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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

SC SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

BRODERICK CULP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000322

APPENDIX

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ATTORNEYS FOR RESPONDENT

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(NO EXHIBITS PROFFERED)

State vs. Broderick Culp - 9-13-13

1 MS. SHELTON: Your Honor, this is the
2 State vs. Broderick Culp. Mr. Culp is pleading
3 guilty to three counts of armed robbery, one
4 count of criminal conspiracy. Your Honor, this
5 case was in a trial posture scheduled to for a
6 trial on Monday of next week.

7 The State has served Mr. Culp with an
8 intention to seek life should he be convicted at
9 trial. Through some plea negotiations that have
10 gone on this week, the State has agreed to do a
11 negotiation of 14 years with the understanding
12 that we will defer sentencing until Monday of
13 next week. Mr. Culp was concerned about
14 visitation this weekend if he was sentenced
15 today. Also, Ms. Desch calculated credit for
16 time served at 106 days.

17 Your Honor, Mr. Smith is telling me there
18 was also a possession of weapons charge that Ms.
19 Desch did not include on the form but he will
20 also be pleading guilty to that.

21 THE JUDGE: Sir, you are Broderick Culp;
22 is that right?

23 THE DEFENDANT: Yes, sir.

24 THE JUDGE: Mr. Culp, How old are you?

25 THE DEFENDANT: Forty.

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1 THE JUDGE: How far did you go in school?

2 THE DEFENDANT: I finished high school.

3 THE JUDGE: What do you do for job or
4 occupation?

5 THE DEFENDANT: I work for a company
6 building pallets.

7 THE JUDGE: Are you married, sir?

8 THE DEFENDANT: Common law.

9 THE JUDGE: Do you have any children
10 under 18?

11 THE DEFENDANT: No, sir.

12 THE JUDGE: Mr. Culp, you are charged
13 today with several offenses. You are charged
14 with two counts of armed robbery each of which
15 is classified as a felony and each of which
16 carries a mandatory minimum sentence of 10 years
17 and a maximum sentence of 30 years. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE JUDGE: These charges are classified
21 as no parole offenses which means you would
22 expect to serve the sentence you would get on
23 these charges. They are classified as violent
24 offenses which could affect your ability to
25 participate in certain programs at the

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Department of Corrections. They are also classified as most serious offenses. The importance of that classification is should you get two most serious offenses on your record or a combination of three serious and most serious offenses on your record, upon receiving the second most serious offense or the third serious and most serious offense on your record, you could get a sentence of life without parole, so called two-strikes and three-strikes rules. These offenses would classify as a strike under either one of these rules, under both two-strike and three-strike rules. Do you understand that?

THE DEFENDANT: I think so.

THE JUDGE: You are also charged today with conspiracy to commit an armed robbery which is classified as a felony and carries a maximum punishment of five years. Do you understand that?

THE DEFENDANT: Yes, sir.

THE JUDGE: You are charged with possession of a pistol during the commission of a violent crime which is also classified as a felony and carries a maximum punishment of 5 years. Do you understand that?

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1 THE DEFENDANT: Yes, sir.

2 THE JUDGE: Understanding the charges and
3 the maximum minimum sentences you could receive
4 on these charges, how do you plead to these
5 charges today, guilty or not guilty?

6 THE DEFENDANT: I plead guilty to them.

7 THE JUDGE: Do you understand by pleading
8 guilty you give up your right to remain silent?
9 You have to respond verbally to my
10 questions so she can record your responses.

11 Do you understand that by pleading guilty
12 you give up your right to right to remain
13 silent?

14 THE DEFENDANT: Yes, sir.

15 THE JUDGE: Do you understand by pleading
16 guilty you give up your right to trial by jury?

17 THE DEFENDANT: Yes, sir.

18 THE JUDGE: If you give up your right to
19 trial by jury, you also give up your right to
20 assert any legal defenses you might have in a
21 jury trial? Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE JUDGE: I know your attorney has gone
24 over that right with you, your jury trial right,
25 and I am going to go over that with you as well.

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1 If you requested a trial by jury, the State
2 would give you a trial. This is, in fact, set
3 for trial on Monday.

4 At trial you would have the right to
5 confront and cross-examine all witnesses against
6 you. You would have the right to present any
7 witnesses and/or evidence in your own defense.
8 You would have the right to testify in your own
9 defense if you wish to do so, and no one could
10 make you testify in your own trial. If you
11 decide to go to trial and not testify, the judge
12 would tell the jury they could not hold your
13 failure to testify against you. In fact, the
14 jury could not even consider your failure to
15 testify in their deliberations on your guilt or
16 innocence. You would be presumed innocent
17 throughout the trial. The State would have to
18 prove you guilty beyond a reasonable doubt to a
19 jury of 12 people. All 12 people would have to
20 unanimously agree you are guilty in order for
21 you to be convicted. Even if you are convicted,
22 you would still have the right to appeal that
23 conviction. Do you understand your rights with
24 regard to trial by jury?

25 THE DEFENDANT: Yes, sir.

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1 THE JUDGE: Understanding that right, do
2 you still want to plead guilty or do you want me
3 to set your case for trial? They already set it
4 for trial. Do you want to go forward with the
5 trial?

6 THE DEFENDANT: I am going to accept my
7 guilty plea.

8 THE JUDGE: The State is recommending to
9 the Court in this case a 14-year sentence, the
10 sentence would all run concurrent and you would
11 get a 14-year sentence. Is that your
12 understanding of the agreement you have with the
13 Solicitor's office in order to plead guilty to
14 these charges?

15 THE DEFENDANT: Yes, sir.

16 THE JUDGE: Has anyone promised you
17 anything other than that -- well, they have
18 taken life without parole off the table. If you
19 went to trial, you would be going to trial with
20 life without parole. They have taken that away.
21 Has anyone promised you anything other than that
22 in order to get you to plead guilty today?

23 THE DEFENDANT: No, sir.

24 THE JUDGE: Are you satisfied with the
25 manner in which your attorney has advised and

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1 represented you in these cases?

2 THE DEFENDANT: I am.

3 THE JUDGE: Have you and your attorney
4 fully discussed the charges against you?

5 THE DEFENDANT: Yes, sir.

6 THE JUDGE: Has your attorney told you the
7 witnesses and the evidence the State has
8 available to present at trial to prove your
9 guilt?

10 THE DEFENDANT: Yes, sir.

11 THE JUDGE: Has your attorney discussed
12 with you any possible legal defenses that might
13 be available to you if you were to go to trial?

14 THE DEFENDANT: Yes, sir.

15 THE JUDGE: Have you told your attorney
16 the names of any and all witnesses you know of
17 that your attorney could subpoena and bring to
18 trial to assist you in your defense if you were
19 to go to trial?

20 THE DEFENDANT: Yes, sir.

21 THE JUDGE: Are you today under the
22 influence of any mind-altering substance such as
23 alcohol, drugs, or prescription medications
24 which interfere with your judgment or ability to
25 understand what we are doing in court?

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1 THE DEFENDANT: Only the stuff that I
2 listed.

3 MR. SMITH: He listed on the plea form the
4 medications he takes, your Honor.

5 THE JUDGE: Let me ask you, sir, whether
6 those medications interfere in any way with your
7 ability to understand what you are doing in
8 court today?

9 THE DEFENDANT: No, sir.

10 THE JUDGE: Do you have any mental,
11 emotional or nervous condition that interferes
12 with your judgment or ability to understand what
13 you are doing in court today?

14 THE DEFENDANT: I do, yes, sir.

15 THE JUDGE: You have a mental or nervous
16 condition, mental or nervous condition?

17 THE DEFENDANT: Bipolar.

18 THE JUDGE: Let me ask you --

19 THE DEFENDANT: I understand what you are
20 saying.

21 THE JUDGE: That's my next question. Do
22 you understand what we are doing in court here
23 today?

24 THE DEFENDANT: Yes, sir.

25 MR. SMITH: And he has taken his

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1 medication today as prescribed, your Honor.

2 THE JUDGE: I am very familiar with
3 Bipolar, and as long as you take medication you
4 can function quite well. A lot of people have
5 Bipolar and function quite well and work every
6 day.

7 Are you pleading guilty today of your own
8 free will?

9 THE DEFENDANT: Yes, sir.

10 THE JUDGE: Are you, in fact, guilty of
11 these charges?

12 THE DEFENDANT: Am I guilty of them?

13 THE JUDGE: Yes, sir.

14 THE DEFENDANT: I am taking a plea, yes,
15 sir.

16 THE JUDGE: Are you guilty of them?

17 THE DEFENDANT: No, but I am taking a
18 plea.

19 THE JUDGE: I cannot take a guilty plea if
20 he says he is not guilty.

21 THE DEFENDANT: I understand everything
22 that you are saying, but you know, you are
23 saying did I participate in these crimes, yes,
24 sir.

25 THE JUDGE: That's what it is all about.

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1 THE DEFENDANT: That's what I am saying.
2 I participated in these crimes, right.

3 THE JUDGE: I am going to hear the facts
4 in just a minute from the solicitor. I will
5 listen to those and you listen to those, and
6 let's see what you agree to and do not agree to.
7 In order to be convicted of an armed robbery,
8 you don't have to walk into a store with a gun.

9 THE DEFENDANT: I understand.

10 THE JUDGE: If somebody who is outside in
11 the car and is a look out and somebody is
12 standing at the door, and somebody walks in and
13 they have a gun --

14 THE DEFENDANT: That's why I am saying
15 guilty.

16 THE JUDGE: That is still guilty in armed
17 robbery because a hand of one is a hand in all.
18 That's why I am asking you if you are, in fact,
19 guilty of these charges. By that, I am not
20 saying did you walk in with a gun and ask for
21 money. I am asking if you participated in an
22 armed robbery?

23 THE DEFENDANT: Yes, sir.

24 THE JUDGE: All right.

25 THE DEFENDANT: She don't have to walk

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1 through that. I understand.

2 THE JUDGE: We are putting it on the
3 record. We have to put it on the record. I am
4 not going to let you plead guilty to something
5 that I don't think they can prove or have facts
6 to back up. I will listen to what they have as
7 well as you, and if they give me something that
8 I say doesn't support that charge, I am not
9 going to take a plea if I don't think the facts
10 support a guilty plea, I am not going to take a
11 guilty plea. Do you understand? We both need
12 to listen to it and see.

13 Give me the facts, Solicitor.

14 MS. SHELTON: Your Honor, these offenses
15 occurred between October 16 and October 17,
16 2010. The first robbery at the Little Giant BP
17 in Rock Hill occurred before midnight. The
18 other two robberies occurred after midnight.
19 The facts that the State would have gone forward
20 on was that on October 16th, 2010, an individual
21 entered the Little Giant BP in Rock Hill. That
22 person went to the cooler area, got a drink,
23 purchased that drink, and when the register was
24 opened used a gun and asked the cashier for
25 money.

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1 Later that evening around 3 a.m., an
2 individual went into the Crenshaw Gas Station
3 also in Rock Hill, York County, asked for
4 cigarettes, paid for those cigarettes. When the
5 register was open, again, used a small pistol
6 and demanded money and was provided with cash
7 from that robbery.

8 At 4 a.m. at Kangaroo Express in Fort
9 Mill, South Carolina, York County, an individual
10 again went to the counter and asked for
11 cigarettes. When that individual went to pay
12 for the cigarettes, he put his wallet on the
13 counter. The clerk opened the register and then
14 the defendant pulled out a small pistol and
15 demanded money and then left the store but left
16 the wallet there.

17 Through the investigation, there was
18 identification in that wallet belonging to
19 Mr. Culp. Also, on a video, someone entering
20 the store around the time of the robbery was
21 seen smoking a cigarette and dropped the
22 cigarette right there at the door. That
23 cigarette was found to still be smoking by law
24 enforcement, still burning. That cigarette butt
25 was collected and was processed. There was DNA

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1 on that cigarette butt that matched Mr. Culp.

2 There was another individual involved who
3 by his statement said that he was the get away
4 driver, and that Mr. Culp was the one that he
5 was driving the car for and Mr. Culp was in the
6 car with him. That individual's name was
7 Antonio Smith.

8 THE JUDGE: Mr. Culp, you heard the facts
9 recited to the Court by the Solicitor's office
10 with regard to these charges. Do you disagree
11 in any way with what they say happened?

12 MR. SMITH: Mr. Culp's version would be
13 that the person they labeled as the get away
14 driver was found on foot within a half hour of
15 leaving the scene with money in his pocket. He
16 would say the roles were reversed, but certainly
17 understands that gives him as much involvement
18 with the three armed robberies had he been the
19 one who entered the store.

20 THE JUDGE: Is that correct, Mr. Culp?

21 THE DEFENDANT: That's correct.

22 THE JUDGE: I find the decision of the
23 defendant, Broderick Culp, to plead guilty to
24 these four charges be made freely, voluntarily,
25 and intelligently. He has had the

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1 representation of a competent attorney with whom
2 he says he is satisfied. I find the facts
3 presented to the Court by the Solicitor's office
4 concurred in, even those concurred to by the
5 defendant. The Court accepts the pleas in this
6 case and accept the pleas as freely and
7 voluntarily made.

8 Mr. Culp, if you disagree with the
9 proceedings in which we are currently involved
10 in, you have ten days from the date you are
11 actually sentenced -- we are deferring your
12 sentence to Monday. You have ten days from
13 Monday to actually file a notice of intent to
14 appeal. Do you understand your right to appeal?

15 THE DEFENDANT: Yes, sir.

16 THE JUDGE: Again, we need to state for
17 the record, if you have three or four people who
18 get together and plan something out, go there,
19 and carry it out, even if only one went in and
20 the others were a part of it, taking a part of
21 it on the scene, that kind of stuff, even only
22 if one had a gun and had gotten money from the
23 cashier, everybody is involved in planning and
24 participating in that and is guilty with the
25 hand of one hand of all. That's what is

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1 presented to the jury and that's the reason I
2 take these pleas. Even in that scenario,
3 Mr. Culp would be guilty of armed robbery if he
4 participated in them.

5 So with that, Counsel, anything else?

6 MR. SMITH: No, your Honor.

7 THE JUDGE: We will defer sentencing on
8 all these charges until Monday thank you.

9 (Whereupon, the above-entitled matter was
10 adjourned.)
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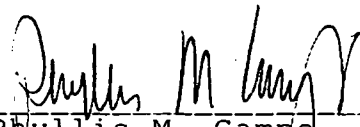
C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA
COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

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

November 10, 2014



Phyllis M. Campo
Official Court Reporter

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF YORK

State of South Carolina,
vs.
Broderick Culp
Defendant.

SENTENCE

2011-GS-46-447

Date: September 16, 2013

BEFORE: The Honorable Alford Lee,

APPEARANCES:

Jennifer Desch, Esq.,
Assistant Solicitor

Phillip Smith, Esq.,
Attorney for Defendant

Phyllis M. Campo, RPR
Court Reporter

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1 MS. DESCH: Your Honor, standing before
2 you is Broderick Culp. He is here with his
3 attorney, Phil Smith, from the Public Defender's
4 Office.

5 Your Honor, this is my case and has been
6 from the beginning. Ms. Shelton was standing in
7 on Friday for Mr. Culp to enter into a plea.
8 She was covering for me. I was in trial in
9 another court and we wanted to enter the plea so
10 we knew how to proceed. This was on the trial
11 docket. It was being prepared for trial.

12 I have two detectives in the courtroom,
13 Detective Neeley and Detective Moore are here.
14 They were also with me preparing for trial. He
15 did enter a plea on Friday for a negotiated 14
16 years. I have taken back over as it is my
17 responsibility and my case, and grateful for Ms.
18 Shelton for standing in for me on Friday. We
19 are here to proceed on sentencing.

20 THE JUDGE: Counsel.

21 MR. SMITH: Yes, your Honor. I met with
22 Mr. Culp this morning. As your Honor is aware,
23 he has been accommodated somewhat concerning the
24 sentencing sheets and his desire to remain where
25 he was for potential visitation this weekend.

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1 When I took to him the sentencing sheets, he
2 indicated he did not wish to sign those sheets
3 and wished to address the Court on an issue. My
4 advice to him and my counsel to him is that he
5 had already pled on Friday. The only issue,
6 before the Court today would be sentencing, that
7 your Honor had, in fact, accepted his guilty
8 plea and that portion of the plea was over, but
9 he did indicate he did wish to address the
10 Court.

11 THE JUDGE: Yes, sir, Mr. Culp.

12 THE DEFENDANT: I don't want to plead.

13 THE JUDGE: You are a day late and dollar
14 short. I took your plea and I accepted your
15 plea on Friday. The only reason I didn't
16 sentence you Friday is because you wanted to
17 meet with your family over the weekend and they
18 will not allow you to do that over there if I
19 actually sentenced you because they would have
20 put you in a different place in the Department
21 of Corrections. That's the only reason you were
22 not sentenced that day. It was an agreed to
23 sentence, negotiated sentence. I took your plea
24 and I accepted your plea, accepted it free and
25 voluntarily and explained to you your rights to

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1 appeal and everything else.

2 I will not allow you to withdraw your plea
3 at this point after you got everything you
4 wanted.

5 We had this set for trial. Now we cannot
6 go forward with the trial now because they have
7 disbanded all of that and no are longer prepared
8 for trial.

9 You pled guilty. I accepted your plea. I
10 explained all of your rights to you. I will not
11 allow you to withdraw your plea.

12 Anything you wish to say in mitigation?

13 MR. SMITH: No, your Honor.

14 THE JUDGE: Anything else you wish to say?

15 THE DEFENDANT: You took my plea under
16 medications. I was heavily sedated. I told you
17 I was.

18 THE JUDGE: I asked you clearly about
19 that. You said that medication did not
20 interfere at all. That's what you said.

21 THE DEFENDANT: That man standing behind
22 me --

23 THE JUDGE: Because that's where he needs
24 to be.

25 THE DEFENDANT: I mean, I am not acting

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1 irrational. I am just telling you I don't want
2 to plea and I was medicated and coerced and
3 forced to take this plea. I felt like if I
4 didn't take this plea that I was going to get a
5 life sentence on Monday. So that's a coercion.

6 THE JUDGE: It was all explained to you,
7 sir. It is all on the record. On Friday that
8 was all explained to you. You were facing life
9 without parole. They had no issue for life
10 without parole if convicted at trial. I
11 explained that to you and everything. That was
12 your choice. I asked you about your medication
13 and you told me, I believe, you were bipolar,
14 and you told me you were taking medication and
15 you clearly understood what you were doing and
16 it didn't affect your ability to understand what
17 you were doing in court, and we corresponded
18 quite clearly. You were quite clear in your
19 communication with the Court.

20 The fact that you changed your mind over
21 the weekend, it is a consequence of no
22 significance to the Court because I have
23 accepted your plea already. You would have been
24 sentenced on Friday except for your request to
25 meet with your family which you couldn't do if I

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1 had already sentenced you. So we deferred the
2 actual sentence to today.

3 So that's the end of that. I am not going
4 to allow you to withdraw your plea. I don't
5 think any judge would.

6 Is anything else you want to say on your
7 behalf?

8 THE DEFENDANT: I would like to appeal,
9 your Honor.

10 THE JUDGE: You can appeal. You have a
11 right. You have ten days from today's date
12 within which to file a notice of intent to
13 appeal. You have that right. You have to file
14 a notice of intent to appeal within ten days.
15 Do you understand that?

16 THE DEFENDANT: No, I don't, but...

17 THE JUDGE: I have explained it to you.
18 Your attorney will file a notice of appeal for
19 you if you want to appeal. He will file it. He
20 will file it for you to protect your rights and
21 somebody from indigent defense will represent
22 you with regard to that.

23 Case Number 2011-GS-447, Broderick Culp,
24 having pled guilty to armed robbery, the
25 sentence of the Court is be committed to State

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1 Department of Corrections for a determinate term
2 of 14 years. His sentence is concurrent. He is
3 given credit for 106 days of jail time.

4 Case Number 2011-GS-46-451, Broderick
5 Culp, having pled guilty to possession of a
6 pistol during the commission of a violent crime,
7 the sentence of the Court will be to be
8 committed to State Department of Corrections for
9 determinate term of five years. This sentence
10 is concurrent with credit for time served.

11 Case Number 2011-GS-46-449, Broderick
12 Culp, having pled guilty to armed robbery, the
13 sentence of the Court is to be committed to
14 State Department of Corrections for a
15 determinate term of 14 years. The sentence is
16 concurrent with credit for time served.

17 Case Number 2011-GS-46-350, Broderick
18 Culp, having pled guilty to conspiracy to commit
19 an armed robbery, the sentence of the Court is
20 to be committed the State Department of
21 Corrections for determinate term five years
22 concurrent, credit for time served.

23 MS. DESCH: Thank you, your Honor.

24 (Whereupon, the above-entitled matter was
25 concluded.)

State vs. Broderick Culp - 9-16-13

C E R T I F I C A T I O N

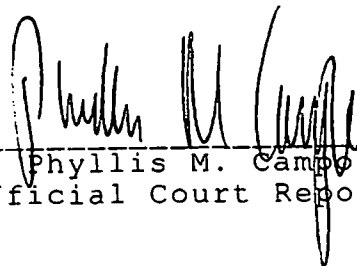
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STATE OF SOUTH CAROLINA
COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

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

November 10, 2014



Phyllis M. Campo
Official Court Reporter

FORM 5

2014 CP 66-3141

STATE OF SOUTH CAROLINA **CERTIFIED TRUE COPY** THE COURT OF COMMON PLEAS

County of YORK 2014 SEP 23 PM 4:06

Brodrick E. Culp
Full name and prison number (if any) of Applicant
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-RECEIVED
2014 SEP 23 PM 12:38
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONS
2. Name and location of Court which imposed sentence York County, MOSS JUSTICE CENTER
3. Name(s) of co-defendant(s) (if any) ANTONIO SMITH
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS 4600 447, 2011 GS 4600 450
 - (b) 2011 GS 4600 449, 2011 GS 4600 451

(c) _____

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

(a) September 16, 2013

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ASKED TO WITHDRAWAL OF PLEA

(c) after a plea of nolo contendere _____

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

YES

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

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

i. York County Mass Justice ...

ii. _____

iii. _____

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

i. Dismissed remittitur sent Rule 221 (b) SCACR

ii. _____

iii. _____

(c) the date of each such result:

i. November 6 2013

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) I WAS AT R+F AND NOT ABLE TO DO SO

(b) _____

(c) _____

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

- (a) Ineffective Counsel, Counsel fail to investigate, pretrial function
- (b) Counsel failed to pursue defense available to defendant
- (c) Excess of jurisdiction by the judge, defendant withdraw plea

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

- (a) Defendant asked for interrogative of investigators, defendant had
- (b) Alibi! Asked for interrogative of victims! Asked for suppression of evidence
- (c) Asked presiding judge for withdrawal of plea during hearing.

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (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. Prior to the hear I filed in North Carolina to
 - ii. show that South Carolina lack Subject matter
 - iii. Jurisdiction & Personal Matter Jurisdiction nor had
 - iv. proable cause to arrest
- (b) the name and location of the Court in which each was filed:
 - i. Aston County, North Carolina District Court
 - ii. _____
 - iii. _____
 - iv. _____

- D. 10. Failure to notify the jurist of alibi to the court
- E. The defendant was arrested on faulty summons which stated no cause for arrest in the state of North Carolina at the time of his arrest.
- F. The individual was arrested insufficient of service of process and due process as the fugitive warrant he was arrested on did not state the fact to his arrest time, place or address of the alleged place that was robbed.
- G. The judge falsely stated that the jury had been dismissed also witnesses, while neither had ever been convened for trial.
- H. The Prosecutor coerced the defendant with the threat of a life sentence to get the defendant to consider a plea agreement which he stated he did not to commit the crime of arm robbery on 9-13-13, while his lawyer did nothing.
- I. On the date 9-16-13 in closed court, while asking to withdraw his plea the court allow the bailiff the to intimidate the defendant by pressing his chest and body against the defendant
- J. Please allow for this to be later amendment and explained with phone records and witnesses once a lawyer is assigned
- K. Improper venue
- L. Another action pending between same party under the same claim.

Respectfully
 [Signature]
 self

(c) the disposition thereof:

- i. The charges were dismissed in Austin County
- ii. District Court.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 1-14-13 / 2-5-13 / 3-25-13 Judge Misty L. Harris
- ii. dismissed charges of Fugitive against Brodrick E. Culp.
- iii. The Initial complaint was #
- iv. _____

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

- i. Initial summons was filed 10-20-2010 # 10-CR250
- ii. 540-01 arrest 1471448
- 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, Lack of Personal Matter Jurisdiction, Lack of Subject Matter Jurisdiction

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

(a) which grounds have been presented:

- i. Lack of Subject Matter Jurisdiction
- ii. Lack of Personal Matter Jurisdiction
- iii. Failure to state facts sufficient to constitute cause of ^{ACTION} F

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

- i. District Court before judge Misty L. Harris
- 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) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? ~~NO~~ 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? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
~~NO~~ 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. N/A
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Phil Smith at Arraignment Plea
 - ii. _____
 - iii. _____

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

I ASK for sentence release or sentence reduction... the same as co-defendant or all charges dismissed.

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

NO - NONE

STATE OF SOUTH CAROLINA)

County of York)

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.

[Signature]

SWORN to and subscribed before me this 12 day of Sept, 2014.


[Signature] (L.S.)
Notary Public

My Commission Expires: 11-4-2015

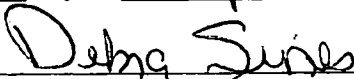
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Brodrick E. Culp, 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
12 day of Sept, 2014.


Notary Public

My Commission Expires: 11-4-2015

10. Violation of due Process, Failure to state facts sufficient to constitute a cause of action.

- a. Clear material prejudice against defendant, which gives a substantive right as a defense to the defendant.
- b. Lack of personal & subject matter jurisdiction of the court.
- c. Insufficiency of service of process
- d. Ineffective assistance of counsel.
- e. Another action pending between the same party for the same claim.
- f. improper venue.

11. The defendant would show that his due process was in violation when arrested in North Carolina on a deficient summons for fugitive warrant # ~~AS~~ # 10-CH-250540-01 complaint # 101020090-502

Also the defendant would show herein, that no probable cause was established and in fact the defendant was not legally arrested.

Defendant would assert that any legal process cannot start on a defect and that the initial arrest is a substantive of personal matter jurisdiction - in our constitutional laws, which gives right to stand before the courts.

2. In such being the matter of disposition of the summons and records of proceedings, the ~~defendant~~ procedure errors under Criminal Practice Rule 6, does nullify authorization of ~~trans~~ any transmittal power of the Court of General Session to hold this prisoner. As the summons does not raise to bar charging a crime against Brodrick. Culp no description, time or place to face charges alleged.

1.10. b. The defendant will show where he was arrested on a defective summons in the state of North Carolina by the requesting state of South Carolina the defendant would affirm that had he known the summons was defective and bogus, he would not have waived his extradition rights, doing so only because he had a collateral interest in being gainfully employed and expecting his first child, by his girlfriend and he could ill afford to misdeeds with either.

We would show herein that the states never had personal jurisdiction over the matter through out a force of coerced force and misrepresentation of false documentation of the arrest power therefore should never have brought Mr. Culp across jurisdictional state lines as well as the courts lack both subject matter and personal matter jurisdiction.

Violating the defendant in 10. a. b. c. f. of this application, also of d. that his counsel should be so lacking as to overlook these errors prior to any arraignment or proceeding.

- D. The defendant will show where his rights have been violated, wherein the defendant would show that he was not given the opportunity to make a special appearance to give any facts that at that time would have been helpful to support his alibi, but instead arrested and detained on the pretense of false fugitive warrant. In his being detained he was collaterally damaged in the loss of his employment & liberty, all the while the courts lacking of both personal and subject matter jurisdiction.
- C. The defendant would show where, he states he has no knowledge of the crime which took place, only that he loaned his vehicle to a suspect who was part of the record of proceedings. The defendant was neither on parole, pardon, fleeing that pursuit, nor probation to warrant being a fugitive. He would claim insufficient of process herein as not knowing a crime had been committed.
- d. The defendant would show he claimed innocents to his public defender and at the time of his being assigned Mr. Phil Smith, Mr. Smith also had a private practise, while being a full time public defender. That pretrial functions - which I ask Mr. Smith to prepare for trial were not done as I ask that he do motion for interrogives to be taken of all witness, Carson Neely, Fredrick, Moore, etc. B.V. Kocek, as well as the so call Co-defendant that I could prove I never committed these crimes. Individuals I were with the night of this crime - were prepared to give statements, yet Mr. Smith had ignored these pretrial functions.

Also I had asked Mr. Smith to withdraw a ~~14~~ fourteen year plea offer and to understand I did not want time, that the other suspect set me up that I could prove this if he got the guy to give statements on interrogatory, but the other guy had got 2 two years and Mr. Smith never helped - causing me not to be able to face the only person who was accusing me!

Also when on Friday the 13th 2013 when the Judge ask me did I do the crime I started no, but my Public defender acted as the Prosecution in telling me to take the time or get a life sentence - even having a Prosecutor come tell me I was going to get life there was nothing they could do for me because how the case looked, regardless that I did it or not.

Mr Phil Smith, did my direct appeal and fail to raise a single issue after I was force to take a plea. In fact he scared me worst than the Prosecution when it came down to going to trial.

e. I was transported back to South Carolina, but was fighting extradition until I could show before the courts, that my initial arrest was faulty and though I went to South Carolina, after knowledge of the bogus summons should nullify the process and proceedings South Carolina happen to be taking against me! Thus I was on Cuyler Adams for the length of 6 six days and because the jurisdiction of North Carolina did not have the power to hold me.

A. DEFENDANT ATTEST HE FALSELY WAS DETAINED ON 2 FIDELITY document "summons" # complaint_101020090-502 BY MECKLENBURG COUNTY. SUMMONS BEING A CRIMINAL COMPLAINT FOR ARREST & PROCEEDING MUST BE SWORN ATTESTED TO MAGISTRAT ON THE AGENCY IMPLYING THE OFFENSE, BY THE COUNTY THAT THE ACCUSED INCURRED GUILT. THE DEFENDANT WILL SHOW THAT THERE WAS NO ISSUANCE NOR PROBABLE CAUSE BY ISSUANCE OF THE N. CAROLINA SUMMONS EXHIBIT E. OF THE 4-29-13 HEARING AT THE AUSTIN COUNTY SUPERIOR COURT.

1. I will show where THE REQUESTING STATE IS NOT ENTITLED TO FURTHER ARREST NOR DETAINMENT, THAT THE REQUESTING STATE WOULD HAVE PRESENTED A FALSE DOCUMENT TO N. CAROLINA TO GET A SUMMONS, OR ACTUALLY HAVE SWORN OUT A AFFIDAVIT IN PERSON WHICH WOULD BE INDICATED IN THE RECORD. THIS IS A BREAK IN THE CHAIN OF EVIDENCE. THE DEFENDANT HAS THE RIGHT TO CHECK THE STATEMENTS OF THE WITNESS, ALSO TO IMPEACH DISCOVERABLE MATERIALS TO HIS DEFENSE.
2. THE DEFENDANT WOULD CONTEST THAT SOUTH CAROLINA EVER HAD ANY LEGAL JURISDICTION AFTER ARREST OF DEFECTIVE SUMMONS. THE LEGAL QUESTION I POSE IS WHO THE ATTESTING OFC WINS TO N. CAROLINA WHOM INITIATED AN ILLEGAL ARREST AT THE DEFENDANT'S JOB. SOUTH CAROLINA'S ISSUANCE OF EACH ARREST WARRANT ARE READ AS HAVING PROBABLE CAUSE AT OCT 21, 2010. TIME 2:38 PM. THE SUMMONS CLEARLY SHOW THAT THE DEFENDANT WAS DETAINED BEFORE IT BECAME PROBABLE TO BE SERVED FOR AN ARREST.
3. THE DEFENDANT ATTEST TO THE FACT THAT NO PART OF ARTICLE 37 UNIFORM CRIMINAL EXTRADITION ACT HAS APPLIED TO HIM. THAT AS ARTICLE 37 READ ON 2010, OCT 20 AT APPROX 10:00 AM NO LAWS HAD I BROKEN, AT THE TIME OF MY ARREST ON DEFECTIVE SUMMONS. NOR HAD I ANY WARRANT, INDICTMENT, PAROLE NOR PROBATION, NOR COULD BE PLACED AT ANY CRIMES. FURTHERMORE IT IS HIGHLY UNLIKELY THAT AS A FUGITIVE I'D CHOOSE TO GO TO WORK TO HIDE.

- B. 1. THE DEFENDANT WOULD ASK THAT THE MATERIALITY OF SUMMON WHICH HAS BEEN ILLEGALLY SWORN, AND WITHHELD FROM DISCLOSURE OF THE HEARING, WOULD SHOW THAT THE REQUESTING STATE WISHES TO HIDE THE FACT THAT AT THE TIME OF THE DEFENDANT'S ARREST, THEY VIOLATED HIS RIGHTS BY ILLEGALLY SEIZURE, QUESTIONING, AND TRANSPORTING HIM ACROSS STATE LINES OF JURISDICTION, AND IN BAD FAITH WOULD ASCRIBE TO THE FURTHERANCE OF AGENCY CORRUPTION IN THE CONTINUED PROSECUTION OF THE DEFENDANT.
2. THE LENGTH OF TIME OF THIS EVIDENCE IN THEIR CUSTODY WOULD BE EQUAL IN THE TIME OF THE CONTROL OF EVIDENCE WITNESSED TO THE SUMMONS... THE REQUESTING PARTY NEED SHOW HOW THE DEFENDANT CAME TO BE UNDER THE ARREST OF JURISDICTION OF SOUTH CAROLINA, WHERE THE DEFENDANT WILL SHOW HE WAS FALSELY IMPRISONED.
3. THE COURT WOULD ASK THE STATED REASON THAT THE REQUESTING OFFICIALS WERE NOT FORTHCOMING WITH THE BEGINNING DOCUMENTATION OF THE ARREST AND ALL THE TANGIBLE OBJECTS - THE DEFENSE IS ENTITLED TO DISCLOSURE OF PREABLE CAUSE. STATE VS. LYLES 125 S.C. 406, 118 S.E. 803 (1928) THAT THE REQUESTING AGENCY ACTING IN BAD FAITH.
4. ANY OTHER CIRCUMSTANCES OR CONSIDERATIONS THE COURT DEEMS APPROPRIATE.

CONSTITUTIONAL VIOLATIONS

DUE PROCESS & EQUAL PROTECTION CLAUSE

(EX.) E

ON 10-20-2010 THE DEFENDANT WILL ATTEST THAT WHILE AT HIS JOB IFCO PALLET COMPANIES, INC ON STAFFORD DRIVE AGENCY GROUP CPD DID UNLAWFULLY ARREST THE DEFENDANT - WITHOUT PROBABLE CAUSE ON A FACELESS SUMMONS DOCUMENT # 101020690502 - 10 CR-250540. THE DEFENDANT WILL ENTER THIS COMPLAINT FORM ADC-CR-217 AS REV 12/03 AS EXHIBIT (D) AGAINST THE DEFENDANT TO INITIATE THE ACTION OF PROCESS...

THE DEFENDANT WILL SHOW WHEREIN THE INITIATION OF DUE PROCESS HAS BEEN DENIED HIS UNITED STATES CONSTITUTIONAL FIRST AMENDMENT RIGHT IN THE AMOUNT OF A FALSE ARREST ON A FAULTY SUMMONS IN THE AMOUNT THAT THE SUMMONS WAS ASWRORN TO IN EX PARTY BY OFC. B.V. KOECK OF C.M.P.D.

1, 4, 5, 14 amend

(EX) E

THE DEFENDANT WILL SHOW IN EXHIBIT D. THAT OFC. B.V. KOECK IS TO THE THIRD OR FOURTH PARTY (EX PARTY) AND HAS NO KNOWLEDGE OF ANY VIOLATION OF LAW THE ACCUSED MAY HAVE BEEN ACCUSED OF... AND COULD NOT REASONABLY BELIEVE THAT ANY OFFENSE COULD HAVE TAKEN PLACE AS THE CAUSE OF THE ONE SAID TO INCURRED GUILT... AND DID UNKNOWINGLY ATTEST TO A THING HE HAD NO KNOWLEDGE OF... IN THE SUMMONS THE STATEMENT IS ALSO DUPLICIOUS... CHARGING A ROBBERY § G.S. 15-A-727. FUGITIVE - WHERE ONE COULD NOT POSSIBLY BELIEVE THAT THE DEFENDANT OF 7241 LAKE POINT DR #20 CHARLOTTE N.C. WOULD HIDE HIMSELF AT HIS PLACE OF EMPLOYMENT TO MEET THE CRITERIA OF G.S. 15-A-727 IN CONCEALING HIMSELF IT IS NOT PROBABLE!

ILLEGAL SEIZURE... 4th amend ENARGES N.C. & S.C. G.S. 14-39 KIDNAPPING

THE DEFENDANT WILL HEREIN SHOW IN EXHIBIT (A) WHERE THE REDUCTIVE STATE MADE NO FURTHER ATTEMPT TO OBTAIN LEGAL JURISDICTION OF THE PERSON ACCUSED FOR MORE THAN 180 - OVER 2 YEARS TO DATE, AND COULD NOT REASONABLY GIVE ASSISTANCE OF EFFECTIVE COUNSEL IN OBTAINING THE WHERE ABOUT OF WITNESSES IN DEFENSE FAVORABLE TO GIVE THE DEFENDANT ADEQUATE REPRESENTATION EQUAL THAT OF PROSECUTION.

(6 amend violation) EX - A

THE DEFENDANT DOES STATE THAT EACH WARRANT AS DEFECTIVE AND RENDERING NO EFFECT AS THEY ARE NOT DATE, NOR CERTIFIED FOR SERVICE... MAKING THEM VOID OF ANY EFFECT, AS WELL AS THE SUMMONS WAS NOT COUNTER SIGNED BY THE ISSUANCE OF THE MAGISTRATE WHOM SWORN OUT ITS ISSUANCE TO BE PROBABLE. AND IN CONSISTANT WITH ARTICLE 1 § 10 US CONSTITUTION AND MUNICIPAL JUDGE BY SECTION CODE 14-25-45.

4. THE CONCLUSION THE DEFENDANT WAS IDENTIFIED THROUGH FINGERPRINTS, PHOTOGRAPHS AND IN PERSON BY INVESTIGATING OFC. IS DRAWING LEGAL CONCLUSIONS WITHOUT EXAMINATION OF HOW THIS OFC. RECEIVED MY FINGERPRINTS WHICH WAS BECAUSE I WAS PRINTED AFTER MY ARREST, MY PHOTOGRAPH BECAUSE THEY TOOK MY PICTURE AT MY TIME OF ARREST AND BY THE DETECTIVE IN PERSON BECAUSE HE WAS THE ONE WHO BROUGHT ME TO S. CAROLINA AFTER ILLEGALLY SEIZING ME FROM MY JOB IN N. CAROLINA ON FALSE WARRANTS HE HIMSELF MUST OF SIGNED CAUSE THAT WAS THE ONLY TIME I EVER SEEN HIM AND THE WARRANT AND INDICTMENT STATE HE'S THE WITNESS IN ALL THIS EX-PARTE WHICH IS HERESAY IN PROPER FORM.
5. THE FACT THE PROCEEDING OF LUTHER ADAMS ARE EXCESSIVE OF THE COURT'S JURISDICTION AFTER 3-25-13 JUDGEMENT DISMISSING THE REQUESTING AGENCY'S FUGITIVE CHARGES AS UNCONSTITUTIONAL OF EXTRADITION-ACTIVE IN THE FURTHERANCE OF DELIVERY THAT THE REQUESTING STATE IS CLEARLY NOT ENTITLED TO... IN I.A.D. TERMS WHICH WOULD EXCEED THE TERMS OF THE DEFENDANT'S PRESENT CONFINEMENT. THE COURT WOULD BE IN EXCESS OF ITS PERSONAL MATTER JURISDICTION TO WILLFULLY EXCEED THE CUSTODIAL POWERS WHICH THE DEFENDANT HAS BEEN CONFINED TO FOR THIRTY MONTHS BY ORDERING TEMPORARY CUSTODY UNDER THE I.A.D. AGREEMENT BY I.A.D. RULES WHICH WOULD ALLOW FOR THE THE DEFENDANT TO FURTHER BE DEPRIVED OF HIS LIBERTY - WHILE THE EXPIRATION OF THE EMPOWERING SENDING INSTITUTIONS IS LESS THAN TEN DAYS OF THIS DAY. THE DEFENDANT OFFERING SPECIAL APPEARANCE SHOULD HAVE BEEN SUFFICIENT AS A SURETY TO DEFEND AGAINST THE CHARGE... AND SHOULD BE PROTECTED, IN HIS EIGHTH 8th AMENDMENT RIGHT SO AS NOT TO PAY EXCESSIVE BOND WHICH HAS BEEN OFFERED AND PAID, PLUS IS RETURNABLE - AS THERE IS NOT BENCH WARRANT PENDING BECAUSE IN GOOD FAITH THE DEFENDANT NOTIFIED THE SOLICITOR AT THE BEGINNING OF HIS CURRENT SENTENCE ABOUT HIS ABSENCE... AND NOW ONLY WISHES TO BE PROTECTED IN HIS 5th RIGHTS, 4th AMENDMENT RIGHTS.

MOTION FOR ORDER REQUEST,

I am asking for additional 120 days to get my North Carolina Superior Courts file to utilize as an exhibit, also I need to put the case law in support to my post conviction, and records withheld from in ambiguity,

I ask this also allow me to be able to amend my brief in part and in whole but before the court assigns counsel.

Respectfully
Requested

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
)
 Broderick E. Culp, # 175645,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-3141

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief application filed September 23, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court’s orders of commitment. The York County Grand Jury indicted the Applicant at the February 2011 term of General Sessions for two counts of Armed Robbery (2011-GS-46-0447, - 0449), Criminal Conspiracy (2011-GS-46-0450) and Possession of a Firearm during the Commission of a Violent Crime (2011-GS-46-0451). The Applicant was represented by Phil Smith, Esquire. On September 16, 2013, the Applicant pled guilty to all charges as indicted. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated sentence, to confinement for fourteen (14) years for each Armed Robbery, five (5) years, concurrent, for Criminal Conspiracy and five (5) years, concurrent, for the possession charge. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject convictions and the Applicant's application. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Counsel, Counsel failed to investigate, pretrial function"
 - a. "Defendant asked for interrogative of investigators, defendant had alibi!"
2. "Counsel failed to pursue defense available to defendant"
 - a. "asked for interrogative of victims. Asked for suppression of evidence"
3. "Excess of jurisdiction by the judge, defendant withdrew plea"
 - a. "Asked presiding judge for withdrawal of plea during hearing"

III.

The Respondent interprets the Applicant's allegations as being claims of ineffective assistance of counsel. The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on September 16, 2013. The Applicant was therefore required to file his application before September 17,

2014. This Application was filed on September 23, 2014, which was beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

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

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired. In the alternative, Respondent requests that an evidentiary hearing be held.

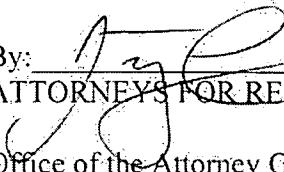
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 30, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
)
)
BRODERICK CULP, #175645)
)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

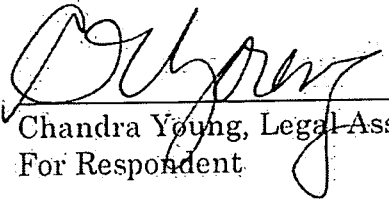
2014-CP-46-3141

AFFIDAVIT OF SERVICE BY MAIL

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

W. Michael Hemlepp, Jr.
3027 S. Paraham Rd
York, SC 29745

DATED this 30th day of December, 2014.



Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
County of York)	2014-CP-46-03141
)	
Broderick Culp,)	
)	
Applicant,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

April 14th, 2015
York, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

NATHAN SHELDON, ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the State

AMINAH R. HARDY, CM
Official Court Reporter

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<u>WITNESS</u>	Direct	Cross	Redirect	Recross
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EXHIBITS

No.	Description	Page
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(No exhibits were marked.)

