

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge

RECEIVED

SEP 18 2015

S.C. Supreme Court

BRANDON JABAR CHRISTIAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000123

APPENDIX

KATHRINE H. HUDGINS
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

KAREN RATIGAN
Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2011-GS-23-3395-3397

ORIGINAL

STATE OF SOUTH CAROLINA)
PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

BRANDON JABAR CHRISTIAN)
DEFENDANT)

April 17, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

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

HOWARD STEINBERG, ESQ.
Attorney for the State

BRIAN JOHNSON, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

BRANDON CHRISTIAN

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» > o < «

There were no exhibits.

Sentencing 14

Certificate of Reporter 15

1 THE COURT: All right.

2 THE CLERK: Your Honor, this is Indictment
3 number 2011-GS-37-233, The State vs. Brandon Jabar
4 Christian, Indictment for armed robbery, robbery while
5 armed or allegedly armed with a deadly weapon. And
6 possession of a weapon during the commission of a violent
7 crime. He is pleading to -- to both of those charges and
8 it is a true bill.

9 And the deferred Indictments are
10 2011-GS-23-3397, Indictment for attempted murder, he pled
11 to the same, it is a true bill. 2011-GS-23-3395,
12 Indictment for murder and possession of a weapon during
13 the commission of a violent crime. He pled to voluntary
14 manslaughter. And 2011-GS-23-3396, Indictment for armed
15 robbery, and he pled to the same. It also -- they are all
16 true bills.

17 Raise your right hand.

18 BRANDON CHRISTIAN, after being duly sworn,
19 testified as follows:

20 THE COURT: How many jail days does 'he get?

21 MR. STEINBERG: He's been in jail since July
22 20th of 2010, Your Honor. I don't think the numbers I
23 have here are correct. He's definitely been in jail since
24 July 20th of 2010.

25 THE COURT: All right.

EXAMINATION

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BY THE COURT:

Q Mr. Christian, in the last 24 hours have you had any drugs, alcohol or medication?

A No, sir.

Q Have you ever been treated for substance or mental illness?

A Yes, sir.

Q What have you been treated for?

A Psychosis, NOS and bipolar.

Q Who treats you?

A Doctor Martin.

Q And you're not supposed to be on medication?

A I am but the jail had took me off my medication.

Q Okay, what kind of medication?

A I was on Abilify and Wellbutrin.

Q All right. Does the fact that you are off your medication, does that impair your ability to understand what's going on?

A No, sir.

Q All right.

And, Mr. Johnson, any competency issues?

MR. JOHNSON: Not from my end, no, sir, Your Honor.

THE COURT: All right.

1 BY THE COURT:

2 Q Now, you're up here on two Indictments that are from
3 Oconee County. And you have an absolute right to
4 require The State to present these cases in Oconee
5 County. Do you want to waive your right to require
6 The State to do that so that you can proceed today on
7 these two charges?

8 A Yes, sir.

9 Q All right. This is Indictment 2011-GS-37-00233. And
10 the first count of that Indictment alleges that you
11 did in Oconee County, July 16, 2010, armed with a
12 deadly weapon or alleging you were, using a
13 representation of one, you took by force or
14 intimidation, money from the Plez-U Number Two
15 Stores. That carries a mandatory minimum of 10 to 20
16 years, it is a violent offense, 85 percent, no
17 parole. It's a most serious offense and convictions
18 for two or more most serious offenses entitles you to
19 be considered for life in prison without parole. Do
20 you understand that?

21 A Yes, sir.

22 Q Count two of that Indictment alleges that you did,
23 Oconee County, July 16th, 2010, while committing the
24 crime of armed robbery, you had in your possession a
25 firearm. That carries five years, do you understand

1 that?

2 A Yes, sir.

3 Q Now, understanding the nature of those charges and
4 the maximum possible punishment, how do you want to
5 plea?

6 A Guilty.

7 Q Anybody forced you in anyway or coerced you?

8 A No, sir.

9 Q Promised you anything or anything to get you to enter
10 that plea?

11 A No, sir.

12 Q All right. Do you understand you have an absolute
13 right -- you have an absolute right to take this case
14 to a trial by juror where you would be presumed
15 innocent, unless and until The State could prove you
16 guilty beyond a reasonable doubt of each and every
17 element of each offense that you're charged with.
18 You would have a right to confront and cross-examine
19 the witnesses and the evidence put up against you by
20 The State. You would have a right to compel in court
21 all relevant and competent evidence in your own
22 defense. Or you can remain silent and your silence
23 cannot be held against you and you can never be
24 compelled to incriminate yourself. Do you understand
25 all those rights?

1 A Yes, sir.

2 Q Do you want to waive all those rights to enter this
3 plea?

4 A Yes, sir.

5 Q Are you guilty?

6 A Yes, sir.

7 Q Are you totally satisfied with your lawyer?

8 A Yes, sir.

9 Q And have you had enough time to review the evidence
10 The State has against you?

11 A Yes, sir.

12 THE COURT: All right, tell me about the Oconee
13 case.

14 MR. STEINBERG: Thank you, Your Honor. On
15 July 16th of 2010 this Defendant went into the Plez-U
16 store on South Oak Street in Seneca. The Defendant was
17 wearing a blue ski mask and armed with a pistol. He
18 robbed the store of money. He then waived the gun and
19 threatened other victims. He discharged a round in the
20 store. He put the cash register in his pocket and
21 demanded car keys from a victim, then drove away. That
22 truck was recovered approximately a week later in
23 Greenville County. This Defendant's I.D. was found in the
24 vehicle. The Defendant did give a written confession to
25 this crime to the Seneca Police Department.

1 THE COURT: All right, is all that true?

2 MR. CHRISTIAN: Yes, sir.

3 THE COURT: All right. And does he have a prior
4 criminal history?

5 MR. STEINBERG: He was a juvenile at the time,
6 Your Honor. He did have a prior juvenile conviction from
7 2008 for armed robbery also from Oconee County.

8 THE COURT: Okay. All right. There's some
9 recommendation, what is that?

10 MR. STEINBERG: I'm sorry, Your Honor, he has a
11 larger record. He has a violation of drug laws, also in
12 juvenile court. And possession of stolen property, also
13 in juvenile court.

14 The recommendation, Your Honor, is that we
15 reduced the murder down to a voluntary manslaughter. That
16 all of his charges from both Greenville and Oconee run
17 concurrently. And that we would inform the Court that the
18 Defendant was willing to cooperate. His Co-defendant in
19 the shooting has since pled guilty. She was also a
20 juvenile. He was willing to cooperate and testify against
21 her.

22 THE COURT: All right. No sentence
23 negotiations?

24 MR. STEINBERG: No, sir, just that he did
25 cooperate.

1 THE COURT: Okay.

2 All right, what do you want to tell me?

3 MR. JOHNSON: Well, Your Honor, first of all,
4 I'd ask you not to consider the juvenile -- juvenile
5 conviction with regards to this plea. I ask you to
6 consider, I know you've already heard it, but I ask you to
7 consider as if he had no record considering he was a
8 juvenile. And that -- just also to kind of tell you the
9 age of this young man, he's 19 now. I believe he was 17
10 when this happened. So he's still very young. We'd ask
11 you to consider that fact in light of the sentencing. He
12 also believes that he previously, during these time
13 period, was abusing drugs as well as you heard some of his
14 mental health problems. So that's just a bad combination
15 or -- a bad -- bad combination and unfortunately we're
16 here before you today.

17 As far as the sentence is concerned, I know that
18 he, of course, is a very young man. And he, of course,
19 wants you to consider something on the minimum end of
20 things of around 10 or so. Of course, I ask you that the
21 Court show mercy and just remember he is a very young man.
22 And he did cooperate with The State as far as testimony.
23 He gave confessions in these incidents. And he's very
24 sorry that these things happened. My dealings with him, I
25 don't know that whether it's simply being behind bars or

1 whether it's -- he's simply in a good place, he's a very
2 nice young man and very friendly. I've had no problems
3 with him whatsoever.

4 And I do believe that this is someone who could
5 be rehabilitated. Because at some point we hope to have
6 him back in society and be a better person. Another thing
7 we'd like for you to consider, considering his former drug
8 problem, is maybe give him ATU program. That's something
9 that he would want. He understands he's going to be doing
10 a significant amount of time and so, why not? Let's try
11 to get that addressed as well. In any case, Your Honor,
12 we ask for the mercy of the Court at this time. And I'm
13 not sure --

14 You wish to say anything?

15 MR. CHRISTIAN: No, sir.

16 THE COURT: Tell me something about the facts, I
17 don't remember this one.

18 MR. STEINBERG: Yes, sir, Your Honor. On
19 July 17th of 2010, shortly after the Oconee County charge,
20 this Defendant and another individual entered a Quick Stop
21 in Greenville County. They went to a drink cooler, they
22 came back to the counter where the proprietor, Kalpesh
23 Patel, was working. The Defendant and the other
24 individual then pulled out guns and demanded money from
25 the cash registerer. Mr. Patel complied but they wanted

1 more money. Mr. Patel replied that he had given them all
2 the money.

3 The Defendant and the individual then fired the
4 guns at Mr. Patel at a very close range. Mr. Patel was
5 shot in the abdomen, his right forearm, his left eye and
6 then they fled the scene. Mr. Patel identified
7 Mr. Christian as one the two men. Mr. Patel is not here,
8 he did ask us to inform him of what Your Honor's decision
9 was. He is concerned with this case but has said that he
10 has forgiven Mr. Christian but he is still concerned about
11 how this case is going to go forward.

12 As to the shooting involving the murder charge,
13 on July 19th of 2010, two days after the prior shooting,
14 the police responded to Crest Lane in Greenville County in
15 response to the shooting Victim, Tyron Lamont Austin,
16 who's mother is present. He was found dead in the living
17 room of his apartment with several crack rocks, a bag of
18 marijuana and powder cocaine in close proximity to his
19 body. It was acknowledged that this was a drug deal gone
20 wrong, Your Honor. There had been several witnesses to
21 come forward and place this Defendant and the Victim and
22 the Co-defendant in the days and hours before this murder
23 talking together, essentially, plotting a burglary, which
24 became robbery, which became a murder.

25 The Victim's next door neighbor heard the

1 gunshots and came outside. He saw this Defendant and the
2 Co-defendant, Tiffany White, running from the house. As
3 part of this plea agreement, Mr. Christian has admitted
4 his guilt in writing, his role in this case to include
5 that he did intend to commit a burglary but it did become
6 a robbery which resulted in a shooting.

7 THE COURT: Who was the trigger man?

8 MR. STEINBERG: He was the trigger man, Your
9 Honor.

10 THE COURT: What happened to the Co-defendant?

11 MR. STEINBERG: The Co-defendant pled guilty to
12 conspiracy to commit burglary. She received a straight-up
13 plea. She received time served and probation last week.
14 The State has no offer on her other than that, the
15 reduction. She was also, I think she was 15 or 16 at the
16 time of the crime.

17 THE COURT: All right, anything from the Victim?
18 Victim representative?

19 VICTIM REPRESENTATIVE: My name is -- Austin.
20 I'm Tyron's mother --

21 THE COURT REPORTER: Judge, I can't hear her.

22 THE COURT: Wait. Ma'am, I need you to speak up
23 a little bit.

24 VICTIM REPRESENTATIVE: My name is Bernitta
25 Austin, I'm Tyron Austin's mother, the Victim. I just

1 want him to get as much time as y'all can give him.
2 Because he's going to get out one day and I hope that when
3 he do get out he don't go and kill somebody else's
4 daughter or son. Because he's responsible for what he
5 did. He had time enough to think before he went in there
6 and did what he did. My son's dead now.

