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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

ORIGINAL

SHERROD MILLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

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Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

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Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

MARY S. WILLIAMS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2010-GS-02-00142

3
4
5 STATE OF SOUTH CAROLINA,

6 -vs-

TRANSCRIPT OF RECORD

7 SHERROD MILLER,
8 Defendant.

9
10 Heard on Thursday, February 11, 2010

11 Aiken, South Carolina

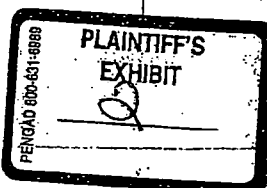
12
13 BEFORE:

14 THE HONORABLE R. FERRELL COTHRAN, JR.

15
16 APPEARANCES:

17 Counsel on Behalf of the State:
18 Samuel B. Grimes, Jr., Esq.

19 Counsel on Behalf of the Defendant:
20 C. David Hayes, Esq.



Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802-1154

1 ON THURSDAY, FEBRUARY 11, 2010 AT 5:03 P.M.:

2 MR. GRIMES: Sherrod Miller.

3 (Defendant placed under oath.)

4 MR. GRIMES: Your Honor, this is Sherrod Miller.

5 He's here on Indictment 2010-GS-02-00142. It's an
6 indictment for bank robbery, entering a bank depository
7 with intent to steal.

8 THE COURT: Okay.

9 MR. GRIMES: This is a defense motion.

10 THE COURT: Oh, okay. I didn't have any plea
11 sheet, so I figured.

12 MR. GRIMES: I'm sorry.

13 THE DEFENDANT: Good afternoon, Your Honor. My
14 name's Sherrod Miller. And I respectfully request new
15 counsel. My counsel has been less than forthright with me
16 and he spoke with me and stated that he had to work with
17 the solicitor's office which gave me direct indication
18 that he wasn't working for me.

19 THE COURT: Where does this case stand on the
20 roster? And when is it up for trial? And how old is it?

21 MR. GRIMES: This case, I believe the arrest date
22 was in November. The case -- we have extended an offer in
23 this case. As of yet it has not been accepted. We should
24 have this case likely ready for a trial list by March or
25 April.

1 THE COURT: Okay. Yes, sir.

2 MR. HAYES: Just to put it in context. He was
3 asking for me to ask for a certain deal repeatedly. I did
4 ask several -- quite a few times.

5 The solicitor finally he said, it's not going to
6 happen, please don't ask any more. He asked me to ask
7 again. At that time I informed that I cannot, that I did
8 not want to burn that bridge, that he respectfully asked
9 me not to ask him again and I would not.

10 THE COURT: Okay. I mean, he seems -- you asked
11 him to ask for a deal. He's asked for it.

12 THE DEFENDANT: Yes. And when I first -- when we
13 first met, Your Honor, I asked Mr. Hayes, sir, how long
14 have you been practicing law? Just a simple question. He
15 refused to answer me.

16 THE COURT: Okay. But he was appointed to
17 represent you in the public defender's office.

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: I understand, but you don't get to
20 pick and choose what public defender you want. You can
21 hire a lawyer, but I can't let defendants pick and choose
22 the public defender they want. You get -- and you haven't
23 shown me anything that he's not capable of doing his job
24 simply because he tells you he's not going to ask for the
25 deal again. He's asked for it a number of times and they

1 say no. And that doesn't make him incompetent and not
2 doing his job.

3 You can go hire any lawyer you want to between
4 now and trial, but right now from what you're telling me

5 he's your lawyer.

6 THE DEFENDANT: Yes, sir. You have a good
7 evening.

8 THE COURT: Thank you.

9 MR. HAYES: Thank you, Your Honor.

10 END OF PROCEEDINGS: 5:07 P.M.

11 CERTIFICATE OF REPORTER

12 I, Cheri L. Young, Registered Professional Reporter,
13 and Official Court Reporter for the State of South
14 Carolina, do hereby certify that the foregoing transcript
15 of proceedings heard on Thursday, February 11, 2010, in
16 Aiken, South Carolina, was reported by me using machine
17 shorthand and realtime computer-aided translation and is a
18 true, accurate and complete transcript of the proceedings
19 had and evidence introduced in the hearing of the matter.
20 I do further certify that I am neither of kin, counsel nor
21 interest to any party hereto.

22 I have hereunto set my hand this Friday, the 8th day
23 of April, 2011.

24 Cheri L. Young, RPR
25 Official Court Reporter

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2010-GS-02-0142

3

4 STATE OF SOUTH CAROLINA,

-vs-

TRANSCRIPT OF RECORD

5

6 SHERROD MILLER,
7 Defendant.

8

9

Heard on Monday, April 19, 2010

10

& Wednesday, April 21, 2010

11

Aiken, South Carolina

12

13 BEFORE:

14

THE HONORABLE EDGAR W. DICKSON

15

16 APPEARANCES:

17

Counsel on Behalf of the State:
Samuel B. Grimes, Jr., Esq.

18

19

Counsel on Behalf of the Defendant:
C. David Hayes, Esq.

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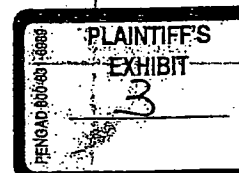
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23

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802-1154

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EXHIBIT INDEX

~~(NO EXHIBITS IDENTIFIED/INTRODUCED.)~~

1 ON MONDAY, APRIL 19, 2010 AT 3:05 P.M.:

2 MR. GRIMES: Sherrod Miller.

3 (Defendant placed under oath.)

4 ~~THE COURT: Mr. Miller, it looks like you're here~~
5 to plead guilty to robbery?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And you are represented by
8 Mr. Hayes?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And he's gone over these charges with
11 you?

12 THE DEFENDANT: Yes, sir

13 THE COURT: He's gone over the possible sentence
14 with you?

15 THE DEFENDANT: Yes, sir.

16 ~~THE COURT:~~ Do you understand you could go to
17 jail for up to 30 years?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Understanding that, he's also gone
20 over your constitutional rights with you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And he's explained the fact that you
23 have a constitutional right to have a jury trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you want a jury trial?

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. You advised -- Mr. Hayes, I
3 know you've gone over these charges with him and the
4 possible sentence?

5 MR. HAYES: Yes, Your Honor.

6 ✓ THE COURT: His constitutional rights. And he's
7 told you he wishes to plead guilty?

8 MR. HAYES: Yes, Your Honor.

9 THE COURT: Do you believe it's in his best
10 interests to plead guilty to this charge?

11 MR. HAYES: I do, Your Honor.

12 THE COURT: Okay. And is there any
13 recommendation by the State?

14 * MR. GRIMES: The State's recommending a cap of 20
15 years.

16 THE COURT: Okay. Other than the recommendation
17 of the cap of 20 years, Mr. Miller, has anybody promised
18 you anything to get you to plead guilty here today?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anybody threatened you to plead
21 guilty here today?

22 THE DEFENDANT: No, sir.

23 + THE COURT: You're doing it freely and
24 voluntarily?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right, sir. Have you understood
2 everything Mr. Hayes has told you?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: Are you satisfied with his services
5 as your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The indictment that I have is
8 indictment number 2010-142. It is an indictment for
9 entering a bank with the intention to steal. It was true
10 billed by the grand jury on February the 4th, 2010.

11 And, Mr. Miller, it alleges that you did in Aiken
12 County on or about October 8, 2009, unlawfully enter
13 Wachovia Bank in North Augusta with the intent to steal
14 money or securities by force or threat. And this is a
15 violation of the laws of the State of South Carolina.

16 Do you understand the allegations contained in
17 this indictment?

18 THE DEFENDANT: Yes, sir, I do.

19 THE COURT: All right, sir. How do you plead to
20 the charge of robbery?

21 *THE DEFENDANT: May I speak prior to --

22 THE COURT: If you want to talk to your attorney
23 before you speak, that might be a good thing.

24 THE DEFENDANT: (Conferring with Attorney Hayes).
25 Yes. I plead guilty.

1 THE COURT: Okay. Now you're going to be given a
2 chance to talk afterwards. I mean, before I sentence you.

3 THE DEFENDANT: Yes, sir.

4 ~~THE COURT: Not after I sentence you.~~

5 THE DEFENDANT: Okay.

6 THE COURT: All right, sir. Mr. Grimes?

7 MR. GRIMES: Thank you, Your Honor. In the
8 afternoon of October 8th, 2009, the Defendant entered the
9 Wachovia Bank at in North Augusta.
10 That's in Aiken County. And presented a note reading,
11 give me the money now.

12 The teller indicated that the Defendant also
13 demanded that he give the Defendant more money. The
14 Defendant was seen running from the bank with a dye pack
15 exploding. Witnesses indicated seeing the Defendant
16 running and getting to a burgundy Mercury and also
17 provided a license plate number for the vehicle, with
18 Michigan license plate. The license plate was registered
19 to the Defendant.

20 The teller was also able to provide a description
21 to law enforcement. The teller indicated that the
22 Defendant not show a weapon. There were nine people
23 inside the bank when this occurred.

24 When the Defendant was later apprehended, he was
25 driving a Mercury with the same license plate number by

1 the Atlanta Police Department.

2 The Defendant does have prior record, Your Honor.

3 THE COURT: Okay. Involving robberies?

4 ~~MR. GRIMES: Well yes, Your Honor. In 1984,~~

5 there's a Florida charge, selling without a permit. In
6 1992 there's a Georgia charge of forgery first degree. In
7 Michigan in 1980, there's a larceny \$100 or less. '95,
8 retail fraud second degree. '96, retail fraud first
9 degree. '96, habitual offender.

10 THE COURT: I don't need '96. What's since -- if
11 you can just kind of bring me to the 2004 on, if you don't
12 mind.

13 MR. GRIMES: Yes, sir.

14 THE COURT: I'm not trying to stop you,
15 Mr. Grimes.

16 MR. GRIMES: In 2000 the Defendant was convicted,
17 six counts of bank robbery by force or violence. That's a
18 federal charge.

19 THE COURT: All right, sir. And nothing since
20 then?

21 MR. GRIMES: Nothing since then, Your Honor.

22 THE COURT: Because he was in jail until this.
23 All right.

24 Mr. Miller, you've heard what the solicitor's
25 told me about the circumstances leading to this charge

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you've heard what he's told me
3 about some of your prior record since -- he tells me that
4 ~~you were in federal custody.~~

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- in 2000 for six bank robberies?

7 THE DEFENDANT: I was convicted on that; yes,
8 sir.

9 THE COURT: Okay. All right, sir. Understanding
10 that, you still want to go forward with your plea here
11 today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. All right. Mr. Miller, I find
14 that your decision to plead guilty is freely, voluntarily
15 and intelligently made. I find that you've had the advice
16 and counsel of a competent lawyer with whom you tell this
17 Court you're satisfied. I find there's a factual basis
18 for you to plead guilty to this charge. And I will accept
19 your guilty plea. Okay.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, Mr. Hayes?

22 MR. HAYES: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 MR. HAYES: Mr. Miller is 47 years of age. He's
25 currently unemployed. He had been looking for work. He

1 was laid off as a customer service rep. He had been in
2 the area looking for a job, going back and forth between
3 Atlanta and Columbia.

4 ~~As time was tight and he didn't have any money he~~
5 decided he was going to go into Wachovia and ask for some
6 money. Your Honor, he realizes that he's made some bad
7 mistakes. He tells me that he's be out on parole for two
8 years. In that two years he hasn't had any other charges
9 but he had a moment of weakness and made a bad decision.

10 Your Honor, he went to high school in Detroit,
11 Michigan and graduated in 1979. He then went to the
12 Western Michigan University and spent three years trying
13 to obtain a business degree. He then went and got a
14 culinary arts degree as well as a personal trainer degree,
15 or certifications. He is single. He has no children.

16 Your Honor, he tells me that he has a brother who
17 was diagnosed with prostate cancer as well as a sister who
18 has MS.

19 Your Honor, he's been in jail for 166 days in
20 Aiken County. And he was picked up in Atlanta, October
21 28th, 2009, and was transported to Aiken, November 4th of
22 2009.

23 Your Honor, he asked me to ask you, for you to
24 consider a split sentence. He realizes that he is going
25 to prison but he would like to have a chance to be able to

1 get out, take care of what he's got to take care of with
2 the federal government and be able to move forward.

3 THE COURT: You mean with a parole violation? *

4 MR. HAYES: Yes. He has a parole violation, a
5 parole hold on him from Detroit, Michigan.

6 THE COURT: All right, sir. And Mr. Miller, you
7 wanted to tell me something?

8 THE DEFENDANT: Your Honor, I am extremely
9 remorseful for my actions. I shamed myself and
10 embarrassed my family. I understand unequivocally what I
11 did was wrong. I'd like to apologize to the citizens of
12 North Augusta as well as Aiken County.

13 THE COURT: All right.

14 MR. HAYES: He also indicated to me, Your Honor,
15 that he has written a spiritual book while he's been here
16 in Aiken County. And that he's planning on doing a second
17 book, however he has shipped the second -- the first one
18 off to be held until he is placed and then once he is
19 settled down, he's going to write a second book to follow
20 up. That while he's been in jail he's trying to find a
21 path of God and realizes his mistakes and asked God to
22 forgive him of those mistakes.

23 THE COURT: Mr. Miller, the 166 days, are you
24 counting it from October 28th or November 4th?

25 MR. HAYES: That's from November 4th, Your

1 Honor.

2 THE COURT: He was picked up in Georgia on these
3 charges?

4 ~~MR. HAYES: Yes, sir. They, because of the APB~~

5 on the vehicle, saw the vehicle and stopped him and
6 questioned him about it.

7 THE COURT: Okay. 76 more days I guess if I gave
8 him credit to October 28th; is that right?

9 MR. HAYES: Yes, Your Honor.

10 THE COURT: All right.

11 Mr. Miller, THE SENTENCE OF THIS COURT IS YOU ARE
12 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
13 PERIOD OF 18 YEARS. I AM GOING TO GIVE YOU CREDIT FOR 172
14 DAYS.

15 THE DEFENDANT: Your Honor, may I please
16 respectfully ask that we could suspend some of the
17 sentence, please, Your Honor? I have family members who
18 are extremely ill. I have learned my lesson, Your Honor.
19 I truly have learned my lesson. I'm 48 years old, Your
20 Honor. I've learned my lesson. God knows I have.

21 THE COURT: All right, sir. Mr. Miller, I'm --
22 I'll think about it, but right now I'm inclined to leave
23 it just the way it is. But I will think about it, and
24 I'll give you my decision tomorrow about whether I will
25 modify it or not.

1 THE DEFENDANT: All right. Thank you very much,
2 sir.

3 MR. HAYES: Thank you, Your Honor.

4 MR. GRIMES: Thank you, Your Honor.

5 THE COURT: Thank you, sir.

6 END OF PROCEEDINGS: 3:17 P.M.

7 * *** *

8 ON WEDNESDAY, APRIL 21, 2010 AT 3:31 P.M.:

9 MR. GRIMES: Sherrod Miller.

10 THE COURT: All right. We're back on the record
11 in Mr. Jarvis (sic) Miller. Mr. Miller, after I sentenced
12 you, I guess it was Monday perhaps, you asked me to
13 reconsider.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And, Mr. Miller, I did. I thought
16 about it now for two nights.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. And, Mr. Miller, you know,
19 considering your prior record, what I always tell people,
20 that follows you for a long time. Considering your prior
21 record and these charges, I normally would have sentenced
22 you, you know, to more than the time that I sentenced you
23 to.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I have reconsidered it, you

1 know. I know you wanted me to move it down.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. But I've reconsidered it and
4 ~~even though I would have probably sentenced you to more,~~

5 I'm not going to do that it either. I'm going to leave it
6 exactly where it is, and give you credit for time served.

7 THE DEFENDANT: Can I speak for one moment?

8 THE COURT: Yes, you can. That's why I got you
9 back out here.

10 THE DEFENDANT: Your Honor, I understand. I've
11 tried to be objective with situations.

12 THE COURT: I know that's hard for you to do
13 because this is personally affecting you and I believe
14 you've got family members you wanted to see and like
15 that. I understand that.

16 THE DEFENDANT: And I also have additional
17 situation that I have to deal with.

18 THE COURT: Yes, sir.

19 THE DEFENDANT: Just based upon that factor and
20 my age, Your Honor, and I can assure you that I'm a
21 law-abiding citizen, Your Honor. I will not Jay walk
22 again. I've drawn closer to God, Your Honor. I know that
23 I have to atone for my actions. I'm absolutely aware of
24 that.

25 THE COURT: Yes, sir.

1 THE DEFENDANT: So I'm just begging you, Your
2 Honor. That is lot of time at my age. That is a lot of
3 time at my age.

4 THE COURT: Yes, sir, it is. And I am sorry
5 about that, but I'm not going to change it. And I'm sorry
6 about that. Okay.

7 MR. HAYES: Thank you, Your Honor.

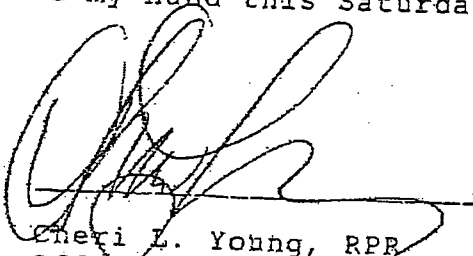
8 END OF PROCEEDINGS: 3:35 P.M.

9 CERTIFICATE OF REPORTER

10 I, Cheri L. Young, Registered Professional Reporter,
11 and Official Court Reporter for the State of South
12 Carolina, do hereby certify that the foregoing transcript
13 of proceedings heard on Monday, April 19, 2010 and
14 Wednesday, April 21, 2010, in Aiken, South Carolina, was
15 reported by me using machine shorthand and realtime
16 computer-aided translation and is a true, accurate and
17 complete transcript of the proceedings had and evidence
18 introduced in the hearing of the matter.

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

21 I have hereunto set my hand this Saturday, the 21st
22 day of August, 2010.

23
24
25

Cheri L. Young, RPR
Official Court Reporter

The South Carolina Court of Appeals

The State,

Respondent

v.

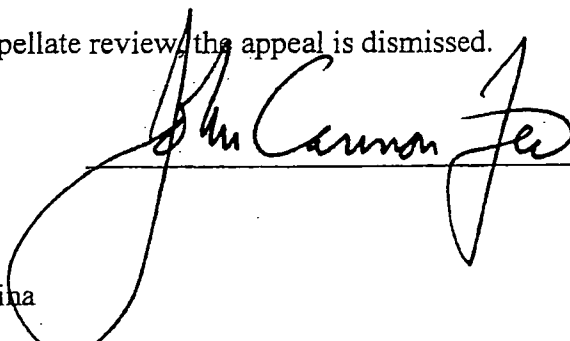
Sherrod Miller,

Appellant.

The Honorable Edgar W. Dickson
Aiken County
Trial Court Case No. 2010-GS-02-00142

ORDER

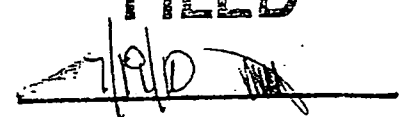
Appellant appeals his guilty plea and sentence imposed by Judge Edgar W. Dickson. Rule 203 (d)(1)(B)(iv), SCACR, requires "a written explanation showing that there is an issue(s) which can be reviewed on appeal....including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." After careful review, we find Appellant failed to show how any issue was preserved for our review. Therefore, due to Appellant's failure to establish any preserved issues for appellate review, the appeal is dismissed.

 , C.J.

Columbia, South Carolina
7/19/2010

cc: Charles David Hayes, Esquire
Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Liz Godard

FILED



STATE OF SOUTH CAROLINA)

County of Aiken)Sherrod J. Miller #340239)

Full name and prison number, if any, of applicant.)

v.)

Name of Respondent)

In the Court of Common Pleas

APPLICATION FOR

POST-CONVICTION RELIEF

2010-02-0194
2010-02-00143
Filed 8/1/10
C.C.P. & G.S. Aiken County
Anne Rhoden
Deputy Clerk
Trial Judge James W. Jones
Trial Atty. Charles Davis
Court Reporter Cheryl Davis
Sec. PCR Petitioner Cheryl Davis
General Sessions Atty. Gen.
Appointed Atty. Cheryl Davis

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
P.O. Box 205 Ridgerville, SC 29472
2. Name and location of Court which imposed sentence Aiken County General Sessions
Court P.O. Box 583 Aiken, SC 29806
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2010-GS-02-142
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) April 19th, 2010 18 years incarceration
(b) _____
(c) _____

1

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 14 2010

C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

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

- (a) Counsel is ineffective for advising the defendant to plead guilty without informing the defendant that if
 (b) he went to trial, he could have requested a jury
charge on a lesser offense and might have
 (c) been convicted of the lesser offense.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

South Carolina Court of Appeals.

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

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

(a) the specific nature thereof:

i.

Dismissed July 19th, 2010

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. Dismissed and remitted to Clerk of Court
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Lack of access to Law Library
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

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

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

i. Charles D. Hayes P.O. Drawer 2247 Aiken, SC 29802

ii.

iii. Charles D. Hayes P.O. Drawer 2247 Aiken, SC 29802

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

i. Arraignment + Plea

ii.

iii. Sentencing

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

To have my conviction set aside and be sentenced up under a lesser-included offense.

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

No

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

VERIFICATION

I, Sherrad S. Miller, 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.

Sherrad S. Miller

Sworn to and subscribed before me

This 13th day of Aug., 2010

Ludiean Bryant L.S.

Notary Public for South Carolina

My Commission Expires May 26, 2020

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

I, _____, 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 or 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 proceeding or give security therefor.

Sherrad S. Miller
Applicant

Sworn to and subscribed before me

This 13th day of August, 2010

Ludiean Bryant L.S.

Notary Public for South Carolina

My Commission Expires: May 26, 2020

Certificate of Service

25

The undersigned hereby certify that he
cause to be mailed to the clerk of court
for Aiken county this 13th day of August
2010.

Respectfully Submitted

Shenod J. Miller

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE SECOND JUDICIAL CIRCUIT
THE COURT OF COMMON PLEAS

Sherrod Miller #340737)
Petitioner,)

DOCKET NO. 2010-CP-02-01941

VS.)

**APPOINTMENT OF COUNSEL
RECOMMENDATION**

State of South Carolina)
Respondent,)

PCR FILED 08-17-10 by AR
Date Int.

FORWARDED COPY TO ATTORNEY GENERAL, SOLICITOR, GENERAL SESSIONS,
AND PETITIONER 08-17-10 by AR
Date Int.

AFTER REVIEWING THE POST CONVICTION RELIEF APPLICATION, COUNSEL:

☒ SHOULD BE APPOINTED, FOR THE REASON LISTED BELOW

☐ SHOULD NOT BE APPOINTED, FOR THE REASON LISTED BELOW

REASON: Application timely filed within one year
of plea on 4/19/10

8/17, 2010
Date

Mary S. Williams
ATTORNEY GENERAL

(RETURN TO: AIKEN COUNTY CLERK'S OFFICE P.O. BOX 583 AIKEN, SC 29802)

THE APPLICANT IS HEREBY _____ COUNSEL.

GRANTED ~~DENIED~~

Aug. 31, 2010
Date

TTT E. J. ... 9.3 10
PRESIDING JUDGE
Liz Godard 9.00
C.C.P. & G.S.
Anita Knoepfle 9.00
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 14 2010

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Sherrod J Miller,
Plaintiff(s),
-vs-
South Carolina State Of,
Defendant(s).

IN THE COURT OF COMMON PLEAS
Second JUDICIAL CIRCUIT
CASE NO.: 2010CP0201941
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

☒ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☒ Post-Conviction Relief (PCR)/habeas case
☐ SVP case
☐ Minor Name Change
☐ Adoption
☐ Custody and/or Visitation
☐ Other: Post Convict Rel 500
☐ Juvenile
☐ Abuse and Neglect

It appears Sherrod J Miller, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other: .

Therefore, it is ordered that Tanya Jeffords hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
September 3, 2010

Liz Godard
☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

Tanya Jeffords	
1124 Laney Walker Blvd	
Augusta, SC 30901	

Defendant Attorney:

Mary Shannon Williams	
Attorney General	
Po Box 11549	
Columbia, SC 29211	

FILED

9-3-2010

Liz Godard
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 14 2010

C.C.P. & G. S., Aiken County, S.C.

Deputy Clerk

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2010-CP-02-1941
	)	
Sherrod Miller, #340737,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 17, 2010, 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 Aiken County Clerk of Court. The Applicant was indicted for Entering a Bank, Depository, or Building and Loan Association with Intent to Steal (2010-GS-02-0142). Applicant was represented by C. David Hayes, Esquire. On April 19, 2010, the Applicant pled guilty before the Honorable Edgar W. Dickson. Applicant was sentenced to eighteen (18) years imprisonment. Applicant's appeal was dismissed by the South Carolina Court of Appeals on July 19, 2010, and the Remittitur was sent on August 4, 2010.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, 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.
 - a. "...advising the defendant to plead guilty without informing the defendant that if he went to trial, he could have requested a jury charge on a lesser offense and might have been convicted of the lesser offense."

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

III.

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

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

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

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

IV.

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

V.

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

[Signatures on next page.]

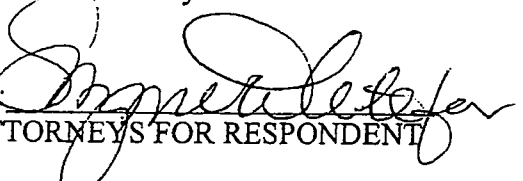
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 16, 2010

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

SHERROD MILLER, 340737

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-02-01941

AFFIDAVIT OF SERVICE BY MAIL

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

Tanya D. Jeffords, Esquire
Law Office of Tanya D. Jeffords and Assoc., PC
418 Greene St.
Augusta, GA 30901

DATED this 16th day of December, 2010.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

COF

STATE OF SOUTH CAROLINA) In the Court of Common Pleas
COUNTY OF AIKEN)
SHERROD MILLER,)
Appellant,)
vs.) Case Number: 2010-CP-02-01941
STATE OF SOUTH CAROLINA,)
Respondent.)

COPY
ORIGINAL FILED
JUL 11 2011 458 al

AIKEN COUNTY
CLERK OF COURT

AMENDED APPLICATION FOR POST CONVICTION RELIEF

COMES NOW, Sherrod Miller, and hereby files his AMENDED APPLICATION FOR POST-CONVICTION RELIEF, by and through undersigned counsel and submits that he is entitled to a new trial on the additional grounds that his counsel was ineffective for failing to investigate a possible defense in his case, and that he did not knowingly and voluntarily waive his Boykin rights. The Defendant submits that his rights under the Sixth, Fifth, and Fourteenth Amendments of the South Carolina Constitution and the United States Constitution have been violated. In support of said motion, the Defendant respectfully shows the Court the following:

1.

Mr. Miller was charged by Indictment on February 4, 2010, for Entering Bank Depository or Building and Loan Association with the Intent to Steal. The indictment alleges that Mr. Sherrod Miller did in Aiken County on or about October 8, 2009 unlawfully enter Wachovia Bank located at 402 Georgia Avenue, North Augusta, South Carolina, with the intent to steal money or securities for money, either by force or intimidation, or threats, to wit Sherrod Jarvis Miller demanded monies from Paul Jones, an employee with Wachovia Bank. (Indictment, Attached hereto as Ex. 1). The Defendant was sentenced to a term of eighteen (18) years in prison. The maximum sentence for the crime carried up to 30 years. The record shows

that throughout the process that culminated in his guilty plea, the Defendant felt that he was not receiving effective assistance of counsel by his Public Defender, David Hayes.

2.

In this case, the evidence was that on October 8, 2009, a person went into the Wachovia Bank with a note and demanded money. A witness followed the person running from the bank.

One description was of a black male, 5' 3", and 170 pounds. A witness got the license plate number of the person leaving which matched the Defendant's car. No gun was used. Apparently, there was a video. A still shot was used from the video for the media which showed a black male in glasses and a baseball cap. The Defendant was picked up in Atlanta and brought to South Carolina. He made no statements to the police. Over \$3,000.00 was taken from the bank.

3.

On February 11, 2010, the Defendant moved to have Mr. Hayes relieved as counsel on the grounds that counsel was not being forthright with him and that his counsel told him that he had to work with the Solicitor's Office. This statement by counsel gave the Defendant the impression that his counsel was not diligently advocating on his behalf in this case or working in his best interest. (Motion to Relieve Counsel Trans., Attached hereto as Ex. 2). Mr. Hayes indicated that the Defendant wanted him to ask for a certain deal and that he was told by the Solicitor to not ask anymore. Mr. Hayes told the Defendant that he did not want to burn any bridges so he would not ask again. (MTR Trans. p. 3). The Defendant wanted Mr. Hayes to ask for a plea to robbery. Mr. Hayes would not tell the Defendant how long he had been practicing law. The Honorable R. Ferrell Cothran, Jr. denied the Defendant's motion to relieve counsel.

4.

On Monday April 19, 2010, the Defendant appeared before Judge Edgar W. Dickson to be sentenced. While the Court asked the Defendant if his attorney had gone over the possible sentence with him, and his constitutional rights with the Defendant, the Court did not personally inquire as to whether the Defendant understood what rights he was waiving. It is clear from the sentencing transcript that the Court did not inquire as to whether the Defendant was knowingly and intelligently waiving his right against self-incrimination or the right to confront the witnesses against him. (Sentencing Trans., Attached hereto as Ex. 3). This is particularly important in a case where counsel for the Defendant did not file any motions on behalf of the Defendant with regard to eyewitness testimony, lineups, or accuracy of the video. The Defendant asked to speak prior to pleading to the robbery charge but was not allowed to do so by the Court. (Sentencing Transc. p. 5). The Defendant was told to speak to his attorney. The Defendant then pled guilty.

5.

After the Court imposed an eighteen (18) year sentence, the Defendant asked for leniency and some probation due to his age of 48 years and sick family members. (Sent. Trans. p. 9-11).

6.

On April 21, 2010, the Court came back on the record to consider the Defendant's request for leniency. The Court indicated that because of the Defendant's record he would normally have sentenced him to a longer period of time and denied his motion to reduce the sentence. (Sent. Trans. p. 12-13). On October 14, 2010, the Defendant filed his Application for Post-Conviction Relief asserting ineffective assistance of counsel. The Respondent filed a response on or about December 16, 2010.

7.

In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case. Porter v. State, 368 S.C. 378, 383-384, 629 S.E.2d 353, 356 (S.C., 2006) (citing, Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). An applicant may attack the voluntary and intelligent character of a guilty plea entered on the advice of counsel only by demonstrating that counsel's representation was below an objective standard of reasonableness. Further, the applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. Id. Additionally, the applicant has the burden of proving the allegations of the PCR petition. Bannister v. State, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998).

8.

In his Application for Post-Conviction Relief, filed October 14, 2010, the Defendant asserted that counsel was ineffective for advising the Defendant to plead guilty without informing the defendant that if he went to trial, he could have requested a jury charge on a lesser offense and might have been convicted of the lesser offense. *See e.g.,* Watson v. State, 287 S.C. 356, 338 S.E.2d 636 (1985) (finding that counsel was ineffective for failing to inform the defendant that he had the right to have a jury impaneled to determine if mercy should be recommended). In this case, common law robbery is a felony punishable by only up to 15 years and it is possible a jury could have found the Defendant guilty of robbery. S.C. Code Ann. § 16-11-325.

Kerridge v. State, 304 S.C. 561

9.

The Defendant hereby amends his application to assert the additional grounds that Counsel was ineffective because he failed to investigate his case. In preparing for trial, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Strickland, 466 U.S. 668, 691, 104 S.Ct. 2052; *see also* Wiggins v. Smith, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003).¹

Counsel failed to investigate or interview any witnesses in this case. If the Defendant had been advised of all possible defenses and motions he could have filed to show weaknesses in the State's case, he would have elected to go to trial and to confront the witnesses against him. If motions had been filed challenging the evidence and weaknesses in the State's case shown by way of motion, the State perhaps would have offered the Defendant a plea to robbery. Counsel's failure to investigate and file motions in this case fell below the standard of reasonableness in a serious case like this where the Defendant is facing a possible thirty (30) year sentence.

10.

The Defendant now hereby amends his application to assert the additional ground that his plea was not freely and voluntarily given with a knowing waiver of his constitutional rights under Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, (1969)(reversing guilty plea on grounds that there was nothing in the record to show that the Court inquired as to whether the Defendant realized he was knowingly waving his right against self-incrimination, the right to trial by jury, and the right to confront the witnesses against him).²

¹ While this ground for relief concerning counsel's failure to investigate is an amendment to the Defendant's petition that is added less than ten (10) days before the PCR hearing, there is no unfair surprise or prejudice to the State because the facts to support Defendant's claim can't be reviewed and addressed until a hearing is held on the matter. In addition, the State will have the opportunity to interview counsel for the Defendant prior to the hearing.

² While this ground for relief is an amendment to the Defendant's petition that is added less than 10 days before the PCR hearing, there is no unfair surprise or prejudice to the State because the matter of the Court's failure to determine if he was knowingly and voluntarily waiving his *Boykin* rights is contained in the sentencing transcript which has been in the State's possession since it filed its response in December of 2010.

The Court's duty in a sentencing hearing is to ensure that the Defendant has freely and voluntarily waived his rights and this duty can't be relegated to the attorney for counsel by asking counsel if the Defendant has been informed of his rights. The record in this case, as in Boykin, is silent as to whether or not the Defendant understood he was knowingly and voluntarily waiving the important constitutional right to confront the witnesses against him and the right against self-incrimination.

11.

Counsel's failure to investigate the Defendant's case or prepare a defense in his case prior to advising him to plead guilty is directly related to the Defendant's inability to knowingly and intelligently waive rights. One can't make a knowing and intelligent waiver of the right to go to trial if no investigation has been done or motions filed to determine what the State's witnesses actually will testify to that would be harmful. There were inconsistencies in the witnesses' statements that could have led a reasonable juror to doubt if the Defendant was actually the person in the car. The State's case was based upon a witness identifying the car and license plate of the robber and not an eyewitness identification of the robber himself. It appears that no photo lineups were conducted in this case. Based upon counsel's failure to independently investigate the case and challenge the evidence presented, the Defendant was unable to make a knowing and intelligent decision to waive his right to a jury trial, to waive his right to not incriminate himself and, importantly, to waive his right to confront the witnesses against him. Counsel's representation fell below the standard of care.

12.

Moreover, as previously discussed, the Defendant was prejudiced by Counsel's failure to advise him of the jury's ability to find him guilty of common law robbery under the facts

presented in his case. A common law robbery conviction would have exposed him to only 15 years of incarceration. There is a fifteen (15) year difference in the amount of time the Defendant would have been exposed to for the purpose of sentencing. Any reasonable person, including the Defendant, would have elected to at least take a chance on reducing their exposure by 15 years. The Defendant would have elected to go to trial rather than accept the State's offer. Counsel's failure to advise the Defendant fell below the standard of reasonableness and precluded the Defendant from making an intelligent and voluntary waiver of his constitutional rights.

13.

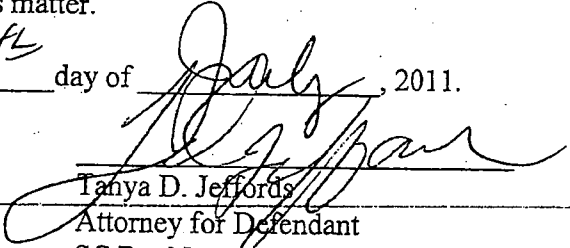
The Defendant did not knowingly and intelligently waive his right to confront the witnesses against him or against self-incrimination. Had there been a proper investigation into any possible defenses, challenges to the eyewitness identification or otherwise, the Defendant would not have foregone his right to confront the witnesses against him. The Defendant was prejudiced by the Court, and Counsel's actions, which fell below the standard of reasonableness. The Defendant would have elected to go to trial to get a robbery conviction which is supported by the facts. In this case, there was no intent to steal, stealing actually occurred; therefore, the robbery statute is in fact more applicable to the crime in this case. A jury would not have known or been concerned about sentencing but would have simply found the following facts to be true: the Defendant did engage in a felonious or unlawful taking of money, goods or other personal property of value from a person by putting such person in fear.

14.

Accordingly, based upon the foregoing and the evidence to be presented at the PCR hearing, the Defendant submits that he received ineffective assistance of counsel and prays for the following:

1. That his sentence be vacated and he be sentenced to a lesser term; or
2. That his sentence be vacated and a new trial granted; and
3. That a hearing be scheduled in this matter.

Respectfully submitted this 11th day of July, 2011.


Tanya D. Jeffords
Attorney for Defendant
SC Bar No.: 72401

Law Offices of
Tanya D. Jeffords
and Associates, P.C.
437 Walker Street
Augusta, GA 30901
(706) 722-3019
(706) 724-5418 (fax)

STATE OF SOUTH CAROLINA	)	In the Court of Common Pleas
	)	
COUNTY OF AIKEN	)	Second Judicial Circuit
	)	
SHERROD MILLER,	)	
Appellant,	)	Case Number: <u>2010-CP-02-01941</u>
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

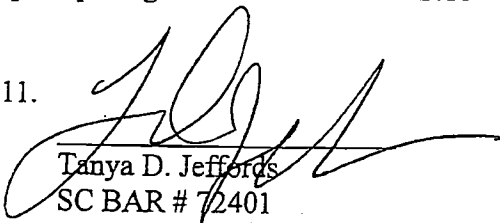
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the above and foregoing AMENDED PETITION FOR POST CONVICTION RELIEF upon interested parties by Emailing AND mailing a copy of the same to:

Mr. Corney-- Rcorney@charlestonlaw.edu
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

by placing the same in the U.S. Postal System with adequate postage affixed thereto to insure delivery, as required by law.

This 17 day of July, 2011.


Tanya D. Jeffords
SC BAR # 72401
Attorney for Defendant

The Law Offices of
Tanya D. Jeffords and
Associates, PC
437 Walker Street
Augusta, Georgia 30901
706-722-3019

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2010-CP-02-01941

3
4
5 SHERROD MILLER,
Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SC,
8 Respondent.

9
10 Post Conviction Relief Hearing
11 Heard on Wednesday, July 13, 2011
Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE JAMES R. BARBER III

15
16 APPEARANCES:

17 Counsel on Behalf of the Plaintiff:
18 Tanya D. Jeffords, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Rob D. Corney, Esq.

21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 1154
Aiken, SC 29802-1154
25

EXAMINATION INDEX

CHARLES DAVID HAYES

DIRECT BY MS. JEFFORDS 5

CROSS BY MR. CORNEY 27

SHERROD JARVIS MILLER

DIRECT BY MS. JEFFORDS 29

CROSS BY MR. CORNEY 32

REDIRECT BY MS. JEFFORDS 33

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Applicant's

MAR

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2	Statement of Larissa Settles	11
3	Photograph	16

1 ON WEDNESDAY, JULY 13, 2011 AT 10:44 A.M.:

2 MR. CORNEY: Sherrod Miller.

3 MS. JEFFORDS: Your Honor, do you have a copy of the
4 amended application?

5 THE COURT: Ma'am?

6 MS. JEFFORDS: Do you have a copy of the amended
7 application?

8 THE COURT: I sure do.

9 MS. JEFFORDS: Thank you.

10 THE COURT: All right. Mr. Corney, are you ready?

11 MR. CORNEY: Yes, sir, Your Honor. This is
12 Mr. Sherrod Miller. I believe I might be mispronouncing
13 it.

14 THE APPLICANT: That's correct.

15 MR. CORNEY: Sherrod Miller, case number 2009-CP-02-
16 1941. Mr. Miller was true bill indicted February 2010 by
17 the Aiken County Grand Jury for entering a bank,
18 depository or building, loan association with the intent
19 to steal. He pled guilty before Judge Dickson as indicted
20 April 19th, 2010. The State recommended a 20-year cap
21 sentence and Mr. Miller was given 18 years.

22 A notice of appeal was filed and perfected and the
23 Court of Appeals dismissed it July 19, 2010. A timely PCR
24 application was filed August 17th, 2010. And he is
25 represented today by Ms. Tanya Jeffords.

CHARLES DAVID HAYES - DIRECT

1 THE COURT: Ms. Jeffords, are you ready to proceed?

2 MS. JEFFORDS: Yes, Your Honor. We would like to
3 call Mr. David Hayes, please.

4 CHARLES DAVID HAYES, having been duly sworn, was
5 examined and testified as follows:

6 THE CLERK: Please have a seat on the witness box and
7 state your full name for the Court.

8 THE WITNESS: Charles David Hayes, H-A-Y-E-S.

9 DIRECT EXAMINATION

10 BY MS. JEFFORDS:

11 Q. Good morning, Mr. Hayes. Do you recall the case of
12 Sherrod Miller?

13 A. I do.

14 Q. And at the time that you were representing Mr. Miller,
15 how long had --

16 THE COURT: Ma'am, I need you to stand when you
17 address the witness, please.

18 MS. JEFFORDS: (Complying.)

19 Q. At the time that you were representing Mr. Miller, how
20 long had you been practicing law?

21 A. I graduated and took the bar in 2008, passed the bar,
22 I was then employed at PD's office June 6, 2009.

23 Q. And was that your first job out of law school?

24 A. It was my actual first paying job, yes.

25 Q. And how much criminal experience had you had at that

CHARLES DAVID HAYES - DIRECT

1 point?

2 A. Prior to that, I had done an internship with Washtenaw
3 County Public Defenders Office.

4 Q. Had you tried any cases before?

5 A. No -- well, I'm sorry, I had tried a magistrate's
6 level case at that point in time.

7 Q. With regard to Mr. Miller's case, what did you do to
8 prepare for trial in this case?

9 A. Well, when we first met, Mr. Miller had called me
10 asking to plea. I informed him that I would come by and
11 tell him what the charges were, what they carried and what
12 he was exactly facing before he made the decision whether
13 or not he wanted to plea.

14 After I informed him that it was zero to 40 for bank
15 robbery or entering a depository, he quickly changed his
16 mind and wanted to know was there something lesser, that
17 it was stupid to be charged with a crime and not be able
18 to plead to something lesser, everybody gets a lesser
19 charge.

20 At that time I told him I was not aware of a lesser
21 charge, however I would research it and get back to him.

22 I returned back to the office. I talked with other
23 senior lawyers. I also did my own research and found that
24 strong arm, as Mr. Miller had suggested to me, was a
25 lesser-included offense.

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1 I then told Mr. Miller that he was correct, that
2 strong arm is a lesser-included offense and that we would
3 begin discussions -- he said that's what he wanted to
4 plead to. So I began discussions with the solicitor as to
5 whether he would offer strong arm robbery or not.

6 The solicitor clearly indicated that he would not
7 based on Mr. Miller's prior record, that we could go to
8 trial or he would offer a cap of 20 years or he could
9 plead straight up.

10 Q. Okay. So is your answer to my question of what did
11 you do to prepare for trial that -- did you interview any
12 witnesses?

13 A. I did not. I actually asked for more discovery and
14 received it right before the trial.

15 It was two of the witnesses in the case that called in
16 the 9-1-1. Actually picked up some of the money that was
17 dropped on the way out this was covered with the dye
18 pack. And on their way over to Augusta, after they
19 reported the case, changed it in at a wash and go or
20 something like that, car wash.

21 Q. Did you interview any of the eyewitnesses, like
22 Mr. Jones?

23 A. No.

24 Q. Okay. Did you interview -- did you discuss any reason
25 why no lineups were done in this case?

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1 A. No.

2 Q. Do you know if a lineup was done in this case?

3 A. I do not recall. There was a actual video done.

4 Q. Okay.

5 A. And the video was produced to me.

6 Q. And did you review that video with Mr. Miller at any
7 time?

8 A. I did. And the video that was actually given to me
9 was a fast forward copy. To be able to get any of the
10 video or photographs off of it that were able to be seen
11 clearly, you had to stop it and print.

12 And I believe that when he asked for his discovery he
13 got copies of that.

14 Q. Do you feel when you reviewed the file that that video
15 was sufficient to clearly identify Mr. Miller?

16 A. Yes.

17 Q. Okay. Do you feel like the police officers felt that
18 that was sufficient to clearly identify Mr. Miller?

19 A. Yes.

20 Q. Okay. Then why did they have to get a picture of him
21 from his home state in Detroit, Michigan, in order to
22 actually locate Mr. Miller?

23 A. Well, they did not know him. They had to find out who
24 the face belongs to. They also had a license plate number
25 off of the vehicle he was driving and ran the DMV

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1 records.

2 Once they received the DMV records and who the car was
3 registered to, they asked for a driver's license of that
4 person. The person that was on the driver's license
5 clearly matched the individual that was in the bank.

6 From that they placed out a BOLO and the vehicle was
7 found in Atlanta, Georgia, as well as Mr. Miller.

8 Q. And the video that you reviewed, what did it show of
9 Mr. Miller?

10 A. It showed Mr. Miller wearing a baseball cap and
11 sunglasses.

12 Q. And so it's your contention that that would have been
13 sufficient for everybody to identify him?

14 A. I do.

15 Q. Did you file any motions in this case?

16 A. I do not remember. I know Mr. Miller wanted to
17 relieve me as counsel at one point in time but he then
18 after found out it was Judge Early on the bench, refused
19 to come back out. He was brought over and was in the
20 back.

21 I do not know if he ever made the motion. I cannot
22 recall.

23 Q. Were you aware that there were conflicting statements
24 between witnesses as to the description of Mr. Miller?

25 A. There may have been. And we were actually prepared to

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1 go to trial, and I was ready to go the day that he decided
2 to plea.

3 MS. JEFFORDS: May I approach, Your Honor?

4 THE COURT: Sure.

5 MS. JEFFORDS: I'd like to mark this as
6 Plaintiff's Exhibit One.

7 (Thereupon, Applicant's Exhibit No. 1, statement of
8 Paul Jones, was marked for identification.)

9 BY MS. JEFFORDS:

10 Q. I'm going to show you what's marked as Plaintiff's
11 Exhibit One. What's the description that Paul Jones gives
12 of the defendant?

13 MR. CORNEY: Your Honor, I haven't seen this. I
14 don't know if this is part of the admitted application.
15 If you have an extra copy.

16 THE WITNESS: He was a middle-aged man about 35 to
17 40, wearing a red and white striped polo shirt, sunglasses
18 and a ball cap. He is approximately five-and-a-half feet
19 tall, black man.

20 BY MS. JEFFORDS:

21 Q. And what's the height?

22 A. It says five-and-a-half feet, approximately.

23 Q. Five-and-a-half feet?

24 A. Approximately.

25 MS. JEFFORDS: (Hands document to State's counsel.)

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1 MR. CORNEY: Thank you.

2 (Thereupon, Applicant's Exhibit No. 2, statement of
3 Larissa Settles, was marked for identification.)

4 BY MS. JEFFORDS:

5 Q. And I want to show you what's marked as Plaintiff's
6 Exhibit Two, which is a statement of Larissa Settles. Can
7 you tell me what Larissa Settles gives the description for
8 the defendant?

9 A. She says: About five-seven, medium build, red and
10 white polo shirt and a hat -- or a 'had'. It should be
11 hat, but I believe it's --

12 Q. And what's the height?

13 A. Five-seven.

14 Q. Okay. Is that different from Mr. Jones' --

15 A. Yes.

16 Q. -- description?

17 THE COURT: What is different?

18 THE WITNESS: The height. Five -- two inches.

19 THE COURT: Five-and-a-half feet?

20 THE WITNESS: And five-seven. It's one inch.

21 THE COURT: One inch.

22 BY MS. JEFFORDS:

23 Q. So there is a difference between five-and-a-half feet
24 and five-seven?

25 A. One inch.

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1 Q. Okay. So you would say -- if I say that somebody is
2 five feet tall and I say a person is five feet seven
3 inches tall, you think that's only one-inch difference?

4 A. No, five feet is five feet. Five-and-a-half feet is
5 five foot six inch. Five feet seven inches is five foot
6 seven inches. That's only one inch difference.

7 Q. So that's how you would interpret that?

8 A. That's how anybody with a ruler would interpret it.

9 Q. Did you talk to the witnesses to see what their
10 contention was?

11 A. I read their statements.

12 Q. But you didn't --

13 A. I did not contact the tellers.

14 Q. Do you know how tall Mr. Miller is?

15 A. I do not remember, off the top of my head.

16 Q. Can you stand up?

17 THE APPLICANT: (Complying.)

18 MS. JEFFORDS: Just for the record, can you state how
19 tall you are?

20 THE APPLICANT: Five feet three inches.

21 MS. JEFFORDS: Thank you.

22 BY MS. JEFFORDS:

23 Q. You say that this case was actually on the trial
24 calendar; is that correct?

25 A. It was on the trial calendar.

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1 Q. Set to go to trial?

2 A. Uh-huh.

3 Q. Do you know if all of the State's witnesses were
4 available for trial at that time?

5 A. The State had placed him on the trial roster for three
6 months in a row. I do not know if the witnesses were in
7 the courtroom or not.

8 Q. Okay. But do you know if they were available to
9 testify? Did you check the subpoenas?

10 A. No, I did not.

11 Q. Okay. Did you talk to them to see if anyone had left
12 town or moved out of town or anything like that?

13 A. No.

14 Q. How many times did you meet with the defendant?

15 A. Give me a few minutes on that one. (Reviewing
16 records). First visit I'm showing is 11-24-2009.

17 Q. And --

18 A. That was the first one.

19 Q. -- did you show him or have the video at that point?

20 A. I didn't have the discovery at that point. Generally
21 when I first receive a case within two weeks of receiving
22 the actual file, I will go over to the jail, if the person
23 is incarcerated, I will do what I call my blue sheet, my
24 first appearance affidavit so I can hand it in when it
25 comes up.

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1 I will then, if I know what the charge is, go through
2 the charges with the code book, explain to them whether
3 it's serious, most serious or strike or not, whether it's
4 85 percent or not.

5 And then once I receive the discovery, I will go back
6 and discuss what the discovery is with them then. I
7 didn't receive his discovery until the 30th of November.
8 I then visited him again on December 8th of 2009.

9 And that's when I went through the zero to 30 years.
10 I also went through no parole, 16-160, it's a violent
11 offense or not. He talked to me about a power of attorney
12 which I told him I do not do power of attorneys as a
13 public defender.

14 Q. At that point did you review the video with him?

15 A. If I had the discovery, at the very least I would have
16 told him I had it and we would go through it. I know
17 there was some --

18 THE COURT: How many times did you visit with him; do
19 you know?

20 THE WITNESS: 12-8-2009. 12-21-2009. February 5th,
21 2010. At that point in time -- I believe he was brought
22 over at one point and we talked in the back because I see
23 where I talked with the Judge prior in chambers on January
24 7th.

25 THE COURT: Mr. Hayes, do you know how many times you

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1 visited with him? If you don't, give us your best answer.

2 THE WITNESS: I have them all written down here,
3 Judge. I'll have to count them up.

4 THE COURT: Count them. You don't have to give us
5 the dates. Just count them.

6 THE WITNESS: (Complying.) Six times.

7 THE COURT: Six times?

8 THE WITNESS: Yes, sir.

9 BY MS. JEFFORDS:

10 Q. And during those six times that you visited with him,
11 on which occasion did you go over the video that, from the
12 bank with him?

13 (Pause.)

14 THE COURT: All right. We're going to take a break.
15 Let him -- this is obviously going to take a while.

16 (Pause.)

17 THE COURT: Do you know which time, Mr. Hayes?

18 THE WITNESS: I'm looking, Your Honor. I'm sorry.

19 THE COURT: If you don't know, you don't know. We'll
20 come back in 10 minutes.

21 (Thereupon at 11:00 a.m., a break was taken. At
22 11:30 a.m., the hearing resumed as follows:)

23 THE COURT: All right. Figured it all out here,
24 Mr. Hayes?

25 THE WITNESS: Yes, sir. I don't know the exact day.

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1 All I remember is that the CD --

2 THE COURT: Oh -- wait. Let's get the client.

3 THE WITNESS: I'm sorry.

4 THE COURT: Can you ask them to bring the Applicant
5 in, please?

6 (Applicant enters courtroom.)

7 THE COURT: All right. If you would, please,
8 Ms. Jeffords.

9 BY MS. JEFFORDS:

10 Q. And how many times did you visit with Mr. Miller?

11 A. I don't know what I just counted up. I was previously
12 looking to see when I gave him the video or reviewed the
13 video.

14 Q. Uh-huh.

15 A. I do not know the exact date. What I remember was
16 that the video had issues playing. It was recorded in
17 fast-forward motion so you had to actually stop the
18 video and print frame-by-frame to have an identifiable
19 picture off of it.

20 Q. Okay.

21 A. And I do know the photographs were provided to
22 Mr. Miller.

23 (Thereupon, Applicant's Exhibit No. 3, photograph, was
24 marked for identification.)

25 BY MS. JEFFORDS:

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1 Q. We have shown you what is marked as Plaintiff's
2 Exhibit Three. When you look at that photo, is that the
3 substance of what could be seen on the video in this case
4 from Wachovia?

5 A. Yeah. Much clearer, but yes.

6 Q. In fact, I believe that is the one that was in the
7 file?

8 A. Yes.

9 Q. Was there anything more clear than that that you
10 recall seeing?

11 A. Not that I recall.

12 Q. Okay. And on that photo/video, could you tell when
13 you looked at that, that that would be Mr. Miller?

14 A. Facial -- yes.

15 Q. If you had --

16 A. I believe that it was Mr. Miller, yes.

17 Q. You believed that it was? Okay. If you had saw
18 somebody for just a few seconds, do you think that based
19 on that view with the hat, the glasses and everything that
20 you would have been able to identify that person as the
21 person who robbed the bank?

22 A. Yes.

23 Q. So when you discussed with Mr. Miller his defenses,
24 what were they? What were the defenses that you discussed
25 in his case?

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1 A. In his case there was not a whole lot of discussion
2 about the defense because he was discussing wanting to
3 plea the whole time. He was wanting to plea bargain down.

4 Q. Okay. And did you feel like because he immediately
5 wanted to take a plea that you didn't need to discuss with
6 him any possible defenses?

7 A. No. I don't remember what all was discussed. I do
8 remember discussing identity. I do remember discussing
9 that I believe that a photograph of that nature, what the
10 jury would -- the jury would find him guilty.

11 As well as that he wanted, from the get-go wanted to
12 plea. So I started discussing the plea options with him
13 as well as to what the different lesser-included offenses
14 or what the different options could be that the solicitor
15 was offering.

16 Q. Okay. And then with regard to what the solicitor was
17 offering, what were your discussions with the solicitor?

18 A. I had multiple discussions with the solicitor. He was
19 asking for a strong arm. And then again, I was asked for
20 probation to PTUP upon payment of 10 years. I sent a
21 confirmation email to the solicitor, his answer was no;
22 strong arm robbery, the answer was no; or a cap of 10
23 years, and the answer was no.

24 Q. Okay. With regard to the strong arm robbery, would
25 you -- do you believe in your professional opinion that

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1 the common law robbery would be a lesser-included of this
2 entering of a bank or depository with intent to steal that
3 he was charged with?

4 A. Yes, yes.

5 Q. And do you believe that a jury, had one been put in
6 the box, could have returned a verdict for robbing rather
7 than just entering a bank?

8 A. It could have.

9 Q. And in fact in this case, entering a bank with the
10 intent to steal really didn't totally fit the facts of
11 this case; isn't that right?

12 A. It fit the facts. Now, it --

13 Q. Did he ever tell you when he formed his intent to
14 steal?

15 A. He -- when I first met with him he said he did it.

16 Q. Uh-huh. He said he did it?

17 A. Yeah.

18 Q. But did he tell you when he formed his intent to
19 steal?

20 A. I think the reasonable conclusion would be that when
21 he passed the note over -- and that's in discovery -- that
22 says, give me the money now, you have formed an intent to
23 steal.

24 Q. And is it possible that he could have done that while
25 he was standing in line at the bank and not prior to

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1 entering the bank?

2 A. Could have.

3 Q. And would that have been a possible defense to say
4 that this is a robbery but I didn't actually steal
5 something but I was standing in line, and I'm going to do
6 something crazy again and that would not have been
7 entering the bank with intent to steal?

8 A. You could argue that, yes.

9 Q. And what is the difference between entering a bank
10 with intent to steal and the common law robbery in this
11 case he was asking for?

12 A. There's not a whole lot of difference in it. One was
13 it's a federally-chartered institution and there's no
14 weapon involved or threat of a weapon. The other one is
15 strong arm robbery which is just the taking through force
16 from somebody.

17 Q. And he did actually take something in this case?

18 A. He did take, yes.

19 Q. Okay. But I'm asking you substantively as a defense
20 attorney advocating on somebody's behalf, what is the real
21 difference between these two charges, entering a bank with
22 intent to steal and the common law robbery?

23 A. There's not a whole lot except for the amount of time
24 that they carry.

25 Q. Okay. Well, what is the difference in the amount of

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1 time that they carry?

2 A. Fifteen years on the strong arm maximum non-violent,
3 and then if you're entering a bank or depository it's zero
4 to 30 years violent and is a serious, I believe.

5 Q. So the difference between this entering the bank with
6 intent to steal is 15 years?

7 A. Carries a significant amount of time more, yes.

8 Q. Okay. So that is a significant difference that
9 somebody would have an invested interest in trying to
10 affirmatively pursue a robbery disposition rather than an
11 entering a bank with intent to steal; right?

12 A. Yes, yes.

13 Q. So if a jury would have and could have, on these
14 facts, returned a verdict of, on the robbery charge, would
15 he have been saved a cap of 15 years for the sentencing
16 judge?

17 A. I don't understand your question.

18 Q. Would there not have been a cap by the judge of 15
19 years if he had taken it to a jury and they would have
20 found him guilty of robbery?

21 A. If they found him guilty of robbery the judge could
22 not sentence more than 15; that's correct.

23 Q. And what did he get in this case?

24 A. He got 18. He pled to a cap of 20 years to entering a
25 depository.

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1 Q. Okay. Now when the solicitor told you several times,
2 just don't ask me again, did you think that you should
3 make any challenges to the evidence in this case?

4 A. I asked him several times and he said if you want to
5 get strong arm robbery he can go to trial and ask the jury
6 for it, but I'm not offering it.

7 Q. And what did you do to prepare for that trial?

8 A. He told me he had no intention to go to trial. He
9 wanted to plead.

10 Q. What did you do to prepare for trial is the question?

11 A. I talked to him. I talked to Investigator Nelson who
12 was the lead investigator from North Augusta. I reviewed
13 all the documents and discovery that I was sent over.

14 I also found out that the two of the witnesses, which
15 were the two individuals who made the 9-1-1 phone call,
16 were also going to potentially be charged -- I don't know
17 if they ever were or were not charged. They were not
18 charged at the time -- for picking the money up and taking
19 it over to Augusta and trading it out for clean quarters
20 at a car wash.

21 While they were on the phone with 9-1-1 they were
22 picking up the dollar bills he was dropping out of the bag
23 that had the ink dye on it. And they had to have a way to
24 change it so they drove over to Augusta and ran it through
25 a cash wash as a way to launder it.

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1 And then there was an audio of that where I listened
2 to it. I don't know if the solicitor ever gave it to me,
3 but we did listen to it, where they confessed that that's
4 what they were doing, and that they did take part in that.

5 Q. So when the solicitor refused your offer, did you at
6 any point advise your client, well, sir --

7 A. Yes.

8 Q. -- perhaps you should go ahead and go to trial and try
9 to get robbery?

10 A. I don't tell them whether they're going to go to trial
11 or not. It is his decision on how he wants to proceed
12 forward. I tell him what the options are, what the
13 possibilities could be, if he chose one versus the other.
14 If you want to go to trial, it is the client's right to
15 exercise it. If the client wants to plead guilty, it's
16 the client's right to exercise that right as well.

17 Q. All right. Did you inform him of his right to have a
18 bench trial?

19 A. I do not know if I discussed bench trial. I know I
20 discussed jury trial.

21 Q. And in your experience, under what circumstances
22 sometimes do you actually advise a client you might want
23 to consider a bench trial?

24 THE COURT: Wait a minute. Let me ask a question.
25 Are you saying he has an individual right to a bench

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1 trial?

2 MS. JEFFORDS: I'm saying that if you're advising a
3 client they have a right to a jury trial and they also can
4 request a bench trial as well. That that is something --

5 THE COURT: Do you understand in South Carolina you
6 only get a bench trial if both sides consent to it, the
7 State and the Defendant?

8 MS. JEFFORDS: That's correct, but you still need to
9 pursue the avenue and discuss it with the client, I think,
10 in representing them.

11 THE COURT: What is your point here? That he did not
12 overrule your client and say go to trial and take the
13 chances on seeing whether you can get a strong arm
14 robbery, vis-a-vis getting 30 years on the charge that he
15 was ultimately pled to?

16 MS. JEFFORDS: The point is, Your Honor, it goes to
17 whether my client could have at the end made a knowing and
18 voluntary waiver of his rights, he could only do that
19 knowing what his rights were and being informed by
20 counsel.

21 THE COURT: And his rights were to have a trial and
22 take a chance on 30 years versus -- and getting a lesser
23 included, you're saying that that's what, your client
24 should have rolled the dice on that?

25 MS. JEFFORDS: Well, I think he should have --

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1 THE COURT: Ma'am, you made your point on that.

2 MS. JEFFORDS: Okay.

3 Q. You did not discuss with him the option of bench
4 trial; is that correct?

5 A. I don't recall. Most likely not. I informed him of a
6 jury trial and I informed him of his right to exercise
7 that as well as he can choose to plead guilty and what the
8 options are and what the consequences for each one of
9 these effects could be.

10 He was also on parole from Detroit, Michigan, on a
11 federal charge. I also made contact with his federal
12 probation officer and informed him of the consequences of
13 what a guilty plea in this case, in South Carolina, would
14 do to him under federal issues as well.

15 From what they informed me, would be his possible
16 projected outlook in their scale of months. I don't
17 remember what that number of months was at this point in
18 time was, though.

19 Q. At the sentencing, did you at any time talk to the
20 Judge when you were trying to get him to exercise his
21 discretion between one and 20 about the fact of this case
22 and the facts fit a robbery and that the cap on that was
23 15 and maybe you would like to have a 15-year sentence?

24 A. Yes. I went in chambers with the judge. Actually I
25 went in chambers with multiple judges.

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1 But ultimately the judge that sentenced him, I can't
2 remember which one it was off the top of my head, we went
3 in chambers and we discussed the facts. And he said that
4 he would sentence somewhere in the range from lower teens
5 to the cap of negotiated 20, that he would not give him
6 the full 20 that was negotiated on the cap, that he didn't
7 see any reason to get that high except for the fact that
8 he would listen to all the facts and listen to his past
9 criminal record which was not disclosed to him in
10 chambers, I don't believe. I cannot remember for sure,
11 but he said the biggest thing that influenced him was that
12 there was no weapons or a threat of weapon used in the
13 case and because of that he would give him the benefit and
14 stayed below the maximum of the cap.

15 Q. Okay. And did you inform Mr. Miller of your
16 discussions with the judges?

17 A. I did. Every time I had a discussion with a judge in
18 chambers, I informed Mr. Miller.

19 MS. JEFFORDS: No further questions.

20 THE COURT: This is a recommendation; correct?

21 THE WITNESS: It was a negotiated cap, I believe.

22 THE COURT: It says recommendation.

23 MR. CORNEY: I believe it was a recommendation.

24 THE COURT: Cap 20 years. So he could have gotten

25 30.

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1 THE WITNESS: I believe it says recommendation, but I
2 believe in chambers we discussed a negotiated cap.

3 THE COURT: Well, the sentencing sheet says --

4 THE WITNESS: I understand.

5 THE COURT: -- cap of 20 years on the
6 recommendation. On a recommendation you can get 30.

7 THE WITNESS: That's correct. If it was a
8 recommendation. I would've explained that to him as
9 well.

10 But if I recall correctly, it did say recommendation
11 on the sheet. And we discussed a negotiated cap if I
12 recall correctly.

13 THE COURT: Anything?

14 MR. CORNEY: Just very briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. CORNEY:

17 Q. You said that -- you said that he wanted, Mr. Miller
18 wanted to plead from the very beginning, the first time
19 you talked to him?

20 A. Yes, the very first phone message was left was that he
21 wanted to plea. I can't remember if he called back and I
22 answered the phone or if I talked with him later, but that
23 was his indication.

24 Q. These statements that were given with the height
25 issues that were brought forward by the opposing counsel,

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1 that was something you could have brought out at trial;
2 right?

3 A. Yeah, most definitely. I would've also probably
4 exploited the fact that two of the people calling on the
5 9-1-1 tape were also picking up the money in the
6 background.

7 Q. And, he knew -- I mean, you don't have any issues
8 saying that you think he knew he had a right to a jury
9 trial?

10 A. No, he knew.

11 Q. So all of this is a lot of could have-would have-
12 should have if I had gone to trial; right?

13 A. Yes.

14 Q. But he made the voluntary, willing decision to take a
15 plea instead?

16 A. Yes. As a matter of fact, when he got the trial
17 letter notice he called and told me he had no intention or
18 left a message on my voice mail that he had no intention
19 of going to trial, that he wanted to plead.

20 Q. And you felt you had fully investigated and prepared
21 for this case?

22 A. Yes.

23 THE COURT: Anything further?

24 MS. JEFFORDS: Nothing further, Your Honor.

25 THE COURT: Thank you. You can step down. All

SHERROD JARVIS MILLER - DIRECT

1 right. Call your next witness.

2 MS. JEFFORDS: We'll call Mr. Miller, Your Honor.

3 SHERROD JARVIS MILLER, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please have a seat on the witness box and
6 state your full name for the Court.

7 THE WITNESS: Sherrod Jarvis Miller.

8 DIRECT EXAMINATION

9 BY MS. JEFFORDS:

10 Q. Mr. Miller, can you tell me if you have ever seen the
11 video in this case?

12 A. I have not.

13 Q. Did you see pictures from the video?

14 A. I seen the blurry pictures that you showed me, that
15 was it, in the discovery.

16 Q. Did Mr. Hayes ever show you the pictures?

17 A. Only -- the picture that you showed, it was in my
18 discovery. That was it.

19 Q. Okay. And did Mr. Hayes ever discuss any possible
20 defenses with you in this case?

21 A. Absolutely not.

22 Q. And did he discuss with you your right to go to a jury
23 trial?

24 A. Yes. That was, that was discussed.

25 Q. And tell me the circumstances. What did he discuss

SHERROD JARVIS MILLER - DIRECT

1 with you about your right to go to a jury trial?

2 A. Basically, take this deal or go to jury trial.

3 Nothing else.

4 Q. Have you ever had a jury trial before?

5 A. No, ma'am.

6 Q. Was your right to confront the witnesses against you
7 and any inconsistencies in their statements or anything in
8 the evidence, were you advised of that right by Mr. Hayes?

9 A. I was never.

10 Q. Were you advised of your right to take the stand and
11 testify or to not testify given the facts of your case?

12 A. I was not. That was not discussed with me, no. I,
13 through my own legal recourse (sic) since being
14 incarcerated, but not -- I've never discussed it with
15 Mr. Hayes, no.

16 Q. Okay. And so in this case, you could have taken the
17 stand and discussed possibly when you formed your intent
18 to steal from this bank?

19 A. Yes.

20 Q. At some point you felt the need to do a motion to
21 remove him as counsel. Why was that?

22 A. The -- it's in the record. I asked Mr. Hayes when I
23 first met him how long he had been practicing law. He
24 refused to answer my question.

25 Besides that, he had told me that he had spoken with

SHERROD JARVIS MILLER - DIRECT

1 the solicitor, Sam Grimes. And Mr. Grimes had said
2 unequivocally, I couldn't get a deal and that he wasn't
3 going to ask him any longer because he had to work with
4 the solicitor's office, which gave me direct indication
5 that he wasn't working for me.

6 Q. Okay. At this point, if you would have gone to trial
7 you could have faced up to 30 years --

8 A. Correct.

9 Q. -- in prison? You understood that at the time; right?

10 A. Correct.

11 Q. And would anything have made a difference for you to
12 actually have gone to trial in this case and tried to get
13 robbery from the jury?

14 A. If I would have known that I had the right to go to
15 trial and request a jury charge to a lesser offense and I
16 might have received it, then I would have never pled
17 guilty. I would have insisted upon going to trial.

18 Q. And was that option discussed with you by Mr. Hayes?

19 A. Absolutely not.

20 Q. So you're saying to the Court that you would actually
21 have risked the 30 years and gone to trial if you had
22 known you could have gotten a lesser-included charge from
23 the jury?

24 A. That's correct.

25 Q. And how do you feel that you've been prejudiced in

SHERROD JARVIS MILLER - CROSS

1 this case since you only got 18 years?

2 A. I feel as though I was prejudiced because there was
3 absolutely no defense on my behalf. And besides that, I
4 was not intelligently and knowingly informed of my
5 constitutional rights prior to pleading to this case.

6 MS. JEFFORDS: I have no further questions, Your
7 Honor.

8 THE COURT: All right.

9 MR. CORNEY: Just very briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. CORNEY:

12 Q. You told Judge Dickson that you were completely
13 satisfied with Mr. Hayes' representation of you at the
14 plea; right?

15 A. Yes. I said that.

16 Q. And you've got a prior criminal record, Mr. Miller?

17 A. Yes.

18 Q. Including six other bank robberies you were convicted
19 of in 2000; right?

20 A. That's correct.

21 Q. And you were sentenced to 10 years on those?

22 A. Correct.

23 Q. So you're familiar with the legal justice system, the
24 court system; right?

25 A. Somewhat.

SHERROD JARVIS MILLER - REDIRECT

1 Q. Okay. And you're saying that you didn't understand
2 the right to a jury trial?

3 A. No. I'm saying I didn't understand -- no defense was
4 presented to me. I didn't understand that I could have
5 went to trial and requested a jury charge to a lesser
6 offense which would have taken it out of the solicitor's
7 office hands, no. And I was not advised of that, either.

8 Q. So you're talking about arguing a lesser offense. So
9 you have no problem admitting that you did commit this
10 bank robbery?

11 A. Well, the thing is, I did not have a knowing and
12 voluntary plea.

13 Q. That's not the question I asked you, though. You said
14 you wanted to go in and argue for a lesser-included
15 offense but you didn't ever say anything about not
16 committing this crime.

17 Do you have any problem admitting you committed this
18 bank robbery?

19 A. Well, the crime -- the crime was committed, yes.

20 MR. CORNEY: That's all I have, Your Honor.

21 THE COURT: All right. You can step down.

22 MS. JEFFORDS: Just one question.

23 REDIRECT EXAMINATION

24 BY MS. JEFFORDS:

25 Q. Were you ever informed of the possibility of a bench

1 trial or requesting one?

2 A. No.

3 Q. Okay. And, had you been aware that you could admit
4 the facts, possibly guilt, to a judge rather than a jury
5 because the crime was committed of robbery, if you could
6 have taken that chance and had the Judge come back and
7 find you guilty of just robbery, do you think you possibly
8 would have wanted to request a bench trial instead and
9 admitted your guilt?

10 A. Yes.

11 Q. And in your hearing to remove counsel, were you ever
12 informed that you had the right to hire counsel?

13 A. I was, yes.

14 Q. But you were informed?

15 A. Yes.

16 Q. Okay. And when you went for your sentencing, did you
17 ever ask to have any of your family members or anybody
18 else there you? I mean, did you stand alone at that
19 sentencing?

20 A. Yes, I did stand alone. My family is a long ways away
21 from here.

22 Q. So there would have been no issues about somebody else
23 speaking on your behalf?

24 A. No.

25 MS. JEFFORDS: No further questions, Your Honor.

1 THE COURT: All right. You may step down. All
2 right. Thank you.

3 END OF PROCEEDINGS: 11:50 A.M.

4 * * *

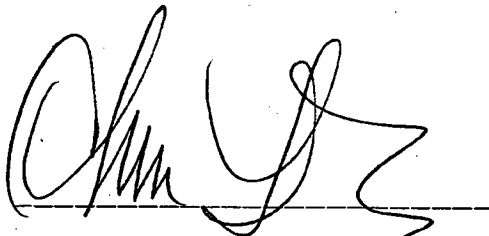
5 CERTIFICATE OF REPORTER

6 I, Cheri L. Young, Registered Professional Reporter,
7 and Official Court Reporter for the State of South
8 Carolina, do hereby certify that the foregoing transcript
9 of proceedings heard on Wednesday, July 13, 2011, in
10 Aiken, South Carolina, was reported by me using machine
11 shorthand and realtime computer-aided translation and is a
12 true, accurate and complete transcript of the proceedings
13 had and evidence introduced in the hearing of the matter.

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

16 I have hereunto set my hand this Friday, the 2nd day
17 of December, 2011.

18
19
20
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25



Cheri L. Young, RPR
Official Court Reporter

RECEIVED
BY CLERK DATE 8/30/11

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-02-1941

Sherrod Miller, # 340737,

Applicant,

AMENDED
ORDER OF DISMISSAL

State of South Carolina,

Respondent.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Geland, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 26 day of August, 2011.
Liz Geland
C.C.P. & G.A., Aiken County, S.C.
Angel Miller am
Deputy Clerk

FILED 26 August 2011
Liz Geland
1:30 pm *Angel Miller am*
Deputy Clerk

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 17, 2010. The Respondent made its Return on December 16, 2010. An evidentiary hearing into the matter was convened on Wednesday, July 13, 2011, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Tanya Jeffords, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, C. David Hayes, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Aiken County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Entering a Bank, Depository, or Building and Loan Association with Intent to Steal (2010-GS-02-0142). Applicant was represented by C.

David Hayes, Esquire. On April 19, 2010, the Applicant pled guilty before the Honorable Edgar W. Dickson. Applicant was sentenced to eighteen (18) years imprisonment. Applicant's appeal was dismissed by the South Carolina Court of Appeals on July 19, 2010, and the Remittitur was sent on August 4, 2010.

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

1. Ineffective assistance of counsel.
 - a. "...advising the defendant to plead guilty without informing the defendant that if he went to trial, he could have requested a jury charge on a lesser offense and might have been convicted of the lesser offense."

Applicant amended his application on July 11, 2011, adding the following additional allegations:

1. "Counsel was ineffective because he failed to investigate his case...Counsel failed to investigate or interview any witnesses in this case. If the Defendant had been advised of all possible defenses and motions he could have filed to show weaknesses in the State's case, he would have elected to go to trial and to confront the witnesses against him... Counsel's failure to investigate and file motions in this case fell below the standard of reasonableness in a serious case like this..."
2. "...plea was not freely and voluntarily given with a knowing waiver of his Constitutional rights under Boykin v. Alabama"; "The record in this case... is silent as to whether or not Defendant understood he was knowingly and

voluntarily waiving the important constitutional right to confront witnesses against him and the right against self-incrimination.”

3. “...Defendant was prejudiced by Counsel’s failure to advise him of the jury’s ability to find him guilty of common law robbery under the facts...”

~~FINDINGS OF FACT AND CONCLUSIONS OF LAW~~

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those

statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

The allegations made in the application and at the hearing all come down to the claim of ineffective assistance of counsel. First, the Applicant alleges that his plea was not entered

voluntarily and knowingly under the standards set forth in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). As stated above, an Applicant in PCR that pleads guilty on counsel's advice may only collaterally attack the voluntary and knowing nature of his guilty plea by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe, *supra*. Therefore, this allegation is essentially a claim of ineffective assistance of counsel that rendered a guilty plea involuntary. Applicant has also alleged counsel failed to properly investigate his case in not interviewing potential witnesses and investigating possible defenses/lesser offenses.

At the PCR hearing, Applicant testified counsel never informed him of his constitutional rights, his right to testify at trial or of any potential lesser offenses that may have been available for a plea or at trial. Applicant alleged after counsel requested a plea offer from the solicitor, counsel told Applicant he "wasn't going to talk to the solicitor anymore about a plea offer because [he] had to work with [the solicitor] in the future." Finally, Applicant alleges if he had known of his ability to request a lesser offense jury charge at trial, he would not have pled guilty but rather would have proceeded to trial.

Counsel testified that he met with Applicant roughly six times prior to the entry of this plea. Counsel also testified that Applicant made clear from their first meeting that he wanted to pursue a plea rather than proceed to trial on the charge. Counsel went on to say during their

initial meeting, he reviewed the indictments, elements of the offenses and potential sentences with Applicant. After his discussions with Applicant, counsel spoke with the chief investigator on the case as well. Counsel then researched the law based on the facts of Applicant's case and determined that "strong arm robbery" was a lesser included offense that could be argued in the case. Counsel stated that at that time, he entered into negotiations with the solicitor where he requested a strong arm robbery plea offer; however, the solicitor rejected the request instead only offering Applicant the options to go to trial, plea "straight up" to the charge, or enter a plea for a twenty (20) year cap sentence. Counsel went on to say that although he did not interview any eye witnesses from the incident, he reviewed the discovery, which included two separate 911 calls and a surveillance videotape of the incident that counsel testified "clearly identified Mr. Miller". Additionally, counsel went over the consequences of a violent versus non-violent crime, reviewed the discovery with Applicant, reviewed the still-frame photographs from the surveillance video with Applicant, advised Applicant of the no-parole status of the charge he was facing as indicted and, after speaking with Applicant's federal parole officer, discussed the potential parole consequences of entering this plea. Counsel testified Applicant admitted his guilt to the charge throughout his representation and, although common-law robbery was a lesser included offense that may have fit the facts, Applicant made the decision to enter the plea rather than risk the potential consequences of a trial. Counsel articulated the case was set on the trial roster, as it had been for three straight months, and he was in fact prepared to proceed to trial had Applicant wished to go forward; however, it was Applicant's decision to waive his right to that trial and to voluntarily enter the plea.

This Court finds Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the

charges he was facing, including his constitutional rights, the indictments, the elements of the offenses, potential sentences he was facing and potential parole consequences. Additionally, counsel reviewed all available discovery and evidence with Applicant after thorough investigation, and gave Applicant the information and advice to make an intelligent decision for himself on whether to enter this plea. Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective. Further, Applicant has failed to prove prejudice from any alleged deficiency in counsel's representation. The Supreme Court of South Carolina has repeatedly held "a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (S.C. 1998), *quoting* Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998); "...mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540. Applicant failed to present testimony from any witnesses at the PCR hearing; therefore, Applicant has failed to prove prejudice from any alleged deficiency by counsel in failing to interview witnesses in preparation for trial.

Finally, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

CONCLUSION

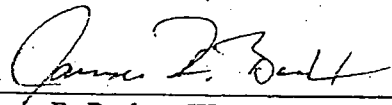
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file 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 17 day of August, 20 11.



 James R. Barber, III
 Presiding Judge
 Second Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 ENTERING BANK, DEPOSITORY OR
 BUILDING AND LOAN ASSOCIATION WITH
 INTENT TO STEAL

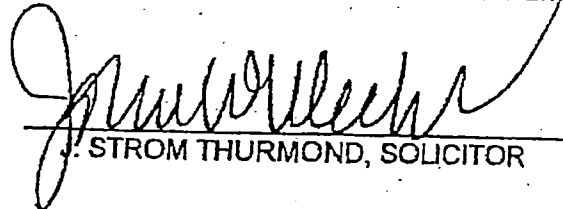
§ 16-11-0380

~~At a Court of General Sessions, convened on February 8, 2010, the Grand~~
 Jurors of Aiken County present upon their oath:

That SHERROD JARVIS MILLER did in Aiken County on or about October 8, 2009, unlawfully enter Wachovia Bank located at _____, North Augusta, South Carolina, with the intent to steal money or securities for money, either by force or intimidation, or threats, to wit: Sherrod Jarvis Miller demanded monies from Paul Jones, an employee with Wachovia Bank. All in violation of Section 16-11-380 of the South Carolina Code of Laws (1976), as amended.



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


 STROM THURMOND, SOLICITOR

WITNESSES

North Augusta Dept. of Public Safety

Jonathan Nelson

Law Enforcement Case #: 09-0336482

SBG

ARREST WARRANT NUMBER

M011225

FILED February 7, 2010

L. J. Hadard
R.C.C.P. & S. Clerk
Shannon W. Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

True Bill

L. J. Hadard
Foreperson of Grand Jury
Date: February 4, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0200142

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

vs.

SHERROD JARVIS MILLER

CDR #: 0257

Indictment for

ENTERING BANK, DEPOSITORY OR
BUILDING AND LOAN ASSOCIATION
WITH INTENT TO STEAL

§ 16-11-0380

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

INDICTMENT FOR
ENTERING BANK, DEPOSITORY OR
BUILDING AND LOAN ASSOCIATION WITH
INTENT TO STEAL

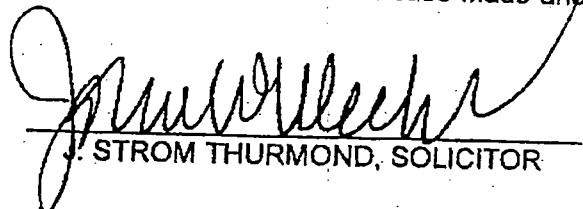
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J. STROM THURMOND, SOLICITOR

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Indictment for

ENTERING BANK, DEPOSITORY OR
BUILDING AND LOAN ASSOCIATION
WITH INTENT TO STEAL

§ 16-11-0380

J. STROM THURMOND, SOLICITOR

RECEIVED

MAY - 7 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

SHERROD MILLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATEMENT FORM

Page 1 of 1

Case #: 87-036486

Statement of: Paul Jones

[Redacted Address]
[Redacted Home Phone Number]
[Redacted Work Phone Number]
[Redacted Social Security Number]

At approximately 2:40 pm, a customer approached my window and presented a note on yellow notebook paper that said "GIVE ME THE MONEY NOW!" I gave him what I had in my top drawer and he instructed to give him more, so I gave him the amount in my second drawer. I gave him the dye pack and the recorded money as well as the contents of both drawers. He was a middle-aged man, about 35-40, wearing a red & white striped polo shirt, sunglasses, and a ballcap. He is approximately 5'1/2 feet tall, black man. He put the money in a black trash bag and exited the branch through the main entrance, then proceeded through the back parking lot. When I emptied my first drawer, he told me to give him more and kept saying, "Now!" He had a scruffy, whispery voice.

I do hereby swear and affirm that the above statement is true and correct and that it was given freely and voluntarily without fear of threat, offer of reward or coercion or intimidation of any kind. I do also hereby acknowledge receipt of a copy of this statement in its entirety.

Wachovia - N. Augusta

Location of Statement

Paul F. Jones
 Signature of Person Giving Statement

10/8/09 3:00 pm

Date and Time of Statement

[Signature]
 Witness of Statement

Sworn before me on 7.13.2011

[Signature]
 Notary Public - State of South Carolina

[Signature]
 Deputy Clerk





STATEMENT FORM

Page 1 of 1Case #: 19-036486Statement of: Larissa SettlesCity: [REDACTED]State: [REDACTED]Work Phone Number: [REDACTED]DOB: [REDACTED]Social Security Number: [REDACTED]

I was in the drive-through assisting a customer. I looked up and saw a man running across the parking lot. Then a teller up front told me that they were robbed. I looked up again and saw the red dye in the air just across the parking lot. I don't know if the man was in a car or walking. He was about 5'7, medium build, red & white polo shirt and a hat.



I do hereby swear and affirm that the above statement is true and correct and that it was given freely and voluntarily without fear of threat, offer of reward or coercion or intimidation of any kind. I do also hereby acknowledge receipt of a copy of this statement in its entirety.

Location of Statement: Wachovia - North Augusta, mainDate and Time of Statement: 3:00 pmSignature of Person Giving Statement: Larissa SettlesDate and Time of Statement: 3:00 pmWitness of Statement: [Signature]Sworn before me on: FILED 7.13.2001

Notary Public - State of South Carolina

[Signature]
[Signature]
 Deputy Clerk

My Commission Expires: P-2

RECEIVED

APR 15 2010

SOLICITOR



FILED

7.13.20011

Rei Rodard
J.C.P. & G.S.

Anita Knoepfle 50
Deputy Clerk