P R O C E E D I N G S

1

2

MR. JOHNSON: May it please the Court, Your Honor.

3

This is the case of Broderick Culp versus the state of

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South Carolina. It's case number 2014-CP-46-3141.

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Mr. Culp was indicted at the February 2011 term of the

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York County grand jury for two counts of armed robbery,

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criminal conspiracy, and possession of a firearm during

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the commission of a violent crime. On September 13, 2013,

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he pled guilty to all charges as indicted before the

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Honorable Lee S. Alford. On September 16th, 2013, Judge

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Alford sentenced him to 14 years for each armed robbery to

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run concurrently, five years for conspiracy and five years

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for possession, also to run concurrently.

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He did file an appeal. It was dismissed for failure

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to provide a sufficient legal explanation, as provided by

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Rule 203(d)(1)(b)(4) of the South Carolina rules of

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appellate procedures. There was a remittitur issued on

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November 22nd, 2013. He timely filed his PCR application

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September 23rd, 2014. The state returned -- filed its

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return December 30th, 2014, and he's represented here

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today by Mr. Nathan Sheldon.

22

THE COURT: Okay.

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MR. SHELDON: Thank you, Your Honor. May it please

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the Court. We would call Phil Smith to the stand.

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PHILLIP SMITH, after having first being duly sworn,

14:13:14 1 testified under oath as follows:

14:13:34 2 MR. SHELDON: Thank you, Your Honor.

14:13:34 3 DIRECT EXAMINATION

14:13:36 4 BY MR. SHELDON

14:13:36 5 Q. Mr. Smith, you represented Mr. Culp in this case; is
14:13:39 6 that correct?

14:13:39 7 A. That's correct.

14:13:40 8 Q. And what all was he charged with originally?

14:13:47 9 A. I have his whole charges listed out. I know he ended
14:13:50 10 up pleading to armed robbery, armed robbery conspiracy,
14:13:54 11 possession of a weapon during the commission of a violent
14:13:57 12 crime, and let me check his life notice. References seven
14:14:21 13 indictments in his life notice.

14:14:23 14 Q. When did you originally get this case?

14:14:27 15 A. I first met with him the first of 2011, January of
14:14:30 16 that month.

14:14:31 17 Q. Ultimately when did this case -- when did Mr. Culp
14:14:34 18 end up pleading guilty to the negotiated 14-year sentence?

14:14:39 19 A. The plea occurred September 13th; sentencing was
14:14:43 20 deferred until September 16th of 2013.

14:14:46 21 Q. Which would have been the same year that you first
14:14:48 22 met with him?

14:14:49 23 A. I say "met with him." I had contact with a friend of
14:14:55 24 his telling me he was in jail in North Carolina. So I was
14:15:02 25 representing back in 2001, but not physically met with him

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:15:02 1 at that point because he was in jail up in North Carolina.

14:15:04 2 Q. Okay. And let's talk about that. So how did it --

14:15:10 3 how did it come to be that Mr. Culp ends up in South

14:15:15 4 Carolina?

14:15:15 5 A. Okay. He showed up on -- with the arrest here and

14:15:19 6 showed up on my docket and Solicitor Desch began putting

14:15:23 7 him on a docket for roll call. When he missed those, was

14:15:27 8 trying to locate him. Got a call from someone saying he

14:15:30 9 was in jail in North Carolina. I sent word to the

14:15:34 10 Solicitor's Office saying, "He's in jail in North Carolina

14:15:36 11 on some new charge. Don't bench warrant him." Her

14:15:40 12 response was, "I won't bench warrant him, but I'll move to

14:15:42 13 revoke his bond." So she began to make a motion the

14:15:48 14 revoke his bond and begin extradition proceedings with him

14:15:51 15 in North Carolina.

14:15:52 16 Q. Were you a part of those extradition proceedings?

14:15:55 17 A. I was not.

14:15:56 18 Q. Are you typically a part of extradition proceedings

14:16:00 19 involving someone being transferred from North Carolina to

14:16:03 20 South Carolina?

14:16:04 21 A. I'm not.

14:16:05 22 Q. So at what -- so you don't actually meet with

14:16:08 23 Mr. Culp until he gets to South Carolina; is that correct?

14:16:10 24 A. That's correct.

14:16:12 25 Q. At that time, did he make you aware of some

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:16:14 1 extradition issues he had with the case?

14:16:17 2 A. He did.

14:16:17 3 Q. And did you investigate those issues?

14:16:19 4 A. I tried to look for him. He has a pretty detailed

14:16:22 5 explanation of what he believes based on what information

14:16:25 6 would have existed when NCIC was entered and what language

14:16:30 7 was actually submitted to North Carolina and then the

14:16:34 8 actual language of the warrant here. I don't think he and

14:16:38 9 I agree -- ever reached to his satisfaction of

14:16:42 10 understanding. He sort of had a different opinion that he

14:16:45 11 maintained of some of that, but I did look into it from my

14:16:49 12 extent to some degree.

14:16:52 13 Q. Moving forward to the actual -- your representation

14:16:55 14 of him for the charges that he ends up pleading to here in

14:16:58 15 South Carolina, did you -- how many opportunities did you

14:17:01 16 have to meet with Mr. Culp?

14:17:05 17 A. I couldn't tell you the number. He had me meet both

14:17:09 18 with him, talk with other representatives, and then going

14:17:11 19 to Carowinds Boulevard attempting to find another witness,

14:17:15 20 and then we were able to view a video and talk about DNA

14:17:23 21 results. So multiple times.

14:17:25 22 Q. Who did he -- did he provide you with a potential

14:17:28 23 alibi in this case?

14:17:29 24 A. He did.

14:17:31 25 Q. And what was that potential alibi?

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:17:34 1 A. He talked about speaking with a female that he may
14:17:40 2 have been around, and then he provided documentation
14:17:43 3 concerning paperwork from AAA, as well as a claim of the
14:17:50 4 pay stubs for a Friday and Saturday work that he had done,
14:17:53 5 and then a claim that monies he would have had would have
14:17:58 6 come from an ATM machine and not from a robbery.

14:18:02 7 Q. And what investigation did you conduct through you or
14:18:04 8 someone in your office to try to establish this alibi
14:18:09 9 defense for Mr. Culp?

14:18:10 10 A. Yes. I went up to Carowinds Boulevard to try to find
14:18:13 11 the witness, that red-haired female there and could not
14:18:17 12 locate her. I was able to see the things from AAA that he
14:18:23 13 was talking about. I don't think they made out exactly
14:18:23 14 what we had hoped when he talked about them, and there was
14:18:29 15 some discussion of some things that had gone on at a
14:18:30 16 party, but he didn't think those persons would be willing
14:18:34 17 to testify, so there wasn't anything more I could do with
14:18:36 18 that.

14:18:36 19 Q. Who -- at what point prior -- you mentioned an LWOP
14:18:36 20 notice in this case; is that right?

14:18:36 21 A. That's correct.

14:18:48 22 Q. How soon prior to trial -- prior to his scheduled
14:18:48 23 trial date did you receive that LWOP notice?

14:18:50 24 A. Two weeks -- I think it was ten days before his plea,
14:18:54 25 so it would have been two weeks before the trial would

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:18:56 1 have occurred.

14:18:57 2 Q. Okay. So two weeks prior to the trial, he was served

14:19:01 3 with notice of intent to put him on life without parole?

14:19:06 4 A. I believe that's correct. It's dated August 30th

14:19:09 5 that it was filed, and then my note of service would have

14:19:23 6 been in August and trial was to be in September.

14:19:26 7 Q. What was the original plea offer in the case?

14:19:31 8 A. I don't have that noted.

14:19:37 9 Q. Do you recall if the plea offer was less or greater

14:19:39 10 or the same as the one he ends up pleading to?

14:19:44 11 A. Off the top of my head, I do not.

14:19:44 12 Q. Okay. When did you originally go see Mr. Culp

14:19:48 13 regarding the life without parole notice?

14:20:02 14 A. It would have been in -- you mean the actual notice

14:20:05 15 or that the solicitor was talking about doing it? Would

14:20:08 16 have met with him in August telling him she was thinking

14:20:11 17 about doing it, and then the notice was actually given to

14:20:13 18 him here in the courtroom in September.

14:20:15 19 Q. So you -- so you had -- you believe you had a

14:20:17 20 conversation with the solicitor in this case about the

14:20:17 21 solicitor seeking a life without parole notice?

14:20:17 22 A. Correct.

14:20:17 23 Q. Prior to her actually serving him with it?

14:20:17 24 A. Yes.

14:20:18 25 Q. Okay. And as soon as you met with the solicitor.

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:20:33 1 Regarding that, you went and discussed that with Mr. Culp?

14:20:35 2 A. I can't say as soon as. But sometime after that,

14:20:38 3 yes.

14:20:39 4 Q. Did you put -- did you give him notice prior to him

14:20:41 5 getting served in the courtroom that this could be a

14:20:44 6 potential option?

14:20:45 7 A. A potential option, yes.

14:20:47 8 Q. Did you verify the certified conviction that they

14:20:51 9 were using to try to enhance this to a life without

14:20:54 10 parole?

14:20:56 11 A. The solicitor provided that.

14:20:57 12 Q. Okay. Leading up to -- so it's my understanding that

14:20:59 13 this case was in a trial posture at the time of plea; is

14:21:02 14 that right?

14:21:03 15 A. Yes, that's correct.

14:21:03 16 Q. How many -- what kinds conversations did you have

14:21:06 17 with the defendant about potential pretrial motions in the

14:21:09 18 case?

14:21:19 19 A. Okay. He wanted a pretrial issue concerning a motion

14:21:20 20 to quash. He wanted it based upon insufficient process

14:21:23 21 concerning the North Carolina extradition service. Also

14:21:27 22 wanted a motion to quash based upon the language of the

14:21:30 23 warrant here. Also wanted a pretrial issue contesting the

14:21:36 24 chain of evidence. Wanted a pretrial issue on the lineup

14:21:39 25 and its alleged suggestibility. And then -- well, we

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:21:52 1 turned over paystubs, the AAA information, phone records
14:21:57 2 with regard to alibi.

14:21:58 3 Q. Did you have the opportunity to -- after you were
14:22:02 4 unable to locate the person at the gas station on
14:22:05 5 Carowinds Boulevard, the potential alibi witness, were
14:22:08 6 there any other alibi witnesses that could have
14:22:11 7 potentially been called at trial?

14:22:12 8 A. Not that I was aware of that would actually testify,
14:22:16 9 no.

14:22:19 10 Q. Did you have a -- at what point did you have a
14:22:22 11 conversation with him about essentially it's 14 years
14:22:26 12 negotiated or you go to trial on LWOP? When did those
14:22:29 13 conversations begin?

14:22:33 14 A. He was certainly set on wanting a trial. The wanting
14:22:37 15 to actually plea, I did not get the impression that he was
14:22:42 16 considering that even once he was served with the paper.
14:22:46 17 Now then in the meetings prior to the week of trial,
14:22:52 18 discussions sort of started that he was considering it,
14:22:57 19 and it seemed to sort of come last minute. That's why we
14:23:00 20 were doing a plea on Friday before a term of court on
14:23:01 21 Monday where we were -- begun the case. In fact, his
14:23:04 22 solicitor was not even in the building, so another
14:23:05 23 solicitor had to step in and do the plea. So it would
14:23:11 24 have been sort of last minute that he decided to accept
14:23:14 25 the plea.

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:23:14 1 Q. What conversations did you have with him almost
14:23:17 2 immediately prior to the plea about his potential of
14:23:24 3 receiving an LWOP versus pleading, things like that?
14:23:28 4 A. Yeah, we would have gone over that and I would have
14:23:31 5 talked about, you know, the pretrial issues that he had,
14:23:33 6 my thoughts of how likely or not likely we were to succeed
14:23:38 7 on any of those. Plus with the cigarette that was still
14:23:42 8 smoking that was found by the officers that was coming
14:23:44 9 back with his DNA and the video, I would have given him
14:23:49 10 some of my insights as to how impactful I thought that
14:23:53 11 would be with the jury, and then obviously if he is
14:23:56 12 convicted of a most-serious charge given his prior record,
14:23:59 13 the judge would not have had discretion. He would have
14:24:03 14 had to receive a life sentence.

14:24:04 15 Q. Did you have an opinion as to whether or not he could
14:24:07 16 win at trial or not?
14:24:09 17 A. It would have been unlikely.

14:24:10 18 Q. Did you convey that opinion to him?
14:24:12 19 A. I did, but also it had to be his decision. But yes,
14:24:15 20 I certainly told him the significant evidence we would
14:24:20 21 have had to overcome.

14:24:21 22 Q. Did you ever tell him things like if you don't plea
14:24:24 23 then you're going to get a life sentence?
14:24:26 24 A. I would always say that's a risk. His wallet was
14:24:28 25 found at the scene. Now, we had an explanation for that

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:24:31 1 that we were going to use had we gone to trial, but it
14:24:34 2 would have been difficult.

14:24:37 3 Q. Did you have him fill out a plea affidavit in this
14:24:42 4 case?

14:24:42 5 A. I did not see in it the packet. I saw it referenced
14:24:45 6 in the transcript, but I did not see the physical
14:24:48 7 affidavit in the packet. I assume so, and it is
14:24:52 8 mentioned, I believe, in the transcript of the plea.

14:24:54 9 Q. Would it be common for you to have a plea affidavit
14:24:56 10 filled out?

14:24:57 11 A. It would be. At that time, more so in front of Judge
14:25:01 12 Hayes than Judge Alford, and I think Judge Alford took
14:25:04 13 this plea but it would not have been uncommon for me to
14:25:07 14 have one. I normally do.

14:25:09 15 Q. Let's talk about the actual way you structured the
14:25:11 16 guilty plea in this case. Why did you decide to bifurcate
14:25:16 17 the plea and the actual imposition of a sentence?

14:25:20 18 A. He had a visitation that was supposed to occur over
14:25:23 19 the weekend, and if he would have pled to a sentence of
14:25:27 20 this large, they would have gone ahead and moved him, even
14:25:30 21 though they would not have transported him over the
14:25:32 22 weekend out of York County detention center. They would
14:25:34 23 have moved him from the block so he could not have had
14:25:37 24 visitation. So he asked if I would request of the
14:25:40 25 solicitor, who took no opinion, and then of the judge if

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:25:43 1 the judge would allow him to enter his plea but save
14:25:46 2 sentencing until Monday so that he could get that last
14:25:48 3 visitation.
14:25:49 4 Q. And then the judge allowed for that, didn't he?
14:25:51 5 A. The judge did.
14:25:52 6 Q. And so this judge essentially accepts the guilty plea
14:25:58 7 but deferred sentencing until -- so on Friday, deferred
14:26:00 8 sentencing until the following Monday; is that correct?
14:26:03 9 A. That's correct.
14:26:03 10 Q. And on the following Monday, Mr. -- at what point
14:26:05 11 does Mr. Culp come to you and say, "I don't want this
14:26:08 12 deal?"
14:26:09 13 A. That Monday.
14:26:10 14 Q. Was that prior to going on the record?
14:26:12 15 A. It was. It would have been in the holding cell here.
14:26:14 16 Q. When you were meeting with Mr. Culp the Friday before
14:26:17 17 this sentence was imposed when the guilty plea was taken,
14:26:20 18 did you advise him that is it, this is the end of the
14:26:23 19 road? Once the judge accepts this, you won't be able to
14:26:25 20 go back on it?
14:26:26 21 A. Correct. Now, I obviously told him he had ten days
14:26:30 22 to appeal, but that's correct.
14:26:31 23 Q. Okay. And so moving forward on Monday, he was
14:26:34 24 sentenced to a negotiated 14; is that right?
14:26:37 25 A. He was. Now, he did try to withdraw his plea and

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:26:40 1 there is a discussion between he and Judge Alford on the
14:26:45 2 16th.
14:26:45 3 Q. And ultimately Judge Alford does not allow him to do
14:26:48 4 so; is that right?
14:26:48 5 A. That's correct.
14:26:49 6 Q. Were you made aware of any medical issues that
14:26:52 7 Mr. Culp might have regarding his ability to freely and
14:26:55 8 voluntarily enter into a plea?
14:26:58 9 A. I was. He had talked to me about medications, and
14:27:01 10 that's where you see in the transcript that I mention a
14:27:03 11 plea affidavit. We had listed the medications that he was
14:27:06 12 taking. But the judge did inquire if he understood what
14:27:08 13 he was doing and did those medications assist or impede
14:27:11 14 him, and he indicated he understood what he was doing.
14:27:15 15 Q. Okay. And Judge Alford spends a considerable portion
14:27:19 16 of the guilty plea transcript -- not the sentencing
14:27:23 17 transcript -- going over the theory of the hand of one or
14:27:27 18 the act of one is the act of all. Did you have those
14:27:31 19 conversations with Mr. Culp prior to going on the record?
14:27:35 20 A. We did, because that was a potential strategy that
14:27:37 21 that we would have had at trial. Obvious his wallet is
14:27:41 22 found at the scene and his DNA, so we had to account for
14:27:44 23 that. There was another person who was found some ways
14:27:48 24 away with some money in their pocket, so our defense was
14:27:52 25 involved sort of changing the roles of who those

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:27:54 1 individuals would have been versus what the state would
14:27:57 2 have presented.

14:27:58 3 Q. You mentioned several pretrial motions that he wanted
14:28:01 4 you to file or that he wanted you to address at trial.
14:28:05 5 When meeting with Mr. Culp, did you inform him that if he
14:28:10 6 pleads guilty, he's essentially giving up his right to any
14:28:14 7 of those challenges or defenses?

14:28:15 8 A. Yes.

14:28:16 9 Q. And did he seem to understand that?

14:28:18 10 A. He does.

14:28:19 11 Q. You filed an appeal in the case anyway; is that
14:28:23 12 correct?

14:28:24 13 A. Yes.

14:28:24 14 Q. And you filed a what's known as 203(b) explanation to
14:28:28 15 go with that appeal; is that right?

14:28:30 16 A. That's correct.

14:28:30 17 Q. When you file a 203(b) explanation, you're
14:28:33 18 essentially saying that you know of no appealable issues;
14:28:35 19 is that right?

14:28:36 20 A. That's correct.

14:28:36 21 Q. So you didn't consider his wanting to withdraw prior
14:28:39 22 to being sentenced as an appealable issue; is that right?

14:28:43 23 A. That's correct. I thought his -- I thought that was
14:28:46 24 before sentencing, but not before his plea.

14:28:48 25 Q. Okay. And so when you file a 203(b) explanation with

PHILLIP SMITH - DIRECT EXAMINATION BY MR. SHELDON

14:28:53 1 your notice of appeal, it essentially shifts the burden on
14:28:55 2 the defendant himself to raise an appealable issue. Would
14:28:59 3 you agree with that?

14:28:59 4 A. That's my understanding.

14:29:04 5 Q. And the burden that shifted on the defendant --
14:29:06 6 they're essentially only given 20 days to respond to that;
14:29:09 7 isn't that right?

14:29:10 8 A. That's my understanding of the procedure.

14:29:13 9 Q. But your understanding of the procedure comes from a
14:29:15 10 letter that the court of appeals sends you on these cases,
14:29:18 11 right?

14:29:19 12 A. Yes. We get a copy of that letter, yes.

14:29:21 13 Q. That's right. And so -- but when you're doing that,
14:29:28 14 it with the understanding that the inmate is in R & E at
14:29:32 15 that point, right?

14:29:35 16 A. That's correct.

14:29:35 17 MR. SHELDON: Your Honor, I don't have any more
14:29:36 18 questions for Mr. Smith.

14:29:38 19 MR. JOHNSON: No questions at this time and we would
14:29:39 20 reserve the right to recall him as a state's witness.

14:29:43 21 THE COURT: Okay.

14:29:51 22 MR. SHELDON: Thank you. We call Broderick Culp to
14:29:53 23 the stand.

14:29:54 24 THE COURT: All right, Mr. Culp.

14:29:54 25 MR. SHELDON: Thank you, Your Honor.

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:29:54 1 BRODERICK CULP, after having first being duly sworn,
14:29:54 2 testified under oath as follows:
14:29:54 3 DIRECT EXAMINATION
14:29:54 4 BY MR. SHELDON:
14:30:22 5 Q Mr. Culp, please state your name for the record.
14:30:25 6 A. My name is Broderick Elliott Culp.
14:30:28 7 Q. And Mr. Culp, where are you currently incarcerated
14:30:30 8 at?
14:30:30 9 A. I'm incarcerated in the Department of Corrections
14:30:33 10 South Carolina at Perry.
14:30:35 11 Q. Okay. And you are serving a 14 year sentence; is
14:30:38 12 that correct?
14:30:39 13 A. Yes, sir.
14:30:40 14 Q. I want to talk to you about this case that we're here
14:30:43 15 for on PCR. Was Mr. Smith your only lawyer at trial? Was
14:30:48 16 that the only lawyer you had during this case?
14:30:49 17 A. There was someone who assisted him who -- I'm not
14:30:55 18 sure who she was, but she came and during the time when I
14:31:02 19 said I didn't want to plead before entering the plea, she
14:31:06 20 came and she insisted that -- that I not take a plea, that
14:31:09 21 it was likely -- more than likely on Monday I would be
14:31:12 22 serving a life sentence and that I'm still a young man and
14:31:15 23 this and that and a whole lot of other things that she
14:31:18 24 said about, you know, the probability and how much defense
14:31:23 25 that I could get because I didn't have any monies to

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:31:27 1 actually hire an attorney. So I don't know exactly who
14:31:30 2 she was, but she was -- he could probably tell you who she
14:31:35 3 was.

14:31:35 4 Q. Did you -- let's go back the beginning of kind of
14:31:36 5 when this case starts. When were you originally arrested
14:31:41 6 for the armed robberies here in South Carolina?

14:31:43 7 A. I was arrested in North Carolina in October the
14:31:47 8 20th of 2010.

14:31:50 9 Q. And did you take issues with the procedure that
14:31:53 10 occurred in North Carolina as to how your arrest came
14:31:56 11 about?

14:31:57 12 A. Yes. I told them that they didn't have a warrant and
14:32:00 13 that they arrested me on a summons that said that I
14:32:03 14 committed a crime in North Carolina, that -- the
14:32:06 15 documentation I brought with me, and it was incorrect. It
14:32:10 16 said on that date I had committed a crime in North
14:32:13 17 Carolina, on that day October the 20th that I was being
14:32:19 18 arrested without a warrant. I could read it better to
14:32:23 19 you. It's over there. And -- but that's what it said and
14:32:30 20 I took issue with it.

14:32:31 21 Q. Did you discuss your issues with the extradition
14:32:34 22 process in the case with Mr. Smith?

14:32:37 23 A. Yes, I did.

14:32:38 24 Q. Did you feel the extradition process was done
14:32:40 25 inappropriately?

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:32:42 1 A. I told him that it was in violation of my
14:32:44 2 constitutional rights and that I went before Judge Misty
14:32:48 3 Lynn Harris, and whenever she had took the documentation
14:32:52 4 initially, she told me that she wouldn't allow them to
14:32:57 5 have me but -- because she said it was unconstitutional.
14:33:00 6 She said that on record herself, and they later up --
14:33:05 7 later they ended up filing paperwork to get me.

14:33:09 8 Q. But did you discuss those issues with Mr. Smith?

14:33:11 9 A. I discussed them with Mr. Smith.

14:33:13 10 Q. And did you understand at the time of your guilty
14:33:20 11 plea that you were waiving all those issues for future
14:33:24 12 appeals or future argument?

14:33:25 13 A. I did not because he said -- what he told me at the
14:33:28 14 time was that what I was telling him was irrelevant, that
14:33:31 15 had nothing to do with what was going on. And I told him
14:33:35 16 well, I'm -- I asked him did it have anything to do with
14:33:38 17 subject matter jurisdiction or personal matter
14:33:42 18 jurisdiction for them to have me, the court might be in
14:33:43 19 excess of its jurisdiction. And I said these things to
14:33:48 20 him, and he said that if that -- at the time that was
14:33:51 21 irrelevant, that they was -- the court was trying to
14:33:54 22 proceed and that they was trying to get a life sentence on
14:33:56 23 me.

14:33:57 24 Q. Were you under the impression you could still pursue
14:34:01 25 those issues at a later -- later on?

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:34:05 1 A. At some point, yes.

14:34:06 2 Q. Even after the guilty plea?

14:34:08 3 A. Yes.

14:34:09 4 Q. Okay. And were you led to believe that by your trial
14:34:15 5 attorney?

14:34:15 6 A. I was under the impression that I could file later
14:34:17 7 on, that I could file either PCR or habeas corpus or
14:34:24 8 something like that. So that was my impression. I'm not
14:34:27 9 real adept at the law like that, but that's what my
14:34:30 10 thoughts was.

14:34:31 11 Q. What conversations did you have with Mr. Smith prior
14:34:33 12 to your eventual guilty plea regarding the life without
14:34:40 13 parole likelihood of success at trial and things like
14:34:44 14 that?

14:34:44 15 A. Well, when I spoke to Mr. Smith, he went over the
14:34:48 16 evidence that the state would present and what my question
14:34:56 17 was that the evidence that the state had that, the chain
14:35:04 18 of command of it and how could they present certain
14:35:07 19 evidence when they didn't -- and they was speaking of DNA,
14:35:10 20 but they didn't dust the stuff for fingerprints. And I
14:35:14 21 was telling him, well, if they check the stuff for
14:35:16 22 fingerprints, that will kill that on the wallet issue
14:35:19 23 because it's going to show I didn't have it in my
14:35:23 24 possession and stuff. So it's going to show the other guy
14:35:26 25 had it. And he went on about videotapes and stuff like

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14:35:29 1 that and I was like, "Well, I don't want to plea," but
14:35:32 2 then this lady comes in. Again, I don't know who she was.
14:35:36 3 She was assisting him. And she comes in and she starts
14:35:41 4 talking -- you know, she's real adamant about what's going
14:35:43 5 to happen. And so -- and they do this every day. This is
14:35:47 6 what they do for a living. So she's pretty adamant about
14:35:50 7 what's going to take place and how the solicitor is going
14:35:54 8 to take the evidence and how they're going to twist it and
14:35:57 9 get it -- make it admissible and stuff like that. So I'm
14:36:01 10 at this point I'm like -- you know, I don't want a life
14:36:05 11 sentence. Regardless of what, I don't want to do a life
14:36:09 12 sentence.

14:36:10 13 Q. But you're asking the court today for a new trial
14:36:12 14 where you could again face another life sentence, correct?

14:36:16 15 A. Well, in the transcript it says that in the first
14:36:20 16 part the judge he told me that I was could get a life
14:36:24 17 sentence and then when I went back and asked him if the
14:36:27 18 second part of Monday when I asked him to withdraw from
14:36:30 19 the plea, that would be the same judge Alford the life was
14:36:37 20 not a issue he explained the life was not a issue and I
14:36:42 21 not sure when he explained it to me or how he explained it
14:36:47 22 to me, but he said on the first part on Friday the
14:36:51 23 13th that you're eligible to get life, you know what I'm
14:36:57 24 saying, they're seeking life, you're eligible to get life.
14:36:59 25 And then when I told him that I didn't want to plead, that

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14:37:02 1 I wanted to go to trial, he told me that -- he had
14:37:06 2 explained to me that life was off the table, that it was
14:37:09 3 not an issue. And so I'm still not understanding what he
14:37:13 4 meant by that.

14:37:15 5 Q. When -- you heard the previous you testimony of
14:37:18 6 Mr. Smith. Describe for the Court what alibi defenses
14:37:22 7 that you potentially had at trial. What you -- what you
14:37:25 8 wanted Mr. Smith to do in terms of investigating a
14:37:28 9 potential alibi.

14:37:29 10 A. What I wanted him to know was that every day --
14:37:32 11 because I work and I commute a lot. I stop at the same
14:37:36 12 place every day. I get something to eat at the same
14:37:39 13 place. I smoke. I talk to the employees there. They
14:37:41 14 know me, you know. They know my face. They know me by
14:37:45 15 name. That -- I actually, you know, if they had got
14:37:51 16 camera and video and stuff, they could -- they could
14:37:53 17 probably see me within days of that, you know, because I
14:37:56 18 stopped out there plenty of times. You know, kicked the
14:37:59 19 bobo or talked with these people, have conversations with
14:38:02 20 these people because I know them and they know me. And I
14:38:06 21 was -- that was my explanation for them talking about they
14:38:09 22 got a cigarette butt from somewhere out there. I'm like
14:38:12 23 okay, well, it's still smoking. They could have picked up
14:38:15 24 any cigarette and said it was smoking. Is it still
14:38:18 25 smoking or, you know, is that your opinion that it's still

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14:38:20 1 smoking, that it was a fresh cigarette? And I spoke to
14:38:24 2 him about that, and then as far as him talking to about
14:38:27 3 the wallet, I explained to him it was in the car, that
14:38:31 4 somebody took the car. I didn't get the car back. And I
14:38:37 5 told him who to talk to. I told him where I had been
14:38:40 6 dropped off at and that I was not with the person who
14:38:43 7 committed the crime.

14:38:45 8 When the judge explained it -- when he explained it,
14:38:47 9 he explained it as it if I was sitting outside in the car
14:38:52 10 waiting on somebody to commit a crime like, you know. And
14:38:56 11 the roles were reversed, like this person did something
14:38:59 12 and I was sitting there in the car waiting and they came
14:39:01 13 and jumped in, you know, and that's not what happened.
14:39:03 14 That's not what I explained to him. But when the judge
14:39:07 15 explained hands of one hands of all, it's as, well, if you
14:39:12 16 gave him the car, then, you know, maybe you gave him the
14:39:18 17 gun. I didn't give him the gun, you know, or none of
14:39:21 18 that. So I was saying --

14:39:22 19 Q. Let me stop you real quick. What conversations did
14:39:24 20 you have with Mr. Smith regarding the act of one is the
14:39:26 21 act of all and other legal theories that you could have
14:39:30 22 been found guilty under?

14:39:32 23 A. That was it. That I gave him the vehicle; that I got
14:39:36 24 out the car; and that my girlfriend was pregnant and at
14:39:42 25 the time and that where I went to. And I explained to

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:39:45 1 him -- and that I approved that and everything. And so we
14:39:48 2 set it up for to get documentation of that. And Jennifer
14:39:57 3 and the guy, they -- who work at the store, I wanted them
14:40:03 4 go and talk to them that could prove I never went in the
14:40:06 5 store. I was never seen nowhere around the store
14:40:09 6 regardless of -- and I come around there a lot, you know,
14:40:13 7 so that would explain my presence of the cigarette or
14:40:18 8 anything, right? So I explained to him that I really
14:40:21 9 didn't want to testify against the guy because of his
14:40:27 10 affiliation --

14:40:27 11 Q. Hold on. Let me stop you there. When you say
14:40:29 12 "testify against the guy," you talking about a codefendant
14:40:31 13 in the case?

14:40:32 14 A. A codefendant, right. And I really didn't want to
14:40:34 15 talk about the guy because of his affiliation and his rank
14:40:37 16 and stuff like that because there was a lot of that was
14:40:40 17 going on during the time with people, you know, joining up
14:40:47 18 into becoming affiliated with the gang. And I didn't, you
14:40:50 19 know -- they was kind of trying to recruit me but I didn't
14:40:54 20 want to, know what I'm saying, recruit. So I -- this is
14:40:56 21 how I ended up getting out of the car and going where I
14:40:59 22 went.

14:40:59 23 Q. When you were -- prior to being -- prior to the first
14:41:05 24 guilty plea hearing that you had on that Friday, did you
14:41:11 25 feel threatened by Mr. Smith to take the plea?

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:41:13 1 A. I felt threatened by the whole process. Just -- I
14:41:19 2 mean not necessarily just him by himself, but his
14:41:26 3 assistant came in and kind of like put the icing on the
14:41:30 4 cake where, "You're going to get a life sentence.
14:41:33 5 You're" --

14:41:33 6 MR. JOHNSON: Objection, Your Honor, hearsay. I
14:41:35 7 think I've let it go on long enough.

14:41:37 8 THE COURT: All right. That's fine. He can go
14:41:39 9 ahead.

14:41:39 10 BY MR. SHELDON

14:41:40 11 Q. Did you -- when you were brought out for the guilty
14:41:43 12 plea hearing but you weren't sentenced, did Mr. Smith
14:41:46 13 explain to you that you had -- that it was over at this
14:41:52 14 point, that you couldn't withdraw it, your plea at a later
14:41:55 15 date?

14:41:56 16 A. No, because I had on Friday -- I had expressed it
14:42:01 17 Friday when we had stepped out and I had told him at that
14:42:04 18 time, I said, "I don't want to do this plea." I had
14:42:07 19 accept -- my acceptance of my involvement was of giving
14:42:12 20 the car. And that I told him, I said -- well, when he
14:42:18 21 came with the plea, I told him, I said, "Well, I'll take a
14:42:21 22 conspiracy and I'll take the time that comes with the
14:42:25 23 conspiracy. That's my involvement." And that I
14:42:29 24 understand that the guy who actually committed the crime
14:42:32 25 got two years. And he said, "Man, they're not going go no

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14:42:36 1 lower than 14 years." They're not going to go -- they're
14:42:40 2 not going to go, you know, to five years because that's
14:42:43 3 conspiracy.
14:42:46 4 Q. Who is Tameka Griffin? What was her involvement in
14:42:52 5 the case for you?
14:42:53 6 A. She is -- was my baby mother. At the time, she was
14:42:57 7 pregnant.
14:42:57 8 Q. Was she a potential alibi witness in this case?
14:42:59 9 A. Yes, she was.
14:42:59 10 Q. What alibi would she have provided?
14:43:02 11 A. That I got dropped off at her home and the person
14:43:04 12 left.
14:43:05 13 Q. Did Mr. Smith investigate that potential alibi?
14:43:09 14 A. I think he may have spoke with her and -- but I don't
14:43:14 15 know how far he went with it. He didn't discuss it with
14:43:17 16 me. He said that he was going talk to Tameka and he was
14:43:24 17 going to talk with the other people and that was it.
14:43:32 18 Q. Did you ask on the record -- when you -- did you try
14:43:33 19 to withdraw your plea that following Monday?
14:43:36 20 A. Yes, I did.
14:43:37 21 Q. And you wanted to withdraw your plea to go to trial,
14:43:39 22 is that right?
14:43:40 23 A. Yes.
14:43:40 24 Q. And Judge Alford did not allow you to do so?
14:43:42 25 A. No, he did not.

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:43:43 1 Q. Did you ask Mr. Smith to file an appeal for you?

14:43:49 2 A. Yes, I stated in open court that I wanted an appeal

14:43:52 3 on record.

14:43:56 4 Q. And he, in fact, did file an appeal, didn't he?

14:44:00 5 A. Yes, he did.

14:44:00 6 Q. So were you ever able to get past the 203(b)

14:44:04 7 explanation letter needed?

14:44:07 8 A. No. When they sent me the letter, they have a

14:44:09 9 process. And I initiated the process and I went took the

14:44:19 10 paperwork to the staff at Kirkland where I was at

14:44:25 11 reception and evaluation. And when I gave the paper to

14:44:28 12 the lady, the lady told me that it was not sufficient;

14:44:29 13 that the paperwork was not sufficient for me to have

14:44:35 14 access to the law library.

14:44:38 15 MR. JOHNSON: Your Honor, I object on this grounds.

14:44:40 16 Anything that SCDC does is not proper for this court.

14:44:42 17 It's not proper for PCR.

14:44:44 18 THE COURT: Right. Sustained.

14:44:50 19 MR. SHELDON: Thank you, Your Honor.

14:44:50 20 BY MR. SHELDON

14:44:51 21 Q So ultimately the 203(b) explanation, you never did

14:44:54 22 get to appeal, is that right?

14:44:55 23 A. No, sir.

14:44:55 24 Q. And you would like a belated appeal in this matter,

14:44:58 25 wouldn't you?

BRODERICK CULP - DIRECT EXAMINATION BY MR. SHELDON

14:44:59 1 A. Of course I would.

14:45:04 2 Q. Were there any other issues that you had with

14:45:06 3 Mr. Smith in this case?

14:45:07 4 A. Basically, all the pretrial motions were never -- I

14:45:12 5 felt like they were never given consideration that they

14:45:15 6 were constitutional violations and that I wanted him to

14:45:18 7 address the constitutional violations dealing with the

14:45:23 8 arrest without a warrant, without the probable cause

14:45:26 9 issue, and things like that of that nature. And he was

14:45:30 10 adamant that that was irrelevant to anything. And I was

14:45:34 11 telling him, "Well, I'm still pending. I'm still pending

14:45:39 12 and entitled to the judgment of someone who was over that

14:45:50 13 to look and see if my constitutional rights have been

14:45:53 14 violated. And I tried to express -- I later on tried to

14:45:56 15 express that in court also, right, and it was not allowed.

14:46:03 16 Q. What medications were you on at the time of the plea?

14:46:06 17 A. I take Tegretol, Oratane (phonetic), Benadryl,

14:46:07 18 Risperdal, and Remeron.

14:46:12 19 Q. And as a result of those medications, do you feel

14:46:15 20 that you entered into the plea freely and voluntarily?

14:46:18 21 A. No, I don't. I felt like under the stress and the

14:46:23 22 coercion and the pressure, there's no way that I could

14:46:26 23 function under that, up under that. I mean, them being

14:46:30 24 professionals, there's no way I could -- he's -- I'm

14:46:33 25 thinking he's going to tell me, you know, what's right or

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14:46:38 1 what -- or he's going to get me the deal for the
14:46:42 2 conspiracy, but he spoke in the record as if I
14:46:48 3 participated in the armed robbery instead of -- as I just
14:46:54 4 didn't notify after the fact that when the person told me,
14:47:01 5 "Hey, I need your car to drive her here. Your car is not
14:47:04 6 here. I don't have your car," and all this stuff has
14:47:06 7 taken place (sic). And I told him that. I told him I
14:47:10 8 received a phone call and that the person told me, "Man,
14:47:15 9 don't go to work." And I said, "Man I'm going to go to
14:47:17 10 work. I got to go to work. I'm not going to quit my job
14:47:21 11 because of whatever you got going on," and...

14:47:24 12 Q. So you had issues with the constitutionality of the
14:47:28 13 extradition issues and things like that; is that right?

14:47:33 14 A. Sure.

14:47:33 15 Q. And you don't feel like Mr. Smith properly
14:47:36 16 investigated that?

14:47:37 17 A. No, I don't.

14:47:39 18 MR. SHELDON: No more questions.

14:47:39 19 MR. JOHNSON: May it please the Court, Your Honor.

14:47:40 20 CROSS-EXAMINATION

14:47:40 21 BY MR. JOHNSON

14:47:41 22 Q. I take it -- reverse order. Mr. Culp, you state you
14:47:45 23 were on medications at the time of your plea; isn't that
14:47:47 24 correct?

14:47:47 25 A. Yes.

BRODERICK CULP -- CROSS-EXAMINATION BY MR. JOHNSON

14:47:47 1 Q. 7and that you didn't understand, you thought there
14:47:50 2 was a lot of pressure, and that you didn't plead freely
14:47:53 3 and voluntarily?
14:47:54 4 A. Yes.
14:47:55 5 Q. Okay. But the judge actually asked if you have any
14:47:57 6 mental, emotional, or nervous condition that interferes
14:47:59 7 with your judgment or ability to understand what you're
14:48:01 8 doing here in court today, and you say I do. You said it
14:48:05 9 was just bi-polar, correct?
14:48:08 10 A. Bi-polar and DID.
14:48:12 11 Q. But you never stopped him and said, "I don't
14:48:13 12 understand what's going on right now. I feel all this
14:48:17 13 pressure from everybody." You never said that to the
14:48:19 14 judge, did you?
14:48:20 15 A. Just -- I was told to answer the questions yes or no
14:48:23 16 by my attorney.
14:48:25 17 Q. Sir, please answer my question.
14:48:27 18 A. No, I didn't.
14:48:28 19 Q. Nobody ever threatened you to take this plea, did
14:48:30 20 they?
14:48:30 21 A. Yes, they did.
14:48:31 22 Q. You didn't tell that to the Court the day of your
14:48:33 23 plea, did you?
14:48:34 24 A. I told it to the Court that -- I told it to my
14:48:39 25 attorney before I even took the plea that I felt like I

BRODERICK CULP -- CROSS-EXAMINATION BY MR. JOHNSON

14:48:42 1 was being coerced and I was being pushed into taking the
14:48:45 2 plea. I told him prior to taking the plea.
14:48:48 3 Q. That was not my question. My question is: Did you
14:48:50 4 tell the Court that?
14:48:52 5 A. He's an officer of the court, yes.
14:48:54 6 Q. Did you tell the plea judge that you felt threatened
14:48:58 7 or coerced? Answer my question, please.
14:49:00 8 A. Yes.
14:49:00 9 Q. You told him that?
14:49:01 10 A. Yes.
14:49:02 11 Q. Please show me in the transcript where you told the
14:49:04 12 judge that.
14:49:04 13 A. He asked me was I guilty. I told him no.
14:49:09 14 MR. JOHNSON: Your Honor, may I approach?
14:49:10 15 THE COURT: Okay.
14:49:10 16 BY MR. JOHNSON:
14:49:10 17 Q I'm not trying to be a smart aleck. Do you recognize
14:49:25 18 this as a copy of your plea transcript?
14:49:27 19 A. It's not full and complete. I've seen where it has
14:49:29 20 been -- some has been taken out. You might see in part on
14:49:34 21 the 16th, you'll go see where --
14:49:36 22 Q. Sir, this is the 13th.
14:49:37 23 A. True. So I don't know what's missing from the
14:49:39 24 13th because some is missing from the 16th.
14:49:45 25 Q. You can read and write?

BRODERICK CULP -- CROSS-EXAMINATION BY MR. JOHNSON

14:49:46 1 A. Yes.

14:49:47 2 Q. Will you please read from line 16 through line 23 out
14:49:53 3 loud?

14:49:54 4 A. 16, 23. And the judge says, "Has anyone promised you
14:49:59 5 anything other than -- well, then have taken life without
14:50:04 6 parole off the table. If you went to trial, you will be
14:50:10 7 going to trial with life without parole. They have taken
14:50:14 8 that away. Has anyone promised you anything other than
14:50:17 9 that in order to get you to plead guilty, sir?"

14:50:24 10 I said, "No, sir."

14:50:26 11 Q. Thank you. You also testified today that you're
14:50:36 12 unsatisfied with Mr. Smith's performance in your case,
14:50:39 13 correct?

14:50:40 14 A. Yes.

14:50:41 15 Q. But at the plea hearing, you told the trial judge
14:50:43 16 this you were fully satisfied with his services, correct?

14:50:46 17 A. Yes.

14:50:46 18 Q. So you lied at the guilty plea?

14:50:49 19 A. Did I lie? No. For what he said that day, I was
14:50:54 20 satisfied for him standing in place and saying and telling
14:50:58 21 me what to do.

14:50:59 22 Q. But now you're complaining that he didn't do enough
14:51:01 23 for you?

14:51:02 24 A. That same day I complained before and after.

14:51:05 25 Q. So you can't have it either way. Which time were you

BRODERICK CULP -- CROSS-EXAMINATION BY MR. JOHNSON

14:51:08 1 lying: Either at the guilty plea or now?

14:51:12 2 A. I'm never lying.

14:51:14 3 Q. So you were just telling untruths at the guilty plea?

14:51:17 4 A. No, I was not.

14:51:26 5 Q. Judge also asked you if you had talked about all the

14:51:27 6 names of witnesses that you know and could subpoena and

14:51:31 7 bring to your defense, and you said yes, sir. Correct?

14:51:36 8 A. Yes, I spoke to my lawyer about them.

14:51:42 9 Q. You also admit you're guilty of this crime, correct?

14:51:46 10 A. I admitted that I had involvement by giving my car.

14:51:50 11 I didn't say my participation was. That's what --

14:51:54 12 Mr. Smith made a statement, but it was not the statement I

14:51:57 13 made to him.

14:52:01 14 Q. But the Court asked you: Are you, in fact, guilty of

14:52:03 15 these charges?

14:52:04 16 A. And I said yes.

14:52:06 17 Q. Thank you.

14:52:09 18 A. When he explained to me that hands of one is hands of

14:52:13 19 all.

14:52:13 20 Q. You also pled on your own free will that day; am I

14:52:17 21 correct?

14:52:18 22 A. Under coercion.

14:52:19 23 Q. That's not freely. You told the court under oath

14:52:23 24 that you were pleading guilty of your own free will,

14:52:25 25 correct?

BRODERICK CULP -- CROSS-EXAMINATION BY MR. JOHNSON

14:52:26 1 A. I'm under oath here now today. And I'm going to
14:52:30 2 answer the questions to the best of my ability. I'm not
14:52:33 3 here to deceive anybody. I just want the truth to be put
14:52:37 4 on record, and I want everybody to know what took place
14:52:39 5 and what didn't take place. I never possessed a firearm
14:52:42 6 in my hand. I never went to a place to rob any business.
14:52:47 7 I never had any involvement in the crime outside of giving
14:52:51 8 my car to an individual and keeping my mouth shut when I
14:52:55 9 later on found out about what took place. When he said
14:52:59 10 the hand of one is hand of all and asked me did I
14:53:02 11 understand that I was guilty by not telling or by giving
14:53:07 12 the car or any of that, I understand my association and my
14:53:12 13 guilt to the crime.

14:53:13 14 Q. All right. Back to my question, sir.

14:53:15 15 A. Yes, sir.

14:53:16 16 Q. The Court asked you if you're pleading guilty on your
14:53:18 17 own free will, to which you said, "Yes, sir." Am I not
14:53:21 18 correct?

14:53:22 19 A. You're correct.

14:53:54 20 MR. JOHNSON: No further questions, Your Honor.

14:53:55 21 THE COURT: Okay.

14:53:56 22 MR. SHELDON: No redirect, Your Honor.

14:53:57 23 THE COURT: You can step down.

14:54:03 24 MR. SHELDON: Your Honor, I may have a potential next
14:54:04 25 witness if I could have about 45 seconds with Mr. Culp

BRODERICK CULP -- CROSS-EXAMINATION BY MR. JOHNSON

14:54:08 1 prior to that.

14:54:09 2 THE COURT: Sure.

14:54:48 3 MR. SHELDON: Your Honor, we call Tameka Griffin at
14:54:50 4 this point.

14:54:51 5 THE COURT: All right.

14:55:19 6 MR. SHELDON: Thank you, Your Honor. May it please
14:55:19 7 the court.

14:55:19 8 TAMEKA GRIFFIN, after being duly sworn,
14:55:19 9 testified as follows:

14:55:19 10 MR. SHELDON: Thank you, Your Honor. May it please
14:55:19 11 the Court.

14:55:19 12 DIRECT EXAMINATION

14:55:19 13 BY MS. GRIFFIN:

14:55:21 14 Q Ms. Griffin, please state your name for the record.

14:55:24 15 A. Tameka D. Griffin.

14:55:25 16 Q. How do you know Mr. Culp?

14:55:27 17 A. We used to be in a relationship.

14:55:30 18 Q. And were you in relationship at the time that all
14:55:31 19 this was going on?

14:55:32 20 A. Yes.

14:55:33 21 Q. And were you note -- were you ever contacted by his
14:55:38 22 attorney, Mr. Smith?

14:55:40 23 A. No.

14:55:41 24 Q. Did you ever have any conversations with Mr. Smith?

14:55:43 25 A. Yes.

TAMEKA GRIFFIN - DIRECT EXAMINATION BY MR. SHELDON

14:55:43 1 Q. How did -- did you initiate the contact?

14:55:46 2 A. I did.

14:55:47 3 Q. And what kind of things did you discuss with

14:55:50 4 Mr. Smith regarding Mr. Culp's case?

14:55:51 5 A. Well, my first contact with Mr. Smith was when they

14:55:55 6 initially sent out a letter stating he needed to appear in

14:55:59 7 court. And, of course, he was in jail. And so when I

14:56:02 8 contacted Mr. Smith, I just wanted to give him a heads up

14:56:06 9 that there was no way he could appear in court --

14:56:09 10 Q. He was in jail in North Carolina.

14:56:11 11 A. That is correct.

14:56:12 12 Q. Were you -- did you ever notify Mr. Smith that you

14:56:15 13 could be a potential alibi in the case?

14:56:17 14 A. That was two days prior to the sentencing.

14:56:24 15 Q. That you notified him that you were a potential alibi

14:56:26 16 as well? Did Mr. Smith call you or did you call him?

14:56:30 17 A. Can you please rephrase the statement -- ask the

14:56:33 18 question again, please.

14:56:35 19 Q. I'm sorry. Mr. Culp testified that in addition to

14:56:41 20 some other alibis at gas stations I think off Carowinds

14:56:45 21 Boulevard, you were also a potential alibi witness in the

14:56:48 22 case; is that right?

14:56:49 23 A. Yes. However, that information wasn't provided until

14:56:54 24 two days prior to the sentencing, which would have been

14:56:57 25 Friday the 13th. I don't -- can't quite remember the

TAMEKA GRIFFIN - DIRECT EXAMINATION BY MR. SHELDON

14:57:03 1 year.

14:57:04 2 Q. Why was that information not provided?

14:57:07 3 A. No one contacted me.

14:57:09 4 Q. Okay. So Mr. Smith never contacted you about the

14:57:12 5 potential alibi and things like that?

14:57:15 6 A. Correct.

14:57:15 7 Q. But he had contacted you regarding other issues in

14:57:17 8 the case -- or I mean you had contacted him regarding

14:57:20 9 other issues in the case?

14:57:21 10 A. Yes, because on the notice that was received that was

14:57:26 11 sent to Mr. Culp mom's home, I -- she gave me the letter

14:57:33 12 and in the letter it had Mr. Phillip Smith's information

14:57:36 13 and it had a date to appear in court. So I did, on behalf

14:57:41 14 of Mr. Culp, contacted Mr. Smith to give the courts

14:57:46 15 information so they wouldn't issue a warrant.

14:57:48 16 Q. What alibi testimony would you have provided at

14:57:51 17 trial?

14:57:51 18 A. That he was with me and that -- and the statement I

14:57:56 19 provided Mr. Smith, my occupation at the time as well as I

14:58:03 20 was at a party with some fellow teachers two, three, in

14:58:07 21 the morning. And so all that information, which was

14:58:10 22 provided two days before, was given to Mr. Smith in

14:58:14 23 writing here in the building.

14:58:18 24 Q. And to the best of your knowledge, did he ever pursue

14:58:21 25 any of those avenues?

TAMEKA GRIFFIN - DIRECT EXAMINATION BY MR. SHELDON

14:58:24 1 A. I can't answer that. I don't know. I wouldn't know
14:58:26 2 if he did or not. I don't know.

14:58:28 3 MR. SHELDON: Thank you, Your Honor. I don't have
14:58:29 4 any more questions.

14:58:31 5 MR. JOHNSON: Just briefly.

14:58:31 6 CROSS-EXAMINATION

14:58:31 7 BY MR. JOHNSON

14:58:32 8 Q. Ms. Griffin, what time was this crime allegedly
14:58:34 9 committed?

14:58:35 10 A. I'm not for certain the time.

14:58:39 11 Q. So how do you know for sure -- well, you don't know
14:58:41 12 for sure that Mr. Culp was with you at the alleged time of
14:58:45 13 crime was committed, do you?

14:58:46 14 A. Well, that's the time that was told to me, so I can't
14:58:49 15 remember what the time is.

14:58:51 16 Q. So you have no personal knowledge of what time the
14:58:54 17 crime was committed?

14:58:57 18 A. Well, let's --

14:58:58 19 Q. That's what you testified here today?

14:58:59 20 A. Can I go back for a second, sir?

14:59:01 21 Q. Yes-or-no answer. You don't have any personal
14:59:03 22 knowledge as to what time the crime was committed?

14:59:05 23 A. I do not, no.

14:59:06 24 Q. Okay.

14:59:07 25 MR. JOHNSON: No further questions, Your Honor.

TAMEKA GRIFFIN - CROSS-EXAMINATION BY MR. JOHNSON

14:59:09 1 MR. SHELDON: No redirect, Your Honor.

14:59:10 2 THE COURT: You may step down.

14:59:13 3 MR. SHELDON: Your Honor, at this time, that's the
14:59:14 4 petitioner's case.

14:59:15 5 THE COURT: All right.

14:59:16 6 MR. JOHNSON: State would call Phil Smith back to the
14:59:18 7 stand.

14:59:30 8 THE COURT: All right.

14:59:30 9 DIRECT EXAMINATION

14:59:30 10 THE COURT: Mr. Smith, you're already sworn. I guess
14:59:33 11 it's perjury if you change your tale. Just...

14:59:44 12 THE WITNESS: Yes, Your Honor.

14:59:44 13 BY MR. JOHNSON:

14:59:45 14 Q. Go over a couple of things that Mr. Culp testified
14:59:47 15 to. His testimony is that he told you Friday he didn't
14:59:58 16 want to plead guilty. Did he ever tell you on that Friday
15:00:01 17 that he didn't want to plead guilty?

15:00:04 18 A. The --

15:00:05 19 Q. The Friday he actually --

15:00:06 20 A. You mean before he pled?

15:00:07 21 Q. Yes.

15:00:09 22 A. He may well have at some point earlier in the day,
15:00:11 23 but at the time he came in to plea he said what he wanted
15:00:13 24 to do was plea.

15:00:32 25 Q. Did he give you the information of Tameka Griffin?

PHILLIP SMITH - DIRECT EXAMINATION BY MR. JOHNSON

15:00:34 1 A. I can't say if he did or she did, but she and I met.

15:00:39 2 Q. So you did actually have face-to-face contact?

15:00:42 3 A. Yes.

15:00:42 4 Q. Did she ever tell you about the alibi information?

15:00:45 5 A. She mentioned the party that she was at that she

15:00:47 6 mentioned to you towards late in the evening. I can't say

15:00:50 7 that the times matched exactly where we needed, but she

15:00:53 8 did provide that information.

15:00:54 9 Q. But you did further investigation on whether the

15:00:56 10 times did match?

15:00:58 11 A. Yes.

15:00:58 12 Q. Did you come out to a conclusion about that?

15:01:00 13 A. My opinion it was not going to be definitive for us

15:01:04 14 to exculpate Mr. Culp.

15:01:06 15 Q. So in other words, there's still a possibility he --

15:01:09 16 at -- the timing, could have committed the crimes?

15:01:12 17 A. Correct.

15:01:13 18 Q. So it was not a foolproof alibi defense?

15:01:16 19 A. Correct.

15:01:23 20 Q. Did you explain that to Mr. Culp?

15:01:24 21 A. Yes, and that was in conjunction with some of the

15:01:26 22 receipts he had and some other items as well, but it was

15:01:30 23 sort of a multilayered alibi defense that we would have

15:01:33 24 been attempting.

15:01:34 25 Q. And light of this information, did he still decide to

PHILLIP SMITH - DIRECT EXAMINATION BY MR. JOHNSON

15:01:36 1 plead guilty?

15:01:38 2 A. Ultimately he did, yes.

15:01:43 3 Q. Did you ever force or threaten him to plead guilty?

15:01:45 4 A. Oh, no.

15:01:45 5 Q. Did your assistant ever or force or threaten him to

15:01:48 6 plead guilty?

15:01:49 7 A. No, and he described a conversation that I'm not at,

15:01:51 8 so obviously I can't say what occurred when I'm not there.

15:01:55 9 But there was -- nothing that I saw indicated that he had

15:01:57 10 been threatened acted in any way unusual when I had

15:02:01 11 contact.

15:02:10 12 Q. And did you explain to him that upon pleading guilty

15:02:12 13 you waive all your defenses?

15:02:14 14 A. I did.

15:02:14 15 Q. Including the defense to challenge the evidence the

15:02:16 16 state has?

15:02:17 17 A. Yes.

15:02:17 18 Q. Including any alibi defense?

15:02:19 19 A. Yes. That is included in the plea waiver form that's

15:02:22 20 referenced in the transcript.

15:02:24 21 Q. And any statement he made have given police?

15:02:28 22 A. Correct.

15:02:28 23 Q. And in your opinion, did he understand those

15:02:32 24 conversation?

15:02:33 25 A. He did.

PHILLIP SMITH - DIRECT EXAMINATION BY MR. JOHNSON

15:02:39 1 Q. Did you explain he would waive the extradition issue?

15:02:41 2 A. I would have said all his defenses and legal issues.

15:02:46 3 He referenced my saying that the extradition issue was

15:02:50 4 irrelevant. My conversation with him was once South

15:02:53 5 Carolina had his body, then they can serve him and

15:02:56 6 actively pursue him then; that the extradition would have

15:03:00 7 to have been fought at the other end. I don't know that

15:03:01 8 "irrelevant" would be my wording of it, but my explanation

15:03:05 9 was I thought at that point we had lost that, and

15:03:09 10 certainly pleading he would lose any challenges or

15:03:15 11 defenses on that.

15:03:15 12 MR. JOHNSON: That's all the questions I have. Thank

15:03:16 13 you.

15:03:17 14 MR. SHELDON: Very briefly, Your Honor.

15:03:18 15 CROSS-EXAMINATION

15:03:19 16 BY MR. SHELDON

15:03:19 17 Q. Were you present when your -- when another woman was

15:03:23 18 talking to him regarding the plea?

15:03:24 19 A. No, I cannot even say who that would have been.

15:03:27 20 Q. Would you ever send someone up to do that without you

15:03:29 21 being present?

15:03:31 22 A. There could have been someone else preparing for

15:03:34 23 trial with me that met with him. That is possible.

15:03:39 24 MR. SHELDON: Thank you, Your Honor. No more

15:03:41 25 questions.

PHILLIP SMITH -- CROSS-EXAMINATION BY MR. SHELDON

15:03:41 1 THE COURT: Step down.

15:03:42 2 MR. JOHNSON: State has no further witnesses Your

15:03:44 3 Honor.

15:03:47 4 MR. SHELDON: No more witnesses, Your Honor.

15:03:48 5 THE COURT: All right. What y'all want me to do?

15:03:50 6 Best I can?

15:03:53 7 MR. SHELDON: Your Honor, we are asking for

15:03:57 8 ineffective assistance of counsel based on threats and

15:04:00 9 coercion surrounding the guilty plea. He was served with

15:04:03 10 an LWOP notice. He wanted to go to trial. He stated even

15:04:06 11 after he pled at the subsequent sentencing hearing he

15:04:08 12 wanted to withdraw the plea. We would ask the Court to

15:04:10 13 find that Mr. Smith was ineffective assistance in his

15:04:13 14 representation --

15:04:15 15 THE COURT: Well, y'all can send me two orders and

15:04:17 16 I'll read it with -- I read his transcript.