7 THE COURT: All right.

8 Anything else?

9 VICTIM REPRESENTATIVE: No, sir.

10 MR. STEINBERG: Nothing from The State, Your
11 Honor.

12 MR. JOHNSON: That will be all from the Defense,
13 Your Honor.

14 THE COURT: Anything you want to tell me?

15 MR. CHRISTIAN: No, sir.

16 SENTENCING

17 THE COURT: All right. Well, that's just
18 tragic. I'm going to give him a little bit of credit for
19 what he's done. I'm going to give him 25 on the voluntary
20 manslaughter, 20 on the attempted murder, 20 on the
21 Greenville armed robbery, 20 on the Oconee armed robbery
22 and five on the pistol charge. They're all to run
23 concurrent.

24 Good luck to you.

25 MR. STEINBERG: Thank you, Your Honor.

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MR. JOHNSON: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

WITNESSES

A. L. Bailey

Greenville County Sheriff's Office

7/20/2010

DOCKET NO. 2011-GS-23-
HLS

003395

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2011

THE STATE

vs.

BRANDON JABAR CHRISTIAN

ARREST WARRANT NUMBER

COUNT I - 1481510 and COUNT II - 1481513

ACTION OF GRAND JURY

TRUE BILL

Collyer

Foreperson of Grand Jury

VERDICT

Sealed

0217
0316 and 0549

Indictment for

**MURDER and POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME**

VIOLATION § 16-03-0010 and § 16-23-0490

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER and POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **MAY 10 2011** the Grand Jurors of Greenville

County present upon their oath:

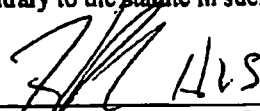
COUNT I

That BRANDON JABAR CHRISTIAN did in Greenville County, on or about the 19th day of July 2010, unlawfully and with malice aforethought kill TYWAN LAMONT AUSTIN by means of shooting the victim with a handgun, and that TYWAN LAMONT AUSTIN died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That BRANDON JABAR CHRISTIAN did in Greenville County, on or about the 19th day of July 2010, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: MURDER. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

MF

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

7/20/2010

DOCKET NO. 2011-GS-23-
HLS

003396

The State of South Carolina

County of Greenville

0

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE

v.s.

BRANDON JABAR CHRISTIAN

ARREST WARRANT NUMBER

1481537

ACTION OF GRAND-JURY

THE STATE

Bobby D. ...

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

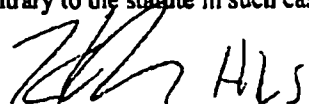
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **MAY 10 2011** the Grand Jurors of Greenville
County present upon their oath:

That BRANDON JABAR CHRISTIAN did in Greenville County, on or about the 17th day of July 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency from the person or presence of an employee of Quick Stop. This is in violation of §16-11-330 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.


SOLICITOR

MF
WITNESSES

Michael Fortner

Greenville County Sheriffs Office

7/20/2010

DOCKET NO. 2011-GS-23- 003397
HLS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2011

THE STATE

VS.

BRANDON JABAR CHRISTIAN

ARREST WARRANT NUMBER

1491538

ACTION OF GRAND JURY

TRIPLEX
Bobby D. Jamm

Foreperson of Grand Jury

VERDICT

3410

Indictment for

ATTEMPTED MURDER

VIOLATION § 16-03-0029

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Brandon Jabar Christian)
 AKA: _____)
 Race: B Sex: M Age: 18)
 DOB: _____ SS#: _____)
 Address: AD)
 City, State, Zip: GREENVILLE, SC 29611)
 DL#: _____ SID#: _____)
 *CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Voluntary Manslaughter

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2011GS2303395
 A/W#: 1481510
 Date of Offense: 7/19/2010
 S.C. Code §: 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

In violation of § 16-03-50 of the S.C. Code of Laws, bearing CDR Code # 0217
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: Howard Steinberg 14082 Brandon Christian 70522
 Steinberg, Howard SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 638 Days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

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

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

DEFER SENTENCE

Clerk of Court/ Deputy Clerk Paul B. Wiseman
 Court Reporter: M. Dignelano
 SCCA/217 (03/2011)

Presiding Judge 20 (W. Miller)
 Judge Code: 2130
 Sentence Date: 5-16-11
 Sentence Date: 4-17-12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2011GS2303396

Brandon Jabar Christian

A/W#: 1481537

AKA:

Date of Offense: 7/17/2010

Race: B Sex: M Age: 18

S.C. Code §: 16-11-0330(A)

DOB: SS#

CDR Code #: 0139

Address:

City, State, Zip: GREENVILLE, SC 29611

SENTENCE SHEET

DL#: SID#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Howard Steinberg, SC Bar# 14082 Defendant Brandon Christian Attorney for Defendant 70522 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 6.38 days The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (DUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.3 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

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

Clerk of Court/ Deputy Clerk Paul D. Wierman Court Reporter: m. Dequame SCCA/217 (03/2011)

Presiding Judge Judge Code: 2130 Sentence Date: 5-16-11 Sentence Date: 4-17-12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Brandon Jabar Christian
AKA:
Race: B Sex: M Age: 18
DOB: 2 SS#: 3400
Address:
City, State, Zip: GREENVILLE, SC 29611
DL#: SID#:

INDICTMENT/CASE#: 2011GS2303397
A/W#: 1481538
Date of Offense: 7/17/2010
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder

CONVICTED OF or PLEADS

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Steinberg, Howard SC Bar# 14082 Defendant
Attorney for Defendant SC Bar# 70522

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 638 Days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with columns for description, amount, and total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-3-2942(J) (Vehicle Assessment) \$40/ca, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

SENTENCING 4-17-12
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation. DEFER SENTENCE

Clerk of Court/ Deputy Clerk Paul B. Wislenski
Court Reporter: M. Duquenois
SCCA/217 (03/2011)

Presiding Judge ED (W. M. G.)
Judge Code: 2130
Sentence Date: 3-16-11
Sentence Date: 4-17-12

24

STATE OF SOUTH CAROLINA)
 COUNTY OF Oconee)
 STATE VS.)
Brandon Jabar Christian)
 AKA: _____)
 Race: _____ Sex: M Age: 18)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: Greenville, SC 29602)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3700233
 A/W#: J453335
 Date of Offense: 7/16/2010
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Robbery / Armed Robbery. robbery while armed or allegedly armed with a deadly weapon Court 1002

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: David Rhys Wagner SC Bar# 6068 Defendant Y. [Signature] Attorney for Defendant 739916 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 63 8 DAYS
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$	_____
§ 14-1-206 (Assessments 107.5 %)		\$	_____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	_____
§ 56-5-2995 (DUI Assessment)	\$12	\$	_____
§ 56-1-286 (DUI Breath Test)	\$25	\$	_____
Proviso 47.9 (Public Def/Prob)	\$500	\$	_____
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	_____
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	_____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	_____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	<u>5.00</u>
3% to County (if paid in installments)		\$	<u>3.90</u>
TOTAL		\$	<u>133.90</u>

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: _____
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2130
 Sentence Date: 4-17-12

Plea taken in Greenville

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS ²⁵

COUNTY OF Oconee)
STATE VS.)

INDICTMENT/CASE#: 2011GS3700233
A/W#: J453338
Date of Offense: 7/16/2010
S.C. Code § : 16-23-0490
CDR Code #: 0549

Brandon Jabar Christian)
AKA: _____)
Race: _____ Sex: M Age: 18)
DOB: _____ SS#: _____)
Address: _____)
City, State, Zip: Greenville, SC 29602)
DL#: _____ SID#: _____)

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death Count 2

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Léwd Act)

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

ATTEST: David Rhys Wagner 64068 Bradley 73996
Wagner, David Rhys SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 639 DAYS
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____	
*Fine: _____	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 56-1-286 (DUI Breath Test)	\$25 \$ _____
Proviso 47.9 (Public Def/Prob)	\$500 \$ _____
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150 \$ _____
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
Proviso 90.5 (SCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk Randy Whitehead
Court Reporter: _____
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 4-17-12

(Plea taken in Greenville)

DOCKET NO. 2011GS37 **00233**

The State of South Carolina
County of Oconee

WITNESSES

JONES, R., Seneca Police Dept

27 *[Signature]*

COURT OF GENERAL SESSIONS

MAR 14 2011
Term

THE STATE

VS.

Brandon Jabar Christian

ARREST WARRANT NUMBER

J453335, **J453338**

ACTION OF GRAND JURY

True Bill

Denise B. Alder
Foreperson of Grand Jury

MAR 14 2011

VERDICT

Foreperson of Petit Jury
Date:

2011 MAR 15 P 2:42

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

Armed Robbery, Robbery While Armed Or
Allegedly Armed With A Deadly Weapon
SC Code: 16-11-0330(A)
CDR Code: 0139
POSSESSION OF A WEAPON DURING VIOLENT
CRIME
SC Code: 16-23-0490
CDR Code: 0549

Indictment for

DRW

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on MAR 14 2011, the Grand Jurors of Oconee County present upon their oath:

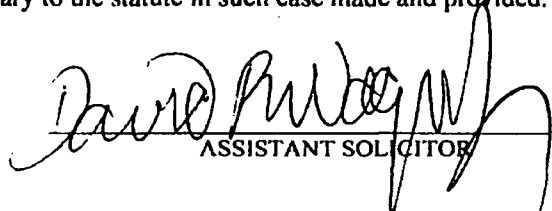
**Armed Robbery, Robbery While Armed Or Allegedly Armed With A
 Deadly Weapon**

That **Brandon Jabar Christian** did in Oconee County, on or about **July 16, 2010**, while armed with a deadly weapon, to wit: a firearm, or while alleging either by action or words he/she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: money from the person or presence of Plez U #2 Stores. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

POSSESSION OF A WEAPON DURING VIOLENT CRIME

That **Brandon Jabar Christian**, did in Oconee County on or about **July 16, 2010**, while committing the crime of Armed Robbery, a crime of violence, have in his possession a firearm, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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


 ASSISTANT SOLICITOR

FORM 5

STATE OF SOUTH CAROLINA)
County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

BRANDON JABAR CHRISTIAN 350508)
Full name and prison number (if any) of Applicant)

2012-CP-23- 06891

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2012 OCT 25 PM 2:13

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention KIRKLAND R/E 4344 Broad River Road, Columbia SC, 29210

2. Name and location of Court which imposed sentence GREENVILLE COUNTY Courthouse
305 E. NORTH STREET, GREENVILLE SC, 29601-2120

3. Name(s) of co-defendant(s) (if any) TIFFANY RENEEA WHITE

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 0139, 0116, 3410, 0549, 16-11-330

(b) _____

(c) _____

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

(a) April 17, 2012 25 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty I was sentenced to 25 years.

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ to (7), list:

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) The reason for not appealing is because once you put in a plea of guilty there is →

"Reverse Side"

14 Sentence back I wish for my consecutive time to stay concurrent with the original sentence.

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) GUILTY PLEA "WAS NOT" KNOWINGLY OR VOLUNTARILY

(c) _____

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

(a) I BRANDON JABAR CHRISTIAN BROUGHT TO MY PUBLIC DEFENDER ^{"Reverse Side" →}

(b) I BRANDON JABAR CHRISTIAN WAS NOT NOTIFIED BY ATTORNEY, PROSECUTOR ^{"Reverse Side" →}

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. NO
ii. NO
iii. NO
iv. NO

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

i. NO
ii. NO
iii. NO

MORE THAN ONES THAT I WOULD LIKE TO FILE FOR A MOTION OF DISMISSAL
BUT HE DID NOT DO SO.

BRANDEN JABAR CHRISTIAN REGIN) NOT ONE BUT THREE DIFFERENT ATTORNEYS AND
HIS NOT NOTIFIED ABOUT IT AT ANY TIME.

BRANDEN JABAR CHRISTIAN DID SIT IN THE COUNTY JAIL MORE THAN 120 DAYS WITHOUT BEING
INDICATED BY THE GRAND JURY.

(b) OR ANYBODY ELSE ABOUT PLEADING GUILTY TO ANYONE OF MY CHARGES.

AFTER I PLEADED GUILTY FOR MY CHARGES I GOT TO COURT ABOUT ONE YEAR LATER TO GET
SENTENCED AND THE JUDGE MADE ME PLEA GUILTY AGAIN.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No, this is my first file for Post-Conviction Relief.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) The reason why such grounds has not previously been presented is because my ^{"reverse side"}
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? NO
- (b) your trial, if any? NO
- (c) your sentencing? NO
- (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 applications with respect to this conviction, which you filed? NO

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

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

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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Public defender told me that Filing for a motion of dismissal means going to trial. And I told
"KRIS SCALZO" to put it in anyway but he did not do so.

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

I BRANTON CHRISTIAN WISH TO TAKE THIS RELIEF INSTEAD OF A SUPREME COURT BECAUSE I
DON'T THINK GENERAL SESSIONS WOULD UNDERSTAND MY REASON FOR POST-CONVICTION RELIEF. I THINK
25 YEARS IS TOO MUCH FOR NO EVIDENCE IN THIS CASE. AND IF I DO GIVE SOME OF ^{"REVERSE"}

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

YES I DID HAVE OTHER CHARGES IN ANOTHER COUNTY BUT THEY WERE ROLLED TOGETHER
WITH MY CHARGES IN GREENVILLE COUNTY.

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of GREENVILLE)

VERIFICATION

I, BRANTON JABAR CHRISTIAN, 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.

Branton Christian

SWORN to and subscribed before me this 28
day of June, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires
October 8, 2014

My Commission Expires: _____

appeal your case. That's why I am filing for my post-conviction relief.

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

I, BRANDON JABAR CHRISTIAN, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Brandon Christian
Applicant

SWORN or affirmed to and subscribed before me this
28th day of June, 2012.

[Signature]
Notary Public
My Commission Expires

My Commission Expires: October 8, 2014

ARREST WARRANT

1-481510

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

THE STATE

1-10-112226

against

Brandon Jabar Christian

Address: Street

Greenville, SC 29609.

Phone: SSN:

Sex: M Race: B Height: 5 8 Weight: 120

DL State: SC DL #:

DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: A L Bailey *15 - 0015

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant BRANDON JABAR CHRISTIAN on 7/19/2010

SM B syc / M. A. 101382
Signature of Constable/ Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

40 Greenville, SC 29601-2120

DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

A L Bailey *15

Personally appeared before me the affiant Brandon Jabar Christian

being duly sworn deposes and says that defendant Brandon Jabar Christian

did within this county and state on or about 07/19/2010

in the following particulars: County/ Municipality of Greenville

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the crime set forth and that the affiant an investigator with the Greenville County Sheriff's Office has above offense. On July 19, 2010, Brandon Jabar Christian shot and did occur at 2211 street in the City of Greenville, South Carolina. The death of Tywan Lamont Austin by shooting him with a handgun.

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of Greenville

Greenville

Affiant's Address 4 M. Street Greenville, SC 29601.

Affiant's Telephone (864) 777-3384

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OF ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/19/2010

did violate the criminal laws of the State of South Carolina (or ordinance of Greenville) as set forth below:

County/ Municipality of Greenville

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 07/19/2010

SM O'Brien (L.S.)
Signature of Issuing Judge

Ernest Michael O'Brien
Judge Code: 7185

Address 20 Magee St. Greenville, SC 29601.

Telephone

Issuing Court: Magistrate Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY

Form Approved by
8 C Admin. Code
April 21, 2008
SCSA 118

ARREST WARRANT

1-481537

STATE OF SOUTH CAROLINA

County: Greenville Municipality of

THE STATE 01-2010-111527

Brandon Jabbar Christian

against

Address: d Sheet

Greenville, SC 29609.

Sex: M Race: B Height: 5 8 Weight: 120

DL State: DL #: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: Michael Fortner - 0129

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

CERTIFIED FOR SERVICE in the County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law.

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant BRANDY CHRISTINA on 7/20/10

S.M.R. SYR

RETURN WARRANT TO:

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA County/ Municipality of Greenville

Personally appeared before me the affiant Michael Fortner

being duly sworn deposes and says that defendant Brandon Jabbar Christian

did within this county and state on or about 07/17/2010

State of South Carolina (or ordinance of County/ Municipality of Greenville

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Affiant, an investigator with the Greenville County Sheriff's Office, has a statement from the victim. In this statement, the victim states that the defendant entered the Quick Stop and approached the register with some items to purchase. Once at the register, the defendant pulled a handgun and demanded money from the victim. The victim gave the defendant an undisclosed amount of cash. The defendant then left the scene. The victim identified the defendant through a six picture photo line-up. This incident took place at 700 Poinsett Hwy in Greenville, SC which is within Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of Greenville

Greenville

Affiant's Address: 4 N. Street Greenville, SC 29601

Affiant's Telephone: (864) 467-5388

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/17/2010

defendant Brandon Jabbar Christian

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Greenville

as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are hereby directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant is being delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 07/20/2010

Judge's Address

(L.S.)

Judge's Telephone

Issuing Court: Magistrate

Magistrate

Municipal

Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY

Form Approved by S.C. Attorney General April 21, 2003 BCCA 518

ARREST WARRANT
1-481538

STATE OF SOUTH CAROLINA
 County/ Municipality of
Greenville

THE STATE 01-2010-0422
against

Brandon Jabbar Christian
Address: [redacted] id Street
Greenville, SC 29609.

Phone: [redacted] SSN: [redacted]
Sex: M Race: B Height: 5 8 Weight: [redacted]
DL State: [redacted] DL #: [redacted]

DOB: [redacted] Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: Michael Fortner - 0129

Offense: Murder / Attempted Murder
Offense Code: 3410
Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of [redacted]
The address is to be arrested and brought before me to be dealt with according to the law

Date: _____
Signature of Judge _____

A copy of this arrest warrant was delivered to defendant
BRANDON CHRISTIAN
7/17/2010
Signature of Constable or Enforcement Officer
D.V. B. SIV

RETURN WARRANT TO:
Greenville General Sessions
305 E. North Street
Greenville County Courthouse
4 Greenville, SC 29601-2120

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
 County/ Municipality of
Greenville

Personally appeared before me the affiant Michael Fortner
being duly sworn deposes and says that defendant Brandon Jabbar Christian
did within this county and state on or about 07/17/2010 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Greenville)

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Affiant, an investigator with the Greenville County Sheriff's Office, has a statement from the victim states that the defendant entered the Quick Stop and approached the register with some items to purchase. Once at the register, the defendant pulled a handgun and demanded money from the victim. The victim gave the defendant an undisclosed amount of cash. During the course of this robbery, the defendant shot the victim four separate times with his handgun with the intent to kill the victim. The victim was struck in the abdomen twice, once in the right abdomen and once in the face. This was done with malice aforethought. The defendant then left the scene. The victim identified the defendant through a six picture photo line-up. This incident took place at 700 Poinsett Hwy in Greenville, SC which is within Greenville County.

Signature of Affiant
Affiant's Address: 4 [redacted] Street
Greenville, SC 29601
Affiant's Telephone: (864) 675-5388
ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
If appearing from the above affidavit that there are reasonable grounds to believe that on or about 7/17/2010 defendant Brandon Jabbar Christian did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me on 07/20/2010
Judge's Address _____
(L.S.) _____

Signature of Issuing Judge
Lebona T. Sitton
Judge Code: 507 5081
Issuing Court: Magistrate Municipal Circuit
DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT
1-481539

STATE OF SOUTH CAROLINA
 County/ Greenville
 Municipality of

THE STATE **01-2010-111627**
 against

Address: **Street**
Greenville, SC 29609

Phone: **Sex: M Race: Height: 5' 8 Weight: 120**
 SSN: **DL #: Agency ORI #: SC0230000**

Prosecuting Agency: **Greenville County Sheriff's Office**
 Prosecuting Officer: **Michael Fortner - 0129**
 Offense: **Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death**

Offense Code: **0549**
 Code/Ordinance Sec.: **16-23-0490**

This warrant is **CERTIFIED FOR SERVICE** in the **County/ Municipality of**
 The accused is to be arrested and brought before me to be dealt with according to the law.

Date: _____
 Signature of Judge _____

RETURN
 A copy of this arrest warrant was delivered to defendant **BRANDON CHRISTIAN** on **7/20/10**

RETURN WARRANT TO:
 Greenville General Sessions
 305 E. North Street
 Greenville County Courthouse
 Greenville, SC 29601-2120

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
AFFIDAVIT

Personally appeared before me the affiant **Michael Fortner** being duly sworn deposes and says that defendant **Brandon Jehar Christian** did within this county and state on or about **07/17/2010** violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of **Greenville**) in the following particulars:

DESCRIPTION OF OFFENSE **Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death**

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Affiant, an investigator with the Greenville County Sheriff's Office, has a statement from the victim. In this statement, the victim states that the defendant entered the Quick Stop and approached the register with some items to purchase. Once at the register, the defendant pulled a handgun and demanded money from the victim. The victim gave the defendant an undisclosed amount of cash. The defendant then left the scene. Armed robbery is defined as a violent crime in 16-1-60 of the South Carolina Code of Laws. The victim identified the defendant through a six picture photo line-up. This incident took place at 700 Poinsett Hwy in Greenville, SC which is within Greenville County.

Signature of Affiant **Michael E Fortner**

STATE OF SOUTH CAROLINA
 County/ Municipality of **Greenville**
 Affiant's Address **4 Wagon Street Greenville, SC 29601**
 Affiant's Telephone **(864)467-5388**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

if appearing from the above affidavit that there are reasonable grounds to believe that on or about **7/17/2010** defendant **Brandon Jehar Christian** did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of **Greenville**) as set forth below:

DESCRIPTION OF OFFENSE: **Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death**
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
 Sworn to and subscribed before me on **07/20/2010**

Judge's Address _____
 Judge's Telephone _____
 Issuing Court: Magistrate Municipal Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT
J-453335

STATE OF SOUTH CAROLINA
 County/ Municipality of
SENECA

THE STATE
against

CHRISTIAN, BRANDON JABAR

Address: ST
GREENVILLE SC

Phone: 0 SSN: 200

Sex: M Race: B Height: 510 Weight: 179

DL State: DL#: Agency ORI #: SC0370100

DOB: 2 Prosecuting Agency: CITY

Prosecuting Officer: RORY JONES

Offense: ARMED/ATTEMPTED ROBBERY

Offense Code: 16-11-330

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of
OCONEE Greenville The Accused

is to be arrested and brought before me to be
dealt with according to law.

Date: 8/25/10 Signature of Judge [Signature] (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant BRANDON SABAR CHRISTIAN

on 12-2-10

Signature of Constable/Law Enforcement Officer [Signature]

RETURN WARRANT TO:

DANNY SINGLETON

225 E. N. 1ST STREET

SENECA SC 29678

STATE OF SOUTH CAROLINA
 County/ Municipality of
SENECA

Personally appeared before me the affiant JONES, RORY
being duly sworn deposes and says that defendant CHRISTIAN, BRANDON JABAR

did within this county and state on 07/16/2010

State of South Carolina (or ordinance of SENECA County/ Municipality of SENECA)
violates the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE:

ARMED/ATTEMPTED ROBBERY WHILE ARMED WITH DEADLY WEAPON - 16-11-330

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, BRANDON JABAR CHRISTIAN, WHILE ARMED WITH A FIREARM, DID COMMIT A LARCENY BY TAKING
MONEY FROM PLEZ-U NO. 2, BY USE OF THREAT OR FORCE. THIS DID OCCUR AT 601 S. OAK STREET WITHIN THE
CITY OF SENECA AND THERE IS A WRITTEN REPORT ON FILE WITH THE SENECA POLICE DEPARTMENT, CASE NO.
10001055.

Signature of Affiant [Signature]

Affiant's Address: 205 N DEPOT ST

Affiant's Telephone: 864-885-2718

SENECA, SC

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
defendant CHRISTIAN, BRANDON JABAR

on 07/16/2010 did violate the criminal laws of the State of South Carolina (or ordinance of SENECA) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED/ATTEMPTED ROBBERY WHILE ARMED WITH DEADLY WEAPON - 16-11-330

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 8/25/10 Judge's Address 225 E. N. 1ST STREET

Signature of Issuing Judge [Signature] (L.S.) Judge's Telephone 864-885-2731

Judge Code: 421 Issuing Court Municipal Circuit

DEFENDANT COPY

COPY

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST FOR VISITING PRIVILEGES

45

After completing this form mail to:
Central Visitation Center
SCDC
3765-B Leeds Avenue
Charleston, SC 29405

INMATE NAME _____

INMATE SCDC # _____

WHAT IS YOUR RELATIONSHIP TO THIS INMATE? _____
(I am the inmate's: Father, Mother, Brother, Sister, Child, Friend, etc.)

Please read the following instructions carefully: The ONLY minors (under 18 years old) that may apply to visit are the inmate's sons/daughters, stepchildren, sisters, brothers, grandchildren and step grandchildren as listed on his/her relative screen during intake or verified by a long form birth certificate. **NOTE:** Minor nieces and nephews are NOT eligible until after an inmate has been incarcerated for at least three (3) consecutive years and meets other specific criteria. (See visitation rules and regulations.)

The inmate named above has requested that you be approved for visitation privileges with him/her within the South Carolina Department of Corrections (SCDC). In order for your application to be considered, you must provide certain information. If you do not furnish this information, the application will not be processed. (NOTE: Your social security number is only used for identification. If you do not wish to provide your social security number, you must write the Central Visitation Center and request SCDC Form 19-128). If you have any questions you may call the Visitation Hot Line at 803-896-1838 and leave a message.

SOCIAL SECURITY NUMBER: - - (Must be legible - print carefully)

LEGAL NAME: _____
Last First Middle

RACE: _____ SEX: M F DATE OF BIRTH: / / AGE: _____

COMPLETE HOME ADDRESS: _____
(street address as shown on your picture ID.)

CITY: _____ STATE: ZIP CODE:

PHONE NUMBER: - -
(Area Code)

DRIVERS LICENSE or state ID NUMBER: _____ STATE OF ISSUE:

HEIGHT: _____ WEIGHT: _____ HAIR COLOR: _____ EYE COLOR: _____

Please answer the following questions: Each block must be checked yes or no or the application will be considered incomplete. Falsifying any information will be grounds for denial of the application.

1. Are you currently or have you ever been employed or performed contract or volunteer services for the South Carolina Department of Corrections? (If the answer is yes, where? _____)

YES NO

(NOTE: If you answered yes to question 1, you should be aware that there are a number of restrictions on current and former employee visits to inmates. Please see the attached SCDC "Rules for Visitors" for more information.)

2. Have you ever been an inmate with the South Carolina Department of Corrections or any other state/federal correctional institutions?

YES NO

(NOTE: If you answered yes to question 2, you will be considered to visit only if you are an immediate family member and listed on his/her relative screen. If you answered yes to this question and you are not an immediate family member, you will be disapproved to visit.)

3. Are you presently on parole, probation, or other supervision by either the S.C. Department of Probation, Parole, and Pardon Services, or any other state or federal agency?

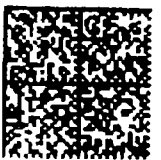
YES NO

If you answered yes to question 3, and you are not an immediate family member, you will be disapproved to visit. If you answered yes to question 3, you must attach to this form written authorization (on official letterhead) from your supervising agency to visit this inmate. This will still require review by the respective warden. (OVER)

Brabbu Christian # 350508 AIF 26

Mailroom

Kirkland Correctional Institution
434 Broad River Road
Columbia, S.C. 29210

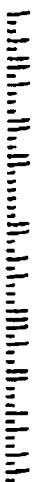


UNITED STATES POSTAGE
FIRST CLASS
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\$ 00.850
OCT 03 2012

KCI MAILROOM
OCT 03 2012

Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville SC 29601

2560132190



LEGAL MAIL ONLY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-6891
COUNTY OF GREENVILLE)	
)	
Brandon Jabar Christian,)	
S.C.D.C. No. 350508,)	
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed October 25, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the May 2011 term of the Greenville County Grand Jury for murder (2011-GS-23-3395, count 1), possession of a weapon during the commission of a violent crime (2011-GS-23-3395, count 2), armed robbery (2011-GS-23-3396), and attempted murder (2011-GS-23-3397). Christopher Scalzo, Esquire and Nihar M. Patel, Esquire, represented the Applicant.

On May 16, 2011, the Applicant pled guilty to voluntary manslaughter, armed robbery, and attempted murder. The Honorable Edward W. Miller deferred sentencing to a later date. On April 17, 2012, Judge Miller levied concurrent sentences of twenty-five years for voluntary manslaughter, twenty years for armed robbery, and twenty years for attempted murder. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The plea and sentencing transcripts will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.
 - a. Attorney failed to file a motion for dismissal.
2. Involuntary guilty plea.
 - a. Applicant was not notified about changes in his assigned attorney.
 - b. Applicant was not timely indicted.
 - c. Applicant contends he had to plea guilty twice.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An

Applicant 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 Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d

171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By: 
Attorneys for Respondent

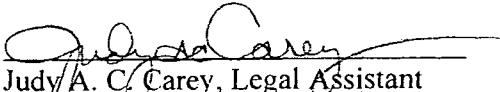
May 2, 2013

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
	)	2012-CP-23-6891
)	
BRANDON JABAR CHRISTIAN, 350508.)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

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

Brandon Jabar Christian, 350508
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 2nd day of May, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	Case No(s) .: 2012CP2306891
)	
Brandon Christian,)	
)	
Applicant,)	
)	
-VS-	)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent)	

October 21, 2014
 Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

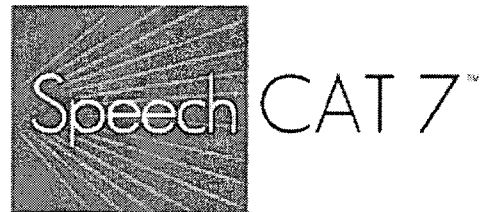
A P P E A R A N C E S:

KAREN RATIGAN, Esquire
 Attorney for Respondent

MILLS ARIAIL, Esquire
 Attorney for Applicant

Teresa B. Johnson
 Certified Verbatim Reporter
 P.O. Box 2812
 Greenville, S.C. 29602

Records are
 taken and
 produced via



I N D E XDIRECT CROSS REDIRECT RECROSS**PLEA RECONSTRUCTION****STATE WITNESSES:**

Chris Scalzo

by Ms. Ratigan 7

Howard Steinberg

by Ms. Ratigan 15

Brandon Christian

by Ms. Ratigan 20

POST-CONVICTION RELIEF HEARING**APPLICANT WITNESSES:**

Brandon Christian

by Mr. Ariail 25

STATE WITNESSES:

Chris Scalzo

by Ms. Ratigan 35

by Mr. Ariail 37

Brian Johnson

by Ms. Ratigan 39

Certificate of Reporter 44

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>
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APPLICANT EXHIBITS

A-1	Letter - Juvenile Parole Board	31
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RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

C-1	Letter - Court Reporter	5
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Remarks

1
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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 21st day of October, 2014 at approximately 3:55 p.m.)

MS. RATIGAN: May it please the Court, Your Honor?

THE COURT: Yes.

MS. RATIGAN: This is the case of Brandon Christian versus the State of South Carolina. The docket is 2012-CP-23-6891. Mr. Christian was indicted for Murder, Possession of a Weapon during the Commission of a Violent Crime, Armed Robbery and Attempted Murder. He pled guilty on May 16th of 2011 to Voluntary Manslaughter, Armed Robbery and Attempted Murder. He was represented by Mr. Scalzo.

At that time, Judge Miller deferred sentencing to a later date. On April 17th of 2012, he appeared for sentencing. He received 25 years for Voluntary Manslaughter, 20 years for Armed Robbery and 20 years for attempted Murder. On that same date, he also entered guilty pleas to two Oconee county charges and received 20 years for armed robbery and five years for the weapons charge. He did not file an appeal.

1 Your Honor, I mentioned earlier today that
2 we do not have a guilty plea transcript in this
3 case. I'm showing Mr. Ariaail a letter. I'd ask
4 that this is marked as a Court's Exhibit. It is
5 a letter February 12th of 2014 from a Court
6 Reporter at Court Administration that states
7 that the Court Reporter provided -- she's no
8 longer at Court Administration. The tape she
9 provided on this date in question, uh, it was
10 blank. So we have no guilty plea transcript.
11 I'd ask that be a Court Exhibit.

12 **THE COURT:** All right.

13 **(WHEREUPON,** Court's Exhibit 1 is marked for
14 identification purposes.)

15 **MS. RATIGAN:** Your Honor, there's really
16 no way, uh, -- there's no right way or wrong
17 way to proceed at this point. If we were to
18 proceed without attempting to construct the
19 plea offer, what would invariably happen is
20 when this case gets appealed, the Office of
21 Appellate Defense would file a motion to
22 reconstruct and the court would probably remand
23 it to try to be reconstructed. So what I've
24 been doing is having a kind of preemptive
25 reconstruction, getting all the parties

Remarks

1 together and basically doing the PCR hearing
2 and then a reconstruction or vice versa. Just
3 to make the record as thorough as possible
4 while we're all still here and have a better
5 memory and have our files rather than
6 potentially having to do that in the future.

7 I talked to Mr. Ariail about doing
8 reconstruction. They've also got the Solicitor
9 here as well as both his plea attorney and his
10 sentencing attorney. So if it meets with Your
11 Honor's -- if it's okay with you, we'd like to
12 do both today. The order of which would be at
13 your preference. We could either attempt to
14 reconstruct the record first and then get into
15 the guilty, uh, the PCR issues or get into the
16 PCR issues and then reconstruct. Whatever is
17 Your Honor's preference.

18 **THE COURT:** All right. Uh, first, this
19 letter from Harriett Bennett dated February
20 12th, 2014 made Exhibit number 1. I do want to
21 reconstruct the plea transcript as best as we
22 can. I'd like to do it first just so that I've
23 got some framework to consider the PCR.

24 **MS. RATIGAN:** Okay. Again, Your Honor,
25 this is one of those things where Supreme Court

1 likes to remand things to be reconstructed but
2 they don't exactly tell us how to do it. So I
3 will proceed with the method that I usually use
4 which is I generally cold call each of the
5 parties that were there that day and ask the
6 same questions just to see if anyone remembers
7 anything specific or if it was a roped guilty
8 plea. With that in mind, first, I will call Mr.
9 Scalzo.

10 **THE CLERK:** Mr. Scalzo, please your left
11 hand on the Bible and raise your right hand.

12 **CHRIS SCALZO**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please state your
15 full name for the record.

16 **THE WITNESS:** Christopher Scalzo.

17 **DIRECT EXAMINATION**

18 **BY MS. RATIGAN:**

19 **Q** Mr. Scalzo, do you recall representing Mr.
20 Christian on these charges?

21 **A** I do.

22 **Q** At the outset, do you have any independent
23 recollection of the guilty plea from May 16th, 2011?

24 **A** The actual hearing, no, I don't.

25 **Q** Okay. The record reflects that it's before

1 Judge Miller, is that correct?

2 **A** Yes. The way I know that is the notes on
3 the file.

4 **Q** Okay. Have you brought other clients to
5 plead before Judge Miller before?

6 **A** Yes, many times.

7 **Q** Would you say that the format of these
8 guilty pleas tend to be very similar from case to
9 case and defendant to defendant?

10 **A** Yes, he's very consistent in the order in
11 which he asks his questions.

12 **Q** Does he generally, in his pleas, ask
13 whether in the last 24 hours, the defendant had any
14 drugs, alcohol or medication?

15 **A** Yes.

16 **Q** Do you remember if he asked that in this
17 case?

18 **A** Not specifically, no.

19 **Q** If your client had answered affirmatively
20 to the fact that he had drugs, alcohol or medication
21 in his system, what would Judge Miller's practice
22 usually be at that point?

23 **A** He would either ask the defendant himself
24 or perhaps the defendant and the lawyer if there were
25 any problems, if either person thought there were any

1 problems with understanding what's going on.

2 Q You don't recall there being any kind of
3 issue on that from the plea?

4 A No, I do not.

5 Q In the course of his general guilty plea
6 practice, does Judge Miller ask if the defendant has
7 been treated for substance abuse, psychiatric illness
8 or emotional problems?

9 A Yes.

10 Q Do you recall him asking that particular
11 question in this case?

12 A No.

13 Q If your client had answered in the
14 affirmative to any of these issues, what would Judge
15 Miller generally do at this point?

16 A It would be roughly the same thing. Most of
17 time, it's ask the defendant to explain what would be
18 going on.

19 Q Okay. Do you recall that coming up during
20 the guilty plea?

21 A I do not. I looked through the file. I
22 don't have any notes that would have indicated that
23 was an issue going into it.

24 Q Okay. Does Judge Miller, as part of his
25 general guilty plea colloquy recite the indictment,

1 the minimum and maximum sentences and whether the
2 charges are violent or serious?

3 **A** Yes, he's very specific about reciting the
4 indictment.

5 **Q** And do you have any independent
6 recollection with whether or not he asked that in
7 this case?

8 **A** I do not. Not independent.

9 **Q** Okay. And does Judge Miller, as part of his
10 general guilty plea colloquy, ask the defendant how
11 they wish to plea? Does he just straight up ask them
12 do you want to plea guilty or not guilty or do you
13 not know?

14 **A** I'm trying to run through in my head. I
15 don't think he ask how you want to plea guilty. I
16 think he simply says are you here to plead guilty or
17 something to that effect.

18 **Q** And do you have any independent
19 recollection of whether he would have asked that of
20 Mr. Christian?

21 **A** Not independently, no.

22 **Q** Okay. Does Judge Miller, in the course of
23 his usual plea colloquy, ask the defendant if anyone
24 has forced them, threatened them or promised them
25 anything in exchange for the plea?

1 **A** Yes.

2 **Q** And do you remember him asking that
3 question in this case?

4 **A** Not independently.

5 **Q** If your client had stated in the
6 affirmative to any of these, the force, the coercion,
7 the threatening or promising, what would Judge Miller
8 usually do at that point?

9 **A** I believe he would have just simply
10 inquired to get a better understanding about what the
11 allegation would have been.

12 **Q** Do you remember having anything like that
13 come up at the plea?

14 **A** No, it doesn't stand out.

15 **Q** Does Judge Miller, in the course of his
16 general plea colloquy, go through the various rights
17 associated with the jury trial?

18 **A** Yes.

19 **Q** Do you have any independent recollection of
20 whether he did that in this case?

21 **A** I do not, no.

22 **Q** Does Judge Miller, after going through all
23 of that, generally ask defendants if they want to
24 waive those rights and enter a plea at that point?

25 **A** Yeah.

1 **Q** And again, you don't have any specific
2 recollection of whether he did?

3 **A** That's correct.

4 **Q** Does Judge Miller, as part of his general
5 plea colloquy, ask the defendant whether or not they
6 are satisfied with their counsel?

7 **A** Yes.

8 **Q** But you don't have any independent
9 recollection of whether that happened in this case?

10 **A** Right, I don't.

11 **Q** Do you have any recollection of whether Mr.
12 Christian, at that point, said he was unsatisfied
13 with you?

14 **A** No, I don't recall that.

15 **Q** Okay.

16 **A** I don't think it would have gone forward if
17 that have been said.

18 **Q** Okay. Does the judge -- does Judge Miller
19 generally then ask that the solicitor to recite the
20 pertinent facts for the record?

21 **A** Yes, I think that was the order and how he
22 does it.

23 **Q** Okay. And you don't have any independent
24 recollection of whether or not --

25 **A** No, I don't.

1 **Q** I told you this would be repetitive. Does
2 Judge Miller in his general plea colloquy ask the
3 defendant if he agreed with the facts as presented?

4 **A** Yes.

5 **Q** If a defendant were to disagree with the
6 facts, what would Judge Miller generally do at that
7 point?

8 **A** He would either ask the defendant or the
9 attorney to explain what the discrepancy is to figure
10 out whether or not it is something that the plea
11 can't go through or if it is simply an
12 inconsequential disagreement.

13 **Q** Does Judge Miller in his plea colloquy
14 usually ask the state to recite any prior record?

15 **A** He does normally. This was a sentence --
16 this was not a sentencing. It was known up front. I
17 don't know that if he would have done that at that
18 point or not.

19 **Q** And since this was a plea with a deferred
20 sentence, would you have in your general practice
21 spoken any mitigation at that point or is that
22 something that would've been deferred to sentencing
23 as well?

24 **A** That would have been deferred. The way I
25 know that is I do not have a specific -- every time I

1 do a plea, I write a piece of paper out in the same
2 fashion with all of my mitigation. I lay it out. I
3 do not have one in my hand. That tells me we were
4 doing the plea for a deferred sentence.

5 Q Okay. Does anything at all stand out? You
6 have probably done probably hundreds or thousands of
7 pleas. Does anything stand out from this particular
8 plea?

9 A You mean like procedurally of things that
10 would happen?

11 Q Yes. Anything kind of weird issues that
12 came up, any subsequent contact you may have had with
13 Mr. Christian about something that may have
14 transpired during the plea?

15 A No, not that I recall.

16 Q Okay. That's all that I have in terms of
17 reconstruction. Can you think of anything to add?

18 MR. ARIAIL: No.

19 MS. RATIGAN: Okay. We're done with Mr.
20 Scalzo.

21 THE COURT: All right.

22 MS. RATIGAN: For the purposes of
23 reconstruction, we'd now call Mr. Steinberg.

24 THE COURT: All right.

25 THE CLERK: Mr. Steinberg, please place

1 your left hand on the Bible and raise your right
2 hand.

3 **HOWARD STEINBERG**

4 having first been duly sworn, testifies as follows:

5 **THE CLERK:** Please state your full name
6 for the record.

7 **THE WITNESS:** Howard Steinberg.

8 **DIRECT EXAMINATION**

9 **BY MS. RATIGAN:**

10 **Q** Mr. Steinberg, were you present for Mr.
11 Scalzo's testimony a second ago?

12 **A** Yes, ma'am. I was.

13 **Q** Well, I apologize in advance. I am about
14 to go through the whole list with you again. Were
15 you the prosecutor in this case?

16 **A** I was.

17 **Q** Do you have any independent recollection of
18 the guilty plea from May 16, 2011?

19 **A** I don't recall it very well. I recall that
20 I was present. I recall that it was simply a plea
21 acceptance, not a sentencing hearing. I handled the
22 plea for the state.

23 **Q** I'm going to go through all of these
24 questions with you again. Have you pled other cases
25 before Judge Miller before?

1 **A** Yes.

2 **Q** Would you say that his colloquy is fairly
3 standard from case to case and from defendant to
4 defendant?

5 **A** It is pretty formulated, yes.

6 **Q** In his general plea colloquy, does he
7 usually ask the defendant if in the last 24 hours
8 they had any drugs, alcohol or medication?

9 **A** That is typical.

10 **Q** Do you recall specifically whether he had
11 done so in this case?

12 **A** I don't recall that. The only thing I
13 have, only individual recollection is the defendant
14 at one point said he was taking Wellbutrin. I have
15 that written down.

16 **Q** Okay. That is a note from when you would
17 have taken that day?

18 **A** A contemporaneous note. It is the only
19 note I have written on here.

20 **Q** Okay. Does Judge Miller in the course of
21 his usual plea colloquy ask a defendant if they have
22 been treated for substance abuse, psychiatric illness
23 or emotional problems?

24 **A** Typically, yes.

25 **Q** Do you recall specifically if he asked

1 that?

2 **A** Not in this case.

3 **Q** Does the judge generally in his plea
4 colloquy recite the indictment to the record, the
5 minimum and maximum sentences for that charge and
6 whether the case is -- whether the charge is violent
7 or serious?

8 **A** Typically. I don't remember if he did that
9 in this case are not.

10 **Q** Does the judge generally ask the defendant,
11 understanding the nature of this charge and possible
12 punishment, how do you plea?

13 **A** Typically, he would ask that. But I don't
14 recall in this case.

15 **Q** Does Judge Miller in his general plea
16 colloquy ask the defendant if anyone has forced them,
17 threaten them, coerced them or promise them anything
18 in exchange for a plea?

19 **A** Typically, but again, I don't remember in
20 this case.

21 **Q** If the defendant answers in the affirmative
22 to any of this, what is your experience with what
23 Judge Miller would do at that point?

24 **A** The judge would further inquire and ask
25 more specific questions.

1 **Q** But you don't recall if that came up as an
2 issue at plea?

3 **A** No. If it had, I probably would have put
4 something down.

5 **Q** Does Judge Miller then generally in a
6 guilty plea go forward -- go through all of the
7 various rights associated with the jury trial?

8 **A** Yes, he does.

9 **Q** And you don't recall whether or not he did
10 in this case?

11 **A** I don't recall.

12 **Q** Does Judge Miller ask the defendant at that
13 point if they are guilty?

14 **A** Yes.

15 **Q** And you don't recall that in this case?

16 **A** I don't recall.

17 **Q** If Mr. Christian had said he was not
18 guilty, what would Judge Miller had done at that
19 point in your experience?

20 **A** He probably would have sent him back into
21 the jail cells.

22 **Q** Does Judge Miller, in the course of his
23 plea colloquy, ask a defendant if they were satisfied
24 with the attorney's representation?

25 **A** Typically, he does. I don't recall

1 anything in this matter. Although because this case
2 had continuing concerns, I probably would have noted
3 something if there had been anything unusual.

4 Q At that point, does Judge Miller generally
5 ask you as the prosecutor to recite the facts for the
6 record?

7 A Yes, I have those facts here.

8 Q Okay. Those were facts that you would have
9 recited at the time of the plea?

10 A Yes.

11 Q Just parenthetically so we don't repeat
12 ourselves, have you read the sentencing transcript in
13 this case?

14 A Yes, I read it yesterday.

15 Q The facts that are recited at the
16 sentencing transcript, would those have been the same
17 facts you would've recited during the guilty plea
18 hearing?

19 A Yes, they appear to be an actual, almost
20 word for word from what I wrote down and what was
21 said in the sentencing hearing.

22 Q Okay. Does Judge Miller generally ask you
23 as the prosecutor to provide a prior record if the
24 sentence is being deferred?

25 A I don't recall if he does or doesn't.

1 **Q** Okay. Again, there is nothing in your mind
2 that stands out as being anything unusual or any kind
3 of red flags from this plea?

4 **A** No, in fact, the word Wellbutrin is the
5 only word that caused me any concern. That is the
6 only thing that I wrote down. Had there been
7 anything that did cause me concern, I would've
8 written something down.

9 **MS. RATIGAN:** Okay. For the testimony for
10 the reconstruction, I don't think I need
11 anything else.

12 **THE COURT:** All right.

13 **MS. RATIGAN:** And we would call Mr.
14 Christian.

15 **BRANDON CHRISTIAN**

16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Thank you. Please state your
18 full name for the record.

19 **THE WITNESS:** Brandon Christian.

20 **THE CLERK:** Thank you.

21 **DIRECT EXAMINATION**

22 **BY MS. RATIGAN:**

23 **Q** Mr. Christian, can you hear me?

24 **A** Yes, ma'am.

25 **Q** Okay. I am sure Mr. Ariail has already

1 told you we don't have a transcript from your guilty
2 plea. We are just trying to go over some questions
3 to see if we can kind of put our heads together and
4 figure out what happened that day, okay?

5 **A** Yes, ma'am.

6 **Q** Do you remember Judge Miller that day
7 asking you if you had any, if you had taken any
8 drugs, alcohol or medication?

9 **A** Yes, ma'am.

10 **Q** What did you tell him?

11 **A** I told him no, ma'am.

12 **Q** Okay. You told him you had not taking any
13 kind of drugs?

14 **A** No, ma'am.

15 **Q** Okay. When Judge Miller asked you if you
16 had been treated for substance abuse, psychiatric
17 illness or emotional problems, do you remember that
18 question?

19 **A** Yes, ma'am.

20 **Q** What did you answer?

21 **A** Yes, ma'am.

22 **Q** What did you tell him when you answered
23 yes?

24 **A** I told him I was treated for psychosis and
25 bipolar.

1 **Q** When you told him that, what did Judge
2 Miller say?

3 **A** He asked me who treated me. I told him Dr.
4 Martin.

5 **Q** Okay. What else did he ask you?

6 **A** He asked me am I not supposed to be on
7 medication. I told him I was but the county jail has
8 taken me off of my medication.

9 **Q** Okay.

10 **A** Then he asked me what type of medication.

11 **Q** Uh-huh.

12 **A** I told him Abilify and Wellbutrin.

13 **Q** Uh-huh.

14 **A** Then he says does the fact that you're off
15 your medication impair your ability to understand
16 what is going on. And I told him no, sir.

17 **Q** Uh-huh. And the plea just kind of went
18 forward after that?

19 **A** Yes, ma'am.

20 **Q** Okay. Did the judge read the indictments
21 into the record? Do you remember? What you were
22 charged with?

23 **A** I don't know. I don't --

24 **Q** Okay. If you don't remember, you don't
25 remember. Did he tell you during the plea what the

1 minimum and maximum charge of the sentences you can
2 get on these charges?

3 **A** See, when I was reading my transcript, it
4 was for the sentencing on the two Oconee County
5 charges.

6 **Q** Uh-huh.

7 **A** The maximum and minimum penalty. But on
8 the voluntary manslaughter and what it carries, none
9 of that was in there.

10 **Q** Okay. I'm not talking about the
11 sentencing. I'm talking about the guilty plea in May
12 where he deferred the sentencing.

13 **A** I don't remember.

14 **Q** You don't remember? Okay. That is fine.
15 Did you tell the judge you wanted to plead guilty
16 that day?

17 **A** Yes, ma'am.

18 **Q** Did he ask you if anyone have forced you,
19 coerced you or threatened you or promised you?

20 **A** Yes, ma'am.

21 **Q** And what did you tell him?

22 **A** No, ma'am.

23 **Q** Okay. At that point, did he talk about
24 your various rights to trial, your right to confront
25 witnesses or anything like that?

1 **A** Yes, ma'am.

2 **Q** Okay. And did you tell him you wanted to
3 give up those rights to plead guilty?

4 **A** Yes, ma'am.

5 **Q** Did he ask you if you were satisfied with
6 Mr. Scalzo?

7 **A** Yes, ma'am.

8 **Q** And what did you respond?

9 **A** Yes, ma'am.

10 **Q** And at that point, did the solicitor read
11 the facts to the court?

12 **A** Yes, ma'am.

13 **Q** Were there any issues you had with those
14 facts not being accurate?

15 **A** No, ma'am.

16 **Q** And at that point, what happened next? At
17 that point, did they decide to stop and defer?

18 **A** They deferred sentencing.

19 **Q** Okay. Nothing else?

20 **A** It was kind of general, ma'am.

21 **MS. RATIGAN:** Okay. That's all I have,
22 Your Honor.

23 **THE COURT:** Okay. You can step down.

24 **MS. RATIGAN:** Uh, actually you can stay up.
25 Stay up there.

1 **THE COURT:** All right. I think you are
2 going to be --

3 **MS. RATIGAN:** Yeah. But judge, that would
4 in the State's reconstruction. It is clear
5 between Mr. Scalzo, Mr. Steinberg and the judge
6 that the plea would not have been allowed to
7 proceed if any of these red flags would have
8 been raised. At this point, I'm going to hand
9 it over to Mr. Ariail for PCR.

10 **MR. ARIAIL:** And I will just leave Mr.
11 Christian on the stand, if that's okay, Your
12 Honor.

13 **THE COURT:** Yeah.

14 **BRANDON CHRISTIAN**

15 having previously been sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. ARIAIL:**

18 **Q** Mr. Christian, I want to go back through a
19 little bit, back through your case to understand how
20 this all came about. I know you were represented by,
21 I think, Mr. Patel at one time, ---

22 **A** Scalzo and Johnson.

23 **Q** --- Mr. Scalzo and Mr. Johnson.

24 **A** Yes, sir.

25 **Q** Initially, you had Mr. Patel, correct?

1 **A** Yes.

2 **Q** How long had he represented you?

3 **A** I don't know how long but I know it wasn't
4 that long.

5 **Q** Okay. So Mr. Scalzo came in. The initial
6 meetings, do you remember or recall what you and Mr.
7 Patel discussed? Did you go over discovery?

8 **A** It was some paperwork that he signed off on
9 about my Rule 5. He told me that we were going to go
10 for a bond hearing to try to get me a bond. We went.
11 I got denied. I think I saw him probably one more
12 time after that when I received my motion of
13 discovery. I think that was the last time that I seen
14 him.

15 **Q** Okay. I want to go back and kind of re-
16 create a little bit about what your argument is in
17 this. You -- what I understand your issue to be is
18 that -- you probably can explain it better than I
19 can. You are currently, I guess you were under DJJ
20 custody and were under their custody at the time the
21 murder occurred, correct?

22 **A** Yes, sir.

23 **Q** So your issue is you shouldn't have been
24 allowed to be charged as an adult because you were
25 under DJJ custody?

1 **A** I shouldn't have been allowed -- I should
2 have been allowed my due process. There is a such
3 thing as a waiver hearing to waive a juvenile up into
4 general sessions. Family Court has exclusive
5 jurisdiction that it cannot just waive without a
6 hearing and the defendant present on its exclusive
7 jurisdiction.

8 It says right here in 14-21-540. It reads
9 transfer of certain criminal cases from Family Court
10 to other courts. If a child 16 years of age or older
11 is charged with an offense which could be a
12 misdemeanor or felony if committed by an adult and if
13 the court, after full investigation, deems it
14 contrary to the best interest of such the child or
15 the public to retain jurisdiction, the court may in
16 its discretion acting as committed magister and bind
17 over child for proper criminal proceedings to any
18 court which would have trial jurisdiction of such
19 offenses as permitted by an adult. I stated Shaw
20 versus State, Kent versus United States and Patton
21 versus Toy.

22 **Q** Okay. Let me get the facts to this. First
23 of all, you were 17 years old.

24 **A** 17 years old at the time of the crime.

25 **Q** You were under DJJ custody and you have got

1 a custody order?

2 **A** I've got a custody order here. I got
3 sentenced April 17th, 2012. I was already sentenced
4 to 25 years in the Department of Corrections, South
5 Carolina Department of Corrections. Five months
6 after my sentencing, September 11th, 2012, the
7 Department of Juvenile Justice comes and gets me from
8 Kirkland R&E. They take me off the premises and take
9 me to South Carolina Juvenile Parole. Obviously, I
10 was still on juvenile parole and serving 25 years at
11 the same time. To me, something wasn't right.

12 **Q** I guess you're saying this should have
13 been --

14 **A** Due process. That is my constitutional
15 right. It is due process to my constitutional right.

16 **Q** I guess what I'm trying to figure is are
17 you saying it should be waived down to Family Court
18 because you were still in custody under DJJ custody?

19 **A** What I am saying is if they had had a
20 hearing, there was a 50-50 chance that the judge
21 would have bound it over. The District of Columbia
22 policy memorandum which cites an eight factor
23 memorandum that must be met by Family Court Judge.
24 It has to waive. He has to waive that jurisdiction.
25 It has got to be factual findings for him to waive

1 the jurisdiction over to General Sessions.

2 Q I understand. You have provided me with
3 some case sites. Kent v. U.S., Patton v. Toy, Shaw v.
4 State, that you say are in support of your petition
5 here?

6 A Yes, sir.

7 Q You are saying -- and I have not reviewed
8 the cases but I want to make sure we put it on the
9 record that that is the issue that you are looking
10 at. Did you discuss that with your attorney?

11 A This is after I had already been sentenced.
12 This is what I found out afterwards. I did not know
13 it then. If I would have knew it then, I would have
14 bought it up then. But I didn't know it then. After
15 I'd already been sentenced, that is when I would
16 have --

17 Q All right. I mean, did you tell them I am
18 under DJJ custody at that time or anything of that
19 nature?

20 A They should have known. They brought me to
21 the county jail and I was hit with these charges from
22 the juvenile institution. I was part of a boy's home
23 call Excalibur boys home.

24 Q Okay.

25 A And I was taken from there to the county

1 jail.

2 **Q** This says basically the State of South
3 Carolina Board of Juvenile Parole release to the
4 Department of Corrections to serve an adult sentence
5 on September 14th, 2012.

6 **A** And I had already been sentenced to 25
7 years in the South Carolina Department of
8 Corrections. How can I be serving two sentences at
9 the same time?

10 And just for the record, I wrote Paul B.
11 Wickensimer to ask him. This is what my letter
12 reads. I have a copy of what he wrote back. It says
13 dear Clerk, my name is Brandon Jabar Christian. I am
14 currently serving a 25-year sentence in the South
15 Carolina Department of Corrections. I am writing to
16 see if any Family Court judge from the years 2010 to
17 2012 signed off on a waiver of jurisdiction order for
18 General Sessions. If so, could you please be so kind
19 and send me a copy of the order. If no order was
20 ever signed off on, could you please be so kind to
21 write back to verify that too. I put down my
22 information for him. He wrote me back. He said Mr.
23 Christian, I cannot find any indications of this type
24 of order here at Family Court.

25 **Q** Okay.

1 **A** And I have got a copy of that. This is the
2 original. I have got a copy.

3 **MR. ARIAIL:** Your Honor, if I can move
4 all of these in as Exhibit 1.

5 **MS. RATIGAN:** I have no objection.

6 **THE COURT:** All right. So admitted.

7 **(WHEREUPON,** Applicant's Exhibit 1 is marked for
8 identification and admitted into the record.)

9 **BY MR. ARIAIL:**

10 **Q** So at no time did you discuss this with Mr.
11 Patel, Mr. Scalzo and Mr. Johnson about any issues
12 about waiving down or being charged as an adult or
13 any of those issues?

14 **A** No, sir.

15 **Q** They never told you, you are 17, but you
16 are charged with an adult at that time?

17 **A** Not really. We didn't get into it.

18 **Q** What did you get into?

19 **A** We just got into my case. I waited my time
20 out. Came and plead and I pled out. I didn't know I
21 had these rights because if I did, I would have never
22 pleaded. If it had not been for counsel's errors of
23 deficient performance, there is a reasonable
24 probability that the results of the proceeding would
25 have been totally different or I would have insisted

1 on going to trial because my due process in General
2 Sessions would have been addressed to the judge and
3 preserved for my appeal when I went up for appeal.

4 Q Okay. Now, as we were going along to -- I
5 think you indicated something about the transcript.
6 Mr. Steinberg mentioned the plea transcript on Page
7 8. I want to go back and make sure this is right.
8 He said he was a juvenile at the time, Your Honor.
9 He did a prior juvenile conviction in 2008 for armed
10 robbery also from Oconee county. Is that in regards
11 to this charge or the Oconee county charge?

12 A This is all together. The judge asked Mr.
13 Steinberg, all right, does he have a prior criminal
14 history. Mr. Steinberg said blankly, no, Your Honor,
15 he was a juvenile at the time. He was going on to
16 say my juvenile record which doesn't mean anything.

17 Q That is an issue we will resolve. We
18 discussed -- I think that was the main issue you had
19 about whether or not you were a juvenile versus an
20 adult and you could be charged with this at that
21 time.

22 A Yeah, I know I could have been charged with
23 it. I'm talking about the proper proceedings. They
24 should have went to waive me up through General
25 Sessions to see if the Family Court judge would bound

1 over jurisdiction or not.

2 **Q** Okay. Are there other issues you want this
3 court to hear in regards to how Mr. Patel and Mr.
4 Scalzo and Mr. Johnson were ineffective in any way
5 during this?

6 **A** Well, there is one more thing that I have
7 got to say about Mr. Johnson. The judge, when he
8 asked me was I on any medications or substances or
9 mental illness, I told him yes. I told him my
10 diagnosis and who treated me. He went down on line
11 26 on Page 4 of my transcript. He asked Mr. Johnson
12 any competency issues. Mr. Johnson said not from his
13 end. But if Mr. Johnson would've done a full
14 investigation on my case like he was supposed to, he
15 would've known that in 2009 I was found incompetent
16 and committed to a mental institution called William
17 S. Hall in Columbia, South Carolina.

18 **Q** Okay. I guess my question was at the time
19 you were doing this and at the time you had your
20 guilty plea, were you competent at that time?

21 **A** Yes. I am not saying I was incompetent.
22 When I am saying is this goes to show that there was
23 no independent investigation done on my case. There
24 was no investigation. It was just put in, said whim,
25 wham, bam, go ahead about your way. You feel what

1 I'm saying?

2 **Q** Okay. Were there other things they didn't
3 investigate that you wanted them to?

4 **A** If I had more time to look into my case, I
5 probably would have found it. But I don't have my
6 motion for discovery. That is a big factor to my
7 case too. I don't have it.

8 **Q** At the time when you were going through
9 this, were there things that you were doing, not
10 doing that you asked them, look into this, talk to
11 that witness?

12 **A** No. I didn't know this stuff. I thought
13 they just did away with juvenile. After I already
14 been sentenced, juvenile came back up.

15 **MR. ARIAIL:** Your Honor, I have no
16 further questions.

17 **THE COURT:** All right. Thank you.

18 **MS. RATIGAN:** I have no questions.

19 **THE COURT:** All right. Sir, you can step
20 down.

21 **MR. ARIAIL:** Your Honor, that is our
22 case.

23 **THE COURT:** Okay.

24 **MS. RATIGAN:** I will call Mr. Scalzo back
25 to the stand.

1 **THE COURT:** Mr. Scalzo, I will just
2 remind you that you are under oath.

3 Mr. Ariail, I'm just going to tell you I am
4 handing him a note on a matter completely
5 unrelated to this, on another matter we were
6 looking up something on.

7 **CHRISTOPHER SCALZO**

8 having previously been sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MS. RATIGAN:**

11 **Q** Mr. Scalzo, I am just going to get right
12 down to it since Mr. Christian seems to have one main
13 issue. Were you aware -- he states he was in DJJ
14 custody at the time of the murder. Were you aware of
15 that?

16 **A** I was aware of his situation being in the
17 Excalibur, I believe, boys home and that being the
18 result of some DJJ process.

19 **Q** And he has testified that he was 17 at the
20 time of these offenses. Does that sound accurate?

21 **A** Yes.

22 **Q** In your opinion, was there a legitimate
23 basis to have a waiver hearing in this case?

24 **A** No. The order of things is what eliminated
25 that. He was charged as an adult and they

1 essentially bypassed Family Court. We don't have a
2 legal recourse to force it back to Family Court. If
3 it started in Family Court, then we would have had
4 the ability to fight the way that he was describing.

5 **Q** Did you explain to him kind of how you
6 ended up skipping over Family Court and right in
7 General Sessions?

8 **A** We never had that discussion. The issue
9 never came up.

10 **MS. RATIGAN:** Beg the Court's indulgence.

11 **THE COURT:** Sure.

12 **BY MS. RATIGAN:**

13 **Q** So there would have been no mechanism, no
14 motion you could file or anything like that to try to
15 get it back down to Family Court that you are aware
16 of?

17 **A** Not that I can think of.

18 **THE COURT:** Just so that I am clear on one
19 thing, he was 17 when he was charged, is that
20 right?

21 **THE WITNESS:** Yes, ma'am.

22 **THE COURT:** All right. I just wanted to
23 be clear on that point.

24 **MS. RATIGAN:** That's all I have, Your
25 Honor.

1 **THE COURT:** All right.

2 **CROSS-EXAMINATION**

3 **BY MR. ARIAIL:**

4 **Q** Chris, this is a nominal issue with me too.
5 He gave me some cases. If you have a juvenile that
6 is charged with murder and tried as an adult, if they
7 bypassed Family Court, they can be waived down back
8 to them. If they don't do the right process, there
9 is a way you get back to Family Court, correct?

10 **A** No, I think the way I understood it even
11 when we were dealing with it back then which is why
12 it wasn't raised is because if you started out -- if
13 there is a petition in Family Court to treat them as
14 a juvenile, whether it is for that murder or for any
15 other charge and the state now wanted him to come up
16 to General Sessions, they would have to do what is
17 called a waiver of your rights.

18 If you are in General Sessions where you
19 start in General Sessions like they did with Brandon,
20 they charged him as an adult in General Sessions. I
21 don't know if there is a mechanism to go back. The
22 statute is clear the other way. But I don't think
23 this statute allows you to go the reverse from General
24 Sessions to Family Court without the discussion of
25 the prosecutor. The prosecutor could do that at

1 their discretion.

2 Q It is an interesting issue. He technically
3 still -- as he shows from this exhibit, he is under
4 DJJ custody. He is being sentenced at that time as an
5 adult still in the custody of DJJ. He is 17. I
6 understand it, but I guess what you are saying is he
7 already had the murder charge at the time and charged
8 as an adult. There is no way to get back down.

9 A From my point of view, there was no legal
10 mechanism to get him from General Sessions into
11 Family Court except by prosecutor's discretion.

12 Q Okay. Y'all didn't -- did he raise that
13 will bring that up at any time during your
14 discussions?

15 A He did not and I did not raise the issue.
16 It seemed settled to me from a legal standpoint.

17 Q Okay. Any issues you saw in regards to his
18 mental health competency?

19 A No, we were aware, I believe Mr. Patel took
20 information from Brandon when he first interviewed
21 him which I would have had in my file. I believe we
22 requested some records from, I don't know if it was
23 William S. Hall or wherever else that he was. We
24 were aware of mental health as an overall issue. I
25 would not have any specific notes or recollection

1 that the mental health was an ongoing problem that I
2 had with Brandon personally.

3 **MR. ARIAIL:** Okay. Your Honor, I have no
4 further questions. Thank you.

5 **MS. RATIGAN:** I have nothing further.

6 **THE WITNESS:** Thank you, Judge.

7 **MS. RATIGAN:** The State would call Mr.
8 Johnson.

9 **THE COURT:** All right.

10 **THE CLERK:** Mr. Johnson, place your left
11 hand on the Bible and raise your right hand.

12 **BRIAN JOHNSON**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please state your
15 full name for the record.

16 **THE WITNESS:** Brian Patrick Johnson.

17 **THE CLERK:** Thank you. You may be seated.

18 **DIRECT EXAMINATION**

19 **BY MS. RATIGAN:**

20 **Q** Mr. Johnson, do you recall how you ended up
21 handling Mr. Christian sentencing while Mr. Scalzo
22 handled the plea?

23 **A** I don't remember the circumstances
24 specifically. I want to say that Mr. Scalzo wasn't
25 in the office at that point in time. But in any

1 case, I do know that I had communications with him as
2 far as the status of the case and get an
3 understanding of what it is that I was supposed to do
4 at that time.

5 Q Okay. Do you recall when you would have --
6 the sentencing was April 17 of 2012. Do you recall
7 when it was you would have stepped in?

8 A I do not.

9 Q Okay. Do you recall there being any
10 conversation with Mr. Scalzo about the DJJ potential
11 waiver issue? Did y'all ever talk about that?

12 A I don't recall ever discussing that.

13 Q Do you recall ever discussing that with Mr.
14 Christian, just the idea of him being a DJJ custody
15 and being charged as an adult for this other offense?

16 A No, ma'am.

17 Q Would there have been any argument that you
18 could have made at sentencing in an attempt to try
19 and get this matter waived down to Family Court? Do
20 you think of anything that you could've argued?

21 A Not even in hindsight, no. I believe he
22 was an adult as charged. I didn't think there was
23 anything to it. I don't think there is anything to
24 it. I didn't realize it was something that he was,
25 that concerned him at the time.

1 **Q** Okay. Did Mr. Christian -- let me back
2 that up. Does your file indicate that there were any
3 prior mental health issues with Mr. Christian, that
4 you recall?

5 **A** Not that I recall. I had spoken with Mr.
6 Christian beforehand. I dealt with people who had
7 been incompetent. He didn't seem to fit that bill at
8 all.

9 **Q** Okay. Did Mr. Christian tell you he had
10 ever been found incompetent at any type of prior
11 hearing?

12 **A** I don't believe that I was aware of that.

13 **Q** If Mr. Christian had told you that he had
14 been found incompetent at some prior hearing, what
15 would you have done about that?

16 **A** I probably would have looked into the
17 issue. I probably would have spoken to both Chris
18 and notify the court just for purposes of making sure
19 the record was good.

20 **Q** Did you see any kind of red flags and
21 discussing with Mr. Christian about his ability to
22 understand what was going on?

23 **A** No, ma'am. He was as he is today, very
24 well spoken, very understanding of the things that
25 were going on.

1 **MS. RATIGAN:** That is all I have, Your
2 Honor.

3 **THE COURT:** All right.

4 **MR. ARIAIL:** No questions, Your Honor.

5 **THE COURT:** All right, sir. You can step
6 down.

7 **THE WITNESS:** Thank you.

8 **MS. RATIGAN:** Your Honor, the State would
9 rest at this point.

10 **THE COURT:** All right. Anything else?

11 **MR. ARIAIL:** Nothing further, Your Honor.

12 **THE COURT:** All right. Mr. Christian, let
13 me just tell you something. I am going to out
14 of an abundance of caution look at the cases
15 that you brought to the court's attention. All
16 right? I was a Family Court judge but that
17 doesn't mean that I know every case that is out
18 there. I will in an abundance of caution look
19 at those cases.

20 Just because you were in DJJ custody
21 doesn't mean that being from the point that you
22 turn 21 is when someone goes out of DJJ custody
23 that you would be charged as a juvenile. All
24 right? At 17, you will be charged with any
25 crime at all as an adult. All right? But if

1 the law changed since I've been in Family Court
2 or whatever, I will take a look at it. I am
3 also going to look at the other issues you
4 raised and look at everything fully and I will
5 be issuing a decision shortly. All right?

6 **MR. CHRISTIAN:** Yes, ma'am.

7 **THE COURT:** Good luck to you.

8 **MR. CHRISTIAN:** Thank you, ma'am.

9 **THE COURT:** Thank you.

10

11 **(WHEREUPON, the proceedings conclude at**
12 **approximately 4:37 p.m.)**

13

14

15

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 20th day of April, 2015.

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

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	C.A. No. 2012-CP-23-6891
)	
Brandon Jabar Christian,)	
S.C.D.C. No. 350508,)	
Applicant,)	
	)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
Respondent.)	
_____)	

FILED - CLERK OF COURT
 GREENVILLE COUNTY, S.C.
 PAUL H. BRIDGEMAN
 2014 OCT 19 4 45 PM

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 25, 2012. The Respondent made its return on May 2, 2013. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Christopher D. Scalzo. The Court had before it the transcript of the sentencing hearing; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return. The Court reconstructed the record of the Applicant's plea hearing prior to conducting the PCR hearing.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted



at the May 2011 term of the Greenville County Grand Jury for murder (2011-GS-23-3395, count 1), possession of a weapon during the commission of a violent crime (2011-GS-23-3395, count 2), armed robbery (2011-GS-23-3396), and attempted murder (2011-GS-23-3397). He was represented by Christopher Scalzo, Esquire, and Nihar M. Patel, Esquire.

On May 15, 2011, the Applicant pled guilty to voluntary manslaughter, armed robbery, and attempted murder. The Honorable Edward W. Miller deferred sentencing to a later date. On April 17, 2012, Judge Miller levied concurrent sentences of twenty-five years for voluntary manslaughter, twenty years for armed robbery, and twenty years for attempted murder. The Applicant did not appeal.

ALLEGATIONS

In this application, the Applicant alleges that he is entitled to PCR for the following reasons:

1. He received ineffective assistance of counsel, in that his attorney failed to file a motion for dismissal; and
2. His guilty plea was involuntary, particularly:
 - a. He was not notified about changes in his assigned attorney;
 - b. He was not timely indicted; and
 - c. He had to plea guilty twice.

At the PCR hearing, the Applicant proceeded upon his ineffective assistance of counsel argument and further alleged that he was improperly sentenced as an adult.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.



Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not “within the range of competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is “a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 686).

In a proceeding for post-conviction relief involving a guilty plea, an applicant may collaterally attack the voluntary or the intelligent character of his plea. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Where ineffective assistance of counsel is the subject of the PCR action, the applicant must show that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that



he would have insisted on proceeding to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citing Strickland, 466 U.S. at 686 and Roscoe, 345 S.C. at 20, 546 S.E.2d at 419); see also Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

To find a guilty plea is made knowingly and voluntarily, the record must establish that the applicant has a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44 (1969). A criminal defendant must know the nature of the constitutional rights he is waiving, as well as the nature and crucial elements of the offense to which he is pleading. Boykin, 395 U.S. at 243-44; Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowledge may be established by the plea colloquy between court and defendant, between the court and the defendant's counsel, or both. Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered and that reasonable care was exercised—particularly in the arena of professional judgments. Ard v. Catog, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

Finally, a motion to dismiss may be made at any point before a criminal trial for a variety of reasons. For example, defense counsel may move to dismiss due to a constitutional violation, a discovery issue, or a failure to prosecute. E.g., State v. Cooper, 386 S.C. 210, 216-17, 687



S.E.2d 62, 67 (Ct. App. 2009); State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999).

The Applicant claims that trial counsel was ineffective because he failed to file a motion to dismiss the charges. However, the Applicant has not specified the grounds upon which the motion should have been made. Nor has the Applicant demonstrated how trial counsel's failure to make such a motion fell below the range of competent representation expected of criminal defense attorneys. Furthermore, during the sentencing colloquy the Applicant affirmed that he was "completely satisfied" with his lawyer. (Sentencing Tr. 7.) Therefore, this Court finds that the Applicant has failed to prove the first prong of the Strickland test—that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant has failed to prove the second prong of Strickland—that he was prejudiced by plea counsel's performance. The Applicant has not met his burden of proving counsel failed to render effective assistance. Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary Plea

The Applicant claims that his guilty plea was entered involuntarily because he was not informed of any changes in his assigned attorney, he was not timely indicted, and because he was required to affirm his plea prior to sentencing. The Applicant bears the burden of proving these allegations by a preponderance of the evidence. Frasier, 351 S.E. at 389, 570 S.E.2d at 174.

As discussed above, a guilty plea must be knowingly, intelligently, and voluntarily made in order to satisfy the requirements of the Fourteenth Amendment. Pittman v. State, 337 S.C. 597, 599 524 S.E.2d 623, 624 (1999). In South Carolina, a defendant entering a guilty plea must be aware of the consequences of his plea—including the nature and crucial elements of the offense charged, the maximum and any mandatory minimum penalty the charge carries, and the



nature of the constitutional rights being waived. State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 603 (1980) (citing Boykin v. Alabama, 395 U.S. at 243).

Pre-indictment delay will only violate the Due Process Clause where (1) such a delay caused substantial actual prejudice to a defendant's right to a fair trial and (2) the prosecution can present no justification for the delay that outweighs the prejudice experienced by the defendant. State v. Brazell, 325 S.C. 65, 68-69, 480 S.E.2d 64, 72 (1997) (citing United States v. Lovasco, 431 U.S. 783 (1977)). To prove substantial prejudice, a defendant must show that he was meaningfully impaired in his ability to defend against the state's charges, to the extent that the outcome of the proceeding was likely affected. Brazell, 325 S.C. at 73, 480 S.E.2d at 69. Applying Brazell, the South Carolina Supreme Court previously found that a delay of twelve years before seeking an indictment violated the Due Process Clause because it presented a significant obstacle to the defendant in preparing an adequate defense and receiving a fair trial. State v. Lee, 375 S.C. 394, 399, 653 S.E.2d 259, 261 (2007).

In this case, the reconstructed record of the Applicant's guilty plea supports the conclusion that the Applicant entered his plea voluntarily, knowingly, and intelligently. The change in the Applicant's assigned attorney does not change the character of the plea itself. Additionally, there was only a 120 day delay between the events giving rise to the Applicant's charges and the indictment returned by the Greenville County Grand Jury. The Applicant has not demonstrated that any prejudice resulted from this delay. This Court therefore finds that the Applicant has failed to meet his burden of proving that his guilty plea was involuntarily made.

Finally, there is no error in a sentencing judge requiring a defendant to affirm that he pleads guilty, where sentencing has been delayed for a substantial amount of time after the entry



of a plea. During the sentencing hearing, the Court conducted a thorough colloquy with the Applicant to determine that his plea was still voluntary. (Sentencing Tr. 4-7.)

Sentencing as an Adult

The Applicant claimed at the hearing that he is entitled to PCR because he was improperly sentenced as an adult. The Applicant argued that his sentence was improper because he was seventeen years of age and he was in the custody of the South Carolina Department of Juvenile Justice at the time of the events at issue. These two circumstances, the Applicant asserts, should have required his case to be initiated in the Greenville County Family Court and then waived to the Circuit Court upon the State's motion. The Applicant relies on S.C. Code Ann. § 63-19-1210 to support this contention.

The Applicant's trial counsel testified at the PCR hearing that he had not discussed the issue of juvenile jurisdiction with the Applicant.

This Court finds that the Applicant has failed to meet his burden of proof on this ground, because § 63-19-1210(1) requires a defendant who is seventeen years of age to be charged and tried as an adult. The mere fact that the Applicant was in state custody at the time the events of this case occurred does not reduce or even permit the State to charge him as a juvenile. Therefore, the Applicant is not entitled to PCR because he was sentenced as an adult.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.



CONCLUSION

Based on all the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 8 day of ^{Dec.}~~November~~, 2014.



Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit





South Carolina Board of Juvenile Parole

1741 Shivers Road
Columbia, South Carolina 29210

Phone: (803) 896-5614
Facsimile: (803) 896-5632 or 0676

Nikki R. Haley
Governor
State of South Carolina

September 11, 2012

Brandon Christian 350508
Kirkland Reception and Evaluation Center
4344 Broad River Road
Columbia, SC 29210

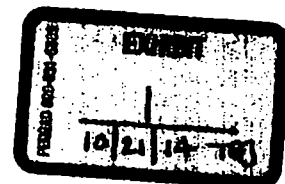
Brandon:

Here is a copy of the release paperwork for your juvenile sentence. It shows that the Board released you, and you do not have juvenile parole.

If you have questions, send me a letter to the address on the envelope.

Sincerely,


Ann Johnson



**STATE OF SOUTH CAROLINA
BOARD OF JUVENILE PAROLE**

ORDER OF UNCONDITIONAL RELEASE

BRANDON JABAR CHRISTIAN

I.D.# 00350508

WHEREAS,

The above-named juvenile is eligible to be released from the South Carolina Department of Corrections,

WHEREAS,

It being the opinion of the South Carolina Board of Juvenile Parole that the release of this juvenile is compatible with the welfare of society,

WHEREAS,

It further appearing that the South Carolina Board of Juvenile Parole is satisfied that this juvenile will not be a public charge on release.

IT IS THEREFORE ORDERED THAT the juvenile be unconditionally released this 4th Day of September 2012.

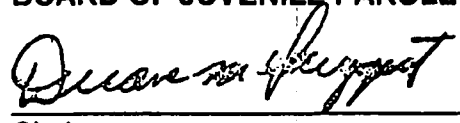
IN WITNESS WHEREOF, this Order bearing the seal of the State of South Carolina is issued this 4th Day of September 2012.

Witness:

**STATE OF SOUTH CAROLINA
BOARD OF JUVENILE PAROLE**



Director



Chairperson

Juvenile shall be released to:

Department of Corrections to serve adult sentence

On: September 14, 2012

Exhibit P-14



State of South Carolina
Board of Juvenile Parole



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org

TO: BRANDON JABAR CHRISTIAN

DATE: April 08, 2014

PLEASE SUPPLY US WITH THE INFORMATION/FORMS REQUESTED BELOW AND RETURN TO OUR OFFICE FOR FILING::

- FURNISH ADDITIONAL COPIES, AS THE CLERK RETAINS AND ORIGINAL AND ONE COPY OF ALL DOCUMENTS FILED.
- PETITION FOR RELIEF THAT YOU ARE REQUESTING (A SUMMONS MUST BE ATTACHED)
- AFFIDAVIT AND ORDER TO PROCEED IN FORMA PAUPERIS.
(A FINANCIAL DECLARATION MUST BE ATTACHED)
- PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN.
- AFFIDAVIT OF SERVICE.
- HEARING REQUEST. (DO NOT SUBMIT UNTIL 30 DAYS AFTER SERVICE)
- ORDER OF TRANSPORTATION. (DO NOT SUBMIT UNTIL YOU SEND A HEARING REQUEST)
- OTHER: I COULD NOT FIND ANY INDICATION OF THIS TYPE OF ORDER HERE AT FAMILY COURT.

Family Court * 301 University Ridge, Post Office Box 757 * Greenville, SC 29602 * (864) 467-5800
Circuit Court * 305 East North Street * Greenville, SC 29601 * (864) 467-8551

HARRIET P. BENNETT
Reporter, S.C. Court Administration
46 Regency Oaks Drive
Summerville, S.C. 29485

February 12, 2014

Ms. Judy A. C. Carey
Legal Assistant
Office of the Attorney General
P. O. Box 11549
Columbia, S.C. 29211-1549

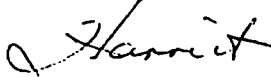
IN RE: State v. Brandon Jabar Christian
Greenville County Court of G.S.

Dear Judy:

You requested a plea in the above case from May 16, 2011, taken by Mary DiGirolamo. I'm sorry to advise that the disc sent to me by Court Admin is blank as to this date. There was nothing that was downloaded for May 16, 2011.

I apologize for not advising you of this sometime ago. I can't believe I overlooked doing this.

Sincerely



copy to Ms. Desiree Allen, Court Admin.

