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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

TONY LEE BELTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001875

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated April 5, 2010).....	1
APPLICATION FOR POST-CONVICTION RELIEF (filed December 2010).....	17
RETURN	24
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated November 29, 2011)	29
APPLICATION FOR POST-CONVICTION RELIEF (filed September 2013)	73
POST-CONVICTION RELIEF HEARING TRANSCRIPT (<u>AUSTIN V. STATE</u>) (dated May 20, 2015)	80
ORDER GRANTING AN APPEAL PURSUANT TO <u>AUSTIN V. STATE</u>	91
ORDER OF DISMISSAL	98
INDICTMENTS	107
PLANTIFF'S EXHIBIT NO. 1	111
PLANTIFF'S EXHIBIT NO. 2	115
PLANTIFF'S EXHIBIT NO. 3	117
PLANTIFF'S EXHIBIT NO. 4	118
PLANTIFF'S EXHIBIT NO. 5	120
PLANTIFF'S EXHIBIT NO. 6	121
PLANTIFF'S EXHIBIT NO. 7	122

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 08-GS-38-0688
08-GS-38-0689

STATE OF SOUTH CAROLINA)

versus)

TONY BELTON,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

APRIL 5, 2010

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

TOMMY SCOTT, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

MARGARET PEGGY HINDS, ESQUIRE
PUBLIC DEFENDER
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E XPAGE

EXAMINATION OF TONY BELTON

BY THE COURT

7

SENTENCE OF THE COURT

15

E X H I B I T S

NONE

1 DATE:

2 APRIL 5, 2010

3 SOLICITOR SCOTT: MAY IT PLEASE THE COURT, YOUR
4 HONOR.

5 THE COURT: IS THIS AN APPEARANCE?

6 SOLICITOR SCOTT: IT'S A PLEA.

7 THE COURT: WELL, WE'VE GOT, WE NEED TO SWEAR
8 EVERYBODY THAT'S GOING TO PLEAD.

9 SOLICITOR SCOTT: YES, SIR.

10 THE COURT: ALRIGHT, IF YOU'RE IN THE COURTROOM
11 AND YOU THINK YOU MIGHT PLEAD GUILTY THIS AFTERNOON I
12 WANT YOU TO STAND SO I CAN EXPLAIN TO YOU YOUR
13 CONSTITUTIONAL RIGHTS. IT DOESN'T MATTER WHETHER YOUR
14 LAWYER IS PRESENT OR WHETHER YOU'VE SIGNED UP OR NOT,
15 BUT I DON'T WANT TO DO IT BUT ONCE. SO, IF YOU'RE IN
16 THE COURTROOM AND YOU THINK YOU MIGHT PLEAD GUILTY I
17 NEED YOU TO STAND AT THIS TIME. IT DOESN'T MAKE YOU,
18 YOU DON'T HAVE TO PLEAD GUILTY, OF COURSE, BUT YOU
19 CAN'T PLEAD GUILTY UNLESS YOU DO IT. I'M ONLY GOING
20 TO DO IT ONCE. SO, RAISE YOUR RIGHT HAND. IS THAT IT?

21 SOLICITOR SCOTT: WHY DON'T YOU JUST HAVE ALL OF
22 THEM STAND.

23 MS. HINDS: YEAH, EVERYBODY ON THE BENCH STAND
24 UP. IF YOU DON'T PLEAD, IT'S NOT GOING TO - - -

25 THE COURT: YOU DON'T HAVE TO PLEAD GUILTY BUT

1 I'LL SWEAR YOU IN AND THEN IF IT COMES AROUND YOU CAN
2 BE READY.

3 (Whereupon, Tony Belton,
4 along with other defendants,
5 is duly sworn.)

6 THE COURT: ALRIGHT, REMAIN STANDING, PLEASE, BUT
7 YOU CAN PUT YOUR HAND DOWN AND LISTEN AS I EXPLAIN TO
8 YOU THREE RIGHTS THAT YOU HAVE TO GIVE UP IF YOU WANT
9 TO PLEAD GUILTY. THE FIRST OF THESE IS YOUR RIGHT TO
10 HAVE THE GRAND JURY CONSIDER THE CHARGES AGAINST YOU.
11 THE GRAND JURY IS EIGHTEEN CITIZENS WHICH MEET HERE AT
12 THE COURTHOUSE EACH MONTH BEFORE COURT. WHEN THEY
13 MEET SOMEONE WHO IS FAMILIAR WITH THE CHARGES AGAINST
14 YOU AND THE EVIDENCE THE STATE HAS AGAINST YOU WOULD
15 APPEAR BEFORE THOSE EIGHTEEN CITIZENS AND TELL THEM
16 WHAT THAT EVIDENCE IS. THAT'S USUALLY A POLICE
17 OFFICER OR A DETECTIVE OR SOMEBODY WHO KNOWS ABOUT
18 YOUR CASE AND THE EVIDENCE AGAINST YOU. ONCE THOSE
19 EIGHTEEN PEOPLE ON THE GRAND JURY HEAR THAT REPORT
20 THEY TAKE A VOTE, AND AT LEAST TWELVE OF THEM HAVE TO
21 FIND THAT THERE IS SUFFICIENT EVIDENCE AGAINST YOU TO
22 BRING YOU TO TRIAL; OTHERWISE, WE CAN'T EVEN PROCEED
23 WITH A GUILTY PLEA. NOW, IF YOUR CASE HAS NOT BEEN TO
24 THE GRAND JURY I WILL TELL YOU AND YOU CAN DECIDE
25 WHETHER YOU WANT TO WAIT AND SEE WHAT THE GRAND JURY

1 MIGHT DO OR WHETHER YOU WANT TO GIVE UP THAT RIGHT AND
2 MOVE FORWARD TODAY..

3 SECONDLY, YOU HAVE THE RIGHT TO REMAIN SILENT.
4 THAT IS YOUR RIGHT TO SAY NOTHING ABOUT THE CHARGES.
5 YOU CANNOT BE FORCED TO TESTIFY AGAINST YOURSELF. BUT
6 WHEN YOU PLEAD GUILTY YOU GIVE UP THAT RIGHT IN ORDER
7 TO ADMIT THE TRUTH OF THE CHARGES AGAINST YOU.

8 AND FINALLY, YOU HAVE A RIGHT TO A JURY TRIAL.
9 THAT IS YOUR RIGHT TO HAVE A JURY DETERMINE WHETHER OR
10 NOT YOU ARE, IN FACT, GUILTY OF THESE CHARGES BEYOND A
11 REASONABLE DOUBT. A JURY WOULD BASE ITS DECISION ON
12 THE TESTIMONY AND THE EVIDENCE PUT UP BY THE STATE'S
13 WITNESSES. YOUR ATTORNEY COULD CROSS-EXAMINE THOSE
14 WITNESSES AND CALL WITNESSES ON YOUR OWN BEHALF AND
15 PUT UP ANY DEFENSE YOU MIGHT HAVE TO THE CHARGES. YOU
16 WOULD BE PRESUMED TO BE INNOCENT IF YOU HAD A JURY
17 TRIAL AND THE BURDEN WOULD BE ON THE STATE TO CONVINCE
18 ALL TWELVE JURORS OF YOUR GUILT.

19 IF YOU HAVE ANY QUESTIONS ABOUT ANY OF THESE
20 RIGHTS I'LL BE GLAD TO ANSWER THOSE QUESTIONS FOR YOU
21 IF YOU DECIDE TO PLEAD GUILTY. THANK YOU VERY MUCH,
22 YOU ALL MAY BE SEATED.

23 ALRIGHT, SOLICITOR.

24 SOLICITOR SCOTT: YOUR HONOR, STANDING BEFORE YOU
25 IS TONY BELTON. HE'S PLEADING GUILTY TO TWO

1 INDICTMENTS, 2008-GS-38-688, ASSAULT AND BATTERY WITH
2 INTENT TO KILL, AND 689, BURGLARY IN THE SECOND
3 DEGREE.

4 THE COURT: AND IS THIS THE ONE WE WERE JUST
5 TALKING ABOUT?

6 SOLICITOR SCOTT: YES, YOUR HONOR.

7 MR. HINDS: YES, SIR.

8 (NOTE: Blank lines on this page do not indicate any
9 part of record has been omitted. Headers on testimony
10 pages and hard page breaks between testimony are now
11 required by the Court. See next ensuing page for
12 sequential continuation of record.)

EXAMINATION OF TONY BELTON

BY THE COURT:

Q. ALRIGHT, MR. BELTON, HOW OLD ARE YOU?

A. TWENTY-TWO.

Q. HOW FAR DID YOU GO IN SCHOOL?

A. IT'S MY SOPHOMORE YEAR IN COLLEGE.

Q. HAVE YOU EVER BEEN TREATED FOR DRUG ABUSE,
ALCOHOL ABUSE OR MENTAL ILLNESS?

A. NO, SIR.

Q. HAVE YOU HAD ANY DRUGS, ALCOHOL, MEDICATION OR
ANYTHING IN THE LAST TWENTY-FOUR HOURS THAT WOULD
KEEP YOU FROM UNDERSTANDING WHAT'S GOING ON IN
COURT TODAY?

A. NO, SIR.

THE COURT: MS. HINDS, HAVE YOU EXPLAINED TO YOUR
CLIENT THE CHARGES HE IS FACING, THE EVIDENCE THE
STATE AGAINST HIM, THE POSSIBLE PENALTY -- IS HE
PLEADING TO ABHAN?

MS. HINDS: ABWIK.

THE COURT: ABWIK, WHICH CARRIES UP TO TWENTY,
AND BURGLARY, WHICH CARRIES UP TO FIFTEEN?

MR. HINDS: YES, SIR.

THE COURT: AND HAVE YOU EXPLAINED TO HIM HIS
CONSTITUTIONAL RIGHTS?

MS. HINDS: I HAVE, YOUR HONOR.

EXAM - TONY BELTON BY THE COURT

8

1 THE COURT: DO YOU BELIEVE HE UNDERSTANDS ALL OF
2 THOSE MATTERS?

3 MS. HINDS: I DO.

4 THE COURT: AND HOW HAS HE ADVISED YOU HE WISHES
5 TO PLEAD?

6 MS. HINDS: GUILTY, SIR.

7 THE COURT: DO YOU CONCUR IN HIS DECISION TO
8 PLEAD GUILTY?

9 MS. HINDS: I DO.

10 Q. MR. BELTON, YOUR ATTORNEY TELLS ME SHE HAS
11 EXPLAINED TO YOU THE CHARGES YOU ARE FACING, THE
12 EVIDENCE THE STATE HAS AGAINST YOU, THE POSSIBLE
13 PENALTY, AND YOUR CONSTITUTIONAL RIGHTS. SHE
14 SAYS SHE BELIEVES THAT YOU UNDERSTAND ALL OF
15 THOSE MATTERS AND YOU WANT TO PLEAD GUILTY. IS
16 THAT RIGHT?

17 A. YES, SIR.

18 Q. NOW, DID YOU UNDERSTAND YOUR RIGHT TO REMAIN
19 SILENT AND YOUR RIGHT TO HAVE A JURY TRIAL WHEN I
20 EXPLAINED THOSE RIGHTS TO YOU?

21 A. YES, SIR.

22 Q. DO YOU UNDERSTAND THAT IN ORDER TO PLEAD GUILTY
23 YOU HAVE TO GIVE UP THOSE RIGHTS?

24 A. YES, SIR.

25 Q. AND THAT'S WHAT YOU WANT TO DO?

EXAM - TONY BELTON BY THE COURT

9

1 A. YES, SIR.

2 Q. YOU DON'T WANT A JURY TRIAL?

3 A. NO, SIR.

4 Q. INDICTMENT NUMBER 689 SAYS THAT IN ORANGEBURG
5 COUNTY ON THE THIRD OF JANUARY, TWO THOUSAND AND
6 EIGHT, THAT YOU WILLFULLY AND UNLAWFULLY ENTERED
7 A DWELLING OF PHILLIP MILES WITHOUT CONSENT AND
8 WITH INTENT TO COMMIT A CRIME IN THAT DWELLING.
9 YOU WERE ORIGINALLY CHARGED WITH BURGLARY IN THE
10 FIRST DEGREE BUT IT'S REDUCED TO BURGLARY IN THE
11 SECOND DEGREE. DO YOU UNDERSTAND THAT CHARGE?

12 A. YES, SIR.

13 Q. HOW DO YOU PLEAD TO THAT CHARGE?

14 A. GUILTY.

15 Q. THE OTHER INDICTMENT SAYS, ON THAT SAME OCCASION
16 THAT YOU COMMITTED AN ASSAULT AND BATTERY UPON
17 THE VICTIM, MR. MILES, BY SHOOTING HIM WITH A
18 HAND GUN. DO YOU UNDERSTAND THAT CHARGE?

19 A. YES, SIR.

20 Q. HOW DO YOU PLEAD TO THAT CHARGE?

21 A. GUILTY.

22 Q. NOW, HAS ANYBODY PROMISED YOU ANYTHING OR
23 THREATENED YOU TO GET YOU TO PLEAD GUILTY?

24 A. NO, SIR.

25 Q. ARE YOU SATISFIED WITH YOUR ATTORNEY?

EXAM - TONY BELTON BY THE COURT

10

1 A. YES, SIR.

2 Q. DID YOU TELL HER EVERYTHING ABOUT THESE CASES SO
3 SHE COULD GIVE YOU CORRECT ADVICE?

4 A. YES, SIR.

5 Q. HAS SHE FAILED TO DO ANYTHING WHICH YOU THINK SHE
6 NEEDS TO DO TO HELP YOU?

7 A. NO, SIR.

8 Q. HAVE YOU UNDERSTOOD ALL THE QUESTIONS THAT I HAVE
9 ASKED YOU?

10 A. YES, SIR.

11 Q. HAVE YOU ANSWERED THEM TRUTHFULLY?

12 A. YES, SIR.

13 Q. DO YOU UNDERSTAND IF YOU WANTED TO FILE AN APPEAL
14 IN THIS CASE YOU WOULD HAVE TO DO THAT WITHIN TEN
15 DAYS?

16 A. YES, SIR.

17 THE COURT: I'LL ACCEPT THE PLEA, I FIND A
18 SUBSTANTIAL FACTUAL BASIS FOR HIS PLEA, HIS DECISION
19 TO PLEAD GUILTY IS FREELY AND VOLUNTARILY MADE, HE'S
20 KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO A JURY
21 TRIAL, AND HE'S HAD THE SERVICES OF AN ATTORNEY WITH
22 WHOM HE SAYS HE'S SATISFIED.

23 SOLICITOR SCOTT: THANK YOU, YOUR HONOR. YOUR
24 HONOR, THE VICTIM IN THIS CASE IS PHILLIP MILES, HE'S
25 SEATED ON THE FRONT ROW IN THE STRIPED SHIRT. YOUR

EXAM - TONY BELTON BY THE COURT

11

1 HONOR, MR. MILES, HE WAS LIVING AT
2 , APARTMENT , , BACK WHEN THIS INCIDENT
3 TOOK PLACE ON JANUARY THE THIRD OF TWO THOUSAND AND
4 EIGHT. MR. MILES TELLS ME, YOUR HONOR, HE CAME BACK
5 INTO TOWN -- MR. MILES WAS GOING TO S. C. STATE, AS
6 WAS THE DEFENDANT, YOUR HONOR, BUT MR. MILES TELLS ME
7 HE CAME BACK INTO TOWN SHORTLY AFTER THE CHRISTMAS
8 BREAK TO PAY HIS RENT. WHEN HE GOT TO HIS APARTMENT
9 HE WALKED INTO HIS APARTMENT, HE SAW SEVERAL ITEMS IN
10 HIS APARTMENT HAD BEEN BOXED UP NEAR THE DOOR. HE
11 DIDN'T THINK A WHOLE LOT OF IT AT FIRST BECAUSE HE
12 KNEW ONE OF HIS ROOM MATES WAS MOVING OUT. MR. MILES
13 STATES, YOUR HONOR, THAT HE WENT UPSTAIRS. WHEN HE
14 WENT INTO HIS ROOM HE NOTICED THAT HIS ROOM WAS IN
15 DISARRAY. HE WALKED INTO ONE OF HIS ROOM MATE'S ROOM
16 AND HE SAW AN INDIVIDUAL, YOUR HONOR, HIDING IN THE
17 CLOSET. THIS WOULD BE SOMEBODY WE BELIEVE AS TOMMY
18 WILSON. MR. MILES BEGAN TUSSLING WITH MR. TOMMY
19 WILSON. THEY ENDED UP IN THE HALLWAY SORT OF ON THE
20 SECOND FLOOR OF MR. MILES'S APARTMENT. AT THAT POINT
21 HE HEARD SOMEBODY YELL, GIVE IT UP. HE TURNED AROUND.
22 THIS DEFENDANT, YOUR HONOR, WAS STANDING THERE WITH A
23 GUN SPEAKING TO MR. MILES. MR. MILES, YOUR HONOR, AT
24 ONE POINT SAW A BREAK TO RUN FOR IT SO HE TRIED TO
25 FLEE DOWN THE STAIRS. AT THAT POINT, YOUR HONOR, THE

1 DEFENDANT, MR. BELTON, FIRED THE GUN, IT STRUCK MR.
2 MILES IN HIS ARM, UNDERNEATH HIS BICEP. MR. MILES
3 WENT TO THE LEASING OFFICE, YOUR HONOR, AND ASKED THEM
4 TO CALL NINE ONE ONE. POLICE RESPONDED. WE BELIEVE
5 THIS DEFENDANT AND THE CO-DEFENDANT, TOMMY WILSON,
6 FLED ON FOOT. A THIRD PERSON WHO HAD BEEN IN THE
7 APARTMENT EARLIER BUT WAS NOT IN THE APARTMENT AT THE
8 TIME OF THE SHOOTING BY THE NAME OF MICHAEL SIMMONS,
9 HE WAS CAUGHT IN THE PARKING LOT, YOUR HONOR. THE
10 POLICE BEGAN TALKING WITH MR. SIMMONS AND MR. SIMMONS
11 ULTIMATELY GAVE A STATEMENT SAYING THAT HE HAD, IN
12 FACT, BEEN IN THE APARTMENT ALONG WITH AN INDIVIDUAL
13 HE KNEW AS TONY BELTON AND A THIRD PERSON HE ONLY KNEW
14 BY THE NAME OF TOMMY, HE DID NOT KNOW TOMMY'S LAST
15 NAME. THE POLICE, YOUR HONOR, AT THAT POINT THEY PUT
16 MR. BELTON IN A PHOTO LINEUP AND MR. MILES PICKED MR.
17 BELTON OUT OF A PHOTO LINEUP.

18 THE COURT: ALRIGHT. MS. HINDS, YOU'VE EXPLAINED
19 TO HIM THAT THIS ASSAULT AND BATTERY WITH INTENT TO
20 KILL IS A VIOLENT, MOST SERIOUS, NO PAROLE OFFENSE?

21 MS. HINDS: WE HAVE GONE OVER ALL OF THIS, SIR.

22 THE COURT: AND YOU'VE EXPLAINED TO HIM THE
23 STRIKES LAW?

24 MS. HINDS: I HAVE.

25 THE COURT: DO YOU UNDERSTAND ALL OF THAT, MR.

1 BELTON?

2 DEFENDANT BELTON: YES, SIR.

3 THE COURT: ALRIGHT. YES, MA'AM, MS. HINDS.

4 MS. HINDS: YOUR HONOR, AS HE TOLD YOU, HE'S
5 TWENTY-TWO YEARS OLD, HE'S SINGLE, HE DOES NOT HAVE
6 ANY CHILDREN. HE WAS ACTUALLY A STUDENT AT SOUTH
7 CAROLINA STATE UNIVERSITY, AS THE SOLICITOR STATED. HE
8 WAS IN HIS SOPHOMORE YEAR, A PSYCHOLOGY MAJOR, I
9 BELIEVE. IN ADDITION TO THAT HE WORKED AS AN
10 ASSISTANT IN A COMPUTER LAB TRYING TO HELP OTHER
11 PEOPLE IMPROVE THEIR COMPUTER SKILLS.

12 YOUR HONOR, I WILL TELL YOU THAT MR. BELTON HAS
13 BEEN IN JAIL CONTINUOUSLY SINCE FEBRUARY NINETEENTH,
14 TWO THOUSAND AND EIGHT. WE HAVE HAD NUMEROUS
15 MEETINGS. WE'VE HAD AN INVESTIGATOR INVOLVED IN THIS
16 CASE. I BELIEVE MR. BELTON HAS TOLD ME EVERYTHING, I
17 BELIEVE WE HAVE FOLLOWED ALL LEADS. HE UNDERSTANDS
18 ABOUT THE SERIOUSNESS OF THIS CRIME, ABOUT THE
19 SERIOUSNESS OF THE CHARGES AND WHAT HE IS DOING HERE
20 TODAY. I WILL TELL YOU THAT HE IS A VERY ARTICULATE
21 YOUNG MAN, HE IS VERY SMART. THIS IS NOT SOMEBODY WHO
22 IS, OR WOULD BE CHARACTERIZED AS A BUG, I DON'T THINK.
23 HE, I THINK GOT CAUGHT UP IN AN UNFORTUNATE SITUATION
24 AND MADE SOME VERY, VERY, VERY BAD CHOICES.

25 YOUR HONOR, AS I SAID, HE'S HERE TAKING

1 RESPONSIBILITY FOR HIS PART IN THIS. I DON'T SAY THIS
2 VERY OFTEN BUT I DO BELIEVE THAT ONCE HE FINISHES ANY
3 TIME THAT HE GETS I DON'T THINK ANY JUDGE IS GOING TO
4 SEE HIM BACK IN THIS COURTROOM OR ANY OTHER COURTROOM,
5 IT'S JUST NOT WHO HE IS.

6 HIS FAMILY IS NOT HERE TODAY, HIS MOTHER IS OUT
7 OF STATE, COULD NOT BE HERE, AND THERE WERE SOME
8 COUSINS THAT WE UNFORTUNATELY COULD NOT GET WORD TO
9 UNTIL THE LAST MINUTE, BUT HE DOES HAVE FAMILY SUPPORT
10 AND HE DOES HAVE PEOPLE WHO CARE ABOUT HIM, AND WE
11 HAVE BEEN IN TELEPHONE CONTACT WITH THEM TODAY.

12 YOUR HONOR, I WOULD ASK YOU TO SHOW ANY LENIENCY
13 OR ANY MERCY THAT YOU COULD SHOW HIM.

14 I DO BELIEVE MR. BELTON WOULD LIKE TO BRIEFLY
15 ADDRESS YOU.

16 THE COURT: YES, SIR.

17 DEFENDANT BELTON: I WOULD JUST LIKE TO ASK YOU
18 FOR AS, WELL, MORE LENIENCY ON THIS PLEA, POSSIBLY
19 PROBATION. THIS IS MY FIRST TIME BEING LOCKED UP,
20 AND I'VE BEEN INCARCERATED FOR TWO YEARS. AS YOU
21 ALREADY KNOW, I ATTENDED THE SOUTH CAROLINA STATE
22 UNIVERSITY. I WAS MAJORING IN PSYCHOLOGY, I BEEN THERE
23 FOR TWO YEARS, AND I -- I'M VERY REMORSEFUL FOR HOW
24 THIS SITUATION CAME INTO PLAY. YOU KNOW, THIS IS,
25 LIKE SHE SAID, THIS IS SOMETHING NOT IN MY CHARACTER.

1 I DID NOT PLAN ON THIS HAPPENING, IT WAS JUST A
2 SITUATION THAT GOT OUT OF HAND. AND ONCE AGAIN, I'D
3 LIKE TO APOLOGIZE TO YOU AS WELL AS MY VICTIM FOR
4 WHATEVER PROBLEM I HAVE CAUSED HIM TODAY AND I WANT TO
5 ASK YOU FOR MERCY ON THIS PLEA.

6 THE COURT: WHEN WERE YOU ARRESTED?

7 DEFENDANT BELTON: I WAS ARRESTED FEBRUARY
8 NINETEENTH, TWO THOUSAND EIGHT.

9 SENTENCE OF THE COURT

10 ALRIGHT, THE SENTENCE ON EACH INDICTMENT IS NINE
11 YEARS. YOU'LL GET CREDIT FOR TIME SERVED, THEY ARE
12 CONCURRENT, AND YOU GET CREDIT FOR TIME SERVED SINCE
13 FEBRUARY THE NINETEENTH, TWO THOUSAND AND EIGHT.

14 GOOD LUCK TO YOU.

15 MS. HINDS: THANK YOU, YOUR HONOR.

16 SOLICITOR SCOTT: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, 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 ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE FIFTH DAY OF APRIL, 2010.

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

DATE: MARCH 7, 2011

Harry A. Walker
(MRS. HARRY A. WALKER)

FORM 5

2010-CP-38-1758

STATE OF SOUTH CAROLINA)

COUNTY OF Orangeburg)

IN THE COURT OF COMMON PLEAS

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

Tony Belton)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention (OCBDC) Orangeburg Calhoun Region Detention Center
2. Name and location of Court which imposed sentence Orangeburg - General Session
3. Name(s) of co-defendant(s) (if any) Michael Simmons
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008 GS38-0689
 - (b) 2008 GS38-0688
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/5/10 9yrs each ran ~~consecutive~~ concurrent
 - (b) 4/5/10 Defendant is to be given credit for time served pursuant to SC Code § 24-13-40 Revised 3/2003 to be calculated and applied. (since 2/14/08)

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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) I was not aware my rights were being violated; being
- (b) that I'm not a lawyer.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
Insufficient Counsel

- (a) Ineffective assistance of counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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) Because of my knowledge the proper procedure is

(b) a PCR.

(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? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Margaret E. Hinds (Peggy) / Office of Public Defender
First Judicial Circuit
P.O. Box 1112
Orangeburg, South Carolina 29116.
- 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:
Sentence vacated and/or new trial.
20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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

Sony Belton

SWORN to and subscribed before me this 2
day of December, 2010.

James B. Or (L.S.)
Notary Public

My Commission Expires: 11 May 2015

709 EEC-7 P 1:00

1968-1969

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

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

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

Jerry Betts
Applicant

SWORN or affirmed to and subscribed before me this
2 day of December, 2010.

[Signature]
Notary Public

My Commission Expires: 11 May 2015

2010 DEC -7 P 1:05
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
	)	2010-CP-38-1758
	)	
Tony Belton, #340217,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed December 17, 2010, 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 Clerk of Court for Orangeburg County. The Applicant was indicted for Assault and Battery with Intent to Kill ("ABWIK") (2008-GS-38-0688) and Burglary – 1st Degree (Dwelling) (2008-GS-38-0689). He was represented by Margaret Peggy Hinds, Esquire. On April 5, 2010, the Applicant plead guilty as indicted before the Honorable James C. Williams, Jr., to ABWIK and the lesser offense of Burglary – 2nd Degree (Non-Violent). Applicant was sentenced to nine (9) year on each charge, sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, and the Applicant's plea transcript.

II.

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

1. Ineffective assistance of counsel

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. 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. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

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.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

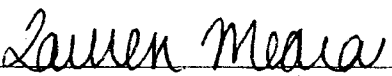
May 3, 20 11

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-1758
	)	
TONY BELTON, 340217,	)	
	)	
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:

Thomas R. Sims, Esquire
Post Office Box 2016
Orangeburg, SC 29116

DATED this 3rd day of May, 2011.


 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2013-CP-38-01200

3
4 TONY LEE BELTON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9
10 Post-Conviction Relief Hearing

11 Heard on Tuesday, November 29, 2011

12 Saint George, South Carolina

13
14 BEFORE:

15 THE HONORABLE DIANE SCHAFFER GOODSTEIN

16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Thomas R. Sims, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
Robert D. Corney, Esq.

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

EXAMINATION INDEX

TONY LEE BELTON

DIRECT BY MR. SIMS

5

CROSS BY MR. CORNEY

23

MARGARET ELIZABETH (PEGGY) HINDS

DIRECT BY MR. CORNEY

26

CROSS BY MR. SIMS

33

BY THE COURT

39

EXHIBIT INDEX

Applicant's

MAR ADM

1	4-page letter	16	16
2	Two letters - Hinds	17	17
3	Excerpts from plea transcript	17	17
4	Incident reports	21	21
5	Victim's statement	21	21
6	Nurse's note	22	22
7	Incident report	43	43

1 ON TUESDAY, NOVEMBER 29, 2011 AT 10:44 A.M.:

2 MR. CORNEY: Tony Belton, Your Honor, and
3 I'll bring up a packet.

4 THE COURT: We are here on the matter
5 involving Mr. Tony Belton. He's present with his
6 attorney, Mr. Sims.

7 Are there any preliminary matters that we
8 need to attend to?

9 MR. CORNEY: None from the State, Your
10 Honor.

11 MR. SIMS: None from the defense, Your
12 Honor.

13 THE COURT: Very well. All right.
14 Mr. Sims, if you'd call your first witness,
15 please.

16 MR. SIMS: Your Honor, at this time we call
17 Mr. Tony Belton to the stand.

18 THE COURT: All right. Mr. Belton, raise
19 your right hand as best you can. You can put
20 your paper down right there.

21 (Applicant placed under oath.)

22 THE COURT: Thank you. Come on and be
23 seated, Mr. Belton and Ms. Salisbury will give
24 you some water in just a moment. And once you
25 are seated, I want you to state your full name

TONY LEE BELTON - DIRECT BY SIMS

1 for our record and spell your last name.

2 THE APPLICANT: Tony Lee Belton.

3 TONY LEE BELTON, having been duly sworn,
4 was examined and testified as follows:

5 THE COURT: Mr. Forenzio, would you just
6 move that microphone just a little bit closer?

7 Thank you so much.

8 All right. Your witness.

9 DIRECT EXAMINATION

10 BY MR. SIMS:

11 Q. Mr. Belton, you were living in Orangeburg County;
12 is that correct?

13 A. I was.

14 Q. And you were attending South Carolina State
15 College?

16 A. I was.

17 Q. And what year were you in college?

18 A. From '06 to 2008.

19 Q. And you were a -- your status?

20 A. I was a sophomore.

21 Q. You were a sophomore. And you were subsequently
22 charged and arrested in Orangeburg County; is that
23 correct?

24 A. I was.

25 Q. And what were those charges?

TONY LEE BELTON - DIRECT BY SIMS

1 A. Assault and battery with intent to kill and a
2 burglary first.

3 Q. Okay. And as a result of that, you were appointed
4 a public defender; is that correct?

5 A. I was.

6 Q. And who was your public defender?

7 A. Peggy Hinds.

8 Q. And when were you first placed in jail?

9 A. February 19, 2008.

10 Q. And, did you have a preliminary hearing?

11 A. No, I did not.

12 Q. Okay. Did you ask for a preliminary hearing?

13 A. Yes, I did.

14 Q. Did you talk with your lawyer about obtaining a
15 preliminary hearing?

16 A. Yes, I did.

17 Q. And when is the first time that you were brought
18 into the courtroom?

19 A. If I'm not mistaken I would say maybe in August,
20 August 2008.

21 Q. August of 2008?

22 A. Yes.

23 Q. And did you at that time ask for a speedy trial?

24 A. Yes, I did.

25 Q. And was a speedy trial granted to you?

TONY LEE BELTON - DIRECT BY SIMS

1 A. No, it wasn't.

2 Q. Did you talk with your lawyer about a speedy
3 trial?

4 A. Yes, I did.

5 Q. Okay. And as a result of that, how long were you
6 in? Did you write letters to anyone in regards to a
7 speedy trial motion or obtaining a speedy trial?

8 A. I wrote letters to the clerk of court as well as to
9 the Supreme Court.

10 Q. Did you receive a response to any of that?

11 A. I did not receive a response from the clerk of
12 court, but I did receive a response from the Supreme
13 Court.

14 Q. And you communicated that with your attorney?

15 A. Yes, and she received a copy as well.

16 Q. Okay. And as a result of that, when was the first
17 time you came into court prior to -- after that? When did
18 you come into court, in effect, to deal with these
19 charges?

20 A. September 9th, 2009.

21 Q. So from January of 2008 through September the 9th
22 of 2009, you had not been in the courtroom?

23 A. I had, I appeared in the courtroóm but it was on
24 several continuances, several second appearances.

25 Q. Okay.

TONY LEE BELTON - DIRECT BY SIMS

1 A. But, as far as considering my sentence or the issue
2 I displayed to the Supreme Court it was, the first time
3 they brought up was in September the 9th of 2009.

4 Q. Now did you at that time -- during the course of
5 this conversation you talked with your attorney; is that
6 correct?

7 A. Yes.

8 Q. And there were certain things that you raised or
9 asked her to do; is that correct?

10 A. Yes, there were.

11 Q. And would you explain to the Court what, if
12 anything, did you ask her to do and whether or not they
13 were done?

14 A. I asked her on several occasions to appear in court
15 for a bond.

16 Q. Uh-huh.

17 A. As well as I asked for a trial. And I had alibis
18 that could have been sufficient for my, for my case
19 because at the same time I was in Columbia, South
20 Carolina, at another crime scene as a victim. I was
21 involved -- I had got shot off of Street
22 which is off of Garners Ferry Road --

23 Q. Uh-huh.

24 A. -- on the same day around the same time which she
25 did not use as evidence for me to appear in court.

TONY LEE BELTON - DIRECT BY SIMS

1 Q. Okay. So, you're -- let me -- we want to be
2 clear. You're actually saying that you were in another
3 place at another time and you were a victim at the same
4 time that this was going on in Orangeburg County?

5 A. Yes.

6 Q. Okay. And you're explaining that to your lawyer?

7 A. Yes.

8 Q. Did you give her -- you said alibis. Were there
9 any other alibis that you asked her to look into?

10 A. A roommate of mine named Kalina Thompson and
11 Shawndella Houston.

12 Q. And were those looked into?

13 A. As far as my knowledge, no, it wasn't.

14 Q. Okay. Now, you said on September 9th when you went
15 to court that issue was discussed as relates to the speedy
16 trial. What if anything happened at that time?

17 A. Nothing happened because at the time the judge seen
18 that we wasn't on the same accord. We wasn't on one
19 accord. So he asked us to come up for another
20 appearance. And that was after that.

21 Q. When you say the judge saw that you were not on the
22 same accord, who, who were you not on the same accord
23 with?

24 A. With my lawyer, Peggy Hinds.

25 Q. Uh-huh.

TONY LEE BELTON - DIRECT BY SIMS

1 A. Because at a moment -- my solicitor had made a
2 false accusation on me or actually brought up a charge I
3 wasn't charged with, you know. And the judge asked me
4 basically to reconsider me taking these things to trial.

5 So at the same time I had to let my lawyer know
6 that I wasn't aware I'm being charged with something such
7 as this crime which she made a statement that, "Yes, yes,
8 I did, yes, I did tell you that you was being charged with
9 this." I was, like, "No, I haven't seen you since April,"
10 you know. And that's where that disagreement came up and
11 the judge said basically it was --

12 Q. Now what was the charge that the solicitor told the
13 court about that you were being charged with?

14 A. I was being charged with homicide, manslaughter and
15 he decided, and he said his decision was to reduce it to
16 an involuntary manslaughter.

17 Q. Okay. And you were prepared for trial; is that
18 correct?

19 A. Yes.

20 Q. And -- but your transcript reveals that you entered
21 into a plea?

22 A. Yes.

23 Q. And would you explain to the Court the
24 circumstances surrounding your entering into a plea?

25 A. Well, you must understand I sat in the county jail

TONY LEE BELTON - DIRECT BY SIMS

1 for over two years. Twenty-six months to be exact.

2 Q. Uh-huh.

3 A. And after trying everything on my behalf and
4 watching -- my attorney really wasn't putting forth 100
5 percent effort on my case. I decided I may have a better
6 chance of fighting it on my own by having to plead guilty.

7 Having -- if my -- if my -- if my lawyer had
8 advised me properly, you know what I'm saying, I would
9 have, I would have gone, went ahead and taken the trial if
10 that was possible.

11 Q. Uh-huh.

12 A. But I wasn't as confident with my lawyer at that
13 time.

14 Q. Okay. Now, you have filed this PCR or post-
15 conviction relief saying that your attorney was
16 ineffective. Would you tell us the things that she did or
17 did not do that were ineffective in your opinion?

18 A. Well, first was mistakes for not appearing for a
19 bond.

20 Q. Uh-huh.

21 A. Which I know, I have knowledge of that. Everyone
22 should receive an opportunity to appear for a bond which I
23 did not until exactly two years later.

24 Also the length of delay of me sitting inside the
25 court -- sitting inside, well, sitting inside the county

TONY LEE BELTON - DIRECT BY SIMS

1 jail. I sat in the county jail for 26 months just off of
2 circumstantial evidence.

3 Q. I think you had a list --

4 A. Yes.

5 Q. -- when we talked the other day. You did have a
6 list of issues that you wanted to raise.

7 Would you just read them into the record or speak
8 them into the record?

9 A. Yes. I filed defaults in the police report. The
10 prosecutor, Thomas Scott, relied on police report at the
11 pretrial which held false information. In the police
12 report the police officer gave a false report stating
13 subject Michael Simmons did in fact pass a polygraph. I,
14 the Applicant, have undisputed evidence that Michael
15 Simmons did fail.

16 Q. And you're saying that your lawyer did not look
17 into that?

18 A. She did not look into it.

19 Q. Okay. What else?

20 A. Also, the counsel failed to advise the client that
21 I had a potential motion for a suppression or impeachment
22 under the photo lineup of Neal versus Biggers because the
23 victim statement cannot describe or identify the suspect.

24 Q. Okay. You cited a case, Neal versus --

25 A. Neal versus Biggers.

TONY LEE BELTON - DIRECT BY SIMS

1 Q. In regards to the photo lineup --

2 A. Correct.

3 Q. -- that there was no motion made to suppress the
4 photo lineup?

5 A. Correct.

6 Q. Okay. What else?

7 A. Also being that the victim did give description
8 pertaining -- to make the lineup even more suggestive and
9 then if the police and prosecutor relied on the subject
10 Michael Simmons makes it worse because the subject is
11 already known as a liar for failing the polygraph test.

12 Q. Okay. So you're saying that because he did not
13 pass the polygraph test and your attorney did not look
14 into that and because there was no motion made to suppress
15 the photo lineup, that was ineffective assistance?

16 A. Correct.

17 Q. Do you have any other grounds that you talked about
18 or you wanted to put on the record for the Court to hear
19 in terms of why you felt that your attorney was
20 ineffective?

21 A. Of course it was several reasons dealing with the
22 case itself.

23 Q. Uh-huh.

24 A. Burglary first, you know, it requires evidence that
25 the defendant entered a dwelling under 16-11-311.

TONY LEE BELTON - DIRECT BY SIMS

1 Q. Uh-huh.

2 A. There was no DNA fingerprints or any physical
3 evidence that showed that the Applicant entered this
4 dwelling. Furthermore, had my attorney told me that
5 malice couldn't be proven with -- proven from use of a
6 deadly weapon, I would have a strong defense against the
7 charge. I would have never pled guilty. And that's under
8 State versus Belcher.

9 And the victim's statement on the photo lineup, the
10 victim, Mr. Phillip Miles, he stated that I, the
11 Applicant, is the one who shot him. But, in his
12 statements and the incident report it shows that he did
13 not see, he did not see the Applicant shoot him because it
14 strictly says that he had his back turned and he didn't
15 get shot until after his back was turned.

16 And other than dealing with the pre-indictment
17 delay as well as speedy trial delay, that's basically all.

18 Q. Okay. So now this is your opportunity to tell this
19 Judge and the Court in terms of what you feel that your
20 client {sic} did not do which in effect prejudiced you and
21 caused you to be where you are now. Is there any other
22 information that you want to give to the Court in regards
23 to that issue?

24 A. I'd like for it to be on record, once again, that I
25 have exhibits as well, evidence as far as what I did write

TONY LEE BELTON - DIRECT BY SIMS

1 the Supreme Court, my letters. And as well, all these
2 issues I brought up, I have exhibits.

3 If -- would you like me to name it, ma'am?

4 THE COURT: You got to ask the questions --

5 MR. SIMS: Yes.

6 THE COURT: -- you know.

7 MR. SIMS: Okay.

8 BY MR. SIMS:

9 Q. You said you had exhibits?

10 A. Yes.

11 Q. And what were those -- what are those exhibits?

12 A. I have exhibits consistent with what I wrote the
13 Supreme Court as well as the police report, the incident
14 report, incident reports and --

15 Q. Exhibits. You mean you have copies of your letters
16 that you sent to the Supreme Court?

17 A. I have copies of the letter that I sent to the
18 Supreme Court for one.

19 Q. Uh-huh.

20 A. And also these same issues I've raised pertaining
21 to how my counsel was ineffective. I have --

22 Q. Do you have those with you because if so, I would
23 want to -- do you want to put them into the record to make
24 them part of the record?

25 A. Yes, I would.

TONY LEE BELTON - DIRECT BY SIMS

1 Q. May I have them, please?

2 Your Honor, may I approach?

3 THE COURT: You may.

4 MR. SIMS: May I have them, please?

5 Your Honor, we would like to make these a
6 Court Exhibit.

7 THE COURT: Applicant's Exhibit.

8 MR. SIMS: I'll show them to the US
9 Attorney's Office {sic}.

10 MR. CORNEY: I apologize, Your Honor.

11 THE COURT: Not a problem.

12 (Attorneys reviewing documents.)

13 MR. CORNEY: Your Honor, there are several
14 here that we clearly just don't have a problem
15 with that are fine, we have no objection to. One
16 being his letter to the Supreme Court, I believe,
17 dated August 20th, 2009. I think it's about four
18 pages or so.

19 THE COURT: Again --

20 MR. SIMS: We move that this be Applicant's
21 One.

22 THE COURT: Okay. Very well.

23 (Applicant's Exhibit No. 1, Applicant's
24 4-page letter, received into evidence.)

25 MR. CORNEY: The next two are letters from

TONY LEE BELTON - DIRECT BY SIMS

1 Peggy Hinds. If we could just do them as one
2 exhibit. You're okay with that?

3 MR. SIMS: Yeah.

4 MR. CORNEY: One is dated March 24th, 2010,
5 and the other is dated May 15th, 2008, both from
6 Peggy Hinds to the Applicant. And we have no
7 problems with those.

8 MR. SIMS: Make these as Applicant's Number
9 Two, Your Honor.

10 THE COURT: Very well.

11 (Applicant's Exhibit No. 2, two letters -
12 Hinds, received into evidence.)

13 MR. CORNEY: This is a page from the plea
14 transcript. It's already made part of the
15 record. It's page 12 the plea transcript. I
16 don't know -- it's already part of the record. I
17 don't know if it's something you want to enter or
18 just --

19 MR. SIMS: Your Honor, this is page 12.
20 The Applicant has made several additions -- made
21 several notes in here, I believe. And he would
22 want that in. We just put it in. It's already
23 part of the record, but we would put it in as
24 Applicant's Three.

25 THE COURT: Okay.

TONY LEE BELTON - DIRECT BY SIMS

1 (Applicant's Exhibit No. 3, excerpts from
2 plea transcript, received into evidence.)

3 MR. CORNEY: Your Honor, the next three are
4 incident -- or, offense reports dated January
5 10th, 2008, January 23rd, 2008, and page two of
6 that January 23rd, 2008. Our objection to these
7 would be that they're incomplete copies of a
8 report based on the page numbers. And I don't
9 think they can go to the truth of the matter
10 asserted in the incident reports. Those would be
11 our objections to these three pages of the
12 offense reports that he has here.

13 THE COURT: All right. So the concern is
14 the lack of completeness of the incident reports;
15 is that right?

16 MR. CORNEY: Yes, Your Honor. It starts on
17 page two here.

18 THE COURT: Okay.

19 MR. CORNEY: There's no page one with it.
20 And I don't think they can go to the truth of the
21 matter asserted in the offense reports anyway,
22 but, yeah, they're incomplete as well. So, that
23 would be the concern of ours.

24 THE COURT: What about that, Mr. Sims?

25 MR. SIMS: Ma'am?

TONY LEE BELTON - DIRECT BY SIMS

1 THE COURT: What about that?

2 MR. SIMS: Your Honor, we feel that the
3 information is indicative of what the
4 Defendant -- what the Applicant has been saying
5 in regards to the issues that he's been trying to
6 raise. They point out, even though they may be
7 just page two -- beginning on page two, it
8 highlights several areas in where the Applicant
9 has made an indication that these are things that
10 should have been looked into or should have been
11 done that were not done as a result of what he's
12 alleging is ineffective assistance of counsel.

13 We feel that just for information purposes
14 they should be in the record.

15 THE COURT: All right. And the State of
16 course is asking that the remainder of the report
17 be admitted as well. I don't know if there is a
18 complete copy of the incident report or not. But
19 it seems to me that, that if he wants --

20 MR. SIMS: Part of it.

21 THE COURT: I don't think it's appropriate
22 to take a part of the report where he has
23 specifically highlighted and made notes and not
24 have the entire report. I think it certainly
25 violates the best evidence rule for sure.

TONY LEE BELTON - DIRECT BY SIMS

1 MR. SIMS: Your Honor, then could we move
2 to supplement the record with the full report?

3 THE COURT: Sure.

4 MR. SIMS: When we -- if that's available?

5 THE COURT: Any objection to that?

6 MR. CORNEY: If we were going to do that
7 we'd just ask that it go towards reasonableness,
8 not towards the truth of what's asserted in the
9 reports. Just towards reasonableness.

10 THE COURT: Sure.

11 MR. SIMS: So, do you want to keep these
12 until we can determine whether or not -- or just
13 hold these as a Court Exhibit?

14 Your Honor, I believe the parties have
15 agreed that this would be a Court Exhibit until
16 we can get a full report to make a determination
17 so that you have, the Court would have the full
18 report.

19 THE COURT: I don't want -- I don't want it
20 in the record because if I start my review of my
21 study, I don't want to have an incomplete
22 document in there. So, you know.

23 MR. SIMS: Could we have two weeks then --

24 THE COURT: Yeah, sure.

25 MR. SIMS: -- to see if we can find the

TONY LEE BELTON - DIRECT BY SIMS

1 full report?

2 THE COURT: Yes. Absolutely.

3 MR. CORNEY: The next two things that I
4 have, Your Honor, are incident reports. And,
5 again, we would just ask they go for
6 reasonableness and not for the truth asserted as
7 the officer who filled these out isn't here to
8 testify.

9 THE COURT: Certainly. Very well.

10 MR. SIMS: This would be Applicant's Four,
11 I believe.

12 (Applicant's Exhibit No. 4, incident
13 reports, received into evidence.)

14 MR. CORNEY: The next page I have, Your
15 Honor, is an Orangeburg County Sheriff's Office
16 Central Investigative Division. It's a victim's
17 affidavit. And again, these go for
18 reasonableness on the document as it is the
19 victim's statement.

20 THE COURT: Very well.

21 MR. CORNEY: And he's not here to testify.

22 MR. SIMS: Your Honor, that would be all
23 that we have at this time.

24 (Applicant's Exhibit No. 5, victim
25 statement, received into evidence.)

TONY LEE BELTON - DIRECT BY SIMS

1 MR. SIMS: Oh, you got one more?

2 MS. WILLIAMS: We got two more.'

3 MR. SIMS: Okay. I'm sorry.

4 MR. CORNEY: All right. This one is a,
5 some sort of a medical document, I believe, of
6 some sort. It's entitled Nursing Emergency
7 Department Note dated January 3rd, 2008.

8 Again, we go for reasonableness but not the
9 truth.

10 MR. SIMS: Yeah.

11 (Applicant's Exhibit No. 6, nurse's note,
12 received into evidence.)

13 MR. CORNEY: And, Your Honor, the final
14 thing I have here is a South Carolina Law
15 Enforcement Division Preliminary Field Polygraph
16 Report of the victim, Phillip Miles, in this
17 case.

18 We would object to this based on the
19 relevancy and the fact that this was a polygraph
20 examination which is not admissible in court.
21 But also for relevance. I don't think Mr. Miles
22 is here today, not available to testify. There's
23 no impeachment purpose or anything. He's not
24 here to testify.

25 MR. SIMS: I understand. I fully

TONY LEE BELTON - CROSS BY CORNEY

1 understand the rule as relates to polygraph
2 examination. He's already testified to it. I
3 believe it's in the record that he testified that
4 he did not pass a polygraph test. So this paper
5 would be, in my mind, redundant and I would
6 withdraw it.

7 THE COURT: Very well. Cross-Examination.

8 MR. CORNEY: Just very briefly, Your Honor.

9 THE COURT: Sure.

10 CROSS-EXAMINATION

11 BY MR. CORNEY:

12 Q. Mr. Belton, at this plea hearing that you had you
13 never once mentioned anything about this preliminary
14 hearing to the judge as you went through the stages of
15 entering the plea, did you?

16 A. I don't believe at the plea hearing.

17 Q. Okay. So that was never something you raised or
18 said, "Hey I want a preliminary hearing," and never got
19 it?

20 A. I did ask for a preliminary hearing during one of
21 my second appearances. And I did, I did fill out the
22 paperwork that I needed to as far as asking for a
23 preliminary hearing.

24 But on the date that I accepted my plea, no, I did
25 not ask for a preliminary hearing.

TONY LEE BELTON - CROSS BY CORNEY

1 Q. Okay. And on page eight in the record, the judge
2 asked -- said, you know, "If you plead you're going to
3 give up your right to a jury trial here." And you said
4 that's what you wanted to do at that point here, right?

5 A. I did say that.

6 Q. Okay. And you told the judge that you were
7 satisfied with Ms. Hinds' representation of you and that
8 there was nothing out there that she hadn't done that you
9 wanted her to do, right?

10 A. I did say that.

11 Q. And I think you said a minute ago that you were
12 concerned about her representation so you wanted to kind
13 of take this into your own hands and enter this plea,
14 right?

15 A. Right.

16 Q. So this was your decision to enter this plea. You
17 took it into your hands and you handled it yourself and
18 said, "This is what I want to do"?

19 A. No. Actually from sitting in the county jail for
20 such a long time it, it plays an effect on the person.
21 So, actually at the end Ms. Hinds asked me to go ahead and
22 plead out but she say, "When you plead you can't go up and
23 still speaking about your innocence. You must go ahead
24 and you must accept that you're guilty."

25 So that's what I did off of her advisement.

1 Q. Okay. So you don't deny that you went in there and
2 said you were guilty and took the plea that day though,
3 right?

4 A. No, I do not deny that.

5 Q. Okay. So you are guilty of the crimes then that
6 you were charged with here?

7 A. No, I'm not.

8 Q. So you lied under oath to Judge Williams the day of
9 your plea hearing saying that you were guilty? You lied
10 under oath that day?

11 A. I mean, you must understand. My lawyer advised me
12 that I can't, I can't scream that I'm innocent when I'm,
13 when I'm about to take a plea. When I come up to take a
14 plea, she said I have no right to ask for, I can't ask for
15 innocent. I can't scream innocence.

16 Q. So you said --

17 A. They locked me up.

18 Q. I apologize. You said what you had to say to get
19 this plea that day though, pretty much, right? Whatever
20 it took to get the plea, that's what you said?

21 A. Under her advisement, yes.

22 MR. CORNEY: That's all the questions I
23 have, Your Honor.

24 THE COURT: All right. Redirect?

25 MR. SIMS: None, Your Honor.

PEGGY HINDS - DIRECT BY CORNEY

1 THE COURT: All right. Come on back down
2 to your lawyer at counsel table. All right.
3 Call your next witness, please.

4 MR. SIMS: Your Honor, that would be the
5 Applicant's case.

6 THE COURT: Very well. Thank you so much.
7 All right. All right.

8 Mr. Corney?

9 MR. CORNEY: The State would call Ms. Peggy
10 Hinds.

11 THE COURT: If you come along ma'am and be
12 sworn.

13 MARGARET ELIZABETH (PEGGY) HINDS, having
14 been duly sworn, was examined and testified as
15 follows:

16 THE COURT: If you'd please be seated and
17 when you are seated if you would state your full
18 name for the record and spell your last name,
19 please.

20 THE WITNESS: Margaret Elizabeth Hinds. I
21 go by Peggy Hinds.

22 THE COURT: Your witness, sir.

23 MR. CORNEY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. CORNEY:

PEGGY HINDS - DIRECT BY CORNEY

1 Q. Good morning, Ms. Hinds.

2 A. Good morning.

3 Q. If you would just briefly start by telling us how
4 long you've been practicing criminal law and what your
5 capacity, what you work in right now.

6 A. I've been doing this for 15 years. I work in
7 Orangeburg Public Defender's Office. I have been there
8 the whole time.

9 Q. Okay. You've had -- have you had an opportunity to
10 briefly review Mr. Belton's file before coming into court
11 today?

12 A. I have.

13 Q. Did you have the opportunity to discuss the
14 indictments and the elements of the offenses that
15 Mr. Belton was facing with him?

16 A. Many, many times.

17 Q. And these indictments were true billed?

18 A. They were.

19 Q. Okay.

20 A. I think I was appointed in March of 2008. They
21 were true billed on May 7th, I believe, 2008.
22 So there wouldn't have been an opportunity to have a
23 prelim.

24 Q. Did you have an opportunity to review his
25 constitutional rights with him including his right to a

PEGGY HINDS - DIRECT BY CORNEY

1 jury trial?

2 A. Yes, sir.

3 Q. And what was his stance based on your conversation
4 in terms of going to trial versus taking a plea in this
5 case?

6 A. For a very long time it was he wanted to go to
7 trial. I met with him for the first time on May 16th of
8 2008. He immediately told me about an alibi defense.

9 That same day I subpoenaed records from the VA
10 Hospital in Columbia, and also from Richland Memorial.
11 What he had told me basically was that he had been shot
12 and had been treated at both of those hospitals. And I
13 got that information.

14 Unfortunately once I got the records back, although
15 it did indicate that he had been treated at both of those
16 facilities, the time frame would have allowed him to get
17 from Orangeburg to Columbia. So it wasn't a solid alibi.

18 Q. And do you recall reviewing his discovery file from
19 the State, or receiving -- I apologize. Do you recall
20 receiving his discovery file?

21 A. Yep. I received it early on. It didn't take very
22 long. I don't know that I offhand know the exact date. I
23 can't tell you when, when I actually got hold of it but I
24 had it at the time of our first meeting in May because we
25 went over it on that date.

PEGGY HINDS - DIRECT BY CORNEY

1 Q. And you did review the contents of his discovery
2 file with him during your meetings?

3 A. On many, many occasions.

4 Q. Did you hire an investigator to help you on this
5 case?

6 A. I did.

7 Q. Okay. Would it be fair to say Mr. Belton's a
8 pretty bright guy, obviously a college-educated guy?

9 A. Yes, sir.

10 Q. And he was in college at South Carolina State, I
11 think, at the time?

12 A. He was.

13 Q. Do you recall if there were any statements given
14 against Mr. Belton by the victim or anyone involved?

15 A. There were.

16 Q. His co-defendant, Michael Simmons, gave a statement
17 against him?

18 A. Yes, sir. I also had an opportunity to meet with
19 the victim personally. So, I mean, it wasn't just -- I
20 knew exactly what he was going to say if we went to trial.

21 Q. Okay. Do you recall whether there was any victim
22 identification lineup or anything of that sort?

23 A. There was.

24 Q. And based on all of your investigation and your
25 discussions with Mr. Belton, were you able to start to

PEGGY HINDS - DIRECT BY CORNEY

1 develop an opinion about the State's ability to prove his
2 guilt beyond a reasonable doubt?

3 A. Yes.

4 Q. And what was your opinion as far as that goes?

5 A. My opinion was he had asked me to look into some
6 witnesses, one of his -- one of which was Ms. Thompson
7 that he's talked about. I was able, or the investigator
8 was able to talk with her. I believe we even got a
9 statement from her. The problem is she would put him in
10 Columbia in a week or weeks prior or around that time
11 period, but she couldn't keep him in Columbia so to
12 speak. In other words, there was nothing -- she had no
13 direct knowledge of where he was at the time of the
14 incident.

15 We also talked to a Mr. Utsey. He talked with us
16 but he wasn't very cooperative and ultimately he declined
17 to give a statement. He didn't want to be involved.

18 Q. Mr. Belton was facing essentially a life sentence
19 under these charges as he was indicted?

20 A. Correct.

21 Q. And do you recall entering into plea negotiations
22 with the State on his behalf?

23 A. Yes.

24 Q. Okay. Do you recall any offers that were made
25 during those negotiations?

PEGGY HINDS - DIRECT BY CORNEY

1 A. Actually there was several. There was a lot of
2 back and forth. I believe initially it was 15 years. By
3 October 14th, my notes reflects that we now had a range of
4 10 to 15.

5 In December of 2009, I got the solicitor down to
6 12.

7 I would point out also that in addition to this,
8 and I think he briefly spoke about it when he was giving
9 his testimony, he had actually been charged with murder.
10 There was an incident that happened at the jail where he
11 was put in a cell with a person who was pretty much out of
12 control.

13 On that particular case it was never any doubt that
14 if the State pursued it that was going to be a trial. And
15 I understood that and totally agreed with them on that.
16 That case was ultimately dismissed.

17 It looks like the last recommendation was from the
18 solicitor would have been in March and that was a 10. And
19 ultimately when he pled in front of Judge Williams he got
20 nine.

21 Q. Okay. And that was to a burglary second charge as
22 opposed to a burglary first?

23 A. Correct.

24 Q. And he was still facing 35 years even with a
25 burglary second, right?

PEGGY HINDS - DIRECT BY CORNEY

1 A. Yes.

2 Q. And those plea offers were things that you, you
3 discussed with him throughout the course of the
4 negotiations?

5 A. Absolutely.

6 Q. Okay. Do you think it was in his best interests to
7 take that plea offer?

8 A. I do.

9 Q. And that was -- and he agreed with you that he
10 thought it was in his best interests at that time?

11 A. As I said, for the longest period of time it was a
12 trial. There was no doubt that he wanted a trial until --
13 it looks like October of 2009 he was still wanting a
14 trial. After the first of the year it looks like he was
15 starting to find out if the plea, if the offers would get
16 any better.

17 Pardon me for just a moment.

18 And then finally at the beginning of April he
19 determined he was going to plead.

20 Q. And was it ultimately his decision to enter this
21 plea?

22 A. Absolutely.

23 Q. And he did so voluntarily from everything you can
24 tell in your representation?

25 A. Yes, sir.

PEGGY HINDS - CROSS BY SIMS

1 Q. And would you have proceeded to trial with him if
2 he insisted on doing so?

3 A. Absolutely.

4 MR. CORNEY: No further questions, Your
5 Honor.

6 THE COURT: All right. Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. SIMS:

9 Q. Ms. Hinds, I believe you said you were appointed in
10 March?

11 A. Correct.

12 Q. And how long had he been in jail at that time?

13 A. I don't know. I mean, I don't have that at my
14 fingertips.

15 Q. Okay.

16 A. Obviously I was appointed in March. I met with him
17 in May. At that point he'd been in jail for a little
18 while.

19 Q. Okay. At that time did you check to determine
20 whether or not he had requested a preliminary hearing?

21 A. Well, automatically when I get appointed, when we
22 open the file, that's the first thing we do; discovery
23 request and request for a prelim.

24 Q. And when you did the discovery request and the
25 prelim request, did you determine at that time that it had

PEGGY HINDS - CROSS BY SIMS

1 already been true billed?

2 A. I think we discovered it afterwards. We don't
3 get -- it isn't automatic that they would send us copies
4 of the true bills.

5 Q. Uh-huh.

6 A. But it was determined at some point after that that
7 it had been true billed.

8 Q. Okay. And from March of '08, I believe, when you
9 were appointed, how many times did you meet with him?

10 A. A quick count looks like 23 times.

11 Q. And in most of those 23 times up until the day of
12 plea, this matter was for trial; is that correct?

13 A. Correct.

14 Q. And he did in fact tell you about the alibi, about
15 being shot and being a victim in Columbia; is that
16 correct?

17 A. Correct.

18 Q. And he told you about Ms. Thompson; is that
19 correct?

20 A. Correct.

21 Q. He told you about Mr. Utsey I believe you said it
22 was?

23 A. Correct.

24 Q. Okay. And I believe your testimony was Mr. Utsey
25 decided he did not want to be involved?

PEGGY HINDS - CROSS BY SIMS

1 A. Correct.

2 Q. Did your investigator -- you hired an
3 investigator. The investigator followed up on these
4 leads?

5 A. Yes.

6 Q. On the day that you were -- on the day of the plea,
7 I believe he's indicated that he had been there for 26
8 months in jail. Were you aware of that?

9 A. Yes.

10 Q. And were you aware of the fact that he at this
11 point was just worn down, tired, and wanted to get out of
12 there?

13 A. No, I wouldn't say that at all. I mean, obviously
14 he wasn't happy about being in jail.

15 Q. Uh-huh.

16 A. But he was a bright, articulate young man. Toward
17 the end, before he pled, the case just kept getting
18 worse. The incident report from Columbia from where he
19 was shot actually put him with another person by the name
20 of Tommy. That Tommy was ultimately charged in this
21 incident. The reason that he hadn't been initially
22 charged was that nobody could figure out who Tommy was.

23 The victim didn't know Tommy, nobody could put a
24 name to him. Mr. Simmons, I don't believe, knew Tommy
25 either. It was when the solicitor finally looked into

PEGGY HINDS - CROSS BY SIMS

1 that incident that they were able to put a last name to
2 Tommy. It was Tommy Wilson.

3 At that point they showed a lineup to the victim
4 and a co-defendant. They both picked Tommy out as the
5 other person who was involved in this.

6 Q. Now was the co-defendant ever charged and sentenced
7 in this matter?

8 A. I believe he was.

9 Q. Okay. And what about Tommy Wilson?

10 A. Yeah. I believe he was also.

11 Q. Did I understand you right that the co-defendant
12 was prepared to testify against Mr. Belton?

13 A. Yes, sir.

14 Q. And how long did these negotiations go on? You
15 said I believe you started out at 15 years?

16 A. Yeah. It started at 15, then a range of 10 to 15,
17 then 12 and ultimately 10.

18 Q. On the date of trial, did Mr. Belton ever express
19 any hesitancy in regards to the plea that had been offered
20 and entered into this plea?

21 A. No. As a matter of fact, he just said, "I want the
22 deal."

23 MR. SIMS: Your Honor, may I have a moment
24 to talk to my client?

25 THE COURT: Certainly, certainly.

PEGGY HINDS - REDIRECT BY CORNEY

1 (Pause.)

2 BY MR. SIMS:

3 Q. Ms. Hinds, just one other question. When the
4 solicitor indicated about this manslaughter, involuntary
5 manslaughter, did you enter any objection or anything to
6 that when -- on September 9th, when he has alleged that
7 the solicitor made false accusations that he had been
8 charged with other matters?

9 A. Okay. I can't give you a specific date but I had
10 the discovery for that --

11 Q. Uh-huh.

12 A. -- murder charge.

13 Q. Uh-huh.

14 A. Ultimately, as I said, I thought it was a very weak
15 case for the State but, I mean, he was charged.

16 Q. He was, he was never served the warrants to your
17 knowledge?

18 A. To my knowledge he was. I think he was. I know we
19 had extensive discovery on that.

20 Q. Uh-huh.

21 A. Extensive discussion. So he was aware of that
22 charge.

23 MR. CORNEY: Okay. That's all I have, Your
24 Honor.

25 THE COURT: All right. Redirect?

PEGGY HINDS - REDIRECT BY CORNEY

1 MR. CORNEY: Just very briefly, Your
2 Honor.

3 THE COURT: Okay.

4 REDIRECT EXAMINATION

5 BY MR. CORNEY:

6 Q. Ms. Hinds, in your review of the photo lineup that
7 Mr. Belton was picked out of, did you see any basis for
8 moving to suppress that if you had proceeded to trial?

9 A. I would have just because I would have.

10 Q. It would have been something that you'd pursue had
11 you gone to trial?

12 A. Yeah. I've actually got photos on Biggers in my
13 file that we were preparing for that eventuality. I would
14 note that the victim -- just as an aside, the victim knew
15 him so it wasn't a matter of him picking a stranger out of
16 a lineup. They actually knew each other.

17 Q. And making motions for speedy trial, and I think
18 Mr. Belton discussed that several times during his
19 testimony, is that something you discussed with him?

20 A. Uh-huh.

21 THE COURT: That's a yes?

22 THE WITNESS: I'm sorry. Yes, ma'am.

23 BY MR. CORNEY:

24 Q. What about a bond hearing, was that something you
25 moved to have a bond hearing?

PEGGY HINDS - EXAMINATION BY THE COURT

1 A. We had a bond hearing. It was denied with Judge
2 Dickson.

3 MR. CORNEY: Thank you.

4 THE COURT: All right. Recross?

5 MR. SIMS: Nothing in regards to that, Your
6 Honor. May I have a moment with my client?

7 THE COURT: Absolutely.

8 I have a very, very brief question. Let me
9 do that and then you can discuss that with him as
10 well.

11 MR. SIMS: Yeah.

EXAMINATION

12
13 BY THE COURT:

14 Q. I just want to be sure that the record that I have
15 is correct because as I looked at the original indictments
16 it looks like he was originally indicted for assault and
17 battery with intent to kill, and burglary in the first
18 degree.

19 A. Yes, ma'am.

20 Q. Now, he pled. It's really two things. He pled to
21 burglary in the second degree non-violent.

22 A. Yes, ma'am.

23 Q. Was that a part of your negotiations?

24 A. Absolutely.

25 Q. And so -- just so our record is clear. What is the

PEGGY HINDS - EXAMINATION BY THE COURT

1 difference between a plea to assault and battery with
2 intent to kill and burglary in the first degree and a plea
3 to assault and battery with intent to kill and burglary in
4 the second degree non-violent?

5 I'm not talking about prison time. The other
6 consequences.

7 A. Okay. Obviously the sentence. The burglary first
8 degree would have carried a minimum of 15 up to life at 85
9 percent at least.

10 Burglary second degree obviously carries a
11 maximum or carried a maximum at that point in
12 time of 15 years.

13 The burglary first would have been most
14 serious. It would have been a strike on his
15 record in addition to that. Just a number of
16 consequences.

17 Q. In other words, at the end of the day, if you will,
18 while the assault and battery with intent to kill is a
19 violent crime, it is a most-serious crime. If the plea or
20 conviction had been to burg first, aside from the prison
21 time he would have been looking at another most serious
22 and another violent crime?

23 A. Yes, ma'am.

24 Q. Consequences going forward in this young man's life
25 very different --

1 A. Yes.

2 Q. -- yes. So in addition to any negotiations we
3 can't tend to talk so much about the prison time and I
4 understand that because this young man's freedom is taken
5 away.

6 A. Yes, ma'am.

7 Q. I understand that, but there are consequences
8 beyond that.

9 A. Absolutely.

10 Q. And in your negotiations -- and you talk about the
11 time, the lowering of the time, but beyond that, this
12 charge which originally was indicted as a burglary in the
13 first degree is pled down to burglary in the second degree
14 non-violent?

15 A. No, ma'am.

16 Q. And I just wanted to be sure I was correct about
17 that.

18 A. Yes, ma'am.

19 THE COURT: Okay. I don't know if that
20 prompts any questions from y'all. I just wanted
21 to be sure that I was correct in that because I
22 just was reviewing that.

23 MR. SIMS: (Conferring with client.)

24 MR. CORNEY: Nothing further from the State
25 at this point, Your Honor.

1 THE COURT: I'm just going to let them
2 chat.

3 MR. CORNEY: Okay. I'm sorry.

4 MR. SIMS: Your Honor, we have nothing.

5 THE COURT: All right. Very well.

6 I know that Ms. Hinds is going to ask
7 whether or not she is free to leave at this point
8 in time. And I don't know who has her under
9 subpoena. Probably both of you do.

10 Any objection -- she probably rode up here
11 though with Ms. Ullman. They probably car-pooled
12 but irrespective, is she free to leave?

13 MR. CORNEY: They're both free to leave,
14 Your Honor.

15 MR. SIMS: Nothing further, Your Honor.

16 THE COURT: Thank you so much. You're free
17 to go. Any additional witnesses?

18 MR. CORNEY: Nothing further from the
19 State.

20 THE COURT: Any reply rebuttal?

21 MR. SIMS: No, Your Honor.

22 THE COURT: Very well, very well. Thank
23 you all so much. I'm going to take this matter
24 under advisement.

25 MR. SIMS: We do have two weeks to get the

1 --

2 THE COURT: Well, I was hoping Ms. Hinds
3 might have it. So maybe chat with her and see if
4 she's got a copy of it in her file, the incident
5 report.

6 MS. HINDS: I'll be glad to look.

7 THE COURT: Would you check? That way I'll
8 know my record is complete.

9 If y'all would do that. If you don't mind
10 doing that, Ms. Hinds, at your leisure. You
11 could go to one of the conference rooms, do that
12 at your leisure. Y'all go back here and have a
13 cup of coffee. We'll copy it. Mr. Sims, just
14 wait and don't take Mr. Belton back until we've
15 had a chance to figure it out. So I want him to
16 see it too.

17 Y'all take him on back. Y'all take him on
18 back to lockup so we can keep going, we can keep
19 working but Mr. Sims can speak with him
20 downstairs.

21 (Applicant's Exhibit No. 7, incident
22 report, received into evidence.)

23 END OF PROCEEDINGS: 11:37 A.M.
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 Dorchester County, on the 29th day of November, 2011.

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

I have hereunder set my hand this 21st day of November, 2015.

Cheri L. Young, RPR
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Orangeburg)Tony L. Belton - #340217)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-38-01200

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention (CCRC) Orangeburg Calhoun Regional Detention Center
2. Name and location of Court which imposed sentence Orangeburg - General Session
3. Name(s) of co-defendant(s) (if any) Michael Simmons
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008 GS 38-0689
 - (b) 2008 GS 38-0688

RECEIVED

OCT 18 2013

 Referred to Harrigan /dm
 Answered _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4/5/10 9yrs each ran concurrent, DF was given time credit
- (b) 4/5/10 beginning on 2/9/08
- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty X
- (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?
- Yes (PCB)
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appellate Appeal - Common Pleas Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Supreme Court ordered that I follow the procedures of Austin v.
- ii. State 305 S.C. 453, 409 SE2d 395 (1991) and it was
- iii. Denied without prejudice to whatever right petitioner may have to seek
under Austin
- (c) the date of each such result:
- i. Appellate C/A No. 2012-213199 - is dated Oct. 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. C/A No. 2012-213199 - without prejudice
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not aware my rights was being violated; I am not a
legal savvy.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel due to violations of my
- (b) Constitutional Rights of the 6th, 9th and 14th Amendments
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel was ineffective due to depriving Applicant of a Bond
- (b) Counsel lied to Judge on or around about date 9/9/09 about a fictitious charge
- (c) Excessive delay on conviction.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes, Supreme Court Disciplinary Counsel
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes, PCR -
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Office of Disciplinary Counsel - due to PCR Counsel being
- ii. Ineffective in his duties.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Supreme Court of South Carolina - Office of Disciplinary Counsel
- ii. _____
- iii. _____
- iv. _____

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC
SEP 25 PM 4:02

(c) the disposition thereof:

- i. Petitioner's complaint was not dismissed, but the disposition
- ii. is confidential under Rules for Lawyer's Disciplinary Enforcement,
- iii. Rule 413, SCACR.
- iv. _____

(d) the date of each such disposition:

- i. June 25, 2013
- ii. _____
- iii. _____
- iv. _____

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

- i. 13-DE-1-0724
- 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?

Yes, in State Court

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

(a) which grounds have been presented:

- i. Ineffective of Assistance Counsel
- ii. _____
- iii. _____

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

- i. PCR, CA No. 2010-CP-38-1758 was dismissed with
- ii. prejudice
- iii. _____

FILED FOR STENOGRAPHY
SEP 25 PM 4:02
CLERK OF COURT
ORANGEBURG, SC

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) Petitioner's Public Defender has made a false statement on
 (b) stand during the PCR hearing and Petitioner is seeking a
 (c) new hearing based on Public Defender and PCR Counsel - Thomas Sims.

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

- (a) your arraignment and plea? No during Arraignment and yes on plea.
 (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? No
 (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. Margaret Hinds - Office of Public Defender - First Judicial Circuit
P.O. Box 1112 - Orangeburg, S.C. 29116.
 ii. Thomas Sims Esq. At Law -
PO Box 2016 - Orangeburg SC 29116
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. Margaret Hinds was my Public Defender
 ii. Thomas Ray Sims - was my PCR Counsel
 iii. _____

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

I seek a rehearing on a PCR and the relief I seek is
a reduction on the current sentence, and Reconsideration on
sentence.

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

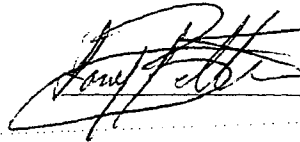
No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Orangeburg)

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



SWORN to and subscribed before me this 24th
 day of September, 2013.

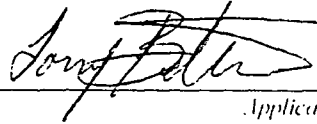
C. F. Hagan (L.S.)
 Notary Public

My Commission Expires: Feb. 9th, 2020

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

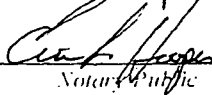
I, Tony Belton, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

20th day of September, 2013.


Notary Public

My Commission Expires: Feb. 9th, 2020

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG 2013-CP-38-01200
3

4 TONY BELTON) TRANSCRIPT OF RECORD
5 VS.)
6) MAY 20, 2015
7 STATE OF SOUTH CAROLINA) ORANGEBURG, SC

8
9 B E F O R E:

10 THE HONORABLE MAITÉ MURPHY

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

12 JONATHAN D. WALLER, ESQUIRE
13 Attorney for the Plaintiff

14 CLAY MITCHELL, ESQUIRE
15 Attorney for the Defendant

16 Ruth L. Mott, RPR, CRR
17 Certified Court Reporter
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1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 TONY BELTON

MR. WALLER 4

5 MR. MITCHELL 5

6 THOMAS SIMS

MR. MITCHELL 7 9

7 MR. WALLER 8

8 CERTIFICATE OF REPORTER 11

9

10

11 E X H I B I T S

12 NO. DESCRIPTION ID EVD

13 (NONE MARKED)

14

- - -

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1 MR. MITCHELL: Your Honor, may it please the Court.
2 This is Tony Belton versus the State of South Carolina, Case
3 No. 2013-CP-38-01200. Mr. Belton was indicted in May 2008 at
4 the Orangeburg County Grand Jury for assault and battery with
5 intent to kill and burg first. He was represented on those
6 charges by Ms. Margaret Peggy Hinds; plead guilty before
7 Judge James Williams on April 5, 2010, to assault and battery
8 with intent to kill and the lesser included of burg second,
9 nonviolent. He was sentenced to nine years' confinement on
10 those charges. He did not appeal that conviction or
11 sentence.

12 He filed his first application for post-conviction
13 relief December 7, 2010. An evidentiary hearing was held
14 November of 2011 at this Courthouse before the Honorable
15 Judge Goodstein. He was present and represented by Mr.
16 Thomas Sims. Judge Goodstein issued an order denying his
17 application for post-conviction relief April 2nd of 2012. He
18 then filed an untimely pro se notice of appeal in October of
19 2012. The Supreme Court dismissed that without prejudice
20 allowing him to seek leave through an Austin review. He
21 filed his second application for post-conviction relief
22 November -- or, excuse me, September 25, 2013, where he asked
23 the Court to grant him an appeal of his first PCR pursuant to
24 Austin v. State. We move to dismiss all other claims besides
25 that as untimely and successive. Mr. Belton is present here

1 today and represented by Mr. Jonathan Waller, and I'll turn
2 it over to him.

3 THE COURT: Mr. Waller.

4 MR. WALLER: Thank you, Your Honor. I guess, first,
5 I've spoken with my client. Mr. Belton actually went to high
6 school with Mr. Mitchell. He's aware of it; has no issue
7 with Mr. Mitchell, you know, being on the other side of this
8 case.

9 Your Honor, I don't have any argument against the
10 State's motion to dismiss all other charges. On the Austin
11 issue I would call Tony Belton to testify.

12 THE COURT: All right. Mr. Belton.

13 TONY BELTON,
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. WALLER:

16 Q. Good morning, Mr. Belton.

17 A. Good morning.

18 Q. Mr. Belton, you plead guilty to charges back in 2010; is
19 that right?

20 A. That's right.

21 Q. Okay. And you filed a PCR from that guilty plea that
22 same year, sometime in 2010.

23 A. I did.

24 Q. Okay. That case was heard and denied by Judge Goodstein
25 in 2012; is that right?

1 A. That is correct.

2 Q. Okay. Did your attorney file an appeal from that order
3 of dismissal?

4 A. No, he did not.

5 Q. Did you at any time tell your attorney that you did not
6 want him to file an appeal?

7 A. No, I did not.

8 Q. Did you ever sign any waiver of appeal rights?

9 A. No, I did not.

10 Q. Did you give your attorney any indication that you did
11 not want an appeal from the order of dismissal of your PCR
12 from 2010?

13 A. No, I did not.

14 Q. Did you attempt to file an appeal on your own?

15 A. I did.

16 Q. What did the Supreme Court do with that appeal?

17 A. They dismissed it without prejudice and asked me to
18 follow the procedures of Austin versus State.

19 Q. Okay. What are you asking the Court here today to do?

20 A. I'm asking to have an appeal.

21 MR. WALLER: No further questions, Your Honor.

22 THE COURT: Mr. Mitchell.

23 CROSS-EXAMINATION BY MR. MITCHELL:

24 Q. Very quickly, Mr. Belton, how's it going?

25 A. All right.

1 Q. Let's see, so Judge Goodstein denied that by order of
2 April of 2012; is that right?

3 A. That's correct.

4 Q. Then you filed a pro se notice of appeal October 2012 of
5 that year, right?

6 A. Correct.

7 Q. Did you ever write any letters or any correspondence
8 with Mr. Sims about appealing the case?

9 A. I did.

10 Q. Okay. Do you recall when that was?

11 A. I believe it was -- it may have been August. I have a
12 copy of a letter that I had sent to him.

13 Q. Do you remember when you received the order dismissing
14 the case?

15 A. I received the order in May.

16 MR. MITCHELL: Okay. No further questions.

17 THE COURT: Any further redirect?

18 MR. WALLER: Nothing, Your Honor.

19 THE COURT: You may step down, Mr. Belton. Thank you.

20 Any other witnesses?

21 MR. WALLER: Nothing further, Your Honor.

22 THE COURT: Anything from the State?

23 MR. MITCHELL: Your Honor, the State calls Mr. Sims, Mr.
24 Thomas Sims.

25 THOMAS SIMS,

1 being first duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. MITCHELL:

3 Q. Good morning, Mr. Sims.

4 A. Good morning.

5 Q. So you represented Mr. Belton on his PCR in 2010; is
6 that right?

7 A. That's correct.

8 Q. And that PCR was denied -- it was heard and denied by
9 Judge Goodstein, right?

10 A. That's correct.

11 Q. Let's see, so she denied it in April of 2012?

12 A. She may have in 2012. I received it, I believe it was
13 the -- on the 11th, or the 10th, I believe, and I sent it out
14 to Mr. Belton on the 11th, on the next day.

15 Q. So that would have been in March or May you said, I'm
16 sorry?

17 A. Mm-hmm, yes.

18 Q. May? Okay. Do you remember if Judge Goodstein had
19 ruled from the bench or if she had taken it under advisement?

20 A. She had taken it under advisement. I got a -- I got the
21 written notice in the mail.

22 Q. And then you forwarded it to Mr. Belton at that point?

23 A. Yes.

24 Q. Did you discuss any appeal before Judge Goodstein had
25 ruled?

1 A. When I went to see Mr. Belton, I think I went to see him
2 a couple of times up at the institute where he was, maybe
3 once or twice, I believe, to go up there to see him; and it
4 is always my practice, when I go, I inform them of their
5 right to appeal, that they need to let me know if they want
6 to appeal.

7 Q. Did he give you any indication that he did want to
8 appeal?

9 A. That was prior to the -- the hearing that we had.

10 Q. Okay. Did you receive any letters or correspondence
11 from Mr. Belton asking you to file a notice of appeal?

12 A. I received a letter from Mr. Belton September 6, 2012.
13 In this letter Mr. Belton stated that he presumed that I had
14 filed an appeal.

15 Q. Okay. Did you tell him that you were going to file a
16 notice of appeal if the case was denied?

17 A. No, I did not.

18 MR. MITCHELL: I have no further questions. Please
19 answer anything Mr. Waller has for you.

20 THE COURT: Mr. Waller.

21 CROSS-EXAMINATION BY MR. WALLER:

22 Q. Mr. Sims, did Mr. Belton ever inform you that he did not
23 wish you to file an appeal?

24 A. No, he did not.

25 Q. Did you ever have him sign anything waiving his right to

1 an appeal from a PCR hearing?

2 A. That -- in 37 years of practice of law, I made that
3 mistake of not getting it in writing; and I'll say that, I
4 just did not get it in writing.

5 Q. Is it your standard practice to file an appeal from a
6 dismissed PCR?

7 A. If I'm -- when I sit down and talk with the individual,
8 if he chooses to file an appeal, I file the appeal. I find
9 that -- I labored under -- until -- after this case, I
10 labored under Rule 11 that filing frivolous appeals would
11 subject you to sanctions; however, I have since discovered
12 that in these situations they want me to do it, so I -- but
13 now because I'm no longer on the appointment list, I don't
14 have to do that.

15 Q. Okay. So it's your understanding that you are supposed
16 to file an appeal from a dismissed PCR?

17 A. That is -- now I know.

18 MR. WALLER: No further questions.

19 THE COURT: Anything further?

20 REDIRECT EXAMINATION BY MR. MITCHELL:

21 Q. It's your understanding you're supposed to file an
22 appeal from the denial if the applicant informs you that he
23 wishes to appeal, correct?

24 A. Yes, if an applicant tells me he wants to appeal, I
25 immediately go and go through the process.

1 Q. Would you have done so in this case?

2 A. If he had told me. That was my whole purpose, when I
3 got it on the 10th, mailing it out on the 11th, so that that
4 would give him the opportunity to contact me; and as I think
5 I responded, when he wrote me that letter, that he waited
6 until -- he conveniently waited until September to write me
7 in regards to -- and with a presumption that I had appealed
8 his case.

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

10 THE COURT: Thank you, Mr. Sims. You may step down.

11 The Court will review the record and notify you of an
12 opinion.

13 --- END OF TRANSCRIPT OF RECORD ---
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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF ORANGEBURG

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Orangeburg County,
11 South Carolina, on the 20th of May, 2015.

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

15 October 19, 2015

16
17 *Ruth L. Mott*

18 Certified Court Reporter
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Tony Lee Belton, #340217,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUITORDER GRANTING AN
APPEAL PURSUANT TO
AUSTIN V. STATE¹

Case No. 2013-CP-38-0200

FILED
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 AUG 21 A 11:44

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 25, 2013. Respondent made its Return and Motion to Dismissal All Claims Beyond Austin Review of First PCR on May 1, 2014, requesting an evidentiary hearing be convened solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by counsel, Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted for Assault and Battery with Intent to Kill (2008-GS-38-00688) and Burglary in the First Degree (2008-GS-38-00689). Applicant was represented by Margaret E. Hinds, Esquire and pled guilty on April 5, 2010, before the Honorable James C. Williams, Jr., to Assault and Battery with Intent to Kill and

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Tony Lee Belton, #340217,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

**ORDER GRANTING AN
APPEAL PURSUANT TO
AUSTIN V. STATE¹**

Case No. 2013-CP-38-21200

FILED
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 AUG 21 A 11:44

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 25, 2013. Respondent made its Return and Motion to Dismissal All Claims Beyond Austin Review of First PCR on May 1, 2014, requesting an evidentiary hearing be convened solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by counsel, Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted for Assault and Battery with Intent to Kill (2008-GS-38-00688) and Burglary in the First Degree (2008-GS-38-00689). Applicant was represented by Margaret E. Hinds, Esquire and pled guilty on April 5, 2010, before the Honorable James C. Williams, Jr., to Assault and Battery with Intent to Kill and

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

to the lesser included offense of Burglary in the Second Degree (Non-violent). Judge Williams sentenced Applicant to nine years confinement on each charge, with the sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

Applicant subsequently filed an application for post-conviction relief on December 7, 2010. (2010-CP-38-1758). In his first application, Applicant asserted a claim of ineffective assistance of counsel. An evidentiary hearing was convened on November 29, 2011, at the Dorchester County Courthouse before the Honorable Diane S. Goodstein. Applicant was present at the hearing and was represented by Thomas Sims, Esquire. By written Order filed April 2, 2012, Judge Goodstein denied and dismissed Applicant's post-conviction relief action.

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

1. "Ineffective Assistance of Counsel due to violations of my Constitutional Rights of the 6th, 9th, and 14th Amendments."
 - a. "Counsel was ineffective due to depriving Applicant of a Bond."
 - b. "Counsel lied to Judge on or about date 9/9/09 about a fictitious charge."
 - c. "Excessive delay on conviction."
2. "Petitioner's Public Defender has made a false statement on stand during the PCR hearing and Petitioner is seeking a new hearing based on Public Defender and PCR Counsel – Thomas Sims."

At the outset of evidentiary hearing, Respondent renewed its Motion to Dismiss All Claims Beyond Austin Review of First PCR. Applicant's counsel candidly informed the court that Applicant had no grounds to oppose the Respondent's motion and would be proceeding only on

Applicant's claim that he was denied the right to appeal the dismissal of his previous post-conviction relief application.

II. SUMMARY OF TESTIMONY

At the hearing, the Applicant testified on his own behalf. The Applicant testified that he pled guilty to his charges in 2010 and did not appeal his conviction or sentence. He further testified that he filed an Application for Post Conviction Relief in December of 2010. Applicant testified that Thomas Sims represented him on his Post Conviction Relief Application from 2010 and that an evidentiary hearing took place in front of Judge Goodstein; who subsequently denied his application in April of 2012. Applicant testified that counsel did not file an appeal from Judge Goodstein's Order and that he and Mr. Sims did not discuss an appeal. Specifically, Applicant testified that he never told counsel that he did not wish to appeal Judge Goodstein's Order of Dismissal. Further, Applicant testified that he attempted to file an appeal *pro se* but his appeal was dismissed for being filed after the 30 day time limit.

Following Applicant's testimony, PCR counsel, Thomas Sims testified. Mr. Sims testified that he represented Applicant on his PCR that was ultimately dismissed by Judge Goodstein. He further testified that he believed that appealing that Order of Dismissal would have been frivolous, as he did not feel there were any appealable issues. He testified that he has since become aware that an appeal is required following a dismissal of a PCR following an evidentiary hearing, absent a knowing and voluntary waiver of that right to appeal.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may

petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his post-conviction relief application (2010-CP-38-1758). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2010-CP-38-1758) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2010-CP-38-1758 pursuant to Austin v. State; this second application for post-conviction relief is hereby denied and dismissed with prejudice;
2. Within thirty (30) days of the service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and
3. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3 day of Aug, 2015

Maité Murphy

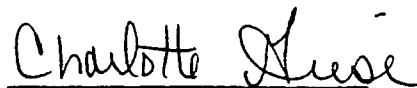
Maité Murphy

Presiding Judge

St. George, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	1ST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
Tony Lee Belton, #340217	)	
	)	CERTIFICATE OF SERVICE
Applicant,	)	
vs.	)	Case No. 2013-CP-38-01200
State of South Carolina,	)	
	)	
Respondent.	)	

I certify that on this date I served the Order Granting an Appeal Pursuant to Austin v. State in this case on counsel for Respondent by delivering a copy of same to the Respondent's attorney of record by delivering by the United States Postal Service, in a sealed envelope clearly bearing a return address with adequate first class postage affixed thereon, said copy to his office located at P.O. Box 11549, Columbia, SC 29211, and addressed to his attention.


Charlotte Giese

Columbia, South Carolina

This 31st day of August, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2010-CP-38-1758

Tony Belton, # 340217,

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 17, 2010. The Respondent made its Return on May 3, 2011. An evidentiary hearing into the matter was convened on Tuesday, November 29, 2011, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Thomas Sims, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Peggy Hinds, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Orangeburg County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Assault and Battery with Intent to Kill ("ABWIK") (2008-GS-38-0688) and Burglary - 1st Degree (Dwelling) (2008-GS-38-0689). He

ATTEST: TRUE COPY

Wingy B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

was represented by Margaret Peggy Hinds, Esquire. On April 5, 2010, the Applicant plead guilty as indicted before the Honorable James C. Williams, Jr., to ABWIK and the lesser offense of Burglary – 2nd Degree (Non-Violent). Applicant was sentenced to nine (9) year on each charge, sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

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

1. Ineffective assistance of counsel.

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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive

unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Failure to Request a Preliminary Hearing

Applicant's first allegation of counsel's ineffective assistance is counsel failed to request Applicant be given a preliminary hearing despite Applicant's requests for such. Applicant testified that after being arrested on February 19, 2008, after which time he was appointed counsel to represent him on the charges. Applicant testified he repeatedly requested counsel file for a preliminary hearing, but that he was never afforded such a hearing prior to his plea entered January of 2010. Counsel testified that she was appointed to represent Applicant in March, 2008, and first met with Applicant at the jail in May. She went on to articulate that, as in this case, the first thing she does upon receiving her appointment is request a preliminary hearing and file a motion for discovery.

Based on a review of the record, I find Applicant's allegation to be without merit in this regard. Every criminal defendant is entitled to notice of his right to a preliminary hearing "to determine whether sufficient evidence exists to warrant [his] detention and trial." Rule 2(a), SCRCrimP. If a defendant makes a timely request for a hearing, one should be held within ten days. Rule 2(a)-(b), SCRCrimP. However, the hearing "shall not be held ... if the defendant is indicted by a grand jury ... before the preliminary hearing is held." Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct.App.1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Furthermore, a defendant has no constitutional right to a preliminary hearing. State v. Keenan.

278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). Thus, although the Applicant may have timely requested a preliminary hearing from counsel, his right to have the hearing ended with the grand jury's indictment. The Orangeburg County Grand Jury returned true bill indictments to both charges on May 7, 2008, thereby foreclosing Applicant's request for a preliminary hearing. Therefore, counsel was not deficient in her performance in this regard.

Failure to Develop/Present Alibi Defense

Applicant's second allegation of ineffectiveness stems from counsel's alleged failure to investigate, develop and present an alibi defense on Applicant's behalf. Applicant testified he had an alibi defense to the charges as he was being treated in Columbia for a gunshot wound he had sustained as a result of a drive-by shooting off of Garner's Ferry Road. Applicant contends counsel was ineffective in failing to investigate and develop this potential defense on his behalf. Counsel testified conversely that she was aware of the shooting incident and Applicant's subsequent treatment, and that she had investigated the matter in depth in an attempt to develop an alibi defense. Counsel stated that based on her investigation, she ultimately concluded the records from the shooting did not provide a sufficient alibi defense to present at trial. Specifically, the hospital records¹ show Applicant was treated for a gunshot wound to the right thigh in Columbia on January 3, 2008 at roughly 11:40 am. The records reflect Applicant was released roughly one hour later. According to police report and victim affidavit incorporated as part this record, the robbery from which these charges arise took place at roughly 10:05 a.m., and officers were dispatched to the scene at 10:22 a.m.

I find Applicant has failed to carry his burden in proving counsel's ineffectiveness based on this alibi defense. First, he has failed to prove counsel's performance was deficient as counsel

¹ These documents, along with the incident report, victim affidavit and correspondence between Applicant and counsel, were all introduced as exhibits and are incorporated into the record before this Court.

credibly testified that she did properly investigate Applicant's claim of an alibi. Further, Applicant has failed to prove resulting prejudice as he has failed to present a sufficient alibi existed. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (S.C. 1980). Based on the records produced at the hearing, there was roughly a one hour and fifteen minute time frame in which Applicant could have fled the scene to Orangeburg, where he was later involved in a shooting. Therefore, Applicant has failed to establish a sufficient alibi defense to prove prejudice as well.

Failure to Request/Have Applicant Appear for Bond Hearing

Applicant contends counsel was ineffective in failing to request a bond hearing on Applicant's behalf, thereby forcing him to remain in jail roughly twenty-two (22) months before appearing for his plea. Applicant testified he requested counsel file for bond which she never did. Counsel again credibly testified that she did request and appear at a bond hearing before the Honorable Edgar W. Dickson, at which time Applicant's request for bond was denied. This testimony is supported by the documentation incorporated into this record, showing Applicant's request for bond was denied by Judge Dickson by order dated and filed with the clerk February 9, 2010. Therefore, I find this allegation to be without merit.

Failure to Challenge/Suppress Photo Lineup Identifications

Applicant's final complaint is counsel failed to challenge or otherwise suppress the victim and co-defendant photo lineup identifications of Applicant. Applicant stated counsel should have convened a suppression hearing pursuant to Neil v. Biggers to challenge the reliability and accuracy of the photo identifications of Applicant.

Counsel testified that she reviewed the discovery materials in depth with Applicant, including the photo lineups, as part of her preparation of the case for trial. She went on to say she personally met with the victim and was aware of the damaging testimony he would present at trial, concluding the state would very likely be able to prove Applicant's guilty beyond a reasonable doubt at trial. Counsel said the photo lineups were given to both the victim and the admitted co-defendant, both of whom picked out Applicant's photo and identified him as "Tommy Wilson". Counsel also noted Applicant's co-defendant was prepared to testify at trial against Applicant, placing him as the second perpetrator involved. Counsel finished by stating she would have filed a motion to suppress the photo lineups had Applicant decided to proceed to trial.

This Court finds Counsel's testimony to be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including the facts giving rise to the charges, the indictments, the elements of the offenses, potential sentences he was facing, and the consequences of rejecting this plea to proceed to trial. Additionally, counsel relayed all plea offers from the state to Applicant, and gave him all of the information and advice necessary to make an intelligent and voluntary decision on whether to waive his constitutional rights and enter this plea. Applicant made the voluntary, knowing decision to waive his right to challenge the photo lineup identifications in order to take advantage of an advantageous plea offer. Counsel had vigorously investigated Applicant's case, including the identifications, and readily stated she would have made a motion to suppress the identifications had the case gone to trial. Therefore, her performance was not unreasonable. Further, Applicant has failed to establish any grounds upon which the lineup would have been suppressed had the motion been made, and has failed to consider the cumulative nature of the photo lineups as there would have been subsequent in-court

identifications made at trial by both the victim and co-defendant according to counsel's credible testimony. Accordingly, Applicant has failed to prove resulting prejudice.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was deficient in her representation. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases. Finally, Applicant failed to prove prejudice based on the alleged deficiencies. Therefore, Applicant has failed to carry his burden in this regard.

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.

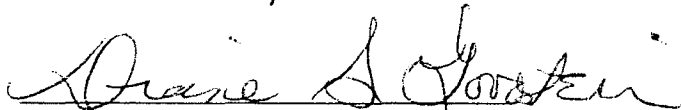
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of April, 2012.



Diane S. Goodstein
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.

107
WITNESSES

DOCKET NO. 2008GS38-0689

The State of South Carolina

County of

ORANGEBURG

INV. PERNELL LAWSON

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

K232845
Arrested: Feb 19, 2008

ACTION OF BURGLARY

Foreperson of Grand Jury MAY 07 2008
Date: May 7, 2008

VERDICT

Foreperson of Petit Jury
Date:

COURT OF GENERAL SESSIONS

May 05, 2008 TERM

THE STATE
vs.

Tony L. Belton

Indictment for

BURGLARY - 1ST DEGREE
(DWELLING)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL-EXM(V)

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

Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2008GS38-0689

At a Court of General Sessions, convened on May 05, 2008 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - 1ST DEGREE (DWELLING)

That Tony L. Belton, did in Orangeburg County, on or about January 3, 2008, willfully and unlawfully enter the dwelling of Phillip Miles without consent and with the intent to commit a crime therein and that the defendant did enter the dwelling while armed with a deadly weapon and/or caused physical injury to Phillip Miles and/or used or threatened the use of a dangerous instrument and/or displayed what appeared to be a pistol, revolver, or other firearm. This offense being a violation of Section §16-11-0311 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.

Thomas B. Scott, III

Thomas B. Scott, III SOLICITOR

WITNESSES

60

DOCKET NO. 2008GS38-0688

The State of South Carolina

County of

ORANGEBURG

INV. PERNELL LAWSON

Arresting Agency:

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

K2332869

Arrested: Feb 19, 2008

ACTION OF PRISON BILLY

[Signature]

MAY 07 2008

Foreperson of Grand Jury
Date: May 7, 2008

VERDICT

Foreperson of Petit Jury

Date:

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

Defendant

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

Defendant

Witness:

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

Tony L. Belton

THE STATE

vs.

Indictment for

ASSAULT AND BATTERY WITH INTENT
TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class: FEL-C(V)

ATTEST: TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROL

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2008GS38-0688

At a Court of General Sessions, convened on May 05, 2008 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Tony L. Belton, did in Orangeburg County, on or about January 3, 2008, with malice aforethought did commit an assault and battery, upon the victim, Phillip Miles, by means of: shooting the victim with a handgun, with intent to kill the said victim. This offense being a violation of Section §16-3-620 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.

Thomas B. Scott, III
Thomas B. Scott, III SOLICITOR

ATTEST: TRUE COPY

111

Winnys B. Clark,
CLERK OF COURT
ORANGEBURG COUNTY

August 20, 2009

2011 DEC -5 PM 4:39

Dear Sir or Madame:

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT

I am an inmate in Orangeburg County Jail, seeking help. I've been here since February 20, 2008. Before my incarceration I was a student at South Carolina State University, majoring in Psychology, classification Sophomore. There are several issues that needs observing and decreed.

For a start my charges are; Assault and Battery with intent to kill and 1st Degree Burglary. This is the first time I have ever been charged with anything. The evidence is inconclusive but that's not my reason for writing this letter. I am having problems with the court system and my Public Defender, Peggy Hinds, and I'm very discontent with both. I can't give her a resignation because she's supposedly the best Public Defendant here.

It seems our Public Defender have a condemnation against me. When I first came here, there were inmates who told me I should ask for a Speedy Trial so that I will be able to get back into school. I called my Public Defender's office and mandated for a Speedy Trial. Whoever was on the other line responded that they will do so. I was also told that my Public Defender should mail me a form to fill out for the Speedy Trial and to think, I never received a form. I have a disaffection for Peggy Hinds. When having a meeting with Ms. Hinds I asked her for the form to file for a Speedy Trial. Ms. Hinds responds, "There is no such thing of a Speedy Trial in the State of South Carolina." "I thought that was a Right I have?" I asked. Ms. Hinds commented, "No, the law was changed a couple years back." I believed her because she is my lawyer. I asked my lawyer for a Speedy Trial two more times month's down the line just to see if the pious lawyer's answer would change and it didn't. So, I acquiesced with the answer she gave me because I was ignorant of the facts.

I have never gone up for a bond and have mentioned it to Ms. Hinds and she said, "I can't get a bond because I have nothing to speak on that will help your case." I didn't respond to her sophistry comment, but I was thinking how is it she has nothing to speak on that will help my case. I'm a college student, this my first charge and the victim is not pursuing the issue. He hasn't come to court since my incarceration and from my knowledge it is mandatory that everyone receive an opportunity for a bond.

I have written the Honorable Judge Williams in May 2009. Who is the Head Judge in Orangeburg, SC and explained to him all my problems I'm having. My problems were not resolved and the Judge never responded to my letter. Since he didn't conciliate the problem, I decided to promulgate the situation.

I also have never had a Preliminary Hearing, even after signing the paper to have one. Realizing, I wasn't going to receive any help from Ms. Hinds, I had to appease the questions I was perplexed about. So, a friend of mine did some research, and the information I received is very interesting. My Constitutional Rights, the SC Declaration of Rights Article 1 section 3, and the VI Amendment have been violated. (I will attach the form to the back of this paper).



I have made numerous of trips, back and forth, for 2nd Appearances in court, for these precarious charges. I have gone to court at least seven times and have never been seen. Being mindful, I've appeared in court at least fourteen times. In November 2008, I was given a trial date from a judge, set for January. I arrived in court January and the judge just happens not to show up. Everyone was given a date to come back for court. When speaking with my lawyer she said, "Come back for a 2nd Appearance in February." I asked. "What about my trial?" Ms. Hinds asked. "What trial?" I responded, "The trial the Judge issued for today". My lawyer's comment astounded me when saying "Oh! Well, I don't know, maybe you will have a trial in February."

I was indignant and very malcontent from the injustices being done unto me, in surreptitious ways. February came and again I wasn't seen by a judge. "What's going on? Why is it that I am not being seen Ms. Hinds?" I asked. "They might call you back in March", my lawyer responds.

I wasn't summoned back to court until May. I received a letter by mail ~~stating this was my final~~ offer either accept a plea offer or take it to trial. I appeared in court hoping I would be going home, but yet to another disappointment I wasn't seen by the judge.

Someone never put my name on the list. Looks as if someone is trying to superimpose something. I haven't gone back to court, since. I'm just encramped behind these walls; waiting. As of now, when I call the Public Defender's office my calls are never accepted. My Mother as well, has called Ms. Hinds repeatedly and she has never answered nor returned any of her phone calls.

My life and career are being demolished, and it's as if nobody cares. Being, I'm a young adult endeavoring to succeed in life. That will make the world a better place not to destroy it. The folk here are really abstaining an African American from achieving his American Dreams. I'm not going to allude from the truth, but if it were anyone else, they would have gotten a Plea, Time Serve, or Probation for the same amount of time, being incarcerated.

My opinion, they are confining the accused where they be pressured into accepting plea agreements because the Government lacks the evidence to secure a conviction. Maybe, it could be prejudice; taking an inordinate amount of time to build its case violating my inherent liberty of every U.S. Citizen Rights.

It is incumbent on Federal and State authorities to leave at liberty those suspected of a crime until the State of federal government has sufficient tangible, not circumstantial, evidence to secure a conviction.

Now, that we are perspicuous and knowledgeable, about the issue, what is my United States Government going to do about the situation? Are you or they going to help me? The Judge should make a decree and abolish this case. The question still remains. HOW? As I mentioned before, I have wrote the Judge here in Orangeburg, SC with the same concerns, and was blatantly ignored. This problem I have is too aggrandize for just me to handle.

- Another concern: While those sent to jail for civil contempt may appeal their confinements, appellate judges often will overturn lower-court rulings only if they find an "abuse of discretion," a standard that offers trial judges wide latitude.
- Ordinarily, U.S. citizens cannot be detained without charge. More than three decades ago, Congress passed Title 18, section 4001(a) of the U.S. Code. It states, "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."
- Trials that take place two or more years after the "crime" is commonplace in the federal system. If those delays are not caused by the petitions from the defendants, the federal judiciary should throw those cases out with prejudice regardless of the criminal offense since the practice of suspending the life of the accused while the State takes an inordinate amount of time to build its case violates the inherent liberty of every US citizen. It is incumbent on federal and State authorities to leave at liberty those suspected of a crime until the State of federal government has sufficient tangible, not circumstantial, evidence to secure a conviction.
- Jail stay violated his right to a speedy trial under the 6th Amendment. The fact that, in the end, all charges against him were dropped is a stigma on the US Department of Justice because it shows that the abuse of the Constitution persists with the agency of the federal government sworn to uphold its tenets. Because of the Constitution, it is incumbent on the government to expedite the trials of those accused of crimes, not confine the accused where they can be pressured into accepting plea agreements because the government lacks the evidence to secure a conviction.
- **US Constitution - Amendment VI** - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.
- **SC Declaration of Rights - Article 1 - SECTION 3. Privileges and Immunities; due process; equal protection of laws.** {The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.) }
- Inquire about an appeal or pardons or something...

Clerical Court get me my copy of Speedy Trial

- 1) length of the delay - 2 yrs and change
- 2) reason for delay - lack of evidence to build a case
- 3) I am not a cop - I filed my Speedy Trial!
- 4) Trial of 2 years delay should be a no evidence and no case

ineffective counsel

How much longer shall I wait? I'm only 21 years of age and I had my birthday in here

th. I'm from Columbia, SC and surrounded by people unknown to me. I'm at least \$30,000 in debt of student loans and after six months of absences in school the bills are starting to appear. Also, I had an apartment with a roommate of whom I owe. Right now the way the economy is I will not be able to get that kind of money. I want to continue my education also. My suggestion would be to grant me liberty before some important people view this case.

Being incarcerated for this length of time has caused me to miss out on valuable things in life that cannot be given back. I miss my family, school, jobs, activities, friends, church and life. I'm not a bale person. I'm just mixed in a lot of befuddle mess right now. I want to go home. Will you help me? My Rights has been violated and I'm asking of you to do the right thing. Thank You.

Tony Belton

Office of the Public Defender

First Judicial Circuit

610 North Cedar Street
Summerville, SC 29483
(843) 851-0072
FAX (843) 871-0523

101 Ridge Street
Dorchester County Courthouse
St. George, SC 29477
(843) 832-0154



MARK A. LEIENDECKER
Chief Public Defender

May 15, 2008

Courthouse, 190 Gibson, Room 110
PO Box 1112
Orangeburg, SC 29116-1112
(803) 536-4858
FAX (803) 536-9986

716 Huff Drive
St. Matthews, SC 29135
(803) 874-2100
FAX (803) 874-2400

Orangeburg-Calhoun Regional Detention Center
Attention: TONYBELTON, Inmate
P.O. Box 9000
Orangeburg, S.C. 29116-9000

Re: State v. Tony L. Belton

Charge(s): Burglary 1st; ABWIK
Warrant/Ticket No(s): K-232845; K-232869

Dear Mr. Belton:

Please be advised that my office is in the process of reassigning your case due to the departure of Mr. Culler/ Mr. Brown. Due to the volume of cases, this will take time. Please be patient with my staff. Your new attorney will be in contact with you as soon as possible. Please do not call daily to find out the newly appointed attorney's name, as this will only slow the process down. You will either receive a letter or be brought over to the courthouse when your case has been reassigned. I thank you for your patience in this matter.

Very truly yours,

ORANGEBURG COUNTY PUBLIC DEFENDER

Margaret E. Hinds
Margaret E. Hinds
Deputy Public Defender

ATTEST: TRUE COPY

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA



FILED FOR RECORD
MAY 15 2008
CLERK OF COURT
2011 DEC - 5 PM 4: 40

Courthouse Office
190 Gibson Street
(803) 536-5682
Fax: 536-9986

Office of the Public Defender
First Judicial Circuit
PO Box 1112
Orangeburg, South Carolina 29116
(803) 536-4858

Covington Office
372 Saint Paul Street
(803) 531-7090
Fax: 531-0977

March 24, 2010

Orangeburg-Calhoun Regional Detention Center
Attention: TONY BELTON, Inmate
P.O. Box 9000
Orangeburg, S.C. 29116-9000

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

2011 DEC -5 PM 4:40

Re: State v. Tony L. Belton

Charge(s): Burglary 1st; Involuntary manslaughter; ABWIK
Warrant/Ticket No(s): K-232845; 2010ORB10; K-232869

Dear Mr. Belton:

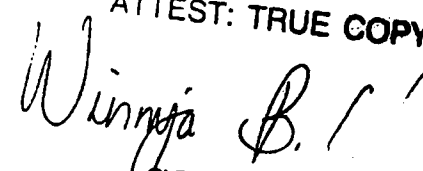
The Solicitor has placed your name on the trial list for the upcoming term of General Sessions Court, **April 5 and 12, 2010**. This means the solicitor may call your case for trial at any time during the term of court. I will have you brought over so that we may discuss your case before the trial. If the solicitor chooses not to call your case during this term of court, your case will be carried over to the next term of court and you will receive another notice from this office.

Sincerely,

ORANGEBURG COUNTY PUBLIC DEFENDER


Peggy Hinds, Esq.
Deputy Public Defender

MEH/cap

ATTEST: TRUE COPY

CLERK OF
ORANGEBURG COUNTY

2011 DEC -3 PM 4:40

FILED FOR RECORD
WINN-DIXIE
CLERK

1 DEFENDANT, MR. BELTON, FIRED THE GUN, IT STUNG
2 MILES IN HIS ARM, UNDERNEATH HIS BICEP. MR. BELTON
3 WENT TO THE LEASING OFFICE, YOUR HONOR, AND ASKED THEM
4 TO CALL NINE ONE ONE. POLICE RESPONDED. WE BELIEVE
5 THIS DEFENDANT AND THE CO-DEFENDANT, TOMMY WILSON,
6 FLED ON FOOT. A THIRD PERSON WHO HAD BEEN IN THE
7 APARTMENT EARLIER BUT WAS NOT IN THE APARTMENT AT THE
8 TIME OF THE SHOOTING BY THE NAME OF MICHAEL SIMMONS,
9 HE WAS CAUGHT IN THE PARKING LOT, YOUR HONOR. THE
10 POLICE BEGAN TALKING WITH MR. SIMMONS AND MR. SIMMONS
11 ULTIMATELY GAVE A STATEMENT SAYING THAT HE HAD, IN
12 FACT, BEEN IN THE APARTMENT ALONG WITH AN INDIVIDUAL
13 HE KNEW AS TONY BELTON AND A THIRD PERSON HE ONLY KNEW
14 BY THE NAME OF TOMMY, HE DID NOT KNOW TOMMY'S LAST
15 NAME. THE POLICE, YOUR HONOR, AT THAT POINT THEY PUT
16 MR. BELTON IN A PHOTO LINEUP AND MR. MILES PICKED MR.
17 BELTON OUT OF A PHOTO LINEUP.

18 THE COURT: ALRIGHT. MS. HINDS, YOU'VE EXPLAINED
19 TO HIM THAT THIS ASSAULT AND BATTERY WITH INTENT TO
20 KILL IS A VIOLENT, MOST SERIOUS, NO PAROLE OFFENSE?

21 MS. HINDS: WE HAVE GONE OVER ALL OF THIS, SIR.

22 THE COURT: AND YOU'VE EXPLAINED TO HIM THE
23 STRIKES LAW?

24 MS. HINDS: I HAVE.

25 THE COURT: DO YOU UNDERSTAND ALL OF THAT, MR.



INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Burglary 1st	☒ YES ☐ NO	☒ YES ☐ NO	Residence	0	☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.
2. Assault And Battery With Intent To Kill	☒ YES ☐ NO	☒ YES ☐ NO	Residence	0	
3.	☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)			ZIP CODE	WEAPON TYPE	
INCIDENT DATE 01-03-08 24 HR. CLOCK 1015 DATE 01-03-08 24 HR. CLOCK 1022			DISPATCH DATE/TIME 01-3-08 1022	TIME ARRIVED 1025	DEPART TIME 1255
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) West Cindy		RELATIONSHIP TO SUBJECT #1 BU #2 #3	RESIDENT ☒ YES ☐ NO	RACE B	SEX F
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
VICTIM'S NAME (LAST, FIRST, MIDDLE) Miles Phillip Shawn		RELATIONSHIP TO SUBJECT #1 BU #2 #3	RESIDENT ☒ YES ☐ NO	RACE B	SEX M
HEIGHT 600 WEIGHT 197 HAIR BIK EYES BRN		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
VISIBLE INJURY (VICTIM) ☒ YES ☐ NO EXPLAIN gun shot wound to right arm		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO			
VISIBLE (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK TYPE		DRUGS ☐ YES ☒ NO ☐ UNK TYPE			
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPL/ASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J-This Jurisdiction, S-State, C-Out of State, U-Unknown.					
SUBJECT NO. 1	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) Unknown		RACE	SEX
	☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		AGE	ETH.
	☐ WANTED	ADDRESS		DATE OF BIRTH	HEIGHT
	☐ WARRANT	CITY		WEIGHT	HAIR
	☐ ARREST	STATE		EYES	
☐ JAIL	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		
☐ SUMMONS	DRUGS ☐ YES ☒ NO ☐ UNK TYPE		DATE/TIME OF OFFENSE		

On the above date and times, this deputy responded to the above location in reference to a shooting incident. Upon arrival, this deputy spoke with the complainant who stated the victim came into her office stating he had been shot. She stated that at that time she called 911 for help. This deputy then spoke with the victim who stated he came home after being away for the holidays. He stated that he heard something upstairs and thought it was his roommate. He stated that he walked up the stairs and found two black males, one who was light skin with braids in his hair. He stated that they told him to give it up and he attempted to leave the residence. He stated that one of the suspects presented a handgun, possibly a 9 mm and fired several rounds at him. One of the rounds struck the victim in the right arm. EMS responded and transported the victim. I HAVE RECEIVED A COPY OF THE 1997 VICTIMS AND WITNESS SERVICES STATUTE.

Signature		Jurisdiction Of This Law Enforcement Agency		Jurisdiction Of Recovery Law Enforcement Agency	
TYPE (GROUP)	ATTEST	TRUE COPY	PLAINTIFF'S EXHIBIT		TOTAL VALUE
STOLEN	Winnifred B. Clark				
DAMAGED					
BURNED					
RECOVERED					
SEIZED					
SUBJECT IDENTIFIED ☒ YES ☐ NO		ORANGE COUNTY SHERIFF'S OFFICE		☒ ACTIVE ☐ ADM. CLOSED	
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE-NO CUSTODY		ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER ☐			
OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Cpl. W. Kitchin	1-3-08	C111	Lt. J. Tapkins	01-03-08	102
			FOLLOW-UP OFFICER INVESTIGATION ☒ YES ☐ NO	1/4/08	319

DEPT
SQ0400000INFORMATION
ONLYCASE NUMBER
0801020803PAGE 419
INQ. INTD.

INCIDENT REPORT

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1.	13A AGGRAVATED ASSAULT	YES NO	YES NO	HIGHWAY/ROAD/ALLEY		☐ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Organ ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.		YES NO	YES NO			
3.		YES NO	YES NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 1400 TAVINEER DR, COLA, SC				ZIP CODE 29208	WEAPON TYPE HANDGUN	
INCIDENT DATE 01/03/2008	24 HR. CLOCK 11:15	TO DATE 01/03/2008	24 HR. CLOCK 12:31	DISP. DATE 01/03/2008	DISP. TIME 12:31	LOCATION NO. 1
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) BELTON, TONY L		RELATIONSHIP TO SUBJECT #1 ST		RESIDENT S	RACE/SEX B M	AGE /
ADDRESS		CITY ORANGEBURG		STATE SC	ZIP CODE	LOCATION NO.
VICTIM'S NAME (LAST, FIRST, MIDDLE) BELTON, TONY L		RELATIONSHIP TO SUBJECT #1 ST		RESIDENT S	RACE/SEX B M	AGE 20 /
HEIGHT 511	WEIGHT 180	HAIR BLK	EYES BRN	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS 2353 RUSSELL ST. APT 3		CITY ORANGEBURG		STATE SC	ZIP CODE 29115	LOCATION NO.
VIOLENCE (VCT.) YES NO EXPLAIN						
VICTIM (V1) USING ALCOHOL YES NO UNK. DRUGS YES NO UNK. TYPE						
TWO MAN VCT. ONE MAN VCT. DEFENSE/PLAINT OTHER ALONE ASSISTED						
J-This Anticipation, S-Self, O-Other, U-Unknown						
NAME (LAST, FIRST, MIDDLE) WILSON, TOMMY, JEROME		RACE/SEX B M	AGE 20 /	ETH N	DATE OF BIRTH	HEIGHT/WEIGHT/HAIR/EYES 510/165/BLK/BRN
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DAYTIME PHONE		EVENING PHONE		
ADDRESS		CITY COLUMBIA		STATE SC	ZIP CODE 29228	LOCATION NO.
SUBJECT (V1) USING ALCOHOL YES NO UNK. DRUGS YES NO UNK. TYPE		ARRESTED/NEAR OFFENSE/ACCUSE YES NO		DATE/TIME OF OFFENSE 01/03/2008 11:15:00		DATE/TIME OF ARREST
TOTAL # ARRESTED		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST		
DAY OF THE WEEK S M T W T F S UNK		HOW REPORTED A- OFFICER DISPATCHED ON CALL B- REPORT TAKEN BY PHONE C- COMPLAINANT WALKED IN		DISP. FACTOR A- RESISTANCE/HOSTILITY B- WEAPONS C- UNFUNDING DALLS D- MENTAL SUBJECT		E- COMPLAINANT FREQUENTLY INTOXICATED F- DOMESTIC G- NORMAL
AGGRAVATED ASSAULT 12A						
BELTON STATES THAT ON THE ABOVE LISTED DATES AND TIMES, AN UNKNOWN SUSPECT SHOT HIM IN THE LEG WHILE HE WAS WALKING DOWN THE STREET IN THE INCIDENT LOCATION. SUSPECT WAS DRIVING IN A WHITE VEHICLE UNKNOWN MAKE AND MODEL. BELTON WAS TRANSPORTED TO THE VETERANS HOSPITAL ON GARNERS FERRY RD BY UTSEY AND WILSON.						
THEN LATER TRANSPORTED TO RICHLAND MEMORIAL HOSPITAL.						
ATTEST: TRUE COPY						
JURISDICTION OF THIS AGENCY JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
TYPE (GROUP)		CLERK OF COURT		TOTAL VALUE		
STOLEN		ORANGEBURG COUNTY, SOUTH CAROLINA		0		
DAMAGED				0		
BURNED				0		
RECOVERED				0		
SEIZED				0		
SUBJECT IDENTIFIED YES NO		SUBJECT LOCATED YES NO		S. P.		ACTIVE UNFOUNDED ADM. CLOSED
PERSON RECEIVING CLEARANCE 1. CR UNDER 18 2. NO PROSECUTION 3. EXTORTION DENIED 4. VICTIM DEQUIRES COOPERATION 5. JUVENILE IN CUSTODY		ARRESTED UNDER 18 ARRESTED 18 AND OVER		EX-CLEAR UNDER 18 EX-CLEAR 18 AND OVER		
REPORTING OFFICER(S) Smith, Michael		DATE 01/03/2008		UNIT NUMBER 1248		APPROVING OFFICER Johnson, Kerry
R. PITCHER		DATE 01/03/2008		UNIT NUMBER 1434		OFFICER GALLEGOS
FOLLOWUP INVESTIGATION YES NO		DATE 01/03/2008		UNIT NUMBER 1145		

ATTEST: TRUE COPY

Winnia B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
ORANGEBURG COUNTY SHERIFF'S OFFICE
CENTRAL INVESTIGATIVE DIVISION
VICTIM AFFIDAVIT



2011 DEC -5 PM 4:40

FILED FOR RECORD
MINISTER OF ARMS
CLERK OF COURT

Date: 01-03-08 Time: 2:30 PM Place: Lacrosse Apt
 Victim Name: Phillips M. Lee
 Age: Date of Birth: Phone Number:
 Address:

On January 3, 2008 at about 2:30 PM I allowed Investigator
Pernell Lawson to write this statement for me but these
are my words. On January 3, 08 at about 10:15 PM I
came home after I entered my apartment I heard
some one up stairs at that time I attempted to go
up stairs when I noticed a black male in the closet I
asked the subject what was he doing in his apartment
the subject said he was chilling I asked him again what
was he doing in here the subject said he is on the Run,
at that time the guy started to move I grabbed
him and asked him where was he going the guy said he
was leaving at that time another guy pulled a Hi and Low
and pointed the gun at me and said give it up I
started taking my things from around my neck and I
jump down the step that's when the guy shot me in my
right arm I ran out side and ran to the office.
Notified the manager at the apartment that some
one was in my apartment and I was shot that's when

Progress Note

Printed On May 19, 2008

LOCAL TITLE: EMERGENCY RM/TRIAGE NURSING NOTE TL
STANDARD TITLE: NURSING EMERGENCY DEPARTMENT NOTE
DATE OF NOTE: JAN 03, 2008@13:11 ENTRY DATE: JAN 03, 2008@13:11:40
AUTHOR: EVANS, MILDRED T EXP COSIGNER:
URGENCY: STATUS: COMPLETED

*** EMERGENCY RM/TRIAGE NURSING NOTE TL Has ADDENDA ***

JAN 03, 2008

VITAL SIGNS:

HEIGHT:

WEIGHT:

TEMPERATURE: 98 F (36.7 C) (01/03/2008 12:15)

PULSE: 88 (01/03/2008 12:15)

BLOOD PRESSURE: 123/93 (01/03/2008 12:15)

RESPIRATION: 20 (01/03/2008 12:15)

PAIN: 10 (01/03/2008 12:15)

[x] Pain is component of visit today. Educated on pain scale and to report any changes in pain. {Reported to provider}.

Pain Intensity: 10

Pain Location: right thigh

Character: burning, sharp

Duration: 1 hour ago

Causes: gun shot wound to right thigh

Relief Measures: None

[] Patient's pain is chronic and states comfortable with current pain level/mgt -not part of emergency visit today. Understands to follow-up with their usual pain provider.

[] Non-communicative patient: Unable to assess further.

ATTEST: TRUE COPY

Patient Age: 20y/o Sex: MALE

Allergies: No Allergy Assessment

TONY L BELTON arrived via: ambulatory

ORIENTED: [x] Yes [] No

COMPLAINT: Pt c/o pain to right thigh x 1 hour after receiving a gun shot wound to right thigh in a drive by.

ASSESSMENT: Gunshot wound to right thigh, minimal bleeding noted, right thigh with notable edema noted. Pressure dressing placed to right thigh and secured with ace wrap. 14 G INT placed in left upper arm, 18 G INT placed to right upper arm, NS @ Bolus rate of 999cc/hr by J Lowery, RN. Dr. Patel in to see pt.

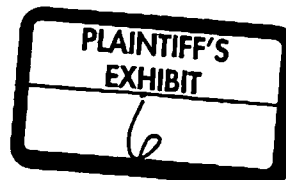
PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

BELTON, TONY

, SOUTH CAROLINA

VISTA Electronic Medical Documentation

Printed at COLUMBIA, SC VAMC



Date: 1/09/08
Time: 11:37:13

ORANGEBURG CO SO
Supplement Listing

Page:
Program: CMSUPL

Case No. . . . : 1-08-000112
Occur From Date: 1/03/08 10:21
Day Of Week . . : Thursday
Case Status . . : Arrested 18 and Over
Common Name . . :
City :
Report Officer : KETCHERSIDE, WILLIAM
Entry Date . . : SAMUEL, LATRINA 1/03/08
Occur To Date : 1/03/08 10:21
Dept Class . . : Shooting Incident
Case Status Dt : 1/09/08
Report Date . . : 1/03/08 10:21

***** A D D I T I O N A L T I M E S *****
Date Cleared . . : 1/03/08 12:55

Supplement Type. . . : NAM
Supplement Sequence #: 1
Report Emp/Dte/Time. : LAWSON, PERNELL 1/09/08 11:02
Name Type. : Suspect

Prompt valid in: SIMMONS, MICHAEL A

Street Number :
City : SC
Home Phone No. :
Birth Date . . :
Social Security:
Minimum Weight : 150
Race : Black
Ethnic Origin : Non-hispanic

Business Phone :
Maximum Age . . : 22
Minimum Height : 600
Juvenile . . . : ADULT
Sex : Male

FILED
WINN
CLERK
RECORD
CLERK

2011 DEC 3 PM 4:40

Supplement Type. . . : NAM
Supplement Sequence #: 1
Report Emp/Dte/Time. : LAWSON, PERNELL 1/09/08 11:11
Name Type. : Witness

Last Name . . . : DARBY, CARROLL
Street Number :
City : , SC
Home Phone No. :
Birth Date . . :
Race : Black
Ethnic Origin : Non-hispanic

Business Phone :
Juvenile . . . : ADULT
Sex : Female

Supplement Type. . . : NAM
Supplement Sequence #: 2
Report Emp/Dte/Time. : LAWSON, PERNELL 1/09/08 11:22
Name Type. : Witness

Last Name . . . : CAIN, ANTWAN
Street Number :
City : , SC
Home Phone No. :
Birth Date . . :
Juvenile . . . : ADULT
Sex : Male

Business Phone :
Occupation . . : SCHOOL
Race : Black
Ethnic Origin : Non-hispanic

Supplement Type. . . : NAM
Supplement Sequence #: 3
Report Emp/Dte/Time. : LAWSON, PERNELL 1/09/08 11:26
Name Type. : Witness

PLAINTIFF'S
EXHIBIT

7

Date: 1/10/08

ORANGEBURG CO SO

Page:

Time: 17:05:22

Offense Report

Program: CMS301

Case Number : 1-08-000112 Occur From Date: 1/03/08 10:21
Occur To Date : 1/03/08 10:21 Day Of Week : Thursday
Dept Class : Shooting Incident Case Status : Arrested 18 and Over
Case Status Dt : 1/09/08
Common Name :
City :
Report Officer : KETCHERSIDE, WILLIAM Report Date : 1/03/08 10:21
Entry Date : SAMUEL, LATRINA 1/03/08

***** VEHICLE INFORMATION # 1 *****
Case number : 1-08-000112 Color - Top : SILVER
License # :

***** SUSPECT / ARRESTEE INFORMATION - # 1 **

*** SUPPLEMENT DETAILS ***

Report Emp/Dte/Time. : LAWSON, PERNELL 1/09/08 11:02

Case Number : 1-08-000112
Prompt valid in: SIMMONS, MICHAEL ANTHONY\
Street Number :
City : , SC
Home Phone No. : Business Phone :
Birth Date : Maximum Age : 22
Social Security: Minimum Height : 600
Minimum Weight : 150 Juvenile : ADULT
Race : Black Sex : Male
Ethnic Origin : Non-hispanic

***** VICTIM INFORMATION - # 1 *****

*** SUPPLEMENT DETAILS ***

Report Emp/Dte/Time. : LAWSON, PERNELL 1/09/08 10:58

Case Number : 1-08-000112 Prompt valid in: MILES, PHILLIP SHAWN
Street Number :
City : , SC
Home Phone No. : Business Phone :
Birth Date : Height : 600
Weight : 197 Juvenile : ADULT
Race : Black Sex : Male
Ethnic Origin : Non-hispanic

***** NARRATIVE # 1 *****

*** SUPPLEMENT DETAILS ***

Report Emp/Dte/Time. : LAWSON, PERNELL 1/07/08 8:28

UPP

Reported By: LAWSON, PERNELL

1/07/08

ON 01-03-08 AT APPROXIMATE 15:15 AM I ARRIVED ON SCENE AT
WHEN I ARRIVED I OBSERVED SEVERAL DEPUTY UNITS AND THE
AMBULANCE I WAS ADVISED THAT IT WAS A SHOOTING OCCURRED AT
MET WITH SGT, MILLER. WHO ADVISE ME THAT APARTMENT HAS BEND

Date: 1/10/08
Time: 17:05:22

ORANGEBURG CO SO
Offense Report

Page: 2
Program: CMS301L

1-08-000112 (Continued)

BURGLARIZE AND ONE SUSPECT WAS IN CUSTODY. I ALSO MET WITH DEPUTY RODRIGUEZ, WHO STATED THAT THE SUSPECT IN CUSTODY HAD SOME ITEMS IN HIS POCKET AND VEHICLE THAT MAY HAVE COME OUT OF THE APARTMENT. I WENT TO THE AMBULANCE A SPOKE WITH THE VICTIM WHO STATED THAT HE AND HIS ROOMMATES WERE OUT OF SCHOOL FOR THE HOLIDAY AND HE CAME BACK TO HIS APARTMENT TO PAY HIS RENT AND AS HE WALKED INTO HIS APARTMENT THROUGH THE FRONT DOOR AND ATTEMPTED TO GO UP STAIRS HE NOTICE A YOUNG BLACK MALE WAS IN HIS CLOSET VICTIM WHO IS PHILLIPS MILES, STATED THAT HE ASKED THE SUBJECT WHAT WAS HE DOING IN HIS APARTMENT, THE SUBJECT STATED TO HIM THAT HE WAS CHILLING. VICTIM STATED THAT HE ASKED THE SUBJECT AGAIN WHAT HE WAS DOING IN HIS APARTMENT THE SUBJECT TURN TO WALK OFF. HE ASKED THE SUBJECT WHERE HE GOING THE SUSPECT WAS SAID HE WAS LEAVING THAT S WHEN HE GRABBED THE SUBJECT. AT THAT TIME ANOTHER BLACK MALE CAME FROM ONE OF THE ROOMS AND POINTED A HAND GUN AT HIM, AND SAID GIVE IT UP. THE GUN LOOKED LIKE A 9MM HI POINT HAND GUN. PHILLIPS STATED THAT HE WAS IN THE PROCESS OF TAKING THE GOLD CHANGE FROM AROUND HIS NECK WHEN HE SEE A BREAK HE RAN FOR THE DOOR WHEN HE DID THE DARK SKIN SUSPECT STARTED SHOOTING AT HIM ONE OF THE BULLET HIT HIM IN HIS RIGHT ARM. HE RAN TO THE APARTMENT OFFICE AND ADVISED THE MANAGER TWO GUYS WERE IN HIS APARTMENT AND THAT HE WAS SHOT. THE MANAGER CALLED 911 FOR HIM. I SPOKE WITH THE MAINTENANCE MAN WHO GAVE ME A WRITTEN STATEMENT TO WHAT HE SAW AND OBSERVED. WHO WAS JOHN CHEESEBORO? CONTINUE INVESTIGATING I MET AND SPOKE WITH CARROLL DARBY NEXT DOOR NEIGHBOR WHO LIVE IN APARTMENT GAVE ME A WRITTEN STATEMENT TO WHAT SHE HERE AND OBSERVED. ON THE SAME DAY AFTER PHILLIPS WERE RELEASED FROM THE EMERGENCY ROOM HE GAVE ME A WRITTEN STATEMENT TO WHAT TOOK PLACE INSIDE OF THE APARTMENT AFTER HE ENTER THE RESIDENCE. I ALSO CALLED THE CRIME SEEING UNIT OUT WHO IS IT, G. CARTER, TO PROCESS THE CRIME SCENE PHILLIPS ALSO IDENTIFIED THE ITEM THAT WAS TAKING FROM THE SUSPECT THAT WAS IN CUSTODY WHO WAS MICHAEL SIMMONS. PHILLIPS IDENTIFIED THE CHAIN AND CHIME TO BE HIS ROOM MADE. ANTWAN CAIN. AT 12:40 PM. I INTERVIEW ANTWAN CAIN AND HE IDENTIFIED THE CHAIN AND CHARM TO BE HIS MR. CAIN ALSO STATED THAT HE HAS SEVERAL PICTURES OF HIM ON THE WALL WITH HIM WEARING THE CHAIN AND CHARM. HE ALSO IDENTIFIED THE CELL PHONE. THAT WAS TAKING OUT OF THE HOUSE BY MICHAEL SIMMONS AND A BOX OF REMINGTON 9MM BULLETS. WE ALSO TOOK ANOTHER BOX OF 9MM WINCHESTER BURETTES OFF OF MICHAEL SIMMONS. ON JANUARY 4,08 AT 1:17 PM. I INTERVIEW MICHAEL SIMMONS, WHO ADMITTED OF BEING IN THE APARTMENT ALONG WITH TWO OTHER CO-DEFENDANTS TONY BELTON, AND ANOTHER SUBJECT BY THE FIRST NAME OF TOMMY. THE LAST NAME HE DOESN T KNOW AT THIS TIME. I READ MICHAEL HIS. AT FIRST MICHAEL STATED THAT HE WANTED A LAWYER. I ADVISE HIM THAT I CANT TALK TO HIM IF HE WANTED A LAWYER THEN MICHAEL CHANGE, HIS MIND AND WANTED TO TALK, AND GAVE A WRITTEN STATEMENT TO HIS INVOLVEMENT. MICHAEL SIMMONS WAS DRIVING A 2002 CHEVY MONTE CARLO GRAY IN COLOR TWO DOORS. WITH TAG NUMBER . VEHICLE WERE TOWED TO THE LAW COMPLEX IMPOUND LOT, FOR SAFE KEEPING

* * * * * END OF REPORT * * * * *