

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

DEC 15 2014

**S.C. Supreme Court**

PARIS AUSTIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001565

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

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

ASHLEIGH R WILSON  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....i

GUILTY PLEA TRANSCRIPT DATED APRIL 9, 2012..... 1

APPLICATION FOR POST-CONVICTION RELIEF .....31

RETURN .....38

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 20, 2014 .....44

ORDER OF DISMISSAL .....82

INDICTMENTS .....94

STATE OF SOUTH CAROLINA	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	2011-GS-10-4156
	2011-GS-10-4159
	2011-GS-10-4601

STATE OF SOUTH CAROLINA	)	TRANSCRIPT OF RECORD
-vs-	)	
PARIS AUSTIN,	)	April 9, 2012
Defendant.	)	Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Bruce DuRant, Assistant Solicitor  
Attorney for the State

Ashley Pennington, Esquire  
Andrew Grimes, Esquire  
Attorneys for the Defendant

Amanda K. Haffenden, RPR, CRR  
Circuit Court Reporter

2

(April 9, 2012.)

3

THE COURT: All right. Are you Paris Austin?

4

THE DEFENDANT: Yes, sir.

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THE COURT: Mr. Austin, you're here today on several charges, and I'm told that you want to plead guilty to them; is that correct?

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THE DEFENDANT: Yes, sir.

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THE COURT: All right. Let's go over with you what we have. The first indictment is indictment 2011-GS-10-4158, and that is an indictment for attempted armed robbery. You could get up to 20 years in prison for that, and I'm told you want to plead guilty to that; is that right?

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THE DEFENDANT: Yes, sir. The next indictment is 2011-GS-10-4156, and that is for unlawful possession of a pistol by a minor. You could get up to five years in prison for that. Do you want to plead guilty to that charge?

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THE DEFENDANT: Yes, sir.

THE COURT: Then I have indictment 2011-GS-10-4157, and that is for a charge of attempted murder. You could get up to 30 years in prison for that. Do you want to plead guilty to that indictment?

THE DEFENDANT: Yes, sir.

1 THE COURT: Next we have indictment 2011  
2 GS-10-4159, and that is for possession of a firearm  
3 during a violent crime. You could get up to five years  
4 in prison for that. Do you want to plead guilty to that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And then the final indictment is  
7 2011-GS-10-4601. That is for criminal conspiracy, zero  
8 to five years. You want to plead guilty to that  
9 indictment?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Let me go over a few  
12 things with you on a couple of these charges. The crime  
13 of attempted murder and attempted armed robbery are  
14 strike offenses. Did your lawyers talk with you about  
15 what strike offenses are?

16 THE DEFENDANT: I think so.

17 THE COURT: Let me make sure I go over those  
18 with you so you understand because that is a collateral  
19 consequence of your being charged with this and pleading  
20 guilty.

21 You're familiar with the game of baseball; is  
22 that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You've heard the phrase three  
25 strikes and you're out?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Well, to use that  
3 phrase helps you understand what we're talking about when  
4 we talk about strike offenses. Strike offenses in the  
5 context of the criminal justice system means if you have  
6 enough strikes, you're out, and out means you go to jail  
7 for the rest of your life without the possibility of  
8 parole.

9 In South Carolina, we have two types of  
10 strike offenses. We have three strike offenses and we  
11 have two strike offenses. Three strike offenses are  
12 called serious offenses, and if you get three of those  
13 you're out, life without the possibility of parole. You  
14 never get out of jail. The only way you get out of jail  
15 is when they carry you out in a box.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: We also have what we call two  
19 strike offenses, and two strike offenses are classified  
20 as most serious offenses. If you get two of those, you  
21 go to jail for the rest of your life without parole. The  
22 armed robbery charge and the attempted armed robbery and  
23 the attempted murder charges are both of the two strike  
24 variety; in other words, they're classified as most  
25 serious offenses, and while both of them -- you think,

1 Well, I got two of them, am I going to go to jail for the  
2 rest of my life, the law says when both arise out of one  
3 occasion or one offense, you only classify them as one  
4 strike, but after today, you will have one strike against  
5 you of the most serious type, in other words, the two  
6 strike type, so if you ever get convicted of another  
7 crime, that is a strike offense in the State of South  
8 Carolina the sentence will be life without the  
9 possibility of parole.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you still wish to plead  
13 guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, you have the  
16 right to a jury trial. If you want a jury trial, you  
17 stop me, and we'll arrange that for you. The State has  
18 to convince 12 jurors that you're guilty of these charges  
19 beyond a reasonable doubt. All 12 jurors would have to  
20 agree you're guilty in order to convict you, and if  
21 convicted, you would have the right to appeal.

22 You can challenge the State's evidence, put  
23 up evidence of your own, testify if you want, and if you  
24 don't want to testify, the judge is to instruct the jury  
25 that they're not to hold that against you while they're

1 deliberating:

2 Do you understand those rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give up each of  
5 those rights in order to plead guilty today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Are you pleading  
8 guilty to each of these indictments because you're guilty  
9 of each of these indictments?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So this indictment for criminal  
12 conspiracy, this alleges on or about January 12, 2011,  
13 you conspired to commit the crime of armed robbery.

14 Do you admit to that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: This indictment for possession of  
17 a firearm during the commission of a violence crime, that  
18 alleges on or about January 12, 2011, you did possess and  
19 visibly display a handgun during commission of that armed  
20 robbery.

21 You did that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And this indictment  
24 for attempted murder, it says on or about January 12,  
25 2011, while acting in concert with others, you did intend

1 to kill or with malice aforethought attempt to kill Sade  
2 Williams in violation of section 16-3-29 of the South  
3 Carolina code of law.

4 Do you admit you did that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: This indictment for possession of  
7 handgun by a person under the age of 18, which alleges  
8 that on or about January 12, 2011, while being under the  
9 age of 18 and not a member of the armed forces, you did  
10 knowingly possess or acquire a handgun in violation of  
11 section 16-23-30 subsection 3 of the South Carolina code  
12 of law.

13 You admit you did that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Finally, this indictment for  
16 attempted armed robbery, which alleges on January 12,  
17 2011, you did while armed with a deadly weapon, and it  
18 being a handgun, you attempted to take away money or  
19 goods from Ms. Sade Wilson with the intent to permanently  
20 deprive her of possession thereof in violation of section  
21 16-11-333 of the South Carolina code of laws.

22 Do you admit you did that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. You are pleading  
25 guilty to each of these crimes because you're guilty of

1 them; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you under the influence of  
4 any drugs or alcohol today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you need any more time with  
7 your lawyers?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have any sort of physical,  
10 mental, or emotional conditions that keep you from  
11 understanding what you're doing today?

12 THE DEFENDANT: No, sir.

13 THE COURT: You're standing next to  
14 Mr. Grimes and Mr. Pennington. They're both your  
15 lawyers. Have you had enough time to talk about this case  
16 with them?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have they done everything you've  
19 asked them to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there anything you've asked  
22 them to do that they haven't done?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you satisfied with their  
25 representation?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And they sat down and went over  
3 all the evidence the State has against you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And they told you what the law is  
6 on each of these charges that you've been charged with  
7 and want to plead guilty to?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Based on those discussions, you  
10 decided you want to waive all those rights that I just  
11 told you about?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So you don't want to tell the  
14 jury your side of the story?

15 THE DEFENDANT: No, sir.

16 THE COURT: You don't want to try to have any  
17 sort of evidence suppressed?

18 THE DEFENDANT: No, sir.

19 THE COURT: You don't want to have a  
20 confession suppressed?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. You don't want a jury  
23 trial?

24 THE DEFENDANT: No, sir.

25 THE COURT: All of this is your decision and

1 your decision alone?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You're pleading straight up  
4 without any sort of promise; is that correct, to what  
5 your sentence will be?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anybody promised you anything  
8 or threatened you in any way to get you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: How old are you?

11 THE DEFENDANT: Seventeen.

12 THE COURT: How far did you get in school?

13 THE DEFENDANT: I got my GED.

14 THE COURT: Are you married?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you have any children?

17 THE DEFENDANT: No, sir.

18 THE COURT: Did you work before you got  
19 arrested?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Mr. Grimes, in your  
22 opinion, does this gentleman understand what he's doing  
23 when he waives his right to a jury trial and pleads  
24 guilty?

25 MR. GRIMES: Yes, sir.

1 THE COURT: Do you agree with his decision?

2 MR. GRIMES: Yes, sir.

3 THE COURT: Mr. Pennington, in your opinion,  
4 does this gentleman understand what he's doing when he  
5 waives his right to a jury trial and pleads guilty?

6 MR. PENNINGTON: I believe he does, Your  
7 Honor. We have also had his family involved. His mother  
8 who is present who's been a big help also in making sure  
9 that he has discussed this thoroughly and thought it  
10 through carefully.

11 THE COURT: He was waived up from juvenile  
12 court; is that correct?

13 MR. PENNINGTON: No. By virtue of the nature  
14 of the offense, I believe it's automatically deemed an  
15 adult offense, so there was no transfer.

16 THE COURT: All right. Well, then, I find  
17 that his plea is freely, voluntarily, and intelligently  
18 made. What would the State like to tell me about this  
19 case?

20 MR. DuRANT: Your Honor, this thing arose  
21 around Christmas of 2010. That occasion, one of  
22 Mr. Austin's codefendants, McGill Kason, went to  
23 Louisiana with his family to visit his grandmother, along  
24 with another one of the codefendants in this case, Floyd  
25 Woods. While he was down there, he found his

1 grandfather's old 38 caliber revolver in a shed and  
2 decided he would bring it back to Charleston, which he  
3 did.

4 He got back. McGill Cason and Floyd Woods  
5 were friends with Paris Austin and Paris's good friend,  
6 Denzel Simmons. They got together, decided it would be a  
7 good idea to use this gun to rob people with it. They  
8 discussed it on a couple of occasions, the last occasion  
9 being the night of January 11th of 2011.

10 On that night, all of them were over at  
11 McGill Cason's house on Florida Avenue. The four of them  
12 were together. They decided that the time was right.  
13 They needed money. They had the tool they needed to get  
14 the money, and they decided that they were going to rob  
15 people at an ATM machine. And the ATM machine they  
16 picked was the ATM machine -- it is South Carolina  
17 Federal Credit Union at the corner of Spruill and  
18 McMillan in North Charleston.

19 And they set out for that purpose around 1:00  
20 in the morning, on January the 12th. Mr. Austin was the  
21 gun man. He and McGill Cason were the two that  
22 approached the victim's car. Denzel Simmons, one of the  
23 codefendants, was the lookout at the corner of McMillan  
24 and Spruill. Floyd Woods was also a lookout across  
25 McMillan and a little bit further up Rivers Avenue.

1           Actually, I forgot. One car came first, but  
2 they were not able to get to that car in time, and then,  
3 unfortunately, Ms. Sade Williams, the victim in this case  
4 who is seated in the front row, drove up shortly after  
5 1:00.

6           She worked at Government Solutions. They  
7 provide, I believe, mail order pharmaceuticals to  
8 veteran's administrations. She was working the night  
9 shift that night. They are located in the old K-Mart  
10 building on Rivers Avenue. She got off at 1:00, and  
11 after taking a co-worker home decided to stop at the  
12 ATM machine at the South Carolina Federal Credit Union to  
13 get some cash.

