

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

RECEIVED

OCT - 2 2015

S.C. Supreme Court

LEVON D. BLACK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001315

APPENDIX

LARA M. CAUDY
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

J. CROOM HUNTER
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi
GUILTY PLEA HEARING TRANSCRIPT (MARCH 12, 2012) 1
APPLICATION FOR POST-CONVICTION RELIEF (FILED FEBRUARY 15, 2013)..... 15
RETURN (DATED MAY 8, 2013).....22
POST-CONVICTION RELIEF HEARING TRANSCRIPT (APRIL 13, 2015)27
ORDER OF DISMISSAL (FILED JUNE 1, 2015).....58
INDICTMENTS67

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	CASE NO. 2011-GS-21-1697

STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
)	
LEVON D. BLACK,)	
)	
Defendant.)	
)	

March 12, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge

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

PATRICIA PARR, Solicitor
 Attorney for the Plaintiff

RICHARD STROBEL, Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Guilty Plea.....	3
Sentence of the Court.....	12
Court Reporter Certification.....	14

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
	(No Exhibits Presented)		

1 MARCH 12, 2012

2 (WHEREAS this matter was scheduled for a term of General
3 Sessions court, the defendant appeared along with his
4 counsel of record. The hearing began at 12:18 p.m.)

5 THE COURT: All right, Ms. Parr.

6 MS. PARR: May it please the Court. This is Levon Black.
7 It's Indictment 2011-1697. He has been indicted on a four
8 count indictment. He is pleading guilty to two counts of
9 armed robbery. He can get up to ten -- up to thirty years.
10 He has to do a minimum of ten. The State is recommending the
11 minimum of ten years.

12 I have with me Investigator Melvin Godwin, who was one of
13 the investigators in this matter. The other investigator was
14 not able to be present. All of the victims were notified and
15 they indicated they would not be present today, but I would
16 pass to the Court their Victim Impact Statement.

17 THE COURT: Is this -- has armed robbery been affected by
18 the new law? Is it still ten to thirty with ten minimum?

19 MS. PARR: Yes.

20 THE COURT: Because I don't think it is. I think they
21 took away that. I'm just -- I'm not sure. That's what I'm
22 saying. You need to check into that because ---

23 MS. PARR: Okay.

24 THE COURT: Where is the red -- where's that red book?

25 THE CLERK: Is this what you're looking for?

1 THE COURT: I'm looking for the current law on armed
2 robbery. I think it might have changed. I may be wrong, but
3 I think it did.

4 MS. PARR: My lawyer said it didn't.

5 THE COURT: All right. Well, that's it.

6 DEPUTY SOLICITOR JEPERTINGER: It's ten to thirty.

7 THE COURT: All right, but is it still the mandatory
8 minimum? Nothing's changed on the ---

9 DEPUTY SOLICITOR JEPERTINGER: It's a mandatory minimum
10 of ten.

11 THE COURT: Okay.

12 MS. PARR: Okay. I thought that was it.

13 THE COURT: All right. I was under the impression that
14 it had. Armed robbery? The new Omnibus Crime Bill didn't
15 change it?

16 MS. PARR: No.

17 THE COURT: All right, sir. You're Levon Dante Black?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Black, Indictment 2011-GS-21-1697 is a
20 multiple count indictment charging you with two counts of
21 armed robbery. Each of those charges, sir, carries a penalty
22 of not less than ten years up to thirty years and they are
23 both classified as a violent offense and a serious -- excuse
24 me, I'm sorry -- most serious offense under our Code of Laws.
25 Do you understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And understanding the nature of the charges
3 against you and the possible punishment that is associated
4 with those offenses, how do you plead to those charges?
5 Guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: Thank you, sir. Mr. Strobel, you represent
8 Mr. Black on these matters?

9 MR. STROBEL: I do.

10 THE COURT: Have you discussed with him the charges he's
11 before the Court on and his constitutional rights to a trial,
12 sir?

13 MR. STROBEL: I have.

14 THE COURT: Mr. Black, you're thirty years of age?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How long have you been in jail on these
17 charges, sir?

18 THE DEFENDANT: Since May 28th of last year.

19 THE COURT: May 28th of '11?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: 2011? Okay. Mr. Black, I'm going to go over
22 your constitutional rights. If at any time you have any
23 question about anything I go over, if you need to talk with
24 Mr. Strobel, let me know that and I'll stop and give you that
25 opportunity. Okay?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have the right to remain silent. You
3 have the right to a jury trial, but when you plead guilty, for
4 purposes of your plea, you give up both of those important
5 constitutional rights. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, the State has the burden of proof.
8 There's rights that are associated with that right to a jury
9 trial and when you give up that right to a jury trial, you
10 give up these rights as well and these rights are, for
11 example, that your presumption of innocence -- you're presumed
12 innocent of these charges if you were to request a jury trial
13 or if you were to plead not guilty and that presumption of
14 innocence would put on the State the burden of proving your
15 guilt and the way they would try to do that is during a jury
16 trial, they would call witnesses to the stand. Those
17 witnesses would testify against you.

18 The Constitution of the United States says that any
19 person charged with a criminal offense has the right to
20 confront or to face their accusers and what that means is that
21 during that jury trial, you would have the right through your
22 attorney Mr. Strobel to question the State's witnesses, cross
23 examine them about their testimony. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That's your right of confrontation under the

1 Constitution, but when you plead guilty, you give up that
2 presumption of innocence and you also give up the right to
3 confront the State's witnesses. Now, the State is not the
4 only one that can call witnesses in a trial. You could call
5 witnesses in your defense or you yourself could testify in
6 your defense.

7 You could do either one of those things or you could do
8 both of those things, but you're not required to do those
9 things. In other words, you could remain silent and if you
10 chose to exercise your constitutional right to remain silent,
11 I would instruct the jury that they could not hold that
12 against you in any way. I would tell the members of the jury
13 that the fact that you chose to remain silent could not even
14 be discussed in the jury room. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, the State has the burden of proof and
17 they have to prove your guilt beyond a reasonable doubt to a
18 unanimous decision. In other words, all twelve members of the
19 jury would have to agree that you were guilty or they could
20 not convict you of these charges. However, if you had a jury
21 trial and you were convicted, you could appeal that conviction
22 to a higher court. Do you understand, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You also have an appellate right with regards
25 to today's hearing. If at the end of this hearing today you

1 wish to appeal my decision, you may do that, but you must file
2 that Notice of Intent to Appeal by -- within ten days of
3 today's date. Do you understand, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, Mr. Black, you have these rights, but
6 when you plead guilty, you waive or you give them up and you
7 won't have a jury trial. Understanding that, do you still
8 wish to go forward with your plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, sir. Now, Ms. Parr has indicated
11 to the Court that -- there were other charges you're
12 dismissing; correct?

13 MS. PARR: That's correct, Your Honor.

14 THE COURT: She's dismissing the other charges against
15 you and then with regards to these two charges, the State has
16 recommended that the Court sentence you to the minimum on each
17 of these, which is ten years, give you credit for the time
18 that you have served, and run them concurrent or together.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that your understanding of their
21 recommendation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Other than that recommendation, has anybody
24 promised you anything, held out any hope of reward or
25 threatened you in any way?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you satisfied with the representation and
3 the advice Mr. Strobel has given?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Any complaints against him or any member of
6 his office?

7 THE DEFENDANT: No, sir.

8 THE COURT: As you stand before me today here, Mr. Black,
9 are you under the influence of any substance that would affect
10 your ability to understand what you're doing?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you pleading guilty on this charge of
13 your own free will on these two charges?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you guilty of these charges, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. Please, if you would, listen
18 carefully while I get the facts.

19 MS. PARR: May it please the Court. On January 5th, 2011,
20 the defendant robbed Papa John's located at -- located on
21 Cherokee Road here in the City of Florence. At that time, he
22 forced a delivery driver to unlock the door to gain entry. He
23 entered the location with a black ski mask covering his face
24 and head, and presented a 9 millimeter Glock and demanded
25 money. He forced the clerk to open the safe and took

1 approximately \$946 and fled the incident location through the
2 rear door.

3 Then on May 29th, 2011, a similar incident occurred at the
4 same restaurant. At that time, the defendant went to the
5 restaurant and ordered the employees of -- to the manager's
6 office by gunpoint, where he demanded money. They placed the
7 money in a plastic bag he held. Then he had the employees
8 exit out of the rear door. He fled on foot towards the Mt.
9 Zion Apartments.

10 The police department was located -- was notified in this
11 incident as well. At that time, they were able to arrest him
12 a short time thereafter. He still at that time had the money
13 in his possession and he gave a full confession of that
14 robbery.

15 This robbery was similar to the other Papa John's
16 robbery. They talked with him about it and he admitted that
17 he, in fact, had robbed the incident in January as well. That
18 incident was investigated by Investigator Melvin Godwin, who
19 is in the courtroom today.

20 In terms of a prior record, the defendant has a prior
21 conviction for an unlawful conduct to a child, simple assault
22 and battery, and giving false information.

23 THE COURT: All right. Thank you, ma'am. Are those
24 facts essentially correct, Mr. Black?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. I find that the State has
2 provided a substantial factual basis to support the charge
3 that Mr. Black has pled guilty to. That his decision to enter
4 these pleas I believe has been done freely, voluntarily, and
5 intelligently. He has had the advice and counsel of an
6 excellent attorney in Mr. Strobel, with whom Mr. Black
7 indicates he has been satisfied with.

8 Mr. Black, there's something I didn't mention and I -- I
9 want to make sure. I think you talked with Mr. Strobel about
10 this, but I want to just make sure. I told you that these
11 were classified as a most serious offense?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that that would be a strike on
14 your record, which means that if you were to get charged with
15 another most serious offense in the future that on that charge
16 that the State could seek life without parole; do you
17 understand that?

18 THE DEFENDANT: Yes, sir. I do understand.

19 THE COURT: Okay. Understanding that, do you still want
20 to go forward with your plea?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, sir, and I -- I'm going to accept
23 his plea. Mr. Strobel?

24 MR. STROBEL: Yes, sir. Your Honor, he understands --
25 excuse me -- the 85 percent rule and he realizes it's non-

1 paroleable, that that's the most he would be looking at.
2 We're asking that you accept the recommendation of the State,
3 that these two sentences of ten years run concurrent one to
4 the other, and that he be given credit for the time that he
5 has already served.

6 He has children. He has -- he's gotten his GED and he
7 realizes that he's going to have to go to prison for a period
8 of time, but hopefully when he gets out, he can get a good job
9 and support his family. Thank you.

10 THE COURT: Thank you, Mr. Strobel. Mr. Black, anything
11 further, sir?

12 THE DEFENDANT: I just want to apologize to the Court
13 right now for my actions. I know that I would be responsible,
14 but I let Mr. Godwin know from the git -- from the start I
15 accepted full responsibility of it. I'm not trying to put no
16 blame on anybody. I took the rap for myself, but I know I
17 made a mistake in committing these crimes. I ask that the
18 State have leniency on me and help me to get my life back in
19 order. Thank you.

20 SENTENCE OF THE COURT

21 THE COURT: Thank you very much, Mr. Black. I appreciate
22 it. I'm going to accept the recommendation for the minimum
23 and on Indictment 2011-GS-21-1697 on the two counts of armed
24 robbery, on each of those the sentence of the Court is that
25 you be committed to the State Department of Corrections for a

1 period of ten years. Those are to run concurrent with each
2 other and you're to be given credit for all the time that you
3 have served since May the 28th of 2011 to the present. Good
4 luck to you, sir.

5 THE DEFENDANT: Thank you, sir.

6 MS. PARR: Thank you, Your Honor.

7 THE DEFENDANT: Thank you, Mr. Godwin and Ms. Parr.

8 MS. PARR: You're welcome.

9 (Whereupon, the proceedings end at 12:30 p.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth 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 hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 12th day of March, 2012.

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

Krystal J. Smith
Court Reporter

Florence, South Carolina
April 23, 2013

County of Florence

IN THE COURT OF COMMON PLEAS

Levon D. Black, # 350129
Full name and prison number (if any) of Applicant

2013-CP-21-468

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2013 FEB 15 PM 12:00
DONNIE REE-SHEARER
CCOP & GS
FLORENCE COUNTY, SC

FILED

INSTRUCTIONS BE 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 Kershaw Corr. Inst.
4848 Gold Mine Hwy, Kershaw, SC 29067
2. Name and location of Court which imposed sentence Florence County Court,
City Complex, 180 N. Irby St, 29501
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(s) 2011-65-21-1697

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

(a) 3-12-12, Ten (10) years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. ~~0~~ _____

ii. _____

iii. _____

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

i. ~~0~~ _____

ii. _____

iii. _____

(c) the date of each such result:

i. ~~0~~ _____

ii. _____

iii. _____

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

i. ~~0~~ _____

ii. _____

iii. _____

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

(a) _____

(b) _____
(c) _____

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

(a) In effective Assistance of Counsel
(b) "
(c) "

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

(a) Failure to file dismissal due to coerced confession
(b) Failure to properly investigate case prior to trial
(c) Failure to object & challenge prosecution plea arrangement

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

(a) any petition in a State Court under South Carolina Law? None
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
(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. ⓪
ii. _____
iii. _____
iv. _____

(b) the name and location of the Court in which each was filed:
i. ⓪
ii. _____
iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. *0*
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. *0*
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. *0*
 - ii. _____
 - iii. _____
 - iv. _____

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

 No

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

- (a) which grounds have been presented:
 - i. *0*
 - ii. _____
 - iii. _____

- (b) the proceedings in which each ground was raised:
 - i. *0*
 - ii. _____
 - iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Appeal taken
- (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 Richard Strobel
Address ?
 - ii _____
 - iii _____
- (b) the proceedings at which each such attorney represented you:
 - i trial
 - ii Sentencing
 - iii _____

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

Reduction of charge and sentence

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

No!

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Levon D. Black, 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.

Levon D. Black, Sr.

SWORN to and subscribed before me this 12 day of February, 2013.

Christine A. Ornes (L.S.)
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

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

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

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

Levon D. Black, Sr.
Applicant

SWORN or affirmed to and subscribed before me this

12 day of FEBRUARY, 2013.

Catherine A. Amos
Notary Public

My Commission Expires: My Commission Expires December 22, 2019

2013 FEB 15 PM 12:00
CORNIE REE-SHEASHE
CCCP & GS
FLORENCE COUNTY, SC

FILED

TATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
)
 Levon D. Black, 350129)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-21-468

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed February 15, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the October 2011 term of the Grand Jury for two counts of armed robbery, and one count of possession of a weapon during commission of a violent offense (2011-GS-21-1697). Richard Stroble, Esquire, represented Applicant.

On March 12, 2012, the Applicant pled guilty as indicted and the Honorable Thomas A. Russo sentenced Applicant to ten years imprisonment on all charges. Applicant did not appeal.

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel."

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. Other allegations as they are presented in the Application are insufficient to make a prima facie case under the Uniform Post Conviction Procedure Act and Respondent moves to dismiss those allegations pursuant to S.C. Code Ann. 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON

Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 8, 2013.

State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2013-CP-21-00468
)	
Levon Black,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

April 13, 2015
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire
Attorney for the Plaintiff

Croom Hunter, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Levon Black	
Direct by Mr. Waller.....	5
Cross by Mr. Hunter.....	12
Redirect by Mr. Waller.....	16
Applicant Rests.....	18
Richard W. Strobel	
Direct by Mr. Hunter.....	19
Cross by Mr. Waller.....	23
State Rests.....	26
Arguments of Counsel.....	26
Ruling.....	28
Court Reporter Certification.....	31

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO.

DESCRIPTION

ID.

EV.

(No Exhibits Presented)

1 APRIL 13, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 11:58 a.m.)

5 THE COURT: Yes, sir?

6 MR. HUNTER: May it please the Court. This is Levon
7 Black versus the State of South Carolina, 2013-CP-21-468.

8 Mr. Black is presently confined with SCDC pursuant to the
9 Florence County Clerk of Court's orders. He was indicted the
10 October 2011 term of the Florence County Grand Jury for two
11 counts of armed robbery and one count of possession of a
12 weapon during the commission of a violent offense. That was
13 2011-GS-21-1697. He was represented by Mr. Richard Strobel.

14 On March 12, 2012, Mr. Black pled guilty as indicted.
15 The Honorable Thomas A. Russo sentenced him to ten years'
16 imprisonment on all charges. He did not appeal. He filed
17 this application for post-conviction relief on February 15th,
18 2013. He is represented here today by Mr. Waller. The State
19 is ready to proceed.

20 THE COURT: Mr. Waller?

21 MR. WALLER: Thank you, Your Honor. The applicant would
22 call Levon Black to testify.

23 THE CLERK: Please step up to the witness stand. Place
24 your left hand on the Bible and raise your right hand. Do you
25 swear or affirm that the testimony you are about to give is

LEVON BLACK - DIRECT BY MR. WALLER

1 the truth, the whole truth, and nothing but the truth, so help
2 you God?

3 THE APPLICANT: Yes, ma'am.

4 THE CLERK: Okay. Have a seat and state your name for
5 the record.

6 THE APPLICANT: Levon Black.

7 LEVON BLACK, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WALLER:

11 Q: Good morning, Mr. Black. How are you today?

12 A: Fine. You?

13 Q: Good. I'm just going to jump right into it. How did Mr.
14 Strobel come to be your lawyer?

15 A: My family contacted him and asked him to -- what he would
16 charge to represent me.

17 Q: Okay. And you -- you had four charges at the time?

18 A: Yes, sir.

19 Q: Okay. Now, Mr. Strobel wasn't your first lawyer, was he?

20 A: No, sir.

21 Q: Okay. Who was your first lawyer?

22 A: Vick Meetze.

23 Q: Okay. Why did you not want Mr. Meetze to be your lawyer
24 and want to hire somebody else?

25 A: Because Mr. Meetze was, like, very rude and didn't want

LEVON BLACK - DIRECT BY MR. WALLER

1 to be considerate of what I had to say or anything like that.

2 Q: Okay. Once you hired Mr. Strobel, how many times do you
3 think you met with him?

4 A: None.

5 Q: None? Okay. When was the first time you saw him?

6 A: In the courtroom to take a plea.

7 Q: Okay. Now, how long -- about how long was that after you
8 had hired him?

9 A: Probably about four months, maybe -- maybe five. I'm not
10 for sure. I know his assistant came to see me the Friday
11 before I took the plea and told me to have the rest of his
12 money ready when we go to court Monday.

13 Q: Okay. Had you met with anybody from his office before
14 that?

15 A: No.

16 Q: Okay. So when was the first time you had contact -- you
17 personally had contact with anybody on -- from his office or
18 on his behalf?

19 A: The Friday before I took the plea. It was his assistant.
20 And I met with him personally the first time in the courtroom
21 taking a plea.

22 Q: Okay. When you met with his assistant the Friday before,
23 what did y'all talk about?

24 A: He didn't have nothing to talk to me about. He just said
25 that he got a message from Mr. Strobel to deliver to me to

LEVON BLACK - DIRECT BY MR. WALLER

1 have his money ready, the rest of his payment due, Monday when
2 we go to court.

3 Q: Okay. When you met with Mr. Strobel, what did y'all talk
4 about?

5 A: Mr. Strobel told me to be ready to plea to 15 years.

6 Q: Okay. Did y'all talk about the charges that you had
7 against you?

8 A: We -- we discussed it, but he was so adamant about me
9 taking 15 years. And we kind of had, like, a little
10 discussion, but I was, like, I had Parr offering me ten, why
11 are you trying to get me to sign for 15? And we kind of got
12 in a little discussion over that. He asked me, well, what are
13 you going to do? Are you going to take the plea or not? So
14 --

15 (WHEREUPON, a cell phone rang.)

16 MR. WALLER: Is that Mr. Strobel?

17 THE COURT: Hold on a minute. Mr. Strobel, is that your
18 phone? Whose phone is going off?

19 MR. HUNTER: I think it's Mr. Strobel.

20 MR. STROBEL: Oh.

21 (WHEREUPON, the cell phone is turned off and handed to
22 the deputy.)

23 THE DEPUTY: Is it off?

24 MR. STROBEL: It's off. Thank you.

25 THE COURT: All right. I'm sorry. Go ahead.

LEVON BLACK - DIRECT BY MR. WALLER

1 MR. WALLER: Thank you, Your Honor.

2 BY MR. WALLER:

3 Q: All right. So let me ask that again. You and Mr.

4 Strobel talked about each of the two charges, and you had two
5 counts of each charge against you?

6 A: Yes, sir.

7 Q: Okay. Did y'all talk about the elements of those
8 charges?

9 A: We discussed about the gun charges being dismissed, and I
10 had a question to ask him -- was if the gun charges being
11 dismissed, then why I am still pleading to an armed robbery?

12 Q: Okay. So the gun charges were dismissed as part of your
13 plea?

14 A: I don't know the circumstances of that. I just know that
15 it was being dismissed.

16 Q: Okay. And you said earlier that Mr. Strobel mentioned 15
17 years?

18 A: Yes, sir.

19 Q: But Ms. Parr had already told you ten years; is that
20 right?

21 A: Yes, sir.

22 Q: Okay. When -- when did that happen? When did she tell
23 you ten years?

24 A: She told -- she'd been offering -- the idea for ten years
25 had been on the table since the first plea when I had Vick

LEVON BLACK - DIRECT BY MR. WALLER

1 Meetze.

2 Q: Okay. Did you and Mr. Strobel talk about the possible
3 penalties you were facing for -- for all of the charges?

4 A: No. We only talked about taking a plea for 15 years.

5 Q: Okay. Did you talk about the evidence the State had
6 against you?

7 A: No.

8 Q: Okay. Did you know what the -- what evidence the State
9 had against you?

10 A: Other than what Vick Meetze told me, it was my
11 confession.

12 Q: Okay. Did you have a copy of the discovery? Had you
13 seen the discovery?

14 A: Yes.

15 Q: Okay. Who did you see that with?

16 A: I had to write a motion of my own to get my Rule 5 and my
17 Brady motion to be sent to me.

18 Q: Okay. Had you talked any lawyer about what -- what was
19 contained in the Rule 5 or Brady motions?

20 A: No. I basically had to learn about everything really on
21 my own just reading it, and that's what led me to write the
22 letter to Ms. Parr.

23 Q: Okay. Now, I'm going to get to that in a second. Did
24 you have any questions about the -- the evidence and the
25 discovery provided to you?

LEVON BLACK - DIRECT BY MR. WALLER

- 1 A: I had a lot of questions.
- 2 Q: Okay. Did you bring those up to Mr. Strobel?
- 3 A: I never had a chance to because when we talked, it was in
4 the courtroom for the very first time to discuss the plea deal
5 of 15 years.
- 6 Q: Okay. But you didn't have -- did you have an opportunity
7 to ask him any questions then?
- 8 A: Basically, he was just really rushing me to sign for the
9 plea or not.
- 10 Q: Okay. What questions did you have?
- 11 A: Basically, if the gun charges are being dismissed, why am
12 I being charged with armed robbery? Why can't the charges be
13 reduced? And that's basically all the questions I had.
- 14 Q: Okay. Now, you gave a statement to law enforcement; is
15 that right?
- 16 A: Yes.
- 17 Q: Okay. Did you and Mr. Strobel talk about that statement
18 at all?
- 19 A: No.
- 20 Q: Okay. Did you and Mr. Strobel ever talk about possibly
21 going to trial?
- 22 A: He say if I didn't take the 15 years, then am I going to
23 trial.
- 24 Q: Okay. And what was your response to that?
- 25 A: I don't want to go to trial. I want to try and discuss a

LEVON BLACK - DIRECT BY MR. WALLER

1 better deal.

2 Q: Okay. Did y'all discuss what would take place if you did
3 go to trial?

4 A: No. The conversation ended right there.

5 Q: Okay. You wrote a letter to Ms. Parr, Patricia Parr, the
6 solicitor in this case; is that right?

7 A: Mm-hmm.

8 Q: Okay. Why did you write that letter?

9 A: Because I wanted her to see the insight that I had as far
10 as my mind frame of what was going on with the case and what I
11 was thinking of. So I decided to write her a truthful letter
12 offering her the deal that I wanted to plea to so she could
13 have some kind of insight of what I was thinking and how I was
14 going about things.

15 Q: Okay. When you wrote this letter, had you already hired
16 Mr. Strobel at that time?

17 A: I think I still had Vick Meetze I believe. I'm not for
18 sure. I think I was kind of, like, in-between counsel.

19 Q: Okay. All right. Now, you've alleged in your
20 application that Mr. Strobel was ineffective; is that right?

21 A: Yes.

22 Q: Okay. What -- what do you think Mr. Strobel didn't do
23 that he should have done?

24 A: Communicate with me, let me know what's going on, at
25 least have time to probably investigate the case, challenge

LEVON BLACK - DIRECT BY MR. WALLER

1 the prosecutors, any little, small thing like that to let me
2 know that you are trying to help defend for me.

3 Q: Okay. You said investigate. What -- what -- what did he
4 need to investigate that he didn't do?

5 A: I mean as far as what was being laid out on the table. I
6 figured if he would have looked into it, then -- and put more
7 effort towards further, he could have at least motioned --
8 mentioned to what I was looking for or what he could do.

9 Q: Okay. Mr. Black, I have asked all the questions that I
10 have of you. Is there anything that you think I've left out
11 or you think the Court needs to be aware of just that I've
12 neglected to ask you?

13 A: No, not really. I think you pretty much covered the
14 bases.

15 Q: Okay. Please answer any questions that Mr. Hunter has.
16 Thank you.

17 THE COURT: Mr. Hunter, cross-examination.

18 CROSS-EXAMINATION

19 BY MR. HUNTER:

20 Q: Good afternoon, Mr. Black.

21 A: Good afternoon.

22 Q: So you never wanted to go to trial on this case; correct?

23 A: No, sir.

24 Q: Okay. And, in fact, you apologized when you pled guilty,
25 didn't you?

LEVON BLACK - CROSS BY MR. HUNTER

- 1 A: Yes.
- 2 Q: Okay. So it's fair to say you felt bad about robbing
3 Papa John's?
- 4 A: Yes, sir.
- 5 Q: Okay. Do you recall when you went before Judge Russo and
6 pled guilty telling Judge Russo that you were satisfied with
7 Mr. Strobel's performance?
- 8 A: Yes, sir.
- 9 Q: Okay. Judge Russo asked if you had any complaints with
10 Mr. Strobel and you said you didn't?
- 11 A: I did say that, but I didn't know to the restraints of
12 what I was saying it, like.
- 13 Q: But you knew you were pleading guilty?
- 14 A: Yes, I knew I was pleading guilty. Yes.
- 15 Q: Okay. And you knew you were pleading guilty to a
16 recommended ten years; right?
- 17 A: Yes, sir.
- 18 Q: Okay. Now, you spoke earlier about -- was there an
19 initial plea offer of 15 years?
- 20 A: That was his initial offer.
- 21 Q: Okay. So Mr. Strobel -- your testimony is that Mr.
22 Strobel told you you were going to have to plead to 15 years?
- 23 A: Yes.
- 24 Q: But Ms. Parr said you only had to plead to ten years?
- 25 A: I had to negotiate with Ms. Parr myself.

LEVON BLACK - CROSS BY MR. HUNTER

1 Q: Okay. So when you pled guilty that day, why did you
2 think you were going to get ten years?

3 A: Because that was the offer that was on the table for her,
4 what she had told me.

5 Q: Okay. But when you saw Mr. Strobel, you didn't say, Mr.
6 Strobel, Ms. Parr said I only got to get ten years?

7 A: Yes, I did tell him that.

8 Q: Okay. But you were still satisfied with him?

9 A: I was satisfied with not getting 15 years.

10 Q: Okay. And it was your own decision to plead guilty;
11 right? Nobody forced you?

12 A: Under the circumstances, I'm thinking that I was pleading
13 to two counts of strong-armed robbery.

14 Q: Okay. So is it fair to say you pled guilty because you
15 didn't want to go to trial and get a stiffer sentence?

16 A: Yes, sir.

17 Q: Okay. Now, when you pled guilty, did you understand that
18 -- do you recall Mr. Strobel telling the Court that you
19 understood that it was going to be an 85-percent sentence?
20 That you had to serve 85 percent?

21 A: I think it was explained to me, yes.

22 Q: Okay. When did he explain that to you?

23 A: When I realized that the paperwork I seen on armed
24 robbery and that it was an 85-percent sentence.

25 Q: Okay. So you didn't understand that until right when you

LEVON BLACK - CROSS BY MR. HUNTER

1 signed the paperwork?

2 A: Yeah.

3 Q: Okay. So he didn't explain that to you until you were
4 standing right there ready to plead? Is that your testimony?

5 A: Yes. Pretty much.

6 Q: Okay.

7 MR. HUNTER: I beg the Court's indulgence.

8 Q: So it's your testimony that the first contact you had
9 with anyone from Mr. Strobel's office was when his assistant
10 came the Friday before trial?

11 A: Yes.

12 Q: Okay. And the only thing that was discussed was money?

13 A: Money.

14 Q: Okay. And that was four months after you had hired Mr.
15 Strobel?

16 A: I think -- right around four months I think.

17 Q: Okay. And just to clear things up, the letter that Mr.
18 Waller was referencing that you had written to Ms. Parr, you
19 wrote that before you had hired Mr. Strobel; is that correct?

20 A: I'm not sure whether it was before or during the process
21 because really I didn't know who my lawyer was at one point in
22 time.

23 Q: Okay.

24 A: Because I didn't hire him. My people hired him.

25 Q: Your family hired him?

LEVON BLACK - CROSS BY MR. HUNTER

1 A: Yeah. So I didn't really know who was my lawyer.

2 Q: Okay. Well, how did you find out that he was your
3 lawyer?

4 A: My old lady came and told me when she came on a visit.
5 She said that she hired Mr. Strobel.

6 Q: Okay. But you don't remember whether you sent that
7 letter to Ms. Parr before or after that conversation?

8 A: No, sir.

9 Q: Okay.

10 MR. HUNTER: No further questions. Thank you, Mr. Black.

11 THE APPLICANT: All right.

12 THE COURT: Mr. Waller?

13 MR. WALLER: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. WALLER:

16 Q: Mr. Black, you said some charges were dismissed, but you
17 didn't know why they were being dismissed?

18 A: No, sir.

19 Q: Okay. Did Mr. Strobel go over the entire circumstances
20 of what you were pleading to in the plea agreement?

21 A: Basically, Mr. Strobel just told me that -- am I ready to
22 plead to 15 years on armed robbery, and that was pretty much
23 it.

24 Q: Okay. He didn't tell you that the other two charges were
25 being dismissed because of the plea?

LEVON BLACK - REDIRECT BY MR. WALLER

1 A: I don't think he did. I don't think he did. I just know
2 Ms. Parr was -- Ms. Parr was telling me that the charges were
3 being dismissed and I'm pleading to armed robbery.

4 Q: Okay. Did y'all talk about the armed robbery charges
5 being a violent offense?

6 A: Upon discussing throughout the discussion while me and
7 Ms. Parr was negotiating back and forth, that's when I learned
8 that I'm pleading to armed robbery, 85 percent.

9 Q: Okay. Did you and Mr. Strobel talk about armed robbery
10 being classified as a violent offense?

11 A: Me and him didn't have -- hardly have too much of a
12 conversation.

13 Q: Okay. So -- okay. I think I'm going to ask you one more
14 time. Did you and Mr. Strobel talk about that charge being a
15 violent offense?

16 A: No. I don't think so.

17 Q: Okay. Did y'all talk about it being a strike on your
18 record?

19 A: Yeah. He did tell me that.

20 Q: Okay. Did y'all talk about what being -- that charge
21 being classified as a violent offense would mean for your
22 status in the Department of Corrections?

23 A: No. But he was saying that two strikes can give me life,
24 but he got me 15 years; so I need to take it.

25 Q: Okay.

LEVON BLACK - REDIRECT BY MR. WALLER

1 MR. WALLER: No further questions.

2 THE COURT: Mr. Hunter, anything further?

3 MR. HUNTER: No, Your Honor.

4 THE COURT: All right. Sir, you may step down. Thank
5 you. All right. Anything further, Mr. Waller?

6 MR. WALLER: No, Your Honor. At this time, the applicant
7 rests.

8 THE COURT: Mr. Hunter?

9 MR. HUNTER: The State would call Mr. Strobel.

10 THE WITNESS: Your Honor, I want to apologize about the
11 phone. I couldn't find the doggoned thing. I could hear it
12 going, but evidently it was down here in my pants pocket and I
13 apologize.

14 THE COURT: That's all right.

15 THE CLERK: Please place your left hand on the Bible and
16 raise your right hand. Do you swear or affirm that the
17 testimony you are about to give is the truth, the whole truth,
18 and nothing but the truth, so help you God?

19 THE WITNESS: It will.

20 THE CLERK: Please take a seat and state your name for
21 the record.

22 THE WITNESS: Richard W. Strobel.

23 THE COURT: Go ahead, Mr. Hunter.

24 RICHARD W. STROBEL, being first duly
25 sworn, testified as follows:

RICHARD W. STROBEL - DIRECT BY MR. HUNTER

DIRECT EXAMINATION

1

2 BY MR. HUNTER:

3 Q: Are you ready, Mr. Strobel?

4 A: I am.

5 Q: All right. How long have you been practicing law?

6 A: Forty-five years.

7 Q: Okay. And of that 45 years, how much of your practice
8 has been devoted to criminal law?

9 A: About 80 percent.

10 Q: Okay. Do you recall when you were retained on this case?

11 A: I'll never forget it. Yes, sir, I remember. It was his
12 girlfriend that came to the office.13 Q: Okay. Well, could you kind of explain that process to
14 us?15 A: She wanted -- she said she was representing the family
16 and she wanted me to represent him. And she was a very close
17 friend with Misty, who I brought with me, and Misty said she
18 knows the girl. She said she's a good girl; so I said, well,
19 fine, I'll represent him.20 Q: Okay. Do you recall if you met with the applicant any
21 prior to the guilty plea?

22 A: I did, and he signed the retainer.

23 Q: Okay. Do you recall how many times you met
24 approximately?

25 A: No. I don't know how many times, but it was more than

RICHARD W. STROBEL - DIRECT BY MR. HUNTER

1 one.

2 Q: Okay. So you spoke -- did you speak with the applicant
3 about his charges prior to the day of the plea?

4 A: Yes.

5 Q: Okay. Did you have any problem getting Rule 5 and Brady
6 from the State in this case?

7 A: No problem.

8 Q: Okay. Did you go over the discovery with -- with Mr.
9 Black?

10 A: Either I did or Skip Duffie went over it with him. I
11 don't know.

12 Q: Okay. Did you discuss Mr. Black's version of the --
13 version of events prior to this plea with him? Did you
14 discuss whether he had any defenses, anything like -- of that
15 sort?

16 A: I did briefly because he was more insistent upon getting
17 a deal and pleading guilty. And he had two armed robberies
18 and a gun charge, and the mandatory minimum was ten years on
19 the armed robbery. So I -- I was able to get him -- get the
20 prosecutor to go down to ten on one count and dismiss
21 everything else. So he got a heck of a good deal.

22 Q: Okay. So he couldn't have gotten less than ten years,
23 could he?

24 A: What?

25 Q: He couldn't have gotten less than ten years on that

RICHARD W. STROBEL - DIRECT BY MR. HUNTER

1 charge?

2 A: He couldn't have gotten less, no.

3 Q: Okay.

4 A: Not on armed robbery.

5 Q: Okay. Did -- did Mr. Black ever claim that he was

6 innocent?

7 A: Never.

8 Q: Okay. Did he have -- had this case --

9 A: In fact -- in fact, that's one the funniest robberies

10 I've ever heard. He went into the back of Papa John's because

11 that's where the guys come and go for the delivery. Anyway,

12 he gets in there and robs the place, then apologizes to the

13 employees in the store for having to rob it because he needed

14 money to buy Christmas presents. But I don't think I've ever

15 had a case where somebody in the process of robbing somebody

16 at gunpoint apologizes for having to do it. But yes, I

17 remember it.

18 Q: Okay. Did you discuss the elements of armed robbery with

19 Mr. Black?

20 A: Yes.

21 Q: Now, one of the things he claimed earlier is that -- is

22 that you didn't investigate enough. Did he provide you with

23 any leads or witnesses to interview or anything like that?

24 A: No.

25 Q: Okay. Prior to his plea, did you go over the

RICHARD W. STROBEL - DIRECT BY MR. HUNTER

1 constitutional rights that Mr. Black was waiving?

2 A: I did.

3 Q: Okay. Did he ever tell you he didn't understand

4 anything?

5 A: No.

6 Q: And did you explain the difference between a straight-up

7 plea or recommendation or negotiated sentence?

8 A: I did.

9 Q: Okay. So he knew what he was pleading to?

10 A: Yes.

11 Q: Okay. So you would say it was fair to say that it was

12 Mr. Black's decision to plead guilty?

13 A: Yes, from the beginning.

14 Q: Okay. But he never indicated he wanted to go to trial?

15 A: Never.

16 Q: Okay. Did you go over with Mr. Black the fact that it

17 was a violent offense?

18 A: I did.

19 Q: And that it was an 85-percent?

20 A: Yes. He knew that.

21 Q: Okay. And the strikes?

22 A: I beg your pardon?

23 Q: And --

24 A: One strike.

25 Q: Okay.

RICHARD W. STROBEL - DIRECT BY MR. HUNTER

1 MR. HUNTER: I beg the Court's indulgence for just a
2 moment, Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. HUNTER:

5 Q: So the first time you saw Mr. Black was not at his plea?

6 A: No.

7 Q: Okay.

8 MR. HUNTER: That's all the questions I have. Thank you,
9 Mr. Strobel.

10 THE COURT: Cross-examination?

11 MR. WALLER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. WALLER:

14 Q: Mr. Strobel, he was charged -- he had four total charges;
15 is that right? He had the two --

16 A: Yes. I think it was four.

17 Q: I'm sorry. Okay. And he actually pled guilty to two
18 armed robberies, and two weapons charges were dismissed; is
19 that right?

20 A: That's correct.

21 Q: Okay. Mr. Strobel, did you have a chance to review your
22 file before you came today?

23 A: Yes.

24 Q: Okay. You just mentioned on direct examination that Mr.
25 Black said he apologized to the people at Papa John's that he

RICHARD W. STROBEL - CROSS BY MR. WALLER

- 1 needed to buy Christmas presents; is that right?
- 2 A: Yes. I think it was his children. It was Christmas
3 presents is what I understand.
- 4 Q: Okay. Mr. Strobel, these offenses allegedly took place
5 in May of 2011; is that right?
- 6 A: I reckon it was birthday. Okay.
- 7 Q: Okay. How did you -- I know you answered it on direct
8 examination, but if you could again, how did you come to
9 represent Mr. Black?
- 10 A: Misty came to see me saying one of her good friend's
11 boyfriend is in a lot of trouble, and I've known her forever
12 and ever and she's a good girl and would I, and I said yeah.
13 And boy, was that something I'll never forget.
- 14 Q: Do you remember --
- 15 A: Misty knows why.
- 16 Q: I apologize for -- for interrupting you there. Do you
17 remember what date that was?
- 18 A: No.
- 19 Q: Do you remember around when you actually began
20 representing him?
- 21 A: No.
- 22 Q: Okay. Was it before October, if you recall?
- 23 A: No.
- 24 Q: You don't recall or it wasn't before October?
- 25 A: Well, I don't recall.

RICHARD W. STROBEL - CROSS BY MR. WALLER

1 Q: Okay.

2 A: It would be on the retainer agreement.

3 Q: Okay. Do you have a copy of that with you here today?

4 A: We didn't bring the file because we was told that this
5 wasn't going forward.

6 Q: Okay. Did you file a discovery motion with the Clerk of
7 Court?

8 A: I did.

9 Q: Okay. Did you file a letter of representation?

10 A: No. I notify the Solicitor's Office, not the Clerk of
11 Court, that I represent someone.

12 Q: Okay. And how did you receive the discovery in that
13 case?

14 A: It was mailed to me by the Solicitor's Office.

15 Q: Okay. When did you go over that discovery with Mr.
16 Black?

17 A: I usually review it for about a week and then go talk to
18 him.

19 Q: Okay. Do you recall y'all's conversations?

20 A: No.

21 Q: Okay. What were the discussions you and Patricia Parr
22 had about the plea offer?

23 A: I wanted the least -- the least I could get, and that's
24 what I got.

25 Q: Okay. Was there ever a mention of 15 years?

RICHARD W. STROBEL - CROSS BY MR. WALLER

1 A: Not -- I heard him saying that. I don't where he got
2 that from.

3 Q: Okay. And again, how many times do you think you met
4 with Mr. Black?

5 A: A few times.

6 Q: Okay.

7 A: Skip met with him a couple times.

8 Q: Okay.

9 MR. WALLER: No further questions, Your Honor.

10 THE COURT: Any redirect?

11 MR. HUNTER: No, Your Honor.

12 THE COURT: Sir, you may step down. Thank you.

13 THE WITNESS: Yes, sir. Thank you. Thank you, Judge.

14 (WHEREUPON, there was a pause in the proceedings as a
15 bench conference was held between Solicitor Clements and
16 the Court on an unrelated matter.)

17 THE COURT: All right. Anything further, Mr. Hunter?

18 MR. HUNTER: No, sir, Your Honor. That's the State's
19 case.

20 ARGUMENTS OF COUNSEL

21 THE COURT: All right. Mr. Waller, anything by way of
22 argument?

23 MR. WALLER: Thank you, Your Honor. Just briefly, Your
24 Honor, I believe the testimony was that Mr. Strobel and Mr.
25 Black did not meet very many times.

1 The circumstances of the plea offer were not completely
2 conveyed to Mr. Black. In fact, the applicant testified that
3 Mr. Strobel came to him with a worse plea offer than he
4 already had.

5 Your Honor, there is -- I believe Your Honor has a copy
6 of the clerk's file. There is no discovery motion that I'm
7 aware of filed by Mr. Strobel in there. Your Honor, the --
8 Mr. Black testified that he and Mr. Strobel discussed going to
9 trial and that -- that he didn't feel that Mr. Strobel had
10 done anything on his case.

11 Your Honor, the applicant has to show that counsel was
12 ineffective and that if those errors hadn't occurred that he
13 would not have pled guilty, but would have insisted on going
14 to trial.

15 Your Honor, we're -- unfortunately, in the system that
16 we're in, criminal defendants don't trust public defenders. I
17 think that was a situation what they had here. He hired Mr.
18 Strobel and he put all of his trust without being able to
19 check behind the attorney that he had paid for. Mr. Strobel
20 did not bring his file, did not -- I don't know where he heard
21 that it was not going to go forward.

22 But, Your Honor, I believe the applicant has satisfied
23 his burden of showing that but for his attorney not being
24 prepared, he would not have pled guilty, but would have
25 insisted on going to trial.

1 THE COURT: All right. Mr. Hunter?

2 MR. HUNTER: Just very briefly, Your Honor, and I can
3 clear up -- Mr. -- I'd talked to Mr. Strobel last week and,
4 based on conversations with Mr. Waller, I had told him that I
5 thought there was a likelihood that Mr. Black would withdraw
6 his PCR, but I did not tell him the case would not go forward.

7 And then to kind of counter Mr. Waller's argument, I
8 think there's plenty of evidence in the record that the plea
9 was voluntarily given. Mr. Black testified that he pled
10 guilty to avoid a harsher sentence. He was sentenced to the
11 minimum; so he couldn't have gotten less time anyway unless
12 Mr. Strobel had secured him a plea to a lesser charge. I
13 doubt that is very likely given the evidence against Mr.
14 Black. He did confess in this case. He did apologize when he
15 pled guilty.

16 And I think the record is very clear that he knew what he
17 was doing and that he willingly pled guilty. And so I really
18 don't think that he's shown that -- that were he to go back
19 and start over again, he would have gone to trial. I don't
20 think he's shown any prejudice. That would be my argument.

21 THE COURT: All right. Anything further, Mr. Waller?

22 MR. WALLER: Nothing further, Your Honor.

23 RULING

24 THE COURT: All right. Based upon what I've heard here
25 today, I do not find that the defendant has met his burden of

1 showing that counsel's representation fell below an objective
2 standard of reasonableness demanded of attorneys in criminal
3 cases, nor has he met the burden of showing that there is a
4 reasonable probability that, but for counsel's errors,
5 defendant would not have pled guilty and would have insisted
6 on going to trial.

7 The defendant in this particular case was fully advised
8 of rights, was fully advised of the consequences. He entered
9 the plea freely, voluntarily, knowingly, and intelligently,
10 and received -- after admitting to such offenses, received the
11 minimum sentence for which he could have received, and I do
12 not believe that he has met the burden in either -- of either
13 prong required under *Strickland*.

14 MR. WALLER: Thank you, Your Honor.

15 THE COURT: If you'll get me an order, Mr. Hunter.

16 MR. HUNTER: Yes, sir. And I think that's it for today.

17 THE COURT: All right.

18 MR. WALLER: Your Honor, one thing, if I could put on the
19 record briefly?

20 THE COURT: Yes.

21 MR. WALLER: I just spoke with my client, and he has
22 advised me he does not wish to file an appeal from your ruling
23 today.

24 THE COURT: All right. Mr. Black, you've heard your
25 lawyer indicate that on the record. Is that correct?

1 THE APPLICANT: Yes, sir.

2 THE COURT: All right. It is on the record for you, Mr.
3 Waller. Mr. Black, good luck to you, sir.

4 THE APPLICANT: Thank you, sir.

5 MR. WALLER: Thank you, Your Honor.

6 (WHEREUPON, the proceedings ended at 12:29 p.m.)

7

8 --- END REQUESTED TRANSCRIPT ---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 30 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 13th
13 day of April, 2015.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 s/ Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 July 6, 2015
22
23
24
25

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2015 JUN -1) PM 2:24

Levon D. Black, #350129,

CONNIE REE SHEA
CCCP & GS
FLORENCE COUNTY, SC

Case No. 2013-CP-21-0468

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 15, 2013. Respondent made a Return on or about May 8, 2013. The Court convened an evidentiary hearing into the matter on April 13, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Richard W. Strobel, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the October 2011 term of the Florence County Grand Jury for two counts of armed robbery and one

CERTIFIED: A TRUE COPY

Connie Ree Shea

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

count of possession of a weapon during the commission of a violent crime (2011-GS-21-1697). Applicant was represented by Richard W. Strobel, Esquire.

On March 12, 2012, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to ten years imprisonment on all charges. Applicant did not appeal.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified at the PCR hearing that his family hired Mr. Strobel (Counsel). Applicant testified he was initially represented by Vick Meetze, Esquire, who he characterized as rude and inconsiderate. Applicant testified he never met with Counsel, and the first time he saw him was at the plea, four months after he had been retained. Applicant testified Counsel's assistant came to see him the Friday before his plea and said for him to have his money ready on the day of the plea. Applicant testified it was the first time he met with anyone from Counsel's

office, and the discussion revolved solely around payment. Applicant testified that prior to the plea, Counsel told him to be ready to plea to fifteen years, and that Counsel was adamant about the fifteen year term. Applicant testified that the solicitor had offered him a ten year plea while he was represented by Meetze. Applicant testified Counsel never went over the State's evidence with him, and that he had to write his own Rule 5 and *Brady* motion. Applicant testified he never had a chance to ask Counsel any questions. Applicant testified he did not understand how he could still be charged with armed robbery if the weapon charge was dismissed. Applicant testified he and Counsel never discussed his statement.

On cross-examination, Applicant testified he never wanted to go to trial. He testified he pled guilty because he was scared he would receive a longer sentence if he was convicted at trial. Applicant admitted he told the plea judge he was satisfied with Counsel and had no complaints about his representation. Upon further questioning, Applicant admitted he had not been truthful with the plea judge when he told him he was satisfied with Counsel's performance.

Counsel testified he has been practicing law for forty-five years, and eighty percent of his practice is devoted to criminal defense. Counsel testified Applicant's girlfriend retained him because she was friends with Counsel's assistant. Counsel testified he met with Applicant multiple times prior to the plea. Counsel testified he had no trouble getting the Rule 5 and *Brady* materials, and that he or his associate went over all of the discovery materials with Applicant. Counsel testified Applicant always wanted to plead guilty, and he explained to Applicant that the mandatory minimum was ten years, which Applicant received. Counsel testified he discussed the elements of armed robbery with Applicant and reviewed the constitutional rights he was waiving by pleading guilty. Counsel testified he never had any trouble communicating with Applicant,

and he never seemed to have trouble understanding their discussions. When Counsel was asked if he discussed Applicant's possible defenses, he responded Applicant did not have any legitimate chance to overcome the charges against him. Counsel testified Applicant went into a Papa John's pizza restaurant and robbed it, and before leaving with the money, Applicant apologized to the employees for robbing them. Counsel testified he explained that armed robbery carried a mandatory 85%, and he explained serious/most serious offenses as well as strikes to Applicant.

On cross-examination, Counsel testified he thought Applicant robbed the store to purchase Christmas presents for his children. When reminded the robbery took place in May, Counsel acknowledged it may have been birthday presents Applicant intended to purchase. Counsel testified he came to represent Applicant because Counsel's assistant told him her good friend's boyfriend was in trouble and asked if he would help. Counsel testified he did not remember the specific date he began representing Applicant. Counsel testified he notified the solicitor's office, not the clerk's office that he was representing Applicant. Counsel testified he usually reviews the discovery for a week or so before he goes and discusses it with his clients. Counsel testified he met with Applicant a few times, as did his associate. Counsel testified his strategy was to get Applicant the least amount of time he could on the armed robbery charge, and that is what he did by pleading to the mandatory minimum.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective

assistance of trial counsel as a ground for relief, Applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case, and he was able to articulate his strategy in obtaining a favorable plea for Applicant. By Applicant's own admission, he was untruthful with the plea

judge, so this Court must evaluate his testimony at the PCR hearing with that in mind. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. This Court further finds that based upon the solicitor's recitation of the facts at the plea colloquy, combined with Counsel's testimony at the PCR hearing, the evidence against Applicant was such that it was in Applicant's best interest to go forward with the plea. As such, Applicant has failed to show ineffectiveness of counsel, and the allegation is without merit.

C. Involuntary Guilty Plea

Although not specifically alleged, this Court finds Applicant's allegations could be construed as alleging his plea was involuntary. This Court finds the allegation to be 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).

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).

This Court has had the opportunity to review the testimony from the PCR hearing, as well as the guilty plea transcript and finds Applicant knowingly, intelligently, and voluntarily entered his guilty plea. Applicant has presented no credible evidence to the contrary. As such, this Court finds the allegation is without merit.

D. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26 day of May 2015.

2015 JUN - 1 PM 2:24
 DONNIE REEL-SHIRT ARRM
 C.C.P. & G.S.
 FLORENCE COUNTY, S.C.
FILED

D. Craig Brown
 D. CRAIG BROWN
 Presiding Judge
 Twelfth Judicial Circuit

Florence, South Carolina

CERTIFIED: A TRUE COPY
Donnie Reel-Shirt
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Stephen Banister Florence Police Department

Melvin Godwin Florence Police Department

CERTIFIED A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.

PATRICIA S PARR

ARREST WARRANT NUMBER

M378099 M378109

2011GS2101697A 2011GS2101697B

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 9-29-11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-21-1697

The State of South Carolina

County of
FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE

vs.

LEVON DONTÉ BLACK

Indictment for

ARMED ROBBERY (2 COUNTS)

AND

POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT OFFENSE

2011 SEP 29 PM 1:32
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ARMED ROBBERY (2 COUNTS)
 AND
 POSSESSION OF WEAPON DURING COMMISSION
 OF A VIOLENT OFFENSE (2 COUNTS)

At a Court of General Sessions, convened on SEPTEMBER 29, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That Levon Donte Black did in Florence County on or about May 29, 2011, while armed with a deadly weapon, to wit: a 380 caliber handgun, take and carry away property of Genayla Doles and Charles Harrison, employees at Papa Johns, from or in the immediate presence of Genayla Doles and Charles Harrison with intent to deprive Genayla Doles and Charles Harrison of possession by use of force, threats or intimidation, to wit: one thousand five hundred dollars (\$1,500.00) in US Currency, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

**COUNT TWO- POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT
 OFFENSE**

That Levon Donte Black did in Florence County, on or about ~~January 5~~ ^{May 29}, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to wit: a 380 caliber handgun during crime of Armed Robbery, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT THREE - ARMED ROBBERY

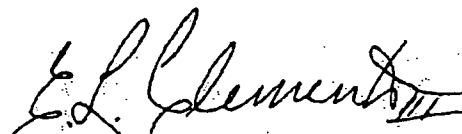
That Levon Donte Black did in Florence County on or about ^{1/5} ~~May 29~~, 2011, while armed with a deadly weapon, to wit: a 380 caliber handgun, take and carry away property of Justin Bernstein and Scott Megan, employees of Papa Johns, from or in the immediate presence of Justin Bernstein and Scott Megan with intent to deprive Justin Bernstein and Scott Megan of possession by use of force, threats or intimidation, to wit: nine hundred forty six dollars (\$946.00) in US Currency, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR 2 COUNTS OF ARMED ROBBERY AND 2 COUNTS POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT OFFENSE WITH THE AFORESAID NAMES(S) OF LEVON DONTÉ BLACK SHOWN THEREON:

COUNT FOUR- POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT OFFENSE

That Levon Donte Black did in Florence County, on or about January 5, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to wit: a 380 caliber handgun during crime of Armed Robbery, in violation of Section 16-23-0490, S. C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFIED A TRUE COPY
E.L. Clements, III
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.