VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

TERON JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001690

APPENDIX

BENJAMIN JOHN TRIPP
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

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Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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can basically show behavior behind me.

Sir, as a -- as I said, Mr. Wimberly and Mrs. Wimberly, I truly apologize for the loss of your son. And like I say, I know it's -- it's just words that can't express that.

I can never -- I can never emotionally tell you how much I truly mean that because you can hear I'm sorry, I apologize every day, but that can never.

MR. WIMBERLY: Well, I accept your apology.

MRS. WIMBERLY: I do, too.

MR. WIMBERLY: But you took Dominique from us as a part of me, part of my wife, and part of his sister, can never replace that. But if -- it's a lesson learned, you know. While you sit in there reading your Bible, you live because you make the wrong mistake.

DEFENDANT ROBINSON: But I'm saying--

MRS. WIMBERLY: We accept your apology and we can love you. God bless you.

DEFENDANT ROBINSON: Thank you. And before I say -- this is the last thing I'll say to the family. And I know it's a -- as I speak on the case once again, I'm not trying to -- but sir, everything that took place that night, anything that could have happened, I can honestly tell you I never had

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anything to do with your -- your son's death as far as the killing behind anything or triggers, bullets, anything. I never took any of them.

MR. WIMBERLY: All right.

THE COURT: Thank you. Mr. Murphy?

MR. MURPHY: Your Honor, Mr. Jackson is here with his grandmother. He was -- been raised by his grandmother. His father is absent and has never been a part of his life. His mother passed away a number of years ago. He's raised by his grandmother.

I got the opportunity to speak to the grandmother as well as an aunt and a couple of cousins, and you know, I think as is the case with the Robinsons here, there's kind of a -- at least from their perspective kind of a shock as to what happened.

They're -- there's no indication from their perspective that anything like this could have happened.

Again, as with Mr. Sullivan's case, I'd ask you to take into account he's 17 and had no prior criminal record. You know, I knew, you know, as Mr. Sullivan, I mean, we -- we have been around long enough to know that this was the likely result.

You know, I have thought about what I would say

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on behalf of my client. And you know, one of the components I guess or one of the things that we talk about is mercy. And mercy sometimes isn't deserved, and -- but it's given nonetheless.

I mean, my client is facing the rest of his natural life in prison for -- for what he did that night. And I guess what I would ask on his behalf -- and I have had a number of conversations with him -- is, you know, those -- those of us that are older know that life goes by in a blink of an eye really.

I mean, 30 years, 40 years, 50 years, it just goes by, and you look back and wonder, wow, what happened. I would ask on behalf of my client that you give him some hope that he will walk out of prison at some time a free man. Not because he deserves it, but because -- but because of the element of mercy.

That's really all, you know, I can ask on his behalf given the situation and given the age he was at that time.

You know, like Mr. Sullivan said, you know, I look at him sometimes and, you know, you look at some other clients you have and you're wondering what the heck, what happened. I mean, you know, it's -- it's astounding to me. There's no explanation. You

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struggle for it.

And you know, I don't know if there is one. It was an evil act and that's what it was. I don't believe his grandma really wants to say anything. Do you want to say anything? Okay. Want to say something?

GRANDMOTHER OF DEFENDANT JACKSON: I can say I raise him from a baby, and I try to raise him the best I can. And he's a good child. And I'm just, you know, had no idea, you know, what was going on.

After a certain age, you know, they get out, going to be out in the element and stuff like that. But he always had manners and respect and stuff like that. And I try to teach him the right thing.

And I do sympathize with the Wimberly family because I know what it's like to lose a child. And I really sympathize with you on that. And I am sorry, so sorry for what happened. But if I could have prevent it, I certainly would have.

And like I say, I will always remember, you know, remember that, just like he would, you know. And I know he's sorry for what he did, but I am telling you from my point of view how I feel about -- because I'm sorry and I sympathize with you on that. And I just hope you can give him a chance, you know,

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to get some hope, you know, in life.

THE COURT: Thank you ma'am.

GRANDMOTHER OF DEFENDANT JACKSON: Thank you.

DEFENDANT JACKSON: I want to say I'm sorry to the Wimberlys. I know they done heard it over a million times, but truly from my heart I am sorry. I apologize for everything that happened, you know.

I'm human. I make mistakes also. So I want to -- you to accept my apology and you forgive me because I do read the Bible and the Bible said you must forgive to be forgiven.

So I want you to look in my eyes and tell me do you accept my apology.

MRS. WIMBERLY: Yes, sir. We accept your apology. But the Bible also says, if you take a life a life, a life should be taken from you. But I do accept your apology.

MR. WIMBERLY: And it wasn't a mistake. It was a plan.

MRS. WIMBERLY: Y'all planned it.

DEFENDANT JACKSON: I want to say the same thing Mr. Robinson said. I mean, I truly am sorry. That's all I have to say. Thank you.

THE COURT: Thank you. I have taken into consideration your age, the fact that neither one of

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y'all have a record that I'm aware of. And I'm not real sure that this whole thing started out you planned to murder anybody.

But you didn't act -- you are the ones that brought the guns to this. You should have realized any time you deal with an armed robbery, somebody is going to get killed. That's exactly what happened. You made some terrible decisions that ruined a lot of peoples lives.

Any way, the Sentence of the Court on Mr. Jackson, on count two, attempted armed robbery, you're sentenced to the State Department of Corrections for a term of 20 years. That's to run concurrent with count one. You be given credit for whatever time you served toward it.

Count four, possession of a firearm during the commission of a violent crime, is you're sentenced to the State Department of Corrections for a term of five years to run concurrent with count one and be given credit on that as well.

Possession of a pistol by someone less than 18 years of age you're sentenced to five years to run concurrent with count one. It's to run consecutive -- I mean -- concurrent with count one. You're given credit for time served.

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On count one, murder, the sentence of the Court is you're committed to the State Department of Corrections for a term of 37 years.

On Mr. Robinson, attempted armed robbery is 20 years to run concurrent with count six. On both of the weapons charges is five years to run concurrent with count six. You're given credit for time served.

And on lynching, count six, you're sentenced to the -- committed to the State Department of Corrections for a term of 37 years. Good luck to you.

MRS. WIMBERLY: Thank you, Your Honor.

(End of requested transcript of record.)

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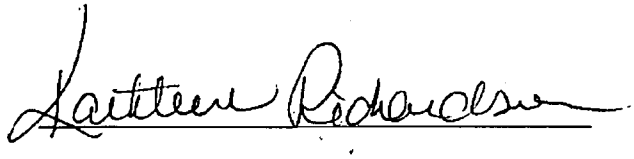
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, Kathleen Richardson, RPR, CRR, Official Court Reporter for the Third 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the twenty-second day of April, 2009.

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

August 5, 2009



KATHLEEN RICHARDSON, RPR, CRR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Teron Hakeen Jackson, Appellant.

Appeal From Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-430
Submitted September 30, 2011 – Filed October 3, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Brendan J. McDonald, all

of Columbia; and Solicitor Ernest A. Finney, III, of Sumter, for Respondent.

PER CURIAM: Teron Hakeen Jackson appeals his convictions for murder, attempted armed robbery, possession of a firearm during the commission of a violent crime, and possession of a handgun by a person under eighteen years old, arguing the circuit court erred in admitting his statements to police. We affirm[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990) ("On appeal, the conclusion of the [circuit court] on issues of fact as to the voluntariness of a [statement] will not be disturbed unless so manifestly erroneous as to show an abuse of discretion."); State v. Breeze, 379 S.C. 538, 544, 665 S.E.2d 247, 250 (Ct. App. 2008) ("The test of voluntariness is whether a suspect's will was overborne by the circumstances surrounding the given statement."); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977) (holding the "decisions are voluminous that the signing of a written waiver is usually sufficient" to find an intelligent waiver of the privilege against self-incrimination); In re Williams, 265 S.C. 295, 300, 217 S.E.2d 719, 721-22 (1975) (declining to "adopt a rule under which any inculpatory statement obtained from a minor in the absence of counsel, parent or other friendly adult would be [p]er se inadmissible"); State v. Simmons, 384 S.C. 145, 163-66, 682 S.E.2d 19, 28-30 (Ct. App. 2009) (finding it within the circuit court's discretion to find officers' testimony more credible than that of the defendant in making its voluntariness determination).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Sumter)

Teron Hakeem Jackson 334394) 2012-CP-43-1958
Full name and prison number (if any) of Applicant.)

v.) **APPLICATION FOR**

State of South Carolina) **POST-CONVICTION RELIEF**

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE C.I./990 WISACKY HWY., BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence SUMTER CO. GEN. SESSIONS COURT
3. Name(s) of co-defendant(s) (if any) JERMEL ANTHONY ROBINSON
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2007-GS-43-816, etc.;
   (a) MURDER
   (b) ATT. ARMED ROBBERY (x2)
   (c) UNLAWFUL POSS. OF PISTOL BY ONE LESS THAN 18 YRS. OLD.
5. The date upon which sentence was imposed and the terms of the sentence: 04/22/09;
   (a) 37 YRS., MURDER
   (b) 20 YRS., ARM. ROB. (1 COUNT)

Revised 3/2003

(c) 5 YRS., POSS. OF FIRE. DICVC/ 5 YRS. LESS T. 18 YRS OLD POSS OF F/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty XXXX

(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. COURT OF APPEALS

ii. _____

iii. _____

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

i. AFFIRMED CONVICTION

ii. _____

iii. _____

(c) the date of each such result:

i. OCTOBER 03, 2011

ii. _____

iii. _____

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

i. STATE V. ROCHESTER, 301 S.C. 196, 200 391 S.E.2d 244, 247 (1990), etc.

ii. SIMMONS, SMITH, WILLIAMS, supra, etc. LEGAL AUTHORITIES AS CITED.

iii. _____

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

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHMENTS TITLED MEMO OF ISSUES AND LAWS;

(a) SEE ATTACHMENTS

(b) INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL

(c) DUE PROCESS AND EQUAL PROTECTION RIGHTS VIOLATIONS

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

(a) SEE ATTACHED

(b) U.S. CONST. 6th AND 14th, etc. AND S.C. CONST. ARTICLES, etc.

(c) RIGHTS TO FAIR TRIAL AND FAIR APPEAL REVIEW DENIED, etc.

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

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof: N/A

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof: N/A

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: N/A

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: SEE THE PROPER EXHAUSTION REMEDY DOCIRINE EFFECTIVE TO CASE, etc

(a) MUST EXHAUST PCR REMEDY FIRST, COLLATERAL PROCEEDINGS act.

(b) " " " " "

(c) " " " " "

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

(a) your arraignment and plea? _____

(b) your trial, if any? xxxxxxx

(c) your sentencing? xxxxxxx

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? xxxxxxx

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. TIMOTHY MURPHY, Esq. TRIAL ATTORNEY

ii. ROBERT M. DUDEK, Esq., APPEAL COUNSEL

iii. _____

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

i. SEE 18.

ii. _____

iii. _____

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

VACATE CONVICTION AND RAMAND FOR NEW TRIAL & DISMISSED CHARGE.

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of LEE)

I, TERON H. JACKSON 334394 XXXXXXX, 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.

TERON H. JACKSON, 334394

SWORN to and subscribed before me this 7 day of Aug, 2012.

(L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

TERON H. JACKSON, 334394

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.

Applicant

TERON H. JACKSON

SWORN or affirmed to and subscribed before me this 7 day of Aug, 2012

Notary Public

My Commission Expires: 11-4-2015

Revised 3/2003

A (1)

PCR ADDENDUM page 1.

POST CONVICTION RELIEF ISSUE

10-a: APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND PURSUANT TO Art. I, §§§ 3, 9, AND 14 OF S.C. CONSTITUTION;

11-a., etc.; COUNSELS REPRESENTATION WAS UNREASONABLE AND PREJUDICIAL ACCORDINGLY TO STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), COUNSELS UNDERTAKEN ACTIONS AND FAILURES INCLUDED, AND NOT LIMITED TO THE FOLLOWING CHARGES:

1.) TRIAL COUNSEL FILED TO CONDUCT AN INDEPENDENT INVESTIGATION OF HIS OWN TO DETERMINE IF THERE WERE ANY DOCUMENTED RECORD EVIDENCE PROFFERING THAT APPLICANT HAD A LEARNING DISABILITY FROM HIS SCHOOLS, etc., RESEARCH THE RECORDS OF THE POLICE DEPARTMENT SHOWING THAT OFFICERS MADE ATTEMPTS TO CONTACT APPLICANT'S FAMILY MEMBERS BEFORE THE POLICE INTERROGATED APPLICANT, REEXAMINE THE REPORTS AND SLED REPORT RESULTS BY AN INDEPENDENT RESOURCES TO DETERMINED THAT THE EVIDENCE WAS WITHOUT FLAWED FINDINGS, FAILED TO INVESTIGATE THE CIRCUMSTANCES OF THE CRIME CHARGED TO MAKE A DETERMINATION OF WHAT PARTICIPATION DID THE APPLICANT HAD IN IT SO THAT THERE COULD HAVE BEEN A COMPETENT TRIAL STRATEGY PLANNED FOR APPLICANT'S TRIAL;

2.) TRIAL COUNSEL FAILED TO HAVE THE COURT TO EVALUATE THE APPLICANT MINOR STATUS SO IT COULD HAVE BEEN DETERMINED RATHER IF APPLICANT FULLY UNDERSTOOD HIS RIGHTS TO A TRIAL AND HIS CONSTITUTION RIGHTS BY IT BASIC MEANINGS;

3.) TRIAL COUNSEL FAILED TO PRE-TRIAL THE DEFECTIVE INDICTMENT WHERE IT SHOWED THE CHARGES PRESENTED TO THE GRAND JURY WAS WITHOUT A BODY AND THEREFORE MAKING IT A SUBJECT MATTER JURISDICTION ISSUE, WHEREAS, THE TRIAL COUNSEL COMMITTED INEFFECTIVE ASSISTANCE WHEN HE DID NOT MOVED TO QUASH THE INDICTMENT WITH THE CRIME CHARGED AS POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OLD, AND LYNCHING (1st DEGREE);

4.) TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO HAVE APPLICANT'S TRIAL SEPARATE FROM HIS CO-DEFENDANT, DUE TO THE FACTS THAT APPLICANT STATEMENTS PLAYED A HOSTILE COMPONENT TO CO-DEFENDANT'S DEFENSE;

5.) TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO HAVE THE DETECTIVES TO TAKE A LIE DETECTOR TESTS IN FINDING RATHER THE DETECTIVE USED ILLEGAL TACTICS IN INTERROGATION OF THE APPLICANT, TRIAL COUNSEL MADE THE ILLEGAL TACTICS AN ISSUE BEFORE THE COURT BUT DID NOT MOVE TO HAVE THE EVALUATION DONE BY THE COURT;

A

PCR ADDENDUM, page 1.

*10-a: APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION, AND PURSUANT TO Art. I, §§§ 3, 9, AND 14th OF THE S.C. CONSTITUTION;

*11-a, etc.; TRIAL COUNSEL REPRESENTATION WAS UNREASONABLE AND PREJUDICIAL ACCORDING TO STRICKLAND V. WASHINGTON, 466 U.S. 688 (1984), TRIAL COUNSEL UNDERTAKING ACTIONS AND FAILURES INCLUDES, AND ARE NOT LIMITED TO THE FOLLOWING CHARGES:

**1. TRIAL COUNSEL FAILURES TO CONDUCT A FULL INVESTIGATION TO CASE IN REGARDS TO THE APPLICANT'S MENTAL CAPACITY AND LIMITED ABILITIES TO UNDERSTAND HIS CONSTITUTIONAL RIGHTS AS HE HAD WAIVED THEM WHEN HE GAVE MULTIPLE STATEMENTS, THE COUNSEL FAILED TO PLACE SCRUTINY UNDER THE FACTS THAT THE APPLICANT WAS IN THE POLICE CUSTODY AND WHILE BEING QUESTIONING BY THE INVESTIGATORS APPLICANT WAS THREATENED AND PSYCHOLOGICALLY FEARING §44-23-410, etc.

**2. TRIAL COUNSEL FAILED TO HAVE AN INDEPENDENT TESTES DONE TO THE FORENSIC REPORTS AS IN DETERMINING WHAT GUN ACTUALLY KILLED THE DECEDENT, THIS CRITICAL POINT WAS NEVER ESTABLISHED AND PRESENTED TO THE JURY BY COMPETENT EVIDENCE AS IT WAS THE APPLICANT RIGHT TO FULLY PRESENT HIS CASE TO THE JURY FOR INNOCENCE BEYOND A REASONABLE DOUBT FINDING.

**3. TRIAL COUNSEL FAILURE TO MOTION FOR TRIAL SEVERANCE BASED UPON THE FACTS THAT THE APPLICANT MADE STATEMENTS THAT PLACED HIM IN A HOSTILE POSITION TO HIS CO-DEFENDANT DEFENSE.

**4. TRIAL COUNSEL FAILURE TO CONFER WITH APPLICANT AND ADVISE HIM OF A TRIAL STRATEGY AND HELP PLAN HIS DEFENSE TO PRESENT EVIDENCE IN HIS FAVORS TO THE JURY.

**5. TRIAL COUNSEL FAILED TO QUASH THE INDICTMENTS THAT WAS TRUE BILLED BY THE GRAND JURY AS THERE WERE ONLY THREE (3) CHARGES SUBMITTED, AND THE POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE WAS NEVER STATED BY LAW STATUTES, etc.

**6. APPELLATE COUNSEL FAILED TO BRIEF ALL PROPERLY PRESERVED ISSUES THAT THE TRIAL COUNSEL PLACED OBJECTIONS TO ON THE TRIAL RECORD AS INDICATED, THE APPLICANT WAS EXTREMELY PREJUDICED AGAINST BY APPELLATE COUNSEL'S REFUSING TO BRIEF ISSUES THAT IS PROPERLY PRESERVED IN THE TRIAL RECORD WHEREAS THE TRIAL COUNSEL PLACED OBJECTIONS TO THEM TO HAVE THEM PRESERVED FOR APPELLATE COURT REVIEW, VIOLATING HIS 6th AND 14th AMEND., AND CAUSING APPLICANT'S TRIAL ISSUES TO BE DEEM ABANDONED FOR FAILURE TO BRIEF THEM, etc. SEE ALL OBJECTIONS STATED IN MEMO OF LAWS.

POST CONVICTION RELIEF ISSUE

10-a: APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND PURSUANT TO Art. I, §§§ 3, 9, AND 14 OF S.C. CONSTITUTION:

11-a., etc.; COUNSELS REPRESENTATION WAS UNREASONABLE AND PREJUDICIAL ACCORDINGLY TO STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), COUNSELS UNDERTAKEN ACTIONS AND FAILURES INCLUDED, AND NOT LIMITED TO THE FOLLOWING CHARGES:

1.) TRIAL COUNSEL FILED TO CONDUCT AN INDEPENDENT INVESTIGATION OF HIS OWN TO DETERMINE IF THERE WERE ANY DOCUMENTED RECORD EVIDENCE PROFFERING THAT APPLICANT HAD A LEARNING DISABILITY FROM HIS SCHOOLS, etc., RESEARCH THE RECORDS OF THE POLICE DEPARTMENT SHOWING THAT OFFICERS MADE ATTEMPTS TO CONTACT APPLICANT'S FAMILY MEMBERS BEFORE THE POLICE INTERROGATED APPLICANT, REEXAMINE THE REPORTS AND SLED REPORT RESULTS BY AN INDEPENDENT RESOURCES TO DETERMINED THAT THE EVIDENCE WAS WITHOUT FLAWED FINDINGS, FAILED TO INVESTIGATE THE CIRCUMSTANCES OF THE CRIME CHARGED TO MAKE A DETERMINATION OF WHAT PARTICIPATION DID THE APPLICANT HAD IN IT SO THAT THERE COULD HAVE BEEN A COMPETENT TRIAL STRATEGY PLANNED FOR APPLICANT'S TRIAL;

2.) TRIAL COUNSEL FAILED TO HAVE THE COURT TO EVALUATE THE APPLICANT MINOR STATUS SO IT COULD HAVE BEEN DETERMINED RATHER IF APPLICANT FULLY UNDERSTOOD HIS RIGHTS TO A TRIAL AND HIS CONSTITUTION RIGHTS BY IT BASIC MEANINGS;

3.) TRIAL COUNSEL FAILED TO PRE-TRIAL THE DEFECTIVE INDICTMENT WHERE IT SHOWED THE CHARGES PRESENTED TO THE GRAND JURY WAS WITHOUT A BODY AND THEREFORE MAKING IT A SUBJECT MATTER JURISDICTION ISSUE, WHEREAS, THE TRIAL COUNSEL COMMITTED INEFFECTIVE ASSISTANCE WHEN HE DID NOT MOVED TO QUASH THE INDICTMENT WITH THE CRIME CHARGED AS POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OLD, AND LYNCHING (1st DEGREE);

4.) TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO HAVE APPLICANT'S TRIAL SEPARATE FROM HIS CO-DEFENDANT, DUE TO THE FACTS THAT APPLICANT STATEMENTS PLAYED A HOSTILE COMPONENT TO CO-DEFENDANT'S DEFENSE;

5.) TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO HAVE THE DETECTIVES TO TAKE A LIE DETECTOR TESTS IN FINDING RATHER THE DETECTIVE USED ILLEGAL TACTICS IN INTERROGATION OF THE APPLICANT, TRIAL COUNSEL MADE THE ILLEGAL TACTICS AN ISSUE BEFORE THE COURT BUT DID NOT MOVE TO HAVE THE EVALUATION DONE BY THE COURT;

6.) APPELLATE COUNSEL INEFFECTIVE WHEN HE DID NOT BRIEFED ALL PROPERLY PRESERVED ISSUES OF THE TRIAL RECORD, AND BY THE APPELLATE COUNSEL REFUSALS TO BRIEFED ALL ISSUES THE TRIAL COUNSEL OBJECTED TO CAUSED THE APPLICANT TO BE DENIED HIS RIGHTS TO A FULL REVIEW OF THE ERROR OF LAWS COMMITTED DURING HIS TRIAL,

PCR MEMORANDUM OF LAW:

¶1. TRIAL COUNSEL TESTIFIED INDIRECTLY TO THE FACTS THAT THE APPLICANT HAD A LEARNING DISABILITY AND STILL IN MINOR STAGES AS NO BEING AN ADULT, THIS BEING KNOWN GAVE ALL LATITUDES TO TRIAL COUNSEL TO BE REASONABLE IN PLANNING HIS STRATEGIES TO THE APPLICANT'S DEFENSE, AND BEING RELIABLE TO THE APPLICANT AS APPLICANT BEING THE CLIENT, IT WAS INCUMBENT UPON THE TRIAL COUNSEL TO UTILIZE HIS EXPERTISE AS IN EXERCISING APPLICANT'S CONSTITUTION RIGHTS TO AN EVALUATION TO TRIAL MATTERS SUCH AS HIS ABILITY TO UNDERSTAND AND ASSIST HIM, AND THIS WAS NOT PURSUED, AND OR DONE BY THE COUNSEL WHOM HAVE THE DUTIES AT THE VERY BEGINNING OF TRIAL TO THE END OF TRIAL MATTERS TO BE THE ADVOCATE TO TEST THE ADVERSE PROCESS, THE COUNSEL FAILED TO BE KNOWLEDGEABLE OF LEGAL STANDARDS AND DUE PROCESS RIGHTS OF THE APPLICANT, THE LAW TURNS ITS MEANINGS TO JUVENILE DELINQUENT AS A PERSON BEING OVER SEVENTEEN AND LESS THAN SIXTEEN FOR THE SAKE OF CRIMINAL ASPECTS, THEREFORE, ABIDING TO THE FACTS THAT THE SC STATE HAS A WELL SETTLED LAW CREATED BY THE SC LEGISLATION, GIVES APPLICANT A RIGHT TO AN ADJUDICATORY PROCESS TO BE EVALUATED THROUGH, AS THE TRIAL COUNSEL TOOK A SIT BACK ON THE HANDS AND DO NOTHING ABOUT IT POSITIONS, THE APPLICANT CASE ISSUES AS HOW HE WAS DISCRIMINATED AGAINST BY THE POLICES/DETECTIVES BY WAY OF HIM BEING YOUNG BLACK MALE IN POVERTY STAGE AUTOMATICALLY MAKES HIM TO BE GUILTY AS CHARGED AND DEPRIVED OF HIS RIGHTS TO EXERCISING MAINTAINING TO BE INNOCENCE UNTIL PROVEN GUILTY, THE COUNSEL ALLOWED APPLICANT TO BE VIOLATED EVEN AFTER THE VIOLATIONS WAS DONE IN THE INITIAL ARRESTING PROCESSES AND YET NEVER SEEKED TO HAVE THE COURT TO EVALUATE THE MATTER THAT OF WHICH CAUSE APPLICANT TO BE PREJUDICED AGAINST IN AN EXTREMELY HIGH LEVELS THAT CANNOT BE DETERMINED, COUNSEL FAILURES TO PROCURE THE RELEVANT DOCUMENTS WERE MORE DETRIMENTAL AS COMPARE TO ALLOW THE COURT TO OVERLOOK THE APPLICANT NOT BEING ENTITLED TO A YOA TYPE ADJUDICATION AS THE LAW WAS EFFECTIVE TO APPLICANT'S CASE AT THE TIME OF HIS CASE FOR TRIAL.

¶2. TRIAL COUNSEL INEFFECTIVE FOR NOT SAFEGUARDING THE APPLICANT'S CONSTITUTIONAL RIGHTS THROUGH THE TRIAL COURT WHEN IT IS DETERMINED THAT APPLICANT WAS NOT NO WHERE KNOWLEDGEABLE OF CRIMINAL LAW AND COULD NOT DETERMINE WHAT WAS THE FIST MEANING OF CRIMINAL LAWS WERE NOR COULD APPLICANT BE INFORMED AS TO HOW THE LAW IS APPLIED TO HIM WHILE HE WAS BEING TRIED, AND TO INCLUDE THE FACTS THAT HE NEVER KNEW WHAT BEING READ HIS MIRANDA RIGHTS MEANT, THE APPLICANT WAS COERCED BY THE OFFICERS BY MEANS OF VEILED THREATS AGAINST HIM WHEN HE GOES TO PRISON, AND FAILED TO KEEP THE CONSTITUTIONAL LAWS OBEYED IN MAKING CONTACTS WITH THE APPLICANT'S FAMILY MEMBERS BEFORE THEY INTERROGATED THE APPLICANT, COUNSEL NEVER SEEK TO RESEARCH THIS MATTER AND THIS CONTRIBUTED TO A UNREASONABLE REPRESENTATION BY COUNSEL, DUE TO THE FACTS THAT THE APPLICANT HAD A LIMITED UNDERSTANDING ABOUT LAW, AND IN THIS SCENARIO THE APPLICANT'S BACKGROUND, EXPERIENCE, AND CONDUCT IN THE PAST WAS NOT A QUESTION TO HAVE THIS DETERMINED, BUT INSTEAD TO HAVE THE DOCUMENTED EVIDENCE PROCURED AND PROFFERED TO THE COURT IN PRE-TRIAL HEARINGS, AND THIS WAS NOT DONE BY TRIAL COUNSEL CAUSING THE APPLICANT TO BE EXTREMELY PREJUDICED AGAINST BY THE TRIAL COUNSEL, HIS ACTION IN THIS MATTER WAS SO TOTAL WRONG AND UNEXCUSEABLE, COUNSEL PERFORMED AS HE TOTALLY FORGOTTEN ABOUT WHAT HIS DUTIES WERE CONSISTED OF WITH THE ABA STANDARDS ALWAYS AVAILABLE FOR A GUIDE TO EVERY ATTORNEY WHO PRACTICE LAW IN

THIS NATION, THE COUNSEL DEPRIVED THE COURT OF PROVIDING THE APPLICANT A BENEVOLENT AND LESS FORMAL MEANS THAN CRIMINAL PROCEEDING FOR DEALING WITH THE SPECIAL AND SENSITIVE ISSUES SUCH AS THE APPLICANT SITUATION WITH THE LEARNING DISABILITIES TO BE AWARE OF THE CRIMINAL PROCESSES THAT HE WAS EFFECTIVE BY TO HIS CRIMINAL CASE, TRIAL COUNSEL WAS INCOMPETENT FOR NOT HAVING THE TRIAL COURT TO ADDRESS THIS MATTER AND MAKE A FINDING OF FACTS TO DETERMINE WHETHER IF APPLICANT HAVE OBTAINED CONSTITUTIONAL PROTECTION AS REQUIRED THROUGH TRIAL PROCEEDINGS.

¶3. TRIAL COUNSEL INEFFECTIVE ASSISTANCE FOR NOT MOTION TO QUASH DEFECTIVE INDICTMENT BASED UPON THE CHARGES AS STATED DID NOT HAVE A BODY PRESENTED TO THE GRAND JURY, THEREFORE, VIOLATING THE STATUTE OF LAW AS: §17-19-10 (2003); per se to: S.C. CONST. Art. I, §11,(AND APPLICANT SPECIFICALLY STATES AS THE LAW STATES: NO PERSON MAY BE HELD TO ANSWER FOR ANY CRIME UNLESS ON PRESENTMENT OR INDICTMENT OF A GRAND JURY OF THE COUNTY WHERE THE CRIME HAS BEEN COMMITTED...) and (NO PERSON SHALL BE HELD TO ANSWER IN ANY COURT FOR AN ALLEGED CRIME OR OFFENSE, UNLESS UPON INDICTMENT BY A GRAND JURY..."), THE APPLICANT WAS DENIED EFFECTIVE ASSISTANCE WHEN THE TRIAL COUNSEL FAILED TO MOTION TO QUASH THE DEFECTIVE INDICTMENT BASED UPON WHERE THE DEFECTIVE INDICTMENT DID NOT AND FAILED TO SET FORTH ESSENTIAL ELEMENTS OF THE OFFENSE OF POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE AND LYNCHING 1st DEGREE, THE TRIAL COUNSEL FAILED TO EXAMINED THE DEFECTIVE INDICTMENT AND SEE THE INSUFFICIENCIES AND THEREFORE MAKING THE APPLICANT BE DEPRIVED OF A FUNDAMENTAL RIGHT TO HAVE EXERCISED TO THE COURT IN QUASHING THE DEFECTIVE INDICTMENT, THE INDICTMENT DID NOT STATE ANY ELEMENTS OF THE MENTIONED TWO CHARGES AND NOR DID THE INDICTMENT STATED WITH SUFFICIENT CERTAINTY AND PARTICULARITY TO ENABLE THE COURT TO KNOW WHAT JUDGEMENT TO PRONOUNCE, AND THE APPLICANT TO KNOW WHAT HE IS CALLED UPON TO ANSWER AND WHETHER HE MAY PLEAD AN ACQUITTAL OR CONVICTION THEREON, NOR DID IT APPRAISED THE APPLICANT OF THE ELEMENTS OF THE CRIME CHARGED, §17-19-20, IT IS SHOWN THROUGH A PRACTICAL EYE IN VIEW OF ALL SURROUNDING CIRCUMSTANCES THAT THE TWO CHARGES ARE NOT PLACED BEFORE THE GRAND JURY BY THE PRESENTING INDICTMENT PROCEDURES IN THE PROCESSES, THEREFORE THE COURT DIED NOT HAVE JURISDICTION TO THE CHARGES NOT PRESENTED TO THE GRAND JURY AS SHOWN BY THE LAWS ESTABLISHED BY CONSTITUTION, COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO PLACE OBJECTIONS TO THE DEFECTIVE INDICTMENT BEFORE THE FIRST JUROR WAS SWORN TO EVEN HAVE IT PRESERVED FOR AN APPELLATE REVIEW, AND THIS CAUSED A RIGHT TO WAIVE INVOLUNTARILY BY THE APPLICANT DUE TO THE TRIAL COUNSEL INCOMPETENCY, IT IS WELL SETTLED LAW THAT WHEN AN INDICTMENT DOES NOT ALLEGES ESSENTIAL ELEMENTS OF CRIME CHARGED, TRIAL COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE POSS. OF PISTOL BY PERSON UNDER THE AGE OF 18 YEARS OLD AND LYNCHING (1st DEGREE) HAS NO BODY BEING TRUE BILLED BY THE GRAND JURY PURSUANT TO SC CODE ANN. §14-7-1560, etc.

¶4. TRIAL COUNSEL INEFFECTIVE ASSISTANCE FOR NOT FILING A MOTION TO SEVERANCE APPLICANT'S TRIAL FROM THE CO-DEFENDANT, TRIAL COUNSEL OVERLOOKED THE FACTS THAT THE APPLICANT GAVE STATEMENTS AND IN THE NATURE OF THE STATEMENTS THEY IMPLICATED THE CO-DEFENDANT THEREBY MAKING THE APPLICANT A HOSTILE COMPONENT TO THE CO-DEFENDANT'S TRIAL DEFENSE, IT IS ALSO SHOWN THAT THERE BEEN EVIDENCE PRESENTED AT THE TRIAL THAT SHOULD NOT HAVE BEEN WHEREAS, THE EVIDENCE SHOULD HAVE NOT BEEN CONSIDERED AGAINST THE APPLICANT DURING TRIAL AND AGAINST THE CO-DEFENDANT, THAT IS MEANING THAT THERE WERE EVIDENCE THAT WAS OF PROBATIVE TO THE APPLICANT'S GUILT BUT TECHNICALLY

ADMISSIBLE ONLY AGAINST THE CO-DEFENDANT, AND AS IT WAS CLEARLY ESTABLISHED THERE BEEN EXCULPATORY EVIDENCE THAT WAS AVAILABLE TO THE APPLICANT IF HE WAS TRIED ALONG AND WOULD NOT HAVE BEEN AVAILABLE IF TRIED AS WAS JOINTLY, AS APPLICANT STATES HIS POSITIONS TO SHOW COUNSEL INEFFECTIVE ASSISTANCE FOR NOT REQUESTING FOR SEPARATE TRIALS, THE APPLICANT SHOWS THAT HE WAS EXTREMELY PREJUDICED AGAINST WHEN THE COUNSEL DID NOT MOTION FOR THE TRIALS TO BE SEPARATE, THE APPLICANT WOULD HAVE ESTABLISHED NOT BEING GUILTY OF ATTEMPTED ARMED ROBBERY FOR SEVERAL REASONS THAT APPLICANT COULD HAVE MADE A THEORY TO BE PRESENTED TO THE JURY, AND HERE IN THIS POSITION APPLICANT MEETS THE BURDEN AS DEMONSTRATING CLEAR AND SUBSTANTIAL PREJUDICE WHEN THE TRIAL COUNSEL DID NOT MOTION FOR SEVERANCE, DUE TO THE EXISTING HOSTILE COMPONENT ELEMENTS BETWEEN THE APPLICANT AND THE CO-DEFENDANT DEFENSES.

¶5. TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO COMPEL THE OFFICERS TO TAKE A LIE DETECTORS TEST IN FINDING THE FACT THAT RATHER THEY HAD USED ILLEGAL TACTICS TO INTERROGATE THE APPLICANT, THE COUNSEL FAILED TO HAVE THE COURT TO EVALUATE THE ISSUE BY A FACT FINDING PROCESS AS IT WAS UPON THE COURT TO DO SO UNDER THE MIRANDA RIGHTS MANDATES, AS THIS WAS NOT THE LEGAL MANDATES FOR THE COURT TO EVALUATE THE CLAIMS BY DUE TO THE FACTS THAT U.S. CONST. 14th AMEND COMPELS BY VIRTUE THE BILL OF RIGHTS UPON ALL STATES TO AFFORD TO THE DEFENDANT A FAIR TRIAL AND A RIGHT TO AN ATTORNEY IF HE CANNOT AFFORD ONE, SO THAT HIS RIGHTS ARE NOT VIOLATED AS IN THE APPLICANT'S CASE MATTER THE ADMISSION WHERE ELICITED FROM ACCUSED IN THE ABSENCE OF COUNSEL WHILE USING ILLEGAL TACTICS AND THREATS GIVEN ABOUT APPLICANT BECOMING A POTENTIAL VICTIM ONCE PLACED INTO THE CUSTODY OF THE SC DEPT. OF CORRECTIONS, COUNSEL INEFFECTIVE ASSISTANCE WHEN COUNSEL KNEW THAT THE RIGHT TO A CUSTODIAN COMPONENT TO BE PRESENCE AS IN THE APPLICANT'S CASE MATTER BECAUSE APPLICANT WAS MINOR/DELINQUENT DURING BEING QUESTIONED BY THE DETECTIVES WAS NOT HONORED AND NOR WAS THE APPLICANT PROTECTED FROM THE MENTAL ABUSE THAT THE DETECTIVES COMMENCED UPON APPLICANT WHEN THEY INTERROGATED HIM, AND TO INCLUDE THE TRIAL COUNSEL NOT COMPELLING THE OFFICERS TO HELD ACCOUNTABLE FOR THEIR BREAKING THE CONSTITUTIONAL LAWS THEY ARE BY OATH TO UNHOLD AT ALL GIVEN TIME, THE COUNSEL WAS INCOMPETENT WHEN HE DID NOT HAVE THIS ISSUE PRETRIAL AND HAVE THE COURT TO SCRUTINIZE THE DETECTIVE'S ACTIONS FROM THE ACCOUNTS THAT THE APPLICANT REVEALED TO THE TRIAL COUNSEL. THE PCR COURT IS BY VIRTUE TO PLACE THE CURRENT LAW MANDATES TO THE APPLICANT'S ISSUE SUBMITTED BASED UPON THE WELL SETTLED LAW OF THE SC SUPREME COURT AS IN SEE: STATE V. FRANKLIN, 299 S.C. 133, 382 S.E.2d 911 (1989); STATE V. ROCHESTER, 301 S.C. 196, 391 (1990), SEE THAT THE DETECTIVES USED ILLEGAL TACTICS, COERCIONS, AND THREATS TO GET HIM TO GIVE ADMISSIONS TO CRIMES AND THE ATTORNEY ALLOWED FOR THE MATTER TO BE INVOLUNTARY WAIVED OF A COURT REVIEWS.

¶6. APPELLATE COUNSEL INEFFECTIVE FOR NOT BRIEFING ALL PROPERLY PRESERVED ISSUES IN THE TRIAL RECORD AND PREVENTED THE APPLICANT FROM A REVIEW FROM THE APPELLATE COURT, THE APPELLATE COUNSEL FAILED TO BRIEF THE ISSUES AS THEY ARE OBJECTED TO BY THE TRIAL COUNSEL AND THIS DID CAUSED THE APPLICANT TO BE DEPRIVED OF A ERROR OF LAW REVIEWS AND THIS IS A VERY EXTREME PREJUDICE AGAINST THE APPLICANT, THE APPLICANT PROFFERS CORRESPONDENCE TO THE COURT THAT HE DID SEND TO THE APPELLATE COUNSEL AFTER THE COUNSEL SENT TO APPLICANT A PRESENTATION LETTER THAT INDICATED TO APPLICANT THAT HE HAD NO CHOICE INTO THE MATTER OF ISSUE BEING SUBMITTED TO THE APPEAL COURT, AND IN THIS ITSELF INDICATED THAT THE COUNSEL WAS NOT GOING TO COMPLY TO THE

RULES OF COURT AS IN HAVING ALL ISSUES PRESENTED TO THE COURT ONCE THEY ARE BRIEFED BY THE STANDING LAWS TO SHOW ERRORS AS THE TRIAL COUNSEL HAD THEM PRESERVED BY AFTER MAKING HIS OBJECTIONS TO THE TRIAL RECORDS, AS TO THE FOLLOWING ISSUES OBJECTED TO BY THE TRIAL COUNSEL, AND IN THE RESPONSES FROM THE TRIAL JUDGE HE DID RULED AGAINST THE APPLICANT IN ALL MENTIONED OBJECTIONS BY THE TRIAL TRANSCRIPT PAGES AND LINES: SEE AT: PG. 16 TO 37,(PG. 22, Ls. 22-25), PG. 47-96, PG. 188, 18-21, PG. 189, Ls 1-11, PG. 214, Ls 12-16, PG. 223, Ls. 18-21, PG. 225, Ls. 1-8, PG. 290, Ls. 5-8, PG. 305, Ls. 18-24, PG. 312, Ls 1-15, PG. 329, Ls. 22-25, PG. 342, Ls. 1-3, PG. 344, Ls. 13-16, PG. 348, Ls. 24-25, PG. 349, Ls. 1-6, PG. 351, Ls. 19-22, PG. 352 Ls. 20-24, IN THE INSTANCE OF THE APPLICANT'S APPEAL ISSUE THE APPLICANT'S APPELLATE COUNSEL SHOULD HAVE RAISED THE PROPERLY PRESERVED ISSUES AS SHOWN IN THE TRIAL RECORD AND HIS FAILURES TO DO SO WAS ERROR AND PREJUDICED APPLICANT BY DEPRIVING HIM OF EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AS GUARANTEED BY THE STATE OF SOUTH CAROLINA LAW AND THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION, IT IS ALSO ESTABLISHED THAT LAW SUPPORTING GRANTING RELIEF IN THIS CASE MATTER PERTAINING TO THE APPEAL ISSUES IS EVENMORE APPROPRIATE WHEN CONSIDERING THEIR ACCUMULATIVE, AND DETRIMENTAL EFFECTS THAT CREATES A PROBABILITY SUFFICIENT TO UNDERMINE THE COURTS CONFIDENCE IN THE OUTCOME OF THE TRIAL. THE APPLICANT RELIES ON THE LAW AUTHORITIES OF SEE: EVITT V. LUCEY, 469 U.S. 387 (1985), IT IS WELL SETTLED THAT APPLICANT IS ENTITLED TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON FIRST APPEAL FROM CONVICTION.

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
Teron Hakeen Jackson, #334394, Applicant, v. State of South Carolina, Respondent.	2012-CP-43-1958 **RETURN**

In response to the post-conviction relief application filed October 2, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was true bill indicted at the February 2009 term of the Sumter County Grand Jury under a six count indictment (2007-GS-43-0816) for Murder, two counts of Attempted Armed Robbery while Armed with Handgun, Possession of a Firearm During Commission of a Crime of Violence, Possession of Pistol by One Less Than 18 years of Age, and Lynching (1st Degree). Applicant was represented by Timothy Murphy, Esquire. On April 15-22, 2009, the Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. On April 22, 2009, the Applicant was found guilty of Murder, Attempted Armed Robbery, Possession of a Firearm During Commission of a Crime of Violence, and Possession of Pistol by One Less Than 18 years of Age. Judge Cothran sentenced the Applicant to thirty-seven years confinement for murder, twenty years confinement for Attempted Armed Robbery, five years confinement for Possession

of a Firearm During Commission of a Crime of Violence and five years confinement for Possession of Pistol by One Less Than 18 years of Age; with the sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Teron Hakeen Jackson, Op. No. 2011-UP-430 (S.C. Ct. App. filed October 3, 2011). The Remittitur was sent October 19, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of trial counsel;
   a. "Failed to conduct an independent investigation of his own to determine if there were any documented record evidence proffering that the applicant had a learning disability for his schools, etc., research the records of the police department showing that officers made attempts to contact applicant's family members before the police interrogated applicant, reexamine the reports and SLED report results by an independent resources to determined that the evidence was without flawed findings."
   b. "Failed to investigate the circumstances of the crime charged to make a determination of what participation did the applicant had in it so that there could have been a competent trial strategy planned for applicant's trial."
   c. "Failed to have the court to evaluate the applicant minor status so it could have been determined rather if applicant fully understood his rights to a trial and his constitutional rights by it basic meaning."
   d. "Failed to pre-trial the defective indictment where it showing the charges presented to the grand jury was without a body and therefore making it a subject matter jurisdiction issue."

e. "...when he did not moved to quash the indictment with the crime charged as possession of pistol by one less than 18 years old, and lynching (1st degree)."
f. "Failed to have applicant's trial separate from his co-defendant, due to the facts that applicant statements played a hostile component to co-defendant's defense."
g. "Failed to have the detectives take a lie detector tests in finding rather the detective used illegal tactics in interrogation of the applicant."
h. "Failed to conduct a full investigation to case in regards to the applicant's mental capacity and limited abilities to understand his constitutional rights as he had waived them when he gave multiple statements."
i. "Failed to place scrutiny under the facts that the applicant was in the police custody and while being questioning by the investigations applicant was threatened and psychologically fearing §44-23-410, etc."
j. "Failed to have independent tests done to the forensic reports as in determining what gun actually killed the decedent."
k. "Failed to motion for trial severance based upon the facts that the applicant made statements that placed him in a hostile position to his co-defendant defense."
l. "Failed to confer with applicant and advise him of a trial strategy and help plan his defense to present evidence in his favor to the jury."
m. "Failed to quash the indictments that was true billed by the grand jury as there were only three (3) charges submitted, and the possession of pistol by one less than 18 years of age was never submitted by law statutes, etc."

2. Ineffective assistance of appellate counsel; and
   a. "Failed to brief all properly preserved issues that the trial counsel placed objections to on the trial record as indicated."
3. Due process and equal protection rights violations.

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State 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.

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, 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. 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 plea 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.

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

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issues of ineffective assistance of trial and appellate counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

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

By: Megan E. Harrigan
Attorneys for the Respondents

March 22, 2013.

STATE OF SOUTH CAROLINA COUNTY OF SUMTER TERON HAKEEN JACKSON, 334394, Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2012-CP-43-1958 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

John Evans James III, Esquire
Post Office Drawer 329
Winnsboro, SC 29180

DATED this 22nd day of March, 2013.

Lauren Meara

Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER 2014 FEB 21 AM 10:56)

Teron Hakeen Jackson, 334394) CASE NO.: 2012-CP-43-1958

Applicant)

v.) ORDER SUBSTITUTING COUNSEL

STATE OF SOUTH CAROLINA)

RESPONDENT.)

IT APPEARING to this Court that JOHN E. JAMES, III, ESQUIRE, was appointed to represent this matter for the Petitioner, TERON HAKEEN JACKSON, it is hereby:

ORDERED, ADJUDGED AND DECREED, that CHARLES T. BROOKS, III, Esquire, be and is hereby substituted as appointed counsel of record in the above captioned for the Applicant as of the 4th day of February, 2014, JOHN E. JAMES, III, ESQUIRE, is hereby relieved of all duties of representation of the above-captioned for the Applicant.

AND IT IS SO ORDERED!

We Consent:

JOHN E. JAMES, III, ESQUIRE

CHARLES T. BROOKS, III, Esquire

CIRCUIT COURT JUDGE

Sumter, SC 2/18, 2014

STATE OF SOUTH CAROLINA)	IN THE COMMON PLEAS COURT
)	
COUNTY OF SUMTER)	
)	DOCKET NO.: 2012-CP-43-1958
TERON JACKSON, 334394)	
)	
Applicant,)	AMENDMENT TO POST
)	CONVICTION RELIEF APPLICATION
-v-)	
)	
STATE OF SOUTH CAROLINA)	
Respondent,)	
)	

The Applicant, through undersigned Counsel, wishes Amend his Post Conviction Relief Application filed October 2, 2013 as follows:

The analysis of the elements of the crime charged in the indictment may indicate a double jeopardy problem.

Such problems arise in two types of situations.

First, the Defendant may be charged with the same crime in two different counts of the indictment. This problem is called "multiplicity".

Second, the Defendant may have previously been prosecuted (placed in jeopardy) for the same offense.

Double jeopardy is prohibited by the Fifth Amendment to the US. Constitution and by Article 1 Section 12 of the S. C. Constitution.

RESPECTFULLY SUBMITTED ON BEHALF OF APPLICANT, Teron Jackson

Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Sumter, South Carolina, 29150
803-418-5708

July 23, 2014

State of South Carolina)
)
County of Sumter)
)

Teron Jackson,
Plaintiff

vs.

The State of South Carolina,
Defendants

2012-CP-43-1958
PCR Hearing

April 14, 2015
Sumter, S.C.

BEFORE THE HONORABLE George C. James, Jr., Judge.

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

Mr. Charles T. Brooks,
Attorney for Plaintiff

Mr. Daniel F. Gourley,
Attorney for Defendants

Margaret T. Sullivan,
Court Reporter

MR. GOURLEY: Judge, we are going to do Teron Jackson next.

THE COURT: This is Teron Akeem Jackson versus The State of South Carolina. I have an amended application. I have actually two of those. And I have some transcripts and some briefs. Are you ready to go, Mr. Brooks?

MR. BROOKS: Yes, sir.

THE COURT: You want to tell me a little bit about it, or do you want to just call your first witness?

MR. BROOKS: I'll go ahead and call him to the stand, Judge. Teron Jackson.

THE COURT: Come on up, Mr. Jackson, right over here.

Teron Jackson, being first duly sworn, testifies as follows:

Direct Examination by Mr. Brooks:

Q. Mr. Jackson, how are you today?

A. I am all right.

Q. I want you to take a deep breath. I know you don't do this all the time, right?

A. Yes, sir.

Q. And this lady seated right here is the Court Reporter. So it's going to be important for

you to speak up clearly and distinctly, because she has to take it down. You can't just, you know, talk in court like you talk back there, where you can just nod your head and say, uh-uh and uh-uh. You understand?

A. Yes, sir.

Q. How old are you, Teron?

A. 25.

Q. And how far did you go in school?

A. To the 10th grade.

Q. Now you were convicted and given a sentence of 37 years, is that correct?

A. Yes, sir.

Q. And---

THE COURT: Convicted of what?

Q. Convicted of murder?

A. Yes, sir.

Q. And you had a co-defendant, correct?

A. Yes, sir.

Q. And Tim Murphy was appointed to represent you.

A. Yes, sir.

Q. Now you brought this application for post-conviction relief, correct?

A. Yes, sir.

Q. You understand that the only thing that Judge James has the power to do is to decide whether to grant you a new trial. Is that correct?

A. Yes, sir.

Q. In effect, start over, right?

A. Yes, sir.

Q. And you and I talked about this. Even though you got 37 years, judge -- it could, the situation could be worse. You understand that?

A. Yes, sir.

Q. And you understand there is a risk that you run by going forward, is that correct?

A. Yes, sir.

Q. And it's still your desire go forward and get a new trial, is that right?

A. Yes, sir.

Q. Now you brought this claim for ineffective assistance of counsel on Mr. Murphy, right?

A. Yes, sir.

Q. Well one of the things you talked about in your application was that his failure to ask for a limiting instruction on the jury use of co-defendant's confession. Your co-defendant in this case had confessed to the crime, is that right?

A. Yes, sir.

Q. And you felt that your lawyer should have asked for a limiting instruction, a limiting instruction from the judge to the jury about that, is that right?

A. Yes, sir.

Q. Do you think that would have made a difference in your case?

A. Yes, I think it would.

Q. Do you know why, or do want to tell the court why you think it would have made a difference in your case?

A. I think it would have made a difference in my case, as far my co-defendants confession was redacted to me, and to the use of my name as the other person. And I'm thinking the other person didn't hide the fact that he was talking about me, and we was in a joint trial. His confession was admitted with the other person so....

THE COURT: So instead of your name, it was read the other person?

A. Yes, sir.

Q. And that brings me to one of the other issues. You felt that you should have had a separate trial, is that right?

A. Yes, sir.

Q. Now did Mr. Murphy ever bring any action or bring a motion that asked for the trials to be separate?

A. Yes, he did.

Q. So he did that.

A. Yes, sir.

Q. The judge just didn't go along with it.

A. Yes, sir.

Q. And one of the things you raised is you said that Mr. Murphy did not call a key witness. Who is that key witness you think he should have called?

A. Tony Wilson.

Q. And who is that in relationship to your case?

A. I would say she was a victim.

Q. She was the victim?

A. Yeah, she was a victim in an attempted armed robbery, but she didn't testify. And I was acquitted of that charge on her.

Q. Okay.

A. And she was the victim of. But as the the jury was deliberating, they deliberated for such time and they came back out and asked -- they asked the judge why didn't she testify.

Q. So that made you think that---

THE COURT: How about explain. Somebody needs to explain. Was that a separate case, was this case tried together? Because I don't want to have to go back and dig myself for context.

Q. Can you give the judge a little bit more background as to Wilson lady, the victim? What's her relationship? Explain now what happened.

A. She was in the car with the victim.

Q. Now for those of us who don't know, who wasn't as your trial, what were you accused of doing?

A. I was accused of murdering Dominique Wimberly.

Q. And Ms. Wilson was in the car with him?

A. Yes, sir.

Q. And you were accused along with your co-defendant of killing Dominique Wimberly.

A. Yes, sir.

Q. And what was the allegation that you did, as far as committing murder on him? Did you all bust in his house?

A. Armed robbery.

Q. He was in the car.

A. Yes, sir.

Q. Can you tell the judge what happened.

A. As far as---

Q. What did they -- what did the police say you did?

A. The police said that we was trying to rob Mr. Wimberly, and we shot and killed him. Robbed Ms. Wilson also.

Q. And she was in the car as well.

A. Yes, sir.

Q. And Ms. Wilson did not testify.

A. No, she didn't.

Q. And you felt that Mr. Murphy should have called her to the stand.

A. Yes, sir.

Q. And if he had done that, how do you think that would have helped your case?

A. I feel it would have helped my case as far as the jury, once they deliberated, they came back out and they asked why she didn't testify. So I felt like, they wanted to know what she had to say. That could have changed their outlook on the other evidence they had. That could have made them look different on something else.

Q. Okay.

A. They didn't, because they don't know what

she said in her statement. So it's evidence that they never got to hear. And most likely they want to hear it, because they wanted to know why she didn't testify.

Q. Now you also raised the issue about your trial counsel failing to object to a burden shifting instruction on malice.

A. Yes sir.

Q. Can you explain that to the court?

A. I can explain it as far as the malice. I feel like -- I feel like my lawyer should have asked for a manslaughter plea.

Q. Are you saying that your lawyer should have asked for a lesser included offense of voluntary manslaughter?

A. Yes, sir.

Q. Did he do that in this case?

A. No, sir.

Q. He didn't ask for it all?

A. No, sir.

Q. So you were tried for murder and armed robbery.

A. Yes, sir.

Q. And it wasn't murder or voluntary manslaughter.

A. No, sir.

THE COURT: Is that a separate ground Mr. Brooks, or is this a part of failing to object to a burden shifting instruction? Because I don't see any to commonality between the two.

MR. BROOKS: Judge, I would ask for some latitude. I'm trying to sift through my client's issues. But I think for purposes of narrowing it, that would be the issue.

THE COURT: All right.

Q. Now one of the things that you initially raised, you said your trial counsel failed to conduct an independent investigation.

A. Yes, sir.

Q. Is it something about your educational background and things of that sort?

A. Yes, sir.

Q. Can you explain that to the court?

A. Okay. My trial counsel, he was ineffective because he didn't actually do an investigation as far as my education concerning my statements with my confession. The judge asked the jury to require the defendant's IQ, his educational level, as far as, if they're going to read it -- well go about with the statements. He didn't

present no document. He didn't do no investigation as far as my education, to know that I was in the special education classes. And he did no background as far as my educational level from any of my old schools.

Q. Do you think that would have made a difference in your case?

A. Yeah, I think It would have.

Q. And those are the types of things that would have gone to your -- the issue of mental capacity?

A. Yes, sir.

Q. Now you also mentioned something about his failure to look at tests done in regards to forensic reports on the gun?

A. Yes, sir.

Q. Can you explain that to the court?

A. The expert testified saying that the bullets they retrieved out of the victim, didn't match the certain gun they were saying was the murder weapon.

Q. Okay.

A. It was inconclusive.

Q. Inconclusive.

A. Inconclusive results.

Q. Are you saying that's something that Mr. Murphy should have got an expert of his own?

A. Yes, sir.

Q. And do you think that would have helped you in your case?

A. I think it would have.

Q. You also mentioned something about Mr. Murphy failed to confer with you in regards to trial strategy?

A. Yes, sir.

Q. Can you explain what you mean by that?

A. Really I didn't know what I was going into as far as, I didn't know what was the strategy. He never sat down with me and let me know as far as, all right, this is what we're going to do, this is how we're going to take this. All I know is that I was going to trial.

Q. Were you in jail the full time before going to trial?

A. Yes, sir.

Q. Do you recall how many times you met with Mr. Murphy?

A. Maybe one or two times. He wasn't -- he was appointed to me. I originally had Ms. Lauren Stevens, and she got off my case. So when I got

Mr. Murphy, I was already locked up for almost a year, I'm assuming.

Q. Now you also raised the issue in regards to appellate counsel.

A. Yes, sir.

Q. Okay. And you said something about failed to brief all the properly preserved issues that trial counsel placed on objection.

A. Yes, sir.

Q. Do you have any specific issues in regards to your appellate counsel, what they didn't do? Or are you just saying they just didn't...

A. They just didn't brief all preserved issues.

THE COURT: Such as? I am not going to guess. I need to know.

Q. Well, Judge, he's not being specific in saying he didn't raise this issue. He's just saying that---

THE COURT: Somebody is going to have to, because I can't pluck the issues out myself.

MR. BROOKS: I understand, Judge. I understand.

Q. Is there anything specific that you're saying that appellate counsel didn't raise that they

should have?

A. He should have raised the admission of my co-defendant's confession?

Q. Do what?

A. He should have raised the admissions of my co-defendant's confession.

Q. And it's use against you?

A. Yeah, it's use against me as far as being redacted.

Q. Anything else about appellate counsel, what they should do, specifically?

A. That's it.

Q. You also raised the issue about Mr. Murphy not moving to quash the indictment.

A. Yeah, it was an indictment of first degree murder and first degree lynching.

Q. And what are you saying Mr. Murphy should have done?

A. I feel he should have -- excuse me, I feel he should have asked, because first degree lynching and first degree murder, I feel bring in the same bracket. And I feel like I was being charged with lynching a person and murdering a person, when it's two different charges. So I felt like he should have asked to get one of the indictments quashed,

the murder, the first degree murder, or the first degree lynching.

Q. One other issue you raised is that you wanted Mr. Murphy to ask to compel the officers to take a lie detector test.

A. Yes, sir.

Q. Do you recall that in your application?

A. Sir?

Q. Do you recall putting that in your application?

A. Yes, sir.

Q. Can you explain why you wanted that?

A. I wanted it because of my interviews. I did two interviews and the tape was off and on. There was many threats and many -- a lot of harassments going on with detectives in my interrogation. So I wanted to get them to take a lie detector test, because at pretrial, they said that they did no harassment and they did no treats.

Q. So now just so we get a background to the court, you did give a confession, is that correct?

A. Yes, sir.

Q. Now you're saying that you were -- the police officers used some harsh tactics in order to get that out of you?

A. Yes, sir.

Q. And you're saying that Mr. Murphy should have asked to in essence interrogate the officers about the interrogation.

A. Yes, sir.

Q. And that's where you're talking about them asking them to take a lie detector test?

A. Yes, sir.

Q. Teron, is there anything that we haven't covered?

A. That's it.

Q. I just want to make sure we covered all your issues. Let the court know what all your issues are. Are you sure we covered everything?

A. That's it.

Q. Anything I missed out?

A. Nah, you missed nothing.

MR. BROOKS: I want you to answer any questions the attorney general has, okay.

THE COURT: Mr. Gourley.

MR. GOURLEY: Thank you, Your Honor. May it please the court.

THE COURT: Yes, sir.

Cross Examination by Mr. Gourley:

Q. Mr. Jackson, do you recall how many times

you met with Mr. Murphy?

A. Not many. Probably, I would say 2 or 3.

Q. Two or three times. And during these meetings, did you all look at the any of the evidence or anything like that?

A. It was just basically he dropped the paper off to me, like my Rule 5.

Q. Mr. Murphy provided you with Rule 5 material?

A. Yes, sir.

Q. Did you all ever get in any kind of discussion about it?

A. No, it was basically a hand off.

Q. So did you all ever discuss about any defenses or anything like that?

A. No, sir.

Q. Now you were just talking about your statement, and you wanted your counsel to get the police to give you a lie detector's test. So you're basically saying that you felt your statement was involuntarily given?

A. Yes, sir.

Q. Do you recall your counsel going on cross examination and bringing out those threats that the officers made to you?

A. Yes, sir.

Mr. GOURLEY: I beg the Court's indulgence, Your Honor.

Q. And just to be clear, Mr. Jackson, you did confess to the crime, correct?

A. I was coerced to.

MR. GOURLEY: That's all I have. Thank you, Mr. Jackson.

THE COURT: Any redirect?

MR. BROOKS: No, sir.

THE COURT: You can step down. Thank you, sir. Your Next witness.

MR. BROOKS: I'd call Mr. Tim Murphy.

Timothy Murphy, being first duly sworn, testified as follows.

Direct Examination by Mr. Brooks:

Q. Mr. Murphy.

A. Mr. Brooks.

Q. How are you?

A. I'm doing good, how are you.

Q. Now you handled this case in your capacity as a public defender?

A. Yes, sir.

Q. Can you kind of give a brief summary of what the State's case was against Mr. Jackson?

A. The facts were generally that Mr. Wimberly, the decedent, was driving his girlfriend home one evening; that my client and the co-defendant saw them pull in. And believed that Mr. Wimberly had money on him, because the word on the street was, Mr. Wimberly was a drug dealer. I want to say, that wasn't true based on my independent discussions with police officers and things like that. But they believed that.

Q. They being your client?

A. My client and his co-defendant. They decided to rob him. So they went back to I believe my co -- the co-defendant's home; put on the dark clothing. Got weapons and came and returned to the scene. The evidence was that my client approached the vehicle. They both approached the vehicle from behind. My client from one side, and his co-defendant from another. I believe my client was on the driver -- the passenger's side. Both pulled out weapons. Said, give it up. The victim Mr. Wimberly, grabbed the co-defendant's weapon during -- and shot the co-defendant in self defense.

And at that point, my client, it was like simultaneously. The girlfriend left the vehicle and ran. And my client shot Mr. Wimberly. And then my

client took off. The co-defendant also took off, but he had been shot. The victim who had been shot by my client, got out of the vehicle and stumbled up the stairs to the apartment, his girlfriend's apartment, and died there. And while before the ambulance could get there. I think he died on the way to the hospital.

The evidence consisted of my client's statement, the co-defendant's statement. Obviously the physical evidence at the scene. The fact that the co-defendant was shot. There were a couple of witnesses who, and I don't know if they were called or not. I really don't recall. But apparently it was either my client or somebody else made some comments about Wimberly when he first pulled in. Because they were in group of people. And something to the effect of, we're going to have to go take care of him or something like that.

And they found the gun in the clothing. My client lead them to the gun and the clothing after the fact. So they had that. But I think that was about it. I mean that was enough.

THE COURT: Do you know which gun he lead them to?

A. His own.

Q. Did you do any investigation about Mr. Jackson's background?

A. Yes, I talked to his grandmother. But his -- he lived with his grandmother. Obviously I had a number of conversations with Mr. Jackson. I met with him 8 total times, not 2 or 3 as he recalled. And a couple of our initial conversations were extensive about, you know, why he did what he did. All those kind of things. There was never an issue about from a substantive point of view, about his confession. He was concerned that he felt coerced. So I talked to his grandmother about, you know, his educational background, had he ever been to mental health. I didn't have any concerns about his competency. He understood every conversation we had. She said that he had to take some special ed. classes. To be frank with you, that's not uncommon with my clients. He understood our conversations. He was engaging. I mean I was -- he understood what I was telling him.

We talked about, I prepared him for the Jackson v. Denno hearing, as far as, the his testimony. I listened to the tape recording of the confession that was provided to me during discovery. It was generally consistent with what he told me. I

mean they were -- now by generally I mean there were what I would say was some harsh questioning, some pointed questioning. I didn't see any particular threats that were, and I believe the Detective Holston was the primary interviewer. He denied my questions regarding particular threats.

What happened was, Mr. Jackson gave a statement, a general statement. And I can't really remember the content of it. They talked to the co-defendant. Came back to Mr. Jackson and in his second statement he confessed. And the second statement was the tape recording that I heard. And it itself was, you know, they were pushing him. There's no question about that. And the judge heard it. I don't, you know, I mean, we weighed out all the facts. Every fact that Mr. Jackson told me about what he alleged they have done. We asked the detective, and Mr. Jackson testified to at the hearing. So I laid all that out. And I believe that was the issue on appeal was the voluntariness of the confession.

Q. To your knowledge, that's what was raised on appeal?

A. Yes, sir. From reading the briefs.

Q. Now did you have any type of independent

test done to the gun?

A. No.

Q. That the police found?

A. No. A finding of inconclusive as to the murder weapon being a positive finding for the defense, not a negative finding. So I don't know why I would seek to improve that result. That's a good result.

Q. You did ask to have the trials separated?

A. Yes, sir.

Q. Severed? Did you explain to Mr. Jackson what your strategy was going to be as a part of this case?

A. Yes, sir.

Q. What did you tell him specifically?

A. Well I said first of all, we needed to try to see if we could suppress the confession. I told him that if the confession came in, that the chances for an acquittal were probably 0. And that at that point it would be a question of seeing if we could fashion through -- fashion a lesser charge. You know, what he told me was that, because we did specifically talk about self defense. He told me he shot Mr. Wimberly because Mr. Wimberly shot his co-defendant. And I advised him that wasn't self

defense, because they were there to rob him; that Mr. Wimberly was acting in self defense, but, you know, Mr. Jackson wasn't.

And so we did talk about that in detail. And then I said well, you know, maybe we can, we'll try to make an argument that there was a provocation that things were easily provoked. And try to shoot for a lesser offense. Because I did a lot of research on the efficacy of that type of argument. Some states kind of allow it. The vast majority don't. But I, you know, I can make -- I try to make a viable argument. So we talked about that. I asked him given his youth, if he would be interested in some sort of plea offer. I asked him a couple of times. He indicated no. There was never a firm plea offer on the table. Mr. Conner basically said well look if your client is interested in a plea, let me know. And he never let me know. So those discussions really didn't go too far.

Q. So are you saying that you tried to get the lesser included offense?

A. Yeah, and in regard to his testimony, I looked it up on page 418 and 419 of the transcript. I raised with Mr. Sullivan a request for involuntary manslaughter, or I'm sorry, for voluntary

manslaughter. And what I argued was in regard to provocation that the issue of legal provocation should be viewed in isolation for the reason they were there. I mean obviously they were there to rob somebody. So if you try to excise the shooting out of that, it constitutes reasonable provocation.

I also wrote -- I also argued that the failure of South Carolina to provide an imperfect self defense theory, sifts the burden to the defense and violates the due process clause of the United States Constitution. And that was based primarily on the fact that some states do allow an imperfect self defense theory. So I thought I would raise that and get it on the record. You know, unsurprisingly the judge denied it. Those requests, but I did make those requests. So I did ask for a voluntary manslaughter. It's in the record. And I did ask for a -- I did make an objection on the due process grounds that the burden had been shifted to the defense, and both of those were denied.

Q. Now the girlfriend in the case that was in the car, you didn't seek to call her as a witness.

A. No.

Q. You didn't try to quash the indictment in any sense.

A. There was no basis to try to quash the indictment, in my judgment. As far as the girlfriend goes, if I recall correctly, you know, it's been a while. This is what, 8 years ago. If I recall correctly, Mr. Conner originally was going to call her, and she was just so distraught that he decided not to call her.

And she would have provided 0 helpful evidence quite frankly. She couldn't iden -- well you know, she couldn't have identified my client. But she would have provided 0. I mean having a victim come in testify as to how her boyfriend got gunned down in a parking lot by two guys in a robbery, wasn't going help my case. And so no, I didn't call her.

MR. BROOKS: I beg the court's indulgence, Your Honor. No other questions, Judge.

THE COURT: Mr. Gourley.

MR. GOURLEY: Your Honor, I don't have any questions.

THE COURT: Is anybody going to ask about the Bruton issue?

MR. BROOKS: I will, Judge.

THE COURT: I think we might as well hear it.

MR. BROOKS: I will, Judge. And do apologize for that.

Q. The instruction -- the co-defendant had given a confession in this case, is that correct?

A. That is correct.

Q. And did you move in any way to redact the co-defendant's testimony?

A. Well obviously the, one of basis for the separate trials was the co-defendant's confession. I will say this though, No. 1, you know, had I been a -- been able to foresee some of the more recent Supreme Court decisions on this, you know, obviously I would have been a bit more aggressive on suppressing it. Having said that, it remains my job -- it was my view at the time and it remains my view, that the confessions were really interlocking. There was nothing in his co-defendant's confession that wasn't in Mr. Jackson's confession. They were interlocking. And I, in my judgment, there really was no prejudice to Mr. Jackson for allowing the other one in. Now I did -- I had made the motion at the time of the severance, is one of the reasons the severance motion was denied. But, you know, I can't say I kept on renewing it because, you know, they went through what was the matter of practice then

was to, you know, delete my client's name. And you know, I mean that's what was done.

Q. Since there it was a joint trial---

A. Uh-huh. (Affirmative.)

Q. ---if you had made that motion to suppress the co-defendant's statement, and let's say---

A. There wouldn't have been. But No. 1, look like I said before, they were interlocking. Once my client's confession came in, it really didn't matter.

Q. Well hear me out, Mr. Murphy.

A. Uh-huh. (Affirmative.)

Q. Who was representing the co-defendant?

A. Mr. Sullivan.

Q. And if Mr. Sullivan moved....

A. I can't recall what Mr. Sullivan did.

Q. But just hear me out. If mr. Sullivan moved to suppress the co-defendant's testimony, which would have been your clients.

A. Uh-huh. (Affirmative.)

Q. And if you had moved to suppress the co-defendant's testimony, which would have been his client, then there wouldn't have been any confessions used in the trial.

A. I don't view that as a likely result. In

my judgment now or at the time.

MR. BROOKS: Okay. Thank you, Judge.

THE COURT: Mr. Gourley.

MR. GOURLEY: Your Honor, I don't have any questions.

THE COURT: Thank you, Mr. Murphy, you can step down. Next witness, Mr. Brooks?

MR. BROOKS: That's the applicant's case, Judge.

THE COURT: Any witnesses for the State?

MR. GOURLEY: None, Your Honor.

THE COURT: Mr. Brooks, let me ask you a couple of questions procedurally. Your client went through by my count, 10 points.

MR. BROOKS: Yes, sir.

THE COURT: What is the authority for court granting a motion for interrogating officers to submit to a polygraph?

MR. BROOKS: Judge, having---

THE COURT: And then on top of that, it being admitted in front of the jury?

MR. BROOKS: Judge, having practiced as long as I have, I don't have such authority.

THE COURT: Okay.

MR. BROOKS: Know such authority.

However, my position is the law is ever changing, and sometimes there is a first time for everything.

THE COURT: The authority for the indictment to be quashed because in your client's terminology, murder and lynching run in the same bracket. Is there authority for that?

MR. BROOKS: No, sir.

THE COURT: There is no testimony from anybody -- let me ask this. Where is it in the transcript that -- well I guess if it's not, if he didn't ask for it, it wouldn't be in the transcript. Did the trial counsel ask for a limiting instruction on the use of co-defendant's confession?

MR. BROOKS: As far as I---

THE COURT: One of his grounds.

MR. BROOKS: Yes.

THE COURT: Mr. Murphy, you're still under oath. Did you ask for a limiting instruction on the co-defendant's confession?

MR. MURPHY: I don't recall, Your Honor. I'd have to look at the transcript.

THE COURT: Are you, is Ms. Wilson available to be called today, because I cannot base any decision on him not calling her unless I hear what she had to say.

MR. BROOKS: No, sir.

THE COURT: That's all the questions I ask about any authority, but I'll be glad to hear any closing comments you might have.

MR. BROOKS: Judge, just briefly in having done any of these, we want to make sure we cover all of our issues. And that's why some may be stronger. Some may not be as strong. But, Judge, it's my position on behalf Mr. Jackson that if Mr. Murphy had moved to suppress the co-defendant's testimony and the co-defendant's lawyer had moved to suppress Mr. Jackson's testimony, then there wouldn't have been any confession.

THE COURT: But that would have to be -- the motion would have to be granted.

MR. BROOKS: But at least have to be made.

THE COURT: Tell me the reasonable probability that would exist if the motions would have been granted.

MR. BROOKS: Honestly, Judge, I don't know because I wasn't there.

THE COURT: What would have been the basis for making the motion? In other words, Your Honor, I move to suppress my co-defendant's statement on the following grounds. What would those grounds

have been? Purely Bruton issues or some other issues?

MR. BROOKS: It would have been along the lines of Bruton issues.

THE COURT: The recent case development.

MR. BROOKS: Correct. And, Judge, that's the strongest part of Mr. Jackson's request for a new trial PCR. Just in all honesty, Judge, that's the strongest issue that I saw, as far as raising it. But it is Mr. Jackson's opinion -- position that he should be granted a new trial in this matter. As you know, Judge, I did explain to him all the risks that come with it. But even though he did get a sentence of 37 years, you know, he could go back and end up getting a life sentence.

THE COURT: And is there any evidence that you can present about what testing of the weapon would have revealed?

MR. BROOKS: No, sir.

THE COURT: So you're saying that in both trial counsel had moved to suppress the other defendant's statements to the police and if both motions had been granted, then there would have been no evidence against the other one.

MR. BROOKS: Correct. And that's my

argument judge.

THE COURT: Well how about, wouldn't that leave the jury -- so you're basing that argument on the hypothetical about it. Let's say the cases had been severed like Mr. Jackson now says they should have been.

MR. BROOKS: Correct.

THE COURT: His statement would have still come in under your theory about if both trial counsel have moved to suppress the other guys statement. If he had been tried by himself.

MR. BROOKS: His statement would have come in as to him. And vice versa with the co-defendant.

THE COURT: All right.

MR. BROOKS: But since, you know, the court denied the motion for severance, if that had been taken for that next step, then if those confessions, cross confessions of both defendants had been suppressed, then obviously we wouldn't have had any statements.

THE COURT: That would have removed the Bruton issue. But it would still have had the issue about his own confession.

MR. BROOKS: Correct. But of course, I'm looking at it as a joint trial, Judge, because it

was a joint trial.

THE COURT: Mr. Gourley.

MR. GOURLEY: Your Honor, I would just submit to the court on most of these issues raised today, Mr. Jackson hasn't met his burden of proof in providing sufficient evidence for this court to determine if counsel was deficient, and therefore prejudiced by Mr. Jackson. Regarding the Bruton issue, Your Honor, I know it's an evolving issue right now with the Supreme Courts. What I'm seeing not, up to date. So it should be on Bruton issue.

THE COURT: Well it pretty much the law is now, you've just got to try everybody separately. If you want to get down to practical terms.

MR. GOURLEY: Yes, sir.

THE COURT And I guess to paraphrase it, whether we like it or not.

MR. GOURLEY: Yes, sir.

THE COURT: But that is not a hard and fast rule. That's just perhaps sometimes the easiest thing to do now. That is not what the law. Did Mr. Murphy ask for a limiting instruction on the use of the co-defendant's confession?

MR. GOURLEY: Your Honor, I've looked through the guilty charges. Not the guilty charges,

but the jury charges. I don't see one.

THE COURT: Would that have made a difference?

MR. GOURLEY: I don't believe so, Your Honor. I think in this case there is clear and overwhelming evidence that would, you know, obviously absolve any kind of prejudice. Obviously Mr. Jackson confessed to it. Several witnesses put Mr. Jackson and his co-defendant at the scene. Obviously his co-defendant testified that Mr. Jackson was involved. The co-defendant was shot by the victim. I think any kind prejudice asserted by counsel's deficiency in any of these allegations is negated by the overwhelming evidence against Mr. Jackson in this case.

THE COURT: And that other evidence was his own confession?

MR. GOURLEY: Yes, Your Honor.

THE COURT: Mr. Brooks, any closing response to that?

MR. BROOKS: Judge, and I know this is because of those case developments along the Bruton lines that I'm perhaps making a very limited argument for my client, in the since that, we're talking about another lawyer in terms of

Mr. Sullivan who is representing the co-defendant. And then we're talking about if both lawyers had done things, and how it would have impacted the other person's client. And I know that that's a bit out, far reaching, Judge. But it obviously that's something that in light of what we see in these Bruton cases, we think that should have been made. And I know it's kind of difficult, because actually what I'm saying, what I'm arguing is that, Mr. Sullivan should have done this, and it would have had this huge impact, and this huge benefit to Mr. Jackson. And vice versa for Mr. Murphy, and it would have had huge benefit for that co-defendant. But if that had been done, those confessions were eliminated.

THE COURT: No, the motion doesn't get it done. You would have to convince me that the judge should have under prevailing authority, granted the motion. So that's what I have got to decide, and you've already touched on that earlier. So making the motion doesn't do them any good. But you've got to establish that the motion should have been granted.

MR. BROOKS: But and obviously, but our first thing is to say that the motion never was

granted. So I understand what Your Honor is saying, but that's our position.

THE COURT: Mr. Jackson, here's what I"m going to do. I've got this transcript and I'm going to review every word of it. I've taken details notes on your testimony and Mr. Murphy. I will do one of two things. I will be issuing an order and it will grant your application. If I do that, then the State will have the right to appeal. The second option is I will issue an order denying your application. If that happens, you will have the right to appeal.

You will have the right to appeal within 30 days after your lawyers receipt of written notice of entry of that judgment. Do you understand that?

THE PLAINTIFF: Yes, sir.

THE COURT: So those are the two things that I will be doing. I'll either deny your application, I will grant it. But you will receive a copy of the order, and your lawyer can educate you on the procedural steps to be taken after that.

THE PLAINTIFF: Yes, sir.

THE COURT: Anybody have any questions?

MR. BROOKS: No, sir.

MR. GOURLEY: No, sir.

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third 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 evidence introduced on April 14, 2015, in Common Pleas nonjury PCR for Sumter County, Sumter, South Carolina.

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

10-27-15
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2015 JUL 27 AM 10:51
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Teron Jackson, #334394,)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

Case No. 2012-CP-43-1958

CERTIFIED TRUE COPY
OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 2, 2012 and amended on February 20, 2014, July 23, 2014, and December 5, 2014. Respondent made its return on March 22, 2013. An evidentiary hearing was convened on April 14, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was true bill indicted at the February 2009 term of the Sumter County Grand Jury under a six count indictment (2007-GS-43-0816) for Murder, two counts of Attempted Armed Robbery while Armed with Handgun, Possession of a Firearm During Commission of a Crime of Violence, Possession of Pistol by One Less Than 18 years of Age, and Lynching (1st Degree). Applicant was represented by Timothy Murphy, Esquire. On April 15-22, 2009, the Applicant proceeded to a jury trial before the Honorable R. Ferrell

Cothran, Jr. On April 22, 2009, the Applicant was found guilty of Murder, Attempted Armed Robbery, Possession of a Firearm during Commission of a Crime of Violence, and Possession of Pistol by One Less Than 18 years of Age. Judge Cothran sentenced the Applicant to thirty-seven years confinement for murder, twenty years confinement for Attempted Armed Robbery, five years confinement for Possession of a Firearm during Commission of a Crime of Violence and five years confinement for Possession of Pistol by One Less Than 18 years of Age; with the sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Teron Hakeen Jackson, Op. No. 2011-UP-430 (S.C. Ct. App. filed October 3, 2011). The remittitur was sent October 19, 2011.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel;
    a. "Failed to conduct an independent investigation of his own to determine if there were any documented record evidence proffering that the applicant had a learning disability for his schools, etc., research the records of the police department showing that officers made attempts to contact applicant's family members before the police interrogated applicant, reexamine the reports and SLED report results by an independent resources to determined that the evidence was without flawed findings."
    b. "Failed to investigate the circumstances of the crime charged to make a determination of what participation did the applicant had in it so that there could have been a competent trial strategy planned for applicant's trial."
    c. "Failed to have the court to evaluate the applicant minor status so it could have been determined rather if applicant fully understood his rights to a trial and his constitutional rights by it basic meaning."

d. "Failed to pre-trial the defective indictment where it showing the charges presented to the grand jury was without a body and therefore making it a subject matter jurisdiction issue."
e. "...when he did not moved to quash the indictment with the crime charged as possession of pistol by one less than 18 years old, and lynching (1st degree)."
f. "Failed to have applicant's trial separate from his co-defendant, due to the facts that applicant statements played a hostile component to co-defendant's defense."
g. "Failed to have the detectives take a lie detector tests in finding rather the detective used illegal tactics in interrogation of the applicant."
h. "Failed to conduct a full investigation to case in regards to the applicant's mental capacity and limited abilities to understand his constitutional rights as he had waived them when he gave multiple statements."
i. "Failed to place scrutiny under the facts that the applicant was in the police custody and while being questioning by the investigations applicant was threatened and psychologically fearing §44-23-410, etc."
j. "Failed to have independent tests done to the forensic reports as in determining what gun actually killed the decedent."
k. "Failed to motion for trial severance based upon the facts that the applicant made statements that placed him in a hostile position to his co-defendant defense."
l. "Failed to confer with applicant and advise him of a trial strategy and help plan his defense to present evidence in his favor to the jury."
m. "Failed to quash the indictments that was true billed by the grand jury as there were only three (3) charges submitted, and the possession of pistol by one less than 18 years of age was never submitted by law statutes, etc."

2. Ineffective assistance of appellate counsel; and
    a. "Failed to brief all properly preserved issues that the trial counsel placed objections to on the trial record as indicated."
3. Due process and equal protection rights violations.

Applicant filed his first amendment on February 20, 2014, alleging the following allegations:

1. "Ineffective Assistance of Appellate Counsel for not raising important issues under Bruton."

Applicant filed his second amendment on July 23, 2014, alleging the following allegations:

1. "The analysis of the elements of the crime charged in the indictment may indicate a double jeopardy problem."

Applicants filed his third amendment to his application on December 5, 2014, alleging the following allegations:

1. Ineffective assistance of counsel
    a. "Trial Counsel's failure to request a limiting instruction on the jury's use of Co-Defendant's confession."
    b. "Trial Counsel ineffective for failure to call key witness."
    c. "Trial Counsel ineffective for failing to object to a burden shifting instruction on malice. Lowery v. State, High v. State and a case to support failure to challenge competence. Matthew v. State."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from Timothy Murphy, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he is twenty five years old and has a tenth grade education. Applicant stated he was convicted at trial and received a thirty seven year sentence. Applicant stated that he understood the PCR process and the risks involved in going forward with his evidentiary hearing. Applicant stated that he did not meet with Trial Counsel or prepare a trial strategy. Applicant stated that he was incarcerated prior to trial. Applicant recalled reviewing the state's evidence with Trial Counsel prior to trial. Applicant recalled Trial Counsel attempting to suppress his statement.

Applicant stated that he felt Trial Counsel was ineffective for failing to request a limiting instruction on the use of the co-defendant's confession. Applicant stated that he did not feel the redactions used in the co-defendant's statement were adequate. Applicant stated that he felt he should have had a separate trial.

Applicant stated that Toni Wilson was one of the victims in the armed robbery. Applicant stated Toni Wilson did not testify during the trial. Applicant stated that he was acquitted on attempted armed robbery of Toni Wilson. Applicant stated that the police alleged that he and Jermel Robinson (hereinafter "Co-defendant") attempted to rob Dominque Wimberly (hereinafter "Victim") and Toni Wilson. Applicant stated that Victim was shot and killed. Applicant opined that Trial Counsel should have called Toni Wilson to testify.

Applicant stated Trial Counsel was ineffective for failing to object to trial court's jury instruction on malice. Applicant alleges that trial court's charge was burden shifting. Applicant stated Trial Counsel was ineffective for failing to explore issues pertaining to Applicant's competence and failing to investigate his background. Specifically, Applicant noted Trial Counsel failed to investigate his educational background. Applicant stated Trial Counsel was ineffective for failing to review the forensic report on the gun found at the scene of the crime. Applicant stated that the gun found at the scene did not match the weapon used in the murder.

Applicant stated Trial Counsel was ineffective for failing to quash the indictments for lynching and murder. Applicant argued that the two charges were similar and exposed him to double jeopardy. Applicant stated Trial Counsel should have filed a motion to compel the officers to take a lie detector test. Applicant stated the tape recorder was on and off at various points of his law enforcement interviews. Applicant stated that he did confess to the crime.

Applicant stated Appellate Counsel was ineffective for failing to brief all preserved issues. Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the admission of the co-defendant's statement amounted to a Bruton violation.

Following Applicant's testimony, Trial Counsel was called to testify by Applicant. Trial Counsel stated that Victim was driving his girlfriend, Toni Wilson, home the night of the murder. Trial Counsel stated Applicant and Co-defendant saw Victim pull up in the apartment parking lot. Trial Counsel stated that Applicant believed Victim had money because the word on the street was the Victim was a drug dealer. Trial Counsel stated his investigation revealed that Victim was not a drug dealer. Trial Counsel stated Applicant and Co-defendant planned to rob Victim. Trial Counsel stated Applicant and Co-defendant got dressed in dark clothing and retrieved their guns. Trial Counsel stated that Applicant went to the passenger side of Victim's vehicle and Co-defendant approached the driver's door. Trial Counsel stated both Applicant and Co-defendant pulled their weapons and demanded money from Victim.

Trial Counsel stated Victim grabbed Co-defendant's gun and shot Co-defendant. Trial Counsel stated Toni Wilson fled the car. Trial Counsel stated Applicant shot Victim as a result of Victim shooting his Co-defendant. Trial Counsel stated both Applicant and Co-defendant fled the scene. Trial Counsel stated Victim stumbled up the apartment stairs and into Toni Wilson's apartment. Trial Counsel stated Victim died in Toni Wilson's apartment as a result of the gunshot wounds.

Trial Counsel stated the State had Applicant's confession, Co-defendant's confession, physical evidence, and various witness statements implicating both Applicant and Co-defendant. Trial Counsel further stated Applicant led the police to his own gun and clothing.

Trial Counsel stated that he never had any concerns about Applicant's competence. Trial Counsel stated that he meet with Applicant eight (8) times. Specifically, Trial Counsel stated that they had extensive conversations about the State's evidence. Trail Counsel stated that

Applicant helped prepare for their Jackson v. Denno hearing. Trial Counsel stated that he talked to Applicant's grandmother about the evidence.

Trial Counsel stated that there was never a real issue about Applicant's confession, despite Applicant arguing that he was coerced. Trial Counsel stated that he listened to the recording of the interview. Trial Counsel noted that the police asked "pointed" questions, but none of their questions amounted to a threat. Trial Counsel stated Applicant initially gave various general statements, but then confessed in his second statement.

Trial Counsel stated the SLED expert, Frank Defreese, was unable to positively match the .38 caliber bullets found at the scene of the crime to the .38 caliber pistol found in Applicant's car. Trial Counsel stated that the inconclusive results were more helpful to the defense than harmful. Trial Counsel stated that he made a motion for severance and that the motion was denied by the trial court.

Trial Counsel stated that he explained to Applicant that they were going to attempt to suppress his confession. Trial Counsel stated that he advised Applicant that there was a zero percent chance of acquittal if his confession was not suppressed. Trial Counsel stated that they discussed trying to fashion a theory that might lead to a lesser-included charge being submitted to the jury. Trial Counsel stated that he made three requests for a voluntary manslaughter charge, but the trial judge denied the request. Trial Counsel stated that they discussed a possible self-defense claim because Applicant shot Victim after Victim shot Co-defendant. Trial Counsel stated that he explained to Applicant that a self-defense claim was not valid because the facts did not merit a self-defense charge.

Trial Counsel stated that he and Applicant discussed the possibility of pursuing a plea offer. Trial Counsel noted Applicant's youth. Trial Counsel stated Applicant never wanted to plead guilty. Trial Counsel stated that he argued the trial court's jury instruction on malice was burden shifting. Trial Counsel stated that he did not see a reason to call Toni Wilson to testify during trial. Trial Counsel stated that Toni Wilson would not have been helpful to Applicant's case. Trial Counsel stated that he had no basis to move to quash the indictments for murder and lynching.

Trial Counsel stated that his view on the use of Co-defendant's statements remain the same. Trial Counsel stated that the two confessions were interlocking. Trial Counsel noted that there was nothing in Co-defendant's confession that was not in Applicant's own confession. Trial Counsel stated he moved to suppress the confession but the trial judge denied the motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has considered the evidence presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler. The applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

1. Ineffective assistance of counsel for failing to investigate Applicant's competence.

This Court finds Trial counsel was not ineffective for failing to explore issues pertaining to the Applicant's competence or for failing to investigate his background. This Court finds very credible Trial Counsel's testimony that the Applicant was engaged in the process and understood everything about the case. Trial counsel spoke with the Applicant's grandmother and thereafter he had no concerns about competence.

During the hearing, this Court was able to closely observe the applicant's performance on the witness stand, and it is readily apparent that the Applicant speaks very well and understands all issues. There is no question that he was able to understand the charges against him and was able to (and did) assist Trial Counsel in his defense. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

2. Ineffective assistance of counsel for failing to make a motion to sever.

The Applicant complains that Trial Counsel was ineffective for failing to ask for a severance. The record reveals trial counsel did request a severance but the request was denied by the trial judge. (Tr. p. 88 line 17—p. 96 line 22).

3. Ineffective assistance of counsel for failing to call Toni Wilson as a witness.

The Applicant seems to complain ineffective assistance on the ground that Trial Counsel did not call victim Toni Wilson to the witness stand. He claims that since the jury asked during deliberations why Ms. Wilson didn't testify, she should have been called to testify. Since Ms. Wilson did not testify at the PCR hearing, this court cannot consider any testimony she might have given at trial to determine whether failure to call her constitutes ineffective assistance of counsel. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (Holding the Applicant's mere

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speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice).

Also, aside from the fact that the Applicant was acquitted of the Attempted Robbery of Ms. Wilson, Trial Counsel explained he did not call her as a witness because she did not see who committed the murder and attempted robbery; Trial Counsel also explained the solicitor didn't call Ms. Wilson as a witness because she was so terribly distraught. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding that trial counsel's choice not to call various witnesses because, in his judgment at the time, their testimony would not have been of value to petitioner's case). This Court agrees and finds Trial Counsel correctly concluded that to call Ms. Wilson as a witness would have only lead her to give a graphic and prejudicial account of what happened during the murder.

4. Ineffective assistance of counsel for failing to object to a "burden shifting" jury charge on malice.

The Applicant claims Trial Counsel failed to object to a "burden shifting" jury charge on malice. This ground has no merit, as the charge was a correct statement of the law insofar as this case is concerned. To the extent that the charge was improper in light of State v. Belcher, this argument has no merit since Trial Counsel asked for a lesser included charge on voluntary manslaughter, which was correctly refused by the trial court.[1] This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms.

[1] In State v. Belcher, the Supreme Court held that a "jury charge instruction that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify homicide." 385 S.C. 597, 600, 685 S.E.2d 802, 803-04 (2009). The Supreme Court held further "the permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder." Id. at 612, 685 S.E.2d at 810 (2009).

Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

5. Ineffective assistance of counsel for failing to move to quash the indictment.

The Applicant claims Trial Counsel should have moved to quash the indictment because it improperly alleged both lynching and murder in two separate counts. The Applicant testified that he felt those two charges "run in the same time bracket." The Court is aware of no authority precluding an indictment on both charges. Also, since the trial court charged the jury it could not find the applicant guilty of both offenses (Tr. p. 477 line 6—p. 478 line 8), the Applicant suffered no prejudice. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

6. Ineffective assistance of counsel for failing to use a limiting instruction on the jury's use of the statement of his co-defendant.

The Applicant claims Trial Counsel should have requested a limiting instruction from the trial judge on the jury's use of the statement of his co-defendant. He is correct on that threshold issue. This Court could not find in the transcript where a limiting instruction was requested or given. Under the Bruton line of cases, the trial court, upon request, must charge the jury that it can only consider the co-defendant's statement, if at all, against the co-defendant. However,

this court finds there was no prejudice to the defendant resulting from Trial Counsel's failure to request the limiting instruction. In State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015), the Supreme Court held that the defendant's confrontation rights were violated because the co-defendant's confession, even redacted, indicated that "another person" was clearly referring to the defendant. The court, however, also concluded that any error in admitting the confession was harmless, in light of the overwhelming evidence of the defendant's guilt.

In the instant case, it is likely that under the law as recently developed, even a redacted statement from the Applicant's co-defendant would have been inadmissible. Trial counsel did make the argument that the statement, as redacted, obviously implicated the Applicant as "another person" or "the other person." Appellate counsel did not raise this issue on appeal, but should have. Neither Trial Counsel's failure to request a limiting instruction nor Appellate Counsel's failure to raise the issue on appeal prejudiced the Applicant because the evidence of the Applicant's guilt was overwhelming. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S. Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Applicant completely confessed to his involvement to the police. Witness Chyenne Rosenberg testified that immediately after the attempted robbery and murder, the Applicant called her and told her Co-defendant had been shot. (Tr. p. 285 line 19-22). The perpetrators had been identified as wearing all black clothing and wearing masks. Witness Talisha Kinard testified she saw the Applicant wearing all black and holding a mask and a gun the day before the murder. (Tr. p. 152 line 1-19). Ms. Kinard testified Applicant said "he was going to rob the next N----- that he saw." (Tr.

p. 152 line 22-25). Ms. Kinard also testified that after the shooting, she saw the Applicant outside wearing all black and sitting on the curb; shortly thereafter, Applicant disappeared and came back wearing a white shirt. (Tr. p. 151 line 8 - 18). Ms. Kinard gave the police the Applicant's name (Tr. p. 151 line 21 - 25). Upon being Mirandized, Applicant voluntarily told the police that he was involved in the crimes, but initially told the police that he was not the shooter. (Tr. p. 239 line 7-9; Tr. p. 241 line 14-18; Tr. p. 248 line 15-18). Applicant later admitted he had a .38 caliber revolver and the Co-defendant had a .40 caliber semi-automatic handgun. (Tr. P. 258 line 24 – p. 259 line 1). Applicant admitted the Co-defendant approached the victim's car on the driver's side while he approached the victim's car on the passenger side. (Tr. p. 259 line 19-21). Applicant told police that he told Victim to "Give me all your shit." (Tr. p. 260 line 4). Victim, who was driving, grabbed the Co-defendant's gun and shot the Co-defendant. The Applicant stated he then fired four times from the passenger side into the vehicle at the murder victim. (Tr. p. 254 line 16-20; Tr. p. 255 line 6; Tr. p. 260 line 6-11). The pathologist testified at trial that the murder victim was shot either four or five times and died from those wounds. (Tr. p. 300 line 3-25 – p. 301 line 1-20). The pathologist testified the bullets predominantly entered the victim's body from the right side and traveled to the left side of his body, which is consistent with the shots being fired at the driver from the vehicle's passenger side, which is exactly where the Applicant placed himself in his statement to law enforcement. (Tr. p. 300 line 6, 10, 18; Tr. p. 308 line 11-16). Applicant told the police they could find his gun under the seat of his car. (Tr. p. 255 line 24-25). The police did find Applicant's .38 caliber gun under the seat of his car. (Tr. p. 256 line 9-10).

The court concludes that despite a limiting instruction not being requested by trial counsel and despite appellate counsel not raising Bruton issues on appeal, evidence of the Applicant's guilt was overwhelming; therefore, the Applicant sustained no prejudice from these errors.

7. Ineffective assistance of counsel for failing to meet with him and discuss trial strategy.

The Applicant claims Trial Counsel was ineffective for failing to meet with him to discuss trial strategy. This ground has no merit. First, this Court finds credible Trial Counsel's testimony that he met with the Applicant eight times and that he told the Applicant that the basic trial strategy was to get his confession suppressed. Trail Counsel also testified that he discussed with the Applicant his belief that self-defense was not a valid defense and that if the confession came in, they would try to establish voluntary manslaughter. Trial counsel tried and failed to get the confession suppressed and asked for a lesser-included option of voluntary manslaughter, which the trial court properly refused. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

8. Ineffective assistance of counsel for failing to request additional testing on his gun.

The Applicant claims Trial Counsel was ineffective for failing to ask for testing on his gun. Trial testimony revealed that SLED ballistic testing revealed inconclusive results as to what caliber bullets were fired into the victim. (Tr. p. 406 line 18—p. 407 line 1). Trial counsel

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testified that he viewed inconclusive results as a positive finding for the defense. This Court agrees with Trial Counsel's assessment that further testing would not have been a wise strategy. Therefore, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

9. Ineffective assistance of counsel for failing to request the officers who interrogated him submit to a lie detector test.

The Applicant claims Trial Counsel should have asked that lie detector tests be administered to the officers who interrogated the Applicant; the veracity of the officers' answers would determine whether the officers turned the tape recorder off during the interrogation to threaten and harass the Applicant. This has no merit as there is no authority allowing for such testing to be done on police officers, and the results of any such tests would be inadmissible.

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 that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. The Applicant is remanded to the custody of the Respondent.

July 20, 2015

GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit

WITNESSES

SPD

Irene Culick

ARREST WARRANT NUMBER

J302557; J302558; J302589

D/A: 06/21/07

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 19 FEB 09

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2007-GS-43- 816

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE
vs.

TERON HAKEEN JACKSON

JERMEL ANTHONY ROBINSON

Indictment for

MURDER, ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUNS (2 Counts), POSSESSION OF FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE, POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE, LYNCHING (1st Degree)

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

MURDER, ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUNS (2 Counts), POSSESSION OF FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE, POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE, LYNCHING (1st Degree)

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – MURDER

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Dominique Wimberly by means of shooting him with a pistol while attempting to rob him, and that the said Dominique Wimberly did die as a proximate result thereof.

COUNT TWO ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUN

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handguns, or while alleging, either by action or words, they were armed while using a representation of a deadly weapon, did feloniously attempt to take personal property from Dominique Wimberly in the presence of Dominique Wimberly, by means of force or intimidation goods or monies of the said Dominique Wimberly.

COUNT THREE ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUN

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handguns, or while alleging, either by action or words, they were armed while using a representation of a deadly weapon, did feloniously attempt to take personal property from Toni Wilson in the presence of Toni Wilson, by means of force or intimidation goods or monies of the said Toni Wilson.

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

C. Kelly Jackson
SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED ARMED ROBBERY WHILE ARMED WITH HANDGUNS 2 Counts), POSSESSION OF FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE, POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE, LYNCHING (1st Degree) WITH THE AFORESAID NAME OF TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON SHOWN THEREON:

COUNT FOUR – POSSESSION OF A FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: handguns, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT FIVE – POSSESSION OF PISTOL BY ONE LESS THAN 18 YEARS OF AGE

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-23-30(A)(3)&(B) of the Code of Laws of South Carolina (1976), as amended in that they did wilfully and unlawfully have in their possession or on their persons an unlawful pistol, to-wit: handguns, they being under the age of eighteen.

COUNT SIX – LYNCHING (1st Degree)

That TERON HAKEEN JACKSON AND JERMEL ANTHONY ROBINSON did in Sumter County on or about June 18, 2007, violate Section 16-3-210 of the Code of Laws of South Carolina (1976), as amended, in that they did assemble without authority of law with a premeditated purpose and intent of committing an act of violence which resulted in the death of one Dominique Weatherly.

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

P. Kelly Jackson
SOLICITOR