15:04:19 17 MR. SHELDON: Okay. Thank you, Your Honor.

15:04:21 18 MR. JOHNSON: Thank you, Your Honor.

19 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Broderick Culp, #175645,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent,)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-46-3141

ORDER

FILED-RECEIVED
 2016 FEB 10 PM 4:19
 DAVID HAMILTON
 C.C.P. & GS SC
 YORK COUNTY, SC

Applicant filed his Post-Conviction Relief application on September 23, 2014. The case was heard before the late Judge Ernest J. Kinard on April 14, 2015. Applicant was represented by Nathan Sheldon, Esquire; the Respondent was represented by J. Rutledge Johnson, Assistant Attorney General.

Due to the untimely death of the Honorable Ernest J. Kindard, the undersigned assigned this case to himself pursuant to Rule 63, South Carolina Rules of Civil Procedure. The undersigned did not receive the Transcript of the April 14, 2015 hearing until January 27, 2016, or the judge's packet until February 1, 2016. Based on the information received, there is no reason for an additional hearing.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the February 2011 term of General Sessions for two counts of Armed Robbery (2011-GS-46-0447, 2011-GS-46-0449), Criminal Conspiracy (2011-GS-46-0450) and Possession of a Firearm During the Commission of a Violent Crime (2011-GS-46-0451). The Applicant was represented by Phil Smith, Esquire. On September 16, 2013, the

Applicant pled guilty to all charges as indicted. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated sentence, to confinement for fourteen (14) years for each Armed Robbery, five (5) years; concurrent, for Criminal Conspiracy, and five (5) years, concurrent, for the possession charge. The Applicant did not timely appeal his conviction or sentence.

A notice of appeal was filed on Applicant's behalf, and it was dismissed for failure to provide a sufficient legal explanation, as provided by Rule 203(d)(1)(b)(4) of the South Carolina Rules of Appellate Procedure. The Remittitur was issued on November 22, 2013. Though the Respondent's Return indicates Applicant untimely filed this PCR application, the State did acknowledge at the hearing it was timely filed.

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

1. Ineffective Assistance of Counsel

Applicant raises two claims of ineffective assistance of counsel—failure to investigate and pretrial functions. This Court will review both claims as one issue. A review of the Transcript of Applicant's Post-Conviction Relief hearing indicates Applicant claims trial counsel was ineffective for failing to investigate the possibility of an alibi and perform interrogatives (sic) of investigators and victims. Applicant further claims Counsel was ineffective in other pretrial functions involving suppression of evidence.

A two-pronged test is used 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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S.

J.C. 6-11-2

668, 104 S.Ct. 2052 (1984)). 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. at 690. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118.

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." Id. at 117-18 (quoting Strickland, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 691; see also Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). With respect to a guilty plea, 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).

Applicant testified there were two potential alibi witnesses he wished counsel to investigate. The first potential witness was an employee at the scene of the crime where the cigarette butt containing Applicant's DNA was found. (PCR Tr. p. 22, LL 10-22). Counsel testified he searched for the witness but was unsuccessful in locating her for questioning. (PCR, Tr. p. 7, LL 10-12). The record establishes counsel attempted to investigate according to his professional requirements by driving to the location and searching for the potential witness. An

JeH #3

unsuccessful search does not show counsel was deficient in his duty. Additionally, Applicant did not present this alleged witness to support his claim the witness would have provided Applicant an alibi defense.

Applicant testified the second witness, the mother of his child, would have testified Applicant was dropped off at her house prior to the crime occurring. (PCR, Tr. p. 26, LL 7-12). Counsel admits he was told about other possible witnesses who were at a party in which this witness was attending, but that the Applicant himself did not believe those people would testify. (PCR Tr. p. 7, LL 16-17). There is further testimony that, while counsel was given information involving Applicant by the second witness two days before the plea, counsel did not believe the information was definitive to exculpate the Applicant. (PCR Tr. p. 40, LL 7-14). Counsel indicated it was not a foolproof alibi defense in his professional opinion (PCR Tr. p. 40, LL 18-19), and that he was not aware of any other alibi witnesses that would actually testify. (PCR Tr. p. 10, LL 6-8). Additionally, though Applicant did present this witness at the PCR hearing, her testimony does not support an alibi defense, and Applicant presented no other witnesses to provide a defense. It appears counsel made a reasonable professional judgment in determining the significance of this particular witness to Applicant's case.

There is nothing in the record that shows counsel's actions were unreasonable or deficient in the effort put into locating the first witness or assessing the effect of the second witness's testimony. Further, there is nothing to suggest the first witness had any relevant information. Counsel's testimony also indicates the unlikelihood, rather, that the second witness's testimony would do much to help Applicant's case. Therefore, Applicant has not proved he was prejudiced in anyway. To the contrary, the record supports the conclusion counsel

Je #14

was not ineffective as to the Applicant's claim counsel did not properly investigate possible alibis.

Applicant also claims ineffective counsel based on pretrial functions. Applicant testified he never felt as though all the pretrial motions were given consideration by counsel. (PCR Tr. p. 28, LL 4-5). Counsel, however, testified he and Applicant spoke about all of the potential pretrial motions in the case, and listed them for the court during the hearing. (PCR Tr. p. 9, LL 19-25). There is no further discussion in the record to establish a lack of consideration by counsel, or that he did not properly reflect on the potential arguments and outcomes of said motions. Additionally, there is nothing in the record to indicate these motions would have resulted in the Applicant's favor had they been addressed if the case moved forward. As such, Applicant does not persuade this Court that counsel was ineffective in his representation of pretrial motions.

Applicant then claims ineffective counsel because counsel did not perform interrogatives (sic) of investigators or victims. There is nothing in the record to support this allegation aside from previous discussion. Therefore, to the extent this claim differs from prior arguments, it will be deemed abandoned.

Finally, during the PCR hearing Applicant's counsel raised the issue of ineffective assistance of counsel due to coercion. Assuming the issue is properly before the court, the claim asserts counsel and counsel's assistant coerced Applicant into pleading guilty against his will. (PCR Tr. p. 17, LL 17-25—p. 18, LL 1-3). Applicant further testified that he could not function under the coercion and stress to properly plea. (PCR Tr. p. 28, LL 21-22).

During the PCR hearing, Applicant stated he did not wish go forward with the plea, but counsel's assistant insisted he would likely serve a life sentence if he did not plead guilty. (PCR

JCH
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Tr. p. 17, LL 19-25). Counsel testified that, though he was not present for the assistant's conversation with the Applicant, there was never any indication Applicant was threatened, and Applicant never acted unusual. (PCR Tr. p. 41, LL 5-11). In addition, counsel testified he never threatened the Applicant himself or forced Applicant to take the plea. (PCR Tr. p. 41, LL3-4). The court finds it reasonable that counsel would inform his client of the possible consequences of going to trial, including the potential sentencing should he be found guilty. Rather than being deficient in his duty, counsel was entirely proper in informing his client of the risk of getting life without parole should Applicant choose to move forward with a jury trial.

Further, Judge Alford specifically questioned Applicant during his plea as to whether or not he was promised anything other than removing life without parole from the sentencing options in order to get him to plead guilty. (Plea Tr. p. 8, LL 16-22). Applicant stated no. (Plea Tr. p. 8, L 23). Judge Alford also asked if Applicant was satisfied with his counsel's representation and advice, and Applicant stated he was. (Plea Tr. p. 8, L 24-25—p. 9, L 1-2). If Applicant felt coerced or felt there was a problem with his counsel's representation, the proper time to bring it to the Court's attention would be during the plea when unambiguously asked.

This Court finds counsel to be credible. Reviewing trial counsel's representation of Applicant, I find, by a preponderance of the evidence, that Applicant has not proven trial counsel represented Applicant ineffectually. Applying the Cherry and Strickland tests, it is clear to the Court that trial counsel's representation of Applicant was not deficient, was reasonable when examined under the rubric of professional norms, and was well within the range of competence required in criminal cases. I find trial counsel rendered adequate assistance and made all significant decisions, including those based on trial strategy in the exercise of reasonable professional judgment.



2. Excess of jurisdiction by judge

Applicant's claim here is ambiguous, and can be read to mean either the court lacks subject matter jurisdiction, or the court erred in denying his request to withdraw his guilty plea. Assuming Applicant's claim is Judge Lee Alford lacked jurisdiction to impose the sentence, this claim is without merit. A circuit court has subject matter jurisdiction to hear criminal matters. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005).

Applicant claims Judge Lee Alford surpassed his jurisdiction by continuing with the sentencing phase when Applicant asked to withdraw his plea. The record shows Applicant entered his plea freely, voluntarily, and intelligently September 13, 2013 (Plea Tr. p. 15, LL 22-25—p. 16, LL 1-7), and at the request of the Applicant, Judge Alford deferred sentencing until September 16, 2013 so that Applicant could visit with his family over the weekend (Plea Tr. p. 17, LL 7-8). At sentencing, Applicant informed the court he wished to withdraw his plea, but Judge Alford would not allow him to do so. (Sentencing Tr. p. 4, LL13-25).

The Court had proper jurisdiction to hear the plea, and Applicant entered the plea freely and voluntarily. The plea was accepted on September 13, and therefore, Applicant was no longer in a position to withdraw his plea, except at the discretion of the court. The only reason he was not sentenced on September 13 was because Applicant asked to defer sentencing. Therefore, because the plea was entered and accepted, the Court had jurisdiction to continue with sentencing and properly did so.

Applicant also claimed his plea was not voluntary because he was medicated at the time. (Sent. Tr. p. 5, LL 15-17). However, Judge Alford asked Applicant if he was under the influence of any mind-altering substance such as prescription medications at the time of the plea. (Plea Tr. p. 9, LL 21-23). When Applicant told him he was taking certain medications, Judge Alford then

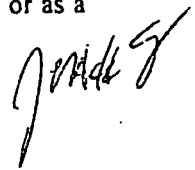
John H 7

specifically asked if those medications "interfere[d] in any way with [his] ability to understand what [he was] doing in court." (Plea Tr. p. 10, LL 5-8). Applicant said no. (Plea Tr. p. 10, L 9).

Judge Alford further asked Applicant if there was any other condition which interfered with his judgment or understanding. (Plea Tr. p. 10, LL 10-13). Applicant stated he was bipolar, but when Judge Alford asked if he understood what he was doing in court, the Applicant stated he did. (Plea Tr. p. 10, LL 15-24). Counsel also stated Applicant had taken his bipolar medication as prescribed that day. (Plea Tr. p. 10, L 25-p. 11, L 1). Though Applicant does appear to have been medicated, Judge Alford acknowledged that Applicant could function quite well if medicated for his bipolar condition. (Plea Tr. p. 11, LL 2-6). Applicant then admitted he was pleading guilty of his own free will. (Plea Tr. p. 11, LL 7-9).

Even though Applicant was on medication, the record establishes that the medication did not interfere with his ability to know what he was pleading to, and his plea was knowingly made. The record fails to establish that Applicant's plea was not freely and voluntarily made. As such, the court had jurisdiction to proceed with the sentencing phase of the Applicant's guilty plea.

To the extent Applicant's claim is the Court's refusal to allow him to withdraw his guilty plea, this issue could have been raised, and should have been raised as a direct appeal. Errors in court proceedings may not be asserted in post-conviction relief hearings if they could have been reviewed on appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). Applicant was given notice of his right to appeal the guilty plea, and appears to have filed an appeal in the matter. However, the appeal was dismissed for failure to provide a sufficient legal explanation. (PCR Tr. p. 3 14-17). This matter could have been heard on direct appeal, but was dismissed. As such, he may not now raise the issue of plea withdrawal in his post-conviction relief petition as a substitute. Additionally, even if the issue had been raised on appeal, or as a



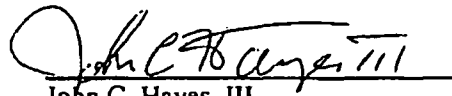
question of ineffective assistance of appellate counsel instead of judicial review, Applicant's claim would not have been successful because "once a defendant enters a guilty plea, whether to allow withdrawal of the plea is left to the sound discretion of the circuit court. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982).

Wherefore, I find Applicant has not carried his burden of proof, and has neither proved trial counsel ineffective, nor an excess of jurisdiction by the judge.

Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


John C. Hayes, III
Judge

#9

February 9th, 2016
York, South Carolina

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

WITNESSES

SO\Neely

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

February 17, Term 2011

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

ARREST WARRANT NUMBER

301096

Brodrick Elliott Culp
Defendant

THE STATE

vs.

Witness:
Walter Miller
G.C.C (PLS. AND G.S.)

ACTION OF GRAND JURY

BRODRICK ELLIOTT CULP

TRUE BILL

W. Neely
person of Grand Jury

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

person of Petit Jury

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

2013 SEP 16 PM 6:10
CERTIFIED TRUE COPY

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

ARMED ROBBERY

The Defendant, Brodrick Elliott Culp, did in York County, South Carolina, on or about October 17, 2010, while armed with a deadly weapon, to wit: a pistol, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take and carry away personal property belonging to Kangaroo Express Convenience Store from the person of or in the presence of Robert Fleming, employee of Kangaroo Express Convenience Store. The Defendant by means of force or intimidation put Robert Fleming in fear and took goods or monies of said Kangaroo Express Convenience Store, located at [REDACTED]

[REDACTED] such goods or monies being described as follows: US Currency. All in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR

WITNESSES	
CSO Neely	
ARREST WARRANT NUMBER	
-155987	
ACTION OF GRAND JURY	
TRUE BILL	
<i>J. B. Bell</i>	
Foreperson of Grand Jury	
Date: 2/17/11	
VERDICT	
Foreperson of Petit Jury	
Date:	

DOCKET NO. 2011-GS-46- 00451

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

February 17, Term 2011

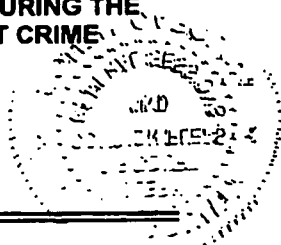
THE STATE

vs.

BRODRICK ELLIOTT CULP

Indictment for
POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490
 CDR Code: 0549



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

Brodrick E Culp
 Defendant

Witness:
W. C. Williams
 C.C. CLERK AND G.S. *Williams*

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of York County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The Defendant, Brodrick Elliott Culp, did in York County on or about October 16, 2011, while committing the crime of Armed Robbery, a crime of violence, have in his possession a pistol, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY
2014 SEP 24 AM 9:36
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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



ASSISTANT SOLICITOR

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

WITNESSES

SO/Neely

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

February 17, Term 2011

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

ARREST WARRANT NUMBER

55985

[Signature]
Defendant

THE STATE

vs.

Witness:
[Signature]
C.C.O. PDS. AND G.S. *[Signature]*

ACTION OF GRAND JURY

BRODRICK ELLIOTT CULP

TRUE BILL

[Signature]
person of Grand Jury
to: *[Signature]*

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

person of Petit Jury
to: