

NO RESPONDENTS BRIEF FILED

The state of south carolina
IN The court of appeals

Appeal from Richland county
Robert E. Hood circuit Judge

Case: No 2014-000602

RECEIVED

SEP 30 2015

SC Court of Appeals

Nakia Jones

Appellant

vs.

state of south carolina

Respondent

RECORD on APPEAL

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STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Nakia Jones, #231592,)
 Petitioner,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-03697

**ORDER DENYING AND DISMISSING
PETITION FOR WRIT OF
HABEAS CORPUS**

2014 MAR -5 AM 10:39
 FILED
 METTE W. HARRIGAN
 C.C.P. & C.S.

This matter comes before this Court by way of a *pro se* document filed with the Richland County Clerk of Court on May 25, 2012, and received by Respondent on August 10, 2012, captioned "Complaint: Uniform Declaratory Judgment Act." In response, Respondent filed a Return and Motion to Dismiss, seeking to summarily dismiss the filing. The Court declined to summarily dismiss the action and requested that counsel be appointed to represent Petitioner and Respondent's Motion to Dismiss be set for a hearing¹.

A hearing was convened on November 19, 2013 at the Richland County Courthouse. Applicant was present and represented by David E. Belding, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. This Court finds the action must be dismissed because it fails to support the requested relief.

I. PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Petitioner was

¹ Respondent's Return and Motion to Dismiss along with a proposed Order of Dismissal were originally sent to the Chief Administrative Judge of Common Pleas for the Fifth Judicial Circuit, the Honorable G. Thomas Cooper, Jr. At Judge Cooper's request, counsel was appointed and a hearing on Respondent's Motion to Dismiss was placed upon the roster.

true bill indicted during the June 1995 term of the Richland County Grand Jury for Assault and Battery with Intent to Kill (1995-GS-40-01328). On February 29, 1996, Petitioner appeared before the Honorable L. Casey Manning, where he pled guilty to the charge as indicted and was sentenced under the Youthful Offender Act to an indeterminate sentence not to exceed six years.

Thereafter, Petitioner was indicted at the May 1998 term of the Richland County Grand Jury for Failure to Stop for a Blue Light, Possession/Making Implements Capable of Being Used in Crime, Unlawful Sale or Delivery of a Pistol, and three counts of Armed Robbery (1998-GS-40-23850, -24551 through -24555). On June 16, 1998, Petitioner proceeded to jury trial before the Honorable H. Dean Hall, where Petitioner was acquitted of Failure to Stop for a Blue Light, but convicted of three counts of Armed Robbery and the weapons charge as indicted. The Possession/Making Implements charge was *nolle prossed* by the State. Judge Hall sentenced Petitioner to life imprisonment without parole for each count of Armed Robbery pursuant to S.C. Code Ann. § 17-25-45; Petitioner was not sentenced for the Weapons charge as a result pursuant to S.C. Code § 16-23-490(a).

A notice of appeal was filed and an appeal was perfected. Petitioner was represented by Senior Appellate Defender Wanda Haile Carter, Esquire, of the South Carolina Office of Appellate Defense. After briefing, the South Carolina Supreme Court affirmed the convictions and sentences by Order filed March 12, 2001. State v. Jones, Op. No. 25257 (S.C. filed March 12, 2001). Specifically, regarding the imposition of life without parole under S.C. Code § 17-25-45 due to Petitioner's prior Assault and Battery with Intent to Kill conviction, the Court found:

"Here, Jones' armed robberies occurred subsequent to passage of 17-25-45, and, as such, there is no *ex post facto* violation. Accord Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (1998) (no *ex post facto* violation for legislation to enhance punishment for later

offenses based on prior conviction, even though enhancement provision was not in effect at time of prior offense).

To the extent Jones contends that the Two-Strikes law changes the consequences of his 1996 plea to ABIK, he is correct. See Gryger v. Burke, 334 U.S. 728 (1948) (holding that sentencing as a habitual criminal is not viewed as new jeopardy or additional penalty for an earlier crime; rather it is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one). Accord State v. Oliver, supra.

In sum, we find no constitutional violation in application of the Two-Strikes law to Jones.”

State v. Jones, 344 S.C. 48, 59, 543 S.E.2d 541, 546-47 (2001). The Remittitur was issued March 28, 2001.

Petitioner filed an initial application for post-conviction relief on June 27, 2001 challenging his 1998 convictions (C.A. No. 2001-CP-40-2660). Respondent filed its Return on July 12, 2002, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 28, 2003, at the Richland County Courthouse before the Honorable James R. Barber, III. Petitioner was present with counsel, Melissa J. Kimbrough, Esquire. By order filed May 23, 2003, Judge Barber denied and dismissed the action with prejudice. The subsequent motion for reconsideration was denied by Judge Barber on June 25, 2003. Petitioner filed a notice of appeal and a Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court on Petitioner’s behalf. By Order on or about August 19, 2004, the South Carolina Supreme Court denied the petition. The Remittitur was issued on or about March 11, 2005.

Petitioner thereafter filed a second application for post-conviction relief on August 14, 2003 (C.A. No. 2003-CP-40-03963). In this second application, Petitioner raised a claim of ineffective assistance of counsel regarding his 1995 conviction for Assault and Battery with Intent to Kill. Respondent filed a Return and Motion to Dismiss on June 21, 2004, requesting the

court summarily dismiss the application with prejudice. After receiving Petitioner's objections to the summary dismissal, the Honorable G. Thomas Cooper, Jr. summarily dismissed the application with prejudice by order filed February 22, 2006. A notice of appeal was filed, but later dismissed by the South Carolina Supreme Court by order on or about May 2, 2006. The remittitur was received May 22, 2006.

II. CURRENT ACTION

In the current petition, Petitioner alleges he is currently being held in custody unlawfully for the following reasons:

1. "That Plaintiff/Petitioner has exhausted his claims in a prior post-conviction relief application, and that Plaintiff/Petitioner is currently being held in custody unlawfully, and in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice. My claim which may be set forth herein, but was not previously exhausted in a prior application for post-conviction relief was either not cognizable by the court at that time, or unavailable to him as a matter of law or otherwise undiscoverable by the exercise of due diligence at the relevant times.

Rights to be Declared

2. That Plaintiff/Petitioner was arbitrarily denied his constitutional rights as conferred upon him by provisions of the United States Constitution, the South Carolina Constitution, statutes and court rules.
3. Declare that it is a clearly erroneous judicial finding that the Plaintiff/Petitioner during his 1996 guilty plea was both "At least seventeen years of age but less than twenty-one years of age" and "At least twenty-one years of age but less than twenty-five years of age".
4. Declare that the absence of Plaintiff/Petitioner's election to consent in writing to be "sentenced as a Youthful Offender under the Act" constituted a fundamental defect or structural defect in the trial mechanism and/or deprived the circuit court of any lawful authority to sentence the Plaintiff/Petitioner for assault and battery with intent to kill under the Youthful Offender Act.
5. Declare the Plaintiff/Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel, where counsel during the 1996 guilty plea failed to adequately protect

Plaintiff/Petitioner against anticipatory breach of the plea agreement by the State of South Carolina who was party to said agreement, as by later enactment of the Two-Strikes law which worked an impairment of the contract or agreement between the parties to the case at that time; and further that the consequences of the 1996 conviction and/or guilty plea still persist.

6. Declare that at the time of Plaintiff/Petitioner's 1996 guilty plea, the offense of assault and battery with intent to kill was not enumerated in the codified law as a "most serious" offense, nor applicable to the Two Strikes law at that time.
7. Declare that the failure of the circuit court to select and specifically mark the checkboxes related to a judicial finding that the offense in question was deemed to be a "most serious" offense on each sentencing sheet for the subsequent offenses and conviction for armed robbery; conclusively establishes that not such finding was made.
8. Declare that failure to file either of the indictments involving the 1996 guilty plea, and the later offenses involving armed robbery constitute a structural defect in the trial mechanism violative [sic] of due process and/or otherwise deprived the circuit court in each case of subject-matter jurisdiction.
9. Declare that the failure of the indictments for armed robbery to allege that the offenses were "most serious" and that the Plaintiff/Petitioner had been the subject of a conviction for a previous "most serious" offense, so as to bring the Plaintiff/Petitioner within the ambit [sic] of the Two Strikes law, constitutes a structural defect in the trial mechanism violative [sic] of due process right to notice, and further failed to allege each of the elements of the enhancement provisions.
10. Declare that the failure to file the sentence within the applicable terms of court violated Plaintiff/Petitioner's right to due process of law.
11. Declare that Plaintiff/Petitioner was deprived of effective assistance of counsel where trial counsel failed to object to or otherwise challenge the defects and matters set forth throughout this pleading.
12. Declare that Plaintiff/Petitioner's continued incarceration is in violation of the provisions of the United States Constitution and relevant counterparts of the South Carolina Constitution and laws."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a preliminary matter, this Court notes it has interpreted the current petition as one for habeas corpus based on the nature of the allegations and the relief requested by Petitioner. While

Petitioner has captioned the pleading as an action for “Declaratory Judgment,” a judgment for Petitioner under the Uniform Declaratory Judgments Act would not terminate the uncertainty or controversy giving rise to the proceeding based on the relief requested and allegations set forth.² Accordingly, in an effort to fully consider the merits of the pleading, this Court has construed the current action as a petition for writ of habeas corpus.

After reviewing the petition in its entirety, in conjunction with a thorough review of Petitioner’s underlying charges, appeals and post-conviction proceedings, the testimony of Petitioner at the hearing, and Petitioner’s Trial Brief, this Court finds that the petition must be dismissed. “A habeas corpus petition must support the requested relief.” Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief. Id. at 40, 495 S.E.2d at 427-28.

To proceed forward to a full hearing on the merits, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as post-conviction relief, are unavailable or inadequate. Id. Post-conviction relief is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

² See S.C. Code § 15-53-70: “The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.”

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in post-conviction relief application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in post-conviction relief proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

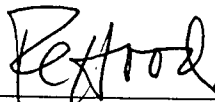
Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a post-conviction relief application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” Id. Here, Petitioner improperly filed the petition with the Richland County Clerk of Court, not in the South Carolina Supreme Court.

In the current action, Petitioner sets forth numerous, extensive allegations that could have, and in some cases even were, raised on direct appeal and/or in his prior post-conviction relief actions. He has failed to set forth any reason he could not have raised the allegations in his previous post-conviction relief actions or why other remedies, such as post-conviction relief, were unavailable or inadequate. Therefore, the current claims cannot be raised in a Petition for Writ of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition must be summarily dismissed.

III. CONCLUSION

IT IS THEREFORE ORDERED that, for the reasons set forth herein, the current Petition is hereby denied and **dismissed with prejudice**. This Court notes that Petitioner must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 4th day of March, 2014.



Robert E. Hood
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

State of South Carolina
County of Richland

In the Court of Common Pleas

PS: B-9

Civ. Act. No. #

2012 CP No 309

FILED
2012 MAY 25 PM 3:31
CORRECTIONAL INSTITUTE
C.C.P. & G.S.

Nakia Jones,

Plaintiff/Petitioner

v.

Leroy Cartledge, Warden,
and the State of South
Carolina,

Defendants/Respondents,

Each in his official capacity

S U M M O N S

GENERAL COUNSEL

TO THE ABOVE-NAMED DEFENDANTS:

You are here by given thirty (30) days in which to Answer the Complaint which is herewith served upon you, exclusive of the date of service hereof. Please serve you Answer upon Plaintiff at McCormick Correction Institution, 286 Redemption Way, McCormick, South Carolina 29399. If you fail to answer within this time, Plaintiff will move for default judgment and for the relief demanded in the Complaint. You are hereby summoned and required to appear.

Date: 5-3-12

Nakia Jones

McCormick, South Carolina.

Nakia Jones, Pro Se

Plaintiff/Petitioner

Plaintiff-Petitioner at the behest of the State of South Carolina. He is sued in his official capacity solely for declaratory relief and injunctive relief as demanded herein; and

3. State of South Carolina; Defendant-Respondent, (hereinafter referred to as "Defendant") is a geopolitical body of the State, and was at all times relevant hereto acting under the color of law, custom, or usage thereof, who at all times relevant hereto, did violate the Plaintiff-Petitioner's Constitutional rights as secured to him by the United States Constitution, and its counterparts in the South Carolina Constitution. The State of South Carolina is sued in its official capacity solely for purposes of declaratory relief and injunctive relief as demanded herein; and

Facts

4. Plaintiff was accused of committing an assault and battery with intent to kill for acts alleged to have occurred on January 27, 1995. On June 14, 1995, Plaintiff-Petitioner was indicted by the Richland County grand jury for Assault and Battery with Intent To Kill (ABWIK). Plaintiff, being born on November 28, 1974 was at that time twenty-two (22) years of age. On February 29, 1996, Plaintiff entered a guilty plea in the Richland County Court of General Sessions, before the Honorable L. Casey Manning. Judge Manning imposed an Indeterminate Sentence not to exceed six (6) years under the Youthful Offender Act provisions. Judge Manning pronounced the sentence, stating:

(a) "The Court finds that the above named defendant was, at the time of conviction:

At least seventeen years of age but less than twenty-one years of age.

At least twenty-one years of age but less than twenty-five years of age and has consented in writing to be treated and sentenced as a Youthful Offender under the Act.

The Court further finds that the defendant is suitable for handling under the Youthful Offender Act.

It is the sentence of the Court that pursuant to Section 5 (c) of the Youthful Offender Act, the Defendant

is committed to the custody of the Department of Corrections, Youthful Offender Division, for an indeterminate period of time not to exceed 6 (or the maximum allowable for the said offense if less than six) years."

- (b) The portion of the sentence sheet which includes a written field stating "I request to be sentenced under the Youthful Offender Act" which also contains a date and signature field for the defendant, is left blank.
- (c) There is no indicia of the sentence, dated February 20, 1996, having ever been filed.
- (d) The sentence does not give the minimum requirement of one year incarceration.
- (e) The sentencing court made no finding that the offense in question constituted a "most serious" offense under South Carolina law, nor was said offense enumerated in relevant statutory provisions as such at the time the offense was committed.
- (f) The indictment for Assault and Battery with Intent to Kill has never been filed according to the requirements of South Carolina law.

5. On June 29, 1997, Plaintiff was subsequently accused of having committed armed robbery, possession of a firearm or knife during the commission of a violent crime, and failure to stop for a blue light. Plaintiff proceeded to trial before the jury and presiding judge, Honorable H. Dean Hall, on June 16, 1998. Plaintiff was found not guilty of the offense of failing to stop for a blue light, and was convicted of the remaining charges, and thereafter sentenced to three (3) concurrent terms of life imprisonment without the possibility of parole (LWOP), pursuant to Code section § 17-25-45 (Suppl. 2000) (Two Strikes law). The basis for imposing each of the three (3) said enhanced sentences was a finding that the single 1996 Youth Offender Act conviction and sentence referenced above in paragraph 4 constituted a prior "most serious" crime under § 17-25-45, the Two-Strikes law. The effective date of the Two Strikes law is January 1, 1996 and so was not in effect at the time of Plaintiff's 1995 conduct alleged in the indictment; and

- (a) None of the indictments for armed robbery have been filed according to the requirements of South Carolina

law;

(b) None of the indictments for armed robbery allege that Plaintiff was the subject of a prior "most serious" conviction, so as to render the "Two Strikes" law applicable.

(c) Whereas the checkbox style information fields within the sentencing sheets for these armed robberies are populated with checkboxes, for which the sentencing judge may elect to find certain facts, or invoke certain actions; none of the sentencing sheets for armed robbery include a finding by the sentencing court that the armed robbery in question constituted a "most serious" offense; and instead the sentencing judge left those checkbox information fields for judicial fact-finding entirely blank on each of the subject sentencing sheets denominated as "SCCA/217 (12/97)." Those checkboxes which the sentencing court elected or invoked have checkmarks impressed upon the relevant checkboxes; and those not so elected or invoked are left blank.

6. Plaintiff directly appealed to the South Carolina Supreme Court, raising the following issues:

- (a) Was Jones tried for three counts of armed robbery?
- (b) Is a sentence of life imprisonment without parole after the commission of one "most serious" offense constitutionally permissible?
- (c) Did the court err in refusing a Telfaire charge?
- (d) That sentencing under the "Two Strikes" law violated separation of powers, constitutes cruel and unusual punishment, results in an equal protection violation, shifts the burden to the defendant to prove the constitutionality of the statute, and constitutes an ex post facto violation in that it changed the consequences of his 1996 plea to assault and Battery with Intent to kill.

The South Carolina Supreme Court affirmed the jury verdict and sentence, and dismissed the appeal by written Opinion No. 25257, Filed March 12, 2001.

7. On June 27, 2001, Plaintiff filed a post-conviction relief application (2001-CP-40-2660) in the Richland County Court of

Common Pleas. In his application, Plaintiff alleged :

- 1. Ineffective assistance of counsel
 - a) Counsel failed to object to the State's failure to comply with the written notice requirement of S.C. Code Section 17-25-45 (H);
 - b) Counsel failed to object to an improper jury charge on reasonable doubt.
- 2. Subject matter jurisdiction
 - Trial court lacked subject matter jurisdiction to invoke sentencing under S.C. Code Section 17-25-45 (H) because the State provided written notice to one but not both, of Applicant's defense counsel.

In an amended application filed April 24, 2003, the plaintiff further the above related grounds with some amplifications; and alleged that the consequences of his unconstitutional and unlawful 1996 guilty plea and sentence still persisted.

PETITION FOR WRIT OF HABEAS CORPUS

8. Plaintiff/Petitioner submits this Court may issue the writ of habeas corpus as provided for by Art. I, § 18, and Article V, § 7 South Carolina Constitution, and as codified at § 17-17-10, et. seq., South Carolina Code, Annot. and further is empowered under the Uniform Declaratory Judgement Act of the State of South Carolina, § 15-53-10 et. seq., to declare the rights and status of Plaintiff/Petitioner, and other legal relations involved herein. Plaintiff/Petitioner is currently being held in custody unlawfully in violation of the following provisions of the United States Constitution, and their counterparts in the South Carolina Constitution involving the Due Process Clause, right to effective assistance of counsel, the Equal Protection Clause, the Cruel and Unusual Punishments Clause, the Ex Post Facto Clause, to wit: Fifth, Sixth, Eighth, and Fourteenth Amendment.

9. That Plaintiff/Petitioner has exhausted his claims in a prior post-conviction relief application, and that Plaintiff/Petitioner is currently being held in custody unlawfully, and in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice. Any claim which may be set forth herein, but was not previously exhausted in a prior application for

post-conviction relief was either not cognizable by the court at that time, or unavailable to him as a matter of law or otherwise undiscoverable by the exercise of due diligence at the relevant times.

RIGHTS TO BE DECLARED

10. That Plaintiff/Petitioner was arbitrarily denied his Constitutional rights as conferred upon him by provisions of the United States Constitution, the South Carolina Constitution, statutes and court rules
11. Declare that it is a clearly erroneous judicial finding that the Plaintiff/Petitioner during his 1996 guilty plea was both "At least seventeen years of age but less than twenty-one years of age" and " At least twenty-one years of age but less than twenty-five years of age".
12. Declare that the absence of Plaintiff/Petitioner's election to consent in writing to be "sentenced as a Youthful Offender under the Act" constituted a fundamental defect or structural defect in the trial mechanism and/or deprived the circuit court of any lawful authority to sentence the Plaintiff/Petitioner for assault and battery with intent to kill under the Youthful Offender Act.
13. Declare that Plaintiff/Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel, where counsel during the 1996 guilty plea failed to adequately protect Plaintiff/Petitioner against anticipatory breach of the plea agreement by the State of South Carolina who was party to said agreement, as by later enactment of the Two-Strikes law which worked an impairment of the contract or agreement between the parties to the case at that time; and further that the consequences of the 1996 conviction and/or guilty plea still persist.
14. Declare that at the time of Plaintiff/Petitioner's 1996 guilty plea, the offense of assault and battery with intent to kill was not enumerated in the codified law as a "most serious" offense, nor applicable to the Two Strikes law at that time.
15. Declare that the failure of the circuit court to select and specifically mark the checkboxes related to a judicial finding that the offense in question was deemed to be a "most

serious" offense on each sentencing sheet for the subsequent offenses and convictions for armed robbery; conclusively establishes that no such finding was made.

- 16. Declare that failure to file either of the indictments involving the 1996 guilty plea, and the later offenses involving armed robbery constitute a structural defect in the trial mechanism violative of due process and/or otherwise deprived the circuit court in each case of subject-matter jurisdiction.
- 17. Declare that the failure of the indictments for armed robbery to allege that the offenses were "most serious" and that the Plaintiff/Petitioner had been the subject of a conviction for a previous "most serious" offense, so as to bring the Plaintiff/Petitioner within the ambit of the Two Strikes law, constitutes a structural defect in the trial mechanism violative of due process right to notice, and further failed to allege each of the elements of the enhancement provisions.
- 18. Declare that the failure to file the sentences within the applicable terms of court violated Plaintiff/Petitioner's right to due process of law.
- 19. Declare that Plaintiff/Petitioner was deprived of effective assistance of counsel where trial counsel failed to object to or otherwise challenge the defects and matters set forth throughout this pleading.
- 20. Declare that Plaintiff/Petitioner's continued incarceration is in violation of the provisions of the United States Constitution and relevant counterparts of the South Carolina Constitution and laws.

Plaintiff/Petitioner hereby leaves this pleading open for amendment by counsel, if any, entering into the case as counsel of record, pursuant to Rule 15 and/or Rule 71.1(5) of South Carolina Rules of Civil Procedure. This pleading shall not be construed in any way to be a post-conviction relief application within the meaning of the Uniform Post-Conviction Relief Procedure Act of South Carolina codified at Section § 17-27-10, et seq., S.C. Code, Annot.

Relief Demanded

Plaintiff/Petitioner hereby prays that the Court issue the great Writ of habeas Corpus; and hereby incorporates by reference each of the facts and matters previously set forth hereinbefore, and would demand such other relief, including the following:

21. Declaratory relief, declaring that the plaintiff/Petitioner is being unlawfully being held in custody pursuant to the "Two-Strikes" law; and is entitled to his immediate release from any application of said statutory provision, because the 1996 conviction and sentence under the Youthful Offender Act was in violation of Plaintiff/Petitioner's rights secured to him by the Constitution of the United States and of the State of South Carolina, as evidenced by the facts and circumstances set forth in this complaint; and
22. Declaratory relief, declaring that the Plaintiff/Petitioner is being unlawfully being held in custody pursuant to the "Two-Strikes" law; and is entitled to his immediate release from any application of said statutory provision, with regard to the sentence sheets for the armed robberies referenced hereinbefore, which make no finding that any of these offenses constituted a "most serious" offense, and therefore to continue Plaintiff/Petitioner's incarceration under a sentence of life without the possibility of parole would be in violation of Plaintiff/Petitioner's rights secured to him by the Constitution of the United States and of the State of South Carolina; as evidenced by the facts and circumstances set forth in this complaint and
23. Declaratory relief that the failure of any of the armed robbery indictments to allege that the Plaintiff/Petitioner had been the subject of a prior "most serious" offense rendered the Plaintiff/Petitioner not subject to the provisions of the "Two-Strikes" law, and/or amounted to a structural defect in the trial mechanism violative of due process of law, and/or otherwise divested the circuit court of subject-matter jurisdiction to sentence the Plaintiff/Petitioner under the provision of said statutory provisions.

- 24. Declare that the failure to file the indictment and/or the sentences themselves, related to the 1996 guilty plea and the subsequent armed robberies deprived the circuit court of subject-matter jurisdiction, or alternatively, constituted a structural defect in the trial mechanism of each said case, depriving the Plaintiff/Petitioner of due process of law, and the right to adequate notice of the charges against him.
- 25. Declare that the Plaintiff/Petitioner's 1996 guilty plea was not voluntarily, knowingly and intelligently entered where, as here, the State of South Carolina was party to said agreement effectively breached that plea agreement by later enacting or passing the "two-Strikes" law, which worked a new detrimental condition to the agreement not contemplated by said agreement. The Plaintiff/Petitioner plead guilty without thus knowing the full range of consequences of entering the guilty plea, and was denied effective assistance of counsel who failed to take reasonable steps in anticipation of said breach by the State.
- 26. Injunctive relief requiring the Defendants immediately release the Plaintiff/Petitioner from custody; or in the alternative bring the Plaintiff/Petitioner back before the Richland County Court of General Sessions for re-sentence to a single term of twenty-five years imprisonment commensurate with a concurrent sentence for the armed robberies in question with the possibility of parole and affording him due credit for time served. Alternately, vacate the conviction and sentence due to failure to file the indictments in denial of due process and lack of subject-matter jurisdiction.
- 27. Injunctive relief for an order vacating, overruling, and/or overturning the 1996 conviction referenced herein related to the charge of assault and battery with intent to kill under ~~Youthful Offender Act~~ provisions. Alternately, vacate the conviction and sentence due the failure to file the indictment and sentence in violation of due process and lack of subject-matter jurisdiction.

Date: 5-3-12
 McCormick, South Carolina.

Nakia Jones
 Nakia Jones
 Pro Se
 Plaintiff/Petitioner

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
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 Nakia Jones, #231592,)
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) Petitioner,)
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IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-03697

RETURN AND MOTION TO DISMISS
 PETITION FOR WRIT OF
 HABEAS CORPUS

2012 OCT -4 AM 10:57
 FILED
 RICHLAND COUNTY
 JENNIFER W. McBRIDE
 C.C.P. & G.S.

This matter comes before the Court by way of a *pro se* document filed with the Richland County Clerk of Court on May 25, 2012, and received by Respondent August 20, 2012, captioned "Complaint: Uniform Declaratory Judgment Act". Respondent submits the action should be summarily dismissed because it fails to support the requested relief.

I.

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Petitioner was true bill indicted at the June 1995 term of the Richland County Grand Jury for Assault and Battery with Intent to Kill (1995-GS-40-01328). On February 29, 1996, Petitioner appeared before the Honorable L. Casey Manning where he pled guilty to the charge as indicted and was sentenced under the Youthful Offender Act to an indeterminate sentence not to exceed six (6) years.

Thereafter, Petitioner was indicted at the May 1998 term of the Richland County Grand Jury for Failure to Stop for a Blue Light, Possession/Making Implements Capable of Being Used in Crime, Unlawful Sale or Delivery of a Pistol, and three (3) counts of Armed Robbery (1998-

GS-40-23850, -24551 through -24555). On June 16, 1998, Petitioner proceeded to jury trial before the Honorable H. Dean Hall at the Richland County General Sessions Court, where he was acquitted of Failure to Stop for a Blue Light, but convicted of the Armed Robbery and Weapon charges as indicted. The Possession/Making Implements charge was *nolle prossed* by the state. Petitioner was sentenced to life imprisonment without parole for each count of Armed Robbery, but was not sentenced for the Weapons charge as a result pursuant to S.C. Code § 16-23-490(a).

A notice of appeal was filed and an appeal was perfected. Petitioner was represented by Senior Appellate Defender Wanda Haile, Esquire, of the South Carolina Office of Appellate Defense on the appeal. After briefing the South Carolina Supreme Court affirmed the convictions and sentences by order filed March 12, 2001. State v. Jones, Op. No. 25257 (S.C. filed March 12, 2001). Specifically, regarding the imposition of life without parole under S.C. Code § 17-25-45 due to Petitioner's prior ABWIK conviction, the Court found:

Here, Jones' armed robberies occurred subsequent to passage of section 17-25-45 and, as such, there is no *ex post facto* violation. Accord Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (1998) (no *ex post facto* violation for legislature to enhance punishment for later offense based on prior conviction, even though enhancement provision was not in effect at time of prior offense).

To the extent Jones contends the Two-Strikes law changes the consequences of his 1996 plea to ABIK, he is incorrect. See Gryder v. Burke, 334 U.S. 728 (1948) (holding that sentencing as an habitual criminal is not viewed as a new jeopardy or additional penalty for an earlier crime; rather it is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one). Accord State v. Oliver, *supra*.

In sum, we find no constitutional violation in application of the Two-Strikes law to Jones.

The remittitur was issued March 28, 2001.

Petitioner filed an application for Post-Conviction Relief (PCR) on June 27, 2001 (2001-CP-40-2660). Respondent filed its Return on July 12, 2002. An evidentiary hearing was

convened into the matter on April 28, 2003, at the Richland County Courthouse before the Honorable James R. Barber, III, at which Petitioner was present with counsel, Melissa J. Kimbrough, Esquire. By order filed May 23, 2003, Judge Barber denied and dismissed the action with prejudice. The subsequent motion for reconsideration was denied by Judge Barber on June 25, 2003. Petitioner filed a notice of appeal and a petition for writ of certiorari was submitted to the South Carolina Supreme Court on Petitioner's behalf. By order on or about August 19, 2004, the South Carolina Supreme Court denied the petition. The remittitur was issued on or about March 11, 2005.

Petitioner thereafter filed a second application for PCR on August 14, 2003 (2003-CP-40-03963). In it, he raised a claim of ineffective assistance of counsel on his 1995 conviction for ABWIK. Respondent filed a Return and Motion to Dismiss on June 21, 2004, requesting the court summarily dismiss the application with prejudice. After receiving Petitioner's objections to the summary dismissal, the Honorable G. Thomas Cooper, Jr., summarily dismissed the application with prejudice by order filed February 22, 2006. A notice of appeal was filed, but later dismissed by the South Carolina Supreme Court by order on or about May 2, 2006. The remittitur was received May 22, 2006.

The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In the current petition, Petitioner alleges he is currently being held in custody unlawfully for the following reasons:

9. That Plaintiff/Petitioner has exhausted his claims in a prior post-conviction relief application, and that Plaintiff/Petitioner is currently being held in custody unlawfully, and in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice. My claim which may be set forth herein, but was not previously exhausted in a prior application for post-conviction relief was either not cognizable by the court at that time, or unavailable to him as a matter of law or otherwise undiscoverable by the exercise of due diligence at the relevant times.

RIGHTS TO BE DECLARED

10. That Plaintiff/Petitioner was arbitrarily denied his Constitutional rights as conferred upon him by provisions of the United States Constitution, the South Carolina Constitution, statutes and court rules.
11. Declare that it is a clearly erroneous judicial finding that the Plaintiff/Petitioner during his 1995 guilty plea was both "At least seventeen years of age but less than twenty-one years of age" and "At least twenty-one years of age but less than twenty-five years of age".
12. Declare that the absence of Plaintiff/Petitioner's election to consent in writing to be "sentenced as a Youthful Offender under the Act" constituted a fundamental defect or structural defect in the trial mechanism and/or deprived the circuit court of any lawful authority to sentence the Plaintiff/Petitioner for assault and battery with intent to kill under the Youthful Offender Act.
13. Declare that Plaintiff/Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel, where counsel during the 1995 guilty plea failed to adequately protect Plaintiff/Petitioner against anticipatory breach of the plea agreement by the State of South Carolina who was party to said agreement, as by later enactment of the Two-Strikes law which worked an impairment of the contract or agreement between the parties to the case at that time; and further that the consequences of the 1995 conviction and/or guilty plea still persist.
14. Declare that at the time of Plaintiff/Petitioner's 1995 guilty plea, the offense of assault and battery with intent to kill was not enumerated in the codified law as a "most serious" offense, nor applicable to the Two Strikes law at that time.

15. Declare that the failure of the circuit court to select and specifically mark the checkboxes related to a judicial finding that the offense in question was deemed to be a "most serious" offense on each sentencing sheet for the subsequent offenses and convictions for armed robbery; conclusively establishes that no such finding was made.
16. Declare that failure to file either of the indictments involving the 1996 guilty plea, and the later offenses involving armed robbery constitute a structural defect in the trial mechanism violative of due process and/or otherwise deprived the circuit court in each case of subject-matter jurisdiction.
17. Declare that the failure of the indictments for armed robbery to allege that the offenses were "most serious" and that the Plaintiff/Petitioner had been the subject of a conviction for a previous "most serious" offense, so as to bring the Plaintiff/Petitioner within the ambit of the Two Strikes law, constitutes a structural defect in the trial mechanism violative of due process right to notice, and further failed to allege each of the elements of the enhancement provisions.
18. Declare that the failure to file the sentences within the applicable terms of court violated Plaintiff/Petitioner's right to due process of law.
19. Declare that Plaintiff/Petitioner was deprived of effective assistance of counsel where trial counsel failed to object to or otherwise challenge the defects and matters set forth throughout this pleading.
20. Declare that Plaintiff/Petitioner's continued incarceration is in violation of the provisions of the United States Constitution and relevant counterparts of the South Carolina Constitution and laws.

III.

As a preliminary matter, Respondent notes it has interpreted the current petition as one for habeas corpus based on the nature of the allegations and the relief requested by Petitioner. While Petitioner has entitled the pleading as an action for "Declaratory Judgment", a judgment for Petitioner under the Uniform Declaratory Judgments Act would not terminate the uncertainty or controversy giving rise to the proceeding based on the relief requested and allegations set

forth.¹ Accordingly, Respondent submits the current action should be construed as one for habeas corpus.

With the above in mind, Respondent submits the petition should be summarily dismissed. “A habeas corpus petition must support the requested relief.” Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Id. PCR is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” A1-

¹ See S.C. Code § 15-53-70: “The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.”

Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” Id.

In the current action, Petitioner sets forth numerous, extensive allegations that could have, and in some cases even were, raised on direct appeal and/or in his prior PCR actions. He has failed to set forth any reason he could not have raised the allegations in his previous PCR actions or why other remedies, such as PCR, were unavailable or inadequate. Therefore, Respondent submits the current claims cannot be raised in a Petition for Writ of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

III.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

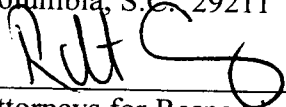
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By: 
Attorneys for Respondent

September 28, 2012.

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I N D E X

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E X H I B I T S

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P-3	<u>Indictment</u> Search Warrant	26

1 THE COURT: All right, we're on the record in
2 2012-CP-40-3697, *Nakia Jones vs. The State of South*
3 *Carolina.*

4 Ms. Harrigan, tell me what's going on.

5 MS. HARRIGAN: Okay, the petitioner was true-bill
6 indicted during the June 1995 term of the Richland County
7 Grand Jury for assault and battery with intent to kill. On
8 February 29, 1996, petitioner appeared before the Honorable
9 L. Casey Manning, where he pled guilty to the charge as
10 indicted and was sentenced under the Youthful Offender Act
11 to an intermediate sentence not to exceed six years.

12 Thereafter, he was indicted during the May 1998 term
13 of the Richland County Grand Jury for failure to stop for a
14 blue light, possession or making implements that could be
15 used in a crime, unlawful sale or delivery of a pistol, and
16 three counts of armed robbery.

17 On June 16, 1998, petitioner proceeded to a jury trial
18 before the Honorable H. Dean Hall, where he was acquitted
19 of failure to stop for a blue light but convicted of armed
20 robbery and the weapons charge as indicted. The possession
21 or making charge was nolle prossed by the state pursuant to
22 the conviction. Petitioner was sentenced to life
23 imprisonment without parole for each count of armed robbery
24 pursuant to the three of two -- two three-strike statute.

25 A notice of appeal was filed and an appeal was

1 perfected. Petitioner was represented by ---

2 THE COURT: Hold on.

3 MS. HARRIGAN: --- Wanda Carter.

4 THE COURT: Hold on. Hold on one second.

5 (A PAUSE.)

6 THE COURT: Okay. Go ahead.

7 MS. HARRIGAN: There was a direct appeal that was
8 undertaken from this conviction, and the South Carolina
9 Supreme Court -- or Court of Appeals affirmed the
10 conviction and sentence. Specifically, they addressed
11 whether or not the prior ABWIK could be used for sentence
12 enhancement for life without parole pursuant to SC code
13 17-25-45 and did uphold the conviction. The remittitur was
14 issued on March 28th of 2001.

15 Thereafter, he filed his first application for
16 post-conviction relief on June 27, 2001. Respondent filed
17 its return requesting an evidentiary hearing be held. A
18 hearing was convened in this courthouse on April 28th of
19 2003 before the Honorable James R. Barber, III, where he
20 was -- petitioner was present and represented by counsel.
21 Judge Barber denied and dismissed the action with
22 prejudice; he also denied a subsequent motion for
23 reconsideration that was filed on applicant's behalf.
24 There was a appeal filed from this, and the Supreme Court
25 denied certiorari, and the remittitur was issued on March

1 11th of 2005.

2 Thereafter, he filed a second application for
3 post-conviction relief on August 14th of 2003. In this
4 application, Mr. Jones raised claims of ineffective
5 assistance of counsel on his 1995 conviction for ABWIK.
6 The state filed a return and motion to dismiss, requesting
7 that the application be summarily, summarily dismissed as
8 beyond the statute of limitations and successive in nature.

9 After receiving petitioner's objections to the summary
10 dismissal, the Honorable G. Thomas Cooper, Jr., summarily
11 dismissed the application. A notice of appeal was filed
12 from this denial, and the South Carolina Supreme Court
13 affirmed the summary dismissal of the second application
14 for post-conviction relief. The remittitur was received
15 for that second action on May 22nd of 2006.

16 Thereafter on May 26th of 2012, respondent -- or
17 petitioner filed a complaint, Uniform Declaratory Judgment
18 Act, and part of the application or summons and complaint
19 that our office received mentioned a habeas corpus. Our
20 office attempted to summarily dismiss this action and
21 further requested the chief administrative judge -- asked
22 it be set for a hearing. At that time Mr. Belding was
23 appointed, and we're here today in regard to the Uniform
24 Declaratory Judgment Act and habeas that was filed by Mr.
25 Jones.

1 THE COURT: Okay.

2 MS. HARRIGAN: And the state at this time would renew
3 our motion to dismiss for the reasoning as set forth in our
4 proposed order in our return and motion to dismiss this
5 before the court.

6 THE COURT: All right, Mr. Belding.

7 MR. BELDING: Thank you, Your Honor.

8 THE COURT: Where is Mr. Jones?

9 APPLICANT: Right here.

10 MR. BELDING: Mr. Jones is in ---

11 THE COURT: You need him with you?

12 MR. BELDING: --- the witness box.

13 THE COURT: You need him with you?

14 MR. BELDING: Either here or -- I did want to ask you.
15 The declaratory judgment actions that I've done before,
16 pretty much in the discretion of the, of the court. If you
17 would permit a little live testimony, we would be happy to
18 put Mr. Jones on, and that would, that would be my
19 preference if you would grant us that courtesy.

20 THE COURT: I will grant you that courtesy.

21 MR. BELDING: Okay. Well, then I would like Mr. Jones
22 to be called to the stand, please.

23 BAILIFF: You need to swear him in, Your Honor?

24 THE COURT: I'd be happy to.

25 Mr. Jones.

1 APPLICANT: How you doing, sir?

2 BAILIFF: Sir, sir, you need to come back around.

3 THE COURT: No. He's okay right there.

4 BAILIFF: All right. Go ahead and just raise your ---

5 THE COURT: Raise your hand.

6 NAKIA JONES, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 THE COURT: All right, Mr. Belding.

9 MR. BELDING: Thank you, Your Honor. May it please
10 the court? First of all I wanted to ask. The -- does the
11 court have in its file the pro se -- when he was still pro
12 se, Mr. Jones filed a return that I would like to make sure
13 the court has access to.

14 MS. HARRIGAN: That is part of the packet that was
15 handed up and ---

16 MR. BELDING: Okay.

17 MS. HARRIGAN: --- is before the court at this time.

18 MR. BELDING: Great.

19 THE COURT: I might can find it.

20 MR. BELDING: Great. Mr. Jones did a lot of research
21 in this case and, and made a lot of good points on his own
22 that I would, I would like the court to consider in this
23 matter as well.

24 THE COURT: Okay.

25 MR. BELDING: All right.

N. JONES - DIRECT EXAMINATION BY MR. BELDING.

1 DIRECT EXAMINATION BY MR. BELDING:

2 Q. Would you please state ---

3 THE COURT: I have it.

4 MR. BELDING: Thank you, Your Honor.

5 Q. Would you please state your full name for the record?

6 A. Nakia Deangelo Jones.

7 Q. Okay, and, Mr. Jones, where are you incarcerated right
8 now?

9 A. McCormick Correctional Institution.

10 Q. And is -- who is the warden at McCormick?

11 A. Leroy Cartledge.

12 Q. Okay, and is he a named defendant in this action?

13 A. Yes, sir.

14 Q. Okay. Now, you heard Ms. Harrigan recite for the
15 court the procedural history of your cases?

16 A. Yes, sir.

17 Q. Okay. Did she pretty much cover how we came to be
18 here today?

19 A. Yes, sir.

20 Q. Okay.

21 A. Close.

22 Q. So, there was a YOA conviction and then a subsequent
23 jury trial that ended up in convictions for armed robbery
24 and a couple other things, right?

25 A. Yes, sir.

N. JONES - DIRECT EXAMINATION BY MR. BELDING

9

1 Q. Okay. Now, you -- she, she pointed out to the court
2 there had been two previous PCRs. Is that true?

3 A. Yes, sir.

4 Q. Okay. Now, in a P -- in a normal PCR, which -- we're
5 here under the Declaratory Judgments Act the way you filed
6 it, correct?

7 A. Uh-huh.

8 Q. All right.

9 A. Yes, sir.

10 Q. In a normal PCR, the, the sufficiency of the
11 indictments and the sentencing sheets normally isn't
12 brought up. Isn't that correct?

13 A. Yes, sir.

14 Q. Okay, and because they're not brought up in your PCR,
15 was that part of your appeal of those PCRs?

16 A. Yes, sir.

17 Q. Okay, but was the, was the sentence sheet under the
18 YOA part of your appeal?

19 A. Yes, sir.

20 Q. Okay. Now, let me go through the 1998 -- excuse me,
21 the 1996 conviction, okay? You were accused of committing
22 an assault and battery with intent to kill in January of
23 1995, correct?

24 A. Yes, sir.

25 Q. Okay. How old were you at the time of the crime?

1 A. Twenty.

2 Q. Twenty. Now, were you brought to court in May of

3 1995?

4 A. No, sir.

5 Q. I'm sorry. Did you have a court-appointed attorney

6 ---

7 A. Yes.

8 Q. --- for that case?

9 A. Yes, sir.

10 Q. And who was that attorney at the time?

11 A. Theresa Johns.

12 Q. Okay. Was she with the public defender's office ---

13 A. Yes, sir.

14 Q. --- then? All right. Did she file for a bond

15 reduction in that case?

16 A. Yes, sir.

17 Q. Okay. Was it granted?

18 A. No, sir.

19 Q. Okay. Did you stay in jail the entire, the entire

20 time that you were awaiting trial or whatever?

21 A. Yes, sir.

22 Q. Okay. Was there an indictment finally handed down in

23 your case?

24 A. Yes, sir.

25 Q. All right, and you remember when that took place?.

N. JONES - DIRECT EXAMINATION BY MR. BELDING

- 1 A. I think June, June -- which one?
- 2 Q. Well, Let me just ask you first.
- 3 A. Go ahead.
- 4 Q. If I may. Does June 14, 1995, sound right?
- 5 A. Yes, sir.
- 6 Q. Okay. I understand you weren't there.
- 7 A. Yeah.
- 8 Q. Okay. Now, when were you brought to court on this
- 9 charge?
- 10 A. January of 2 -- '96.
- 11 Q. Okay. Is it possible that it was February of ---
- 12 A. February. Excuse me. Yeah, February. Excuse me.
- 13 Q. Okay.
- 14 A. My fault. My fault.
- 15 Q. No. That's a long time ago. The records I've seen
- 16 indicate you were brought to court on February the 29th,
- 17 1996. Does that sound correct?
- 18 A. Yes, sir.
- 19 Q. Okay, and at that time, were you still represented by
- 20 Ms. Johns?
- 21 A. Yes, sir...
- 22 Q. Okay, and at that time, did, did she talk to you about
- 23 pleading guilty before the court to the crime that you were
- 24 alleged to have committed?
- 25 A. No, sir.

1 Q. Okay. Did you appear in front of Judge L. Casey
2 Manning on that day?

3 A. I think so. I did. I think so. Yes, sir..

4 Q. Okay. What was the purpose of your appearing in court
5 in front of Judge Manning?

6 A. She just told me I'm going to get you a plea bargain,
7 and you will do one year, and you'll get out. That's it.

8 Q. Okay. Had you ever heard of the Youthful Offender Act
9 at that time?

10 A. No, sir.

11 Q. Did she discuss the Youthful Offender Act with you?

12 A. No, sir.

13 Q. Were you asked by the court if you consented to being
14 sentenced under the Youthful Offender Act?

15 A. Not to my knowledge.

16 Q. Okay. Did -- there is an exhibit that I have
17 attached.

18 MR. BELDING: And, Your Honor, let me just
19 parenthetically point out. Some of the exhibits I've
20 attached to the brief that I submitted I obtained from the
21 clerk of court's office. They're not the best. They have
22 the 1890s technology with microfilm in there, and they're
23 hard to read. I think that there might be some better
24 copies in your file; the Attorney General's office has
25 better ones. Hopefully you can, can, can make these out,

1 but I, I'm specifically going to ask Mr. Jones about
2 Exhibit 3.

3 BY MR. JONES:

4 Q. Do you have that, Mr. Jones?, Okay.

5 A. Yes, sir.

6 Q. All right. Please turn to Exhibit 3. Is -- does this
7 look like the indictment for assault and battery with
8 intent to kill back in '95?

9 A. Exhibit 3? I got ---

10 Q. Yes.

11 A. I got bond hearing on mine, on Exhibit 3.

12 Q. Yeah, you got it last. There you go.

13 A. Oh, okay. Yes, sir.

14 Q. All right. Do you recall -- it appears on my copy
15 that, that you signed the back of the, the indictment. Is
16 that your signature next to the signature of Barbara Scott?

17 A. Yes, sir.

18 Q. Okay. Do you know why you signed this indictment?

19 A. No, sir.

20 Q. Was it explained to you ---

21 A. No.

22 Q. --- in any way why you needed to be signing this?

23 A. No, sir.

24 Q. Do you know what your signature means on this
25 document?

1 A. Yes, sir.

2 Q. Oh, and when did you find that out?

3 A. When I started reading cases and stuff on it.

4 Q. Okay. What, what is your understanding of what your
5 signature on the indictment means?

6 A. I -- waiver or I don't know. Waiver of indictment,
7 something like that. I don't know.

8 Q. Okay. Now, the next page that is still part of the
9 indictment is the actual indictment that was handed down
10 stating what they allege that you did.

11 A. Yes, sir.

12 Q. Did you see a copy of this?

13 A. Yes, sir.

14 Q. Okay. In, in this indictment, it is alleged -- is it
15 alleged that you committed any bodily injury to this
16 alleged victim, Wesley Goodwin?

17 A. No, sir.

18 Q. Okay. Now, would you mind turning to Exhibit 4?
19 Okay, I'll represent to you that this is the sentence sheet
20 that was signed by Judge Manning on that date back in 1996.

21 A. Yes, sir.

22 Q. Have you see this before?

23 A. Yes, sir.

24 Q. Okay. Now on the date of your sentencing, February
25 29, 1996, how old were you at that time?

1 A. Twenty-one.

2 Q. Twenty-one years old?

3 A. Yes, sir.

4 Q. Okay. Now, in the printed indeterminate sentence
5 form, the third paragraph says that -- can you read it
6 where -- does it say on yours at least that ---

7 A. At least twenty-one years of age or less than
8 twenty-five years of age and has consenting right to be
9 sentenced -- treated and sentenced as a youthful offender
10 under this act.

11 Q. Okay. Was this all explained to you?

12 A. No, sir.

13 Q. Before you pled guilty?

14 A. No, sir.

15 Q. Did you see this sentence sheet at the time of your
16 sentencing?

17 A. No, sir.

18 Q. When did you finally see a copy of this?

19 A. When I subpoena -- when I asked for a copy of my
20 records from the clerk of court.

21 Q. Some time later?

22 A. Yeah. Years, years later.

23 Q. Okay. All right.

24 MS. HARRIGAN: Your Honor -- Mr. Belding, are you
25 moving any of these into ---

1 MR. BELDING: I'm going to move them all in at the
2 end, if that's all right.

3 MS. HARRIGAN: Okay. The state does have an objection
4 to Exhibit 4.

5 MR. BELDING: Okay. Well, I'm -- let me at this time
6 -- the...

7 BY MR. BELDING:

8 Q. Mr. Jones, do you, do you recognize this document?

9 A. Yes, sir.

10 Q. It -- does this -- although it's hard to, to read,
11 does this look like every official version of the document
12 you've seen of the sentencing under the Youthful Offender
13 Act?

14 A. Clarify for me.

15 Q. I'm sorry. Is, is there anything different looking
16 about this than any version or any copy you've ever seen?

17 A. Yes, sir. I ain't signed, I ain't signed any sentence
18 that was youth offender on here.

19 Q. I understand. Had you ever seen any copies of this
20 where you did sign it?

21 A. No, sir.

22 Q. Okay.

23 A. No, sir.

24 MR. BELDING: Your Honor, at this time I'd move this
25 as -- be introduced into evidence, Exhibit 4, as

1 Petitioner's 1 in this hearing. This is a copy that was
2 provided to me by the clerk of court's office, and I didn't
3 bring an authenticating witness, but we can get one.

4 MS. HARRIGAN: There is nothing on here to indicate
5 that it is a certified copy. However, if Mr. Belding, as
6 an officer of the court, says that he got it directly from
7 the clerk's office, then I'll withdraw my objection.

8 MR. BELDING: Thank you, Your Honor. As a matter of
9 fact, at the bottom it has the little microfilm dates and
10 everything. I, I wish I had a better copy myself. Thank
11 you.

12 (SENTENCING SHEET MARKED INTO EVIDENCE AS PETITIONER'S
13 EXHIBIT NUMBER 1.)

14 BY MR. BELDING:

15 Q. Now, Mr. Jones, what has now been introduced into
16 evidence as Petitioner's 1 in this hearing is a copy of
17 your youthful offender sentence sheet.

18 A. Uh-huh.

19 Q. Okay. I want to make sure I understand. Did Ms.
20 Johns, your attorney, discuss your sentence under the
21 Youthful Offender Act with you before you pled guilty?

22 A. No, sir.

23 Q. To your recollection, did Judge Manning ask you did
24 you consent to be sentenced under that act?

25 A. No, sir.

1 Q. Did you consent in writing to be -- being sentenced
2 ---

3 A. No, sir.

4 Q. --- under that act, and doesn't Exhibit 1 evidence
5 that you did not consent in writing to being sentenced that
6 way?

7 A. Yes, sir..

8 Q. All right. Is it your position under the Uniform
9 Declaratory Judgments Act that your YOA sentence is invalid
10 because you did not consent in writing as the statute
11 requires?

12 A. That's correct.

13 Q. Okay. When did you find out that the statute required
14 that you consent in writing?

15 A. When I started studying and got a copy of this from
16 the clerk of court, and I started studying a lot of cases,
17 going back and stuff like that there. That's when I found
18 out that this sentence was illegal, and so I filed
19 declatory [sic] -- dec -- declatory judgment. That's what
20 I call it. I can't ---

21 Q. I understand. Okay, declaratory judgment.

22 A. Declaratory judgment. Excuse me, sir.

23 MR. BELDING: And I think the word that was used
24 earlier, Your Honor, is actually pronounced indeterminate
25 sentence.

1 APPLICANT: Yes.

2 MR. BELDING: Someone said intermediate but that's --
3 I mean, it's indeterminate.

4 THE COURT: I agree.

5 MR. BELDING: Okay.

6 BY MR. BELDING:

7 Q. Mr. Jones, did you -- when you went under the Youthful
8 Offender Act to serve your year, did you appeal that?

9 A. No, sir.

10 Q. Okay. Did your attorney ask you whether or not you
11 wanted to file an appeal?

12 A. No, sir.

13 Q. Okay. Did you just go and do your time?

14 A. Yes, sir.

15 Q. And got out in a year?

16 A. Yes, sir.

17 Q. Okay. During the time you were in jail under the
18 Youthful Offender Act, did you do any legal research about
19 your case?

20 A. No, sir.

21 Q. Okay. Now, later were you accused of committing a
22 crime in 19 -- that happened in June of 1997?

23 A. Yes, sir.

24 Q. Okay. What were you originally charged with in, in
25 1997?

1 A. Three counts of armed robbery, possession of pistol
2 during a violent crime.

3 Q. Okay. Did the state serve you with notice of intent
4 to seek life without the possibility of parole?

5 A. Yes, sir.

6 Q. Okay, and you signed for that?

7 A. Yes, sir.

8 Q. All right. Why were they seeking life without parole,
9 to your knowledge?

10 A. They was using my -- this invalid YOA conviction for
11 enhancement filing purposes.

12 Q. Okay. Is that the first time that you knew that they
13 could do such a thing?

14 A. Yes, sir.

15 Q. Okay. Who were your attorneys at that time?

16 A. John Shutt [phonetic] and Robbie -- John Shepp
17 [phonetic] and Robbie Sneed.

18 Q. Okay. Did they move to quash the indictments?

19 A. Yes, sir.

20 Q. Okay. Was that motion granted or denied?

21 A. Denied.

22 Q. Okay. You went to trial. How long did the trial
23 last?

24 A. I think about a week.. Something like that.

25 Q. Okay.

1 A. So long ago.

2 Q. And at the end, you were found guilty on -- of what?

3 A. Possession of -- three counts of armed robbery,

4 possession of firearm during commission of a violent crime.

5 Q. Okay, and did Judge Hall sentence you to life without

6 the possibility of parole?

7 A. Yes, sir.

8 Q. Okay. Did -- and you, as you heard earlier, you did

9 appeal that and ---

10 A. Yes.

11 Q. Part of your -- was part of your appeal that you

12 filed, it was ex post facto?

13 A. Yes, sir.

14 Q. Okay. Two strikes law came in after your original

15 conviction?

16 A. Uh-huh.

17 Q. Okay, but the Supreme Court turned that down, correct?

18 A. Yeah.

19 Q. All right. Now, I'd like you to tell this court your

20 main grounds for declaratory judgment. First thing is your

21 -- the sentence sheet that you did not consent under the

22 Youthful Offender Act, correct?

23 A. Yes, sir.

24 Q. Okay: Even though you'd done the time?

25 A. I'd done the time yes, sir.

1 Q. Okay. Is it your position that the sentence sheet is
2 void as a matter of law?
3 A. Yes, sir.
4 Q. Does the statute require that you consent in writing?
5 A. Yes, sir.
6 Q. Is there any writing of yours, any signature anywhere?
7 A. No, sir.
8 Q. Okay. Is -- do you, do you believe that, that the
9 sentence sheet has a place on it where you're supposed to
10 consent in writing?
11 A. Yes, sir.
12 Q. Okay. Now, as to, as to your 1998 convictions.
13 A. Yes.
14 Q. The ones that came out of the trial before Judge Hall.
15 A. Yes, sir.
16 Q. Have you seen the sentence sheets in those cases?
17 A. Yes, sir.
18 Q. Okay. Did any of those indicate a judicial
19 determination of whether the convictions were violent,
20 serious, or most serious?
21 A. No, sir.
22 Q. I'm going to show you and, and hope you can -- as best
23 as you can tell from those copies, are those the sentence
24 sheets from your 1998 trial?
25 A. Yes, sir.

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Q. Okay.

MR. BELDING: Do you have ---

MS. HARRIGAN: Exhibit 8?

MR. BELDING: Yes.

MS. HARRIGAN: Yes.

Your Honor, at this time I'd move these be introduced as Exhibit -- both of them as Exhibit 2. They are copies from the clerk's office and a little hard to read, but I think you can make them out.

MS. HARRIGAN: No objection from the state.

MR. BELDING: Thank you.

(SENTENCING SHEETS MARKED INTO EVIDENCE AS PETITIONER'S EXHIBIT NUMBER 2.)

BY MR. BELDING:

Q. All right. Now, on those -- what's now been introduced as Plaintiff's Exhibit 2, do any of those indicate any of those judicial determinations about violent, serious, or most serious?

A. No, sir.

Q. All right. Is there any determination that you can tell from those sentence sheets that would justify a sentence of life without possibility of parole?

A. No, sir.

Q. Okay. Is it your position, Mr. Jones, that under the Uniform Declaratory Judgments Act, that you've got a --

1 what they call a justiciable contribu -- now I'm not saying
2 it -- justiciable controversy in this court with the state?

3 A. Yes, sir.

4 Q. All right. Now, if the state were to -- if this court
5 were able to rule that your YOA sentence was inadequate
6 under the law ---

7 A. Yes, sir.

8 Q. --- because the statute wasn't followed and vacated
9 that sentence, even though it's years later.

10 A. Yes, sir.

11 Q. Would it afford you relief?

12 A. Yes, sir.

13 Q. Okay, and in what way would it afford you relief?

14 A. It would take the life sentence, life without the
15 possibility of parole, off me.

16 Q. Mr. Jones, I want to talk briefly. You also --
17 understanding that you, you, you filed this action by
18 yourself, correct?

19 A. Yes, sir.

20 Q. So, you're pro se?

21 A. Yes, sir.

22 Q. You know what that means?

23 A. Uh-huh.

24 Q. All right. Did you include the habeas corpus part of
25 this ---

1 A. Yes, sir.

2 Q. --- action?

3 A. Yes, sir.

4 Q. What do you understand habeas corpus to be?

5 A. It's a little confusing on my end.

6 Q. Okay. Is it -- did you understand that may be a way

7 to get you to the court to see if you're being held

8 legally?

9 A. Yes, sir.

10 Q. Okay. I understand you don't speak Latin, do you?

11 A. No.

12 Q. Okay. Is, is it -- is that just another type of PCR,

13 or is it ---

14 A. Yes.

15 Q. --- a separate action where you're trying to show that

16 you're being held illegally?

17 A. A separate action.

18 Q. And, and why do you feel you're being held unlawfully?

19 A. Because my 1995 conviction is illegal.

20 Q. Okay. Are you, in this action, testing the legality

21 of your present detention?

22 A. Yes, sir.

23 Q. For the reasons you just stated?

24 A. Yes, sir.

25 Q. Now, let me hand you what has been marked as part of

1 your trial brief that is Exhibit 1. You may have discussed
2 this earlier, but let me show you. Do you recognize what,
3 what that, that is?

4 A. I know that that's the arrest warrant right there.

5 Q. Okay.

6 A. I don't, I don't, I don't know what this is.

7 Q. Let me represent to you that's the back.

8 A. Oh.

9 Q. Okay. Is this the ~~arrest warrant~~ ^{Indictment} from your YOA, what
10 ended up being your YOA conviction?

11 A. Yes, sir.

12 Q. So, this is the assault and battery with intent to
13 kill?

14 A. Uh-huh. Yes, sir.

15 Q. All right.

16 MR. BELDING: Your Honor, again from clerk's office,
17 I'd move this -- have this exhibit introduced as Exhibit 3
18 for the plaintiff.

19 MS. HARRIGAN: No objection from the state.

20 BY MR. BELDING:

21 Q. All right. Showing you, Mr. Jones ---

22 THE COURT: Hold on. She can only go so fast.

23 ~~SEARCH WARRANT~~ ^{Indictment} MARKED INTO EVIDENCE AS PETITIONER'S
24 EXHIBIT NUMBER 3.)

25 BY MR. BELDING:

1 Q. Briefly, Mr. Jones, let me show you what has been
2 marked in your brief as Exhibit 2. Do you recognize the --
3 that document?

4 A. Yes, sir.

5 Q. Okay. Was that the petition for the bond reduction?

6 A. Yes, sir.

7 Q. Okay, and were you granted ---

8 A. No, sir.

9 Q. --- reduction? Okay.

10 A. No, sir.

11 MR. BELDING: Your Honor, again I would move to have
12 this introduced as Plaintiff's Exhibit 4.

13 THE COURT: What's the relevance of that?

14 MR. BELDING: In his, in his handwritten brief -- and
15 I included it in my brief, too -- he was in jail the entire
16 time without much benefit of having Ms. Johns come by, and
17 he -- this is the reason that he pled guilty is he'd
18 already been in jail for over a year, even though she moved
19 to have the bond reduced. It's...

20 THE COURT: Okay.

21 MS. HARRIGAN: The state would object to that as an
22 issue that was already litigated in his two prior PCRs.
23 The state would object to any further ---

24 THE COURT: I just don't understand the -- I mean, his
25 issue is is that he didn't sign off on getting a YOA.

1 Therefore, his ABIK case is invalid from 1996 when he pled
2 in front of Judge Manning. Therefore, his life sentence is
3 invalid because the original sentence that was used to
4 increase his punishment and enhance his punishment per the
5 statute was originally invalid, right?

6 That -- that's your deal?

7 WITNESS: Yes, sir.

8 THE COURT: Your deal is that Judge Manning gave you
9 an illegal sentence in 1996, not -- you already -- you've
10 already litigated the ex post facto and lost. You've
11 already litigated Ms. Johns being ineffective and lost.
12 Your issue is that Judge Manning couldn't have given you
13 that sentence without you agreeing to it and, therefore,
14 that sentence is void; therefore, that sentence being used
15 to enhance you on the next set of charges is, is improper.
16 Therefore, a life sentence is improper.

17 APPLICANT: That's correct, Your Honor.

18 THE COURT: Okay.

19 MR. BELDING: We got right to it. All right, Your
20 Honor, and I would just add all that's included in our
21 brief and argument in support of it.

22 THE COURT: That's fine. I mean, you know, all of
23 your, your briefs and motions will be clocked in and made a
24 part of the record. I mean, and all these are official
25 court documents. So, it's not like it's something that,

1 you know, he has created. I, I just don't -- there's
2 really not much relevance in the fact that she filed a bond
3 reduction motion or she ---

4 MR. BELDING: I understand.

5 THE COURT: --- didn't for the purposes -- I mean,
6 this is purely almost a legal argument ---

7 APPLICANT: Yes.

8 THE COURT: --- more than anything.

9 Do you agree with that?

10 APPLICANT: Yes, sir.

11 THE COURT: I'm not trying to put words in your mouth
12 but, I mean, in, in your mind you, you've created this and
13 you -- this is -- what happened happened.

14 APPLICANT: Yes, sir.

15 THE COURT: There's really not much dispute in that,
16 okay, based on what I've heard today. But it's more of a
17 legal issue as to what the effect of that is. Do you agree
18 with that?

19 APPLICANT: Yes, sir.

20 MR. BELDING: I, I think that sums it up.

21 THE COURT: Okay.

22 MR. BELDING: And I have no further questions.

23 THE COURT: Okay. Good.

24 Go ahead.

25 MS. HARRIGAN: Briefly, Your Honor.

1 CROSS-EXAMINATION BY MS. HARRIGAN:

2 Q. Mr. Jones, you signed the indictment for your 1995
3 ABWIK, correct?

4 A. I, I don't remember, ma'am.

5 Q. But I, I believe it was Exhibit 3. Do you still have
6 your exhibits up there?

7 THE COURT: No. I have the exhibits.

8 MS. HARRIGAN: Oh.

9 BY MS. HARRIGAN:

10 Q. Do you have your copy of your attorney's brief?

11 A. Yes, ma'am.

12 Q. Do, do you recall your signature on there? I think
13 you testified on direct that you -- that was your
14 signature?

15 A. Yes, ma'am.

16 Q. Was this given to you at the same time as the Youthful
17 Offender Act sentencing sheet you didn't sign?

18 A. No. I, I never seen the ^{indeterminate} ~~incident~~ sentencing sheet,
19 ma'am.

20 Q. You've never seen that before?

21 A. I never seen ---

22 Q. It wasn't presented to you with ---

23 A. No, ma'am, at all.

24 Q. And you knew at the time of your trial for your three
25 robberies and your weapons charge the state was seeking

1 life without parole ---

2 A. Yes.

3 Q. --- pursuant to ---

4 A. Yes.

5 Q. --- 17-25-45 ---

6 A. Yes, ma'am.

7 Q. Right?

8 A. I know that, uh-huh.

9 Q. So, you were aware that this 1995 assault and battery
10 with intent to kill was being used for enhancement
11 purposes?

12 A. Yes, sir.

13 Q. At that time in 1998?

14 A. Uh-huh.

15 Q. And you had a direct appeal of that, those three ---

16 A. Yes, ma'am.

17 Q. --- convictions for armed robbery and your weapons
18 charge, correct?

19 A. Yes, ma'am.

20 Q. And your appeal specifically dealt with enhancement
21 issues and using that ABWIK for enhancement purposes to
22 give you life without parole, correct?

23 A. Yes. That's my understanding.

24 Q. And you had two prior PCRs challenging both the armed
25 robberies and -- at least in your second challenging the

1 1995 conviction, correct?

2 A. Yes, ma'am.

3 Q. And you've been afforded two appeals of each of those
4 PCRs, correct?

5 A. Yes, ma'am.

6 MS. HARRIGAN: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MR. BELDING: Nothing on redirect. Thank you, Your
9 Honor.

10 THE COURT: All right, is there -- now, since I'm the
11 judge and there is no jury, is there anything else you want
12 to tell me? Maybe you think I have -- and I'm not trying
13 to put words in your mouth, but do you, do you think, based
14 on my recitation just a couple of minutes ago of what you
15 believe is your issue, do you believe that I've accurately
16 stated it? Or is there anything else you want to -- this
17 is your opportunity to tell me anything else ---

18 APPLICANT: No.

19 THE COURT: --- you want to tell me.

20 APPLICANT: No, sir. I'm fine.

21 THE COURT: You sure?

22 APPLICANT: Yes, sir.

23 THE COURT: Okay, because I don't, I don't want you to
24 say he didn't let me talk, or he didn't give me an
25 opportunity. If you, if you want to tell me something else

1 about it, then, you know, now is your chance.

2 APPLICANT: No, sir. No, sir.

3 THE COURT: Okay. Very good. Thank you very much,
4 Mr. Jones.

5 MR. BELDING: Your Honor, that would be the
6 plaintiff's case. We, just briefly, if, if -- we
7 appreciate you taking the time to review the submissions.
8 Obviously, we don't think that this is a case of statutory
9 interpretation at all. The statute's clear. It says even
10 on the form what's supposed to be done, and it didn't
11 happen, and the petitioner's case, the plaintiff's case is
12 that makes it void ab initio.

13 THE COURT: All right, Ms. Harrigan.

14 MS. HARRIGAN: And in response to that, the state
15 would contend that at most, that would make the sentence
16 illegal, not the underlying conviction illegal. And all he
17 would be entitled to in the case of an illegal sentence,
18 that he be -- the case would be remanded for the purpose of
19 resentencing. So, the overall underlying conviction would
20 still stand and would still be eligible to be used for the
21 LWOP provisions as set forth in 17-25-45.

22 Additionally, a lot of these issues have already been
23 litigated in his direct appeal, his two prior PCRs, and his
24 appeals of his two prior PCRs. The state would contend
25 that this is blocked under res judicata. It's been --

1 issues surrounding this, this might be a new way of
 2 couching it, but this issue has been litigated several
 3 times. He's been afforded an opportunity to come to court
 4 several times to litigate these issues.

5 Additionally, regarding his habeas petition that was
 6 filed pro se, and I believe is still mentioned in
 7 plaintiff's trial brief. I don't believe it's being
 8 abandoned by Mr. Belding or petitioner. Habeas is only
 9 available for constitutional violations of which PCR is
 10 inadequate or unavailable, and here the facts have not
 11 changed; there's nothing new. This is just a situation
 12 where habeas is being used, the state would contend, to get
 13 around the long-standing rules in South Carolina against
 14 successive applications as set forth in Aice, as well as
 15 statute of limitations.

16 And finally, a declaratory judgment or habeas should
 17 not be able to be used just to circumvent the clear
 18 standing case law and statutory provisions entitling
 19 applicant to his one bite at the apple. Mr. Jones has had
 20 multiple bites of multiple apples at this point, and we're
 21 asking that this matter be dismissed.

22 If Your Honor would like, I could address each of the
 23 issues as set forth in plaintiff's trial brief, or the
 24 state is more than happy to submit our own response to
 25 plaintiff's trial brief.

1 THE COURT: Why don't we do this? Why don't you both
2 prepare proposed orders? Is sixty days enough time? If
3 it's not, tell me now.

4 MS. HARRIGAN: Sixty should be more than fine, Your
5 Honor.

6 MR. BELDING: That takes us beyond Christmas, right?
7 I can't do math that fast.

8 COURT: I think so, yes.

9 MR. BELDING: That's, that's ---

10 MS. HARRIGAN: I believe it's January, mid-January.

11 MR. BELDING: That will be, that will be enough time.

12 THE COURT: And if you need more time, just email the
13 law clerk. I don't get upset about things like that.

14 MR. BELDING: What, what is your law clerk's name?

15 THE COURT: Elizabeth Hedgepeth.

16 THE COURT: All right.

17 MS. HARRIGAN: Thank you, Your Honor.

18 MR. BELDING: Thank you, Your Honor.

19 THE COURT: All right, good luck to you, Mr. Jones.

20 APPLICANT: Okay. Take care.

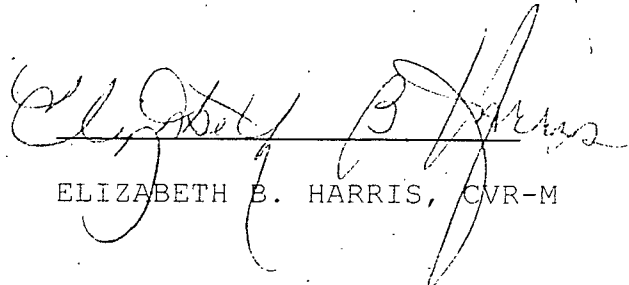
21 THE COURT: You, too, sir.

22 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
 VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
 JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
 HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
 AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
 OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
 CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
 THE 19TH DAY OF NOVEMBER, 2013.

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



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

APRIL 5TH, 2015



EX-17
P9E63

YOUTHFUL OFFENDER ACT

The State of South Carolina

-vs-
Nakia Jones
Defendant

Case No.
95-35-40-1328
ABIK

INDETERMINATE SENTENCE
Section 5 (c)

The Court finds that the above named defendant was, at the time of conviction:

- At least seventeen years of age but less than twenty-one years of age.
- At least twenty-one years of age but less than twenty-five years of age and has consented in writing to be treated and sentenced as a Youthful Offender under the Act.

The Court further finds that the defendant is suitable for handling under the Youthful Offender Act.

It is the sentence of the Court that pursuant to Section 5 (c) of the Youthful Offender Act, the Defendant is committed to the custody of the Department of Corrections, Youthful Offender Division, for an indeterminate period of time not to exceed 6 (or the maximum allowable for the said offense if less than six) years.

2-29-76
DATE

[Signature]
JUDGE

I request to be sentenced under the Youthful Offender Act.

Date

Defendant

ATTEST
A TRUE COPY

[Signature]
Notary Public

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

STATE vs.)

Nakia Jones)

AKA:)

Race: Black Sex: Male)

DOB: 11-28-74 Age:)

SSN:)

DL#)

SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE #:

98 -GS- 40 - 24552

A/W#: F599090

Date of Offense: 6-29-97

S.C. CODE §: 16-11-330(A)

CDR Code #: 0139

**EX-2
PSEL4**

SENTENCE

PLEA

TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation Negotiated Sentence

Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, or Under Youthful Offender Act for a term of LIFE WITHOUT POSSIBILITY OF PAROLE days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years

and/or payment of \$ _____ plus costs and assessments as applicable*; the balance suspended with probation for _____ months/years AND SUBJECT TO SCDPPPS STANDARD CONDITIONS OF PROBATION WHICH ARE INCORPORATED BY REFERENCE.

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered

Total: \$ _____

Pay Terms: _____

Recipient: _____

- 1 PTUP
- 2 _____ days/hours Public Service Employment
- 3 Obtain GED
- 4 Attend Voc Rehab. or Job Corps
- 5 May serve W/E beginning _____
- 6 Substance Abuse Counseling
- 7 Random Drug/Alcohol Testing
- 8 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
- 9 Other: _____
- 10 Other: _____

*Fine: _____ \$
 §14-1-206 - Assessments 100% _____ \$
 §14-1-211 - Surcharge _____ \$
 Exceptions: See §14-1-211)
 §6-5-2995 (DUI) _____ \$
 TOTAL _____ \$

Barbara Scott

Richard H. ...

A TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF Pickland

STATE vs
Nakia Jones

AKA: _____
Race: Black Sex: Male
DOB: 11-27-77 Age: _____
SSN: _____
DL# _____
SID# _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT CASE #

98 -GS- 40 - 24553

A/W#: F599091
Date of Offense: 6-27-97
S.C. CODE §: 16-11-300(A)
CDR Code #: 01/319

EX-2
PS64E
SENTENCE
PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or RELEASED TO: Armed Robbery

in violation of § 16-11-300(A) of the S.C. Code of Laws, bearing CDR Code # 01/319
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation Negotiated Sentence
 Recommendation by the State

ATTEST:

Solicitor _____ Defendant _____ Attorney for Defendant _____
WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, or Under Youthful Offender Act for a term of LIFE without Parole years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance suspended with probation for _____ months/year AND SUBJECT TO SCDPPPS STANDARD CONDITIONS OF PROBATION WHICH ARE INCORPORATED BY REFERENCE.
 CONCURRENT or CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered
Total: \$ _____
Pay Terms: _____
Recipient: _____

- 1 PTUP
- 2 _____ days/hours Public Service Employment
- 3 Obtain GED
- 4 Attend Voc Rehab. or Job Corps
- 5 May serve W/E beginning _____
- 6 Substance Abuse Counseling
- 7 Random Drug/Alcohol Testing
- 8 Fine may be pd. in equal, consecutive weekly installments amt. of \$ _____ beginning _____
- 9 Other: _____
- 10 Other: _____

§14-1-206 - Assessments 100% \$ _____
§14-1-211 - Surcharges \$ _____
§14-1-211 - Suspensions See §14-1-211) \$ _____
§14-5-2995 (DUI) \$ _____
§14-5-2995 \$ _____

Charles A. Scott
Clerk of Court/Deputy Clerk

RESIDING JUDGE
Signature Date: 5-18-98
Judge Code: _____

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

vs.

Nakia Jones

AKA:

Race: Black

Sex: Male

DOB: 11-28-74

Age: _____

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE #:

98 -GS- 40 - 24554

A/W#: F599092

Date of Offense: 6-29-97

S.C. CODE §: 16-11-330(A)

CDR Code #: 0139

SENTENCE

**EX-2
PSE 64**

PLEA

TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation

Negotiated Sentence

Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, or Under Youthful Offender Act for a term of LIFE WITHOUT POSSIBILITY OF PAROLE days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*.

probation for _____ months/years AND SUBJECT TO SCDCPPS STANDARD CONDITIONS OF PROBATION WHICH ARE INCORPORATED BY REFERENCE.

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered

Total: \$ _____

Pay Terms: _____

Recipient: _____

- 1 PTUP
- 2 _____ days/hours Public Service Employment
- 3 Obtain GED
- 4 Attend Voc Rehab. or Job Corps
- 5 May serve W/E beginning _____
- 6 Substance Abuse Counseling
- 7 Random Drug/Alcohol Testing
- 8 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
- 9 Other: _____
- 10 Other: _____

*Fine: _____ \$
 \$14-1-206 - Assessments 100% _____ \$
 \$14-1-211 - Surcharge _____ \$
 (Exceptions: See §14-1-211)
 \$56-5-2995 (DUI) _____ \$
 TOTAL _____ \$

ATTEST

A TRUE COPY

Barbara A. Scott
Clerk of Court/Deputy Clerk

Barbara A. Scott
PRESIDING JUDGE

Sentence Date: 6-18-98

Court Reporter: Delicia

Judge Code: _____

State of South Carolina
IN the court of Appeals

Appeal from Richland County

Robert E. Hood Circuit Judge

NAKIA Jones

Appellant

SEP 30 2015
SC Court of Appeals

vs.

State of South Carolina

Respondent

certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: September 24 2015

NAKIA Jones PRO SE
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Columbia S.C 29210