

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Tanya A. Gee, The Honorable Tanya A. Gee

JAMES L. ALSTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001657

A P P E N D I X

TIFFANY L. BUTLER
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) IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

2009-GS-02-0791, 0792,

0793, 0794, 0909, 2017

State of South Carolina,

Plaintiff,

v.

James Alston,

Defendant.

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) Transcript of Record
) PLEA
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)
)

April 21, 2011
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge

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

Strom Thurmond, Esquire
Attorney for the State

De Grant Gibbons, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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Plea

EXHIBITS:

No exhibits were marked to this proceeding.

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1 April 21, 2011.

2 THE COURT: Thank you. Good morning. Please be
3 seated.

4 MR. THURMOND: Ready Judge.

5 James Alston.

6 THE CLERK: Raise your right hand.

7 (WHEREUPON, James Alston was sworn
8 to tell the truth.)

9 MR. THURMOND: This is Mr. James Lavon Alston before
10 the Court on indictment numbers 2009-GS-02-791, an
11 indictment for grand larceny. 2009-Gs-02-792, an indictment
12 for burglary in the first degree. 2009-GS-02-793, another
13 indictment for burglary in the first degree.
14 2009-GS-02-794, an indictment for murder. 2009-GS-02-909,
15 an indictment for armed robbery. 2010-GS-02-2017, an
16 indictment for arson in the second degree. Please
17 negotiations are rather extensive. Do you want me to put
18 that on the record now?

19 THE COURT: Yes.

20 MR. THURMOND: Judge, as to the indictment for arson in
21 the second degree, that would be 2017, for a negotiated
22 sentence of 25 years. The indictment for armed robbery,
23 GS-02-909, a negotiated sentence of 30 years. Indictment
24 for murder, that's going to be indictment 794, a negotiated
25 sentence of 35 years. Indictment for burglary in the first

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1 degree, that's indictment number 793, a negotiated sentence
2 of 35 years. A second indictment for burglary in the first
3 degree is indictment number 792, a negotiated sentence for
4 35 years. Indictment 791, and indictment for grand larceny,
5 a negotiated sentence of 10 years, all of which are to run
6 concurrently.

7 THE COURT: Mr. Gibbons, do you represent James Lavon
8 Alston on the indictments just called?

9 MR. GIBBONS: I do, Your Honor.

10 THE COURT: Let's go over them one at the time.
11 Indictment 791, the indictment for grand larceny. Have you
12 advised him that that carries up to 10 years in the
13 Department of Corrections?

14 MR. GIBBONS: I have, Your Honor.

15 THE COURT: As to indictment 792 and 793, those are both
16 indictments for first degree burglary. Have you advised him
17 that those carry 15 years to life in prison?

18 MR. GIBBONS: I have, Your Honor, as well as they are
19 violent and --

20 THE COURT: We'll go over that in a second.

21 MR. GIBBONS: Yes, sir.

22 THE COURT: Murder charge. Have you advised him that
23 that carries a minimum of 30 to life?

24 MR. GIBBONS: I have.

25 THE COURT: As to the armed robbery, have you advised

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1 him that carries 10 to 30?

2 MR. GIBBONS: Yes, sir.

3 THE COURT: And on arson second, have you advised him
4 that carries a minimum of 25 years?

5 MR. GIBBONS: I have.

6 THE COURT: As to the last indictments for arson second
7 degree, armed robbery, murder and the two burglary first
8 offenses, have you advised him that those are all classified
9 as violent and may have some effect on where he is housed
10 and some restrictions in the Department of Corrections?

11 MR. GIBBONS: I have, Your Honor, we've discussed it.

12 THE COURT: Further, those five indictments are all
13 classified as most serious. Have you advised him that that
14 now constitutes a strike and in the event that he is
15 released from incarceration and becomes involved in criminal
16 activity classified as most serious he is subjecting himself
17 to the possibility of life imprisonment without the
18 possibility of parole and/or activities classified as
19 serious two more times resulting in three strikes?

20 MR. GIBBONS: Yes, sir, I have.

21 THE COURT: On the murder charge, have you advised him
22 that under our current statutory scheme that by accepting
23 the negotiation he will serve that day for day. Absolutely
24 no parole, no early release. It is a day for day sentence.

25 MR. GIBBONS: I have, Your Honor.

1 THE COURT: I guess this is not that important, but
2 anyway, on the other four, the armed robbery, the arson, two
3 burglaries, those are what we call no parole sentences, and
4 but for the murder charge he would be serving 85 percent of
5 those.

6 MR. GIBBONS: I've explained that to him.

7 THE COURT: Have you further explained to your client
8 the right to trial by jury?

9 MR. GIBBONS: I have.

10 THE COURT: And has he indicated to you he wishes to
11 plead?

12 MR. GIBBONS: He wishes to come before the Court and
13 enter a plea of guilty to these charges, Your Honor.

14 THE COURT: I forgot to ask you about the grand larceny.
15 I assume you told him that carries up to 10 years?

16 MR. GIBBONS: I have, Your Honor.

17 THE COURT: Mr. Gibbons, after having reviewed all the
18 evidence and discussions with your client and the solicitor,
19 and based on your experience, are you in agreement with his
20 decision to plead guilty?

21 MR. GIBBONS: Yes, Your Honor. The evidence came
22 through in this case kind of piece by piece, but it was not
23 too long into the discussions that Mr. Alston started
24 talking about this kind of end to this case. This is the
25 appropriate thing.

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1 THE COURT: You've heard Solicitor Thurmond tell me what
2 the negotiations are. Is that your understanding?

3 MR. GIBBONS: Yes, Your Honor.

4 THE COURT: Basically, 35 years on the murder, burglary
5 first, both of those, 25 years on the arson, 10 years on the
6 grand larceny and 30 years on the armed robbery, all to run
7 concurrent?

8 MR. GIBBONS: Yes.

9 THE COURT: All right.

10 Mr. Alston, good morning.

11 MR. ALSTON: Good morning, sir.

12 THE COURT: You stand before me on a number of charges.
13 I'll go through each one of them separately.

14 The first one is grand larceny. That carries up to 10
15 years in the Department of corrections; do you understand
16 that?

17 MR. ALSTON: Yes, sir.

18 THE COURT: You are next charged with burglary first;
19 two indictments of that. That carries a minimum of 15 to
20 life in the Department of Corrections. Do you understand
21 that?

22 MR. ALSTON: Yes, sir.

23 THE COURT: As to the arson second degree, that carries
24 five to 20 -- a minimum of five, up to 25 years in the
25 Department of Corrections. Do you understand that?

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1 MR. ALSTON: Yes, sir.

2 THE COURT: And the armed robbery carries a minimum of
3 10 to 30 years; do you understand that?

4 MR. ALSTON: Yes, sir.

5 THE COURT: The murder carries 30 to life; do you
6 understand that?

7 MR. ALSTON: Yes, sir.

8 THE COURT: Do you understand that all of these offenses
9 except for the grand larceny are classified as serious
10 offenses?

11 MR. ALSTON: Yes, sir.

12 THE COURT: Which means under our strike laws if you are
13 released from incarceration that you would then -- if you
14 became involved in criminal activity classified as most
15 serious you would be subjecting yourself to the possibly of
16 life in prison without parole and if the offense is
17 classified as serious two times plus this most serious that
18 would be three strikes that way, and like-wise being
19 subjected to live imprisonment without the possibility of
20 parole. So you understand what most serious means?

21 MR. ALSTON: Yes, sir.

22 THE COURT: Do you understand that the murder charge,
23 that whatever sentence impose you do that day for day?

24 MR. ALSTON: Yes, sir.

25 THE COURT: Do you know what day for day means?

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1 MR. ALSTON: No time credit.

2 THE COURT: Any time credit, you don't get any early
3 release. You do it -- if it's 35 years and I accept it, you
4 do it day for day, a full 35 years before you're released.

5 MR. ALSTON: Yes, sir.

6 THE COURT: Of course, you'll get credit for whatever
7 time you've served to date, but what's left on it, you will
8 do it day for day. There is no early release; do you
9 understand that?

10 MR. ALSTON: Yes, sir.

11 THE COURT: They are all classified as violent so it may
12 have some effect on where you're housed and other
13 restrictions on you in the Department of Corrections; do you
14 understand that?

15 MR. ALSTON: Yes, sir.

16 THE COURT: Sir, understanding all the charges and all
17 six indictments how do you wish to plea; not guilty or
18 guilty to each indictment?

19 MR. ALSTON: Guilty.

20 THE COURT: Sir?

21 MR. ALSTON: Guilty.

22 THE COURT: Sir, when you plead guilty you will be
23 giving up certain of your constitutional rights. First will
24 be your right to remain silent. In a little while, while
25 these proceedings are going on you will have to admit to me

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1 your involvement in this murder, burglary, armed robbery,
2 arson, etcetera. Do you understand that?

3 MR. ALSTON: Yes, sir.

4 THE COURT: More importantly, or just as important, you
5 will be giving up your right to a trial by a jury; do you
6 understand that?

7 MR. ALSTON: Obviously, if you ask for a trial or demand
8 a trial the state would give you one. During that trial,
9 you have the right to confront and cross-examine everybody
10 who testified against you. Then you'd have the right to
11 present your own defense, your own case. You can call
12 witnesses to testify in your defense, you can introduce
13 relative exhibits and you could testify in your own defense;
14 do you understand that?

15 MR. ALSTON: Yes, sir.

16 THE COURT: If you chose to exercise your constitutional
17 right to remain silent, then I would tell the jury they
18 could not hold the fact that you did not testify against you
19 in any manner whatsoever, and I would instruct and charge
20 them at the end of the case that they could not even
21 consider the fact that you did not testify when they
22 deliberated your guilt or innocence. Under the Constitution
23 you would be considered innocent throughout the trial and
24 the State of South Carolina would have the burden of proving
25 you guilty of each indictment beyond a reasonable doubt to

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1 that jury of 12 people, and in order for the jury to convict
2 you all 12 people on the jury would have to unanimously
3 agree that you were, in fact, guilty. And even if you were
4 convicted you would still have the right to an appeal. Do
5 you understand your rights to trial by jury?

6 MR. ALSTON: Yes, sir.

7 THE COURT: Understanding those rights, do you still
8 wish to plead guilty --

9 MR. ALSTON: Yes, sir.

10 THE COURT: -- or do you want me to set this case for a
11 jury trial?

12 MR. ALSTON: Guilty, sir.

13 THE COURT: This is -- this plea is a result of
14 negotiations between your lawyer and the state, the
15 solicitor's office, and they have told me that they have
16 negotiated a 35 year sentence for the murder. Which you
17 means you'd do 35 years less whatever time you've been in
18 jail. They also have advised me they've negotiated a 25
19 year sentence for the armed robbery -- strike that -- a 30
20 year sentence for the armed robbery, 25 years for the arson,
21 35 years for the two burglaries, and 10 years for the grand
22 larceny, to run concurrent, which means you will do them all
23 at the same time, but with the murder you will end up doing
24 35 total years. Is that your understanding of the
25 negotiations?

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1 MR. ALSTON: Yes, sir.

2 THE COURT: Other than the negotiations has anyone
3 promised you anything, held out any hope of reward or
4 threatened you in any manner in order to make you plead
5 guilty?

6 MR. ALSTON: No, sir.

7 THE COURT: And do you understand that if I listen to
8 this situation and I feel that this negotiation is not
9 appropriate, then you will have the right to discuss your
10 options with your lawyer?

11 MR. ALSTON: Yes, sir.

12 THE COURT: You've been represented throughout this
13 matter by Mr. Gibbons; is that correct?

14 MR. ALSTON: Yes, sir.

15 THE COURT: Are you totally and completely satisfied
16 with his services to you as your lawyer?

17 MR. ALSTON: Yes, sir.

18 THE COURT: In your opinion, has he had enough time to
19 spend with you, enough time to research the law, and enough
20 time to investigate the facts so that he can properly
21 represent you?

22 MR. ALSTON: Yes, sir.

23 THE COURT: Is there anything else that you want him to
24 do for you today before we move forward other than speak up
25 on your behalf?

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1 MR. ALSTON: No, sir.

2 THE COURT: And I ask you once again, are you totally
3 and completely satisfied with his representation?

4 MR. ALSTON: Yes, sir.

5 THE COURT: Sir, are you today under the influence of
6 any alcoholic beverages, drugs or prescription medication?

7 MR. ALSTON: No, sir.

8 THE COURT: Sir, are you today, aware of any mental,
9 nervous, or emotional condition that would have kept,
10 preclude you from understanding my questions?

11 MR. ALSTON: I don't know --

12 THE COURT: Have you understood all my questions?

13 MR. ALSTON: Yes, sir.

14 THE COURT: Have you understood all of my explanations?

15 MR. ALSTON: Yes, sir.

16 THE COURT: And have you understood these proceedings?

17 MR. ALSTON: Yes, sir.

18 THE COURT: Sir, are you pleading guilty of all six of
19 your indictments of your own free will and accord?

20 MR. ALSTON: Yes, sir.

21 THE COURT: No one is making you do it, no one is
22 twisting your arm; is that correct?

23 MR. ALSTON: That's correct, sir.

24 THE COURT: It's the free will of James Lavon Alston; is
25 that correct?

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1 MR. ALSTON: Yes, sir.

2 THE COURT: Sir, did you here in Aiken County, on or
3 about December 20 of the year 2008, enter a dwelling located
4 at Street, SE in Aiken belonging to one,
5 Robert Allen Stanton with intent to commit a crime therein
6 in the night time?

7 MR. ALSTON: Yes, sir.

8 THE COURT: Did you also on that same date enter the
9 dwelling at Street belonging to Tony Lee,
10 S-t-i-l-p, without consent with the intent to commit a crime
11 therein in the night time?

12 MR. ALSTON: Yes, sir.

13 THE COURT: Did you, sir, on that same date, December
14 20, 2008, cause an explosion or set fire to or burn a
15 structure located at Westover Street, Westover Drive in
16 Aiken?

17 MR. ALSTON: Yes, sir.

18 THE COURT: You set fire to that. Did you sir, on that
19 same date, December 20, 2008, feloniously take from one
20 George William Woltz, W-o-l-t-z, Jr., by the means of force
21 or intimidation while armed with a baseball bat, take monies
22 from him in the approximate amount of \$240?

23 MR. ALSTON: Yes, sir.

24 THE COURT: Did you sir, on that same date, December 20,
25 2008 in Aiken County, take or steal, steal, take or deprive

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1 Mr. Stanton of his ownership of a 2009 white four-door
2 Mercedes Benz?

3 MR. ALSTON: Yes, sir.

4 THE COURT: And, sir, did you on that same date, with
5 malice aforethought kill or murder one George William Woltz
6 by striking him on the head with a baseball bat causing
7 blunt trauma?

8 MR. ALSTON: Yes, sir.

9 THE COURT: Putting a cloth over his head causing him
10 to suffocate?

11 MR. ALSTON: Yes, sir.

12 THE COURT: Did you murder or participate in the murder
13 of George William Woltz, Jr.?

14 MR. ALSTON: Yes, sir.

15 THE COURT: Sir, you're pleading guilty to each of these
16 indictments and facts alleged in the indictments because you
17 are, in fact, guilty?

18 MR. ALSTON: Yes, sir.

19 THE COURT: Because you participated in the murder,
20 robbing, burning, stealing and the breaking in all these
21 places that I've described?

22 MR. ALSTON: Yes, sir.

23 THE COURT: Are you pleading guilty because you broke
24 the laws of the State of South Carolina?

25 MR. ALSTON: Yes, sir.

1 THE COURT: All right. I find your decision to plead
2 guilty to be freely, voluntarily and intelligently made.
3 You've had the representation of an excellent lawyer, Mr.
4 Gibbons, which whom you tell me you're totally and
5 completely satisfied with and I will accept your plea. If
6 you disagree of my sentence of these proceedings you have 10
7 days from today's date on notice to file an appeal; do you
8 understand that?

9 MR. ALSTON: Yes, sir.

10 THE COURT: Mr. Solicitor.

11 MR. THURMOND: Thank Your Honor. Please the Court.

12 Judge before I cut in the facts, there are a couple of
13 folks in the courtroom that I wanted to introduce to Your
14 Honor.

15 Judge, this is Mr. Ed Woltz, seated to your far left.
16 He is the brother of the deceased, William Woltz, he went by
17 Bill. Ed Woltz had been extremely patient, and he's been
18 extremely gracious during some perfectly horrific
19 circumstances. He's probably met with me and my office more
20 times than he would have cared to. We have been in close
21 contact with him We have vetted all the --

22 THE COURT: Hold on a second. Who's phone is that.
23 Please raise your hand. Please turn it off. Everybody
24 please turn their phones off. He's fine, Mr. George.

25 All right. Everybody's phone off? Thank you.

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1 I'm sorry.

2 MR. THURMOND: Judge, we have vetted all these
3 negotiations through Mr. Ed Woltz, as the spokesperson for
4 the Woltz family, and I think he would tell you that,
5 although, an imperfect resolution, he accepts them and bring
6 some certainty to this rather than putting his family in the
7 process through a protracted trial, and, if convicted, and
8 even more protracted appellate process.

9 I also want recognize Sheriff Hunt in the courtroom.
10 He always comes to court on our major cases that his agency
11 makes. We appreciate him being here.

12 THE COURT: So do I. I appreciate all the Sheriff does
13 for the citizens of Aiken. You know, he makes us feel
14 sometimes that we're appreciated by being here. Often times
15 I go to counties where law enforcement agencies don't go to
16 court.

17 MR. THURMOND: Yes, sir.

18 THE COURT: But my sheriffs in the Second Circuit do,
19 and I appreciate them all.

20 MR. THURMOND: Yes, sir. And we have kept him informed
21 and we have vetted this plea negotiation through them and
22 the Sheriff's Office supports this resolution, as well.

23 On the second row is Investigator James Chrystalis
24 (sp). Of interest, perhaps, he was promoted to investigator
25 in the fall of 2008, and this was first case and it was a

1 big one to start with and he performed ably and performed as
2 a veteran investigator.

3 To my right is Investigator Billy Flurry (sp), Chief
4 Investigator for the Sheriff's Office and spear headed what
5 was really a thoughtful and complete and purposeful
6 investigation in both pre and post arrest, and I'll get into
7 some of the drip, drip, drip of forensic back and forth with
8 the State Law Enforcement Agency for the last two years that
9 is finally resulting in what I hope will be three guilty
10 pleas ultimately.

11 Judge, this crime scene involved multiple agencies; the
12 Sheriff's Office, the Aiken Department of Public Safety, the
13 State Law Enforcement Division, the Anderson Police
14 Department. Multiple jurisdictions. They and we made
15 numerous trips back and forth to Anderson. Specifically,
16 Tom Gallardi and David Miller with our staff have hours upon
17 hours of their efforts involved in this matter.

18 We had essentially six crime scenes. We had the Woltz
19 residence, we had the two burglaries on Williamsburg Street,
20 two residences there. We had the 2009 Mercedes and we had
21 two locations up in Anderson where defendants were arrested,
22 where evidence was taken from those locations, as well.
23 There was just considerable coordination. We had buccal
24 swabs from six individuals or DNA samples from six
25 individuals, of course, the deceased, all three defendants

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1 and then Mr. and Mrs. Stanton, who owned one of the
2 residences on Williamsburg Street where the Mercedes was
3 stolen from. So we've spent the last two years checking
4 evidence against the DNA standards of a half-dozen people,
5 which has just been a Herculean effort by our local law
6 enforcement agencies. So I certainly want to give credit
7 where it's due and I just want to publicly and on the record
8 thank the Aiken County Sheriff's Office for all their hard
9 work.

10 Judge, back on December 20, 2008, at about 10:30 p.m.,
11 George William Woltz, Jr., was found deceased at

12 Drive in Aiken. His hands and feet had been bound
13 and he had been found in the closet of the master bedroom of
14 the house. The Aiken Public Safety responded, had
15 extinguished the fire and found Mr. Woltz in the closet.

16 Westover Drive is what we call -- it's a donut hole in
17 the county. It's actually right downtown in the city of
18 Aiken, right across the street from the Palmetto Golf
19 Course, right there on Whiskey Road. There's a little gas
20 station there, and a night club there, and Westover Drive
21 abuts those locations, so truly right in downtown Aiken.

22 The fire was extinguished, Mr. Woltz's body was
23 identified and recovered from Drive. He was
24 autopsied the next day, December 21, 2008 at 9:00 o'clock in
25 the morning by Dr. Pinella (sp) who is now in Missouri. We

1 were set to try this case in May and that would have been
2 one of our challenges would have been getting him here, as
3 well as the Stantons, who reside in New York, having them
4 come for a trial.

5 The cause of death was ultimately determined to be
6 asphyxiation due to smothering, due to a blanket tied over
7 Mr. Woltz's head with a contributory factor of blunt force
8 trauma to the head.

9 To back up to the night before. Once all these law
10 enforcement and emergency assets had responded to

11 Drive, it's now determined that this location is in
12 the county, Sheriff's Office takes the lead. Jimmy
13 Chrystalis is the lead investigator on call. They start the
14 investigation, at that point. They start collecting the
15 evidence and they start interviewing witnesses in and around
16 the area. They met with some folks across the street, and
17 what would become a critically important witness was a Wade
18 Watson, who had advised the Sheriff's Office late that night
19 on the 20, that his dog was barking and so he went outside
20 to look to see what was going on, and he observed bright
21 headlights from what appeared to be a 2009 white Mercedes. I
22 think Mr. Watson may be in the auto repair business and
23 knows quite a bit about cars. He further advised that
24 Mercedes had changed the design for the car in 2009 and gave
25 it a distinctive slope on the front end of it, and he could

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1 immediately say, hey, that's a 2009 model. He also observed
2 two black males carrying items between the house at

3 Drive, Mr. Woltz's Toyota and the 2009 Mercedes.
4 He observed Mr. Woltz's roommate standing near the Toyota
5 with the two subjects. That roommate would later be
6 identified as Keith Fitzgerald. Mr. Fitzgerald just pled
7 guilty on April 1, 2011.

8 THE COURT: He was who, now?

9 MR. THURMOND: He was Mr. Woltz's roommate. Okay.

10 And Fitzgerald pled guilty on April 1, 2011 and
11 received a 35 year, day for day sentence. Investigators
12 early on the morning of December 21, have contacted Mr. Ed
13 Woltz. Mr. Woltz owned the house, owned the property where
14 his brother was living and Mr. Woltz advised that Keith
15 Allen Fitzgerald, a distant relative of the Woltz family had
16 been living there with his brother, Bill Woltz.

17 The arson team from the Sheriff's Office also
18 responded. Investigator Clay Adams quickly determined that
19 the arson, the fire was a result of arson. He found two
20 separate points of origin where the fire started. SLED
21 would later analyze some debris that was taken from the
22 scene and would determine that debris contained petroleum
23 distillates. There was a mineral spirits can found in the
24 house that would ultimately reveal the fingerprint of Keith
25 Fitzgerald on the mineral spirits can and mineral spirits

1 are in the same class or family as what the chemicals in the
2 debris revealed.

3 By mid-morning on December 21, 2008, the Aiken
4 Department of Public Safety, is now working these two
5 burglaries on Williamsburg Avenue. That
6 Street is the resident of Ms. Stilp and
7 Street is the resident of Dr. Stanton. That is a part-time
8 residence for them. He is an orthopedic surgeon, I believe,
9 in New York, and they spend several months out of the year
10 at their location on Williamsburg Avenue. And Detective
11 Sawyer new the Stantons and knew that they had a white
12 Mercedes and knew that the white Mercedes was missing and
13 simultaneously this Watson individual has given us the
14 information, I saw a white Mercedes there. So working
15 together the Department of Public Safety and the Sheriff's
16 Office quickly made that connection that we need to be
17 looking for this car.

18 Interestingly enough, the Mercedes, valued at
19 approximately \$60,000 was equipped with some technology
20 called a LoJack System where if the car is stolen the owner
21 can notify the company, LoJack, and the car will then send
22 out a GPS honing beacon. This was done early that morning
23 and Judge, by a stroke of good luck, the Anderson Police
24 Department had two of their cruisers equipped with the
25 computer system to pick up the honing device from a LoJack

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1 equipped vehicle if activated and within 30 minutes of that
2 system being activated the Mercedes was recovered in front
3 of an apartment complex in Anderson, South Carolina with Mr.
4 Keith Allen Fitzgerald asleep behind the wheel. And he was
5 taken into custody at that point. Investigators immediately
6 responded up to Anderson, attempted to interview Mr.
7 Fitzgerald. He asked, did it burn up, and Investigator
8 Flurry said, yes, and then he invoked his right to counsel
9 at that point. His clothing was taken from him and in March
10 of 2011 we would discover Mr. Ed Woltz's blood on the
11 camouflage pants of Mr. Keith Fitzgerald, a critically
12 important piece of evidence and probably the reason he
13 ultimately pled guilty earlier this month.

14 The vehicle was taken custody of by the Sheriff's
15 Office, was towed back to Aiken, South Carolina where it was
16 processed. The next couple of days, December 22 and
17 December 23, the investigation is on-going. The other
18 individuals, this defendant, Mr. James Alston and Mr.
19 Trevonta Williams were identified and located as suspects up
20 in Anderson. Both of their residences were searched. While
21 the location of Boulevard, Apartment was
22 the residence of Mr. Alston. That location was searched.
23 Evidence was taken from there to include, very importantly,
24 a pair of black work boots, sitting by the wall in the
25 kitchen.

1 In late December of 2008, Mr. Trevonta Williams was
2 kind of the first to come forward and the first to roll, if
3 you will, and tell investigators what happened. He gave a
4 video taped interview on December 29, 2008, where he advised
5 that a David Bailey on the early morning hours of December
6 20, drove him and Mr. Alston from Anderson to Aiken to be
7 with Keith Fitzgerald at the Woltz residence. Williams
8 would tell us at some point a plan was hatched to rob Mr.
9 Woltz. It was a Saturday, he had been paid on a Saturday,
10 he would have cash on him. Mr. Woltz was mentally slow, and
11 I'll get into that a little bit later one, collected things,
12 collected trains, collected baseball memorabilia. Had some
13 antique baseball bats. So a plan was hatched that when Mr.
14 Woltz walked out of his bedroom Mr. Fitzgerald would throw a
15 bed sheet over his head. Mr. Williams would advise that Mr.
16 Woltz was struck with a baseball bat, but that he, Williams,
17 did not participate in the beating of Mr. Woltz, that he was
18 tied up, a sheet was placed over his head, and that he was
19 ultimately hung in the closet.

20 So that statement that was given on the 29 was kind of
21 the framework for the whole case with what would become the
22 state's theory of the case minus some of the self-serving
23 statements that Mr. Trevonta Williams would make.

24 Mr. James Alston would give us a video-taped statement
25 on March 17, 2011. I've advised the Court of this drum-beat

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1 of forensics that we were sending back and forth to SLED
2 and, of course, given their current budget constraints we
3 get to send five pieces of evidence at the time, and
4 truthfully we could send evidence up there for the next 10
5 years in this case. That goes back to really, the
6 thoughtfulness of the Sheriff's Office in selecting what
7 items were to be analyzed knowing we could only send five up
8 there at the time, and knowing that it would be months and
9 months once we sent evidence up there, when it would be
10 returned. So on December 15, 2009, several items of
11 evidence were sent up and one of those was a black plastic
12 lid to a black Java coffee cup that was interesting to them
13 for some reason. That was recovered from the Mercedes, and
14 low and behold we got Mr. James Alston's DNA off of that
15 coffee cup lid, which would undeniably place him in that
16 vehicle or at least place his DNA on that coffee lid.

17 Additionally, Judge, on July 2, 2010, there were
18 several areas of the black boots that were recovered from
19 Mr. James Alston's apartment that were analyzed. At this
20 point, we had the DNA standard from Mr. Woltz, as well as
21 swabs from Mr. and Mrs. Stanton, Mr. Keith Fitzgerald, Mr.
22 James Alston, and Mr. Trevonta Williams.

23 So everything up there that we're getting we're having
24 to run DNA analysis on six people on every piece of evidence
25 that we're had.

1 So on July 2, 2010, Mr. Woltz's blood was found on
2 several locations of the black boots, and in the event that
3 this case proceeded to trial and Mr. Alston took a position
4 that those were not his boots, we tested the inside of the
5 boots for Mr. Alston's DNA and on March 9, 2011, in the next
6 batch of DNA that we got back from SLED we not only got Mr.
7 Fitzgerald's DNA on the camouflage -- excuse me, Mr. Woltz's
8 DNA on the pants that Mr. Fitzgerald was wearing, Mr.
9 Woltz's blood on Mr. Fitzgerald's camouflage pants. We also
10 got Mr. James Alston's DNA from the inside of the boots with
11 Mr. Woltz's blood on the outside of the boots. Pretty
12 compelling piece of evidence at that point. And Judge, then
13 sequentially once we get that piece of information back on
14 March 9, shortly thereafter we have the statement that James
15 Alston gives us, and he gives a statement that pretty
16 closely mirrors Trevonta Williams except he blames
17 everything on Trevonta Williams, whereas Trevonta Williams
18 blames everything on James Alston. So in his statement he
19 puts himself there, he admits to participating in the
20 burglaries, he admits to knowing that there was going to be
21 a robbery of Mr. Woltz, but denied taking a baseball bat,
22 denied striking Mr. Woltz with the bat, but clearly put
23 himself there and conceded that he knew what was going on
24 and what was going to happen.

25 Shortly after that statement was given in mid-March,

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1 Mr. Fitzgerald has decided that he has both of his
2 co-defendants who have now given statements against him,
3 albeit self-serving in parts, and we have the DNA now back
4 from SLED with Mr. Woltz's blood on Mr. Fitzgerald's pants.
5 Mr. Fitzgerald takes the position that, well, now y'all got
6 me. He then gives a statement which I think is probably as
7 close to the truth as we're going to get in this case, where
8 Mr. Fitzgerald tells us that he kind of hatched the plan for
9 the robbery. He knew that Mr. Woltz would have the money on
10 him that day, and that Mr. Woltz came out of the bedroom,
11 that he, Fitzgerald, threw the bed sheet over his head while
12 Mr. Alston and Mr. Williams struck Mr. Woltz with the bat,
13 and that ultimately he, Fitzgerald, smothered and killed Mr.
14 Bill Woltz.

15 So Judge that's kind of where we are in the case.
16 Those are the facts. Mr. Alston has a prior drug conviction
17 out of Florida for possession back in 2000, and a burglary
18 out of the state of New York from 2002. He and Mr.
19 Fitzgerald were cell mates in New York and that's how they
20 came to know one another. We have looked very closely at
21 his prior record and very closely at Mr. Fitzgerald's prior
22 record, looking to see if any of their prior convictions
23 would qualify as strikes under our law and would have hoped
24 to have struck them out if they were convicted of any of the
25 five indictments that Your Honor referenced earlier,

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1 however, their prior convictions are not violent or serious
2 offenses under South Carolina law.

3 THE COURT: How long had Alston and Fitzgerald been
4 released from incarceration before -- do you know?

5 MR. THURMOND: Mr. -- I know Mr. Fitzgerald was on
6 parole out of New York and was behind on his money, which
7 was ultimately the motivation for robbing Mr. Woltz.

8 Judge, I'll just tell you briefly about Bill Woltz. He
9 was 61 years old at this death. Of course, had never been
10 in trouble. Toxicology was done on him. There wasn't a drop
11 of alcohol or illicit drugs in his system. He had lived at
12 that residence on Westover Drive and following the arson,
13 Mr. Ed Woltz had the residence destroyed, bulldozed. It's a
14 vacant lot now on Westover Drive, but he had lived there for
15 8 to 10 years. Ed had bought his brother Bill a house and
16 the house was in Ed's name. Bill never married, never had
17 children. He had worked at Macy's for about eight years as
18 a stock worker doing very menial task, unloading boxes off
19 of a truck at 61 years of age. He was mentally slow. He
20 lived with his parents for a long time and never really
21 stayed by himself. I advised the Court that he collected
22 things and I'll let Ed elaborate on anything else that he
23 would like to tell the Court about his brother or about how
24 the whole process has forever impacted his family.

25 THE COURT: How did the deceased and Fitzgerald get

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1 together; are they related?

2 MR. THURMOND: Related distantly by marriage, I
3 believe. Once Fitzgerald was released from prison he needed
4 a place to stay. I think Ed Woltz and the Woltz family took
5 the position of we'll take him in. They weren't charging
6 him any rent, And this is what they got in return.

7 Judge, when you want to hear from Mr. Ed Woltz, I'm --
8 there may be something he wants to say to the Court.

9 THE COURT: Thank you, Solicitor. Let me finish with
10 this. Yes, sir.

11 MR. GIBBONS: Your Honor, this has been a long drawn
12 out process and this has been a lot to process with my
13 client, Mr. Alston. I have been through all the evidence
14 and we've talked about the number of different scenarios as
15 we tried to get to the bottom of what brought all this
16 about, and I don't know that there is an answer that he can
17 put into words.

18 He did come down here to see Keith Fitzgerald. Mr.
19 Fitzgerald did talk to him about getting his parole revoked
20 if he didn't pay some money. They had talked about going
21 around and doing some burglaries to pay some money, to try
22 and keep him on the street. That didn't work out. This
23 particular day, I mean, he tells me it wasn't a long drawn
24 out thing, just kind of an opportunity that popped into
25 their mind and got horribly out of hand really quick. They

1 had originally thought they could just knock him out, rob
2 him and then report it that someone else had broken in and
3 done it, but at some point it went horribly wrong and Mr.
4 Fitzgerald finally killed Mr. Woltz. He was part of this
5 situation. He knows he's done wrong.

6 He is originally from New York. I think he was born in
7 the Bronx and had a really -- kind of a horrific childhood.
8 When he was in his early teens or just before that he moved
9 out of that area but still up in the New York state area and
10 he's done little odd jobs, animal care, food services, some
11 horticulture work. He did serve some time in prison up
12 there where he was trained in masonry and horticulture.
13 When he got out he came with Mr. Fitzgerald down south.
14 They were roommates for a time at a mobile home park here in
15 Aiken. They kind of broke up. Mr. Alston moved to
16 Anderson, moved in with a friend up there and they were
17 apart for some period of time, but they were close friends
18 and he came down and saw him on a couple of occasions. This
19 is what happened during one of those occasions.

20 He is amazed to find himself where he's found himself.
21 Like I said, this wasn't what was contemplated. There were
22 some bad things contemplated, but not this.

23 He is 30 years of age. He understands that he will, in
24 all likelihood be 65 years of age, if he makes it that long,
25 when he gets out of prison. He said he never had an

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1 personal problems with Mr. Woltz. They had talked on
2 occasion. He never had any ill feelings, they never had any
3 words. This was just a crazy crime of money for a few
4 dollars. He's here before the Court asking for you, Your
5 Honor, to go along with this negotiated sentence.

6 MR. THURMOND: Judge, let me tie up one loose end on
7 the facts. Following the murder of Mr. Woltz, Mr. Alston,
8 Mr. Fitzgerald, and Mr. Williams took Mr. Woltz's car and
9 went driving around looking for houses to break in. They
10 found the two residences on Williamsburg Avenue and went
11 inside both of those residences. All three participated.
12 All three have given video statements admitting to breaking
13 into those two residences and admitting that it was in the
14 night time, which is an element of first degree burglary.
15 There was a flashlight that was recovered from the Mercedes
16 that Ms. Stilp identified as coming from her residence, and
17 there was several items of property from the Stanton
18 residence that Ms. Stanton identified from the trunk of the
19 Mercedes as being inside their house prior to the burglary.

20 THE COURT: Anything you want to tell me?

21 MR. ALSTON: Yeah. First and foremost, I'd just like
22 to apologize to everybody that had to do all this extensive
23 work. Like my lawyer said, none of this -- the death of Mr.
24 Woltz wasn't supposed to happen, and it was quite horrific
25 that this took place. I'd just like it to be known that

1 there's really not a day that doesn't go by that I don't
2 regret this. I've done a lot of stupid things in my life,
3 so to speak, and I won't -- minimize my actions in any
4 regards as far as this case is concerned. I don't blame my
5 childhood or anything like that for any of this. Quite a
6 few years -- I'm just hoping I get to see my family again.
7 I know the importance of family, and like I said, there
8 hasn't been a day that goes by that I just don't regret
9 everything, from day one. To say the least I'm very
10 apologetic, especially to Mr. Woltz's family. He was a nice
11 man and I'm very sorry for what happened. Words can't even
12 describe how I honestly feel inside. I don't know -- I know
13 there's no actual aid to helping someone with a lost person.
14 Me being a person that has lost quite a few people I know
15 exactly how hard it is. He was a very close family member
16 to the Woltz family and Keith Fitzgerald's family, and I'm
17 just really sorry all this happened. I wish it didn't go
18 down this way. I know if I could take it back I would. As
19 reality has it, it's not going to happen that way. I'm very
20 sorry.

21 THE COURT: All right.

22 Sir, is there anything you want to say?

23 MR. WOLTZ: Your Honor, I don't really know what to
24 say. My brother was truly a victim here. He was a very
25 kind gentle person. This gentleman just talked about how he

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1 wanted to see his family again, my family is gone. My
2 brother was it. That was it. My daughter has lost her
3 uncle. All my memories that my brother had are burned up
4 and gone. We have nothing left. What he's put us through
5 has been horrific. My daughter is in college. Cost her an
6 extra semester to deal with this. It's cost her an extra
7 three months of her life for an extra semester. We have no
8 memories left because they all got burned up or stolen.
9 This poor man lost his life for \$244 when he was giving
10 somebody a place to live, free, to help him. Probably would
11 have given him the money if he'd asked.

12 There's no much else I can say other than that.

13 THE COURT: It's just really nothing to say. I'm beyond
14 words.

15 MR. WOLTZ: I would like to thank the Solicitor's
16 Office and the Sheriff's Department for the great job
17 they've done.

18 THE COURT: Well, they certainly have, and hopefully by
19 this resolution none of us will have to be subjected to
20 these people doing the same type of thing again.

21 MR. WOLTZ: That's right. I hope not. Thank you.

22 THE COURT: All right, Mr. Alston, as to indictment
23 794, murder you are to be committed to the State Department
24 of Corrections for a period of 35 years. As to the
25 indictment for burglary first, 792, sentence of the Court is

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1 that you be committed to the State Department of Corrections
2 for a period of 35 years. As to indictment 793, burglary,
3 first degree, sentence of the Court you be committed to the
4 State Department of Corrections for a period of 35 years.
5 As to indictment 909, armed robbery, the sentence of the
6 Court is you be committed to the State Department of
7 Corrections for a period of 30 years. As to indictment
8 2017, arson second degree, sentence of the Court you be
9 committed to the State Department of Corrections for a
10 period of 25 years. And as to indictment 791, grand
11 larceny, sentence of the Court is you be sentenced to the
12 State Department of Corrections for a period of 10 years.
13 You will be given credit for any time served through today.
14 All the sentences will run concurrent. Good luck to you.

15 We'll take a few minutes break.

16 (This proceeding was concluded.)
17
18
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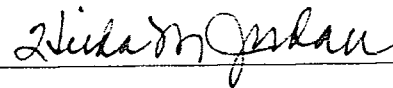
State v. Alston 4/21/11

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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 AIKEN COUNTY, SOUTH CAROLINA, ON THE 21 DAY OF APRIL, 2011.

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



Hilda M. Jordan, CVR-M

July 16, 2012

FORM 5

STATE OF SOUTH CAROLINA

County of AikenJAMES LEVON ALSTON
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

I 091215, 091216
M 005057, 015015
20100502 02017

APPLICATION FOR

POST-CONVICTION RELIEF

2012 CP-02 00373
 2009 GS-02 791, 792, 794, 809
 10-2017
 Filed 2-13-2012
 C.C.P. & C.J. - Aiken County, SC
 Anita Knappe, 800
 Deputy Clerk Time
 Trial Judge: J.A. Early III
 Trial Any: DeLoach, Gibbons
 Court Reporter: Hilda J. J. J.
 Sec. PCR Petitioner Solicitor
 General Sessions Atty. Gen.
 Appointed Asst.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Correctional Institution, 990
Wisacky Hwy, Bishopville SC 29010
2. Name and location of Court which imposed sentence Court of General
Sessions, Aiken County
3. Name(s) of co-defendant(s) (if any) Keith Fitzgerald
TRAVONTE Williams
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-02-00791 GRAND LARCENY
 - (b) 2009-GS-02-00792 Burglary - First Degree

4.

(d) 2009-GS-02-00794 MURDER

(e) 2009-GS-02-00909 ARMED ROBBERY

(f) 2010-GS-02-02017 ARSON - SECOND DEGREE

(c) 2009-CS-02-00793 Burglary - First Degree

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

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) ATTORNEY DID NOT ADVISE ME OF APPEAL

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) BRADY violation
- (b) counsel failed to investigate alibi
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) statement of defendant's girlfriend with help
- (b) defendant was not present at crime
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) PCR is proper venue
 (b) _____
 (c) _____

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

(a) your arraignment and plea? YES
 (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?
NO

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. DeGrant Gibbons, Public Defenders Office,
410 Barnwell Ave., N.W., P.O. Box 2247,
Aiken South Carolina 29802
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. _____
 iii. _____

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

NEW TRIAL

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

No

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, JAMES LEON ALSTON, 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.

Mr. James Leon Alston

SWORN to and subscribed before me this 10
day of Feb, 2012.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, JAMES LEVON ALSTON, 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.

Mr. James Levon Alston
Applicant

SWORN or affirmed to and subscribed before me this
10 day of Feb, 2015.

Debra Sines
Notary Public

My Commission Expires: 11-4-2015

James L. Alston, 345846
 Lee Correctional Institution
 990 Wisaiky Hwy.
 Bishopville SC 29010

Liz Godard
 Clerk of Court, Aiken County
 PO Box 583
 Aiken SC 29802-0583

Ms Godard:
 Enclosed is my application form for
 Post Conviction Relief. Please clock stamp and
 file an original for the court and return
 a clock stamped copy to me at the above
 address. Thank you for your time and
 efforts.

Sincerely,

Mr. James Laven Alston

JAMES LAVEN ALSTON
 February 9, 2012

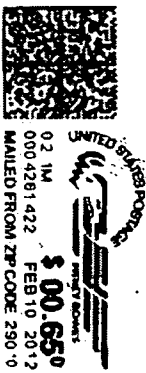
James Alston #345846
Lee Ann. K&R 2248
990 W. Sackety Hwy
Bishopville SC 29010

Cindy

Liz Coates, Aiken County Clerk

PO Box 583

Aiken SC 29802-0583



29802-0583

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

James L. Alston, #345846,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

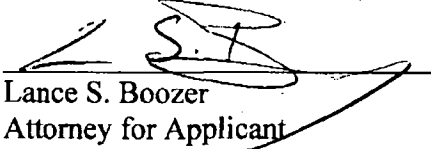
C/A NO: 2012-CP-02-373

**AMENDMENT TO PRIOR
APPLICATION FOR PCR**

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed February 13, 2012:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (c) Involuntary guilty plea

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 1331 Park Street
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 December 5, 2013

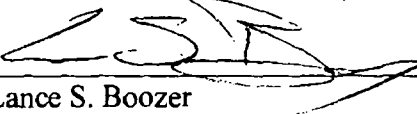
FILED December 9, 2013
Leij Hedard
 C.C.P. & G.S.
Anna Comer
 Deputy Clerk 8:30 am

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2012-CP-02-373
	)	
James L. Alston, #345846,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE BY MAIL
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

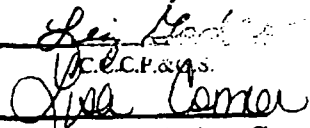
Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1331 Park Street
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
December 5, 2013

FILED December 9 2013

J.C.C.P. & S.
Deputy Clerk 8:30am

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
	)	2012-CP-02-0373
	)	
James L. Alston, #345846,	)	
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief, filed February 13, 2012, 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 Aiken County Clerk of Court. The Applicant was true bill indicted during the June 2009 term of the Aiken County Grand Jury for murder 92009-GS-02-00794); Burglary – First degree (2009-GS-02-00792); armed robbery (2009-GS-02-00909); and grand larceny (2009-GS-02-00791). Additionally, the Applicant was true bill indicted during the December 2010 term of the Aiken County grand Jury for Arson – Second Degree (2010-GS-02-02017). The Applicant was represented by DeGrant Gibbons, Esquire, on all five charges. On April 21, 2011, the Applicant pled guilty as indicted to all five charges. The Applicant was sentenced by the Honorable Doyet A. Early, III, to a sentence thirty-five years imprisonment for murder, thirty-five years imprisonment for burglary – first degree, thirty years imprisonment for armed robbery, twenty-five years for arson – second degree, and ten years for grand larceny. All sentences were pursuant to negotiated and were to run concurrently. The

Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, and the Applicant's records from the South Carolina Department of Corrections. The guilty plea transcript has been requested, and will be forwarded 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. Failure to file appeal
 - b. "counsel failed to investigate alibi"
2. Brady violation
 - a. "statement of defendants girlfriend with help defendant was not present at crime"

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, SCRCP.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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, 88 L.Ed. 2d 203 (1985).

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

IV.

The Respondent construes ground that "statement of defendants girlfriend with help defendant was not present at crime" to allege that the State withheld favorable evidence in

violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

V.

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

VI.

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

[signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

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

June 14, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2012-CP-02-0373
	)	
JAMES L. ALSTON, 345846,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Bradley A. Brodie, Esquire
Smith Massey Brodie Guynn & Mayes, PA
Post Office Box 519
Aiken, SC 29802-0519

DATED this 14th day of June, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2012-CP-02-00373

3
4 JAMES ALSTON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Monday, May 18, 2015

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE TANYA A. GEE

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Lance S. Boozer, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
Daniel F. Gourley, II, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29803-5232
25

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1 ON MONDAY, MAY 18, 2015 AT 10:07 A.M.:

2 MR. GOURLEY: James Levon Alston.

3 May it please the Court. Your Honor, this is James
4 Alston versus the State of South Carolina, Docket Number
5 2012-CP-02-373.

6 Presently confined in the South Carolina Department
7 of Corrections pursuant to orders of commitment of the
8 Aiken County Clerk of Court. He was indicted at the June
9 2009 term of the Aiken County Grand Jury for murder,
10 burglary in the first degree, armed robbery and grand
11 larceny. He was additionally true-bill indicted during
12 the December 2010 term of the Aiken County Grand Jury for
13 arson in the second degree. Mr. Gibbons represented him.

14 On April 21st, 2011, he pled guilty as indicted
15 before the Honorable Doyet A. Early the Third. Judge
16 Early sentenced him to 35 years imprisonment for murder,
17 35 years for burglary in the first degree, 30 years
18 imprisonment for armed robbery, 25 years for arson in the
19 second degree and 10 years for the grand larceny. All
20 sentences were pursuant to negotiations and were run
21 concurrently.

22 He subsequently filed an application for post-
23 conviction relief on February 13th, 2012, alleging
24 ineffective assistance of counsel and a Brady violation.
25 Applicant amended his application on December 9th, 2013,

1 alleging that he was being held in custody unlawfully
2 based on the involuntary guilty plea. The State made its
3 return on June 14th, 2012. And he's represented in this
4 matter by Mr. Boozer.

5 THE COURT: All right. Thank you. Mr. Boozer?

6 MR. BOOZER: Thank you, Your Honor. If it pleases
7 the Court.

8 And just to add -- I'm not sure, Mr. Gourley, if
9 you have this in your file -- there was a second
10 amendment --

11 MR. GOURLEY: Yes.

12 MR. BOOZER: -- that was made by way of February
13 20, 2014.

14 THE COURT: 2015?

15 MR. BOOZER: 2015. Excuse me.

16 MR. GOURLEY: That's right.

17 MR. BOOZER: Sorry.

18 THE COURT: And what are the additional allegations
19 in that? Are there any additional allegations?

20 MR. BOOZER: There are, Your Honor.

21 THE COURT: Okay. Please.

22 MR. BOOZER: One of the allegations is whether the
23 State violated the Petitioner's rule five due process
24 rights to have all evidence in his case. Additionally did
25 have counsel call Petitioner to plead guilty by way of

1 coercion when he told Petitioner he could get a life
2 sentence or death penalty when he knew that to be untrue.
3 Additionally no Blair hearing. It was Petitioner's right
4 to a Blair hearing under state law. And counsel knew he
5 had serious mental health problems.

6 Your Honor, that also contains a claim that I think
7 is duplicative by way of violation of due process, the
8 sixth amendment and the 14th amendments as well as a claim
9 for conflict of interest. Petitioner's claim is based on
10 his co-defendants were also represented by the public
11 defender's office and he feels that his representation by
12 the public defender's office created a conflict of
13 interest.

14 THE COURT: Okay.

15 MR. BOOZER: And, Your Honor, I do have a copy of
16 that amended application. I'm happy to hand that up to
17 the Court.

18 THE COURT: I think that I have it. The second
19 amendment to prior application for PCR filed by you
20 February 15th, 2015?

21 MR. BOOZER: That's correct, Your Honor.

22 THE COURT: I have it.

23 All right. Mr. Boozer, you may call Mr. Alston.
24 You will ask those questions that I had asked of
25 Mr. Clement as a threshold matter so we don't need to do

JAMES ALSTON - DIRECT BY BOOZER

1 it twice regarding his understanding.

2 MR. BOOZER: Absolutely, Your Honor.

3 THE COURT: We'll just go ahead and streamline it
4 then, and have you call your first witness.

5 MR. BOOZER: Thank you, Your Honor. We'll call
6 Mr. Alston to the stand.

7 JAMES ALSTON, having been duly sworn, was examined
8 and testified as follows:

9 THE CLERK: Please have a seat in the witness box
10 and state your full name for the Court.

11 THE APPLICANT: Where? Over here?

12 MR. BOOZER: Yeah.

13 DIRECT EXAMINATION

14 BY MR. BOOZER:

15 Q. Mr. Alston, how are you doing today?

16 A. Pretty good.

17 Q. Good. We'll need you to speak up so that everyone
18 in here can hear you including Madam Court Reporter
19 because she has to write down everything that you're going
20 to say. Okay?

21 A. Okay.

22 Q. Now you've obviously filed an application for post-
23 conviction relief?

24 A. Yes, sir.

25 Q. Okay. And do you understand that the only thing

JAMES ALSTON - DIRECT BY BOOZER

1 that this Court can do for you today is if this Court
2 grants your application for post-conviction relief, the
3 only relief that you can get is to be given a new trial on
4 your original charges or possibly a belated appeal?

5 A. Belated appeal meaning?

6 Q. An appeal from your guilty plea.

7 A. Okay.

8 Q. Do you understand that?

9 A. Yes, sir.

10 Q. Okay. This Court cannot reduce your sentence,
11 can't cut any time, can't do anything like that. Do you
12 understand that?

13 A. Okay. Yes, sir.

14 Q. Okay. And currently you're serving a 35-year
15 sentence for murder, 35-year sentence for burglary first,
16 30 years for armed robbery, 25 years for arson, and 10
17 years for grand larceny, all concurrent?

18 A. That's correct.

19 Q. Okay. Do you understand that if you were
20 successful today and go back, you would face all of those
21 charges and any other charges that you were originally
22 charged with?

23 A. Yes, sir.

24 Q. All right. And you do understand that if you went
25 back and hypothetically if you went to a trial and were

JAMES ALSTON - DIRECT BY BOOZER

1 found guilty at trial that you could get potentially a
2 life sentence or even more?

3 A. Yes, sir.

4 Q. Okay. And knowing all of that, do you still wish
5 to go forward today?

6 A. Yes, sir.

7 Q. And you and I have discussed that already?

8 A. Yes, sir.

9 Q. Okay. Now, you filed an application for post-
10 conviction relief. You have quite a bit of allegations.

11 A. Yes, sir.

12 Q. And I know that you don't have anything up there
13 with you, so if the Court will allow me a little bit of
14 leisure in going through your allegations --

15 THE COURT: Sure.

16 BY MR. BOOZER:

17 Q. -- we'll walk through your application. Okay?

18 A. Yes, sir.

19 Q. Now Mr. Alston, you've filed a claim for
20 ineffective assistance of counsel in that your lawyer
21 failed to first file an appeal from your plea; is that
22 right?

23 A. Sorry. Say again.

24 Q. Your lawyer failed to file an appeal from your
25 plea; is that correct?

JAMES ALSTON - DIRECT BY BOOZER

1 A. Yes.

2 Q. Tell the Court in detail what you mean by that and
3 if you asked your lawyer to file an appeal and when you
4 asked.

5 A. Well, initially when I had received the 35 years --
6 I was sentenced to 35 years by Mr. Early, Judge Early --
7 at that time I was unaware of the appeal process. I was
8 unaware of any possible appeals, you know, for my case.

9 Honestly to tell you truth, sir, like, at that
10 point in time I didn't even know anything, you know, but
11 the 35 years that I had received. And it wasn't until I
12 actually got to the county jail and some of the other
13 people that were sentenced that day had told me that there
14 were appeal processes, a PCR process and all these other
15 processes that, you know, I had a possibility of using to
16 help me, you know, I guess to right the wrong, if you
17 will.

18 But that's all I knew about, you know, the appeal
19 process at that point in time.

20 Q. Did your lawyer ever explain to you that you could
21 file an appeal?

22 A. No.

23 Q. Okay.

24 A. No, sir.

25 Q. Did you ever ask your lawyer to file an appeal?

JAMES ALSTON - DIRECT BY BOOZER

1 A. No, not at the time. At that point in time right
2 at, I would say, a couple days before I was sentenced to
3 the 35 years, it was my understanding that, you know, I
4 didn't even know I was going to get 35 years at that point
5 in time. It was never told to me.

6 The day of my sentencing is when I actually knew I
7 was getting 35 years because the judge actually had made
8 mention of it right then and there. The solicitor,
9 rather, Mr. Strom Thurmond, had made mention of 35 years
10 then. But as far as the negotiated plea or anything like
11 that, I had no idea that this was already, you know,
12 sought out and, you know, they already had put this
13 together. I had no idea.

14 Like I said, the day I got sentenced was the only
15 day that I knew that I was receiving 35 years.

16 Q. Your lawyer never told you that there was any sort
17 of recommendation or negotiation --

18 A. No, sir.

19 Q. -- or that you were looking at 35 years?

20 A. No, sir.

21 Q. Okay. Had you known that to be the case would you
22 have pled guilty?

23 A. No, sir.

24 Q. Now you've also alleged that your lawyer failed to
25 investigate -- and who was your lawyer?

JAMES ALSTON - DIRECT BY BOOZER

1 A. Mr. Grant Gibbons at the time.

2 Q. Okay. Was he appointed to represent you?

3 A. Yes.

4 Q. Okay. You've alleged that he failed to investigate
5 what you call alibi witnesses?

6 A. Yes.

7 Q. What is it that you asked Mr. Gibbons to do?

8 A. Initially when he had came and see me, he made his
9 first attempt to come and visit me and I had expressed to
10 him that the people that I lived with or lived around at
11 that time, my neighbors that lived in Anderson Crossing
12 where I was staying, Anderson, South Carolina, that they
13 were aware of my whereabouts and one of the co-defendants
14 that had put me involved directly with this, this case
15 that he and I were enemies and that these people knew that
16 because it was an altercation, a physical altercation that
17 occurred between he and I at that point in time.

18 And, I had asked him at that point in time to
19 please go talk to my neighbors because two of them at that
20 point in time were there when I was, you know, being
21 brought home. Two of them by the name of Megan and
22 Mason. I don't know their last names unfortunately, but
23 they lived directly across the hall from me. And they saw
24 when I came in that night, you know. They spoke to me
25 briefly. Asked me if I was all right and whatnot.

JAMES ALSTON - DIRECT BY BOOZER

1 You know, I was pretty much inebriated by then but
2 when I had told them that, I had told them all the people
3 that I believe would speak up and see, you know, what was
4 going on that night. And Susan Frame, namely one of the
5 people that was looking out her window, I really didn't
6 get a chance to talk to her too much. You know, I was,
7 like I said, inebriated at that point. But when I had
8 told them that he was, like, "Okay, well I'll get on it."
9 And that was the end of that.

10 He never made mention of if he was going to go talk
11 to her again or anything like that. I've tried on quite a
12 few occasions afterwards, you know, asking him to please
13 go talk to these people and it never happened. And even
14 in my rule five, I have it there where almost a year and
15 eight months later he went back to where I lived and by
16 then people moved on. And his investigator came to me
17 within that period of time and was telling me that a
18 family lived there that had a wife and a husband and seven
19 children or something like that, which at the time I lived
20 there nobody had a family that big, period.

21 And they said that I had came in hot and heavy and
22 all of this other stuff. And I was, like, these people
23 never lived there, you know, and if you would just look
24 on, you know, the landlord's report and see who lived
25 there you would know that these people aren't telling the

JAMES ALSTON - DIRECT BY BOOZER

1 truth.

2 So, after that there was no mention after that
3 about that. I had kept asking him on numerous occasions
4 to please go and talk to these people. He never did that.

5 Q. All right. You also have a claim, and you're going
6 to have to help me with this one a little bit, a statement
7 of girlfriend would help defendant not present at crime.

8 A. Well, it was -- there was a girl named Sierra.
9 Pretty much the night that I had came back to Anderson
10 County, I had spent some time with her and, you know, I
11 was working at Petsmart for a period of time.

12 And, at one point in time we had got, got a
13 relationship going between each other. And she, she --
14 once again, she was there. And I also told him that,
15 Mr. Gibbons. I had told him about Sierra that I used to
16 work with and I was spending time with her that night of
17 the incident. And that she would have placed me in
18 Anderson at a certain time rather than the time that
19 somebody had -- I guess, from what I understand his
20 investigator told me that somebody said that I had
21 returned somewhere between the hours of four o'clock and
22 three o'clock, or something like that, in the morning
23 which is untrue.

24 And, like I said, she has a child, she had a child
25 at that time and I spent time with her during that time.

JAMES ALSTON - DIRECT BY BOOZER

1 So she wasn't, like, the type of person to stay up all
2 night. That wasn't her, you know, her thing, but. So...

3 Q. Anything else regarding that allegation?

4 A. As far as?

5 Q. Anything you wanted to explain to the Court about
6 what you felt your lawyer should have done differently or
7 how you feel you were prejudiced with regards to this
8 allegation.

9 A. Uh. Yeah, I really believe, like, had he taken the
10 time, you know, and I understand people are quite busy
11 when it comes to legal matters but, you know, had he would
12 have taken the time to just actually follow up on what I
13 was asking him to do and I think it was very crucial that
14 these people that I was expressing to him that knew my
15 whereabouts at that time, I really believed that
16 ultimately -- I don't believe that I would have even
17 thought about taking time for anything. It felt like I
18 was -- I had no hope there because everybody I asked him
19 to go interview, it was no reason why he would not go and
20 talk with these people. He never did. Like, he just
21 never even attempted. In a year and nine months or eight
22 months later, I mean, and people move left and right and
23 then when I asked him about it towards that time he starts
24 telling me that this person might have moved to Florida
25 and this this person might have moved over here. So by

JAMES ALSTON - DIRECT BY BOOZER

1 then my hope is just, it's diminished by then, you know.

2 Q. You have another claim that you made by way of your
3 second amended application and that was whether the State
4 violated Petitioner's rule five due process right to have
5 all evidence in your case.

6 A. Correct.

7 Q. Explain that allegation to the Court.

8 A. Well, after, you know, reviewing some other
9 paperwork and stuff, and I had some people sending me
10 legal material, it was my understanding that I was allowed
11 to have or allowed to view or have knowledge of anything
12 dealing with me in this case.

13 And at that time Mr. Travonte Williams'
14 statement -- you know, the only statement I heard and got
15 to see firsthand was Keith Fitzgerald's statement of the
16 alleged incident.

17 Q. That was a co-defendant?

18 A. Yes. He's the co-defendant. Keith Fitzgerald is
19 one of the co-defendants involved in this case. He was
20 the only statement that I got to hear. And I kept asking
21 about the other ones and all I kept getting from him was,
22 "Well, at some point in time we'll go over it." That
23 never happened. And I stayed in that county jail almost
24 two years.

25 And the only statement, like I said, I got to hear

JAMES ALSTON - DIRECT BY BOOZER

1 was Mr. Fitzgerald's, my co-defendant. Whereas the other
2 person that actually put me directly involved in this, I
3 felt that it was important that I got to hear exactly what
4 I was being accused of and his account of what was going
5 on. And when I asked him about it, he would never give me
6 a direct answer. I would get vague answers like, "Well,
7 we don't need to concentrate on that right now," or, you
8 know, "At some point in time we'll cross that bridge when
9 that bridge comes."

10 Susan Frame had made two statements. She actually
11 sought me out while I was in the county jail and got in
12 contact with Mr. Gibbons, my lawyer. And told him that
13 she knew what had happened that night and whatnot and made
14 two statements. And his, his account of that was not to
15 bring her on the stand because she had a DSS case, not to
16 make her look bad or something like that. And I just, you
17 know, by then it just made me feel like he wasn't in my
18 favor.

19 Q. All right. Let me ask you this: You've got two
20 allegations that kind of dovetail into each other. One of
21 which is an involuntary -- you're alleging your plea was
22 involuntarily made as well as whether -- and this was made
23 by your second amended application -- that whether counsel
24 called Petitioner to plead guilty by way of coercion when
25 he told Petitioner he could get a life sentence or death

JAMES ALSTON - DIRECT BY BOOZER

1 penalty when he knew that to be untrue.

2 Those allegations kind of go together. So let me
3 ask you this: Why was it that you pled guilty in this
4 case?

5 A. Well, like I said, initially, Mr. Boozer, I
6 really -- I was headstrong on going to trial. And I think
7 what broke me fairly quickly at the end was when I got in
8 contact with my sister who lives in New York, the Bronx,
9 New York. Her name is Ebony Milliner. And she's like a
10 mother to me. She is my mother figure.

11 When she said that she spoke with my attorney and
12 his investigator, from my understanding from what our
13 phone conversation he had given me the address and a phone
14 number, you know, to contact her. And when I talked to
15 her, you know, she was crying on the phone and she was
16 telling me how they said that it was a good possibility
17 that I'd never see her again or, you know, that there's a
18 good chance that they could take my life, you know. I was
19 facing the death penalty. And, you know, all of this
20 really extreme stuff.

21 And she kept pleading to me, she said to me
22 directly, she said, you know, "Please don't let these
23 people take your life like that. I miss you. I love
24 you. Please think about your nieces and nephews."

25 And not only that his investigator, he became a

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1 little belligerent with me at one point in time. We had
2 got into a couple arguments because I kept asking him, I
3 said, "Well, do you believe that I'm guilty or not
4 guilty." That was one of the questions I asked his
5 investigator. He kept coming to the county jail to see
6 me. And he said, "Well, I don't believe that you directly
7 did it but I do believe you know something about it."
8 And, he said, "If you really care about your sister and
9 your family like you say you do, then you would cooperate
10 with us."

11 So at that point in time I felt, like, okay, well,
12 you're supposed to be defending me here and you're making
13 it -- make me feel like I don't have any defense at all,
14 you know. And then once I talked to my sister again and
15 she started crying on the phone and saying that he was
16 afraid that these people were going to take my life.

17 By then I broke down. I said that was it. I said,
18 just, you know -- I had given up. I had given up.

19 Q. You just testified that you were under the
20 impression that you could receive the death penalty.

21 A. Yes.

22 Q. Why were you under that impression?

23 A. Because Mr. Gibbons' investigator came to me and he
24 told me. He said that there was a good chance that if I
25 didn't play ball, as he put it, that I would be facing the

JAMES ALSTON - DIRECT BY BOOZER

1 death penalty. And that there was a good chance that they
2 would win and that of course I would get the needle.

3 He told me that this was down south. They do not
4 do law the same way that they do it in New York. He said
5 that nobody's going to believe, in a jury, that I had
6 nothing to do -- I wasn't directly involved with the
7 murder or the assault of Mr., the deceased, Mr. Woltz.

8 I asked him, I said, "Well, what if the facts are
9 pointing to the fact that I didn't do this and I could
10 prove that that guy's lying." And the response I got from
11 him was, "Well, they'll hear the case and know that you're
12 probably, you know, just trying to save your own skin,"
13 and it's a tit for tat, you know. Now that you're going
14 to speak up and say that, you know, this guy's lying on
15 you or whatever. He's like that they wouldn't believe
16 that.

17 And Mr. Gibbons at one point in time expressed to
18 me that they would take all the evidence and he made a
19 physical gesture to say that they would plaster it on a
20 wall and let it fall where it may. Those were his exact
21 words.

22 And by then I was just, I just said, "Whatever,"
23 and I just, you know, we kind of got into a little
24 altercation. Not Mr. Gibbons but his investigator.

25 There was also another point in time where they

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1 brought me to the sheriff's office, ACSO, and he had
2 brought me food. They had brought me a McDonald's meal.
3 And he asked me was I willing to talk and, you know, deal
4 with the case now. And I told him, I said, I'll tell him
5 everything I knew.

6 So when we got underway he asked me if I had a meal
7 like this in a long time. And I said no. And he said,
8 "Well, go ahead and enjoy it." But for some odd reason
9 something just didn't feel right to me, you know. We just
10 went from an extreme, you and I arguing to, like, a couple
11 days later I'm sitting in the sheriff's office waiting on
12 the solicitor and he brings me a meal.

13 So, you know, after he had asked me he came back --
14 they went in the hallway. He comes back in. And he asks
15 me, he says, "Well," you know, "are you going to play ball
16 here or what." And I was, like, "what do you want to
17 know." And he's, like, "What do you know about the case."
18 And I told him. I said, "I had nothing to do with the
19 assault of that man or the murder." He got upset,
20 snatched the bag, and told me that -- he walked to one of
21 the officers that was there and told them that I wasn't
22 going to cooperate. And they brought me directly back to
23 the county jail.

24 Q. Okay. You have another allegation but I think you
25 may have already covered it on the failure to investigate.

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1 Has that been covered?

2 A. Yeah. As far as, like, when it comes to him not
3 investigating things. Everything, like I said, that I've
4 asked him to look into. Also some of the stuff that was,
5 like, the phone conversations. Mr. Gibbons had alerted me
6 that the solicitor at that time had made -- was asking for
7 a copy of the jail phone records. And at that time there
8 was discussions of what had happened that night. And he
9 said, Well, be careful what you're saying on the phone,"
10 which, you know, obviously is good sound advice. But he
11 was saying that, "Be careful what you say on the phone
12 because, you know, they do record the conversations and
13 they are, you know, recording your conversations."

14 So I said to him that I didn't say anything I
15 believed that was incriminating. I just said what, you
16 know -- when they asked me a question I answered it and
17 that was the end of that.

18 And it never dawned on me, you know, to ask, you
19 know, before about the phone records. But towards the end
20 I started asking, I said, "Well, you know what, there was
21 a conversation about, you know, who knew what and, you
22 know, how they saw me and whatnot." Susan Frame and
23 Wesley Bolen, one of the parties that was there the night
24 that I made it back to my apartment. And I asked him if
25 he would be willing to, you know, get a recording or let

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1 me view the recordings and see if we can come up with
2 something there, you know, because of the conversation
3 that was being held on, you know, the other end as well as
4 my sister.

5 And, the next thing I know it went from saying,
6 yeah, he'll, you know, talk about it, or something, with
7 the solicitor. And that never happened.

8 And I also feel that that he did a poor job because
9 he turned around and the things that he would tell me was,
10 like, "Well, they're not going to believe that you had
11 nothing to do with this, you know, period, irregardless of
12 what facts you had, you know, they're not going to believe
13 that." So, I mean...

14 Q. Tell the Court about what you mean by conflict of
15 interests you feel that the public defender's office has.
16 That's one of your allegations.

17 A. In the beginning of -- in the beginning of this
18 case it seemed like he was very strong and adamant in
19 trying to defend me. In the beginning of the case. And,
20 like, little things, like the preliminary hearing that I
21 was asking about, you know, if there was any way that, you
22 know, that I'd get a copy of it and whatnot. And that
23 never happened. He never alerted me to anything that --
24 if I was going to have one or not.

25 Also it was just things that he was doing that

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1 just, just made me feel like he wasn't in my favor at all.
2 Things that he would say, you know, he would come for,
3 like, five minutes or something. And I'd ask him if he
4 did something that I asked him to do and he'd be, like,
5 you know, he didn't even try. I didn't even think he
6 tried.

7 But Ms. Alves, I believe was her name, or Alvarez,
8 she was also my co-defendant's lawyer. And my other
9 co-defendant, I believe also, Mr. Travonte Williams, I
10 believe he had a lawyer in the same public defender's
11 office. And it seemed to me at one point in time from him
12 actually wanting to work on my case to working on my case
13 just got diminished that quickly. And I think, you know,
14 personally I was, like, well, if he's the chief public
15 defender of this office, I would think that he's
16 representing me. And these people are representing these
17 people, you know, my co-defendants, out of the same
18 office.

19 You know, to me it just seemed a little unfair
20 there. And I thought maybe for some odd reason -- I got
21 the impression that he wasn't going to do his job
22 properly, you know. That's just the impression that I got
23 because he -- I just don't see how, you know, all three of
24 us working out of the same office, you know, having
25 lawyers out of the same office that anything was going to

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1 come out fair. I didn't think that was fair at all.

2 Q. Okay. You've also alleged that no Blair hearing
3 was conducted.

4 A. Right.

5 Q. Explain to the Court what your allegation is
6 regarding that.

7 A. At the point in time I wasn't really sure about
8 what a Blair hearing was. And it was made mention to me
9 by somebody, once again, that I was in the county jail.
10 He was working on the case. Well, he got the information
11 from his lawyer rather.

12 But at that time I had a long, a longstanding
13 mental health history for PTSD and dysthymia. And
14 unfortunately when I'm not medicated -- and I won't blame,
15 you know, not being medicated for being, you know, out of
16 it sometimes. But I do know I did need help at that time.
17 And it felt like I was at a point in my life where -- I
18 even had a suicide attempt in the county jail.

19 And Mr. Gibbons was aware at that point in time
20 that I was a mental-health patient. And I was under a lot
21 of stress, obviously. You know, someone telling you that
22 you have the death penalty in front of your face, you
23 know, there's a lot of stress behind that and not having
24 any support system whatsoever.

25 Q. Do you understand what you're doing here today?

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1 A. I'm sorry?

2 Q. Do you understand what you're doing here today?

3 A. Yes. You've made it -- previous occasions where
4 we've talked, you made it quite clear.

5 Q. But you're not under any mental condition today or
6 medicated condition --

7 A. No.

8 Q. -- that's going to keep you from understanding what
9 we're doing here today?

10 A. No. I'm medicated now. I have medications that I
11 take, you know. I'm coherent. I'm fine. I can
12 understand everything that's going on.

13 Q. Okay. You've also got an allegation that you feel
14 your due process rights were violated. Please explain
15 that allegation.

16 A. There was points in the case where certain aspects
17 of, like, evidence that was already given to the other
18 co-defendants that I had, Mr. Fitzgerald and Travonte
19 Williams, they had access to stuff that I didn't receive.
20 And namely one of them was Susan Frame, one of Susan
21 Frame's -- her statement that she made, voluntary
22 statement.

23 There were other little things that I had asked
24 for. Like, I can't really recall what it was, but there
25 were several little items that I had asked that was

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1 dealing with my rule five. And I asked about them. He
2 said, "Well, you don't need to be concerned about it."
3 Like, the crime scene. That was one of them. I asked to
4 view that. He said that that wasn't important. I wanted
5 to view Mr. Wesley Bolen's statement, Andrew LaRoy's
6 statement, Patricia McDonald's statement. I believe it
7 was Travonte Williams' statement most that I was really
8 adamant on trying to, you know, get to hear and was denied
9 that all the way around the board.

10 And because I knew that it was there, that's why I
11 was asking for it because I knew it was there. And I
12 wanted to actually go over this stuff with him. And that
13 never happened.

14 The only thing that he did go over with me was
15 Mr. Fitzgerald's statement in which Ms. Tesa Culbertson, I
16 believe is her name, that works out of his office, the
17 paralegal. She had brought the DVD of the statement that
18 he had made. But initially, like, I had asked him as you
19 could see in the rule five there's, in the supplementary
20 report where they said that I had made a statement.

21 And I found it quite odd and I asked him. I said,
22 "How is it possible that they took an audio and video
23 recording of everybody else's statement but yet they're
24 only going by word of mouth by my statement." You know,
25 and I just thought that was kind of odd that after I had

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1 asked him that he says to me, he says, "Well, they don't
2 really have to do this and they don't really have to do
3 that."

4 And I kept saying, "Why does that make any sense
5 that they would record both of theirs but not record mine
6 and just trying to go off of word of mouth," you know.
7 And when I asked him to retrieve them he made no, no
8 attempts whatsoever to turn any of that stuff over.

9 Q. How many times do you think you met with
10 Mr. Gibbons prior to your plea?

11 A. In person, I would say I had met Mr. Gibbons
12 approximately three to four times.

13 Q. How long was he appointed to represent you before
14 your plea?

15 A. I'm sorry?

16 Q. How long was he appointed to represent you before
17 your plea?

18 A. I would like to say I had, I had started this case
19 2008, December, and I believe I got sentenced somewhere in
20 2010. So it was approximately, about two years almost.
21 Almost two years.

22 Q. You've also testified that you met with his
23 investigator?

24 A. Yes.

25 Q. Do you know how many times you met with his

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1 investigator?

2 A. Several times. I cannot really recall how many
3 times offhand. I know there was a lot of times where he
4 just came to the county jail. And, like, as I said
5 before, for some odd reason we just -- we just could not
6 get along at all. And I've even asked him, instead of him
7 coming to see me that I would prefer to talk to
8 Mr. Gibbons about my case because I wasn't feeling
9 comfortable with his investigator at all.

10 Q. Did you and Mr. Gibbons discuss your defenses to
11 the charges?

12 A. No.

13 Q. Do you know what your defenses --

14 A. No, the closest we got to discussing a defense was
15 me asking him if he would be willing to actually go to
16 talk to the people that I had asked him to go talk to that
17 I believe were alibi witnesses in my heart that I believe
18 that they would have said, you know, he was here at this
19 time.

20 And I don't believe that he even attempted to put a
21 defense together. And the reason also because I asked him
22 about the time line about the case itself. It was so many
23 inconsistencies as far as where we were at at certain
24 times in the day and afternoon leading up to the actual
25 incident. And a lot of it is very inconsistent. And I

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1 brought that up to him as well as I was getting things in
2 that he was sending me from his office. And I asked him
3 if he noticed any of this stuff and he was, like, "No,
4 well, you know, we can go over that." And that never
5 happened.

6 Q. Did you want a trial in this case?

7 A. Yes. Initially, yes, I did.

8 Q. Okay. Did you feel that Mr. Gibbons would have
9 been prepared to present a trial for you or defended you
10 at trial?

11 A. No. When I took the plea at that point in time,
12 like I said, unfortunately I don't think mentally I was
13 fit. I don't think mentally I was at the standpoint with
14 him where we had a good understanding with each other.

15 And I don't think, honestly, I felt comfortable
16 saying that he would have done his job correctly. Suffice
17 it to say that I do know that -- I believe that, you know,
18 obviously through word of mouth in the county jail
19 everybody said that he's a pretty good lawyer. And I had
20 faith in him in the beginning. Like I said, in the
21 beginning of the case.

22 Unfortunately his actions showed a total opposite
23 of what I had heard about the guy, about the lawyer,
24 Mr. Gibbons. And at that time I don't believe that he
25 would have been prepared at all because of everything I've

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1 explained to him, either he just didn't bother to look
2 into it or whatever his reasoning was, he just, he didn't
3 go over anything with me, period.

4 So there was no way I was feeling confident at that
5 point in time. But I believe had he would have
6 investigated it properly, I believe if he would have
7 actually put effort into, you know, going over stuff with
8 me and preparing a defense with me and giving me knowledge
9 of what was to come and what to expect and what to do,
10 dealing with the situation such as this, especially the
11 severity of the situation of a mention of the death
12 penalty like that, you would think somebody would be very
13 adamant on details. And it just seemed like he just
14 didn't care at all, you know. So...

15 Q. Now we've covered quite a lot through your
16 testimony today.

17 A. Yes, sir.

18 Q. Is there anything regarding the allegations that
19 you haven't covered that you've already raised in your
20 first application, your first amended application, and
21 your second amended application?

22 A. Yes.

23 Q. Okay.

24 A. One of the -- one of the ways that I felt that I
25 was coerced also into taking time was he had made mention

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1 to me that the only way that Judge Early at the time, who
2 was the presiding judge, he told me that the only way that
3 he would accept any offer from the solicitor or they would
4 help me in any way is if I accepted, you know,
5 responsibility for the crimes that were committed and that
6 I was being accused of.

7 And he said that he didn't want to hear -- Judge
8 Early is not the type of judge that would want to hear,
9 "No, I did this but, you know, I might have had something
10 to do with that." He said, "It's just," you know, "you
11 need to just be up front with him." And be, like, okay,
12 "Well, this is what I did," and don't try to, you know,
13 minimize anything.

14 So at that point in time, you know, I felt the only
15 way to save myself was to follow his advice and take the
16 recommendation of whatever they were going to do. And he
17 never told me at one point in time that there was a
18 negotiated plea of 35 years.

19 I even asked him afterward. And this is what
20 bothers me the most. He said that I would not get as much
21 time as the other co-defendants. He said I wouldn't get
22 the same amount of time as the actual person that did it.

23 So I was under the assumption that I was not going
24 to get anywhere close to 35 years or anything like that
25 because he never made mention of how much time I would

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1 get. And he said that the solicitor would be willing to
2 help me more if I was to, you know, basically plead
3 guilty. And which I did.

4 And he also asked me to apologize to the victim's
5 family. He said, "When they ask you to apologize -- where
6 he said -- he had said to me, make sure that I apologize
7 to the victim's family to show sincerity and whatnot.

8 But inside, inside of myself, I really didn't like
9 that, you know.

10 Q. Okay.

11 A. I didn't.

12 Q. You were under the impression that you were going
13 to receive less than your co-defendants. You testified
14 about --

15 A. Both of them.

16 Q. -- Mr. Fitzgerald.

17 A. Both. Right.

18 Q. Have you since learned what sentences they
19 received?

20 A. Yes. It was my understanding through someone that
21 I keep in contact with, a Christian woman out there, her
22 name is Ginger Lawton. And she made mention that Mr.
23 Fitzgerald received 35 years. And he also -- as a matter
24 of fact, Mr. Gibbons also told me that he didn't
25 understand why I got the same amount of time. But it was

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1 also my impression that -- my understanding that
2 Mr. Travonte Williams received 40 years for, you know, his
3 part in this case.

4 Q. Is there anything else that we have not covered
5 through your testimony regarding your allegations?

6 A. No, sir.

7 MR. BOOZER: No further questions, Your Honor.

8 THE COURT: All right. Thank you. Mr. Gourley?

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

10 CROSS-EXAMINATION

11 BY MR. GOURLEY:

12 Q. Mr. Alston, you said you met with Mr. Gibbons about
13 three to four times prior to your plea?

14 A. Yes, sir. In person.

15 Q. Sir?

16 A. In person, like, face to face.

17 Q. Okay. During those meetings, did you have the
18 opportunity to review the evidence against you?

19 A. No, sir. We barely went over anything hardly.

20 Q. Didn't go over hardly anything?

21 A. Hardly anything.

22 Q. Okay. Did y'all talk about any defenses or
23 anything like that?

24 A. Like I said, the only time that we actually
25 discussed anything was when Susan Frame had made two

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1 voluntary -- had made two voluntary statements. And he
2 was basically telling me that that would be a bad idea to
3 pursue having Susan Frame to be, like, a character witness
4 I believe is the word he used.

5 Q. Okay.

6 A. The reason being is that because she had a DSS
7 case.

8 Q. Okay.

9 A. But as far as saying what to do and, you know,
10 where we were going with the case --

11 Q. Okay.

12 A. -- no, we didn't discuss that.

13 Q. Did you ever give your attorney any kind of leads
14 or witnesses to look into?

15 A. Yes, yes.

16 Q. Let's just name those in particular. Okay?

17 A. I asked him to speak to Ms. Susan Frame who was my
18 neighbor.

19 Q. Okay.

20 A. David Bailey who was a friend and also a witness in
21 this, in this case.

22 Q. Okay.

23 A. I also asked him to talk to Mr. Fitzgerald in the
24 beginning of the case.

25 Q. Okay.

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1 A. I believe I told him to talk to Mason and Megan who
2 lived right across the hall from me, and Sierra at
3 Petsmart where she was working at the time where she was
4 employed.

5 Q. Okay.

6 A. And Wesley Bolen.

7 Q. Wesley?

8 A. Bolen.

9 Q. Okay. And to your knowledge did Mr. Gibbons ever
10 look into any of these witnesses?

11 A. No. He never made mention that he talked to
12 anybody. He said that he would and I never got a response
13 back concerning any of the people.

14 I believe actually -- I stand corrected. I believe
15 the only person that he did say something remotely close
16 to saying whether or not had made contact with was Sierra.

17 Q. Uh-huh.

18 A. I think he said his investigator stopped by
19 Petsmart at one point in time, but he never told me that
20 they interviewed her or anything like that.

21 Q. Okay. Are any of these people here today?

22 A. I really couldn't tell you.

23 Q. Okay.

24 A. Oh. In the courtroom?

25 Q. Yes.

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1 A. No, sir.

2 Q. Now during your guilty plea, do you recall waiving
3 your constitutional rights?

4 A. I'm sorry?

5 Q. Do you recall waiving your constitutional rights
6 during your guilty plea?

7 A. Honestly, no, I don't. I'm sorry, but.

8 Q. If the transcript reflects you waiving your
9 constitutional rights, would you dispute that?

10 A. I -- no, I wouldn't dispute it. Like I said, at
11 that time I just said yes to everything.

12 Q. Okay.

13 And, Your Honor, just for the record, that's page
14 nine through 11 of the plea transcript.

15 THE COURT: Okay. Thank you.

16 BY MR. GOURLEY:

17 Q. Do you recall telling the judge that you were
18 satisfied with your attorney's services?

19 A. Yes. I do recall saying that.

20 Q. Okay. And do you recall telling the judge that he
21 had done everything that you felt was necessary in order
22 to adequately represent you?

23 A. Yes, sir.

24 Q. Now here today you're complaining about
25 Mr. Gibbons' representation?

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1 A. Yes, sir.

2 Q. So what changed between when you were telling the
3 judge that you were satisfied until today?

4 A. Well, like I said, when Mr. Early, Judge Early gave
5 me 35 years --

6 Q. Uh-huh.

7 A. -- the sentence --

8 Q. I'm sorry. Go ahead. I don't want to interrupt
9 you.

10 A. When Mr. Early gave me 35 years, I knew something
11 was wrong. But, like I said, you know, when you're at a
12 crossroads between someone saying that you'll never get to
13 see your family again, I chose my family, getting a chance
14 to see my family again.

15 Q. So you pled guilty to avoid a harsher sentence or
16 possibility of a life --

17 A. Or death penalty, correct.

18 Q. -- or death?

19 A. Correct.

20 Q. So up until you received 35 years you were
21 satisfied with Mr. Gibbons' services?

22 A. No. We had a lot of conflicts with each other.
23 But, once again, him being the chief public defender --

24 Q. Uh-huh.

25 A. -- I didn't even know that there was any other

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1 route to take, you know. I didn't know what to do. Like
2 I said, legally I don't know, you know, legal terms. I'm
3 not very versed in the law.

4 Q. Certainly.

5 A. So I wouldn't know who to complain to. Like I
6 said, my family's miles and miles away. So basically any
7 complaints that I would have about my case would pretty
8 much be falling on deaf ears, in my opinion.

9 Q. Uh-huh.

10 A. You know, no disrespect. But I didn't have support
11 where I could tell somebody, "Listen, I don't think this
12 guy's in my favor, I need help." I didn't know who to
13 turn to. So at that time I basically stuck with what I
14 had and that was Mr. Gibbons.

15 Q. So at the time that you pled guilty, you were not
16 satisfied with Mr. Gibbons' services?

17 A. No, I wasn't. Like I said, the only reason why I
18 did go along with the whole sentencing process was because
19 I was under the assumption that, once again, that I would
20 get a better deal and that basically I would have the best
21 deal. And that was my only option.

22 Q. Well what was this deal?

23 A. He told me that, once again, that I would not be
24 receiving the same amount of time as the person that
25 actually did the murder.

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1 Q. Uh-huh.

2 A. Nor would I receive the same amount of time as
3 anybody else that was involved with the murder.

4 Q. Okay.

5 A. You know, namely my co-defendants.

6 Q. You all didn't talk about any kind of specific
7 sentences or anything like that?

8 A. No.

9 Q. You realize this was a negotiated plea at this
10 point in time, right?

11 A. I had no idea that that was even brought up at any
12 point in time.

13 Q. You don't --

14 A. The only thing that I do remember that was
15 supposedly set in stone and that was brought up, I
16 believe, at the sentencing was the lie detector, a lie
17 detector test by the solicitor, Mr. Strom Thurmond, in
18 which I did tell Mr. Gibbons, I expressed to him that I
19 was willing to take the lie detector test. And he said,
20 "Do you believe that you could pass the lie detector
21 test," and I told him yes. And he said, "Well, we'll
22 cross that bridge -- once again, "We'll cross that bridge
23 when that time gets here. Let's talk about that later."

24 And once again, I never heard anything about it
25 until the sentencing when Mr. Strom Thurmond says, you

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1 know, he afforded me a chance to take the lie detector
2 test. And I looked at Mr. Gibbons and I never even got a
3 response about that.

4 Q. Okay. Now, during your plea do you recall Judge
5 Early advising you of the negotiations that your attorney
6 had worked out with the solicitor?

7 A. I -- honestly, I wasn't paying attention.

8 Q. You weren't paying attention during your plea?

9 A. No, not really. The only time I started actually
10 answering anything was when he started asking me if I was
11 guilty of this, guilty of that, guilty of this, you know,
12 the charges that I'm here on now.

13 Q. Uh-huh.

14 A. But like I said, under the advisement of
15 Mr. Gibbons, I had it in my head basically to be, like,
16 okay, well, just agree with everything in order to, you
17 know, get away from this whole situation. The way it
18 was -- the way it was looking to me in my understanding of
19 the situation was, I was either facing life with no parole
20 or the death penalty.

21 Q. You were facing at least the potential of life,
22 correct? You'd agree with me on that?

23 A. Well, yeah. He had said that quite a few times.

24 Q. Murder carries life, right?

25 A. Yeah.

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1 Q. Burglary in the first degree carries life?

2 A. Obviously, yeah. Like I said, I'm not versed in
3 the law so I couldn't tell you verbatim, like, okay, well
4 I knew that offhand. I do know that obviously murder
5 could carry, you know, the death penalty when he was,
6 like, "Well, this is South Carolina and we do have the
7 death penalty and whatnot." So that was always in the
8 forefront of my mind.

9 Q. Yes, sir.

10 A. My life and my family.

11 Q. Did Mr. Gibbons ever tell you you were facing the
12 death penalty?

13 A. He said that they would make a mention of the death
14 penalty, that they might pursue the death penalty.

15 Q. Did you receive any kind of official notice from
16 the solicitor's office regarding a potential death
17 penalty?

18 A. I don't -- I barely had anything in my possession
19 dealing with the case at that time.

20 Q. Now, if the transcript reflects Judge Early going
21 over negotiations and you saying you understand those, do
22 you dispute that?

23 A. No, I won't dispute -- like I said, I won't dispute
24 any of that. I do remember just saying yes to a lot of
25 stuff and just trying to get that over with, you know.

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1 Q. Uh-huh.

2 A. And get started with whatever they said that I was
3 supposed to receive.

4 Q. Okay.

5 A. But at no time before that, prior to that
6 sentencing was I ever made aware of 35 years being
7 anywhere on the table at all. That day was the day I
8 realized I had 35 years after he sentenced me and told me
9 that I accepted -- when Mr. Strom Thurmond, the solicitor
10 at the time, had said that they were recommending a
11 35-year sentence for all charges.

12 Q. Okay. So you knew murder though you could get at
13 least, you were going to be sentenced to at least 30
14 years, right?

15 A. No, I didn't even know --

16 Q. Didn't know any of that?

17 A. At the time -- all I knew was at that point in time
18 before sentencing, all I knew was that I was facing life
19 or death, you know.

20 Q. Okay.

21 A. Between the two from his advisement.

22 Q. And when Judge Early told you that you were going
23 to get 35 years for murder and so on and so forth, did you
24 ever speak up and say, "Whoa, that's not what I
25 understood"?

JAMES ALSTON - CROSS BY GOURLEY

1 A. No. I looked at Mr. Gibbons. And I was confused.
2 I didn't know what was going on. And at the time I
3 thought that was the only deal that I had. And like I
4 said, all I kept thinking about was being able to see my
5 family again.

6 Q. Okay. Fair enough. Do you recall telling Judge
7 Early that no one was promising you or threatening you to
8 get you to plead guilty?

9 A. Yes.

10 Q. That you were pleading guilty freely and
11 voluntarily?

12 A. Yes.

13 Q. And do you recall the solicitor reading the factual
14 basis into the record?

15 A. I'm sorry?

16 Q. Do you recall the solicitor reading the facts that
17 they would have prepared to present had you gone to trial
18 into the record? Their version of events I guess is the
19 best way to put it.

20 A. Yes.

21 Q. Do you recall that?

22 A. Yes. I do remember him saying -- meaning, like,
23 the incident that happened?

24 Q. Yeah. What they allege occurred.

25 A. Yes.

JAMES ALSTON - CROSS BY GOURLEY

1 Q. Okay. And you didn't have any objections to that,
2 right?

3 A. No, I -- I didn't. I didn't object to anything.
4 Like I said, I just stood there and I just waited.

5 Q. Okay.

6 A. That's all I saw, was just to stand there and wait.

7 Q. Okay.

8 A. And when I got the 35 years the first -- like I
9 said, the only thing he said to me afterwards -- well,
10 actually he said two things. The first thing he said to
11 me was he doesn't understand why that I got 35 years. You
12 know, he said that did seem a little rough there. And I
13 was in the holding cell as a matter of fact when they had
14 took me off the stand -- or, I mean, took me in front of
15 the judge.

16 And the other thing was he had came to me and asked
17 me about my mental health status.

18 Q. Uh-huh.

19 A. And he said -- he asked me, "Is there going to be
20 any problems about you having mental health issues or
21 anything like that." And I looked at him. I was, like,
22 What are you talking about. And after that he was, like,
23 "Oh, don't worry about it." And he walked away.

24 And I was, like, man I just wanted to be left alone
25 by then. Just after receiving 35 years. I pretty much

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1 zoned out after that. He, you know, just left. And that
2 was the last I spoke to Mr. Gibbons.

3 Q. Do you recall telling the plea court that you were
4 in fact guilty of these charges?

5 A. Yes, sir, I did.

6 Q. Do you recall Judge Early advising you of your
7 10-day right to file an appeal?

8 A. No, I don't recall that either.

9 Q. When did you learn of your right to file an appeal?

10 A. Like I said, when I got back to the county jail
11 there was another gentleman there. I can't really recall
12 his name, but I was in the pod with a gentleman that also
13 had a murder charge.

14 Q. Uh-huh.

15 A. And he had advised me and because by then I was
16 pretty much stressed out. And he had told me, he was,
17 like, "Well, you do realize that you can appeal, you
18 know. Your lawyer will -- probably can help you appeal
19 this whole thing."

20 Q. Right.

21 A. And by then I was like, I don't even believe this
22 dude even wants me to appeal anything, you know, and --
23 meaning Mr. Gibbons.

24 Q. Uh-huh.

25 A. So, that was the first of me hearing anything about

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1 that.

2 And then the second time I heard something about
3 it, it was about a PCR which I'm not used to any of that
4 at all.

5 Q. Yes, sir.

6 A. So that was the only time I heard anything about an
7 appeal process or PCR process or anything like that.

8 Q. Okay. Did you ever notify Mr. Gibbons that you
9 wanted an appeal?

10 A. I hadn't spoken to Mr. Gibbons, ever, since then.

11 Q. Okay.

12 MR. GOURLEY: Beg the Court's indulgence, Your
13 Honor.

14 THE COURT: Yes, sir.

15 BY MR. GOURLEY:

16 Q. Now you've alleged that you felt there was a
17 conflict of interest due to the fact that your other two
18 other co-defendants were being represented by the public
19 defender's office as well?

20 A. That's correct.

21 Q. And just based off their own representation of the
22 two co-defendants is why you feel there was a conflict?

23 A. Really, like I said, I wholeheartedly believe that
24 especially namely Ms. Alvarez, I believe is her name.

25 Q. Alves.

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1 A. Or, Alves.

2 Q. Yes, sir.

3 A. Excuse me. I apologize.

4 Q. That's fine.

5 A. Like, when I asked him about having a preliminary
6 hearing and the importance of it that other people were
7 telling me the importance of a preliminary hearing,
8 finding out the facts of the case and whatnot, and what
9 the police and investigators allege to happened and that
10 they had actual grounds to, you know, move forward with
11 anything.

12 Like I said, she was able to get a preliminary
13 hearing. And every time I asked Mr. Gibbons about it, it
14 was, "Well, they put it off this day" and whatnot. And
15 then he would come back and tell me that, "Well, you know,
16 it's not really that important." And, you know, basically
17 that's what I was getting from him was just vague answers
18 and nothing concrete.

19 And it just seemed like he -- the other, the other
20 lawyers, every time somebody else asked for something they
21 got it, you know. They were able to view other statements
22 and whatnot.

23 Q. Uh-huh.

24 A. But for some odd reason every time I went to ask
25 him about something it was just, like I said, vague

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1 answers or "I'll get to it" and it never happened.

2 Q. Okay.

3 A. So I believe and, you know, just based off of that
4 that quite possibly I don't think it was right that I was
5 being represented by the same people because it seemed
6 like they put more effort into working with them and some
7 of the stuff that they had received, and like I said,
8 through word of mouth and I won't bring up any names or
9 anything like that, but some of the other inmates that
10 were in the county jail had made note that it was, like,
11 "Oh yeah, well, I know all about your case."

12 And stuff that was -- they knew stuff about my case
13 that I didn't even know. Then when I asked him about it
14 he was like, "Oh yeah, well we do have that." And I'm
15 sitting there, like, "Well, how come you didn't send it to
16 me, or why didn't you discuss it with me."

17 Q. Right.

18 A. And I think that was just really where, you know,
19 the discomfort came from where somebody that has nothing
20 to do with my case knowing something about my case --

21 Q. Okay.

22 A. -- before I did. To me that was a little odd, you
23 know. And I had brought that up to him on a couple
24 occasions. And it just seems like he didn't make any
25 effort whatsoever in that sense.

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1 Q. And you knew all othis prior to pleading guilty of
2 course?

3 A. Yes.

4 Q. Okay. But you still elected to plead guilty?

5 A. I didn't see any other way of, you know, resolving
6 the issue. I didn't know who to go to. I didn't know who
7 to write. Like I said, I was just going off of whatever I
8 had in front of me.

9 Q. I gotcha.

10 A. That was Mr. Gibbons.

11 Q. Now you also talked about a Blair hearing and
12 saying that you lacked mental competency to plead guilty?

13 A. No. I didn't say I lacked mental competency. At
14 the time, like I said, my state of mental being, you know,
15 my mental health at that time, it wasn't, it wasn't in the
16 strongest point at all.

17 Q. Okay.

18 A. And what I mean by that, there were times where I'd
19 ask him to help me, you know. I told him I was under a
20 lot of stress.

21 Q. Right.

22 A. In the county jail I'm pretty sure it's still
23 recorded somewhere or logged somewhere, I was placed in
24 C2.

25 Q. What is C2?

JAMES ALSTON - CROSS BY GOURLEY

1 A. C2 is, like, somewhat of a semi-segregation pod.

2 Q. Okay.

3 A. I was stressing out pretty bad. And it seemed like
4 everything that I was trying to get together mentally -- I
5 couldn't focus at all. And I've had these problems before
6 when I wasn't medicated.

7 Q. Right.

8 A. Eventually some time down the road when I was in
9 the county jail, I started seeing a psychiatrist. I did
10 alert him to, you know, my mental well being at that point
11 in time. And it seemed like it was stress on top of
12 stress on top of stress. And it just seemed like he
13 didn't even try to help me at all --

14 Q. Right.

15 A. -- you know, try to figure anything out.

16 Q. Okay.

17 A. And I just -- I felt like I was fending for myself.

18 Q. Yes, sir.

19 A. That's exactly what I felt like.

20 Q. Okay. Now, were you of sound mind during your plea

21 --

22 A. Yes.

23 Q. -- in your opinion?

24 A. Well, in my opinion I would honestly say the only
25 thing I kept saying was I just want to get this over with.

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1 Q. Okay.

2 A. And, like I said, in front of me I saw two options,
3 you know, see my family, like I said, or face life or
4 death.

5 Q. Okay.

6 A. You know, between the two, I didn't, I didn't see
7 no other option. I love my family and, you know -- and
8 not to discredit anybody but I love my family enough to
9 say that, listen, I would take any risk just to be able
10 to, you know, see them again. That's -- they're all I
11 have. That's all I have.

12 MR. GOURLEY: Thank you, Mr. Alston. I have no
13 other questions.

14 THE COURT: Mr. Boozer?

15 MR. BOOZER: No questions, Your Honor.

16 THE COURT: All right. You may step down. Thank
17 you very much.

18 THE APPLICANT: Thank you.

19 THE COURT: Mr. Boozer, any additional witnesses?

20 MR. BOOZER: No additional witnesses, Your Honor.

21 THE COURT: All right.

22 MR. GOURLEY: We call Mr. Gibbons to the stand,
23 Your Honor.

24 THE COURT: All right.

25 DE GRANT GIBBONS, having been duly sworn, was

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1 examined and testified as follows:

2 THE CLERK: Please have a seat in the witness box.
3 State your full name for the Court.

4 THE WITNESS: My full name is De Grant Gibbons.
5 Last name spelled G-I-B-B-O-N-S.

6 DIRECT EXAMINATION

7 BY MR. GOURLEY:

8 Q. Mr. Gibbons, were you appointed or retained in this
9 case?

10 A. I was appointed.

11 Q. Do you recall approximately how many meetings you
12 had with Mr. Alston?

13 A. I would say somewhere in the neighborhood of 10.

14 Q. Okay.

15 A. And probably at least that many phone calls.

16 Q. Did you file rule five and Brady motions?

17 A. I did.

18 Q. Did you have the opportunity to review that
19 material with Mr. Alston?

20 A. I did.

21 Q. Did y'all discuss his version of events?

22 A. We discussed a lot about what went on and what he
23 wanted me to do about the case.

24 Q. Did y'all discuss any possible defenses to these
25 charges?

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1 A. At one point early on he was indicating that he met
2 somebody in a park when this event went down. I think he
3 was going to buy some weed or something like that in one
4 of the city parks. But he had no name, just a real vague
5 description and I had nothing to go on as far as finding
6 that person. We did what we could, but there was just no
7 way to come up with that person.

8 Other than that, most of the people he wanted me to
9 talk to, most of the things that he wanted me to do were
10 character-type witnesses that I would use at trial, if I
11 used it at all, to bolster his character. Nothing really
12 fact driven that he gave me.

13 Q. So the witnesses -- obviously you were here for his
14 testimony of the witnesses that he listed --

15 A. Uh-huh.

16 Q. -- in your opinion, were just character witnesses?

17 A. Well, either that or they were going to either add
18 nothing or make things worse. I talked a number of times
19 to Wesley on the phone. That's his friend from, I think
20 he was living in Bowman when I talked to him. He gave me
21 permission to talk to him. We talked on the phone four or
22 five times. He really didn't have any firsthand knowledge
23 of anything that went on regarding the case but was more
24 interested in, you know, being kept up to date.

25 I sent an investigator to Anderson, South

DE GRANT GIBBONS - DIRECT BY GOURLEY

1 Carolina. He met with -- he went and talked to everybody
2 in the apartments nearby where Mr. Alston was staying. He
3 talked to a gentleman and a lady that said they were
4 living there at the time Mr. Alston lived there. I
5 believe the lady had an amputated leg. That's to the best
6 of my recollection, but Mr. Alston was adamant that we
7 talk to them. And they did say they saw him that night
8 but they also put him in company with the co-defendant and
9 other information that would have been extremely damaging
10 if they had testified.

11 Q. What about Sierra? Did you ever look into her or
12 know anything about her?

13 A. Again, that was a character witness. That's really
14 all I got from that. And if we had gone to trial, I could
15 have called her but as far as pushing a case for the
16 defense, that really wasn't useful.

17 Q. She never said that Mr. Alston was with her the
18 night of the incident?

19 A. No.

20 Q. Mr. Gibbons, can you briefly describe the State's
21 evidence against Mr. Alston? Kind of a raw summary I
22 guess is the best way to put it.

23 A. This case involved the murder of a man who was
24 challenged functioning. He wasn't, he wasn't -- I don't
25 know how to say it. He was a little bit slow.

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1 And he was related, I think, to one of the
2 co-defendants. And the allegations were that the
3 co-defendant was living with him and that Mr. Alston and
4 another friend came down there and spent time there off
5 and on.

6 Law enforcement was called to the house. They
7 found this elderly gentleman, the victim in the case, had
8 been beaten and hung in the closet and the house had been
9 set on fire.

10 They continued checking into it. They said some
11 neighbors had seen folks over there. They gave
12 descriptions. There was also a burglary down the street
13 that -- a Mercedes was taken that was seen at the crime
14 scene.

15 Mr. Alston was very close to the gentleman that was
16 living at the house. They had been -- I think they had
17 served some time together somewhere else. And they were
18 seen -- he was -- his co-Defendant was captured in the
19 vehicle in Anderson and taken into custody at that time
20 nearby where Mr. Alston lived.

21 The case -- for probably the first six or seven
22 months, we were concerned that it was going to be a death
23 penalty case. They were deciding it and analyzing it.
24 And I told Mr. Alston that, that it had -- it was
25 qualified for a death penalty case and I wouldn't be

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1 surprised that given just how bad it was if they wouldn't
2 file it. So we were preparing for that.

3 Like I said, months into the case the solicitor
4 told me they were just going to go forward on the regular
5 charges and not make it a capital case. And from then on
6 I told Mr. Alston that and that's what we were doing. We
7 were working toward trial. And, you know, I've got a
8 pretty big file that we were putting together. I had a
9 paralegal and an investigator working on this case full-
10 time with me and we were preparing for court.

11 As I said, I sent an investigator to Anderson to
12 run down anything that might be up there. I spoke to
13 Mr. Bolen on the phone, nothing was helping me out
14 factually that I was able to find.

15 Q. Yes, sir.

16 A. And towards the time of the plea, all parties were
17 working toward trial. And at the last minute they were
18 going to try Mr. Fitzgerald. And at the last minute they
19 offered him 35 years if he would cooperate against
20 Mr. Alston. And he gave a detailed statement implicating
21 all the parties involved.

22 At that point I met with Mr. Alston and I said,
23 "Look, we've got this other guy that's going to testify
24 against you, we've got facts involved here that aren't
25 going to look really good. There was blood evidence that

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1 was not going to look good." I said, "I don't see how
2 they can give you any more than they're giving
3 Mr. Fitzgerald, and maybe they'll give you less."

4 And I tried for that. And I discussed with the
5 solicitor and tried and tried to get them to come down but
6 they would not. But I told Mr. Alston that we were
7 looking at a life sentence type case if we went to trial.
8 And at this point we could cut his exposure down to 35
9 years which was lower than I thought we would get on our
10 own.

11 And we discussed all the ramifications of that and
12 he agreed that that would be the best course of action.
13 We more or less rushed to get that before they could
14 change their mind.

15 Q. So you explained to him that when he pled guilty he
16 was going to receive a 35-year sentence for the murder, so
17 on and so forth?

18 A. Yes, I did.

19 Q. Okay. Mr. Gibbons, did you ever discuss
20 Mr. Alston's right to file an appeal?

21 A. I never discussed filing an appeal with him. He
22 never requested it and we were anxious to get that
23 negotiated plea and get in there and lock that in. I had
24 no indication that he wanted to do anything other than get
25 that while he could.

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1 Q. Had he wanted you to file an appeal, would you have
2 done so?

3 A. Of course.

4 MR. GOURLEY: Beg the Court's indulgence, Your
5 Honor.

6 (Pause.)

7 Q. Regarding the conflict of interest. You're
8 obviously the head public defender. How does the public
9 defender's office handle multiple representation of
10 co-defendants?

11 A. Well, there's a specific rule that the Supreme
12 Court set out, I think it's Rule 110, which indicates in a
13 public defender's office multiple co-defendants can be
14 represented if they are completely isolated as far as
15 who's working on the case.

16 And in my office I have three different teams of
17 lawyers and two different investigators. And once we have
18 a case in the office that we're going to have a
19 co-defendant on, they are cut off from that other case,
20 that other lawyer, that other file. And we remain
21 independent throughout the case.

22 And that's what went on here. I had no access to
23 information or conversations with Ms. Alves who was
24 representing Mr. Fitzgerald. And I believe maybe
25 Mr. Routzong was representing the co-defendant. I had no

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1 conversations with him.

2 But that's, that's how we are required to do it per
3 the rule.

4 Q. Okay. And did you feel the representation of the
5 other public defenders in any way affected your
6 representation of Mr. Alston?

7 A. No, I did not.

8 Q. Regarding Mr. Alston's mental capacity, did you
9 have any concerns regarding his mental capacity?

10 A. I never had a problem with him understanding what I
11 was saying. I never had a problem understanding what he
12 was saying.

13 He never indicated that -- he never gave me any
14 indication that anything was wrong with him. He did -- he
15 was nervous a lot. He did move a lot, but I was, never
16 was not able to converse with him in a normal manner.

17 After the plea he was very distraught and I did go
18 back there and ask him if I needed to do anything, if he
19 was thinking of harming himself. And I asked the jail to
20 keep an eye on him because I didn't want him to harm
21 himself.

22 Q. Did you ever tell Mr. Alston to answer yes or no to
23 the plea judge in the colloquy?

24 A. I tell every client to be honest with the judge,
25 tell them the truth. If they don't understand, ask them

DE GRANT GIBBONS - CROSS BY BOOZER

1 to repeat.

2 Q. And, just again, prior to his plea y'all had
3 discussed everything, the process of pleading guilty and
4 so on and so forth?

5 A. We had.

6 MR. GOURLEY: Your Honor, I don't have any other
7 questions. Thank you, Mr. Gibbons.

8 THE COURT: Mr. Boozer?

9 MR. BOOZER: Just briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. BOOZER:

12 Q. Mr. Gibbons, what were the -- y'all said that y'all
13 kind of had a last minute, I guess, plea deal in this
14 before trial; is that right?

15 A. Well, relative to the age of the case. It wasn't
16 like 10 minutes' notice or anything like that. But as
17 soon as Mr. Fitzgerald gave a detailed statement and we
18 reviewed that with Mr. Alston, we decided it was time for
19 us to get in there and get the same or better if we could
20 before it went away, before we got to trial.

21 Q. Prior to the plea, what was the, sort of the trial
22 strategy going into this case?

23 A. Well, there were a lot of facts working against us.
24 The main thing we were going to do would be show that
25 Mr. Fitzgerald was calling all the shots, that he was the

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1 one that did the actual acts, that Mr. Alston was
2 compliant only because he was scared. That kind of thing.

3 Q. Did you discuss that strategy with Mr. Alston?

4 A. We discussed all kind of strategies.

5 Q. Okay. Going back to these -- what he said was he
6 had an alibi witness. Was that something that you
7 discussed with him?

8 A. I discussed that the first time I met him. And the
9 only alibi witness he came up with was the guy in the
10 park. And I was never able to find anything further than
11 just a random guy in the park that he ran into that he
12 didn't know.

13 Q. Did you ever tell Mr. Alston that he really had no
14 option other than to plead guilty?

15 A. No. We were preparing for trial for the bulk of
16 this case. I told him I didn't think it was a good idea
17 but I would do it my best whichever way he wanted me to
18 go.

19 Q. You've heard Mr. Alston discuss a little bit about
20 that he didn't feel like he got to see all the evidence
21 that the State had in this case. Was there a lot of
22 evidence in this case?

23 A. There's a box, a banker's box full of evidence
24 right here.

25 Q. Do you think you reviewed all of it with him or

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1 some of it?

2 A. I think between me and my investigator and my
3 paralegal he's seen everything. He's had copies of most
4 everything. There were some CDs that I couldn't give him
5 but what was on them, I reviewed with him what I could.

6 Q. Specifically one of the CDs was at the jail
7 recording a conversation that you heard him testify
8 about?

9 A. Right.

10 Q. Do you recall whether there was anything that would
11 have assisted him in his case?

12 A. As I recall, the jail recordings were more or less
13 a personal nature between him and friends and him and
14 romantic interests, just talking about the situation and
15 how worried he was about it and just small talk mostly.
16 There was nothing concrete that I heard come through those
17 conversations.

18 Q. Did you ever inform Mr. Alston that he needed to be
19 careful about what he was saying in his phone
20 conversations?

21 A. I tell every client that every phone call is
22 recorded. And a lot of times they'll listen to it on a
23 case this size and I'm sure that they listened to it.

24 Q. Going back to Mr. Alston's claim that he wasn't in
25 the best mental state at the time. And you've testified

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1 that you didn't have any trouble, I guess, communicating
2 with him during the course of your representation of him.
3 Was there anything that stood out to you though about his
4 mental state during that time other than maybe some
5 stress?

6 A. It looked like stress to me. I mean, he would get
7 kind of hyper and he'd say, you know, "I'm not the kind of
8 person that can be in jail," you know, "I'm not the kind
9 of person that should be in this situation," but nothing
10 in the lines of anything of a mental disorder that I saw.

11 Q. You've seen him here today. Does he seem to be in
12 a better state today than he was at the plea?

13 A. He does.

14 Q. What does he seem to be like today versus how he
15 was during the plea?

16 A. He was emotional at the plea. He was nervous at
17 the plea. Today he seems pretty calm and pretty level
18 headed.

19 Q. And there was never any notice given that the
20 solicitor's office was seeking the death penalty in this
21 case?

22 A. No, they never did notice it. They told me on
23 several occasions they were still reviewing it. It was
24 possible but they never did notice it.

25 Q. Do you think that he was under any sort of

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1 impression that they had noticed him for a death penalty?

2 A. Not from me. And we had, we had talked months
3 after they said they weren't going to do the death penalty
4 about what was coming up, what was the exposure, the life
5 sentence was there. I know there was no more talk about
6 death penalty.

7 Q. Do you recall your investigator speaking with
8 Mr. Alston about possible death penalty?

9 A. I think we both spoke with him about that. That
10 was early on before they had said they weren't going to do
11 that.

12 Q. Could the investigator have told him that the
13 solicitor's office had provided any sort of notice for the
14 death penalty?

15 A. Could he have?

16 Q. Yes.

17 A. I don't know why or how.

18 Q. And you may have already testified to this, but did
19 Mr. Alston ask you to file an appeal or a motion to
20 reconsider following the plea?

21 A. No, he didn't. As I said, again, we were anxious
22 to get that deal locked in when we were offered it.

23 Q. Other than what you had testified to earlier about
24 seeing if he was okay after the plea, did you have any
25 contact with him after that?

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1 A. Not that I recall.

2 MR. BOOZER: Court's indulgence, Your Honor.

3 THE COURT: Uh-huh.

4 Q. Did y'all have any discussion about your office
5 representing his other two co-defendants and explaining
6 the Rule 1.10 to him?

7 A. I don't recall exactly if I spelled it all out like
8 that, but I told him I didn't know anything about -- I
9 couldn't get anything about their case. What they had was
10 theirs and what I had was mine.

11 Q. Do you recall having any contact with Mr. Alston's
12 sister?

13 A. I think we did talk to her. I know I probably
14 talked to her once and my investigator talked to her as
15 well.

16 Q. What was the nature of that conversation? Do you
17 recall what y'all discussed?

18 A. Well, she was wanting to know what was going on
19 with the case and what it was looking like. And he wanted
20 us to talk to her. And so we spoke and more or less told
21 her generally what we were up against and what the
22 outcomes could be or possibly could be. And she was going
23 to talk to him about it.

24 Q. Did y'all have any discussion with her that it was
25 in his best interests to plead guilty or that he shouldn't

DE GRANT GIBBONS - CROSS BY BOOZER

1 go to trial on this?

2 A. I don't recall saying that. I told him it didn't
3 look real good. I told her it didn't look real good.
4 There was a lot against us.

5 Q. And, Mr. Gibbons, you may have already covered this
6 but you've heard Mr. Alston allege that you advised him to
7 apologize in court and say yes where he needed to say yes
8 in his answers to the Court for the plea. Is that
9 something that you did and told him to do prior to this
10 plea?

11 A. I make it a practice to tell all my clients if
12 there's a victim in the case that if the judge asks them
13 if they have anything else to say to say "I'm sorry".

14 And I don't doubt that I told him to apologize to
15 the family.

16 Q. And one other item that Mr. Alston testified to
17 with regard to, I guess, a situation that occurred or may
18 have occurred at the Aiken County Sheriff's -- or at the
19 detention center or the sheriff's office where his
20 investigator brought some McDonald's food to him.

21 Do you recall anything occurring like that or
22 having any sort of discussion with Mr. Alston or your
23 investigator about that?

24 A. Yes. He at one point had said he wanted to provide
25 a statement. He wanted to be a cooperating witness and

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1 would I line it up.

2 I lined it up. It was about lunchtime. They took
3 him before they had fed him at the jail so I had my
4 investigator get him some lunch so while we were at the
5 sheriff's office he could eat some lunch. We got over
6 there. He got upset and said he wasn't going to do
7 anything. He wanted to be taken back to the jail. And he
8 was taken back to the jail.

9 Q. Is that your understanding through what your
10 investigator said?

11 A. I think I was actually over there for that.

12 Q. Okay. My client wanted me to ask you regarding a
13 lie detector test. Was there ever any discussion about
14 him submitting to a polygraph?

15 A. Well, there was a discussion that when we were
16 going to go give a statement that they might polygraph him
17 afterwards. He did ask for a polygraph early on in the
18 case. And I asked the sheriff's office about that. They
19 said that that's not our policy, just to give one upon
20 request.

21 But I probably told him we were going to give a
22 statement. They may polygraph him afterwards to make sure
23 that they could believe him. And that would be the extent
24 of that conversation.

25 Q. Since he's the one that was requesting it, did you

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1 ever consider asking or getting that done on your own or?

2 A. Well, it wouldn't have been admissible. I don't
3 think the State would have complied with that. If they
4 were going to give him one that early in the case, I
5 probably would have got a private one before he took the
6 State one. But that never materialized so I didn't see
7 any need in doing that.

8 MR. BOOZER: No further questions, Your Honor.
9 Thank you, Mr. Gibbons.

10 MR. GOURLEY: Nothing further, Your Honor.

11 THE WITNESS: Was there something about a prelim
12 that you wanted to cover? I thought he alleged something
13 about a prelim.

14 MR. BOOZER: No, Your Honor.

15 THE WITNESS: Okay.

16 THE COURT: Mr. Boozer, in the context of the
17 conflict of interest, your client did mention a
18 preliminary hearing and that being when he recognized that
19 there may be a problem.

20 MR. BOOZER: Thank you, Your Honor. Thank you,
21 Mr. Gibbons.

22 THE COURT: Okay.

23 BY MR. BOOZER:

24 Q. Did he ever request to have a preliminary hearing
25 for this case?

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1 A. He did request to have one. The first request came
2 when I had no discovery. And I don't like to go into a
3 prelim if I think there's going to be a benefit of it if I
4 don't have any discovery.

5 Mr. Fitzgerald had a prelim. I attended it. I
6 took notes. I got everything down that the officer said.
7 And I went back and I told Mr. Alston, "Look, we can have
8 a prelim. They'll say the same thing. We'll get -- it
9 will get in the paper. It will stir everything all up
10 again. The prosecutor's in the process of deciding
11 whether to file on this case."

12 I thought strategically it would be a better idea
13 since we already had the information for him not to stir
14 that up again.

15 Q. And you said strategically. What was that strategy
16 exactly?

17 A. Well, the prosecutor was still trying to decide
18 whether or not to file a death penalty on the case. And I
19 didn't think it would be good to have a prelim because the
20 press would be there. It would all hit the paper again.
21 It would just call more attention to the crime that
22 happened at a time when we wanted things to cool off.

23 Q. Did you explain that, your strategy, to
24 Mr. Alston?

25 A. I did.

1 MR. BOOZER: No further questions, Your Honor.

2 THE COURT: All right

3 MR. GOURLEY: Nothing.

4 THE COURT: You may step down. Thank you.

5 MR. GOURLEY: The State has no additional
6 witnesses, Your Honor.

7 THE COURT: All right.

8 I have listened to the testimony in this case and
9 also reviewed the petition and the transcript from the
10 plea.

11 And the decision of the Court is to deny the PCR.
12 I ask that the attorney general's office please prepare an
13 order within the next 30 days.

14 I'm going to go through each of the allegations
15 now.

16 With regard to the allegation that Mr. Alston's
17 defense counsel failed to file an appeal on his behalf,
18 Mr. Alston had testified that he was not made aware of the
19 appeal process. However, before pleading guilty, Judge
20 Early did inform him that he had a right to appeal the
21 guilty plea within 10 days. And that is found on page 16
22 of the guilty plea transcript.

23 Furthermore, the defendant and defense attorney
24 both testified that the defendant never specifically asked
25 the attorney to file an appeal on his behalf.

1 With regard to the allegations that the defense
2 attorney failed to investigate alibi witnesses, I find as
3 a fact that the only alibi witness that the defense
4 attorney was aware of was the person in the park. There
5 was no name of this person in the park. There was no way
6 to find this person in the park.

7 With regard to neighbors, the defense attorney did
8 talk to those neighbors and determine strategically that
9 they should not be called because they would testify that
10 Mr. Alston was with his co-defendants on the evening in
11 question.

12 With regard to the woman who worked at Petsmart,
13 she was not an alibi witness but a character witness. And
14 again, the defense attorney, I do find as a fact, sought
15 out that witness.

16 With regard to the due process claims, these were
17 arguments that Mr. Alston did not receive all of the Brady
18 materials. His allegations on this point were directed
19 towards his attorney, arguing that his attorney had not
20 showed him his file. I do not believe he made any
21 allegations against the State, that the State had not
22 turned over any material and certainly didn't testify with
23 regard to any material that he did not have that the State
24 did not give him.

25 This was a situation where Mr. Alston says that he

1 was not given copies of the statements from his
2 co-defendants, wasn't able to see things from the crime
3 scene. His attorney testified that Mr. Alston did indeed
4 see everything. Although he may not have had a copy of
5 everything, he certain was made privy to his entire file.
6 And so I find as a fact that he did have access to those
7 materials.

8 With regard to his allegations that the plea was
9 involuntarily made, he -- Mr. Alston, testified that he
10 felt pressure from the investigator and pressure from his
11 sister. He also was concerned because he was facing what
12 he thought to be the death penalty. He cares very much
13 about his family, and said that he would do anything to
14 see his family again.

15 The defense attorney testified that he asked the
16 defendant to be truthful. The defendant during his guilty
17 plea swore under oath that no one was making him plead
18 guilty. He admitted under oath that he had in fact
19 committed these crimes. And while he may have felt
20 pressure because he wanted to see his family again, this
21 was not -- that sort of pressure does not render the
22 guilty plea involuntary.

23 With regard to his allegations that he was told
24 that he could get the death penalty, I find that the fact
25 that this was the type of crime in which a solicitor may

1 have sought the death penalty and so -- as his defense
2 attorney testified, for several months the death penalty
3 was certainly a question in everybody's mind. However, I
4 also find as a fact that Mr. Alston was told when the
5 solicitor determined that this would no longer be a death
6 penalty case.

7 With regard to the allegation of the conflict of
8 interest, I find that Rule 1.10 was followed and that the
9 public defender's office was able to represent
10 co-defendants so long as they completely separated
11 themselves from each other which was done in this case.

12 Furthermore, Mr. Alston testified that he was aware
13 of the conflict and prior to pleading guilty and during
14 the guilty plea he indicated that he was satisfied
15 completely with his attorney.

16 With regard to any prejudice that he brought up
17 with regard to the conflict of interest, he only named
18 that the preliminary hearing -- he had requested a
19 preliminary hearing and his attorney did not follow
20 through with that. However, I find that the decision not
21 to seek a preliminary hearing was strategically made.

22 I also note that there's no constitutional right in
23 South Carolina to a preliminary hearing. And in this --
24 under these circumstances where at the time of the
25 preliminary hearing the issue of the death penalty was

1 still hanging out there it made sound strategic sense for
2 defense counsel to attend the co-defendant's preliminary
3 hearing and not continue the cycle of publicity that was
4 going on in this case.

5 With regard to the allegations that the defendant
6 should have had a Blair hearing, the defendant
7 testified -- specifically he stated that he was not saying
8 that he lacked mental competence at the time of the guilty
9 plea and therefore there was no need for a Blair hearing.

10 And I believe that that covers all of the
11 allegations but, Mr. Boozer, I could stand to be corrected
12 if there's something that I've missed.

13 MR. BOOZER: Judge, just for the record, I have two
14 allegations noted. And you may have already covered
15 this. That would be whether the State violated the
16 Petitioner's rule five due process right to have and view
17 all evidence in this case.

18 THE COURT: Okay.

19 MR. BOOZER: And then one other allegation which
20 Mr. Alston had to help me with which was he testified very
21 early on about the statement of his girlfriend would help
22 defend him and that was his words, not present at the
23 crime. Those were the only two allegations that I had
24 that I don't believe were covered unless the rule five one
25 was covered under your initial ruling.

1 THE COURT: Yes. It was intended to be, but let me
2 just make that clear.

3 I find that there was absolutely no testimony or
4 evidence with regard to any rule five violation from the
5 State. Mr. Alston's testimony focused on his defense
6 attorney's -- that his defense attorney failed to give --
7 hand him over statements that were in the defense
8 attorney's possession. The attorney testified that he did
9 indeed share all of those materials with Mr. Alston.

10 Now tell me what the question with the girlfriend,
11 is that the woman at Petsmart and did we not cover that?

12 MR. BOOZER: Judge, that's been covered.

13 THE COURT: Okay. Thank you very much. Mr. --
14 from the State, is there anything further that you need to
15 draft the order?

16 MR. GOURLEY: No, Your Honor.

17 THE COURT: Okay.

18 MR. GOURLEY: Thank you.

19 THE COURT: Thank you much very much.

20 MR. GOURLEY: I'll prepare the order.

21 THE COURT: Thank you.

22 END OF PROCEEDINGS: 11:37 A.M.

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, on the 18th day of May, 2015.

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

I have hereunder set my hand this 6th day of November, 2015.

Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

James Alston, # 345846,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2012-CP-02-0373

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 13, 2012. Respondent filed a return on June 14, 2012. An evidentiary hearing was convened on May 18, 2015, at the Aiken 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 Aiken County Clerk of Court. The Applicant was indicted at the June 2009 term of the Aiken County Grand Jury for murder, burglary in the first degree, armed robbery, and grand larceny. Additionally the Applicant was true bill indicted during the December 2010 term of the Aiken County Grand Jury for arson - second degree. He was represented by DeGrant Gibbons, Esquire. On April 21, 2011, the Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to concurrent sentences of thirty-five years' imprisonment for murder, thirty-five years' imprisonment for burglary-first degree, thirty years' imprisonment for armed

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robbery, twenty-five years' imprisonment for arson-second degree, and ten years' imprisonment for grand larceny. All sentences were pursuant to negotiations and were run concurrently.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel;
 - a. Failing to File an appeal
 - b. Failing to investigate Alibi defense
2. Brady Violation
 - a. Statement of Defendant's girlfriend would help prove defendant was not present at the crime scene.

Applicant filed an amended application on December 9, 2013, alleging an additional claim of involuntary guilty plea. At the start of the evidentiary hearing, Applicant raised allegations of ineffective assistance of counsel, Brady violation, involuntary guilty plea, coercion by plea counsel, failure to request a Blair hearing, Due Process violation, conflict of interest, and Rule 5 violation. At the hearing, Applicant failed to present any arguments or testimony on the purported Rule 5 violation. Therefore, Applicant has abandoned the allegation of a Rule 5 violation.

SUMMARY OF TESTIMONY PRESENTED

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

During the evidentiary hearing, Applicant testified that he met with Plea Counsel approximately three to four times prior to his guilty plea, but he claims they did not review any evidence prior to his plea. Applicant stated that he told Plea Counsel to investigate Susan

Frame's two voluntary statements and that he gave Plea Counsel various witnesses to investigate. Applicant stated Plea Counsel never investigated these witnesses.

Applicant did not recall that his plea was negotiated. According to Applicant, he would not have pled guilty had he known that he was going to get a thirty-five year sentence. Applicant stated that he was not aware of the sentencing ranges prior to the plea and that he was confused during the plea. Applicant stated that he pled guilty to avoid the possibility of the death penalty and that he said "yes" to the plea judge's questions to get it over with it.

Applicant stated Plea Counsel failed to investigate potential alibi witnesses. Applicant stated that he told Plea Counsel about his two neighbors who could have testified to his whereabouts. Applicant stated that Plea Counsel went to his neighbors Megan and Mason's house but was told that they had moved away. Applicant further stated Ciara, his girlfriend, gave a statement that would show he was in Anderson at the time of the incident. Applicant stated Ciara was working at Pet Smart at the time.

Applicant stated the State had violated Brady/Rule 5 by failing to disclose Travonte Williams' statements, which implicated him. Applicant further stated he only heard the statement of his co-defendant, Keith Fitzgerald. Applicant stated that Plea Counsel failed to investigate into Susan Frame and Wesley Boland. Furthermore, Applicant stated that he would like to hear all recorded statements, including jail recordings.

Applicant alleged that his plea was involuntary. Applicant stated that he wanted a trial, but he talked to his sister who said she spoke with Plea Counsel. Applicant stated that his sister told him it was her understanding that Applicant would be facing the death penalty if he went to trial. Applicant stated that his sister asked him to plead guilty. Applicant further claimed that Plea Counsel's investigator told him that he would get the death penalty if he went to trial.

Applicant stated that investigator took him over to the sheriff's office and brought him McDonalds, but once the investigator learned Applicant was not going to give a statement, he took the food away.

Applicant stated that he knew that a co-defendant was also represented by a public defender who worked in the same office as Applicant's attorney. Applicant stated that he felt Plea Counsel did not do what he asked because of this purported conflict of interest. Applicant stated that Plea Counsel's representation dwindled over time. Applicant stated that he is upset that his codefendants got a preliminary hearing and he did not get a preliminary hearing.

Applicant admitted that he did not tell his attorney that he wanted to appeal. Applicant stated that he only found out about the appeal process when he returned to jail because Plea Counsel never told him that he could file an appeal.

Applicant stated that his attorney asked about his mental health. Applicant stated that he did not advise the plea judge about his mental health status because he wanted to get the plea done. Applicant stated that Plea Counsel never requested a Blair hearing. Applicant stated that he has a longstanding mental health history with PTSD. Applicant stated that he had a suicide attempt in jail. Applicant stated that he was not claiming that he was mentally incompetent but that his health history should have been researched.

Applicant stated that his Due Process rights were violated. Specifically, Applicant stated that evidence was given to his co-defendants and never turned over to him. Applicant stated he wanted the various statements from the witnesses and that he also wanted a copy of his own statement.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he met with Applicant approximately ten times. In addition to their meetings, Plea Counsel

stated that he wrote to Applicant and had multiple telephone conversations with him. Plea Counsel stated that he filed for and reviewed with Applicant all Brady and Rule 5 material. Plea Counsel stated Applicant saw all the evidence. According to Plea Counsel, the jail recordings were mostly personal conversations.

Plea Counsel stated that Applicant claimed that there was a witness at a park that could corroborate his alibi defense. However, Applicant could give no name or address to find this witness. Plea Counsel stated that he investigated into various other witnesses suggested by Applicant. Plea Counsel stated most of Applicant's witnesses were character witnesses that would either make things worse for Applicant or had nothing to add. Plea Counsel stated that his investigator talked to Applicant's neighbors. The neighbors told the investigator that they saw Applicant at his house with the co-defendant, which was not helpful. Plea Counsel stated that Applicant's girlfriend, Ciara, was a character witness and never stated that she was with Applicant.

Plea Counsel stated that he prepared for trial, but no favorable facts turned up for Applicant. Plea Counsel stated Applicant's co-defendant, Keith Fitzgerald, pled first and gave a detailed statement implicating Applicant. Plea Counsel stated that he told Applicant that he would probably receive a similar sentence if he pled guilty. Plea Counsel stated Applicant received the same thirty-five year sentence as his co-defendant. Plea Counsel stated that Applicant was never noticed for the death penalty and that he and Applicant discussed the possible sentence range months after the death penalty was taken off the table.

Plea Counsel stated that Applicant never requested him to file an appeal. Counsel further stated that he would have filed a notice of appeal had Applicant requested him to file one. Plea Counsel stated Applicant simply wanted to plead guilty and move on.

With regard to the alleged conflict of interest, Plea Counsel referred to Rule 1.10, SCRCP, which allows a Public Defenders office to represent multiple co-defendants so long as the teams representing the defendants are isolated. Plea Counsel stated that his office has three separate teams and that each team has separate support staffs. Plea Counsel stated that the teams are completely separate of each other.

Plea Counsel stated that he never had a problem with Applicant during his representation and that Applicant seemed to understand their conversations. Plea Counsel stated Applicant appeared to understand the information about his case and the judicial process. Plea Counsel stated Applicant seemed nervous during the plea.

Plea Counsel explained that he tells every client to be truthful and to answer the judge's questions honestly. Plea Counsel stated that he advises his clients that they should apologize to the victims if the judge asks if they would like to speak. Plea Counsel stated that he never told Applicant that his only choice was to plead guilty.

Plea Counsel stated that at one point, Applicant wanted to cooperate and that is why he was brought to the sheriff's office to give a statement. Plea Counsel stated his investigator most likely would have been present for the meeting. Plea Counsel stated it is not atypical to bring the client lunch. Plea Counsel stated Applicant did not cooperate and refused to give a statement.

Plea Counsel stated Applicant did request a preliminary hearing. Plea Counsel stated he attended co-defendant, Keith Fitzgerald's preliminary hearing. Plea Counsel stated it was their strategy not to follow up with the preliminary hearing because Applicant's case was highly publicized and the solicitor was still deciding on whether to pursue the death penalty. Plea Counsel stated that they did not want to "stir up" everything again by following through with the preliminary hearing when there was nothing to gain by pursuing it.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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).

Plea Counsel was not ineffective for failing to file an appeal.

Applicant first argues that plea counsel should have filed a notice of appeal his behalf. I disagree.

The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Rather "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry 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 such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

Here, Applicant pled guilty, had a negotiated sentence, and never requested Plea Counsel to file an appeal. Although Applicant stated that he did not know he had a right to appeal, the record also reflects that the Applicant was advised of his right to appeal by the plea judge. (T. 16). Thus, there is no reason to think that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

Investigation of alibi witness

Applicant next argues that Plea Counsel should have done more to investigate into purported alibi witnesses. I disagree.

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

Here, Plea Counsel credibly testified that the only purported alibi witness identified by Applicant was a person in the park. Plea Counsel stated that Applicant could not give a name or address for this person and counsel had no way to find that person. Plea Counsel credibly testified that other witnesses named by Applicant were merely character witnesses who were not beneficial to Applicant. Specifically, Plea Counsel stated Applicant's neighbors placed Applicant with his co-defendant. Additionally, Plea Counsel stated he investigated Ciara and she did not provide an alibi. 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, Applicant failed to present any of the purported alibi witnesses during his PCR evidentiary hearing. Accordingly, 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.

Due Process/Brady Violation¹

Applicant next argues that he did not receive Due Process. This is because his attorney failed to show him all the Brady material. I disagree. Plea Counsel's credibly testified that he reviewed all evidence with Applicant and that Applicant had complete access to everything Plea Counsel had in his file. Thus, 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, Applicant failed to present sufficient evidence to prove prejudice. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Accordingly, 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.

Applicant's Plea was voluntarily made.

Applicant next argues that his plea was involuntary. I disagree. 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,

¹ Applicant's claim of Due Process is more appropriately characterized as a Brady violation.

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 alleges that he felt pressured to plead guilty after speaking with his sister and investigator. However, the record reflects Applicant swore to the plea court that he was pleading guilty freely and voluntarily. Furthermore, Plea Counsel testified credibly regarding his preparation and advice concerning the case and the amount of time Applicant was facing. Applicant admitted his guilt to the plea court and apologized to the victim's family. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. The plea court advised Applicant of the negotiations, the maximum possible punishment, and the specifics of each individual charge. The plea court also had an extensive colloquy with Applicant on whether he was satisfied with Plea Counsel. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. To the extent that Applicant alleged his plea was involuntary due to the threat of the death penalty, our Supreme Court has found that pleading guilty to avoid a possibly greater sentence,

without more, does not render a guilty plea involuntary. Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992). Accordingly, I find that this allegation should be denied and dismissed with prejudice.

Conflict of Interest.

Applicant next argues that his Plea Counsel had a conflict of interest because another public defender represented Applicant's co-defendant. I disagree.

"An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). "A defendant need not demonstrate prejudice if there is an actual conflict of interest." Id., 364 S.C. at 153, 612 S.E.2d at 450.

Here, Plea Counsel stated that the Aiken County Public Defender's office has separate teams of attorneys, paralegals, and support staff. Plea Counsel stated each co-defendant was assigned to a separate team, each team is separated from each other, and information is not shared between the two teams.

I find that no actual conflict of interest occurred by the dual representation of co-defendants by the Aiken County Public Defender's office. See Rule 407, SCACR, Rule 1.10, SCRPC. The mere possibility of a conflict is insufficient to impugn a criminal conviction. Gregory, 364 S.C at 152-53, 612 S.E.2d at 450 (2009). Applicant failed to present any credible evidence that an actual conflict of interest occurred.

Blair Hearing

Finally, Applicant argues that Plea Counsel should have requested a Blair hearing. I disagree.

In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id. Here, Plea Counsel credibly testified that Applicant was able to communicate and participate in his defense. Moreover, Applicant himself stated that he suffered from no competency issues both and during the evidentiary hearing. Thus, 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.

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.

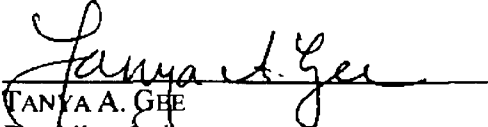
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right 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. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30th day of June, 2015.

Columbia, South Carolina


TANYA A. GEE
Presiding Judge
Second Judicial Circuit

WITNESSES

Aiken Department Of Public Safety

Martin Sawyer

Law Enforcement Case #: 2009 20381

ARREST WARRANT NUMBER

1091215

11-2009



J. STROM THURMOND
ACTION OF GRAND JURY

The Bill

VERDICT


Foreperson of Grand Jury

Date: June 11, 2009

DOCKET NO. 2009-GS-02-00791The State of South CarolinaCounty of AikenCOURT OF GENERAL SESSIONSJUNE TERM 2009THE STATE
vs.JAMES LEVON ALSTONCDR #: 0479Indictment forGRAND LARCENY§ 18-13-0030(B)(2)J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
GRAND LARCENY

§ 16-13-0030(B)(2)

At a Court of General Sessions, convened on June 15, 2009, the Grand Jurors of Aiken County present upon their oath:

That JAMES LEVON ALSTON, along with others, did in Aiken County, South Carolina, on or about December 20, 2008 knowingly, wilfully and unlawfully take, steal or carry away goods, chattels, instruments or other property with the intent to permanently deprive the owner thereof, being the property of [REDACTED] and described as a 2009 White 4 Door Mercedes, such property having a value of Five Thousand Dollars or more, in violation of §16-13-30 (B) (2) of the Code of Laws of South Carolina, 1976, as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Alken Department Of Public Safety

Martin Sawyer

Law Enforcement Case #: 2009 20381

ARREST WARRANT NUMBER

1091216

FILED June 11 2009

W. H. H. H. H. H.
W.C.P. & G.S.*James H. H. H. H.*
Deputy ClerkACTION OF GRAND JURY*True Bill**James H. H. H. H.*
Foreperson of Grand Jury
Dated June 11, 2009VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-02-00792

The State of South Carolina

County of Alken

COURT OF GENERAL SESSIONS

JUNE TERM 2009

THE STATE
vs.

JAMES LEVON ALSTON

CDR #: 0079

Indictment for

BURGLARY FIRST

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
BURGLARY FIRST

§ 16-11-0311

At a Court of General Sessions, convened on June 15, 2009, the Grand Jurors of Aiken County present upon their oath:

That JAMES LEVON ALSTON, along with others, did in Aiken County, South Carolina, on or about December 20, 2008, knowingly and wilfully enter a dwelling, to wit: 318 Williamsburg Street, SE, Aiken, South Carolina, being the dwelling of [REDACTED], without consent and with the intent to commit a crime therein and the defendant did enter or remain in the dwelling in the nighttime. All in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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


J. STROM THURMOND, SOLICITOR

<u>WITNESSES</u>		<u>DOCKET NO. 2008-GS-02-00794</u>	
Alken County Sheriff Office		The State of South Carolina	
James Criscillas		County of Alken	
Law Enforcement Case #: 2008 70822			
<u>ARREST WARRANT NUMBER</u> <u>9</u>		<u>COURT OF GENERAL SESSIONS</u>	
<u>MOD6057</u>		<u>JUNE TERM 2009</u>	
<u>THE STATE</u>		<u>VS.</u>	
<u>JAMES LEVON ALSTON</u>			
<u>ACTION OF GRAND JURY</u>		<u>CDR #: 0116</u>	
<u>Fore Bill</u>		<u>Indictment for</u>	
<u>Foreperson of Grand Jury</u>		<u>MURDER</u>	
<u>Date: June 11, 2009</u>		<u>§ 16-03-0010</u>	
<u>VERDICT</u>		<u>J. STROM THURMOND, SOLICITOR</u>	
<u>Foreperson of Petit Jury</u>			
<u>Date:</u>			

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

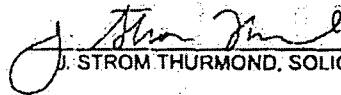
INDICTMENT FOR
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on June 15, 2009, the Grand Jurors of Aiken County present upon their oath:

That JAMES LEVON ALSTON, along with others, did in Aiken County on or about December 20, 2008, feloniously, wilfully and with malice aforethought, kill and murder [REDACTED] by striking [REDACTED] in the head with a baseball bat, causing blunt force trauma, and by securing a cloth over the victim's head, causing asphyxiation and that the victim did die in Aiken County at 845 Westover Drive, Aiken, South Carolina as a result thereof on December 20, 2008. All in violation of §16-3-10, Code of Laws of South Carolina, 1976, as amended.

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


J. STROM THURMOND, SOLICITOR

<u>WITNESSES</u>		<u>DOCKET NO. 2008-GS-02-00808</u>	
Aiken County Sheriff Office		The State of South Carolina	
James Crisillas		County of Aiken	
<u>Law Enforcement Case #: 2008 70922</u>			
<u>COURT OF GENERAL SESSIONS</u>			
<u>ARREST WARRANT NUMBER</u>		<u>JUNE TERM 2009</u>	
<u>NO16015</u>			
<u>THE STATE</u>		<u>VS.</u>	
<u>JAMES LEVON ALSTON</u>			
<u>ACTION OF GRAND JURY</u>			
<u>The Bill</u>			
<u>CDR #: 0139</u>		<u>Indictment for</u>	
		<u>ARMED ROBBERY</u>	
		<u>§ 16-11-0330(A)</u>	
<u>J. STROM THURMOND, SOLICITOR</u>			
<u>Foreperson of Grand Jury</u>			
<u>Date: June 11, 2009</u>			
<u>VERDICT</u>			
<u>Foreperson of Petit Jury</u>			
<u>Date:</u>			

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY
§ 16-11-0330(A)

At a Court of General Sessions, convened on June 15, 2009, the Grand Jurors of Aiken County present upon their oath:

That JAMES LEVON ALSTON, along with others, did in Aiken County, South Carolina on or about December 20, 2008 knowingly and wilfully while having possession of a deadly weapon, to wit: a baseball bat, feloniously take from the person or presence of [REDACTED], by means of force, threats or intimidation goods or monies being described as follows: Approximately Two Hundred Forty and 00/100 Dollars (\$240.00) with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

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


J. STROM THURMOND, SOLICITOR

WITNESSES
Aiken County Sheriff's Office
Jamess Critchalls
Law Enforcement Case #: 2008-10922

DOCKET NO. 2010GS0202017

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

ARREST WARRANT NUMBER
10-D102-0105
10-11-10

THE STATE
 vs.

JAMES LEVON ALSTON

ACTION OF GRAND JURY

True Bill

CDR #: 2851

Indictment for

ARSON - SECOND DEGREE

§ 18-11-0110(B)

J. STROM THURMOND, SOLICITOR

Forperson of Grand Jury
Date: December 8, 2010

VERDICT

Forperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
ARSON- SECOND DEGREE

§ 16-11-0110(B)

At a Court of General Sessions, convened on December 13, 2010, the Grand Jurors of Aiken County present upon their oath:

That JAMES LEVON ALSTON, along with others, did in Aiken County, South Carolina, on or about December 20, 2008, wilfully and maliciously cause an explosion, set fire to or burn, or cause to be burned or aid, counsel, or procure the burning of a building or structure, to wit: Drive, Aiken, South Carolina, such being a dwelling house or its appurtenant structures, whether such building or structure was the property of the defendant or another, all in violation of Section 16-11-110 (B) of the Code of Laws of the State of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR