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JUN 17 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

DAVID L. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002563

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DAVID PARKER,) 2011-GS-11-00484
7 DEFENDANT.) 2011-GS-11-00485
8) 2012-GS-11-00308
9) APRIL 16, 2012
10 GAFFNEY, SOUTH CAROLINA

11 B E F O R E:
12 THE HONORABLE ROGER C. COUCH, JUDGE.

13
14 A P P E A R A N C E S:
15 MATTHEW KENDALL, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE
17 MITCH SLADE, ESQUIRE
18 ATTORNEY FOR THE DEFENDANT
19
20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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WITNESSES

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(NO WITNESSES CALLED)

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EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
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1 (PROCEEDINGS, APRIL 16, 2012)

2 THE COURT: Yes, sir, Mr. Kendall, you may call
3 the case.

4 MR. KENDALL: Your Honor, before the court is Mr.
5 David Parker on Indictment 2012-308. He's been charged with
6 one count of attempted armed robbery. He's pleading guilty
7 today under a negotiated sentence of eight and a half years,
8 Your Honor. And also Indictment 2011-484 for common law
9 robbery with a negotiated sentence to run concurrent, as
10 well as 2011-485 to run concurrent. That's also to common
11 law robbery, Your Honor.

12 DAVID PARKER, having been first duly sworn,
13 testified as follows:

14 THE COURT: All right, sir, your name is David
15 Parker?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Parker, you are in front of me on
18 several charges. I'm going to go over the charges with you.
19 And when I do, I'll be going over with you the sentences
20 that are potential sentences in the case. And I will advise
21 you that, of course, I have the authority, as I always do,
22 to sentence you up to the full extent allowed by law, except
23 these are negotiated sentences. So if I don't except the
24 negotiation that's been entered into between you, your
25 attorney and the State, I will advise you of that and give

1 you an opportunity to withdraw your plea, if I don't follow
2 the negotiation. Do you understand what we are doing?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is that your understanding as to how
5 this would be handled?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. The first case is a common
8 law robbery, case number 11-484. That has been indicted by
9 the Grand Jury. That carries a potential sentence of zero
10 to fifteen years.

11 The next charge is another common law robbery
12 case, number 11-485, and I think the potential sentence is
13 up to fifteen years. Now, this is a lesser included
14 offense, because the original indictment in that case was
15 for armed robbery, and the Grand Jury issued a True Bill on
16 that indictment.

17 The next case is 2012-308. It's an attempted
18 armed robbery. That carries up to twenty years.

19 Is that an armed robbery?

20 MR. KENDALL: No, it's attempted armed, Your
21 Honor.

22 THE COURT: Is it attempted, or is it armed
23 robbery?

24 MR. KENDALL: It's attempted armed robbery.

25 THE COURT: Attempted armed robbery. I thought I

1 had that right. That carries up to twenty years.

2 Now, that is a violent and a most-serious offense.

3 I will advise you that that carries with it
4 certain ramifications that it could serve as one your
5 strikes. In the future if you pled guilt to or were found
6 guilty of other offenses that qualified as a strike or
7 classified as a violent serious or most serious, your plea
8 in that case could be used in the future to make future
9 sentences much more severe. It could result in a sentence
10 of life imprisonment without the possibility of ever
11 receiving a parole.

12 Have you discussed that with your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that situation?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, again, I have
17 indicated that there is a negotiated sentence and -- well,
18 if I don't accept that negotiation, I would advise you.

19 Go over that negotiation with me again, Mr.
20 Kendall, so I'm sure I understand it.

21 MR. KENDALL: It's eight and a half years, Your
22 Honor, on the attempted armed robbery. And on the strong
23 armed robbery it's to run concurrent with that.

24 THE COURT: All right. So it's eight and a half
25 years on all of these?

1 MR. KENDALL: Yeah, on 2012-308, yes, sir, the
2 effect would be on all of them.

3 THE COURT: Running concurrent?

4 MR. KENDALL: Yes, sir.

5 THE COURT: Is that your understanding?

6 MR. SLADE: It is my understanding, Your Honor.

7 THE COURT: You have a wrinkled brow and I'm
8 trying to figure out if we are missing something.

9 MR. SLADE: No, sir, I agree with what you just
10 said. The negotiated plea is for eight and a half years on
11 the attempted armed robbery; and for the two common law
12 robberies to receive a sentence of eight and a half years
13 each, to be run concurrent.

14 What I was concerned about, Your Honor, is -- and
15 I think I may have missed this when I had David sign the
16 sentencing sheet. I believe that attempted armed robbery is
17 a nonviolent offense. Armed robbery is a violent offense.

18 THE COURT: Well, we need to look that up, because
19 this is checked as violent, so --

20 MR. SLADE: Yes, sir.

21 THE COURT: -- why don't you take a moment and
22 let's confirm that.

23 MR. SLADE: Thank you, Your Honor.

24 (Off the record)

25 (Back on the record)

1 MR. SLADE: I'm mistaken, Your Honor.

2 I think I need a moment to talk to him.

3 THE COURT: I'm going to let you step down for
4 just a minute. That's an important distinction, so --

5 MR. SLADE: Thank you.

6 THE COURT: -- talk that over with your client and
7 then we will take it up once you are finished.

8 (Off the record)

9 (Back on the record)

10 MR. SLADE: Your Honor, I appreciate you letting
11 us stand aside.

12 MR. KENDALL: We did the research on it, Your
13 Honor. It is, in fact, a violent offense.

14 As a sign of good will, we have changed the
15 negotiation from eight and a half years to eight years, to
16 reflect that he was unaware it was violent, so now the
17 negotiated sentence is, eight years on the attempted armed
18 robbery and concurrent sentencing on the two common law
19 robberies, Your Honor.

20 THE COURT: I understand.

21 MR. SLADE: And I wanted -- if I may, Your Honor,
22 I did want to say I appreciate you letting us stand this
23 aside. I had told David that the attempted armed robbery
24 was a nonviolent offense. It is, in fact, a violent
25 offense. I made a mistake. I just wanted to make sure we

1 put that on the record clearly so this wouldn't be an issue
2 somewhere down the line.

3 THE COURT: Oh, I understand, and I'm going to ask
4 Mr. Parker, have you had an opportunity to discuss that
5 situation with your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And are you satisfied with those
8 discussions?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, has he thoroughly explained to
11 you the designation of it being a violent and most-serious
12 offense?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you understand what that carries
15 with it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: It affects not only your eligibility
18 for parole, but it also affects future sentences, if you
19 have future violations that are similar in nature. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay.

23 All right. Now, I think we are at the point of
24 where we were discussing the nature of the charges.

25 I will now, Mr. Parker, ask you if you are ready.

1 to enter a plea? Are you ready to do that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: On these charges you have the right to
4 enter a plea of either, guilty or not guilty. How do you
5 plead?

6 THE DEFENDANT: Guilty.

7 THE COURT: Counselor, I'm sure that you have
8 discussed all of those matters now with your client, is that
9 correct?

10 MR. SLADE: Yes, sir.

11 THE COURT: And are you satisfied that he
12 understood those discussions?

13 MR. SLADE: Yes, sir.

14 THE COURT: He's indicated to me that he's made
15 this decision to offer a guilty plea. Do you agree with his
16 decision?

17 MR. SLADE: I do.

18 THE COURT: And has he been able to assist you in
19 his defense?

20 MR. SLADE: Yes, sir, he has.

21 THE COURT: Mr. Parker, you are thirty-five?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: I graduated.

25 THE COURT: High school?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you married?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Children?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How many?

7 THE DEFENDANT: Five.

8 THE COURT: See if you can remember all those
9 ages. How old are they?

10 THE DEFENDANT: Fourteen, eighteen, twenty,
11 twenty-one, twenty-two.

12 THE COURT: Did pretty good.

13 THE DEFENDANT: Twenty-three.

14 THE COURT: All right. Now, do you have a job on
15 the outside?

16 THE DEFENDANT: No, sir.

17 THE COURT: Where did you last have a job, Mr.
18 Parker?

19 THE DEFENDANT: Old Mill Cafe.

20 THE COURT: Mr. Parker, has anybody done anything
21 to you, such as threaten you, or put pressure on you,
22 threatened you, do anything to try to force you or make you
23 offer a plea?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you doing this freely and

1 voluntarily?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you had enough time to consider
4 this matter?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And has anybody made any promises or
7 guarantees or assurances, other than the negotiated sentence
8 in this matter, in an effort to try to get you to plead?

9 THE DEFENDANT: No, sir.

10 THE COURT: Now, I have to be sure that you
11 understand your Constitutional Rights. This is an important
12 matter when you give up those rights and I have to be sure
13 that you understand what you are giving up, so I'm going to
14 explain them to you and then I'll give you a chance to ask
15 questions.

16 First of all, you have a right to have your cases
17 considered by a Grand Jury. That's occurred in all of the
18 cases.

19 I will point out in the case 2011-485, that was
20 originally indicted as an armed robbery. The plea in this
21 case is to common law robbery, so that's what we call a
22 lesser included offense. That means you are pleading to a
23 lower offense, but it was included in the higher offense
24 when it was indicted. Do you understand what that means?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: So all the cases went before the Grand
2 Jury.

3 Now, you have a right to an attorney and your
4 attorney is present and available to you.

5 You have a right to a trial by jury. At the trial
6 you would be presumed to be innocent. That would be true
7 until the State was to -- if they were to prove your guilt
8 beyond a reasonable doubt. That's the State's burden. A
9 defendant is not required to prove anything, since you are
10 presumed to be innocent.

11 At the trial and under the Constitution you would
12 have the right to have subpoenas issued to witnesses to
13 require that they attend the hearing.

14 You would have the right to confront or question
15 anyone who testified during the trial.

16 You would have the right at the trial to present
17 all the defenses that you have to the charges.

18 You would also be given the opportunity to try to
19 suppress any evidence the State may have against you. That
20 includes any statements that you might have made prior to
21 the time of the trial.

22 At all times, Mr. Parker, you have the right to
23 remain silent. At a trial, if you chose to remain silent,
24 the judge is required to instruct the jury that your silence
25 could not be used against you or be a factor in the verdict.

1 Now, do you understand the rights that I have
2 explained?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about any of
5 them?

6 THE DEFENDANT: No, sir.

7 THE COURT: When you plead guilty, if I later on
8 decide to accept the plea, you will have waived or given up
9 all of those Constitutional Rights as they relate to these
10 three charges, with the exception of the right of having
11 your lawyer represent you until your plea is completed. So
12 do you understand what you are giving up?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, does the fact that you have to
15 give up those rights, does that cause you to want to change
16 your plea at this time?

17 THE DEFENDANT: No, sir.

18 THE COURT: So you are still pleading guilty to
19 all three charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is that because you are guilty of
22 these charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Was that a yes, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Thank you.

2 Now, I'm going to ask you the solicitor to go over
3 the facts they are alleging. When the solicitor finishes,
4 I'm going to be asking you some questions, so listen to what
5 he has to say.

6 MR. KENDALL: Your Honor, each of these offenses
7 occurred on May 24th, 2011. He used a very similar modus
8 operandi. The defendant would flag down individuals. This
9 occurred three separate instances.

10 The first of these was a Steven Ohmagosh, the
11 second a Richard Slaviani, and the third a Dillon Owens.

12 In each case the defendant would flag down these
13 individuals and ask for a ride. Once inside the vehicle he
14 would ask to borrow their cellular phone. He would then --
15 to make a call. He would then, basically, we thought at
16 that point steal, but really hide somewhere in the vehicle
17 the cellular phone. Then he would present with his hand
18 under his shirt something that would appear to be a firearm
19 and ask them to go to an automated teller machine and
20 withdraw money.

21 He was ultimately caught during the last
22 individuals, Dillon Owens. Mr. Owens did not have any
23 money, and so basically that bluff got called, so to speak,
24 and the defendant got out of the car. Mr. Owens then found
25 his cellular phone tucked in his seat and called the police,

1 who caught the defendant very shortly thereafter. From
2 there there was a match. He met similar modus operandi.
3 Richard Slaviani relatively quickly that it happened;
4 approximately the same day. And then Steven Ohmagosh came
5 forward approximately two weeks later and said the same
6 thing had happened to him after hearing about these other
7 individuals, Your Honor.

8 THE COURT: And Mr. Parker was implicated in all
9 of those?

10 MR. KENDALL: Yes, sir.

11 THE COURT: He was caught in the last one?

12 MR. KENDALL: Yes, sir, he was caught in the last
13 one. There was a photo lineup done with Mr. Ohmagosh, that
14 they did not do one for Mr. Owens. However, the defendant
15 gave a statement which he basically said he had gotten a
16 ride from a bunch of people and they had given him some
17 money, and he included Richard as one of the people who had
18 given him a ride, Mr. Slaviani, although he claimed that Mr.
19 Slaviani had given money for narcotics, not for any sort of
20 robbery or anything like that.

21 THE COURT: Mr. Parker, did you hear what the
22 solicitor told me about these cases?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that information the truth?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, have you told me the truth?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did anyone tell you how to answer my
4 questions?

5 THE DEFENDANT: No, sir.

6 THE COURT: So the answers that you have given me
7 are your own?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is there any part of what we have
10 discussed today that you want to go back and change anything
11 that you told me?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Then I'll accept the plea
14 as having been freely and voluntarily given.

15 The defendant is aware of these charges; he's
16 aware of the penalties; he's had the advice of a lawyer;
17 he's satisfied with that advice. There is a factual basis
18 or a reason for the plea.

19 Mr. Slade?

20 MR. SLADE: Thank you, Your Honor.

21 Your Honor, I won't belabor this. I would just
22 ask the court to accept the negotiated plea of eight years
23 with the other two cases that were two common law robberies
24 to run concurrent.

25 Your Honor, I think -- in asking the court to

1 accept this, I think it's done basically because no one was
2 hurt. David has told me, and I think his record reflects
3 it, that he basically was trying to get -- in each of these
4 instances he got a 100 or \$200. He asked them to go to
5 their ATM machine, and he was more or less pretending he had
6 a weapon. In each time they he got -- they rode around
7 afterwards. He got them to let him out at Fourth Street or
8 Second Street, which as you know, Your Honor, is the flea
9 market for crack cocaine around here.

10 And the last one, to emphasize it, nobody got hurt
11 and he never intended to hurt anybody. The seventeen year
12 old boy, the kid, told him "I don't have any money." And he
13 says "well, you're a pretty cool kid. I just needed
14 somewhere to rest my feet. Do you mind carrying me by
15 McDonald's," so that's what he did. And he asked him for
16 some change when he got to McDonald's. He got some change
17 and left.

18 So, Your Honor, I just ask the court to accept the
19 negotiated plea. I certainly don't think he meant any harm.

20 THE COURT: You brought some people up here. Does
21 anybody want to speak on his behalf?

22 Your name?

23 MARCUS GILES? Marcus Giles.

24 THE COURT: Yes, sir.

25 MARCUS GILES: Well, I knew David for a little

1 while when I moved down here and I know that he's a good
2 man. I know that his drug problems when you talk with him,
3 but I know besides that he's a really good man and he's a
4 really good father.

5 THE COURT: Thank you.

6 Sir, do you wish to be heard, Mr. Parker?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right.

9 Prior record?

10 MR. KENDALL: Your Honor, from 1994, one count of
11 burglary in the third degree.

12 From 1996, simple assault and battery; forgery.

13 From 2003, a distribution of crack cocaine.

14 From 2007, a prox charge; driving under the
15 influence.

16 I believe that's the entirety, Your Honor. That
17 prox charge was counted as a strike for purposes of life
18 without parole, as would the second or attempted armed
19 robbery.

20 THE COURT: He's out of strikes.

21 MR. KENDALL: Yes, sir. If he were to be
22 convicted again of a serious or most-serious offense, he
23 would be eligible for life without parole.

24 THE COURT: Do you understand that, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How much time has he already served?

2 MR. SLADE: Your Honor, he's been in since May the
3 24th.

4 THE COURT: Last year.

5 MR. SLADE: Yes, sir, of 2011. Well, May the
6 25th. I think he was actually arrested after midnight.

7 MR. KENDALL: Yes, sir.

8 MR. SLADE: May the 25th of 2011.

9 THE COURT: I have accepted the negotiations and
10 the sentence is eight years in all cases, run concurrently.

11 I have ordered that he be referred to the
12 Addiction Treatment Unit while he's incarcerated.

13 MR. SLADE: Thank you very much, Your Honor.

14 MR. KENDALL: Thank you, Your Honor.

15 THE COURT: Thank you, sir.

16 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 16TH day of APRIL, 2012.

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

October 22, 2012

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

7/20

FORM 5

012CP-110611

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

County of CHEROKEEDAVID PARKER 250125

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 23 AM 11 19
BRANDY M. MBBE

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 SCDC - STEVENSON CORRECTIONAL,
4546 Broadview Rd, Columbia, S.C. 29210
2. Name and location of Court which imposed sentence CHEROKEE COUNTY
COURTHOUSE, GAFFNEY, S.C. 29342
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) GS1100308
 - (b) GS1100484

(c) GS1100485

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

(a) 4-16-12 - 8 yrs(b) 4-16-12 - 8 yrs CONCURRENT(c) 4-16-12 - 8 yrs CONCURRENT

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) PCR IS PROPER FOR INEFFECTIVE ASSISTANCE(b) OF COURSE!

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 23 AM 11 19
BRANDY W. MCBEE

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) CONVICTION WAS OBTAINED IN DIRECT VIOLATION
- (b) OF UNITED STATES CONSTITUTION 6, AND 14th
- (c) AMENDMENTS AND SOUTH CAROLINA CONST. ART. 1, SEC 14
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUSSEL WAS INEFFECTIVE FOR FAIL TO MOTION
- (b) THE COURT FOR A CONTINUOUS, FAIL TO SUPPRESS
- (c) PHOTO LINE, FAILING TO MOTION FOR DISMISSAL OF CHARGES, ECT.
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. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

FILED IN OFFICE OF
CLERK OF COURT
HERKREE COUNTY, S.C.
JUL 23 AM 11 19
BRANDY W. MOBBE

(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. _____

FILED IN OFFICE OF
CLERK OF COURT
CHELSEA COUNTY, S.C.
2012 AUG 23 AM 11 19
BRADY W. MCBEE

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) Grounds A through C ARE ISSUES OF INEFFECTIVE
 (b) ASSISTANCE OF COUNSEL, thus PCR IS PROPER
 (c) REMEDY AND this courts jurisdiction.

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? NIA
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NIA
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NIA

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. Mitch Slade

ii.

iii.

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

i. Guilty PEA

ii.

iii.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 Nov 23 PM 11 19
BRANDY W. MCBEY

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

VACATION OF PLEA, SENTENCES AND COMPLETE
EXONERATION OF ALL CHARGES

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

NO

STATE OF SOUTH CAROLINA)

County of CHEROKEE)

VERIFICATION

I, DAVID PARKER, 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.

David Parker 250123

SWORN to and subscribed before me this 20th
day of August, 2012.

Yolanda Long (L.S.)
Notary Public

My Commission Expires: 1/20/2022

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 23 AM 11 20
BRANDY W. MCBEE

012CP-110611

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

I, DAVID PARKER, 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.

David Parker
Applicant

SWORN or affirmed to and subscribed before me this

20th day of August, 2012.

Yolanda Long
Notary Public

My Commission Expires: 1/20/2022

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 23 AM 11 20
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
	)	2012-CP-11-0611
David L. Parker, #250125,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 23, 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 Cherokee County Clerk of Court. He was indicted at the August 2011 term of the Cherokee County Grand Jury for two counts of armed robbery (2011-GS-11-0484, -0485), and then Applicant was indicted at the April 2012 term of the Cherokee County Grand Jury for attempted armed robbery (2012-GS-11-0308). The Applicant was represented by Mitch Slade, Esquire. On April 16, 2012, the Applicant pled guilty before the Honorable Roger L. Couch and was sentenced to confinement for concurrent sentences of eight years for each charge. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel was ineffective for failing to move for a continuance,
 - b. Counsel was ineffective for failing to move to suppress photo lineup,
 - c. Counsel was ineffective for failing to move for dismissal of charges, and
2. Due process violations, in that;
 - a. Conviction was obtained in direct violation of United States Constitution 6th and 14th Amendments and the South Carolina Constitution Article I, Section 4.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

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

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

IV.

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." Section 17-27-50 of the Code of Laws of South Carolina (1976). 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 expressly admitted, qualified or explained is hereby denied.

VI.

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 W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 19, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

David L. Parker,

2012-CP-11-0611

Applicant,

v.

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Kenneth Robertson, Esquire
Cobourn & Saleeby, LLP
P.O. Box 5888
Spartanburg, South Carolina 29204-5888


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 19th day of August, 2013.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF COMMON PLEAS
3
4 David L. Parker,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2012-CP-11-0611
7 The State.) September 30, 2013
8 Spartanburg, South Carolina
9

10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

15 J. KENNETH ROBERTSON, ESQUIRE
16 Attorney for the Applicant

17 SUZANNE H. WHITE, ESQUIRE
18 Attorney for the State
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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Redirect examination by Ms. White

Recross-examination by Robertson

No exhibits entered into evidence.

David L. Parker
Direct examination by Mr. Robertson

1 MS. WHITE: Thank you, Your Honor.

2 This is the case of David Parker vs. the State. It's
3 case No. 2012-CP-11-0611.

4 Mr. Parker is represented today by Mr. Kenny
5 Robertson.

6 He was indicted August of 2011 on two counts of armed
7 robbery and then indicted April of 2012 on an attempted
8 armed robbery charge.

9 He ultimately pled represented by Mr. Mitch Slade to
10 two counts of common-law robbery and the attempted armed
11 robbery as indicted, received concurrent sentences of eight
12 years on each charge pursuant to a negotiated sentence.

13 And he has alleged ineffective assistance of counsel,
14 that counsel failed to move for a continuance, failed to
15 suppress the photo lineup and failed to move for a
16 dismissal of all charges. He's also alleged due process
17 violations.

18 So I'll turn it over to Mr. Robertson at this time.

19 MR. ROBERTSON: May it please the Court. I have one
20 witness. That would be Mr. Parker.

21 THE COURT: Okay.

22 DAVID L. PARKER, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. ROBERTSON

25 Q would you please state your name for the record?

David L. Parker
Direct examination by Mr. Robertson

1 A David Parker.

2 Q Mr. Parker, we're here on your petition for post
3 conviction relief because you believe you received
4 ineffective assistance of counsel at trial, is that
5 correct?

6 A Yes, sir.

7 Q You were represented by Mitch Slade at trial, is that
8 correct?

9 A Yes, sir.

10 Q And you entered into a negotiated guilty plea, is that
11 correct?

12 A Yes, sir.

13 Q And can you explain to the best of your knowledge what
14 that guilty plea was? In other words, what were you
15 sentenced to?

16 A I was to plead guilty to attempted armed robbery,
17 which would have been a nonviolent eight and a half years,
18 with two common-law robberies ran concurrent.

19 When I got in front of Judge Couch I was notified that
20 the charge was a violent most serious charge and that it
21 would count as one of my strikes.

22 Q And was it your position that you did not want to
23 plead to a violent most serious charge?

24 A No. I didn't want to plead to a violent most serious.
25 At that point Mr. Slade -- the judge allowed me to

David L. Parker
Direct examination by Mr. Robertson

1 step down and talk to Mr. Slade, and Mr. Slade went to
2 work -- try to work out another plea agreement. But the
3 state refused to give him another plea.

4 And at that point I advised Mr. Slade that I wanted to
5 get a continuance and go to trial. Mr. Slade told me I
6 would take the plea today or we would go to trial in the
7 morning. We was not ready for trial.

8 Q Why do you think you were not prepared for trial?

9 A Because the whole time it was based upon us going over
10 here for a plea. We hadn't even came up with a trial
11 strategy or nothing, no witnesses or contacted nobody, got
12 no video footage or nothing.

13 Q And prior to going for your plea agreement you knew
14 what the plea was for was eight and a half years, is that
15 correct?

16 A Yes, sir.

17 Q And it was your understanding that that was as
18 nonviolent charges.

19 A Yes, sir.

20 Q Okay. And when did you discover that those were
21 violent charges?

22 A By Judge Couch when he was advising me of it being a
23 most serious charge and a violent charge.

24 Q And after you were informed that it was a most violent
25 offense they agreed to a further reduced sentence of just

David L. Parker
Direct examination by Mr. Robertson

1 eight years instead of eight and a half, is that correct?

2 A Yes, sir.

3 Q And it's your position that you accepted that plea
4 even though it was a violent offense because you had no
5 other choice.

6 A Yes, sir.

7 Q Because you felt you were unprepared to go forward for
8 trial.

9 A Yes, sir.

10 Q To your knowledge were there any witnesses on your
11 behalf that had been developed between you and Mitch Slade?

12 A I mean, my wife was a witness, because when two of the
13 robberies took place I was at the motel with my wife.

14 Q Okay. So you believe you had an alibi.

15 A Yes, sir.

16 Q For at least two of the charges.

17 A Yes, sir.

18 Q Okay. And to your knowledge did Mitch Slade develop
19 that alibi?

20 A No, sir.

21 Q Did you have any other defenses that you were aware of
22 that might have been helpful?

23 A I mean, it was video footage from the A.T.M. that
24 could have been -- that Mr. Slade could have got and video
25 footage from Limestone Courts -- because his money to

David L. Parker
Direct examination by Mr. Robertson

1 buy -- the Gaffney police department.

2 Q Okay. For clarification, as part of the crimes you
3 were alleged to have committed people were taken by force
4 to A.T.M.s?

5 A Yes, sir.

6 Q And you believe that had you been the assailant in
7 that case you would have shown up on the an A.T.M. footage?

8 A Yes, sir.

9 Q And one of the crimes purportedly took place near
10 Limestone Court, is that correct?

11 A They say after each -- each time after the assailant
12 got outta the car, they got out at Limestone Courts.

13 Q Okay. And it's your belief that Limestone Court has
14 video surveillance at that site.

15 A It is, yes. They do because my kids have been
16 fighting down there, and the police charged them with
17 trespassing based upon the video footage of seeing them in
18 Limestone Courts.

19 Q So you believe that that video footage could have
20 exonerated you because it would not have shown you being
21 dropped off at approximately the time of some of your
22 crimes.

23 A Yes, sir.

24 Q Your alleged crimes. And to your knowledge that was
25 not developed, is that correct?

David L. Parker
Cross-examination by Ms. White

1 A No, sir.

2 Q It had been your intention and it was your sole
3 strategy and it was your attorney's sole strategy to plea
4 bargain, is that correct?

5 A Yes, sir.

6 Q And the crux of the matter is that your attorney was
7 mistaken about the plea bargain, is that correct?

8 A Yes, sir.

9 MR. ROBERTSON: Your Honor, those are the only
10 questions I have.

11 CROSS-EXAMINATION

12 BY MS. WHITE

13 Q And, Mr. Parker, you mentioned that the judge allowed
14 you to take some time to meet with your attorney after he
15 indicated that this was a violent crime.

16 A Yes, sir -- yes, ma'am.

17 Q Okay. And you had time to do that and then actually
18 got back on the record with the Court, is that correct?

19 A Yes, ma'am.

20 Q And they came back with reducing it from eight and a
21 half years to an eight years. And the judge went over that
22 with you, and he said, "Have you had an opportunity to
23 discuss that with your lawyer and are you satisfied and you
24 understand how that effects you." And you said you were.

25 A Yes, ma'am.

David L. Parker
Cross-examination by Ms. White

1 Q Okay. So, but today you're saying you were not.

2 A I was not for the simple fact Mr. Slade refused to ask
3 for a continuance.

4 I mean, the state had asked for -- had filed a motion
5 to Mr. Slade asking to get a written notice of any alibi
6 place or places or witnesses that I was going to present.

7 Mr. Slade had not responded to that motion. Had I
8 went to trial the next day anything that I would have tried
9 to present would have been dismissed due to the fact the
10 state hadn't had a chance to review it.

11 Q And is that based on the fact that y'all had agreed
12 and you had wanted to plead to this eight and a half years
13 originally?

14 A Yes, ma'am.

15 Q Okay. And there were a couple of folks. One
16 person -- you were actually caught at one of the scenes, is
17 that right?

18 A Yes, ma'am.

19 Q The other two are the ones that you're kind of
20 contesting maybe. And there was a photo lineup which you
21 were picked up -- picked out of that one.

22 A Yes, ma'am.

23 Q Okay. And when the judge read all of the facts to you
24 and said, "Is this what occurred, is this correct," you
25 said, "Yes, sir, that's all the truth." And that you had

David L. Parker
Cross-examination by Ms. White

1 told the judge everything that was the truth and you didn't
2 want to go back and change anything.

3 A I was following the advice of my attorney.

4 Q So you didn't think that was the time that you should
5 have said actually I really don't want to plead violent,
6 I'd rather go to trial?

7 A I mean, I didn't have the knowledge that I could have
8 just spoke out like that. I mean, I thought everything had
9 to go through my attorney.

10 Q Okay. All right. And so even though the Court had
11 allowed you a chance to talk with your attorney to discuss
12 the fact that it was changed from nonviolent to violent you
13 didn't want to take that time and come back to the Court
14 when they asked you if everything was fine and you were
15 willing to go forward and say no?

16 A I mean, everything I did I went through up under the
17 advice of my attorney. I mean, I notified my attorney that
18 I wanted to continue it and that I wanted to go to trial.
19 He said we wasn't going to get no continuance, we were
20 going to take the plea today or go to trial in the morning.
21 Based upon the fact that we weren't trial ready, I mean, it
22 was no way possible to go to trial the next day.

23 Q Okay. All right. Thank you.

24 MS. WHITE: That's all I have, Your Honor.

25 MR. ROBERTSON: Nothing further, Your Honor.

S. Mitchell Slade
Direct examination by Ms. White

1 THE COURT: Step down.

2 MS. WHITE: Your Honor, the state calls Mitch Slade to
3 the stand.

4 S. MITCHELL SLADE, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. WHITE

7 Q Could you state your name for the record?

8 A My name is Mitch Slade.

9 Q And, Mr. Slade, do you recall representing Mr. Parker
10 in this matter?

11 A Yes, ma'am.

12 Q Were you appointed or retained?

13 A I was appointed.

14 Q Okay. And in your discussions with him did you start
15 off discussing trial, or was it always a plea? Did he
16 always want to plead?

17 A We -- we discussed a trial for a long time, that we
18 discussed several defenses in the course of discussing a
19 trial.

20 The -- one of the main problems that we had in the
21 case was David had given a statement saying that he had
22 asked four people for rides and asked them to take him by
23 the A.T.M. but denied threatening them if I recall his
24 statement correctly.

25 The -- the heart of the state's case was that David

S. Mitchell Slade
Direct examination by Ms. White

1 would flag people down. And what the -- what the
2 witnesses, the complainant, complainants, would have
3 testified to was that David would flag them down and ask
4 them for a ride.

5 And once they got in the car he would -- with a couple
6 of them, ask them to borrow the phone. Once he had the
7 phone, then he would somehow convey to them sometimes by
8 putting his hand under his shirt or under whatever outer
9 garment he was wearing and tell them he didn't want anybody
10 to get hurt but take him by the A.T.M., give him some
11 money, that kind of thing.

12 So that was -- in David's statement he admits getting
13 rides from I believe it was four people altogether. So
14 although we -- we talked about alibi or he talked about
15 alibi it really wasn't -- it wasn't a very viable defense
16 in my opinion.

17 I did a good bit of research looking at several other
18 possible avenues. David -- the good thing for David was
19 he's generally a very talkative, friendly guy, and we -- I
20 was hoping that there might be some defense based on his
21 just suggesting to these people maybe they took it the
22 wrong way, maybe he asked them for money, they felt
23 threatened.

24 One of the other defenses that we talked about that
25 was a much more viable defense than any kind of alibi was

S. Mitchell Slade
Direct examination by Ms. White

1 at least one of these people let him off somewhere I
2 believe -- again, I haven't spent a lot of time reviewing
3 the file, but I believe one of them let -- let him off
4 around 4th Street, which is essentially a drug area where
5 people buy crack and stuff in Gaffney a lot.

6 And so we looked at the possibility of maybe these
7 people who he was -- who were giving him rides were in
8 actuality making a drug connection and they got mad because
9 he took the money and left.

10 In my opinion -- and David and I talked about this
11 several times -- those were potentially much more -- much
12 better defenses than an alibi defense.

13 In the last case, the one where we got arrested, he
14 flagged down a young guy, teenager, who was, I don't know,
15 17 or 18 years old and told him -- when the guy let him in
16 the car he told him to take him to the bank to get some
17 money. And the kid said he didn't have any money. And
18 David said, well, I just needed to rest my feet, why don't
19 you take me by the McDonald's, can you give me some change.

20 And so I looked at maybe abandonment, maybe a defense
21 with some of these cases. We discussed all of those
22 things.

23 In the last one, that young -- the teenager -- waited
24 I think across the street from -- he -- I believe David
25 asked him to take him to the McDonald's and then decided

S. Mitchell Slade
Direct examination by Ms. White

1 he'd let him off across the street at the gas station --
2 the Murphy.

3 And the accuser then waited, called -- called the
4 police and waited until the police got there. And I think
5 they picked up David at the -- at the gas station.

6 So and David understood. He had some prior offenses.
7 He was concerned about the violent offense, and we talked
8 for a long time about trying this case.

9 The problem -- and I explained it to David, and I
10 think to his mom and maybe some other people in his
11 family -- I don't really recall right now -- but -- but the
12 problem is they had five cases against him, and they only
13 got to win one. I mean, we got to win all of them.

14 The -- when -- when they finally offered us something
15 on common-law attempted robbery, I just thought it was a
16 better thing to go on and take the -- what they originally
17 offered was eight and a half years. And we went back and
18 forth and back and forth on whether or not to plead or go
19 to trial.

20 And there were times that David really wanted to try
21 the case, and there were times he was willing to do a plea.
22 But I just explained to him, like I said, they only got to
23 win one and he's going to get, you know, in my opinion
24 because he had some prior drug offenses -- he had done some
25 time in S.C.D.C. that I just felt like -- I mean, of course

S. Mitchell Slade
Direct examination by Ms. White

1 the minimum is ten, and I just felt like he was going to
2 get on the high end and, you know, at the point where we
3 had to take the -- make a decision on taking the plea, he
4 decided that -- to take the plea.

5 Go ahead. I'm sorry.

6 Q No. That's fine. I was going to ask the day of the
7 plea you get into the Court, and the judge mentions that
8 it's violent.

9 A Right.

10 Q There was a confusion about whether or not the
11 attempted armed robbery, I think, was violent or
12 nonviolent. And you had some time to speak with him
13 afterwards. What was the conversation with Mr. Parker
14 during that break?

15 A Well, you said there was some confusion. There wasn't
16 any confusion. I made a mistake.

17 The judge was reading him the -- going over the -- the
18 consequences of the plea as they do, and he mentioned that.
19 And I realized at that point that I had misinformed David.
20 And so I asked Judge Couch if we could just talk about it,
21 and we talked about it. And I talked with the prosecutor
22 and they -- and I told them that I had -- that that was
23 something we were concerned about. And they reduced the
24 recommendation from eight and a half to eight is my
25 recollection.

S. Mitchell Slade
Direct examination by Ms. White

1 And David and I talked about it, and I explained to
2 him that we were going to have to take -- we were going to
3 have to take the deal then.

4 We wouldn't have had to try the case that week, but I
5 was concerned that we had been back and forth and back and
6 forth on -- on a -- on a plea, and I was just very
7 concerned that if we turned down that we weren't going to
8 ever get a chance at -- at another recommendation of
9 common-law robbery, okay, something that was below the
10 mandatory ten, something that didn't carry the mandatory
11 ten. And I was afraid if we told them that if -- if we
12 weren't taking that that we weren't going to get a chance
13 at that deal again.

14 And that may have been what the solicitor told me. I
15 don't recall that. They were anxious to go on and move
16 this case. And I'm sure I would have related to David what
17 the solicitor was telling me. I'm sure that had we chosen
18 the trial option we would have been given the time to get
19 whatever we needed to do done in order to prepare it.

20 I don't think -- I heard David's testimony a few
21 minutes ago, and I don't really think an alibi defense was
22 a viable defense or something we were depending on.

23 I think the defenses we would have used would have
24 depended somewhat on which of the cases they were going to
25 try. As I said, there were a number of them. The defenses

S. Mitchell Slade
Direct examination by Ms. White

1 were a little different perhaps for each one. I don't
2 think an alibi defense was something that we would have
3 seriously considered.

4 Q So --

5 A Go ahead.

6 Q Your testimony is that the trial was actually not
7 going to be that week. It was set up for a plea, not a
8 trial, is that right?

9 A Yeah. The -- the court appearance was set up for a
10 plea.

11 Q Okay.

12 A I don't recall telling David that we would have had to
13 try the case that week.

14 What -- what I am -- what I feel like I told him was
15 that if -- if we turned them down and told them we wanted a
16 trial, I mean, we were going to have to make a decision on
17 whether or not we were going to take this plea or go to
18 trial. We wouldn't have had to try it then. Does that
19 make sense?

20 Q Sure. But -- but you're worried the state might have
21 withdrawn the offer --

22 A Exactly, yeah.

23 Q -- for the eight years negotiated common-law.

24 A Yes. And -- and I don't recall precisely what the
25 solicitor and I talked about on that point, but whatever

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 they said in terms of whether or not the deal was still
2 going to be available at any point, I would have conveyed
3 to him.

4 Q And did you think --

5 A And so the urgency of the thing or the immediacy of
6 the thing was we had to either take the plea that was being
7 offered or we weren't going to get one.

8 Q Okay. And in regards to ultimately after you had a
9 chance to talk with him and it was determined that it was a
10 violent offense and he did plead guilty, did you have any
11 concerns that he was doing that based on a feeling of
12 coercion or that he felt like he was forced to do it, or
13 did you feel like based on the information he had he had
14 chosen to plead to the eight years voluntarily?

15 A We had a discussion of what his options are, and he
16 picked the option that he took.

17 Q Okay. Thank you very much, Mr. Slade.

18 MS. WHITE: That's all, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. ROBERTSON

21 Q Mr. Slade, I really just a very few questions for you.

22 To the best of your knowledge do you know if it was
23 possible that you would have had to have tried Mr. Parker's
24 case the very next week after the plea-bargaining hearing?

25 A The very next week?

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 Q Yeah. The week after you did your plea bargain, to
2 your knowledge, is it a possibility that you would have had
3 to try that case that week?

4 A Well, it's a possibility, but my recollection is that
5 generally you just have one-week terms over there. And we
6 might have had to try it at the next term of court if
7 that's what you're referring to but --

8 Q But it's possible it could have been tried sooner than
9 the next term of court, is that correct?

10 A No.

11 Q It's not possible that you could have done a plea
12 bargain one week and if that had fallen through that you
13 could have been in trial the very next week?

14 A Well, a moment ago in your question you said would it
15 have been possible to try the case before the next term of
16 court. I mean, that's -- that's not possible. You have to
17 have a term of court to have a trial.

18 Q Right.

19 A If you meant would it have been possible with the next
20 term of court the very next week and would we have had to
21 try the case, my answer to that it's a possibility, but I
22 don't -- I can't imagine circumstances in which a judge
23 would have made me go forward have I -- had I explained,
24 look, we thought that we had a plea worked out, it didn't
25 work out, we need to try this case. And I'm sure I would

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 have been given whatever time we needed to get whatever
2 evidence we needed to -- to defend the case.

3 But in -- in my responses to the state and in response
4 to David's position I just don't think any alibi defense
5 was -- was something that we were talking about in terms of
6 being a viable defense.

7 Q We'll get to viable defenses in just a minute. To the
8 best of your knowledge when did you receive Mr. Parker's
9 case? When were you appointed?

10 A I -- I -- I don't -- I don't remember.

11 Q Do you have your file with you?

12 A I do.

13 Q What's the first work that you done on his file?

14 A In September of 2011.

15 Q And you're aware that in May of 2011 he made a
16 statement, is that correct? And in that statement he
17 alleges that one of the people who are alleging that he
18 robbed them actually paid him money to purchase marijuana,
19 which he did not produce. Were you aware of that?

20 A Yes.

21 Q So would that be a defense to armed robbery? In other
22 words, if he was not, in fact, robbing this gentleman but
23 the gentleman gave him money to buy pot.

24 A Yes.

25 Q And he didn't produce the pot, that would have been a

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 defense, is that correct?

2 A Yes, yes.

3 Q And if any of the people who alleged that Mr. Parker
4 took them to an A.T.M. and forced them to withdraw money,
5 if the A.T.M. video showed that he was not in the car,
6 would that have been helpful as a defense?

7 A Well, it would have been if -- if he hadn't said in
8 his statement that he got rides from those people.

9 Q Well, even if he got a ride from the people, my point
10 is at the point that he's no longer in the car potentially
11 with a weapon what impetus would they have to get money to
12 give to him if he's not in the car? If he's not there --

13 A Right.

14 Q -- how could he continue to rob them? Wouldn't
15 that -- wouldn't you think that would be a defense? In
16 other words, if I'm trying to rob somebody and I say when
17 you get out of the car I want to go up to that A.T.M. and
18 get some money and bring it back by here and drop it off to
19 me, what would keep them from just leaving? That would be
20 a defense, right?

21 A Yes, it would be.

22 Q Okay. And if a couple of these people allege that
23 they dropped him off at an area that was under 24-hour
24 video surveillance, and if you reviewed the time when they
25 said that they dropped him off and you do not see

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 Mr. Parker getting out of the car, would that not be a
2 defense?

3 A It would.

4 Q Because it would prove that the witness was at least
5 mistaken about some element of their alleged, you know,
6 crime.

7 A Well, that's true, but in his statement he says I also
8 asked three other people for rides and asked them to go by
9 the A.T.M. and get me some money to help me out.

10 Q Right.

11 A And so once you stuck with that position that's a --

12 Q Is it --

13 A That's a --

14 Q Wait a minute.

15 A That's a difficult thing to deal with.

16 Q Is it a crime to ask somebody for money?

17 A No, it's not. That's correct.

18 Q So, again, if he's not in the car when that car goes
19 to the A.T.M. and they withdraw funds, if they didn't take
20 those funds back to him, wouldn't that be part of your
21 defense? He's not in the car. How could he make them get
22 money?

23 A Well, that's true.

24 Q Okay.

25 A I agree with that. Now, your question is premised on

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 him telling me that scenario.

2 Q Sure, sure. Well, that's a scenario that's actually
3 written in his statement, isn't it? He asked them for
4 money.

5 A That's true.

6 Q I'm just saying if you had gotten video
7 surveillance --

8 A Right.

9 Q -- and it showed that he was not in the car, that that
10 would be a defense against that particular charge of armed
11 robbery, right?

12 A If our position was he wasn't in the car when they
13 went by the A.T.M.s, that's correct.

14 Q That's correct. And he alleges that he stayed in a
15 place called the Gaffney Inn and that the Gaffney Inn had
16 video surveillance and that at some times of the crime he
17 was actually inside the Gaffney Inn where he could not have
18 committed those crimes.

19 Did you ever obtain any video footage? Let's ask it
20 that way.

21 A No.

22 Q Did you ever try and get any A.T.M. records or A.T.M.
23 footage?

24 A I don't believe I did.

25 Q Did you ever try and get any of the video surveillance

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 footage from any of the scenes of the crime or where he was
2 alleged to have been dropped off?

3 A No.

4 Q Arguably, the worst case against him is the case of I
5 believe Dillon Owens. That's the young gentleman you were
6 talking, about the teenager, is that correct?

7 A Well, Dillon Owens is the teenager, I believe. I'm
8 not --

9 Q He's the one who called the police and --

10 A I'm not saying that's the worst case though. That's
11 not necessarily the worst case. That may be one of the
12 better cases.

13 Q One of the stronger cases against him, is that
14 correct? You've got an eye witness who calls 9-1-1
15 contemporaneously with an arrest alleging that he has a
16 weapon. All of those elements all contemporaneous, that's
17 pretty strong, wouldn't you say?

18 A Well, those -- those are certainly factors in the
19 case.

20 The -- the reason that I'm disagreeing with you is
21 that's also the case where at some point in that discussion
22 David tells him, "I don't want to rob you. I just want to
23 put my feet up or -- or get a rest or something like that."
24 Asked him if he could take -- take him by the McDonald's or
25 something to that effect. And those kinds of facts fit

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 into a scenario where David is simply asking people for
2 rides, and then during the course of their ride there's
3 some conversation about can you help me out with some
4 money. I don't have any money. Can you take me somewhere
5 to get something to eat, which is not a bad way to deal
6 with the -- the kind of accusation that they were making in
7 this case. So that's the reason I am disagreeing with you.
8 There were some factors there in -- in the teenager's case.

9 Q That would exonerate him.

10 A That to me fit into one of the better defenses that we
11 discussed, which was he was asking people for rides and in
12 the course of the ride would ask them for money, and for
13 whatever reason they felt -- you know, took it the wrong
14 way.

15 Q Okay. Did you get the 9-1-1 call record --

16 A No.

17 Q -- on Mr. Owens' case? Why not?

18 A Because I didn't believe it was important to the case.

19 Q How would it not be important to the case?

20 A Well, David is telling me what -- what he says
21 happened.

22 We had the statement of the -- of the accuser, the
23 teenager, and had the statement of the officer who made the
24 report.

25 Q Okay. Did you bother to get Mr. Owens' cell phone

S. Mitchell Slade
Cross-examination by Mr. Robertson

1 records to see what calls were made from his cell phone
2 during the time of this crime?

3 A No, I didn't.

4 Q Why didn't you get those?

5 A Again, they -- they weren't important, because in
6 Dillon Owens' statement he essentially says this guy was
7 trying to rob me.

8 Q Right, right. But he also in his statement mentioned
9 that he thought originally that the -- Mr. Parker had taken
10 his cell phone. And Mr. Parker -- did he not ever inform
11 you about Dillon Owens making a call to his mother while he
12 was in the car with him?

13 A I don't recall that.

14 Q You don't recall that. Would it not be useful to
15 cross-examine Mr. Owens if, in fact, you could show that he
16 was making calls to his relatives while Mr. Parker was in
17 the car with him?

18 A Yes, that could be. That could be helpful.

19 Q And the next thing, this case with Mr. Owens, at least
20 according to the police report, took place somewhere around
21 11:00 to 11:30 at night.

22 Did you develop a theory that you could have used at
23 trial for why a 17-year-old black male would be picking up
24 Mr. Parker at 11:30 at night and riding him around town?
25 That's a little different from picking somebody up that

S. Mitchell Slade
Redirect examination by Ms. White

1 needs a ride in the middle of the day.

2 A That's true, and we discussed -- we discussed that
3 primarily in terms of him being a drug connection for
4 different people who were giving him rides.

5 Q So if you had, in fact, had to try Mr. Parker's case
6 the very next week after you did the plea bargain would you
7 have been ready to go forward that week?

8 A I don't think so.

9 Q That's my only questions. Thank you.

10 MS. WHITE: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. WHITE

13 Q At the time -- a lot of these questions that have been
14 asked, it's premised on the fact that you were going to go
15 to trial. But at this point you had received a plea offer
16 that the applicant had indicated he wanted to accept, is
17 that right?

18 A Yes.

19 Q So you were going forward on the plea, at which time
20 he also admitted guilt to these crimes, is that right?

21 A Yes.

22 Q Thank you.

23 MS. WHITE: That's all I have, Your Honor.

24

25

S. Mitchell Slade
Recross-examination by Mr. Robertson

1 RECROSS-EXAMINATION

2 BY MR. ROBERTSON

3 Q But you were mistaken about the plea, is that not
4 correct?

5 A Mistaken about what?

6 Q About the plea bargain. You were mistaken. You
7 didn't realize it was a violent offense that he would be
8 pleading to.

9 A My mistake was I didn't -- I didn't inform him that
10 attempted armed robbery was a violent offense, that's
11 correct.

12 Q So are you stating that you knew that it was a violent
13 offense?

14 A No. I was mistaken about that.

15 Q Okay.

16 A I'm sorry. I thought I said that.

17 Q Therefore he was improperly informed at least
18 initially going into that plea bargain, correct?

19 A He was improperly informed. I mistakenly informed him
20 that it was not a violent offense, that attempted armed
21 robbery is not a violent offense.

22 At the point where Judge Couch covered that in the
23 plea I asked Judge Couch if we could step aside. He
24 allowed us to do that. And we talked, David and I talked,
25 for a good while. I talked with the prosecutor for a good

S. Mitchell Slade
Recross-examination by Mr. Robertson

1 while, as I said a few minutes ago. And at the end of that
2 they reduced the recommendation from eight and a half to
3 eight years, I believe. So, he and I and the prosecutor
4 talked about it for a while.

5 Q Did he at any point inform you that he would rather do
6 more time on a nonviolent offense?

7 A He -- he may have. We -- we talked about a number of
8 different configurations for trying to work out a plea.

9 He -- he and I talked about various ways to structure
10 the plea, but the whole problem was that there were four
11 armed robberies and an attempted armed robbery hanging over
12 us if we didn't work something out that was more favorable.

13 Q Were they armed robberies or strong arm robberies?

14 A Well, they started out as strong arm robberies. He
15 was initially arrested for I believe -- I believe there
16 were a total of five charges in this string of events. And
17 the Gaffney city police charged him with several strong arm
18 robberies.

19 Now, I can't recall at this point. I think he was
20 either charged with an armed robbery and these -- excuse
21 me -- in these -- in these five cases, or an attempted
22 armed robbery. But by the time it got to the solicitor's
23 office and when they indicted it, they indicted all of them
24 as armed robberies or attempted armed robberies.

25 So they -- they initially charged him. He was

S. Mitchell Slade
Recross-examination by Mr. Robertson

1 initially arrested for strong arm robbery in most of the
2 cases. I don't recall about all of them. But when he got
3 indicted or ultimately indicted -- they may have indicted
4 him in the beginning with common-law strong arm robbery,
5 but he was ultimately indicted for armed robbery.

6 Q Thank you. That's the only other questions I have.

7 MS. WHITE: The state has nothing further, Your Honor.

8 THE COURT: You may step down.

9 MS. WHITE: The state has no other witnesses.

10 THE COURT: All right. I'll review the transcript and
11 issue an order.

12 END OF REQUESTED TRANSCRIPT OF RECORD

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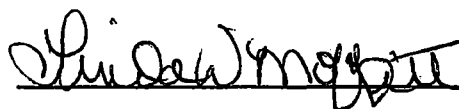
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 30th day of September 2013.

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

February 23, 2015



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF CHEROKEE)

David L. Parker, #250125,)

2012-CP-11-061)

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 23, 2012. The Respondent made its Return on or about August 19, 2013. An evidentiary hearing into the matter was convened on January 9, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Kenneth Robertson, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. S. Mitchell Slade, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. He was indicted at the August 2011 term of the Cherokee County Grand Jury for two counts of armed robbery (2011-GS-11-0484, -0485), and the Applicant was indicted at the April 2012 term of the

Cherokee County Grand Jury for attempted armed robbery (2012-GS-11-0308). The Applicant was represented by Mitch Slade, Esquire. On April 16, 2012, the Applicant pled guilty before the Honorable Roger L. Couch and was sentenced to confinement for two concurrent eight year terms for the lesser included offenses of common law robbery, and eight years, concurrent, for attempted armed robbery. Applicant did not appeal his conviction and sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel was ineffective for failing to motion the court for a continuance,
 - b. Counsel was ineffective for failing to suppress photo lineup,
 - c. Counsel was ineffective for failing to motion for dismissal of charges, and
2. Due process violations, in that;
 - a. Conviction was obtained in direct violation of United States Constitution 6th and 14th Amendments and the South Carolina Constitution Article I, Section 4.

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 their 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).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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. "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).

Applicant testified that he pled guilty to two counts of common law robbery and one count of attempted armed robbery, and received a sentence of eight and one-half years as a negotiated sentence. Applicant testified that he was informed by the plea judge that he was

pleading to a most serious and violent offense, but Applicant testified that he believed the charge was non-violent. Applicant testified that he did not think he had enough time to prepare for trial, so he felt that he was forced to plead guilty. Applicant also testified that because of the confusion over whether or not the attempted armed robbery charge was non-violent or violent, the State agreed to reduce the negotiated sentence to eight years.

Counsel testified that he was appointed to represent the Applicant on these charges and began work on the case in September 2011. Counsel testified that he discussed the possibility of a trial and possible defenses with the Applicant. Counsel testified that one of the issues in proceeding to trial was the fact that the Applicant had given police a statement admitting that he asked four people for rides to the ATM, but denied threatening each person. Counsel testified that although he did not have the 911 call tape from the final victim, he did have written statements from each victim. Counsel testified that he discussed an alibi defense with Applicant, but it was not a viable defense. They did discuss a possible defense if Applicant was not shown on the videotapes from the ATMs, but Counsel did not ever get any of the footage from the ATMs. Counsel also testified that because one of the victims dropped Applicant off around Fourth Street, the defense of a drug deal gone bad was also discussed. The Applicant was concerned about the charge being considered violent because he was facing five charges (four armed robbery charges and one attempted armed robbery) and had prior offenses. Counsel testified that he did make a mistake when initially advising the Applicant that the charge would be non-violent, but that issue was resolved at the plea when the State agreed to reduce the negotiated sentence further and the violent nature of the charge was discussed with Applicant. Ultimately, Counsel testified that he discussed the options that Applicant faced with the Applicant and Applicant picked the option to plead guilty with the negotiated sentence.

First, this Court finds that although the Applicant specifically raised the allegations that Counsel was ineffective for failing to move for a continuance, failing to move to suppress the photo lineup, and failing to move for dismissal of all charges in his application, he did pursue any of those allegations at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned these allegations.

As to the allegations raised at the hearing, this Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. Applicant's testimony appeared to allege that Counsel was unprepared to proceed to trial, which led to Applicant's reluctant acceptance of the plea. The Applicant's allegation that Counsel failed to conduct an adequate pre-trial investigation is without merit. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any meritorious defenses that could have been pursued had Counsel been more fully prepared. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the

two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Although it was clear through testimony that Counsel did misadvise the Applicant as to the non-violent/violent nature of his charge, this Court finds that the error was cured by the plea court and further discussions with the Applicant as to his understanding and willingness to continue with the plea. Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges, such as sentencing range, the error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The Applicant failed to establish that he would have proceeded to trial, but for, Counsel's incorrect advice and failure to fully investigate possible defenses. Therefore, this claim is denied and dismissed.

Due Process Violations

This Court finds that, although raised in the application, this allegation was not pursued by Applicant at the hearing. Therefore, this Court finds that the allegation was voluntarily abandoned by the Applicant.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of

reasonableness.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 13 day of March, 2014.



J. Derham Cole
Presiding Judge

CLERK OF COURT

MAR 17 11 08 AM

WITNESSES

Gaffney Police Dept.

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8-18-11

VERDICT

Foreperson of Petit Jury

Date:

DOC E No

11-GS-11-0484

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 18 2011

TERM

THE STATE

vs.

David Lamon Parker

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2011 AUG 18 A 10:21

ANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

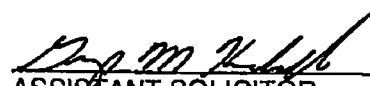
AUG 18 2011

At a Court of General Sessions, convened on _____, the Grand
Jurors of Cherokee County present upon their oath:

ARMED ROBBERY

That David Lamon Parker, did in Cherokee County on or about May 24, 2011, while armed with a pistol, 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 or attempted robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Steven Ongemach, by means of force, violence, and/or intimidation, goods or monies of Steven Ongemach, such goods or monies being described as follows: cash, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.
David Parker

AKA:

Race: Black

Sex: M

Age: 35DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Common law robbery, strong arm robbery (0-15 years)

in violation of § 16-11-0325

of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST:

KENDALL, MATT

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 5/25/11

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk: Brandon K. BeoCourt Reporter: Mike H. Harts

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1100484

A/W#: 2011GS1100484

Date of Offense: 5/24/2011

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP

_____ days/hours Public Service Employment

Obtain GED: ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2135Sentence Date: 4/16/12

WITNESSES

Gaffney Police Dept.

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Charles W. Lunde
Foreperson of Grand Jury
Date: 8-18-11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **11-GS-11-0485**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 18 2011

TERM

**THE STATE
vs.**

David Lamon Parker

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2011 AUG 18 A 10:21

ANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

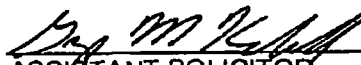
AUG 18 2011

At a Court of General Sessions, convened on _____, the Grand Jurors of Cherokee County present upon their oath:

ARMED ROBBERY

That David Lamon Parker, did in Cherokee County on or about May 24, 2011, while armed with a pistol, 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 or attempted robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Richard Flaviani, by means of force, violence, and/or intimidation, goods or monies of Richard Flaviani, such goods or monies being described as follows: cash, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS.

David Parker

AKA:

Race:

BLACK

Sex: M

Age: 35

DOB:

SS#:

Address:

City, State, Zip:

BLACKSBURG SC 29702

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Common law robbery, strong arm robbery (0-15 years)

in violation of § 16-11-0325

of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

KENDALL, MATT

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or NY under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 5/25/11☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	390
TOTAL	\$	133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1100485

A/W#: 2011GS1100485

Date of Offense: 5/24/2011

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

79

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *4/12/12*

VERDICT

Foreperson of Petit Jury

Date:

12-GS-11-0308

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

APR 12 2012

TERM

THE STATE

vs.

David Lamon Parker

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2012 APR 12 AM 10 17

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on APR 12 2012, the
Grand Jurors of Cherokee County present upon their oath:

ATTEMPTED ARMED ROBBERY

That David Lamon Parker, did in Cherokee County on or about May 24, 2011, while armed with a 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 or attempted robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Dylan Owens, by means of force or intimidation goods or monies of Dylan Owens, in violation of §16-11-330 (B), §16-1-80 CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS.

David Parker

AKA:

Race:

~~BLACK~~

Sex: M

Age:

35

DOB:

Address:

City, State, Zip:

BLACKSBURG SC 29702

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery (0-20 Years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1100308

A/W#: 2012GS1100308

Date of Offense: 5/24/2011

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 77213

Defendant David Parker

Attorney for Defendant

SC Bar# 5146

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/16/12☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 5/25/11☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: ATU

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 7138

Sentence Date: 4/16/12