14           Ms. Williams is the mother of two young  
15 children, a five and a six-year-old, a boy and a girl.  
16 She pulled up to the ATM machine, and as she was getting  
17 her card out and opening the door to get some cash, her  
18 car was approached by Paris Austin and McGill Cason, with  
19 Paris being 16 years old at the time, having the gun.

20           They immediately started demanding money of  
21 her. She was trying to explain to them that, I don't  
22 have any money. That's why I'm at the ATM machine. I  
23 need to get money.

24           And the boys -- she kind of resisted. The  
25 more agitated they got. At one point, Mr. Austin told

1 BJ to reach in and grab her keys. Ms. Williams said,  
2 You're not taking my car.

3 She began struggling with McGill Cason,  
4 during which time McGill Cason punched her in the eye,  
5 and at that point, Mr. Austin made his choice, and that  
6 choice was not to leave, the choice was to pull the  
7 trigger and the choice was to pull the trigger three  
8 times, which he did. Ms. Williams was shot three times  
9 just above the pubic area, once in the abdomen, once in  
10 the chest.

11 She is a tough woman. Despite that, she gets  
12 in the her car, shuts the door, drives out of the bank  
13 parking lot, drives down to McMillan Avenue to the Exxon  
14 station to get to a safe area where she finally pulls  
15 over and calls 911 on her cell phone.

16 Police are very close. They get there within  
17 a minute, but she's transported to the hospital. She was  
18 in the hospital originally for about a week. She had two  
19 surgeries initially. I think she's had two or three  
20 since then.

21 She suffered a lacerated liver, a lacerated  
22 kidney, perforated bowel, had her appendix removed.  
23 She's suffered from numerous infections since then and  
24 has been back and forth to the doctors quite a bit and is  
25 continuing to have problems with her intestinal area to

1 today.

2           Subsequent to this, Denzel Simmons was  
3 identified as a potential codefendant in this case. He  
4 was picked up. He eventually gives Paris Austin's name;  
5 also, his mother and brother named Paris Austin as a  
6 participant in this thing. Mr. Austin did, in fact,  
7 admit to the police himself that he was the shooter in  
8 this case. All three of his codefendants were prepared  
9 to testify against him in this case had we gone to trial  
10 today.

11           THE COURT: I'm sorry. You said --

12           MR. DuRANT: All three of his codefendants  
13 were prepared, and are prepared, to testify against him  
14 had the case gone forward.

15           THE COURT: Have they pled guilty?

16           MR. DuRANT: They will be pleading guilty.

17           THE COURT: Okay.

18           MR. DuRANT: Not today probably, but I would  
19 anticipate they would plead guilty in front of Your Honor  
20 perhaps this week or whenever I can arrange it with their  
21 attorneys.

22           THE COURT: All right.

23           MR. DuRANT: That's about all I have to say. I  
24 know Ms. Williams and her mother would like to address  
25 the Court at the appropriate time.

1 THE COURT: Did they get any money.

2 MR. DuRANT: They never got a thing. They  
3 never got -- they never gave her a chance to get to the  
4 machine to get the money out, and so all of this for  
5 nothing.

6 And as I told Mr. Grimes, quite frankly, you  
7 know, had you not made that choice, had he not made that  
8 choice to pull the trigger, nobody would have ever gotten  
9 caught in this case probably, but he did make that  
10 choice.

11 THE COURT: All right. Did you wish to  
12 speak, ma'am?

13 THE WITNESS: I am Chanel Williams. I am the  
14 mother of Sade Williams. I just want him to be punished  
15 for what he did to my daughter, and I'm glad that she's  
16 still here. We went through a lot, and we deserve out  
17 life from things that we used to do because what he done  
18 so her.

19 THE COURT: All right.

20 THE WITNESS: I am Sade Williams. I would  
21 like to say that this young man has put me and my family  
22 through so much. My kids are afraid for me to even leave  
23 the house for, like, an hour, with a caregiver, wondering  
24 about me and crying.

25 Not only that, but my body has been through

1 so much turmoil. I've been down and just painful,  
2 painful bowel movements, you know, when having to go to  
3 the bathroom. I would also like to say that this young  
4 man looked me in the eye when he shot me. There was  
5 no -- he did not turn his head. He meant to shot me on  
6 purpose, and I would just ask that you give him close to  
7 the maximum.

8 THE COURT: All right. Thank you. Is there  
9 anything further from the State?

10 MR. DuRANT: Nothing from us, Your Honor.  
11 Thank you.

12 THE COURT: All right. Well, there is  
13 certainly a substantial factual basis for his pleading  
14 then. Who would like to speak on behalf of Mr. Austin?

15 MR. GRIMES: I will, Your Honor.

16 THE COURT: Go ahead.

17 MR. GRIMES: May it please the Court: First,  
18 as Ms. Williams' mother stated, we know Paris is going  
19 to be punished, and he wants to be punished. He knows he  
20 did something wrong, he's remorseful, and we're asking  
21 for a punishment as fair and as just regarding his  
22 background, his age, and what he can do in the future.

23 First, I would like to introduce the people  
24 here on his behalf. We have us mother, Barbara Austin,  
25 his stepfather, Rasheed Watkins, his grandmother Cynthia

1 Stafford, his aunt, Geraldine Middleton, some family and  
2 friends and people involved in his church, Lemar Nelson  
3 and Mr. Nelson's wife, Ardena Nelson, Tiffany Campbell,  
4 we have his brother and sister, Rashidi Austin, and his  
5 brother Rashid Austin in the blue sweat shirt.

6 And I know I attached to my memo. You know,  
7 part of the punish -- part of the criminal justice system  
8 is to punish people for their crimes, also to help deter  
9 people from committing crimes in the future.

10 When you look on page 17 of the Roper case it  
11 talks about how juveniles -- it would be hard to deter.  
12 They don't make that cost benefit analysis that adults  
13 do, so by sending -- if you did send him a lot of message  
14 of 30 years, most juveniles are not going to be deterred  
15 by that, so I think that would mitigate in favor of a  
16 sentence less than the maximum.

17 I believe the record in this case shows that  
18 it's kind of out of Paris's character. He did have an  
19 anger problem. In talking with him, I think he was a  
20 couple years earlier he was shorter. He's always been a  
21 little bit shorter and some people might call it short  
22 man syndrome, and people would pick on him and he didn't  
23 like that and he tried to get his sort of respect in the  
24 school and he would be quick to fight at times.

25 And if you look at his juvenile record, most

1 of his reports were sort of fighting, disturbing schools,  
2 doing something on the bus. There isn't any indication  
3 of him being involved with weapons, dealing drugs, any  
4 type of aggravated assaults, and there's no indication  
5 that he would go from someone who gets in fights, as a  
6 typical teenager does, to someone who would go out to an  
7 ATM and shoot a helpless person.

8 I think the biggest thing to mitigate in  
9 favor of reducing Paris's sentence is at the time, you  
10 basically got a 16-year-old boy who got caught up in the  
11 wrong crowd.

12 You will hear a little bit later all the good  
13 stuff he had been doing, he was probably about 14 and he  
14 started rebelling of, wouldn't listen to his mom as he  
15 should have, wanting to go out late at night, be with his  
16 friends, kind of live his own lifestyle.

17 He was in a church group, ended up getting  
18 out of the church group again because of some bad  
19 influences, and when you look at his record from the  
20 marine institute, he was a good athlete there, he was one  
21 of the MVP on his flag football for two seasons got his  
22 GED worked really hard to get that. I think initially he  
23 got in trouble when one was picking object him, and then  
24 he testified himself. He also talked about the need for  
25 him to get counselling, and I don't think that was ever

1 followed up on. Part of them with likes with Paris, I  
2 don't think he was the most cooperative son in some  
3 respects, but when you have a 16-year-old, a 14-year-old  
4 going through this teenage years, and you have a lot of  
5 friends out there, kind of tempting him to do stuff he  
6 shouldn't be doing, like McGill Cason, bringing a gun  
7 from Louisiana, trying to organize this robbery and  
8 talking about it.

9 As as a juvenile, can you fall into that peer  
10 pressure and the case law is clear of that. The brief I  
11 handed up from the American Society of Psychological  
12 Association, American caseworker's association talks  
13 about that.

14 You know, as the Court may know, the  
15 juveniles brain's just aren't completely developed. I  
16 mean, even when you go and get your car insurance, you  
17 get a discount after you turn 25 because young men are  
18 impulsive and they will go race cars and do things think  
19 shouldn't be doing.

20 Once they've matured and they have sort of  
21 stopped that behavior. That's on page nine, and page 25  
22 through 31 of the amici brief, pages 11 and 12 talk about  
23 how juveniles wanting rewards, wanting immediate Kto  
24 rewards and make sort of spur of the moment behaviors.

25 In this case Paris needed money. He wasn't

1 living with his mom, he was living with Denzel Simmons,  
2 needed money to sort of get clothes, shoes, so that other  
3 stuff he needed to get buy, so he wasn't going out just  
4 to go rob somebody and trying to get rich, make a quick  
5 dollar. He was basically trying to survive. For  
6 whatever reason, he wasn't listening to his mom even  
7 though she had a good place for him. He was living with  
8 Denzel, was kind of on a runaway status at times, and to  
9 make it, he had sort of -- made some poor choices.

10           And I think Roper talks about how juveniles  
11 may do very egregious crimes, that's when what -- because  
12 of their age, their lack of maturity, their impulses is  
13 is all backed up by the underlying signs they can be  
14 rehabilitated once they become mature. That is one of  
15 the reasons they cut out of the death penalty for  
16 juveniles and that is why they cut out life sentences for  
17 non-murders cases.

18           At this time the Supreme Court is considering  
19 cutting out life sentences for juveniles. It's all  
20 because Courts and science realize that juveniles can't  
21 be treated as adults. If he was 25 and did everything  
22 that he is alleged to have done and he would be looking  
23 probably at 30, 35 years. At that point, there is no  
24 excuse for what he had been doing.

25           By analogy, We had also looked at some of the

1 federal sentencing guidelines and attached that. Under  
2 those guidelines, certainly by this Court he would be  
3 looking at between 188 months and 235 months, and, you  
4 know, the guidelines when I used to practice in federal  
5 court is built upon years of study and state courts,  
6 federal courts and try to come up with some type of  
7 science or make everything uniform, and that's what  
8 they've come up with for some in Paris's situation, and  
9 if the Court would disagree with my calculations, that's  
10 why I attached all the actual guidelines themselves.

11 I think his grades show he can be a  
12 productive member of society when he applies himself. He  
13 was making 90's and 80, but when he starting hanging with  
14 McGill Cason and these other guys, his grades start going  
15 down. He runs away and committed the crimes. And one  
16 part of this, you know, he was probably under the  
17 influence of marijuana at the time. He described it as a  
18 special kind of marijuana called Wild. It's going to be  
19 a little more powerful than some other forms of  
20 marijuana, and I think Paris would like to address the  
21 Court and talk about his remorse and apologize to  
22 Ms. Williams for what he did.

23 But as I have quoted in my memo, you know,  
24 Supreme Court recognized that once the juvenile's  
25 recklessness goes away that he can become a good member

1 of society, and that's why we're asking the Court to  
2 consider a sentence between 15 and 20 years. I believe  
3 there are people that would like to address the Court at  
4 this time, Your Honor. First his mother, Ms. Austin.

5 THE COURT: Yes, your name please.

6 THE WITNESS: Barbara Austin, I'm Paris's  
7 mother, and I've known him most of his life, and I know  
8 that he's a kind guy. He's always been good to his  
9 sisters and brothers, and he's always helped me at home  
10 whenever I needed it.

11 When he got older and hanging around with  
12 these young men, that is when he started to change. He  
13 knows that he's done wrong, and he knows that he has to  
14 pay for it, but, Your Honor, please don't send my child  
15 to jail for the rest of his life. Please don't send him  
16 to jail for the rest of his life. Please don't take him.  
17 And I'm so sorry what he did to this young lady, and he  
18 is too. That's all I have to say.

19 THE COURT: Thank you.

20 MR. GRIMES: At this time I would also like  
21 Lamar Nelson to talk a little bit about what Paris is  
22 doing in the Junior Brotherhood at New Jerusalem Baptist  
23 Church.

24 THE WITNESS: Good afternoon. My name is  
25 Lamar Nelson. I'm servant leader for Junior Brotherhood

1 at Jerusalem Baptist Church in Rutledge. I met Paris  
2 about eight years ago after I retired in the Army,  
3 starting reprogramming him along, with this young man I  
4 could always count on, him he have good leadership  
5 potential but I always discuss with them about getting in  
6 trouble and once you get in trouble, you're just going to  
7 have to fess up to it. We usually depend on him always  
8 to help me out with the younger guys, so he can't -- he  
9 be lenient -- he know he don't get punished and we always  
10 talked about that, but I know he's going to be  
11 resourceful and remorseful for what he done. Thank you,  
12 Your Honor.

13 MR. GRIMES: I believe Tiffany Campbell, she's  
14 sort of become a mentor for Paris, and he has goals to  
15 own his own barbership she has a college degree, and  
16 she's indicated a willingness to help him whatever way  
17 she can if you could get Judge Young.

18 THE WITNESS: I'm Tiffany Campbell. I'm  
19 prepared to help Paris in any way he can. I knows he's a  
20 good kid. When he gets out I'll help him own his  
21 barbershop, get his barber's license and whatever he  
22 needs to help him get a job in whatever.

23 THE COURT: Okay. Thank you.

24 MR. GRIMES: The thing that caught my  
25 attention was Paris gives good advise but he has trouble

1 following his, and he was always telling her to stay in  
2 school, stay out of trouble. If he had followed his own  
3 advice and his mother's advice, he won't be here and  
4 Ms. Williams would be here, and the last thing I would  
5 like to say, I would like the Court to take into  
6 consideration McGill Cason, who in the scheme of things  
7 is the person is staying in Family Court so the worse  
8 sentence he's going to receive was a six year sentence  
9 even though he wasn't the trigger man he did approach the  
10 car, did hit Ms. Williams, got the gun, kind of put the  
11 whole thing in motion.

12           And I believe just to have -- just because  
13 he's a your older at the time of the offense, you know,  
14 he shouldn't get hammered while McGill Cason essentially  
15 gets a slap on the wrist, and in Mr. Pennington has  
16 something to add or wrap up and the last person to speak  
17 would be Mr. Austin.

18           MR. PENNINGTON: I'll be very brief. I came  
19 into the case in the last month, and what I've seen is a  
20 couple things that are outside the norm. What I've seen  
21 mostly from Paris is someone who is, I believe, really  
22 fairly intelligent and he asks good questions and he was  
23 respectful and interested in this case.

24           He was facing immense peer pressure from  
25 peers in the jail to force this to trial, and it was a

1 real pleasure working with him and helping him understand  
2 what was going on. When it came right down to it, he was  
3 ready to say I'm sorry, and I think that is what you  
4 really want to hear right now is hear him himself speak  
5 to you.

6 He's one of the few clients also that I'll  
7 say, when asking him what do you want to do with your  
8 life, he actually had a plan, not something that was  
9 drummed by somebody else. He's used this last year in  
10 the detention center to sort through what he's done,  
11 where he's headed. He knows that the choice when he gets  
12 up the road is to either hang with the wrong crowd or  
13 right crowd. We've talked about that at some length. He  
14 is very determined to come back and make something of  
15 himself.

16 He would like to open a barbershop downtown  
17 maybe have more than one. A beauty salon. I think he  
18 could do it, so I ask that you factor that in, and I  
19 would also to hear from Mr. Austin.

20 THE COURT: Go ahead, Mr. Austin.

21 THE DEFENDANT: First of all, I would like to  
22 apologize to Ms. Williams and her family, and as the  
23 community, I wish it never would have happened. I'd like  
24 to tell her I truly was remorseful for what happened.  
25 I'm not just somebody who go out and do some things like

1 that. I can't even count to you how many nights I sit up  
2 in county jails, just wishing this never happened and  
3 wanting to reach out to her and apologize to her while  
4 I'm back there almost every day, you know. I just -- I  
5 ask her to forgive me for that one, find mercy in her  
6 heart, just for a young person at the time making a big  
7 mistake, alter the next few years of my life, if I could  
8 I would change it, but I can't so that, is why I truly  
9 want to apologize, I want to apologize to my family and  
10 my loved ones for putting up with all this stress and  
11 heartache and disappointing them.

12 Thank you.

13 THE COURT: Why did you shoot her?

14 THE DEFENDANT: It was an accident. I didn't  
15 mean to shoot her. I just tried to shoot in the car to  
16 scare her, and next thing I know, the car went off three  
17 times and she got up three times.

18 THE COURT: I could see one time being an  
19 accident. I don't understand how you accidentally shoot  
20 somebody three times.

21 THE DEFENDANT: I don't see it either, Your  
22 Honor, but some things happen that you can't explain.

23 THE COURT: All right. Anything else?

24 MR. GRIMES: No, sir.

25 THE COURT: Anything further from the State?

1 MR. DURANT: No, Your Honor.

2 THE COURT: All right.

3 Well, I always sad when some young person has  
4 done something to destroy basically their lives and  
5 someone else's life is going to be affected. I suppose  
6 if there is any good to come out of that that Ms.  
7 Williams is alive, and despite having some probably  
8 lifelong health issues seems to be relatively healthy.  
9 I'm sure you could probably live with the mental aspects  
10 of this for the rest of her life as well as some residual  
11 health affects but today seems to be remarkably well,  
12 considering she was shot three times at such close range.

13 Of course we got to try to fashion what is a  
14 sentence for Mr. Austin for his crime and what is the  
15 sentence for Ms. Williams as the victim and what is the  
16 sentence for society in a case like this, especially --  
17 you know, I suppose you're very lucky he's not here on a  
18 murder charge. It's remarkable that somebody gets shot  
19 three times, and this could easily be a case in which the  
20 State is looking at asking for life without parole, and  
21 had she died but for you you probably would have sought  
22 the death penalty on a case where he was -- if had he  
23 been an adult. Those stats were easily justified. I  
24 always find this is the worst part of the job when you  
25 have somebody that is so young who has made such bad

1 decisions. You know, I'm aware of the science that tells  
2 you that your brain is not developed and you make bad  
3 choices, and of course not every young person goes out  
4 and commits these kind of crimes and everybody's brain  
5 develops in different ways, and probably a lot of factors  
6 that come together on something like this, but the  
7 ultimate reason is -- the ultimate question is why do you  
8 do something like? This, and youth has got a lot to do  
9 with it.

10           You know, Mr. Grimes as alluded to the fact  
11 that some studies show that young people don't do a cost  
12 effective analysis they say that adults make. I'm not  
13 sure that many adults actually make that. I think what  
14 happens is actually that to the extent that young people  
15 do think and consequences of their actions they minimize  
16 the risk of getting caught is the flaw in their analysis.

17           I think they may think about it in some  
18 context, but they just can't fathom that they would ever  
19 get caught doing anything, and that is probably the  
20 reason why most people commit. Crimes of drugs or  
21 alcohol are usually involved, and they just for whatever  
22 reason don't think they'll get caught.

23           But you did, and you got caught with some  
24 fellows that sound like they were ready to come and  
25 testify against you. I sense the remorse that you have.

1 I struggle with the fact that you shot this lady not once  
2 but three times, and I'm having a hard time getting my  
3 head around the fact that that could be classified as an  
4 accident. So the real question is well, what society is  
5 interest in this as well, and, you know, society needs to  
6 be protected from people that are willing to at some  
7 point in their lives, whether they're very young or a  
8 little bit older, go out and hold people up at ATMs and  
9 then shoot them for no real apparent reason. Didn't even  
10 get a dime off this robbery.

11 Society has a right to be protected from  
12 people like that, and you get some benefit for coming in  
13 and taking responsibility for the actions. I can see an  
14 ease -- I can easily see you could have gone to trial on  
15 this and gotten the maximum sentence. I could easily see  
16 consecutive sentences being handed down by a trial judge  
17 after a trial with these charges and just the facts that  
18 I've heard.

19 Nevertheless, I think you should get credit  
20 for coming in and taking responsibility. You can get it  
21 as a mitigating factor. Your youth, I think it's good  
22 that you are attempting to build something of a life.  
23 You got a long time ahead of you, and I hope that you'll  
24 figure out a way to come out the other end as a  
25 productive member of society; however, at this point I

1 still think you're going to owe the State 25 years on  
2 each of these charges, the two attempted armed robbery  
3 and the attempted murder charge. The other three you  
4 will get five on each of those, but I will allow them to  
5 be run concurrently, and you will get credit for any time  
6 you've served on these charges.

7 Good luck to you.

8 MR. DuRANT: Just I think the maximum on the  
9 attempted armed robbery is 20.

10 THE COURT: You're sorry. So it's 20 on  
11 attempted armed robbery, 25 on the attempted murder.  
12 Thank you for pointing that out.

13 MR. GRIMES: I believe he served 388 days.

14 THE COURT: 380. All right. I'll write that  
15 down. Thank you. Good luck to you.

16 - - -

17 (Whereupon, the proceedings were concluded.)

18 - - -

19

20

21

22

23

24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 9th of April 2012.

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

March 14, 2013



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )

County of Charleston )

2012-CP-10-8355

IN THE COURT OF COMMON PLEAS

Paris Austin 350390  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

FILED  
2012 DEC 21 PM 4:40  
JULIE CLARK, CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correctional Institution Darlington North 1148  
990 W. Sackville Highway Bishopville SC 29010

2. Name and location of Court which imposed sentence Charleston County  
100 Broad Street Charleston County SC 29401-2258

3. Name(s) of co-defendant(s) (if any) Denzel Simmons, Floyd Woods  
III, McGill Cason

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

SEE ATTACHED SHEET

CLERK'S OFFICE  
NATIVE INSTRUCTIONS  
END FILE  
COPIES MADE  
TRANSCRIPT  
CLERK RECORDS  
RECORDS  
OFFICE  
DATE  
FILED

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) April 9, 2012 25 years

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) I didn't know I could

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance Counsel
- (b) Due Process Violation / over 90 days to indict
- (c) \_\_\_\_\_

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

- (a) See attached paper
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

- (a) Attorney didn't brought forth such
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

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

- i. Andreyo Gomes, O.T. Wallace County office BLDG  
101 Meeting Street, 5<sup>th</sup> Floor Charleston SC, 29401-2214
- ii. N/A
- iii. \_\_\_\_\_

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

- i. Plea and Sentencing
- ii. N/A
- iii. \_\_\_\_\_

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

I want my conviction vacated

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of Charleston )

VERIFICATION

I, Paris Austin 350390, 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.

Paris Austin #350390  
Paris Austin

SWORN to and subscribed before me this 7 day of Dec. 2012.

Debra Jones (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, Paris Austin, 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.

Paris Austin #350390  
Applicant

SWORN or affirmed to and subscribed before me this  
7 day of Dec, 2012.

Debra Sims  
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 )  
 Paris Austin, #350390, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-10-8355

RETURN

BY *ASD*  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 2013 JUL -5 AM 11:59  
 FILED

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 21, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for criminal conspiracy (2011-GS-10-4601), unlawful possession of a pistol (2011-GS-10-4156), attempted armed robbery (2011-GS-10-4158), attempted murder (2011-GS-10-4157), and possession of a firearm during the commission of a violent crime (2011-GS-10-4159). The Applicant was represented by Andrew Grimes, Esquire.

On April 9, 2012, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of twenty-five (25) years for attempted murder, twenty (20) years for attempted robbery, five (5) years for criminal conspiracy, five (5) years for unlawful possession of a pistol, and five (5) years for possession of

a firearm during the commission of a violent crime. The sentences are to be served concurrently. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective Assistance of Counsel
2. "Due process violation/over 90 days to indict"

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant further alleges that he was denied due process of law. The Applicant’s allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which

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

## V.

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

## VI.

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

[Signature on the following power.]

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

July 3, 2013.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-8355

PARIS AUSTIN, #350390

Applicant,

Vs

AFFIDAVIT OF SERVICE BY MAIL

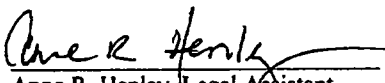
STATE OF SOUTH CAROLINA,

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:

Mr. William Runyon, Jr., Esquire  
#3 Gamecock Avenue  
Suite 303  
Charleston, SC 29407

DATED this 3rd day of July, 2013

  
Anne R. Henley, Legal Assistant  
For Respondent

FILED  
2013 JUL -5 AM 11:59  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

STATE OF SOUTH CAROLINA     ) COURT OF COMMON PLEAS?  
                                   ) NINTH JUDICIAL CIRCUIT  
 COUNTY OF CHARLESTON        ) CASE NO.: 2012-CP-10-08355

PARIS AUSTIN,                    )  
                                   )  
           APPLICANT,             )  
                                   )  
 VS.                                )  
                                   )  
 STATE OF SOUTH CAROLINA        )  
                                   )  
           RESPONDENT.            )  
 \_\_\_\_\_                      )

**POST CONVICTION RELIEF HEARING**

held before the Honorable Deadra L. Jefferson  
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit  
 in the Charleston County Courthouse  
 Charleston, South Carolina  
 on May 20, 2014, Commencing at 11:18 a.m.

---

SUSAN "MIA" PERRON, CVR-CM-M  
*Circuit Court Reporter - 9th Judicial Circuit*  
 Post Office Box 31865  
 Charleston, South Carolina 29417-1865  
 1-706-231-6028

---

APPEARANCES OF COUNSEL

FOR THE APPLICANT: William L. Runyon, Jr., Esquire  
Attorney at Law  
#3 Gamecock Avenue, Suite 303  
Charleston, South Carolina 29407

FOR THE RESPONDENT: Ashleigh R. Wilson, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

## INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
PARIS AUSTIN	
Direct Examination by Mr. Runyon	6
Cross-Examination by Ms. Wilson	10
ANDREW GRIMES	
Direct Examination by Ms. Wilson	14
Cross-Examination by Mr. Runyon	21
CLOSING ARGUMENT BY MR. RUNYON	25
CLOSING ARGUMENT BY MS. WILSON	26
COURT'S FINDINGS	28
CERTIFICATE OF COURT REPORTER	38

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EXHIBITS

[None]

Paris Austin vs. State of South Carolina  
Post Conviction Relief Hearing  
May 20, 2014

PROCEEDINGS

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THE COURT: This is Paris Austin versus the State of South Carolina, 2012-CP-10-8355. It is before the Court on an application for post conviction relief, which was filed on December 21st of 2012. The State's return was filed on July 5th of 2013. He was represented by Andrew Grimes. Sentenced by Judge Young on April 9th of 2012 on the offenses, twenty-five years for attempted murder, twenty years for attempted robbery, five years for criminal conspiracy, and five years for unlawful possession of a pistol and five years for possession of a firearm during the commission of a violent crime. The sentences were to run concurrently. There was no appeal filed from these convictions. And it was a guilty plea.

He alleges ineffective assistance of counsel and due process violation over ninety days to indict.

The applicant is represented by Mr. Runyon. The State is represented by Ms. Wilson.

Is the State ready to proceed?

MS. WILSON: Yes, Your Honor, the State is ready to proceed.

THE COURT: Is the applicant ready to proceed?

MR. RUNYON: Yes, Your Honor.

THE COURT: Mr. Runyon, you may proceed.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Paris Austin vs. State of South Carolina  
Post Conviction Relief Hearing  
May 20, 2014

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MR. RUNYON: Your Honor, at this time we would call the applicant, Mr. Paris Austin.

THE COURT: Sir, if you would stand at counsel table and raise your right hand to be sworn.

[Whereupon, Mr. Austin is duly sworn by the Court as follows: do you swear or affirm the testimony you give will be the truth]

THE WITNESS: Yes, ma'am.

THE COURT: You can put your right hand down. Sir, be seated. State your full name for the record, spelling your last name for the court reporter.

THE WITNESS: Paris Austin. A-U-S-T-I-N.

THE COURT: You may proceed, Mr. Runyon.

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Paris Austin  
Direct Examination by Mr. Runyon  
May 20, 2014

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PARIS AUSTIN,

Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. Mr. Austin, you of course were -- you're the applicant in this case?

A. Yes, sir.

Q. And you were represented by Mr. Grimes?

A. Yes, sir.

Q. Now, did he come to see you in the jail? Or were you out on bond?

A. I been incarcerated, before I get my time, for thirteen months. And throughout that thirteen months, he came to see me when my preliminary hearing and right before my initial trial.

Q. Did you advise him of any possible witnesses to call?

A. No, sir.

Q. Did you have any witnesses to call?

A. No, sir.

Q. Did you advise him of any alibi defense that you might have?

A. No, sir.

Q. Did you have an alibi defense to assert?

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Paris Austin  
Direct Examination by Mr. Runyon  
May 20, 2014

1 A. No, sir.

2 Q. All right. He prepared for your trial?

3 A. I don't -- I don't -- I disagree.

4 Q. Well, that's what I'm asking you. I'm not  
5 telling you he did, I'm asking you.

6 A. No. No, sir.

7 Q. Now, as a practical matter, did you in fact  
8 start the trial?

9 A. No, sir.

10 Q. You didn't start drawing a jury or anything?

11 A. No, sir.

12 Q. And in any event, did you ultimately plead  
13 guilty?

14 A. Yes, sir.

15 Q. And you received the sentence that the Court  
16 read out?

17 A. Yes, sir.

18 Q. All right. What did Mr. Grimes not do, or what  
19 did he do that was not in your best interest?

20 A. Well, Your Honor, I think he should have  
21 objected to the fact that my confession was illegally  
22 coerced. That's one. And he coerced me to take a plea.  
23 I never wanted to take a plea.

24 Q. How did he coerce you to take a plea?

25 A. Throughout my whole time in the detention center

Paris Austin  
Direct Examination by Mr. Runyon  
May 20, 2014

1 and the county jail, I filed a motion for a fast and  
2 speedy trial, which got stamped and approved by the clerk  
3 of court. After it got stamped and approved by the clerk  
4 of court, it seemed like that was just it. You know, he  
5 never took me in front of the judge to pursue the speedy  
6 trial.

7 I also filed a motion to get my coerced  
8 statement suppressed, which got stamped and approved by  
9 the clerk of court, and I never went in front of a judge  
10 on that behalf, either.

11 Q. Now, you of course understand that at a trial  
12 that you would have a right to move to suppress your  
13 statements?

14 A. Yes, sir.

15 Q. But you never completed the trial, did you?

16 A. No, sir.

17 Q. All right. Now, how old were you at the time  
18 that you appeared -- how old were you when you were  
19 charged?

20 A. Sixteen.

21 Q. And how old were you when you pled guilty?

22 A. Seventeen.

23 Q. And did you have anyone to advise you, other  
24 than Mr. Grimes?

25 A. Advise me about what?

Paris Austin  
Direct Examination by Mr. Runyon  
May 20, 2014

1 Q. About pleading guilty.

2 A. Well, Mr. Pennington, he talked to my mother  
3 about me pleading guilty. That's also the reason why I  
4 pleaded guilty, because I guess -- I guess he told my  
5 mother that it was -- I would come off better if I pled  
6 guilty, you know.

7 Q. So as a practical matter, you're saying you were  
8 coerced to plead guilty by virtue of your defense counsel  
9 talking to your mother?

10 A. Yes, sir.

11 Q. And that's the sole ground for the coercion;  
12 correct?

13 A. Yes, sir.

14 MR. RUNYON: No further questions, Your Honor.

15 THE COURT: Any questions of the witness?

16 MS. WILSON: Just briefly, Your Honor.

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Paris Austin  
Cross-Examination by Ms. Wilson  
May 20, 2014

CROSS-EXAMINATION

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BY MS. WILSON:

Q. Mr. Austin, can you recall how many times you met with Mr. Grimes before you pled guilty?

A. Well, like I said, I met with him one time right after the preliminary hearing. And my initial trial was supposed to be in March. Right before my initial trial, he started to come see me like about two weeks before the trial of the case. Then he got sick, so they moved my trial date back a month. When they moved it back a month, after he recovered from his sickness he started to come and see me again like two weeks before my trial date.

Q. So maybe like five or six times, can you guesstimate?

A. [No response]

Q. You met with him a couple of times before you pled guilty?

A. Yes, sir. Yes, ma'am.

Q. Okay. And did you -- when you met with him, did he go over the State's evidence with you?

A. Yes, ma'am.

Q. Did he talk to you about possible defenses and what y'all could present if y'all went to trial?

A. Yes, ma'am. Yes, ma'am.

We really was, you know, like -- I could have

Paris Austin  
Cross-Examination by Ms. Wilson  
May 20, 2014

1 present alibi for a witness as to where I was at at the  
2 time of the crime, you know. Yeah, we talked about  
3 certain things like that.

4 Q. And you talked to Mr. Grimes about the State's  
5 plea offer to you, is that correct, before you pled  
6 guilty?

7 A. I never had a plea.

8 Q. Okay. So you didn't plead guilty?

9 A. Oh. Yes, ma'am, I pled guilty. I thought you  
10 were referring to like my whole time inside county jail.

11 Q. No. Before you pled guilty, did you talk to  
12 Mr. Grimes about pleading guilty?

13 A. Yes, ma'am, on Saturday before my -- the  
14 Saturday before my trial.

15 Q. And was it your decision to plead guilty?

16 A. No, ma'am.

17 Q. Do you recall telling the judge that you wanted  
18 to plead guilty?

19 A. Yes, ma'am.

20 Q. Do you recall telling the Court that you were  
21 indeed guilty of the crime?

22 A. Yes, ma'am.

23 Q. And when you pled guilty, do you recall waiving  
24 your constitution rights like your right to remain silent,  
25 your right to a jury trial and your right to confront the

Paris Austin  
Cross-Examination by Ms. Wilson  
May 20, 2014

1 witnesses against you?

2 A. That whole morning right there was really like  
3 just a blur. I really was just -- you know, I say -- I  
4 was scared, you know. But I really can't recall what  
5 happened that morning unless I look over the transcript.  
6 I really was just trying to get through the whole  
7 procedure the best way I -- the best way I can.

8 Q. Did you recall -- did you recall telling the  
9 Court that you were satisfied with Mr. Grimes and that he  
10 did everything he could do?

11 A. No, ma'am.

12 MS. WILSON: Thank you.

13 THE COURT: Any redirect?

14 MR. RUNYON: No redirect, Your Honor.

15 THE COURT: Any further witnesses?

16 MR. RUNYON: No further witnesses from the  
17 applicant, Judge.

18 THE COURT: The State may proceed.

19 MS. WILSON: Thank you, Your Honor.

20 The State would call Mr. Andrew Grimes.

21 THE COURT: Mr. Grimes, if you would come  
22 forward.

23 [Whereupon, Mr. Grimes comes forward]

24 [Whereupon, Mr. Grimes is duly sworn by the  
25 clerk of court as follows: do you swear or affirm the

Paris Austin  
Cross-Examination by Ms. Wilson  
May 20, 2014

1 testimony you will give the Court will be the truth,  
2 the whole truth, and nothing but the truth, so help  
3 you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: You may be seated. Once  
6 seated, sir, if you could please state your first and  
7 last name and then spell your last for the record.

8 [Whereupon, Mr. Grimes takes the witness stand]

9 THE WITNESS: Andrew Grimes. G-R-I-M-E-S.

10 THE COURT: You may proceed.

11 MS. WILSON: Good morning, Mr. Grimes.

12 THE WITNESS: Good morning.

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Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

DIRECT EXAMINATION

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BY MS. WILSON:

Q. Can you tell the Court how long you've been practicing law and what your -- how much of your practice has been in criminal law?

A. I was sworn in in 1995. Most of my practice has been in criminal law. I've done some civil and some family court, appellate and trial work.

Q. Do you remember -- I'm sorry. Go ahead. Were you --

Do you recall when you were appointed to represent Mr. Austin?

A. If I look in the file I can.

Q. Well, was it, you know, months before he pled guilty or --

A. It was probably over a year before he pled guilty.

Q. And do you recall about how frequently you got to meet with him before he pled?

A. Reviewing what he said, we I think met at the beginning. Had I think a pretty good meeting. Went through the law and potential defenses and arguments. At that point I think we were trying to -- we agreed it was probably in his best interest to try to work out a plea, maybe he can -- I had heard talk that the victim's family

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Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

1 had hired a private attorney and wanted to sue the bank  
2 for an unsafe environment. And maybe he cooperated on  
3 that civil lawsuit to help out. Then I didn't see him  
4 again for a while. I think I sent him discovery. Mr  
5 Durant sent me Brady material and witnesses changing their  
6 testimony on the accounts. I sent him those. And then as  
7 it got closer to trial date, we started meeting more.

8 Q. And prior to him pleading guilty, did you talk  
9 to him about the elements of the charges he was facing and  
10 what the State had to prove?

11 A. Yes, ma'am.

12 Q. And you talked to him about his version of the  
13 facts?

14 A. Yes, ma'am.

15 Q. And you said you talked to him about possible  
16 defenses. Did you and Mr. Austin conclude that he had any  
17 defenses that he could present at trial?

18 A. We had a couple of arguments. We did -- he did  
19 give me the name of an alibi witness, provided written  
20 alibi notice. We did meet with her, me and Mr. Pennington  
21 and -- Ryan Schwartz [phonetic], and really didn't find  
22 him to be very credible. I think there was some facebook  
23 material which showed -- which would have been used to  
24 impeach her at trial, maybe she had a closer connection  
25 that what she was telling us. Told Mr. Austin that she

Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

1 was just basically a horrible witness and wouldn't help  
2 his case. And we agreed not to show an alibi.

3 Talked about on the attempted murder, he might  
4 have a defense there that, you know, showed it wasn't  
5 maybe an accident, it was an act of malice aforethought  
6 and I might get the charge reduced to assault and battery  
7 of an aggravated nature or assault and battery in the  
8 first degree.

9 As to the other charges, I didn't see much of a  
10 defense there. Either the hand of one, the hand of all,  
11 probably would have been very hurtful to our case in that  
12 they had I think three codefendants who were going to  
13 testify against us.

14 Q. And could you briefly characterize the State's  
15 evidence against Mr. Austin?

16 A. I think it was a pretty solid case that they  
17 had. They had videotapes of the incident, which I don't  
18 think showed who did it but it did show the incident on  
19 the bank cameras.

20 The victim would have then also testified about  
21 what happened and how she was able to drive away after  
22 being shot and called the police.

23 Then they had I think codefendants who were  
24 going to testify. All were lined up against us.

25 Mr. Austin had given a statement. There was

Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

1 a -- we talked about a challenging statement, because he  
2 had I think initially invoked counsel, retracted counsel.  
3 And then there was a question whether he reinitiated the  
4 interrogation I think with Detective Evans. And that  
5 would have been something to decide in court. And also  
6 talked about maybe not challenging the statement because  
7 it did have sort of his version in a nutshell of it being  
8 an accident, which may have shown that it wasn't malice  
9 aforethought. So either we had a good argument to keep it  
10 out, we made that argument and tried to use it at trial.

11 I don't think they had any other forensics or  
12 anything tying him to it. And I'm not sure exactly how he  
13 became a suspect. I don't recall that.

14 But that's the State's case in a nutshell.

15 Q. And what kind of investigation did you have to  
16 do in this case? Did you have to hire a private  
17 investigator or anything like that?

18 A. No, ma'am.

19 You know, based on our first meeting, it didn't  
20 seem like Mr. Austin was denying what happened so there  
21 didn't seem to be a lot of investigation to do. We  
22 obviously reviewed discovery. We I guess did more  
23 investigation in mitigation toward the end of the case.

24 And I met with his mother. We met at my office.  
25 I remember me and Mr. Pennington went to her house, met

Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

1 with her there. Then we talked to his sister about, you  
2 know, what kind of brother he was.

3 And got some additional names. I think several  
4 people came to court on his behalf and spoke in his  
5 behalf. We tried to present more of a mitigation tactic  
6 there.

7 And I think I had done some research before  
8 Miler v. Alabama was decided. Pulled the briefs. In  
9 there, it talked about age as a mitigating factor and why  
10 you get to treat juveniles differently from adults and  
11 they can't be judged the same way. I think we had given  
12 those briefs to Judge Young and he said he was familiar  
13 that sort of line of thought.

14 But I think that's -- most of our investigation  
15 was toward mitigation.

16 Q. And do you recall exactly or around the time  
17 when you entered into plea negotiations on Mr. Austin's  
18 behalf or how far before he pled guilty?

19 A. There was never a good offer made.

20 Q. And so he was just pleading guilty straight up?

21 A. Yes, ma'am.

22 I think Judge Young at sentencing said if he had  
23 gone to trial and lost, he might have considered him for  
24 consecutive sentences.

25 Q. And before you -- before Mr. Austin pled guilty,

Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

1 did you talk to him about the consequences of pleading  
2 guilty and how he would be giving up the right to  
3 challenge his statement and other things at trial?

4 A. Yes, ma'am.

5 Q. And did you talk to him about his constitutional  
6 rights and what he would be waiving?

7 A. Yes, ma'am.

8 We went over the statement, I think pretty well  
9 detailed, try to see what grounds there were for that. I  
10 did speak with Detective Adams about that, too.

11 Q. And did Mr. Austin ever tell you he didn't  
12 understand a part of the proceeding or anything like that?

13 A. I don't recall. Although he was young, he  
14 struck me as pretty bright. A lot of good qualities about  
15 him. I'm not sure what caused this incident but, you  
16 know, he was -- he talked a lot about basketball, you  
17 know, why his favorite team was Denver, other stuff. And  
18 he, you know, apart from the shooting, a very pleasant  
19 young man, come from a good family. You know, was doing  
20 well in his activities and showed a lot of leadership. He  
21 was like in family court with one of the boot -- work  
22 camps. We got some material from there. And just for  
23 whatever reason, he went out, unfortunately, you know, did  
24 a robbery and for some reason she got shot.

25 Q. Now, did you coerce Mr. Sumter [sic] to plead

Andrew Grimes  
Direct Examination by Ms. Wilson  
May 20, 2014

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guilty?

A. Ma'am?

Q. Did you coerce Mr. Sumter [sic] to plead guilty?

A. I mean, I imagine there was probably some pressure on him. Say, you know, if you go to trial, you're looking at this, you know, don't have great odds to win the case, you know, pleading guilty might give you a better option.

But I wouldn't say it was undue coercion, just trying to be straightforward and honest with him about the odds of what would happen at trial and what would happen if he pled guilty.

MS. WILSON: Thank you.

THE COURT: Any questions for the witness?

MR. RUNYON: Very briefly.

THE COURT: You may proceed.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-826-6313

Andrew Grimes  
Cross-Examination by Mr. Runyon  
May 20, 2014

CROSS-EXAMINATION

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BY MR. RUNYON:

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Q. Mr. Grimes, you're aware of the fact that your client was sixteen when he was charged?

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A. Yes, sir.

6

Q. And that he was seventeen when he pled guilty?

7

A. Yes, sir.

8

Q. And you indicated that you did research on the issue of his age as a factor in forming decisions to do things?

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A. Yes, sir.

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Q. And did I -- just as an aside. But did I understand you to say that there was some question about he advanced a theory of an accident that caused this?

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A. In his statement to police I think he said he accidentally shot her. During the plea colloquy Judge Young asked about the shooting and he said accident. And, honestly, I talked -- you know, see what happened in court and talking with the other defense lawyers who were representing the codefendant, I think we had to turn Judge Young off a little bit because he's, you know, reacting about -- how do you explain three shots and it was an accident.

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I think he probably meant accident in the sense that he wasn't aiming to hit her, he was shooting to scare

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Andrew Grimes  
Cross-Examination by Mr. Runyon  
May 20, 2014

1 her and it didn't come across that way.

2 Q. So you thoroughly vetted this issue of just  
3 accidentally shooting someone three times in the course  
4 of an armed robbery? I mean, you vetted that? I mean,  
5 you --

6 A. Yeah. And I wouldn't say I did a huge amount of  
7 research on that --

8 Q. Did he have the -- other than his mother  
9 perhaps, did he have the benefit of any other counseling,  
10 or anything of that sort, before he made any these  
11 decisions?

12 A. I remember asking -- sent an e-mail out to the  
13 office that this was going to be an involved trial, what  
14 it looked like and see, you know, who wants that second  
15 chair. Mr. Pennington volunteered and he spoke with  
16 Mr. Austin a lot.

17 Q. Actually, this plea actually occurred after you  
18 started to draw a jury and what-have-you for trial, didn't  
19 it?

20 A. I don't believe so. I think we spoke with Judge  
21 Young a little bit in chambers and the jury was set to be  
22 picked, I think, but we never got that far.

