

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

---

**RECEIVED**

JAN 13 2016

**SC SUPREME COURT**

GREGG C. HIERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001148

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**A P P E N D I X**

---

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ATTORNEYS FOR RESPONDENT

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State of South Carolina

Court of General Sessions

County of Richland

2012-GS-40-06498

The State of South Carolina :

-VS-

TRANSCRIPT OF RECORD

Gregg C. Hiers :

December 13, 2012  
Columbia, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge.

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

Dolly J. Garfield, Esquire  
Attorney for the State

Brian Shealey, Esquire  
Attorney for the Defendant

Daphne D. Helms  
Circuit Court Reporter

1           **Ms. Garfield:** The State calls Gregg Hiers.

2                   Gregg Hiers, after being duly sworn, testified as  
3 follows:

4           **Ms. Garfield:** May it please the Court, Your Honor?  
5 Before you is Gregory Hiers with his attorney, Mr. Brian  
6 Shealey of the public defender's office. Your Honor, Mr.  
7 Hiers is entering a guilty plea today to armed robbery as  
8 charged. This is a negotiated plea for a sentence of 10  
9 years. In exchange for his plea, the State is dismissing a  
10 bomb threat.

11           **The Court:** Okay. Okay. Ms. Garfield, I make everybody  
12 else tell me who they are, so you're---

13           **Ms. Garfield:** I'm sorry.

14           **The Court:** ---going to have to get in that practice.

15           **Ms. Garfield:** I'm sorry, Judge. I'm Dolly Justice  
16 Garfield from the solicitor's office.

17           **The Court:** I, of course, know who you are, but that's  
18 beside the point. See, once you say that, if a defendant is  
19 out there, they can start shivering when they hear that name.

20           **Ms. Garfield:** Yes, sir.

21           **The Court:** Dolly Justice Garfield.

22                   Examination by The Court

23           Q. Anyway, you are Gregg Hiers.

24           A. (Nodded head up and down.)

25           Q. Is that right?

1 A. Yes, sir.

2 Q. Mr. Hiers, you're over 55?

3 A. Yes, sir.

4 Q. Under 60?

5 A. Yes, sir.

6 Q. You have been locked up how long?

7 A. Five -- going on five months.

8 **Mr. Shealey:** Since July 24th, according to the jail  
9 records.

10 By the Court:

11 Q. Here is how this shakes down. A negotiated plea means  
12 that's what you get, if I accept it. You have to answer  
13 because the court reporter cannot interpret a nod.

14 A. Yes, sir.

15 Q. Now, this particular indictment alleges that an armed  
16 robbery was committed at Rite Aid back July 21st of this  
17 year. It has not been presented to the grand jury, and you  
18 have indicated you're going to waive presentment to the grand  
19 jury.

20 A. Correct.

21 Q. Do you understand that you could require the State to go  
22 in front of the Richland County grand jury? They've got 18  
23 members. At least 12 of them would have to feel like you  
24 need to answer to these charges before they return a true  
25 bill. They might return a no bill. Do you understand that?

1 A. Right.

2 Q. You're also entitled to a jury trial. At a jury trial,  
3 of course, you're presumed innocent. You get to assist your  
4 attorney in selecting the jury. You have a good many strikes  
5 on an armed robbery charge. Twelve jurors would be seated  
6 and then it would be incumbent on the State to convince each  
7 of them beyond a reasonable doubt that you committed the  
8 crime. Do you understand that?

9 A. Yes, sir.

10 Q. Now, during a trial you would get to be present in the  
11 courtroom, observe all that transpires, look at and listen to  
12 what the witnesses say. You can object to the admissibility  
13 of evidence. You can object to admissibility of testimony.  
14 You can make various motions. You personally can testify or  
15 not, your choice. If you elect not to testify, they can't  
16 comment on it. If you've previously given a statement to law  
17 enforcement -- which I don't know. Have you?

18 A. No, sir.

19 Q. If you had, you'd be entitled to a hearing on whether  
20 that statement could come in, and then, of course, you could  
21 put up a defense or not.

22 A. Yes, sir.

23 Q. And then after all the evidence is in, you don't have to  
24 prove you're not guilty. The State has got to, beyond a  
25 reasonable doubt, prove that you are. The summations are

1 made to the jury, and then the judge instructs the jury on  
2 the law. Unless all of them agree that the State has met its  
3 burden of proof, you either get a mistrial or be found not  
4 guilty. If it's a mistrial, the State might not want to fool  
5 with it again. If you're found guilty, you get sentenced.  
6 If you're found not guilty, you walk. Do you understand all  
7 that?

8 A. Yes, sir.

9 Q. Are your other answers correct on this advisement of  
10 rights form?

11 A. Yes, sir.

12 Q. And you don't have any mental conditions that you're  
13 aware of.

14 A. No.

15 Q. There are a couple of bad consequences for entering this  
16 plea, as I'm sure your attorney has explained to you. One is  
17 it's a violent crime so if in the future you commit another  
18 most serious or violent crime, the State could ask for life  
19 without parole even though the penalty for the crime might  
20 not be that much. Do you understand that?

21 A. Yes, sir.

22 Q. In addition, when they say they've negotiated, that's  
23 what I would have to give you if I accept the plea, but armed  
24 robbery carries a minimum of 10, all the way up to 30.

25 A. Right.

1 Q. But you have to serve 85 percent of the time that I give  
2 you which would be 10 years, if I accept it, and then you're  
3 not through with it. Even if you get out after 85 percent,  
4 you're on supervised release for a period of time. They can  
5 put you back in and make you serve it day for day if you get  
6 in any trouble while you're out. Do you understand that?

7 A. Yes, sir.

8 Q. Do you have any questions about anything at this point?

9 A. No, sir.

10 Q. All right. I'm going to listen. Sometimes in armed  
11 robbery circumstances, in addition to guilty or not guilty,  
12 the jury might consider whether you might be guilty of strong  
13 arm robbery, but I don't know any of the facts. You know, if  
14 you had a weapon in your hand, then it's not strong arm, but  
15 we'll see. Okay.

16 **Ms. Garfield:** Thank you, Judge. This incident occurred  
17 July 21st of this year at the Rite Aid pharmacy in the Five  
18 Points area in the City of Columbia limits. About 10:30 to  
19 11:00 in the morning on that particular day - it was a  
20 Saturday - the only people in this particular store on that  
21 day was the manager, the shift manager, the pharmacist, and  
22 the pharmacy tech.

23 On that particular morning the defendant went into the  
24 store and he walked back to the pharmacy. At that time he  
25 put a closed duffel bag up on the counter and he was holding

1 what the pharmacy tech would describe what appeared to be  
2 either like a baby monitor or some type of tape recorder and  
3 he was holding -- he was touching a red button on this  
4 device.

5 At that time he said and I quote from the pharmacy tech  
6 statement that he said, "You are being robbed. I have a  
7 bomb. Everybody get up to the front of the store." At first  
8 she thought he was kidding and then he said it again louder  
9 as well as, Your Honor, he was -- coupled with this, he was  
10 wearing a shirt with marines on it and that led the employees  
11 to believe that perhaps he did have some knowledge of making  
12 bombs.

13 At that time they did go to the front of the store.  
14 They called 9-1-1. They did eventually leave the store. The  
15 defendant can be seen in the store. Once it's all cleared,  
16 he actually goes to the back of the pharmacy and arms himself  
17 with pills, and you can see him taking the pills as well as  
18 going to a cooler and drinking a couple of beers. He  
19 eventually passes out.

20 Once they -- C.P.D. contacts S.L.E.D. S.L.E.D. brings  
21 in their bomb squad. They bring in a robot and make sure the  
22 place is secure, and they go in to find the defendant passed  
23 out on the floor near the pharmacy.

24 EMS takes Mr. Hiers to the hospital. It is believed  
25 that he ingested approximately 20 pills of Vicodin. He is

1 charged with armed robbery and taken to jail and charged with  
2 armed robbery as well as the bomb threat.

3 Your Honor, he has written me approximately three  
4 letters asking to plead guilty to anything less than life.  
5 He was asking to plead before 2013. His letters are very  
6 coherent, very intelligent. So I have been trying to  
7 negotiate with his attorneys to get him over here. He  
8 informs me in these letters, which I'm sure they will go into  
9 more detail, that his purpose -- entire purpose of this  
10 robbery was not to hurt anyone but for him to actually commit  
11 suicide which he unsuccessfully went through.

12 Based on his intentions as well as his age, I am making  
13 a negotiation of 10 years. I have spoken with the victims as  
14 well as Investigator McKellar on this case, and we believe  
15 this is appropriate. He has an extensive record, Judge.  
16 He's been in prison or been in and out of trouble for over  
17 40 years, and just to give you a -- if you'd like for me to  
18 read it all, but just to show you, he has multiple D.U.I.'s,  
19 housebreakings. He has an attempted armed robbery from 1978  
20 and most recently an A.B.I.K. conviction in 2000 which he  
21 served 12 years and actually had his community supervision  
22 revoked. I believe 10 years is more than reasonable.

23 **The Court:** Okay. Of course, Mr. Hiers, you understand  
24 I don't know whether it was a bomb or not a bomb, but if the  
25 person it's presented to felt like you were armed or had a

1 bomb, that's all that's required to satisfy the armed  
2 robbery. Your attorney has explained it to you.

3 **Mr. Hiers:** Yes, sir.

4 **Mr. Shealey:** Thank you, Your Honor. May it please the  
5 Court? Your Honor, Brian Shealey from the public defender's  
6 office. For the record, I am covering this on behalf of my  
7 brother, Luke Shealey, who can't -- he was here earlier this  
8 morning and talked to Mr. Hiers, explained everything to him  
9 but is in a lot of pain with his back, and so I'm covering  
10 this plea for him, Your Honor.

11 Your Honor, the negotiations are 10 years, credit since  
12 July 24th. The bomb threat is being -- that charge is being  
13 dismissed in exchange for his plea. Your Honor, Mr. Hiers  
14 was homeless at the time. All of his family is from  
15 Columbia. All of his family is deceased, and on that day he  
16 -- you know, he tried to kill himself and this occurred. He  
17 ingested about 21 Vicodin, tried to end it.

18 He understands that the device he had which I believe  
19 ended up being a tape recorder -- you know, the  
20 representations that are made could satisfy the elements for  
21 armed robbery. He understands it's a negotiated and if you  
22 choose to accept his plea that he will get 10 years,  
23 85 percent time. He understands all this. I think he might  
24 be addressing Your Honor, and he may feel that 10 years is  
25 pretty steep on something like this, but he also understands

1 he's got a record and he understands that potentially this is  
2 L-WOP otherwise, and he has agreed, after speaking with Luke  
3 Shealey extensively, to plead guilty on this. That's all I  
4 have to say, if you're inclined to take the negotiations,  
5 Your Honor.

6 **The Court:** Okay. Mr. Hiers, what would you like to  
7 add?

8 **Mr. Hiers:** Nothing, Your Honor. I'm satisfied.

9 **The Court:** Okay. The problem with armed robbery, you  
10 know, is it's a 10-year minimum. That's what you're pleading  
11 to or getting. Sounds like they could make it L-WOP at this  
12 point from what I've heard.

13 **Mr. Shealey:** Potentially, based on his record, yes.

14 **The Court:** Based on his record. So, anyway, I'm  
15 accepting the negotiations. Ten years, given credit for the  
16 time you have served. Good luck.

17 **Mr. Shealey:** Thank you, Your Honor.

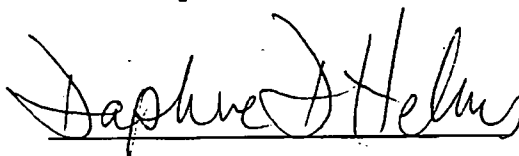
18 **Ms. Garfield:** Thank you, Judge.

19 (Whereupon, the proceedings were concluded. There were  
20 no exhibits introduced.)  
21  
22  
23  
24  
25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 13th of December, 2012.

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

February 28, 2014

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in black ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA

County of Richland

Gregg C. Hiers # 270630  
Full name and prison number (if any) of Applicant,

vs.

STATE OF South Carolina  
Name of Respondent.

2012 P 407338  
In the Court of Common Pleas

2013 DEC -4 PM 1:23  
CLERK OF COURT  
GENERAL SESSIONS

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention EVANS Corr. Inst. 600 Hwy 9 West  
Bennettsville SC 29512
2. Name and location of Court which imposed sentence Richland Co. General Sessions  
1701 Main St. Columbia SC 29202
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2012 GS 4006498 Armed Robbery
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 12-13-12 10 yrs. violent (858) To serve
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. 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 \_\_\_\_\_

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

NO - I didn't know I could.

7. If you answered "yes" to (6), list

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

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

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

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

(c) the date of each such result:

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

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

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

8. If you answered "no" to (6), state your reasons for not appealing:

- (a) I didn't know I could.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Asst. of counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) I SAW him only taice for a very short time.
- (b) And he got his brother to represent me
- (c) at Court that morning as he was sick & had to go home.

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
  - i. N/A
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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

NO

- i. \_\_\_\_\_
- ii. NONE N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. NONE N/A
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective asst. of counsel. Didn't know I could.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes - My attorney's brother
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

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

- i. Luke Shealy - Public Defenders Office  
1701 Main St. ColA SC 29202
- ii. Bryan Shealy - Public Defenders Office  
1701 MAIN St. ColA SC 29202
- iii. \_\_\_\_\_

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

- i. He talked to me twice before court date
- ii. He got me during sentencing
- iii. \_\_\_\_\_

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

for my case to have a jury trial

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

NO

County of Richland

I, Gregg Hiers, 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 his application; and that the matters and allegations therein set forth are true.

Gregg Hiers

SWORN to and subscribed before me this 2<sup>nd</sup> day of December, 19 2013

Doraine B (L.S.)  
Notary Public

My Commission Expires: Feb 7<sup>th</sup> 2023

2013 DEC -4 PM 4:23

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

I, Gregg Hiers, 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 therefor.

Gregg Hiers  
Applicant

SWORN or affirmed to and subscribed before me this 2<sup>nd</sup> day of December, 19 2013

Doraine B  
Notary Public

My Commission Expires Feb 7<sup>th</sup> 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Gregg C. Hiers, #270630,	)	2013-CP-40-7338
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for post-conviction relief filed December 4, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was represented by Luke Shealey, Esquire, and Brian Shealey, Esquire. On December 13, 2012, Applicant appeared before the Honorable J. Ernest Kinard, Jr., where he waived presentment to the Richland County Grand Jury and pled guilty to Armed Robbery (2012-GS-40-6498). Pursuant to negotiations between Applicant and the State, Judge Kinard sentenced Applicant to ten years imprisonment. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions and Applicant's records from the South Carolina Department of Corrections. The transcript from Applicant's guilty plea proceeding has been ordered and will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

## 1. Ineffective Assistance of Counsel

- a. "I only saw him twice for a very short time. And he got his brother to represent me at Court that morning as he was sick and had to go home."

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

## III.

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

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

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

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

#### IV.

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

#### V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN RATIGAN  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: Megan E. Harrigan  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

Feb. 27, 2014

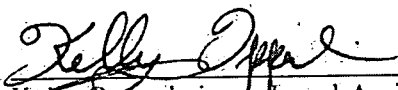
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2013-CP-40-7338
	)	
GREGG C. HIERS, #270630	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

---

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

**Anna R. Good, Esquire  
Law Office of Anna Good, LLC  
1720 Main Street, Suite 303  
Columbia, South Carolina 29201**

DATED this 27<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
Kelly Oppenheimer, Legal Assistant  
For Respondent

State of South Carolina )  
County of Richland )

In the Court of Common Pleas  
Fifth Judicial Circuit  
2013-CP-40-7338

Gregg Hiers, )  
Applicant, )  
vs. )  
State of South Carolina, )  
Respondent. )

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Transcript of Record

April 2, 2015  
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Anna R. Good, Esquire  
Attorney for Applicant

J. Clayton Mitchell, III, Esquire  
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

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## TRANSCRIPT OF RECORD

1  
2 (Whereupon, the proceeding was commenced at 10:02 a.m.)

3 MR. MITCHELL: May it please the Court: This is *Gregg*  
4 *Hiers v. the State of South Carolina*, Case No. 2013-CP-40-  
5 7338. Applicant was represented on these charges by Mr.  
6 Luke and Mr. Brian Shealey. He appeared before Judge  
7 Kinard on December 13th of 2012, where he waived  
8 presentment to -- waived presentment to a armed robbery  
9 indictment and pled guilty to that. Pursuant to  
10 negotiations he was sentenced to ten years' imprisonment.  
11 He did not appeal those sentences -- that sentence or  
12 conviction.

13 File -- he filed this application in December of 2013,  
14 where he alleged ineffective assistance of counsel;  
15 specifically, that he did not meet with his attorney long  
16 enough. I'd note that Mr. Hiers is here today and  
17 represented by Ms. Anna Good. And I will turn it over to  
18 her at this time.

19 THE COURT: Ms. Good?

20 MS. GOOD: Thank you, Your Honor. At this time, I  
21 would call Gregg Hiers to the stand.

22 (Whereupon, the witness came forward.)

23 GREGG HIERS, having been first duly sworn,  
24 testified as follows:

25 THE BAILIFF: Watch your step, please.

1 (Whereupon, the witness entered the witness stand.)

2 DIRECT EXAMINATION

3 BY MS. GOOD:

4 Q Please state your name for the record.

5 A Gregg Hiers.

6 Q Mr. Hiers, you just heard you pled guilty on December  
7 13th of 2012 to armed robbery in front of Judge Kinard,  
8 correct?

9 A Right.

10 Q At that time who was your attorney?

11 A Which had ---

12 Q Who was your original attorney?

13 A Luke Shealey.

14 Q Okay. And was Mr. -- was Luke Shealey your attorney  
15 the entire time, from the time you were arrested until your  
16 plea?

17 A Yeah.

18 Q Okay. And how many -- when were you originally  
19 arrested?

20 A I'm not sure of the exact date.

21 Q Do you remember what month?

22 A It was July.

23 Q July 2012?

24 A Right.

25 Q Okay. And after July of 2012, between then and

1 December 13th of 2012 when you pled, how many meetings did  
2 you have with Mr. Shealey?

3 A Two.

4 Q When was the first meeting? Do you remember?

5 A The day I went to jail.

6 Q So July 25th, 2012?

7 A Right.

8 Q Okay. And how long did you meet with him then?

9 A About five minutes.

10 Q And when you spoke during that five minutes ---

11 A Uh-huh.

12 Q --- can you tell the judge what you discussed?

13 A We discussed about me being evaluated and that the  
14 reason that I went into the drugstore to start with was to  
15 kill myself. It wasn't armed-robbing anybody; it was to  
16 literally kill myself.

17 Q And just to give a little background, basically, the  
18 facts of this are you went into a drugstore and took a  
19 whole bunch of pills?

20 A Right.

21 Q Okay. And after your discussion with him, did you  
22 meet with him again after that before your plea?

23 A I did ---

24 Q And when ---

25 A --- for five ---

1 Q --- did you ---

2 A --- minutes.

3 Q Okay. And did you continue to try to contact him?

4 A I wrote him letters. I wrote four or five different  
5 letters.

6 Q Okay. And what did those letters consist of? What  
7 were you wanting?

8 A That I was wanting to get to court and to be  
9 evaluated.

10 Q Okay. And why did you want to get evaluated?

11 A Because I had a -- a -- I had a wish to kill myself.

12 Q Okay. And do you have any mental health history?

13 A Yes, ma'am.

14 Q And what is that?

15 A Paranoid schizophrenia and there's one other that they  
16 say. I -- I can't remember the name of it.

17 Q Okay. And when were you diagnosed with that?

18 A All my life.

19 Q Okay. So at the time of the armed robbery charges,  
20 were you on medication for those?

21 A Yes, ma'am.

22 Q Okay. And currently now, are you on medication ---

23 A Yes, ma'am.

24 Q --- for those -- and what are those medications?

25 A Risperdal ---

- 1 Q And how often do you take that?
- 2 A --- and -- and Remeron. Every day.
- 3 Q Okay. And ultimately, as a result of your letters to
- 4 Luke Shealey, did you ultimately come to the courthouse to
- 5 plea?
- 6 A Yes, I did.
- 7 Q And were you ready to plea that day?
- 8 A I was.
- 9 Q And why did you want to plea that day?
- 10 A So I could get to the Department of Corrections and
- 11 kill myself.
- 12 Q And why did you think it was easier to do it at the
- 13 Department of Corrections versus Alvin S. Glenn Detention
- 14 Center?
- 15 A Because you had access to pills.
- 16 Q Okay. And so when you went on the day of December
- 17 13th, was Luke Shealey there?
- 18 A He was there. But he -- he left from being sick and
- 19 had asked his brother to represent me.
- 20 Q And his brother is Brian Shealey?
- 21 A Right.
- 22 Q Had you -- had you ever met Brian Shealey before?
- 23 A Never.
- 24 Q Okay. So that was the first time that you had ---
- 25 A Right.

1 Q --- seen him, that morning?

2 A First time.

3 Q Okay. At that time did he go over any paperwork with  
4 you? explain what was going to happen during the plea?

5 A He just told me -- he said, "Just go along with  
6 everything the judge says." And that's -- that was  
7 basically what he told me.

8 Q Did you understand what you were agreeing to regarding  
9 the guilty plea?

10 A Not really. No.

11 Q Okay. You did -- had discussed with Mr. -- with Luke  
12 Shealey about having you evaluated. Did he ever have you  
13 evaluated?

14 A No, ma'am.

15 Q Before your plea on December 13th, had you ever seen  
16 any of the discovery in your case?

17 A No.

18 Q When did you actually receive a copy of your discovery  
19 to see what the facts were?

20 A After I went to court at that -- that day.

21 Q After the plea?

22 A After the plea.

23 Q And after getting your discovery and looking at it, di  
24 did you determine that you didn't feel you should've pled  
25 guilty that day?

1 A Well, I didn't want to plead guilty to start with.

2 Q Okay. But you had just wanted to go so you could get  
3 to SCDC?

4 A (Nodded head up and down.)

5 Q Okay. If you had been aware of all those facts  
6 surrounding the case and knowing the consequences of the  
7 guilty plea -- not for purposes of going to SCDC to kill  
8 yourself, but actual consequences of the guilty plea --  
9 would you have pled guilty ---

10 A Of ---

11 Q --- that day?

12 A --- course not.

13 Q Okay. Is ---

14 A Because I ---

15 Q --- there anything ---

16 A --- didn't armed-rob anybody.

17 Q Okay. Is there anything else you would like to tell  
18 the judge that we may have missed or skipped over?

19 A Your Honor, this -- this whole thing came about when I  
20 got real despondent on -- I was on the streets; I had  
21 nowhere to live. I became real despondent. And I thought,  
22 Well, I'll go in the drugstore here and take all these  
23 pills and maybe I'll kill myself.

24 And I wound up in the hospital for three days. But  
25 obviously, I didn't die. But it wasn't -- it -- it -- when

1 I went into the drugstore, I told everybody in the  
2 drugstore to leave. If it'd been armed robbery, I  
3 obviously wouldn't have done it like that. Don't you  
4 agree?

5 I mean, I went in that drugstore with the intent to --  
6 of doing nothing but killing myself. And I told everybody  
7 in the store to leave out. And they all left out. And I  
8 went back to the drug section and took as many pills as I  
9 could.

10 Q Okay. And did you tell Mr. Luke Shealey all this  
11 information?

12 A I -- every bit of it.

13 MS. GOOD: No further questions, Your Honor.

14 THE COURT: All right. Thank you, ma'am. Cross-  
15 examination?

16 CROSS-EXAMINATION

17 BY MR. MITCHELL:

18 Q Good morning, Mr. Hiers. How are you doing?

19 A Good morning.

20 Q All right. So you were charged with armed robbery;  
21 that's correct?

22 A Right.

23 Q And then you pled guilty in front of Judge Kinard?

24 A Uh-huh.

25 Q And that ---

- 1 A Right.
- 2 Q --- was with Mr. Brian Shealey as ---
- 3 A Uh-huh.
- 4 Q --- your attorney, right?
- 5 And that was because Mr. Luke Shealey was ---
- 6 A He had got sick ---
- 7 Q He ---
- 8 A --- that day.
- 9 Q --- he got sick and then he asked his brother to fill
- 10 in, right?
- 11 A Uh-huh.
- 12 Q And at that point you had already agreed to plead
- 13 guilty under a negotiated sentence; isn't that correct?
- 14 A Right.
- 15 Q And the negotiated sentence was for ten years,
- 16 correct?
- 17 A Right.
- 18 Q And you got the ten years that the state offered;
- 19 that's correct?
- 20 A (Nodded head up and down.)
- 21 Q And they -- and in exchange for your guilty plea, they
- 22 also dropped a bomb-threat charge; isn't that correct?
- 23 A Correct.
- 24 Q And at that point you were facing life without parole?
- 25 A Right.

1 Q And you ended up getting the minimum of ten years for  
2 armed robbery ---

3 A Right.

4 Q --- correct?

5 Okay. Now, you dispute whether it was an armed  
6 robbery. But at the plea hearing, the state said that it  
7 was ready to present evidence that you told a clerk there  
8 that you were being robbed -- "I have a -- I have a bomb";  
9 isn't that correct?

10 A That's correct.

11 Q So they had witnesses prepared to say that, correct?

12 A Right.

13 Q Okay. And then you repeated it because, well, the  
14 clerk didn't think you were serious; is that ---

15 A Right.

16 Q --- right?

17 Okay. Now, was that what happened?

18 A That's basically what happened.

19 Q Okay. And that's how you were charged with armed  
20 robbery; isn't that correct?

21 A Right.

22 Q Okay. There's also some discussion in the plea  
23 transcript about your letters to the solicitor. And that  
24 was requesting time less than a life sentence; isn't that  
25 right?

1 A Right.

2 Q And that's -- you ended up getting the ten years,  
3 correct?

4 A Right.

5 Q All right.

6 MR. MITCHELL: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 Q Mr. Hiers, this is what I would say is an advisement-  
9 of-rights sheet. Do you recognize this?

10 A Uh-huh.

11 Q Is that your name there?

12 A Yes.

13 Q Is this your signature down at the bottom here?

14 A Yes.

15 Q Do you remember signing this?

16 A Yeah. They told me to go along with everything.

17 Q Okay.

18 MR. MITCHELL: (To the court reporter) Can I have  
19 this marked as a ---

20 THE COURT: And make ---

21 MR. MITCHELL: --- Defense Exhibit 1?

22 THE COURT: There's -- without objection?

23 MS. GOOD: Without objection, Your Honor.

24 A Yeah. They told me to go along with everything and to  
25 agree with everything that was being said; otherwise, I

1 wouldn't be able to plea.

2 (Whereupon, Defendant's Exhibit 1 was marked and  
3 entered into evidence.)

4 Q So on this sheet, it goes through whether you pled  
5 guilty voluntarily. It asks you that multiple -- it asks  
6 you whether you pled guilty voluntarily and you said "yes";  
7 is that correct?

8 A Right.

9 Q It asks you whether you were pleading guilty because  
10 you are guilty; that's -- is that correct?

11 A He also asked me that.

12 Q And that is why you pled guilty, right, because you  
13 were guilty of armed ---

14 A No, I ---

15 Q --- robbery?

16 A --- wasn't guilty.

17 Q Okay.

18 A I never went in that store with the intent to steal  
19 anything.

20 Q I understand. No further questions. Thank you.

21 THE COURT: Any redirect?

22 MS. GOOD: No, sir, Your Honor.

23 THE COURT: All right. Thank you, sir. You may step  
24 down, sir.

25 THE BAILIFF: Watch your step.

DIRECT EXAMINATION BY MR. MITCHELL - LUKE SHEALEY 16

1 (Whereupon, the witness exited the witness stand.)

2 MS. GOOD: The applicant rests, Your Honor.

3 THE COURT: Applicant rests.

4 MR. MITCHELL: Your Honor, the state calls Luke  
5 Shealey.

6 (Whereupon, the witness came forward.)

7 LUKE SHEALEY, having been first duly sworn,  
8 testified as follows:

9 THE BAILIFF: Watch your step.

10 (Whereupon, the witness entered the witness stand.)

11 DIRECT EXAMINATION

12 BY MR. MITCHELL:

13 Q Good morning, Mr. Shealey.

14 A Good morning.

15 Q Let's see. How long have you been practicing law?

16 A Eight and a half years, I think.

17 Q Where were you working at the time of your  
18 representation of Mr. Hiers?

19 A At the Richland County Public Defender's Office.

20 Q How did you become his attorney on this case?

21 A I was appointed his case by my boss.

22 Q Did you file a motion for discovery in this case?

23 A Yes, sir.

24 Q Did you review that discovery with Mr. Hiers?

25 A Yes, sir.

1 Q How would you characterize the evidence against Mr.  
2 Hiers here?

3 A Well, it was -- it was an allegation that made the  
4 news, and so it had some heightened scrutiny to it. But I  
5 personally didn't think it was an armed robbery myself,  
6 based -- once I got the discovery and talking to him  
7 because the pharmacy tech or the victim of the alleged  
8 robbery, I think in her statement, recalled that she didn't  
9 think -- he put up a cassette player and said, "This is a  
10 robbery," but she didn't feel it was real.

11 So for me, although the allegation was serious and he  
12 was eligible to be served with life without parole, I  
13 didn't think it was an armed robbery for that fact that the  
14 victim didn't feel that it was a real deadly weapon; and  
15 also, that he just asked everybody to leave the store. And  
16 usually, for an armed robbery, there has to be a taking, an  
17 asportation. And he didn't actually take it from the  
18 presence of anybody. Everybody was out of the store when  
19 he started slamming Vicodin and drinking beers, trying to  
20 kill himself.

21 So it was a dangerous situation for him, because it  
22 was life without parole. Maybe a jury wouldn't see it the  
23 way I did. But in terms of how I felt about the evidence,  
24 I thought it was a legitimate bomb threat but not an armed  
25 robbery.

DIRECT EXAMINATION BY MR. MITCHELL - LUKE SHEALEY 18

1           So I -- I really wanted at the time to try to convince  
2 the solicitor of that. But I was kind of being undermined  
3 by Mr. Hiers himself, who was sending her letters and  
4 demanding to get to court and really rushing me.

5           And so I think at the point that we arranged the plea,  
6 I think Ms. Garfield was saying, "Well, it's LWOP. We can  
7 either LWOP him or, you know, he's writing me letters. So  
8 we can -- we can do a negotiated ten years," which he  
9 wanted to do because he -- he kept insisting on getting  
10 back to prison; didn't have any place to live; just wanted  
11 to go back to prison.

12           And I was saying, "Well, let me keep working on this  
13 case." But he was insistent on pleading to it. And -- and  
14 then the day of the plea, I think it -- I was either sick  
15 or my back went out or something. So because it was  
16 negotiated, our office policy was you could have someone  
17 cover if it was negotiated. So my brother decided to step  
18 up and cover it -- cover the plea.

19           Q     To your knowledge, nothing happened at the plea that  
20 went unexpected? I mean, the judge was -- accepted your  
21 prior negotiations; is that correct?

22           A     Yes, sir. It was -- I mean, I wasn't there. But it  
23 was a very short plea. My brother went through the advice  
24 of rights with Mr. Hiers and dealt with Ms. Garfield.

25           And just from reading the transcript, it seemed like

1 it was a very short plea; it was laid out. It was  
2 negotiated; the bomb-threat charge was dismissed.

3 And I don't think a whole lot was even said on -- on  
4 my brother's behalf because it was negotiated -- or by my  
5 brother or Mr. Hiers. And Judge Kinard accepted the plea,  
6 and that was that.

7 Q Now, the negotiation was just ten years; there was no  
8 range or any kind of ---

9 A Right. It was just ---

10 Q --- lower sentences ---

11 A --- simply for ten years, the minimum on armed  
12 robbery, with the other charge being dismissed.

13 Q All right. Thank you. No further questions. Please  
14 answer anything Ms. Good has for you.

15 THE COURT: Cross-examination?

16 MS. GOOD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. GOOD:

19 Q Mr. Shealey, when you first met with Mr. Hiers -- or  
20 Hiers, did he make you aware of any of his background  
21 regarding his mental condition?

22 A I think he probably did. I'm looking at my notes.  
23 And one of my goals I listed was -- he didn't have a  
24 housing situation. So I was trying to find him a mental  
25 health and/or a substance-abuse housing solution. At -- at

1 that time, you know, my goal was to see if I could get away  
2 from the armed robbery, maybe find him someplace more  
3 stable.

4 So I think he had made me aware of something that's  
5 going on. I didn't -- I didn't have any competency  
6 concerns, just from my conversations with him. As I  
7 sometimes do with clients, it become immediately apparent.  
8 But he -- I'm -- I'm pretty sure he did tell me about some  
9 of his mental health history.

10 Q And you were aware, obviously from reading the  
11 discovery, that he was trying to kill himself at -- during  
12 the, I guess, alleged armed robbery?

13 A Correct. And he told me that the first time I met  
14 him. And also, once I got the discovery, it became very  
15 apparent that he was trying to kill himself.

16 Q And due to the facts of the actual incident and his  
17 mental health history, did you ever think to get him  
18 evaluated?

19 A I -- I considered not competency but maybe criminal  
20 responsibility. I never did it. I considered it.

21 But then, you know, reading the discovery and -- and  
22 I'm not a doctor. And I -- I can't -- I guess I have to  
23 decide which case needs that type of evaluation and which  
24 doesn't. And it just seemed that he was acting very  
25 purposeful towards the goal of killing himself, not that he

1 was having some kind of dissociative break or didn't  
2 appreciate right from wrong.

3 So in the -- in the end, I didn't. Maybe I should've.  
4 But it -- you know, he kind of -- I didn't have enough  
5 time. I mean, we rushed this potentially LWOP case and was  
6 done within five months or so, based on his writing,  
7 really, Ms. Garfield letters, insisting on pleading guilty.

8 Q And you had mentioned that you reviewed discovery with  
9 him. Do you have in your notes when that was?

10 A Yes. That would've been November 1st of 2012.

11 Q And you said, after reviewing the discovery, you  
12 didn't believe that it was an armed robbery?

13 A I mean, the discovery pretty much maxed -- matched  
14 exactly the story he told me when I first met him. I  
15 didn't personally feel that it met the elements of an armed  
16 robbery. I could see how the allegation gets made.

17 But, you know, me trying to do my job as his lawyer, I  
18 didn't -- because of the statement from the -- the victim,  
19 saying that she didn't -- she -- she -- it looked like a  
20 cassette player or a baby mama -- monitor. I didn't think  
21 that she felt that that was a deadly weapon, as would be  
22 required.

23 And then, you know, my research said it was the -- a  
24 taking would have to be done from that person or in their  
25 immediate vicinity. Well, every -- the store was empty

1 when, I guess, the taking is him ingesting Vicodin and him  
2 drinking the beer until he passed out. So I really wanted  
3 to kind of keep trying to persuade the solicitor that that  
4 wasn't armed robbery.

5 But in the midst of doing all that, Mr. Hiers was  
6 constantly writing her that he wants to plead, wants to  
7 plead, wants to plead. And she was basically, like, "Well,  
8 let's do this or he can get LWOP'ed."

9 And I think ten years is reasonable, which, I mean,  
10 considering his record, it's fair. But I still had --  
11 personally, I didn't feel it was an armed robbery.

12 MS. GOOD: No further questions, Your Honor.

13 THE COURT: All right.

14 MR. MITCHELL: Nothing further, Your Honor.

15 THE COURT: All right. Thank you, sir. You may step  
16 down.

17 THE WITNESS: Thank you.

18 THE COURT: Anything else?

19 (Whereupon, the witness exited the witness stand.)

20 MR. MITCHELL: The state has no further witnesses.

21 THE COURT: Any -- any reply, Ms. Good?

22 MS. GOOD: No, sir, Your Honor.

23 THE COURT: Brief argument?

24 MS. GOOD: Your Honor, just basically, Mr. Hiers'  
25 contention is that this plea was not voluntarily and

1 willingly made. He was doing it for purposes not that he  
2 was guilty, but that he was trying to go to Department of  
3 Corrections to kill himself, which he had previously tried  
4 to do in the drugstore, which is where this incident came  
5 about.

6 So he's asking that you grant his PCR based on the  
7 fact his plea is not voluntarily and willfully made.

8 THE COURT: All right. Thank you, Ms. Good.

9 MR. MITCHELL: Your Honor, it's the state position  
10 that applicant has failed to meet his burden here. There's  
11 been no evidence presented that he was not competent.  
12 Everything in the record points to his competency. Judge  
13 Kinard asked him point-blank on page 5 whether he's had any  
14 mental-competency issues or any mental health issues. He  
15 says "no." That's consistent with his advisement-of-rights  
16 form.

17 The solicitor also noted in her statement of the case  
18 that he wrote letters to her about the case that were very  
19 coherent and very intelligent. I -- I don't think there  
20 was any question -- there's any reason to question his  
21 competency. I don't think there's anything to show that he  
22 was not competent at the time. I think he had a firm grasp  
23 of what happened and what he had done.

24 And for those reasons, I think the application should  
25 be denied. Thank you.

**CERTIFICATE**

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED  
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,  
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL  
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY  
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND  
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE  
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT  
COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 2ND  
DAY OF APRIL, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

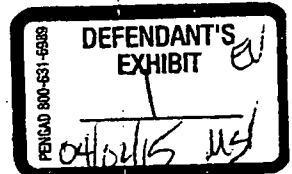


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MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 28, 2015



RICHLAND COUNTY GENERAL SESSIONS

THE STATE v. Cross Hirs SOLICITOR Dolly Carfield

INDICTMENT # 2012AS4001498 DEFENSE ATTORNEY Bora Steber

The Defendant avers that the Defendant desires to plead guilty to Armed Robbery

and certifies to the Court that the answers to the following are true:

1. The Penalty(ies) for my charge(s) are: 10 - 30 years

2. The maximum sentence I could get is: 30 years @ 85%

Has anyone threatened you or put any pressure on you to get you to plead guilty? NO  
If so, who and what? \_\_\_\_\_

Has the State agreed to recommend a sentence to the Judge? Yes

(a) If so, what is the recommendation? Negotiated 10 years

(b) If so has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? \_\_\_\_\_

(c) If not, has anyone promised you anything to get you to plead guilty? \_\_\_\_\_

Are you under the influence of any drugs or alcohol today? No If yes, explain: \_\_\_\_\_

If your charge(s) has/have NOT been presented to the Grand Jury, do you understand that you give up that right when you plead guilty? yes

Do you understand that if you plead NOT GUILTY, you have the right to have the help of a lawyer at all stages of the proceedings, even if you cannot afford to pay a lawyer, and that a lawyer will be appointed to represent you if you cannot afford to employ one? YES  NO \_\_\_\_\_

Do you understand when you plead guilty you give up your right to a jury trial? CERTIFIED TRUE COPY

Do you understand when you plead NOT GUILTY you will be presumed innocent until the State has proved you guilty beyond a reasonable doubt and all jurors unanimously agree on your guilt? Yes

YES  NO \_\_\_\_\_

OF ORIGINAL FILED,  
RICHLAND COUNTY  
SOUTH CAROLINA

Do you understand that if you plead NOT GUILTY you have the right to see and hear all witnesses called to testify against you and to confront, cross-examine and question them? YES  NO \_\_\_\_\_

Do you understand that if you plead NOT GUILTY you have the right to take the witness stand and testify or not to take the witness stand as you choose, and that you cannot be required to take the witness stand?

yes

Do you understand that if you plead NOT GUILTY and do not take the witness stand, the jury cannot take that as evidence against you?

yes

Do you understand that if you plead NOT GUILTY you have the right to use the subpoena power of the Court to get the attendance of any witnesses on your behalf, whether they want to come or not?

yes

1. Do you know if you plead GUILTY you will be found Guilty without a trial and you will have given up all the rights mentioned in questions (8) to (13) along with your right to present any defense(s)?

yes

5. Have you made any statements in which you admitted all or any part of the crime(s) to which you want to plead guilty? yes If yes, would you plead guilty if you knew the statement(s) could not be used against you?

6. If your case involves forensic evidence that is incomplete or currently unavailable, such as chemical analysis of drugs, matching of DNA, fibers, etc., do you understand that by pleading guilty you give up the right use such evidence as a defense?

yes

7. If you are on parole or probation, do you know that this plea could result in a revocation?

yes

8. Has your lawyer gone over all your rights and all circumstances of the charge(s) with you?

yes

19. Are you satisfied with your lawyer?

yes

20. Do you understand what you are doing and all the rights that you are giving up?

yes

21. Are you pleading guilty freely and voluntarily?

yes

22. Are you pleading guilty because you are guilty?

yes

23. Do you understand you have the right to appeal this guilty plea within 10 days?

yes

X Alberini  
Defendant's Signature

12/13/12  
Date

You have 1 year from today's date to file for conviction relief application X Alberini

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Gregg C. Hiers, #270630

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2013-CP-40-07338

**ORDER OF DISMISSAL**

2015 MAY 18 AM 9:45  
RICHLAND COUNTY  
JEREMY E. M. ROSS  
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 4, 2013. Respondent made its Return on March 5, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on April 2, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Luke A. Shealey, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was represented by Luke Shealey, Esquire, and Brian Shealey, Esquire. On December 13, 2012, Applicant appeared before the Honorable J. Ernest Kinard, Jr., where he waived presentment to the Richland County Grand Jury and pled guilty to Armed Robbery (2012-GS-40-6498). Pursuant to negotiations

between Applicant and the State, Judge Kinard sentenced Applicant to ten (10) years' imprisonment. Applicant did not appeal his guilty plea or sentence.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The guilty plea was not entered into knowingly and voluntarily because of Applicant's mental condition at the time.
2. Ineffective assistance of counsel in failing to have Applicant evaluated and in not reviewing discovery with him prior to the plea.

## **II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING**

### **Applicant's Testimony**

Applicant testified Counsel was assigned to represent him on the charges at issue. He testified Luke Shealey (Luke) represented him from July 2012 until he pleaded guilty. Applicant testified he was potentially facing a life without parole sentence if convicted because of his prior convictions. Applicant testified he agreed to plead guilty to a negotiated ten (10) year term of imprisonment with the State dropping the bomb threat charges in exchange for his plea. Applicant explained that Brian Shealey (Brian) represented him during the guilty plea hearing because Luke was ill. Applicant testified he sent four to five letters to the prosecuting solicitor asking her to not seek a life without parole sentence and to expedite his case.

Applicant explained the circumstances of the incident. He testified he went to Rite Aid in an attempt to commit suicide. He testified he told the drug store's employee that she was being robbed and that he had a bomb. He testified he repeated himself after the employee seemed to think he was joking. He testified she then reported him to authorities who apprehended him after he had passed out. He testified he ingested nearly two dozen Vicodin pills taken from the Rite Aid pharmacy in his suicide attempt. Applicant testified he was never evaluated and believed that he should have been. Applicant also testified that counsel did not review discovery with him.

Applicant testified he completed and reviewed an advice of rights form with Brian where they went the numerous rights that he was waiving by pleading guilty which included any challenge to the elements of the armed robbery charge.

#### **Counsel Luke A. Shealey's Testimony**

Luke Shealey testified he represented Applicant on the charges currently before the Court. Luke testified he was appointed to represent Applicant through his prior position with the Richland County Public Defenders' Office. Luke testified he reviewed discovery and the evidence the State would present if the case were to go to trial with Applicant. He explained that the case had made the news and was receiving some local attention. Luke testified he had concerns with whether the State could prove all elements of the armed robbery charge.

Luke testified Applicant sent numerous letters to the prosecuting solicitor demanding to get to court and to get the case resolved quickly. Luke testified Applicant was potentially facing a life without parole sentence because of prior convictions. Luke testified he advised Applicant of the negotiated ten (10) year offer and that Applicant chose to accept it. He testified Applicant was eager to get to prison where he believed he would be able to then successfully commit suicide. Luke testified that his brother, Brian, filled in for him because of a problem he was having with his back. Luke explained that since Applicant was entering into a negotiated plea, that his brother could easily cover for him at the hearing. He noted that Brian went through an advice of rights form with him.

Luke testified he was aware that Applicant may have had some mental issues in the past. Luke testified that Applicant was homeless at the time of the incident and that he hoped to get a housing solution worked out for him. Luke reiterated that Applicant was only trying to commit suicide and had no intention to hurt anyone else.



### III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).



#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

##### **Involuntary and Unintelligent Guilty Plea**

Applicant argues he did not plead guilty knowingly and voluntarily because he was suffering from mental issues and was not competent to plead guilty. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the



truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he could not have pled guilty knowingly and voluntarily as he was not competent. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. This Court finds that Applicant wrote numerous letters to the prosecuting solicitor that were described as very coherent and very intelligent. This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorneys and was advised further by the plea court. This Court also relies on the advice of rights form in finding Applicant was thoroughly advised and made no objections in entering his plea. In fact, the record reflects that it was Applicant that urged the prosecuting solicitor and counsel to get the case resolved quickly. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

**Ineffective Assistance of Counsel – Failure to have Applicant Evaluated / Failure to Review Discovery**

Applicant alleges that counsel was ineffective in failing to get him evaluated for criminal responsibility and competency. Applicant presented no evidence to support this contention. This



allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). This Court emphasizes that Applicant acted purposefully in his attempt to commit suicide and had a clear purpose in hoping to get his case resolved quickly. This Court further emphasizes the articulate letters written by Applicant in his attempt to persuade the prosecuting solicitor to take a life without parole sentence off the table in their plea discussions. Therefore, this allegation is readily denied and dismissed.

This Court finds Applicant’s allegation that Counsel failed to review discovery with him to be meritless. Counsel’s credible testimony on the issue is persuasive. Counsel met with Applicant and reviewed the discovery materials.

#### **All Other Allegations**

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

#### **V. CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels’ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8 day of July, 2015.

  
 \_\_\_\_\_  
 BRODERICK P. GOLDSMITH  
 Presiding Judge

\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 )  
 )  
GREGG C. HIERS, #270630 )  
 ) Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 ) Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT  
 CASE NO.: 2013-CP-40-07338

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

RICHLAND COUNTY  
 FILED  
 2015 MAY 18 AM 9:45  
 JEANETTE M. GIBSON  
 C.C.P. CLERK

Plaintiff's Attorney: Anna R. Good, Bar No. 72808 Address: PO Box 7284, Columbia SC 29202 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: J. Clayton Mitchell, Bar No. 101443 Address: PO Box 11549, Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____									
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
<b>SECTION I: Hearing Information</b>										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO										
<b>SECTION II: Motion/Order Type</b>										
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
<div style="display: flex; justify-content: space-between;"> <span>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant</span> <span>4/29/2015 Date submitted</span> </div>										
<b>SECTION III: Motion Fee</b>										
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason) <table style="width:100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: _____	<input type="checkbox"/> Other: _____
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<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions										
Name of Court Reporter: _____										
<input type="checkbox"/> Other: _____										
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____									
<b>CLERK'S VERIFICATION</b>										
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____										

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGM. IN A CIVIL CASE

CASE NUMBER: **2013CP4007338**

**Gregg C #270630 Hiers**

**State of South Carolina**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 19 May 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Gregg C #270630 Hiers

Anna Rawl Good

Megan Harrigan Jameson

Gregg C #270630 Hiers

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court



**SCANNED**