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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

DYZSHON R. BOYKINS,

PETITIONER/RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

APPELLATE CASE NO. 2015-002513

APPENDIX

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ATTORNEYS FOR RESPONDENT/
PETITIONER

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PLEA

EXHIBITS:

(No exhibits were marked to this proceeding.)

Certificate of Court Reporter 18

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1 MR. SORENSON: Please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SORENSON: Before you is Dyzshon, D-y-z-s-h-o-n,
4 Boykins. We're here on Indictment 2011-GS-38-1722. He is
5 represented by Mark Wise with the Public Defender's Office.

6 He was originally charged, indicted for one count of
7 armed robbery. He is waiving presentiment, Your Honor, and
8 pleading guilty to entering a bank with intent to steal.

9 We are recommending a seven year sentence.

10 THE CLERK: Please raise your right hand.

11 (WHEREUPON, Dyzshon Boykins, was
12 sworn to tell the truth.)

13 THE CLERK: Thank you.

14 MR. WISE: Good morning, Your Honor. I am Mark Wise, W-
15 i-s-e, the office of the Public Defender appearing with Mr.
16 Boykins.

17 THE COURT: Very well.

18 Dyzshon is your first name?

19 MR. BOYKINS: Yes, sir.

20 THE COURT: Did I say it correctly?

21 MR. BOYKINS: Yes, sir.

22 THE COURT: Dyzshon Rakeem Antonio Boykins?

23 MR. BOYKINS: Yes, sir.

24 THE COURT: I have an indictment I'm going to publish.
25 It's not been presented yet before the Orangeburg Grand

1 Jury.

2 MR. SORENSON: He was indicted for armed robbery, Your
3 Honor, but I don't believe entering a bank with intent to
4 steal would be a lesser included. So he's waiving
5 presentment on that charge.

6 THE COURT: All right. We're going to publish this
7 indictment nevertheless.

8 This indictment reads, in part, -- the number is 2011-
9 GS-38-1722. On December 28, 2010, while in Orangeburg
10 County, that you, using threats or force while armed
11 alleging words or action did commit the offense of robbery,
12 take away the goods of South Carolina State Credit Union
13 with the intent to deprive the victims of those monies and
14 goods. This offense being a violation of Code Section 16-
15 11-330.

16 It is my understanding that you're going to plead
17 guilty to the offense of entering a bank with the intent to
18 steal, which is not necessarily a lesser included, but you
19 are waiving presentment to that offense; is that correct?

20 MR. BOYKINS: Yes, sir.

21 THE COURT: All right.

22 Mr. Wise, you represent Mr. Boykins?

23 MR. WISE: I do, Your Honor.

24 THE COURT: Have you advised him of the elements of this
25 offense of entering a bank with the intent to steal and the

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1 potential punishment he faces?

2 MR. WISE: I have.

3 THE COURT: And do you believe that the state has
4 sufficient evidence to convict him if he were to proceed to
5 trial?

6 MR. WISE: I do.

7 THE COURT: And do you agree with his decision to enter
8 this plea?

9 MR. WISE: I do.

10 THE COURT: All right.

11 Mr. Boykins, back to you. In the last 24 hours have
12 you taken any alcohol, drugs or medications of any type?

13 MR. BOYKINS: No, sir.

14 THE COURT: Are you clear headed right now?

15 MR. BOYKINS: Yes, sir.

16 THE COURT: Do you suffer from any disabilities, whether
17 mental, physical or emotional ones that would effect your
18 understanding or hearing of what I'm saying to you?

19 MR. BOYKINS: No, sir.

20 THE COURT: Now, if you want to plead guilty on this
21 offense you must give up your constitution rights to a jury
22 trial. Do you understand what a jury trial is?

23 MR. BOYKINS: Yes, sir.

24 THE COURT: Do you understand that a jury trial, the
25 state bears the burden of proving your guilty. For the

1 state to meet its burden it's required to call the witness,
2 the present evidence sufficient to convince all 12 jurors
3 unanimously of your guilt. Do you understand that?

4 MR. BOYKINS: Yes, sir.

5 THE COURT: Do you understand that your attorney, Mr.
6 Wise, would be allowed to cross-examine each and every
7 witness the state would call, he's allowed to challenge any
8 evidence they try to introduce. He's allowed to present
9 defenses that you may have available to you under our laws.
10 In order to plead guilty you give up that right of
11 confrontation, also. Do you understand that?

12 MR. BOYKINS: Yes, sir.

13 THE COURT: Lastly, during a trial you can sit at the
14 counsel table, you cannot be forced to testify in your own
15 defense, the state cannot call you as a witness nor may the
16 state comment on your silence if you choose not to testify.
17 Do you understand your right to remain silent?

18 MR. BOYKINS: Yes, sir.

19 THE COURT: Understanding all of these rights, is it
20 your decision to waive them in order to plead guilty to this
21 entering a bank with intent to steal charge?

22 MR. BOYKINS: Yes, sir.

23 THE COURT: And are you waiving all of your rights
24 freely and voluntarily?

25 MR. BOYKINS: Yes, sir.

1 THE COURT: Very well.

2 Tell me what happened?

3 MR. SORENSON: Thank you. May it please the Court, Your
4 Honor.

5 This offense occurred back on the afternoon of December
6 28, 2010 at the South Carolina State Credit Union, located
7 at 181 Boulevard Avenue here in Orangeburg.

8 An individual came in, presented a firearm and ended up
9 taking cash and fleeing the bank. It was on video, he did
10 not have his face concealed. We received some stills from
11 that video that are consistent with Mr. Boykins facial
12 features and physical size.

13 The investigation, at that point in time, they did not
14 have a suspect initially. His name was ultimately given to
15 law enforcement in February of 2011, about two months later.
16 When an individual came forward, by the name of Travis Green
17 who gave a statement that he knew this defendant and had had
18 some conversations with him shortly afterward where he had
19 admitted to the bank robbery. This was kind of spurred from
20 Mr. Green seeing the stills in the paper and recognizing Mr.
21 Boykins. Ultimately, he provided information that Mr.
22 Boykins was down in Georgia, at that point in time. They
23 put him in a lineup and he was identified by one of the
24 tellers inside the bank as being the individual. Law
25 enforcement obtained warrants for him on March 11, 2011. He

1 was put into NCIC. He was ultimately picked up and brought
2 back here to Orangeburg and the warrant was served on him on
3 August 8, 2011. He has been incarcerated since that time.

4 THE COURT: What he said happened, is that accurate to
5 the facts that are supporting this plea?

6 MR. BOYKINS: Yes, sir.

7 THE COURT: Have you been promised anything to get you
8 to plead guilty other than a reduction in the charge, armed
9 robbery, not pleading to that. Entering a bank or a savings
10 and loan with intent to steal is the charge you're pleading
11 to. It's my understanding the state is making a
12 recommendation that you be incarcerated seven years; is that
13 right?

14 MR. BOYKINS: Yes, sir.

15 THE COURT: Other than that recommendation, have you
16 been coerced or threatened by anybody to get you to plead
17 guilty?

18 MR. BOYKINS: No, sir.

19 THE COURT: Any other recommendations or promises been
20 made to you?

21 MR. BOYKINS: No, sir.

22 THE COURT: There is -- is this entering a bank with
23 intent to steal; is it a serious crime?

24 MR. WISE: It is, Your Honor.

25 THE COURT: So it carries 20?

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1 MR. SORENSON: It carries up to 30.

2 THE COURT: So it's 85 percent charge?

3 MR. SORENSON: Right. It's 85 percent.

4 THE COURT: You understand this being a serious offense
5 it's going to create a record for you for a conviction on
6 this offense, which is a serious classification, that being,
7 this will count as a strike against you in the scheme of
8 three strikes you're out or two big strikes you're out. Are
9 you familiar with that serious classification of convictions
10 which you are putting this on your record, have you had that
11 told to you by your attorney?

12 MR. BOYKINS: Yes, sir.

13 THE COURT: Do you understand this will be a conviction.
14 It appears you don't have any other prior serious offenses
15 on your record. This will be strike one. Behavior like
16 this continues it will catch up to you and you can be
17 subject to a life without parole sentence in the future if
18 behavior continues of this type. Do you understand?

19 MR. BOYKINS: Yes, sir.

20 THE COURT: Eventually, you'll do 85 percent of whatever
21 sentence the Court imposes and you're not eligible for
22 parole; do you understand that?

23 MR. BOYKINS: Yes, sir.

24 THE COURT: I think you're eligible for community
25 supervision which is similar but not parole; do you

1 understand?

2 MR. BOYKINS: Yes, sir.

3 THE COURT: Understanding that you will not be entitled
4 to certain programs in the Department of Corrections because
5 of your conviction of a serious offense, do you still want
6 to plead guilty?

7 MR. BOYKINS: Yes, sir.

8 THE COURT: Now, have you had enough time to discuss
9 this matter with your lawyer?

10 MR. BOYKINS: Yes, sir.

11 THE COURT: Has he got a copy of the state's
12 investigatory file transmitted to you; has he gone over that
13 with you?

14 MR. BOYKINS: Yes, sir.

15 THE COURT: Have you understood your conversations with
16 him?

17 MR. BOYKINS: Yes, sir.

18 THE COURT: He's answered all your questions and you
19 understand what's going on?

20 MR. BOYKINS: Yes, sir.

21 THE COURT: How far did you go in school?

22 MR. BOYKINS: 11 grade, sir.

23 THE COURT: Okay. Did you go to school around here?

24 MR. BOYKINS: No, sir.

25 THE COURT: Where did you grow up?

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1 MR. BOYKINS: New York, Syracuse.

2 THE COURT: How in the world did you end up down south?

3 MR. BOYKINS: I had a lot of family down here, sir.

4 THE COURT: All right. Fair enough. Now, understanding
5 your rights as I explained to you earlier, you waived your
6 right of presentment to the Orangeburg Grand Jury by
7 initialing in that little line right there; do you
8 understand?

9 MR. BOYKINS: Yes, sir.

10 THE COURT: Was your waiver of presentment to the
11 Orangeburg Grand Jury freely and voluntarily given?

12 MR. BOYKINS: Yes, sir.

13 THE COURT: You can ask your lawyer, Mr. Wise. If
14 you've got any questions about the waiver you can ask him
15 right now and it won't cost you anything extra.

16 MR. BOYKINS: I understand.

17 THE COURT: Okay. Now, are you pleading guilty before
18 me today to entering a bank with intent to steal from
19 therein today freely and voluntarily?

20 MR. BOYKINS: Yes, sir.

21 THE COURT: Are you entering that plea because you are,
22 in fact, guilty of committing that offense?

23 MR. BOYKINS: Yes, sir.

24 THE COURT: Do you need any more time to talk with your
25 lawyer before I go forward?

1 MR. BOYKINS: Oh, yes, sir.

2 THE COURT: Are you satisfied with the advice and
3 counsel he's given you in regard to this charge?

4 MR. BOYKINS: Excuse me?

5 THE COURT: Are you satisfied with his advice and
6 counsel with regard to this charge?

7 MR. BOYKINS: Yes, sir.

8 THE COURT: He's done you a good job?

9 MR. BOYKINS: Yes.

10 THE COURT: Very well. All right. Regarding Indictment
11 2011-GS-38-1722, I find that Dyzshon Rakeem Antonio Boykins,
12 has made a free, knowing and intelligent waiver of
13 presentment to the Orangeburg Grand Jury. Additionally,
14 he's made a free, knowing and intelligent plea of guilt to
15 the offense of entering a bank with the intent to steal
16 therefrom. He's entered his plea and waiver with advice of
17 counsel, an attorney of whom he states on the record while
18 under oath that he is satisfied. Also the state has
19 provided ample facts upon which to base this plea.

20 All right. Mr. Wise.

21 MR. WISE: Thank Your Honor. Please the Court.

22 THE COURT: Yes, sir.

23 MR. WISE: A few preliminary matters. One additional
24 consideration in Mr. Boykins entering this plea today was
25 the fact that he was allowed to plea to a non-violent

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1 offense, so although it is a serious offense, that was one
2 of the things that factored into his decision to plead
3 guilty. We obviously recognize the sentence is from zero to
4 30 years and it's our request that the Court consider a
5 minimal sentence in this case and I will give you the
6 reasons why we ask for that. And when I'm done, Your Honor,
7 Mr. Boykins may want to speak briefly.

8 THE COURT: Sure.

9 MR. WISE: A little bit about what happened based on my
10 investigation of this, and I have looked at the police
11 reports and looked at the photos that were referenced. No
12 one was injured in this, there were no shots fired in the
13 bank. The gun was not used in a threatening manner, and
14 what I mean by that is when you look at the photos you don't
15 see a gun being pointed at the face or at the head of
16 anybody in the bank. I don't think the state's indicated,
17 but Mr. Boykins record consist of a prior drug offense.

18 THE COURT: I saw that on my sheet.

19 MR. WISE: Okay. Very good. A little background about
20 Dyzshon. He is 23 years old. He has a five year old
21 daughter. He was enrolled in Atlanta Tech. He was going
22 for his GED. He was living there with his father. At the
23 time he was working -- at the time of the his arrest he was
24 working at Zaxby's in Decatur, Georgia. I've been meeting
25 with Mr. Boykins now, well over a year. I find him to be a

1 smart young man. He -- in talking a little bit about his
2 background he informs me he was in gifted classes in school,
3 and as I indicated, he was at a college trying to get his
4 GED. The issue then becomes why would something like this
5 happens. As his record indicates there came a point in time
6 when Mr. Boykins developed a problem with drugs, and I think
7 that's what kind of led him away from the life that he
8 recognizes he can have.

9 Mr. Boykins, in spite of how it appears today, has a
10 lot of support from his family. His father lives in
11 Atlanta. That's where he was living when he was arrested,
12 with his father. His step-mother is in Atlanta with his
13 father. His mother lives here. She was going to be here,
14 but she is in Syracuse, so she couldn't be here, but I think
15 -- and this kind of came up on short notice. If we'd had
16 more time you would have seen his father, step-mother and
17 his mother standing here. So I bring that to the Court's
18 attention so that the Court does understand that he does
19 have a lot of support that will help him get his life on
20 track when he gets out of jail.

21 He's been in jail since July 27. He was arrested in
22 Georgia and then he was extradited here. He got here in
23 August.

24 The other thing that he indicated, and I think he means
25 this when he says it, he has the ability, given his

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1 education and given his intellect, to go out and become well
2 employed. If the Court wants to make any condition of his
3 sentence, restitution, he's willing to pay the restitution
4 for what was taken.

5 So given his lack of any crimes of violence and weapons
6 and assault behavior, we'd like the Court to consider a much
7 lower sentence than seven years.

8 I think his being in jail as long as he has has gotten
9 his attention. Obviously, he is now free of drugs, so
10 that's not going to be an issue. He does have family
11 support and as I've indicated I've talked to all his family
12 and they all support him. I think he is an appropriate
13 person for the Court to consider going below the
14 recommendation and we'd ask the Court to do that.

15 May I have one moment?

16 THE COURT: Sure.

17 MR. WISE: And Mr. Boykins would like to --

18 THE COURT: Be glad to hear from him.

19 MR. BOYKINS: Well, you know, first I'm a man of God,
20 Your Honor. You know, I was raised in the church. I got
21 good supporting family. There are a lot of things I was --
22 in my adolescent days when I was younger, it came back on
23 me, you know. So, you know, the things I did when I was
24 young, you know, it's coming back -- it's back biting me,
25 and, you know, I got plans when I get out of here. I plan

1 to get into the military soon as I step out of there, you
2 know, no more than two or three months I can get into the
3 military. I just ask you to find it upon your heart to be
4 lenient on me, you know. Due to my lack of background, you
5 know. That's all.

6 THE COURT: All right.

7 Anything from state?

8 MR. SORENSON: No, sir.

9 THE COURT: All right. Anything else from anybody?

10 MR. WISE: No, Your Honor. Not from the defendant.

11 THE COURT: All right. I accept the plea. Sentence of
12 the Court, considering the negotiation down from armed
13 robbery withdrawing that mandatory minimum the Court will
14 sentence Mr. Boykins to the Department of Corrections to a
15 term of seven years, giving credit for all the days he's
16 done to date.

17 I noticed on the sentence sheet, someone checked obtain
18 GED. I'm certain you'll be able to do that. From the
19 comments made you appear very intelligent, so it shouldn't
20 be any problem at all, and if it's available and if you want
21 it I'm going to recommend you get referral to the ATU while
22 at Department of Corrections. If it's not available, I
23 don't know the facility you're going to, but if it's not
24 available then you won't have to do it. It's not a
25 mandatory -- it's a suggestion.

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MR. BOYKINS: Thank you, sir.

THE COURT: Good luck to you.

MR. SORENSON: Thank Your Honor.

(This proceeding was concluded.)

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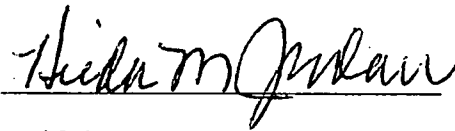
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PLEA IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 11 DAY OF FEBRUARY, 2013.

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



Hilda M. Jordan, CVR-M

September 13, 2014

MH 19

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Orangeburg)

Dyzshan R. Boykins 354347#)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-38-00798

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth 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 Ridgeband Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg County Court House
1540 Ellis Ave / P.O. Box 9000
Orangeburg, SC 29116
3. Name(s) of co-defendant(s) (if any) non-applicable
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) J697751-2011-6S-38-01722
 - (b) J697752-2011-6S-38-0173
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2-11-13
 - (b) Entering Bank, with intent to steal / 7 years non-violent

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CLERK OF COURT
ORANGEBURG, SC
JUN 30 PM 1:23

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

no

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

(a) the name of each Court to which you appealed: *non-applicable*

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) *_____ was never informed or enlightened about an appeal.*

(b) _____

(c) _____

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

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

My state appointed Lawyer Mark Wise failed to represent me effectively with the sources and knowledge of law disposed to him by the State of S.C.

First Mark Wise made no attempts at assisting me with establishing a defense for trial. I was detained in Orangeburg County Detention Center for 1½ years awaiting a trial date, which was never issued, due to Mark Wise's lack of fulfilling his sworn duties with motioning the courts for a court date to settle that matter. I wrote grievances to the Head Public Defenders Office complaining his poor assistance, but before I recieved any reply Mark Wise informed me and my family that the solicitor of my case Don Swarsen deployed a plea bargain. The plea bargain was reducing the nature of the crime and the initial 15 years violent to an 7 years non-violent. Being detained in the County Jail at that time

was stressful and strenuous to me and my family because I lost my job and was unable financially to post any bond set. Mark Wise was eagerly optative with me accepting the plea bargain, and excluding trial. He explained that I would be doing 7 years non-violent which in SCDC is 51% of 7 years to serve. I weighed the scales and agreed because that would leave me with 1½ years to complete. I accepted and entered into SCDC in February of 2013. When I was informed on how much time I had left to complete it was a 4 year difference. SCDC sentenced me to 7 years 85% Non-violent. Mark Wise used deceptive tactics for me to believe I was going to serve 51% and because of me being ignorant to a "CDR Code" and policies on SCDC Sentencing I am now serving 5 years 11 months.

- (a) Ineffective assistance of Counsel
- (b)
- (c)

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

- (a)
- (b)
- (c)

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

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

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. Motion to Excuse
 - ii.
 - iii.
 - iv.

- (b) the name and location of the Court in which each was filed:
 - i. Orangeburg County Clerk of Court office
 - ii. P.O. Box 9070 Orangeburg, SC, 29116
 - iii.
 - iv.

- (c) the disposition thereof:
 - i. No action taken
 - ii.
 - iii.

iv. _____
(d) the date of each such disposition:

i. _____ April, 24, 2014

ii. _____

iii. _____

iv. _____

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

i. _____ non-applicable

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented: non-applicable

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____ Was "Ignorant" to the facts

(b) _____

(c) _____

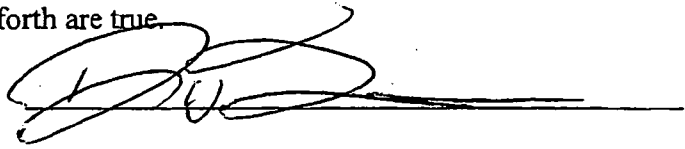
17. Were you represented by an attorney at any time during the course of:

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

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



SWORN to and subscribed before me this 25 day of June, 2014.

Virginia Robinson (L.S.)
Notary Public


My Commission Expires: May 20, 2021

FILED FOR RECORD
WINDYBROOK COURT
ORANGEBURG, SC
2014 JUN 30 PM 1:23

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

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

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



Applicant

SWORN or affirmed to and subscribed before me this
25 day of June, 2014.



Notary Public

My Commission Expires: May 20, 2021

| | | |
|--------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | C.A. No. 2014-CP-38-00798 |
| COUNTY OF ORANGEBURG |) | |
| |) | |
| Dyzshon R. Boykins, |) | |
| S.C.D.C. No. 354347, |) | |
| |) | |
| Applicant, |) | |
| |) | RETURN AND PARTIAL MOTION |
| v. |) | TO DISMISS |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

In response to the post-conviction relief application filed June 30, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court’s orders of commitment. The Orangeburg County Grand Jury indicted the Applicant at the November 2011 term of General Sessions for Armed Robbery (2011-GS-38-1722) and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-38-1723). Mark Wise, Esquire represented the Applicant on these charges.

On February 11, 2013, pursuant to negotiations, Applicant waived presentment to the grand jury and pleaded guilty to Entering a Bank With Intent to Steal (2011-GS-38-1722). The Honorable Eugene C. Griffith accepted the parties’ negotiations and sentenced Applicant to seven (7) years’ imprisonment. The Possession of a Weapon During the Commission of a Violent Crime charge was nolle prossed. Applicant did not appeal his plea or sentences.

Attached herewith and incorporated herein by reference are the records of the

Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Failed to assist Applicant prepare a defense for trial
 - b. Misrepresented the total incarceration time Applicant would serve by pleading guilty
 - c. "Was never informed or enlightened about an appeal."

III.

Respondent submits this Application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Applicant pled guilty to the offenses he challenges in this Application on February 11, 2013. Applicant was therefore required to file his application before February 12, 2014. This Application was filed on June 20, 2014, which was after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, “courts must take into account all the information counsel knew or should have known.” Id. (citing Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066 (1984)). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. There being nothing in the record to indicate that Applicant reasonably demonstrated to plea counsel that he was interested in appealing, Respondent submits that the allegation is totally without merit and should be dismissed.

Respondent submits the allegation probably raises questions of fact that cannot be conclusively refuted by the record. 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).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests that: (1) a hearing be held solely on the issue of whether the Applicant is entitled to a review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) and (2) all other issues be dismissed as having been alleged after the expiration of the one-year statute of limitations.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

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

By: 
Attorneys for Respondent

February 20, 2015

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
2014-CP-38-00798

DYZSHON R. BOYKINS

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)

TRANSCRIPT OF RECORD

VS.

STATE OF SOUTH CAROLINA

MAY 22, 2015
ST. GEORGE, SC

B E F O R E:

THE HONORABLE MAITÉ MURPHY

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

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

J. CLAYTON MITCHELL, ESQUIRE
Attorney for the Respondent

Ruth L. Mott, RPR, CRR
Certified Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 DYZSHON BOYKINS

MR. WALLER 4 10

5 MR. MITCHELL 9

6 MARK WISE

MR. MITCHELL 11

7 MR. WALLER 13

8 DYZSHON BOYKINS

MR. WALLER 15 21

9 MR. MITCHELL 20

10 MARK WISE

MR. MITCHELL 22

11 MR. WALLER 26

12 CERTIFICATE OF REPORTER 29

13

14 E X H I B I T S

15 NO. DESCRIPTION ID EVD

16 (NONE MARKED)

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1 MR. MITCHELL: Good morning, Your Honor, may it please
2 the Court. This is Dyzhon Boykins versus the State of South
3 Carolina, Case No. 2014-CP-38-0798. He was indicted in
4 November of 2011 for armed robbery and possession of a weapon
5 during the commission of a violent crime. He was represented
6 on these charges by Mr. Mark Wise. Mr. Boykins plead guilty
7 on February 11, 2013, pursuant to negotiations. He waived
8 presentment to an entering a bank with intent to steal
9 charge. Judge Griffith accepted the negotiations and
10 sentenced him to seven years' imprisonment. The possession
11 of a weapon during the commission of a violent crime was
12 nolle-prossed. He did not appeal this sentence or
13 conviction.

14 Mr. Boykins filed this application on June 30th, 2014.
15 We filed a return to that earlier this year and a partial
16 motion to dismiss since it was filed outside the one-year
17 statute of limitations. He plead in February of 2013. This
18 was filed in June of 2014. He also alluded to an issue of or
19 an allegation of ineffective assistance of counsel for
20 failing to file an appeal on his behalf, so we are prepared
21 to go forward on that, but we ask that the Court dismiss all
22 other allegations at this point.

23 THE COURT: Do you have a packet for me?

24 MR. MITCHELL: Oh, I'm sorry, Your Honor.

25 THE COURT: That's okay.

1 Mr. Waller?

2 MR. WALLER: Thank you, Your Honor. With respect to the
3 motion to dismiss, Mr. Boykins alleges that while he was in
4 SCDC he was unable to get together the documentation
5 necessary to file the PCR application because of various
6 lock-downs while he was in there. I would like to take some
7 testimony from him if possible, and also we can handle the
8 White v. State issue as well. We can probably just put him
9 up one time as opposed to the two times we did earlier this
10 week.

11 THE COURT: Sure, that's fine.

12 MR. WALLER: So I would call Dyzshon Boykins.

13 DYZSHON BOYKINS,
14 being first duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION BY MR. WALLER:

17 Q. Good morning, Mr. Boykins.

18 A. Good morning.

19 Q. Mr. Boykins, when you plead guilty, where did you go
20 immediately after that?

21 A. Kirkland.

22 Q. How long were you in Kirkland?

23 A. About 40 days.

24 Q. If you would, can you describe a little bit of the --
25 what access you have to certain things in Kirkland?

1 A. Well, we have no access to law library, and we have
2 actually no access to anything. It's just lock down 23 hours
3 out the day, and we attend breakfast, lunch and dinner,
4 that's it.

5 Q. Okay. What kind of personal items and stuff can you
6 have in your cell with you?

7 A. Nothing but whatever they issue to us as far as hygiene.

8 Q. Okay. Do you have access to an application for
9 post-conviction relief?

10 A. No.

11 Q. Do you have pen and paper?

12 A. Yes.

13 Q. When you left Kirkland, where did you go?

14 A. To Ridgeland.

15 Q. Where is Ridgeland located?

16 A. Jasper County.

17 Q. When you got to Ridgeland, what was your custody status,
18 I guess?

19 A. MI-2.

20 Q. Can you explain what that means?

21 A. MI-2 is, according to SCDC policy, it's like a level
22 two. You're restricted in the fence. You can't go outside
23 the fence, and it's like -- they put me in ME dorm as soon as
24 I got there, as far as like -- when I got to the dorm, the
25 dorm was already on lockdown due to a riot that had happened

1 before I got there. They was already down for seven months,
2 so it was like I couldn't go in the yard, I couldn't leave
3 the dorm, I couldn't even leave my room.

4 Q. Did you have access to the law library during that time?

5 A. No.

6 Q. Did you have access to an application for
7 post-conviction relief during that time?

8 A. No.

9 Q. How long was that lockdown, that first lockdown when you
10 were there?

11 A. About three months.

12 Q. Were there any other lockdowns while you've been at
13 Ridgeland?

14 A. Yes, sir.

15 Q. What was the date of the next one?

16 A. The next date was May 13th, 2013, and that was 50 days'
17 lockdown due to the reconstruction of the kitchen, so they
18 didn't let nobody on the yard, and they just kept everybody
19 in the dorm.

20 Q. During that time did you have access to the law library?

21 A. No, sir.

22 Q. Did you have access to an application for
23 post-conviction relief?

24 A. No, sir.

25 Q. During the gap of time where you weren't on lockdown,

1 what did you have access to?

2 A. Nothing. I was in my room.

3 Q. Okay. When you weren't on lockdown, though, were you
4 able to go to the law library?

5 A. No -- oh, when I wasn't on lockdown?

6 Q. Yes, sir.

7 A. Yes, sir.

8 Q. How long were you not on lockdown that first time?

9 A. Well, the first time that I wasn't on lockdown was three
10 months after I was on Ridgeland, and I wasn't aware of a PCR
11 because I wasn't advised by my lawyer that I had when I plead
12 with Mr. Wise.

13 Q. So three months after you had been at Ridgeland would
14 have been about four and a half months after you initially
15 plead; is that right?

16 A. Yes, sir.

17 Q. Were there any other lockdowns while you were at
18 Ridgeland until February 11th of 2014?

19 A. Yes, February -- January, actually, 2014 a gun was
20 discovered on the yard, and they locked the whole yard down
21 for two months.

22 Q. Okay. And what was the date of that you said?

23 A. January, from January to February.

24 Q. Okay. So during the deadline of your filing a PCR
25 application within the statute of limitations.

1 A. Yes, sir.

2 Q. Have there been any other lockdowns during that first
3 one-year time period?

4 A. No, just those three occasions, that was it.

5 Q. Okay. And during those occasions did you have access to
6 an application for post-conviction relief?

7 A. No, sir.

8 Q. Did you have access to a law library?

9 A. No, sir.

10 Q. Turning back to your guilty plea for just a second, you
11 plead guilty. Did you indicate to Mr. Wise that you did not
12 want to appeal?

13 A. No. I wasn't aware of appeal. I never knew what appeal
14 was.

15 Q. Did you and Mr. Wise have any conversations about an
16 appeal before you plead guilty?

17 A. No, sir.

18 Q. Do you recall any time when Mr. Wise would have told you
19 that you would have had ten days to appeal?

20 A. No, sir.

21 Q. Did you and Mr. Wise ever have any conversations about
22 appealing from your conviction?

23 A. No, sir.

24 MR. WALLER: I have no further questions. Please answer
25 any questions Mr. Mitchell might have.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION BY MR. MITCHELL:

3 Q. Good morning, Mr. Boykins.

4 A. Good morning.

5 Q. You plead from armed robbery to entering a bank with
6 intent to steal; is that right?

7 A. Yes, sir.

8 Q. And you got a seven-year sentence on that; is that
9 right?

10 A. Yes, sir.

11 Q. Now, let's see, you don't have any competency problems,
12 do you?

13 A. No, sir.

14 Q. You never have had any competency problems, have you?

15 A. No, sir.

16 Q. You seem to be a pretty bright guy.

17 A. Thank you.

18 Q. So you never filed anything with the Court relating to
19 PCR until you filed this application; is that right?

20 A. Well, this motion to excuse, that was it.

21 Q. Okay. Nothing was filed -- no application was filed.

22 A. No, sir.

23 Q. Okay. Did you -- you never told Mr. Wise that you
24 wanted to appeal your sentence after you were sentenced, did
25 you?

1 A. No, sir.

2 MR. MITCHELL: Okay. No further questions. Thank you.

3 THE COURT: Anything further?

4 MR. WALLER: Just very briefly, Your Honor.

5 REDIRECT EXAMINATION BY MR. WALLER:

6 Q. Mr. Boykins, you mentioned a motion to excuse that you
7 filed. What was that?

8 A. Well, according to, well, the information I got from the
9 law clerk, he -- he advised me to file for a motion to excuse
10 because of all of the time that I was locked down, the whole
11 seven months that I got taken away from me to file for PCR,
12 so he told me to file for motion to excuse, and I just filed
13 for it, hoping that I would get some more time to file my
14 PCR.

15 Q. So you filed that trying to get an extension of the
16 one-year timeline?

17 A. Yes, sir.

18 Q. How long after you came off of the last lockdown,
19 lockup, did you file that?

20 A. Probably two months, three months or something like
21 that.

22 Q. Did you file it as quickly as you could?

23 A. Yes, sir.

24 MR. WALLER: No further questions.

25 THE COURT: You may step down, sir. Thank you.

1 Any other witnesses?

2 MR. WALLER: No additional witnesses.

3 THE COURT: Mr. Mitchell?

4 MR. MITCHELL: Your Honor, State calls Mr. Mark Wise.

5 MARK WISE,

6 being first duly sworn, was examined and testified as
7 follows:

8 DIRECT EXAMINATION BY MR. MITCHELL:

9 Q. Good morning, Mr. Wise.

10 A. Good morning.

11 Q. Can you give me a brief rundown of your background and
12 employment currently?

13 A. I'm currently employed by the First Circuit Public
14 Defender's Office in the Orangeburg office.

15 Q. And you were appointed to represent Mr. Boykins through
16 that position?

17 A. I was.

18 Q. Did you advise Mr. Boykins that he had a right to appeal
19 from the guilty plea?

20 A. I don't believe I did.

21 Q. Is it your normal practice to do so on guilty pleas?

22 A. I don't know that it is my normal practice when we
23 have -- when you have a case that's resolved and it seems to
24 go according to what was discussed and what we wanted to see
25 happen, I don't know that I would.

1 Q. So this was a -- if not quite a negotiated, it was
2 definitely a recommendation from the State; is that correct?

3 A. That's correct.

4 Q. It was a seven-year sentence?

5 A. That's correct.

6 Q. Plead down from armed robbery?

7 A. That's correct.

8 Q. So you believed this to be a favorable plea offer to Mr.
9 Boykins?

10 A. Well, it is -- it was agreeable to Mr. Boykins when
11 we -- when we did it. We talked about the plea and we
12 started negotiations, and we got to the point where that's
13 what was being offered; and there was a higher offer and plea
14 to armed robbery for more time, and so we had a couple of
15 rounds of negotiations, and we finally got to this point.

16 Q. Did you see any reason to file a notice of appeal after
17 the guilty plea?

18 A. No.

19 Q. Did you make any objections during the hearing?

20 A. The plea?

21 Q. During the plea hearing, yes, sir.

22 A. No.

23 MR. MITCHELL: No further questions. Please answer
24 anything Mr. Waller has for you.

25 THE COURT: Mr. Waller.

1 CROSS-EXAMINATION BY MR. WALLER:

2 Q. Mr. Wise, you testified that you did not discuss an
3 appeal with Mr. Boykins. Was that before or after his plea?

4 A. I don't know that we actually ever discussed an appeal.

5 Q. Did you notice during the plea hearing that Judge
6 Griffith did not mention to Mr. Boykins that he had ten days
7 to appeal the decision?

8 A. No.

9 Q. If you had noticed that, would you have discussed it
10 with Mr. Boykins?

11 A. In this case I don't know that I would have. I might
12 have, but I don't know.

13 Q. So it is entirely understandable that Mr. Boykins may
14 not have known he had a right to an appeal at all?

15 A. Absolutely.

16 MR. WALLER: No further questions.

17 THE COURT: You may step down, sir. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Anything further?

20 MR. MITCHELL: Your Honor, if I can make a brief
21 argument in support of the motion to dismiss.

22 THE COURT: Certainly.

23 MR. MITCHELL: It is filed outside the one-year statute
24 of limitations. The tolling South Carolina courts recognize
25 is due to incompetence. I think, as you see, Mr. Boykins is

1 exceptionally competent, and he understood the situation,
2 just did not file it within one year.

3 As far as the belated appeal issue, pursuant to Roe v.
4 Flores-Ortega, counsel only has a duty to advise of an appeal
5 if a defendant -- if a rational defendant would want to
6 appeal that sentence or if the defendant indicated to counsel
7 that he wanted to appeal, so he has no duty to advise of an
8 appeal per se, and we'd ask that you deny on that ground as
9 well.

10 THE COURT: Mr. Waller.

11 MR. WALLER: Your Honor, just briefly with respect to
12 the motion to dismiss, while I understand the State's
13 position that Mr. Boykins was competent throughout the entire
14 time, he was physically precluded from -- prohibited from
15 being able to file anything. He was on lockdown not --
16 without access to the actual application itself. It is -- I
17 don't think it's reasonable to expect someone to be able to
18 file something that they don't physically have access to or
19 be able to actually file it, so we would ask you to deny the
20 motion to dismiss based on those grounds.

21 THE COURT: Based upon the testimony and the record, I
22 am going to deny the motion to dismiss. It appears that he
23 was not advised of his right to appeal by either the Court or
24 his attorney, so I will grant the motion -- not grant the
25 motion to dismiss.

1 MR. WALLER: Thank you, Your Honor.

2 MR. MITCHELL: Your Honor, just for clarity, is that on
3 the White ground or would it be on all allegations raised?

4 THE COURT: Pardon me?

5 MR. MITCHELL: Would that be just to the White claim or
6 to all the allegations raised in the application?

7 THE COURT: And then the other allegation was, what else
8 is he alleging.

9 MR. WALLER: Your Honor, we, we never got there.

10 THE COURT: Right. Based upon his inability to have
11 access and he wasn't properly advised, so now he can proceed
12 on his other claims, on his ineffective assistance claim.

13 MR. WALLER: Thank you, Your Honor. I would call
14 Dyzshon Boykins.

15 DYZSHON BOYKINS,
16 being previously duly sworn, testified as follows:

17 FURTHER DIRECT EXAMINATION BY MR. WALLER:

18 Q. Good morning again, Mr. Boykins. Mr. Boykins, when were
19 you arrested on the armed robbery and possession of a weapon
20 during a violent crime charges?

21 A. July 27, 2011.

22 Q. And how soon after you were arrested were you -- did you
23 get a lawyer?

24 A. Probably about the end of August of that year.

25 Q. Okay. Where were you arrested?

1 A. Decatur County, Decatur, Georgia.

2 Q. Were you extradited back?

3 A. August 8, 2011.

4 Q. Okay. So you did not receive an attorney until you got
5 back to South Carolina.

6 A. Yes, sir.

7 Q. Who was your attorney?

8 A. Mark Wise.

9 Q. Was he appointed to you or did you hire him?

10 A. Appointed.

11 Q. How many times did you meet with Mr. Wise before you
12 plead guilty?

13 A. I would say about six or seven times.

14 Q. Did you all talk about the charges, the armed robbery
15 and possession of a weapon charge?

16 A. Yes, sir.

17 Q. Did you understand the penalties that those charges
18 carried?

19 A. Yes, sir.

20 Q. Did you understand what the State would have to prove
21 against you to find you guilty?

22 A. Not in full. I wasn't -- I wasn't aware of the -- how
23 can I say -- I wasn't -- I was ignorant to the law. I didn't
24 really know everything, like the collateral consequences of
25 the plea I was offered and everything. I didn't really know

1 everything.

2 Q. Did you and Mr. Wise discuss those collateral
3 consequences?

4 A. No.

5 Q. What conversations did you all have? You said you met
6 six or seven times. What did you all talk about?

7 A. Well, the first time I met him he explained to me the
8 charges being brought against me, and I just frankly told him
9 that I wanted to go to trial, and that's what I kept telling
10 him every time I came up there to see him.

11 Q. Okay. When you all were discussing your case, did you
12 provide him with any information that would have helped him
13 defend you?

14 A. Yes.

15 Q. What did you tell him?

16 A. Alibis; my mom, my step-mom, my dad.

17 Q. Okay. And that was after you told him you wanted to go
18 to trial?

19 A. Yes, sir.

20 Q. Do you know, to the best of your knowledge did he
21 contact any of those people?

22 A. Yes, he did.

23 Q. What was his response to contacting them?

24 A. Well, we -- we didn't really go that far because after
25 those -- a year and a half, two years sitting in there, I

1 just kind of -- I just got -- it was too strenuous for me. I
2 wanted to go to trial, and I wasn't never getting a date; and
3 when I got my Rule 5, I mean, I -- I tried to build a defense
4 off -- you know, from just common knowledge of what I knew at
5 the time off my Rule 5, you know; but as far as all the work
6 he did, he didn't really do much.

7 Q. Why did you feel the need to try to build your own
8 defense?

9 A. Because I felt like he wasn't doing it.

10 Q. Okay. What conversations did you and Mr. Wise have that
11 ultimately led to your decision to plead guilty?

12 A. Just him, every time he pulled me up, he just had
13 offers, it was offers.

14 Q. Did you all discuss actually going to trial?

15 A. Yes.

16 Q. Did you all discuss the procedures that would take place
17 when you went to trial?

18 A. Not in detail.

19 Q. What do you feel that Mr. Wise could have done that he
20 did not do?

21 A. I believe that -- how can I say this? He could have did
22 more as far as, you know, got me a trial date because I just
23 was sitting in there. I never had a trial date, nothing.

24 Q. So you were locked up the whole time; you were not out
25 on bond.

1 A. Yes, sir.

2 Q. For how long?

3 A. About a year and a half.

4 Q. What was Mr. Wise's response to you continuously asking
5 him to get a trial date?

6 A. Well, he told me that -- he just was giving me the
7 chances of me winning the trial. That's all he would tell
8 me, the chances of me winning the trial according to, you
9 know, all the evidence that was given me at that time.

10 Q. But ultimately you decided to take one of the deals and
11 plead guilty; is that right?

12 A. Yes, sir.

13 Q. Why did you do that?

14 A. Because it just -- it was just too heavy on my family
15 and on me, you know, so it was like I just got tired; I just
16 plead out.

17 Q. Did you feel that he was ready to go to trial for you?

18 A. No.

19 Q. If you had felt that he was ready and had gotten a trial
20 date, would you have still plead guilty?

21 A. Yes, sir, I would have proceed.

22 Q. With the trial or pleading guilty?

23 A. The trial.

24 Q. Okay. Mr. Boykins, I've asked all the questions that I
25 have. Is there anything else that I've forgotten or left out

1 that you think the Judge needs to be aware of about Mr.
2 Wise's representation of you?

3 A. No, just if I would have got a trial, I would have
4 proceeded. You know, if it wasn't for his, you know, his
5 information that he was giving me and, you know, his
6 insufficient counsel, I would have -- I would have went to
7 trial, I would have continued but...

8 MR. WALLER: Okay. No further questions. Thank you.

9 THE COURT: Cross-examination.

10 FURTHER CROSS-EXAMINATION BY MR. MITCHELL:

11 Q. Good morning again, Mr. Boykins.

12 A. Good morning.

13 Q. So you would have gone to trial on the armed robbery
14 charge; is that right?

15 A. Yes, sir.

16 Q. Now, the evidence against you, you -- there was a video
17 recording of the incident; is that right?

18 A. Yes, sir.

19 Q. And there was no mask over the alleged person's face,
20 right?

21 A. Yes, sir.

22 Q. Which they alleged to be you.

23 A. Yes, sir.

24 Q. Okay. And there were statements given by a Travis Green
25 that implicated you in there?

1 A. Yes, sir.

2 Q. And then there was a photo lineup that the teller picked
3 you out of; is that right?

4 A. Yes, sir.

5 Q. Now, when you appeared before Judge Griffith, you told
6 him that you were satisfied with Mr. Wise and that you
7 believe he'd done a good job; is that right?

8 A. Yes, sir.

9 Q. Also, when you were in front of Judge Griffith, you went
10 through and admitted your guilt to this crime; is that right?

11 A. Yes, sir.

12 Q. And that was in hopes to receive a lesser sentence?

13 A. Yes, sir.

14 MR. MITCHELL: No further questions. Thank you.

15 THE COURT: Anything further?

16 MR. WALLER: Just very briefly.

17 FURTHER REDIRECT EXAMINATION BY MR. WALLER:

18 Q. Mr. Boykins, did you and Mr. Wise discuss the lineup
19 that you were picked out of?

20 A. No.

21 Q. Did you all discuss the video and it being able to be
22 admitted at trial?

23 A. No.

24 Q. Did you all discuss the lineup being able to be admitted
25 at trial?

1 A. No.

2 MR. WALLER: No further questions.

3 THE COURT: Thank you, sir. You may step down.

4 Any other witnesses?

5 MR. WALLER: No further witnesses, Your Honor.

6 THE COURT: Mr. Mitchell?

7 MR. MITCHELL: State calls Mr. Mark Wise.

8 THE COURT: Mr. Wise, you're still under oath.

9 THE WITNESS: Thank you, ma'am.

10 MARK WISE,

11 being previously duly sworn, testified as follows:

12 FURTHER DIRECT EXAMINATION BY MR. MITCHELL:

13 Q. Good morning, Mr. Wise.

14 A. Good morning.

15 Q. So your meetings with Mr. Boykins, can you describe your
16 initial discussions with him?

17 A. Mr. Boykins had maintained from the beginning that he --
18 this was not him and that he wanted a trial. That's where we
19 started from.

20 Q. Okay. So you advised him of the charges against him and
21 the penalties that the charges carried?

22 A. Yes.

23 Q. Did you file a Rule 5 in this case?

24 A. We did.

25 Q. And did you review those discovery materials with Mr.

1 Boykins?

2 A. I provided them to Mr. Boykins.

3 Q. Okay. So he would have known about the evidence against
4 him that the State was prepared to go to trial on?

5 A. I believe so.

6 Q. And did you review that with him as well?

7 A. The evidence that the State would use?

8 Q. Yes. I guess like specifically the video, the lineup.

9 A. We talked about -- we would have talked about what the
10 State would try to use to have him convicted, yes.

11 Q. Okay. How did the plea negotiations go? I know you
12 mentioned that a bit earlier.

13 A. Sure. Obviously he was charged with armed robbery.
14 According to my notes, November 28th of, I guess it was 2012,
15 the solicitor made an offer of a ten to fifteen-year sentence
16 on that. Mr. Boykins was not interested in that, and I told
17 the solicitor, based on my conversation with Mr. Boykins,
18 that Mr. Boykins indicated he would not plead to anything
19 except probation. And then on the 29th of December the
20 solicitor indicated that he would talk to public safety and
21 see if Mr. Boykins could plead guilty to entering a bank with
22 intent to steal, and obviously then he came back and
23 indicated that that was possible. That was the plea
24 negotiations.

25 Q. Okay. And then they came back with another offer?

1 A. Yes, then they came back and said they would recommend a
2 seven-year sentence.

3 Q. And you asked for less than that at the sentencing
4 portion of the hearing.

5 A. I'll have to look.

6 Q. The record will speak for itself on that.

7 A. Okay.

8 Q. That's fine. Did Mr. Boykins bring an alibi defense to
9 your attention?

10 A. He had -- Mr. Boykins was in Georgia, and he was staying
11 between -- I think he might have gone out to see his father,
12 and I have -- I can look at my notes about this, but there
13 were people in Georgia that could have said he was in
14 Georgia.

15 Q. Did you look into those witnesses?

16 A. I spoke to -- may I have a moment?

17 Q. Sure.

18 A. I spoke to his stepmother, Tracy Wyble. I spoke to his
19 mother, but I don't think she would have been part of the
20 alibi. There was -- I spoke to his father. His father lived
21 in Decatur, Georgia.

22 Q. Was he able to provide you anything that approached an
23 alibi?

24 A. He said he was going to give me some information, but I
25 don't believe I ever received it. The issue was Mr. Boykins

1 was in Decatur and would have been working in Decatur, but it
2 wasn't very -- we couldn't tie it, you know, really make it
3 more concrete, and that was some of the problem.

4 Q. Did you have discussions with him of the likelihood of
5 success if the case did go to trial?

6 A. With Mr. Boykins?

7 Q. Yes, sir.

8 A. No. My normal practice would be to discuss the evidence
9 with a client, but I would not be inclined to say, oh, if
10 this goes to trial, you're going to lose. You know, I
11 discuss the evidence, and I let the clients make the
12 determination how they want to proceed. I typically tell
13 them I will support them in whatever decision they make.

14 Q. If the case did go to trial and he chose not to accept
15 the offer --

16 A. Yes.

17 Q. -- would you have pursued this alibi defense further?

18 A. I don't know. I don't know the alibi would have worked
19 out, and the issue was could we have, with some concreteness,
20 shown that he was in Decatur, Georgia, at the time of the
21 robbery, so as I sit here now I don't know. I wasn't able to
22 nail that down before we entered into the plea.

23 MR. MITCHELL: Okay. No further questions. Thank you.

24 THE COURT: Your witness.

25 MR. WALLER: Thank you.

1 CROSS-EXAMINATION BY MR. WALLER:

2 Q. Mr. Wise, when were you appointed to represent Mr.
3 Boykins?

4 A. Looks like on or about August 17, 2011.

5 Q. And he plead guilty February 11, 2013; is that your
6 recollection?

7 A. Yes.

8 Q. So about 18 months later; is that right?

9 A. Okay.

10 Q. And you just testified that he always maintained that he
11 wanted a trial.

12 A. That's correct.

13 Q. And that he provided you with a potential alibi defense,
14 but you weren't able to nail it down within that 18 months.

15 A. That's correct.

16 Q. What changed from him always wanting a trial to deciding
17 to plead guilty?

18 A. I think he received an offer that he found acceptable.

19 Q. Was there any discussions with the solicitor's office
20 about when the case was going to go to trial?

21 A. Well, he went -- he was initially -- he initially went
22 in front of Judge Goodstein on January the 7th of 2013 to
23 enter a plea to entering a bank for a negotiated seven years.
24 Judge Goodstein rejected that plea. The case was then set
25 for trial, my notes indicate May the 6th of 2013. We then

1 went back in front -- we went in front of Judge Griffith on
2 the 11th of January, same offer, and Judge Griffith accepted
3 the plea, so I guess the short answer is, looks like we would
4 have gone to trial May 6th.

5 Q. By February 11th of 2013 how far along had you gotten in
6 your trial preparation?

7 A. How do you mean that?

8 Q. Had you begun preparing for an actual trial at that
9 point?

10 A. Well, we were -- yes, we were starting to -- I was
11 starting to do some work on getting the case ready for trial.

12 Q. How much of that work was devoted to preparing an alibi
13 defense?

14 A. Well, I spoke to his father, I spoke to his stepmother,
15 you know, had pretty good conversations with them; so, I
16 mean, if we were going to go to trial, we would do the best
17 we can with what we had regarding the alibi.

18 Q. Okay. You testified that in the prior 18 months you had
19 not been able to nail down his alibi. How would the next
20 three months until trial have been any different?

21 A. I don't know that for the entire 18 months I was trying
22 to nail down his alibi, and I don't have my notes for the
23 date that I spoke to his father, his stepmother, his mother,
24 but there came a point when I was more focused on Mr.
25 Boykins' case than other cases; and I can't tell you exactly

1 when that happened, but if this was in January and we looked
2 at a trial in May, that's probably when -- once that
3 happened, I would have probably been very focused on...

4 Q. Did you ever file a notice of intent to present an alibi
5 defense?

6 A. No.

7 MR. WALLER: Beg the Court's indulgence.

8 (Brief pause.)

9 MR. WALLER: No further questions.

10 MR. MITCHELL: Nothing further from the State.

11 THE COURT: You may step down, Mr. Wise. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Any other witnesses?

14 MR. MITCHELL: No further witnesses.

15 THE COURT: The Court will review the record and take
16 the matter under advisement and notify you of the ruling.

17 MR. WALLER: Thank you, Your Honor.

18 MR. MITCHELL: Thank you, Your Honor.

19 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF ORANGEBURG
4

5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the 1st Judicial Circuit Court for
11 Orangeburg County, South Carolina, on the 22nd of May, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 February 5, 2016

16
17 *Ruth L. Mott*

18 Certified Court Reporter
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Dyzshon R. Boykins, #354347,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-0798

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIFER B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 AUG 26 1 A 12: 02

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 30, 2014. Respondent made a Return and Partial Motion to Dismiss on February 23, 2015, requesting that the action be dismissed as filed outside the statute of limitations. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. A hearing was held on May 22, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court's orders of commitment. The Orangeburg County Grand Jury indicted the Applicant at the November 2011 term of General Sessions for Armed Robbery

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ORANGEBURG COUNTY, SC

(2011-GS-38-1722) and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-38-1723). Mark Wise, Esquire represented the Applicant on these charges.

On February 11, 2013, pursuant to negotiations, Applicant waived presentment to the grand jury and pleaded guilty to Entering a Bank With Intent to Steal (2011-GS-38-1722). The Honorable Eugene C. Griffith accepted the parties' negotiations and sentenced Applicant to seven (7) years' imprisonment. The Possession of a Weapon During the Commission of a Violent Crime charge was *nolle prossed*. Applicant did not appeal his plea or sentences.

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

1. Ineffective assistance of counsel in failing to advise of a right to appeal the guilty plea; and
2. Involuntary guilty plea in that Applicant believed he had a viable alibi defense.

III. APPLICABLE LAW

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

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

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

State's Motion to Dismiss

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The State asked this Court to dismiss all issues except whether he is entitled to a review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because the application was filed outside of the statute of limitations. Applicant pleaded guilty on February 11, 2013, and filed the application on June 20, 2014. This Court, first, heard testimony regarding the issue of whether Applicant's case should be dismissed as filed outside the statute of limitations and whether he was entitled to a belated direct appeal of his guilty plea. This Court denied the State's motion to dismiss at the hearing.

Dyzshon Boykin's Testimony

Applicant testified he did not have access to a law library while incarcerated at Kirkland Correctional Institution. He testified he was in lockdown for twenty-three (23) hours a day and that his meals were served in his cell. He testified he was not allowed to have anything in his cell during this time. He testified he did not have an application for post-conviction relief but did have pen and paper. He explained that he was then transferred to Ridgeland Correctional Institution in Jasper County. He testified, while at Ridgeland, he again did not have access to an application for post-conviction relief and that he was on lockdown for months at a time where he was unable to leave his room. He testified there was construction going on at the institution and that he did not have access to an application. He explained that the prison was not on lockdown during his entire stay and that he could go to the law library for around three (3) months but that he was not aware of PCR at the time. He testified a gun was found in the yard and that the prison was put on lockdown for two (2) months around the time the statute of limitations would run.

Applicant conceded he has not had any competency issues and has not received any treatment for competency issues. He testified he did not file anything with the court within one

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(1) year of his guilty plea. Applicant further testified he was not aware he could appeal from his guilty plea. He testified Counsel did not discuss a right to appeal with him.

Counsel Mark Wise's Testimony

Counsel testified that he did not believe he advised Applicant of the right to appeal his plea of guilty. He testified that Applicant pleaded to a negotiated sentence and that he did not see any grounds for an appeal. He testified he did not believe he was under a duty to advise that Applicant could file a PCR application.

Discussion

This Court denied the State's motion for partial dismissal and allowed him to proceed to a full evidentiary hearing. This Court found that Applicant was not barred by the statute of limitations and that the time limits should be tolled due to Applicant's circumstances of incarceration.

Further, Applicant has alleged that he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000). There was no evidence or testimony presented that Applicant requested Counsel file an appeal on Applicant's behalf or that there was a reason for Counsel to believe that Applicant wanted to appeal the conviction or sentence. This Court finds there is no merit to an appeal, notably because no objections were made. Therefore, this claim is denied and dismissed

This Court will now address the allegation raised at the full evidentiary hearing.

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ORANGEBURG COUNTY

Involuntary and Unintelligent Guilty Plea

Dyzshon Boykins's Testimony

Applicant testified he was arrested in ~~Georgia~~^{MA} on August 8, 2011 and that Mark Wise was appointed to represent him. He testified he was advised of the potential penalties relating to the charges and that Counsel reviewed some of what the State would need to prove in order for Applicant to be convicted. He testified he provided Counsel with an alibi defense in that he was in Georgia at the time of the incident. Applicant testified he attempted to contact witnesses and build his own defense.

Applicant explained that he decided to plead guilty because he got tired. He testified Counsel advised him that the chances of winning at trial were not strong.

Counsel Mark Wise's Testimony

Counsel testified he advised Applicant of the charges against him and the penalties that those charges carried. He reviewed the plea negotiations he had with the prosecuting solicitor and testified that Applicant agreed to the negotiated deal that he ultimately entered into. As to the alibi defense, he testified he spoke to Applicant's father, mother, and other people who lived in Georgia. He testified that the alibi did not come together, that it was not concrete, and that he was unable to nail it down. He testified that he investigated the alibi and encouraged Applicant to give him information on people that could testify to support the defense. He testified that if they were to go to trial, they would do the best they could with the alibi defense. Counsel testified he believed Applicant changed his mind and decided to plead guilty because he was extended an acceptable offer.

Discussion

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 RANGEBOURG COUNTY, SC

Applicant alleges he did not plead guilty knowingly and voluntarily because he believed he had a viable alibi defense. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the potential alibi defense. This Court finds Applicant's testimony not credible. The record reflects Applicant admitted his guilt to the plea court. This Court finds that Applicant presented *no* evidence that he was coerced or forced to plead guilty. This Court finds Applicant's intent to plead guilty was

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MOBILE, ALABAMA

made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. This Court finds Counsel's testimony credible and persuasive on the alibi defense issue in that the alibi was not solid and was not likely to be successful at trial. Applicant knew he was pleading guilty and thereby waiving any challenges to the evidence. This Court notes Applicant pled guilty to a negotiated plea offer. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice

All Other Allegations

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

V. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

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Winniford B. Clark

CLERK OF COURT

of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 18 day of Aug, 2015.

J. Gray, South Carolina

Maité Murphy
MAITÉ MURPHY
Presiding Judge

ATTEST: TRUE
Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2011GS38-1722

At a Court of General Sessions, convened on November 7, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about December 28, 2010, in Orangeburg County, the defendant, Dyzshon Rakeem Antonio Boykins did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, S. C. State Credit Union, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

DOCKET NO. 2011GS38-1722

**The State of South Carolina
County of ORANGEBURG**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

**COURT OF GENERAL SESSIONS
November 7, 2011 TERM**

I hereby appear in my own proper person and plead guilty to the within indictment or to

**THE STATE
vs.**

Dyzshon Rakeem Antonio Boykins

Defendant

Witness:

C.C.C. PLS. AND G.S.

2011 NOV -9 AM 10: 42

FILED FOR RECORD
WINNIE D. CLARK
CLERK OF COURT
ORANGEBURG, SC

Indictment for

ARMED ROBBERY

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Winnie D. Clark

CLERK OF COURT
ORANGEBURG COUNTY SC

SC Code: 16-11-330(A)

WITNESSES

Cindy Smoak

Orangeburg Police Department

ARREST WARRANT NUMBER
J697751

Arrested: August 8, 2011

TRUE GRAND JURY

Winnie D. Clark

Date *11-9-11*

Foreperson of Grand Jury

Date: November 9, 2011

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
 COUNTY OF Orangeburg
 VS.
Dyzshon Rakeem Antonio Boykins
 AKA:
 Race: BLACK Sex: M Age: 23
 DOB: [REDACTED] SS#: [REDACTED]
 Address:
 City, State, Zip: Bowman, SC 29018
 DL#: [REDACTED] SID#: [REDACTED]
 CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Entering Bank, Depository or Bldg and Loan Association with intent to Steal

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2011GS38-1722
 A/W#: J697751
 Date of Offense: 12/28/2010
 S.C. Code § : 16-11-330(A)
 CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-380 of the S.C. Code of Laws, bearing CDR Code # 0257
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. D.B. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 9512 [Signature] Mark W. [Signature] 14332
 Sorenson, Donald N. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 7 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 552 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
 Set by SCDPPPS

PTUP
 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other: ATU (if available)

Recipient:

| | | |
|--|---------|-----------|
| *Fine: | | \$ |
| § 14-1-206 (Assessments 107.5 %) | | \$ |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| § 56-5-2995 (DUI Assessment) | \$12 | \$ |
| § 56-1-286 (DUI Breath Test) | \$25 | \$ |
| Proviso 47.9 (Public Def/Prob) | \$500 | \$ |
| § 14-1-212 (Law Enforce. Funding) | \$25 | \$ 25.00 |
| § 14-1-213 (Drug Court Surcharge) | \$150 | \$ |
| § 50-21-114(BUI Breath Test Fee) | \$50 | \$ |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$ |
| Proviso 90.5 (SCCJA Surcharge) | \$5 | \$ 5.00 |
| 3% to County (if paid in installments) | | \$ 3.90 |
| TOTAL | | \$ 133.90 |

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk - J. Glenn
 Court Reporter: Hilda Jordan
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2154
 Sentence Date: 2-11-13

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2011 NOV -9 AM 10: 42

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

DOCKET NO. 2011GS38-1723

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 7, 2011 TERM

THE STATE
vs.

Dyzshon Rakeem Antonio Boykins

Indictment for

POSS. WEAPON DURING VIOLENT
CRIME, IF NOT ALSO SENTENCED TO
LIFE WITHOUT PAROLE OR DEATH
ATTEST: TRUE COPY

Winnie B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-23-490

WITNESSES

Cindy Smoak

Orangeburg Police Department

ARREST WARRANT NUMBER
J697752

Arrested: August 8, 2011

TRUE GRAND JURY

NOV 09 2011

Winnie B. Clark
Date 11-9-11

Foreperson of Grand Jury
Date: November 9, 2011

VERDICT

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Maite Murphy, Circuit Court Judge

RECEIVED

MAR - 7 2016

SC SUPREME COURT

DYZSHON R. BOYKINS,

PETITIONER/RESPONDENT,

V.

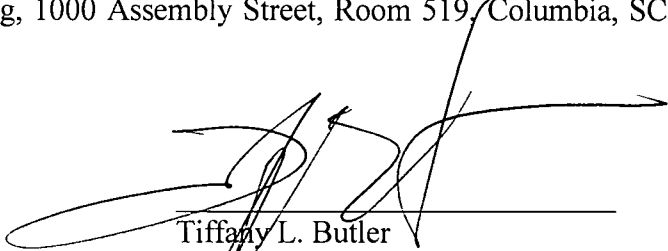
STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

APPELLATE CASE NO. 2015-002513

CERTIFICATE OF SERVICE

I certify that a true copy of the appendix in this case have been served on Clay Mitchell, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 7th day of March, 2016.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of March, 2016.

Wanda Mendel (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.