

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

NOV 30 2015

S.C. Supreme Court

ANTWAN GRAYSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000823

APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion when it denied the jury's request to review Appellant's statements to police when, although the written statements were not entered into evidence, portions of Appellant's statements were in evidence through Appellant's trial testimony, and where the jury's determination of Appellant's credibility was critical to his defense?

STATEMENT OF THE CASE

On May 04, 2010, Appellant Antwan Grayson was indicted by the Greenville County Grand Jury for: (1) kidnapping; (2) first degree criminal sexual conduct; (3) armed robbery; and (4) possession of a weapon during the commission of a violent crime. R. 499 – 506.

On March 28-30, 2011, Appellant proceeded to trial before the Honorable Robin B. Stilwell and a jury. R. 1. Appellant was represented by Randall Chambers, and the State was represented by Assistant Solicitor Kris Hodge. R. 1. The jury found Appellant guilty as charged. R. 482, l. 9 – 483, l. 4. Judge Stilwell then sentenced Appellant to: (1) thirty years imprisonment on the kidnapping conviction; (2) thirty years imprisonment for the criminal sexual conduct conviction; (3) thirty years imprisonment for the armed robbery conviction; and (4) five years imprisonment for the possession of a firearm during the commission of a violent crime conviction. R. 495, ll. 7-25. The sentences were to run concurrently to one another; however, the sentences were to run consecutive to his probation revocation sentence.

This appeal follows.

STATEMENT OF FACTS

Relevant Facts

At trial, the alleged victim, Crystal Byers, maintained that on the night of March 16, 2009, she was unable to identify the two men who she claimed accosted her as she walked towards her apartment building. R. 83, l. 4 – 86, l. 19; 161, ll. 6-9. Byers also maintained that one of the men was wearing a bandanna on his face and “put [a gun] up against [her] mouth.” R. 86, ll. 14-19. Byers further contended that she was forced to drive the two men to an ATM, where she withdrew money out of her mother’s account, and that she was subsequently raped in the backseat of her car by one of the men. R. 88, l. 12 – 107, l. 1.

Additionally, Byers stated that the man who raped her wanted her cell phone, so she drove back to her apartment to retrieve the phone. R. 107, l. 3 – 109, l. 8. Byers asserted that after she gave the man her cell phone, “[h]e just walked off with the phone, playing with it as he walked away.” R. 109, l. 7 – 110, l. 9. Byers recalled that her mother, who lives with her, “had followed us out [of the apartment]” . . . [, but that] [her mother] didn’t see what was going on.” R. 110, ll. 10-16. Byers also stated that she then told her mother what had occurred and called the police using her mother’s cell phone. R. 111, ll. 7-18.

An acquaintance of Appellant, Curtis Wilkie, testified as a State’s witness and corroborated Byers’s claim regarding the robbery. R. 239, l. 1 – 249, l. 23. Notably, Wilkie admitted to having the following pending charges: (1) “three armed robberies[;]” (2) “two kidnappings[;]” (3) “burglary first[;]” and (4) “attempted burglary[.]” Wilkie also admitted that he was rearrested after being released on bond in this case. R. 256, ll. 16-21. Wilkie noted that he had “never read [his police] statement” because the police officer who typed the statement only told him to initial and sign the statement. R. 264, l. 3 – 266, l. 1.

Appellant admitted at trial that on March 17, 2009, he gave a false statement to police about how he met “a white lady sitting in a white Nissan” and that after speaking with her, he “hopped in the car” and later “had sex” with her. R. 366, ll. 1-21. Appellant then testified that he gave a second statement to police regarding what actually occurred with Byers. R. 369, ll. 15-21. Specifically, Appellant read from both statements that he gave to the police and testified, “*I didn’t tell [the police] the truth the first time . . . because people kept telling me that I was going to get life.*” R. 366, l. 1 – 372, l: 22 (emphasis added).

As to Appellant’s second statement, Appellant testified that he was at Byers’s apartment complex selling drugs with his cousin, when a “white woman in a Nissan pulled up” and asked for “some crack.” R. 370, ll. 5-15. Appellant also testified that Byers told him “she didn’t have any money” and that “[s]he asked us if we would ride to the bank with her to get [money] out [of] the ATM.” R. 16-20. Appellant further testified that he gave Byers “four [crack] rocks” for the money she got at the bank. R. 370, l. 21 – 371, l: 2.

Appellant recalled that Byers wanted more drugs, so she offered to give him the cell phone she had at her apartment. R. 371, ll. 2-3. Appellant stated that they went to her apartment to get the phone and that he did not go into the apartment because Byers “said something about her mom being sick.” R. 371, ll. 5-8. Appellant testified that Byers “smoked [the crack] in the car with [him]” and that after smoking the crack, Byers wanted more drugs, so they “had sexual intercourse” in exchange for payment. R. 371, ll. 8-19. Appellant also reiterated that his second statement to police was the truth, and admitted that, although he had sex with Byers, he did not rape her. R. 373, l. 22 – 374, ll. 1-15.

Furthermore, after approximately three hours of deliberations, the jury sent out a note with three questions; one of the questions asked, “Can we have the statements of Mr.

Grayson [Petitioner] and Mr. Wilky [Curtis Wilkie]?" R. 477, l. 24 – 480, l. 8; 498 (Court's Exhibit #2, Jury Note). The trial court then informed the jury:

[T]hose statements were not offered into the record. Because [those statements] were not offered into the record as evidence, you can't see them. But do understand this, that you heard [those statements], *that is there were portions of them that were read into the record*. So I would charge you, you each heard that and you have your individual recollections of the same and that *you can recall what that evidence was at the time it was offered into evidence by either of the respected parties*.

R. 480, ll. 4-13 (emphasis added). The jury deliberated for approximately another two hours before finding Appellant guilty as charged. R. 480, ll. 17-21.

ARGUMENT

The trial court abused its discretion when it denied the jury's request to review Appellant's statements to police when, although the written statements were not entered into evidence, portions of Appellant's statements were in evidence through Appellant's trial testimony, and where the jury's determination of Appellant's credibility was critical to his defense.

In *State v. Plyler*, 275 S.C. 291, 270 S.E.2d 126 (1980), the South Carolina Supreme Court held that "[t]he trial judge, in his discretion, may permit the jury at their request to review, in the defendant's presence, testimony after the beginning of deliberations." Specifically, in *Plyler*, the jury requested that testimony of a key witness be read back to them, and the trial court allowed the jury to hear a tape of the testimony. *Id.* at 298, 270 S.E.2d at 129. After listening to the direct testimony, "the [jury] foreman informed the court that the jury had heard all they desired. The tape was stopped and the jury returned to their deliberations." *Id.* The trial court subsequently denied defense counsel's motion to require the jury to also hear the tape of the corresponding cross-examination.

In *State v. Winkler*, 388 S.C. 574, 585, 698 S.E.2d 596, 602 (2010), the jury sent the judge a question during deliberations asking if they could read a transcript of the 911 tape. Defense counsel argued that the transcript was not part of the trial record since it was not entered into evidence. Notably, the trial court allowed the jury to review the transcript of the 911 tape while the tape was replayed. Appellant offered no objection to the introduction of the 911 transcript at trial, nor did he object to the transcript being read while the 911 tape played.

In this case, the jury requested to "have" the defendant's statements. R. 477, I. 24 – 480, I. 8; 498. The trial court erroneously denied the jury's request because the statements

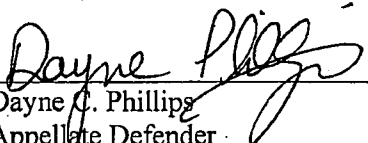
were not entered into evidence. R. 480, ll. 4-13. Similar to *Winkler*, the trial court acknowledged that portions of Appellant's statements were read into the record without any objection by State and should have complied with the jury's request by replaying a tape of testimony or by providing a transcript of the testimony. R. 366, l. 1 – 372, l. 22; 480, ll. 4-13; *See Winkler*, 388 S.C. at 585, 698 S.E.2d at 602. However, unlike in *State v. Summers*, 276 S.C. 11, 16, 274 S.E.2d 427, 430 (1981), overruled on other grounds by *State v. McFadden*, 342 S.C. 629, 539 S.E.2d 387 (2000), the record is clear on what "was reproduced for the jury" and it is unreasonable to infer "that the jury was satisfied with the court's response to their request" because the trial court denied the jury's request. App. 498. It is also clear that the trial court failed "to comply with the request of the jury" or "infer[] that the jury . . . felt their request had been met[.]" *Id.*

Furthermore, the error cannot be harmless because portions of the requested matter demonstrated Appellant's innocence, as discussed above. *See State v. Blassingame*, 271 S.C. 44, 47, 244 S.E.2d 528, 530 (1978) (noting "[t]he additional words which the trial judge would relay to the jury would be given special consideration by the jury since they were in response to its own inquiry"). The jury focused on certain aspects of the evidence that, at a minimum, would create a reasonable doubt as to Appellant's guilt in a "he said, she said" argument. *See Id.* Accordingly, the trial court abused its discretion when it misinterpreted the jury's request to "have" the defendant's statements by failing to comply with jury's request. App. 480, ll. 4-13; *See Winkler*, 388 S.C. at 585, 698 S.E.2d at 602; *see also Summers*, 276 S.C. at 16, 274 S.E.2d at 430, overruled on other grounds by *McFadden*, 342 S.C. 629, 539 S.E.2d 387.

CONCLUSION

For the foregoing reasons, Appellant Antwan Grayson requests that this Court reverse his convictions and remand this case to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,



Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of July, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWAN DOMINIQUE GRAYSON,

APPELLANT

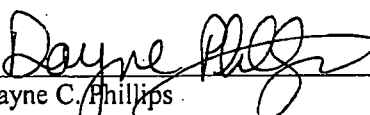
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwan Dominique Grayson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Robin B. Stilwell, which was held on March 30, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Antwan D. Grayson.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of July, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWAN DOMINIQUE GRAYSON,

APPELLANT


**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript of Proceeding: 1 - 497;
- (3) Court's Exhibit #2 (Jury Note).

I certify that this designation contains no matter which is irrelevant to this appeal.

July 13th, 2012


 Dayne C. Phillips
 Appellate Defender

South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589
 (803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

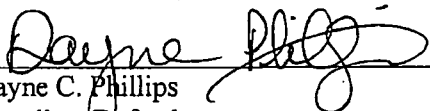
V.

ANTWAN DOMINIQUE GRAYSON,

APPELLANT

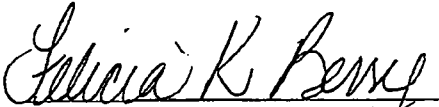
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Antwan Dominique Grayson, #329430 at Broad River Correctional Institution 4460 Broad River Road, Columbia, SC 29210; this 13th day of July, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of July, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Antwan Dominique Grayson, Appellant.

Appellate Case No. 2011-190104

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Unpublished Opinion No. 2013-UP-263
Submitted May 1, 2013 – Filed June 19, 2013

APPEAL DISMISSED

Appellate Defender Dayne C. Phillips, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, THOMAS, and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



CLOSING LETTER SENT
ON 06.20.13

Attorney initials CVG

Assistant initials PM

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 09, 2013

RECEIVED

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

JUL - 9 - 2013

SC OFFICE OF
APPELLATE JUDICENCE

REMITTITUR

Re: The State v. Grayson, Antwan
Lower Court Case No. 2009GS2304364, 2009GS2304366, 2009GS2304365
Appellate Case No. 2011-190104

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott
Dayne C. Phillips
Robert M. Pachak

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GreenVile)

Antwan Dominique Grayson - 329430)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 04574

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE, CO S.C.
PAUL B. WILKINS
2013 MAR 22 P 1:29

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 veified (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 cla 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, exeise 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 threes 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 Perry C.I. 430 Oaklawn Rd, Pelzer SC. 29669
305 E. North Street, Suite 325, Greenville, SC 29601
2. Name and location of Court which imposed sentence Greenville County Court Home-General Sessions
3. Name(s) of co-defendant(s) (if any) Curtis Antonio Wilkie
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery and Poss. of weapon during violent Crime - 2009GS2304364
 - (b) 1st degree CSC - 2009GS2304365
 - (c) Kidnapping - 2009GS2304366
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Armed Robber - March 30th, 2011 (30 years) - Poss of weapon - March 30th, 2011 (5 years)
 - (b) 1st degree CSC - March 30th, 2011 (30 years) Connsed concurrent with Top Charge

(c) Kidnapping March 30th, 2011 (30 years) runned concurrent with Top charges.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

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. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. June 19, 2013

ii. _____

iii. _____

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

i. Dismissed after review Pursuant to Anders v.

ii. California, 386 U.S. 738 (1967)

iii. _____

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

(a) _____

(b) _____

(c) _____

N/A

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

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

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

- (a) See attached Motion
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

N/A

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

i. _____

ii. _____

iii. _____

N/A

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) _____

(b) _____

(c) _____

N/A

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

Yes

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (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. Randy Chambers Trial
- ii. Dayne Phillips / Carmen V. Ganjehsani - Direct Appeal
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea, Trial, Sentencing
- ii. Appeal
- iii. _____

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

May old plea back which was 22 years correct concurrent with the time I'm doing now. Plus fine ~~done~~ ^{serve} for the time I done did.

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

Yes

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, _____, 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.

At D. G.

SWORN to and subscribed before me this 2nd
day of August, 2013.

Nancy C. Munkat (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty 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.

Art D. G.
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of August, 2013.

Nancy C. Muskat
Notary Public

My Commission Expires: 1-23-2023

State of South Carolina)
 County of Greenville)
 Antwan D. Grayson, #329430)
 Applicant,)
 vs.)
 State of South Carolina,)
 Defendant.)

Court of Common Pleas
 Civil Action Case No.:
 2013-CP-23-04574

BRIEF IN SUPPORT OF AMENDMENT
 AND ADDITIONAL PLEADING TO PRIOR
 POST-CONVICTION-RELIEF FILED
 AUGUST 21, 2013, PURSUANT TO
 RULE 15.

ENTERED COMPUTER

FILED-CLERK OF COURT
 GREENVILLE CO. SOUTH
 CAROLINA
 PAUL B. WICKENSIMMER
 2013 AUG 19 AM 11:44

SW

WHEREIN the Applicant in support of Amendments and additional pleading for the Application for Post-Conviction Relief, hereby submit the following:

Post-Conviction relief allows the applicant the chance to prove counsel was ineffective pursuant to Strickland vs. Washington, 466 U.S. 668, 104 S.Ct. 20 52 (1984). The Supreme Court has established a two prong test to evaluate ineffective of assistance of counsel claims.

To obtain relief upon request; (1) Applicant must show that counsel performance is measured by the complete avenue of deficiency. Under this prong, attorney performance is under complete reasonableness of professional norms. Cherry vs. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Secondly, counsel's deficient performance must have prejudice the applicant to where there is a high level of reasonableness probability that when perhaps before counsel's unprofessionalism of practical errors, the resultment of the proceeding would have required to be different.

Wherein applicant is entitled to relief upon request for reviewing applicant's brief there would be substantial evidence proving that he is being held unlawfully, as required according to State v. Johnson, 333 S.C. 459, 510 S.E.2d 423 (1999).

In citation of review, we will discover that applicant's 6th amendment and 14th amendment were violated. The 6th amendment guaranteed the right to effective assistance, and the 14th amendment guaranteed the right to due process of law and equal protection of law.

STATEMENT OF FACT

The applicant above was indicted at the May 2010, term of the Greenville County General Sessions Grand Jury for; (1) kidnapping, (2) first degree criminal sexual conduct, (3) armed robbery, (4) possession of a weapon during the commission of a violent crime.

Copy to A.G.

STATEMENT OF STANDARD REVIEW

The applicant is confined in the South Carolina Department of Corrections pursuant to order of commitments of Greenville County Clerk of Court. He was represented by, "Randy Chambers" March 30, 2011, trial to (1) kidnapping, (2) first degree criminal sexual conduct, (3) armed robbery, (4) possession of a weapon during the commission of a violent crime. Sentence by the Honorable Robin B. Stilwell to thirty (30) years consecutive. The applicant's direct appeal filed around July 13, 2012 and denied around July/August 2013. Applicant's Post-Conviction relief filed August 21, 2013.

INEFFECTIVE ASSISTANCE OF COUNSEL

Issue # 10

COUNSEL WAS INEFFECTIVE BY FAILING TO DISCLOSE ALL FAVORABLE BRADY MATERIALS

Because of counsel error I did not see the overwhelming evidence (photos) and decline the plea and went to trial and received (30) years and ran consecutive to the time I'm currently serving. In Blaine Lafler v. Anthony Cooper 132, S.Ct 1376 (2012) it states: When determining the remedy for ineffective assistance of counsel relating to the defendant's rejection of a plea offer, if the sole advantage a defendant would have received under the plea is a lesser sentence, which is typically the case when the charges that would have been admitted as part of the plea bargain are the same as the charges the defendant was convicted of after trial. The Court may conduct an evidentiary hearing to determine whether the defendant has shown a reasonable probability, that but for counsel's errors he would have accepted the plea, and if the showing is made, the Court may exercise discretion in determining whether the defendant should receive the term of imprisonment the government offered in the plea, the sentence he received at trial, or something in between. U.S.C.A. Amend. 6.

However, if counsel was effective and showed me the photos that the state used on me at trial before hand, I would have took the plea for 22 years for everything and would be maxing out at age 37 instead of 55! By seeing the photos I would've seen that it was in my best interest to plea instead of going to trial.

Applicant never heard the police 911 call until trial which my lawyer had! So by me not seeing the photos and hearing the 911 call, I went to trial thinking they didn't have anything on me. But since my lawyer never

revealed any of these, I went to trial instead of taking the plea which was my best option and received 30 years when I could've just had 22 years!!!

At D Grayson

Antwan D. Grayson
Applicant

PCI - Q3 B - 203
430 Oaklawn Rd
Pelzer, SC 29669

SWORN or affirmed to and subscribed
before me this 12th day of November,
2013.

Nancy C. Merchant
Notary Public

My Commission Expires: 01-23-2013

MY ISSUE...INEFFECTIVE ASSISTANCE OF COUN.
ISSUE #1.

COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO PROSECUTOR DIRECT-
EXAMINATION.

Because of counsel's error, the prosecutor was allowed to state at trial, Tr. pg. 257 line 24 through pg. 258 line 10, "Mr. Wilkie, is Antwan Grayson present in the Courtroom today, the one robbed this victim Crystal Byers? Answer, No Ma'am. Question, Antwan Grayson, the person you were in the car? Answer, No Ma'am. Question, Are you sure about that? Answer, Yes, he is in here. Question, Where is he? Answer, He's sitting right there in the white shirt right there beside the man in the gray."

The state was allowed to coach the witness to identify me and I was sentence to 30 years ran consecutive with the probation violation I'm already doing. Which makes me have 44 years. However, if counsel was effective when the state asked the witness was the person who did this crime in the car and did the robbery was in the courtroom and the witness stated no. The counsel was suppose to object to the next question the state asked and moved for an acquittal de to mis-identification testimony because the witness stated twice that the person who did the crime with him was not in the courtroom, which would've been in my favor to achieve a verdict of not guilty!!!

ISSUE #2.

COUNSEL WAS INEFFECTIVE BY FAILING TO ASK FOR A CONTINUANCE.

Because of counsel's error, the state gained an advantage over me because I was left in the blind and didn't know what they was going to do, nor did I no any of the defense my counsel had because we never talked to prepare for trial. I was only asked did I want a plea and when I said no, the meetings was over between counsel and myself.

Now, if counsel was effective and was using his intelligence of the law, he would have asked for a continuance because we needed it, and because it was in our best interest so we could gather more witnesses and build a better defense. In U.S. v. Nichols, 56 F.3d 403 (1995 2nd Cir.) the judge said they was there to make sure you (the defendant) is able to help your counsel with the trial and preparation;

but how could I do any that when we never talked about trial preparation? That's why I asked for a continuance so we could prepare, and we could have had a chance of beating the trial or at least I could have accepted the plea if I knew the chances of winning as 10 to 1 in the state benefit.

ISSUE #3.

COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO PROSECUTOR'S CLOSING ARGUMENTS.

"Tr. pg. 430 line 6 - pg. 431 line 13"

Because of counsel's error the prosecutor was allowed to falsely lead the jury to believe I did the crime and was the one and only one lying when she stated on "Tr. pg. 430 line 6 - pg. 431 line 13" stating: "Finally, and this, I think, is the biggest piece of when you can tell if someone's telling you the truth or lying. Motivation, what is motivating this person to tell you what they are telling you? I submit to you the only person in this case that has real motivation about your verdict is the defendant. His life is the only life that's going to be different tomorrow." By counsel error in not objecting to her closing arguments lead the jury to believe I did it and that I was the only one with a reason to lie. The prosecutor is not an expert to say how you can tell who's lying or not and that wasn't her place to say the things she said. However, if counsel would have objected to the prosecutor error the jury may have had doubt in their minds that I didn't do it and that I was really innocent. If they would have used their own reasoning and not what the state lead them to believe or go with, then I may have had a chance of coming back with a not guilty verdict.

ISSUE #4

COUNSEL WAS INEFFECTIVE BY FAILING TO ALLOW ME TO PLEA.

Because of counsel's error, I went to trial and was found guilty and sentence to serve 44 years because I was given 30 years for each charge (3), and 5 years for one charge which was ran concurrent with the 30 years but the 30 ran consecutive with the 14 years I am doing for violating probation. If he would have allowed me to plea, I would

only have 22 years now. I had of 44. In my transcript " pg. 488 line 10-19" counsel says that they had evidence on me but still wouldn't allow me to plea because he had it set in his mind, once you say you didn't do it then he's not going to allow you to plea. However, if counsel had been effective he would have seen the overwhelming evidence the state had against me and seen that it was in my best interest to plea guilty and allow me to accept the 22 years for everything with the time I'm doing now. I also wrote to him and asked to plea, but he never wrote me back. Also, by counsel not allowing me to plea was misconduct too, because I'm able to enter one as long as it's "voluntarily knowingly, and intelligently." Entering a guilty plea results in a waiver of several constitutional rights therefore the "Due Process Clause" requires that guilty pleas are entered "voluntarily, knowingly and intelligently," by defendants. See Boykin v. Alabama, 89 S.Ct. 1709.

ISSUE #5

COUNSEL WAS INEFFECTIVE BY FAILING TO COMMUNICATE.

Because of counsel's error, I wasn't able to help with preparing the defense nor did I know the defense he was taken. The state presented photos of me inside the victims car which I never knew they had because my lawyer never showed me any photos whatsoever until the trial had started, revealing my lawyer and I had total miscommunication. He only came to see me 3 days before trial saying we are going to trial. As he was my lawyer every since 2009 and only wrote me "once" and that was in 2010 telling me to contact Tracy, if I needed to talk to him, but I was on phone restriction from 2009 through 2012 and that's why I kept writing! As South Carolina Rules of Court 2010 Edition Section 1.4 "Communication" states - "A lawyer shall: (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0 (F), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and ... -comment- [4]... When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member

of the lawyers staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

-Explaining Matters [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved...

In U.S. v. Nichols, 56 F.3d 405 (2nd. Cir. 1995) The judge states: "one of our concerns is that you understand what's going on around you so that you could assist your lawyer in preparing a defense." But I never had any knowledge of the defense or angle my lawyer was going to take. However, if counsel was effective, he would have seen me several times before trial so we could have discussed defenses to establish so we could beat trial. By him not doing so we went to trial and lost and now I am serving 44 years.

ISSUE #6.

COUNSEL WHAT INEFFECTIVE BY FAILING TO INVESTIGATE POTENTIAL WITNESSES TO PREPARE A DEFENSE.

Because of counsel of error, the state was allowed to attack my character with prior bad acts without any problem from the defense. Also, the state kept saying I'm a robber and etc. Now by counsel not getting the witnesses I told him too, which was Crystal Davis, Tina Grayson, Alvin Gernard Grayson to testify on my prior good acts and who I truly am was violation of my due process rights. The witness would've testified that I'm not a robber or them other bad names that was put on me, and that I have never, ever, hurted a woman. However, that could have put doubt in the jurors minds that I committed the crimes. My counsel had Alvin Gernard Grayson on his witness list but never called him to the stand which my mother and I told him that Alvin G. Grayson said he want to take the stand. However, if counsel was effective he would've called potential witnesses or just a witness to testify on my prior good acts, if he would have called Alvin G. Grayson to testify he and the courtroom would've found that the state witness and I am related and that he lied on the stand committing

perjury, which could have played a part on the jury to them they could not trust the witness cause he already lied to their faces. By that I could have won the case with a not guilty verdict.

ISSUE #7

COUNSEL WAS INEFFECTIVE BY FAILING TO INVESTIGATE INCIDENT!

Because of counsel's error, I went to trial and the state prosecuted me and gave me 30 years; However, if counsel was effective he would have investigated my indictments more seriously and checked the "Terms of Circuit and Family Court Calendar of May 2010, and he would have seen that NO GENERAL SESSIONS Court was held on the 4th of May! My indictments was done on May 4th 2010, which was not a General Session Court date which means the procedure's were violated dealing with statute "S.C. Code Ann. § 14-9-210! Now, if he would have seen this, he could have had all my chargers thrown out and I wouldn't have had to go to trial and never would have received 30 more years!

ISSUE #8

COUNSEL WAS INEFFECTIVE BY FAILING TO PREPARE FOR TRIAL.

Because of counsel's error, the state benefited by his error winning their case. Counsel never wrote me back when I wrote him. We never talked about a defense. He never showed me the incriminating photos that the state had and used on me at trial, nor did he suppress a piece of evidence that couldn't lead back to me. In Coles v. Peyton, 389 F.2d 224 (1968), on Pg. 226 it states: "Counsel should be afforded a reasonable opportunity to prepare to defend a accused. Counsel must confer with his client without undue delay and as often as necessary, to advise him of his rights and to elicit matters of defense or to ascertain that potential defenses are unavailable. Counsel must conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial. An omission or failure to abide by these requirements constitutes a denial of effective representation of counsel."

COUNSEL WAS INEFFECTIVE BY FAILING TO HAVE ALL MY INDICTMENTS QUASHED,
AND TO MOVE TO QUASH THE INDICTMENTS IN ACCORDANCE WITH S.C. CODE ANN.
§ 17-19-90 (2003).

Because of counsel's error, the state falsely convicted me and sentence me to 30 years to run consecutive with the 14 years I'm doing for violating probation. However, if counsel was effective he would have had my indictments quashed because I was not indicted inside a Court of General Sessions like Statute "S.C. Code Ann. § 14-9-210. This statute states: The state/court "must" true bill a indictment inside a court of General Session. Therefore the state violated a jurisdictional statute! So by 14-9-210 being violated, "All" indictments that I was charged with illegally by null indictments "Shall"/"Must" be thrown out/quash! Now, if he would have had them quashed then I would have never went to trial nor would I have 30 extra years!

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Antwan Dominique Grayson,)
 S.C.D.C. No. 329430,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-4574

RETURN

In response to the post-conviction relief application filed August 21, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the May 2010 term of General Sessions for armed robbery (2009-GS-23-4364, count 1), possession of a weapon during commission of a violent crime (2009-GS-23-4364, count 2), first-degree criminal sexual conduct (CSC) (2009-GS-23-4365), and kidnapping (2009-GS-23-4366). Randall L. Chambers, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On March 30, 2011, the Honorable Robin B. Stilwell sentenced the Applicant to thirty years for armed robbery and five years for possession of a weapon during commission of a violent crime. Judge Stilwell then levied a thirty year sentence for first-degree CSC and a thirty year sentence of kidnapping to

be consecutive to the fourteen-year sentence the Applicant was already serving¹ – resulting in a 44-year total term of incarceration.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Grayson, Op. No. 2013-UP-263 (S.C. Ct. App. filed June 19, 2013). The Remittitur was sent on July 9, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of counsel.

In a pro se "Brief in Support of Amendment and Additional Pleading to Prior Post-Conviction-Relief Filed August 21, 2013, Pursuant to Rule 15" filed November 19, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:

- a. Failed to disclose all favorable Brady materials:
 - i. "[I]f counsel was effective and showed me the photos that the state used on me at trial before hand, I would have took the plea for 22 years for everything."
 - ii. "[N]ever heard the police 911 call until trial which my

¹ On May 15, 2009, the Honorable C. Victor Pyle, Jr. revoked the Applicant's probation for second-degree burglary (2008-GS-23-5293) and ordered a sentence of fourteen years imprisonment.

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

- lawyer had.”
- b. Failed to object to the prosecutor’s direct examination of Wilkie.
 - c. Failed to ask for a continuance.
 - d. Failed to object to the prosecutor’s closing arguments (page 430, line 6 – page 431, line 13).
 - e. Failed “to allow me to plea.”
 - f. Failed to communicate.
 - g. Failed to investigate witnesses (Crystal Davis, Tina Grayson, and Alvin Grayson) to prepare a defense.
 - h. Failed to investigate indictments and move to quash.
 - i. Failed to prepare for trial.

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

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

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

IV.

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

V.

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

Respectfully submitted,

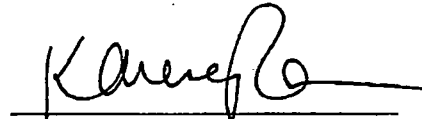
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

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Senior Assistant Deputy Attorney General

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

By:



Attorneys for Respondent

April 8, 2014

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	2013-CP-23-04574
)	
)	
)	
)	
ANTWAN DOMINIQUE GRAYSON,)	
APPLICANT,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
RESPONDENT.)	
)	

ORIGINAL

December 18, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE.

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

CAROLINE M. HORLBECK, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) ANTWAN DOMINIQUE GRAYSON:

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Applicant's Exhibits)		
A-1	E-Mail dated 10/30/14.....	8.....	9

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1 THE COURT: All right. Ms. Ratigan.

2 MS. RATIGAN: Thank you, Your Honor.

3 May it please the Court.

4 This is the case of Antwan Grayson v. the State of
5 South Carolina. The docket number is 2013-CP-23-4574.
6 Mr. Grayson was indicted for armed robbery, possession of
7 a weapon during the commission of a violent crime, first
8 degree criminal sexual conduct, and kidnapping. He was
9 represented on these charges by Mr. Chambers.
10

11 The case was brought to trial before Judge Stilwell.
12 On March 30th of 2011, Mr. Grayson was found guilty.
13 Judge Stilwell sentenced him to 30 years for armed
14 robbery, and five years for the weapons charge. He then
15 sentenced him to 30 years for first degree CSC, and 30
16 years for kidnapping. Those were to be concurrent with
17 each other, but consecutive to a 14-year sentence
18 Mr. Grayson had already received for a probation
19 revocation. So, in total, he received an aggregate
20 sentence of 44 years that day.

21 Mr. Grayson did file an appeal. It was perfected in
22 the nature of an Anders brief. The Court of Appeals
23 dismissed that brief in June of 2013. His application was
24 timely filed.

25 And the State is ready to proceed.

1 THE COURT: All right. Ms. Horlbeck.

2 MS. HORLBECK: Judge, we would call Mr. Grayson,
3 Antwan Grayson, to the stand.

4 THE COURT: All right. Mr. Grayson, come around here
5 and be sworn, and then have a seat.

6 THE CLERK: Mr. Grayson, please, place your left hand
7 on the Bible and raise your right hand as best you can.

8 WHEREUPON,

9 ANTWAN DOMINIQUE GRAYSON,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please state your full name for the record.

13 THE WITNESS: Antwan Dominique Grayson.

14 THE CLERK: Thank you.

15 You may be seated.

16 DIRECT EXAMINATION

17 BY MS. HORLBECK:

18 Q Mr. Grayson, who represented you at the trial of this
19 case?

20 A Randy Chambers.

21 Q Based on Mr. Chambers's representation, did you file
22 this petition for post-conviction relief?

23 A Yes, ma'am.

24 Q Okay. Let's talk about the allegations -- well, let
25 me get a little bit of background from you about

1 Mr. Chambers. Was Mr. Chambers appointed, or was he
2 retained to represent you?

3 A He was appointed, a bono -- a pro bono lawyer.

4 Q All right. Now, did you make bond, or were you
5 incarcerated in the law enforcement center while you were
6 waiting for your case to go to trial?

7 A I was incarcerated.

8 Q Okay. Were you at the law enforcement center, or
9 somewhere else?

10 A I was down enrolled [phonetic] in prison.

11 Q The entire time that Mr. Chambers represented you --

12 A Oh, no.

13 Q -- were you in SCDC?

14 A No, ma'am. I was in the county.

15 Q Okay. How long were you in the county while
16 Mr. Chambers represented you?

17 A I'd say I wasn't in the county no more than five
18 months, I don't think. So probably about that whole time.

19 Q Okay. Let's start with that. While you were in the
20 Greenville County Law Enforcement Center, did Mr. Chambers
21 come and talk to you about your case?

22 A He seen me like, I think, one time. And it wasn't
23 even long.

24 Q During the time that he came to the law enforcement
25 center to see you, what did you and he discuss?

1 A We discussed who did -- who I had to -- that he can
2 get in contact and get a background on.

3 Q Okay. What else did you and he discuss? Did you
4 discuss bond?

5 A Yes. He said he was going to help me get a bond, but
6 ain't nothing really happened.

7 Q Did you have a bond hearing?

8 A Yes, ma'am.

9 Q In front of -- did the -- what did the Judge decide
10 to do?

11 A They gave me a bond for -- I think it was a probation
12 violation, but I couldn't make it.

13 Q All right. So after five months at the law
14 enforcement center, where did you go?

15 A I went to Lee County.

16 Q And what did you go to Lee County Correctional for?

17 A Violation of probation.

18 Q Okay. And what was -- how long were you in SCDC?

19 A Well, I've been in SCDC since 2009.

20 Q Well, I'm just saying -- okay. So you never came
21 back to Greenville until your trial; is that correct?

22 A Yes, ma'am.

23 Q Okay. While you were in SCDC, did Mr. Chambers come
24 to visit you?

25 A No, ma'am.

1 Q All right. Did he write to you?

2 A He wrote me once.

3 Q Okay.

4 A And that was just to tell me that if I needed to talk
5 to him, contact his -- contact his -- one of his persons
6 that worked with him is Tracy. And, other than that,
7 that's all he said.

8 Q Okay. And you weren't incarcerated at Lee the entire
9 time, were you? You, actually, went to Broad River and
10 some other places?

11 A Yes, ma'am.

12 Q Okay. And did you ask the Department of Corrections
13 to provide you with a listing of all the letters you
14 received while you were in SCDC?

15 A Yes, ma'am, I did.

16 Q And did you receive any correspondence in return?

17 A No, ma'am.

18 Q All right. But are you sure --

19 MS. HORLBECK: Let me have this marked as
20 petitioner's one.

21 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
22 identification only.)

23 BY MS. HORLBECK:

24 Q I'm handing you petitioner's one. I'll just ask you
25 to take a look at that. And then I'll ask you some

1 questions.

2 A (Witness complied.)

3 Q Is that correspondence from officials from SCDC?

4 A Yes, ma'am.

5 Q And does that correspondence reflect that there was
6 no communication --

7 A Yes, ma'am.

8 Q -- from your attorney during the time period that you
9 were in the Department of Corrections?

10 A Yes, ma'am.

11 Q Okay. Now, you've conceded there was one letter; is
12 that true?

13 A Yes, ma'am.

14 MS. HORLBECK: And I think --

15 Ms. Ratigan, I showed this to you, didn't I?

16 MS. RATIGAN: Yes.

17 MS. HORLBECK: All right. We would move this into
18 evidence, Judge.

19 Ms. RATIGAN: No objection.

20 THE COURT: Without objection, Exhibit No. 1 for the
21 Applicant.

22 (WHEREUPON, Applicant's Exhibit No. 1 was admitted into
23 evidence.)

24 BY MS. HORLBECK:

25 Q And did anyone from Mr. Chambers office or the Public

1 Defender's Office ever correspond with you?

2 A No, ma'am. I wrote -- I had to write the Clerk of
3 Court. That's the only one I really had correspondence
4 with.

5 Q Did anyone schedule a video conference from
6 Mr. Chambers office?

7 A No. The only time -- I had a video conference like
8 three days before trial with Mr. Chambers. He just popped
9 up out of the blue and said we was going to trial.

10 Q Okay. Now, while you were at SCDC, you were
11 transported to the Greenville County courthouse a couple
12 of times for court; is that correct?

13 A Yes, ma'am.

14 Q All right. How many times were you transported from
15 SCDC to court?

16 A Twice.

17 Q All right. The two times that you were transported,
18 did Mr. Chambers speak to you on those two occasions?

19 A Yes, ma'am.

20 Q Did you -- where did y'all speak?

21 A Down here in the holding cell.

22 Q All right. When you met with Mr. Chambers, what did
23 you and he discuss?

24 A We discussed -- first, we talked about my momma and
25 my uncle being witnesses, and some people -- another

1 person. And, basically, that was it.

2 Q All right. You and Mr. Chambers discussed witnesses?

3 A Yes, ma'am.

4 Q Did you give him witness names and contact
5 information?

6 A Yes, ma'am.

7 Q What witness names did you give him?

8 A I gave him Alvin Gernard Grayson, Tina Grayson, and
9 Crystal Davis.

10 Q All right. Did you, also, give him contact
11 information for those three witnesses?

12 A Yes, ma'am.

13 Q And did -- to your knowledge, did Mr. Chambers
14 contact those three witnesses?

15 A To my knowledge, no, ma'am.

16 Q Did you ask him if he contacted them?

17 A He said he did, but that's all he said.

18 Q All right. Did he discuss with you whether -- what
19 they said, what they told him, if anything?

20 A No, ma'am.

21 Q Did you ask?

22 A Yes, ma'am.

23 Q All right. And what was his response?

24 A He was like we ain't going to need them.

25 Q Okay. Did he tell you why -- did Mr. Chambers tell

1 you why he didn't believe those witnesses would be
2 necessary at your trial?

3 A He was like they were saying the same thing,
4 something like that.

5 Q Okay. When -- did Mr. Chambers ever review discovery
6 with you?

7 A No, ma'am.

8 Q All right. Did he ever review the incident reports
9 or the statements with you?

10 A I mean, to my knowledge, I don't remember us going
11 over the statements and all. I don't remember that. I
12 know in trial, we went over them in trial. But I don't
13 remember before that that we went over it.

14 Q Okay. Before your trial, you don't recall going over
15 any discovery with Mr. Chambers or anyone from his office?

16 A No. The only time he called me is when I came back,
17 he was calling for a plea.

18 Q All right. So, at trial, what discovery did you
19 review for the first time?

20 A Before trial, we didn't review nothing.

21 Q At trial --

22 A At trial was the first time I witnessed that they had
23 some photos of me and a 911 call that I never knew about.

24 Q All right. Had you ever had the opportunity to
25 listen to that 911 call prior to your trial?

1 A No, ma'am. I didn't hear that until my second day of
2 trial.

3 Q Okay. Had you had the opportunity before trial to
4 review the photos that the State had?

5 A No, ma'am. I didn't see it until they showed it to
6 the State [sic].

7 Q Did Mr. Chambers ever provide you a copy of
8 discovery?

9 A No, ma'am. Once again, I got that from the Clerk of
10 Court.

11 Q All right. And if you'd had a chance to review that
12 discovery, how do you think the outcome of your trial
13 would have been different?

14 A I don't even think I would have went to trial. I'm a
15 hundred percent sure I would have took a plea.

16 Q Okay. Prior to the beginning -- before your trial
17 began, did Mr. Chambers make any pre-trial motions?
18 Because I noted that one of the allegations -- the reason
19 I'm asking you that is one of the allegations you've
20 raised is that Mr. Chambers did not request a continuance
21 of your trial?

22 A He did not request one.

23 Q All right. Did -- tell me a little bit about that.
24 Tell me, did that -- did you and Mr. Chambers discuss a
25 continuance prior to trial?

1 A Yeah. Before I came up here to trial, I talked to
2 him like I want a continuance, because I'm not ready. I
3 don't know the defense. Because, like I said, he came and
4 had a video chat with me three days before trial. So I'm
5 like -- and, at that time, I was on lock up.

6 So I was like I need a continuance. I'm not ready.
7 I don't even have things I'm supposed to have. He was
8 like I'm not -- I've got to be ready. I've got this. And
9 I said, But I'm not ready. He said, But I've got this.
10 We're going to be all right. So we went to trial.

11 Q Did you tell the Judge prior to the beginning --
12 prior to the trial beginning that you wanted a continuance
13 and your attorney would not ask for one?

14 A I didn't know I could talk to the Judge and say that
15 at the time, ma'am.

16 Q Okay. And, as a result, you didn't make that -- you
17 didn't say anything about it to the Judge, did you?

18 A No, ma'am.

19 Q All right. You, also, raised that there was -- your
20 trial counsel did not discuss all favorable Brady
21 materials. And is that what you're talking about -- when
22 you say photos and 911 call, are you saying that those --
23 are you saying that those would have been exculpatory to
24 you somehow?

25 A Yes, ma'am. They was -- them [sic] was very

1 important to me.

2 Q Do you know -- can you explain to the Court why those
3 are Brady materials? Because you've raised -- you've
4 listed this in your application. I mean, did you --

5 A Because the Brady material, that's dealing with your
6 Rule 5. Your motion of discovery is all they have on you.
7 So if they have photos of me in a victim's car, I supposed
8 to see these photos to know what's going on. I can know
9 what they have against me. At the time, I did not know
10 what they had. So I went to trial.

11 Q Okay. So where were the photos of you in the
12 victim's car taken?

13 A At the bank.

14 Q At the bank. Okay. So your position today is if
15 you'd known about those photos, you would have pled?

16 A Yes, ma'am.

17 Q All right. And are you -- is it, also, your position
18 that Mr. Chambers made a mistake in not sharing those
19 photos and the 911 phone call with you?

20 A Yes, ma'am.

21 Q Okay. And that if he had shared those things with
22 you, you'd have done something different than go to trial?

23 A Yes, ma'am.

24 Q All right. Was there ever an offer in this case from
25 the State?

1 A Yes, ma'am. They offered me 22 years for everything
2 ran concurrent with my time I'm doing, 14.

3 Q Okay. And what did you do about that offer?

4 A I turned it down. Because, like I said, I didn't
5 know even know they had anything on me.

6 Q Okay. You've, also, alleged that Mr. Chambers failed
7 to allow you to plead. Would you explain that to the
8 Court?

9 A All right. I told Mr. Chambers I wanted to plead.
10 But he got it stuck in your head like -- he got it in his
11 head like once you tell him one time that you're not
12 guilty, he is not going to let you plead. He even says it
13 at trial. He told the Judge that.

14 So I told him I wanted to plead, but he wouldn't let
15 me. I even told my mom to contact him and tell him I
16 wanted to plead, but he never allowed me to.

17 Q Okay. Well, your decision -- you turned down the
18 State's offer; correct?

19 A Yes, ma'am.

20 Q Okay. So after you -- when did you decide that you
21 wanted to plead?

22 A The third time that -- when I contacted -- I told him
23 through my momma and -- my momma to tell him that I wanted
24 to plead. He didn't contact me back. And then three days
25 before trial, he came and said, We're going to trial.

1 Q Okay. So how long in advance of trial did you tell
2 Mr. Chambers that you wanted to plead?

3 A Approximately three months and a half.

4 Q Okay. And your mother was supposed to call
5 Mr. Chambers and tell him that you wanted to plead?

6 A Yes, ma'am.

7 Q All right. Is it your position today that
8 Mr. Chambers should have arranged a plea for you once --

9 A Yes.

10 Q -- he heard from your mother?

11 A Yes, ma'am.

12 Q All right. And are you arguing today that that was
13 an error that he didn't -- him not arranging your plea was
14 an error that --

15 A I'm arguing the fact that he would not allow me to
16 plead.

17 Q All right. Did you -- why did you not -- did you
18 tell him the day of your trial that you wanted to plead?

19 A Yes, ma'am, I did. That's why I wanted a
20 continuance, too, so we could talk about all of that. But
21 he was like he was ready for trial.

22 Q And what did Mr. Chambers say the day of trial when
23 you told him that you wanted to plead?

24 A He was like, It's too late. We're already here.

25 So I was like I need a continuance to know what's

1 going on.

2 And he was like I've got this. We're going to be all
3 right.

4 Q Okay. Did you tell the Judge before trial that you
5 didn't really want to have a trial, you'd rather plead?

6 A No, ma'am. Because I didn't know if I could stop it
7 or not.

8 Q Okay. And the day of trial, to your knowledge, was
9 there any offer on the table from the State?

10 A No, ma'am.

11 Q Did you and Mr. Chambers talk about whether or not
12 there was an offer from the State the day of trial?

13 A No, ma'am.

14 Q Okay. Now, you've -- did Mr. Chambers ever make any
15 motions to move to quash your indictments?

16 A Absolutely not.

17 Q All right. And is it -- are you arguing today that
18 your indictments contained defects?

19 A Yes, ma'am.

20 Q What are those?

21 A Well, as I've been back in the penitentiary, I was
22 going to the law library and getting help. And I found
23 out that my indictments -- I was supposed to be indicted
24 on May the 4th, 2010. But then I wrote -- I think it was
25 the Family Court or the -- I think it was the Clerk of

1 Court. And I got the terms of circuit and Family Court
2 for May 10th. And it shows on that week that it [sic] was
3 no General Sessions held on that date as they say it was.

4 And so I did some more studying. And as I was going
5 through -- and I see that statute 14-93-10 [phonetic], it
6 has been violated. Because, by that statute, I supposed
7 to be indicted inside of a Grand Jury session. So if
8 there's no grand session -- General Sessions held, then
9 that makes it ineffective.

10 Q Okay. And did Mr. Chambers make those motions prior
11 to trial?

12 A No, ma'am.

13 Q All right. Do you -- is it your argument today that
14 that was a mistake on Mr. Chambers part?

15 A Yes, ma'am. Because I asked him about them, as a
16 matter of fact. And he was like I checked and they was
17 right. But when I started doing checking, I did not see
18 that it was right.

19 Q Do you believe that the outcome of your case would
20 have been different if Mr. Chambers had made those
21 motions?

22 A Totally. Because if he would have made the motions
23 and really did an investigation on my indictments, he
24 would have seen that my indictments was inviolent [sic].
25 And by being non violent meaning they was not supposed to

1 prosecute me in the first place. I was never supposed to
2 be in that trial. So not being at trial, I would never be
3 stuck with all this time.

4 Q Okay. Now, you've, also, raised an allegation that
5 Mr. Chambers failed to object to the testimony of one of
6 your -- one of the witnesses, one of the State's
7 witnesses?

8 A Yes, ma'am.

9 Q Specifically, I believe Curtis Wilkie; is that
10 correct?

11 A Yes, ma'am.

12 Q All right. Tell the Court a little bit about that.
13 What's the -- explain what objections you believe
14 Mr. Chambers should have made?

15 A All right. Well, during -- the Prosecutor, when she
16 was questioning him, at the end of it, she asked, Do you
17 see the person -- in my transcript on Page 257, Line 24
18 through Page 258, Line 10, she asked him, she said,
19 Mr. Wilkie, is Antwan Grayson present in the courtroom
20 today, the one that robbed the victim, Crystal Byers?

21 Answer: No, ma'am.

22 Question: Antwan Grayson, the person you were in the
23 car with?

24 Answer: No, ma'am.

25 So he said no twice.

1 Then a question again, Are you sure about that?

2 Answer: Yes. He is in here.

3 Question: Where is he?

4 Answer: He's sitting right there in the white shirt,
5 right there beside the man in the gray.

6 So I'm like he already said no twice. So, basically,
7 that's misidentification in the courtroom when you say
8 this person that did this crime is not in the courtroom.
9 But the Prosecutor kept asking him, asking him like tell
10 me, tell me, tell me.

11 And so he, basically, broke down and said, yes, he's
12 in here when the whole time -- he said no twice. Why keep
13 badgering him? Why you keep pressing him to say something
14 I'm not saying?

15 So I feel like he should have spoke up and objected
16 to that and moved for -- to get it throwed [sic] out.

17 Q Okay. And he did not make an objection, such as
18 objection asked and answered?

19 A No, ma'am.

20 Q Okay. And did Mr. Chambers argue that point in his
21 closing argument?

22 A No, ma'am.

23 Q Okay. And if he had argued that point or made an
24 objection and gotten it sustained, how do you think that
25 would have impacted or affected the outcome of your trial?

1 A I'd be ordered to have 14 years right now. I would
2 have never been convicted. Because he said the person
3 that did the crime -- was the reason we was at trial was
4 not in the courtroom. So that would make me not that
5 person. So I would have been an innocent person. And
6 they would have had to throw the charges away.

7 Q Now, how -- you, also -- are there any other things
8 that you wanted Mr. Chambers to object to regarding Curtis
9 Wilkie's testimony?

10 A No, ma'am. That was the only one.

11 Q Okay. Was Mr. Wilkie -- was he questioned about his
12 relationship with Alvin Gernard Grayson?

13 A Yes, ma'am.

14 Q And do you recall -- what is their relationship, to
15 your knowledge?

16 A Oh, that's his father.

17 Q Okay. And did -- do you recall whether the State
18 asked Mr. Wilkie about his relationship with Alvin Gernard
19 Grayson?

20 A Yes. The State asked him how is he related to him.
21 And he was like that's my -- that's my -- I think he said
22 that's my daddy. But when they turned around and asked
23 him how was he related to me, he was like he's not related
24 to him.

25 Q Okay. So Alvin is related to you as well?

1 A Yes, ma'am.

2 Q Alvin Gernard Grayson?

3 A Yes, ma'am.

4 Q What page did Curtis Wilkie testify that he didn't
5 know how you were related to Alvin Gernard Grayson? Do
6 you recall?

7 A Not offhand. Because I didn't write that down,
8 because I was thinking about his questioning.

9 Q Okay. Is it Page -- I don't know if you have a copy
10 of your transcript. But --

11 A It's beside you.

12 Q Okay. I'm going to direct your attention to Page 233
13 of the transcript. And start with Lines 13 through 19.
14 Just read it silently to yourself.

15 A (Witness complied.)

16 Q Are you ready?

17 A (Witness nodded.)

18 Q So, in the transcript, the Prosecutor asked
19 Mr. Grayson if Alvin Grayson was related to you; is that
20 correct?

21 A Yes, ma'am.

22 Q All right. And Mr. Wilkie said yes; right?

23 A Yes, ma'am.

24 Q Okay. And the Prosecutor then asked how -- what was
25 the relationship. And Mr. Wilkie said he didn't know; is

1 that correct?

2 A Correct.

3 Q And your argument today is that Curtis Wilkie did
4 know how you were related to Alvin Grayson?

5 A Yes, ma'am.

6 Q Okay. Why do you believe that Wilkie should have
7 known the relationship between you and Mr. Grayson?

8 A Because we were family. We stayed together.

9 Q How were you related to Curtis Wilkie?

10 A Because his daddy is my cousin, but I called him my
11 uncle.

12 Q Okay. And did Mr. -- did you tell Mr. Chambers about
13 that during the trial? Did you point --

14 A I told him. During the trial, I tapped him and told
15 him that. But he was like hold on. Don't worry. Just be
16 quiet.

17 Q Okay. Were you able to explain to him that you
18 thought Mr. Wilkie was lying on the stand?

19 A That's what I was telling him when I tapped him. I
20 was telling him like he's lying. He knows he's my
21 cousin -- that his daddy is my cousin.

22 Q Okay. And did you -- were you able to get your
23 message across to Mr. Chambers?

24 A No, ma'am.

25 Q And, as a result, did Mr. Chambers cross-examine

1 Mr. Wilkie about -- or use the information you provided to
2 impeach Mr. Wilkie?

3 A No, ma'am.

4 Q Okay. Did Mr. Chambers ever use the information you
5 provided him about the family relationship to -- did he
6 ever argue that in closing to impeach Mr. Wilkie's --

7 A No, ma'am.

8 Q All right. And Curtis Wilkie, he was a co-defendant
9 in your case; right?

10 A Yes, ma'am.

11 Q All right. He was -- was he the only co-defendant?

12 A Yes, ma'am.

13 Q And his -- he testified against you in your case;
14 correct?

15 A Correct.

16 Q All right. So are you arguing today that
17 Mr. Wilkie's testimony was -- it was important to impeach
18 him?

19 A Yes, ma'am, to show the prejudice.

20 Q All right. And did Mr. Chambers failure to -- are
21 you arguing that Mr. Chambers failure to correctly impeach
22 Mr. Wilkie that that impacted the outcome of your trial?

23 A Yes, ma'am.

24 Q All right. Do you -- would things -- would your
25 trial -- the outcome of your trial have been different if

1 that impeachment had taken place?

2 A Yes, ma'am.

3 Q Okay. Is there anything else that you wanted
4 Mr. Chambers to object to regarding Mr. Wilkie's
5 testimony?

6 A To my knowledge, no, ma'am.

7 Q Okay. And tell me one more time how -- it's Alvin
8 Grayson. Does Mr. Alvin Grayson have a middle name?

9 A Gernard.

10 Q Okay. And how is he related to you?

11 A He's my momma's first cousin.

12 Q Okay. And Mr. Wilkie is your cousin?

13 A Yes, ma'am.

14 Q Okay. And Mr. Wilkie is related to Mr. Alvin Gernard
15 Grayson how?

16 A That's his son. That's his -- yeah. That's
17 Gernard's son.

18 Q Okay. What other allegations do you have today?
19 Because I think we've covered most of them. But I don't
20 want to shut you down if you've got something else.

21 A I have the Prosecutor's closing arguments.

22 Q Oh, okay. Tell us what arguments you're talking
23 about.

24 A Well, the arguments -- when she was closing the
25 arguments, she was talking to the jury, but she was giving

1 them her input on what she thinks -- who's a liar and --
2 which is -- she's not no expert to tell who's lying or
3 not. And, by that, she was -- I was like -- not because
4 of counsel's error and by him e -- the Prosecutor was
5 allowed to falsely lead a jury to believe I did a crime
6 and I was the only one lying.

7 Q Are you talking -- let's direct the Court's attention
8 to a specific page. Because I think you've got Page 430,
9 Line 6 -- starting at Line 6 to Page 431, Line 13?

10 A Yes, ma'am.

11 Q Is that the section of the Prosecutor's closing
12 argument that you wanted Mr. Chambers to object to?

13 A Yes, ma'am.

14 Q Okay. Do you -- and he didn't object, did he?

15 A No, ma'am.

16 Q Did you -- do you believe that that failure to object
17 affected the outcome of your trial?

18 A Yes, ma'am.

19 Q And do you think the outcome of your trial would have
20 been different if he had objected?

21 A I really do. Because I think if he would have
22 objected and she would let the jury decide on their own
23 that they probably would have come back with not guilty.
24 Because she painted me as a person that I'm the Defendant,
25 I'm guilty, I'm the only one that have something to lie

1 about. My life is the only one that's going to be
2 different, which is a lie.

3 Q Okay. Now, the -- did you have any other witnesses
4 besides the three that you've named here today? You named
5 Alvin Gernard, Tina Grayson, and Crystal Davis?

6 A Yes, ma'am. I had -- I have my great-aunt, Ernestine
7 Grayson, too.

8 Q All right. Was Ernestine Grayson -- was she present
9 at the -- when this allegedly happened, in your mind? Was
10 she there on the scene?

11 A No, ma'am.

12 Q So she would have been called as a character witness?

13 A Yes, ma'am.

14 Q What about Crystal Davis? Would she have been a
15 character witness as well?

16 A Yes, ma'am. All of them would have been a character
17 witness.

18 Q Okay. But Alvin Gernard Grayson, he would have -- he
19 was called -- he would be called for a different reason;
20 correct?

21 A Yeah. Because he's the family.

22 Q Okay. What other grounds did you want to raise today
23 that we haven't already covered?

24 A All right. I wanted to argue the fact that he failed
25 to ask for a Jackson v. Denno hearing. And by that --

1 that hearing is like the Court knows that it's a way to
2 get the permissible -- the statements.

3 Q Okay. How many statements had you made to police?
4 One or two?

5 A I made two.

6 Q And you, also, testified during your trial; correct?

7 A Correct.

8 Q All right. And, during your testimony, did you go
9 into those statements that you made?

10 A Yes, ma'am.

11 Q Okay. And are you saying -- what's the basis for the
12 Jackson v. Denno hearing?

13 A It's to see -- it was like if you was under pressure,
14 was you coerced, was you --

15 Q Right. So what are you alleging was the coercion or
16 force?

17 A The only reason I gave the statement is because the
18 Detective, Mike Fortner, he told me if I didn't tell him
19 what he wanted to hear that he was going to lock my
20 brother up. And so they had my brother first. Because
21 they caught him with the phone. So I didn't want him to
22 go down for a phone that I had and gave him.

23 Q Did you explain that to the jury when you testified?

24 A No, ma'am.

25 Q And do you believe the outcome of your trial would

1 have been different if Mr. Chambers had had a Jackson v.
2 Denno hearing?

3 A Yes, ma'am.

4 Q All right. And what other allegations do you have
5 that we've not already covered?

6 A We did the fail to -- the prior defense; right?

7 Q If there's -- I think we have. But if there's
8 anything else you -- we went through the witnesses and the
9 fact that he had not communicated with you and did not
10 review discovery with you.

11 A Well, that is all.

12 MS. HORLBECK: Please answer any questions that
13 Ms. Ratigan may have for you.

14 CROSS-EXAMINATION

15 BY MS. RATIGAN:

16 Q So when you add everything together in terms of
17 in-person visits or video conference visits, how many
18 meetings would you have had with Mr. Chambers prior to the
19 trial?

20 A Possibly three.

21 Q Okay. And your testimony was y'all talked about
22 witnesses and bonds, but nothing else?

23 A Yes. Yes, ma'am.

24 Q Did you tell him your version of what had happened
25 with these charges?

1 A Yes, ma'am.

2 Q But y'all didn't talk about your statements at all?

3 A I didn't go over -- he just asked me what happened.

4 Q Okay. So you didn't look at your statements, he just
5 said, Tell me what happened?

6 A Yes.

7 Q Okay. Now, when did Mr. Chambers tell you about that
8 22-year plea agreement?

9 A I do not know the date exactly.

10 Q Okay. Was it like a couple of weeks before trial?
11 Was it a few months? Were you already in SCDC at that
12 point?

13 A Yeah. I was already in SCDC.

14 Q Okay. And how did he tell you about it? Did y'all
15 have a video conference, or did you meet him in person?

16 A I met him down here.

17 Q Okay. So you met him here at the courthouse?

18 A Yes, ma'am.

19 Q Okay. And when he told you about this 22-year deal,
20 what did y'all talk about?

21 A He just asked me like they've got a plea on the
22 table, 22 years. You can come home when you're like 40
23 something. I was like, Nah, I didn't do it. I'm not
24 going to take it.

25 Q Okay. So you didn't want to take the plea because

1 you say you're innocent?

2 A Yes, ma'am.

3 Q Okay. But you didn't discuss any of the evidence
4 with Mr. Chambers when you talked about the plea?

5 A I asked him what they had on me. But he -- the only
6 thing -- he said they had some statute [phonetic] of
7 evidence. But he never told me what was the statute of
8 evidence. He never showed me no evidence, or nothing.

9 Q Did you ever send letters to Mr. Chambers asking if
10 he could give you a little bit more information about your
11 case?

12 A Yes, ma'am. I sent letters asking him how it was
13 going, what defense we going to have, and stuff like that.

14 Q Okay. And I believe you testified these witnesses
15 that you gave Mr. Chambers, except for Alvin Grayson, they
16 were going to be character witnesses?

17 A Yes, ma'am.

18 Q And you gave him all the information to be able to
19 contact them like phone numbers, or addresses, or
20 something like that?

21 A Yes, ma'am.

22 Q And your testimony today is you didn't feel like you
23 could tell the Judge that you were unhappy with
24 Mr. Chambers preparation at that point?

25 A It's not that I didn't feel like I could. I didn't

1 know I could.

2 Q Okay. Well, you have been to court before, haven't
3 you?

4 A No.

5 Q You had never been to court. How did you have a
6 probation revocation?

7 A That's -- I ain't never been to trial. I've been to
8 court, but I ain't never been to trial. So I didn't know
9 how trials work.

10 Q Okay. So you've gone to a guilty plea, though?

11 A Yes, ma'am.

12 Q Okay. And the Judge asked you during the guilty plea
13 if you're satisfied with your lawyer; right?

14 A Yes, ma'am.

15 Q Okay. And you didn't think you could have that same
16 discussion at a trial?

17 A No, ma'am. Because, as you say, the Judge asked me
18 was I satisfied with my lawyer at them other hearings.
19 The Judge not [sic] ask me that at trial.

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

21 THE COURT: Okay. Anything else?

22 MS. HORLBECK: No, Judge.

23 THE COURT: You may step down.

24 MS. HORLBECK: I'm just going to step out and grab my
25 next witness in the hall, Judge.

1 THE COURT: Okay.

2 (Pause.)

3 MS. HORLBECK: Judge, we would call Mr. Alvin Gernard
4 Grayson.

5 THE COURT: Alvin Gernard Grayson, come around here
6 and be sworn.

7 THE CLERK: Mr. Grayson, please, place your left hand
8 on the Bible and raise your right hand.

9 WHEREUPON,

10 ALVIN GERNARD GRAYSON,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 You may be seated.

14 Please state your full name for the record.

15 THE WITNESS: Alvin Gernard Grayson.

16 DIRECT EXAMINATION

17 BY MS. HORLBECK:

18 Q Mr. Grayson, I'm Caroline Horlbeck. I've just got a
19 few questions for you about this case. I represent Antwan
20 Grayson in this -- in his PCR action.

21 Did you have the opportunity to speak with Randy
22 Chambers while he was representing Mr. Grayson in this --
23 in his -- prior to trial?

24 A No, ma'am. I never spoke with him.

25 Q All right. Speak up just a little bit. I can't hear

1 you.

2 A No. I never spoke with him. I don't even know who
3 he is.

4 Q All right. Did Mr. Chambers call you to -- or try to
5 interview you prior Mr. Grayson's trial?

6 A No, ma'am.

7 Q Did anyone from Mr. Chambers office ever contact you
8 to speak with you about Mr. Grayson's case?

9 A No, ma'am.

10 Q Okay. And were you present when Mr. Grayson went to
11 trial?

12 A No, ma'am.

13 Q Okay. You did not come to trial?

14 A I didn't know about it.

15 Q All right. And let me explore some of the family
16 relationships with you. Are you related to Mr. Antwan
17 Grayson?

18 A Yes, ma'am.

19 Q And what's your relationship to him?

20 A Cousin.

21 Q Are you, also, related to Mr. Curtis Wilkie?

22 A Yes, ma'am. He's my son.

23 Q All right. Is he a biological son of yours?

24 A Yes, ma'am.

25 Q Okay. And how is your son, Curtis Wilkie, related to

1 Antwan Grayson?

2 A Because -- so me and Tina, we are first cousins. So
3 that would make Antwan and Tina -- I mean Antwan and
4 Curtis second cousins -- and then Antwan and Curtis would
5 be third cousins.

6 Q All right. And your -- to your recollection, did
7 Curtis Wilkie and Mr. Antwan Grayson spend time together?
8 Are they family?

9 A Yes, ma'am. They stayed with me.

10 Q Okay. Both of them did?

11 A Yes, ma'am.

12 Q Do they know each other fairly well? Is that fair to
13 say?

14 A Oh, yeah.

15 Q All right. And you have been to court, actually,
16 twice for Antwan's post-conviction relief hearing;
17 correct?

18 A Yes, ma'am.

19 Q All right. And both times, did I subpoena you, or
20 did you come of your own accord to court?

21 A (There was no response.)

22 Q Let me rephrase that. Did I have to get -- did I
23 have to serve you with a subpoena those two times -- or
24 these two times to get you to come here?

25 A No, ma'am.

1 Q All right. Did you catch a ride with one of Antwan's
2 family members?

3 A Well, I drove.

4 Q I'm sorry. Say that again.

5 A I drove myself.

6 MS. HORLBECK: Oh, you did.

7 All right. That's all I have. I appreciate it.

8 Please answer any questions Ms. Ratigan may have.

9 CROSS-EXAMINATION

10 BY MS. RATIGAN:

11 Q Do you have any knowledge of the facts surrounding
12 Antwan's case like were you there? Were you present?

13 A No. Of course, I wasn't there.

14 MS. RATIGAN: Okay. That's all I have, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. HORLBECK:

17 Q Would you --

18 MS. HORLBECK: One more question, Judge.

19 BY MS. HORLBECK:

20 Q Would you have testified at Mr. Grayson's trial if
21 subpoenaed?

22 A Yes, ma'am.

23 MS. HORLBECK: Okay. Thank you.

24 That's all I have.

25 Just -- I beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 MS. HORLBECK: Judge, we rest at this point.

4 THE COURT: All right.

5 MS. RATIGAN: Your Honor, we'd call Mr. Chambers.

6 THE CLERK: Mr. Chambers, place your left hand on the
7 Bible and raise your right hand.

8 WHEREUPON,

9 RANDALL LEE CHAMBERS,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please state your full name for record.

13 THE WITNESS: My name is Randall Lee Chambers.

14 DIRECT EXAMINATION

15 BY MS. RATIGAN:

16 Q Mr. Chambers, do you recall representing Mr. Grayson
17 on these charges?

18 A I do.

19 Q And were you appointed in this case?

20 A I was appointed.

21 Q Was that through the Public Defender's Office?

22 A Yes.

23 Q Did you file the usual Brady and Rule 5 discovery
24 motions?

25 A I did.

1 Q To the best of your knowledge, did you receive full
2 discovery from the State?

3 A As far as I know.

4 Q Did that include two statements from your client?

5 A It did.

6 Q Were there, also, some photographs?

7 A There were.

8 Q And what were those photographs of?

9 A Photographs taken from an ATM camera that showed the
10 alleged victim in the driver's seat and then a person
11 wearing a hoodie, who was identified as Mr. Grayson.
12 Although, frankly, I didn't think the pictures were all
13 that clear. But it was a person wearing a hoodie that was
14 sitting in the passenger side of the car. And that's what
15 the pictures showed.

16 Q Okay. Was there, also, a 911 tape?

17 A There was.

18 Q Were you able to review these items with Mr. Grayson?

19 A We didn't listen to the 911 tape. I didn't listen to
20 the 911 tape with him, because I really didn't have any
21 way to do that either when he was in jail or when we were
22 video conferencing. But, as far as the other discovery,
23 the pictures and everything, he should have gotten copies
24 of all of that.

25 I know that I reviewed it with him, because I review

1 that with all of my clients. And I, specifically,
2 remember reviewing it with him. And he should have gotten
3 a copy of it. Because one of the things that I let people
4 know -- and, at that point, Tracy Burkette was the
5 assistant that I had assigned to me in the Public
6 Defender's Office.

7 So I always tell them when a client asks for a copy
8 of discovery, be sure to give it to them. That hasn't
9 always been -- it's not really a policy of the Public
10 Defender's Office. Because they don't like to have copies
11 of discovery in the jail or in the Department of
12 Corrections, because it can cause problems for clients.
13 But I always tell them if my clients want it, I want you
14 to send it to them.

15 So any time a client contacts me and says they want a
16 copy of the discovery, I make sure that they get it.

17 Q Okay. Did he ever tell you in meeting with him that
18 he hadn't received any of the discovery?

19 A He may have. I don't recall that specifically. If
20 he had, again, I would have made sure that he got a copy
21 of it. But I do want to, you know, reiterate that I -- we
22 went over discovery with one another on several occasions.

23 Q Okay. Did Mr. Grayson tell you his version of what
24 happened that night?

25 A He did. I mean, that was our whole defense, I mean,

1 from the first time that I met with him through every
2 meeting we had thereafter. He was adamant in his
3 innocence. He indicated to me that he and Mr. Wilkie had
4 gone there to this apartment complex, and that they had
5 encountered the victim, because she was looking to buy
6 drugs.

7 And so they were going to sell her some drugs. The
8 reason that they got into the car was because she had to
9 drive to the ATM to get money at some point. So she got
10 money. They bought drugs. And they stayed together. At
11 one point, she wanted some more drugs. And they
12 indicated -- he indicated that he would -- I think she
13 said she would have sex with him in exchange for drugs.

14 They let Mr. Wilkie out at like some railroad tracks,
15 or something like that. And then they went to a parking
16 lot -- into a dark area of a parking lot and engaged in
17 sexual intercourse, which, presumably, was in exchange for
18 the drugs. And that was his story all along. And that
19 was the defense that we presented.

20 Q Now, did he ever give you any witness names, people
21 to contact?

22 A You know, I don't recall. He may have. He could
23 very well have told me to contact those people. But this
24 was not a case where I would have called any character
25 witnesses.

1 And as far as the gentleman that just testified, even
2 hearing what he had to say today, I wouldn't have called
3 him as a witness. I don't think -- I mean, there weren't
4 any alibi witnesses. There weren't any fact witnesses.
5 There wasn't anybody that would help in the defense that
6 we had. He was really the only witness that we had that
7 could have presented any of that.

8 You know, the relationship that he may or not have
9 had with this man and whether or not Mr. Wilkie knew what
10 that relationship was, in my mind, couldn't be more
11 irrelevant.

12 Q Did you see the need for a Jackson v. Denno hearing
13 in this case?

14 A No. And, first of all, you know, my understanding of
15 the law is it's not a defense counsel's responsibility to
16 ask for one. If the Solicitor wants to offer a statement,
17 it's up to them to ask for a Jackson v. Denno hearing and
18 for the Court to conduct it.

19 But, frankly, I didn't have any problem with his
20 statements coming in because they were consistent with his
21 testimony, and they were consistent with our defense. I
22 wanted those to come in. Because it showed that his story
23 had been consistent and he had been telling that story
24 from the outset.

25 Q Now, the State, at some point, made a 22-year offer?

1 A They did.

2 Q And did you convey that to Mr. Grayson?

3 A I did.

4 Q And did he take any time to think about it, or did he
5 just reject it?

6 A No. I mean, he was adamant in his innocence. And he
7 turned it down. And I don't ever remember anybody
8 contacting me and, certainly, not him telling me that he
9 wanted to take the deal.

10 Now, by the time we got to trial, the deal would have
11 been off the table. But I feel fairly strongly that, in
12 this particular instance, the Solicitor would have
13 probably still let him have the 22-year deal. And if he
14 wanted to come in here and admit that he was guilty and
15 take the plea, I would have been more than happy to let
16 him do that. I've done that plenty of times, had people
17 plead off the trial docket.

18 I'm not the one who is sitting there in the
19 Defendant's chair, you know. I'm not the one that's going
20 to suffer the consequences. If my client wants to plead
21 guilty, I'm going to let him plead guilty.

22 Q So you don't recall him ever telling you he -- let me
23 strike that.

24 His testimony was about three months beforehand --
25 both three months beforehand and the day of the trial, he

1 told you he wanted to plead guilty. Is that just not --

2 A That's just not true.

3 MS. RATIGAN: I have nothing further, Your Honor.

4 MS. HORLBECK: I beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 CROSS-EXAMINATION

8 BY MS. HORLBECK:

9 Q Do you recall arguing to the Court at sentencing --
10 or telling the Court at the sentencing -- and it starts on
11 Page 488, Lines 10 through 19. Part of it says, I told
12 him -- I tell everybody that I represent -- in fact, I
13 don't think I've ever missed telling anybody this, if
14 you're not guilty, don't plead guilty. If you tell me
15 you're not guilty, I'm not going to let you plead guilty.
16 Do you recall saying that on Page 488, Lines 10 through
17 19?

18 A I do. And I've said that plenty of times.

19 Q Okay.

20 A But, you know, that said, if the implication is do I,
21 actually, prevent somebody from pleading guilty? No. If
22 he wanted to step forward and go through the line of
23 questioning with the Judge, which would involve him
24 admitting his guilt, I would not have prevented him from
25 doing that.

1 And, frankly, I don't know any way that I could
2 prevent somebody from doing that. That's just my way of
3 letting people know that I'm not going to strong arm
4 anybody into a plea. If you tell me that you're not
5 guilty and you want to go to trial, I'm going to represent
6 you to the best of my ability.

7 Q Okay. Do you have any notes reflecting that
8 discovery was provided to Mr. Grayson?

9 A No. But I can tell you that I've never had occasion
10 where I didn't provide discovery to somebody.

11 Q All right.

12 A And I wasn't going to start with Mr. Grayson.

13 MS. HORLBECK: That's all I have.

14 Thank you.

15 THE COURT: Anything else?

16 MS. RATIGAN: No, Your Honor.

17 The State would rest.

18 And I'd ask that Mr. Chambers be released.

19 THE COURT: Sure.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: See you, Mr. Chambers.

22 Ms. Horlbeck, anything else from y'all in reply?

23 MS. HORLBECK: No, Your Honor.

24 THE COURT: Let me review what's been submitted into
25 the record and whatnot, and I will notify y'all of my

1 decision on this one.

2 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of December, 2014.

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

June 29, 2015



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

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Gmail

[Empty box] [Empty box] [Empty box] [Empty box] More 2 of 3 [Empty box]

COMPOSE

Email - Edmond.Jessica@doc.sc.gov

Inbox

Starred



Search people...

- ben watson
- Eli Wiygul
- james foy
- bjmh1
- Ashley Foy
- Eli Wiygul
- horibecklawfirm@...
- Tony Verbunt
- Verbunt, Katherin...
- Wilson, Meredith

From: Jessica Edmond (C036451)
Sent: Tuesday, September 30, 2014 11:55 AM
To: 'Horlbeck Law'
Subject: RE: Request for information regarding Antwan D. Grayson #329430

Good Afternoon,

Ms. Horlbeck we were only able to find legal mail sent from Tommy Thomas's Office to the above referenced inmate on January 13, 2012 and January 26, 2012. There was nothing in the time frame that you requested. If you need any additional information, please feel free to let me know.

Thanks,

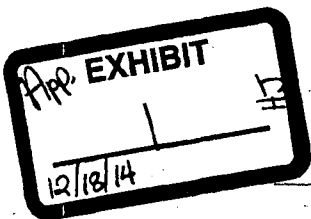
Jessica Edmond
S.C. Department of Corrections
Agency Mailroom Coordinator
4444 Broad River Road
Columbia, South Carolina 29210
Office Number - 803-896-4354
Fax Number - 803-896-1766
Email - Edmond.Jessica@doc.sc.gov

From: Horlbeck Law [<mailto:horibecklawfirm@gmail.com>]
Sent: Tuesday, September 09, 2014 3:11 PM
To: Jessica Edmond (C036451)
Subject: Request for information regarding Antwan D. Grayson #329430

Dear Ms. Edmond,



I have been appointed to represent Mr. Grayson in a PCR case pending in Greenville County. One of Mr. Grayson's allegations is that his attorney (Randy Chambers, Greenville County Public Defender Office) wrote him only once while he was incarcerated at Lee Correctional (from 6/2009 until 10/2010) and Broad River Correctional (from 11/2010 to 4/2011). Mr. Grayson asked that I



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Antwan Dominique Grayson,)
 S.C.D.C. No. 329430,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-4574

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 FEB 16 PM 2 53

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 21, 2013. The Respondent made its return on April 8, 2014. An evidentiary hearing was held on December 18, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, 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 were Alvin Grayson and the Applicant's trial counsel, Randall L. Chambers, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2010 term of the Greenville County Grand Jury for armed robbery (2009-GS-23-4364, count 1), possession of a weapon during commission of a violent crime (2009-GS-23-

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4364, count 2), first-degree criminal sexual conduct (CSC) (2009-GS-23-4365), and kidnapping (2009-GS-23-4366). He was represented by Randall L. Chambers, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On March 30, 2011, the Honorable Robin B. Stilwell sentenced the Applicant to 30 years for armed robbery and 5 years for possession of a weapon during commission of a violent crime. Judge Stilwell also levied a 30 year sentence for first-degree CSC and a 30 year sentence of kidnapping to be consecutive to the 14-year sentence the Applicant was already serving.¹

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Grayson, Op. No. 2013-UP-263 (S.C. Ct. App. filed June 19, 2013). The Remittitur was sent on July 9, 2013.

ALLEGATIONS

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

1. Ineffective assistance of counsel.

In a pro se "Brief in Support of Amendment and Additional Pleading to Prior Post-Conviction-Relief Filed August 21, 2013, Pursuant to Rule 15" filed November 19, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to disclose all favorable Brady materials:
 - i. "[I]f counsel was effective and showed me the photos that the state used on me at trial before hand, I would have took

¹ On May 15, 2009, the Honorable C. Victor Pyle, Jr. revoked the Applicant's probation for second-degree burglary (2008-GS-23-5293) and sentenced him to 14 years imprisonment.

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

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- the plea for 22 years for everything.”
- ii. “[N]ever heard the police 911 call until trial which my lawyer had.”
 - b. Failed to object to the prosecutor’s direct examination of Wilkie.
 - c. Failed to ask for a continuance.
 - d. Failed to object to the prosecutor’s closing arguments (page 430, line 6 – page 431, line 13).
 - e. Failed “to allow me to plea.”
 - f. Failed to communicate.
 - g. Failed to investigate witnesses (Crystal Davis, Tina Grayson, and Alvin Grayson) to prepare a defense.
 - h. Failed to investigate indictments and move to quash.
 - i. Failed to prepare for trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Ineffective Assistance of Counsel

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

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). In order to prove prejudice, an applicant

must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he and trial counsel had three meetings prior to trial. The Applicant stated they discussed potential witnesses and his version of events but did not review discovery. The Applicant stated he gave witness names to trial counsel (Alvin Grayson, Tina Grayson, and Crystal Davis) and trial counsel said he had contacted them but did not need them. The Applicant stated Tina Grayson and Crystal Davis would have been character witnesses. The Applicant stated he wanted a continuance but admitted he did not convey this to trial counsel. The Applicant complained there was no Jackson v. Denno hearing. The Applicant stated he did not review photographs and the 911 call until the trial and that he would have pled guilty if he had seen this material beforehand. The Applicant stated trial counsel should have objected to Curtis Wilkie's testimony and questioned him about his testimony that he was not related to the Applicant. The Applicant stated he rejected a 22-year plea offer because he did not know the extent of the State's case. The Applicant acknowledged trial counsel advised him the State had "substantial evidence" but said he did not plead guilty because he was innocent. The Applicant stated he subsequently wanted to plead guilty three months before trial but trial counsel would not let him do so. The Applicant stated he did not feel he could tell the trial judge about this. The Applicant stated trial counsel should have objected during the State's closing argument because the assistant solicitor gave input as to who she thought was lying.

Alvin Grayson stated he is the Applicant's cousin and Curtis Wilkie's father. Grayson

stated the Applicant and Wilkie knew each other well. Grayson admitted he was not present at the incident and could not add anything to the facts of this case.

Trial counsel testified he was appointed in this case and filed discovery motions. Trial counsel testified he received full discovery in this case, which included: two statements from the Applicant, photographs from the ATM camera that showed the victim as the driver but someone identified as the Applicant in a hoodie, and a 911 tape. Trial counsel testified there was no way for the Applicant to listen to the 911 tape, but that the Applicant received a copy of the discovery materials (his assistant always sends it to clients) and they reviewed it several times. Trial counsel testified he and the Applicant discussed his version of events and that the Applicant was adamant he was innocent. Trial counsel testified he did not recall discussing witnesses but that he would not have called character witnesses. Trial counsel testified Grayson's testimony would not have been relevant at trial. Trial counsel testified the State requests a Denno hearing but that he had no problem with the Applicant's statements being admitted because they were consistent. Trial counsel testified he conveyed a 22-year plea offer to the Applicant, who rejected it because he was adamant about his innocence. Trial counsel testified the Applicant never stated he wanted to plead guilty.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately prepare for trial. This Court finds trial counsel reviewed the discovery materials with the Applicant, as well as his version of events. This Court finds the Applicant was provided with a copy of his discovery materials (except for the 911 tape). This Court does not find credible the Applicant's assertion that he did not see the photographs until the day of trial. Regardless, this Court also does not find credible the Applicant's assertion that he would have pled guilty if he had seen the photographs and heard the 911 tape because (1) he was always adamant about his

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innocence and (2) by his own admission, trial counsel said the State had substantial evidence against him. This Court finds trial counsel was prepared for the legal and factual issues at the Applicant's trial and the Applicant has failed to meet his burden of proving trial counsel needed additional time in which to investigate or prepare his case.³ See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have contacted witnesses in his case. While the Applicant argued trial counsel should have presented Tina Grayson and Crystal Davis as character witnesses, trial counsel testified he would not have called such at trial. This Court cannot speculate on what these witnesses might have testified about (and any potential impact) because they did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). As to Alvin Grayson, this Court finds the Applicant has failed to demonstrate either that trial counsel was deficient in failing to subpoena and call Grayson as a witness or that his case was prejudiced as a result. While the Applicant argued Grayson would have been able to testify Wilkie stated falsely that he was not related to the Applicant, this Court finds this would not have

³ This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a continuance both because he admitted he did not ask trial counsel to make such a motion and because he failed to meet his burden of proving a continuance was necessary. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding in a PCR proceeding, the applicant bears the burden of proving the allegations in their application).

changed the outcome of the case. Trial counsel thoroughly cross-examined Wilkie and impeached him with inconsistent statements. This Court does not find Grayson's testimony would have added much to the defense case as the jury was already aware of Wilkie's inconsistent testimony. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (noting the jury is "the finder of fact and weigher of credibility").

This Court finds the Applicant failed to meet his burden of proving trial counsel prevented him from pleading guilty. The Applicant and trial counsel both testified counsel conveyed the 22-year plea offer and that the Applicant rejected it because he proclaimed his innocence. The Applicant admitted trial counsel told him the State had substantial evidence against him. The Applicant testified he later wanted to plead guilty but trial counsel would not allow him to do so. This Court does not find this testimony is credible. This Court notes the Applicant admitted he was familiar with the court process. This Court finds the Applicant knew he had the right to address the court, if he so desired, and indicate he wanted to plead guilty. The absence of such in the trial transcript bolsters this Court's finding that the Applicant is not credible. Trial counsel's testimony (that the Applicant never stated he wanted to plead guilty) is, by contrast, extremely credible. This Court finds both that the Applicant (1) made an informed decision to reject the plea offer and proceed to a jury trial and (2) failed to meet his burden of proving trial counsel was deficient.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the State's closing argument. The Applicant argued the State's closing argument was improper because she gave input as to who she believed was lying in this case. (Trial transcript, pp.430-31). This Court has examined the language of the assistant solicitor's closing argument and does not find trial counsel deficient for failing to object because the

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argument was not objectionable. See State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor's argument must stay within the record and its reasonable inferences); see also State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

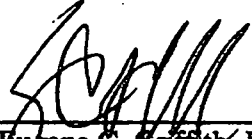


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate 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 7th day of February, 2015.


 Eugene C. Griffith, Jr.
 Presiding Judge
 Thirteenth Judicial Circuit

Newberry, South Carolina.

WITNESSES

Michael Fortner

(Signature)

Greenville County Sheriffs Office

3/17/2009

DOCKET NO. 2009-GS-23-

KBF

067307

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2009

THE STATE

VS.

ANTWAN DOMINIQUE GRAYSON

ARREST WARRANT NUMBER

COUNT I - M176027 COUNT II - M176031

ACTION OF GRAND JURY

(Signature) TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

(Signature) Guilty

Indictment for
0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

(Signature)
Foreperson of Petit Jury Date: 3/17/2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ARMED ROBBERY and POSSESSION OF A WEAPON DURING
) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on MAY 04 2010 the Grand Jurors of Greenville
 County present upon their oath:

COUNT I

That ANTWAN DOMINIQUE GRAYSON did in Greenville County, on or about the 16th day of March 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a cell phone and U.S. currency from the person or presence of C.B. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That ANTWAN DOMINIQUE GRAYSON did in Greenville County, on or about the 16th day of March 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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



 SOLICITOR

WITNESSES

Michael Fortner

(Signature)

Greenville County Sheriff's Office

3/17/2009

DOCKET NO. 2009-GS-23-

KBF

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The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

VS.

ANTWAN DOMINIQUE GRAYSON

ARREST WARRANT NUMBER

M176028

ACTION OF GRAND JURY

TRUE BILL

(Signature)

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

0160

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

VIOLATION § 16-03-0652

William E. Harvey II
Foreperson of Petit Jury
Date: 30 Mar 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE


At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

That ANTWAN DOMINIQUE GRAYSON did in Greenville County, on or about the 16th day of March 2009,
engage in sexual battery, with C.B., and used aggravated force to accomplish this sexual battery. This is in
violation of South Carolina Code of Laws Section 16-3-652 of the South Carolina Code of Laws (1976) as
amended.

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


SOLICITOR

WITNESSES

Michael Fortner 

Greenville County Sheriffs Office

3/17/2009

ARREST WARRANT NUMBER
M176029

DOCKET NO. 2009-GS-23-
KBF

The State of South Carolina

County of Greenville

031366

COURT OF GENERAL SESSIONS

May TERM 2009 

THE STATE

vs.

ANTWAN DOMINIQUE GRAYSON

ACTION OF GRAND JURY

TRUE BILL


FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

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0095

Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

William E. Starnes
Foreperson of Petit Jury
Date: *3/17/2009*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

That ANTWAN DOMINIQUE GRAYSON did in Greenville County, on or about the 16th day of March 2009,
unlawfully seize, abduct, confine, inveigle, decoy or carry away C.B., without the authority of law. This is in
violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR