

RECEIVED

JUN 30 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA, )

COUNTY OF CHEROKEE )

Russell Darryl Moore, #145353 )  
Plaintiff )

vs. )

State of South Carolina )  
Defendant. )

IN THE  FAMILY COURT  
 COURT OF COMMON PLEAS  
 MAGISTRATE COURT

7TH JUDICIAL CIRCUIT

MOTION AND AFFIDAVIT TO  
PROCEED IN FORMA PAUPERIS

FILE NO. 016CP-110142

Russell Darryl Moore, being duly sworn, state that I am the Plaintiff and that I do have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me  
this 26 day of February, 2016.

[Signature]  
Notary Public for South Carolina

My Commission expires Dec 5, 2026

[Signature]  
Signature of Plaintiff or  
Person Filing Complaint on Behalf of  
Plaintiff

ORDER

Leave  (granted) /  (denied) to proceed in forma pauperis.

Dated: 5 May 2016, 2016  
[Signature], South Carolina

[Signature]  
JUDGE/CLERK OF COURT

2016 MAY -5 A 11:44  
CLERK OF COURT  
SOUTH CAROLINA

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

Cribson v. State, 329SC 37, 495 SE2d 426 (1998). Simpson v. State, 329SC 43, 495 SE2d 429 (1998). Petition does not meet requirements of habeas corpus. See petition.  
SCCA 405 (5/02) RKK

Attention: Ashley Haworth

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

ZIP 29340  
041L11245001



\$00.46<sup>5</sup>

US POSTAGE  
05/12/2016

FIRST CLASS MAIL

After 5 Days Return To:  
Mrs. Brandy W. McBee  
Clerk Of Court, Cherokee County  
Post Office Drawer 2289  
Gaffney, S.C. 29342



**BRANDY W. MCBEE**  
CLERK OF COURT, CHEROKEE COUNTY  
POST OFFICE DRAWER 2289  
125 E. FLOYD BAKER BOULEVARD  
GAFFNEY, SC 29342

05/12/2016

US POSTAGE

\$00.46<sup>5</sup>



ZIP 29340  
041L11245001

Russell Darryl Moore #145353  
Tyger River Corr. Inst.  
200 Prison Road, Unit 8-124  
Enoree, SC 29335

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY 12 P 3:34  
BRANDY W. MCBEE  
CHEROKEE COUNTY, SC

The Supreme Court of South Carolina

Russell Darryl Moore, Petitioner.


Appellate Case No. 2013-001175

ORDER

FILED IN THE OFFICE  
CLERK OF COURT  
2013 MAY -5 A 11:45  
GRANDY W. MOBBE  
CHEROKEE COUNTY, SC

By order dated April 7, 2010, this Court prohibited "petitioner from filing any further collateral actions challenging his 1996 convictions in the circuit court without first obtaining permission to do so from this Court. *Moore v. State*, Appellate Case No. 2010-149307 (Lower Court Case No. 2008-CP-11-00783).

Petitioner now moves for permission to file a new post-conviction relief action challenging the 1996 convictions. The motion is denied.

  
C.J.  
FOR THE COURT

Columbia, South Carolina  
June 0, 2013

cc: Office of the Attorney General  
Mr. Russell Darryl Moore, #145353

State of South Carolina )  
County of Cherokee )

In the Court of Common Pleas

016 CP-110142

Russell D. Moore, #145353 )  
 )

Affidavit in Support  
of Informa Pauperis

RECEIVED

Petitioner, )

JUN 30 2016

v. )

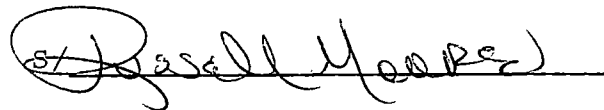
SC Court of Appeals

State of South Carolina )

Respondents. )  
\_\_\_\_\_ )

I Russel D. Moore, #145353 declare that I am the Petitioner in the above captioned case. That in support of my motion to proceed " Informa Pauperis ", and without being required to prepay cost or give security, therefore I state that because of my poverty I am unable to pay the cost of said proceedings or to give security thereof and I believe I am entitled to legal redress and relief.

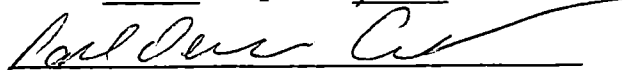
I declare under the penalty of perjury that the foregoing is true and correct.



Russell D. Moore

Sworn and Subscribed Before Me

This 8<sup>th</sup> day of Feb., 2016



Notary Public of South Carolina

My Commission Expires: Dec. 10, 2024

Russell Darryl Moore #145353  
Tyger River Correctional Institution  
200 Prison Road  
Enoree, SC 29335

January 22, 2016

Hon. Brandi McBee  
Clerk of Court  
P.O. Box 2289  
Gaffney, SC 29342

RECEIVED  
CLERK OF COURT  
JAN 24 10 51 AM '16

RE: Filing of Writ of Habeas Corpus

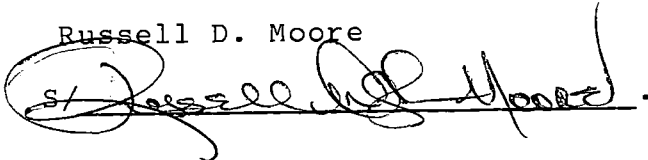
Dear Mrs. McBee:

Pleas find enclosed for filing my petition for writ of habeas corpus pursuant to SC Code of Laws §17-17-10-200. I also enclose along with my petition a summons, proof of service, motion for informa pauperis and motion cover sheets. Please return to me a clocked stamped copy so that I can serve upon the respondents.

Thank you,

With Kind regards,

Russell D. Moore

  
s/ Russell D. Moore

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

016 CP-110142

Russell Darryl Moore Plaintiff(s)

vs.

State of South Carolina Defendant(s)

PETITION FOR A WRIT OF HABEAS CORPUS

RECEIVED... 2016 MAY -5 A 11

Submitted By: Russell Darryl Moore
Address: 200 Prison Rd. Enoree, SC 29335

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI- - -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signature: [Handwritten Signature]

Date: January 31, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

State of South Carolina IN THE COURT OF COMMON PLEAS

County of Cherokee )

Case No. 016CP-110142

Russell D. Moore, #145353 )

SUMMONS

Petitioner, )

v. )

State of South Carolina )

Respondents. )

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:45  
BRANDY W. HOBBE  
CHEROKEE COUNTY, S.C.

To the Representative of the above captioned respondent, that being the State of South Carolina. you are hereby summoned and required to serve upon the Petitioner, Russell D. Moore an answer to the contentions within the Motion for Writ of Habeas Corpus which is herewith served upon you, within thirty (30) days after service of this summons. The Petitioner address as follows....

Russell D. Moore #145353

Tyger Riv. Corr. Inst.

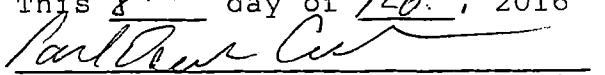
200 Prison Road

Enoree, SC 29335

If you fail to respond; a judgment by default will be sought against you in accordance with the South Carolina Rules of Civil Procedure.

Sworn and Subscribed Before Me  
This 8<sup>th</sup> day of Feb., 2016

  
Russell D. Moore

  
Notary Public of South Carolina  
My Commission Expires: Dec 10, 2022

State of South Carolina  
County of Cherokee

IN THE COURT OF COMMON PLEAS

Case No: 016CP-110142

Russell D. Moore, #145353 )  
)  
Petitioner, )  
v. )  
State of South Carolina )  
Respondents. )  
\_\_\_\_\_ )

PROOF OF SERVICE

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:45  
GRANDY W. HOBBE  
CHEROKEE COUNTY, S.C.

I Russell D. Moore, Hereby serve my " Writ of Habeas Corpus  
for immediate release from custody along with a petition,  
summons, affidavit and proof of service upon the S.C. Attorney  
General's Office at P.O. Box 11549 Columbia, South Carolina 29211  
by depositing such within the Tyger River Correctional Inst. mail  
room. I swear under the penalty of perjury that all of the above  
is true and correct with my signature below.

*Russell Moore*  
Russel D. Moore #145353  
Tyger River Corr. Inst.  
200 Prison Road  
Enoree, SC 29335

Sworn and Subscribed Before Me  
This 8 day of Feb., 2016  
*Paul Lewis*

notary Public of South Carolina  
My Commission Expires: Dec. 10, 2024

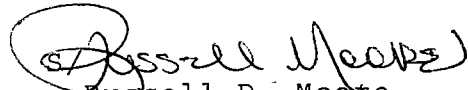
AFFIDAVIT

016CP-110142

The Petitioner Russell Darryl Moore submits this habeas corpus and supporting affidavit in good faith and believes that he is entitled to legal redress and relief.


Petitioner does not bring before this court a writ without merit or frivolous intent:

Therefore, Petitioner prays of this court to accept Petitioner's writ for habeas corpus and to grant Petitioner an evidentiary hearing to fully adjudicate Petitioner's claims within his petition

  
Russell D. Moore

Sworn and Subscribed Before Me

This 8<sup>th</sup> day of Feb., 2016



Notary Public of South Carolina

My Commission Expires: Dec. 19, 2024

STATE OF SOUTH CAROLINA )

COUNTY OF CHEROKEE )

Russell Darryl Moore, 145353 )

Plaintiff )

v. )

State of South Carolina )

Defendant. )

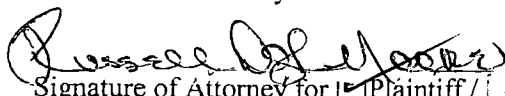
IN THE COURT OF COMMON PLEAS

016 CP-110142

CASE NO.

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

WRIT FOR HABEAS CORPUS

Plaintiff's Attorney: Russell Darryl Moore, 145353, Bar No. Address: 200 Prison Road Enoree, SC 29335 phone: fax: e-mail: other:	Defendant's Attorney: South Carolina Address: Attorney Generals Office P.O. BOX 11549 Columbia, SC 29211 e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b> Nature of Motion: Evidentiary Hearing / Habeas Corpus Estimated Time Needed: 1 Hr. Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b> <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant <span style="float: right;">Date submitted</span>  <span style="float: right;">1-21-16</span>	
<b>SECTION III: Motion Fee</b> <input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b> Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

FILED IN THE OFFICE  
 CLERK OF COURT  
 2016 MAY -5 A 11:45  
 BRANDY WAGNER  
 CLERK OF COURT  
 CHEROKEE COUNTY, SC

State of South Carolina

IN THE COURT OF COMMON PLEAS

County of Cherokee

)

Case No.

016CP-110142

Russell D. Moore, #145353

)

Affidavit in Support of

)

Motion For Habeas Corpus

Petitioner,

)

v.

)

State of South Carolina

)

Respondents.

)

)

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:45  
BRANDY W. NOBEE  
CHEROKEE COUNTY, SC

I Russell D. Moore, #145353, Decalre under the penalty of perjury that the following is true and correct to the best of my knowledge and belief...

1. On May 2, 1995 the Petitioner appeared before the Cherokee County Clerk of Court, the Hon. Katie Baines and exercised his State and Federal Rights to equal protection, counsel and due process by requesting that the Court appoint legal counsel to petitioner concerning warrant #E-179516 which would become indictemnt Number 96-GS-11-1099.

2. The Clerk of Court deemed petitioner to be indigent after perfecting and affidavit of indigence and proceeded to order legal counsel Usha J. Bridges, attorney at law as legal counsel to petitioner with this particular charge of robbery.

3. On September 4, 1996 the Petitioner was charged with three (3) separate and distinct additional charges of robbery. Warrants E-759293, 759284 & F-027091 which would become indictments 96-GS-1097, 1098, & 1100.

4. The petitioner once again exercised his rights by requesting legal counsel and on September 18, 1996 the Cherokee county clerk of court appointed Donald Letteer as legal counsel to petitioner concerning the three additional charges.

5. At this point, the clerk of court has appointed two (2) legal counsels to petitioner with two (2) separate and distinct issues of robbery some eighteen months apart. These appointment orders are binding on the record and must require a courts order to be withdrawn or waived.

6. The petitioner was confronted on September 20, 1996 by solicitor Donnie Willingham with four (4) indictments of robbery, two (2) being armed and offered petitioner a conditional plea agreement. The agreement consisted of petitioner signing waivers of presentment for the reduction of an armed robbery to a strong arm robbery concerning warrant F-027091, indictment 96-GS-1100. Petitioner accepted the offer without any advice or assistance from either of his court appointed counsels.

7. This pretrial agreement took place between solicitor D. Willingham and petitioner on September 20, 1996. Petitioner was not advised of his right to counsel nor offered counsel and petitioner did not waive counsel with this critical proceeding.

8. The petitioner was under duress due to drug abuse, hiv and hep-c complications and had attempted suicide while in pretrial detention on September 6, 1996. The solicitor Mr. Willingham disregarded this and petitioners right to counsel and knew or should have known petitioner had requested counsel and had been

appointed counsel.

9. Petitioner pled guilty on September 20, 1996 before Hon. Gary Clary. The court was not informed that petitioner had two (2) court appointed counsels but one was not present. The court was not informed of petitioners pretrial suicide attempt and Dr.'s recommendation of mental health evaluation.

10. The court was informed by petitioners counsel Mr. Letteer that the solicitor, Donnie Willingham had negotiated a plea agreement and accepted petitioners waivers of presentment before he was appointed, and Mr. Letteer also informed the court that the solicitor Mr. Willingham also advised petitioner of his rights. The solicitor Donnie Willingham did not object to this information and the court accepted it as true and informed.

11. At petitioners initial pcr hearing held June 2, 2000, petitioner alleged that solicitor Willingham coerced and took advantage of petitioners physical and mental health while obtaining petitioners waivers of presentment and negotiated plea agreement. Solicitor Willingham, the states witness testified under oath that he never met with or spoke with petitioner before or during petitioners trial, that he did not accept petitioners waivers of presentment, that he did not negotiate a plea agreement and does not know who did or when and where it took place.

CONCLUSION

SWORN AFFIDAVIT

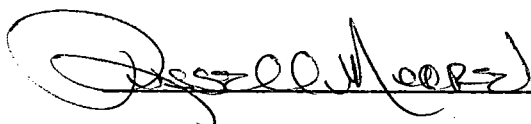
I Russell Darryl Moore, the petitioner, submits this Habeas Corpus in GOOD FAITH and in belief that the matters raised therein are not frivolous.

Petitioner has not had a proper opportunity to adjudicate the issues presented in this Habeas due to procedural bar rather than the merits of petitioners claims.

Petitioner believes in good faith that the matters raised in this petition are worthy of this courts consideration.


Therefore, petitioner humbly prays for an evidentiary hearing to adjudicate the issues presented in this petition.

Respectfully submitted,



Russell D. Moore

Sworn to and subscribed  
before me this 18 day  
of December 2015.



Notary of South Carolina

Dec. 10, 2024

My commission expires

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:45  
BRANDY W. MCPHEE  
CLERK OF COURT  
SOUTH CAROLINA

State of South Carolina

IN THE COURT OF COMMON PLEAS

County of Cherokee

)

Case No 016CP-110142

Russell D. Moore, #145353

)

PETITIONER'S WRIT OF HABEAS

)

CORPUS PURSUANT TO S.C. CODE

Petitioner,

)

17-17-10-200

v.

)

State of South Carolina

)

Respondents.

)

)

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:45  
BRADY W. HOPE  
CHEROKEE COUNTY, SC

This matter comes before this Honorable Court pursuant tot he provisions of South Carolina Code of Laws § 17-17-10-200.

The petitioner respectfully petitions this court for a writ of habeas corpus and to release him from his present state of confinement within the South carolina Dept. of Corrections.

Wherefore petitioner is detained under an invalid waivers of presentment and unconstitutional guilty plea that are unknowing, involuntary and unconstitutional, all of which deprived trial court of jurisdiction to convict and render a sentence for which the petitioner is presently being deprived of his life and liberty unlawfully.

For cause, the Petitioner would respectfully show this honorable court.....

PROCEDURAL HISTORY

016CP-110142

Petitioner Russell Darryl Moore is currently confined at the Tiger River Corr. Inst. per orders of the Cherokee County Clerk of Court. Petitioner pled guilty on September 20, 1996 to four indictments for robbery, two (2) being armed before the Honorable Gary E. Clary. Petitioner received 30 years for an indictment of armed robbery (96-GS-11-1098) and a concurrent 15 years for indictments (96-GS-11-1099 & 1097) and a consecutive 15 years for reduced indictment (96-GS-11-1100). A total of 45 years. Petitioner filed a direct appeal OP.No:97-up-623 and two (2) subsequent pcr's (98-CP-11-453 and 2008-CP-11-783) challenging his convictions. The petitioner does not have any other available remedy to request review of the questions presented in this petition. Petitioner has exhausted per order of the S.C. Supreme Court and deemed procedurally defaulted on his claims rather than on the merits of petitioners claims and without an evidentiary hearing to adjudicate petitioners claims of constitutional dimensions.

Petitioner raised several claims and presents several issues and supporting facts petitioner believes to be unconstitutional state actions which denied petitioner his procedural and substantive constitutional rights which fundamentally undermined petitioners trial and post trial proceedings and deprived the Trial Court of Jurisdiction to accept Petitioners waivers of presentment and negotiated guilty plea.

Therefore, petitioner respectfully moves upon this court for an evidentiary hearing and review of petitioners claims of Federal and State Constitutional Rights. Petitioner pleads for a grant of Habeas Corpus pursuant to S.C. Code §17-17-10-200.

QUESTIONS PRESENTED

1. DID TRIAL COURT HAVE SUBJECT MATTER OF JURISDICTIONS TO ACCEPT PETITIONERS WAIVERS OF PRESENTMENT AND NEGOTIATED PLEA AGREEMENT UNDER §17-23-120-130-140.?

2. DID GOVERNMENT DENY PETITIONER HIS PRO|EDURAL AND SUBSTANTIVE 1|ONSTITUTIONAL RIGHTS TO EQUAL PROTECTION, 1|OUNSEL AND DUE PROCESS?

3. DID PETITIONER RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WITH REGARDS TO PETITIONERS PRE-TRIAL PRO||EEDINGS AND TRIAL?

ARGUMENT OF FIRST ISSUE PRESENTED

DID TRIAL COURT HAVE SUBJECT MATTER OF JURISDICTION TO ACCEPT PETITIONERS WAIVERS OF PRESENTMENT AND NEGOTIATED PLEA AGREEMENT?

Petitioner Russell Darryl Moore would show this court that petitioners 1996 waivers of presentment and negotiated guilty plea are not in accordance to the mandates set forth in Boylin v. Alabama and that of South Carolina Code §17-23-120-150. Petitioner would respectfully present and assert in his claims to this court that the state solicitor and prosecutor over petitioners indictments and trial presented unconstitutional waivers of presentment and an unconstitutional negotiated conditional plea agreement to the trial court in bad faith in violation of petitioners 5th, 6th & 14th amendments rights and to that of S.C. Code §17-23-120-150.

It is mandatory that the states prosecuting solicitor consent to a guilty plea and only after an investigation, the solicitor must have knowledge and consent to waivers of presentment. S.C. Code §17-23-120-140 states: Upon receipt by the solicitor of the warrant forwarded to him, pursuant to the provisions of §17-23-120, he may forthwith prepare a formal indictment as now provides by law in such cases and shall return it to the clerk of court. The clerk of court will then notify the sheriff or one of his duly authorized deputies to bring the defendant before the clerk at a time and place to be stated on the notice. At which time the clerk shall have the defendant sign a waiver of presentment by the Grand Jury and his plea of guilt. "Provided that no plea shall be entered or made under this section except by consent of solicitor of the circuit court after investigation by such solicitor"

Appellant presents to this court the argument and basis for asserting that his signed waivers of presentment are not in

accordance to S.C. CODE §17-23-120-140. Petitioner has standing to challenge the circuit courts jurisdiction to accept petitioners waivers of presentment and guilty plea and to render a sentence, when the solicitor over petitioners four robbery indictments has emphatically denied throughout petitioners initial pcr evidentiary hearing held June 2, 2000 that he has no knowledge as to whom perfected and executed petitioners waivers of presentment and negotiated plea agreement, and said solicitor went on to testify that he doesn't know who did or when and where it took place, but that he, Donnie Willingham did not negotiate with petitioner nor accept petitioners waivers of presentment. (SEE TRANSCRIPT JUNE 2, 2000, 98-cp-11-453 pages 22-27).

Petitioner submits to this court that the solicitor that negotiated a reduction in one of petitioners armed robbery charges to a lesser included offense and accepted petitioners waivers of presentment has testified under oath at an evidentiary hearing in response to coercion allegations that he never had any type or form of communication with petitioner in regards to his pretrial proceedings, which would render petitioners waivers and plea unconstitutional. Petitioner respectfully request that this Honorable court review and consider the trial transcripts of 96-GS-11-1097-1100 where petitioners trial counsel during the trial informed the trial court that "THE SOLICITOR HAS SEPARATELY ADVISED MR. MOORE OF HIS RIGHTS AND SUCH AND THAT THE NEGOTIATED PLEA AND WAIVERS OF PRESENTMENT TOOK PLACE BEFORE I WAS APPOINTED."

S.C. Code §17-23-120-140 is mandatory, and petitioner asserts that due process requires that guilty pleas be knowingly and intelligently made and it has been settled in Summerall v. State

and State v. Martin that the requirements of S.C. Code 17-23-120-140 are mandatory. The Court has held that first and foremost, "A PENAL STATUE MUST BE CONSTRUED STRICTLY AGAINST THE STATE AND IN FAVOR OF THE DEFENDANT, Williams v State, 306, S.C. 89, SE2d 563 (1991) AND IT HAS ALSO BEEN HELD THAT: "WHEN THE TERMS OF A STATUE ARE CLEAR AND UNAMBIGUOUS, THE COURT MUST APPLY THEM ACCORDINGLY TO THEIR LITERAL MEANING. FURTHERMORE, IN CONSTRUING A STATUE'S WORDS, THEY MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING WITHOUT RESORTING TO SUBTLE OR FORCED CONSTRUCTION TO LIMIT OR EXPAND THE STATUE'S OPERATION. STATE V. KELLY, 540, SE2d 851 (S.C. 2001)

Petitioner asserts and alleges that the solicitor over petitioners pretrial proceedings and trial has testified that he did not secure petitioners waivers of presentment or negotiated plea agreement, therefore petitioners waivers of presentment are invalid, unconstitutional and that petitioner has sufficient cause to raise the question as to whether the trial court had jurisdiction to accept petitioners waivers and negotiated plea after solicitor over those indictments recanted as to having knowledge or participation in securing those waivers and plea in accordance to the provisions mandated by state law.

The petitioner's conditional plea was disclosed in open court for the record, a colloquy took place between the court, the petitioner and his trial counsel, and the trial court accepted the information presented to it as a basis for accepting petitioners plea, that being that the plea was conditional, knowing, intelligently made and voluntary, additionally based upon the solicitor having negotiated a reduction in one of petitioners charges and that the solicitor accepted petitioners waivers of presentment.

The petitioner was of the understanding that he negotiated with solicitor Willingham, the same solicitor that prosecuted petitioner at his trial and that of the same solicitor that was the state's witness at petitioners pcr evidentiary hearing. However, the states's witness and solicitor has emphatically denied having any fundamental knowledge as to whom perfected and executed petitioners waivers and negotiated plea, and therefore petitioner would assert and submit to this court that he was prejudiced as a result where he has no understanding or knowledge himself as to whom negotiated his plea and waivers of presentment.

Petitioner has met his burden of proof to show that the record in this case does not have a valid waiver of presentment and petitioner moves upon this court for an evidentiary hearing to adjudicate the merits of petitioners claim that the trial court was without subject matter of jurisdiction over petitioners waivers of presentment and guilty plea. **THEREFORE, PETITIONER PRAYS THAT THIS COURT WILL AGREE THAT PETITIONERS WAIVERS AND TRIAL ARE UN|ONSTITUTIONAL AND GRANT PETITIONER ANY RELIEF THIS COURT DEEM JUST AND PROPER....**

#### **SECOND ISSUE PRESENTED**

**DID THE GOVERNMENT ARBITRARILY DENY PETITIONER HIS PRO|EDURAL AND SUBSTANTIVE |ONSTITUTIONAL RIGHTS TO EQUAL PROTECTION, |OUNSEL AND DUE PRO|ESS?**

**The courts have held, in addition to counsels presence at trial,**

accused is granted that he need not stand alone against the state at any stage of prosecution, formal or informal, in court or out; where counsel's absence might derogate accused right to a fair trial. U.S. vs. WADE, 87, S.C.T. 1926 (1967). Furthermore, the 6th Amendment provides that in criminal proceedings, defendants are entitled to the assistance of counsel at all critical stages, to include the proceedings in which the accused is confronted by the procedural system or the prosecutor or both. The petitioner would show this court that he was arrested for a March 31, 1995 common law robbery and on May 2, 1995 petitioner appeared before the Cherokee County Clerk of Court and exercised his state and federal constitutional rights to counsel and due process, by legally requesting counsel. The clerk deemed petitioner indigent and ordered Usha J. Bridges as legal counsel for petitioner. This order was clocked stamped and filed in the clerks office therefore it became a binding contract, a document that is part of the record and that can not be waived without permission of the court. This appointment concerned warrant #E-179516, indictment #96-GS-11-1099. The clerk did require a \$25.00 filing fee. On September 4, 1996 the state produced (3) three additional charges against petitioner and once again, the petitioner requested counsel. The clerk of court perfected and executed an additional affidavit of indigence and appointment of counsel on September 18, 1996 in regards to the additional charges, where Donald Letteer was appointed to petitioner. At this point, the clerk had appointed (2) two counsels to petitioner that were separate and distinct. The charges that Mr. Letteer was appointed to were warrants E-759293, E-759284 &

F-027091. These would become indictment #96-GS-11-1097, 1098 & 1100.

The petitioner would show this Honorable court that despite having two separate court appointed counsels, petitioner was confronted by the state's prosecutor and solicitor Mr. Donnie Willingham on September 20, 1996 with four indictments for robbery, two being armed. Petitioner submits to this court that the solicitor, D. Willingham knew or should have known that petitioner had counsel appointed, in fact petitioner had two counsels of record appointed by the clerk with regards to his charges. Petitioner did not waive his rights to counsel at this critical stage and proceedings, yet the solicitor obtained a negotiated plea agreement and waivers of presentment from the petitioner. The courts has uniformly found constitutional error without showing prejudice when counsel was either totally absent or prevented from assisting the accused during a critical stage. *Strickland v. Washington*, 466, U.S. 668, 104 S. CT. 2052 (1984) *Satterwhite vs. Texas* 486, U.S. 249 (1988) *U.S. vs Cronin*, 466, U.S. 648, 659.

Furthermore, defendant must have a knowing and intelligent waiver of right to counsel, *Boykin vs. Alabama*, 395, U.S. 238, 98, S.CT. 1709.

Petitioner respectfully submits that he has sufficiently shown he has requested counsel, however, the state's solicitor and prosecuting attorney has obtained a waiver of presentment and

plea agreement from petitioner without advising petitioner of his right to have counsel present and obtaining a signed waiver of that right. Petitioner requested and was appointed counsel, and denied the assistance of counsel with regards to his waivers of presentment and negotiated plea. In support of this fact, petitioner would direct this courts attention to the trial transcript, where petitioners counsel Donald Letteer informed the court that the negotiations between the petitioner and the solicitor took place before he, Mr. Letteer was appointed. However, that is not true either because petitioner waived presentment and discussed plea agreement which is signed by the clerk of court on September 20, 1996. Mr. Letteer was appointed on September 18, 1996. The truth is that petitioners counsel had just met with petitioner 15 minutes before petitioners trial after learning that petitioner had entered into a plea agreement. In any event, petitioners counsel should have objected that the state's attorney had obtained a waiver of presentment and negotiated plea agreement without his presence rather than just advise the trial court that it had taken place before he was appointed, the record speaks for itself. Additionally, the petitioner would point out to this court to take notice that the counsel appointed on May 2, 1995, the Honorable Usha Bridges, was neither present at petitioners pretrial proceedings or trial due to the fact that the clerk of court never informed Mrs. Bridges of the appointment. Mrs. Bridges would have become aware of the appointment had the state's solicitor D. Willingham contacted the clerk or petitioners counsels of record as he was duly required to do rather than not contact either counsel or the clerk to ensure that petitioners rights to counsel and due process were protected as a matter of law.

The petitioner would respectfully plead for this court to take notice of petitioners June 2, 2000 pcr evidentiary hearing transcript, (98-cp-11-453) pages 22-27 where the state's witness Donnie Willingham testified under oath when asked why he confronted petitioner prior to trial without petitioners counsel present, solicitor D. Willingham stated that he has never spoke to petitioner concerning a negotiated plea agreement or waivers of presentment. However, once again, the trial transcript will show that petitioners counsel informed the court that petitioner and solicitor Willingham had discussed the plea agreement and waivers before he was appointed and the court seemed to accept this as a basis for accepting petitioners guilty plea and solicitor Willingham certainly did not object to or rectify what petitioners counsel said to the trial court for the record.

Petitioner asserts and submits that petitioner' right to counsel attaches at the initiation of adversarial judicial proceedings whether by way of formal charges or confrontation by the state. Petitioner requested that the state provide him equal protection, counsel and due process when he, petitioner requested counsel. The court appointed counsel but petitioner was denied that assistance at a critical stage which ultimately prejudiced petitioner and violated his state and federal constitutional rights. Petitioner was denied the assistance of counsel at a critical stage held against him without a valid waiver as required by law, a fundamental miscarriage of justice, which undermined the integrity of the waivers of presentment, negotiated plea agreement and the petitioners trial and post trial proceedings.

Therefore, petitioner prays of this court to agree that petitioners procedural and substantive rights of equal protection, counsel and due process have been violated and the record does not have any valid waivers. Petitioner request that he be granted an evidentiary hearing and prays this court will allow him to withdraw his plea. Additionally, the petitioner would point out that the record does not reflect a motion to withdraw with regards to the first of the two appointed counsels, Mrs. Bridges, which would be a result of the clerk of court not formally notifying that particular counsel of the appointment, which further prejudiced petitioner.

#### THIRD QUESTION PRESENTED

DID PETITIONER RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL?

In *Strickland*, parameters were used to determine whether counsel was ineffective. The United States Supreme Court, noting that it never squarely decided the proper standard, announced that the standard for such a claim was "reasonably effective assistance." Examining the requirements of the 6th Amendment, the court noted that "an accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial can not be relied on as

having produced a just result. The court ruled that attorney performance must be measured by "reasonableness under prevailing professional norms." When the attorney fails to meet these standards, the attorney is said to have rendered deficient performance. From Strickland, the rules that guide for claims of ineffective assistance of counsel are, 1. that counsel failed to render reasonable effective assistance under prevailing norms. 2. That he, petitioner was prejudiced by his counsel's ineffective performance. Strickland; Judge v. State, 321, S.C. 554, 471, SE2d 146 (1966).

In the present case before this court, petitioner plead guilty without the advice of counsel. Petitioner entered inot a negotiated plea agreement with the state's solicitor unknowingly, unintelligently and involuntary. Petitioner waived presentment without counsels presence or advice after having requested counsel twice and the record reflecting that (2) two counsels were appointed. Petitioner still did not have the benefit of the assistance of counsel while considering a negotiated plea agreement and waivers of presentment. The states prosecuting attorney did not obtain a waiver of petitioners right to counsel at this critical stage and the trial record will reflect supporting evidence to this fact. Once trial counsel learned that the petitioner had signed waivers and negotiated a plea agreement without his presence or advice, petitioners trial counsel should have made a formal objection being that the agreement was not in the best interest of the petitioner and that the state's solicitor had circumvented petitioners rights to counsel and due process to obtain the waivers and plea without so much as even consulting with petitioners counsel. Additionally, petitioner

proceeded to trial with "HYBRID REPRESENTATION" after the court appointed two counsels of record with two separate and distinct charges of robbery, however, only one counsel made an appearance and the counsel that did not, never formally motioned the trial court to withdraw, therefore, petitioner ultimately ended up representing himself with the charge that particular counsel had been appointed to while Mr. Letteer represented petitioner on the three additional charges appointed to him.

The petitioner submits that he was appointed counsel and represented by counsel at his trial but did not have the assistance of counsel when confronted by the solicitor with the four indictments where solicitor was seeking waivers of presentment, therefore petitioners counsel's committed errors amounting to deficient performance and caused prejudice to petitioner. Petitioner submits he has met his burden of showing that counsel was ineffective. Because petitioner waives several constitutional rights by pleading guilty, the due process clause requires that guilty pleas are entered into voluntary, knowingly and intelligently. BOYKIN VS. ALABAMA 395, U.S. 238 (1969) PITTMAN VS. STATE, 337, S.C. 597, 524 SE2d 623 (1999). Boykin requires that petitioner be made aware of the right to a jury trial, the privilege against self incrimination and the right to confront ones accusers; Additionally, the knowing and voluntary waiver of those constitutional rights "may be accomplished by a colloquy between the court and and defendant, between the court and defendants counsel or both. In the present case, petitioners trial counsel advised the trial court that the petitioner had

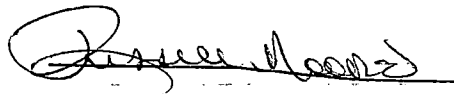
negotiated a plea and waived presentment before he, counsel was appointed. However, the record will reflect that counsel was appointed on September 18, 1996 and petitioners trial took place on September 20, 1996. Also, petitioner had an additional counsel appointed on May 2, 1995 that never became part of the record, further prejudicing petitioner. Petitioner's counsel knew of the unfair proceeding and critical stage actions between his client and the solicitor and although he informed the trial court of those proceedings, he did not object to them and this prejudiced the petitioner and rendered ineffective assistance of counsel.

#### CONCLUSION

The petitioner asserts to this court that he exercised his state and federal constitutional rights to counsel and due process concerning the warrants and indictments presented against him. He legally requested counsel twice and the court appointed two counsels with two separate and distinct incidents of robbery in accordance to the provision of state law. However, the solicitor over petitioners warrants and indictments confronted petitioner with four indictments and negotiated a plea agreement and obtained waivers of presentment without either of petitioners counsels presence or advice to petitioner. The petitioner further asserts that when petitioner confronted the solicitor at petitioners pcr evidentiary hearing in regards to these matters, the solicitor over petitioners indictments and trial, testified he did not negotiate a plea agreement with petitioner, nor did he obtain petitioners waivers of presentment and does not know who did or when and where it took place.

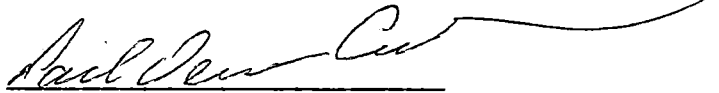
Petitioner would therefore respectfully request of this court to consider, 1. that the solicitor violated petitioners constitutional rights to counsel at a critical process, 2. that counsel was ineffective at that critical process and with trial, 3. that the court was without jurisdiction to accept petitioners waivers of presentment and guilty plea.

Respectfully submitted,



SWORN TO AND SUBSCRIBED BEFORE ME

this 18 DAY OF  
December 2015.



NOTARY OF SOUTH CAROLINA

Dec. 10, 2024

MY COMMISSION EXPIRES

EXHIBIT A

TRANSCRIPT EXCERPTS FROM 1996 GUILTY PLEA, THE TRIAL COURT  
ESTABLISHES FOR THE RECORD THAT THE PROSECUTING SOLICITOR  
DONNIE WILLINGHAM, NEGOTIATED A CONDITIONAL PLEA AGREEMENT  
AND AND ACCEPTED PETITIONERS SIGNED WAIVERS OF PRESENTMENT.

96-GS-11-1097-1100

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:46  
BRANDY W. JOBBE  
CHEROKEE COUNTY, GA

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CHEROKEE )

THE STATE )  
 ) TRANSCRIPT OF RECORD  
 ) 96-GS-11-1097  
-vs- ) 96-GS-11-1098  
 ) 96-GS-11-1099-Usha Bridges  
RUSSELL DARRYL MOORE, ) 96-GS-11-1100  
 ) SEPTEMBER 20, 1996  
 ) GAFFNEY, SOUTH CAROLINA  
Defendant. )

B E F O R E:

HONORABLE GARY E. CLARY, JUDGE.

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:46  
BRANDY W. MOSE  
CHEROKEE COUNTY, SC

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

• DONNIE WILLINGHAM, ASSISTANT SOLICITOR  
Attorney for the State.

• DONALD LETTEER, PUBLIC DEFENDER  
Attorney for the Defendant.

Michael R. Watts  
Circuit Court Reporter

99-4-19  
Guilty Plea  
Transcripts

1 (Proceedings September 20, 1996)

2 MR. WILLINGHAM: Your Honor, if it please the  
3 court, before you is Russell Darryl Moore, there  
4 being several indictments, the first one being  
5 96-GS-11-1100, an indictment for common law robbery --  
6 an indictment for armed robbery. The State is  
7 accepting a plea to common law robbery.

8 96-GS-11-1099, an indictment for common law  
9 robbery. He is pleading guilty to that charge.

10 96-GS-11-1098, an indictment for armed robbery.  
11 He's pleading guilty to that charge.

12 96-GS-11-1097, an indictment for common law  
13 robbery. He's pleading guilty to that charge.

14 All the indictments have been -- he has waived  
15 presentment. He's indicated by his signature he  
16 wishes to plead guilty.

17 THE COURT: Mr. Letteer, do you represent the  
18 defendant Russell Darryl Moore?

19 MR. LETTEER: Yes, sir, I do, sir, by court  
20 appointment.

21 THE COURT: You have explained to him the  
22 charges contained in these indictments, the possible  
23 punishment, including his -- and his Constitutional  
24 Rights, including that to a trial by jury, as well  
25 as his right of presentment of these indictments to

1 the Cherokee County Grand Jury?

2 MR. LETTEER: Yes, sir, to all those, yes, sir.

3 THE COURT: And in your opinion does he  
4 understand all these things?

5 MR. LETTEER: Yes, sir. The solicitor has  
6 separately also told him about the Grand Jury rights  
7 and such.

8 THE COURT: From your investigation of the  
9 facts and circumstances of this case, do you feel  
10 that the State could produce sufficient evidence to  
11 convince a jury of this defendant's guilt beyond a  
12 reasonable doubt, and that if he were to stand  
13 trial, his conviction would be probable?

14 MR. LETTEER: His conviction would be probable  
15 on all charges, sir.

16 THE COURT: How does he indicate to you that he  
17 wishes to plead?

18 MR. LETTEER: Guilty to all charges.

19 THE COURT: And do you agree with that?

20 MR. LETTEER: Yes, sir, I do.

21 THE COURT: Place him under oath, please.

22 RUSSELL DARRYL MOORE, having been first duly  
23 sworn testified as follows.

24 THE COURT: You are Russell Darryl Moore?

25 THE DEFENDANT: Yes, sir.

1 goods or monies be described as \$400.00.

2 That is armed robbery. Do you understand that  
3 I could sentence you to a maximum of thirty years in  
4 prison for that offense?

5 THE DEFENDANT: Yes.

6 THE COURT: And that there is a minimum  
7 incarceration of ten years?

8 THE DEFENDANT: Yes.

9 THE COURT: Indictment 96-1099, the State  
10 charges that you did in Cherokee County or on about  
11 March 31, 1995, feloniously take from the person or  
12 presence of Francine Morgan by means of force or  
13 intimidation goods or monies of Mr. Petro, such  
14 goods or monies being described as follows:  
15 \$1050.00.

16 That's another common law robbery charge. Do  
17 you understand that I could sentence you to an  
18 additional fifteen years in prison for that offense?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And then Indictment 96-1100, the  
21 State charges that you did in Cherokee County on or  
22 about September 2, 1996, while armed with a deadly  
23 weapon, that being a gun, feloniously take from the  
24 person or presence of Linda Best by means of force  
25 or intimidation goods or monies of Corner Stop

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And if you have given incriminating  
3 statements in all of these cases, or any of these  
4 cases, do you understand that by pleading guilty,  
5 that you will waive or give up the right to contest  
6 or challenge whether such a statement was freely and  
7 voluntarily given in accordance with your  
8 Constitutional Rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you commit these offenses?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, solicitor, I understand that  
13 the negotiations that you have had on some of these  
14 reductions in the charges. Is that the extent of  
15 any negotiations or recommendation?

16 MR. WILLINGHAM: Yes, sir, Your Honor.

17 THE COURT: Is that correct, Mr. Letteer?

18 MR. LETTEER: That is correct. Much of that  
19 took place even before I was appointed.

20 THE COURT: Okay. And is that what you  
21 understood, Mr. Moore?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anyone promised you anything or  
24 held out any hope of reward in order to get you to  
25 plead guilty?

007 CP-11060

22

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh 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 plea and sentencing hearing of the captioned cause, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 20th day of September, 1996.

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

November 7, 1996

SHANDY W. NOBEE

2001 JAN 31 A 10:36

CLERK OF  
COURT  
CHEROKEE COUNTY, S.C.

Michael R. Watts

Circuit Court Reporter

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:16  
BRANDY W. MORFITT  
CHEROKEE COUNTY, GA

EXHIBIT 6

EXCERPTS FROM PETITIONERS JUNE 2, 2000 PCR TRANSCRIPT  
(98-CP-11-453) WHERE PROSECUTING ATTORNEY AND STATES WITNESS  
DONNIE WILLINGHAM "TESTIFIES THAT HE DID NOT NEGOTIATE A  
CONDITIONAL PLEA AGREEMENT WITH PETITIONER AND THAT  
HE HE HAS NO BASIC FUNDAMENTAL KNOWLEDGE OR INFORMATION  
AS TO WHOM ACCEPTED PETITIONERS WAIVERS OF PRESENTMENT OR  
WHEN AND WHERE THAT PRE-TRIAL PROCEDURE TOOK PLACE."

PETITIONER SUBMITS THIS TESTIMONY TO SUPPORT HIS ARGUMENT  
THAT PETITIONERS SIGNED WAIVERS OF PRESENTMENT AND  
NEGOTIATED GUILTY PLEA ARE NOT IN ACCORDANCE TO THE  
MANDATES SET FORTH IN S.C. CODE §17-23-120-150.

THEREFORE THE TRIAL COURT WAS WITHOUT JURISDICTION TO  
ACCEPT PETITIONERS WAIVERS OF PRESENTMENT WHEN STATES PROSECUTOR  
AND SOLICITOR HAS NO BASIC FUNDAMENTAL KNOWLEDGE AS TO WHOM  
PERFECTED AND EXECUTED PETITIONERS WAIVERS OF PRESENTMENT  
AND NEGOTIATED GUILTY PLEA

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHERKOE E ) COURT OF COMMON PLEAS NONJURY

RUSSELL D. MOORE, )  
Applicant, ) TRANSCRIPT  
-vs- ) OF  
STATE OF SOUTH CAROLINA, ) RECORD  
Respondent. ) 98-CP-11-453

June 2, 2000  
Spartanburg, South Carolina

B E F O R E

HONORABLE R. MARKLEY DENNIS, JUNIOR, Judge

A P P E A R A N C E S

VICTOR SARRATT  
Esquire  
Attorney for the Petitioner

G. ROBERT DeLOACH, III  
Assistant Attorney General  
Attorney for the Respondent

PAMELA E. GREEN  
Circuit Court Reporter  
Seventh Judicial Circuit

FILED IN THE OFFICE  
CLERK OF COURT  
2006 MAY -5 A 11:46  
BRANDY W. MOORE  
CHEROKEE COUNTY, SC

ORIGINAL

I N D E X

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2000

Donnie Willingham - Direct examination  
by Mr. DeLoach

1 MR. DELOACH: Thank you.

2 DIRECT EXAMINATION

3 BY MR. DELOACH:

4 Q. Mr. Willingham, by whom were you employed in September  
5 of 1996?

6 A. Seventh Circuit Solicitor's Office.

7 Q. In what capacity?

8 A. I was the assistant solicitor for Cherokee County.

9 Q. In that capacity, were you the prosecutor of Russell  
10 Darrell Moore on four different indictments for armed  
11 robbery?

12 A. That's correct.

13 Q. Or robbery?

14 A. Two were for robbery. One, two was for common law.  
15 We reduced one of the common laws.

16 Q. All right.

17 A. One of the armed to common law.

18 Q. All right. Now, at my request, have you had an  
19 opportunity to review this case?

20 A. Yes, I have.

21 Q. All right. You've been here in courtroom and listened  
22 to the testimony.

23 I'm going to ask you, did you meet with Mr. Moore to  
24 discuss a potential plea bargain before the guilty plea?

25 A. No, sir, I did not.

Donnie Willingham - Direct examination  
by Mr. DeLoach

1 Q. All right. Did you say anything to him with reference  
2 to waiving his rights or telling him he had to waive his  
3 rights and sign some papers?

4 A. No, sir.

5 MR. DELOACH: No further questions, Your Honor.

6 THE COURT: You may cross-examine, Mr. Sarratt.

7 MR. DELOACH: Oh, I'm sorry. I do have one additional  
8 question.

9 THE COURT: Hold on one second, Mr. Sarratt.

10 MR. DELOACH: Thank you. I apologize

11 Q. Was -- did Mr. Moore ever inform you that another  
12 attorney represented him on any of these charges?

13 A. No, sir.

14 Q. All right. Thank you.

15 That would be all. I apologize, Your Honor.

16 THE COURT: All right. You may proceed

17 CROSS-EXAMINATION

18 BY MR. SARRATT:

19 Q. Mr. Willingham, do you have a copy of the transcript  
20 of the trial?

21 A. No, sir, I do not.

22 MR. DELOACH: With the Court's permission, I now hand  
23 a copy of the guilty plea transcript to Mr. Willingham.

24 THE COURT: All right.

25 Q. I call your attention to Page 13.

Donnie Willingham - Cross-examination  
by Mr. Sarratt

1 A. Yes, sir.

2 Q. Call your attention to Line 12.

3 A. Yes, sir.

4 Q. Read:

5 THE COURT: Now, solicitor, I understand that the  
6 negotiations that you have had on some of these reductions in  
7 the, in the charges afternoon -- I'll read it again.

8 Now, solicitor, I understand the negotiations that you  
9 have had on some of these reductions in the charges.

10 Is that the extent of any negotiations or  
11 recommendations?

12 Yes, sir.

13 Your Honor, this is Mr. Willingham speaking.

14 Yes, sir, Your Honor.

15 THE COURT: Is that correct?

16 MR. LETTEER: That is correct. Much of that took  
17 place even before I was appointed.

18 Okay. Is that what you understood, Mr. Moore?

19 Yes, sir.

20 As I read that, Mr. Willingham, that you, you had some  
21 conversation with Mr. Moore prior to the time that  
22 Mr. Letteer conferred with him or was appointed, is that  
23 correct?

24 A. I have not had a conversation with Mr. Moore, no, sir.

25 Q. All right, sir. Well, how did you have negotiations.

Donnie Willingham - Cross-examination  
by Mr. Sarratt

1 with him if you didn't have a conversation with him?

2 A. I did not negotiate with Mr. Moore. A decision was  
3 made to reduce one of the armed robberies to a common law  
4 robbery. That was the extent of the negotiations. Whether  
5 Mr., when Mr. Letteer, I can't speak for him, as to when he  
6 learned of those decisions by our office.

7 Q. All right, sir. I call your attention to Page 5, and I  
8 will tell you that, that it's not you speaking, but  
9 Mr. Letteer.

10 Mr. Letteer stated to the Court the solicitor has  
11 separately also told him about the Grand Jury rights and  
12 such. That was a statement that was made from Mr. Letteer,  
13 and, of course, the Court seemed to indicate that they  
14 accepted that.

15 And what conversation did you have with Mr. Moore?

16 A. I'm telling you I had no conversation with Mr. Moore.

17 Q. Did you have ever have a conversation with him?

18 A. No, sir.

19 Q. How did Mr. -- how did the charge get reduced?

20 A. I made a decision to reduce the charge. I don't know  
21 if that was at the request of Mr. Letteer or if that was  
22 based on the evidence after reviewing the facts of the case.  
23 But I never had a conversation with Mr. Moore.

24 Q. Why would you reduce one charge and not the other  
25 charge?

Donnie Willingham - Cross-examination  
by Mr. Sarratt

1 A. It's very possible, without me reviewing the incident  
2 report, that the witness would not be able to say if he had  
3 had a weapon at the time, and, therefore, agreed to reduce it  
4 to common law robbery particularly when I knew he had a armed  
5 robbery still pending against him.

6 Q. But you don't remember that individual circumstance?

7 A. I'd have to look at the incident report to determine  
8 if that was the reason for my determination to reduce it.

9 Q. Okay. But your testimony is that you never had any  
10 conversation with Mr. Moore before the time Mr. Letteer  
11 testified, Mr. Letteer conferred with him?

12 A. That's correct.

13 Q. Did you have a conversation with Mr. Moore after  
14 Mr. Letteer conferred with him?

15 A. No, sir.

16 Q. Did you ever, have a conversation with Mr. Moore?

17 A. Again, no, sir.

18 Q. All right, sir.

19 Would the Court indulge me?

20 THE COURT: Yes, sir.

21 (Pause.)

22 Q. Mr. Willingham, do you recall who effected Mr. Moore's  
23 execution of his plea of guilty?

24 Were you present when he signed his, his guilty plea?

25 A. Not that I'm aware of, no, sir.

Donnie Willingham - Cross-examination  
by Mr. Sarratt.

1 Q. Are you aware of where it took place?

2 A. No, sir. Typically what happens is, before they go  
3 into the courtroom, in the jail room right next---

4 Q. I'm aware of what typically happens.

5 A. Okay.

6 Q. I have nothing further.

7 MR. DELOACH: Nothing further from this witness, Your  
8 Honor.

9 THE COURT: Step down. Thank you.

10 MR. DELOACH: That would be the State's presentation  
11 in this matter, Your Honor.

12 THE COURT: All right. Any reply testimony?

13 MR. SARRATT: Your Honor, we would call Mr. Moore to  
14 the stand.

15 THE COURT: All right, sir. In reply with the  
16 restrictions.

17 MR. SARRATT: Yes, sir.

18 THE COURT: All right, sir.

19 Mr. Moore, I would advise you, sir, that you are still  
20 under oath at this time.

21 WITNESS: Yes, sir.

22 RUSSELL MOORE, having been previously sworn,  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SARRATT:

C E R T I F I C A T E

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I, the undersigned, Pamela E. Green, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, on the 2nd day of June, 2000.

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

September 8, 2001

Pamela E. Green

Court Reporter

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:46  
BRANDY W. MOORE  
CLERK OF COURT  
SPARTANBURG COUNTY, SC

016 CP-110142

EXHIBIT C

AFFIDAVIT OF INDIGENCE AND ORDER OF

APPOINTMENT OF COUNSEL MAY 2, 1995 IN RELATION TO WARRANT E-179516

INDICTMENT 96-GS-11-1099

FILED IN THE OFFICE  
CLERK OF COURT  
2018 MAY -5 A 11:46  
BRANDY W. MOBE  
CHEROKEE COUNTY, SC

DEFENSE OF INDIGENTS ACT  
FORM NO. 4

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA  
County of Cherokee  
Docket No. \_\_\_\_\_

STATE OF SOUTH CAROLINA

vs.

Russell Moore  
Defendant

ORDER OF APPOINTMENT OF LEGAL

COUNSEL FOR INDIGENT DEFENDANT

VOL. \_\_\_\_\_ PAGE \_\_\_\_\_  
KATHY W. BAINES  
CLERK OF COURT

MAY 2 3 49 PM '95

FILED IN  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, Yasha Budj Attorney-at-Law, is appointed as counsel for the defendant.

~~X~~ This 2<sup>nd</sup> day of May, 19 95  
at 3:50 (a.m. p.m.)  
Kate W Bain

DEFENSE OF INDIGENTS ACT  
FORM NO. 2

STATE OF SOUTH CAROLINA )

AFFIDAVIT OF INDIGENCY AND

COUNTY OF Cherokee )

APPLICATION FOR COUNSEL

STATE vs. Russell Meade

ADDRESS AND PHONE NUMBER

CRIMINAL CASE NO. Common Law Robbery 564 Shelby Hwy -  
(insert when known) Jaffrey, SC - 489-2731

1. Are you presently employed? Yes  No   
a. If "yes", state the amount of your salary or wages per month, and give the name and address of your employer. \_\_\_\_\_

b. If "no", state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. 3 weeks ago worked  
Andrew Roofing #7.00 hr.

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. wife 2 kids -  
8 & 6

3. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or form of self-employment?  
Yes  No
- b. Rent payments, interest or dividends?  
Yes  No
- c. Pensions, annuities or life insurance payments?  
Yes  No
- d. Gifts or inheritances?  
Yes  No
- e. Any other sources?  
Yes  No

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months. \_\_\_\_\_

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
MAY 2 3 49 PM '55  
VOL. \_\_\_\_\_ PAGE \_\_\_\_\_  
KATIE W. BAINES  
CLERK OF COURT



E-179516

96-101

STATE OF SOUTH CAROLINA

County/  Municipality of  
CHEROKEE COUNTY

AFFIDAVIT

Form Approved by  
S.C. Attorney General  
July 26, 1990  
SCCA 518

STATE OF SOUTH CAROLINA

County/  Municipality of  
CHEROKEE COUNTY

Personally appeared before me the affiant DETECTIVE SGT KEN BROOME who

being duly sworn deposes and says that defendant DARRYL RUSSELL MOORE

did within this county and state on March 31, 1995 violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of CHEROKEE COUNTY)

in the following particulars:

MAGISTRATE'S OFFICE  
THE STATE CHEROKEE COUNTY, S.C.  
against  
MAGISTRATE'S OFFICE

DESCRIPTION OF OFFENSE: COMMON LAW ROBBERY

CHEROKEE COUNTY, S.C.

L RUSSELL MOORE

712 WEST FLOYD BAKER BLVD  
GAFFNEY, SC 29348

SSN: [REDACTED]  
Race: W Height: 5'10" Weight: 165

DL#: none

Agency ORI#: SC0110000

uting Agency: SHERIFF'S OFFICE

uting Officer: DETECTIVE SGT. KEN BROOME

e: COMMON LAW ROBBERY

Offense Code:

Ordinance Sec. 16-11-325

warrant is CERTIFIED FOR SERVICE in the  
county/  Municipality of

The accused  
be arrested and brought before me to be  
with according to law.

Signature of Judge (L.S.)

RETURN

Copy of this arrest warrant was delivered to  
dant Darryl Russell Moore

083195

Signature of Constable/Law Enforcement Officer

JRN WARRANT TO:  
Magistrate's Office,  
Cherokee County Court House  
GAFFNEY, SC. 29348  
487-2533

Copy sent to court  
per 9-4-96  
mjs

Sworn to and subscribed before me )  
on 8/31/95 )

Signature of Issuing Judge (L.S.)

STATE OF SOUTH CAROLINA

County/  Municipality of  
CHEROKEE COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on March 31, 1995 defendant DARRYL RUSSELL MOORE

did violate the criminal laws of the State of South Carolina (or ordinance of

County/  Municipality of CHEROKEE COUNTY) as set forth below:

DESCRIPTION OF OFFENSE: COMMON LAW ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge's Address Cherokee County Court House  
GAFFNEY, SC 29348

Signature of Issuing Judge Judge's Telephone 803 487-2533

Judge Code: 644 Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

E-179516

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
SEP 5 9 32 AM '96  
VOL. KATIE  
CLERK

\* HIV Pos. \*

Signature of Affiant  
Affiant's Address: 200 WEST MONTGOMERY STREET  
GAFFNEY, SC 29348  
Affiant's Telephone: 803 487-2505

E-179516-11

DOCKET NO. 96-GS-11-1099

**The State of South Carolina,**

County of Cherokee

**COURT OF GENERAL SESSIONS**

September 16 TERM 1996

**THE STATE**

Russell Darryl vs.  
Darryl Russell Moore

**Indictment for Armed Robbery and Robbery**

Holman C. Gossett, Jr

**WITNESSES**

Ken Broome, SD C. 96  
9-20-96

ARREST WARRANT NO. E179516

**ACTION OF GRAND JURY**  
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Simm Russell Moore  
Foreman of Grand Jury

**VERDICT**

Foreman of Petit Jury

Date: X

I, Russell Darryl Moore hereby appear in my own proper person and plead guilty to Common Law Robbery

\_\_\_\_\_ count on the within Indictment

WITNESS: Alexander C. J. ...

Hester W. ...  
9-20-96

COMMERCIAL ...

016CP-110142

EXHIBIT D

AFFIDAVIT OF INDIGENCE AND ORDER OF APPOINTMENT OF COUNSEL

EXECUTED ON SEPTEMBER 18, 1996 IN RELATION TO WARRANTS

E-759284, E-759293, F-027091

INDICTMENTS 96-GS-11-1097, 1098 & 1100

FILED IN THE OFFICE  
CLERK OF COURT  
2016 MAY -5 A 11:47  
THOMAS W. MOORE  
CLERK OF COURT  
CHEROKEE COUNTY, GA.

DEFENSE OF INDIGENTS ACT  
FORM NO. 4

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA  
County of Cherokee  
Docket No. \_\_\_\_\_

STATE OF SOUTH CAROLINA

vs.

ORDER OF APPOINTMENT OF LEGAL  
COUNSEL FOR INDIGENT DEFENDANT

Darryl Moore  
Defendant

007 GP-11060

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, Don Lettier,  
Attorney-at-Law, is appointed as counsel for the defendant.

This 18<sup>th</sup> day of Sept, 19 96  
at 1:00 (a.m. - p.m.)

Katie W Baines  
KATIE W. BAINES, CLERK OF COURT

FILED IN COURT OF  
CLERK OF COURT  
CHEROKEE CO. S.C.  
SEP 18 12:59 PM '96

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

COUNT NO: \_\_\_\_\_

CASE NO: 96 GS-11 1099

VS

WARRANT NO: E 179516

Russell Barry Moore

CHARGE Common Law Battery

The sentence of the Court is that Russell Barry Moore, the defendant named in this indictment be confined to the State Board of Corrections/Cherokee County Detention for a term of Fifteen (15) months/years (and) (or) pay a fine of \$ \_\_\_\_\_ : provided that upon the service of \_\_\_\_\_ months /years (and) (or) payment of \$ \_\_\_\_\_ plus (pay) (waive) cost and assessments as applicable \*, the balance is suspended and the defendant is placed on probation for \_\_\_\_\_ months/years. concurrent

RESTITUTION: (YES) (NO)  
HEARING HELD OR WAIVED ON: \_\_\_\_\_

PHYSICAL INJURY \$ \_\_\_\_\_  
(and) (or)  
PROPERTY DAMAGE \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

PAYABLE TO CLERK FOR (VICTIM) \_\_\_\_\_

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: \_\_\_\_\_

**TIME COPY**  
Barry W. Moore  
CLERK OF COURT  
CHEROKEE COUNTY, SC.

DATE: 9-20-96  
GAFFNEY, S.C. 29340

Larry B. Clay  
Presiding Judge

\*COST AND ASSESSMENTS : FINE \$ \_\_\_\_\_  
NON WAIVABLE \$ \_\_\_\_\_  
NOT WAIVED \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

Barry W. Moore  
CLERK OF COURT  
Date of Birth ██████████70  
Social Security ██████████  
Drivers License 1414  
ATTORNEY FOR DEF. Don J. Trotter  
ADDRESS 712 W. Floyd Baker  
Gaffney SC  
SOLICITOR 2  
COURT REPORTER Mike Watts

M/B  
B/W

DEFENSE OF INDIGENTS ACT  
FORM NO. 2

City Jail

STATE OF SOUTH CAROLINA )

AFFIDAVIT OF INDIGENCY AND

COUNTY OF CHEROKEE )

APPLICATION FOR COUNSEL

STATE vs. ~~Marion Moore~~ Moore

712 W. Lloyd Baker Blvd

CRIMINAL CASE NO. AC/Strong AR  
(insert when known)

Saffrey, SC

489-2731

1. Are you presently employed? Yes  No

a. If "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

L. Brown & Best - \$9.00  
Law not have job now

b. If "no", state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month.

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support.

wife - \$children

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes  No

b. Rent payments, interest or dividends?

Yes  No

c. Pensions, annuities or life insurance payments?

Yes  No

d. Gifts or inheritances?

Yes  No

e. Any other sources?

Yes  No

007 R-11060

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Do you have cash, or do you have any money in a checking or savings account?  
Yes \_\_\_\_\_ No

If the answer is "yes", state the total amount of the cash owned. \_\_\_\_\_  
\_\_\_\_\_

5. Do you own any real estate, stocks, bonds, notes, or other valuable property (excluding ordinary household furnishings and clothing)? Yes \_\_\_\_\_ No

If the answer is "yes", describe the property and state the appropriate value of the items owned. \_\_\_\_\_  
\_\_\_\_\_

6. What kind of motor vehicle do you own? 93 Camaro  
Is it paid for? Yes  No \_\_\_\_\_

If not, what are the payments? \_\_\_\_\_

7. How much do you owe (on liens, mortgages, other encumbrances or debts)? \_\_\_\_\_

Family World \$100 Southern Gas World 200  
15 Franklin 2000

I do solemnly swear that the account by me delivered into this court with my application for counsel does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I or any person in trust for me have or at the time of my possession had, or am, or was, in any respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost of representation, but that such claim shall not constitute a lien against my property unless the claim is reduced to judgment by order of the Court after giving me at least thirty days' notice.

I am financially unable to employ counsel and request that counsel be assigned to represent me.

This 18th day of September, 1996

Darryl Moore  
Defendant

0901-ED 200

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 18th day of September, 1996

Darryl Moore  
Defendant

Subscribed and sworn to before me this 18th day of September, 1996

Elizabeth S. Guffie (L.S.)  
Notary Public for South Carolina

My Commission Expires: 2-20-2002

ARREST WARRANT

E-759293

96-10 J

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of CHEROKEE COUNTY

THE STATE against

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of CHEROKEE COUNTY

AFFIDAVIT

Personally appeared before me the affiant DETECTIVE MIKE FOWLKES who being duly sworn deposes and says that defendant DARRYL RUSSELL MOORE did within this county and state on August 31, 1996 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHEROKEE COUNTY) in the following particulars:

DESCRIPTION OF OFFENSE: STRONG ARM ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, DARRYL MOORE, DID TAKE WITH THE INTENT TO DEPRIVE, MONEY FROM THE QUICK C STORE. THE DEFENDANT DID INTIMIDATE KATRINA EARLS, CLERK OF THE STORE, TO ACCOMPLISH THE ROBBERY. INCIDENT OCCURRED ON AUGUST 31, 1996 AT 2731 E. CHEROKEE STREET, GROVER IN CHEROKEE COUNTY, S.C.

WARRANT BASED ON THE INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE. CASE# 96003463

DARRYL RUSSELL MOORE Address: 712 W. FLOYD BAKER BLVD. GAFFNEY, SC 29340 Phone: SSN: Sex: M Race: W Height: 5'10" Weight: 165 DL State: SC DL #: DOB: Agency ORI #: SC0110000 Prosecuting Agency: SHERIFF'S OFFICE Prosecuting Officer: DETECTIVE MIKE FOWLKES Offense: STRONG ARM ROBBERY Code/Ordinance Sec. 16-11-325

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant DARRYL RUSSELL MOORE on 09-05-96 W. FOSTER Signature of Constable/Law Enforcement Officer

RETURN WARRANT 09 SEP 1 1996 Magistrates Office, Cherokee County Court House GAFFNEY, SC 29340 803 487-2533

FILED IN OFFICE OF CLERK OF COURT S.C. CHEROKEE COUNTY

Sworn to and subscribed before me on 09/05/96 Signature of Issuing Judge (L.S.)

Signature of Affiant Michael A. Foster Affiant's Address 200 WEST MONTGOMERY STREET GAFFNEY, SC 29340 Affiant's Telephone 803 487-2505

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of CHEROKEE COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on August 31, 1996 defendant DARRYL RUSSELL MOORE did violate the criminal laws of the State of South Carolina (or ordinance of

[X] County/ [ ] Municipality of CHEROKEE COUNTY) as set forth below:

DESCRIPTION OF OFFENSE: STRONG ARM ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge's Address Cherokee County Court House GAFFNEY, SC 29340 Judge's Telephone 803 487-2533 Issuing Court: [ ] Magistrate [ ] Municipal [X] Circuit

ORIGINAL

E-759293

25

STATE OF SOUTH CAROLINA )  
COUNTY OF Cherokee )

INDICTMENT FOR ~~ARMED ROBBERY~~  
~~AND~~ ROBBERY

At a Court of General Sessions, convened on Cherokee  
the Grand Jurors of Cherokee County present upon their oath:

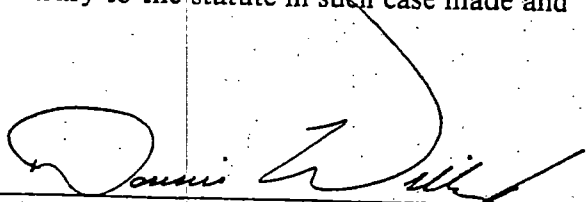
COUNT ONE — ARMED ROBBERY

That \_\_\_\_\_ did in  
\_\_\_\_\_ County on or about \_\_\_\_\_, while armed with a deadly  
weapon, to wit: \_\_\_\_\_  
\_\_\_\_\_, feloniously take from the person or presence of \_\_\_\_\_ by means of  
force or intimidation goods or monies of \_\_\_\_\_, such goods or monies being  
described as follows: \_\_\_\_\_  
\_\_\_\_\_

COUNT TWO — ROBBERY

That Darryl Russell Moore did in Cherokee  
County on or about August 31, 1996, feloniously take from the  
person or presence of Katrina Earls by means of  
force or intimidation goods or monies of Quick C Store  
such goods or monies being described as follows: \$850  
\_\_\_\_\_

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

  
SOLICITOR

WITNESSES

Michael Fowlkes, SD

*C-96  
9/18*

*MF*

ARREST WARRANT NO. E759293

ACTION OF GRAND JURY

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

Sign: *Darryl Russell Moore*

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 96-GS-11-1097

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

September 16 TERM 1996

THE STATE

Russell vs. Darryl  
Darryl Russell Moore

Indictment for ~~Armed~~  
Robbery and Robbery

Holman C. Gossett, Jr.

*Russell Darryl Moore* hereby appear in my own proper person and plead guilty to *Common Law Robbery*

count on the within Indictment

WITNESS: *Darryl Russell Moore*

*State of S.C.*  
S.C.G.Fls. & G.S. *cm*  
*9-10-96* *26*

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

COUNTY NO: \_\_\_\_\_

VS

CASE NO: 96 GS-11 1097

Russell Parry Moore

WARRANT NO: E 759253

CHARGE: Common Law Battery

The sentence of the Court is that Russell Parry Moore, the defendant named in this indictment be confined to the State Board of Corrections/Cherokee County Detention for a term of fifteen (15) months/years (and) (or) pay a fine of \$ \_\_\_\_\_ : provided that upon the service of \_\_\_\_\_ months /years (and) (or) payment of \$ \_\_\_\_\_ plus (pay) (waive) cost and assessments as applicable \*, the balance is suspended and the defendant is placed on probation for \_\_\_\_\_ months/years. Concurrent

RESTITUTION: (YES) (NO) \_\_\_\_\_  
HEARING HELD OR WAIVED ON : \_\_\_\_\_

PHYSICAL INJURY \$ \_\_\_\_\_  
(and) (or)  
PROPERTY DAMAGE \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

PAYABLE TO CLERK FOR (VICTIM) \_\_\_\_\_

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: \_\_\_\_\_

**RECEIVED**

SEP 24 1996

**R&E CENTER  
FINGERPRINTED**

DATE: 9-20-96  
GAFFNEY, S.C. 29340

Gay B. Cleary  
Presiding Judge

John W. Bannin  
CLERK OF COURT

\*COST AND ASSESSMENTS : FINE \$ \_\_\_\_\_  
NON WAIVABLE \$ \_\_\_\_\_  
NOT WAIVED \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

Date of Birth \_\_\_\_\_

Social Security \_\_\_\_\_

Drivers License N/A

ATTORNEY FOR DEF: Don Little

ADDRESS: 712 W. Floyd B. ...

Gaffney, S.C.

SOLICITOR \_\_\_\_\_

COURT REPORTER Mike White

M/P  
B/W

ARREST WARRANT

E-759284

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

AFFIDAVIT

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
CHEROKEE COUNTY )

Personally appeared before me the affiant DETECTIVE MIKE FOWLKES who being duly sworn deposes and says that defendant DARRYL RUSSELL MOORE did within this county and state on August 30, 1996 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHEROKEE COUNTY) in the following particulars: DESCRIPTION OF OFFENSE: ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, DARRYL RUSSELL MOORE, DID WHILE ARMED WITH A KNIFE TAKE MONEY FROM THE FAST AND FRESH STORE. INCIDENT OCCURRED ON AUGUST 30, 1996 AT 1116 CHEROKEE AVE. IN CHEROKEE COUNTY, S.C.

WARRANT BASED ON INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE. CASE# 96003400

Sworn to and subscribed before me )
on 08/30/96 )
[Signature] (L.S.) )
Signature of Issuing Judge

[Signature] )
Signature of Affiant )
Affiant's Address : 200 WEST MONTGOMERY STREET )
GAFFNEY, SC 29340 )
Affiant's Telephone : 803 487-2505 )

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
CHEROKEE COUNTY )

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on August 30, 1996 defendant DARRYL RUSSELL MOORE did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHEROKEE COUNTY) as set forth below: DESCRIPTION OF OFFENSE: ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address : Cherokee County Court House )
GAFFNEY, SC 29340 )
Judge's Telephone : 803 487-2533 )
Issuing Court: [ ] Magistrate [ ] Municipal [X] Circuit

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
CHEROKEE COUNTY )

THE STATE )
against )

DARRYL RUSSELL MOORE )
Address: 712 W. FLOYD BAKER BLVD. )
GAFFNEY, SC 29340 )
SSN: )
Race: W Height: 5'10" Weight: 165 )
DL #: )
Agency ORI #: SC0110000 )
Secuting Agency: SHERIFF'S OFFICE )
Secuting Officer: DETECTIVE MIKE FOWLKES )
Offense: ARMED ROBBERY )
Offense Code: )
Ordinance Sec. COMMON LAW )

This warrant is CERTIFIED FOR SERVICE in the )
[ ] County/ [ ] Municipality of )
The accused )
to be arrested and brought before me to be )
dealt with according to law. )

(L.S.) )
Signature of Judge

RETURN

A copy of this arrest warrant was delivered to )
defendant Darryl Russell Moore )
9-4-96 )
[Signature] )
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: )
Magistrate's Office, )
Cherokee County Court House )
GAFFNEY, SC 29340 )
803 487-2533

SEP 16 1 58 PM '96 )
CLERK OF COURT )
KATIE W. )
CLERK OF COURT )
CHEROKEE COUNTY, S.C.

ORIGINAL

E-759284

27

STATE OF SOUTH CAROLINA )  
COUNTY OF Cherokee )

INDICTMENT FOR ARMED ROBBERY  
~~AND ROBBERY~~

At a Court of General Sessions, convened on September 16, 1996,  
the Grand Jurors of Cherokee County present upon their oath:

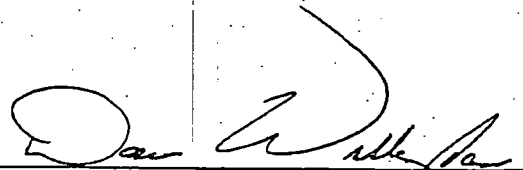
**COUNT ONE — ARMED ROBBERY**

That Darryl Russell Moore did in  
Cherokee County on or about August 30, 1996 while armed with a deadly  
weapon, to wit: a knife  
Richard Bonner  
feloniously take from the person or presence of Richard Bonner by means of  
force or intimidation goods or monies of Fast & Fresh, such goods or monies being  
described as follows: \$400

**COUNT TWO — ROBBERY**

That \_\_\_\_\_ did in \_\_\_\_\_  
County on or about \_\_\_\_\_, feloniously take from the  
person or presence of \_\_\_\_\_ by means of  
force or intimidation goods or monies of \_\_\_\_\_,  
such goods or monies being described as follows: \_\_\_\_\_

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

  
SOLICITOR

DOCKET NO. 96-GS-11-1098

**The State of South Carolina,**

County of Cherokee

COURT OF GENERAL SESSIONS

September 16 TERM 1996

THE STATE

Russell <sup>vs.</sup> Darryl  
Darryl Russell Moore

**Indictment for Armed  
Robbery and Robbery**

Holman C. Gossett, Jr.

WITNESSES

Michael Fowlkes, SD

*C-96  
9-20-96*

*8  
8*

ARREST WARRANT NO. E759284

**ACTION OF GRAND JURY**  
after being fully advised as to  
my legal rights, I hereby waive  
presentment to the Grand Jury.

Sign *Darryl Russell Moore*

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

I, *Darryl Russell Moore* hereby  
appear in my own proper person and plead guilty  
to Armed Robbery

\_\_\_\_\_ count on the within Indictment

WITNESS: *Darryl Russell Moore*

*Holman C. Gossett, Jr.*  
C.C. P.P.S. & G.S. W.M.  
9-10-96 26

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

COUN. NO: \_\_\_\_\_

CASE NO: 96 GS-11 1098

VS

WARRANT NO: E 759284

Russell Charles Moore

CHARGE: Armed Robbery

The sentence of the Court is that Russell Charles Moore, the defendant named in this indictment be confined to the State Board of Corrections/Cherokee County Detention for a term of thirty (30) months/years (and) (or) pay a fine of \$ \_\_\_\_\_ : provided that upon the service of \_\_\_\_\_ months /years (and) (or) payment of \$ \_\_\_\_\_ plus (pay) (waive) cost and assessments as applicable \*, the balance is suspended and the defendant is placed on probation for \_\_\_\_\_ months/years. ~~consec~~ consec to 96-1100

RESTITUTION: (YES) (NO)  
HEARING HELD OR WAIVED ON : \_\_\_\_\_

PHYSICAL INJURY \$ \_\_\_\_\_  
(and) (or)  
PROPERTY DAMAGE \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

PAYABLE TO CLERK FOR (VICTIM) \_\_\_\_\_

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: \_\_\_\_\_

**RI**  
SEP 24 1996  
B & E CENTER  
FINGERPRINTED

DATE: 9-20-96  
GAFFNEY, S.C. 29340

Gregory E. Clay  
Presiding Judge  
Walter W. Davis  
CLERK OF COURT  
Date of Birth \_\_\_\_\_  
Social Security \_\_\_\_\_  
Drivers License N/A  
ATTORNEY FOR DEF Ken Fittner  
ADDRESS 712 W. Floyd Baker Rd  
Gaffney SC  
SOLICITOR \_\_\_\_\_  
COURT REPORTER Mike White

\*COST AND ASSESSMENTS : FINE \$ \_\_\_\_\_  
NON WAIVABLE \$ \_\_\_\_\_  
NOT WAIVED \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

M/D  
B/W

ARREST WARRANT

F- 027091

STATE OF SOUTH CAROLINA

County Municipality of

THE STATE against

MOORE, RUSSELL DARRYL

Address: GAFFNEY, SC 29340

Phone: SSN: 150

Sex: Race: Height: Weight:

DL State: DL#: SC0110200

DOB: CITY Agency: GAFFNEY

Prosecuting Agency: ANY LAWFUL OFFICER

Prosecuting Officer: ROBBERY

Offense: Offense Code: 026A

Code/Ordinance Sec. Offense Code:

Code/Ordinance Sec.

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 9-4-96

Signature of Constable/Law Enforcement Officer: Det Sgt. M.C. Seeger

RETURN WARRANT TO: GAFFNEY POLICE DEPARTMENT

201 N LIMESTONE

P.O. BOX 2109

GAFFNEY S.C. 29342

STATE OF SOUTH CAROLINA

FILED County/ Municipality of CLERK OF COURT CHEROKES

Personally appeared before me the affiant MOORE, RUSSELL DARRYL who being duly sworn deposes and says that defendant did within this county and state on 9-2-96 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of ) in the following particulars: ARMED ROBBERY

DESCRIPTION OF OFFENSE: ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: THE DEFENDANT, RUSSELL DARRYL MOORE, DID TAKE WITH INTENT TO DEPRIVE \$444.00 IN MONIES FROM THE PERSON OF LINDA BEST, AN EMPLOYEE OF THE CORNER STOP #2, THROUGH FORCE AND INTIMIDATION, THREATENING TO HURT HER AND SHOWING HER A HANDLE POSITIONED IN THE TOP OF HIS JEANS, WHICH SHE THOUGHT TO BE A GUN OR KNIFE, A DEADLY WEAPON. THIS DID OCCUR AT 717 PROVIDENCE ROAD WITHIN THE CITY LIMITS OF GAFFNEY, SOUTH CAROLINA, COUNTY OF CHEROKES, ON SEPTEMBER 2, 1996. PROBABLE CAUSE BASED UPON INVESTIGATION OF THE DETECTIVE DIVISION OF THE GAFFNEY POLICE DEPARTMENT.

Sworn to and subscribed before me on 09-04-96

Signature of Issuing Judge (L.S.): J. Allison

Signature of Issuing Judge

AFFIDAVIT

CLARY, DET SGT D L

MOORE, RUSSELL DARRYL

who

GAFFNEY

Signature of Affiant: Det. Sgt. D.L. Clary

Signature of Affiant: GAFFNEY POLICE DEPT

Affiant's Address: SC 29340

Affiant's Telephone: 864 489-8115

Affiant's Telephone

STATE OF SOUTH CAROLINA

GAFFNEY Municipality of

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It is appearing from the above affidavit that there are reasonable grounds to believe that the defendant MOORE, RUSSELL DARRYL did violate the criminal laws of the State of South Carolina (or ordinance of ) as set forth below:

County/ Municipality of ARMED ROBBERY

DESCRIPTION OF OFFENSE:

Now, therefore, you are empowered and directed to arrest the said defendant and bring her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. MESTONE STREET.

Signature of Issuing Judge (L.S.): J. Allison

Signature of Issuing Judge

Judge: J. Allison

Judge's Address: GAFFNEY, SC 29340

Judge's Telephone: 803 489-8115

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL



WITNESSES

Det. Sgt. David Clary  
City Police

*C*  
*9-20-96*

ARREST WARRANT NO. <sup>F</sup> 2027091

ACTION OF GRAND JURY

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

Sign *Russell D. Moore*  
Foreman of Grand Jury

VERDICT

Foreman of Grand Jury

Date:

DOCKET NO. 96-GS-11-1100

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

September 16 TERM 1996

THE STATE

vs.

Russell Darryl Moore

Indictment for Armed Robbery and Robbery

Holman C. Gossett, Jr.

I, *Russell Darryl Moore* hereby appear in my own proper person and plead guilty to *Common Law Robbery*

to \_\_\_\_\_ court on the within indictment

WITNESS:

*Holman C. Gossett, Jr.*  
*Russell D. Moore*  
C.C.P.S. & G.S. *WM*  
*9-20-96*

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

COUNT NO: \_\_\_\_\_

CASE NO: 96 GS-11 1100

VS

WARRANT NO: 027091

Russell Wayne Moore

CHARGE: Common Law Battery

The sentence of the Court is that Russell Wayne Moore, the defendant named in this indictment be confined to the State Board of Corrections/Cherokee County Detention for a term of fifteen (15) months/years (and) (or) pay a fine of \$ \_\_\_\_\_ : provided that upon the service of \_\_\_\_\_ months /years (and) (or) payment of \$ \_\_\_\_\_ plus (pay) (waive, cost and assessments as applicable \*, the balance is suspended and the defendant is placed on probation for \_\_\_\_\_ months/years. consecutive to 96-1098

RESTITUTION: (YES) (NO)  
HEARING HELD OR WAIVED ON: \_\_\_\_\_

PHYSICAL INJURY \$ \_\_\_\_\_  
(and) (or)  
PROPERTY DAMAGE \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

PAYABLE TO CLERK FOR (VICTIM) \_\_\_\_\_

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: \_\_\_\_\_

ATTEST COPY  
Brandy W. Hester  
CLERK OF COURT  
CHEROKEE COUNTY, SC

DATE: 9-20-96  
GAFFNEY, S.C. 29340

Lang E. Clay  
Presiding Judge

\*COST AND ASSESSMENTS : FINE \$ \_\_\_\_\_  
NON WAIVABLE \$ \_\_\_\_\_  
NOT WAIVED \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

Katie W. Babin  
CLERK OF COURT

Date of Birth: [REDACTED]  
Social Security [REDACTED]  
Drivers License 2/A

ATTORNEY FOR DEF: Don Lettner  
ADDRESS 712 W. Floyd Street

Duffin SC  
SOLICITOR Annie Williams  
COURT REPORTER Michelle

M/W  
B/W

RECEIVED

JUN 30 2016

SC Court of Appeals

att. Jenny  
Mrs. Kitchner

Russell Darryl Moore  
VS

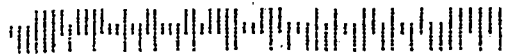
State of South Carolina

Ref: proposal

Appellate case # 2016-001259

Russell Darrv/ Moore

#145353 w



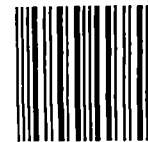
Tiger River Corr. Inst.

200 Prison Rd.

Enoree SC 29335



1000



29211

U.S. POSTAGE  
PAID  
GAFFNEY, SC  
29341  
JUN 28, 16  
AMOUNT

**\$3.46**

R2304N117416-08

**RECEIVED**

JUN 30 2016

SC Court of Appeals

South Carolina  
Court of Appeals  
P.O. Box 11429  
Columbia SC 29211