23 Q. But you never got that far. But you were  
24 prepared for trial?

25 A. Yes, sir.

Andrew Grimes  
Cross-Examination by Mr. Runyon  
May 20, 2014

1 MR. RUNYON: Okay. No further questions, Your  
2 Honor.

3 THE COURT: Any redirect?

4 MS. WILSON: Nothing further from the state.

5 MR. AUSTIN: May I say something, Your Honor?

6 THE COURT: No, sir. You can tell Mr. Runyon,  
7 if there's a question you have, and he can articulate  
8 that to the Court.

9 [Whereupon, Mr. Runyon and Mr. Austin confer]

10 Q. [Mr. Runyon] Mr. Grimes --

11 A. Yes, sir.

12 Q. -- there was no question about the fact that  
13 when he gave a statement to police, he didn't have any  
14 lawyer present?

15 A. No, sir.

16 Q. He didn't have any counselor of any kind or any  
17 guardian present?

18 A. No, sir.

19 Q. He was, in fact, a sixteen-year-old kid making a  
20 confession to the police?

21 A. Yes, sir.

22 MR. RUNYON: No further questions, Your Honor.

23 THE COURT: Anything further?

24 MS. WILSON: Nothing further from the State,  
25 Your Honor.

Andrew Grimes  
Cross-Examination by Mr. Runyon  
May 20, 2014

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THE COURT: Mr. Grimes, you may step down.

MR. GRIMES: Thank you, Your Honor.

THE COURT: You're welcome.

[Whereupon, Mr. Grimes is excused and exits the witness stand]

THE COURT: Anything further from the State?

MS. WILSON: Nothing from the State, Your Honor.

THE COURT: Any rebuttal, Mr. Runyon?

MR. RUNYON: No, Your Honor.

THE COURT: Be glad to hear arguments.

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Paris Austin vs. The State of South Carolina  
Closing Argument by Mr. Runyon  
May 20, 2014

CLOSING ARGUMENT

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MR. RUNYON: Your Honor, basically what we have here is a young man who's sixteen who is charged as an adult, who is -- his main issue is is that he made a decision to plead guilty. And it's his position that there weren't sufficient steps taken to ensure that he could do a cognizant and cogent -- and make a cogent decision to plead guilty for a seventeen-year-old.

He also questions whether or not they should have relied upon his statement made when he was a sixteen-year-old. And I don't want to say mentally deficient. He's not mentally deficient. He's just a young youngster with no counselor or guardian present at the time he made these decisions, that he was called upon to make these decisions as a young person who was not yet eighteen years of age, not at the age of consent, essentially. He couldn't enter -- he couldn't go buy a car but he can make a decision to plead guilty. That's his position.

THE COURT: Ms. Wilson?

MS. WILSON: Thank you, Your Honor.

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Paris Austin vs. The State of South Carolina  
Closing Argument by Ms. Wilson  
May 20, 2014

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CLOSING ARGUMENT

MS. WILSON: The State would just ask that you deny and dismiss this application for post conviction relief with prejudice.

With regard to Mr. Austin's allegation that he was coerced to plead guilty, the record from his guilty plea transcript pretty clearly reflects that he was advised of all his rights by the Court. He told Judge Young that he hadn't been promised, threatened, or coerced to get him to plead guilty. He also told the Court that he wasn't under the influence, hadn't suffered from any mental illness, and that he had spoken with Mr. Grimes enough to make the decision, and that he was satisfied with his counsel.

With regard to the argument about his age prohibiting him from entering the guilty plea, we heard from Mr. Grimes that Mr. Austin was a pretty bright sixteen-year-old and that he understood what was going on. And also that he discussed the challenging of his statement to police with Mr. Austin before he decided to plead guilty and that he thought that was in his best interest.

Also, Your Honor, Mr. Grimes at the guilty plea made extensive argument in mitigation dealing with his age and his placement in the community and his

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Paris Austin vs. The State of South Carolina  
Closing Argument by Ms. Wilson  
May 20, 2014

1 activities. Also, Mr. Grimes testified that he spoke  
2 with the defendant -- both the defendant and his  
3 mother.

4 Your Honor, based on the nature of the offense,  
5 Mr. Austin, based on the severity of the crimes he  
6 submitted, he's not considered a juvenile under the  
7 law, the case law, as far as the Court's jurisdiction  
8 over juveniles that commit crimes. Because attempted  
9 murder is a class A felony and attempted armed robbery  
10 is a class B felony, he's not considered a juvenile  
11 for that purpose and it automatically went up to  
12 general sessions court.

13 So we just ask that you consider everything that  
14 Mr. Grimes did present to the Court on Mr. Austin's  
15 behalf and just ask that you dismiss the application  
16 with prejudice.

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Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

COURT'S FINDINGS

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THE COURT: In considering an application for post conviction relief, the applicant has the burden of proof. He must prove that his counsel was ineffective. Not only that he was ineffective but that his performance fell below what would be considered the professional norms. And in the context of a guilty plea, he has to prove that counsel's performance was so deficient that not only -- that he would have -- instead of pleading guilty, he would have insisted on going to trial. And of course that is his burden of proof.

He has basically alleged in his application that -- he makes a blanket assertion of ineffective assistance of counsel, which in this instance he has articulated as his counsel coercing him into pleading guilty not taking into account his age. And also he has made certain allegations regarding a lack of challenging or trying to suppress his statement made to the police.

And he also alleged due process violation over ninety days to indict. Since there was no testimony regarding that, I assume that ground has been abandoned.

I have reviewed the transcript in this matter,

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 which is most persuasive to the Court because it is a  
2 contemporaneous record of what actually took place on  
3 that day and of the judge's findings. And not only  
4 that, of the judges observations of the applicant.  
5 Judges are very astute. We look at more than the  
6 words that people say. We look at their body  
7 language, their behavior and otherwise, and make  
8 certain independent determinations outside of the  
9 record as to whether we're going to accept and qualify  
10 a plea or not. And apparently by Judge Young  
11 qualifying that plea, he did not have any of those  
12 concerns.

13 But, again, the record is what I consider to be  
14 dispositive of this matter. It is clear from the  
15 record that Judge Young advised the applicant of the  
16 collateral consequences of his plea, that being  
17 enhancement and strikes. That's at page 3, lines 17  
18 through 25, page 4 and page 5, lines 1 through 13. He  
19 was clearly advised of his constitutional rights. In  
20 fact, he was waiving those rights. At page 5, lines  
21 15 through 25, continuing on to page 6, lines 1  
22 through 6, he on two occasions very clearly  
23 articulated his guilt, that being at page 6, lines 7  
24 through 10 and page 7, lines 24 and 25, continuing to  
25 page 8, lines 1 through 2. He also elocuted to the

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 facts of each indictment, indicating his guilt as to  
2 the elements of each offense as indicted. And that's  
3 at page 6, lines 11 through 25 and page 7, lines 1  
4 through 23. He advised the Court that he was not  
5 under the influence of any drugs, alcohol, or other  
6 intoxicants at page 8, lines 3 through 5. And he  
7 indicated to the Court he had no desire to meet  
8 any further with his attorneys at page 8, lines 6  
9 through 8.

10 He also acknowledged, in contravention of his  
11 testimony here today, that he did not suffer from any  
12 physical, emotional or mental conditions that would  
13 impair his ability to understand where he was or what  
14 he was doing, at page 8, lines 9 through 12.

15 He also indicated that he was satisfied with his  
16 attorneys and the extent of their services; in other  
17 words, what they went over with him his constitutional  
18 rights, elements of the offenses, and otherwise, at  
19 page 8, lines 12 through 25 and page 9, lines 1  
20 through 11, and his waiver of his right to a jury  
21 trial, as well as his ability to suppress or make a  
22 motion to suppress any evidence, at page 9, lines 9  
23 through 24.

24 He then provided for the Court that, in fact,  
25 all of these decisions were his decisions at page 9,

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 line 25 and page 10, lines 1 through 2, and that he  
2 was pleading straight up with no promises. Page 10,  
3 lines 3 through 6, that he was not subject to any  
4 promises or threats, page 10, lines 7 through 9.

5 The record also reflects, through the  
6 representations of Mr. Pennington, that there was a  
7 thorough explanation of all of these proceedings to  
8 the applicant and that was also with the aid and  
9 assistance of his mother and that they had enlisted  
10 her assistance. Not only had they explained  
11 everything to her but they had made sure that she was  
12 present, due to his tender age, to make sure all of  
13 these items were explained to him, as well and that he  
14 had a thorough understanding of what was going on, at  
15 page 11, lines 3 through 10.

16 And also the matters of his age and also  
17 anything in mitigation regarding his age and any  
18 current and new case law was thoroughly explored and  
19 argued in mitigation to the Court by Mr. Grimes. Not  
20 only did he argue it, but he also filed a memo with  
21 the Court. It's obvious to this Court that he took  
22 the matter very seriously and he argued very ardently  
23 regarding that in mitigation for his client. As well,  
24 other mitigation, and I'm not neglecting that, in the  
25 record because he had people come to speak as

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 character witnesses on his behalf as to his  
2 involvement in church and otherwise. But what I'm  
3 referring to now is at page 18, lines 6 through 16,  
4 page 19, lines 8 through 11, and page 21, lines 18  
5 through 24.

6 The Court finds the testimony of Mr. Grimes  
7 credible and compelling on several issues, one of  
8 which is the suppression or any potential suppression  
9 of the applicant's statement. And after an evaluation  
10 of that and after having gone over that with his  
11 client, they determined when they were in the trial  
12 preparation process that this really was not  
13 necessarily in his best interest. And that was a  
14 strategic call. Simply because the statements, in  
15 fact, contained his version of the incident or the  
16 accident as it has been characterized, and that well  
17 could have enured to his benefit. And so there really  
18 -- at that point it may well have been to his benefit  
19 to have allowed that statement in because then that of  
20 course spares him being -- testifying, as well as  
21 being cross-examined, which we know is a valuable  
22 thing to preserve in a trial proceeding. And I'm  
23 extrapolating that from Mr. Grimes' testimony.  
24 Although he did not specifically use that wording, I  
25 can only assume that that would be his analysis, as

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 that would be the analysis of most criminal attorneys  
2 in that same position.

3 What is most compelling in Mr. Grimes'  
4 preparation of this case, and what really I think ham-  
5 stringed him to some extent, is the testimony of three  
6 codefendants who were willing to come forward and  
7 testify against his client, which put him in very much  
8 of a bind because, of course, juries generally think  
9 where there's smoke there's fire. One codefendant  
10 with an ulterior motive is one thing. But three with  
11 an ulterior motive, having to collaborate three  
12 separate stories, is almost -- a jury can believe a  
13 conspiracy theory, but it's unlikely they're going to  
14 believe three independent folk or three independent  
15 motives conspired against one person when it is  
16 alleged that they were all a part of the same  
17 conspiracy. So he was between what we call a  
18 proverbial rock and hard place when you have three  
19 codefendants willing to testify against your client  
20 and going to trial on that.

21 Where Judge Young very clearly articulated in  
22 the record that he gave him credit for several things.  
23 It is clear from this record that Judge Young gave him  
24 substantial consideration in the mitigation that  
25 Mr. Grimes argued, as well as the fact that to some

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 extent, even though he really didn't admit his guilt,  
 2 he said it was an accident, but he very clearly  
 3 articulated that if he had gone to trial -- and he  
 4 says at page 30, line 14: I can easily see you could  
 5 have gone to trial on this and gotten the maximum  
 6 sentence; I could easily see consecutive sentences  
 7 being handed down by a trial judge after a trial on  
 8 these charges and just the facts that I've heard.  
 9 Which means he acknowledges really the egregious  
 10 nature of what happened. And earlier in the  
 11 transcript he acknowledges the fact that it really is,  
 12 and his words were, lucky that this woman really got  
 13 up from this incident because after three shots, he  
 14 said, he could very easily have been here, and I'm  
 15 paraphrasing his words, on a murder charge instead of  
 16 an attempted murder charge.

17 The fact that it became the strategy to go  
 18 forward with a plea and to focus on mitigation really  
 19 makes null the issues of the suppression of the  
 20 statement. And I've already addressed that I feel it  
 21 was valid strategy for Mr. Grimes to have thought or  
 22 have perceived, after evaluating the situation, that  
 23 the statement may have been more valuable to his  
 24 client than suppressing it.

25 And I find credible Mr. Grimes' testimony that

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-826-6313

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 while his client was young, that he was pretty bright,  
2 had good qualities about him, and that he was able to  
3 assist in his representation and he understood the  
4 proceedings.

5 As well as the fact that while he did not coerce  
6 him, he did put some pressure on him to plead guilty  
7 because he did not see a viable win in the facts and  
8 circumstances of this case. And as any attorney would  
9 have really grave concern about a person of his young  
10 and tender age going to trial on something like this  
11 and receiving potentially the maximum sentence, which  
12 would be -- which would have been the entirety of his  
13 future, when faced with the possibility of arguing in  
14 mitigation and being able to max out the sentence and  
15 still come out and have some life to live as a mature  
16 adult and still have some benefit of rehabilitation.

17 I do not find the applicant's testimony credible  
18 that the plea was a blur, that he didn't understand,  
19 that he was seventeen and scared. I believe he was  
20 seventeen and scared, but almost every person that  
21 pleads before the Court is scared. That doesn't mean  
22 that they didn't understand what they were doing. I  
23 think that you would be inhuman or you would not have  
24 any level of emotion if you didn't have trepidation  
25 when you're pleading guilty before, one, a stranger,

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 to a set of circumstances that were egregious and not  
 2 knowing what the outcome will be. I think anybody  
 3 would have some level of fear or trepidation in that  
 4 situation. It does not mean, however, that it rose to  
 5 the level of you being coerced, that -- the plea not  
 6 being -- negating the plea being the free and  
 7 voluntary will of the individual. I can honestly say  
 8 I've never seen a criminal defendant testify -- I  
 9 mean, plead guilty, that wasn't nervous. There is  
 10 always some level of nervousness. But in this  
 11 instance, I don't see anything in the record that  
 12 bears out that he was so nervous he did not understand  
 13 what he was doing. And, again, that is bourn out by  
 14 the elocution -- or the plea colloquy, which very  
 15 clearly indicates that he was thoroughly questioned.  
 16 He didn't hesitate in any of his answers, he appeared  
 17 to be cogent, aware of his surroundings, and answered  
 18 the questions appropriately.

19 Based on what has been presented to the Court,  
 20 the application for post conviction relief is denied.

21 Ms. Wilson will provide the Court with a  
 22 proposed order. I'll give her leave to make any other  
 23 findings of facts and conclusions of law that are  
 24 consistent with the record. That order will be  
 25 provided to the Court within fifteen days of today.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-625-6313

Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

1 And a copy of that order will likewise be sent to  
2 Mr. Runyon.

3 Mr. Runyon, if you have any changes,  
4 modifications or otherwise you want to make to the  
5 order, please feel free --

6 MR. RUNYON: Yes, Your Honor.

7 THE COURT: -- to make Ms. Wilson aware of them.

8 MR. RUNYON: Thank you very much.

9 THE COURT: Thank you very much.

10 MS. WILSON: Thank you.

11 [HEARING CONCLUDES AT 12:05 P.M.]

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Paris Austin vs. The State of South Carolina  
Court's Findings  
May 20, 2014

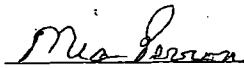
C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Deadra L. Jefferson, on May 20, 2014.

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

Dated this 7th day of September, 2014.

  
\_\_\_\_\_  
Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Paris S. Austin, #350390, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-10-8355

FILED  
 2014 JUL 15 PM 3:18  
 JULIE A. BRISTOL  
 CLERK OF COURT  
 BY \_\_\_\_\_

ORDER OF DISMISSAL

Presiding Judge:	The Hon. Deadra L. Jefferson
Applicant's Attorney:	William L. Runyon, Jr., Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	Andrew Grimes
Date of Hearing:	May 20, 2014
Court Reporter:	Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 21, 2012. The Respondent made its Return on July 3, 2013. An evidentiary hearing into the matter was convened on May 20, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Andrew Grimes, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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 [Signature]

**RECEIVED**

JUL 21 2014

**S.C. SUPREME COURT**PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for Criminal Conspiracy<sup>1</sup> (2011-GS-10-4601), Unlawful Possession of a Pistol<sup>2</sup> (2011-GS-10-4156), Attempted Armed Robbery<sup>3</sup> (2011-GS-10-4158), Attempted Murder<sup>4</sup> (2011-GS-10-4157), and Possession of a Firearm During the Commission of a Violent Crime<sup>5</sup> (2011-GS-10-4159). The Applicant was represented by Andrew Grimes, Esquire.

On April 9, 2012, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of twenty-five (25) years for Attempted Murder, twenty (20) years for Attempted Robbery, five (5) years for Criminal Conspiracy, five (5) years for Unlawful Possession of a Pistol, and five (5) years for Possession of a Firearm During the Commission of a Violent Crime. The sentences are to be served concurrently. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. "Due process violation/over 90 days to indict"


<sup>1</sup> The offense of Criminal Conspiracy is a felony punishable by five (5) years' imprisonment or a \$5,000.00 fine. See S.C. CODE ANN. § 16-17-410 (2011).

<sup>2</sup> The offense of Unlawful Possession of a Pistol is a felony punishable by five (5) years' imprisonment or a \$2,000.00 fine, or both. See S.C. CODE ANN. § 16-23-30 (2011).

<sup>3</sup> The offense of Attempted Armed Robbery is a violent, most serious felony punishable by imprisonment not more than twenty (20) years. See S.C. CODE ANN. § 16-11-330(B) (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

<sup>4</sup> The offense of Attempted Murder is a violent, most serious felony punishable by not more than thirty (30) years' imprisonment, none of which may be suspended, nor probation granted. See S.C. CODE ANN. § 16-3-29 (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

<sup>5</sup> The offense of Possession of a Firearm During Commission of a Violent Crime is a felony punishable by a mandatory minimum of five (5) years' imprisonment in addition to the offender's punishment for the principal crime. See S.C. CODE ANN. § 16-23-490 (2011).

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At the hearing, the Applicant abandoned all grounds for relief except ineffective assistance of counsel.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

#### Summary of the Testimony

The Applicant was present and testified he was represented at his guilty plea by Andrew Grimes, Esquire. He testified he first met Mr. Grimes after his preliminary hearing. The Applicant testified he met with Mr. Grimes a "couple" of times before his guilty plea. He testified he and counsel reviewed the evidence and discovery, discussed possible defenses, and discussed pleading guilty the Saturday before trial. The Applicant testified he did not know of any witnesses he could call and he had no alibi. The Applicant testified Mr. Grimes did not prepare for trial. The Applicant also testified Mr. Grimes should have objected to his confession.

The Applicant testified further he was coerced to plead guilty by Mr. Grimes. He testified he told the plea judge that he was guilty and wanted to plead guilty, but, at the PCR hearing, denied that it was his decision to plead guilty. The Applicant denied he told the court during his plea colloquy that he was satisfied with his attorney. He testified he was sixteen years old when he was charged and seventeen years old when he pled guilty. The Applicant testified Ashley Pennington, Esquire, spoke to his mother about his plea offer. He testified that he was coerced to

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plead guilty by counsel speaking with his mother. The Applicant testified it was not his decision to plead guilty, the entire morning and the plea was a blur, and he was afraid during the guilty plea. The Applicant testified he was "seventeen and scared" and just tried to get through the procedure the best he could.

Andrew Grimes, Esquire, counsel for the Applicant also testified. Counsel testified he has been practicing mostly criminal law since 1995. He testified he was appointed to represent the Applicant over a year prior to the plea. Counsel testified he met with Ashley Pennington, Esquire and a law clerk, who volunteered to sit second chair on the case if the Applicant proceeded to trial. He testified his initial meeting with the Applicant was good and the best route was to try negotiating a plea offer with the State. Closer to trial, Counsel testified he and the Applicant met more. Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. He testified they also discussed the Applicant's version of facts.

Counsel testified the Applicant gave him the name of a potential alibi witness, but the witness turned out to not be credible, that he discovered some Facebook material to potentially impeach her but that the alibi witness would have been "horrible." Counsel testified his argument at trial would have been that the Attempted Murder was an accident and the Applicant was guilty only of Assault and Battery of a High and Aggravated Nature.<sup>6</sup> Counsel testified the Applicant did not have a defense to the other charges he was facing. Counsel testified he discussed with the Applicant challenging the Applicant's statement to police based on Miranda and custodial interrogation because there was a question about whether the Applicant re-initiated contact with police. Counsel testified they also considered not challenging the Applicant's statement because

<sup>6</sup> Assault and Battery of a High and Aggravated Nature is a violent, serious felony punishable by not more than twenty (20) years' imprisonment. See S.C. CODE ANN. § 16-3-600(B)(1) & (2) (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

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it contained the Applicant's side of the story and would have been helpful. Counsel testified that as part of going over the evidence against the Applicant prior to the trial, he was concerned about the Applicant's co-defendants testifying against him, the bank surveillance video and victim testimony about the shot being introduced against the Applicant at trial.

Counsel testified extensive investigation beyond discovery was not necessary in this case because the Applicant did not deny the incident took place and there were no real forensics. He testified he reviewed the discovery and focused most of his investigation on mitigation to present at a guilty plea. Counsel testified the jury was set to be picked and they were prepared for trial. He testified before the start of trial the Applicant gave consideration to the possibility that the trial judge would calculate his sentence consecutively if the Applicant went to trial resulting in his conviction, as the trial judge stated on the record. He testified that as a result the Applicant decided to plead guilty. Counsel testified he was honest with the Applicant about his odds at trial, but he did not unduly coerce the Applicant to plead guilty. Counsel testified that no plea offers were ever made by the State and that the Applicant was well aware he was pleading straight up. He testified there was likely some pressure on the Applicant based on what he was facing at trial and his dubious odds of winning. Counsel denied he coerced the Applicant into pleading guilty but admitted to putting some pressure on him—not undue coercion—in an attempt to be straightforward and honest about the Applicant's options because his was not a winning case.

Counsel testified prior to the Applicant's plea he informed the Applicant of the consequences of pleading guilty, his statement that he accidentally shot the victim, and his constitutional rights. Counsel testified the Applicant understood that if he pled guilty he would not be able to challenge his statement. Counsel testified the Applicant was young, but very bright

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and pleasant. Counsel testified he researched the Applicant's youth, age and decision making as factors for mitigation and Miller v. Alabama.<sup>7</sup> he presented a brief to the plea judge on the issue of the Applicant's age, he met with the Applicant's mother and sister, and he got the names of several others who would speak on the Applicant's behalf during sentencing.


#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under

<sup>7</sup> 132 S.Ct. 2455, 183 L.E.2d 407 (2012).

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prevailing professional norms.” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419

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[Signature]

(2002) (citations omitted).

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

The Applicant alleges he was coerced to plead guilty by counsel. This Court finds the Applicant's guilty plea was entered freely, voluntarily, and intelligently made and the Applicant had a full understanding of the consequences of pleading guilty. The Applicant affirmed to the Court that he wished to plead guilty to five (5) offenses. (Tr. 2:10-25, 3:1-10). The Court advised the Applicant of the potential sentences for the charges he was facing. (Tr. 2:9-3:10). The Court advised the Applicant of collateral consequences, enhancements, and that he was pleading to strike offenses and if convicted of another strike offense would be sentenced to life without the possibility of parole. (Tr. 3:12-25, 4:1-25, 5:1-14). The Applicant was advised of his right to a jury trial, his right to appeal, his right to challenge the State's evidence, and his right to testify at trial, all of which he waived. (Tr. 5:15-25, 6:1-6, 9:9-24). The Applicant admitted his guilt (Tr. 6:7-10, 7:24-25, 8:1-2) and allocated to the facts of each indictment (Tr. 6:11-25, 7:1-23). The Applicant told the Court he was not under the influence of any drugs or alcohol (Tr. 8:3-5) and did not have any physical, mental, or emotional conditions that kept him from understanding the guilty plea. (Tr. 8:9-12). The Applicant also told the Court he did not want to have his confession suppressed. (Tr. 9:16-21). Lastly, the Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Tr. 9:25, 10:1-9). This

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Court also finds counsel with the aid of the Applicant's mother thoroughly explained the guilty plea proceeding with the Applicant. (Tr. 11: 3-10). Most notably, the Applicant told the Court he had enough time to speak with his attorneys (Tr. 8: 6-8, 13-17), his lawyers did everything the Applicant asked them to do (Tr. 8: 18-23), and he was satisfied with his attorneys' services (Tr. 8: 24-25, 9:1). The Applicant also told the Court that his attorneys reviewed all the evidence and the law with him. (Tr. 9:2-8).

This Court does not find credible Applicant's testimony that he was coerced to plead guilty by plea counsel. A defendant knowingly, freely, voluntarily, and intelligently pleads guilty when the defendant has a full understanding of the consequences of his plea and the charges against him. Boykin, 395 U.S. at 243-44, 89 S. Ct. at 1712. Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 73-74, 97 S. Ct. 1621, 1629-30 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347, 350 & n.1 (4th Cir.1975), *overruled on other grounds*, United States v. Whitley, 759 F.2d 327, 331; Edmonds v. Lewis, 546 F.2d 566, 567-68 (4th Cir. 1976) (citing Rule 11, Fed. R. Crim. P.; Crawford, 519 F.2d at 350). This Court finds the Applicant's statements to the Court during his

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guilty plea are conclusive and the Applicant should not be allowed to depart from the truth of his statements.

This Court also finds it is not uncommon for criminal defendants to experience some fear or nervousness when pleading guilty before the Court. This Court does not find credible the Applicant's testimony that the guilty plea was a blur. This Court also notes that nothing in the record indicates the Applicant's nervousness prevented him from understanding his plea proceeding. This Court finds the Applicant's fear and nervousness during the guilty plea proceeding was not sufficient to warrant the Applicant's guilty plea involuntary.

This Court finds the Applicant's age did not prevent his guilty plea from being entered freely and voluntarily. The record reflects the plea court was well aware of the Applicant's age at both the time of the incident and the time of the guilty plea. The plea court did not appear to have any concerns with the Applicant proceeding with the guilty plea. This Court finds the issue of the Applicant's youth was thoroughly explored and adamantly argued in mitigation to the Court. (Tr. 18:6-16). Ultimately, this Court finds that the matter of the Applicant's age was taken very seriously. (Tr. 21:18-24, 28:3-5, 30:19-25). Counsel for the Applicant also presented substantial mitigation evidence to the Court regarding the Applicant's age during sentencing. This Court finds credible counsel's testimony that the Applicant, while young, was bright and able to assist in his representation.

The Applicant also alleges counsel was ineffective for failing to challenge his statement to police. This Court finds the Applicant was well aware that entering a guilty plea would waive his right to challenge his statement to police. The Applicant was advised by the plea court of his right to challenge his statement and he told the Court he wished to plead guilty and give up his right to have his statement suppressed. (Tr. 9:16-21). This Court finds this allegation is without

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merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to challenge his statement to police.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See id. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony in support of the claims. Accordingly, this Court deems these allegations abandoned by the Applicant. Therefore, they are hereby denied and dismissed.

**CONCLUSION**

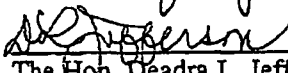
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation.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

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

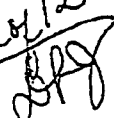
**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 10<sup>th</sup> day of July, 2014

  
 \_\_\_\_\_  
 The Hon. Deadra L. Jefferson  
 Presiding Judge, 9th Judicial Circuit

Charleston, South Carolina  
 At Chambers

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DBD20110301570

WITNESSES

Mark L. Evans

North Charleston Police Department

AGENCY CASE NUMBER

2011001436

ARREST WARRANT NUMBER

M726040

DATE OF ARREST

March 17, 2011

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date:

JUN 13 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1004156

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

PARIS SHYHEIM AUSTIN

DOB [REDACTED]  
B/M

Indictment for

POSSESSION OF A HANDGUN BY  
PERSON UNDER 18

**FILED**

8/4/2011 2:42:11 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By *Mark L. Evans*  
DEPUTY CLERK

DEPUTY CLERK  
By *[Signature]*  
JULIE ARMSTRONG (SEAL)  
CLERK, C.P. S.S. & F.D.  
ATTEST: A TRUE COPY

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on July 11, 2011 the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A HANDGUN BY PERSON UNDER 18

That in Charleston County on or about January 12, 2011, the Defendant, **PARIS SHYHEIM AUSTIN**, being under the age of 18 and not a member of the Armed Forces, National Guard, State Militia, R.O.T.C. or having been temporarily loaned a handgun for instructional purposes under the immediate supervision of a parent or adult instructor, did knowingly possess or acquire a handgun in violation of Section 16-23-30(3) of the South Carolina Code of Laws, 1976, as amended.

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

*[Signature]*  
D. BRUCE DURANT  
CHIEF DEPUTY SOLICITOR

DBD20110301570

WITNESSES

Mark L. Evans

North Charleston Police Department

AGENCY CASE NUMBER

2011001436

ARREST WARRANT NUMBER

M726041

DATE OF ARREST

March 17, 2011

ACTION OF GRAND JURY

**TRUE BILL**

*J. [Signature]*  
Foreperson of Grand Jury  
Date:

JUL 13 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1004157

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

PARIS SHYHEIM AUSTIN

DOB: [REDACTED]  
B/M

Indictment for

ATTEMPTED MURDER

**FILED**

8/4/2011 2:42:11 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By *[Signature]*  
DEPUTY CLERK

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on July 11, 2011 the Grand Jurors of Charleston County present upon their oath:

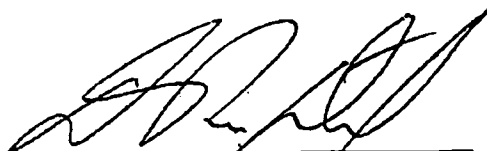
**ATTEMPTED MURDER**

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That in Charleston County, South Carolina, on or about January 12, 2011, the Defendant, **PARIS SHYHEIM AUSTIN**, while acting in concert with others, did with intent to kill and malice aforethought attempt to kill Sade Williams in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

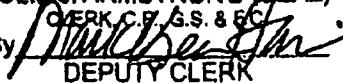
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



**D. BRUCE DURANT**  
CHIEF DEPUTY SOLICITOR

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)

By   
DEPUTY CLERK

DBD20110301570

DOCKET NO. 2011GS1004158

WITNESSES

Mark L Evans

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2011001436

COURT OF GENERAL SESSIONS

July 2011 Term

ARREST WARRANT NUMBER

M726043

DATE OF ARREST

March 17, 2011

FILED

8/4/2011 2:42:11 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

ACTION OF GRAND JURY

**TRUE BILL**

THE STATE

vs.

PARIS SHYHEIM AUSTIN

DOB: [REDACTED]

B/M

Foreperson of Grand Jury

Date:

JUL 13 2011

Indictment for

ATTEMPTED ARMED ROBBERY

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK OF P. S. & F.C.  
By: [Signature]  
DEPUTY CLERK

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

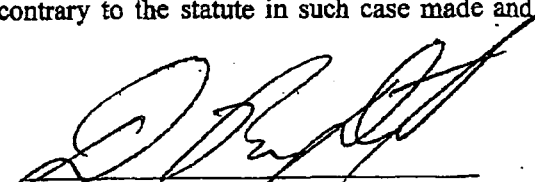
INDICTMENT

At a Court of General Sessions, convened on July 11, 2011, the Grand Jurors of Charleston County present upon their oath:

**ATTEMPTED ARMED ROBBERY**

That on or about January 12, 2011, in Charleston County, South Carolina, at [REDACTED] [REDACTED], North Charleston, the Defendant, PARIS SHYHEIM AUSTIN, while acting in concert with others, did by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, attempt to take and carry away goods and/or monies from the person or immediate presence of Sade Williams with the intent to permanently deprive her of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

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

  
D. BRUCE DURANT  
CHIEF DEPUTY SOLICITOR

DBD20110301570

WITNESSES

Mark L Evans

North Charleston Police Department

AGENCY CASE NUMBER

2011001436

ARREST WARRANT NUMBER

M726044

DATE OF ARREST

March 17, 2011

ACTION OF GRAND JURY

**TRUE BILL**

*J. [Signature]*

Foreperson of Grand Jury  
Date:

JUL 13 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1004159

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

PARIS SHYHEIM AUSTIN

DOB [REDACTED]  
B/M

Indictment for

POSSESSION OF A FIREARM  
DURING THE COMMISSION OF  
A VIOLENT CRIME

**FILED**

8/4/2011 2:42:11 PM

JULIE J. ARMSTRONG

CLERK OF COURT

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK OF P. G.S. & F.C.  
By *[Signature]*  
DEPUTY CLERK

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )


INDICTMENT

At a Court of General Sessions, convened on July 11, 2011, the Grand Jurors of Charleston County present upon their oath:

**POSSESSION OF A FIREARM DURING  
THE COMMISSION OF A VIOLENT CRIME**

That in Charleston County, South Carolina, on or about January 12, 2011, the Defendant, PARIS SHYHEIM AUSTIN, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of armed robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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

  
D. BRUCE DURANT  
CHIEF DEPUTY SOLICITOR

DBD20110301570

DOCKET NO. 2011GS1004601

WITNESSES

Mark Evans  
North Charleston Police Department

AGENCY CASE NUMBER

2011001436

ARREST WARRANT NUMBER  
DIRIND1458

DATE OF ARREST

July 11, 2011

ACTION OF GRAND JURY

**TRUE BILL**

*J. Scott*  
Foreperson of Grand Jury  
Date: Jul 13 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

PARIS SHYHEIM AUSTIN

DOB: [REDACTED]  
B/M

Indictment for  
CRIMINAL CONSPIRACY

**FILED**

8/4/2011 2:36:52 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

