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**SC SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Williamsburg County

Steven H. John, Circuit Court Judge

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JHERWASKI PRESSLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002286

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

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BENJAMIN JOHN TRIPP  
Appellate Defender

ALAN WILSON  
Attorney General

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

DANIEL GOURLEY  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) )  
 ) GENERAL SESSIONS COURT  
COUNTY OF WILLIAMSBURG )

STATE OF SOUTH CAROLINA)

STATE, )

TRANSCRIPT OF RECORD  
12-GS-45-114

v. )

MARTIN D. PRESSLEY, )  
JHERWASKI D. PRESSLEY )  
RONNIE STEPHENS )

\_\_\_\_\_ DEFENDANTS. )

September 15, 2014  
Kingstree, South Carolina

**B E F O R E :**

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

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

TYLER B. BROWN, ESQ.  
Assistant Solicitor

STEVEN S. MCKENZIE, ESQ.  
Attorney for Defendant

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

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(There were no exhibits submitted.)

1 THE CLERK OF COURT: Place your left hand  
2 on the Bible and raise your right.

3 WHEREUPON,

4 **MARTIN PRESSLEY,**  
5 **RONNIE STEPHENS,**  
6 **JHERWASKI PRESSLEY,**

7 were duly sworn by the Clerk of Court.

8 THE CLERK OF COURT: State your names for  
9 the record.

10 DEFENDANT MARTIN PRESSLEY: Martin  
11 Pressley.

12 DEFENDANT STEPHENS: Ronnie Stephens.

13 DEFENDANT JHERWASKI PRESSLEY: Jherwaski  
14 Pressley.

15 MR. BROWN: May it please the Court, Your  
16 Honor.

17 THE COURT: Yes, sir.

18 MR. BROWN: Your Honor, before you are  
19 three individuals: Those individuals being  
20 Jherwaski Demario Pressley, Martin Dorrell Pressley,  
21 and Ronnie Stephens. Your Honor, all three were  
22 indicted under the hands of one hands of all theory  
23 under, I believe eight separate indictments, or  
24 under eight separate counts in the indictment, one  
25 count for armed robbery, one count of criminal  
conspiracy, one count for assault and battery first

1 degree, one count for possession of a firearm during  
2 a violent crime, and then four counts of pointing  
3 and presenting a firearm. Your Honor, Mr. Steve  
4 McKenzie is representing all three of them. They  
5 are here today to plead guilty to, each to plead  
6 guilty to the armed robbery, the assault and battery  
7 first degree. In exchange for their plea we're  
8 recommending a mandatory minimum of a ten year  
9 sentence to run concurrent between both offenses.  
10 All other offenses will be dismissed as part of the  
11 plea. Permission to approach.

12 THE COURT: Yes, sir.

13 Okay, you're Martin Pressley?

14 DEFENDANT JHERWASKI PRESSLEY: Jherwaski,  
15 sir.

16 THE COURT: Okay. You're Martin?

17 DEFENDANT MARTIN PRESSLEY: Yes, sir.

18 THE COURT: And you're Mr. Stephens?

19 DEFENDANT STEPHENS: Yes, sir.

20 THE COURT: Have y'all had enough time to  
21 talk to your lawyer?

22 (Defendants responded yes, sir.)

23 THE COURT: Each one of you satisfied with  
24 his representation?

25 (Defendants responded yes, sir.)

1 THE COURT: I -- you got the same lawyer  
2 representing all three of y'all. Do you, any of  
3 y'all perceive that there's a conflict in him  
4 representing all three of y'all?

5 (Defendants responded negatively.)

6 THE COURT: You understand that you'll be  
7 entitled if you went to trial to a separate lawyer.  
8 You understand that?

9 (Defendants responded yes, sir.)

10 THE COURT: Okay. Has anybody outside of  
11 what your lawyer and the Solicitor's entered into,  
12 has anybody promised you anything or threatened you  
13 in any way to get you to plead guilty?

14 (Defendants responded no, sir.)

15 THE COURT: So you're pleading freely and  
16 voluntarily?

17 (Defendants responded yes, sir.)

18 THE COURT: Are any of you under the  
19 influence of alcohol or drugs today?

20 (Defendants responded no, sir.)

21 THE COURT: You have any mental diseases  
22 that would keep you from understanding what you're  
23 doing today?

24 (Defendants responded no, sir.)

25 THE COURT: You understand that armed

1 robbery carries from 10 to 30 years in jail. It is  
2 a no parolable offense. It is a most serious  
3 offense and a violent felony, which means you don't  
4 get parole, you got to serve 85 percent of it. If  
5 you get another most serious offense you're gonna be  
6 looking at life without the possibility of parole.  
7 You understand that?

8 (Defendants responded yes, sir.)

9 THE COURT: You also understand that  
10 assault and battery first degree carries up to 10  
11 years in prison. You understand that?

12 (Defendants responded yes, sir.)

13 THE COURT: By pleading guilty you're  
14 giving up your constitutional right to remain silent  
15 'cause each one of you are telling me you're guilty.  
16 You understand that?

17 (Defendants responded yes, sir.)

18 THE COURT: You're also giving up your  
19 right to a jury trial; and in that trial y'all would  
20 be presumed innocent. The State would have to prove  
21 you guilty beyond a reasonable doubt to all twelve  
22 jurors. You would be able to sit in this courtroom  
23 and confront the witnesses that would testify  
24 against you from the witness stand right there.  
25 Each one of you would have the right to

1 cross-examine the State's witnesses, to subpoena  
2 witnesses to testify in your behalf, to put up any  
3 defenses you have to these crimes. When you plead  
4 guilty you're giving all that up. Do you  
5 understand?

6 (Defendants responded yes, sir.)

7 THE COURT: You're also giving up any  
8 appeals that could come out of that trial by  
9 pleading guilty. You understand?

10 (Defendants responded yes, sir.)

11 THE COURT: Have y'all had an opportunity  
12 to go over discovery that the State has provided  
13 with your attorney concerning this case?

14 (Defendants responded yes, sir.)

15 THE COURT: Has the attorney showed you  
16 what the State had against you?

17 (Defendants responded yes, sir.)

18 THE COURT: You got any complaints against  
19 the Solicitor's Office or law enforcement by not  
20 providing you something that you think you're  
21 entitled to?

22 (Defendants responded no, sir.)

23 THE COURT: Okay. If you want to appeal  
24 this guilty plea today, you got to file that appeal  
25 with the clerk of court within ten days of today's

1 date or you give up that right. You understand  
2 that?

3 (Defendants responded yes, sir.)

4 THE COURT: Any of you got any questions  
5 you want to ask me concerning your rights?

6 (Defendants responded no, sir.)

7 THE COURT: Okay, the Solicitor's gonna  
8 tell me about the facts.

9 MR. BROWN: Good morning, Your Honor, may  
10 it please the Court. Your Honor, this all arose out  
11 of March 22nd, 2012. On that night five individuals  
12 around 9:33 that night were at a local store called  
13 Bahas (ph) which is at 529 North Williamsburg County  
14 Highway here in Kingstree. Law enforcement got  
15 called out to that location because they were  
16 reported there was a — that there was an armed  
17 robbery. Actually, I think they had hit the panic  
18 button to be precise. When law enforcement got out  
19 there they managed to speak with the individuals who  
20 had been in the store. The five individuals,  
21 indicated that on that night three individuals came  
22 into the store. They were masked, I believe,  
23 wearing dark clothes. Two of them had firearms and  
24 walked in and pointed a firearm and demanded money.  
25 The store owner Mr. Kenneth Moore, I believe he's

1 locally known as Bobo, he began trying to turn the  
2 money over. And one of the individuals, because he  
3 wasn't going fast enough, hit him across the face  
4 which is the grounds for the assault and battery in  
5 the first degree. He then proceeded to manage to  
6 get the money. Again, he wasn't going fast enough  
7 so a second one of the three individuals walked up  
8 and they also hit him on the face. Eventually the  
9 money was turned over. It was a sum total around  
10 1200-dollars. And law enforcement is called out.  
11 They of course began search of the location.

12 At some point during that night, Mark Watts,  
13 who is one of the victims in this case, saw an  
14 individual who was kind of matching the description,  
15 tried to give chase and was not able to catch him  
16 but law enforcement was called out to that location.  
17 They were looking and they ended up seeing one of  
18 the individuals Jherwaski Pressley there in a field  
19 with a money bag, and so they managed to stop him.  
20 He surrendered. They began speaking with him about  
21 the events of that night. At first he denied  
22 culpability, and but soon thereafter, he came clean  
23 on what all happened. He implicated his younger  
24 brother Martin -- younger or older, I'm not really  
25 sure, I'm sorry, Your Honor. But he indicated his

1 brother Martin Pressley and he said that it was one  
2 of Martin's friends that came with him; he didn't  
3 know him by name. They spoke with Martin Pressley  
4 and Martin quickly owned up to his responsibility as  
5 well as Jherwaski Pressley who gave the name of  
6 Ronnie Stephens. When Ronnie Stephens spoke with  
7 law enforcement and also implicated himself and both  
8 of the Pressley brothers. I think one of the three  
9 indicated a fourth person that knew only by  
10 nickname. There's nothing to my knowledge any leads  
11 as to what came of that; but neither here nor there,  
12 all three admitted to their responsibility into  
13 this. To be clear, none of them have any criminal  
14 history, but I've spoken with all the victims. One  
15 of them is present here today, Mr. Benji Rogers is  
16 present here in court. I don't think he wants to  
17 address the Court, but he wanted to be present. I  
18 spoke with all the individuals. Only one of them  
19 wanted them to get more time than ten years, and she  
20 was — she understood that I was going to recommend  
21 ten years; she didn't have a problem with that. She  
22 just said it scared her a lot that this happened.  
23 So that's the basis of the plea, Your Honor.

24 THE COURT: Okay. Those facts correct,  
25 gentlemen?

1 (Defendants responded yes, sir.)

2 THE COURT: And you're pleading guilty  
3 'cause you are guilty?

4 (Defendants responded yes, sir.)

5 THE COURT: I find there's a factual basis  
6 to your plea. It's freely and voluntarily entered  
7 into, that you've had advice of competent counsel  
8 with whom you tell me you're satisfied. I'll accept  
9 your pleas.

10 Mr. McKenzie.

11 MR. MCKENZIE: Thank you, Your Honor. And  
12 Your Honor, as you know we had a hearing on the  
13 issue of me being representing all three of these  
14 young men, I think, last term of court when we were  
15 here. And this issue came up, whether or not I  
16 would have a conflict. I have been over that with  
17 them. They understand — and I went over it again  
18 this morning with them. They understand that if  
19 they were, did not, weren't comfortable with me  
20 handling this matter they could find their own  
21 lawyers. All of them indicated they were  
22 comfortable with me handling it.

23 In going through the file, Your Honor, and  
24 when I got discovery, and there's videos, there's  
25 audio, these young men gave very detailed statements

1 and they almost are identical statements as to what  
2 happened on that night so there wasn't a lot  
3 conflict in regards to, for me in regards to  
4 representing them on a plea. Obviously if it was a  
5 trial I think that I would have to get out of the  
6 case; but in regards to a plea, they all agreed that  
7 what happened was that they went into the store, and  
8 as the Solicitor said, they committed armed robbery.  
9 And they are -- they're standing in front of you  
10 with no prior criminal history, with good families.

11 The Pressleys are over here to my far right.  
12 Ronnie Stephens, Sr., is right here behind his son.  
13 His mother Mary is seated back there in the red  
14 shirt. They -- these young men come from good  
15 families and have never been in trouble before. And  
16 we just -- I just don't know, I can't understand it,  
17 I really can't. I've talked to them about it, and  
18 they inform me that they had been smoking marijuana  
19 earlier that day. I told them that wasn't a defense  
20 to this. It's just like if you were DUI and ran a  
21 stop sign and hit somebody, that's not a defense to  
22 it because you're drunk. But I think that it's just  
23 one of these situations where these kids were, you  
24 know, it's unfortunate but they were young. At the  
25 time I think that this happened they were 18, 20 and

1 21; and now they're 20, 23, and 21 years old. So  
2 it's one of these situations, Your Honor, where I'm,  
3 you know, I can't explain it. I can't explain what  
4 went off the track. The families can't explain it.  
5 They know that they are good people. They know  
6 their children other than this event, were good  
7 kids. They had no problem with them. They had no  
8 prior criminal history. They weren't in trouble.  
9 They were -- for example, Ronnie is in voc training  
10 right now and trying to get a good job, and that's  
11 gone. Eight-and-a-half years of their life is gonna  
12 be gone if you accept this recommendation; they know  
13 that. They know they have to serve 85 percent of  
14 this ten year sentence. And they are, you know,  
15 their families are upset about it and they've asked  
16 me all those questions, is there any way they can  
17 get probation, any way they can do a YOA sentence?  
18 And I said no, I said the law doesn't allow it.  
19 They said, is there anything they can go below the  
20 ten year minimum. I said, no, the judge has no  
21 discretion. The legislature said if you're gonna  
22 commit armed robbery in South Carolina, you get a  
23 ten year minimum sentence. That's a minimum. And I  
24 said, and Judge Cothran can say, I don't want to  
25 accept that.

1           But Your Honor, I will tell you that I'm gonna  
2 ask each one of the family members if they would  
3 talk to you about their sons and especially — I'll  
4 start with the Pressleys because they have both  
5 Jherwaski and Martin here. And you know, I can't —  
6 this is not a situation where we have broken  
7 families with children that are out there with these  
8 boys. They have no children. They were out there  
9 working, and now they're not. They're going to be  
10 going to prison for eight-and-a-half years minimum  
11 if you accept this plea bargain. And so I would ask  
12 the Pressleys if they have anything they want to say  
13 to you about their boys. And like I said, I'm at a  
14 loss for why they would do this, why they would walk  
15 into a store with two guns and rob people at gun  
16 point and strike people with a gun. I'm at a loss  
17 at it. And I can't explain to the Court, I have no  
18 excuse for it and they have no excuse for it. It  
19 happened, and we're asking the Court to accept this  
20 plea deal.

21           If these boys had a prior record I don't think  
22 I could stand up here in good faith and ask you to  
23 accept it. They haven't — they don't have a prior  
24 record. I think, like I said, that the victims are  
25 okay with the minimum sentence. They understand

1 these boys made a tremendous, horrible mistake one  
2 day out of their life and now they've got to pay for  
3 it going forward. And the good thing about this,  
4 Judge, is that at my age, your age, this will be a  
5 different story; but they're in their 20s and they  
6 have a chance to do something with their life after  
7 they get out of SCDC. And they will. They'll still  
8 be young men, and they will have a chance to make  
9 something of themselves and make something of their  
10 lives. Right now they're gonna do eight-and-a-half  
11 years and they understand that. They understand  
12 that you have to do that; your hands are tied.

13 And I just, again, I'm just at a loss for  
14 words why they would just make this mistake on this  
15 day. And as I've said, they gave very detailed  
16 statements. I reviewed the videos and the audios.  
17 It's just nothing that at trial I could present that  
18 the jury would not -- that I wouldn't think the jury  
19 would come back and say they were guilty and then I  
20 know what you would do. I know what you would do  
21 after a trial; you would give them 25 or 30 years.  
22 And so I'm asking that you accept this plea. I  
23 think they owned up to it immediately. Like I said,  
24 there was a little hymn and haw like everybody does;  
25 but they signed the waiver of rights form and

1 they're the ones who said this is what we did. And  
2 they made a mistake, and that's in all their  
3 statements but. And since they've been out, they've  
4 been out for two years now, on bond, two years. As  
5 of March, two years they got out on bond and they  
6 have not been in a lick of trouble.

7 And so I'm not saying that that makes up for  
8 anything that's happened in the past, especially  
9 what happened to any of these victims in this case;  
10 but I'm just saying to you, Your Honor, that it just  
11 shows me that we had a one day event. It could have  
12 been tragic. I'm -- thank God nobody was injured or  
13 shot or a gun didn't go off or something stupid like  
14 that would have happened, and that's a possibility  
15 that could have happened. But I'll ask the  
16 Pressleys, Mr. and Mrs. Pressley want to say  
17 anything about their children, if they want to speak  
18 at this time.

19 MS. PRESSLEY: Well, I want to apologize  
20 to the victim on behalf of my children because no,  
21 it was surprising to me when I found out about it.  
22 And like he said, like Tony McKenzie said, a  
23 mistake. We all have made mistakes, and we know  
24 that there's consequences for mistake. We taught  
25 them that there's consequences to your action never

1 knowing that it would come to this point. But then,  
2 I was told that ten years is the minimum that they  
3 can receive, and I'm just still asking for  
4 compassion from the judge. But you know, again, I  
5 don't know what happened, why it happened, still to  
6 this day.

7 THE COURT: Thank you, ma'am.

8 MR. MCKENZIE: Mr. Pressley, if he wants  
9 to say anything.

10 MR. PRESSLEY: Yes, Your Honor, we — like  
11 my wife said, we apologize to the victims. And you  
12 know, they are kids and we all have went through  
13 something and it's not excusable for what they did;  
14 but we have heard that, you know, life goes on and  
15 still they have a chance. And it's up to us and  
16 everyone here, you know, that they have a chance  
17 because of fact is they're here, they want a life  
18 too as well as us, and all I'm just saying is I'm  
19 sorry. And that's all I really have.

20 MS. PRESSLEY: And again, I would just ask  
21 that the victim truly will find forgiveness in their  
22 heart —

23 MR. PRESSLEY: Yes.

24 MS. PRESSLEY: —because you can't move  
25 on without forgiveness neither so I just ask that

1 you find forgiveness.

2 THE COURT: Thank you, ma'am.

3 MR. MCKENZIE: Ronnie Stephens, Sr.

4 THE COURT: Yes, sir.

5 MR. STEPHENS, SR.: Yeah, I want to  
6 apologize to the victims, you know, for the actions  
7 of these fellas but. I somewhat kind of take the  
8 blame for my son 'cause I work construction and the  
9 night that this happened I was in Kinston, North  
10 Carolina, I think, working on the railroad. My work  
11 takes me away from home a lot of times, and you're  
12 not there to -- every night when they come in, make  
13 sure they're in and see what's going on all the time  
14 and things but. I know all these guys since they  
15 been little boys and I know they all good kids, but  
16 they just made a mistake just like we all do. We  
17 just want to ask for leniency too.

18 THE COURT: Thank you, sir.

19 MR. MCKENZIE: Your Honor, each one of the  
20 boys, if they want to say anything starting with  
21 Ronnie Stephens.

22 DEFENDANT STEPHENS: Yeah, I just want to  
23 say I'm sorry to the victim for whatever I did to  
24 you. I hope you accept my apology.

25 MR. MCKENZIE: And then Martin Pressley.

1           DEFENDANT PRESSLEY: Yeah, I apologize to  
2 the victim too.

3           MR. MCKENZIE: And Jhewarski.

4           DEFENDANT PRESSLEY: I apologize to the  
5 victim for the things that I did towards them.

6           MR. MCKENZIE: Thank you, Your Honor.

7           MR. BROWN: Your Honor, if I can, the only  
8 other thing I have, I did promise Mr. Kenneth Moore  
9 who is the store owner, he asked me to specifically  
10 to say that he doesn't hold any ill will. He  
11 doesn't hold any grudges. He recognizes this is the  
12 responsibility of the State to prosecution and the  
13 gravity of this crime. That's just where we are.  
14 He certainly asked me to relay to the defendants and  
15 their families that he doesn't hold any ill will  
16 today.

17           MR. MCKENZIE: And Your Honor, I will say  
18 that all my clients have told me there's a fourth  
19 person involved in this, and they are willing to —  
20 if they can identify them, if the State comes up  
21 with any leads at a later date that — he wasn't one  
22 of the persons that went in the store but there was  
23 a fourth person involved in it. And again, it was  
24 one of the guys I believe that was with them earlier  
25 that day. They know him other than by a street

1 name; I think they gave that to law enforcement.  
2 But they are willing to cooperate with law  
3 enforcement if that person is ever found out so  
4 thank you, Your Honor.

5 THE COURT: And it is unfortunate y'all's  
6 first brush with the law is as serious as it is; and  
7 I mean, and I don't have any discretion in this case  
8 and the minimum sentence is what they recommended.  
9 You seem to come from good families. Why you made  
10 this stupid decision, I don't know, and that's a  
11 parent's worst nightmare. But I'll follow the  
12 recommendation on each one of you. The sentence on  
13 the armed robbery is ten years, and ten years on the  
14 assault and battery, to run concurrent each other.  
15 I've given you credit for any time you served toward  
16 that.

17 You know, when you get to the Department of  
18 Corrections you've got an opportunity because you  
19 are young. When you get out — you can run with the  
20 wrong crowd in the Department of Corrections just  
21 like you can on the street or you can get in there  
22 and take advantage of every program they got. You  
23 can further your education to come out better  
24 educated. And those are programs that will help you  
25 if you take advantage of them. Or you can sit and

1 get with the wrong crowd and come out worse than you  
2 are today. I hope when you do get out of prison you  
3 will put this chapter behind you and be able to be  
4 productive citizens and make your parents proud of  
5 you, but it's up to you. You made these decisions  
6 that got you here. I hope now you can make better  
7 decisions when you leave. Good luck to you.

8

9

10

11 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

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STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Williamsburg )

Jheowski Demario Pressley 00561495 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

SHARON B. STEVENS  
CLERK OF COURT  
KINGSTREE, S.C.

2014 DEC 16 AM 10:04

FILED

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 Kirkland / Evans Corrections Institution

---

2. Name and location of Court which imposed sentence Williamsburg  
County, Kingstree, S.C.

---

3. Name(s) of co-defendant(s) (if any) Martin D. Pressley and  
Bonnie T. Stephens and Bopais

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-GS-45-0114

---

  - (b) N/A

---

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 9-15-2014

(b) 10 years sentence Concurrent

(c) N/A

6. Check whether a finding of guilty was made:

(a)  after a plea of guilty 10 yrs sentence

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

N/A

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) I didn't know how to go about it. It my first time.

(b) N/A

(c) N/A

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

(a) Attorney Steve McKenzie Misrepresented Me.

(b) He Promise me the V.O.A. Program.

(c) ~~HE~~ had ties with the victim

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

(a) Misrepresented, Didn't investigate Foul Play involved.

(b) Promise me the V.O.A program and I didn't receive it.

(c) Reason to believe he was close friends with the victim conflict the case

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. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

NO

N/A

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) New Found Evidence.
- (b) N/A
- (c) N/A

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

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

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. Steve McKenzie  
Manning, SC
  - ii. N/A  
N/A
  - iii. N/A  
N/A
- (b) the proceedings at which each such attorney represented you:
  - i. In The Court Of General Sessions.  
N/A
  - ii. N/A
  - iii. N/A  
N/A

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

Fair trial to present new evidence and Eyewitness.

\_\_\_\_\_

N/A

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

NO, I am not

\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
County of Williamsburg )

VERIFICATION

I, Jherwaski Demario Pressley, 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.

Jherwaski Demario Pressley 10-15-2014  
Jherwaski Demario Pressley

SWORN to and subscribed before me this 15th  
day of October 2014.

[Signature] (L.S.)  
Notary Public

My Commission Expires: April 12, 2013

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

I, Therwaski Demario Prussley, 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.

*Therwaski Demario Prussley* 10-15-2014  
*Therwaski Demario Prussley*  
 Applicant

SWORN or affirmed to and subscribed before me this

15th day of October, 2014.

*[Signature]*  
 Notary Public

My Commission Expires: April 12, 2023

2014 DEC 16 AM 10:05  
 SHARON R. ADAMS  
 CLERK OF COURT  
 KINGSTREE, S.C.

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Jherwaski D. Pressley, #361485,	)	2014-CP-45-648
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 16, 2014, 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 Williamsburg County Clerk of Court. The Applicant was true bill indicted at the May 2012 term of the Williamsburg County Grand Jury for armed robbery, criminal conspiracy, assault and battery-first degree, possession of a firearm during a violent crime, and four counts of pointing and presenting a firearm (2012-GS-45-0114). Steve McKenzie, Esquire represented Applicant. On September 15, 2014, Applicant pled guilty as indicted to armed robbery and assault and battery-first degree before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant pursuant to a recommendation by the State to ten years for armed robbery and ten years for assault and battery-first degree to run concurrent. Applicant did not appeal his guilty plea or sentence.

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

Department of Corrections, and the plea transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective Assistance of Counsel
  - a. Attorney misrepresented me.
  - b. Didn't investigate foul play involved.
  - c. He promise me the Y.O.A. program.
  - d. He had ties with the victim.

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

## III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

#### IV.

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

V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

February 11, 2015.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF WILLIAMSBURG )  
 )  
 JHERWASKI D. PRESSLEY, #361485, )  
 )  
                                   Applicant, )  
                                   ) )  
                                   vs. )  
                                   ) )  
 STATE OF SOUTH CAROLINA, )  
                                   ) )  
                                   Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

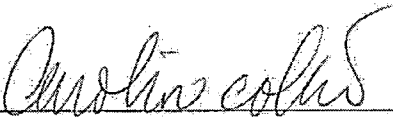
2014-CP-45-648

AFFIDAVIT OF SERVICE BY MAIL

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

**Lance S. Boozer, Esquire**  
**The Boozer Law Firm, LLC**  
**807 Gervais Street, Suite 203**  
**Columbia, SC 29201**

DATED this 11<sup>th</sup> day of February, 2015.

  
 \_\_\_\_\_  
 Caroline Collins, Legal Assistant  
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Williamsburg	)	Case No. 2014-CP-45-00648
	)	
Jherwaski Pressley,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 15, 2015  
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Lance Boozer, Esquire  
Attorney for the Plaintiff

Daniel Gourley, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Court Reporter

I N D E X

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Direct by Mr. Boozer.....	23
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 JULY 15, 2015

2 (WHEREAS this matter was scheduled for a post-conviction  
3 relief hearing, the applicant appeared along with his  
4 counsel of record. The hearing began at 10:55 a.m.)

5 THE COURT: Yes, sir, Mr. Attorney General.

6 MR. GOURLEY: Yes, Your Honor. This is Jherwaski  
7 Pressley versus the State of South Carolina, Docket Number  
8 2014-CP-45-648. He's presently confined in the South Carolina  
9 Department of Corrections pursuant to orders of commitment of  
10 the Williamsburg County Clerk of Court.

11 He was true-bill indicted at the May 2012 term of the  
12 Williamsburg County Grand Jury for armed robbery, criminal  
13 conspiracy, assault and battery in the first degree,  
14 possession of a firearm during a violent crime, and four  
15 counts of pointing and presenting a firearm. Mr. McKenzie  
16 represented him.

17 On September 15<sup>th</sup>, 2014, he pled guilty as indicted to  
18 armed robbery and assault and battery in the first degree  
19 before the Honorable R. Ferrell Cothran Jr. Judge Cothran  
20 sentenced him pursuant to a recommendation by the State to a  
21 ten-year term for armed robbery and a ten-year term for  
22 assault and battery in the first degree, with those sentences  
23 running concurrently.

24 He did not appeal his guilty plea or sentence. He filed  
25 a timely application for PCR on December 16<sup>th</sup>, 2014, alleging

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

1 ineffective assistance of counsel. The State filed its return  
2 on February 11<sup>th</sup>, 2015. And he's represented today by Mr.  
3 Boozer.

4 THE COURT: All right. Mr. Boozer, are you ready to  
5 proceed?

6 MR. BOOZER: I am, Your Honor.

7 THE COURT: All right. Very good. I'll be glad for you  
8 to -- to do so.

9 MR. BOOZER: Thank you, Your Honor. If it pleases the  
10 Court, Judge, we would call Jherwaski Pressley to the stand.

11 THE COURT: All right, sir. Please come around. Come  
12 right over here to be sworn, sir. All right, sir. As best  
13 you can, can you raise your right hand, please, sir? Do you  
14 solemnly swear or affirm to tell the truth, the whole truth,  
15 and nothing but the truth, so help you God?

16 THE APPLICANT: Yes, sir.

17 THE COURT: Very good. Have a seat, get situated, and  
18 then state your name, please, sir.

19 THE APPLICANT: Jherwaski Pressley.

20 THE COURT: Go ahead, Mr. Boozer.

21 MR. BOOZER: Thank you, Your Honor.

22 JHERWASKI PRESSLEY, being first  
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. BOOZER:

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

- 1 Q: Mr. Pressley, how are you doing today?
- 2 A: All right. And yourself?
- 3 Q: I'm doing fine, but I appreciate you -- you asking. Do
- 4 you know what you're here today for?
- 5 A: Yes, sir.
- 6 Q: And why is that? Why are we here today?
- 7 A: To get a resentencing.
- 8 Q: Well, not a resentencing. You're -- you filed what's
- 9 called a PCR.
- 10 A: A PCR, yes, sir.
- 11 Q: Okay. And you understand that we're not here asking for
- 12 a resentencing? What the relief that His Honor can give if he
- 13 grants your PCR is that you get a new trial?
- 14 A: Yes, sir.
- 15 Q: And you understand that?
- 16 A: Yes, sir.
- 17 Q: And you understand that you're serving a ten-year
- 18 sentence for armed robbery, as well as assault and battery
- 19 first degree?
- 20 A: Yes, sir.
- 21 Q: Okay. And were some other charges dropped?
- 22 A: Yes, sir.
- 23 Q: Okay. You understand that if we go forward today and
- 24 you're successful, that you're getting your PCR granted, that
- 25 charges that were dropped will come back when this case goes

## JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

1 back to the Solicitor's Office, and your plea deal will  
2 basically come undone? You understand that; right?

3 A: Yes, sir.

4 Q: And you understand that if you do get a new trial that  
5 there's a possibility -- well, there's not a possibility.  
6 You'll be facing whatever time these charges carry, which on  
7 an armed robbery, of course, is up to -- is ten to thirty  
8 years?

9 A: Yes, sir.

10 Q: And knowing that, that that's a possibility, you still  
11 wish to go forward today?

12 A: Yes, sir.

13 Q: And you do understand that His Honor cannot reduce your  
14 time or resentence you. The only thing he can do is give you  
15 a new trial?

16 A: Yes, sir.

17 Q: Okay. And you want to go forward?

18 A: Yes, sir.

19 Q: All right. Now, obviously, you filed an application for  
20 PCR. Who represented you at your plea?

21 A: Mr. Steve McKenzie.

22 Q: Okay. And how did Mr. McKenzie come to represent you?  
23 Was he hired?

24 A: Yes, sir.

25 Q: All right. Now, ultimately, you pled guilty September

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

1 15<sup>th</sup>, 2014; is that right?

2 A: Yes, sir.

3 Q: And you filed this PCR application and you've alleged  
4 some things against Mr. McKenzie; is that correct?

5 A: Yes, sir.

6 Q: Okay. And just for the record, the first allegation that  
7 you've filed against -- are alleging in your PCR application  
8 is what you called attorney misrepresentation; is that right?

9 A: Yes, sir.

10 Q: All right. Tell the Court what you mean by attorney  
11 misrepresentation?

12 A: Well, we was offered something else on the table and when  
13 the time came for us to get sentenced, that wasn't an option.

14 Q: Okay. And you've also filed -- and does that allegation  
15 tie into another one you have where you've got -- you've  
16 claimed that there was a potential or promised a YOA sentence?

17 A: Yes, sir.

18 Q: Okay. What -- what is a YOA sentence?

19 A: A Youthful Offender Act.

20 Q: Okay. And does that tie into what you're talking about  
21 attorney misrepresentation?

22 A: Yes, sir.

23 Q: Why don't you go ahead and tell the Court about those two  
24 allegations that you were promised a YOA sentence?

25 A: Well, when we first went there, we -- he told us that

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

1 because of we're not being in trouble and never been in  
2 trouble and we don't got no bad record that we could get  
3 recommended [verbatim] for that, but he was going to try to  
4 get a strong-armed. But if we wouldn't have got recommended  
5 for that, he said we would get YOA regardless.

6 Q: Okay. And you're saying we. Did you have a co-  
7 defendant?

8 A: Yes, sir.

9 Q: Who was your co-defendant?

10 A: My brother and Ronnie Stephens.

11 Q: Okay. Who is your brother?

12 A: Martin Pressley.

13 Q: Okay. Did he get the same sentence you received?

14 A: Yes, sir.

15 Q: Was he with you in all your meetings with Mr. McKenzie?

16 A: Yes, sir.

17 Q: Okay. And you're saying that you were promised this YOA.  
18 Explain that a little bit more. You were talking about he was  
19 going to try and get it dropped to strong-armed robbery?

20 A: Yes, sir.

21 Q: And get you a YOA sentence?

22 A: Yes, sir.

23 Q: But you also just said -- and I think this is what you  
24 said, but I want to make sure. That even if he wasn't able to  
25 get it dropped to strong-armed and even if you pled to armed

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

1 robbery, you'd still get a YOA sentence?

2 A: Yes, sir.

3 Q: Okay. When -- how many times did you meet with Mr.

4 McKenzie?

5 A: A few.

6 Q: Okay. You pled guilty September of 2014. When was he

7 first hired?

8 A: I'm not really sure. When I got bonded out.

9 Q: Do you know when that was?

10 A: I'm not sure. No, sir.

11 Q: You were able to bond out?

12 A: Yes, sir.

13 Q: And how long were you out?

14 A: Almost two years.

15 Q: Almost two years?

16 A: Yes, sir.

17 Q: Okay. Where did these meetings occur when you were

18 talking about a YOA with Mr. McKenzie?

19 A: His office.

20 Q: You would go to his office?

21 A: Yes, sir.

22 Q: Where was his office?

23 A: In Manning, South Carolina.

24 Q: How long would those meetings last?

25 A: A couple of minutes.

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

- 1 Q: What all would y'all talk about other than the YOA?
- 2 A: Just what we'd done and that's basically it. And I  
3 stayed on the straight and narrow, no -- having a job and not  
4 getting in no more trouble.
- 5 Q: All right. Did you discuss any defenses or did you talk  
6 about going to trial?
- 7 A: No, sir.
- 8 Q: Okay. Were you ever scheduled to go to trial?
- 9 A: No, sir.
- 10 Q: All right. Ultimately when you ended up going to plead  
11 guilty in September of 2014, did you go there with the  
12 understanding -- did you think you were going to get a YOA  
13 sentence?
- 14 A: Yes, sir.
- 15 Q: Okay. And what -- what made you to believe that in  
16 September of 2014?
- 17 A: Because that was the promise when we got out on bail.
- 18 Q: That was the promise that Mr. McKenzie had made to you?
- 19 A: Yes, sir.
- 20 Q: Is that why you ultimately pled guilty?
- 21 A: Yes, sir.
- 22 Q: Who else was with you in those meetings besides you and  
23 your brother? Were your parents there?
- 24 A: Yes, sir.
- 25 Q: And what are your parents' names?

## JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

1 A: Jerry Pressley and LouAngela Pressley.

2 Q: Okay. And would they have heard all of these

3 conversations?

4 A: Yes, sir.

5 Q: Did you discuss with your parents about getting a YOA

6 sentence?

7 A: Yes, sir.

8 Q: Okay. Do you think that they thought that that's what

9 you were getting?

10 A: Yes, sir.

11 Q: And you want a trial in this case?

12 A: Yes, sir.

13 Q: You've also got another allegation that counsel failed to

14 investigate foul play; correct?

15 A: Yes, sir.

16 Q: Okay. Tell the Court what you mean by that.

17 A: Well, everything that was brought up to our lawyer that

18 happened, it wasn't brought up before the judge.

19 Q: Okay. Do -- do you want to go -- do you still want to

20 pursue that allegation?

21 A: Yes, sir.

22 Q: Okay. Well, tell the Court what it is that you feel like

23 should have been brought before the judge.

24 A: It was certain things that happened. Like, for example,

25 we was getting -- we got shot at and the people that we did do

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

- 1 the thing to, they came after us after we left their property,  
2 and there was a couple of other things I got written down.
- 3 Q: Do you recall what those things are?
- 4 A: Not at this moment. That's why I written them down.
- 5 Q: Do you have them here? Are they with you?
- 6 A: No, sir.
- 7 Q: Okay. Now, this is your shot. This is your one shot.  
8 Okay?
- 9 A: Yes, sir.
- 10 Q: All right. Is there anything else that your lawyer did  
11 to fail to investigate any sort of foul play?
- 12 A: No, sir.
- 13 Q: Okay. Is there anything else you want to discuss on that  
14 particular allegation?
- 15 A: No, sir.
- 16 Q: All right. You also have an allegation that you feel  
17 that your lawyer, Mr. McKenzie, had ties with the victim; is  
18 that right?
- 19 A: Yes, sir.
- 20 Q: Tell the Court what you mean by that.
- 21 A: It's another reason when we first got out he said he  
22 would get to talk to them and see if -- that was one of the  
23 main reasons he thought he could get it to strong-armed. He  
24 said he --
- 25 Q: To talk to who?

JHERWASKI PRESSLEY - DIRECT BY MR. BOOZER

- 1 A: To talk to the defendants that it happened to. The  
2 people that it happened to.
- 3 Q: Okay. The alleged victims?
- 4 A: Yes, sir.
- 5 Q: Okay. Well, did he -- did he tell you he knows these  
6 people or what?
- 7 A: He said he could have talked to them.
- 8 Q: Okay. What else led you to believe that he had some ties  
9 with the -- with the victim?
- 10 A: For right now, that's it.
- 11 Q: Okay. Tell me this. And I think you've already told me  
12 that you were expecting to get a YOA sentence. Do you  
13 remember the judge talking to you at your plea?
- 14 A: Kind of, sort of.
- 15 Q: Is it just because it happened so fast or --
- 16 A: Yes, sir.
- 17 Q: Okay. Do you recall the judge telling you that it was a  
18 ten-year minimum that he could sentence you to?
- 19 A: Yes, sir.
- 20 Q: Okay. But did you still think that there was a  
21 possibility you were going to get a YOA?
- 22 A: Yes, sir.
- 23 Q: And what -- and is that because of what your lawyer was  
24 telling you?
- 25 A: Yes, sir.

JHERWASKI PRESSLEY - CROSS BY MR. GOURLEY

1 Q: Okay.

2 MR. BOOZER: Your Honor, I don't have any further  
3 questions.

4 THE COURT: All right. Very good. Cross-examination?

5 MR. GOURLEY: May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. GOURLEY:

9 Q: Mr. Pressley, you just were talking to Mr. Boozer about  
10 some stuff that wasn't brought up to the judge during the  
11 plea; right?

12 A: Yes, sir.

13 Q: And you said -- I got you down -- did the things you do  
14 or did. What was that thing that you did to those people?

15 A: We went in and robbed.

16 Q: So you did go in to rob those people?

17 A: Yes, sir.

18 Q: And when you were robbing them, they shot back at you?

19 A: No, sir.

20 Q: Okay. What happened?

21 A: We was already off their premises.

22 Q: You were already off their premises after robbing them?

23 A: Yes, sir.

24 Q: And then you left?

25 A: Yes, sir.

JHERWASKI PRESSLEY - CROSS BY MR. GOURLEY

- 1 Q: And they chased after you and shot you?
- 2 A: Yes, sir.
- 3 Q: Okay. So you said Mr. McKenzie told you you were getting
- 4 a YOA?
- 5 A: Yes, sir.
- 6 Q: Do you recall the judge advising you an armed robbery
- 7 carried ten to thirty?
- 8 A: Yes, sir.
- 9 Q: Okay. And the State made a recommendation of ten; right?
- 10 A: Yes, sir.
- 11 Q: And do you recall that?
- 12 A: Yes, sir.
- 13 Q: Okay. Did you at any point in time tell the judge that
- 14 someone had promised you that you were going to get a YOA?
- 15 A: No, sir.
- 16 Q: Why not?
- 17 A: Because I was just going through what my lawyer told me
- 18 to do.
- 19 Q: But your lawyer isn't doing the time, is he?
- 20 A: No, sir.
- 21 Q: You are; right?
- 22 A: Yes, sir.
- 23 Q: You didn't feel it was important to tell the judge that
- 24 Mr. McKenzie had promised you you were going to get a YOA?
- 25 A: It was my first time ever being in trouble; so I was just

JHERWASKI PRESSLEY - CROSS BY MR. GOURLEY

1 following what my lawyer told me to do.

2 Q: Okay. You told the Court that you were satisfied with  
3 Mr. McKenzie's services; right?

4 A: Yes, sir.

5 Q: Okay. You also told the judge that no one was promising  
6 or threatening you; right?

7 A: Yes, sir.

8 Q: Okay. Do you recall the facts being stated at your plea  
9 hearing by the State?

10 A: Yes, sir.

11 Q: And you agree with those facts; right?

12 A: Yes, sir.

13 Q: Okay. And you confessed to the crime; right?

14 A: Yes, sir.

15 Q: Okay. No doubt that you're guilty of it; right?

16 A: Yes, sir.

17 Q: Okay. So what do you want to go to trial on? What's  
18 going to be your defense?

19 A: Well --

20 MR. BOOZER: Objection, Your Honor.

21 THE COURT: Rephrase your question.

22 BY MR. GOURLEY:

23 Q: What would you proceed to trial on if you were granted a  
24 new trial knowing that you were guilty?

25 A: I'm trying to get it reduced to strong-armed.

JHERWASKI PRESSLEY - CROSS BY MR. GOURLEY

1 Q: Okay. So you don't want a new trial?

2 A: Yes, I do.

3 Q: Okay. So you want a new trial, but you're going to argue  
4 that it wasn't armed robbery, it was strong-armed robbery?

5 A: Yes, sir.

6 Q: I gotcha. Okay. Do you recall waiving your  
7 constitutional rights during your plea?

8 A: Yes, sir.

9 Q: And you said there was some kind of conflict of interest  
10 that Mr. McKenzie knew the victims?

11 A: Yes, sir.

12 Q: Did you ever bring that up to the Court?

13 A: No, sir.

14 Q: When did you learn about this conflict?

15 A: After I got locked up.

16 Q: Okay.

17 MR. GOURLEY: Your Honor, I don't have any other  
18 questions. Thank you, Mr. Pressley.

19 THE COURT: All right. Redirect?

20 MR. BOOZER: Yes, sir.

21 THE COURT: Yes, sir.

22 MR. BOOZER: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. BOOZER:

25 Q: Mr. Pressley, you were just asked by the State about a

JHERWASKI PRESSLEY - REDIRECT BY MR. BOOZER

1 ten-year recommendation. Did you have any understanding or  
2 knowledge prior to your plea that the State was recommending  
3 you receive ten years?

4 A: No, sir.

5 Q: Okay. What was your understanding going into that plea?  
6 What did you think you were going to get when you pled guilty?

7 A: I still thought I was going to get the YOA.

8 Q: Okay.

9 MR. BOOZER: Thank you, Your Honor.

10 DIRECT EXAMINATION BY THE COURT

11 THE COURT: Mr. Pressley, let me ask you a couple  
12 questions.

13 THE APPLICANT: Yes, sir.

14 THE COURT: When you were before the trial judge, Judge  
15 Cothran, he talked to you about the sentence, the range of ten  
16 to thirty years; correct?

17 THE APPLICANT: Yes, sir.

18 THE COURT: And he told you it's a no-parole-able  
19 offense; correct?

20 THE APPLICANT: Yes, sir.

21 THE COURT: And he said it's a most serious offense, a  
22 violent felony, which means you don't get parole, and you  
23 understood that?

24 THE APPLICANT: Yes, sir.

25 THE COURT: And he says you've got to serve eighty-five

JHERWASKI PRESSLEY - DIRECT BY THE COURT

1 percent of it and he told you that; right?

2 THE APPLICANT: Yes, sir.

3 THE COURT: All right. Now, after that you had -- of  
4 course, the solicitor got up and talked about the facts of the  
5 case and you told the Court that you agreed with those -- with  
6 those facts; correct?

7 THE APPLICANT: Yes, sir.

8 THE COURT: All right. Then Mr. McKenzie got up and  
9 talked to the judge and he spoke on -- on all of y'all's  
10 behalf. Now, he said in there that in a prior term of court  
11 there was a hearing about Mr. McKenzie representing all three  
12 of the defendants. Do you recall that?

13 THE APPLICANT: Could you repeat that?

14 THE COURT: That there was a hearing about that; right?

15 THE APPLICANT: Yes, sir.

16 THE COURT: And at that hearing, y'all told the Court  
17 that you understood there was the possibility of a conflict;  
18 correct?

19 THE APPLICANT: Yes, sir.

20 THE COURT: And that you were giving that up and you  
21 wanted Mr. McKenzie to represent you; right?

22 THE APPLICANT: Yes, sir.

23 THE COURT: That's what you told the Court at that prior  
24 hearing; right?

25 THE APPLICANT: Yes, sir.

JHERWASKI PRESSLEY - DIRECT BY THE COURT

1 THE COURT: All right. Now, in the plea, your attorney  
2 is talking to the judge and in explaining -- trying to explain  
3 the situation and your background and everything, he -- he  
4 goes on and says -- in talking about the sentence, he says  
5 that eight-and-a-half years of their life is going to be gone  
6 if you accept this recommendation. They know that. They know  
7 they have to serve eighty-five percent of this ten-year  
8 sentence. Now, you heard your lawyer say that; right?

9 THE APPLICANT: Yes, sir.

10 THE COURT: All right. And he goes on. And they know  
11 and their families are upset about it and they've asked me all  
12 those questions. Is there any way they can get probation?  
13 Any way they can do a YOA sentence? And I said no. I said  
14 the law doesn't allow it. They said is there anything they  
15 can go below the ten-year minimum, and I said no. The judge  
16 has no discretion. You heard your lawyer tell the judge that  
17 at your plea; right?

18 THE APPLICANT: Yes, sir.

19 THE COURT: All right. Later on, he goes on. They're  
20 still young men. They'll have a chance to make something of  
21 themselves and make something of their lives. Right now,  
22 they're going to do eight-and-a-half years and they understand  
23 that. They understand that you have to do that. Your hands  
24 are tied. And you heard your lawyer say that?

25 THE APPLICANT: Yes, sir.

JHERWASKI PRESSLEY - DIRECT BY THE COURT

1 THE COURT: All right. And then -- and it indicates Ms.  
2 -- Ms. Pressley. Was that -- was that your mama?  
3 THE APPLICANT: Yes, sir.  
4 THE COURT: That got up and talked to the judge?  
5 THE APPLICANT: Yes, sir.  
6 THE COURT: All right. And in that, she says I was told  
7 ten years is the minimum that they can receive. Now, she was  
8 asking for compassion, but she says I was told that ten years  
9 is the minimum that y'all can receive. And you heard your  
10 mama tell the judge that; right?  
11 THE APPLICANT: Yes, sir.  
12 THE COURT: All right. At -- at any point in time when  
13 you hear your lawyer say over and over and over again you're  
14 going to do ten years, you hear your mama say you're going to  
15 do ten years or eighty-five percent of that, at any point in  
16 time do you raise your hand, you poke your attorney in the  
17 side, do anything that says, no, I'm supposed to get a YOA?  
18 Did you do anything like that?  
19 THE APPLICANT: No, sir.  
20 THE COURT: All right. Thank you, sir. Questions?  
21 MR. BOOZER: No questions, Your Honor.  
22 MR. GOURLEY: Nothing, Your Honor.  
23 THE COURT: You may step down, sir.  
24 MR. BOOZER: The Court's indulgence, Your Honor?  
25 THE COURT: Yes, sir. Further witnesses on behalf of the

## LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

1 applicant?

2 MR. BOOZER: Yes, Your Honor. I'd actually like to call  
3 Mr. Pressley's mother, Ms. LouAngela Pressley, to the stand.

4 THE COURT: All right. Please come around, ma'am.  
5 Please come around up here, please. And before you sit down,  
6 ma'am, could you stand and raise your right hand, please,  
7 ma'am? Do you solemnly swear or affirm to tell the truth, the  
8 whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: Yes.

10 THE COURT: Yes, ma'am. Go ahead and have a seat and  
11 then when you get situated, you can state your name, please.

12 THE WITNESS: Okay. LouAngela Pressley.

13 THE COURT: Go ahead, Mr. Boozer.

14 MR. BOOZER: Thank you, Your Honor.

15 LOUANGELA PRESSLEY, being first  
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BOOZER:

19 Q: Ms. Pressley, how are you doing today?

20 A: Great.

21 Q: Good. And tell us who are you? Why are you here?

22 A: I'm here because a lot of things that took place didn't  
23 took place like we was instructed that it would have taken  
24 place.

25 Q: Okay. Let me stop you there.

## LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

- 1 A: Uh-huh.
- 2 Q: When I asked who you are, are you the mother of Jherwaski  
3 Pressley?
- 4 A: The mother of Jherwaski Pressley.
- 5 Q: And do you also have another son?
- 6 A: Yes.
- 7 Q: And who is that?
- 8 A: Martin Pressley.
- 9 Q: Okay. And he was also involved in this case?
- 10 A: Yes, he was.
- 11 Q: Okay. And this is your son sitting over here sitting at  
12 my table?
- 13 A: Yes.
- 14 Q: Okay. Now, Ms. Pressley, how -- how involved were you in  
15 meetings with your sons and their attorney, Mr. McKenzie?
- 16 A: I was involved because I went to the meetings. There was  
17 my husband and I and the boys.
- 18 Q: Okay. At the meeting --
- 19 A: Every one.
- 20 Q: I'm sorry. Go ahead.
- 21 A: Every one of them.
- 22 Q: Okay. How many meetings do you think there were?
- 23 A: Three.
- 24 Q: There were three meetings?
- 25 A: Three.

LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

1 Q: All right. When -- do you recall when the first meeting  
2 was?

3 A: The first meeting was when they got bond. When they got  
4 bond on that Monday, we called Mr. McKenzie and he told us to  
5 come in, and we went in on that Monday. And I don't know the  
6 date, but it was that Monday. And again, we went in to give  
7 him money and then he talked. And the last time was the five  
8 weeks before the boys was sentenced.

9 Q: Okay. What was the last meeting before the sentence?

10 A: The last week before the sentencing?

11 Q: The last meeting. I'm sorry.

12 A: The last meeting?

13 Q: Yes, ma'am. When was it?

14 A: It was five weeks. I know it was exactly five weeks  
15 because I marked my calendar because when we went there the  
16 last meeting, which was the third meeting, he told us, well,  
17 all I could get was ten years. Eight years of those boys'  
18 life is going to be wasted. Eight-and-a-half years. Then we  
19 go eight-and-a-half years? You know, you made a deal or  
20 whatever and you told us this or that, da da da.

21 Q: Let me stop you right there. You're saying you made a  
22 deal, this and that, da da da?

23 A: Uh-huh.

24 Q: Walk us through what your understanding of the deal that  
25 you're talking about?

LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

1 A: Our -- my understanding was -- the first day -- the first  
2 meeting we had with Mr. McKenzie, he told us that because of  
3 their age that he was going to work this program for them. He  
4 said it would have been in Columbia. He also stated that  
5 Jherwaski, because he was the oldest, would probably serve  
6 like -- he would probably get out about twenty-six years old.  
7 Being Martin was the youngest, he probably would get out --  
8 you know, one of them would get out earlier than the other one  
9 because of their age. He said something like four years or  
10 something like that, and he said the place was going to be in  
11 Columbia. And that's what -- that was our understanding.  
12 Okay. Mr. McKenzie said he got this. Okay.

13 Q: When -- and you've obviously heard the testimony that's  
14 been given today in court?

15 A: Uh-huh.

16 Q: Your understanding -- I mean was that your understanding  
17 of what a YOA sentence was?

18 A: Yes.

19 Q: Okay.

20 A: Uh-huh.

21 Q: And that's what he would be doing? That's what they  
22 would be doing in Columbia?

23 A: That -- whatever -- yes. Columbia.

24 Q: Okay. And when did that change? When did you learn that  
25 that was not -- that was not going to happen?

LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

- 1 A: Five weeks before our boys went to trial.
- 2 Q: Okay. What happened?
- 3 A: When we went the last time to his office -- because we
- 4 kept calling him over and over, and half of the time we
- 5 couldn't get in contact with him, which I wanted my husband to
- 6 change, but he didn't. But anyway, five weeks before the 15<sup>th</sup>,
- 7 September 15<sup>th</sup>, we went in there. That was our information.
- 8 That's what he gave us five weeks before our boys was to go
- 9 before the judge.
- 10 Q: But up until that point, y'all were of the understanding
- 11 that --
- 12 A: Yes.
- 13 Q: -- this was going to be a YOA sentence?
- 14 A: Yes.
- 15 Q: Okay. Is your husband in the courtroom today?
- 16 A: Yes, he is.
- 17 Q: Could you point him out where he is?
- 18 A: (Indicating.)
- 19 Q: And you're pointing to --
- 20 A: On the left.
- 21 Q: -- the gentleman in the blue on the first row?
- 22 A: The first row.
- 23 Q: Okay.
- 24 A: To the left.
- 25 Q: And he's been with you -- with you throughout all of

## LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

1 this?

2 A: Yes, he was.

3 Q: Okay. And obviously, His Honor just spoke and was  
4 referring to the transcript, and the transcript is basically a  
5 record of the -- of the plea hearing.

6 A: Uh-huh.

7 Q: And in the transcript, His Honor was referring to that  
8 you were told ten years is the minimum that they could receive  
9 and you're just asking for compassion from the judge?

10 A: Correct.

11 Q: You were still -- were you still thinking that there was  
12 a possibility that they could get that YOA sentence then?

13 A: Yes. Because I mean Mr. McKenzie told us -- and I didn't  
14 bring the list because you -- and I heard you tell Jherwaski  
15 that a while ago. He gave us a number. He gave us some  
16 numbers of some judge he said he knew, and he said if he had  
17 got those judge, he would have been able to do whatever. He  
18 would have get what he wanted. Yes, that's what he told us.

19 And up until that point, I still believed that even  
20 though he said all those -- and the thing that got to me when  
21 he kept saying to the judge because when we talk about the ten  
22 years, we were before the judge. We were before everybody.  
23 We weren't in no conference room talking to no judge, in no  
24 conference room talking to no one. We were standing before  
25 the judge for them to be sentenced that day when all of this

LOUANGELA PRESSLEY - DIRECT BY MR. BOOZER

1 came up and he said, well, they know they going to get ten.  
2 They realize that they going to get ten. They know they going  
3 to. And he kept just saying it as we stood before the judge,  
4 yes.

5 Q: Okay.

6 MR. BOOZER: Court's indulgence, Your Honor?

7 THE COURT: All right.

8 MR. BOOZER: Thank you, Ms. Pressley. I don't have any  
9 further questions, Your Honor.

10 THE COURT: Cross-examination?

11 MR. GOURLEY: Yes, Your Honor, very briefly.

12 CROSS-EXAMINATION

13 BY MR. GOURLEY:

14 Q: Ms. Pressley, you stated that Mr. McKenzie advised you of  
15 a ten-year deal five weeks before the trial?

16 A: Yes.

17 Q: Okay. And it was your understanding that your sons were  
18 going to have to serve eighty-five percent of that ten-year  
19 sentence?

20 A: Yes.

21 Q: And they accepted it?

22 A: Yes.

23 Q: Did y'all have a discussion about it during that meeting?

24 A: Yes. We just said -- you know, we thought we were going  
25 to get -- you know, and then he said, no, that's out the

LOUANGELA PRESSLEY - CROSS BY MR. GOURLEY

1 window and all of that, yes.

2 Q: Okay. So it was your understanding --

3 A: He said that was no longer on the table because the  
4 solicitor -- this is the deal that I could get from the  
5 solicitor. We don't know nothing. We just went along with  
6 what -- this is the first time we ever had any conflict with  
7 the law. We didn't know anything.

8 Q: All right.

9 A: We didn't know nothing about the law. When he told us  
10 that, we just was going on it because we hired someone --

11 Q: Yes, ma'am.

12 A: -- that would have been there before, that was  
13 recommended by someone. We didn't know nothing --

14 Q: Okay.

15 A: -- about nothing and, yes, we were going on what he said.  
16 And he said that this is what the solicitor offered. So then,  
17 hey, that's all we knew.

18 Q: Right. So you're saying Mr. McKenzie told you that the  
19 solicitor offered your sons a ten-year plea deal and, if they  
20 wanted to accept that, they could plead guilty with the  
21 recommendation of ten years?

22 A: Yes.

23 Q: And ultimately, I guess obviously they made the decision  
24 to accept that plea deal?

25 A: Yes.

## LOUANGELA PRESSLEY - CROSS BY MR. GOURLEY

1 Q: Okay.

2 MR. GOURLEY: Your Honor, I don't have any other  
3 questions. Thank you, Ms. Pressley.

4 THE COURT: Do you wish the witness to be excused or any  
5 further questions?

6 MR. BOOZER: No further questions and, of course, she may  
7 be excused, Your Honor.

8 THE COURT: All right, sir. You may step down, ma'am.  
9 If you wish to be excused, you're welcome to do so. Further  
10 witnesses on behalf of the applicant?

11 MR. BOOZER: No further witnesses, Your Honor.

12 THE COURT: All right.

13 MR. GOURLEY: Yes, Your Honor. We'd call Mr. McKenzie.

14 THE COURT: All right, sir. Please come around to be  
15 sworn. All right, sir. Could you raise your right hand,  
16 please, sir? Do you solemnly swear or affirm to tell the  
17 truth, the whole truth, and nothing but the truth, so help you  
18 God?

19 THE WITNESS: I do, Your Honor.

20 THE COURT: Have a seat and, when you get situated,  
21 please state your name.

22 THE WITNESS: Steven Smith McKenzie, Steven with a V.

23 STEVEN MCKENZIE, being first  
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION.

STEVEN MCKENZIE - DIRECT BY MR. GOURLEY

1 BY MR. GOURLEY:

2 Q: Mr. McKenzie, you represented Mr. Jherwaski Pressley;  
3 correct?

4 A: I did.

5 Q: Okay. And during your representation, did you work out  
6 any plea negotiations with the solicitor?

7 A: I had extensive conversations with the Solicitor's Office  
8 over a two-year period of time about this case. And one of  
9 the reasons I think it took two years for it to come to trial  
10 or for the negotiations to work out was during that period of  
11 time I was trying to get the solicitor to agree to drop the  
12 charge down to a -- something that would be maybe akin to a  
13 strong-armed robbery or something of that nature that would  
14 allow these boys to get a YOA sentence.

15 However, the victim, who was the owner of the convenience  
16 store that was robbed, would not consent to that. And so  
17 ultimately, it came up to a position where, as Ms. Pressley  
18 stated, that we met about five weeks beforehand. We actually  
19 had -- I actually had the plea offer that I had negotiated  
20 with the Solicitor's Office, which was Tyler Brown who was  
21 working with the Solicitor's Office then. And the plea offer  
22 was the armed robbery and I think the assault charge, and that  
23 was a ten-year minimum sentence running concurrent, and they  
24 would dismiss a number of other warrants, including possession  
25 of a weapon during a violent crime. I think some other

## STEVEN MCKENZIE - DIRECT BY MR. GOURLEY

1 warrants were also dismissed. Maybe three or four other  
2 warrants were dismissed.

3 Q: Okay.

4 A: But the -- yes. During that -- during the whole time  
5 that we discussed this case or I discussed this case with the  
6 Pressleys and even another co-defendant, Ronnie Stephens, I  
7 discussed with them the fact that I would -- the ultimate goal  
8 would obviously be the -- or the best-case scenario would  
9 obviously be a YOA sentence. Could I promise them a YOA  
10 sentence? No. But that would be my goal and over two years I  
11 tried to work towards that goal.

12 Q: Okay.

13 A: But I could not get the Solicitor's Office to get below  
14 that or go below an armed robbery, and obviously that's not  
15 eligible for -- for a YOA.

16 Q: Okay. Mr. Pressley has also alleged a conflict of  
17 interest due to the victims. Did you know the victims? Have  
18 any conflict?

19 A: I don't know the victims. There were several victims in  
20 this case. What -- what happened in this case was Mr.  
21 Jherwaski Pressley and Martin Pressley and Mr. Stephens went  
22 into this convenience store called Bobo's on Highway 52  
23 outside of Kingstree, and they had masks on and they robbed  
24 them at gunpoint. And I'm pretty sure it was Jherwaski who  
25 actually struck the owner of the convenience store with a

STEVEN MCKENZIE - DIRECT BY MR. GOURLEY

1 pistol during the -- during the -- during the armed robbery.

2           So there was actually handguns involved. Two -- two of  
3 the -- two of the defendants had handguns on their possession,  
4 went into the store, and so it obviously was an armed robbery  
5 case. I mean there was no doubt about that. For me to get  
6 ten years on this and even talk Judge Cothran into it, which  
7 it wasn't a negotiated sentence. It was a recommendation.

8 Q:    Okay.

9 A:    I felt very fortunate for the boys that that's all that  
10 they are serving because, again, the boys were captured. I  
11 think Jherwaski was captured with the money on him. One of  
12 the other boys took the police officers to where the guns were  
13 located. They all gave video and oral statements that were --  
14 and they waived their Miranda rights -- that were almost  
15 identical statements.

16           That's why we had that hearing in front of Judge Cothran  
17 to determine whether or not I had a conflict in representing  
18 all three, and they all waived the conflict because they  
19 basically said the same thing. That they went into the  
20 convenience store, robbed it at gunpoint. That they struck  
21 the owner of the convenience store. They took money out of  
22 the cash register. Money was found on Jherwaski.

23           And, you know, it's unfortunate because I felt very sorry  
24 for Mr. and Ms. Pressley because they raised their children  
25 not to act this way. These children had no prior records.

STEVEN MCKENZIE - DIRECT BY MR. GOURLEY

1 And so, yes, I was doing everything I could to try to get  
2 around that strong-armed -- I mean around that armed robbery.

3 The problem is when you walk into a convenience store  
4 with two loaded handguns and you strike the owner, the owner  
5 is not going to be too conducive to reducing that below a  
6 strong -- below an armed robbery to a strong-armed robbery.  
7 And that's what I found was the problem here.

8 I did not know the owner personally. I know of him. I'm  
9 from Kingstree originally. I know of him, but I did not know  
10 him personally. Some of other victims in the store, I do -- I  
11 did know personally. They did not show up at the plea when we  
12 did the plea, and I think it was because they were not  
13 obviously struck by the -- by the pistol.

14 Q: Okay.

15 A: But I did not know the owner personally of the  
16 convenience store. I did know some of the other victims.

17 Q: And that limited knowledge of the victims, did that in  
18 any way affect your representation of Mr. Pressley?

19 A: Not at all. Like I said, I did all I could do to try to  
20 get these boys as low a sentence as I could. They -- I mean  
21 they gave statements. They signed Miranda waivers. They --  
22 and their statements were videoed and audio-recorded and  
23 transcribed, and their statements mirrored each other. In  
24 fact, I would -- the statements were so close, it was like  
25 they were sitting in the same room together when they gave the

STEVEN MCKENZIE - DIRECT BY MR. GOURLEY

1 statements, but they were not.

2 Q: All right.

3 MR. GOURLEY: Your Honor, I don't have any other  
4 questions. Thank you, Mr. McKenzie.

5 THE WITNESS: Thank you.

6 THE COURT: Cross-examination?

7 MR. BOOZER: Thank you, Your Honor. Just briefly.

8 CROSS-EXAMINATION

9 BY MR. BOOZER:

10 Q: How are you doing, Mr. McKenzie?

11 A: I'm doing well.

12 Q: Do you recall about how many times you would have met  
13 with Mr. Pressley?

14 A: I do not. I do have my fee contract in here. I was just  
15 looking at that and it was -- let me find that for you. The  
16 first time we would have met, obviously I would have -- yeah,  
17 here's my fee contract. We met -- my fee contract is dated  
18 30<sup>th</sup> of March, 2012.

19 Q: Okay.

20 A: I probably met with them beforehand. I have my notes  
21 here, but it's not dated. I met with Jerry and -- which is  
22 the father, and the mother, and they gave me the initial  
23 information with the contact information and telephone  
24 numbers, and I quoted them a fee at that time. Later, they  
25 came in and signed a fee contract. So I know I would have met

## STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 with them on the day that everybody -- we met for the fee  
2 contract.

3       There was various times. We had a preliminary hearing.  
4 I'm pretty sure that I -- they were -- they attended the  
5 preliminary hearing and we were there, and I talked to them at  
6 the preliminary hearing, but basically the preliminary hearing  
7 was just what we talked about. The officer testified as to  
8 what happened and what occurred, and that date of that  
9 preliminary hearing -- if you'll bear with me, I'll tell you  
10 about that. I've got notes on that too. It would have been  
11 in I think May of that same year, but I'm just looking for my  
12 notes.

13       Yeah, May 2<sup>nd</sup>, 2012, was the preliminary hearing. The  
14 magistrate was Willie McCutcheon. Investigator Warren Bowers  
15 was the officer who testified in regards to that. I know I  
16 would have met with them on that day also.

17       As far as other dates, sometimes they would show in where  
18 they would make payments. Part of my contract agreement with  
19 them was to make payments. I had a \$10,000 retainer to  
20 represent both boys. In my retainer agreement, it says for a  
21 plea only because I knew that this was for me to negotiate a  
22 plea for them because I knew this was not going to be a trial.  
23 They had given statements and they understood that from the  
24 very beginning this was not going to be a trial.

25       And the boys were out for two years pending this case,

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 and I -- as defense lawyers do, we tend to try to stall things  
2 as long as we can to try to get the best deal we can.  
3 Hopefully, you know, in that situation, witnesses move or  
4 can't be found, and I was hoping that some of those things may  
5 occur, but nothing of that nature did occur.

6 Q: And since you brought that up as part of the fee  
7 agreement being just a plea only --

8 A: Right.

9 Q: -- and that was kind of a road y'all were going down, did  
10 you ever discuss with -- with the boys about having a trial  
11 and what that trial would entail and what may occur at a  
12 trial?

13 A: Yeah. I discussed a trial. I said, you know, you've got  
14 -- you guys have given statements that have been videoed,  
15 audio, been transcribed, and all of you have signed waiver of  
16 rights forms, you know, that -- and they all understood that.  
17 They all said, yes, we did. No one ever -- at the beginning  
18 of this case, even his parents when they first came to see me,  
19 my notes reflect they did it. No one was denying they did  
20 this. The question was get them the best deal you can get  
21 them.

22 Q: And so I guess that would go on to my next topic. This  
23 was -- in fact, you were just attempting to get the best deal  
24 that you possibly could for the boys?

25 A: Exactly.

## STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 Q: And what -- was it conveyed to them that the goal would  
2 be to get them a YOA sentence?

3 A: It was not conveyed to them. I told them that that was  
4 -- after I told them -- of course, anything was possible.  
5 Anything was possible for them. Like I said, if witnesses  
6 disappeared, moved out of the country -- say the guy who was  
7 pistol whipped all of a sudden -- and I don't want to be  
8 morbid about this. If he had passed away, there would be no  
9 eyewitness to testify against that. Now, obviously they gave  
10 statements, but again, that would have been maybe a game  
11 changer and that would have maybe reduced this deal down to  
12 something that would have happened.

13 So my -- I've been practicing law going on twenty-one  
14 years. In doing -- in my twenty-one years, I've seen these  
15 things occur. The longer I put off trials, witness' memories  
16 fade. Sometimes witnesses move out. Police officers,  
17 investigating officers get fired. They move on to a different  
18 agency.

19 So my -- I guess -- and I hate to tell the judge this,  
20 but natural tendency -- and I think he knows this, but natural  
21 tendency of defense lawyers is to put cases off. And so  
22 that's what I was trying to do and that's two years I put a  
23 case off that was a slam dunk for the Solicitor's Office. All  
24 they had to do was walk in the court with a witness and say  
25 these are the people who robbed me and here's their

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 statements.

2           And so that's what I was trying to do is to get them in  
3 the best possible posture for a plea. When it came up for  
4 them that they called it for a trial, I -- they actually sent  
5 me the -- we negotiated a plea offer five weeks before they  
6 were going to call it for a trial.

7           I met with the entire family before -- that five weeks  
8 beforehand and said you guys think about it. This is what  
9 they're going to -- they're offering you ten years. That's  
10 the best I can get you. It's armed robbery, ten years.  
11 That's -- and that's a recommendation to the Court. I said  
12 they'll have to serve eighty-five percent, just like I said in  
13 the transcript to the Court.

14           So they had five weeks to think about it. On the day  
15 that we did the plea, we met in the grand jury room in  
16 Williamsburg County. If you're familiar with that courthouse,  
17 it's on the second floor. It's right behind where the --  
18 where the courtroom is. We met in the grand jury room. It  
19 may have been the petit jury room. With the -- I met with the  
20 family and Ryan Stephens' family and we all met together.

21           And again, I went over this with them in detail and said,  
22 listen, this is what they're going to get today. And I said  
23 I've got to convince Judge Cothran that these boys -- and  
24 because they had no prior criminal history, I think that's one  
25 of the reasons Judge Cothran gave them the minimum. And he

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 didn't have to do that, but he did. And I felt like that was  
2 the absolute best deal I could -- could get.

3 And also, the victim was there, the one who was actually  
4 hit with the pistol, and the owner of the store was there to  
5 testify and really didn't testify -- you know, he could have  
6 been very belligerent, but he wasn't. He just said he wanted  
7 justice to be served. The Court heard that and the judge  
8 sentenced him and went with the recommendation of the State.

9 Q: And just going back to before that meeting that was five  
10 weeks out, presumably there were meetings prior to that?

11 A: Yes.

12 Q: Okay. And in those meetings, would there have been  
13 discussions though of you attempting to get a YOA sentence for  
14 Mr. Pressley?

15 A: There always -- listen -- I mean -- and I'm not trying to  
16 say that that was not the discussions, that we did not discuss  
17 that. I could not promise them that and I told them that. I  
18 said, listen, if we -- if things went a different route, if  
19 the road forked and we went this way and, like I said, the  
20 witnesses didn't show up or the State had problems, something  
21 happened, I said always there's a possibility that something  
22 like this could occur, but it was abundantly clear that that  
23 was not going to happen.

24 And like I said, I put it off for as long as I could  
25 hoping to get them in a posture where we could get to a YOA

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 sentence, but as far as promising them a YOA sentence, I got  
2 my fee agreement and you're happy to look at it if you want  
3 to. It doesn't say anything. All it says is I'm representing  
4 you on a plea deal, and it doesn't say anything about  
5 promising a YOA sentence in that -- in that agreement.

6 Q: What discussions exactly did you have with the solicitor  
7 about a YOA?

8 A: He would have nothing to do with it.

9 Q: Did you ask him about it?

10 A: I did. I did. I asked -- I asked if we could reduce it  
11 to a strong-armed robbery. The problem that he had was that  
12 two guns were involved and someone was struck with a gun, and  
13 I think that Jherwaski was the one who struck him with the  
14 gun, if I recall.

15 Q: And did you let -- and when I say the boys, I mean the  
16 Pressley brothers. Did you let them know that that was the  
17 substance of your discussion with the Solicitor's Office?

18 A: At that five-week, they discussed that. And they're  
19 correct. We had a meeting in my office about five weeks prior  
20 to the plea because I had -- I knew well in advance when the  
21 plea was going to be because Williamsburg doesn't have court  
22 every week. About every five or six weeks, they have court.

23 I had been over it. I had been negotiating this deal,  
24 getting the best thing, and I'd been over to Williamsburg  
25 County and met with Tyler Brown numerous times on this case.

## STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 I actually had a hearing in front of Judge Cothran. That  
2 day that I had the hearing in front of Judge Cothran about the  
3 conflict, I asked him again is there any way we can get to a  
4 -- get to a strong-armed robbery and a YOA, and again he was  
5 -- he was not only no, but hell no.

6 You know, this is -- he had -- he had too good of a case.  
7 He had -- and he did. He had -- if I was the prosecutor in  
8 that situation, I don't think I would have bent. I'm not sure  
9 I would have allowed ten years, but he did and I was -- and I  
10 think that was a fortunate thing for these young men because  
11 they really could have -- I think if we'd have done a  
12 straight-up plea, they probably would be looking at fifteen to  
13 twenty.

14 Q: During these meetings, were Mr. and Mrs. Pressley  
15 involved in the meetings with you?

16 A: Mr. and Ms. Pressley were involved in almost every  
17 meeting. I don't think I recall having a meeting with the  
18 children by themselves or the boys by themselves.

19 Q: Okay. Going back to the victim, I guess there's been  
20 some testimony about an alleged relationship or you knowing  
21 the victim. What's the extent that you knew -- to what extent  
22 did you know the victim in this case?

23 A: I don't even remember if I recall what he looked like. I  
24 just knew his name, but when he walked in -- I remember he  
25 walked in the courtroom that day, I remember he wasn't the

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 person I thought he was. I'll put it that way. It was -- you  
2 hear people's names in the community and you -- I guess I  
3 associated him with somebody else.

4 Q: And --

5 A: So I didn't know him that well.

6 Q: And I've got a note that you had made mention that you  
7 may have known some of the other folks that may have been in  
8 the store --

9 A: Right.

10 Q: -- at that time. Do you recall how you may have known  
11 those folks?

12 A: Just from growing up in town. They were older than I was  
13 and just people that I knew in the community, but nobody that  
14 I was related to or was good friends. I moved out of  
15 Kingstree eighteen years ago, and so I started practicing law  
16 in Manning then. So I haven't been active in the community in  
17 Kingstree in eighteen years.

18 Q: Did you have any discussion with the Pressley brothers  
19 about you knowing anyone that was involved in that store?

20 A: I told them I knew people's names. The names that I saw  
21 that were victims -- and I don't recall the victims' names  
22 right now. I remember them -- their names.

23 Q: What was the reaction to that, if any? Or did y'all have  
24 an in-depth discussion about that?

25 A: We didn't. I told them I didn't -- I didn't have any

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 close ties with them, but they weren't concerned about that.  
2 But I just told them that I knew some of the victims in the  
3 store.  
4 Q: Did you explain to the boys that armed robbery was not an  
5 eligible YOA?  
6 A: I did. And that's why -- this is where this discussion  
7 came where we would have to get the solicitor -- he would have  
8 to make a lot of -- a lot of jumps there. One would be jump  
9 to going to the strong-armed robbery charge as opposed to  
10 pleading that down armed robbery to strong-armed robbery. And  
11 then the next jump is to allow them to go into the YOA system  
12 even with the strong-armed robbery because strong-armed  
13 robbery carries up to fifteen years obviously.  
14 And so that would have been the next jump he would have  
15 had to make, and he knew the jumps I was trying to get him to  
16 go through. And he just -- he just said I can go -- I can  
17 recommend ten years. I said that's the best I can do. He  
18 said -- he agreed with me that the boys had no prior criminal  
19 history. That -- and he believed with me that the family was  
20 a good family and these boys weren't raised this way. And --  
21 and I told the judge that. I said they weren't raised this  
22 way. They weren't. They were good kids and I just -- it was  
23 a -- I could not believe that they would do something like  
24 this and I think their parents were even more astonished that  
25 they would do something like this.

STEVEN MCKENZIE - CROSS BY MR. BOOZER

1 MR. BOOZER: Court's indulgence, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. BOOZER:

4 Q: Mr. McKenzie, do you recall ever having any sort of  
5 discussions with either -- I'll say the Pressley family --  
6 about maybe having represented one of the folks in the store  
7 in a divorce?

8 A: I don't. I don't recall that. And like I said, I've  
9 been doing it twenty-one years. If I did do that, like I  
10 said, they didn't -- no one -- none of the other victims  
11 showed up at the hearing, but I don't recall having that  
12 statement that you just said a discussion with about a  
13 divorce.

14 Q: Okay.

15 MR. BOOZER: Thank you, Mr. McKenzie. I don't have any  
16 further questions.

17 THE WITNESS: Thank you.

18 THE COURT: Any redirect?

19 MR. GOURLEY: No, Your Honor.

20 THE COURT: All right. You may step down, sir. Do you  
21 wish the witness to be excused?

22 MR. GOURLEY: Yes, sir, Your Honor.

23 THE COURT: Any objection?

24 MR. BOOZER: No objection.

25 THE COURT: All right, sir. You're released. You may go

1 back to your regular activities.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Further witnesses on behalf of the State?

4 MR. GOURLEY: No, Your Honor.

5 THE COURT: All right. All right. With that then, Mr.  
6 Boozer, would you like to make a statement to the Court,  
7 please?

8 MR. BOOZER: Judge, just very briefly. You know, from  
9 Mr. Pressley's testimony, it seems like his mind was focused  
10 on a YOA, and I think probably at times -- and just for  
11 argument's sake, I think that you can kind of start thinking  
12 about what's the best case scenario and that becomes your  
13 thinking throughout the process maybe. And that may be what  
14 Mr. Pressley was thinking and that's all he heard was that  
15 hopefully he could get a YOA.

16 And, Judge, just going on his testimony, that's what he  
17 said he heard and that's what he thought he was going to get,  
18 a YOA. I certainly understand that on the record there is  
19 quite a bit of mention about the ten-year sentence and he was  
20 kind of going through the motions of responding to the Court.

21 And as I was questioning Mr. Pressley, he said that he  
22 doesn't recall a lot of it and things were going quickly.  
23 Judge, that's the argument that I guess I'm making to the --  
24 to the Court.

25 THE COURT: All right, sir. Thank you. Solicitor -- I'm

1 sorry. Mr. Attorney General?

2 MR. GOURLEY: Yes, Your Honor. I think the record speaks  
3 for itself on those issues, but in regards to Mr. McKenzie's  
4 statement about the YOA, I believe Mr. McKenzie stated that he  
5 advised them that a YOA was a possibility. Maybe that would  
6 promise them a YOA.

7 Five weeks out before the plea, he advised them of the  
8 plea offer by the -- by the State of a ten-year sentence. Ms.  
9 Pressley acknowledged that that was what Mr. McKenzie relayed.  
10 They thought about it. They accepted it. Ms. Pressley, on  
11 the record as Your Honor pointed out, acknowledged that they  
12 were told ten years, to serve eight-five percent. So I think  
13 that issue is clear, Your Honor.

14 In regards to the conflict of interest, I don't think any  
15 kind of evidence has been presented sufficient enough to show  
16 that Mr. McKenzie represented the Pressley brothers under any  
17 kind of conflict of interest to amount to a conflict of  
18 interest.

19 So, Your Honor, I would ask that you deny this  
20 application for PCR.

21 RULING

22 THE COURT: All right. In a post-conviction relief  
23 application in a plea situation, there is a two-prong test  
24 that exists to evaluate post-conviction relief application and  
25 the claim of ineffective assistance of counsel.

1           In this, the applicant or the defendant must show that  
2 the attorney's performance was deficient, that it fell below  
3 some objective standard of reasonableness. Also, the  
4 applicant or defendant has to show that that there is a  
5 reasonable probability that, but for counsel's unprofessional  
6 errors, the result of the proceeding would have been  
7 different. That in this that there is a reasonable  
8 probability that he would not have pled guilty and instead  
9 have insisted on going to trial.

10           In this particular case, there is no evidence that the  
11 attorney's performance fell below the objective standard of  
12 reasonableness. I find that it was -- certainly before the  
13 applicant/defendant came to the courthouse had a clear  
14 understanding of the situation. In fact, this was, as  
15 indicated by the record before me, a case that the  
16 defendants/applicants acknowledged was not a trial case and  
17 they did not expect it to be.

18           But with that, the applicant knew the situation, was  
19 explained the situation. Even if the attorney made some  
20 error, it was clearly stated in the record by the judge and  
21 again by the attorney in the court, in the courtroom, what the  
22 plea was, what they were pleading to, what the sentence  
23 recommendation was, what the eventualities would be.

24           There's just no evidence that the Court can find that  
25 would cause the Court to grant the post-conviction relief

1 application and, therefore, the post-conviction relief  
2 application is denied.

3 Mr. Attorney General?

4 MR. GOURLEY: Yes, Your Honor.

5 THE COURT: Please do an order to that effect and forward  
6 it email to all concerned within ten days. Thank you, sir.

7 MR. GOURLEY: Yes, Your Honor. Thank you.

8 (WHEREUPON, the proceedings ended at 11:51 a.m.)

9

10 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina )  
 2 ) Certificate  
 3 County of Florence )  
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and  
 6 Official Court Reporter for the Twelfth Judicial Circuit of  
 7 the State of South Carolina, do hereby certify that the  
 8 foregoing pages, numbered 1 through 50 constitute a true,  
 9 accurate, and complete Transcript of Record of all the  
 10 proceedings had and evidence introduced in the hearing of the  
 11 above captioned case, relative to appeal, in the Court of  
 12 Common Pleas for Williamsburg County, South Carolina, held in  
 13 Sumter County, South Carolina, on the 15<sup>th</sup> day of July, 2015.

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

16  
 17 s/Krystal J. Smith  
 18 Court Reporter

19  
 20 Florence, South Carolina  
 21 January 12, 2016  
 22  
 23  
 24  
 25

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

Jherwaski Pressley, #361485

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-45-648

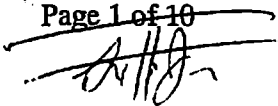
**ORDER OF DISMISSAL**

2015 SEP 16 11:10:34

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 16, 2014. Respondent made its return on February 11, 2015. An evidentiary hearing into the matter was convened on July 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the May 2012 term of the Williamsburg County Grand Jury for armed robbery, criminal conspiracy, assault and battery-first degree, possession of a firearm during a violent crime, and four counts of pointing and presenting a firearm (2012-GS-45-0114). Steve McKenzie, Esquire represented Applicant. On September 15, 2014, Applicant pled guilty as indicted to armed robbery and assault and battery-first degree before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant pursuant to a recommendation by the State to ten years for armed robbery and ten years for



assault and battery-first degree to run concurrently. Applicant did not appeal his guilty plea or sentence.

### ALLEGATIONS

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

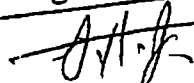
1. Ineffective Assistance of Counsel
  - a. Attorney misrepresented me.
  - b. Didn't investigate foul play involved.
  - c. He promise me the Y.O.A. program.
  - d. He had ties with the victim.

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from his mother. (hereinafter "Mother"). The State presented testimony from Steve McKenzie, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

Applicant testified that Steve McKenzie was retained to represent him during his plea. Applicant stated that Plea Counsel misrepresented him. Specifically, Applicant stated that Plea Counsel informed him that he would be receiving a sentence under the Youthful Offender Act. Applicant stated that he was out on bond and met with Plea Counsel at his office. Applicant stated that his parents were present at the meetings. Applicant stated that his parents thought Applicant would be receiving a Y.O.A. sentence. Applicant stated that he was scheduled to go to trial.

Applicant stated Plea Counsel failed to properly investigate his case. Applicant stated that this issue was not brought before the plea judge. Applicant stated that Plea Counsel should



have further investigated into the fact that they were shot at when they fled the scene. Applicant admitted that he committed the armed robbery, but felt Plea Counsel should have explained to the plea judge that they were shot at by the victims as they fled the scene. Applicant stated Plea Counsel should have spoken with the victims. Applicant further acknowledged that he confessed to the police.

Applicant recalled waiving his constitutional rights during the plea. Applicant recalled the plea court advising him that the minimum sentence for armed robbery was ten years. Applicant stated that he received the ten year minimum.

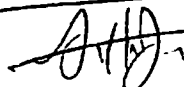
Following Applicant's testimony, Mother was called to testify. Mother stated that Applicant was her son. Mother stated that she loved her son, but was present at the hearing to tell the truth. Mother stated that Plea Counsel advised them that he thought they would receive a Y.O.A. sentence. Specifically, Mother recalled Plea Counsel advising them that Applicant would be approximately twenty-six years old when he got out prison. Mother stated approximately five weeks before the plea, Plea Counsel presented a ten year plea offer. Mother stated that she discussed the offer with Applicant and Applicant chose to accept the offer. Mother further recalled her testimony during the plea, where she acknowledged that Applicant would be required to serve a ten year sentence.

Following mother's testimony, Plea Counsel was called to testify. Plea Counsel stated that he represented Applicant for approximately two years. Plea Counsel stated he attempted to delay the case for as long as possible in hopes that the state's case would weaken over time. Plea Counsel stated that State's case against Applicant was very strong. Specifically, Plea Counsel stated Applicant was captured on video, multiple witnesses identified Applicant, and Applicant confessed to the crime on video.

Plea Counsel stated that there was no question that this was going to be a guilty plea. Plea Counsel referenced his fee agreement which specifically states that he was retained to do a guilty plea only. Plea Counsel stated that he was retained on March 30, 2012. Plea Counsel stated that he met with Applicant's parents and discussed his fee agreement and got basic background information. Plea Counsel stated that he felt bad for Applicant's parents because they did not raise Applicant to be a criminal.

Plea Counsel stated that he attempted to get the assistant solicitor to drop the charges to strong armed robbery. Plea Counsel reasoned that a strong armed robbery conviction would allow for a Y.O.A. sentence. Plea Counsel stated that the assistant solicitor refused to offer anything lower than a recommended ten year sentence for armed robbery. Plea Counsel noted that the victim of the store would not agree with anything less than an armed robbery conviction. Plea Counsel stated that he presented the assistant solicitor's ten year plea offer to Applicant and his family approximately five weeks prior to the plea. Plea Counsel stated that he advised Applicant that he was not going to be eligible for a Y.O.A. sentence when he pled guilty to armed robbery.

Plea Counsel stated that he grew up in Williamsburg County. Plea Counsel stated that he moved away from Williamsburg County approximately twenty years ago. Plea Counsel stated that he recognized some of the names of the victims, but did not have a personal relationship with any of the victims. Plea Counsel stated the fact that he recognized the names of the victims did not impact his representation of Applicant. Plea Counsel stated that he discussed this information with Applicant. Plea Counsel stated Applicant did not express any concerns about him recognizing the victims' names.

A handwritten signature in black ink, appearing to be 'A. H.', is written over a horizontal line. A second horizontal line is drawn below the signature.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

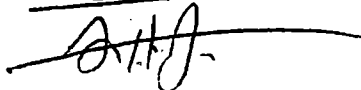
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

### INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient



performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

### ALLEGATIONS

#### 1. Ineffective assistance of counsel for misrepresenting him.<sup>1</sup>

Applicant alleges that he received ineffective assistance of counsel due to plea counsel's advisement that he would receive a Y.O.A. sentence. This Court finds Applicant's allegation is meritless. A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). In the instant case, Applicant testified that Plea Counsel told him he would receive a Y.O.A. sentence. This Court finds Applicant's testimony that Plea Counsel advised him that he would be receiving a Y.O.A. sentence when he entered his guilty plea to armed robbery is not credible. This Court finds Plea Counsel credibly testified that he relayed a ten year plea offer for armed robbery to Applicant and his family. Notably, mother corroborated Plea Counsel's testimony.

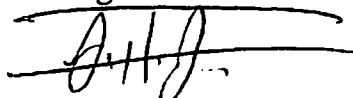
<sup>1</sup> This Court notes Applicant's allegations "a" and "c" are essentially one allegation of ineffective assistance of counsel for advising Applicant that he would receive a Y.O.A. sentence. Therefore, this Court will address allegations "a" and "c" as one allegation.

Specifically, Mother stated that Plea Counsel relayed the ten year plea offer five weeks before the plea. This Court further finds credible Plea Counsel's testimony that he advised Applicant that he would not be receiving a Y.O.A. sentence when he entered a plea to armed robbery. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

This Court notes the colloquy between the plea judge and Applicant reveals the plea judge advising Applicant of the maximum penalties for each of his crimes and that he does not have to follow the State's recommendation of ten years. (Pl. p. 5 line 25—p. 6 line 8). Furthermore, this Court notes, Applicant's mother acknowledged during the plea that "ten years is the minimum" that Applicant could receive. (Pl. p. 17 lines 2-3). Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

## **2. Ineffective Assistance of Counsel for failing to investigate foul play.**

This Court notes Applicant argued that Plea Counsel should have investigated into the fact that the victims shot at the Applicant as they fled the scene. This Court finds Applicant's allegation is wholly meritless. Applicant presented no credible evidence to show why Plea Counsel should have investigated into the victims shooting at Applicant as he fled following the armed robbery. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, this Court finds Applicant has

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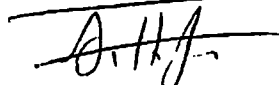
failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court finds Applicant’s allegation should be denied and dismissed with prejudice.

**3. Ineffective assistance due to conflict of interest.**

This Court notes Applicant argued that Plea Counsel labored under a conflict of interest due to his prior relationship with some of the victims of the armed robbery. This Court finds Applicant’s allegation is meritless.

It is well established that the fact that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, an applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984). “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney’s performance.” Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (emphasis added).

In the instant case, Plea Counsel stated that he grew up in Williamsburg County. However, Plea Counsel stated that he moved to Manning approximately twenty years ago. As a result, Plea Counsel stated that he was familiar with some of the victim’s names, but did not have a personal relationship with any of the victims. This Court notes Plea Counsel credibly testified



that he advised Applicant and his family of his prior knowledge of some of the victims of the case. Plea Counsel stated Applicant and his family still wished Plea Counsel to represent him. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court notes Applicant failed to present any credible evidence that Plea Counsel's prior relationship with the victims amounted to a conflict of interest. Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

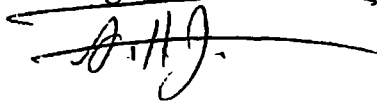
**ALL OTHER ALLEGATIONS**

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

**CONCLUSION**

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

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

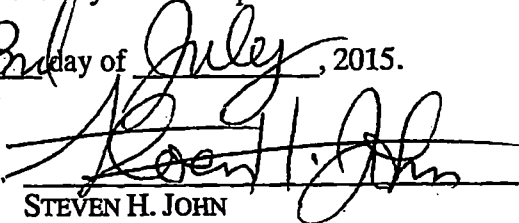
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appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief 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 2nd day of July, 2015.

  
 STEVEN H. JOHN  
 Presiding Judge  
 Third Judicial Circuit

A. Parker, South Carolina

**WITNESSES**

Juan Ballard  
Williamsburg County Sheriff

Date:

**DOCKET NO. 2012-GS-45-0114**

**The State of South Carolina**

**County of WILLIAMSBURG**

**COURT OF GENERAL SESSIONS**

MAY      TERM      2012

**THE STATE**

vs.

**JHERWASKI DEMARIO PRESSLEY  
MARTIN DORRELL PRESSLEY  
RONNIE STEPHENS**

**ARREST WARRANT NUMBER**

M687137; M687138; M687139; M687141; M687142;  
M687143; M687144; M687145; M687146; M687147;  
M687148; M687149; M687150; M687151; M687152;  
M687153; M687154; M687155; M687156; M687167;  
M687158;

**Indictment for**

**Armed Robbery, Criminal Conspiracy, Assault  
and Battery, 1<sup>st</sup> Degree, Poss. Of a Firearm  
During A Violent Crime, Pointing and  
Presenting a Firearm (x4)**

**ACTION OF GRAND JURY**

*True Bill*  
*Michael D. Long*  
Foreperson of Grand Jury  
Date: 5/3/12

*Ernest A. Finney III*

**VERDICT**

**ERNEST A. FINNEY, III, SOLICITOR**

Foreperson of Petit Jury

2012 MAY -3 AM 11:48  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
KINGSTREE, S.C.

**FILED**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF WILLIAMSBURG )

84:1111A E-7711S105  
 INDICTMENT FOR

Armed Robbery, Criminal Conspiracy, Assault and  
 Battery, 1<sup>st</sup> Degree, Poss. Of a Firearm During A  
 Violent Crime, Pointing and Presenting a Firearm (x4)

At a Court of General Sessions, convened on May 3, 2012 the Grand Jurors of  
 WILLIAMSBURG County present upon their oath:

**COUNT ONE - ARMED ROBBERY**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and  
 Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March  
 22, 2012, feloniously take and carry away cash from the person or in the presence of  
 the victim, Kenneth Moore, while armed with a firearm or other deadly weapon, in  
 violation of §16-11-330(A) of the Code of Laws of South Carolina (1976), as amended.

**COUNT TWO - CRIMINAL CONSPIRACY**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and  
 Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March  
 22, 2012, combine with each other and/or other persons for the purpose of  
 accomplishing a criminal or unlawful act or for the purpose of committing a lawful act but  
 through criminal or unlawful means, in violation of §16-17-410, S. C. Code of Laws,  
 1976, as amended.

**COUNT THREE - POSSESSION OF A FIREARM DURING THE COMMISSION OF A  
 VIOLENT CRIME**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and  
 Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March  
 22, 2012, unlawfully possess a firearm, or visibly display what appeared to be a firearm,  
 during the commission or attempted commission of a violent crime, in violation of §16-  
 23-490, S. C. Code of Laws, 1976, as amended.

**COUNT FOUR - ASSAULT AND BATTERY IN THE 1<sup>ST</sup> DEGREE**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and  
 Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March  
 22, 2012 unlawfully injure the victim, Kenneth Moore, and the act occurred during the  
 commission of a robbery, burglary, kidnapping, or theft, in violation of §16-3-600(C)(1),  
S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR Jherwaski Demario Pressley, Martin Dorrell Pressley, and Ronnie Terrell Stephens WITH THE AFORESAID NAME OF 2012-GS-45-0114 SHOWN THEREON:

**COUNT FIVE – POINTING AND PRESENTING A FIREARM**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March 22, 2012 point or present firearm at the victim, Bruce Casselman, in violation of §16-23-410, S. C. Code of Laws, 1976, as amended.

**COUNT SIX – POINTING AND PRESENTING A FIREARM**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March 22, 2012 point or present firearm at the victim, Benji Rogers, in violation of §16-23-410, S. C. Code of Laws, 1976, as amended.

**COUNT SEVEN – POINTING AND PRESENTING A FIREARM**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March 22, 2012 point or present firearm at the victim, Margaret Harrington, in violation of §16-23-410, S. C. Code of Laws, 1976, as amended.

**COUNT EIGHT – POINTING AND PRESENTING A FIREARM**

That the defendants, Jherwaski Demario Pressley, Martin Dorrell Pressley, and Ronnie Terrell Stephens, did in Williamsburg County, South Carolina on or about March 22, 2012 point or present firearm at the victim, Mark Watts, in violation of §16-23-410, S. C. Code of Laws, 1976, as amended.

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

Solicitor

