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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

---

LYNNETTE RISHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212089

---

APPENDIX

---

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS  
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 06-GS-38-0253

versus

)  
)  
) TRANSCRIPT OF RECORD

LYNETTE RISHER,

)  
) DATE:

DEFENDANT

)  
) SEPTEMBER 15, 2008  
)

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

ROB CLARIDAY, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

C. BRADLEY HUTTO, ESQUIRE

ATTORNEY AT LAW

FOR THE DEFENDANT

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

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E X H I B I T S

NONE.

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DATE:  
SEPTEMBER 15, 2008

SOLICITOR CLARIDAY: THE STATE CALLS  
LYNETTE RISHER.

THE COURT: I BELIEVE WE HAVE  
SEVERAL OTHERS TO QUALIFY?

CLERK: YES, SIR.

THE COURT: ALRIGHT, THAT'S FOUR.  
ALRIGHT YOU FOUR INDIVIDUALS PLEASE RAISE YOUR RIGHT  
HAND.

(Whereupon, Lynette Risher,  
along with other defendants,  
is duly sworn.)

THE COURT: ALRIGHT, REMAIN  
STANDING, YOU CAN PUT YOUR HAND DOWN, AND LISTEN AS I  
EXPLAIN TO YOU THREE RIGHTS YOU HAVE TO GIVE UP IF YOU  
WANT TO PLEAD GUILTY. THE FIRST OF THESE IS YOUR RIGHT  
TO HAVE THE GRAND JURY CONSIDER THE CHARGES AGAINST YOU.  
THE GRAND JURY IS EIGHTEEN CITIZENS WHICH MEET HERE IN  
THE COURTHOUSE EACH MONTH BEFORE COURT. WHEN THEY MEET  
SOMEONE WHO IS FAMILIAR WITH THE CHARGES AGAINST YOU AND  
THE EVIDENCE THE STATE HAS AGAINST YOU WOULD APPEAR  
BEFORE THOSE EIGHTEEN PEOPLE AND TELL THEM WHAT THAT  
EVIDENCE IS. THAT'S USUALLY A POLICE OFFICER OR A  
DETECTIVE, BUT IT'S SOMEONE WHO KNOWS ABOUT YOUR CASE

1 AND THE EVIDENCE AGAINST YOU. ONCE THOSE EIGHTEEN  
 2 PEOPLE HEAR THAT REPORT THEY TAKE A VOTE AND AT LEAST  
 3 TWELVE OF THEM HAVE TO FIND THAT THERE IS SUFFICIENT  
 4 EVIDENCE AGAINST YOU TO BRING YOU TO TRIAL; OTHERWISE,  
 5 WE CAN'T EVEN PROCEED WITH A GUILTY PLEA. NOW, MOST OF  
 6 YOUR CASES HAVE BEEN HEARD BY THE GRAND JURY BUT IF  
 7 YOURS HAS NOT I WILL TELL YOU CAN DECIDE WHETHER YOU  
 8 WANT TO WAIT AND SEE WHAT THE GRAND JURY MIGHT DO, OR  
 9 WHETHER YOU WANT TO GIVE UP THAT RIGHT AND MOVE FORWARD  
 10 TODAY.

11 SECONDLY, YOU HAVE A RIGHT TO REMAIN  
 12 SILENT. THAT IS YOUR RIGHT TO SAY NOTHING ABOUT THE  
 13 CHARGES. YOU CANNOT BE FORCED TO TESTIFY AGAINST  
 14 YOURSELF. BUT WHEN YOU PLEAD GUILTY YOU GIVE UP THAT  
 15 RIGHT IN ORDER TO ADMIT THE TRUTH OF THE CHARGES AGAINST  
 16 YOU.

17 AND FINALLY, YOU HAVE A RIGHT TO A  
 18 JURY TRIAL. THAT'S YOUR RIGHT TO HAVE A JURY DETERMINE  
 19 WHETHER OR NOT YOU ARE, IN FACT, GUILTY OF THESE CHARGES  
 20 BEYOND A REASONABLE DOUBT. A JURY WOULD BASE ITS  
 21 DECISION ON THE TESTIMONY AND THE EVIDENCE PUT UP BY THE  
 22 STATE'S WITNESSES. YOUR ATTORNEY COULD CROSS-EXAMINE  
 23 THOSE WITNESSES AND CALL WITNESSES ON YOUR OWN BEHALF,  
 24 AND PUT UP ANY DEFENSE YOU MIGHT HAVE TO THE CHARGES.  
 25 YOU WOULD BE PRESUMED TO BE INNOCENT IF YOU HAD A JURY

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TRIAL, THE BURDEN WOULD BE ON THE STATE TO CONVINCING ALL TWELVE JURORS OF YOUR GUILT.

NOW, IF YOU HAVE ANY QUESTIONS ABOUT THESE RIGHTS I WILL BE GLAD TO ANSWER THOSE QUESTIONS FOR YOU WHEN I TAKE YOUR PLEA.

THANK YOU VERY MUCH, YOU MAY BE SEATED.

ALRIGHT, SIR.

SOLICITOR CLARIDAY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

THE COURT: YES, SIR.

SOLICITOR CLARIDAY: STANDING BEFORE YOU TODAY IS MS. LYNETTE RISHER. SHE'S PLEADING GUILTY TODAY ON TRUE BILLED INDICTMENT 2006-GS-38-0253, ONE COUNT OF LYNCHING IN THE SECOND DEGREE. SHE IS REPRESENTED BY MR. BRAD HUTTO, AND SHE'S PLEADING STRAIGHT UP TO THE CHARGE, YOUR HONOR.

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

EXAM - LYNETTE RISHER BY THE COURT

1

EXAMINATION OF LYNETTE RISHER

2

BY THE COURT:

3

Q. HOW OLD ARE YOU, MS. RISHER?

4

A. THIRTY-ONE YEARS OLD.

5

Q. HOW FAR DID YOU GO IN SCHOOL?

6

A. I HAD QUIT BUT I WENT BACK AND GOT MY G.E.D. FROM  
HIGH SCHOOL.

7

8

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

9

10

A. NO, SIR.

11

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

13

14

15

A. NO, SIR.

16

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

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EXAM - DEFENSE COUNSEL HUTTO BY THE COURT

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EXAMINATION OF DEFENSE COUNSEL HUTTO

BY THE COURT:

Q. MR. HUTTO, HAVE YOU EXPLAINED TO YOUR CLIENT THE CHARGES SHE IS FACING, THE EVIDENCE THE STATE HAS AGAINST HER, THE POSSIBLE PENALTY, UP TO TWENTY YEARS, NO PAROLE, SERIOUS OFFENSE, AND HAVE YOU EXPLAINED TO HER HER CONSTITUTIONAL RIGHTS?

A. I HAVE.

Q. AND DO YOU BELIEVE SHE UNDERSTANDS THOSE MATTERS?

A. I DO.

Q. AND HOW HAS SHE ADVISED YOU SHE WISHES TO PLEAD?

A. GUILTY.

Q. DO YOU CONCUR IN HER DECISION TO PLEAD GUILTY?

A. I DO.

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

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EXAMINATION OF LYNETTE RISHER

BY THE COURT CONTINUES:

Q. MS. RISHER, YOUR ATTORNEY TELLS ME HE'S EXPLAINED TO YOU THE CHARGES THAT YOU ARE FACING, THE EVIDENCE THE STATE HAS AGAINST YOU, THE POSSIBLE PENALTY, AND YOUR CONSTITUTIONAL RIGHTS. HE SAYS HE BELIEVES YOU UNDERSTAND ALL OF THOSE MATTERS AND YOU WANT TO PLEAD GUILTY. IS THAT RIGHT?

A. YES, SIR.

Q. YOU NEED TO SPEAK A LITTLE LOUDER BECAUSE THIS LADY HAS TO HEAR IT AND WRITE IT ALL DOWN.

A. YES, SIR.

Q. ALRIGHT. AND DID YOU UNDERSTAND YOUR RIGHT TO REMAIN SILENT AND YOUR RIGHT TO HAVE A JURY TRIAL WHEN I EXPLAINED THOSE RIGHTS TO YOU EARLIER?

A. YES, SIR.

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

A. YES, SIR.

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

A. YES, SIR.

Q. YOU DON'T WANT A JURY TRIAL?

A. NO, SIR.

Q. THE INDICTMENT SAYS THAT ON OR ABOUT THE TWENTY-NINTH OF NOVEMBER, TWO THOUSAND AND FIVE, THAT YOU

EXAM - LYNETTE RISHER BY THE COURT

9

1 WILLFULLY AND UNLAWFULLY, ALONG WITH ONE OR MORE  
 2 INDIVIDUALS, COMMITTED AND ACT OF VIOLENCE ON THE  
 3 BODY OF FRANK ZIMMERMAN, AND IT'S A CRIME THAT'S  
 4 CALLED LYNCHING BECAUSE IT'S MOB VIOLENCE, OR THE  
 5 ACTION OF A CROWD. . DO YOU UNDERSTAND THIS CHARGE?  
 6 A. YES, SIR.  
 7 Q. HOW DO YOU PLEAD TO THE CHARGE?  
 8 A. GUILTY.  
 9 Q. NOW, HAS ANYBODY PROMISED YOU ANYTHING OR  
 10 THREATENED YOU TO GET YOU TO PLEAD GUILTY?  
 11 A. NO, SIR.  
 12 Q. I CAN'T HEAR YOU.  
 13 A. NO, SIR.  
 14 Q. YOU HESITATED, WHICH MEANS IF SOMEBODY HAS  
 15 PROMISED YOU SOMETHING YOU NEED TO TELL ME WHAT  
 16 THAT IS, BECAUSE AS FAR AS I KNOW, NOBODY HAS TOLD  
 17 ME THEY HAVE PROMISED YOU ANYTHING.  
 18 A. NO, SIR.  
 19 Q. ARE YOU SATISFIED WITH YOUR ATTORNEY?  
 20 A. YES, SIR.  
 21 Q. DID YOU EXPLAIN TO HIM EVERYTHING ABOUT THESE  
 22 CHARGES SO HE COULD GIVE YOU GOOD ADVICE?  
 23 A. YES, SIR.  
 24 Q. HAS HE FAILED TO DO ANYTHING THAT YOU THINK HE  
 25 NEEDS TO DO TO HELP YOU IN THE CASE?

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1 A. NO, SIR.

2 Q. HAVE YOU UNDERSTOOD ALL THE QUESTIONS THAT I HAVE  
3 ASKED YOU?

4 A. YES, SIR.

5 Q. AND HAVE YOU ANSWERED MY QUESTIONS TRUTHFULLY?

6 A. YES, SIR.

7 Q. DO YOU UNDERSTAND THAT IF YOU WANTED TO FILE AN  
8 APPEAL IN THIS CASE YOU WOULD HAVE TO DO THAT  
9 WITHIN TEN DAYS?

10 A. YES, SIR.

11 THE COURT: I WILL ACCEPT HER PLEA,  
12 I FIND A SUBSTANTIAL FACTUAL BASIS FOR HER PLEA, HER  
13 DECISION TO PLEAD GUILTY IS FREELY AND VOLUNTARILY MADE,  
14 SHE'S KNOWINGLY AND INTELLIGENTLY WAIVED HER RIGHT TO A  
15 JURY TRIAL, AND SHE'S HAD THE SERVICES OF AN ATTORNEY  
16 WITH WHOM SHE SAYS SHE'S SATISFIED.

17 AND I DIDN'T MENTION, THERE'S A  
18 MINIMUM OF A THREE YEAR SENTENCE. WAS THERE ANY  
19 RECOMMENDATION FROM THE STATE, A CAP OR ANYTHING, OR  
20 NOTHING?

21 SOLICITOR CLARIDAY: NO, SIR, JUST  
22 PLEAD TO THE CHARGE.

23 THE COURT: OKAY. AND I UNDERSTAND,  
24 MS. RISHER, THAT YOU WANTED TO, BECAUSE YOU HAVE A  
25 MEDICAL APPOINTMENT WITH A CHILD OR SOMETHING, YOU

1 WANTED TO BE SENTENCED TOMORROW AT TWO O'CLOCK?

2 DEFENDANT RISHER: YES, SIR.

3 THE COURT: ALRIGHT, I WILL NOT HEAR  
4 ANYTHING ELSE FROM THE STATE OR THE DEFENSE UNTIL  
5 TOMORROW AT TWO O'CLOCK. NOW, YOU NEED TO BE BACK AT  
6 TWO O'CLOCK, MS. RISHER, TOMORROW.

7 DEFENDANT RISHER: YES, SIR.

8 THE COURT: OKAY. I'LL SEE YOU  
9 THEN.

10 MR. HUTTO: THANK YOU, YOUR HONOR.

11 (Recess)

12 DATE:

13 SEPTEMBER 16, 2008

14 SOLICITOR CLARIDAY: THE STATE CALLS  
15 LYNETTE RISHER.

16 THE COURT: ALRIGHT, THIS IS A  
17 SENTENCING. MS. RISHER PLED YESTERDAY AND WANTED TO  
18 COME BACK TODAY TO BE SENTENCED. I DO NOT BELIEVE I  
19 HEARD THE FACTS YESTERDAY, DID I?

20 SOLICITOR CLARIDAY: THAT'S RIGHT,  
21 THAT'S CORRECT.

22 THE COURT: I'LL BE GLAD TO HEAR THE  
23 FACTS FROM THE STATE AND ANYBODY WHO WANTS TO SPEAK ON  
24 BEHALF OF THE STATE, AND THEN MR. HUTTO AND WHOEVER  
25 WANTS TO SPEAK ON BEHALF OF MS. RISHER.



1 A BEER BOTTLE. HE WAS THEN LEFT ON THE SIDE OF THE ROAD  
 2 FOR APPROXIMATELY FOUR HOURS IN THE MIDDLE OF THE NIGHT  
 3 FROM ABOUT MIDNIGHT TO FOUR A.M. THIS WAS A STREET THAT  
 4 WAS DESERTED, NOT DESERTED BUT IT WAS, HAD WOODS ON  
 5 EITHER SIDE, YOUR HONOR, SO THIS WAS NOT LIKE OUT ON THE  
 6 MAIN THOROUGHFARE WHERE HE COULD EASILY BE FOUND. WE  
 7 HAD TESTIMONY, OR WE WERE GOING TO PROVIDE TESTIMONY AT  
 8 THE TRIAL AND WE WERE READY TO GO ON YESTERDAY, YOUR  
 9 HONOR, FROM THREE SEPARATE CO-DEFENDANTS THAT WOULD HAVE  
 10 TESTIFIED TO THOSE FACTS, YOUR HONOR, INVOLVING MS.  
 11 RISHER. MR. ZIMMERMAN SUSTAINED A MASSIVE AMOUNT OF  
 12 INJURIES. I BELIEVE HE SPENT FORTY-TWO DAYS IN THE ICU  
 13 UNIT AT PALMETTO HEALTH RICHLAND, HAS UNDERGONE AT LEAST  
 14 THREE BRAIN SURGERIES SINCE THEN, CLOSE TO FOUR HUNDRED  
 15 THOUSAND DOLLARS WORTH OF MEDICAL BILLS FROM THIS ONE  
 16 INCIDENT, YOUR HONOR. THE PREVIOUS, TWO PREVIOUS CO-  
 17 DEFENDANTS WHO HAVE PLED HAVE PLED JUST TO THIS CHARGE,  
 18 THE LYNCHING, SECOND, CHARGE, PLED ALMOST TWO AND A HALF  
 19 YEARS AGO, AND THEY RECEIVED A TEN YEAR SENTENCE, YOUR  
 20 HONOR. AND I BELIEVE THOSE ARE THE FACTS THAT ARE  
 21 RELEVANT TO THE ARREST OF MS. RISHER.

22 THE COURT: ALRIGHT. YES, SIR, MR.  
 23 ZIMMERMAN, I'LL BE GLAD TO HEAR FROM YOU.

24 FRANK ZIMMERMAN: I WAS HOPING THAT  
 25 THIS WOULD ACTUALLY GO TO TRIAL SO I COULD FIGURE OUT

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1 WHY THEY DID WHAT THEY DID TO ME. OKAY. TO THIS DAY I  
2 DO NOT KNOW WHY. I SPENT LIKE FORTY-TWO DAYS IN A COMA.  
3 WHEN I AWOKE FROM THAT COMA MY MOTHER WAS THERE, AND  
4 SHE'S AN INNOCENT VICTIM. NO MATTER WHAT I DID, SHE  
5 DIDN'T DESERVE THIS, AND I DO NOT KNOW WHAT I DID. ALL  
6 THEY HAD TO DO WAS CALL THE COPS ON ME IF I DID DO  
7 SOMETHING OF THAT NATURE. I DON'T UNDERSTAND WHY THEY  
8 DIDN'T. I AWOKE FROM THAT COMA AND I GOT ON MY HANDS  
9 AND KNEES AND I BEGGED GOT TO HELP ME, AND HE DID. AND  
10 I DO WANT TO THANK HER AND THEM FOR GETTING ME CLOSER TO  
11 GOD. HOWEVER, I DID PRAY THAT THERE WAS NO CHILDREN  
12 INVOLVED, AND THEN FRIDAY I FOUND OUT THAT SHE HAD FOUR  
13 CHILDREN, AND ONE OF THEM WAS PRESENT THERE IN THE  
14 BEATING. I WILL TRY MY HARDEST TO GET THEM KIDS REMOVED  
15 FROM HER FAMILY IF IT'S THE LAST THING I DO. SHE DOESN'T  
16 DESERVE CHILDREN, SHE DON'T DESERVE TO BE IN THIS WORLD  
17 WITH NORMAL PEOPLE. I WANT TO KNOW WHAT KIND OF ANIMAL  
18 SHE IS. I DON'T UNDERSTAND IT, AND I PROBABLY NEVER  
19 WILL. BUT, YOUR HONOR, I FEEL SORRY FOR YOU, BECAUSE  
20 YOU HAVE TO SORT THROUGH ALL THIS GARBAGE AND GIVE HER  
21 A PROPER SENTENCE. AND TO ME THERE IS NO PROPER  
22 SENTENCE OTHER THAN THE SAME AMOUNT OF DAMAGE THAT I  
23 GOT. AND YOUR HONOR, I'M SORRY THAT YOU HAVE TO DEAL  
24 WITH THIS STUFF.

25 THE COURT: WELL, THAT'S ALRIGHT.

1 IT'S NOT YOUR FAULT. THANK YOU, SIR.

2 ANYTHING ELSE FROM THE STATE?

3 SOLICITOR CLARIDAY: I DON'T BELIEVE  
4 SO, YOUR HONOR.

5 THIS IS MS. GRACE BANKS, WHICH IS  
6 MR. ZIMMERMAN'S MOTHER, AS WELL AS BEATRICE JOHNS, WHICH  
7 IS HIS SISTER. THEY ARE PRESENT, BUT I DON'T BELIEVE  
8 THEY WANT TO SPEAK AT THIS TIME, YOUR HONOR.

9 THE COURT: ALRIGHT, MR. HUTTO.

10 MR. HUTTO: YOUR HONOR, I'VE BEEN  
11 APPOINTED TO REPRESENT MS. RISHER, AND SHE'S BEEN  
12 COOPERATIVE WITH MY OFFICE THROUGHOUT THIS. IT WAS ONE  
13 TIME WHICH HER ADDRESS CHANGED AND I COULDN'T FIND HER,  
14 BUT THERE WAS JUST SOME COMMUNICATION PROBLEM THERE.  
15 BUT SINCE THAT TIME, AND EVEN BEFORE THEN SHE HAS JUST  
16 COME IN AND COOPERATED WITH ME. SHE DOES HAVE FOUR  
17 SMALL CHILDREN, [REDACTED] WHO IS TEN, [REDACTED] WHO IS NINE,  
18 [REDACTED] WHO WILL BE SEVEN ON OCTOBER THE FIRST, AND  
19 [REDACTED] WHO IS FIVE. SHE WAS IN A PRETTY SERIOUS  
20 AUTOMOBILE ACCIDENT BACK IN MAY OF O-FIVE THAT LED TO  
21 HER HAVING A PRETTY LONG RECOVERY PERIOD. AND SO SHE  
22 WAS OUT OF WORK FOR A GOOD WHILE, WHILE SHE WAS  
23 RECOVERING FROM THE ACCIDENT. SHE SUFFERS FROM HIGH  
24 BLOOD PRESSURE AND DIABETES. BUT SINCE -- SHE DROPPED  
25 OUT OF HIGH SCHOOL BUT LATER WENT BACK AND GOT HER HIGH

1 SCHOOL EDUCATION, AND HAS SINCE RECOVERED FROM HER  
2 ACCIDENT, BEEN SHADOWING AND SUBBING AT THE SCHOOL OVER  
3 IN BELLS DOWN IN COLLETON COUNTY.

