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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

DIDIER VAN SELLNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-002472

APPENDIX

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INDEX

INDEX.....i

GUILTY PLEA TRANSCRIPT1

APPLICATION FOR POST-CONVICTION RELIEF.....23

RETURN35

POST-CONVICTION RELIEF HEARING TRANSCRIPT42

ORDER OF DISMISSAL76

INDICTMENT84

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF ORANGEBURG) No. 2011 GS 38 1984

3 STATE OF SOUTH CAROLINA)
 4)
 5)
 6 versus)
 7)
 8 DIDIER VAN SELLNER)
 9 Defendant)

TRANSCRIPT OF RECORD

Orangeburg, South Carolina
 March 6, 2012

12 B E F O R E :

13 HONORABLE EDGAR W. DICKSON, Presiding Judge

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

15
 16 For the State: D. SORENSON, Esq.
 Solicitor
 17 For the Defendant: P. HINDS, Esq.
 Public Defender
 18 Reporter: HARRY DOT WALKER
 19

20
 21 HARRIET P. BENNETT
 Reporter, S.C. Court Administration
 22 46 Regency Oaks Drive
 23 Summerville, S.C. 29485
 24
 25

1 (The within matter came before the Court for
2 hearing on March 6, 2012)

3 SOLICITOR: Didier Van Sellner.

4 (Whereupon, the Defendant was sworn by the Clerk
5 for purposes of this matter)

6 SOLICITOR: This is Indictment 2011 GS 38 1984,
7 and he's waiving presentment.

8 He's pleading guilty to armed robbery.

9 THE COURT: All right.

10 SOLICITOR: He was evaluated also by the Depart-
11 ment of Mental Health for competency, and I think we
12 probably need to make that report a Court's Exhibit.

13 I've got a copy of it.

14 THE COURT: I've got a copy of it. Make another
15 copy, and we'll make that Court's Exhibit 1.

16 (Department of Mental Health report marked
17 Court's Exhibit 1)

18 Hand that back up when you copy it. May I see
19 you all briefly.

20 (Conference at the bench between counsel and
21 the Court off the record)

22 THE COURT: All right. Mr. Van Sellner?

23 DEFENDANT: Yes, sir.

24 THE COURT: All right, Mr. Van Sellner, the
25 first number in your Social Security is zero?

1 DEFENDANT: Yes.

2 THE COURT: And, Mr. Van Sellner, you are forty-
3 six years old?

4 DEFENDANT: Yes, sir.

5 THE COURT: Okay. How far did you go in school?

6 DEFENDANT: Eighth grade.

7 THE COURT: Where were you going to school?

8 DEFENDANT: I was going to Our Lady Catholic
9 School in Harlem, New York City, 143rd and Amsterdam
10 Avenue.

11 THE COURT: Now, why did you stop in the eighth
12 grade?

13 DEFENDANT: Because my mother -- I had witnessed
14 the shooting and murder of my mother at nine years old.
15 in 1975, and it caused me so much stress at the time

16 I had outpatient psychiatric care, and after living
17 with my mother I moved up to Harlem and being of mixed
18 race in basically an all black ghetto I had a lot of
19 pressure of being in gangs and it was like basically
20 go to school, be a nerd, get beat up, have lunch money
21 taken or kind of hang out in the streets.

22 At that time I left school and I got shot during
23 a gang fight, and then I became a male prostitute at
24 fourteen. I was doing that to save my life, you know.

25 I know I've been wrong and I ask for mercy because

1 after being a male prostitute from fourteen to nineteen
2 I got in a situation where I robbed and assaulted one
3 of my tricks, and I ended up serving eight and a half
4 years for attempted murder.

5 Basically I would say out of forty-six years I
6 have spent nineteen of them behind bars. Point blank,
7 another ten years, twenty years, thirty years, is not
8 going to solve the problem, and I really had tried this
9 time to be good.

10 I was out for six and a half years after serving
11 ten years in New York State Prison for robbery. I was
12 trying my best. I didn't want me and my common law
13 wife to be homeless, although that is not an excuse.

14 All I'm begging you is that, you know, if you
15 keep me in prison for an excessive amount of years --

16 I've been getting a V.A. disability since I was two
17 years old. Needless to say, I have no job skills. I
18 have nothing really per se to offer society.

19 I just inherited a trust fund from my grandfather
20 who died, and if you keep me and release me at sixty
21 years old or fifty-nine, there is nothing really for
22 me to do in society.

23 I'm just asking for a chance. I've spent all my
24 twenties, all my thirties, in prison, and I had no
25 weapon this time. I only took Five Hundred and I gave

1 up. I admitted my guilt and I've accepted my respon-
2 sibility.

3 I'm just begging for some mercy because, like I
4 said, sir, I have had a very hard life. I have never
5 been given a chance.

6 I mean, I went to State prison at twenty where I
7 was raped and stabbed and everything. I was at Trenton
8 State Prison until I was twenty-eight. I didn't leave
9 prison until I was twenty-eight.

10 I was institutionalized even though I was out of
11 prison. I got out of prison March of 2005 and even
12 though I was on the street for six and a half, I was
13 still kind of institutionalized. That should be acknow-
14 ledged. After that many years in prison I stayed out
15 for almost seven years. I tried my best. I really did.

16 THE COURT: Well, Mr. Van Sellner, let me -- I
17 appreciate what you're telling me, but there are a
18 couple of things I've got to go through here.

19 DEFENDANT: Okay, but I did want to put that on
20 the record though.

21 THE COURT: I know you want to get it off your
22 chest as well. Okay? Now, if you'll bear with me, I
23 have to go through some steps.

24 One of the things is since you have been under
25 psychiatric care, are you being treated for any mental

1 health issues now?

2 DEFENDANT: Basically there is no treatment in the
3 county jail. I have been getting medication, Rispatol,
4 which does help with my auditory and visual hallucina-
5 tions.

6 THE COURT: Okay.

7 DEFENDANT: I talk to my dead mother and things
8 like that.

9 THE COURT: Okay. Now, the Rispatol -- that's what
10 you are taking now?

11 DEFENDANT: Yes.

12 THE COURT: Other than that, are you taking any
13 other kind of medication?

14 DEFENDANT: No. They don't have much that is very
15 helpful or conducive in that. That's a part of my prob-
16 lem in that I didn't get any psychiatric care in the
17 time I was out of prison. Once you max out and you
18 are not on parole, they don't really -- I tried to get
19 Medicaid in this State but they wouldn't give it to me.
20 I wanted to go. I needed to see a psychiatrist.

21 THE COURT: Are you under the influence of any il-
22 legal drugs today?

23 DEFENDANT: No.

24 THE COURT: Any alcohol?

25 DEFENDANT: No.

1 THE COURT: Okay, the only thing you are taking
2 today is the Rispatol?

3 DEFENDANT: I take it in the evening.

4 THE COURT: Are you thinking clearly this morning?

5 DEFENDANT: Yes, thinking very clearly and very
6 scared and praying for a miracle.

7 THE COURT: Now, do you know why you're here?

8 DEFENDANT: Yes.

9 THE COURT: It's my understanding you are here to
10 plead guilty to a charge of armed robbery?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, the armed robbery
13 charge carries a maximum sentence of up to thirty years.
14 Are you aware of that?

15 DEFENDANT: Yes.

16 THE COURT: This case is before me and on my sen-
17 tencing sheet indicates there are no negotiations or
18 recommendations that have been made.

19 Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: That means you are taking your chances
22 in front of me.

23 DEFENDANT: Yes, sir.

24 THE COURT: You understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Has anybody promised you anything to
2 get you to plead guilty here today?

3 DEFENDANT: No, sir.

4 THE COURT: Has anybody threatened you or forced you
5 to plead guilty here today?

6 DEFENDANT: No.

7 THE COURT: Are you doing this freely and voluntar-
8 ily?

9 DEFENDANT: Yes.

10 THE COURT: Now, I need to ask your attorney some
11 questions and then I'll come back to you.

12 Ms. Hinds, you were appointed to represent Mr. Van
13 Sellner?

14 MS. HINDS: Yes, sir.

15 THE COURT: You have met with him a number of times

16 I take it?

17 MS. HINDS: On a number of occasions.

18 THE COURT: Now, he's indicated he has had some
19 outpatient psychiatric treatment and he takes Rispatol.
20 He said that kept away some of his hallucinations, I
21 guess, for lack of a better . .

22 MS. HINDS: Yes, sir. That's what it does.

23 THE COURT: You have met with him a number of times
24 and talked with him about his case?

25 MS. HINDS: Yes, sir.

1 THE COURT: Have you gone over the evidence in the
2 case with him?

3 MS. HINDS: Absolutely, gone over it thoroughly.

4 THE COURT: The first question I need to ask you is,
5 do you think he understands what he is doing here today?

6 MS. HINDS: I do.

7 THE COURT: You think he understands mentally?

8 MS. HINDS: I do.

9 THE COURT: Do you have any question about whether
10 or not he knows what he's doing here today?

11 MS. HINDS: No, and I would go so far as to say
12 on the record that he has shown good education, and
13 there is no question about that. He is intelligent, as
14 is reflected in that colloquy with you and is not re-
15 flective of that grade level of education.

16 THE COURT: Okay.

17 MS. HINDS: We have gone over the discovery at
18 great length, and he is able to tell me all kinds of
19 things about it. His memory is phenomenal. He is able
20 to give me dates and things that happened several years
21 ago, and he remembers addresses and where the high
22 school was. Things such as that.

23 So he understands what he is doing here today, the
24 consequences of what he's doing, and I do believe he
25 is fully aware of the consequences.

1 THE COURT: Have you been over his constitutional
2 rights with him? I know you have that two page sheet,
3 but he understood that as well?

4 MS. HINDS: He does.

5 THE COURT: He understands he has a right to have
6 a jury trial?

7 MS. HINDS: He does.

8 THE COURT: He has told you he wishes to plead
9 guilty to this charge?

10 MS. HINDS: Yes, sir.

11 THE COURT: Has anybody promised him anything to
12 get him to plead guilty?

13 MS. HINDS: No, sir.

14 THE COURT: Anybody threatened or forced him to
15 plead guilty?

16 MS. HINDS: No, sir.

17 THE COURT: Do you believe it is in his best inter-
18 ests to plead guilty?

19 MS. HINDS: Absolutely, sir, I do. We have discussed
20 this, and because of his prior record there was a poten-
21 tial here for the State to seek life without parole if
22 they had wanted to do that. We have discussed that at
23 great length so I do think that this is in his best in-
24 terests.

25 10

1 THE COURT: All right. Mr. Van Sellner, your at-
2 torney has indicated that she has gone over all the evi-
3 dence with you. Is that correct?

4 DEFENDANT: Yes, sir.

5 THE COURT: Along with the possible sentences, she
6 advised you of your constitutional rights, including the
7 right to have a jury trial on this charge?

8 DEFENDANT: Yes.

9 THE COURT: Do you want a jury trial?

10 DEFENDANT: No.

11 THE COURT: Have you understood everything Ms.
12 Hinds has told you?

13 DEFENDANT: Yes. I just -- you know, some of the
14 numbers that she was talking about I felt were kind
15 of excessive, considering that there was no weapon and
16 there was no resisting arrest.

17 I've admitted it from day one. I never denied my
18 guilt. I signed the statement, I signed the warrants,
19 and I never asked for a trial. I wanted just to plead
20 guilty.

21 Because of -- you know, obviously I'm not trying
22 to go back to jail. I stayed out six and a half years;
23 and I can stay out there -- you know, if you were to
24 let me out today, which ain't gonna happen, you would
25 never see me again.

1 All I'm asking for is some mercy. That's all.

2 THE COURT: All right. Now, do you understand you
3 are facing the very real possibility of an extended
4 jail period?

5 DEFENDANT: Yes.

6 THE COURT: You do know that?

7 DEFENDANT: Yes.

8 THE COURT: Okay.

9 DEFENDANT: I've discussed it with my lawyer.

10 THE COURT: All right, sir. Now, are you satis-
11 fied with the services of your attorney?

12 DEFENDANT: Yes.

13 THE COURT: All right, Mr. Van Sellner, the Indict-
14 ment that I have, 2011 GS 38 1984, has not been presented
15 to the Grand Jury. I understand that you have waived
16 presentment. Is that correct?

17 DEFENDANT: Yes, sir.

18 THE COURT: The Indictment alleges that you did on
19 September 8, 2011, in Orangeburg County, by force,
20 threats or intimidation, while armed with a deadly wea-
21 pon or alleging either by words or actions that you were
22 armed with a deadly weapon, that you did take and carry
23 away goods or moneys from SC B and T with intent to per-
24 manently deprive them of such moneys.

25 Do you understand the allegations contained in

1 the Indictment?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. How do you plead to the
4 charge of armed robbery?

5 DEFENDANT: Guilty.

6 THE COURT: Thank you, sir. Mr. Sorenson.

7 SOLICITOR: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 SOLICITOR: With me today is Terry Chapman who
10 works for South Carolina Bank and Trust.

11 Your Honor, this offense occurred on the morning
12 of September 8th of last year, about ten o'clock or
13 so, at the S. C. B and T which is located on John C.
14 Calhoun Drive in Orangeburg County.

15 ~~The Defendant entered the Bank and went up to~~
16 one of the tellers, Ms. Hildebrandt, who has since re-
17 tired from the Bank.

18 He handed her a note requesting her to give him
19 Three Thousand Dollars in used bills, indicating to
20 her not to give him any dye packs, and that if she did
21 not comply he would shoot her.

22 She ultimately ended up giving him Five Hundred
23 Dollars or so. I think when it was totalled up it
24 was around Four Hundred Ninety-two Dollars that was
25 taken from the Bank.

1 He then fled the scene, and the call came out and
2 they ultimately ended up tracking him through a couple
3 of witnesses to a local motel where he was taken into
4 custody. The clothes he was wearing were what he had on
5 during the robbery.

6 As he indicated a few minutes ago, he did end up
7 giving a statement of his involvement to the officers
8 who were involved in arresting him. He admitted his
9 involvement to the Public Safety officers and the FBI.

10 As to prior record, Your Honor, he has an exten-
11 sive record from the State of New York. He has several
12 convictions for robbery there as shown on his rap sheet
13 since 1995. Also controlled substance convictions. He
14 spent about ten years on those charges in prison, and
15 I believe Mr. Chapman at the appropriate time would
16 like to address the Court.

17 THE COURT: Mr. Chapman, is there something you
18 want to tell me now?

19 MR. CHAPMAN: Yes, sir. May it please the Court,
20 Your Honor?

21 THE COURT: Yes, sir.

22 MR. CHAPMAN: This may not have been the most
23 sophisticated or threatening bank robbery the Court has
24 ever seen, it was to Ms. Hildebrandt and all the bank
25 employees that were present.

1 Ms. Hildebrandt is eighty-two years of age, and I
2 talked to her yesterday and last night. This was a
3 tramatic event for her, and I would just point out,
4 Your Honor, that Mr. Van Sellner did not show Ms.
5 Hildebrandt or the other employees any mercy.

6 Thank you, Your Honor.

7 THE COURT: Yes, sir. Anything else?

8 SOLICITOR: That would be all from the State,
9 Your Honor.

10 THE COURT: Mr. Van Sellner, you heard what the
11 Solicitor has told me about the circumstances of this
12 armed robbery?

13 DEFENDANT: Yes, sir.

14 THE COURT: There will be a chance for you to ex-
15 plain but right now I've got to ask you a couple of
16 questions.

17 All right, Mr. Van Sellner, you also heard what
18 Mr. Chapman from the Bank said about the effect the
19 robbery had on Ms. Hildebrandt? Also the other clerks.

20 DEFENDANT: Yes.

21 THE COURT: You heard what Mr. Sorenson has
22 told me about your prior record?

23 DEFENDANT: Yes, sir.

24 THE COURT: It seems like most of it is in New
25 York?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do you understand also that by plead-
3 ing guilty to the charge, you will now have a convic-
4 tion here in South Carolina?

5 DEFENDANT: Yes, sir.

6 THE COURT: You also understand you have ten days
7 from today's date to appeal it if you are aggrieved
8 by my decision?

9 DEFENDANT: Yes.

10 THE COURT: Okay, and do you want me to accept
11 your guilty plea? Yes or no.

12 DEFENDANT: Yes.

13 THE COURT: Did you say yes?

14 DEFENDANT: Yes.

15 THE COURT: I just wanted to make sure I understood.....
16 you.

17 All right, Mr. Van Sellner. I find that your de-
18 cision to plead guilty is freely, voluntarily and in-
19 telligently made and that you had the advice and coun-
20 sel of a competent lawyer; that you are satisfied with
21 the services of your lawyer.

22 I find that there is a factual basis for you to
23 plead guilty to this charge, and so I am going to ac-
24 cept your guilty plea at this time.

25 MS. HINDS: Your Honor, as you've heard, he's

1 forty-six years old and has technically an eighth grade
2 education, although I do believe he is a great deal a
3 more intelligent than that would reflect.

4 He's had a lot of things happen to him, and he's
5 not had many breaks. He understands that some of the
6 things he did wrong are things he brought on himself.
7 He understands that the reason he's standing before
8 you today was brought on by himself.

9 DEFENDANT: I would like to take note that it has
10 kind of been indicated that the victim was eighty-one
11 years old, yes, and I don't doubt the trauma she may
12 have felt, but I did not target her.

13 She is -- the only thing I have a problem with in
14 that presentation is when you wait in line in a bank it
15 is not that you would per se have a choice with any
16 teller.

17 I was standing in line and it wasn't like I went
18 because she's an older woman. You can check my record.
19 It is a fact that I do not assault, rob or touch women
20 or children. It's a fact.

21 I'm not justifying my life or my actions, but it
22 is kind of trying to sound like I targeted her, and,
23 further, I'd like to say that the reason I only got
24 Four Hundred Ninety-two Dollars is because at the time
25 it was obvious she was kind of like counting slow. She

1 gave me some money and said is that enough? Seeing she
2 was an older woman, I took it, and I never made any
3 verbal threat to her. All I did was present a note.
4 I took it and I left.

5 I just want to make -- I understand I did wrong
6 in the bank, but at the same time I was in and out of
7 the bank in less than five minutes.

8 And if you read the statements in discovery, some
9 of the people didn't even know the bank was robbed be-
10 cause I didn't go in there yelling and screaming to
11 upset anyone.

12 So, I mean, I kind of take note that I was not
13 trying to target an older woman. It was what -- I'm
14 standing in line and she had her window open so I . .

15 THE COURT: Okay.

16 MS. HINDS: Your Honor, he never denied any respon-
17 sibility for his actions, and we would ask you to take
18 into consideration. He has admitted it from day one.

19 We would also ask you to take into consideration
20 his age. He did not have a weapon, although he did
21 make the teller think he had a weapon. He had no in-
22 tent of harming anybody, no intention of assaulting any-
23 body.

24 I believe he got into a situation where he had
25 been threatened and his wife had been threatened, and

1 he was trying to get money to pay back a debt to avoid
2 harm. That doesn't make it right but that is where
3 his mind was at at the time.

4 We'd just ask you for mercy, sir.

5 DEFENDANT: And after spending all these years in
6 prison, it's kind of redundant to say, okay, release
7 me at sixty years old or release me at seventy, and
8 what do you get? I'm institutionalized. You know what
9 I'm saying? I'm not trying to . .

10 THE COURT: I understand what you're saying, Mr.
11 Van Sellner.

12 MS. HINDS: He has been incarcerated since Septem-
13 ber 8th.

14 THE COURT: September 8th.

15 DEFENDANT: And a model inmate too.

16 THE COURT: All right.

17 DEFENDANT: May I say one more thing, sir?

18 THE COURT: I haven't written it yet, but before
19 you say anything do you want to talk to your attorney?

20 DEFENDANT: I deserve . .

21 THE COURT: Let her know what you want to talk
22 about?

23 DEFENDANT: I think she knows -- she has read the
24 paper work that I inherited Twenty Thousand that's in
25 a trust fund.

1 The reason I bring that up is that upon release,
2 I won't be robbing anything obviously. I have inher-
3 ited a Twenty Thousand Dollar trust from my dead
4 grandfather.

5 I inherited that in 2010 and they just sold the
6 house and closed it. So I just want to say that the
7 situation that led to me robbing this -- at Twenty Thousand
8 Dollars a year my robbery days are long over.

9 THE COURT: Well, I hope they will be anyway.

10 DEFENDANT: Yes, they are.

11 THE COURT: Okay. I need to ask you a couple of
12 questions, but before I do -- Ms. Hinds, does he un-
13 derstand he is pleading to a violent and a most ser-
14 ious offense?

15 MS. HINDS: He does.

16 THE COURT: Does he understand this will count as a
17 strike against him?

18 MS. HINDS: He does.

19 THE COURT: Mr. Van Sellner, I forgot to ask you
20 that, but your attorney did go over that situation with
21 you?

22 DEFENDANT: Yes.

23 THE COURT: I understood when you were earlier
24 talking to me that you could have been facing that any-
25 way, should the Solicitor's Office have chosen to

1 prosecute you in that manner.

2 DEFENDANT: Yes, sir.

3 THE COURT: Is that correct?

4 MS. HINDS: Yes, sir.

5 THE COURT: Okay. All right, he's been in jail
6 you say since September 8th?

7 MS. HINDS: Yes, sir.

8 THE COURT: Mr. Van Sellner, it is the sentence
9 of the Court that you are committed to the State De-
10 partment of Corrections for a period of twelve years,
11 and I give you credit for the time served.

12 DEFENDANT: Okay, thank you.

13 THE COURT: Good luck to you.

14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared from the records of Harry Dot Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on March 6, 2012.

FURTHER, I certify that I am neither of kin nor of counsel to any party to this matter, nor do I have any interest therein.

September 9, 2013

Harriet P. Bennett

STATE OF SOUTH CAROLINA)
County of DORCHESTER)

IN THE COURT OF COMMON PLEAS

DIDIER VAN SELLNER 350065

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

REC'D
JAN 11 PM 10:32

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 ORANGEBURG CALHOUN COUNTY DETENTION CENTER
2. Name and location of Court which imposed sentence ORANGEBURG SUPREME COURT, AMEALIA ST
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) I WAS NEVER INDICTED

(b) _____
(c) _____

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

(a) MARCH 6, 2012
(b) 12 YEARS 85%
(c) ARMED ROBBERY / MOST VIOLENT
MOST SERIOUS

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes
(b) after a plea of not guilty NO
(c) after a plea of nolo contendere NO

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

NO, NEVER

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) NEVER RECEIVED PAPER WORK TO FILE
APPEAL. NO ONE EXPLAINED HOW TO FILE
APPEAL WAS SHIPPED TO KIRKLAND
RECEPTION 6 DAYS AFTER BEING
SENTENCED THEN AFTER 2 DAYS IN

ENCLOSED WITH THIS STATEMENT ARE
ALL POLICE REPORTS, WITNESS STATEMENTS
SURVEILLANCE CAMERA PHOTOS & RAP SHEET
PHOTO COPIES OF CLASS A FELONY 16-11-330
16-11-380 AND SENTENCING GUIDELINES
17-25-20 & 17-25-40

ANSWER TO QUESTION 10

PRESSURED AND COERCED TO ACCEPT
OPEN PLEA TO THE CHARGE OF ARMED ROBBERY
WHEN IN FACT MY BANK ROBBERY HAD NONE
OF THE ELEMENTS NOR FULFILLED THE
CRITERIA FOR ARMED ROBBERY. I ROBBED
THE BANK BY THREATS AND INTIMIDATION
WRITTEN IN A NOTE, ONLY NOTHING MORE.
I WAS THREATENED WITH LIFE WITHOUT
PAROLE IF I DID NOT ACCEPT THIS PLEA.

- 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, NEVER

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. _____

ANSWERS FOR QUESTION 11

ACCORDING TO CODE OF LAWS OF SOUTH CAROLINA TITLE 16, 16-11-330 ARMED ROBBERY "THAT EITHER BY ACTIONS OR WORDS PERSON WAS ARMED WHILE USING REPRESENTATION OF A DEADLY WEAPON OR ANY OBJECT THAT COULD BE REASONABLY BELIEVED TO BE A DEADLY WEAPON"

NOW CLEARLY FROM ALL THE ENCLOSED WITNESS STATEMENTS AND POLICE REPORTS I WAS NEVER ARMED, NOR POSSESSED ANY OBJECT OR DEVICE THAT COULD BE CONSIDERED A WEAPON. IN FACT 1 ORANGEBURG PUBLIC SAFETY REPORT CLASSIFYS THIS BANK ROBBERY, AS ROBBERY BY THREATS AND INTIMIDATION.

FROM THE TIME I FIRST ENTERED BANK I STOOD ON LINE WAITING FOR AVAILABLE TELLER THEN PASSED NOTE AND BAG TO SAID TELLER "MY HANDS WEARING GLOVES WERE VISIBLE AT ALL TIMES" ENCLOSED SURVEILLANCE CAMERA PHOTOS VERIFY THIS FACT.

SO THIS BANK ROBBERY COULD NOT!! IN ANY WAY SHAPE, FORM, OR ACTION BE CONSIDERED A ARMED ROBBERY. THIS CRIME I COMMITTED WAS A NON VIOLENT BANK ROBBERY USING A NOTE.

