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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

Thomas A. Russo, Circuit Court Judge

DERRICK JAVARD GEORGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002429

APPENDIX

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THE STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF DARLINGTON)	
COUNTY OF FLORENCE)	
)	
THE STATE,	)	August 29, 2012
)	
PLAINTIFF,)	
)	
VERSUS)	
)	
DERRICK JAVARD GEORGE	)	2011-GS-16-0554
	)	2011-GS-21-0771
DEFENDANT.)	
_____)	

BEFORE

THE HONORABLE HOWARD P. KING

APPEARANCES

John Charles Jepertinger, Esquire
John W. Holt, Esquire
ATTORNEYS FOR THE STATE

John M. Ervin III
ATTORNEY FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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THE STATE VERSUS DERRICK JAVARD GEORGE

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1 (Whereupon, this hearing began at 2:58 p.m.
2 on Monday, August 29, 2011.)

3 **THE COURT:** All right, Mr. Jepertinger.

4 **MR. JEPERTINGER:** May it please the Court, Your
5 Honor. For the record, my names is John Jepertinger.
6 J-E-P-E-R-T-I-N-G-E-R.

7 Your Honor, I am here for a charge out of Florence
8 County on 2011-0771. Up there on the bench, Your Honor, I
9 have handed up a sentencing sheet. I also have a waiver
10 of venue signed by the defendant and his attorney. And I
11 believe an order to lift a bench warrant out of a Florence
12 County case, Your Honor.

13 He is pleading to an armed robbery charge on the
14 Florence County case. There is a negotiation between the
15 defense attorney, Mr. Ervin and myself for a thirteen year
16 armed robbery conviction, Your Honor. That is to run
17 concurrent with this sentence that he receives out of the
18 Darlington charges.

19 Your Honor, also in terms of the negotiations, there
20 was another Indictment in Florence, 2011-1239 for strong
21 armed robbery, that is being nolle prosequi and dismissed,
22 Your Honor. In terms of victim notification, we called
23 the convenient store owners, and they chose not to be
24 here, and we informed them what the negotiated sentence
25 was going to be.

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4

1 **THE COURT:** Mr. Jepertinger, I have the three
2 Indictments from Darlington County, which are 11-553, 554,
3 and 557. Again I am being handed -

4 **MR. JEPERTINGER:** -- A certified true copy of the
5 Florence Indictments, and it would be, Your Honor, count
6 three of that Indictment. Some of the other counts
7 involve other co-defendants.

8 **THE COURT:** That is 2011-GS-21-771, and is count
9 three. And you have the sentencing sheets for both the
10 Florence and the -

11 **CLERK:** Yes, sir.

12 **THE COURT:** I'll let you go ahead and process
13 those, and in the mean time go ahead and swear the
14 defendant.

WHEREUPON, DERRICK JAVARD GEORGE**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

15 **MR. GEORGE:** I do.

16 **THE COURT:** Mr. Ervin, you represent the
17 defendant?
18 defendant?

19 **MR. ERVIN:** I do, Your Honor.

20 **THE COURT:** Have you explained to him the charges
21 contained in all of the Indictments, that is the three
22 Darlington County Indictments as well as the Florence
23 County Indictment?
24 County Indictment?

25 **MR. ERVIN:** I have.

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5

1 **THE COURT:** In your opinion, does he understand
2 those things?

3 **MR. ERVIN:** He does, Your Honor.

4 **THE COURT:** All right. You are Derrick Javard
5 George; is that correct?

6 **MR. GEORGE:** Yes, sir.

7 **THE COURT:** Mr. George, I need for you to speak up
8 loudly and clearly, so that I can understand you, and so
9 that this lady can hear you.

10 I need to ask you some questions. If you don't
11 understand the questions or the words that I use, tell me
12 and I will be glad to explain them to you. You may talk
13 to your lawyer at any time as we go through this process.
14 Do you understand?

15 **MR. GEORGE:** Yes, sir.

16 **THE COURT:** How old are you?

17 **MR. GEORGE:** Thirty-six.

18 **THE COURT:** How old?

19 **MR. GEORGE:** Thirty-six.

20 **THE COURT:** You can just talk straight. I think I
21 can hear you. You don't need to get too close to it.

22 What kind of work do you usually do?

23 **MR. GEORGE:** Detailing, auto work.

24 **THE COURT:** Are you today under the influence of
25 any kind of drugs or alcohol?

THE STATE VERSUS DERRICK JAVARD GEORGE

6

1 **MR. GEORGE:** No, sir.

2 **THE COURT:** Are you today aware of any physical,
3 emotional, or nervous problem that would keep you from
4 understanding what you are doing here today?

5 **MR. GEORGE:** No, sir.

6 **THE COURT:** Have you ever been treated for the use
7 of alcohol or drugs?

8 **MR. GEORGE:** No, sir.

9 **THE COURT:** All right. You have heard your
10 attorney tell me that he has explained to you the charges
11 against you, and the possible punishment, and your
12 constitutional rights, and that you understand these
13 things; is that correct?

14 **MR. GEORGE:** Yes, sir.

15 **THE COURT:** All right. I am going to go over
16 these charges with you. And the first one I am going to
17 go over is the Florence County charge, because it is just
18 one Indictment. But that is Indictment Number 2011-GS-21-
19 0771, and it charges in count three, that you did, along
20 with Calvin Dixon, did in Florence County, on or about
21 September 22, 2010, along with a deadly weapon;
22 specifically a handgun, take and carry away the personal
23 property of Panther's Convenient Store from the immediate
24 presence of Anneta Verona, with the intent to deprive The
25 Panther's Convenient Store of the property, and the charge

THE STATE VERSUS DERRICK JAVARD GEORGE

1 is one of armed robbery. Do you understand that charge?

2 **MR. GEORGE:** Yes, sir.

3 **THE COURT:** Do you understand that for that
4 offense you can get a minimum of ten, and a maximum of
5 thirty years in prison?

6 **MR. GEORGE:** Yes, sir.

7 **THE COURT:** Do you understand that is also
8 considered under our law a violent offense. Do you
9 understand that?

10 **MR. GEORGE:** Yes, sir.

11 **THE COURT:** And has your lawyer explained to you
12 what is meant by violent offense?

13 **MR. GEORGE:** Yes, sir.

14 **THE COURT:** Do you also understand that it is
15 considered a most serious offense. Under our two strike,
16 three strike law it means that if you were to have two
17 most serious, or three serious offenses that you could be
18 subject to life in prison, so that you would now have this
19 strike against you; do you understand that?

20 **MR. GEORGE:** Yes, sir.

21 **THE COURT:** Now, the other Indictments are
22 Darlington County Indictments, and they charge in
23 Indictment Number 2011-554 that you did in Darlington
24 County, on or about November 13, 2010, while armed with a
25 deadly weapon, specifically a handgun, take and carry away

THE STATE VERSUS DERRICK JAVARD GEORGE

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1 the personal property of SavWay, that being money in the
2 amount of forty-five dollars, and that was a charge for
3 armed robbery of The SavWay Store, for which you can get
4 from ten to thirty years in jail; do you understand that?

5 **MR. GEORGE:** Yes, sir.

6 **THE COURT:** And do you understand that that also
7 is a serious or actually a most serious offense, and it
8 would go against your record. Now, I don't know whether
9 it would be subsequent offenses that would be considered a
10 second or third Mr. Ervin, because it is not the same date
11 as the one over in Florence, but that would be a matter
12 that he would have to consider.

13 Do you understand that?

14 **MR. GEORGE:** Yes, sir.

15 **THE COURT:** All right. And, also on that same
16 date you were charged with carrying a concealed weapon, to
17 wit, two small razor blades concealed about your person;
18 do you understand that charge?

19 **MR. GEORGE:** Not really, because the razor blades
20 were issued at the jail, and I forgot to return them back
21 to the office. Certainly when they did their routine
22 search in Florence County, and an officer found the razor
23 blades on my toilet tissue holder.

24 **THE COURT:** Where did they find it?

25 **MR. GEORGE:** In the toilet tissue holder.

THE STATE VERSUS DERRICK JAVARD GEORGE

9

1 **THE COURT:** Okay.

2 **MR. GEORGE:** And when they searched the room they
3 found the razor blades, and they charged me with it.

4 **THE COURT:** So, they charged you with the razor
5 blades, because the razor blades were in the toilet tissue
6 holder in the cell?

7 **MR. GEORGE:** Yes, sir.

8 **THE COURT:** But you are pleading guilty to that as
9 well; is that correct?

10 **MR. GEORGE:** Yes, sir.

11 **THE COURT:** And finally then, the other count on
12 the Indictment is --- I mean, the other Indictment is
13 another armed robbery, that is Indictment Number 1557, and
14 557 is on September 24th, while armed with a deadly
15 weapon, specifically a handgun, you did take from the
16 presence of the B.P. Station, approximately eight hundred
17 dollars, and that is another count of armed robbery. Do
18 you understand that?

19 **MR. GEORGE:** Yes, sir.

20 **THE COURT:** So, we are talking about three counts
21 of armed robbery, for which you could get from ten to
22 thirty years in prison on for each one; do you understand?

23 **MR. GEORGE:** Yes, sir.

24 **THE COURT:** And each one is considered a violent
25 offense, and each one is considered a most serious

THE STATE VERSUS DERRICK JAVARD GEORGE

10

1 offense. Do you understand that?

2 **MR. GEORGE:** Yes, sir.

3 **THE COURT:** All right. Now, Mr. George, when you
4 plead guilty, you give up certain important constitutional
5 rights. You give up your right to remain silent. That is
6 your privilege against self-incrimination. Your right to
7 say nothing at all. You cannot be required to provide
8 testimony or evidence against yourself. You give up your
9 right to have a jury trial, that is your right to have a
10 jury decide whether you are guilty beyond a reasonable
11 doubt. In a trial, you would be presumed to be innocent,
12 and the state would have to prove your guilt beyond a
13 reasonable doubt, and convince all twelve members of the
14 jury of your guilt beyond a reasonable doubt.

15 Also, you give up your right to remain silent. Well,
16 I said that. You give up your right to remain silent.
17 And you give up your right to have a jury trial. You also
18 give up the right to subpoena witnesses on your own
19 behalf, and make the witnesses against you come into court
20 and testify, and have those witnesses examined by your
21 lawyer. That is your right of confrontation. These are
22 all constitutional rights that you give up when you plead
23 guilty. Do you understand that?

24 **MR. GEORGE:** Yes, sir.

25 **THE COURT:** Understanding the nature of the

THE STATE VERSUS DERRICK JAVARD GEORGE

11

1 charges against you, that is three counts of armed
2 robbery, and one count of whatever else it was ---
3 carrying or concealing a weapon in a prison cell, those
4 are the four charges against you. How do you wish to
5 plead to these charges, guilty or not guilty?

6 **MR. GEORGE:** I plead guilty.

7 **THE COURT:** Do you understand that when you plead
8 guilty you are admitting that the charges against you are
9 true?

10 **MR. GEORGE:** Yes, sir.

11 **THE COURT:** Now, you may have a defense to one or
12 more of these charges. I don't know if you do or not, but
13 do you understand that when you plead guilty you waive or
14 give up any right or any defenses that you might have with
15 regard to these charges?

16 **MR. GEORGE:** Yes, sir.

17 **THE COURT:** You also may have given an
18 incriminating statement in this case. Again, I don't know
19 whether you have or not. But, do you understand that when
20 you plead guilty you waive or give up your right to
21 contest or question whether or not that statement was
22 freely and voluntarily given in accordance with your
23 constitutional rights?

24 **MR. GEORGE:** Yes, sir.

25 **THE COURT:** And you are pleading guilty because

THE STATE VERSUS DERRICK JAVARD GEORGE

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1 you are guilty?

2 **MR. GEORGE:** Yes, sir.

3 **THE COURT:** All right. Now, you do have the right
4 to have the Florence County charge go before a court in
5 Florence County, but I understand that you are waiving
6 your right to have it presented to a court in Florence
7 County, and willing to go forward with that hearing in
8 Darlington County today; is that correct?

9 **MR. GEORGE:** Yes, sir.

10 **THE COURT:** Did you say you have a waiver of
11 venue? Yeah, I have it right here.

12 All right. The Court does have a copy --- a form
13 that indicates that you have waived your right to have the
14 matter heard in Florence, and agree to have it heard here.
15 Is that your signature?

16 **MR. GEORGE:** Yes, sir.

17 **THE COURT:** Plea negotiations, Mr. Jepertinger or
18 Mr. Holt?

19 **MR. HOLT:** Mine were for a recommendation of
20 thirteen years, judge. And I fully wanted you to give him
21 the whole thirteen, and am prepared to speak on that.

22 And Mr. Jepertinger is for a negotiated thirteen, so,
23 I guess -

24 **THE COURT:** So, the recommendation is a joint
25 recommendation for thirteen years concurrent on all

THE STATE VERSUS DERRICK JAVARD GEORGE

13

1 charges?

2 MR. JEPERTINGER: That's correct.

3 MR. HOLT: Yes sir, Your Honor.

4 THE COURT: All right. The state is recommending
5 that I give you a thirteen year sentence concurrent on all
6 charges. That means that they would all run together, not
7 one right after the other one. Do you understand that to
8 be the recommendation of the state?

9 MR. GEORGE: Yes, sir.

10 THE COURT: Other than that recommendation, has
11 anyone promised you anything to get you to plead guilty?

12 MR. GEORGE: No, sir.

13 THE COURT: And, are you pleading guilty freely
14 and voluntarily?

15 MR. GEORGE: Yes, sir.

16 THE COURT: You are represented in this case by
17 Mr. Ervin, are you satisfied with the manner in which Mr.
18 Ervin has advised and represented you in this case?

19 MR. GEORGE: Yes, sir.

20 THE COURT: And do you understand that you have
21 the right to appeal from any decision that I make, and you
22 must do that within ten days?

23 MR. GEORGE: Yes, sir.

24 THE COURT: Let's go back just a minute to your
25 representation by Mr. Ervin.

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14

1 Mr. Ervin, are you retained or were you appointed?

2 MR. ERVIN: I was retained.

3 THE COURT: All right. And has Mr. Ervin done
4 everything for you that you feel that he could have or
5 should have done on your behalf?

6 MR. GEORGE: Yes, sir.

7 THE COURT: Has he done anything that you feel
8 that he should not have done?

9 MR. GEORGE: Yes.

10 THE COURT: And you are completely satisfied with
11 his services?

12 MR. GEORGE: Yes, sir.

13 THE COURT: All right. Do you have any complaints
14 that you want to make about your lawyer, the Solicitor, or
15 any of the police officers?

16 MR. GEORGE: (No response.)

17 THE COURT: Now is the time to tell me if you have
18 any complaints about Mr. Ervin, not after you get over to
19 The State Department of Corrections and you decide you
20 want to write a writ and say that he didn't properly
21 represent you. If you have any complaints against Mr.
22 Ervin, now is the time to tell me. Do you have any
23 complaints?

24 MR. GEORGE: No, sir.

25 THE COURT: Do you understand that you have a

THE STATE VERSUS DERRICK JAVARD GEORGE

15

1 right to appeal any decision I make, and you must do that
2 within ten days?

3 **MR. GEORGE:** Yes, sir.

4 **THE COURT:** All right. If you will give me the
5 factual background Mr. Holt, or Mr. Jepertinger; that will
6 be fine.

7 **MR. HOLT:** You go first.

8 **MR. JEPERTINGER:** Thank you.

9 **PRESENTATION OF FACTS GIVEN BY MR. JEPERTINGER**

10 **MR. JEPERTINGER:** Your Honor, back on September
11 22, 2010, Mr. George along with Calvin Dixon, went into
12 the Panther's Convenient Store. One of them was armed
13 with a handgun. The store surveillance video showed the
14 individual armed, Your Honor. And, as a result of that,
15 they took money from the store, Your Honor. And there was
16 a get-a-way driver by the name of Sandra Carris,
17 (phonetic) who said she saw the money in Mr. George's
18 possession, and she also saw a weapon, I believe carried
19 by Mr. George when he came back to the vehicle.

20 I will give you his record, Your Honor. He had a
21 couple of DUSs, possession of a stolen vehicle in 97.
22 Purse snatching also in 1997 for which he caught a little
23 bit of time. A grand larceny between one thousand and
24 five thousand dollars. And obtaining goods by false
25 pretenses, and possession with intent to distribute

THE STATE VERSUS DERRICK JAVARD GEORGE

16

1 cocaine in 2000, out of the state of North Carolina. And
2 also, which was referred to as a robbery with dangerous
3 weapon in 2003, up in North Carolina. I do not know if
4 that would have been a qualifying event to make this a
5 LWOP type sentence. We have not got that far, but
6 possibly could have.

7 **THE COURT:** All right. Mr. Holt.

8 **PRESENTATION OF FACTS GIVEN BY MR. HOLT**

9 **MR. HOLT:** Thank you, very much, Judge. The first
10 robbery taking place 11/13/2010, at the SavWay. in the
11 North Fifth Street area of Hartsville; in the area of
12 Darlington County. And the second taking place 9/24/2010,
13 at 2301 Timmons ville Highway, in the Darlington area of
14 Darlington County. Basically what he did, Judge, is he
15 took a quart of beer to the counter, at which time he
16 would inform the clerk that he had a weapon. To give him
17 the money. At the Timmons ville store he actually did
18 brandish a weapon. He took somewhere around eight hundred
19 dollars, Judge. This case was set for trial. We were
20 ready to go. The state had DNA, fingerprint, and video
21 tape evidence. It was just a matter of getting here
22 today, Your Honor.

23 The prisoners carrying a concealed weapon, Your Honor
24 heard that from the defendant already. And the state's
25 case isn't much more than that, except at the jail he did

THE STATE VERSUS DERRICK JAVARD GEORGE

17

1 have two razor blades in his possession.

2 **THE COURT:** All right. The Court does find that
3 there was a substantial factual basis for all of the pleas
4 in this case.

5 The Court finds that the Defendant's decision to
6 plead guilty is freely, voluntarily, knowingly, and
7 intelligently made. That he has had the advice and
8 counsel of an attorney with whom he says he is satisfied.
9 The Court will accept the plea.

10 Mr. Jepertinger, what is the status of the case
11 against the co-defendant?

12 **MR. JEPERTINGER:** Calvin Dixon plead the last term
13 of court on August 11, 2011, and received a ten year
14 active sentence by Judge Nettles. But that was the only
15 case he had pending against him.

16 **THE COURT:** And, I think you told me, but let's go
17 ahead and put it on the record. Would both of you tell me
18 about victim notification?

19 **MR. JEPERTINGER:** We have contacted the Panther's
20 Convenient Store, Your Honor. We spoke to management
21 there. They chose not to send anyone from the store here.
22 And we did inform them about the negotiated plea, and they
23 were satisfied with that. And we will call them when we
24 get back to our office.

25 **THE COURT:** Mr. Holt?

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18

1 **MR. HOLT:** Both of my convenient store victim
2 impact statements were not returned to this office, Judge.

3 **THE COURT:** I don't think I mentioned this to you,
4 Mr. George, but I want to make sure that you understand
5 that the carrying of the weapon by an inmate carries up to
6 ten years; do you understand that?

7 **MR. GEORGE:** Yes.

8 **THE COURT:** Is that a yes?

9 **MR. GEORGE:** Yes, sir.

10 **THE COURT:** Okay. All right. The recommendation
11 of the state is still a concurrent sentence on all of the
12 charges. That means that they will all run together; do
13 you understand that?

14 **MR. GEORGE:** Yes, sir.

15 **THE COURT:** All right. Mr. Ervin.

16 **STATEMENT BY MR. ERVIN**

17 **MR. ERVIN:** Your Honor, this thirty-six-year-old
18 man completed the eleventh grade here in Darlington, SC.
19 John's High School. He worked various jobs. He told you
20 he did some auto detailing. He also worked with the power
21 plant maintenance. And a business over in Hartsville,
22 Dent Doc Express. He did a lot of auto body work there.

23 But the majority of his experience is in the
24 construction, and auto body and detailing business.

25 His mother is Mary George, and she and his father

THE STATE VERSUS DERRICK JAVARD GEORGE

19

1 Jerome, live over in Florence County. And, they have been
2 very supportive, very concerned about him.

3 The situation up in North Carolina that he was
4 involve in, sounds to be similar to this, but it did
5 involve some elements --- some similar elements in that a
6 convenient store was robbed up there, but he did not enter
7 the store. He was really more of a lookout, and that may
8 have been where he gained his first exposure to this type
9 of activity.

10 And certainly, I think that the state's
11 recommendation in this case is sufficient, but not greater
12 than necessary in terms of punishment; if the Court deems
13 it appropriate to follow that recommendation.

14 And, again, I think they have been fair in allowing
15 him to have these sentences run concurrently. And he is
16 leaving here with the knowledge today that any similar
17 conduct in the future is going to have catastrophic
18 consequences. I mean, he will probably spend the rest of
19 his life in jail.

20 Fortunately, he can get back out and still have a
21 reasonably still decent life-span, and learn something in
22 this period of incarceration.

23 **THE COURT:** All right, Mr. George, what would you
24 like to tell me?

25 **STATEMENT BY THE DEFENDANT**

THE STATE VERSUS DERRICK JAVARD GEORGE

20

1 **MR. GEORGE:** Your Honor, I just want to say, I
2 apologize to the convenient stores. I am not a bad
3 person. I committed violent crimes. If I could take it
4 back, I could. Due to the fact that I got kids. But,
5 now, you know, I feel like I have to suffer the
6 consequences for my actions. And I just hope that you
7 will have mercy on me. That is all I have to say.

8 **THE COURT:** All right, thank you, sir. Well, I
9 agree with Mr. Ervin, I think this is a fair sentence, and
10 a fair recommendation on behalf of the state. He really
11 could be facing three consecutive thirty-year sentences if
12 the state wanted to proceed that way, or up to ninety
13 years in prison, plus another ten years for the weapon,
14 being the razor blades. So, a hundred years is what you
15 were facing. The state has a recommendation of thirteen
16 years.

17 I also agree with Mr. Ervin, that you can get this
18 behind you, and you still have some time left. You do
19 understand, and I did not mention this to you, but this is
20 a multiple offense, that means that you will have to serve
21 eighty-five percent of whatever I sentence you do before
22 you will be eligible for any kind of release on community
23 supervision; do you understand that?

24 **MR. GEORGE:** Yes, sir.

25 **THE COURT:** All right. The Court is going to

THE STATE VERSUS DERRICK JAVARD GEORGE

21

1 accept the recommendation.

2 The sentence on all three armed robberies to run
3 concurrently. The defendant is committed to The State
4 Department of Corrections for a term of thirteen years;
5 given credit for whatever time he has served.

6 And on the other charge with the razor blades, the
7 weapon in a prison cell. The sentence is ten years also
8 to run concurrently with all of the other charges.

9 Good luck to you sir.

10 Incidentally, the bench warrant is also lifted, and
11 the Court will find that the state has complied with the
12 terms of the victim's rights bill by notifying the victims
13 of their right to be present. And, they have chosen not
14 to do so.

15 And the Court will further find that the defendant
16 has freely and voluntarily waived his right to venue on
17 the Florence County charge, and had the matter heard here
18 in Darlington County.

19 **MR. ERVIN:** Your Honor, I would ask that he get
20 credit for the amount of time he has been detained in the
21 Detention Center.

22 **THE COURT:** I put that on the sentencing sheet.

23 **CLERK:** Your Honor, if we don't put the days in
24 there, they will write me a letter.

25 **THE COURT:** How much time?

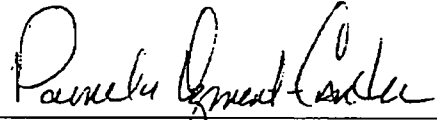
CERTIFICATE OF REPORTER

23

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 29th day of August 2011.

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

September 24, 2012



Pamela Ozment-Cartee
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

DERRICK JAVARD GEORGE
Full name and prison number (if any) of Applicant.
241851

v.

State of South Carolina
Attorney General

2012-CP-16-00735
IN THE COURT OF COMMON PLEAS

2011-GS-16-0554
2011-GS-16-0557
2011-GS-16-00771

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention see CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence COUNTY OF DARLINGTON DARLINGTON GENERAL Sessions
3. Name(s) of co-defendant(s) (if any) NO NAME
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-16-0554 / 2011-GS-16-0557
 - (b) 2011-GS-16-0557 / 2011-GS-16-00771
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUG-29-2011-13-YEARS/SENTENCES
 - (b) _____

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D. JONES
CLERK
COURT
DARLINGTON COUNTY, S.C.

FILED

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty YES
 - (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?
YES

8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. SOUTH CAROLINA COURT OF APPEALS

ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:
 i. NONE
 ii. _____
 iii. _____

(c) the date of each such result:
 i. NONE
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. NONE
 ii. _____
 iii. _____

9. If you answered "no" 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) Ineffective ASSISTANCE of Counsel
- (b) Preliminary Hearings Denied
- (c) Pressured to PLEA guilty

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

- (a) Counsel fail to bring the Attention of the Court
- (b) that Appellant Mental Health Status, That Appellant did
- (c) inform Counsel that he was mental Health, and diagnose with

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

mental illness
psychosis

- (a) any petition in a State Court under South Carolina Law? YES ~~South Carolina~~
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____

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

- i. South Carolina Court of Appeals
- ii. Tanya A Gee Clerk
- iii. P.O Box 11629
- iv. Columbia, SC 29211

(c) the disposition thereof:

- i. NONE
- ii. _____

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 CLERK OF COURT
 ARLINGTON COUNTY, S.C.

- iii. _____
- iv. _____
- (d) the date of each such disposition:
 - i. NONE
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. NONE
 - 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. NONE
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. NONE
 - 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) Ineffective Assistance of counsel to Acknowledge
- (b) the Court about Appellant Mental Health Status
- (c) and diagnosis; by South Carolina Department of Mental Health

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? NO
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ~~yes~~ NO
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. John M. Ervin, III, Esquire Ervin Law Office
 - ii. P.O. Box 23
 - iii. Darlington, SC 29540
 - (b) the proceedings at which each such attorney represented you:
 - i. All of 17 ABOVE
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:
New trial or ~~renew~~ ~~and~~ ~~in~~

20. Are you now under sentence from any other court that you have not challenged?
NO

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 CLERK OF COURT/R.O.B.
 DARLINGTON COUNTY, S.C.
 Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of DARLINGTON)

VERIFICATION

I, Derrick George, 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.

Derrick George

SWORN to and subscribed before me this Aug 22nd
day of 22nd Aug, 2012

Notary Public (L.S.)

My Commission Expires: _____

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

I, Shervik George, 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.

Shervik George
Applicant

SWORN or affirmed to and subscribed before me this
Aug day of 22nd Aug, 2012
22nd

Notary Public

My Commission Expires: _____

FILED
2012 AUG 29 AM 10:11
CLERK OF COURT
DARLINGTON, S.C.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	
)	
	)	2012-CP-16- 735
)	
Derrick Javard George, 241851)	
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 29, 2012, would respectfully show this Court:

1.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for robbery/armed robbery, robbery while armed or allegedly armed (2011-GS-16-0554, 0557) and prisoner carrying or concealing weapon by inmates (2011 GS-16-553). John M. Ervin, Esquire, represented Applicant.

On March 9, 2011, the Applicant pled guilty as indicted before the Honorable Howard P. King, who sentenced Applicant to thirteen years imprisonment. Respondent's records also show an additional charge from Florence County for Robbery/armed robbery, robbery while armed or allegedly armed with a deadly weapon (2011-GS-21-771) was disposed of on August 29, 2011, as

well as the charge of carrying a weapon, for which Applicant received ten years imprisonment. Applicant did not appeal any of the aforementioned sentences.

Attached herewith and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction, 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"
2. "Preliminary Hearings Denied"
3. "Pressured to plea guilty"

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.

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. As to all other allegations, the State moves for summary dismissal 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

January 17, 2012³

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
)
)
 DERRICK JAVARD GEORGE, 241851)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

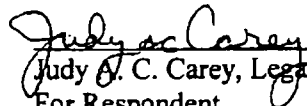
2012-CP-16-0735

AFFIDAVIT OF SERVICE VIA MAIL

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

Parker E. Howle, Esquire
Howle Law Firm
100 St. John's Street
Darlington SC 29532

DATED this 17th day of January, 2013.



 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA))
) COURT OF COMMON PLEAS
 COUNTY OF DARLINGTON))

DERRICK GEORGE)
 241851)
 PETITIONER,)

v.) TRANSCRIPT OF RECORD
) 12-CP-16-0735

STATE OF SOUTH CAROLINA,)
 _____)
 RESPONDENT.)

July 17, 2013
 Darlington, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

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

PARKER E. HOWLE, ESQ.
 Attorney for the Petitioner

KAREN C. RATIGAN, ESQ.
 Attorney for Respondent

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. RATIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. RATIGAN: Your Honor, this is the case
4 of Derrick George versus the State of South
5 Carolina. The docket number is 2012-CP-16-735. Mr.
6 George was indicted for concealing a weapon by an
7 inmate and two counts of armed robbery. He was
8 represented on these charges by Mr. Ervin. He pled
9 guilty to the charges as indicted before Judge King
10 on August 29th of 2012, received concurrent
11 sentences of ten years concealing weapon by inmate,
12 and 13 years on each count of armed robbery. He did
13 not file an appeal, and the State is ready to
14 proceed.

15 THE COURT: Okay.

16 MR. HOWLE: Thank you, Your Honor. I'd
17 like to call Mr. George, Mr. Derrick George, to the
18 stand.

19 THE COURT: Okay.

20 THE CLERK: Mr. George, if you will place
21 your left hand on the Bible and raise your right.

22 WHEREUPON,

23 **DERRICK GEORGE,**
24 having been duly sworn by the Clerk, testified as
25 follows:

PW - D. GEORGE - DIRECT

DIRECT EXAMINATION1
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BY MR. HOWLE:

Q Yes, sir, would you state your full name for the record?

A Derrick Jever (ph) George.

Q And you're here today to have your plea from August 29th, 2012 set aside?

A Yes, sir.

Q All right. You do understand that if your PCR is granted today, the only relief you can get is a new trial?

A Yes, sir.

Q Okay. It looks like you received on — 13 years concurrent on three armed robberies, and a concealing of a weapon by inmate again back on August 29th of last year?

A Yes, sir.

Q Okay. And you understand that you can face all those charges together if they would run consecutive; it'd be a hundred years in prison. You understand that, right?

A Yes, sir.

Q And you still wish to go forward?

A Yes, sir.

Q Okay. Just briefly, Mr. George, what exactly did

PW - D. GEORGE - DIRECT

1 your attorney, or do you feel your attorney Jay
2 Ervin did wrong?

3 A First I would like to say I told Mr. Ervin about
4 my mental illness and that I was sick and I didn't
5 know anything about the charges, and he didn't do
6 anything about it. I sent my mom to inform him
7 about my situation because I needed help, and she
8 told him about my mental illness and he still did
9 nothing. The day of my arraignment he took, he
10 pretty much took advantage of me under psyche
11 medicine and had me plead out without properly
12 defending me and not letting the courts know about
13 my mental health status.

14 Q So you don't even remember committing these three
15 robberies? Is that what you're telling the Court
16 here today?

17 A No, sir, no.

18 Q And you said you have a history of mental
19 illness?

20 A Yes, sir.

21 Q And what is the nature of that illness?

22 A I got the diagnosis with the paperwork. It got
23 psychosis and antisocial, antisocial personality
24 disorder.

25 Q Okay. And you were evaluated, do you see the

PW - D. GEORGE - DIRECT

1 date on that?

2 A June 7th, 2010.

3 Q Okay, and you have your paperwork from the
4 Department of Mental Health?

5 A Yes, sir.

6 Q You can show it to the judge if you want.

7 (Document tendered to the Court.)

8 BY MR. HOWLE:

9 Q So back in 2010 you voluntarily admitted
10 yourself?

11 A Yes, sir.

12 Q And again, you said the diagnosis was psychosis
13 and hearing voices and having visions?

14 A Yes, sir.

15 Q So July 2010, and then these robberies that
16 occurred were in November — September, and then two
17 occurred in November of that same year; is that
18 correct?

19 A I think so.

20 Q So within about four months of when you
21 voluntarily admitted yourself?

22 A I think so.

23 Q Okay. And you brought this, you said you brought
24 this history of mental illness to Mr. Ervin's
25 attention?

PW - D. GEORGE - DIRECT

1 A Yes, sir.

2 Q Have you ever been under any medication or are
3 you currently under any medication for your mental
4 illness?

5 A Yeah, but not at the moment because I had to come
6 to court and —

7 Q But you were at the time?

8 A Yes, sir.

9 Q Do you recall what you were taking?

10 A I think it's — they had me with Seroquel,
11 Trazodone, Cylexin, and Visceral.

12 Q Okay. And those were, again, to treat your
13 psychosis?

14 A Yes, sir, psychosis and my sleeping disorder.

15 Q Sure, all right. Let's see now, these robberies,
16 again, you stated that you don't remember them at
17 all?

18 A No, sir.

19 Q Okay. And I'm assuming you brought this to Mr.
20 Ervin's attention?

21 A Yes, sir.

22 Q Now in regards to when you pled in August of
23 2012, do you feel you were in your right mind when
24 you pled?

25 A I told Mr. Ervin that I was under medication and

PW - D. GEORGE - DIRECT

1 to point where I didn't want to go forward, but he
2 straight pointed to me that I needed to go forward
3 and take the plea or I was going to get life in
4 prison.

5 Q So you feel he pressured you to plead guilty?

6 A Yes, sir, he did.

7 Q Okay. Now you understand that, you know,
8 criminal charges, the solicitor's office has to
9 disclose their evidence to the other side. Did Mr.
10 Ervin ever go over that evidence with you?

11 A Which evidence?

12 Q Any incident reports, warrants, I believe there's
13 a couple of videos of these robberies.

14 A They had videos I never seen. I never seen none
15 of them. I filed for the preliminary hearings. I
16 never received any of my preliminary hearings from
17 Mr. Ervin, none.

18 Q So you never had a preliminary hearing?

19 A No, sir.

20 Q And then he never -- you never saw these videos
21 of those robberies?

22 A No, sir.

23 Q Okay. Now when you pled back in August of 2012
24 did Mr. Ervin mention your history of mental illness
25 to the Court?

PW - D. GEORGE - DIRECT

1 A No, sir.

2 Q Okay. So do you feel that you entered into this
3 plea voluntarily?

4 A No, sir.

5 Q So do you feel that you were pressured by Mr.
6 Ervin to plead?

7 A Yes, sir.

8 Q Okay. Now in regards to any of -- why didn't you
9 appeal this case?

10 A Well, the day I got sentenced, the second day, I
11 think Judge King told me I had ten days to do a
12 notice of appeal. My roommate helped me file the
13 notice of appeal; I did send it in. And when I
14 previously got to Lee County, the State of appeals
15 sent me a letter back, I think, from Mr. Ervin's
16 office stating that he found, that he found that
17 there was no merits in my case for the appeal. And
18 so I wrote, I asked if -- I had inmate help me write
19 the courts back and tell them that I needed
20 appointment of an attorney and extension of time.
21 And they gave me the extension of time but they
22 wouldn't appoint me a lawyer, and I never heard
23 anything else about it.

24 Q So you never actually filed the appeal?

25 A I did file it with the state but I never --

PW - D. GEORGE - CROSS

1 Q You filed a notice of intent to appeal?

2 A Yes, notice of intent to appeal.

3 Q But you didn't actually file the appeal?

4 A No, sir.

5 Q Okay.

6 MR. HOWLE: That's all the questions I
7 have, Your Honor.

8 THE COURT: Okay.

9 **CROSS-EXAMINATION**

10 BY MS. RATIGAN:

11 Q So did you ever review any of the evidence with
12 Mr. Ervin?

13 A No, ma'am.

14 Q You didn't discuss the case at all?

15 A He discussed that he had one case in Florence
16 that he said that was being dismissed; that was it.

17 Q Okay. So you told him you didn't remember
18 anything about the case, about the charges?

19 A Period.

20 Q But you never actually talked about that with
21 him?

22 A No, sir, he came see me one time. He brought
23 me — the only thing he brought me was my discovery
24 papers; that was it.

25 Q So he gave you the evidence, he gave you

PW - D. GEORGE - CROSS

1 discovery materials?

2 A That's it.

3 Q You just never talked about it with him?

4 A No, sir.

5 Q All right. So you looked at the discovery
6 materials and you saw that the State had some DNA
7 evidence, fingerprint evidence, and some video
8 evidence?

9 A That's what they said.

10 Q Okay. But you never talked about that with Mr.
11 Ervin?

12 A No, ma'am.

13 Q And you're testifying today that Mr. Ervin
14 pressured you into pleading guilty?

15 A Yes, ma'am, I did.

16 Q But didn't you tell the Court you're pleading
17 guilty freely and voluntarily? Do you remember
18 telling the Court that?

19 A That I'm pleading involuntary?

20 Q No, that you're pleading guilty freely and
21 voluntarily?

22 A I'm not recalling that.

23 Q You don't recall? Okay. And if Mr. Ervin was
24 pressuring you to plead guilty, why did you tell the
25 judge you were satisfied with him as your lawyer?

PW - D. GEORGE - CROSS

1 A Basically I was pretty much scared for my
2 freedom, ma'am, and I told Mr. Ervin that I really
3 needed his help in this situation because I really
4 didn't know anything about the charges. And at the
5 time he was basically telling me that I couldn't
6 testify to anything that the State had against me;
7 and he pretty much, pretty much I didn't have a
8 chance of winning this case. And he basically told
9 me if I did take it that I was going to receive life
10 sentence in prison.

11 Q Now during the plea hearing why didn't you tell
12 the judge about your psychiatric history?

13 A You say why didn't I?

14 Q Yeah.

15 A I don't know.

16 Q And what did you want to appeal in the case? Why
17 did you want to appeal your guilty plea?

18 A You say why?

19 Q Yes, sir.

20 A For one, why I'm appealing is because I didn't do
21 the charges; and two, is that I was expecting my
22 lawyer to represent me with information that he knew
23 about. Because he failed to do investigation on my
24 case.

25 Q And you thought filing an appeal after guilty

PW - J. ERVIN -DIRECT

1 plea would get both of these things reviewed by the.
2 appellate court?

3 A Yes, ma'am.

4 MS. RATIGAN: That's all I have, Your
5 Honor?

6 MR. HOWLE: No redirect, Your Honor.

7 THE COURT: You can step down.

8 MR. HOWLE: The petitioner calls Jay
9 Ervin.

10 WHEREUPON,

11 **JAY ERVIN,**

12 having been duly sworn by the Clerk, testified as
13 follows:

14 **DIRECT EXAMINATION**

15 BY MR. HOWLE:

16 Q Mr. Ervin, would you state your full name for the
17 record.

18 A My full name is John M. Ervin, III.

19 Q And you were representing Mr. George in regards
20 to these charges in Darlington County?

21 A Darlington and Florence.

22 Q Darlington and Florence, I apologize. And were
23 you retained or appointed?

24 A Retained.

25 Q Okay. And it appears to be that the crux of

PW - J. ERVIN -DIRECT

1 Mr. George's argument is that he was suffering from
2 a mental illness, specifically psychosis at the
3 time; and he has testified that he informed you of
4 that mental illness. Is that correct?

5 A It's correct that he testified to that.

6 Q I apologize. Did he ever inform you that he was,
7 had a history of mental illness?

8 A Not to my recollection. If he did he certainly
9 didn't exhibit any signs in my presence.

10 Q Okay. So did you ever have him evaluated b the
11 Department of Mental Health?

12 A Not that I recall. I mean, I don't see anything
13 in the file to indicate that he did; but if there is
14 something, again, it's not in my file.

15 Q All right. And so you, did you ever contact the
16 Department of Mental Health to see if he had ever
17 been evaluated or committed?

18 A I did not, but I didn't have any reason to do so.

19 Q All right. And at his plea did you -- again, I
20 don't know that you were aware of it, but did you
21 address the issue, specifically his history of
22 mental illness with the judge?

23 A I think the plea colloquy establishes that I did
24 not feel that there were any competency issues. I
25 didn't have any problem communicating with him, and

PW - J. ERVIN -DIRECT

1 he didn't exhibit any signs of psychosis or any
2 problem communicating with me.

3 Q All right. So you do you feel he was in his
4 right mind when he pled?

5 A I'm certain he was.

6 Q Okay. And you feel he was competent to
7 understand his sentence and the consequences of a
8 guilty plea?

9 A I am. We went over that in detail. We were on
10 the trial list. I had an offer from the solicitor's
11 office in Florence and Darlington that was in
12 essence a package deal where all three armed robbery
13 sentences would run concurrently as opposed to any
14 of them being consecutive; and of course, if we had
15 gone to trial in Darlington he would have been
16 subject to the charges in Florence as well.
17 Typically in a situation like that, if he went
18 forward at trial there wouldn't be any reason that a
19 court would not impose a consecutive sentence.

20 Q So you feel that based on everything, that if he
21 had gone to trial he would have been found guilty?

22 A The evidence in Darlington County and Florence,
23 certainly in Darlington County, was overwhelming.
24 Florence County, it was not quite as strong but I
25 mean, I'd be glad to go through it with you but in

PW - D. GEORGE - CROSS

1 reviewing my notes there was more than adequate
2 evidence for the government, the State, you know, to
3 get a conviction.

4 Q So you felt that the 13 year sentence he got,
5 concurrent of course, was in his best interest?

6 A I do. He had just completed a similar sentence
7 in North Carolina, not quite as long but it was for
8 a robbery up there so he knocked it out of prison
9 long and when this crime was committed and he was
10 charged. So, yeah, I feel it was very reasonable
11 particularly considering that there were three
12 separate incidents.

13 MR. HOWLE: That's all I have, Your Honor.

14 THE COURT: Okay.

15 MS. RATIGAN: Briefly, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MS. RATIGAN:

18 Q So Mr. Ervin, as part of your practice you would
19 have filed the usual Brady and Rule 5 motions?

20 A I did and I received all Brady materials.

21 Q And did you review those materials with Mr.
22 George?

23 A I did, in fact, I made detailed notes about it.
24 I had a -- copies of the video. I still have the
25 disk. My notes that I discussed with him about it,

PW - D. GEORGE - CROSS

1 and I have independent recollection of Darlington
2 and Florence County and he was — the Darlington
3 County incident involved videotape, DNA,
4 fingerprints. I believe it was a beer can or energy
5 drink that he took to the counter where his
6 fingerprint was lifted. The blood hounds tracked
7 him to close to his mother's house or very close in
8 proximity. I believe a hat was recovered. That's
9 where the hair and DNA was recovered from. There
10 was a lot of scientific evidence as well as the
11 videotape from the store itself which was consistent
12 with his appearance.

13 Q And did you review all this evidence with Mr.
14 George?

15 A Oh, I did.

16 Q Did you explain to him how detrimental this was
17 going to be to defend against?

18 A Absolutely.

19 Q Okay. Did he ever tell you he didn't remember
20 the robberies?

21 A No, ma'am.

22 Q Did he give you his version of what had happened
23 during those days?

24 A He wrote me a letter one time in which he
25 disputed certain aspects of the crime, but none of

PW - D. GEORGE - CROSS

1 them were significant enough for me to give much
2 credibility to them. You know, there would be
3 issues about whether or not the gun actually looked
4 like a gun, things like that. But the video was
5 very clear; the quality was good. And the other
6 evidence, which I just cited, was corroborative of
7 the defendant's guilt and I felt it was in his best
8 interest to take such a generous plea offer by the
9 State.

10 Q And did he appear to understand the conversations
11 you had with him about his case?

12 A There was nothing to indicate he didn't.

13 Q Did he ever tell you he didn't understand or
14 wasn't really following what you were saying?

15 A No, ma'am.

16 Q Okay. And the State made that 13 year offer for
17 everything to be concurrent. Did you fully explain
18 to him what that would mean?

19 A Not only did I fully explain it to him I didn't
20 pressure him, but I certainly recommended that he
21 accept the State's offer based on the possibility of
22 a, you know, much worse outcome if he proceeded to
23 trial. They would have tried the Darlington County
24 case first and I've referred to the evidence in that
25 case and he still would have been subject to

PW - D. GEORGE - CROSS

1 prosecution in Florence County so it was what most
2 attorneys would call a no-brainer for him to accept
3 that plea offer.

4 Q Okay. Do you recall his mother ever contacting
5 you to talk to you about any kind of mental or
6 psychiatric illness?

7 A I talked to Mary a number of times and we never
8 discussed any prior mental health problems that he
9 suffered from; but I didn't, again, see any evidence
10 of confusion or delirium or any like psychosis that
11 he referred to when I met with him. I'm not saying
12 that he never was evaluated or had ever received any
13 treatment, but I certainly was not made aware of it
14 and had no reason to be suspicious of it.

15 MS. RATIGAN: That's all I have, Your
16 Honor.

17 THE COURT: Okay, anything else?

18 MR. HOWLE: No redirect, Your Honor.

19 THE COURT: You can step down.

20 THE WITNESS: Thank you.

21 THE COURT: Anything else?

22 MR. HOWLE: Nothing further from the
23 petitioner, Your Honor.

24 MS. RATIGAN: We would just rest on the
25 record, Your Honor.

1 THE COURT: All right. I'll review the
2 record and let y'all know. Thank you.

3 MR. HOWLE: Mr. George asks he get that
4 paperwork back. I believe you still have it.

5 THE COURT: Are you going to make it part
6 of the record?

7 MR. HOWLE: No, sir.

8 THE COURT: All right. I can give it
9 back — based on the paperwork he gave me, the
10 findings of mental health were he was malingering.

11 MR. HOWLE: I'm sorry?

12 THE COURT: The paperwork that I read said
13 he was malingering, that they didn't diagnose any
14 mental health issues; that they thought he was
15 malingering the whole time. Anyway, so I'll give it
16 to you.

17 MR. HOWLE: Thank you, Your Honor. Judge,
18 I hate to embarrass myself, I don't know — what
19 does that mean? I apologize.

20 THE COURT: They did not find he was
21 mental at all; that he was faking it all.

22 MR. HOWLE: Thank you, Your Honor.

23 THE COURT: The doctor said that in his
24 opinion he was faking his mental illness.

25 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Derrick Javard George,)
 S.C.D.C. No. 241851,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0735

ORDER OF DISMISSAL

FILED
 2013 AUG 27 PM 2:09
 SCOTT B. SUGGS
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 29, 2012. The Respondent made its return on January 17, 2013. An evidentiary hearing into the matter was convened on July 17, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Parker E. Howle, 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, John M. Ervin, III, Esquire. The Court had before it the transcript of the guilty plea hearing, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the May 2011 term of the Darlington County Grand Jury for concealing a weapon by an inmate (2011-GS-16-0553) and two counts of armed robbery (2011-GS-16-0554, -0557). He

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Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

was represented by John M. Ervin, III, Esquire.

On August 29, 2012, the Applicant pled guilty. He was sentenced by the Honorable Howard P. King to concurrent terms of ten years for concealing a weapon by an inmate and thirteen years on each count of armed robbery. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Counsel fail to bring the attention of th[e] Court that appellant mental health status. That appellant [sic] did inform counsel that he was mental health, and diagnois [sic] with mental illness psychosis."
2. "Preliminary hearings denied."
3. Involuntary guilty plea:
 - a. "Pressured to plead guilty."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant initially stated he did not review any of the State's evidence with plea counsel. The Applicant later admitted plea counsel brought him the discovery materials and they reviewed the DNA, fingerprint, and videotape evidence in his case. The Applicant stated he told plea counsel he was mentally ill (diagnosed with psychosis and antisocial personality disorder) and did not know anything about the charges. The Applicant stated his mother also mentioned his mental health history to plea counsel. The Applicant stated plea counsel pressured him to

plead guilty and did not mention his mental health history to the plea judge. The Applicant admitted he told the plea judge he was satisfied with counsel's performance and could not explain why he did not tell the plea judge about his mental health history after counsel did not. The Applicant stated he filed a notice of appeal but plea counsel said there was no merit.

Plea counsel testified he was retained to represent the Applicant on Darlington County and Florence County charges. Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they also reviewed the Applicant's version of events and that the Applicant never told him he did not remember what happened. Plea counsel testified he understood his communications with the Applicant and the Applicant never indicated he did not understand. Plea counsel testified neither the Applicant nor his mother ever mentioned the Applicant had a history of mental illness. Plea counsel testified he did not feel the Applicant had any problems with competency to plead guilty. Plea counsel testified the State made a thirteen-year offer that was a "package deal" and that he explained it to the Applicant.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, pp.11-12). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, pp.10-11; pp.13-14). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he

was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not investigate and present evidence regarding his mental health history. Plea counsel testified neither the Applicant nor the Applicant's mother ever advised him that the Applicant had a history of mental illness. Plea counsel testified he did not have any problems communicating with the Applicant and did not have any concerns about his competency. Court finds plea counsel's testimony is credible. This Court finds the Applicant's allegation is refuted by the guilty plea transcript because the Applicant – upon being asked by the plea judge whether he was aware of “any physical, emotional, or nervous problem that would keep [him] from understanding what [he was] doing here today” – stated “[n]o, sir.” (Plea transcript, p.6). See Rayford v. State, 314 S.C. at 48-49, 443 S.E.2d at 806; Stalk v. State, 375 S.C. at 300, 652 S.E.2d at 407. Regardless, as the Applicant neither presented an expert witness nor introduced any medical records at the PCR hearing, this Court cannot speculate as to the potential impact such testimony or evidence would have had upon the Applicant's case. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”); see also Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the

contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

Accordingly, this Court finds 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 failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.¹

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 and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and

¹ This Court notes the Applicant alleged “[p]reliminary hearings denied” in his PCR application. As the Applicant has failed to present any evidence or testimony regarding this claim, this Court finds it has been abandoned. Regardless, this Court finds the Applicant could not prevail upon this issue in any event because there is no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982).

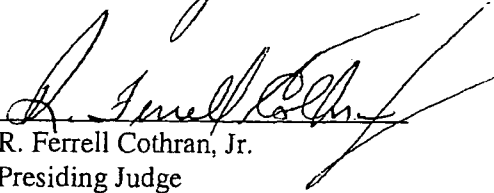
sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed 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 appropriate 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 19 day of Aug., 2013.


 R. Ferrell Cothran, Jr.
 Presiding Judge

Manning, South Carolina.

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Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

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 2013 AUG 27 PM 2:09
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FORM 5

STATE OF SOUTH CAROLINA)

County of DARLINGTON)

Derrick Javard George, 241851)

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

v.)

State of South Carolina)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-16-0093

FILED
2013 NOV 26 PM 12:12
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CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear 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 Lee Correctional Institution
990 Wisacky Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence General Sessions Court
Darlington County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) (2011-GS-16-0553 - §24-13-0440) (2011-GS-16-0554 - §16-11-0330(A))
(b) (2011-GS-16-0557 - §16-11-0330(A)) (2011-GS-21-0771 - §16-11-0330(A))

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Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2011-GS-16-0553 - 8/29/11 - 10 yrs. Concurrent
 - (b) 2011-GS-16-0554 and 0557 - 8/29/11 - 13 yrs. each - Concurrent
 - (c) 2011-GS-21-0771 - 8/29/11 - 13yrs. Concurrent

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty YES
 - (b) after a plea of not guilty NO
 - (c) after a plea of nolo contendere NO

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

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals
 - ii. _____
 - iii. _____

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 DARLINGTON COUNTY, S.C.

- (b) the result in each such Court to which you appealed:
 - i. SEE: APPENDIX - Exhibit A and B
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. SEE: APPENDIX - Exhibit A and B
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. SEE: APPENDIX - Exhibit A and B
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A

(b) _____

(c) _____

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

(a) **SEE: APPENDIX - Attached** _____

(b) _____

(c) _____

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

(a) **SEE: APPENDIX - Attached** _____

(b) _____

(c) **Documentation in Support: SEE, Exhibits D thur J** _____

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

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

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

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

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

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

(a) the specific nature thereof:

i. **C/A No: 2012-CP-16-0735** _____

ii. _____

iii. _____

iv. _____

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

i. **Court of Common Pleas, Darlington County** _____

ii. _____

iii. _____

iv. _____

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CLERK OF COURT R.O.U.
DARLINGTON COUNTY, S.C.

(c) the disposition thereof:

Dismissed

i.

ii.

iii.

iv.

(d) the date of each such disposition:

August 27, 2013

i.

ii.

iii.

iv.

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

SEE: APPENDIX - EXHIBIT

C

i.

ii.

iii.

iv.

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

NO

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

(a) which grounds have been presented:

N/A

i.

N/A

ii.

iii.

iv.

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

N/A

i.

N/A

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) SEE: APPENDIX - Attached
- (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? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Denied Counsel by Court of Appeals
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
None - Post-Conviction Application filed Pro Se. -

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 CLERK OF COURT
 DARLINGTON, S.C.

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

- (a) ~~the name and address of each attorney who represented you:~~
 - i. John M. Ervin, III., P.O. Box 23, Darlington, SC. 29540
 - ii. Parker E. Howle, P.O. Box 186, Darlington, SC. 29540
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and Plea
 - ii. Post-Conviction Relief (Appointed after filing)
 - iii. _____

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

I, DERRICK J. GEORGE, 241851, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of my application I declare under penalty of perjury that the following facts are true:

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

Derrick George
Applicant

SWORN or affirmed to and subscribed before me this
25th day of November, 2013

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

Michael Michel
Notary Public

My Commission Expires: 9-3-2014

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2013 NOV 26 PM 12:12
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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

DERRICK JARVARD GEORGE, #241851,

Applicant,

- - vs - -

STATE OF SOUTH CAROLINA,

Respondent.

Civil Action No:

A P P E N D I X

TO APPLICATION FOR
POST-CONVICTION RELIEF

AUSTIN -vs- STATE

PAGE 3, Question 10(a):

Ineffective Assistance of Counsel in Applicant's Initial
Collateral Review Proceedings. (C/A No: 2012-CP-16-0735).

PAGE 3, Question 11(a):

Applicant, Derrick George, #241851, a State prisoner, currently being housed at the Lee Correctional Institution, a facility of the South Carolina Department of Corrections, in Bishopville, South Carolina, received Ineffective Assistance of Counsel in his initial collateral proceeding, in that counsel failed to preserve applicant's statutory right to appeal the findings of the Circuit Court in his initial application (S.C. Code Ann. § 17-27-100)(1976). AUSTIN -vs- STATE, 49 S. 2d 385 (1991).

PAGE ONE

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REVIEW:

APPENDIX - Exhibits

C thru J.

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

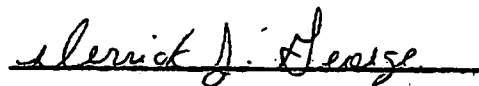
Applicant at the time of this filing does not have counsel to assist him in the preparation and presentation of this application; ... and request the Court to provide adequate counsel to applicant for the preparation and presentation of this application to the Court. (RULE 71.1 et.al. SCRCiv.P.).

Applicant does not waive the attorney-client privilege to any extent, and request that any previous counsel, appointed to applicant, not provide any portion of applicant's files to any representative of the Attorney General's Office outside the scope of these specific claims.

PAGE 5, Question 16:

The grounds set forth in 10(a) and 11(a) above have not been previously presented because these grounds arose due to applicant's Post-Conviction Counsel being ineffective. (C/A No: 2012-CP-16-0735.)

Respectfully submitted,



Derrick J. George, #241851

Date: 11-12, 2013

APPLICANT.

PAGE TWO



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1850
FAX: (803) 734-1839
www.sccourts.org

December 19, 2011

John M. Ervin, III, Esquire
Ervin Law Office
P.O. Box 23
Darlington, SC 29540

Re: The State v. George, Derrick
2011198787

Dear Mr. Ervin:

Enclosed is a copy of an Order of the Court for the above case.

Very truly yours,

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudek
Derrick George, # 241851
Assistant Deputy Attorney General Salley W. Elliott

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2013 NOV 26 PM 12:12
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Exhibit A

The South Carolina Court of Appeals

The State, Respondent,
 v.
 Derrick George, Appellant.

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 2013 NOV 26 PM 12:13
 SCOTT B. SUGGS
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 DARLINGTON COUNTY, S.C.

The Honorable Howard P. King
 Florence County
 Trial Court Case No. 2011-GS-16-00553--
 2011-GS-16-00554-Robbery
 2011-GS-16-00557-Robbery
 2011-GS-16-00771-

ORDER

Appellant is attempting to appeal from a guilty plea. Pursuant to Rule 203(d)(1)(B)(iv),

SCACR, Appellant is required to identify the issues and make a showing of how the issues can be reviewed on appeal. In this case, Appellant's counsel has asserted that "[n]o issues were raised during the guilty plea or sentence." Appellant filed a motion requesting appointment of counsel and an extension of time in which to provide this court with the issues and a showing of how the issues can be reviewed on appeal. After careful consideration, Appellant's motion for appointment of counsel is denied. Appellant's request for an extension of time is granted. Appellant shall provide this Court with an identification of the issues and a showing of how the issues can be reviewed on appeal within twenty days, excluding the filing date of this order.

IT IS SO ORDERED.

James A. Curran, AS

Columbia, South Carolina

Exhibit B PAGE 1 of 2 **FILED** 12-19-11 DV

cc: Chief Appellate Defender Robert M. Dudek
John M. Ervin, III, Esquire
Assistant Deputy Attorney General Salley W. Elliott

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Exhibit B page 2 of 2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Derrick Javard George,)
 S.C.D.C. No. 241851,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0735

ORDER OF DISMISSAL

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 SCOTT B. SUGGS
 CLERK OF COURT/R.C.D.
 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 29, 2012. The Respondent made its return on January 17, 2013. An evidentiary hearing into the matter was convened on July 17, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Parker E. Howle, 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, John M. Ervin, III, Esquire. The Court had before it the transcript of the guilty plea hearing, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the May 2011 term of the Darlington County Grand Jury for concealing a weapon by an inmate (2011-GS-16-0553) and two counts of armed robbery (2011-GS-16-0554).

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Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

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 CLERK OF COURT/R.C.D.
 DARLINGTON COUNTY, S.C.

Exhibit C PAGE 1 of 7

was represented by John M. Ervin, III, Esquire.

On August 29, 2012, the Applicant pled guilty. He was sentenced by the Honorable Howard P. King to concurrent terms of ten years for concealing a weapon by an inmate and thirteen years on each count of armed robbery. The Applicant did not appeal.

ALLEGATIONS

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

- 1. Ineffective assistance of counsel:
 - a. "Counsel fail to bring the attention of th[e] Court that appellant mental health status. That appellant [sic] did inform counsel that he was mental health, and diagnois [sic] with mental illness psychosis."
- 2. "Preliminary hearings denied."
- 3. Involuntary guilty plea:
 - a. "Pressured to plead guilty."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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

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DARLINGTON COUNTY, S.C.

Exhibit C page 2 of 7

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, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant initially stated he did not review any of the State's evidence with plea counsel. The Applicant later admitted plea counsel brought him the discovery materials and they reviewed the DNA, fingerprint, and videotape evidence in his case. The Applicant stated he told plea counsel he was mentally ill (diagnosed with psychosis and antisocial personality disorder) and did not know anything about the charges. The Applicant stated his mother also mentioned his mental health history to plea counsel. The Applicant stated plea counsel pressured him to

plead guilty and did not mention his mental health history to the plea judge. The Applicant admitted he told the plea judge he was satisfied with counsel's performance and could not explain why he did not tell the plea judge about his mental health history after counsel did not. The Applicant stated he filed a notice of appeal but plea counsel said there was no merit.

Plea counsel testified he was retained to represent the Applicant on Darlington County and Florence County charges. Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they also reviewed the Applicant's version of events and that the Applicant never told him he did not remember what happened. Plea counsel testified he understood his communications with the Applicant and the Applicant never indicated he did not understand. Plea counsel testified neither the Applicant nor his mother ever mentioned the Applicant had a history of mental illness. Plea counsel testified he did not feel the Applicant had any problems with competency to plead guilty. Plea counsel testified the State made a thirteen-year offer that was a "package deal" and that he explained it to the Applicant.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, pp.11-12). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, pp.10-11; pp.13-14). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he

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SCOTT B. SUGGS
CLERK OF COURT / R. 60
DARLINGTON COUNTY, S.C.

Exhibit C PAGE 4 of 7

was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not investigate and present evidence regarding his mental health history. Plea counsel testified neither the Applicant nor the Applicant's mother ever advised him that the Applicant had a history of mental illness. Plea counsel testified he did not have any problems communicating with the Applicant and did not have any concerns about his competency. Court finds plea counsel's testimony is credible. This Court finds the Applicant's allegation is refuted by the guilty plea transcript because the Applicant – upon being asked by the plea judge whether he was aware of “any physical, emotional, or nervous problem that would keep [him] from understanding what [he was] doing here today” – stated “[n]o, sir.” (Plea transcript, p.6). See Rayford v. State, 314 S.C. at 48-49, 443 S.E.2d at 806; Stalk v. State, 375 S.C. at 300, 652 S.E.2d at 407. Regardless, as the Applicant neither presented an expert witness nor introduced any medical records at the PCR hearing, this Court cannot speculate as to the potential impact such testimony or evidence would have had upon the Applicant's case. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”); see also Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the

contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

Accordingly, this Court finds 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 failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.¹

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 and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and

¹ This Court notes the Applicant alleged “[p]reliminary hearings denied” in his PCR application. As the Applicant has failed to present any evidence or testimony regarding this claim, this Court finds it has been abandoned. Regardless, this Court finds the Applicant could not prevail upon this issue in any event because there is no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 688 (1982).

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SCOTT W. GIBSON
CLERK OF COURT
DARLINGTON, SC

Exhibit C page 6 of 7

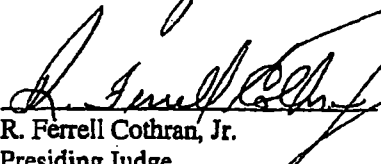
sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed 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 appropriate 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.

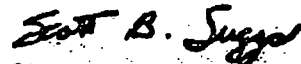
AND IT IS SO ORDERED this 19 day of Aug, 2013.


 R. Ferrell Cothran, Jr.
 Presiding Judge

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 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Manning, South Carolina.

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 DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

HOWLE LAW FIRM

NEWTON I. (BILL) HOWLE, JR.
PARKER E. HOWLE
ATTORNEYS AT LAW
 100 ST. JOHN'S STREET
 POST OFFICE BOX 188
 DARLINGTON, SOUTH CAROLINA 29540
 TELEPHONE: (843) 395-1519
 FACSIMILE: (843) 393-0342

October 10, 2013

Jenny Abbott Kitchings
 Clerk of Court
 SC Court of Appeals
 Post Office Box 11629
 Columbia, SC 29211

RE: *Derrick George vs. State of South Carolina*
 Case No.: 2012-CP-16-735

Jenny:

~~Please find a Notice of Appeal, Certificate of Service and Motion in reference to the~~
 above-captioned matter. Please do not hesitate to contact me with any questions or
 concerns.

With warmest, personal regards, I remain,

Yours very truly,

PARKER E. HOWLE

Enclosures

cc: Robert M. Dudeck
 Karen C. Ratigan
 The Hon. Alan Wilson
 Derrick J. George

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 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

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Exhibit D

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MOTION

Case No.: 2012-CP-16-735

Derrick Javard George,
 S.C.D.C. No.: 241851

Respondent

v.

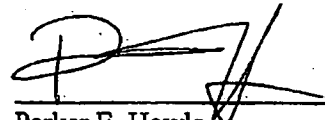
State of South Carolina,

Appellant.

This matter is before the Court in regards to an Application for Post-Conviction Relief, filed by Petitioner on August 29, 2012. This matter was heard by the Honorable R. Ferrell Cothran, Jr. on July 17, 2013. This matter was taken under advisement, and an Order of Dismissal was signed by the Court on August 19, 2013. Said Order was filed on August 27, 2013 and received by Counsel on or about September 6, 2013. Counsel failed to provide a copy of said Order until October 4, 2013. At that time, Applicant requested that a Notice of Appeal be filed on his behalf. Counsel requests that any time limitations be waived and this Notice of Appeal be submitted on Applicant's behalf.

Date: October 10, 2013

IS SO MOVE:


 Parker E. Howle
 Attorney for PCR Applicant
 Post Office Box 186
 Darlington, SC 29501

cc:
 Karen C. Rattigan
 Assistant Deputy Attorney General
 Post Office Box 11549
 Columbia, SC 29211-1549

Derrick J. George
 S.C.D.C. No.: 241851
 Lee Correctional Institution
 990 Wisacky Way
 Bishopville, SC 29010

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 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Exhibit E

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

NOTICE OF APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2012-CP-16-735

Derrick Javard George,
S.C.D.C. No.: 241851

Respondent

v.

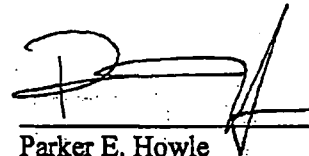
State of South Carolina,

Appellant.

STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

Appellant's Application for Post-Conviction Relief was heard on July 17, 2013 and dismissed by Order of the Court dated August 19, 2013. Undersigned counsel files this appeal at the request of Appellant and pursuant to In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991), as well as Weathers v. State, 319 S.C. 59 (1995). Counsel knows of no issue that can be reviewed on appeal.

Date: October 10, 2013



Parker E. Howle
Attorney for PCR Applicant
Post Office Box 186
Darlington, SC 29500

cc:
Karen C. Rattigan
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

Derrick J. George
S.C.D.C. No.: 241851
Lee Correctional Institution
990 Wisacky Way
Bishopville, SC 29010

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CLERK OF COURT/R.D.O.
DARLINGTON COUNTY, S.C.

Exhibit F

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

NOTICE OF APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

Case No.: 2012-CP-16-735

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CLERK OF COURT (R.O.D.)
DARLINGTON COUNTY, S.C.

Derrick Javard George,
S.C.D.C. No.: 241851

Respondent

v.

State of South Carolina,

Appellant.

CERTIFICATE OF SERVICE

I, Parker E. Howle, certify that I have, this 10th day of October, 2013, served a copy of the Notice of Appeal and Certificate of Mailing in connection with the above-captioned matter upon the parties to this action listed below by depositing same in the United States Regular Mail, postage pre-paid and addressed as follows:

Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

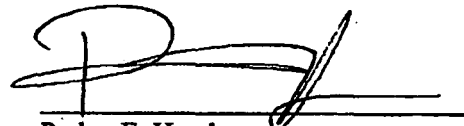
Robert M. Dudek
Chief Appellate Defender
Office of Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

Karen C. Ratigan
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

The Hon. Alan Wilson
SC Attorney General
Post Office Box 11549
Columbia, SC 29211

Derrick J. George
SCDC No.: 241851
Lee Correctional Institution
990 Wisacky Way
Bishopville, SC 29010

Date: October 10, 2013



Parker E. Howle
Attorney for PCR Applicant
Post Office Box 186
Darlington, SC 29540

Exhibit G

HOWLE LAW FIRM



NEWTON I. (BILL) HOWLE, JR.
PARKER E. HOWLE
ATTORNEYS AT LAW
100 ST. JOHN'S STREET
POST OFFICE BOX 186
DARLINGTON, SOUTH CAROLINA 29540
TELEPHONE: (843) 395-1519
FACSIMILE: (843) 393-0342

October 29, 2013

Derrick J. George
SCDC ID: 00241851
Lee Correctional Institution
990 Wisacky Way
Bishopville, SC 29010

RE: *Derrick George vs. State*
Case No.: 2012-CP-16-735

Mr. George:

Please find enclosed the Order from the Supreme Court of South Carolina in regards
to the above-captioned matter.

With warmest, personal regards, I remain,

Yours very truly,

PARKER E. HOWLE

Enclosures

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Exhibit H



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1498
www.sccourts.org

November 06, 2013

Mr. Derrick J. George, #00241851
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29210

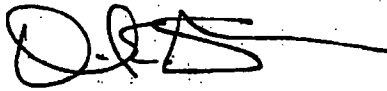
Re: Derrick Javard George v. State
Appellate Case No. 2013-002199
Lower Court Case No. 2012CP1600735

Dear Mr. George:

This Court has received your *pro se* notice of appeal dated October 30, 2013. Please be advised that your counsel had already served and filed a notice of appeal on your behalf. Therefore, no action will be taken on your *pro se* notice of appeal. *Cf. Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

I note that the notice of appeal filed by your counsel has been dismissed. I have enclosed a copy of that order.

Very truly yours,


CLERK

Enclosure

cc: Parker Edwards Howle, Esquire
Karen Christine Ratigan, Esquire

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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Exhibit I

The Supreme Court of South Carolina

Derrick Javard George, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-002199

Lower Court Case No. 2012-CP-16-00735

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SCOTT B. SUGGS
CLERK OF COURT, P.O. D.
DARLINGTON COUNTY, S.C.

ORDER

The notice of appeal was served in this matter on October 10, 2013. Petitioner's counsel admits that he received written notice of entry of the order on appeal on or about September 6, 2013, but moves to waive any time limitations.

The time to the serve the notice of appeal on the opposing counsel cannot be extended, Rule 263(b) of the South Carolina Appellate Court Rules (SCACR), and the timely service of the notice of appeal is a jurisdiction requirement. *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). Accordingly, the motion is denied and the notice of appeal is dismissed based on the failure to serve the notice of appeal within the time specified by Rules 243(b) and 203(b)(1), SCACR. This dismissal is without prejudice to whatever right petitioner may now have to seek relief under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).


C.J.
FOR THE COURT

Columbia, South Carolina
October 22, 2013

cc: Parker Edwards Howle, Esquire
Karen Christine Ratigan, Esquire

Exhibit J

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	FOR THE FOURTH JUDICIAL CIRCUIT
Derrick J. George, #241851,	)	Case No. 2013-CP-16-93
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief filed November 26, 2013, would respectfully show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. Applicant was indicted at the May 2011 term of the Darlington County Grand Jury for concealing a weapon by an inmate (2011-GS-16-0553) and two counts of armed robbery (2011-GS-16-0554, -0557). He was represented by John M. Ervin, III, Esquire.

On August 29, 2012, Applicant pled guilty. He was sentenced by the Honorable Howard P. King to concurrent terms of ten years for concealing a weapon by an inmate and thirteen years for each count of armed robbery. Applicant did not appeal.

Applicant filed his first post-conviction relief action on August 29, 2012. Respondent made its return on January 17, 2013. The Honorable R. Ferrell Cothran, Jr., convened an evidentiary hearing into the matter on July 17, 2013 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Parker E. Howle, Esquire. Judge Cothran denied relief in

an order filed August 27, 2013. Applicant filed a notice of appeal from Judge Cothran's order, but the South Carolina Supreme Court dismissed the appeal as untimely on October 22, 2013.

II.

In his Application, Applicant alleges "that counsel failed to preserve applicant's statutory right to appeal the findings of the Circuit Court in his initial application."

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and records from the prior PCR. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Applicant alleges he did not knowingly and voluntarily waive his right to appellate review of his prior PCR hearing. Respondent submits this allegation is without merit. "The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted). However, a defendant may waive the right to

an appeal by making a “knowing and intelligent decision not to pursue the appeal.” See Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, “[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine “whether he was prejudiced by his failure to obtain review of a meritorious issue.” Odom, 337 S.C. at 263, 523 S.E.2d at 756 (1999).

Respondent submits Applicant knowingly and voluntarily waived his right to appellate review of his PCR hearing. However, this allegation probably raises questions of fact 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.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 2, 2014

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Mr. Thomas	4
Response/Mr. Thomas	4
Decision by the Court	4
Certificate Page	5

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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NO EXHIBITS INTRODUCED

1 MR. THOMAS: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. THOMAS: The next case is *Derrick George vs. the*
4 *State of South Carolina*, Case No. 2013-CP-16-93. Mr.
5 George was -- did plead guilty in August, 2012, to
6 concealing weapon by an inmate and armed robbery.

7 He filed a post-conviction relief action from that
8 shortly thereafter. Judge Cothran held a hearing on it in
9 July of 2013. I believe the same term as the last
10 gentleman. Parker Howell represented Mr. George on that.
11 Judge Cothran did deny relief in August 27, 2013.

12 I've spoken to Mr. Howell, and he's -- has candidly
13 admitted that he just missed the deadline for filing the
14 appeal on this one. So at this time, the State would just
15 request that you enter an order granting an *Austin* appeal
16 of this PCR action.

17 THE COURT: All right.

18 MR. SHAFFER: Without objection, Your Honor.

19 THE COURT: All right. I'm going to grant that
20 relief, and if you'd prepare an order to that effect, Mr.
21 Thomas.

22 MR. THOMAS: Yes, sir, Your Honor.

23 THE COURT: Thank you very much.

24

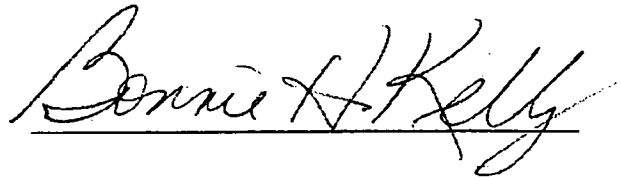
25

--- END OF TRANSCRIPT RECORD ---

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth 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 captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 21st day of July, 2014.

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

A handwritten signature in cursive script that reads "Bonnie H. Kelly". The signature is written in black ink and is positioned above a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

January 2, 2015

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Derrick J. George, #241851,)
Applicant,)

Case No. 2013-CP-16-93

v.)
State of South Carolina,)
Respondent.)

**ORDER GRANTING APPEAL
PURSUANT TO
AUSTIN V. STATE**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 26, 2013. Respondent made a timely Return on or about June 2, 2014. The Court convened an evidentiary hearing into the matter on July 21, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Court had before it general sessions records of the Darlington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the records from Applicant's prior post-conviction relief action. Pursuant to S.C. Code Ann. § 17-27-80, the Court finds as follows:

FILED
2014 SEP 22 PM 12:42
CLERK OF COURT
DARLINGTON COUNTY, S.C.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In May 2011, the Darlington County Grand Jury indicted Applicant for for concealing a weapon by an inmate (2011-GS-16-0553) and two counts of armed robbery (2011-GS-16-0552, -0557). John M. Ervin, III, Esquire, represented Applicant. On August 29, 2011, Applicant pled guilty to all of the charges as

TRUE CERTIFIED COPY
Page 1 of 4
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

indicted. The Honorable Howard P. King sentenced Applicant to concurrent terms of ten (10) years for concealing a weapon by an inmate and thirteen (13) years for each count of armed robbery. Applicant did not appeal his plea or sentence.

Applicant filed his first post-conviction relief action on August 29, 2012 (2012-CP-16-0735). Respondent made a timely return on January 17, 2013. The Honorable R. Ferrell Cothran, Jr., convened an evidentiary hearing into the matter on July 17, 2013, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Parker E. Howle, Esquire. Judge Cothran denied relief in an order filed August 27, 2013. Applicant filed a notice of appeal from Judge Cothran's order, but the South Carolina Supreme Court dismissed the appeal as untimely on October 22, 2013.

In his current application, Applicant alleges his prior post-conviction counsel, Mr. Howle, failed to timely file an appeal from Judge Cothran's order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court finds meritorious Applicant's allegation he was denied an appeal from the decision in his prior post-conviction relief action.

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted).

Even if the post-conviction court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine “whether he was prejudiced by his failure to obtain review of a meritorious issue.” Odom, 337 S.C. at 263, 523 S.E.2d at 756 (1999).

Applicant’s prior post-conviction counsel was present at the hearing on this matter, but did not testify. Respondent’s counsel represented prior counsel admitted he did not file a notice of appeal within thirty (30) days of receiving notice of judgment. See Rule 203, SCACR. The Court also examined the notice of appeal prior counsel did file and the Supreme Court’s order dismissing the appeal. Those documents indicate prior counsel received the clocked order on September 6, 2013, and filed the notice of appeal on October 10, 2013.

The uncontested evidence reveals prior post-conviction counsel did not timely file a notice of appeal from Judge Cothran’s order of dismissal. Therefore, the Court affirmatively finds Applicant requested and was denied an opportunity to seek appellate review. Accordingly, the Court hereby grants Applicant’s request for a review of his post-conviction relief action pursuant to Austin v. State.

III. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant is entitled to an appeal of his prior post-conviction relief action pursuant to Austin v. State.

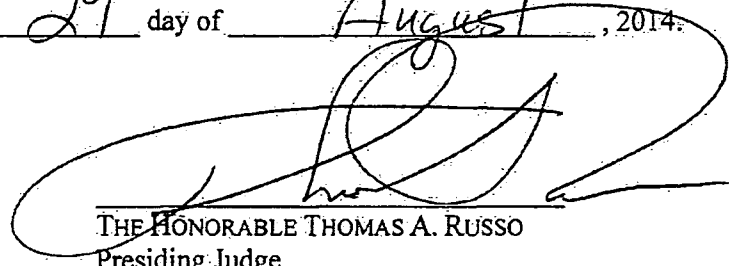
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Counsel and Applicant are directed to King v. State, 308 S.C.

348, 417 S.E.2d 868 (1992), for the appropriate procedure for securing appellate review pursuant to Austin v. State.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief seeking an appeal pursuant to Austin v. State is granted; and
2. Applicant must be remanded to the custody of the Department of Corrections.

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



THE HONORABLE THOMAS A. RUSSO
Presiding Judge

Lexington, South Carolina

FILED
 2014 SEP 12 PM 12:42
 SCOTT R. SUGGS
 CLERK OF COURT/R.M.C.
 DARLINGTON COUNTY, SC

TRUE CERTIFIED COPY.
Scott Page 8 of 4 Suggs
 CLERK OF COURT/R.M.C.
 DARLINGTON COUNTY, SC

WITNESSES

Jim Goins *Phu*
 Darlington County Sheriff
Law Enforcement Case #: 201012-0494

495

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
J663885

ARRESTED ON: 2010-12-23

ACTION OF GRAND JURY

Grand Jury Foreperson *Phu*
 Date *MAY 13 2011*

VERDICT

Petit Jury Foreperson
 Date

DOCKET NUMBER:
2011-GS-16-0553

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
May 2011

THE STATE

vs.

Derrick Javard George

INDICTMENT FOR

Prisoners / Carrying or concealing weapon by inmates

§24-13-0440

CDR Code: 0441

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON) INDICTMENT FOR
) Prisoners / Carrying or concealing weapon by
) inmates
) §24-13-0440

At a Court of General Sessions, convened on May 12, 2011, the Grand Jurors of Darlington County present upon their oath:

CARRYING CONCEALED WEAPON BY INMATES
 (OTHER THAN PISTOL)

CDR: 0441 24-13-0440

That Derrick Javard George did in Darlington County, on or about December 21, 2010, an inmate at the Darlington County Detention Center, unlawfully carry a deadly weapon usually used for the infliction of personal injury, to wit: Two (2) small Razor Blades, concealed about his person, in violation of Section 24-13-0440, 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.


 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Larry Stivender

LS

Darlington County Sheriff

Law Enforcement Case #:

495

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
K032123

ARRESTED ON: 2010-11-13

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

[Signature]
MAY 12 2011

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-0554

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
May 2011

THE STATE

vs.

Derrick Javard George

INDICTMENT FOR

Robbery / Armed Robbery, robbery while
armed or allegedly armed

§16-11-0330(A)

CDR Code: 0139

William B. Rogers, Jr., Solicitor

WITNESSES

Jim Goins



Darlington County Sheriff

Law Enforcement Case #: 201009-0619

495

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

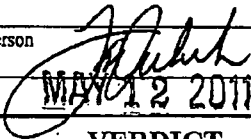
ARREST WARRANT NUMBER
J663630

ARRESTED ON: 2010-09-30

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson



Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-0557

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
May 2011

THE STATE

vs.

Derrick Javard George

INDICTMENT FOR

Robbery / Armed Robbery, robbery while armed or allegedly ar

§16-11-0330(A)

CDR Code: 0139

William B. Rogers, Jr., Solicitor

FILED

2011 MAR 31 PM 2:17

CONNIE R. FLETCHER, ARIN
CCCP & GS
FLORENCE COUNTY, SC

DOCKET NO. 2011-GS-21-0771

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2011

THE STATE

vs.

SANDRA MARIA CARUS

TYVIN KWMAINE DIXON

DERICK JEVARD GEORGE

Indictment for

ACCESSORY AFTER THE FACT,
ARMED ROBBERY (TWO COUNTS),
ACCESSORY BEFORE THE FACT

AND

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

WITNESSES

Lee Davis
Florence Police Department

JOHN C. JEPERTINGER

ARREST WARRANT NUMBER

M377147 M377102 M377146

2011GS2100771A 2011GS2100771B

500002 T.D. 0544

ACTION OF GRAND JURY

TRUE BILL

Samuel Davis
Foreperson of Grand Jury
Date 3-31-11

VERDICT

Foreperson of Petit Jury Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

ACCESSORY AFTER THE FACT,
ARMED ROBBERY (TWO COUNTS),
ACCESSORY BEFORE THE FACT
AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on MARCH 31, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ACCESSORY AFTER THE FACT

That SANDRA MARIA CARUS did in Florence on or about September 22, 2010, violate Section 16-01-0055 of the Code of Laws of South Carolina (1976), as amended in that knowing of the commission and completion of the felony of Armed Robbery, by the principal felons, DERICK J. GEORGE and TYVIN K. DIXON, harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the crime of Accessory After the Fact in commission of the felony.

COUNT TWO- ARMED ROBBERY

That TYVIN K. DIXON along with DERICK J. GEORGE did in Florence County on or about September 22, 2010, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Panthers Convenience Store from or in the immediate presence of Amita Khurana, with intent to deprive Panthers Convenience Store of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT THREE - ARMED ROBBERY

That DERICK J. GEORGE along with TYVIN K. DIXON did in Florence County on or about September 22, 2010, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Panthers Convenience Store from or in the immediate presence of Amita Khurana, with intent to deprive Panthers Convenience Store of possession by use of force, threats or intimidation, 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 ACCESSORY AFTER THE FACT, ARMED ROBBERY (TWO COUNTS), ACCESSORY BEFORE THE FACT AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WITH THE AFORESAID NAMES(S) OF SANDRA MARIA CARUS, TYVIN K. DIXON AND DERICK J. GEORGE SHOWN THEREON:


COUNT FOUR- ACCESSORY BEFORE THE FACT

That SANDRA MARIA CARUS did in Florence County on or about September 22, 2010, advised or agreed with or urged or hired or in some way aided, counseled or encouraged the principal felons to commit the felony of Armed Robbery in that she did drive the armed robbers to Panthers Convenience Store in order for them to rob it at gunpoint, and then drive them away, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

**COUNT FIVE- POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That TYVIN K. DIXON along with DERICK J. GEORGE did in Florence County, on or about September 22, 2010, 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: 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

STATE OF SOUTH CAROLINA)
 COUNTY OF Darlington)
 STATE VS.)
Derrick Javard George)
 AKA:)
 Race: R Sex: M Age: 36)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Florence, SC 29501)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

1047

INDICTMENT/CASE#: 2011-GS-16-0553
 A/W#: J663885
 Date of Offense: 12/21/2010
 S.C. Code § : 24-13-0440
 CDR Code #: 0441

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Prisoners / Carrying or concealing weapon by inmates

CONVICTED OF or PLEADS

in violation of § 24-13-0440 of the S.C. Code of Laws, bearing CDR Code # 0441
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor Ist 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: [Signature] 177495 Derrick George [Signature] 1914
 Holt, John 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 10 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: on all charges
 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. 301 day
 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: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPS _____ 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	\$
§ 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(B)UI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

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

Clerk of Court/ Deputy Clerk: [Signature]
 Court Reporter: [Signature]

Presiding Judge: [Signature]
 Judge Code: 210
 Sentence Date: 1/21/2011

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington
STATE VS.

INDICTMENT/CASE#: 2011-GS-16-0554

Derrick Javard George

A/W#: K032123

AKA: _____

Date of Offense: 11/13/2010

Race: B Sex: M Age: 36

S.C. Code § : 16-11-0330(A)

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0139

Address: [REDACTED]

TRUE CERTIFIED COPY,

City, State, Zip: Florence, SC 29501

Scott B. Jagger
SENTENCE SHEET

DL#: _____ SID#: _____

CONVICTED OF OR PLEADS
ARLINGTON COUNTY, S.C.

*CDL Yes No CMV Yes No Hazmat Yes No

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

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. (Defendant's initials)

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

ATTEST: [Signature] 77495 [Signature] 1914
Hoit, John 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 13 days/months/year 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: see above
 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. 301 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: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]

Presiding Judge [Signature]
Judge Code: [Signature]
Sentence Date: [Signature]

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington)
STATE VS.)

INDICTMENT/CASE#: 2011-GS-16-0557

Derrick Javard George)

A/W#: J663630

AKA: _____)

Date of Offense: 9/30/2010

Race: B Sex: M Age: 36)

S.C. Code § : 16-11-0330(A)

DOB: [REDACTED] SS#: [REDACTED])

CDR Code #: TR0139 **CERTIFIED COPY,**

Address: [REDACTED])

Scott B. Suggs
SENTENCE SHEET

City, State, Zip: Florence, SC 29501)

CLERK OF COURT/ RMC

DL#: _____ SID#: _____)

DARLINGTON COUNTY, S.C.

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

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

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 (defendant's initials)

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

ATTEST: [Signature] 77495 [Signature] [Signature] 1914
Holt, John 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 13 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: all charges
 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. ~~301 days~~ 301 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

Recipient: _____

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: _____

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

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]

Presiding Judge [Signature]
Judge Code: 2101
Sentence Date: 8/20/11

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.
Derick Jevard George

AKA:
Race: B Sex: M Age: 36

DOB: [REDACTED]
Address: [REDACTED]

City, State, Zip: Florence, SC 29501-8590
DL#: 004249763 SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-21-0771
A/W#: M377146
Date of Offense: 9/22/2010
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

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: *John C. Jernigan* 9826 *Derick George* 1914
JERNIGAN, JOHN C 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 13 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: all charges
 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. 301 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: \$ _____
_____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling

Recipient: _____
*Fine: _____ \$ _____
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund

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

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

Clerk of Court/ Deputy Clerk: *Donna Cowley*
Court Reporter: *Donna Cowley*
SCCA217 (03/2011)

Presiding Judge: *Howard P. Hines*
Judge Code: 2107
Sentence Date: 8/29/2011

Hearing held in Darl. County

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DARLINGTON COUNTY
In The Court of Common PleasHonorable Thomas A. Russo
Common Pleas Judge of the Fourth Judicial Circuit

Case No.: 2013-CP-16-93

Derrick J. George, #241851

Petitioner,

v.

State of South Carolina,

Respondent.

RECEIVED

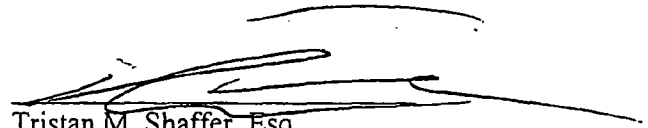
NOV 12 2014

S.C. SUPREME COURT

NOTICE OF APPEAL

Pursuant to Austin v. State, Petitioner appeals the Order of Dismissal, dated August 27, 2013 of the Honorable R. Ferrell Cothran. This appeal is taken pursuant to the August 29, 2014, order signed by the Honorable Thomas A. Russo that was received by Petitioner on October 28, 2014.

November 12, 2014



Tristan M. Shaffer, Esq.
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Columbia, SC 29211