4 THIS WAS A SITUATION THAT GOT WAY  
5 OUT OF HAND. MR. ZIMMERMAN CLEARLY DIDN'T DESERVE THIS  
6 AT ALL. I MEAN, THERE WERE SOME ALLEGATIONS AS YOU MAY  
7 HAVE HEARD FROM THE EARLIER PRESENTATION TO YOU, THAT  
8 POSSIBLY HE HAD TAKEN SOME MONEY FROM ONE OF THE  
9 LADIES'S POCKETBOOKS OR SOMETHING, BUT LIKE HE SAID, THE  
10 PROPER RESPONSE TO THAT WOULD HAVE BEEN TO CALL THE  
11 SHERIFF AND REPORT THE ALLEGATION THAT HE HAD TAKEN A  
12 TWENTY DOLLAR BILL OUT OF THE PURSE OR WHATEVER IT WAS.  
13 THE PROPER RESPONSE WAS NOT TO TAKE THE LAW INTO YOUR  
14 OWN HANDS, AND THAT'S BASICALLY WHAT HAPPENED HERE. I  
15 THINK IT STARTED OFF REALLY AS AN ATTEMPT BY SEVERAL  
16 PEOPLE TO CONFRONT HIM TO SEE IF, IN FACT, HE DID TAKE  
17 THE MONEY. WHEN HE -- AS THE STATEMENTS REVEALED, WHEN  
18 HE ADMITTED THAT HE DID TAKE THE MONEY BUT HE DIDN'T  
19 HAVE IT ANYMORE, I THINK DIFFERENT ONES GOT MAD. SHE  
20 WAS NOT INVOLVED IN THE FIRST OR THE SECOND BEATING, BUT  
21 DID BY THE STATEMENTS OF THE WITNESSES, STRIKE HIM ONE  
22 BLOW WITH A BEER BOTTLE NEAR THE TIME OF THE THIRD  
23 BEATING. NONE OF THAT IS ANY WAY TO EXCUSE WHAT  
24 HAPPENED IN THIS CASE. SHE VERY MUCH WISHES THERE WAS  
25 SOME WAY TO GO BACK AND UNDO THIS. SHE SAYS SHE HAD

1 KNOWN FRANKIE BEFORE THIS. SHE HAD ALWAYS BEEN KIND TO  
2 HIM, SHE HAD NO ILL WILL TOWARD HIM, AND SO THERE IS NO  
3 EXPLANATION AS TO -- I MEAN, THIS WASN'T SOME LONG BUILT  
4 UP GRUDGE OR ANYTHING, IT WAS SOMETHING THAT HAPPENED  
5 THAT NIGHT ON THE SPUR OF THE MOMENT. ALCOHOL WAS  
6 INVOLVED. IT JUST WASN'T ANY EXCUSE FOR IT. BUT SHE HAS  
7 LEARNED A BIG LESSON THROUGH ALL OF THIS. SHE KNOWS  
8 NOW, OF COURSE, HAVING SPENT A LITTLE BIT OF TIME, I  
9 THINK AROUND SEVEN OR EIGHT MONTHS IN JAIL, WHAT IT'S  
10 LIKE TO BE WITHOUT HER CHILDREN DURING THIS PERIOD OF  
11 TIME, AND SHE KNOWS THAT WHATEVER SENTENCE YOU IMPOSE ON  
12 HER TODAY IS GOING TO CAUSE HER TO CONTINUE TO BE  
13 WITHOUT THEM. THEY -- IT'S SOMETHING I WANTED TO ASK  
14 THE COURT TO TAKE INTO CONSIDERATION, SHE DOES HAVE THE  
15 FOUR SMALL CHILDREN THAT BASICALLY WHILE SHE WAS  
16 INCARCERATED AND WHEN SHE WILL BE INCARCERATED AGAIN  
17 PURSUANT TO YOUR SENTENCE, WILL LIVE WITH HER MOTHER WHO  
18 IS AN OLDER PERSON WHO ALSO HAS SOME HEALTH PROBLEMS.  
19 WE WOULD ASK YOU TO TAKE INTO CONSIDERATION THAT WHILE  
20 SHE KNOWS SHE HAS A DEBT TO PAY TO SOCIETY, THAT YOU  
21 HAVE MERCY ON HER. SHE HAS APOLOGIZED, SHE'S TOLD ME  
22 THAT SHE'S VERY SORRY ABOUT IT, I THINK SHE'S WILLING TO  
23 ALSO IN A MINUTE TELL THAT TO THE COURT AND TO THE  
24 FAMILY, FRANKIE'S FAMILY. BUT SHE DOESN'T HAVE AN  
25 EXCUSE OR REALLY AN EXPLANATION FOR WHAT HAPPENED OTHER

1 THAN IT JUST GOT OUT OF HAND, AND SOME ALCOHOL WAS  
2 INVOLVED IN IT. IT CERTAINLY WASN'T THE SMART THING TO  
3 DO, BUT IT WASN'T -- I KNOW THAT THEY'VE SORT OF  
4 CHARACTERIZED IT AS HER BEING AN INSTIGATOR. I DON'T  
5 THINK THAT THIS WAS SOMETHING THAT TOOK ANY, THIS WASN'T  
6 SOME LONG PLANNED OUT THING, IT'S SOMETHING THAT JUST  
7 HAPPENED AND SNOWBALLED BEYOND HER ABILITY TO CONTROL  
8 WHAT EVERYBODY ELSE DID, BUT SHE CERTAINLY COULD HAVE  
9 CONTROLLED WHAT SHE DID. AND THE PART SHE DID WAS, SHE  
10 DID STRIKE HIM THE ONE BLOW. AND WHETHER IT WAS ONE  
11 BLOW OR TEN BLOWS, THAT MAKES HER CULPABLE. AND I'VE  
12 EXPLAINED THAT TO HER UNDER THE LYNCHING STATUTE, THAT  
13 WHEN PEOPLE ACT TOGETHER IN THIS ACT THAT EVERYBODY IS  
14 ACTING TOGETHER. AND SHE UNDERSTANDS THAT THAT'S WHAT  
15 SHE'S PLEADING TO. AND SHE PLEADING FREELY AND  
16 VOLUNTARILY. WE'VE TALKED ABOUT THAT AND SHE  
17 UNDERSTANDS THAT THIS IS SOMETHING THAT SHE NEEDS TO DO  
18 TO START THE PROCESS OF LETTING NOT ONLY THE COURT KNOW  
19 AND THE STATE KNOW THAT SHE'S SORRY FOR HER ACTS, BUT  
20 ALSO THE FAMILY OF THE VICTIM. SHE DOES HAVE SOME  
21 THINGS SHE'S LIKE TO SAY TO YOU, BUT WE WOULD ASK YOU TO  
22 TAKE ALL THOSE THINGS INTO ACCOUNT, AND I KNOW THAT THE  
23 CO-DEFENDANT WHO WERE INVOLVED IN THE MAJOR PART OF THE  
24 BEATING GOT A TEN YEAR SENTENCE. WE WOULD ASK YOU TO  
25 CONSIDER SOMETHING LESS THAN THAT, BUT I UNDERSTAND THAT

1 IT'S TOTALLY IN YOUR HONOR'S DISCRETION.

2 THE COURT: YES, MA'AM, DID YOU WANT  
3 TO SAY SOMETHING?

4 DEFENDANT RISHER: YES, SIR.

5 THE COURT: ALRIGHT.

6 DEFENDANT RISHER: I WOULD LIKE TO  
7 THANK -- I WOULD LIKE TO FIRST APOLOGIZE TO THE FAMILY  
8 OF MR. FRANK FOR THE PAIN THAT I HAVE CAUSED THE FAMILY.  
9 I AM VERY SORRY. I AM ALSO SORRY FOR WASTING THE  
10 COURT'S TIME WITH MY ACTIONS. I'D LIKE TO THANK MY  
11 ATTORNEY FOR PROVIDING ME WITH THE BEST DEFENSE  
12 POSSIBLE. I THANK THE PEOPLE FOR ALLOWING ME TO SUBMIT  
13 A GUILTY PLEA ON MY BEHALF. IN THE INTEREST OF MY FOUR  
14 LITTLE CHILDREN WHO ARE IN GRADE SCHOOL, I PUT MYSELF ON  
15 MERCY OF THIS COURT AND I ASK YOUR HONOR TO SENTENCE ME  
16 FOR THE GIVEN CHARGE. I PRAY THAT YOU ALLOW THE SPIRIT  
17 OF GOD TO LEAD YOU IN YOUR EFFORTS. I THANK YOU VERY  
18 MUCH, YOUR HONOR.

19 THE COURT: THANK YOU, MA'AM.

20 SIDNEY RISHER: I'M LYNETTE'S OLDEST  
21 BROTHER AND - - -

22 THE COURT: YOUR NAME, PLEASE?

23 SIDNEY RISHER: SIDNEY RISHER.

24 THE COURT: ALRIGHT, SIR.

25 SIDNEY RISHER: I LIVE IN COLUMBIA,

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SOUTH CAROLINA.

THE COURT: YES, SIR.

SIDNEY RISHER: AND I'M HER OLDEST BROTHER. AND WE HAVE, MY MOTHER WILL BE KEEPING THE KIDS. AND SHE HAS BEEN KEEPING THEM BUT SHE IS NOT ABLE TO REALLY PROVIDE WHAT THEY NEED. AND I REALLY WANT TO APOLOGIZE TO THE FAMILY FOR WHAT HAS HAPPENED. THIS IS ACTUALLY MY FIRST TIME COMING UP WITH THE INCIDENT, BUT I REALLY FEEL MORE SYMPATHY FOR THE KIDS BECAUSE OF THE SCHOOLING, AND SHE HAS DID EIGHT MONTHS ALREADY WITHOUT THEM. AND WHEN SHE GOT, I THINK SHE LEARNED QUITE A BIT THE EIGHT MONTHS SHE SERVED THERE IN THE COUNTY JAIL. SO, I JUST BEG THAT IF YOU COULD ALLOW HER TO GET BACK WITH THEM AS QUICKLY AS POSSIBLE.

THE COURT: ALRIGHT, THANK YOU, SIR.

MR. HUTTO: YOUR HONOR, I WOULD ADD THAT SHE'S GOT NO PRIOR RECORD FOR ANYTHING, I MEAN, IT'S JUST, YOU KNOW, IT'S NOT LIKE SHE COMES BEFORE YOU WITH SOME TRACK RECORD OF BEING IN SCRAPES AND SCUFFLES AND ALL DURING THAT TIME. I ASK YOU TO TAKE THAT INTO ACCOUNT ALSO.

THE COURT: ALRIGHT. WELL, THIS CERTAINLY IS A TRAGEDY. THE CHILDREN IN THIS CASE ARE VICTIMS JUST LIKE MR. ZIMMERMAN IS A VICTIM IN THE CASE. THERE ARE NO WINNERS.

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SENTENCE OF THE COURT

THE SENTENCE OF THE COURT IS THAT  
YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS  
FOR A PERIOD OF NINE YEARS.

YOU GET CREDIT FOR THE TIME THAT  
YOU'VE SERVED.

GOOD LUCK TO YOU, MA'AM.

MR. HUTTO: THANK YOU, YOUR HONOR.

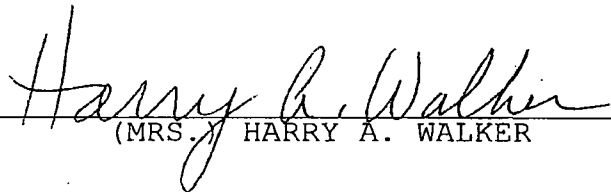
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CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE FIFTEENTH-SIXTEENTH DAYS OF SEPTEMBER, 2008.

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

DATE: FEBRUARY 2, 2010

  
\_\_\_\_\_  
(MRS. HARRY A. WALKER

FORM 5

STATE OF SOUTH CAROLINA )  
 County of ORANGEBURG SC )  
LYNETTE BISHOP - 330633 )  
 Full name and prison number (if any) of Applicant )

2009-CP-38-1527  
 IN THE COURT OF COMMON PLEAS

v.

State of South Carolina )  
 )  
 )  
 )

APPLICATION FOR  
 POST-CONVICTION RELIEF

INSTRUCTIONS-READ CCAREFULLY

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 of 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 established 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 Orangeburg County Detention Center

---

2. Name and location of Court which imposed sentence Orangeburg County Courthouse

---

3. Name(s) of co-defendant(s) (if any) James Earl Ray, Jr. et al.

---

4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

- (a) 2006-05-38-0253
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) November 29, 05 9 years
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty A
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

Attorney didn't file it, imposition of sentence

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

- (a) the names of each Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) Lawyer didn't file my appeal.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) I did not participate in the crime

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) I wasn't involved in the crime

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered yes to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/A

- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

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

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

- i. N/A
- 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) My lawyer represented me and he told me I did not
- (b) state any of the grounds.
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? My lawyer told me I did not
- (b) your trial, if any? My lawyer told me I did not

(c) your sentencing? plea

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Misrepresented & misled

(e) preparation, presentation or consideration of any petitions, motions or applications

with respect to this conviction, which you filed? I didn't not prepare  
while the lawyer was present with lawyer of the court

18. If you answered yes to one or more parts of (17), list: Not enough time to prepare  
to my cell

(a) the name and address of each attorney who represented you:

i. Brad Hutto @ Williams + Williams Law Firm  
190 St. Paul St. Orangeburg SC 29116

ii. \_\_\_\_\_

\_\_\_\_\_

iii. \_\_\_\_\_

\_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

i. \_\_\_\_\_

\_\_\_\_\_

ii. \_\_\_\_\_

\_\_\_\_\_

iii. \_\_\_\_\_

\_\_\_\_\_

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

I hope and pray to get a fair trial. I  
didn't feel that I was represented  
properly and fairly.

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

No

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS

2009-CP-38-1527

Lynnette Risher, #330683,

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN AND MOTION TO DISMISS**  
(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 16, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted at the May 2006 term of the Orangeburg County Grand Jury for Lynching – 2<sup>nd</sup> Degree (2006-GS-38-0253). He was represented by C. Bradley Hutto, Esquire. On September 16, 2008, the Applicant pled guilty before the Honorable James C. Williams, Jr. Applicant was sentenced to nine (9) years imprisonment. Applicant did not appeal her conviction and sentence.

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

Department of Corrections, and the plea transcript.<sup>1</sup> The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "I did not participate in the crime."
  - a. "I wasn't involved in the crime."

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

## III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

---

<sup>1</sup> The transcript has been ordered but not yet received. The same will be forwarded upon receipt.

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Sufficiency of evidence may not be challenged through collateral review. Therefore, the Court should summarily dismiss this application for post-conviction relief.

IV.

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

V.

WHEREFORE, having made its Return, the State requests that the application be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160.

*[Signatures on next page.]*

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By: Mary S. Williams  
ATTORNEYS FOR RESPONDENT

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

Dec. 14, 2009.

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF ORANGEBURG

CIRCUIT COURT  
2009-CP-38-01527

3  
4 LYNETTE RISHER,  
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,  
8 Respondent.

9 Post Conviction Relief Hearing  
10 Heard on Wednesday, December 8, 2010  
11 Orangeburg, South Carolina

12 BEFORE:

13 THE HONORABLE EDGAR W. DICKSON  
14  
15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:  
18 Charles T. Brooks III, Esq.

19 Counsel on Behalf of the Respondent, State of SC:  
20 Mary Shannon Williams, Esq.  
21  
22

23 Cheri L. Young, RPR  
24 Circuit Court Reporter  
25 P O Box 1154  
Aiken, SC 29802-1154

EXAMINATION INDEX

LYNNETTE RISHER  
BY THE COURT . . . . . 3

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON WEDNESDAY, DECEMBER 8, 2010 AT 3:15 P.M.:

2 THE COURT: Mr. Brooks, you represent Lynette  
3 Risher?

4 MR. BROOKS: That's correct, Judge.

5 THE COURT: And you have met with her prior to  
6 the hearing?

7 MR. BROOKS: I have.

8 THE COURT: All right, sir. What is her position  
9 with regard to the PCR application?

10 MR. BROOKS: Judge, she indicates it's her desire  
11 to withdraw her application. The reason being is she got,  
12 like, nine years and of course she could face 20 on the  
13 lynching.

14 Obviously I explained to her that the only remedy  
15 that she could get on PCR is to get a new trial. There's  
16 no such thing as a sentence modification or a reduction of  
17 her sentence. Be that as it may, it's her desire to  
18 withdraw her application.

19 THE COURT: Thank you, sir. Ms. Risher, how old  
20 are you, Ms. Risher?

21 THE APPLICANT: I'm 33 years old.

22 THE COURT: And how far did you go in school?

23 THE APPLICANT: Tenth grade.

24 THE COURT: Tenth grade. Were you working  
25 anywhere or doing anything like that before you went to

## LYNNETTE RISHER - EXAMINATION

1 jail?

2 THE APPLICANT: Yes, sir.

3 THE COURT: What kind of work did you do?

4 THE APPLICANT: Early childhood education. I had  
5 to drop out of school and I went back and got my GED. And  
6 I was teaching at elementary school, fifth grade math.

7 THE COURT: Ms. Risher, your attorney has advised  
8 me that you wish to withdraw your PCR application. Is  
9 that correct?

10 THE APPLICANT: Yes, sir.

11 THE COURT: Ma'am?

12 THE APPLICANT: Yes, sir.

13 THE COURT: And before I do it, do you mind  
14 raising your right hand, please, ma'am?

15 LYNNETTE RISHER, having been duly sworn, was  
16 examined and testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q. I've asked you a couple questions before I placed you  
20 under oath, but you gave me truthful answers to those  
21 questions. Is that correct?

22 A. Yes, sir.

23 Q. You have indicated to me that you wish to withdraw  
24 your PCR application.

25 A. Yes, sir.

## LYNNETTE RISHER - EXAMINATION

1 Q. Your attorney has advised you, correctly, that PCR is  
2 not for sentence reduction, it's the right to get a new  
3 trial on this matter.

4 A. Yes, sir. It is my first time hearing that from my  
5 attorney.

6 Q. No. I understand that. I'm not upset with you about  
7 that. I want to make sure you understand that. Okay?  
8 But I want to make sure you understand that if you  
9 withdraw your PCR, that's it. You don't get to file  
10 another PCR later on.

11 Do you understand that this is final? Ma'am?

12 A. Yes, sir.

13 Q. Okay. Now, are you under the influence of any type of  
14 drugs here today?

15 A. No, sir.

16 Q. You're thinking clearly?

17 A. Yes, sir.

18 Q. You have understood everything Mr. Brooks has told you  
19 when he went over your PCR application with you. Is that  
20 correct?

21 A. Well, we didn't went over everything but some of the  
22 things he stated; yes, sir.

23 Q. Do you have any questions for the Court? For me?

24 A. No, sir.

25 Q. Okay. It's your wish to have your PCR withdrawn?

## LYNNETTE RISHER - EXAMINATION

1 A. Yes, sir.

2 Q. Ma'am?

3 A. Yes, sir.

4 Q. Okay. Has anybody threatened you to get you to  
5 withdraw your PCR?

6 A. No, sir. This is my first time speaking with him. He  
7 didn't say -- I mean, he didn't say if you withdraw this,  
8 that and the other. I'm just withdrawing, you know, I'm  
9 thinking I'm going to be through with it.

10 Some of the stuff that he's, like, saying that he was  
11 talking to me, he had me -- I'm thinking that, well, when  
12 I like talked to other people, like, when was like coming  
13 back and forth, I thought that the PCR, the understanding  
14 that I got clearly from the PCR is that I come to see  
15 when, I come to court to get my time reduced.

16 Q. Yes, ma'am. And I want to make it clear you do not  
17 get your time reduced at a PCR hearing. What happens  
18 is -- did you plead guilty in your case?

19 A. Well, I took a non-guilty plea.

20 Q. Okay.

21 MS. WILLIAMS: She entered an Alford plea.

22 THE APPLICANT: I mean, I took a guilty plea.

23 BY THE COURT:

24 Q. Yes, ma'am. And you were facing up to 20 years in  
25 jail if you were convicted at trial?

## LYNNETTE RISHER - EXAMINATION

1 A. He didn't -- he didn't say all that. He just told me  
2 to take a plea for three years and that's what I did.

3 Q. But you're aware that if you got back, you wouldn't  
4 get a reduction, not necessarily a reduction, you'd get a  
5 trial. And you're facing up to the maximum of 20 years on  
6 this charge. Is that correct, Mr. Brooks?

7 MR. BROOKS: That's my understanding, right.

8 MS. WILLIAMS: It appears that, yes, sir, she had  
9 a charge of lynching in the second degree. It also looks  
10 like there was a direct indictment for assault and battery  
11 with intent to kill. So it really could have been  
12 potentially more than 20.

13 BY THE COURT:

14 Q. And you pled guilty or you did an Alford plea --

15 A. Yes, sir.

16 Q. -- to the lynching and they dropped the assault and  
17 battery charge?

18 A. Yes, sir. That's what the last lawyer told me. He  
19 told me to take the guilty plea for three years for  
20 assault and battery -- I mean, for the lynching.

21 Q. Okay.

22 A. That's what I did.

23 Q. If I granted the PCR you would be tried -- you could  
24 be tried on both the assault and battery and the  
25 lynching. Do you understand that?

## LYNNETTE RISHER - EXAMINATION

1 A. Yes, sir.

2 Q. Understanding all of that, do you still wish to  
3 withdraw your PCR application?

4 A. Yes, sir.

5 Q. Okay. All right. I will grant your request,  
6 Ms. Risher. Okay?

7 A. Yes, sir.

8 Q. Good luck to you.

9 A. Thank you.

10 THE COURT: Okay. And, Ms. Williams, if you'd do  
11 that order for me.

12 MS. WILLIAMS: Yes, sir.

13 THE COURT: Thank you, ma'am. I appreciate it.

14 THE APPLICANT: Okay.

15 END OF PROCEEDINGS: 3:17 P.M.

16 \* \* \* \*

17 CERTIFICATE OF REPORTER

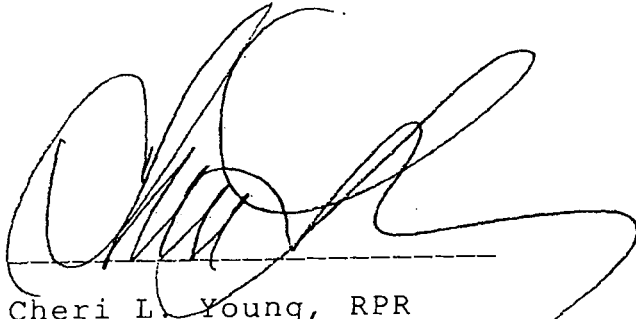
18 I, Cheri L. Young, Registered Professional Reporter,  
19 and Official Court Reporter for the State of South  
20 Carolina, do hereby certify that the foregoing transcript  
21 of proceedings heard on Wednesday, December 8, 2010, in  
22 Orangeburg, South Carolina, was reported by me using  
23 machine shorthand and realtime computer-aided translation  
24 and is a true, accurate and complete transcript of the  
25 proceedings had and evidence introduced in the hearing of

LYNNETTE RISHER - EXAMINATION

1 the matter.

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

4 I have hereunto set my hand this Thursday, the 10th  
5 day of February, 2011.

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9 Cheri L. Young, RPR  
10 Official Court Reporter  
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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF ORANGEBURG

2009-CP-38-01527

3  
4  
5 LYNETTE RISHER,  
6 Applicant,

7 -vs-

TRANSCRIPT OF RECORD

8 STATE OF SOUTH CAROLINA,  
9 Respondent.

10 Post Conviction Relief Hearing

11 Heard on Thursday, December 1, 2011

12 Saint George, South Carolina

13 BEFORE:

14 THE HONORABLE DIANE SCHAFER GOODSTEIN

15 APPEARANCES:

16  
17 Counsel on Behalf of the Applicant:  
18 Charles T. Brooks, III, Esq.

19  
20 Counsel on Behalf of the Respondent, State of SC:  
21 Mary S. Williams, Esq.

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

EXHIBIT INDEX

State's		MAR	ADM
1	Letter dated November 8, 2006	34	34

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## EXAMINATION INDEX

LYNETTE RISHER

DIRECT BY MR. BROOKS

6

CROSS BY MS. WILLIAMS

16

CHARLES BRADLEY HUTTO

DIRECT BY MR. BROOKS

21

CROSS BY MS. WILLIAMS

29

1 ON THURSDAY, DECEMBER 1, 2011 AT 4:14 P.M.:

2 THE COURT: We're on the record with Miss Lynette  
3 Risher as I understand and she is represented by  
4 Mr. Brooks.

5 Ms. Williams, are you going to give me the procedural  
6 history?

7 MS. WILLIAMS: Yes, ma'am. Ms. Risher was indicted  
8 for lynching in the second degree. She was represented by  
9 Mr. Hutto. She pled guilty to that charge in September of  
10 2008, and she was sentenced to nine years.

11 There was not an appeal from that sentence and she's  
12 here today with Mr. Brooks. Her PCR was filed back in  
13 2009. There was a hearing on that before Your Honor  
14 actually in June of 2010, at which time she was  
15 represented by Mr. Jay Jackson.

16 And during the course of that hearing it became known  
17 that Mr. Jackson had represented one of her  
18 co-defendants. So we relieved Mr. Jackson and had another  
19 attorney appointed.

20 And that's how we get here today.

21 THE COURT: Very well. May I have the packet, please,  
22 on Miss Risher?

23 MR. BROOKS: There is some additional information.

24 THE COURT: Yes.

25 MS. WILLIAMS: Do you want me to add on the

LYNETTE RISHER - DIRECT

1 additional?

2 MR. BROOKS: You can go ahead and add on.

3 THE COURT: Okay.

4 MS. WILLIAMS: In December of 2010, Ms. Risher  
5 withdrew her application. Subsequent to the hearing she  
6 passed a message along to Judge Dickson that she didn't  
7 mean to withdraw her application that day.

8 So we came back in March of 2011, March 8th, 2011,  
9 and -- to withdraw her withdrawal. And over the State's  
10 opposition, Judge Dickson allowed her to go ahead and  
11 proceed again today -- which brings us here today.

12 I guess that's a little bit more accurate.

13 THE COURT: Okay. Got it. Okay.

14 MR. BROOKS: Are you ready, Judge?

15 THE COURT: Very well. Do you have any preliminary  
16 matters?

17 MR. BROOKS: That's it.

18 THE COURT: Call your first witness, please.

19 MR. BROOKS: We call Ms. Risher to the stand.

20 THE COURT: Okay.

21 LYNETTE RISHER, having been duly sworn, was examined  
22 and testified as follows:

23 THE COURT: Please be seated and when you are seated  
24 state your full name for the record, please.

25 THE APPLICANT: Lynette Risher.

LYNETTE RISHER - DIRECT

1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MR. BROOKS:

4 Q. Ms. Risher, you had Attorney Hutto represent you on  
5 this case; is that correct?

6 A. Yes, sir.

7 Q. And you ended up pleading guilty to that; is that  
8 correct?

9 A. Yes.

10 Q. And that's why you filed your application for post  
11 conviction relief because you -- that was not your intent  
12 to plead; is that correct?

13 A. Exactly. Yes, yes.

14 Q. Okay. And you wanted an opportunity to tell the Court  
15 about Mr. Hutto's representation and why your plea should  
16 be overturned; is that correct?

17 A. Yes.

18 Q. And tell us what, what happened. Tell us the  
19 circumstances behind your plea and why that's not what you  
20 intended to do.

21 A. Mr. Hutto had told me to take a plea for one thing and  
22 I end up with another thing. He had told me to take a  
23 plea for three years and I end up with more time that I  
24 supposed to end up with.

25 And also on top of that, he was not a good attorney

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1 for me. And that was like the same thing I was --

2 THE COURT: I can't understand you. You need to speak  
3 up a little bit. I can't put my volume up any more. And  
4 slow down just a little bit. Okay? Thank you.

5 THE APPLICANT: Okay. And, do you want me to start  
6 over?

7 THE COURT: Well, I heard you say something about  
8 Mr. Hutto wasn't my lawyer. He was not your lawyer or he  
9 was?

10 THE APPLICANT: He was; yes, ma'am.

11 THE COURT: Take it from right there. Mr. Hutto was  
12 my lawyer and.

13 THE WITNESS: Mr. Hutto was my attorney and he had  
14 told me to take a plea for three years and I end up with  
15 more time.

16 Mr. Hutto wasn't the type of lawyer that, you know,  
17 take me step through the step and let me know what was  
18 going on. And I explain to him that I never been in  
19 trouble and this was my first time, you know, getting into  
20 anything.

21 And I feel that I was, you know, told to do something  
22 that he know that I had need more guidance and I didn't  
23 understand. It was like he didn't took the time to walk  
24 me through what was going on. I was like misled.

25 And it's just like the same thing also with

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1 Mr. Brooks, also. I don't get a clear understanding from  
2 him. I mean, I'm getting a run around and I feel that,  
3 you know, why should I jeopardize myself again with  
4 Mr. Brooks also. I mean, it's like I'm getting treated  
5 the same way with Mr. Brooks as the same way I did with  
6 Mr. Hutto back in August when I was in the courtroom. I  
7 left them know that, that I didn't feel comfortable with  
8 Mr. Brooks also when I was in Orangeburg County.

9 MR. BROOKS: Just for clarification. Judge Dickson  
10 heard that matter and kept me on the case, Judge.

11 THE COURT: I understand. Thank you.

12 BY MR. BROOKS:

13 Q. Now, Ms. Risher, what did you not understand when  
14 Mr. Hutto was representing you?

15 A. It was, it was a lot that I didn't understand. I  
16 mean, like I said, this was my first time being into  
17 anything. And I feel that if he was my attorney, a  
18 attorney should have had, you know, let me know more about  
19 what I was facing.

20 Q. Well, let me --

21 A. You know, don't tell me to -- just like, you're at a  
22 car lot or any place and you're looking to buy, you buying  
23 this brand new car. And this -- your salesperson coming  
24 over telling you this car is this, this car is that. But,  
25 you know, don't know. You're just going on what they tell

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1 you. And then you're on the way home and this car broke  
2 down on you.

3 Q. Let me ask you this.

4 A. I feel --

5 Q. Let me ask you this to clarify. What do you know now  
6 that you did not know then when you pled that would have  
7 caused you to do something totally different like go to  
8 trial, not take a plea?

9 A. Okay. I was looking to do my three years and go  
10 home. When he said nine years, it was like where, where  
11 did all of this happen at. And he was, like, he was going  
12 to do an appeal for me to get back into court but within  
13 10 days I hadn't heard anything.

14 Q. Now --

15 A. Okay. After that, by listening to, like, other  
16 inmates once I got in the yard, that's how I know about a  
17 PCR, that is getting me back in court and they can  
18 possibly help me with my time.

19 So that's when this young lady help me write the Clerk  
20 of Court to ask for a PCR package.

21 And I heard the inmates talk about a PCR and it's  
22 like, you know --

23 Q. Let me ask you this, Ms. Risher: Do you recall what  
24 you pled guilty to?

25 A. I pled guilty, I took a plea to lynching second.

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1 Q. Now, do you know -- the only thing and I think we've  
2 talked about this, but I want to make sure we're clear.  
3 Do you know the only thing that Judge Goodstein could do  
4 is to grant you a new trial and in essence start over?  
5 She can't cut your time. She can't make you parole  
6 eligible any sooner. She can only give you a new trial  
7 and start over. And if you don't believe me, you can ask  
8 her.

9 THE COURT: It is important that you understand. And  
10 I want to be sure that you understand that. But before I  
11 say anything to you, this is your day and I'm here and I'm  
12 listening. Okay?

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: That's the first and foremost. Okay?

15 THE APPLICANT: Yes, ma'am.

16 THE COURT: And I don't mind sharing this information  
17 with you, but you must understand I'm only sharing this  
18 information with you just because knowledge is power. I  
19 don't want -- I'm not going to share this information with  
20 you for any other reason. Do you hear me?

21 THE APPLICANT: Yes, ma'am.

22 THE COURT: Not to change your mind, not to do another  
23 thing. Okay?

24 THE APPLICANT: Yes, ma'am.

25 THE COURT: Are we clear with one another?

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1 THE APPLICANT: Yes, ma'am.

2 THE COURT: Okay. Because here's what I'm hearing and  
3 then I'll tell you. What I am hearing is that you thought  
4 when you pled that you were going to receive a sentence of  
5 three years.

6 THE APPLICANT: Yes.

7 THE COURT: That's what I'm hearing. Okay?

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: Okay. Okay. What Mr. Brooks is telling  
10 you is that in a PCR application, which is what you have  
11 filed -- apparently you learned about that?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: And there was someone that helped you  
14 understand that and helped you fill out a PCR application  
15 which is a good thing.

16 But, what the law lets me do, meaning I might want to  
17 do lots of things but I have to live within the bounds of  
18 the law. I mean, if the Judge does live outside the  
19 bounds of the law, then we got a mess; right?

20 THE APPLICANT: Yes, ma'am.

21 THE COURT: One of the reliefs that's available for --  
22 not one of them. The relief that is available for a Judge  
23 in what's called a post conviction relief application,  
24 which is what you have filed, is to grant someone a new  
25 trial.

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1           And the reason that that happens is because there have  
2 been constitutional violations, either to the plea or  
3 trial. Typically and often it's called the ineffective  
4 assistance of counsel, which is what you're talking  
5 about. I thought it was going to get -- it was my  
6 understanding that the plea was for three years and the  
7 next thing I hear is nine years.

8           See what I'm saying?

9           THE APPLICANT: Yes, ma'am.

10          THE COURT: What the law allows me to do in a PCR,  
11 with one exception and I'm going to go over that in a  
12 minute because a lawyer mentioned it, and I guess it could  
13 really be considered an exception, but that's the remedy  
14 that the law allows me to do is set aside either the plea  
15 or the conviction if there was a trial, and then allow the  
16 person a new trial. Okay?

17          THE APPLICANT: Okay.

18          THE COURT: Okay. The reason that that gets to be  
19 important -- and again, I'm just explaining. I'm not  
20 suggesting. I want you to do exactly -- you are the  
21 captain of your ship. Do you hear me?

22          THE APPLICANT: Yes, ma'am.

23          THE COURT: You're not losing control of being the  
24 captain of your ship, but one of the things that lawyers  
25 worry about in a PCR is that if somebody starts anew and

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1 they've had a plea negotiation, that the person  
2 understands that they do start anew. And if there were  
3 two charges, then they can potentially stand trial on two  
4 charges.

5 In other words, you go back to go. Which is really  
6 fair if you think about it, because if you either had a  
7 trial or you pled guilty and your constitutional rights  
8 were violated, you ought to go back to go. Everybody  
9 ought to wipe that clean and go back to go which is what a  
10 PCR does. See what I'm saying?

11 THE APPLICANT: Yes, ma'am.

12 THE COURT: So that's what Mr. Brooks is talking  
13 about. And that will, oftentimes PCR lawyers worry about  
14 their clients understand that, that the Judge's hands are  
15 tied. I can't change the sentence but if it makes sense  
16 to you as I've just explained, it makes sense to me; if  
17 there's a constitutional violation, all of that needs to  
18 be wiped clean and you go back again.

19 Now having said that, there was a lawyer yesterday  
20 that pointed out, you know, well, Judge, say there were  
21 two sentences, right. And say there was a plea, and say  
22 that the Judge accidentally said, gave somebody five years  
23 for something and then they gave them five years on the  
24 other charge and they ran them concurrent but on one  
25 charge in reality it really wasn't, say, a five-year

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1 charge but the other one was like a three-year charge and  
2 they just made a mistake. I think you could correct that  
3 one. It wouldn't make any difference, if you see what I'm  
4 saying.

5 THE APPLICANT: Yes, ma'am.

6 THE COURT: You would just go from the five to the  
7 three and correct it. We might be able to do that in a  
8 PCR, but that's just correcting, if you will, an error.  
9 Because you can't give somebody a five-year sentence on a  
10 three-year charge. You know what I'm saying? The maximum  
11 is three, you can't get any more than three years. Do you  
12 see what I'm saying?

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: So in those circumstances, one of the  
15 lawyers, they were talking to me yesterday and said, I  
16 think you can probably change it in that circumstance but  
17 that's the only way you could ever change the sentence.

18 Otherwise, if there's constitutional violations, which  
19 is what post conviction relief is about, it's like you  
20 wipe the slate clean and you go back to go. In other  
21 words, whatever the charges were that were viable before  
22 could be viable again. And everybody just goes back and  
23 starts over.

24 Does that make sense?

25 THE APPLICANT: Yes, ma'am.

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1 THE COURT: Do you have any questions of me or of  
2 Mr. Brooks about that?

3 THE APPLICANT: No, ma'am.

4 THE COURT: This is really important that you just  
5 understand, understand where you are. Okay?

6 THE APPLICANT: Yes, ma'am.

7 THE COURT: All right. Thank you. Mr. Brooks?

8 BY MR. BROOKS:

9 Q. Now, Ms. Risher, you do understand that if Judge  
10 Goodstein does grant that based on what you had, you could  
11 possibly on the second go round, if you get a second go  
12 round, you could get more time.

13 Do you understand that that possibility exists? I'm  
14 not saying that's going to happen, but do you understand  
15 that that possibility does exist?

16 A. (Nods head.)

17 THE COURT: And you answered yes?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Is that your answer? Because I know what  
20 you mean because you nodded your head up and down. I know  
21 what you mean, but I need for Ms. Cher to be able to take  
22 down the answer. I know what you mean but I just want the  
23 record to be clear. So if you'd just answer with your  
24 voice.

25 THE APPLICANT: Yes, ma'am.

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1 THE COURT: Good volume there. Thank you so much.

2 All right.

3 BY MR. BROOKS:

4 Q. Do you have anything else you want to say?

5 A. Huh-uh.

6 Q. And knowing what I've told you along with what Judge  
7 Goodstein just explained to you, is it still your desire  
8 to have your PCR granted and get a new trial and start  
9 over, as Judge Goodstein said, start all the way over at  
10 go?

11 A. Yes.

12 Q. Okay. Is there anything else you want to add?

13 A. Not right now.

14 THE COURT: Not right now?

15 THE APPLICANT: (Nods head.)

16 THE COURT: Thank you so much.

17 MR. BROOKS: Answer any questions of the Attorney  
18 General.

19 THE COURT: I want you to listen carefully to  
20 Ms. Williams and answer her questions. Okay? Cross-  
21 examination.

22 CROSS-EXAMINATION

23 BY MS. WILLIAMS:

24 Q. Ms. Risher, can you tell me when Mr. Hutto began  
25 representing you? Like, just the year even?

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1 A. I can't exactly remember the year that it happened but  
2 I know I went to prison in 2008.

3 Q. Okay. And this incident occurred in 2005, the end of  
4 2005. Does that sound right?

5 A. Maybe. Probably.

6 Q. Okay. Do you recall meeting with Mr. Hutto and  
7 talking about some witness statements that had been made  
8 against you?

9 A. Yes, ma'am.

10 Q. Okay. And did he ever tell you -- because you were  
11 actually looking at two charges at first; is that correct?

12 A. When I got in his office he had told me but when I had  
13 got locked up it was only one.

14 Q. Okay. And he told you you were looking at up to 20  
15 years on one of those charges?

16 A. Yes, ma'am. That's the charge that he told me.

17 Q. Okay. And did you hear Judge Williams when he said  
18 during the plea that you faced up to 20 years on the  
19 charge you were pleading to as well; right?

20 A. He told me and I went and signed the paper, he said  
21 three years.

22 Q. Who did, Judge --

23 A. Williams.

24 Q. Judge Williams told you you were getting three years?

25 A. Yes, ma'am. I had signed, I want to believe I signed

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1 a paper that Friday and I was going -- either that  
2 Friday and I was going -- I sign the paper that Friday and  
3 went to Court that Tuesday or I signed that paper on  
4 Monday and went to Court that Tuesday, but it was a paper  
5 for three years that I signed.

6 And the reason why I didn't have Court that same day  
7 was because my child was sick and the Judge had allowed me  
8 to take my child to the doctor. But when I got there the  
9 doctor had went out and I called Mr. Hutto to let him know  
10 but he told me I had to come so my child hadn't got seen.

11 Q. You actually came and signed a paper one day and then  
12 you had to go and take care of your child?

13 A. Yes, ma'am.

14 Q. And then you came and pled guilty after you talked to  
15 the Judge in court on another day?

16 A. I signed the paper one day and, like, I think I signed  
17 it that Friday and I came to court that Monday or I signed  
18 it that Monday and came to court that Tuesday.

19 Q. And then he sentenced you the next day?

20 A. The same that I came to court.

21 Q. Okay. So do you recall when Judge Williams said,  
22 you're facing up to 20 years and you told him -- and he  
23 told you there was a minimum of three as well?

24 A. He told me to take the plea for three years and sign a  
25 paper.

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1 Q. Who told you that, Mr. Hutto or the Judge?

2 A. Brad Hutto.

3 Q. Okay. I'm sorry. I was confused because --

4 A. Well, when you say Williams, you know, I figure you  
5 saying because you Williams as well.

6 Q. Okay. Thank you. Just straighten me up.

7 A. And that's what I was looking for at the time.

8 Q. Okay. Did Mr. Hutto ever communicate with you by  
9 letters? How did y'all stay in touch?

10 A. He wrote me a letter and he would call my brother.

11 Q. Okay. Did you --

12 A. Well, when I went to court that's the time that he had  
13 called my brother, but most of the time it was, like, when  
14 I came to court -- well it was, like, roll call, the  
15 people there would just let me know when to come back.

16 Q. And do you want to take this to trial because you were  
17 looking at trial the next week or the next couple of days;  
18 right?

19 A. I mean, trial as in next couple weeks. Like, how you  
20 mean?

21 Q. Did you --

22 A. Back then or?

23 Q. Back then. Yes, ma'am. I'm sorry.

24 THE COURT: No, no, you would not be going trial in a  
25 couple of weeks. That would be terrifying; wouldn't it?

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1 No, no, no. What she's asking you is at the time of your  
2 plea, did you understand that your trial was going to be  
3 in a couple of weeks.

4 I don't know. Do you know when it was going be?

5 THE APPLICANT: Well, I mean, I didn't actually -- I  
6 thought that, you know, when, like, he told me to sign a  
7 paper and I was going to do three years and just that. I  
8 didn't, you know, because like I said, I never, I never  
9 had went through none of this before.

10 BY MS. WILLIAMS:

11 Q. And Judge Williams asked you if anybody had made you  
12 any promises; is that correct?

13 A. Yes.

14 Q. Did you tell him you'd been promised a certain  
15 sentence?

16 A. He was the one that told me what to do. I mean, I  
17 hadn't talked to anyone else. I was just only going by  
18 what he had told me to do because he was an attorney and  
19 that's what I was doing, what he said.

20 Q. Did the Judge ask you if anybody made you any  
21 promises?

22 A. Yes, ma'am. I believe so.

23 Q. Did you tell the Judge, yep, I've been promised a  
24 certain sentence?

25 A. I told him that I was -- I told -- I was told that I

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1 was going to do three years, receive three years. And  
2 that's what I was looking to do, but I end up with more.

3 Q. But did you tell the Judge that when he asked you  
4 about that?

5 A. I believe I did. I'm not sure.

6 Q. Okay. I don't have any more questions, Your Honor.

7 THE COURT: Thank you. Redirect?

8 MR. BROOKS: No, ma'am.

9 THE COURT: All right. Thank you so much. You can  
10 come on back down.

11 THE APPLICANT: Okay.

12 THE COURT: And just come on back down. Call your  
13 next witness, please, Mr. Brooks.

14 MR. BROOKS: We call Attorney Brad Hutto.

15 CHARLES BRADLEY HUTTO, having been duly sworn, was  
16 examined and testified as follows:

17 THE COURT: You are Charles Bradley Hutto?

18 THE WITNESS: I am.

19 THE COURT: Your witness, Mr. Brooks.

20 DIRECT EXAMINATION

21 BY MR. BROOKS:

22 Q. Mr. Hutto, I might ask some of the questions that  
23 you've already answered.

24 A. That will be fine.

25 Q. How long have you been practicing?

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1 A. Close to 30 years.

2 Q. And you represented Ms. Risher in this case?

3 A. I did. I was appointed. This was a case in which  
4 there were multiple defendants. It seemed like half the  
5 bar in Orangeburg was involved in this case. She was the  
6 client that was appointed to me.

7 Q. And do you recall how long you had been on her case  
8 prior to the disposition?

9 A. Years, because I think it happened the end of 2005 and  
10 at least by the summer of 2006 some of her co-defendants  
11 were pleading guilty and two pled guilty and got 10-year  
12 sentences.

13 She was initially offered a cap of 13 years. That  
14 would have been in 2006. The case did not go to trial in  
15 2006. It came around to 2007. By then further  
16 negotiations and discussions, the cap moved to 10 years.  
17 And I lost touch with her at some point in time, whether  
18 by a move or a switch of phone numbers or  
19 miscommunication, I'm just not sure. But at some point in  
20 time she did not appear for a roll call. She later, I  
21 believe, was picked up pursuant to a bench warrant for  
22 failing to -- but I got back in touch with her then.

23 So she did stay incarcerated for a few months, maybe  
24 seven or eight months, like maybe between January and  
25 August, but we were scheduled -- when this came up, we

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1 were scheduled to go to court the following week.

