 was marked and
6 entered)

7 THE COURT: All right. Mr. Sullivan, you can come
8 on up. State your name, please.

9 MR. SULLIVAN: David Sullivan.

10 DAVID SULLIVAN,
11 being first duly sworn, was examined and testified as
12 follows:

13 THE BAILIFF: State your name and spell your last
14 for the record.

15 MR. SULLIVAN: David Sullivan, S-U-L-L-I-V-A-N.

16 DIRECT EXAMINATION BY MR. GOURLEY:

17 Q Mr. Sullivan, how long have you been practicing
18 law?

19 A About eight years.

20 Q And you were appointed in this case?

21 A Yes.

22 Q How many times did you meet with the applicant
23 prior to his trial?

24 A Without looking through my notes and giving you an
25 exact number, I would say maybe three. Three or four

DAVID SULLIVAN - DIRECT EXAMINATION BY MR. GOURLEY

1 times.

2 Q Did you file any Rule 5 agree motions?

3 A Yes.

4 Q Did you review that with the applicant?

5 A Yes.

6 Q Did y'all discuss his version of the facts?

7 A Yes.

8 Q And can you briefly describe the evidence the State
9 had against the applicant?

10 A The -- basically the State's theory of the case was
11 that Mr. Robinson and Mr. Jackson did some surveillance
12 and kind of hung out in the parking lot of these
13 apartments for awhile and that the victim was driving a
14 car. He was in the parking lot with a passenger who, I
15 think, was his girlfriend. And that Mr. Robinson was on
16 one side and Mr. Jackson was on the other side and that
17 when they went to rob Mr. Wimberly. He grabbed
18 Mr. Robinson's gun and Mr. Jackson at that point started
19 shooting at Mr. Wimberly, the victim. The police had
20 the taped confessions of Mr. Robinson, Mr. Jackson.
21 They found Mr. Robinson at the scene. I remember the
22 guy's nickname, they called him "Old School." I can't
23 remember his actual name. They found him shot. They --
24 like I said, they questioned -- I can't remember ---

25 THE COURT: Who is "Old School?"

DAVID SULLIVAN - DIRECT EXAMINATION BY MR. GOURLEY

1 A I can't remember Old School's name, but Old School
2 was -- had an apartment who Mr. Robinson ran into his
3 apartment right after this happened.

4 THE COURT: I got you.

5 A Mainly I think it was the confessions of both the
6 defendants. And I can't recall if this trial, it's been
7 awhile, I can't recall what -- if they found -- who's
8 guns they found and what ballistics they found at the
9 scene. I can't remember all that.

10 Q Okay. And you did a motion to suppress the
11 statement; correct? The confession?

12 A That's correct.

13 Q What was your trial strategy in this case?

14 A Really just to make the State prove its case. I
15 wanted for the jury to know that when my client gave a
16 statement, my former client, that he was in pain. And
17 that he was on some medication. So -- but when I spoke
18 with Mr. Robinson and when my investigator spoke with
19 Mr. Robinson, he didn't really tell my investigator or
20 me anything different than what he told the police.

21 So, you know, it wasn't a situation where he had an
22 alibi and he could say he wasn't there. You know, he
23 never told me that he was just wondering through the
24 parking lot and didn't know the codefendant. And, you
25 know, all of a sudden he's witnessing a robbery and he

DAVID SULLIVAN - DIRECT EXAMINATION BY MR. GOURLEY

1 gets accused of it. It was nothing like that. He
2 really didn't give me any kind of defense.

3 Q And both defendants were tried together; correct?

4 A Correct.

5 Q And you moved for a motion to severance based on
6 the fact that the State's were going to submit both
7 codefendant's statements against each other; right?

8 A Correct. Pursuant to the confrontation clause. I
9 think that's why I moved for the severance.

10 Q And the Judge ultimately ruled against you on that?

11 A Correct.

12 Q Finding that there were no inconsistent defenses?

13 A Correct.

14 MR. GOURLEY: And, Your Honor, that's page 95 for
15 your reference.

16 THE COURT: Okay.

17 Q Did he tell you he had any basis to object to the
18 lynching statute based on a mercy clause?

19 A I'm not sure looking at my post-trial motion what I
20 was thinking and discussing. I may have just mentioned
21 that to give some background as to why that lynching
22 statute was deemed unconstitutional. You know, looking
23 at my -- reading my motion this morning, I'm not sure
24 why the sentence not being the death penalty, I'm not
25 sure how mercy would really play a role. I don't know

DAVID SULLIVAN - DIRECT EXAMINATION BY MR. GOURLEY

1 if I said that just because like I said, I was wanting
2 to get some background as to why this was
3 unconstitutional, the statute.

4 THE COURT: But they weren't seeking death; right?

5 A Correct.

6 MR. GOURLEY: No, your Honor.

7 Q Do you feel you had any basis to object to lynching
8 statute and murder being charged at the same time?

9 A I did in my -- I did make the post-trial motion
10 arguing that the two charges were inconsistent. I think
11 what maybe I was thinking was that for there to be a
12 lynching, you have to have one or more -- you have to
13 have more than one individual involved. And if the
14 codefendant was acquitted of the lynching, I think what
15 I was thinking is it didn't make sense that only one
16 person could be convicted of lynching. Because lynching
17 required, of course, it's not on the books anymore, but
18 it required more than one person. I think that was my
19 thought.

20 Q So you argued that to the trial Court?

21 A Right. And Judge, I think it was Judge Cothran
22 that denied my motion.

23 MR. GOURLEY: Beg the Court's indulgence, Your
24 Honor.

25 THE COURT: Okay.

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 Q Did you feel you had any basis to request a
2 mistrial based on the admission of the two or admission
3 of the codefendant's statement in this case?

4 A I don't think so.

5 Q Okay.

6 MR. GOURLEY: I have no further questions, Your
7 Honor.

8 THE COURT: All right. Mr. Jones?

9 MR. JONES: Thank you, Your Honor.

10 CROSS EXAMINATION BY MR. JONES:

11 Q You've been practicing law for eight years?

12 A Something like that.

13 Q And this trial was in 2009?

14 A I believe so.

15 Q So you've been practicing about four years at that
16 point?

17 A Yes.

18 Q Okay. And how -- up to that point you were with
19 the public defender's office? I mean, I'm sorry, at
20 that point you were at the public defender's office?

21 A Right. Correct.

22 Q How long had you been with them?

23 A I hadn't been with them for very long. Maybe a
24 year if that.

25 Q All right. Before that year, did you practice

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 criminal law or did you practice ---

2 A I practiced real estate. I never practiced
3 criminal law.

4 Q All right. Had you ever handled a murder trial
5 before that point?

6 A No, I had not.

7 Q All right. And you met with the defendant you said
8 three or four times?

9 A Just without -- I mean, I can tell you the specific
10 dates if you want me to, but just I would say -- I would
11 guess about three or four times.

12 Q Did y'all meet at the jail?

13 A Yes.

14 Q All right. And how long would y'all meet each
15 time?

16 A I generally would meet and this is a file that was
17 transferred to me from Chip Finney. So, Mr. Finney, I
18 had his notes where he had done the initial interview.
19 I would normally do an initial interview and just get
20 some background information. And then once I got the
21 discovery, I would go over the discovery with my client.
22 And I did that on a couple of occasions with
23 Mr. Robinson. I've got one -- I've got notes that --
24 detailed notes from one appointment that I had with him
25 where I tried to get everything, all the information

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 from him that I felt like I needed.

2 Q All right. But each time, would y'all meet for an
3 hour at the time? Half an hour? Two hours?
4 Twenty minutes? Do you know?

5 A Generally and this being early on when I was with
6 the public defender's office, I learned that I needed to
7 take very detailed notes, so my notes on this file
8 aren't as detailed as the later files that I handled
9 there. But I would of had maybe one or two meetings
10 with him where I just -- they would have been short
11 meetings. And then I had a meeting on April 13, 2009
12 and that probably would have lasted maybe a couple of
13 hours. This looks like the meeting where we would have
14 gone over the discovery and I would have tried to get
15 his side of the story, everything that happened. And,
16 of course -- I don't think I meet with Mr. Robinson
17 regularly like some of the other assistant public
18 defender's would do just to say, "hey, how are you
19 doing?" I just met with him to get the information that
20 I needed. I did meet with my investigator on several
21 occasions.

22 Q All right. This is a murder case?

23 A Right.

24 Q Okay. And you just met with him to just to get
25 information you needed?

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 A Right.

2 Q Okay. All right. How long were you in the file?
3 How long had you had this file before the trial?

4 A No response.

5 Q Looks like the trial was April 15, 17, 20 through
6 22 of 2009.

7 A Looking at when the -- and I just have the
8 documents that the public defender's office emailed to
9 me, but I'm trying -- I'm looking for the earliest
10 entries. I see a time entry in, as early as August of
11 2008. The date that's given for when the file was
12 opened doesn't seem to make sense. So it could have
13 been earlier than August of 2008. But that's the
14 earliest entry I see.

15 Q All right. And you received the file from
16 Mr. Finney, Solicitor?

17 A I believe you're asking when I received the
18 discovery.

19 THE COURT: No. The file from Mr. Finney.

20 Q The current Solicitor; correct?

21 A Oh, I'm sorry.

22 THE COURT: He's not asking when, he's just asking
23 if that's who you got it from.

24 A I'm sorry. Yes, that's correct.

25 Q All right. Was that as a result of him becoming

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 Solicitor? I can't recall when he became Solicitor.
2 Was that what happened or he had been retained? What
3 was going on with that?

4 A There was a gap in between the time that he left
5 the public defender's office or stopped doing work for
6 the public defender's office and became the Solicitor.
7 So when I got the file, it was when, I guess, he just
8 stopped doing public defender work.

9 Q All right. Did you have a discussion with him
10 about the case?

11 A I don't recall having a discussion with Mr. Finney
12 about the case.

13 Q All right. So going back to the question, the
14 trial was in April of 2009, you don't know how long you
15 had the file before the case came to trial?

16 A Like I said, on the program that the public
17 defender's office uses, the file open date doesn't seem
18 to make sense. Because it's after the trial date. And
19 I'm just going by the -- trying to find the earliest
20 entry.

21 THE COURT: Well, let's get it straight. Did you
22 get the file in August of 2008 at the earliest or was it
23 opened in the public defender's office in 2008 at the
24 earliest? Because it's a 2007 indictment.

25 A Right. I would have gotten the file around August

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 of 2008. That's not when the file was opened.

2 Q You had it for one year before the trial? Because
3 the trial was in April of 2009; is that what you're
4 saying?

5 A Yes.

6 Q All right. And you met -- during that year you
7 meet with Mr. Robinson three or four times, I think, is
8 what you just said; is that correct?

9 A Yes.

10 Q All right.

11 THE COURT: Well, it's eight months, not a year.

12 MR. JONES: Sir?

13 THE COURT: Eight months. August to April is eight
14 months.

15 MR. JONES: I'm sorry.

16 Q All right. Now, don't you feel that since you had
17 never handled a murder trial before, you've been doing
18 real estate, that meeting with Mr. Robinson more than
19 three or four times in jail there was not enough time to
20 meet with him to prepare?

21 A No, I don't agree with that.

22 Q You don't agree with that?

23 A No. But you have to keep in mind, I did a lot of
24 other investigation on this case. I talked to, you
25 know, a lot of other people. But, you know, I saw in my

DAVID SULLIVAN - CROSS EXAMINATION BY MR. JONES

1 notes where I asked Mr. Robinson if there is anything
2 else he wanted to tell me. So, I mean, it only took
3 that many meetings to illicit all the information that
4 he could possibly tell me.

5 Q Do you have any letters where you sent him on that
6 to confirm that?

7 A Saying that -- or asking him if he's got any other
8 information to tell me?

9 Q Correct.

10 A I don't have a letter saying that. I did make a
11 notation in my file that I saw where I notated that I
12 asked him that.

13 Q Okay. You had a note to ask him that?

14 A No. I have a notation in my file from where I
15 stated that my notation says that I asked him whether or
16 not there was anything else that he wanted to tell me.

17 Q The appellate attorney, did you have a discussion
18 with him about the case?

19 A I may have. I can't recall though.

20 Q You don't have any notes of that?

21 A I can't recall having a discussion with the
22 appellate attorney.

23 Q You don't have any notes on that saying ---

24 A No. I've got letters that I sent but I don't
25 recall a conversation with the appellate attorney.

1 Q Okay. Now, your motion for directed verdict, I
2 read that out of the transcript and it says, "we feel
3 the State has not proven its case or its presumption"
4 and that's what you said, that was your motion; correct?

5 A Yes.

6 Q Okay. And you don't feel like you could have been
7 a little bit more specific on making an argument on
8 that?

9 A No.

10 Q All right. And we're talking about a murder case
11 here?

12 A Yes.

13 Q Okay.

14 MR. JONES: Bear with me one second, Your Honor.

15 THE COURT: Okay.

16 Q One other question, Mr. Sullivan. You heard
17 Mr. Robinson testify at length about his claims, but one
18 thing that he felt strongly about is the
19 unconstitutionality of the lynching statute and the fact
20 that you didn't raise that as an objection at trial.
21 You agree you didn't raise that as an objection at
22 trial?

23 A I don't remember raising that as an objection at
24 trial.

25 Q Okay. All right.

DAVID SULLIVAN - REDIRECT EXAMINATION BY MR. GOURLEY

1 MR. JONES: I have no other questions.

2 THE COURT: All right. Redirect?

3 MR. GOURLEY: Yes, Your Honor, just briefly.

4 REDIRECT EXAMINATION BY MR. GOURLEY:

5 Q Mr. Sullivan, outside of your meetings with
6 Mr. Robinson, were you still actively working on the
7 case?

8 A Yes.

9 Q Are you familiar with the Court of Appeals' opinion
10 regarding this directed verdict motion?

11 A Just what I read sitting at the table with you this
12 morning.

13 Q And they ultimately affirmed his conviction;
14 correct?

15 A Yes.

16 MR. GOURLEY: No further questions, Your Honor.

17 THE COURT: Anything else, Mr. Jones, from this
18 witness?

19 MR. JONES: No, sir.

20 THE COURT: You can step down. Thank you, sir. Any
21 other witnesses from the State?

22 MR. GOURLEY: No, Your Honor.

23 THE COURT: Any reply?

24 MR. JONES: No, sir.

25 THE COURT: Okay. Anything that you would like to

1 put on the record, Mr. Jones, as far as any argument is
2 concerned?

3 MR. JONES: One second, Your Honor. Bear with me
4 just one second.

5 THE COURT: Okay.

6 MR. JONES: Nothing else, Judge.

7 THE COURT: Were two people killed? Talking about
8 the man in the apartment, was he shot, too?

9 MR. GOURLEY: That was actually Mr. Robinson fled to
10 Vincent Jones, Old School's apartment.

11 THE COURT: But Vincent Jones wasn't shot?

12 MR. GOURLEY: No, sir, he was not.

13 THE COURT: So does the State have any argument it
14 wants to put on the record?

15 MR. GOURLEY: Your Honor, just very briefly.
16 Applicant admitted that his guilt in this case and,
17 therefore, we would submit that the applicant should not
18 show any prejudice in regards to the appellate issues.
19 Counsel's not required -- appellate counsel's not
20 required to raise all reserved issues. And we would
21 submit to the Court that issue raised by the appellate
22 counsel was meritorious at the time. That would be it,
23 Your Honor.

24 THE COURT: Okay. Mr. Jones, anything?

25 MR. JONES: No, sir.

1 THE COURT: So I just want to get clear, that it was
2 pretty much Mr. Robinson has admitted today that he and
3 the codefendant kind of lay in wait and saw this man in
4 a car and one approached from one side and one
5 approached from the other. The victim got
6 Mr. Robinson's gun and that's when Mr. Jackson started
7 firing. And Mr. Robinson believes it was the victim who
8 shot him presumably with his own gun. He fled and then
9 arrests were made, so forth and so on.

10 MR. GOURLEY: Yes, Your Honor.

11 THE COURT: Confessions were given by both that
12 implicated themselves and the other defendant.

13 MR. GOURLEY: Yes, Your Honor.

14 THE COURT: And those were redacted and I'm not
15 clear on how they were redacted in full or with black
16 magic marker. He said that they were given to the jury
17 to read along. My transcript just has the questions and
18 answers and argument, it does not have the exhibits.
19 What was given to the jury to read along? Do you know,
20 Mr. Sullivan, you're still under oath.

21 MR. SULLIVAN: I believe the redacted statements ---

22 THE COURT: With blacked out ---

23 MR. SULLIVAN: I think they were blacked out.

24 THE COURT: Okay. All right. What did the jury
25 see?

1 MR. JONES: He can tell the Court that?

2 THE COURT: Yes.

3 MR. ROBINSON: Yes, Your Honor. In the redaction, I
4 was stating that the incriminating references even
5 though he took our names out, they replaced it saying
6 the other person.

7 THE COURT: Okay. So that's what was given to the
8 jury?

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: Okay. And I understand his point about
11 it was clear in the context that they were both talking
12 about the other and they were just getting by Bruton to
13 do it that way. I understand that. Okay. All right.
14 Anything else, Mr. Jones?

15 MR. JONES: I'm sorry, he was telling me something.

16 THE COURT: Okay.

17 MR. JONES: Judge, he wants to tell you something.

18 THE COURT: Well, you tell me. You got to make the
19 argument.

20 MR. JONES: Yes, sir.

21 THE COURT: If it's factual, then that would have
22 been reply.

23 MR. JONES: He wants to say that he asked the
24 question about whether he was guilty or not. He was
25 talking about the attempted armed robbery is what he's

RULING OF THE COURT

1 talking about.

2 THE COURT: That's how I took it.

3 MR. JONES: Yes, sir.

4 THE COURT: Okay. All right. Anything else,
5 Mr. Gourley?

6 MR. GOURLEY: No, Your Honor.

7 THE COURT: All right. Okay. Thank you.

8 Mr. Robinson, I appreciate your presentation. I thought
9 it was very good, very organized. I appreciate it and
10 it will give me a good roadmap on how to resolve it. Of
11 course, Mr. Jones can tell you that I will rule one way
12 or the other and an order to the appropriate effect will
13 be entered and he can educate you on your appellate or
14 -- excuse me, your time to appeal which I believe is
15 30 days; is that right, Mr. Jones?

16 MR. JONES: Yes, sir.

17 THE COURT: Mr. Gourley?

18 MR. GOURLEY: Yes, sir.

19 THE COURT: So make sure y'all keep up with that
20 timeframe. If you don't like the order, you can appeal.
21 If the State doesn't like it, the State can appeal.

22 All right. Thank you very much.

23 MR. ROBINSON: Thank you, your Honor. Before ---

24 MR. JONES: What he's wanting to submit is a
25 proposed order. I've not looked at it, Judge.

RULING OF THE COURT

1 MR. ROBINSON: If it meets with your approval, Your
2 Honor.

3 THE COURT: Well certainly it will be with my
4 approval. You can hand it up.

5 MR. ROBINSON: Thank you, Your Honor.

6 THE COURT: It would help if it has paper clipped or
7 some kind of staple in it. He's handing up a proposed
8 order.

9 MR. JONES: Judge, I've not looked at this and so
10 I'm advising him that we not hand this up without me
11 reviewing it.

12 THE COURT: I'll leave that up to y'all. If you
13 want to hand it up ---

14 MR. ROBINSON: I have a copy for my attorney, Your
15 Honor, that way he can review it.

16 THE COURT: Then you can submit it to me if you
17 think that's appropriate, Mr. Jones. It doesn't have to
18 be now.

19 MR. GOURLEY: I would just request a copy as well,
20 Your Honor.

21 THE COURT: All right. Mr. Jones, you can go to
22 your office and make a copy and get someone to bring one
23 back for Mr. Gourley.

24 MR. JONES: Yes, Your Honor.

25 THE COURT: If you choose to submit it.

1 MR. JONES: Yes, sir.

2 THE COURT: All right.

3 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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CERTIFICATE OF REPORTER

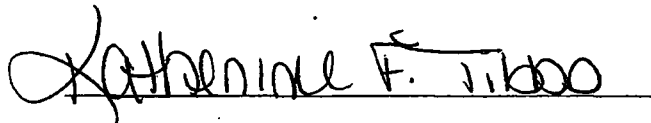
STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

I, KATHERINE F. TIBBS, Registered Professional Reporter for the Forty-third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 24th of February, 2014.

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

(This transcript was transcribed from the record taken by Margaret T. Sullivan)

November 13, 2014

A handwritten signature in cursive script, reading "Katherine F. Tibbs", written over a horizontal line.

Katherine F. Tibbs

Registered Professional Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014 APR 25 PM 12:10

Jermel Anthony Robinson, #334393

Case No. 2012-CP-43-648

Applicant,

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

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 3, 2012. Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on February 24, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Richard T. Jones, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

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 during the February 2009 term of the Sumter County Grand Jury for Murder, two counts of Armed Robbery, Possession of a Firearm During the Commission of a Crime of Violence, Possession of a Pistol by One Less than Eighteen Years of Age, and Lynching—1st degree. David Sullivan represented him. Applicant proceeded to trial, and on April 22, 2009, he was convicted by jury of Lynching, Attempted Armed Robbery, Possession of a Firearm During the Commission of a Crime of Violence, and Possession of a

Pistol by One Less than Eighteen Years of Age. The Honorable R. Ferrell Cothran, Jr., sentenced thirty-seven years imprisonment for lynching, twenty years imprisonment for attempted armed robbery, and five years for each gun charge. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Robinson, Unpublished Op. 2011-UP-435 (S.C. Ct. App. filed October 11, 2011).

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

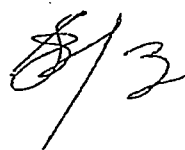
1. Ineffective Assistance of Counsel
 - a. Failure to ask for mercy under lynching statute
 - b. Failure to object to unconstitutional of the lynching statute
 - c. Failure to present an effective directed verdict motion
 - d. Failure to object to jury charges
 - e. Failure to contest conviction for lynching when co-defendant was not convicted of lynching
 - f. Failure to request a limiting instruction on the jury's use of co-defendant's confession
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to brief all properly preserved issues

SUMMARY OF TESTIMONY PRESENTED

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

During the evidentiary hearing, Applicant testified he was currently incarcerated in Lee Correctional Department and has served approximately five years of his sentence. Applicant stated he was convicted in 2009 and was represented by David Sullivan (Counsel). Applicant stated he was convicted of Lynching, Attempted Armed Robbery, Possession of a Firearm During the Commission of a Crime of Violence, and Possession of a Pistol by One Less than Eighteen Years of Age. Applicant stated he received thirty-seven years as an aggregate sentence. Applicant stated he met with Counsel two or three times prior to trial. Applicant stated he recalled reviewing discovery material with Counsel. Applicant stated he and Counsel discussed the fact that Applicant felt he did not play a role in the killing and was actually injured as a result of the crime. Applicant stated he did not play a major role in the crime. Applicant stated he did not give Counsel any leads or witnesses to investigate. Applicant recalled that he confessed to being involved in the crime. Applicant stated he admitted to police that he had a forty caliber pistol as he approached the Victim's car. Applicant recalled apologizing multiple times for the death of the Victim.

Additionally, Applicant stated Counsel should have asked the jury for mercy under the Lynching State § 16-3-210. Applicant stated he was prejudiced because the jury was never given the opportunity to consider giving him mercy under the statute. Applicant stated Counsel should have objected to the unconstitutionality of the lynching statute. Applicant claimed that the statute as worded shifts the burden from the State to the Defendant. Applicant explained that he was prejudiced because he was required to present mitigating factors. Applicant further stated, had Counsel done a reasonable investigation he would have recognized the unconstitutionality of the statute. Applicant alleged Counsel failed to present an effective directed verdict motion. Applicant stated Counsel merely argued that the State had not proven "the presumption."



Applicant further stated Counsel did not properly object and preserve the issue for appellate review.

Furthermore, Applicant argued that Counsel was ineffective for failing to object to the faulty jury instructions. Specifically Applicant stated that he felt Counsel should have objected to the trial court charging the jury on both Murder and Lynching. Applicant stated Counsel should have challenged the fact that he was convicted of Lynching when Lynching requires two or more people. Applicant explained that his co-defendant was acquitted of Lynching and found guilty of Murder. Applicant stated because his co-defendant was not found guilty of Lynching he should not have been found guilty of Lynching either. Applicant stated Counsel failed to object to the admission of the confession at trial and argue that the trial should be severed. Applicant argued that it violated his confrontation rights. Applicant further argued that Counsel should have asked that the court instruct the jury that they could not use the co-defendant confession as evidence against him.

Additionally, Applicant stated that his Appellate Counsel was ineffective for failing to raise all meritorious issues. Specifically, Applicant stated Appellate Counsel should have briefed the issue regarding the motion for severance. Applicant stated Appellate Counsel should have briefed the issue regarding the trial court's failure to suppress his confession. Applicant further argued, Appellate Counsel should have briefed the issue regarding the fact that his confession was read to the jury.

Following Applicant's testimony, David Sullivan (Counsel) was called to testify by the State. Counsel testified he has been practicing law for eight years. Counsel stated he was appointed to represent Applicant. Counsel stated he received the file in August 2008. Counsel stated he met with Applicant four or five times. Counsel stated he filed for and received all Rule

5 and Brady material. Counsel stated he reviewed all Rule 5 and Brady material with Applicant prior to trial. Counsel stated he did a lot of investigation into the case. Counsel stated he reviewed Applicant's version of events. Counsel stated Applicant had given a confession. Counsel stated the State's theory was that Applicant and Co-Defendant had done surveillance, both Applicant and Co-Defendant approached the Victim's vehicle and attempted to rob him. Counsel stated Applicant and Co-Defendant were on opposite sides of the vehicle. Counsel stated Applicant was shot during the incident and fled the scene. Counsel stated he was unsuccessful in his motion to suppress Applicant's confession. Counsel could not recall any discussion with Applicant's Appellate attorney.

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 (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, (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). 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. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Failure to ask for mercy under the lynching statute, 16-3-210.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to ask for mercy under the lynching statute is without merit. This Court finds the mercy issue was only relevant when the death penalty was available for lynching. The Applicant was not facing the death penalty in this case. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Counsel's failure to object to the unconstitutionality of the lynching statute

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to object to the unconstitutionality of the lynching statute is without merit. The Applicant claims the statute shifts the burden of proof to the defendant to present mitigating factors on the issue of mercy. The Applicant also argues that giving the jury the choice between murder and lynching gave the jury the opportunity to convict the Applicant of offenses that require the same findings for guilty. This Court finds that mercy was not an issue in this case, as Applicant was not facing the death penalty. Furthermore, this Court notes that the elements of murder and lynching are not the same. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Failure to present an effective directed verdict motion.

This Court finds the Applicant failed to meet his burden of proving ^{trial}plea counsel was ineffective in failing to present an effective directed verdict motion is without merit. A review of the transcript reveals that trial counsel stated "we believe that the State has not met its presumption." (Tr. p. 409). While this Court agrees that the motion was not thoroughly stated, this Court finds Applicant would not have been remotely entitled to a directed verdict on any charge, as there was sufficient evidence in the record to send the case to the jury on every charge. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a

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reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Failure to object to the jury charges.

This Court finds Applicant's allegation that he was denied the right to effective assistance of counsel for failing to object to the jury charges is without merit. Applicant appears to argue that Counsel should have objected to both the murder and lynching charges going to the jury. This Court finds that there is no merit to Applicant's argument. The jury can consider both lynching and murder, though the jury could not convict one defendant of both crimes. Furthermore, this Court notes that because Applicant's co-defendant was convicted of murder does not mean that the Applicant could not be convicted of lynching. This Court finds that the jury charges as given were proper. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Failure to contest conviction for lynching when co-defendant was not convicted of lynching.

This Court finds the Applicant failed to meet his burden of proving ^{trial (4)} plea counsel was ineffective in for failing to contest conviction for lynching when co-defendant was not convicted of lynching. Applicant argues that he could not be convicted of lynching as the statute requires that there be two or more people. Simply stated, Applicant argues that he could not be a "Mob

By 8

of one." This argument has no merit as Applicant can be convicted of lynching despite the fact that his co-defendant was convicted of murder and not lynching. The fact that his co-defendant was not convicted of lynching does not mean that there was no "mob." Plainly stated, one of the mob was guilty of murder, and the Applicant was the second part of the two-man mob. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Trial counsel's failure to request a limiting instruction on the jury's use of co-defendant's confession.

Applicant argues that Counsel should have requested a limiting instruction on the jury's use of the co-defendant's confession. This Court agrees that Counsel's failure to request a limiting instruction on the jury's use of the co-defendant's confession was ineffective assistance of counsel. However, this Court finds Applicant has failed to show any resulting prejudice. Applicant was shot during the incident. Furthermore, Applicant freely and voluntarily confessed to being a part of the plan to rob the Victim. After a review of the entire transcript, this Court is convinced that there was clear overwhelming evidence of the Applicant's guilt on all counts of the indictment for which he was convicted.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Appellate counsel's failure to brief all properly preserved issue.

This Court finds Applicant's allegation that he was denied effective assistance of

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Appellate Counsel for failing to brief all meritorious issues is without merit. Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) *citing* Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983) (emphasis supplied). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy...." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Applicant argued that Appellate Counsel should have briefed the issue of whether the trial court abused its discretion in denying his motion for severance. The applicant claims his and his co-defendant's confessions clearly implicated the other, and that redactions did not cure their obvious implications. This Court disagrees. The applicant's own confession implicated himself, and he cannot complain that the co-defendant's confession may have done so. Furthermore, Applicant cannot show any prejudice because the applicant's own confession was found to be voluntary and was introduced into evidence. In light of his confession, the fact that he was shot is corroborating evidence he was at the scene. He again confessed to his actions at the PCR hearing when he freely admitted his involvement in the entire incident. The jury was entitled to use the applicant's own confession against him if it desired to do so, and this Court's reading of his co-defendant's confession implicating "another person", albeit more likely than not the Applicant, the other evidence of his guilt was overwhelming (again, his confession and

the fact that he was shot during the attempted robbery).

Applicant argued that Appellate Counsel should have briefed the issue of whether the trial court erred in denying his motion to suppress his confession. Applicant argued that his confession was not freely and voluntarily given because police told him that his co-defendant had already confessed. Applicant stated that this information coerced him into confessing. This Court finds the fact that the Applicant did not confess until law enforcement told him that the co-defendant had implicated him does not render the Applicant's statement involuntary.

Applicant argues Appellate Counsel should have briefed the issue of whether the trial court erred in allowing the confession to be admitted at trial. Specifically, Applicant claims that when the confession was read to the jury, it became hearsay and a violation of his right of confrontation because it was clear the co-defendant was talking about the Applicant as the other person. As previously stated above when discussing the motion for severance, this Court finds the argument lacks any merit. The Applicant also complains that Appellate Counsel failed to brief and argue that the jury was improperly given a redacted copy of the co-defendant's confession as it was being read to the jury. This Court disagrees; there was no objection to this at trial. This Court finds Applicant's allegations that Appellate Counsel was ineffective for failing to brief the various issues stated above is without merit. Therefore, this Court finds Applicant's allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was

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prejudiced by counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

ALL OTHER ALLEGATIONS

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

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.

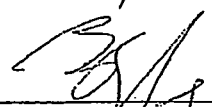
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit


_____, South Carolina

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2014 MAY -5 AM 10:53) THIRD JUDICIAL CIRCUIT
JAMES C. CAMPBELL) 2010-CP-43-648
CLERK OF COURT)
SUMTER COUNTY, S.C.)
Jermel Anthony Robinson, 334393,)
Applicant,)
vs.) **NOTICE OF MOTION AND MOTION**
) **PURSUANT TO RULES 59 & 60, SCRCP**
State of South Carolina,)
Respondent.)

TO: THE STATE OF SOUTH CAROLINA, THE RESPONDENT ABOVE NAMED, AND THE RESPONDENT'S ATTORNEY, DANIEL GOURLEY, ESQUIRE, AND THE HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE OF THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Jermel Anthony Robinson, by and through his undersigned attorney, shall move before this Court ten (10) days after service of this Notice of Motion, or as soon thereafter as this matter may be conveniently heard by the Court, at the Sumter County Court of Common Pleas located at 215 N. Harvin Street, Sumter, South Carolina, for an Order granting the following relief in relation to this Court's Order of Dismissal dated April 16, 2014, and filed with the Court on April 25, 2014:

1. The Plaintiff requests that the Court grant him relief pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure, along with any other relief the Court deems just and proper. This Motion is in relation to the attached Order of Dismissal issued by the Court which is in connection with the Application for Post-Conviction Relief filed by the Petitioner / Applicant, Jermel Anthony Robinson. A copy of said Order is attached to this Motion as an exhibit. The Applicant's attorney received a filed copy of said Order on April 29, 2014. The Applicant also attaches, and incorporates herein, his supplement to this Motion which is also

titled "Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC", and which is signed by the Applicant, Jermel A Robinson, on April 29, 2014, which the Applicant has requested that his attorney submit in support of his position as well.

2. Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Applicant requests that the Court alter or amend its judgment and/or grant a new trial as well as reconsidering its ruling in this matter. In this regard, the Applicant would allege the following specifics as it relates to this Court's findings and this Court's Order:

- a. The Applicant believes that this Court should reconsider, alter or amend its findings and its Order as it relates to the issue of Applicant's previous attorney failing to make an effective directed verdict motion. The Court does find that the motion made by Applicant's counsel at the time of the criminal trial, that being Attorney David Sullivan (hereinafter "Sullivan"), was not thoroughly stated. The Applicant believes that if Sullivan had made a more thorough motion, the same would have been granted or, at least, there would have been more of a chance for it to have been granted if a more thorough motion was made. Likewise, had Sullivan made a more thorough motion and, even if the same was denied by the Court, the Applicant believes that it would have given him an additional issue for appeal. Due to the fact that Sullivan failed to make what would even amount to even the most minimal of motions in his "motion for directed verdict", the Applicant was prejudiced. Thus, the Applicant believes that the Court should find that Sullivan was ineffective as counsel. The Court should reconsider its finding that Sullivan's actions in failing to make an effective directed verdict motion did fall below the

professional norms of reasonableness, especially when considering the seriousness of the charges being made against the Applicant in the criminal trial. Further, that the Court should reconsider and amend its findings in relation to the fact that the Applicant was in fact prejudiced, as discussed above, by Sullivan's failure to make an effective direct verdict motion. The fact that the Applicant was being charged with such serious crimes should, by itself, cause Sullivan to be expected to make something more than the motion that he made. The Applicant would respectfully submit that he basically never got a chance to have the Court consider a direct verdict because of the lack of argument on the part of his attorney. At this point, it is not known whether the original trial court would have granted a direct verdict or not because the Applicant was not given a chance.

- b. The Applicant would further allege that the Court should grant him relief from the judgment in this Order of Dismissal in relation to the above directed verdict argument. The Applicant would incorporate into his argument pursuant to Rule 60 the above discussion and argument in the paragraph dealing with Rule 59 about as it relates to the directed verdict.

3. The Applicant would show that the Court should alter or amend its judgment and/or reconsider its ruling and findings in relation to the issue of Sullivan's failure to request a limiting instruction on the jury's use of a co-defendant's confession. Further, that the Court should grant a new trial and grant him relief from this judgment pursuant to Rule 60 of the South Carolina Rules of Civil Procedure as it relates to trial counsel's failure to request a limiting instruction on the jury's use of a co-defendant's confession. The Court did find that

Sullivan's failure to request a limiting instruction on the jury's use of a co-defendant's confession was ineffective assistance of counsel. However, the Court finds that the Applicant has failed to show any resulting prejudice. The Applicant would show that due to the seriousness of the charges brought against the Applicant in the criminal trial, the fact that there was any finding of ineffective assistance of counsel, which the Court has already made, should, by itself, show that the Applicant was prejudiced. The Applicant believes there would have been a different result in the trial, or at least the possibility of a different result in the trial, if Sullivan had requested a limiting instruction on the jury's use of the co-defendant's confession. The Applicant believes that this failure to object so greatly prejudiced the Applicant that he was not entitled to a fair trial.

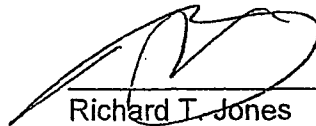
4. The Applicant requests that the Court alter or amend its judgment and/or reconsider its ruling and/or judgment pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, as well granting relief from judgment pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, in relation to the issue of Sullivan's failure to contest the conviction for lynching when co-defendant was not convicted of lynching. The Applicant believes that his argument that the fact that the co-defendant was not convicted of lynching, but that the Applicant was convicted of lynching, is a valid argument. Sullivan should have contested this conviction. The Applicant believes that it is only rational that if the co-defendant was not convicted of lynching, and lynching requires a mob, which is more than one (1) person, there could not be a "lynching". Sullivan should have contested this conviction and/or raised his issue, but he did not. Thus, Sullivan was ineffective as trial counsel for the Applicant and the Applicant was prejudiced. Again, this was yet another issue that, even if the trial court did deny, the same could have been raised on appeal.

5. The Applicant believes that he was prejudiced by Sullivan's ineffective assistance.

of counsel. The mere fact that Sullivan failed to make objections, as discussed above, and that Sullivan failed to raise all of the objections, that are fully listed in the Applicant's Application and discussed in this Court's Order of Dismissal, prejudiced the Applicant due to the fact that the Applicant was without the ability to raise such issues on appeal. Even if the trial court had overruled the objections of Sullivan, the important thing is that Sullivan did not raise the objection and that Sullivan did not make what would come close to a sufficient motion for a direct verdict. Thus, Sullivan was ineffective as counsel for the Applicant and the Applicant was prejudiced.

Based upon the foregoing, the Applicant would ask that the Court reconsider, alter or amend its ruling and/or grant a new trial and/or grant the Applicant relief from judgment in relation this Court's Order of Dismissal, along with granting any other relief the Court deems just and proper.

JONES, SETH, SHULER & JONES, LLP



Richard T. Jones
Attorney for Applicant
5 Law Range – P. O. Box 1268
Sumter, South Carolina 29151
(803) 773-8676

Sumter, South Carolina
May 4, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
 Jermel Anthony Robinson,)
 Applicant,)
 vs.)
 State of South Carolina,)
 Respondent.)

RECORDED

2014 MAY -5 AM 10:54

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2010-CP-43-648

SUPPLEMENT TO
 APPLICANT'S NOTICE OF MOTION
 AND MOTION TO RECONSIDER,
 ALTER OR AMEND, AND MOTION
 PURSUANT TO RULES 59 AND 60, SCRCP

RECORDED

STATE OF SOUTH CAROLINA)
 County of Sumter)
 Jermel A. Robinson, 334393)
 Applicant)
 v.)
 State of South Carolina)
 Respondent)

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

THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CA No. 2012-CP-43-648

**MOTION TO ALTER OR
 AMEND JUDGEMENT
 PURSUANT TO RULE 59(e)
 SCRPC**

PLEASE TAKE NOTICE that the Applicant by way and through his undersigned attorney will move before the Honorable George C. James, Jr. to direct an entry of a new Judgement or alter or amend the Judgement signed on April 16, 2014 and filed on April 25, 2014. A copy of the Order of Dismissal was received by the undersigned attorney on April 29, 2014 and was received by the Applicant on April 23, 2014.

Comes now the applicant by and through his undersigned attorney and request that this court direct the entry of a new judgment pursuant to Rule 59(e) SCRPC and/or to alter or amend the findings of fact and conclusions of law in the State's Order of Dismissal.

This matter comes before the court by way of an application for Post-Conviction Relief filed on April 3, 2012. An evidentiary hearing into the matter was convened on February 24, 2014 at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Richard T. Jones, Esquire. The respondent was represented by Assistant Attorney General Daniel Gourley.

During the hearing Applicant testified on his own behalf. The state presented testimony from trial counsel, David Sullivan, Esquire. This court also had before it a copy of the trial transcript, the appellate records, the Sumter County Clerk of Court records; the Applicant's SCDC records the PCR application and the Return. The Applicant submitted a Proposed Order to Grant Post-Conviction Relief at the conclusion of the evidentiary hearing.

- 1) The State's Order of Dismissal does not include nor address the Applicant's claim regarding his Trial Counsel's Failure to object and raise a Straight Forward and obvious double Jeopardy claim concerning the charges Murder and Lynching in the First Degree. Pursuant to Marlar v. State, 375 S.C. 407 653 S.E. 2d 266 (2007) the Applicant respectfully request that this court review the Applicant's proposed order to grant Post-Conviction Relief (Pg. 11), the evidentiary hearing transcript, the amended PCR application and the exhibits admitted during the evidentiary hearing where this claim is addressed. The Applicant request that this court specifically and meticulously include and address this claim in its Order.
- 2) The Order of Dismissal fails to fully summarize the Applicant's testimony at the evidentiary hearing. Pursuant to Marlar v. State, 375 S.C. 407 653 S.E. 2d 266 (2007), the applicant respectfully request that the court review the evidentiary hearing transcript and fully and properly address the applicant's testimony.

- 3) The State's Order of Dismissal does not fully address the Applicant's claim regarding trial counsel's Failure to argue or request for a recommendation of mercy under the Lynching in the First Degree Statue, 16-3-210, which mandates death upon a finding of guilty. The Applicant was sentenced under the old Lynching in the First Degree Statue on April 22, 2009, which mandated death, prior to the statue being amended in 2010 by legislature. Pursuant to United States v. Boone, 245 F. 3d 352 (4th cir.), 532 U.S. 1031 (2001) and United States v. Watson, 496 F. 2d 1125, 1130 (4th cir. 1973) Statutory safeguards and Procedures are to be adhered to and upheld in all cases where the death penalty could be imposed because the enabling statue defines it as a capital crime, [not] only in those cases where the death penalty is actually sought by the government. Likewise, upon indictment for a capital crime, whether or not death penalty is a realistic possibility. Pursuant to Marlar v. State, 375 S.C. 407, 653 S.E. 2d 266 (2007) the Applicant respectfully request that this court review the State's Order of Dismissal (Page 6), the Applicant's proposed order where this claim is addressed on (Page 8-9) and/or the evidentiary hearing transcript, exhibits and properly address this claim..
- 4) The State's Order of Dismissal does not fully address the Applicant's claim regarding trial counsel's failure to object to the unconstitutionality of the Lynching in the First Degree Statue, 16-3-210. The State argues the improper burden of shifting (which makes the Statue unconstitutional), and that mercy is not an issue in this case, (Page 7) of the State's Order of Dismissal.

More importantly, the State overlooks the fact that pursuant to Gregg v. Georgia, 428 U.S. 153 9. S. ct. 2909 (1976), the Lynching in the First Degree statue (prior to its amendment in the year 2010 by legislature) has absolutely none of the safeguards and procedures mandated by the United States Supreme Court under Gregg v. Georgia and is thus in violation of the Eighth and Fourteenth amendments of the United States Constitution. Pursuant to Marlar v. State, 375 S.C. 407, 653 S.E. 2d 266 (2007), the Applicant respectfully request that this court review the Applicant's proposed order where this claim is addressed on (Page 10) of the Applicant's proposed order and/or the evidentiary hearing transcript, exhibits and properly address this claim.

- 5) The State's Order of Dismissal does not fully address the Applicant's claim regarding trial counsel's failure to properly preserve the Applicant's issue regarding Lynching in the First Degree, (Page 7) of the State's Order of Dismissal. The State argues that "Plea Counsel" was not ineffective. First, the applicant would like to make it clear for the court and the record that the Applicant stood trial alongside his co-defendant on all charges in this case deriving from one incident, and all charges were presented in one indictment. The applicant nor his co-defendant plead to any of the charges in this case. The Applicant's issue was not properly preserved for appellate review (see the State's Final Brief of Respondent on direct appeal). The State agrees in it's order that trial counsel's motion was not thoroughly stated. The State disregards that there was insufficient evidence in the record to send the charge of Lynching in the First Degree to the Jury. There was no evidence in this case, direct nor circumstantial that a struggle took place between the Applicant and the victim. The victim drew his own gun and shot the Applicant in the chest.

Pursuant to State v. Smith, 352 S.C. 133, 572 S.E. 2d 473, 475 (ct. APP. 2002) and State v. Barksdale, 311 S.C. 201, 428 S.E. 2d 498, 500 (ct. APP. 1993), certiorari denied October 21, 1993, the state introduced no direct or circumstantial evidence that the Applicant and his co-defendant possessed a common intent to inflict bodily harm upon the victim or intent to do him violence. See Trial Transcript pg. 366 Lines 1-25 and Trial Transcript pg. 367 Lines 1-5. Furthermore, none of the State's witnesses provided testimony that a struggle took place between the Applicant and the victim, and the state's witness, Detective Culick provided testimony that the Applicant never stated a struggle took place. See Trial Transcript pg. 360 Lines 1-9 and Trial Transcript pg. 379 Lines 16-24. This was based on law enforcement's assumption of what happened. For these reason the Applicant's directed verdict should have been granted or his issue properly preserved pursuant to Marlar v. State, 375 S.C. 407, 653 S.E. 2d 266 (2007), the Applicant respectfully request that this court review the Applicant's proposed order where this claim is addressed on (Page 12-13), the trial transcript, and/or the evidentiary hearing transcript, exhibits and properly address this claim.

- 6) The State's Order of Dismissal does not fully address the Applicant's claim regarding trial counsel's failure to make an objection to the violation of the Lynching in the First Degree Statue, the elements of the offense and that the Jury Simultaneously acquitted the only other defendant (Page 8-9). The State argues "Plea Counsel" was not ineffective. Again, the Applicant would like to make it clear for the court and the record that the Applicant stood trial on all charges, and the Applicant nor his co-defendant plead to any of the charges in this case.

The State argues that the co-defendant's conviction for murder and the Applicant's conviction for Lynching in the First Degree made the two-man mob. This is lawfully incorrect. The State completely disregards the fact that Murder and Lynching in the First Degree are separate statutory provisions, and that the co-defendant's conviction for Murder cannot sustain the mob element of Lynching in the First Degree. This violation arose in a joint-trial, under a statute that mandates the participation of two or more people. Furthermore, there is no case law in the history of South Carolina law where one defendant is convicted of Lynching in the First Degree and the other acquitted where there was a joint-trial. Pursuant to Marlar v. State, 375 S.C. 407, 653 S.E. 2d 266 (2007), the Applicant respectfully request that this court review the Applicant's proposed order where this claim is addressed on (Page 7-8) and/or the evidentiary hearing transcript, exhibits and properly address this claim.

- 7) The State's Order of Dismissal does not include nor address the Applicant's claim regarding his Trial counsel's failure to object and request a mistrial motion after a State's witness committed a Bruton error. Pursuant to Marlar v. State, 375 S.C. 407 653 S.E. 2d 266 (2007), the Applicant respectfully request that this court review the Applicant's proposed Order to Grant Post-Conviction Relief (Pg. 15-16), the evidentiary hearing transcript, and the PCR application where this claim is addressed. The Applicant request that this court specifically and meticulously include and address this claim in its Order.

THEREFORE, based upon the foregoing the Applicant respectfully request that the court reconsider the Order of Dismissal and review the transcripts of the evidentiary hearing in conjunction with the exhibits and the Applicant's Proposed Order. Furthermore, the Applicant respectfully request that this court direct an entry of a new judgment and/or alter or amend the judgment signed on April 16, 2014 and filed on April 25, 2014.

Sincerely,



Jermel A. Robinson, 334393

Respectfully Submitted
April 29, 2014

CC: Sumter County Clerk of Court
Attorney Richard T. Jones
File

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Jermel Anthony Robinson,

vs.

Applicant

The State of South Carolina,

Defendant

RECORDED

2014 MAY 22

PM 12:

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO: 2010-CP-43-648

JAMES C. CAMPBELL

CLERK OF COURT

SUMTER COUNTY, S.C.

ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILEDDEPUTY CLERK OF COURT
SUMTER COUNTY, S.C.
SOUTH CAROLINA

THIS MATTER is before the court on the applicant's Motion Pursuant to Rules 59 & 60, SCRCP. Appearing on behalf of the applicant is Richard T. Jones, Esquire.

This is a motion in which the applicant requests that the Court grant him relief pursuant to Rules 59 and 60, SCRCP, as well as any other relief the Court deems just and proper. The applicant's request for relief is based on this Court's Order of Dismissal, which dismisses the applicant's Application for Post-Conviction Relief. The applicant makes several arguments which he believes entitle him to an altered or amended judgment, or a new hearing.

First, the applicant alleges that his trial counsel, David Sullivan, failed to make an effective directed verdict motion at trial. The applicant argues that a more "thorough" and "effective" motion should have been made in order to increase the likelihood of the motion being granted. The applicant asserts that Sullivan failed to make "what would even amount to the most minimal of motions in his motion for directed verdict," and therefore the Court should reconsider its findings to rule that Sullivan's actions fell below professional norms of reasonableness and prejudiced the applicant. The Court denies the applicant's request for relief under Rules 59 and 60, SCRCP, based on this deficient motion for directed verdict argument. In making this argument, the applicant fails to assert what he believes a viable motion for directed verdict would have been based upon. The applicant simply argues that the motion should have been "more effective" and "more thorough" because of the



seriousness of his charges. Without describing the basis of this hypothetically proper motion for directed verdict, this Court cannot determine if the applicant was in fact prejudiced by trial counsel's failure to "thoroughly state" his motion for directed verdict. The applicant's arguments do not provide a specific showing of ineffective assistance and resulting prejudice that would entitle to the applicant to relief under Rule 59 or 60.

Next, the applicant argues that the Court should alter or amend its judgment and/or reconsider its ruling or findings because of trial counsel's failure to request a limiting instruction on the jury's use of a co-defendant's confession. The applicant also argues that he should be granted a new trial based on this failure to request a limiting instruction pursuant to Rule 60. The Court found that this failure to request a limiting instruction fell below the standard of reasonableness under prevailing professional norms, but that the applicant did not prove resulting prejudice. The applicant argues that the seriousness of his charges combined with the finding that counsel's performance fell below prevailing norms establishes that he was prejudiced and did not receive a fair trial. The Court denies the applicant's request for relief. The "seriousness of the charges" is not a factor that is considered when granting or denying an application for post-conviction relief. There is no "*per se*" prejudice simply because the charges are "serious". The applicant has not established that there is a reasonable probability that the outcome of the trial would have been different if trial counsel had requested a limiting instruction on the jury's use of a co-defendant's confession. The Order of Dismissal discusses this issue in sufficient detail.

Next, the applicant requests that the Court reconsider its ruling pursuant to Rule 59 as well as grant relief from the judgment pursuant to Rule 60 based on trial counsel's failure to contest the conviction for lynching when his co-defendant was not convicted of lynching. The Court denies this request for relief based on the reasoning that is fully discussed in the Order of Dismissal.

Based on the foregoing, the applicant's request for relief is denied.

A handwritten signature, possibly reading "J. B. / 2", is written in the bottom right corner of the page.

AND IT IS SO ORDERED.

A handwritten signature in dark ink, appearing to be "G. C. James, Jr.", written over a horizontal line.

GEORGE C. JAMES, JR.

JUDGE, THIRD JUDICIAL CIRCUIT

Sumter, South Carolina

May 16, 2014

A handwritten signature in dark ink, appearing to be "G. C. James, Jr.", written at the bottom right of the page.

WITNESSES

SPD

Irene Culick

AMENDED

DOCKET NO. 2007-GS-43- 816

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

TERON HAKEEN JACKSON

JERMEL ANTHONY ROBINSON

ARREST WARRANT NUMBER

J302557, J302558, J302589

D/A: 06/21/07

ACTION OF GRAND JURY

Terrell B. Rice
Foreperson of Grand Jury
Date: 12/13/09

VERDICT

Indictment for

Foreperson of Petit Jury
Date:

MURDER, ATTEMPTED ARMED ROBBERY
WHILE ARMED WITH HANDGUNS (2
Counts), POSSESSION OF FIREARM
DURING COMMISSION OF A CRIME OF
VIOLENCE, POSSESSION OF PISTOL BY
ONE LESS THAN 18 YEARS OF AGE,
LYNCHING (1st Degree)

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
) MURDER, ATTEMPTED ARMED ROBBERY WHILE
 COUNTY OF SUMTER) ARMED WITH HANDGUNS (2 Counts), POSSESSION
 OF FIREARM DURING COMMISSION OF A CRIME
 OF VIOLENCE, POSSESSION OF PISTOL BY ONE
 LESS THAN 18 YEARS OF AGE,
 LYNCHING (1st Degree)

At a Court of General Sessions, convened on February 19, 2009, the Grand
 Jurors of SUMTER County present upon their oath:

Barbara Shaper
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

COUNT ONE – MURDER

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Dominique Wimberly by means of shooting him with a pistol while attempting to rob him, and that the said Dominique Wimberly did die as a proximate result thereof.

COUNT TWO ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUN

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handguns, or while alleging, either by action or words, they were armed while using a representation of a deadly weapon, did feloniously attempt to take personal property from Dominique Wimberly in the presence of Dominique Wimberly, by means of force or intimidation goods or monies of the said Dominique Wimberly.

COUNT THREE ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUN

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handguns, or while alleging, either by action or words, they were armed while using a representation of a deadly weapon, did feloniously attempt to take personal property from Toni Wilson in the presence of Toni Wilson, by means of force or intimidation goods or monies of the said Toni Wilson.

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

C. Kelly Jackson
 SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUNS 2 Counts), POSSESSION OF FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE, POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE, LYNCHING (1st Degree) WITH THE AFORESAID NAME OF TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON SHOWN THEREON:

COUNT FOUR – POSSESSION OF A FIREARM DURING COMMISSION
OF A CRIME OF VIOLENCE

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: handguns, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT FIVE – POSSESSION OF PISTOL BY ONE LESS THAN
18 YEARS OF AGE

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-23-30(A)(3)&(B) of the Code of Laws of South Carolina (1976), as amended in that they did wilfully and unlawfully have in their possession or on their persons an unlawful pistol, to-wit: handguns, they being under the age of eighteen.

COUNT SIX – LYNCHING (1st Degree)

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-3-210 of the Code of Laws of South Carolina (1976), as amended, in that they did assemble without authority of law with a premeditated purpose and intent of committing an act of violence which resulted in the death of one Dominique Weatherly.

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


SOLICITOR