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FEB 29 2016

**SC SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Spartanburg County  
Roger L. Couch, Circuit Court Judge

---

FREDDIE EDWARDS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001961

---

APPENDIX

---

LAURA R. BAER  
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South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
 The State,	)	
	)	TRANSCRIPT OF RECORD
-vs-	)	2011-GS-42-2779 thru 2783
	)	
Freddie Edwards, Jr.	)	
	)	November 26, 2012
Defendant.	)	Spartanburg, South Carolina

B E F O R E:

HONORABLE LEE S. ALFORD, JUDGE

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

JENNIFER A.J. JORDAN, ESQUIRE  
Attorney for the State

THEO W. MITCHELL, ESQUIRE  
Attorney for the Defendant

Margaret A. Woods  
Circuit Court Reporter

**ORIGINAL**

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 THE COURT: Okay, Solicitor, I don't have the indictments  
2 here.

3 MS. JORDAN: I have 'em, Your Honor. Before you is  
4 Freddie Edwards, he's before the Court on six different  
5 charges, four of them are armed robbery, all six charges have  
6 been true billed. The armed robberies are under  
7 2011-GS-42-2781, 2783, 2782, 2780, he is also pleading guilty  
8 to attempted murder under 2011-GS-42-2779 as charged. On  
9 2011-GS-42-2778 he was initially charged under true bill  
10 indictment with murder, he is pleading guilty to attempted  
11 murder on that charge. There's a negotiated sentence of  
12 thirty (30) years.

13 THE CLERK: Mr. Edwards, would you raise your right hand,  
14 please.

15 FREDDIE EDWARDS, JR. having been  
16 first duly sworn, testified as follows:

17 THE COURT: Actually, he's pleading under *North Carolina*  
18 *vs. Alford* or no contest so I guess either way no contest  
19 probly the appropriate plea on the murder and attempted murder  
20 both those two, is that correct?

21 MS. JORDAN: The two attempted murders.

22 MR. MITCHELL: Yes, sir.

23 THE COURT: Pardon me?

24 MS. JORDAN: The two attempted murders yes, sir.

25 THE COURT: Okay, so he's pleadin' no contest is

1 sufficient for your purposes, Counsel?

2 MR. MITCHELL: Yes, sir, Your Honor, that would be.

3 EXAMINATION BY THE COURT:

4 Q. Sir, you're Freddie Edwards, Jr., is that right?

5 A. Yes, sir.

6 Q. Or is it Freddie Junior Edwards? Freddie Edwards, Jr.?

7 A. Yes, sir.

8 Q. How old are ya, Mr. Edwards?

9 A. Twenty-one.

10 Q. How far'd you go in school?

11 A. Graduated.

12 Q. High school? What do you do for job or occupation?

13 A. No, nothing, sir.

14 Q. Are you married, sir?

15 A. No, sir.

16 Q. You have any children?

17 A. No, sir.

18 Q. How much time have you served in jail on these charges?  
19 You got in figured out, Counsel?

20 MR. MITCHELL: Uh, Your Honor, it's approximately 22  
21 months my understanding.

22 MS. JORDAN: Your Honor, he's been in jail since April of  
23 2011, I'll do the calculation if needed.

24 THE COURT: Okay. I always like to put that on the  
25 sentencing sheet, make sure he gets credit, ---

1 MR. MITCHELL: Yes, sir.

2 THE COURT: --- uh, when he gets to SCDC.

3 EXAMINATION BY THE COURT:

4 Q. Now, Mr. Edwards, you're charged today with two counts of  
5 attempted murder each of which is classified as a felony, each  
6 of which carries a maximum punishment of thirty (30) years,  
7 each of them is a classified as a violent offense which could  
8 affect your ability to participate in certain programs down  
9 down at the South Carolina Department of Corrections, they're  
10 also no parolable offenses which means you would be expected  
11 to serve the sentence you actually receive on these charges,  
12 they're also classified as most serious offenses. The  
13 importance of that classification is should you get three  
14 s -- excuse me, two most serious offenses on your record or a  
15 combination of three serious and most serious offenses on your  
16 record, upon receiving the second or third such offense you,  
17 with the classifications you could get a sentence of life  
18 without parole, so-called two strikes and three strikes rule,  
19 you understand that? In other words, with these on your  
20 record, should you get another most serious offense on your  
21 record it would qualify as a second strike for which you could  
22 get life without parole, do you understand that?

23 A. Yes, sir.

24 Q. Alright, and some of these others are also classified as  
25 serious offenses are most serious offenses so if you pick up

1 another most serious offense any time in the future, you could  
2 get a sentence life without parole with these on your record,  
3 do you understand that?

4 A. Yes, sir.

5 Q. You're also charged with four counts of armed robbery  
6 each of which is classified as a felony, each of which carries  
7 a minimum sentence of ten (10) years and a maximum sentence of  
8 thirty (30) years, they also are no parolable offenses,  
9 they're classified as violent and most serious offenses, do  
10 you understand that?

11 A. Yes, sir.

12 Q. Now understanding all of that, my understanding is you  
13 wish to enter a plea of no contest to the two attempted murder  
14 charges, is that correct, sir?

15 A. Yes, sir.

16 Q. It's also my understanding that you wish -- or how do you  
17 plead then to the four armed robbery charges guilty or not  
18 guilty?

19 A. Uh, guilty.

20 Q. You understand that by entering these pleas you give up  
21 your right to remain silent?

22 A. Yes, sir.

23 Q. You understand that by entering these pleas you give up  
24 your right to a trial by jury?

25 A. Yes, sir.

1 Q. And if you give up your right to trial by jury you also  
2 give up your right to assert any legal defenses that you might  
3 have in a jury trial.

4 A. Yes, sir.

5 Q. I know your attorney's gone over your rights with ya in a  
6 jury trial and I'm gonna do that as well. If you requested a  
7 trial by jury, the State would give you a trial. At trial  
8 you'd have the right to confront and cross-examine all  
9 witnesses against you, you would have the right to present any  
10 witnesses and/or evidence in your own defense, you would have  
11 the right to testify in your own defense if you wish to do so  
12 but no one could make you testify in your own trial. If you  
13 decided to go to trial and not testify, the judge will tell  
14 the jury they could not hold your failure to testify against  
15 you; in fact, the jury couldn't even consider your failure to  
16 testify in their deliberations on your guilt or innocence.  
17 You would be presumed innocent throughout your trial, the  
18 State would have to prove you're guilty beyond a reasonable  
19 doubt to a jury of twelve people, all twelve people would have  
20 to unanimously agree that you were guilty in order for you to  
21 be convicted, even if you were convicted you still have the  
22 right to appeal that conviction. Do you understand your  
23 rights with regard to a trial by jury?

24 A. Yes, sir.

25 Q. Understanding that right do you still wish to plead

1 guilty to the armed robbery charges and no contest to the  
2 attempted murder charges or do you wish a trial?

3 A. I plead guilty.

4 Q. The State has agreed to reduce a murder charge to  
5 attempted murder charge, uh, and they are recommending a  
6 30-year sentence, a a a concurrent sentencing on these  
7 charges, is that your understanding of the agreement you had  
8 with the solicitor's office in order to enter your pleas  
9 today?

10 A. Yes, sir.

11 Q. Anybody promise you anything other than that in order to  
12 get you to enter your pleas?

13 A. No, sir.

14 Q. Are you satisfied with the manner in which your attorney  
15 has advised and represented you in these cases?

16 A. Yes, sir.

17 Q. Have you and your attorney fully discussed the charges  
18 against you?

19 A. Yes, sir.

20 Q. Has your attorney told you the witnesses and evidence the  
21 State has available to present at trial to prove your guilt?

22 A. Yes, sir.

23 Q. Has your attorney discussed with you any possible legal  
24 defenses that might be available to you if you were to go to  
25 trial? Sir?

1 A. Yes, sir.

2 Q. Uh, have you told your attorney the names of any and all  
3 witnesses you know of that your attorney could subpoena and  
4 bring to trial to assist ya in your defense if you were to go  
5 to trial?

6 A. Okay, yes.

7 Q. Are you today under the influence of any mind-altering  
8 substance such as alcohol, drugs or prescription medications  
9 which interfere with your judgment or ability to understand  
10 what you're doing in court today?

11 A. No, sir.

12 Q. Do you have any mental, emotional or nervous condition  
13 that interferes with your judgment or ability to understand  
14 what you're doing in court today?

15 A. No, sir.

16 Q. Are ya entering your pleas today of your own free will?

17 A. Yes, sir.

18 Q. Are you in fact guilty of the armed robbery charges?

19 A. Yes, sir.

20 THE COURT: Alright, please give me the, uh, facts,  
21 Solicitor.

22 MS. JORDAN: Thank Your Honor. If I may just for points  
23 of clarification he has been in custody five hundred  
24 ninety-four (594) days, that was from April the 13th of 2011,  
25 was one year and seven months, fourteen days and also for

1 further clarification on the record the defendant at the  
2 request of the defense counsel was -- did undergo an  
3 evaluation for his competency to stand trial and I would just  
4 like to present to the Court the, um, evaluation that we  
5 received on Ap -- on October the 4th of 2012 where the  
6 defendant was deemed competent to stand trial and he was also  
7 deemed not to have any presence of intellectual disability or  
8 related disability if I can make that part a the record.

9 THE COURT: Alright, without an objection we'll make  
10 those, uh, court exhibits.

11 MS. JORDAN: Thank you. Your Honor, on April the 8th of  
12 2011, an individual by the name of Drakkarr Crawford decided  
13 that he was gonna purchase some marijuana. He contacted  
14 Timothy Clayton who is present here in the courtroom today.  
15 When he contacted, uh, Timothy, Timothy stated that he could  
16 get some marijuana and he in turn contacted my victim Ronnie  
17 Metcalf. Ronnie was 41-years-old at the time, he lived at [REDACTED]  
18 Old Furnace Road here in Spartanburg County. Drakkarr  
19 Crawford did not have the money needed to purchase the ounce  
20 and a half of marijuana, he made a phone call to his cousin  
21 Fred Pearson. Fred Pearson, um, started talking to Drakkarr  
22 about just jacking Ronnie or robbing him instead a paying for  
23 the drugs. At that point in time, later on that a -- later on  
24 that evening of April the 8th Drakkarr was picked up at Collin  
25 Mills' residence which is also right beside where Drakkarr

1 lived. Inside the vehicle Freddie Edwards was driving an SUV,  
2 Fred Pearson was in the passenger seat, Drakkarr Crawford got  
3 in the back, they went and picked up Timothy Clayton. Once  
4 they picked up Timothy Clayton, Timothy gave them directions  
5 to Ronnie's house. They got to Ronnie's and under the guise  
6 that one of the guys in the front seat had to go and pick up  
7 his child they left Timothy at the house who did not know that  
8 a robbery was going to take place, he still thought he was  
9 there to introduce him to Ronnie so they could purchase  
10 marijuana. They left Timothy at the house and Drakkarr, this  
11 defendant and Fred Pearson left. They came back about an  
12 hour, hour and a half later, came back to, um, a church just  
13 down the street from the [REDACTED] Old Furnace Road address, parked  
14 the vehicle. Drakkarr woulda testified at trial that once  
15 they parked the vehicle Freddie Edwards got outta the back,  
16 opened up the hatch, pulled out a .22 rifle. Drakkarr had  
17 already come prepared with an Airsoft pistol. Um, from that  
18 point they masked their faces with different things, with  
19 t-shirts and bandanas, walked down to [REDACTED] Old Furnace, came  
20 around the corner. Once they came around the corner of the  
21 garage at Old Furnace Road they ran into four individuals who  
22 were right outside the garage or just outside or just inside  
23 of the garage, that was Timothy Clayton who they had already  
24 dropped off earlier in the evening, um, Izel Poates who is the  
25 nephew of Ronnie, Richard Benson or "KJ" as they called him

1 who was also the nephew of Ronnie and Gilbert Cook. Gilbert  
2 Cook was a neighbor of Ronnie's. They had all been there  
3 hanging out that afternoon and that evening together, they  
4 were gonna go to some races but there was a, there was rain  
5 that night and they weren't able to go. Ronnie Metcalf, the  
6 victim, uh, who is now deceased, came from inside the garage  
7 and stepped down, when he did Fred, um, Fred Pearson  
8 approached Mr. Mets -- Metcalf in the garage and they began as  
9 to struggle over the .22 rifle. While this was going on  
10 Freddie Edwards and Drakkarr Crawford were outside with the  
11 individuals they had basically get down on their knees, empty  
12 up -- empty their pockets, going through to see what all they  
13 could get. Izel described to me how he didn't have anything  
14 for them to, for them to take at that point, that he even  
15 opened up his wallet and showed 'em that he had nothing. From  
16 inside the garage Fred Pearson called for help. Freddie  
17 Edwards walked over to the garage, picked up a red grinder  
18 tool case, it's about a foot long and maybe 6 inches that  
19 belonged to Gilbert Cook's dad. He picked that up and while  
20 the struggle was going on for the rifle, he used that to hit  
21 Ronnie on top a the head. Dr. Wren who's the pathologist here  
22 in Spartanburg County woulda testified at trial that Ronnie  
23 did have abrasions on his head, he couldn't tell where they  
24 came from but they were abrasions in the area that people had  
25 described where Ronnie was hit. Once he hit Ronnie, Fred

1 Pearson was able to break free. He broke free and basically  
2 started unloading the .22 rifle as he backed outta the garage.  
3 Ronnie was hit three times in the back, he basically made it  
4 up two steps right inside of his parents' kitchen and passed  
5 away, um, inside the kitchen with his mom and his stepdad who  
6 had raised him present there. Gilbert Cook who was the  
7 neighbor who was at the house that night was struck in the,  
8 um, in the upper thigh buttocks area. They did take the  
9 grinder, the tool grinder with them when they left along with  
10 some cigarettes. At trial, uh, Drakkarr Crawford woulda  
11 testified for the State as would Collin Mills. Collin Mills  
12 woulda stated that that evening they came back to his house,  
13 once they arrived at his house Freddie Edwards was driving the  
14 vehicle, Fred Pearson was in the passenger seat in the front,  
15 Drakkarr got out with him, he took the, uh, the grinder, the  
16 Airsoft pistol that he had used to rob the, uh, individuals  
17 and the .22 rifle which were all recovered by law enforcement  
18 su -- on subsequent days.

19 EXAMINATION BY THE COURT:

20 Q. Alright, Mr. Edwards, you've heard the facts recited to  
21 the Court by the solicitor's office, as to the armed robbery  
22 charges, I'm not asking ya at this point about the attempted  
23 murder charges, but as to the armed robbery charges, do you  
24 disagree in any way what they say happened as to the armed  
25 robbery charges?

1 A. No, sir.

2 Q. I find the decision of the defendant Freddie Edwards, Jr.  
3 to plead no contest to the attempted murder charges and to and  
4 guilty to the four armed robbery charges to be made freely,  
5 voluntarily and intelligently, he's had the representation of  
6 a competent attorney with whom he says he is satisfied, I find  
7 the facts presented to the Court by the solicitor's office  
8 fully support the pleas in this case, I'll accept the pleas as  
9 freely and voluntarily made. Mr. Edwards, if you disagree  
10 with the proceeding in which we're currently involved, you  
11 have ten days from today's date for then which to file a  
12 notice of intent to appeal. Do you understand your right to  
13 appeal today's proceeding? Sir?

14 A. Yes, sir.

15 THE COURT: Alright, uh, State have anything else you  
16 wish to present?

17 MS. JORDAN: Your Honor, just on behalf of the victims,  
18 uh, I know that there's no sentence that we could have in  
19 court today or at any point in time that would bring back  
20 Ronnie and take away everything that happened that night, um,  
21 we discussed, we did discuss the 30-year, uh, offer in this  
22 case and they've accepted it although I know that they would  
23 love to see everybody in this, everybody who was involved in  
24 this go to prison for as much time as they possibly could but  
25 today will hopefully bring a resolution for them. Since this

1 has happened they're, uh, they're mother's broken her hip,  
2 they've also lost their stepdad who was there that night.

3 THE COURT: Alright. Thank you, ma'am. Alright,  
4 Counsel.

5 MR. MITCHELL: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. MITCHELL: Your Honor, my client indicated to me  
8 great remorse and that's in regards to his participation this  
9 nefarious act. He has had a clean record up until to date.  
10 Uh, he's in court with his his mother and sisters,  
11 21-years-old, finished high school, unfortunately the conduct  
12 he exemplified at that time most reprehensible and  
13 unexcuseable. He has indicated to me that he wish to at least  
14 two of these say how sorry he is to this family lost their  
15 their loved one. Uh, I certainly have nothin' further that I  
16 can add other than what the solicitor has added except that he  
17 has anguished, uh, in the Department of or in the detention  
18 center for yea so many months as solicitor then pointed out as  
19 far as I think the negotiation which was accepted by the  
20 family which we appreciate certainly give him the opportunity  
21 to one day look at going before the parole board. Uh, we  
22 certainly request the Court to accept his plea and certainly  
23 give him the opportunity to address this family.

24 THE COURT: Alright, sir. Mr. Edwards, anything you  
25 wanna say to the Court?

1 THE DEFENDANT: I wanna say somethin' to the family.

2 THE COURT: Alright, well you you can speak it directly  
3 to me if you want to but they they're here and they can hear  
4 you.

5 THE DEFENDANT: I I wanna tell this family that I'm sorry  
6 for what happened that night. I wou -- I got -- I was hangin'  
7 around with the wrong crowd and hope one day they'll find  
8 forgiveness in their heart for what, for what happened that  
9 night.

10 THE COURT: Thank you, sir. Alright, in Case Number, uh,  
11 2011-GS-42-2778 Freddie Edwards, Jr. having pled no contest to  
12 a charge of attempted murder, sentence of the Court is he be  
13 committed to State Department of Corrections for a determinate  
14 term of thirty (30) years, this sentence is concurrent, he's  
15 given credit for the five hundred ninety-four (594) days of  
16 jail time. Case Number 2011-GS-42-2779 Freddie Edwards, Jr.  
17 having pled no contest to a charge of attempted murder,  
18 sentence of the Court same as the previous sentence, to run  
19 concurrent. In Case Number 2011-GS-42-2782, Freddie Edwards,  
20 Jr. having pled guilty to armed robbery, sentence of the Court  
21 is the same as the previous sentences, to run concurrent.  
22 Case Number 2011-GS-42-2783, Freddie Edwards, Jr. having pled  
23 guilty to armed robbery, sentence of the Court is the same as  
24 previous sentence, to run concurrent. Case Number  
25 2011-GS-42-2780, Freddie Edwards, Jr. having pled guilty to

1 armed robbery, sentence of the Court the same as previous  
2 sentence, to run concurrent. Case Number 2011-GS-42-2781  
3 Freddie Edwards, Jr. having pled guilty to armed robbery,  
4 sentence of the Court the same as the previous sentence, to  
5 run concurrent.

6 MS. JORDAN: Thank Your Honor.

7 MR. MITCHELL: Thank you very much, Your Honor.

8 (Medical evaluation marked Court's Exhibit No. 1 and  
9 admitted into evidence.)

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CERTIFICATE OF REPORTER

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I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on November 26, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 18, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

September 17, 2013

*Margaret A. Woods*

\_\_\_\_\_  
Margaret A. Woods, Court Reporter  
in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Spartanburg )  
 )  
 Freddie Edwards Jr # 353276 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

2013-CP-42-02483

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County
3. Name(s) of co-defendant(s) (if any) Collen Mills, Drakar Crawford
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 4 counts armed robbery (11-GS-420-2782)
  - (b) attempted murder (11-GS-420-2779)
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) November 26, 2012
  - (b) 30 years

M. HOPKINS ACKLEY  
 2013 JUN 19 PM 11:52  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 FILED  
 General Session

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) was not informed of the option by attorney

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 JUN 10 AM 11:52  
M. HOPE BLACKLEY

10.

(A) Ineffective Assistance of counsel

(B) Illegal Sentencing

11.

(A) Counsel was ineffective for advising me to plead guilty to (4) counts of armed robbery when nothing was taken from the victims.

(B) Counsel was ineffective for lack of investigation. If he would have properly investigated I would never been found guilty of attempted murder & 4 counts armed robbery. He would have been able to prove a lesser charge and I would have received a lesser sentence.

(C) I did not plea guilty voluntarily and intelligently among the alternative courses of action open to me because counsel did not discuss defenses with me. I did not have a full understanding of the charges against me being counsel did not discovery material with me.

(D) I was illegally sentenced by being found guilty of attempted murder after my co-defendant was charged for the same charge in which he admitted to being the shooter. I should never have been charged with the attempted murder charge when he admitted to being the shooter, being that the attempted murder victim was shot only 1 time.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 JUN 10 AM 11:52  
MEREDITH BEACHLEY

- (a) — INEFFECTIVE ASS. of COUNSEL
- (b) — IMPROPER PLEA
- (c) — FIFTH AMENDMENT VIOLATION

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

- (a) — STRICKLAND vs WASHINGTON 466 U.S. 668 (1984)
- (b) — ..
- (c) — ..

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

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

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

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

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iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

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:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

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

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. Theo W. Mitchell, Attorney-at-Law office / 9 Bradshaw St. Greenville SC, 296
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. A Guilty Plea
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Sentence Reconsideration / Reduce sentence

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

NO

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STATE OF SOUTH CAROLINA )  
 )  
County of Spartanburg )

VERIFICATION

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Freddie Edwards

SWORN to and subscribed before me this 4  
day of June, 2013.

Debra Suris (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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SPARTANBURG COUNTY  
2013 JUN 10 AM 11:52  
M. HOPE BLACKLEY

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

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

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

Freddie Edwards  
Applicant

SWORN or affirmed to and subscribed before me this

4 day of June, 2013.

[Signature]  
Notary Public

My Commission Expires: 11-4-2015

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Freddie Edwards, Jr., #353276, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2483

**RETURN**

Respondent, making its Return to the application for post-conviction relief (PCR) filed June 10, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the June 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-2778), attempted murder (2011-GS-42-2779), and four counts of armed robbery (2011-GS-42-2780, -2781, -2782, -2783). The Applicant was represented by Theo W. Mitchell, Esquire. On November 26, 2012, the Applicant pled no contest to the lesser included offense of attempted murder, no contest to the charge of attempted murder, and guilty as indicted to the four armed robbery charges. The Honorable Lee S. Alford sentenced Applicant to six concurrent sentences of thirty years, pursuant to a negotiated sentence. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and the plea 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:

- a. Ineffective assistance of Counsel, in that;
  - i. Counsel advised the Applicant to plead guilty to four counts of attempted robbery when there was nothing taken,
  - ii. Counsel failed to investigate,
- b. Involuntary guilty plea, in that;
  - i. Applicant did not have a full understanding of the charges,
  - ii. Counsel failed to review discovery materials with Applicant,
- c. Illegal Sentence,
  - i. Co-defendant was found guilty of murder, but the victim was only shot once, so Applicant should never have been charged with attempted murder.

## III.

The Respondent interprets the first and third allegation as an allegation of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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 Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1)

counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty plea s, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265; 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel and involuntary guilty plea.

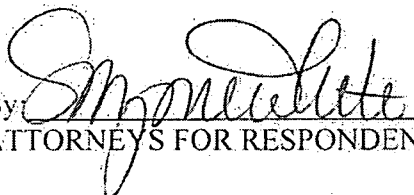
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE  
Assistant Deputy Attorney General

By   
ATTORNEYS FOR RESPONDENT

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

July 9, 2014.

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

)  
)

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Freddie Edwards, Jr.,

)

2013-CP-42-2483

Applicant,

)

)

)

v.

)

**CERTIFICATE OF SERVICE BY MAIL**

)

State of South Carolina,

)

)

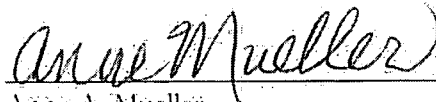
Respondent.

)

)

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

J. Brandt Rucker, Esquire  
522 N. Church Street  
Greenville, SC 29601



\_\_\_\_\_  
Anne A. Mueller  
Legal Assistant for the Respondent

DATED this 9<sup>th</sup> day of July, 2014.

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG ) COURT OF COMMON PLEAS NONJURY

FREDDIE EDWARDS, JR., ) TRANSCRIPT  
APPLICANT, ) OF  
vs. ) RECORD  
STATE OF SOUTH CAROLINA, ) 2013-CP-42-2483  
RESPONDENT. )

March 23<sup>rd</sup>, 2015  
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

J. BRANDT RUCKER  
ESQ.  
Attorney for the Applicant

SUZANNE H. WHITE  
Assistant Attorney General  
Attorney for the Respondent

PAMELA E. GREEN  
Circuit Court Reporter  
Seventh Judicial Circuit

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## P R O C E E D I N G S

1  
2  
3 THE COURT: All right. The Court is on the record in  
4 the case of Freddie Edwards, Junior versus The State of  
5 South Carolina. It's an application for post-conviction  
6 relief.

7 I'll hear from the State concerning the status of the  
8 case.

9 MS. WHITE: Thank you, Your Honor.

10 Case Number 2013-CP-42-2483. Mr. Edwards is  
11 represented today by Mr. Brandt Rucker, and I believe we are  
12 gonna proceed with a hearing.

13 Mr. Edwards was indicted in June of 2011 for murder,  
14 attempted murder, and four counts of armed robbery.  
15 Mr. Theo Mitchell represented him at a plea at which time he  
16 pled, pursuant to North Carolina versus Alford, to a -- two  
17 counts of attempted murder and pled guilty to the four  
18 counts of armed robbery. That was November 22<sup>nd</sup>, 2012.  
19 There was a negotiated sentence for a concurrent 30 years on  
20 all charges.

21 Mr. Edwards has filed this application June 10<sup>th</sup>,  
22 2013, alleging ineffective assistance of counsel,  
23 involuntary guilty plea, and illegal sentence. He alleged  
24 that counsel advised him to plead to armed robbery when  
25 nothing was taken. He -- counsel failed to investigate,

Freddie Edwards - Direct examination  
by Mr. Rucker

1 counsel failed to review discovery with him, that the  
2 Applicant lacked a full understanding of the charges, that  
3 his codefendant was found guilty of murder, but the victim  
4 was only shot once. So the Applicant should not have been  
5 charged.

6 I'll turn it over, at this time, to Mr. Rucker.

7 THE COURT: Mr. Rucker, you may proceed.

8 MR. RUCKER: Your Honor, I call my witness,  
9 Mr. Edwards, to the stand.

10 THE COURT: Let me put -- get you, if you would before  
11 we start though, to put on the record the grounds on which  
12 you're proceeding.

13 MR. RUCKER: We are proceeding on all the grounds he  
14 listed originally in his application, Your Honor.

15 THE COURT: And, and what she just stated?

16 MR. RUCKER: Yes, sir.

17 THE COURT: All right. You wish to call Mr. Edwards?

18 MR. RUCKER: I do.

19 THE COURT: Sir, if you'll come forward to my left  
20 please.

21 (Witness complies.)

22 THE COURT: Mr. Edwards, if you would, put your  
23 left-hand on the Bible, raise your right to the best of your  
24 ability. You need to stand up and face me while you do  
25 that.

Freddie Edwards - Direct examination  
by Mr. Rucker

1 FREDDIE EDWARDS, being first duly  
2 sworn, testified as follows:

3 THE COURT: Have a seat.

4 (Witness complies.)

5 THE COURT: State your name please.

6 THE WITNESS: Freddie Edwards.

7 THE COURT: Thank you.

8 Mr. Rucker---

9 MR. RUCKER: May it---

10 THE COURT: ---your witness.

11 MR. RUCKER: May it please the Court?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. RUCKER:

15 Q Mr. Edwards, what is your current sentence?

16 A Thirty years, 85 percent.

17 Q Okay. And do you know what you were, what you pled --  
18 do you recall what you pled guilty to?

19 A Yes, sir.

20 Q All right. What were the charges you pled guilty to?

21 A Suppose to be attempted murder and four armed  
22 robberies.

23 Q Okay. And did you have a codefendant in that case?

24 A Yes, sir, I got three of them.

25 Q Okay. Who were -- do you recall who the codefendants

Freddie Edwards - Direct examination  
by Mr. Rucker

1 were?

2 A Fredrick Pearson, Drayquad Crawford, and Collin, Collin  
3 Mills.

4 Q Okay. Who were you represented by at your plea?

5 A Theo Mitchell.

6 Q How did you come to have him represent you?

7 Was he appointed or did you hire him?

8 A I hired him.

9 Q Okay. And how many times roughly did you meet with  
10 him?

11 A Three or four.

12 Q Okay. When did -- how, how far before the plea did  
13 you, did you hire him?

14 A When, when I first, when I first got in the county he  
15 was hired.

16 Q Okay. So in-between the time you first got in the  
17 county and the actual plea, how long had he represented you?

18 A About 17 months.

19 Q Okay. And in that time you only met with him four  
20 times.

21 Is that right?

22 A Yes, sir.

23 Q Okay. How long would these meetings last?

24 A Forty-five to an hour.

25 Q Okay. And you've alleged he did not go over the

Freddie Edwards - Direct examination  
by Mr. Rucker

1 discovery with you.

2 Did he ever bring discovery for you to review?

3 A He, he brought it but he ain't never give me the chance  
4 to go over it. He was just reading from it, reading from  
5 it.

6 Q Okay.

7 A But he ain't go into details about the evidence they  
8 had against me.

9 Q Okay. What do you believe, within that evidence that  
10 was in the discovery; would of helped you if you'd gone over  
11 it with him?

12 A Basically the victims -- two of the victims said that  
13 they ain't had nothing for us to take. Offer them -- when a  
14 crime occurred, you know what I'm saying, and then could of  
15 got it dropped from four armed robberies, two armed  
16 robberies to a lesser charge.

17 Q Okay.

18 A And then intent to murder on the victim that -- the  
19 victim got shot.

20 Q Okay. And did you discuss with him any possible --  
21 potential defenses that you may have?

22 A No, sir.

23 Q All right. Did y'all talk about self-defense or any of  
24 those?

25 A No, sir.

Freddie Edwards - Direct examination  
by Mr. Rucker

1 Q Okay. In addition to meeting with you four times, did  
2 he bring you an offer that the state gave you?

3 A He say the first offer was 30 mandatory.

4 Q Okay. And when was that offer originally given to you?

5 A Like a year after being incarcerated.

6 Q Okay. And between -- and that -- between that and when  
7 you actually entered your plea, did the offer change?

8 A From 30 mandatory to 30, 85 percent.

9 Q Okay. And did you voluntarily enter into that plea  
10 that day for the 30, 85 percent?

11 A Yes, sir.

12 Q Okay. You're alleging that you -- your plea was not  
13 voluntary.

14 why was it not voluntary?

15 A Based cause, based cause I have all the ideas and all  
16 the elements of the charges they had against me that I was  
17 pleaing to and then be notified of a lesser charge.

18 Q Okay. Did, did Mr. Mitchell talk to you about lesser  
19 charges that were available to you if you went to trial?

20 A No, sir.

21 Q Did he talk to you about hand of one is the hand of all  
22 theory in South Carolina?

23 A Yes, sir.

24 Q All right. I'm sorry. I didn't hear you.

25 A Yes, sir.

Freddie Edwards - Direct examination  
by Mr. Rucker

1 Q All right. And why did you, in fact, not go to trial  
2 then and plead guilty?

3 A Cause I ain't want to get life. He pressure me. He  
4 said if I take it to trial I'd get life and I ain't want to  
5 spend the rest of my life in prison.

6 Q Why do you believe he could of gotten you a lesser  
7 charge as part of the plea negotiations?

8 A Based off, based off the evidence saying that wasn't  
9 nothing taken off two of the victims and they charges were  
10 for armed robbery.

11 Q Okay. Did -- factually, why were y'all over there in  
12 the first place?

13 A Suppose to be a robbery --

14 Q Okay.

15 A -- to get some weed.

16 Q I'm sorry?

17 A Robbery for some marijuana.

18 Q Okay. And was there just an ongoing problem between  
19 you and the other person?

20 was there an ongoing problem between Mr. Pearson and  
21 the person that y'all---

22 A Yes, sir.

23 Q ---visited -- you have to let me finish to make sure we  
24 have a record.

25 okay?

Freddie Edwards - Direct examination  
by Mr. Rucker

1 A Okay.

2 Q All right. Did -- was there an ongoing problem between  
3 Mr. Pearson and the person who -- the, the person who was  
4 shot?

5 A Would you say it again now?

6 I can't --.

7 Q Did you have -- was it -- to your knowledge, was there  
8 a problem -- did Mr. Pearson have a beef or a problem with  
9 the person who was shot?

10 A Oh no.

11 Q Okay. What else did you discuss with Mr. Mitchell as  
12 far as your defenses?

13 A He really, he really didn't discuss defenses with me.

14 Q Okay. During, during the, the course of that incident,  
15 did you have to defend yourself?

16 A No, sir.

17 Q Okay. So your, your, your belief is that you could of  
18 gotten a lesser charge based on the, the failure of any  
19 money to be taken---

20 A Yes, sir.

21 Q ---from the two people?

22 All right. Do you have any other claims to make for  
23 Your Honor to, to look at?

24 A No, sir.

25 MR. RUCKER: All right. That's all my questions.

Freddie Edwards - Cross-examination  
by Ms. White

1 MS. WHITE: Just a---

2 THE COURT: State may cross-examine.

3 MS. WHITE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. WHITE:

6 Q Just briefly, Mr. Edwards.

7 You do acknowledge that you met with Mr. Mitchell and  
8 went over the charges you had been indicted with.

9 Is that right?

10 A Yeah.

11 Q And you ultimately pled to attempted murder instead of  
12 one of the murder charges.

13 Is that right?

14 A Yes, ma'am.

15 Q So one of the charges was reduced?

16 A Yes, ma'am.

17 Q And in your discussions with him, whether or not you  
18 would have a chance at trial versus a better chance at a  
19 sentence if you pled, that's what caused you to plead  
20 guilty?

21 A Yes, ma'am.

22 Q The, the discussions about the possibility of receiving  
23 life if you went to trial on murder?

24 A Yes, ma'am.

25 Q Okay. So you pled guilty because you wanted a lesser

Freddie Edwards - Cross-examination  
by Ms. White

1 sentence.

2 Is that right?

3 A Yes, ma'am.

4 Q Okay. And when the judge asked you if you were  
5 pleading freely and voluntarily, you agreed that you were?

6 Is that right?

7 A (Witness nods affirmatively.)

8 Q And when the judge asked you if you were satisfied with  
9 counsel, you also agreed that you were.

10 Is that right?

11 A Yes, ma'am.

12 Q Okay. And now your concern is that you essentially  
13 want a lesser sentence?

14 A Yes, ma'am.

15 Q Okay. Thank you, Mr. Edwards.

16 MR. RUCKER: Nothing -- no, sir, nothing further.

17 THE COURT: All right, sir. You may step down.

18 Applicant may call its next witness.

19 MR. RUCKER: We have no other witnesses, Your Honor.

20 THE COURT: The State may call witnesses.

21 MS. WHITE: We'll briefly call Mr. Theo Mitchell, Your  
22 Honor.

23 THE COURT: Mr. Mitchell, come forward to my left  
24 please, sir.

25 THE WITNESS: Thank you very much, Your Honor.

Theo Mitchell - Direct examination  
by Ms. White

1 THE COURT: Yes, sir.

2 And when you arrive, if you'll put your left-hand on  
3 the Bible and raise your right.

4 THE WITNESS: Yes, sir.

5 THEO MITCHELL, being first duly  
6 sworn, testified as follows:

7 THE COURT: Have a seat please.

8 THE WITNESS: Thank you.

9 THE COURT: State your name please.

10 THE WITNESS: My name is Theo Walker Mitchell.

11 THE COURT: Thank you.

12 Ms. White, your witness.

13 MS. WHITE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. WHITE:

16 Q Mr. Mitchell, if you can just give me a brief  
17 background.

18 At the time you represented Mr. Edwards in 2012, how  
19 long had you been practicing law?

20 A I guess about 40 years.

21 Q Okay. And was your practice primarily in criminal law  
22 or civil?

23 A Both.

24 Q Both.

25 Had you had the opportunity to represent people for

Theo Mitchell - Direct examination  
by Ms. White

1 murder, attempted murder, and armed robbery charges before?

2 A Yes, including six capital punishment cases.

3 Q Okay. And when you were retained in this case, was it  
4 correct that you represented him for about 17 months before  
5 the trial?

6 A That's correct. His mother retained me.

7 Q Okay. Do you recall how many times you met with him  
8 during that period before the plea?

9 A It was more than three or four times. I know that.

10 Q And was Mr. Edwards in -- did he ever get out on bond  
11 or was he in the detention, detention center the whole time?

12 A He was in the detention center at all times after he  
13 was returned from the Department of Mental Health for a  
14 mental evaluation as to whether or not he could assist me at  
15 trial or if he knew right from wrong or whether or not he  
16 actually was capable of standing trial.

17 Q And was that performed at your request?

18 A That is correct.

19 Q Okay. And I would take it that they found that he was  
20 competent to stand trial and held criminal responsibility  
21 for the charges?

22 A That's correct.

23 Q Okay. In your discussions with him, did you have a  
24 chance to discuss with him the discovery materials and the  
25 facts in the case?

Theo Mitchell - Direct examination  
by Ms. White

1 A Yes, I did.

2 Q And what -- can you give us a brief idea of what some  
3 of those discovery materials consisted of?

4 A Well, the discovery materials consisted of not only  
5 disks but also documentation outlining the situation, the  
6 murder of the young man who they went to rob. Four of them  
7 extended upon this victim. Obviously didn't know he had  
8 friends in the garage, and they were in the garage smoking  
9 dope, and they went there to steal the dope from him or  
10 marijuana.

11 Consequently, an altercation ensued. Mr. Edwards, his  
12 codefendants, had a .22 caliber rifle and also I believe it  
13 was a pellet gun. Notwithstanding the fact that the, the  
14 victim attempted to protect himself, Mr. Edwards took a  
15 toolbox, struck the victim over the head knocking him out  
16 after he had been shot. They retreated. They stole  
17 cigarettes, other items from the other victims that were  
18 caught within the garage, and absconded the jurisdiction.

19 Consequently, they were apprehended. They consented to  
20 having searches of their premises. Marijuana was taken,  
21 other items which I can't enumerate at this point, taken  
22 from the victims. The main thing they went to steal  
23 marijuana and they stole it --

24 Q Okay.

25 A -- at -- with an armed -- with a, with a rifle.

Theo Mitchell - Direct examination  
by Ms. White

1 Q And so in your review of the, the evidence that was in  
2 the case, armed robbery was a, in your mind, appropriate  
3 charge?

4 A Well, I definitely think so.

5 Q And---

6 A From all four of them.

7 Q Okay. And obviously, in, in your review as well, there  
8 was no defense of self-defense or any other possible defense  
9 that could of been presented at trial?

10 A No self-defense, no, ma'am.

11 Q Okay.

12 A This was an instigated situation that was brought about  
13 by a codefendant who was prepared to turn State's evidence  
14 against them on the murder charge because the man did die  
15 when he was shot and another one was struck I think in the  
16 arm or leg. I can't recall. But that was the attempted  
17 murder.

18 Q Okay. And so, in your discussions with him, was it a  
19 discussion about the best plea offer essentially you could  
20 get for him most of the time?

21 A Oh yes.

22 Q And did you feel that he understood, at this point,  
23 what his options were when he went to plead guilty?

24 A I have no doubt that Mr. Edwards knew what he was doing  
25 and was capable and competent to be able to stand before

Theo Mitchell - Direct examination  
by Ms. White

1 this bar and tender his plea.

2 Q Thank you, Mr. Mitchell.

3 That's all I have, Your Honor.

4 A Thank you.

5 THE COURT: You may cross-examine, Mr. Rucker.

6 MR. RUCKER: May it please the Court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. RUCKER:

10 Q Mr. Mitchell, I'm Brent Rucker and I represent Mr.  
11 Edwards in this case.

12 A Yes.

13 Q Sir, you've testified previously that you sent him in  
14 for a mental health evaluation.

15 where did you send him?

16 A To Columbia.

17 Q Okay. And why, why did you think that was necessary in  
18 this case?

19 A Because anyone that would be cajoled by another to  
20 commit a crime such as they committed had to be mentally  
21 touched --

22 Q Okay.

23 A -- or have some kind of mental problem.

24 Q So you believed he entered into this because he was  
25 pressured by at least one of the codefendants?

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 A No, he wasn't pressured. He voluntarily entered into  
2 this.

3 Q I understand.

4 You -- but you testified that he was cajoled into  
5 getting involved in this.

6 Was that because Mr. Pearson was pressuring him?

7 A Mr. Pearson was the one that set up this whole  
8 nefarious affair --

9 Q Okay.

10 A -- and, consequently, Mr. Edwards fell in hook, line,  
11 and sinker in which a man was killed.

12 Q Yes, sir, and we understand the seriousness of it.

13 But you're saying that Mr. Pearson coerced my client  
14 into getting involved in this?

15 A That's the only way my clients knew that these people  
16 had dope. That's correct.

17 Q Okay. And is it fair to say that he was sent back from  
18 mental health and they gave him -- they said that he, he  
19 understands what he did and he understood what he was  
20 pleading guilty -- that he could help you with this defense  
21 and plead guilty?

22 A That's correct.

23 Q Did they tell you that he had problems with authority  
24 figures or people talking to him and pressuring him into  
25 things?

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 A That didn't come back in the report that I received.

2 Q Okay. But you noticed that from your own talking with  
3 him I'm assuming?

4 A No, I noticed that when I met with him on numerous  
5 occasions that seemed like this young man was confused,  
6 seemed like he needed some counseling and/or an evaluation  
7 and that's why I -- we sent him to Columbia.

8 Q Yes, sir.

9 Who was the defendant that was gonna go State's  
10 evidence?

11 A I think Mr. Pearson. It was the white guy.

12 Q All right. And Mr. Pearson---

13 A There were four blacks that Mr. Pearson approached in  
14 regards to robbing these people and stealing the dope.  
15 Whoever the white fellow was, that was the one who  
16 approached them and got them involved in this nonsense.

17 Q But -- so you don't know for sure if that was Mr.  
18 Pearson?

19 It could of been someone else?

20 A I think it was Mr. Pearson.

21 Q Okay. Did Mr.---

22 A It's been a while since I, pardon me, handled the case.

23 Q Okay.

24 A I mean reviewed it.

25 Q Yes, sir, I understand.

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 Did Mr. Pearson get a guilty plea out of this or did he  
2 go to trial?

3 A I have no idea what happened to Mr. Pearson.

4 Q And, and how did you find out he was one -- whichever  
5 defendant was gonna turn State's evidence?

6 A Because he refused to cooperate hook, line, and sinker  
7 with the solicitor's office. He refused to cooperate in  
8 anyway as far as some plea negotiations. He made a deal,  
9 from my understanding, with the solicitor that he was going  
10 to give testimony against these guys.

11 Q Okay. Did you -- did the solicitor tell you that is  
12 what I'm asking?

13 A Yes.

14 Q Okay. And did you inform my client that there was a  
15 potential State's evidence witness?

16 A Yes, he knew.

17 Q Now, I'm certainly not talking about the victim who was  
18 killed, but other witnesses, did you interview those  
19 witnesses about what happened in that garage?

20 A No, they were actually -- if I may, they were actually  
21 charged -- as far as the victims were concerned, no, I did  
22 not talk to any of the victims. I talked to Mr. Edwards and  
23 he gave me the name of a couple more defendants who were  
24 still in prison and I met with one of them.

25 Q Yes, sir.

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 But I'm simply asking did you talk to any of the other  
2 witnesses that were there other than the codefendants?

3 A Other witnesses that were there, no.

4 Q Okay. Did you have -- were you able to talk to them?

5 Did you get discovery in this case to see who the, the  
6 witnesses were?

7 A I did.

8 Q Okay. Why did you not speak with them?

9 A Because I had no intention on infuriating anybody that  
10 had been aggrieved and had a friend of theirs killed in  
11 their presence. I just felt that it would of been a hostile  
12 and invaluable situation. Not invaluable. But wouldn't put  
13 any value to, to a defense of this. There was no defense,  
14 sir.

15 Q Okay. Well, how -- did you go over the victim's  
16 statements or the witness statements with my client,  
17 Mr. Edwards?

18 A I did.

19 Q How often did -- how many times did y'all meet and  
20 discuss the actual statements?

21 A I met with Mr. Edwards no less than I'll say five, six,  
22 seven times. I have no idea. I took over the discovery,  
23 took him through the elements in regards to the charges, and  
24 whatever else was required for me to have done to try to  
25 protect him.

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 Q Okay. Did you mention to him that the, the witnesses  
2 were intoxicated with marijuana at the time of this  
3 incident?

4 A I had no idea whether they were intoxicated or not.

5 Q Okay.

6 A No, I didn't mention that to him.

7 Q I believe, in your previous testimony, you testified  
8 they were smoking dope when these defendants got there.

9 A I still don't know whether they were intoxicated.

10 Q Okay. Did you try to find out?

11 A No.

12 Q All right. Well, why not?

13 A Because they victimized or killed one, shot another  
14 one, robbed them, and retreated.

15 Q Yes, sir. Yes, sir, but there---

16 A That's why I didn't talk to them, sir.

17 Q They were alleged to have done that, but your client  
18 has Fifth Amendment protections.

19 Correct?

20 A Fifth Amendment protection?

21 Q Right.

22 But did he, did he give a statement in this case?

23 A No.

24 Q Okay. And they were making their case based maybe on  
25 Mr. Pearson, but on the other witnesses, correct?

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 A That's correct. They even found marijuana in his home.

2 Q But you -- that was based on a consent search.

3 Is that right?

4 A Yeah, he had no knowledge. He was in -- incarcerated  
5 at the time.

6 Q Okay. And that -- those were other family members --  
7 there were numerous people that lived at that house.

8 Isn't that right?

9 A I have no idea who all went there. But I do know that  
10 an investigator for the Solicitor's Office went there.

11 Q Well, could it be important that they consented to  
12 allow a search?

13 It could of been somebody else's marijuana in the home,  
14 couldn't it?

15 A I have no idea whose marijuana it was. I know they  
16 were there to steal marijuana and they stole it.

17 Q But you didn't check with the -- I mean are you saying  
18 that the, part of the evidence they had that my client  
19 committed this crime was that, based on a consent search,  
20 they found the marijuana that was at the scene?

21 A I have no idea where that marijuana came from. I know  
22 they found marijuana.

23 Q Okay. Did you discuss challenging the consent with my  
24 client, the consent search?

25 A No, because the consent was in writing.

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 Q All right. Did you, did you talk with him about  
2 challenging whether that was his marijuana or somebody  
3 else's in the home?

4 A No, I didn't discuss that with him.

5 Q Okay. Do you know if any kind of ID, photo ID or  
6 lineup, was done in this case?

7 A No.

8 Q Did you check into that and see why that was not done?

9 A No, I didn't check into it. I had received discovery  
10 from the solicitor's office as much as I could, yeah,  
11 including disks.

12 Q Okay. Did the, did the victims know my client  
13 specifically?

14 Not Mr. Pearson, but my client.

15 A I have no idea.

16 Q Okay.

17 A I have no idea if they knew each other or not.

18 Q Did you check into how my client was ID'd as being part  
19 of this?

20 A The solicitor's office charged Mr. Edwards. The  
21 magistrate gave a preliminary. The Grand Jury handed down a  
22 True Bill and, the gentleman, he never denied that he was  
23 not a part of those proceedings, sir. No, I did not  
24 question anything about any photo ID or anything like that.

25 Q All right. Did you have any statements of codefendants

Theo Mitchell - Cross-examination  
by Mr. Rucker

1 implicating my client?

2 A No.

3 Q And you testified Mr. Pearson would not cooperate and  
4 give statements against anyone including himself.

5 Is that right?

6 A That's correct.

7 MR. RUCKER: All right. No further questions.

8 THE COURT: Ms. White.

9 MS. WHITE: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Mitchell, the Applicant admitted and acknowledged  
13 the facts of the case at the guilty plea, did he not?

14 A That's correct.

15 Q And he also informed the Court that he was in agreement  
16 with the fact that it was being dropped down to attempted  
17 murder to avoid a day-for-day sentence.

18 Is that right?

19 A That's correct.

20 Q And he also acknowledged that he was guilty of the  
21 charges of armed robbery and believed he would be found  
22 guilty of attempted murder if he had proceeded to trial?

23 A That's correct.

24 Q Thank you.

25 That's all I have, Your Honor.

1 THE COURT: Anything further?

2 MR. RUCKER: No, sir.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Does the State wish to call additional witnesses?

7 MS. WHITE: No, Your Honor. The State would rest.

8 THE COURT: All right. I'll hear from counsel.

9 Mr. Rucker.

10 MR. RUCKER: Your Honor, our chief allegation is there  
11 was no real investigation in this case. We don't deny that  
12 Mr. Mitchell met with my client several times. But my --  
13 they didn't have meaningful meetings. They never went over  
14 victim's statements. There was no challenge to the  
15 identification. There was no challenge to the search. And  
16 my client pled guilty because he didn't understand he had a  
17 right to challenge these things and there's a fair chance  
18 that the evidence would not have been admitted against him.

19 THE COURT: The State.

20 MS. WHITE: Your Honor, the, the burden of proof that  
21 the Applicant has is to show that not only would he have not  
22 pled guilty, but he would of proceeded to trial but for  
23 counsel's deficient performance or advice. There's nothing  
24 that has been shown today that shows, number one, that he  
25 would of proceeded to trial on these charges. In fact, he

1 specifically stated that he did want to plead freely and  
2 voluntarily in order to receive a lesser sentence and not  
3 risk receiving a life sentence, and I think that, with his  
4 admissions in the guilty plea transcript, that there is no  
5 way that the Applicant has met his burden of proof of  
6 showing any deficient performance or any prejudice.

7 THE COURT: All right. I do find that the Applicant  
8 has failed to meet his burden of proof as argued by the  
9 State. It's my finding that that failure should result in  
10 the dismissal of the application.

11 If you'll prepare an order I'll be happy to sign it.

12 MS. WHITE: Thank you, Your Honor.

13 MR. RUCKER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. MITCHELL: Thank you, Your Honor.

16

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18 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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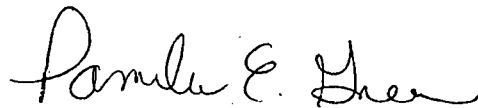
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## C E R T I F I C A T E

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3 I, Pamela E. Green, Official Court Reporter for the  
4 Seventh Judicial Circuit of the State of South Carolina, do  
5 hereby certify that the foregoing is a true, accurate and  
6 complete Transcript of Record of the proceedings had and  
7 evidence introduced in the trial of the captioned case,  
8 relative to appeal, in the Court of Common Pleas Nonjury for  
9 Spartanburg County, South Carolina, on the 23<sup>rd</sup> day of  
10 March, 2015.

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

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16 October 21<sup>st</sup>, 2015  
17  
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21 PAMELA E. GREEN, Court Reporter  
22  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 )  
 Freddie Edwards, Jr., #353276, )  
 )  
 ) Applicant, )  
 )  
 ) v. )  
 )  
 State of South Carolina, )  
 )  
 ) Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2483

**ORDER OF DISMISSAL**

SPARTANBURG COUNTY  
 2015 AUG 17 PM 4:38  
 M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 10, 2013. Respondent made its Return on or about July 9, 2014. An evidentiary hearing into the matter was convened on March 23, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Theo W. Mitchell, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the June 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-2778), attempted murder (2011-GS-42-2779), and four counts of armed robbery (2011-GS-42-2780, -2781, -2782, -2783). Applicant was represented by Theo W. Mitchell, Esquire. On November 26, 2012,

Applicant pled no contest to the lesser included offense of attempted murder, no contest to the charge of attempted murder, and guilty as indicted to the four armed robbery charges. The Honorable Lee S. Alford sentenced Applicant to six concurrent sentences of thirty years, pursuant to a negotiated sentence. Applicant did not appeal his convictions or sentences.

### ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
  - i. Counsel advised the Applicant to plead guilty to four counts of attempted robbery when there was nothing taken,
  - ii. Counsel failed to investigate,
2. Involuntary guilty plea, in that;
  - i. Applicant did not have a full understanding of the charges,
  - ii. Counsel failed to review discovery materials with Applicant,
3. Illegal Sentence,
  - i. Co-defendant was found guilty of murder, but the victim was only shot once, so Applicant should never have been charged with attempted murder.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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 M. HOPE BLACKLEY  
 SPARTANBURG COUNTY



### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised at the hearing.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "A reasonable probability is a probability

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sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he is serving a thirty-year sentence for attempted murder and four counts of armed robbery. Applicant testified that he also had three co-defendants, Pearson, Mills, and Crawford. Applicant testified that he retained Counsel to represent him on the charges and met with Counsel approximately three to four times during the seventeen months between his arrest and plea. Applicant testified that Counsel brought discovery materials to Applicant and read the materials to Applicant, but did not allow Applicant ample time to review the materials. Applicant testified that Counsel did not review any possible defenses with Applicant, including the fact that two of the victims indicated that they did not have anything to steal. Applicant testified that he was initially offered a thirty-year sentence for murder, which would require service of day for day, but then the offer was reduced to allow for service of 85%.

Counsel testified that when he represented Applicant in 2012, he had been practicing law for almost forty years, handling both criminal and civil cases. Counsel testified that he had participated in six capital cases. Counsel testified that he met with Applicant more than four times and requested that a mental evaluation be taken of Applicant. However, Counsel testified that the evaluation did not reveal any issues that would provide a defense or mitigation. Counsel testified that he reviewed all discovery materials with Applicant, including the documents and discs received from the State. Counsel testified that the evidence indicated that Applicant and his three co-defendants went to rob the victim at his home, but when they arrived, the victim had friends at his home as well. The victim shot back, but only after he was shot by one of the co-defendants and hit over the head with a tool by Applicant. Further, the defendants consented to searches and items from the victim's home were found in their possession. Counsel testified that

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he did not believe there was a defense to present at trial and advised Applicant to consider a plea. Counsel testified that he was informed that Pearson, one of the co-defendants, intended to testify on behalf of the State if the case proceeded to trial. Counsel testified that Applicant was indicted following a preliminary hearing and never denied to Counsel that he was involved in the incident.

This Court finds that Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation is without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court notes that Counsel has years of experience representing clients on similar charges. Applicant failed to point to any specific matters Counsel failed to discover or by defenses that could have been pursued had Counsel completed additional investigation.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

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In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d 674. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that Applicant has failed to meet his burden of proof as to all claims that Counsel was ineffective.

#### Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective

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standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Applicant testified that he did voluntarily enter into the plea, but then indicated that the plea was not voluntary because he was not aware of each of the elements of the charges. Applicant testified that he pled guilty to receive a lesser sentence and did not want to risk receiving a life sentence if he proceeded to trial. Counsel testified that he fully reviewed discovery materials with Applicant and reviewed the charges and possible sentences. Counsel testified that Applicant voluntarily chose to plead guilty to avoid a potential life sentence.

This Court also finds this allegation conclusively refuted by the record. This Court finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

#### Illegal Sentence

Applicant alleged that his sentence was illegal. This Court finds that this allegation is without merit. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove that the alleged

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07

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M. HOPE BLACKLEY  
CLERK OF COURT

excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment *per se*. Id., Clark; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Applicant's allegation that his sentence is too harsh lacks merit. The court has the discretion to sentence codefendants to different punishment or treatment. State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974). The record shows that the sentencing judge reviewed the degree of participation of each codefendant as well as Applicant's prior criminal record.

The record further shows that Applicant did not object to the court's sentence. Applicant's failure to object waived any challenge to the length of the sentence on appeal or collateral review. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Therefore, this allegation is dismissed.

#### *Summary*

This Court finds, in regards to the allegation of ineffective assistance of counsel and involuntary guilty plea, Counsel's testimony was most credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his

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 CLERK  
 CLERK

burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

### CONCLUSION


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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCR, provides that if an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the applicant's behalf. Your attention 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17<sup>th</sup> day of August, 2015.


  
 \_\_\_\_\_  
 ROGER L. COUCH  
 Presiding Judge  
 Seventh Judicial Circuit

2015 AUG 17 PM 4:38  
 M. HOPE BLACKLEY  
 CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
FREDDIE EDWARDS, JR., #353276 )  
 Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT  
 CASE NO.: 2013-CP-42-2483

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: J. Brandt Rucker, Bar No. 69403 Address: 522 N. Church Street Greenville SC 29601 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. 101254 Address: PO Box 11549 Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____									
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
<b>SECTION I: Hearing Information</b>										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO										
<b>SECTION II: Motion/Order Type</b>										
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 14, 2015 Date submitted									
<b>SECTION III: Motion Fee</b>										
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason) <table style="width:100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCR/CP)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or,                      reduced to writing from motion made in open court per judge's instruction</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCR/CP)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction	Name of Court Reporter: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support										
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<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party										
<input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief										
<input type="checkbox"/> Motion for Stay in Bankruptcy										
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCR/CP)										
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction										
Name of Court Reporter: _____										
<input type="checkbox"/> Other: _____										
<b>JUDGE'S SECTION</b>	<b>JUDGE'S SECTION</b>									
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____									
<b>CLERK'S VERIFICATION</b>										
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____										

SPARTANBURG COUNTY  
 2015 AUG 17 PM 5:38  
 M. HOPE BISHOP  
 CLERK

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O. Box 3483  
Spartanburg, SC 29304-3483

Phone (864) 596-2591  
Fax (864) 596-2239



M. Hope Blackley  
Clerk of Court

August 18, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>TH</sup> JUDICIAL CIRCUIT

Freddie Edwards Jr.  
# 553276

CASE # 2013CP12-2483

Applicant

CERTIFICATE OF SERVICE

VS  
State  
Respondent

I certify that, on this date, I served a copy of the Order of Dismissal  
In this action dated 8-17, 2015 on 8-18-15

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Hawthorth  
Jann Recker  
\_\_\_\_\_  
\_\_\_\_\_

8-18-15  
(Date)

Corrie Steg  
(Signature)

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:36  
M. HOPE BLACKLEY

DOCKET NO  
**11-GS-42-2278**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

v

Freddie Edwards, Jr.

Indictment for

MURDER

SC Code 16-03-0010, 0020  
CDR Code 116  
Class FEL-EXM

WITNESSES

Spartanburg County Sheriff's Department

**RECEIVED**  
RECORDS ENDED  
CARD FILED  
INDEXED  
CHECKED WARRANTS  
CHECKED WARRANT NUMBER  
MAY 31 2011  
JUL 17 2011

ACTION OF GRAND JURY

JUN 17 2011

**True Bill**

Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

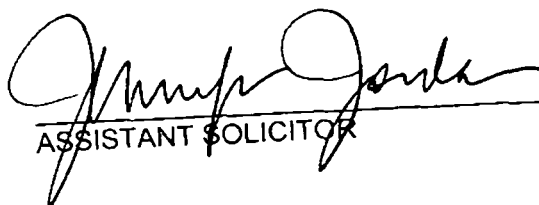
INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011, the  
Grand Jurors of Spartanburg County present upon their oath:

**MURDER**

That Freddie Edwards, Jr. did in Spartanburg County on or about April 8, 2011, feloniously, willfully, and with malice aforethought, kill Ronnie Lee Metcalf, by shooting him with a gun, and he died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

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

  
ASSISTANT SOLICITOR

1106S-42-2779

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4: 36  
M. HOPE BLACKLEY

The State of South Carolina  
County of Spartanburg  
Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011  
TERM

THE STATE  
vs.

Freddie Edwards, Jr.

Indictment for  
ATTEMPTED MURDER

SC Code: 16-3-0029  
CDR Code: 3410  
Class FEL-A

WITNESSES

Spartanburg County Sheriff's Office

SEARCHED  
INDEXED  
SERIALIZED  
FILED  
JUN 20 2011  
F. K. Thompson

CHARGED  
ARREST WARRANT NUMBER  
M123584

ACTION OF GRAND JURY

JUN 15 2011

True Bill

Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

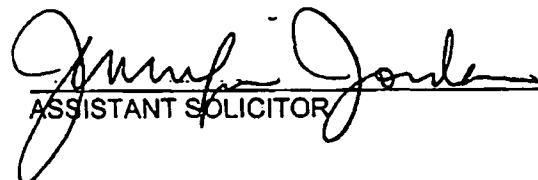
APR 13 2011

At a Court of General Sessions, convened on \_\_\_\_\_, the  
 Grand Jurors of Spartanburg County present upon their oath:

**ATTEMPTED MURDER**

That Freddie Edwards, Jr. did in Spartanburg County on or about April 8, 2011, with malice aforethought, intend and attempt to kill the victim, Gilbert Rey Cook to wit; by shooting the victim with a gun, causing him to seek medical treatment, all in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

  
 ASSISTANT SOLICITOR



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

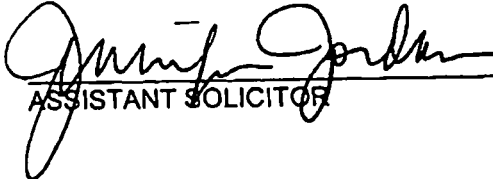
~~JUN~~ 17 2011

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That Freddie Edwards, Jr. did in Spartanburg County on or about, April 8, 2011, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Richard benson by means of force, violence, and/or intimidation, goods or monies of Richard Benson, with the intent to deprive the owner permanently of such property in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 ASSISTANT SOLICITOR

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4: 36  
M. HOPE BLACKLEY

DOCKET NO  
**11-GS-42-2781**  
The State of South Carolina  
County of Spartanburg  
Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011 TERM

THE STATE  
vs.

Freddie Edwards, Jr.

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)  
CDR Code: 139  
Class FEL/A

WITNESSES

~~Notarized~~  
Spartanburg County Sheriff's Office  
REARMS ROOM  
JUN 21 2011

CHECKED BY *Barry J. Barnette*

CHECKED BY

ARREST WARRANT NUMBER

M125976

ACTION OF GRAND JURY

JUN 17 2011

True Bill

Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

JUN 17 2011

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That Freddie Edwards, Jr. did in Spartanburg County on or about, April 8, 2011, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Gilbert Rey Cook by means of force, violence, and/or intimidation, goods or monies of Gilbert Rey Cook to wit: Power Tools, with the intent to deprive the owner permanently of such property in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
ASSISTANT SOLICITOR

DOCKET NO.

**11-GS-42-2702**  
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

vs.

Freddie Edwards, Jr.

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

WITNESSES

Spartanburg County Sheriff's Office

ISSUES FIDED

AND FULFED

*Barry J. Barnette*

CHECKED WARRANTS

CHECKED SIGNATURE

ASSIGNED AND

FILED CARD MADE

ARREST WARRANT NUMBER

M125981

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:36  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

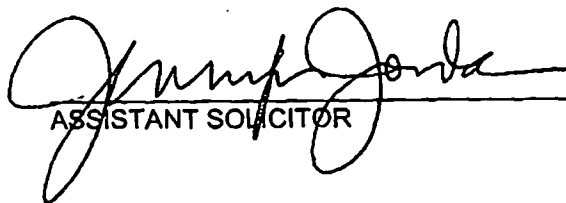
INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That Freddie Edwards, Jr. did in Spartanburg County on or about, April 8, 2011, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Timothy Clayton by means of force, violence, and/or intimidation, goods or monies of Timothy Clayton, with the intent to deprive the owner permanently of such property in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 ASSISTANT SOLICITOR

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 JUN 21 PM 4:36  
M. HOPE BLACKLEY

11-**GS-42-2703**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011 TERM

THE STATE  
vs.

Freddie Edwards, Jr.

Indictment for  
**ARMED ROBBERY**  
SC Code: 16-11-330 (A)  
CDR Code: 139  
Class FEL/A

WITNESSES

Spartanburg County Sheriff's Office  
REC-201 20110620  
**Computer**

JAND FURMAN

WITNESS

CHIEF OF POLICE

CHIEF OF POLICE

ASST. SHERIFF

ARREST WARRANT NUMBER

M125977

ACTION OF GRAND JURY

JUN 17 2011

**True Bill**

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

## INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That Freddie Edwards, Jr. did in Spartanburg County on or about, April 8, 2011, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Izel Poates by means of force, violence, and/or intimidation, goods or monies of Izel Poates, with the intent to deprive the owner permanently of such property in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 ASSISTANT SOLICITOR