2 Q. Where does three years come from?

3 A. That's the minimum. She was charged initially -- I  
4 think she was arrested on a lynching charge, but the State  
5 always viewed her as the ringleader. Whether rightly or  
6 wrongly, they always deemed her the ringleader.

7 And they told us if we did not plead to -- and they  
8 were going to give her the option of either assault and  
9 battery with intent to kill or lynching, but they both  
10 carried 20 years. So it really didn't matter.

11 But they told us if it went to trial they were going  
12 to try her on both. She was arrested on one and indicted  
13 or at least threatened to be indicted on two different  
14 charges.

15 Q. And three years is the minimum?

16 A. It's the minimum on the lynching, yes. And Judge  
17 Williams stated that in the courtroom that day.

18 And so, I mean, I know we had discussions of, you  
19 know, how much time am I going to do. The answer is, you  
20 have to do three years, that's the minimum.

21 But, no, there were opportunities for us to pick it.  
22 I mean, I think the State would have agreed to a  
23 negotiated sentence. We agreed just to basically plead  
24 straight up hoping that, based on things that were going  
25 to be said during the plea that the Judge might sentence

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1 her to less than what her co-defendants got which is what  
2 in fact happened.

3 They got ten years. Two of them got 10 years. She  
4 got nine.

5 But they weren't agreeable -- the State was not  
6 agreeable to recommending or agreeing to a straight-up  
7 three-year sentence but we knew it was at least three  
8 years.

9 I felt all along that it was probably going to be in  
10 the range of eight to 10.

11 But she did have small children at home. Something I  
12 thought the Judge might take into consideration in giving  
13 her a lesser sentence. She had been out of jail for three  
14 years and not been in any trouble other than missing a  
15 roll call during that time.

16 So there were some factors that a Judge could consider  
17 in giving her a lesser sentence. I never really thought  
18 she was going to get a minimum sentence, but it was  
19 possible.

20 Q. What exactly was the crux of the State's case against  
21 her?

22 A. Basically this was a situation in which a lot of  
23 people were out one night and there was a dispute between  
24 a gentleman and some ladies over money in a pocketbook,  
25 that he allegedly took some money out of a pocketbook.

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1       Rather than report that, I think he was confronted.  
2       Drugs and alcohol were involved, I think, on all sides.

3       But the crux of the evidence against her which made  
4       the State really not want to really give up this case  
5       against her at all was that after this victim had been  
6       beaten twice and was laying down -- I say laying down,  
7       knocked out, basically -- that she asked two of the other  
8       guys to hold him up and they lifted him up and she took a  
9       beer bottle and smacked it across his face, knocked him  
10      back out.

11      By all indications, I think most of them thought he  
12      was dead at that point. It turns out he was not. But, so  
13      there was several beatings that occurred to this  
14      gentleman.

15      The arguments by the State are, number one, is that  
16      she told the group of guys to beat him up the first time.  
17      And argument number two was that after he was left for  
18      dead she went back and instructed them to hold him up  
19      while she struck him with a beer bottle.

20      And there was at least -- the problem we had was these  
21      were her friends that had given statements that said she  
22      had done these things. So it's not like --

23      Q.   And these were the co-defendants?

24      A.   Co-defendants, right. I'm saying her friends. I  
25      mean, these were all people that were, for lack of a

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1 better term, hanging out together that night.

2 And, so the statements that were, that they were going  
3 to use against her were not coming from random strangers.  
4 They were coming from people that knew her.

5 There was never a question about identity. She denied  
6 variously about her involvement or, you know, the extent  
7 of her involvement, and really never accepted that she was  
8 the ringleader or responsible.

9 But the real problem with the case, I thought, was  
10 going to be that after the guy, by everybody else's  
11 account, had been beaten up severely at least twice, that  
12 this third smacking of the beer bottle across his head was  
13 not going to be good.

14 Q. Was that victim able to identify her?

15 A. Yes. And came to court that day and was very, I mean,  
16 he -- of course he wanted Judge Dickson (sic) to sentence  
17 her to the max. And he was -- said that it changed his  
18 life.

19 He had significant medical bills. I mean, maybe  
20 hundreds of thousands of dollars. And he was, he said,  
21 changed forever. It messed him up. And he attributed the  
22 beer bottle concussion part of it. I'm not sure of the  
23 exact medical diagnosis but he blamed her directly in  
24 court that day during the -- really a little bit more than  
25 I had anticipated. You know, I'm not allowed to talk to

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1 the victims, but I had not perceived him to be as  
2 vindictive in his thought process towards Lynette because  
3 he had known her. But he was.

4 Q. He was -- in his discovery he was clear, he was able  
5 to identify her?

6 A. Oh, yeah. Well -- yes. I think he identified her  
7 early on in the pocketbook incident. I think by the time  
8 it's alleged that she hit him with a beer bottle, that he  
9 was so beaten that he may not have known who beat him.

10 Q. But that's what the co-defendants --

11 A. Right. This is a situation where he was knocked down,  
12 beat, hit, stomped, kicked, left, beaten a second time,  
13 left. I mean, those are the allegations. It was not a  
14 good situation.

15 Q. Okay.

16 MR. BROOKS: Beg the Court's indulgence.

17 THE COURT: Okay.

18 (Pause.)

19 BY MR. BROOKS:

20 Q. Mr. Hutto, do you recall possibly telling Ms. Risher  
21 this is a three year --

22 A. Three-year minimum? I did. Telling her that she was  
23 going to get three years? I did not. Telling her that  
24 she was going to get at least three years? I did.

25 I mean, I understand that there may be a conviction in

CHARLES BRADLEY HUTTO - DIRECT

1 how she's hearing what I'm saying but she clearly was  
2 pleading to a sentence in which she could not receive less  
3 than three years. So I am sure at some point the  
4 conversation, if she asked or however I phrased it, you're  
5 going to get at least three years, you're going to get  
6 three years, she was going to get at least three years.  
7 Okay.

8 But, the conversation didn't stop at that. And there  
9 was always that, but you can get up to 20. The State as  
10 you'll recall had recommended 13 and then 10, and when we  
11 talked about whether we wanted to actually negotiate for a  
12 number, because I had a feeling that if she said -- I'll  
13 just pick a number -- I'll take eight, I might have been  
14 able to go to them and we might have agreed to an  
15 eight-year sentence.

16 But she always wanted the opportunity to get the  
17 minimum if the judge, based on what he heard at the plea,  
18 would give her the minimum.

19 So we decided to plead straight up rather than, than  
20 knowingly take more than we might get. And that's a  
21 calculated risk that you take. I thought she would  
22 probably get somewhere not more than 10, I didn't think,  
23 because the co-defendants had gotten 10.

24 And I knew they were going to characterize her as the  
25 ringleader but I still thought given that she had been out

## CHARLES BRADLEY HUTTO - CROSS

1 of trouble for the three years since it happened that she  
2 probably could get less than 10.

3 And there was always the chance that the judge could  
4 have said, four, five, three. He could have said those  
5 things, but he didn't, so ...

6 MR. BROOKS: No other questions, Judge.

7 THE COURT: All right. Cross-examination?

8 MS. WILLIAMS: Just briefly.

9 CROSS-EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Mr. Hutto, you had an opportunity to discuss witness  
12 statements with Ms. Risher?

13 A. Yeah. And I'm going to tell you that this was --  
14 because there were so many people involved and they all  
15 had attorneys and on top of that they had all nicknames  
16 and on top of that some people called them by one name and  
17 some another.

18 The statements were very confusing. And I have a  
19 chart. I actually, we sat down with every statement and  
20 made a chart on each beating and each blow that we could  
21 get from every statement we got and tried to plot out the  
22 beating as best we could.

23 But as you think about 20 people or so looking at what  
24 is, some people would characterize as mob violence, people  
25 are seeing it from different angles and different times.

CHARLES BRADLEY HUTTO - CROSS

1 And so what Pop said Rico did, Rico said, you know,  
2 Lynette did.

3 And so, but we took every statement. We spent a good  
4 bit of time taking every single statement and plotting out  
5 every kick and blow and beer bottle and everything else  
6 that somebody said happened and tried to mesh those  
7 statements together to see if we even could find any  
8 inconsistencies, anything in Lynette's favor.

9 But in the end what it came down to is that there were  
10 two -- not every witness said she used a beer bottle. Not  
11 every witness said she was the ringleader. Now that they  
12 didn't say that in their statement, that didn't mean they  
13 weren't going to say that in Court because all said that.

14 I didn't think -- I thought since they were friends  
15 they probably would not all gang up on her in that  
16 regard. But there were at least two people that were, if  
17 not -- I don't know whether she characterized them as  
18 friends or not, but at least acquaintances of hers that  
19 had identified her picking up a beer bottle and hitting  
20 somebody who already had been substantially beaten.

21 Q. And you were able to discuss those things with  
22 Ms. Risher? Never had any problem communicating with her?

23 A. I did. And I wrote her a -- early on, and this case  
24 went on for, like, three years.

25 Q. Maybe November 8, 2006?

CHARLES BRADLEY HUTTO - CROSS

1 A. November 8, 2006. I wrote her a very detailed letter  
2 going through what every single witness said and  
3 explaining to her that at least two people were going to  
4 put a beer bottle in her hand that was used to strike the  
5 victim.

6 And I did that so that -- because it was confusing to  
7 sit down and talk about so many people doing so many  
8 things over the course of -- these beatings were not -- it  
9 wasn't just a five-minute thing. The purse, the robbery  
10 thing happened. They've tracked the guy down. He  
11 wouldn't apologize. He got beat up. Then they -- he was  
12 left. They got him again. They beat him up again. Then  
13 maybe as he's struggling to get up, that's when she  
14 allegedly hit him again.

15 And so, I wanted to make sure that she understood that  
16 there were a lot of witness statements out there, some  
17 which had the name Lynette in them and some which didn't  
18 have the name Lynette in them because not everybody saw  
19 everything because everybody wasn't present at every  
20 time. And I don't think she was present for all of the  
21 beatings, although the State would argue that she  
22 instigated it by saying, we need to go get him.

23 Q. I'm going to show you a copy of this letter of  
24 November 8, 2006. Could you tell me if that's the one you  
25 sent to Ms. Risher?

CHARLES BRADLEY HUTTO - CROSS

1 A. It is. I did send this letter, but what I'm telling  
2 you is even after this letter I developed a chart.

3 Q. Okay.

4 A. And had it even more detailed than this. But, yes, I  
5 did send this letter to her.

6 Q. Okay. And those were things -- you talked to her  
7 about that?

8 A. Yeah, I did. I tried to. She -- well, I'll have to  
9 tell you she pretty much denied not that she was there but  
10 she just said these other people were responsible, she  
11 wasn't responsible. That that wasn't her. She wouldn't  
12 do these things. And --

13 Q. Your communication with her was pretty good, though --

14 A. Oh, yeah.

15 Q. -- you never had any problem understanding each other  
16 back and forth?

17 A. No, we never did. The only communication problem we  
18 had was just, I think, either the phone contact I had with  
19 her was not a direct contact and I'd even have to leave  
20 messages or word, so in that regard. But when we were  
21 face to face I never had problems talking to her and  
22 explaining these things to her. But I can tell you that  
23 she did not want to go jail. And I don't blame her. I  
24 wouldn't want to go to jail either, but she has young  
25 children and I understood that, too.

CHARLES BRADLEY HUTTO - CROSS

1 But, I mean, I would tell her these things. I don't  
2 think she wanted to hear them.

3 Q. Now tell me about after the plea. Did she talk to you  
4 about an appeal at all?

5 A. I don't recall that.

6 Q. Okay. Did you see anything that was a potentially  
7 appeal-able issue in this case?

8 A. I did not. I mean, really, by the way the case came  
9 out, we got a lesser sentence than we would have gotten if  
10 we had gone to court two years earlier. And so as the  
11 case drug out, for lack of a better term, the State's  
12 request for time diminished.

13 So, I don't know of anything that was appeal-able.  
14 And I also don't think it was going to be to her benefit  
15 to go to trial.

16 Q. So you don't recall any reaction of her saying what  
17 happened here or any of that?

18 A. I don't recall her after the sentence saying, that's  
19 not what happened, that's not what you told me or anything  
20 like that.

21 Because, I mean, I'm clear in my mind that I did not  
22 -- I knew that I didn't know what the judge was going to  
23 give her. So I wouldn't have told her that. I would have  
24 told her she had to do at least three years and could do  
25 up to 20, but I felt like she probably would get less,

1 equal to or less than her co-defendants.

2 MS. WILLIAMS: And I would just move the letter in as  
3 State's Exhibit One.

4 THE COURT: Any objection?

5 MR. BROOKS: Judge, I have no objection under the  
6 rules of evidence. I would put on the record my client  
7 denies getting this letter.

8 MS. WILLIAMS: She denies getting the letter?

9 MR. BROOKS: Right.

10 THE COURT: Very well. Admitted.

11 MS. WILLIAMS: And I don't have any more questions for  
12 Mr. Hutto.

13 (Thereupon, State's Exhibit No. 1, letter of November  
14 8, 2006, was received into evidence.)

15 THE COURT: Redirect?

16 MR. BROOKS: No other questions.

17 THE COURT: Very well. Thank you. Call your next  
18 witness, please.

19 MR. BROOKS: That's the Applicant's case, Judge.

20 THE COURT: Thank you so much. I will notify you by  
21 letter of my decision, ask one of you to draft me an  
22 order. I would -- probably jumped the gun, Ms. Williams,  
23 but all week you haven't had anybody additional with the  
24 lawyers being called by the other side.

25 Does that remain? Yes? Y'all have no other

1 witnesses?

2 MS. WILLIAMS: That's correct, Your Honor.

3 THE COURT: Very well. Thank you so much.

4 END OF CASE: 4:53 P.M.

5 \* \* \* \*

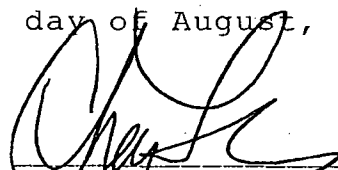
6 CERTIFICATE OF REPORTER

7  
8 STATE OF SOUTH CAROLINA )

9 COUNTY OF AIKEN )

10 I, Cheri L. Young, Registered Professional Reporter  
11 and Official Court Reporter for the Second Judicial  
12 Circuit-At Large of the State of South Carolina, do hereby  
13 certify that the foregoing is a true, accurate and  
14 complete transcript of record of the proceedings had and  
15 evidence introduced in the hearing of the captioned case,  
16 relative to appeal, in the Court of Common Pleas for  
17 Orangeburg County, on the 1st day of December, 2011.

18 I do further certify that I am neither of kin,  
19 counsel, nor interest to any party hereto. I have  
20 hereunder set my hand this 16th day of August, 2012.

21  
22  
23   
24 Cheri L. Young, RPR  
25 Official Court Reporter

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

Lynnette Risher, #330683, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS

2009-CP-38-1527

ORDER OF DISMISSAL

2012 SEP 11 AM 10:21

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 16, 2009. An evidentiary hearing into the matter was convened on December 1, 2010, at the Dorchester County Courthouse.<sup>1</sup> The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on her own behalf. Also testifying was C. Brad Hutto, Esquire ("Counsel"). This Court had before it the records of the Dorchester County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

ATTEST: TRUE COPY  
*Winnys B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

<sup>1</sup> Applicant originally had an evidentiary hearing in March 2010. During the hearing, it was determined that appointed PCR counsel had represented one of Applicant's co-defendants. Judge Goodstein therefore relieved the attorney, Jay Jackson, and directed that a new attorney be appointed. In December 2010, Applicant withdrew her PCR application. However, after the hearing, she decided that she did not want to withdraw her application. At the March 2011 term of court the Honorable Edgar W. Dickson permitted her, over the State's objection, to rescind her withdrawal. The evidentiary hearing followed.

## PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted at the May 2006 term of the Orangeburg County Grand Jury for Lynching – 2<sup>nd</sup> Degree (2006-GS-38-0253). <sup>She</sup> He was represented by C. Bradley Hutto, Esquire. On September 16, 2008, the Applicant pled guilty before the Honorable James C. Williams, Jr. Applicant was sentenced to nine (9) years imprisonment. Applicant did not appeal her conviction and sentence.

In <sup>my</sup> his application for post-conviction relief (PCR), Applicant alleges that <sup>she</sup> he is being held in custody unlawfully for the following reasons:

1. "I did not participate in the crime."
  - a. "I wasn't involved in the crime."

At hearing on December 1, 2010, Applicant alleged that Counsel misinformed her about her sentence, that he did not adequately guide her, and that she was entitled to a direct appeal.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

### Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he

burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”  
Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

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

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, <sup>she</sup> ~~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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

#### *Sentence Advice*

Applicant submits that she believed, based on Counsel's advice, that she would receive a sentence of three (3) years as a result of her guilty plea. Applicant stated that Counsel informed her of this sentence when she "signed the paper" a few days before her plea. Counsel explained that Applicant faced a minimum sentence of three (3) years and a maximum sentence of twenty (20) years for Lynching – 2<sup>nd</sup> Degree. Counsel further explained that if Applicant had gone to trial she

would be facing an additional maximum of twenty (20) years for ABWIK. Counsel testified that they had decided not to go along with a negotiated sentence from the State in hopes that Applicant would receive a sentence less than that of her co-defendants. Applicant received a sentence of nine (9) years, and some of her co-defendants received ten (10) years. Counsel denied informing Applicant that she would receive three (3) years as a result of her plea and indicated that he told her that the minimum sentence was three (3) years. Counsel stated that their conversations always ended with the fact that she could receive up to twenty (20) years, so he believed that she understood the potential sentence though she certainly hoped for the minimum. Counsel felt that Applicant would likely receive eight (8) to ten (10) years as a result of her plea and he never believed that she would be likely to receive the minimum sentence. Counsel also communicated with Applicant via letters. In at least one letter, he informed her that each charged offense carried up to twenty (20) years.

At the plea, the solicitor stated that Applicant was pleading "straight up." (Tr. p. 5, lines 16-17.) The solicitor also later stated that the plea was without recommendation. (Tr. p. 10, lines 17-22.) Counsel averred that he had explained the charge and the potential sentence of twenty (20) years. (Tr. p. 7, lines 3-10.) Applicant agreed that Counsel had explained these things. (Tr. p. 8, lines 3-9.) The plea judge also noted that there was a minimum sentence of three (3) years. (Tr. p. 10, lines 17-18.) Applicant assured the plea court that she had been made no promises. (Tr. p. 9, lines 9-18.) The sentencing sheet also indicates that the plea was without negotiations or recommendations, and the potential sentence of three (3) to twenty (20) years is listed in the upper right corner.

I find Counsel's testimony that he informed Applicant of the minimum and maximum sentences and never promised Applicant the three year minimum to be credible. Therefore I find that

Counsel was not ineffective in this regard. Moreover, any misapprehension Applicant may have labored under was cured by the plea colloquy. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

#### *Preparation*

Applicant further asserts that Counsel did not adequately prepare her and that she needed more guidance. Counsel testified that he reviewed the statements of Applicant's co-defendants. In working through the facts of the case, they plotted a chart to determine what Applicant's role was. Counsel also wrote at least one letter explaining co-defendants' statements. Counsel recalled that after that letter, he made an even more detailed chart and reviewed it with Applicant. As discussed in the previous section, Counsel had discussed the potential consequences of Applicant's charges. I find Counsel's performance in this regard to be well within reasonable professional norms. Further, Applicant has failed to set forth any evidence of prejudice, alleging only generally that she was "misled" and needed more guidance.

#### *Appeal*

Applicant stated that she believed that Counsel was going to file an appeal, but he did not. Counsel testified that he did not consult with and did not recall Applicant requesting that he file an appeal. The United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to

counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Applicant was advised of her right to appeal by the plea court. She received a sentence within the range that Counsel had anticipated, a sentence lower than that given to her co-defendants though the State postured her as the "ringleader" of the attack. There were no viable issues for appeal. Under these circumstances, I find that Counsel's failure to consult with Applicant does not constitute ineffective assistance of counsel.

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **CONCLUSION**

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

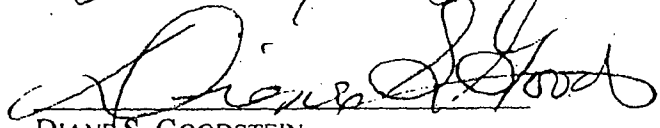
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

#### **IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and

- 2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of March, 2012



DIANE S. GOODSTEIN  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina.

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

May 15, 2006 TERM

THE STATE  
vs.

Lynette Risher

Indictment for  
LYNCHING - 2ND DEGREE

SC Code: 16-3-220  
CDR Code: 0313  
Class: FEL-C

hereby waive presentment to the Grand Jury.

Defendant

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

Defendant

Witness:

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

FILED  
CLERK OF COURT  
ORANGEBURG COUNTY  
SOUTH CAROLINA  
2006 MAY 18 AM 9:35

ATTEST: TRUE COPY

*Lisa M. Risher*  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

CHIEF HARRY HARRIOTT

Arresting Agency:  
Branchville Police Dept.

ARREST WARRANT NUMBER

G291104

Arrested: Dec 02, 2005

TRUE BILL  
ACTION OF GRAND JURY

*L. L. Boyd*  
MAY 17 2006

Foreperson of Grand Jury  
Date: May 17, 2006

VERDICT

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

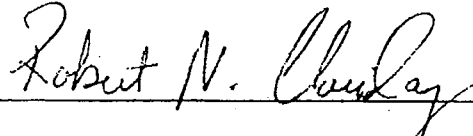
INDICTMENT  
2006GS38-0253

At a Court of General Sessions, convened on May 15, 2006 the Grand Jurors of Orangeburg County present upon their oath:

**LYNCHING - 2ND DEGREE**

That Lynette Risher, did in Orangeburg County, on or about November 29, 2005, willfully and unlawfully, along with one or more individuals commit an act of violence upon the body of Frank Zimmerman, which constituted the crime of Lynching and as a result violated Section 16-3-220, 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.

  
\_\_\_\_\_  
Robert N. Clariday SOLICITOR