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) ONLY HAD 10 DAYS TO FILE FORMAL
- (b) APPEAL, SENTENCED MARCH 6, 2012
- (c) SHIPPED TO KIRKLAND RECEPTION MARCH, 12, 2012

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? NONE
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NONE
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NONE

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. _____
- ii. _____
- iii. _____

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

- i. ARRAIGNMENT AND PLEA
MY SENTENCING
- ii. MENTAL HEALTH COMPETENCY
HEARING, STATE HOSPITAL
- iii. COLUMBIA, SOUTH CAROLINA

NOW UPON RECENT RESEARCH I FOUND A STATE BANK ROBBERY CHARGE, CLASS A FELONY 6-11-380. THE BANK I ROBBED WAS A SOUTH CAROLINA BANK & TRUST (SCBT) HIS CHARGE PLAINLY STATES:

IT IS UNLAWFUL TO ENTER A BANK OR ART OF BUILDING OCCUPIED AS A BANK WITH INTENT TO STEAL MONEY BY FORCE INTIMIDATION, OR THREATS // THIS IS THE FELONY I SHOULD HAVE BEEN CHARGED WITH NOT ARMED ROBBERY.

DUE TO THE INEFFECTIVE UNPROFESSIONAL COUNSEL OF PUBLIC DEFENDER PEGGY HINES, WHO SAID THIS BANK ROBBERY, YET ALL ELEMENTS OF ARMED ROBBERY DUE TO FACT I SAID I HAD GUN ON THE NOTE. YET NEVER EXPLAINED ALL THE ELEMENTS OF THIS CHARGE IN DETAIL. DUE TO THE FACT ORANGEBURG COUNTY DETENTION CENTER HAS NO LAW LIBRARY, I WAS NOT ABLE TO RESEARCH ~~AND~~ FIND THIS INFO AND NEW CHARGE ON MY OWN. ALSO SHE NEVER ADVISED ME OR SOLICITOR OF CLASS A FELONY 6-11-380.

FURTHER MORE PEGGY HINES PRESSURED ME TO ACCEPT PLEA (12 YEARS 85%) BECAUSE OF 10 YEAR PRISON SENTENCE FOR 3RD DEGREE

ROBBERYS IN New York STATE, WHERE I'm ORIGINALLY FROM. LIVED IN ORANGEBURG SC JUNE 2008 TILL SEPT, 8, 2011. SHE SAID IF I WENT TO TRIAL AND LOST I WOULD BE SENTENCED TO LIFE WITHOUT PAROLE DUE TO THIS PRISON SENTENCE AND VARIOUS MISDEMEANOUR CONVICTIONS.

YET WHEN I REVIEWED HABITUAL OFFENDER SENTENCING GUIDELINE 17-25-40 I FOUND THAT MY 3RD DEGREE ROBBERY CONVICTIONS DO NOT MEET CRITERIA FOR 7-25-40, SO SHE LIED. THREAT OF LIFE WITHOUT PAROLE WAS ONLY REASON I ACCEPTED PLEA FOR ARMED ROBBERY.

(ANSWER FOR QUESTION 19)

PLEASE OVERTURN, THROW OUT ARMED ROBBERY CONVICTION AND SENTENCE. THEN BE ALLOWED TO PLEA GUILTY TO CLASS A FELONY 16-11-380 AND BE SENTENCED ACCORDING TO GUIDELINES OF 16-11-380

Thank you

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

THE ANSWER TO THIS QUESTION ON
THE BACK OF THIS PAGE.

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

NO, NONE.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

VERIFICATION

I, DIDIER VAN SELLNER 350065, 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.

Didier Van Sellner

SWORN to and subscribed before me this 2st
day of November, 2017.

Liekeem B. Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2/4/2017

TO: Clerk of Court

It was my honest intention to include all police reports, witness statements, surveillance camera photos, my rap sheet and photo copies of Class A Felonys 16-11-330, 16-11-380 and sentencing guidelines 17-25-20, 17-25-40

But when my wife Norma M. sent me 2 copies of my Baxter motion of discovery, copies of the code of laws and sentencing writ, these items were sent priority mail arrived at Lieber mail room Jan, 11 2013. They were opened and when surveillance photos were found

instead of questioning me, then give me my personal private legal mail/papers Lieber mail room co look it upon herself to send my paperwork to Kirkland for media review. As of this date, 15 biz days I've still not been given my personal legal paperwork, my called wife media review, explained I needed this paperwork for my PCR.

So since this has happened I have no evidence to include with this application, sorry! Judicial Van Sellner

PLEASE CONTACT me Here

SEND TIME DATED COPY OF
THIS APPLICATION WHEN YOU
RECEIVE IT Thank you

DIDIER VAN SELLNER

350065

BOX 205, EBISTO B-15

RIDGEVILLE, SC 29472

REC'D FEB 11 PM 12:32
FOR RECORD
V. J. ...
CLERK ...
ORANGEVILLE, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
 Didier Van Sellner, #350065,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-018

RETURN

FILED FOR RECORD
 WINNIE A. B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2013 MAY -7 AM 11: 22

In response to the post-conviction relief application filed February 11, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. On March 6, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he waived presentment to the Orangeburg County Grand Jury and pled guilty to Armed Robbery (2011-GS-38-1984). He was represented by Margaret E. Hinds, Esquire. Judge Dickson sentenced the Applicant to confinement for twelve years. The Applicant did not appeal his sentence or conviction.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions¹ and the Applicant's records from the South Carolina Department of Corrections. Respondent has ordered a copy of Applicant's guilty plea transcript, which will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ Respondent requested copies of the records from the Orangeburg County Clerk of Court on February 25, 2013, but as of today's date, no records have been provided. Respondent will forward such records upon receipt.

II.

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

1. "Ineffective unprofessional counsel"
 - a. Counsel failed to explain all the elements of the charge in detail
2. Involuntary Guilty Plea
 - a. Counsel "pressured me to accept plea"
3. "I was never armed, nor possessed any object or device that could be considered a weapon...So this bank robbery could not be in any way shape, form, or action be considered a armed robbery."

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

III.

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

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

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

The Applicant also alleges involuntary guilty plea. Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that: (1) counsel was ineffective; and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent submits that Applicant's remaining claims should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....”

S.C. Code Ann. § 17-27-20 (1976). Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss this allegation as it is not proper post-conviction relief issue.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

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

By: *Megan E. Harrigan*
Attorneys for the Respondents

April 24, 2013.

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
POST CONVICTION RELIEF APPLICATION	
DIDIER VAN SELLNER	
Direct Examination by Mr. Culler	5
Cross-Examination by Mr. Harrigan	15
MARGARET HINDS	
Direct Examination by Mr. Culler	24
Cross-Examination by Ms. Harrigan	29
CLOSING ARGUMENTS	
Remarks by Ms. Harrigan	30
Remarks by Mr. Culler	32
CERTIFICATE OF THE COURT REPORTER	34

INDEX TO EXHIBITS

No exhibits were introduced

Didier Van Sellner v State of S.C.
Proceedings
May 29, 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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PROCEEDINGS

MS. HARRIGAN: May it please the court?

THE COURT: Yes, ma'am.

MS. HARRIGAN: Your Honor, this is Didier Van Sellner v the State of South Carolina docket number 2013-CP-38-0184. On March 6, 2012 Mr. Van Sellner appeared before the Honorable Edgar W. Dixon where he waived presentment to the Orangeburg County Grand Jury and pled guilty to armed robbery.

He was represented by Margaret Hinds. Judge Dixon sentenced Mr. Van Sellner to confinement for 12 years. Mr. Van Sellner did not appeal his sentence or conviction. He did file a timely application for post-conviction relief on February 11, 2013 alleging the following claims:

Ineffective assistance of counsel for advising him to plead guilty when he did not have a weapon during the robbery, involuntary guilty plea that he was coerced to accept the plea by threat that the State would seek life without parole if he did not accept the State's offer, that he did not have a weapon that he was only armed with a threatening note, and also that the trial court committed error. The State made its return on April 24, 2013 requesting an evidentiary hearing be held. And he's represented in this action by Michael R. Culler, Jr. and

Didier Van Sellner v State of S.C.
Proceedings
May 29, 2014

1 I'll turn it over to Mr. Culler at this time.

2 THE COURT: Mr. Culler?

3 MR. CULLER: Thank you, Your Honor. Yes, the thrust
4 of our argument is going to be pretty simple, I think she
5 stated it correctly. And if we could just call Mr. Van
6 Sellner for some testimony, I think that would be
7 helpful.

8 THE COURT: All right, Mr. Van Sellner if you would
9 please come to the witness stand.

10 [Whereupon, Mr. Van Sellner comes forward]

11 CLERK OF COURT: Please raise your right hand and
12 state your full name for the record.

13 THE WITNESS: Didier Van Sellner.

14 [Whereupon the witness is duly sworn by the Clerk of
15 Court]

16 THE COURT: Your witness, Mr. Culler.

17 MR. CULLER: Thank you, Your Honor.
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Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 correct?

2 A. Yes.

3 Q. And so you admit you robbed a bank, you just said it
4 wasn't an armed robbery, is that the thrust of it?

5 A. Yes and my contention is that I was never properly
6 advised because upon research, I found a State charge for
7 entering a bank with intent to steal. Upon further
8 research, numerous other cases of robberies with notes
9 threatening weapons, no one -- everyone has been charged
10 with entering a bank with intent to steal, other than me.

11 Q. Well, I appreciate that, but with regard to this
12 case ---

13 A. --- yeah ---

14 Q. --- did you have that discussion with Ms. Hinds
15 about your charge and ---

16 A. --- no ---

17 Q. --- were there other charges?

18 A. No, sir. She just said that we were pretty much
19 stuck. All I can do is Armed Robbery, we can't reduce
20 it, we can't do anything, this is all we have. Take it
21 or leave it, or get life.

22 Q. Okay. When you say take it or leave it or get life,
23 there had been some discussion I believe with Solicitor
24 Sorenson was prosecuting you that he'd indicated to Ms.
25 Hinds and she made you aware, that they would

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 potentially, they the Solicitor's office, would seek a
2 Life Without Parole based on a prior conviction out of
3 the state of New York, is that correct?

4 A. Yes, sir.

5 Q. Okay. Now, so you get arrested and how long are you
6 in jail before you go to court, Mr. Van Sellner?

7 A. Well actually, I didn't get to court really; I
8 really basically only had one hearing. They had
9 requested a competency hearing because I had wrote a
10 letter explaining my mental issues, etcetera etcetera
11 basically ---

12 Q. --- and excuse me, I don't mean to cut you off, but
13 let's discuss that just for the record. You're diagnosed
14 with what, Mr. Van Sellner?

15 A. I'm basically diagnosed with bipolar and post
16 traumatic stress due to other prison bits and also
17 delusions, hallucinations, from excessive drug use.

18 Q. And tell the court, are you on medication currently?

19 A. Yes, I take Risperdal, I take I think its Celexa or
20 some anti-depressant, I take Cogentin, and I was taking
21 Risperdal for hallucinations in the county jail at the
22 time, too.

23 Q. Okay. So at the time that you went to court with
24 Judge Dixon, you were taking those medications?

25 A. Yes, I was.

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 Q. And that's not part of your PCR application at all?

2 A. No, sir.

3 Q. Okay. When you went to court, Mr. Van Sellner, one
4 of your contentions is you were never indicted. Tell the
5 court briefly, if you can be brief, what you mean by
6 that.

7 A. Well, when I went the initial hearing when I was
8 having a conference, she said look they're not going to
9 make any deals. All I can do is Armed Robbery. You
10 have to sign this paper and waive your right to a Grand
11 Jury and it's a 10 to 30 open plea, no negotiations.

12 And it was like I said you can't -- I'm not from
13 this state, so I'm really not familiar with the laws in
14 this state or you know and I felt like scared and --
15 well, if you don't waive your right to a Grand Jury and
16 you refuse this, then we're going to take it and we're
17 going to go to Grand Jury and we're going to go to trial.
18 There will be no offers; basically take it or leave it,
19 so.

20 Q. Okay.

21 A. I didn't know what else to do.

22 Q. And, so it's in the record clearly, the plea sheet
23 and the sentence sheet, you waived presentment to the
24 Grand Jury?

25 A. Yes.

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 Q. Okay. But it's your contention today that you did
2 not do that knowing and intelligent.

3 A. No. I mean if I was aware or she had better
4 explained the elements of the Armed Robbery or even
5 mentioned the other charge, then I would have had more to
6 work with. I mean, she's just telling me there's nothing
7 else we can do.

8 And I had no way to find out this information or to
9 do research and it was like, do it now or don't or that's
10 it. They're not negotiating, they're not offering a plea
11 deal, this was an open plea; take it or leave it. And I
12 kind of -- initially I was told, well you'll probably get
13 10-85, well I ended up with 12-85.

14 Q. Okay. And when you say -- well two things, when you
15 say the other charge, there was no other charge was
16 there? You're referring to the charge you wish you had,
17 not one that was lodged against you at that time?

18 A. Yeah, well the charge I kind of feel that you know
19 from subsequent research that ---

20 Q. --- Mr. Van Sellner?

21 A. Yes?

22 Q. I understand that, but you had one charge against
23 you at that time?

24 A. Yes, sir.

25 Q. Okay. So when you say the other charge, you're

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 talking about the charge that you hoped to have, not one
2 that was lodged against you.

3 A. Yes.

4 Q. And you waive presentment on the Armed Robbery
5 charge?

6 A. Yes, sir.

7 Q. Okay. The other thing you allege in your
8 application is you were not told about an appeal. Would
9 you explain that briefly to the court?

10 A. No, when I was sentenced, basically I said what now.
11 I had no further contact with her. I wasn't given any
12 paperwork. There was a brief thing well you can appeal,
13 but no one told me how or how to go about it and then six
14 days after I was sent to Kirkland. And then obviously
15 because of certain mental issues and emotional problems,
16 I ended up in Gilliam Psychiatric Center.

17 So, even if I had been forwarded paperwork, I had no
18 access to anyway to file them because I was in a
19 psychiatric hospital in reception for two weeks, getting
20 medication and trying to figure out what would be the
21 best treatment for my incarceration.

22 But, subsequently I ended up at Edisto Unit in
23 Lieber for mental health problems and eventually I was
24 sent to McDougall because I had been responding to my
25 treatment and my medication.

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 MR. CULLER: Your Honor, may I approach the witness
2 briefly?

3 THE COURT: You may.

4 Q. [Mr. Culler] Mr. Van Sellner, we might as well
5 cross this bridge so the State doesn't have to and I'm
6 going to hand you the transcript of your plea hearing.
7 We reviewed that downstairs. I'm looking at page 16 line
8 6, if you would read that out loud -- just read that
9 highlighted portion out for the record please.

10 [Whereupon, the witness is shown document]

11 A. [Reading] You also understand you have ten days from
12 today's date to appeal it if you are aggrieved by my
13 decision.

14 Q. And that's Judge Dixon who's telling you that?

15 A. Yes ---

16 Q. --- is that correct?

17 A. I would think, uh huh.

18 Q. You would think?

19 A. Yeah, the Judge I would think.

20 Q. Okay. And so he told you that, but your contention
21 is that logistically you were not able to accomplish
22 that?

23 A. Well, yes and I was never given any paperwork and I
24 was never told -- he said ten days to appeal, but after
25 that Peggy Hinds never talked to me, like in the holding

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 cell or whatever or said here's the paperwork or how
2 would you like, you know it was no, it was just okay ten
3 days you got to appeal and then what? I got sent to the
4 County Jail and then sent to Kirkland. There was no
5 further elaboration of what it was supposed to be.

6 Q. I got all that.

7 A. Okay.

8 Q. But the day you were sentenced, you didn't ask her
9 to appeal, did you?

10 A. No.

11 Q. Okay. Mr. Van Sellner, the other thing that you
12 have said in this lengthy application is that you were
13 coerced into pleading and I don't mean to put words in
14 your mouth, but you mean you relied on the
15 representations that this was the only charge and you had
16 to take it, is that what you mean?

17 A. Yes, that's what I mean.

18 Q. And you relied on the advice of counsel in that
19 regard?

20 A. Yes. I would have never taken it if I had been
21 aware of the -- of that charge that I found in research
22 and then upon looking at other laws about habitual
23 offender, etcetera. I would have never taken this Armed
24 Robbery if I had been made aware of that or if it had
25 been fully explained. She didn't even further explain

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 the full statute of Armed Robbery, which kind of clearly
2 states you have to present a representation or something
3 that would be considered reasonably a weapon. Which I
4 had nothing in my hand. I had -- and I made no actions
5 to even indicate that I had a weapon.

6 I just said it to get the money. I didn't act like
7 I had one. She didn't clarify that at all, she just said
8 well this met all the elements, take it or leave it. So
9 I mean there was no clarification whatsoever.

10 Q. I understand and Mr. Van Sellner, anything else that
11 you wish to raise? I think that covers the written
12 portion of your application. Is there anything else that
13 you wish to consider -- the court to consider in this
14 regard?

15 A. Well, I mean, the main issue is that upon -- if you
16 look at all the evidence, I was clearly not armed nor did
17 anyone feel I was armed. And I think that should be the
18 main consideration that this was not an armed robbery by
19 any -- there was no intent to be an armed robbery.

20 I got desperate, I wanted pay -- it was a wrong
21 choice, I stayed out of prison for six and a half years,
22 I got desperate. I did a stupid thing. I did not go in
23 the bank to hurt anyone, to harm anyone and all my
24 actions clearly show that. Surveillance video,
25 photograph ---

Didier Van Sellner v State of S.C.
Didier Van Sellner-Direct Examination by Mr. Culler
May 29, 2014

1 Q. --- so ---

2 A. --- I, that's all. It's not an armed robbery by any
3 shape or no intent to be an armed robbery. I'm sorry; I
4 just went there to steal some money, that's it. I'm
5 sorry.

6 Q. Okay. I take that as a no that we covered
7 everything?

8 A. Yeah.

9 Q. Okay.

10 MR. CULLER: I would now defer to the state, Your
11 Honor.

12 THE COURT: Cross-examination?

13 MS. HARRIGAN: Yes, briefly Your Honor, thank you.
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Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 CROSS-EXAMINATION

2 BY MS. HARRIGAN:

3 Q. Good afternoon, Mr. Van Sellner.

4 A. Yes.

5 Q. And I apologize for pronouncing your first name

6 wrong before.

7 A. It happens all the time.

8 Q. I bet.

9 A. It happens to be French for Joseph; my father was

10 German-Austrian.

11 Q. Okay. You testified before that you only passed the

12 bank tellers threatening to shoot and saying you had a

13 gun, correct?

14 A. I did not threaten to shoot, or I said I had a gun,

15 if you gave me a dye pack I would shoot. That's all I

16 said; threats. That's all it was.

17 Q. So, if you had a gun and if gave dye pack, you'd

18 shoot?

19 A. No, I did not say that. I said, freeze this is

20 stick up, I have a gun please give me 3,000 dollars in

21 large, loose, bills. No games or I'll shoot. That's all

22 I said.

23 Q. And your testimony is that you never discussed with

24 Ms. Hinds, the South Carolina Armed Robbery Statute and

25 whether you met the elements of it?

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 A. Yes. She never fully clarified the main point is
2 that I had to have representation or something that would
3 indicate. And if you look at all the statements,
4 everyone said they saw no weapon. Even police reports
5 said robbery by threats intimidation, no weapon.

6 See, I wasn't clear on that point. She just said
7 well, because you said you had a gun, that's what she
8 said. And I just went with that.

9 I didn't know that you had to -- it seems to clearly
10 say you have to have a representation or your hand in
11 your pocket, or something like that. She never clarified
12 that. She just said because you said it, that makes it
13 so.

14 Q. You testified that you discussed with Ms. Hinds the
15 possibility of the State seeking Life without Parole
16 based on your New York charges, correct?

17 A. Yes, she said Life without Parole could be on the
18 table.

19 Q. What -- oh, I'm sorry, I didn't mean to cut you off
20 are you finished?

21 A. Yes.

22 Q. What prior charges do you have from New York?

23 A. Well, I did, I had robbed banks with note. I robbed
24 three -- robbed three banks with notes in 1995 and I
25 subsequently served ten years.

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 Q. Any other prior charges from New York?

2 A. Misdemeanors, no felonies. And I'd like to add
3 also that I was out of prison six and a half years before
4 I committed this, so I was trying to not commit -- I was
5 trying to really be a good boy and it's a stupid
6 situation...

7 Q. Do you remember your guilty plea in front of Judge
8 Dixon?

9 A. Yeah, I remember more that I begged for mercy and
10 pleaded upon the court for 35 or between 20 and 30
11 minutes trying to explain the situation. Just like I
12 said once she said well, take a 10 to 30 everything kind
13 of -- I felt, I have a wife, I support her, I'm her only
14 emotional and financial support.

15 So I mean that was a lot of my motivation just for
16 taking it because I mean I am responsible for my wife,
17 Norma Baxter. We came down here from upstate New York
18 and I do have a cousin so and that's a point too. I
19 never came to this state to commit a crime or be a
20 burden.

21 I lived in Orangeburg three years prior to this
22 offense. I was trying to follow the rules. I didn't
23 just come down here to do anything, so. Like I said, I
24 remember the hearing, but it was just it happened so
25 quick I just felt it was wrong and I just I was scared.

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 It was like damn, 12, take this or get life; what do you
2 do?

3 Q. Do you recall during your guilty plea telling Judge
4 Dixon that you had served eight and a half years for
5 Attempted Murder?

6 A. Well yes, I was being honest and...

7 Q. So you did serve time out of New York for Attempted
8 Murder?

9 A. No, not in New York. What happened what that I was
10 a teenage male prostitute from 14 to 19 years old. I,
11 basically after selling my body as a teenager being used
12 and basically molested, a trick picked me up, took me to
13 a motel in North Bergen, New Jersey and I basically, if
14 you want to say freaked out, melted down, whatever he was
15 touching me in a sexual way that was not part of the
16 agreed payment and I snapped.

17 I was 19 years old; I've mental and emotional
18 problems ever since witnessing the murder of my mother in
19 1975 and other incidents that happened to me. So, after
20 being basically used as a prostitute and molested, I
21 snapped. I stabbed him, I robbed him, I panicked.

22 But, I'd like to say also that four months later in
23 California I confessed and fully took responsibility and
24 I ended up serving eight and a half years. When I got
25 out in 1994 that was my first prison experience, it was

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 quite brutal, quite hard. I got gang raped in prison; I
2 was beaten by staff and officers. I fought for my life.
3 I was very institutionalized. I admit I was not ready
4 for the street in '94.

5 And then when I got out I started selling drugs and
6 got strung out on crack-cocaine and I ended up robbing a
7 few banks with notes and I served another ten years in
8 prison. I'm not an angel, I'm not saying that. All I'm
9 asking is to be judged on the merits of this offense and
10 this offense only, which it was not an armed robbery.

11 Q. Did Ms. Hinds discuss with you that based on those
12 prior three robberies, or however many-so robberies out
13 of New York and possibly your Attempted Murder that the
14 State could seek and likely would seek Life Without
15 Parole if you were to go to trial?

16 A. Well, see, I had mentioned the Attempted Murder
17 because I had assumed that it was on my rap sheet. Now,
18 according to her and her research that I guess,
19 apparently when they took the paper records but the
20 offense happened in 1985.

21 I went to trial in '87 in Jersey City, New Jersey.
22 All that paperwork was sealed under some state shield.
23 Basically, there's no record of it in my rap sheets. I
24 think there's nothing in my FBI sheet, so I had only
25 really brought it up just to be honest and to be

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 forthcoming. But apparently she said they couldn't
2 really consider that because there was some kind of
3 procedure they'd have to go through the State Attorney
4 General of Jersey. Those records have been sealed;
5 there's really no documentation of the eight and a half
6 years I served in prison.

7 And the reason why that all came up was I wanted to
8 establish that I was classified a mental health,
9 psychiatric inmate in Jersey, in New York and here. I
10 basically, my mental problems, I guess you could say I've
11 been getting treatment, but have also been exacerbated by
12 my institutionalization that because I served time in
13 some very violent institutions up in New York and Jersey.
14 But, that's the reason why it came up was to establish my
15 mental health history.

16 Q. She did discuss with you, though, that the robberies
17 could be used for the State?

18 A. No, she didn't say because I had those felonies.
19 She didn't specify the robberies, but as I clarified that
20 they were third degree robberies and what I copped out to
21 them they were considered non violent. I passed a note.

22 Third degree robbery in the State of New York is a D
23 or E Felony and it goes on a scale from A to E. And
24 generally D to E felonies are not considered violent.
25 How it ended up the other way, I obviously don't know,

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 but that's what it was considered.

2 Q. Regarding your issue that you wanted an appeal, you
3 testified before that you do recall Judge Dixon advising
4 you and you knew you had ten days, but you ---

5 A. --- no, I, he just said you got ten days to appeal
6 and I kind of, you know, mechanically just said yeah. I
7 mean, I just, by that time I was I mean, I'm stunned, I'm
8 shocked, I'm messed up. I mean, I know the crime I
9 committed didn't warrant 12 years by any long shot, even
10 though if you want to say I'm a career criminal.

11 I didn't hurt anyone, I didn't try to hurt anyone
12 and I mean it's a, excuse my language, it's a bubble gum
13 robbery. I stole 500 dollars and I'm not making --
14 mitigating it or saying it's not a major issue but when
15 they just hit you with 12 years for something that like,
16 so I just kind of mechanically just kind of yes, I
17 agreed, just.

18 But, there was no motion to really proceed. If I
19 had been given the tools, the paperwork, a full
20 explanation of what it entailed to make an appeal in this
21 state, I would have.

22 But that's my main issue. You said ten days, I kind
23 of just said yeah and then I never heard anything more.
24 There was no visit from Peggy Hinds, there was no
25 conference after, you know okay, here's your paperwork,

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 this is how, do you really want to do an appeal? None of
2 that was done. He just said ten days and next thing I
3 know I'm in Kirkland and I had a meltdown and I ended up
4 in the psychiatric unit of Gilliam.

5 And by then, it's too late then because you're not
6 getting any law library or anything else, you're seeing a
7 doctor and getting medication.

8 Q. Do you -- you testified before you never asked her
9 to file an appeal after your guilty plea.

10 A. I didn't know how to ask her. I didn't know the way
11 because she never came to me to ask her. She just, no
12 she didn't say anything after that. She just said take
13 this and go home and that was it.

14 I never seen her after that day. She never visited
15 me, she never requested me, so how could I say that if I
16 never even had a chance to ask her about appeal? She
17 never -- no one explained nothing.

18 Q. Okay.

19 MS. HARRIGAN: No further questions, Your Honor.

20 THE COURT: Anything further, Mr. Culler?

21 MR. CULLER: No, Your Honor.

22 THE COURT: You may step down, sir, thank you.

23 WITNESS: Thank you, ma'am.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

Didier Van Sellner v State of S.C.
Didier Van Sellner-Cross-Examination by Ms. Harrigan
May 29, 2014

1 THE COURT: You may call your next witness.
2 MR. CULLER: I call Ms. Hinds.
3 CLERK OF COURT: Raise your right hand and state
4 your full name for the record.
5 THE WITNESS: Margaret Elizabeth Hinds.
6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]
8 THE COURT: Your witness.

Didier Van Sellner v State of S.C.
Margaret Hinds-Direct Examination by Mr. Culler
May 29, 2014

1 MARGARET HINDS,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. CULLER:
6 Q. Ms. Hinds, you had the duty of representing Mr. Van
7 Sellner as I do today ---
8 A. --- correct ---
9 Q. --- is that correct? And he's obviously a very
10 intelligent person, but he also can be very interesting.
11 Is that fair to say?
12 A. Absolutely.
13 Q. Were you initially assigned to represent him or did
14 you take this over from somebody?
15 A. It was mine initially. What had happened was Mr.
16 Van Sellner was writing letters to David Pascoe and to
17 Don Sorenson in the Solicitor's office ---
18 Q. --- right ---
19 A. --- basically admitting that he did the robbery and
20 trying to negotiate a deal. The Solicitors had him
21 brought over to the courthouse to try to get him
22 appointed to get somebody to represent him and I was the
23 one who got appointed that day.
24 Q. Right. And subsequently he was evaluated and I
25 think Judge Dixon assisted you in some of that?

Didier Van Sellner v State of S.C.
Margaret Hinds-Direct Examination by Mr. Culler
May 29, 2014

1 A. He was -- we got an eval order ---

2 Q. --- I don't mean to go through the -- I'm not
3 interested in ---

4 A. --- yeah, he was evaluated not once, but twice. The
5 first time they felt like he was malingering or not
6 cooperating enough. The second time he was evaluated I
7 actually went and was there with him during the eval.

8 Q. And, in your discussions with him, did he talk about
9 as he has today, the elements or the fact that it wasn't
10 -- did he ever raise that or he never really talked about
11 that with you?

12 A. He told me from day one that he didn't really have a
13 gun. But we discussed the elements of Armed Robbery and
14 it is -- was my belief then and is still my belief now
15 that the representation was the note.

16 Q. Right. And so let me ask you this in the evidence
17 that you had gone through --

18 MR. CULLER: Your Honor, again may I approach?

19 THE COURT: Yes, you may.

20 Q. [Mr. Culler] You had an opportunity --

21 [Whereupon, Mr. Culler shows documents to Ms.
22 Harrigan]

23 Q. [Mr. Culler] I'm going to hand you what's the
24 Orangeburg Department of Public Safety report.

25 [Whereupon, the witness is shown document]

Didier Van Sellner v State of S.C.
Margaret Hinds-Direct Examination by Mr. Culler
May 29, 2014

1 Q. You had a chance to review that?

2 A. Absolutely.

3 Q. In your discovery?

4 A. Yes.

5 Q. And, was there anything in there that said that Mr.
6 Van Sellner either was armed or represented that he was
7 armed other than by a note?

8 A. No.

9 Q. By which, I mean a physical manifestation of some
10 kind.

11 A. No, sir.

12 Q. Okay. And this is part of the discovery as a
13 supplemental report from Sergeant Hay where she spoke
14 with a clerk, Mr. Walker [phonetic].

15 [Whereupon, the witness is shown document]

16 Q. And did you have a chance to review that?

17 A. I did.

18 Q. Does that sort of fall in the same vein that Mr. Van
19 Sellner was telling this clerk, all you need is a note to
20 rob a bank; you don't need a gun?

21 A. Correct.

22 Q. Okay. And then, I believe Mr. Van Sellner also,
23 I'll hand you another document the FBI document where, I
24 think it was Captain Mike Adams with Orangeburg police
25 and the FBI interviewed Mr. Van Sellner. He admitted

Didier Van Sellner v State of S.C.
Margaret Hinds-Direct Examination by Mr. Culler
May 29, 2014

1 that he did this. But again, my question is, is there
2 anywhere in there that it says he's armed or that he
3 represented that he was armed?

4 [Whereupon, witness reviews document]

5 A. Other than the note, no.

6 Q. Okay. And last but not least, the Orangeburg
7 Department of Public Safety checklist I guess I'll
8 characterize it which, if you would just read what's
9 checked by the Orangeburg Department of Public Safety?

10 [Whereupon, the witness is shown document]

11 A. Under the heading of robbery, there are boxes that
12 can be checked that says no mask, threats, intimidation,
13 no weapon.

14 Q. And Ms. Hinds, this is in a bank that really is not
15 far from your office, is that right?

16 A. Correct.

17 Q. And, you reviewed or did you review, I'm sure you
18 did, four or five statements from the tellers?

19 A. I did.

20 Q. Did any of those ladies in that bank say that he was
21 armed or that he represented that he was armed other than
22 he had the note?

23 A. No. To the contrary I think one of them said she
24 didn't see a gun.

25 Q. Right. None of them ever, or did any of them ever

Didier Van Sellner v State of S.C.
Margaret Hinds-Direct Examination by Mr. Culler
May 29, 2014

1 say that he put his hands anywhere?

2 A. No ---

3 Q. --- to represent...

4 A. No.

5 Q. So, in the transcript when you say he did not have a
6 weapon although he did make the teller think he had a
7 weapon, you're referring to the note?

8 A. Yes.

9 Q. Okay.

10 MR. CULLER: I think that's all I have.

11 THE COURT: Cross-examination?

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Didier Van Sellner v State of S.C.
Margaret Hinds-Cross-Examination by Ms. Harrigan
May 29, 2014

1 CROSS-EXAMINATION
2 BY MS. HARRIGAN:
3 Q. Ms. Hinds you testified that your belief then and
4 your belief still now is that under the South Carolina
5 Armed Robbery Statute 16-11-330, the note was enough to
6 be a representation or words that he was armed?
7 A. I do.
8 MS. HARRIGAN: No further questions, Your Honor.
9 THE COURT: You may step down, Ms. Hinds, thank you.
10 [Whereupon, the witness is excused and exits the
11 witness stand]
12 THE COURT: You may call your next witness.
13 MR. CULLER: None, Your Honor.
14 THE COURT: Anything from the State?
15 MS. HARRIGAN: The State has no witnesses to call.
16 THE COURT: Any arguments?
17 MR. CULLER: Sure, I'll follow you or...
18 MS. HARRIGAN: Either. What do you prefer?
19 MR. CULLER: Go ahead. I'll follow you, go ahead.
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Didier Van Sellner v State of S.C.
Closing Argument-By Ms. Harrigan
May 29, 2014

1 CLOSING ARGUMENT

2 BY MS. HARRIGAN:

3 The state would submit the applicant has not met his
4 requisite burden of proof in regards to the allegations
5 he set forth in his application. First to the issue of
6 Armed Robbery, the State would submit that this is an
7 Armed Robbery despite the fact that he might not have
8 made a physical manifestation.

9 I think the South Carolina Armed Robbery Statute is
10 very clear that a representation of a deadly weapon
11 either by actions or words that he's armed is enough.
12 And here he clearly, you heard Mr. Van Sellner's
13 testimony, told the tellers at the bank, by note, that he
14 had a gun and would shoot if they did not give him the
15 funds or whatever else he requested in there. So, the
16 State would submit Ms. Hinds can't be found deficient; it
17 clearly falls within the guidelines of Armed Robbery.
18 The State would submit he was appropriately charged and
19 therefore she's not deficient and no prejudice can be
20 shown.

21 Turning to the allegation that Ms. Hinds was
22 ineffective for failing to file an appeal on his behalf,
23 this was a guilty plea. Counsel is not under any duty to
24 consult with clients about appellate rights from a guilty
25 plea. They are required if a request is made to file

Didier Van Sellner v State of S.C.
Closing Argument-By Ms. Harrigan
May 29, 2014

1 one, to file one on their behalf. But, stemming from a
2 guilty plea there is no constitutional or state standard
3 that you have to consult about a guilty plea. So, the
4 State would submit there's no deficiency in that regard
5 and we had testimony from Mr. Van Sellner that he did not
6 request an appeal on Ms. Hinds' behalf. I know he said
7 that he was transferred to SCDC shortly thereafter, but
8 never once turned to her and said I'm unhappy with my
9 sentence I'd like an appeal. So, the State would submit
10 that this application should be denied in full.

11 THE COURT: Mr. Culler?

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Didier Van Sellner v State of S.C.
Closing Argument-By Mr. Culler
May 29, 2014

1 CLOSING ARGUMENT

2 BY MR. CULLER:

3 May it please the court, Your Honor? I wouldn't
4 think the court has heard the word exacerbated come out
5 of the mouth of a witness too many times, or an applicant
6 I should say. Mr. Van Sellner is clearly very bright,
7 he's a very gemisch person and he is, by his own
8 admission, a criminal who's got a long record.

9 Having said that, Your Honor, what I would argue to
10 the court is that the statute which I would submit needs
11 to be construed narrowly against the State, but this is
12 really all about one word, while. The South Carolina
13 statute that I'll read from [Reading] A person who
14 commits a robbery while armed with a dirk, slingshot,
15 razor, or other deadly weapon or while alleging either by
16 action or words, he was armed -- which we got all that --
17 while using a representation of a deadly weapon or an
18 object which -- any object which a person present during
19 commission of the robbery reasonably believed to be a
20 deadly weapon.

21 I would submit to the court, I'm not saying he's not
22 guilty, Your Honor, I'm saying he is, but I'm saying he's
23 not guilty of the Armed Robbery. And what I would argue
24 to the court is that this is a case where presentment was
25 waived. The Grand Jury didn't pass on this. Mr. Van

Didier Van Sellner v State of S.C.
Closing Argument-By Mr. Culler
May 29, 2014

1 Sellner was under some duress, as he stated, about the
2 potential life sentence that he thought he was facing and
3 he relied on the advice of his counsel. I would submit
4 that the advice was in error, it doesn't follow the
5 statutory requirements of the Armed Robbery Statute that
6 he detrimentally relied on that by accepting the plea and
7 I would ask the court to grant him his application.

8 THE COURT: Thank you, Mr. Culler

9 MR. CULLER: Thank you, Your Honor.

10 THE COURT: And I will review the record in its
11 entirety and issue a written ruling.

12 MS. HARRIGAN: Thank you, Your Honor.

13 MR. CULLER: Thank you, Your Honor.

14 *****END OF TRANSCRIPT OF RECORD*****
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STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

Didier Van Sellner, #350065,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-0184

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed February 11, 2013. The State made its Return on April 24, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Michael R. Culler, Jr., Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. On March 6, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he waived presentment to the Orangeburg County Grand Jury and pled guilty to

Armed Robbery (2011-GS-38-1984). He was represented by Margaret E. Hinds, Esquire. Judge Dickson sentenced Applicant to confinement for twelve years. Applicant did not appeal his sentence or conviction.

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

1. "Ineffective unprofessional counsel"
 - a. Counsel failed to explain all the elements of the charge in detail
2. Involuntary Guilty Plea
 - a. Counsel "pressured me to accept plea"
3. "I was never armed, nor possessed any object or device that could be considered a weapon...So this bank robbery could not be in any way shape, form, or action be considered a armed robbery."

At the evidentiary hearing, Applicant proceeded forward solely on the ground that Counsel was ineffective for allowing him to plead guilty to Armed Robbery when he did not meet the statutory requirements for the offense.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and testimony was presented from plea counsel, Michael R. Culler, Jr. (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Orangeburg County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that he did indeed go into the bank and give a teller a note demanding money without a dye pack or he would shoot. However, he contends that he did not have a weapon or make any physical representation of having a

weapon, and therefore he was not guilty of armed robbery. He testified that he is guilty of entering a bank with the intent to steal and that is what he should have been charged with instead. He testified that Counsel was ineffective for advising him to plead guilty to armed robbery when his conduct did not conform to the statutory requirements. He testified that he wanted to plead guilty and accept responsibility for his actions, but his actions did not amount to armed robbery due to the lack of a weapon. He testified that he was prejudiced by Counsel's misadvice to plead guilty to armed robbery rather than seek a plea for entering a bank with intent to steal because the later carries a lower sentence range.

Applicant conceded that he has a lengthy prior record including multiple other robberies and attempted murder. He testified that he was aware that the State could have sought life without parole based on his prior convictions. He testified that Counsel told him that the State would likely serve him with notice of its intent to seek life without parole if he did not plead guilty. He testified that Counsel advised him he would likely be convicted of armed robbery if he proceeded to trial and would receive a life sentence.

Counsel testified following Applicant. Counsel testified that she was appointed to represent Applicant as an Assistant Public Defender for Orangeburg County. She described Applicant as "very intelligent and interesting." She testified that Applicant told her from the very start of representation that he did enter the bank and pass the teller a note demanding money or he would shoot, but that he was adamant that he did not have a weapon. She testified that her interpretation of the South Carolina Armed Robbery Statute (S.C. Code Ann. §16-11-330) would include the conduct of Applicant. She elaborated that the "representation of a deadly weapon"

element of armed robbery was satisfied by Applicant passing the teller a note threatening to shoot if she did not comply. She testified that she advised Applicant that the State would likely seek life without parole based on his extensive prior record, and that Applicant would likely be convicted at trial. She testified that she advised Applicant to plead guilty before the State served him the notice of its intent to seek life without parole pursuant to S.C. Code Ann. §17-25-45 so that he could receive a sentence between ten to thirty years. She testified that Applicant understood he would receive a sentence within the ten to thirty year range and that it was his decision to plead guilty:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application and establishing that he is entitled to relief: Abney v. State, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (S.C. Ct. App. 2014); *reh'g denied* (Apr. 24, 2014) (citing Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having

produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Abney, 408 S.C. at 46, 757 S.E.2d at 546 (citing Strickland, 466 U.S. at 690). With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985); Roscoe v. State, 345 S.C. 16546 S.E.2d 417 (2001).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Applicant alleges that Counsel was ineffective for advising him to plead guilty to armed robbery when his conduct did not comport with the required, statutory elements of the offense. This Court finds that Applicant has failed to meet his burden of establishing any deficiency in regards to these allegations. The South Carolina armed robbery statute states the following:

(A) A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or *while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon*, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

S.C. Code Ann. § 16-11-330 (emphasis added). Applicant readily concedes that he entered the bank and passed the teller a note demanding money and threatening to shoot her if she did not comply. By passing the teller a note threatening her with a deadly weapon, Applicant's conduct comported to the armed robbery statute by alleging with words that he was armed with a deadly weapon. Therefore, this Court finds that counsel was not deficient for advising Applicant to plead guilty to armed robbery.

Furthermore, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiencies, as there is no reasonable likelihood that the result of the proceeding would have been different or that Applicant would have proceeded to trial. Applicant testified numerous times that he pled guilty to avoid a mandatory life sentence and that he was guilty of the conduct giving rise to the charge. Therefore, this Court finds that Applicant has failed to meet his burden of proof in regards to both deficiency and prejudice and that these allegations must be denied and dismissed with prejudice.

CONCLUSION

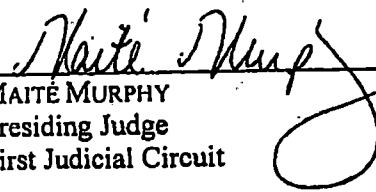
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29 day of Sept, 2014.



MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

Columbia, South Carolina.

WITNESSES

Bobby Rivers

Orangeburg Police Department

ARREST WARRANT NUMBER
J697993

Arrested: September 9, 2011

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: November 9, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1984

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 7, 2011 TERM

THE STATE
vs.

Didier Van Sellner

Indictment for
ARMED ROBBERY

SC Code: 16-11-330(A)

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

Didier Van Sellner
Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY

Winnifred B. Clark
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-1984


At a Court of General Sessions, convened on November 7, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about September 8, 2011, in Orangeburg County, the defendant, Didier Van Sellner did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, SCB&T, with the intent to permanently deprive the victim of possession of the goods or monies.

This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor