

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

JOSEPH DOMINICK URATO

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002381

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
 2 COUNTY OF GREENVILLE) 2010-GS-23-7909
 3)
 4 State of South Carolina) TRANSCRIPT OF RECORD
 5)
 6 -vs-)
 7 Joseph Dominick Urato)

8 January 17, 2012
 9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE EDWARD MILLER, Judge.

12 A P P E A R A N C E S

13 RANDY CHAMBERS, Esquire
 14 Attorney for the Plaintiff

15 JON GREGORY, Esquire
 16 Attorney for Defendant

17 CAROLINE HISKELL
 18 Thirteenth Circuit Court Reporter
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I N D E X

(There were no exhibits or witnesses presented).

State versus Joseph Dominick Urato

P R O C E E D I N G S

1
2
3 THE BAILIFF: All rise, the Honorable Edward
4 Miller presiding.

5 THE COURT: Thanks. Please be seated.

6 THE CLERK: Your Honor, this is case 2010-GS-
7 23-7909, the State versus Joseph Dominick Urato who is
8 indicted for conspiracy and he's pleading to the same.
9 The case of 2010-GS-23-7945, Mr. Urato is indicted for
10 bank robbery and he's pleading to entering the bank
11 depository with intent to steal. In the case of 2010-GS-
12 23-7946, Mr. Urato is also indicted for bank robbery and
13 he's pleading to the same.

14 Sir, would you please raise your right hand.

15 JOSEPH DOMINICK URATO, having been duly
16 sworn, testified as follows:

17 Thank you.

18 THE COURT: Mr. Urato, in the last 24 hours,
19 have you had any drugs, alcohol or medication?

20 DEFENDANT URATO: No, sir.

21 THE COURT: Have you ever been treated for
22 the abuse of alcohol or drug, for mental illness or
23 emotional problems?

24 DEFENDANT URATO: Yes, Your Honor.

25 THE COURT: Tell me about that.

~~DEFENDANT URATO: I've struggled with drug~~

State versus Joseph Dominick Urato

1 addiction ever since I was 15.

2 THE COURT: What kind of drugs?

3 DEFENDANT URATO: Cocaine, crack, Ecstasy.

4 THE COURT: What kind of treatment have you
5 had?

6 DEFENDANT URATO: Not much. I was supposed
7 to get some with the government. As backed up and as
8 crowded as they are, they never got around to it so I was
9 sent to prison once before and never got any treatment.

10 THE COURT: Are you sober today?

11 DEFENDANT URATO: Yes, sir.

12 THE COURT: You're up here on three
13 indictments. The first one I've got is 2010-7946 alleges
14 you did in Greenville County, July 30, 2010, entered the
15 Wachovia Bank, Lewis Plaza, Greenville, South Carolina.
16 with the intent to steal money, securities for money or
17 property either by force, intimidation or threats. Is
18 this a 15 year offense?

19 MR. GREGORY: A 30 year, Your Honor.

20 THE COURT: Any mandatory minimum?

21 MR. GREGORY: No, Your Honor.

22 THE COURT: Thirty years, do you understand
23 that?

24 DEFENDANT URATO: Yes, Your Honor.

25 THE COURT: This is a Serious Offense. That

State versus Joseph Dominick Urato

1 means if you get three convictions for Serious Offenses,
2 that means you're eligible for life in prison without
3 parole, do you understand that?

4 DEFENDANT URATO: Yes, Your Honor.

5 THE COURT: You're also up here on 2010-7945,
6 it alleges you did in Greenville County, July 27, 2010,
7 enter Arthur State Bank on North Pleasantburg Drive with
8 the intent to steal money by force or intimidation and
9 that's another 30 years and also another Serious Offense,
10 do you understand that?

11 DEFENDANT URATO: Yes, Your Honor.

12 THE COURT: And you're also up here on
13 2010-7909 alleges you did in Greenville County between
14 July 27 and July 30, 2010 you unlawfully combined with
15 Deborah Pitman Bassler for the purpose of accomplishing an
16 unlawful object or a lawful object by unlawful means and
17 that is bank robbery. Five years for that, do you
18 understand that?

19 DEFENDANT URATO: Yes, Your Honor.

20 THE COURT: Understanding the nature of the
21 charges against you and the maximum possible punishment,
22 how do you want to plead?

23 DEFENDANT URATO: Guilty.

24 THE COURT: Did anybody force you in any way
25 to get you to do that?

State versus Joseph Dominick Urato

1 DEFENDANT URATO: No, Your Honor.

2 THE COURT: Did anybody promise you anything
3 or coerced you in any way?

4 DEFENDANT URATO: No, Your Honor.

5 THE COURT: You understand you have an
6 absolute right to a trial by jury where you would be
7 presumed innocent unless and until the State could prove
8 you guilty beyond any reasonable doubt of each and every
9 element of the offenses that you were charged with. You
10 would have a right to confront and cross-examine the
11 witnesses and the evidence put up against you by the
12 State.

13 You'd have a right to compel in Court all
14 relevant and competent evidence in your own defense or you
15 can remain silent. Your silence can not be held against
16 you and you can never be compelled to incriminate
17 yourself.

18 Do you understand all those rights?

19 DEFENDANT URATO: Yes, Your Honor.

20 THE COURT: Do you want to give up all of
21 those rights to enter this plea?

22 DEFENDANT URATO: Yes, Your Honor.

23 THE COURT: You sure?

24 DEFENDANT URATO: Yes, Your Honor.

25 THE COURT: Are you guilty?

State versus Joseph Dominick Urato

1 DEFENDANT URATO: Yes, Your Honor.

2 THE COURT: Are you totally satisfied with
3 your lawyer?

4 DEFENDANT URATO: Absolutely.

5 THE COURT: Got any complaints you want to
6 make about how you've been treated in this case?

7 DEFENDANT URATO: No, Your Honor.

8 THE COURT: And have you had enough time to
9 review the evidence the State has against you?

10 DEFENDANT URATO: Yes, Your Honor.

11 THE COURT: Okay. Tell us about it.

12 MR. GREGORY: Thank you, Your Honor. On July
13 27, 2010, the co-defendant Deborah Bassler walked into the
14 Arthur Bank on Pleasantburg Drive in Greenville County.

15 She pretended to use the bathroom to make
16 sure the bank was clear. After she left, this defendant
17 entered the bank wearing a mask and a blue bandanna around
18 his mouth. He jumped over the counter, was screaming the
19 whole time and said that no one would get hurt and
20 demanded money.

21 The defendant got approximately \$3,400 in
22 cash from the teller and left the bank.

23 Both the co-defendant Bassler and this
24 defendant were arrested on July 30, 2010 after Bassler
25 entered the First Saver's Bank on Augusta Road. The

State versus Joseph Dominick Urato

1 teller there recognized her as the co-defendant in the
2 Arthur State Bank and she tripped a silent alarm.

3 According to Ms. Bassler's testimony, she
4 says that after she went in the First Savers she went in
5 the scope it out just like the Arthur State Bank. She
6 went back to the truck with this defendant, they started
7 gearing up to rob the bank and that's when the police
8 showed up and actually apprehended both suspects.

9 She gave a complete statement implicating
10 herself and the defendant and she was deferred sentencing
11 back in November. She was going to testify today. Those
12 are the facts, Your Honor.

13 THE COURT: Well, that was one bank. Weren't
14 there two banks?

15 MR. GREGORY: There were, Your Honor. It's
16 the State's position that the First Savers Bank she
17 entered the bank and according to the statute entering a
18 bank with intent to ---

19 THE COURT: Wait a minute. I've got Arthur
20 State Bank and I got Wachovia.

21 MR. GREGORY: There should be an amended
22 indictment, Your Honor, that reads First Savers Bank.

23 THE COURT: I don't have that.

24 MR. CHAMBERS: Your Honor, I am aware that
25 they were going to amend that indictment and that it had

State versus Joseph Dominick Urato

1 been amended.

2 THE COURT: Which one?

3 MR. CHAMBERS: The Wachovia. The first one
4 is the -- the bank on the 27th, that one is correct,
5 Arthur State Bank. When they got the indictment on the
6 subsequent charge they put Wachovia. They did amend it
7 and I was shown an amended copy at some point where they
8 had amended it to First Savers on Augusta.

9 THE COURT: 7946 reads Wachovia Bank.

10 MR. GREGORY: I can try to track it down at
11 the Clerk's Office. I've got a copy of the amended if you
12 want to see it.

13 THE COURT: We just don't want to have this
14 indictment floating around out there.

15 MR. GREGORY: I agree. According to the
16 Clerk's Office I had noticed the new number on top of the
17 amended indictment. I went down to the Clerk and talked
18 to her. She said this was just a typo. When they were
19 stamping it, they were flipping through each individual
20 one and didn't notice that there had already been an
21 amended indictment. The indictment that they had down
22 there, she showed me, had this number scratched off and it
23 was the amended indictment.

24 THE COURT: Let me see the amended
25 indictment.

State versus Joseph Dominick Urato

1 MR. GREGORY: I'll be happy to send my
2 investigator down there to get a copy of it.

3 THE COURT: Mr. Urato, I read to you the
4 indictment that said Wachovia Bank. Did you go rob
5 Wachovia?

6 MR. CHAMBERS: No, Your Honor.

7 DEFENDANT URATO: No ---

8 THE COURT: I'm talking to him.

9 MR. CHAMBERS: Sorry, Your Honor.

10 THE COURT: Well, amended indictment has the
11 same number. This is a copy, I guess. It alleges that
12 you did in Greenville County on July 30, 2010 enter the
13 First Savers Bank located at 1818 Augusta Street,
14 Greenville, South Carolina with the intent to steal money,
15 securities by force or intimidation or threats. It
16 carries up to 30 years. It's a Serious Offense, same
17 penalty as the other one.

18 Now, I've asked you a series of questions and
19 you responded to all those questions but it referenced the
20 Arthur State Bank and that was in response to the Arthur
21 State Bank indictment and the Wachovia Bank Indictment.
22 But the Wachovia Bank Indictment is obviously in error.
23 Do you want to change any of your previous answers to the
24 questions I have propounded to you with respect to this
25 indictment with regards to First Savers Bank?

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1 DEFENDANT URATO: No, Your Honor.

2 THE COURT: Do you need a minute to talk to
3 your lawyer about this?

4 MR. CHAMBERS: We actually talked about this
5 and that's probably why neither one of us noticed the fact
6 that you said Wachovia because we had talked about how the
7 indictment had been amended and I even told him how I
8 looked at the indictment. I guess what I had actually
9 seen was a copy because whenever I have a trial on the
10 docket I look on the docket and I did that today and
11 everything has been changed.

12 THE COURT: I'm going to, if you have no
13 objection and this is entirely up to you Mr. Urato, I'm
14 going to mark this indictment, this copy, as a deemed
15 original. Is that agreeable with you?

16 DEFENDANT URATO: Yes, Your Honor.

17 THE COURT: I'm going to scratch through this
18 typo stamped number up there. Any problem with that?

19 DEFENDANT URATO: No, Your Honor.

20 THE COURT: Okay. Is everything he told me
21 about the facts of the case correct?

22 DEFENDANT URATO: Yes, Your Honor.

23 THE COURT: I'm going to accept your guilty
24 plea to each of these indictments as being freely,
25 voluntarily and intelligently made with the advice of a

State versus Joseph Dominick Urato

1 very competent attorney with whom you state you are
2 satisfied and there is a substantial factual basis for the
3 plea.

4 MR. CHAMBERS: Your Honor, this has been a
5 complicated for me from a personal standpoint. First of
6 all, I have not represented him from the outset. He was
7 represented by Nahir Patel and I inherited this case from
8 him. Every since I got the case, I've had this sort of
9 ongoing back and forth with the Solicitor's Office, Mark
10 Moyer had the case first, about whether the Feds were
11 going to take the case. The FBI agent that I spoke to
12 numerous times told me that the Feds wanted this case and
13 they were going to take this case and they never did that.

14 So here we are on the trial docket but that
15 has let us to a lot -- I think the case would have been on
16 the trial docket a lot sooner and my client may have
17 decided to plead a lot sooner had it not been for those
18 discussions with the FBI and those things over time.

19 In looking at this case, Your Honor, I would
20 ask the Court to consider that he has come in today and
21 taken full responsibility for what happened. He has
22 nobody -- there was never any indication that a weapon was
23 ever presented in this case. He never did anything to
24 hurt anybody or try to hurt anybody and so there are a lot
25 of mitigating factors.

State versus Joseph Dominick Urato

1 As he indicated to you, he had a drug problem
2 for years and, in fact, his co-defendant in this case will
3 be sentenced later and they were waiting to see how she
4 would testify, had a drug problem to the degree that even
5 when she gave her initial statement to police said that
6 she was high on crack at the time.

7 He has now been in jail for about a year and
8 a half. He has been completely drug free. As far as
9 client go he has been one of the most cooperative clients
10 I have ever had the pleasure to work with. He is a very
11 smart fellow and he asks intelligent questions and he
12 follows questions and he has just been very good to work
13 with.

14 I tell the Court that because even at his
15 worst when he had this drug problem, he never set out to
16 hurt anybody or do anybody any harm. The second offense
17 he hadn't even made it out of the parking lot so he didn't
18 have an opportunity to do anything, but it was clear that
19 he didn't had a weapon. If he had one, they would have
20 found one when he was preparing to go into that second
21 bank. So he wasn't in any position to do any harm to
22 anybody.

23 He does have a prior record. He does have
24 one prior bank robbery on his record which is the federal
25 sentence that he did and I know the Court is going to take

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1 that into consideration. He knows that he's looking at a
2 whole lot of time.

3 I would ask the Court to look at the
4 mitigating factors and he's even agree to make
5 restitution in this case which would be very difficult for
6 him but he intends to do that.

7 I would ask the Court to consider a sentence
8 -- he knows he's got to do so time and I'm not asking you
9 to just give him a slap on the wrist, but I would ask you
10 to consider something in the range of seven or eight years
11 which he would have to serve straight time.

12 I also want to point out that his mother has
13 traveled up here. She's sitting only because she has a
14 cane but she's traveled up from Charleston but she's here
15 to support him. He has a sister here today who is seated
16 in the second row. His father wanted to be here but he
17 lives in Hawaii and that's obviously a long distance to
18 travel. I've spoken to his family members numerous times
19 on the phone and I know they will do whatever they can
20 once he's released to help with his drug problem.

21 I would also like to ask the Court to
22 recommend ATU for him and I think that would be good.

23 THE COURT: How many days has he been in jail
24 and what's his record?

25 MR. GREGORY: He's been in jail 536 days.

State versus Joseph Dominick Urato

1 Your Honor, his prior record is 1994 DUS, 1997 habitual
2 traffic offender. In 1999 we have two counts of armed
3 robbery. I think it was the same plea, and it was also a
4 possession of a weapon during the commission of a violent
5 crime that was associated with that robbery. 2003,
6 smuggling contraband into a prison.

7 THE COURT: The armed robbery was the federal
8 case?

9 MR. GREGORY: Yes, Your Honor. There was two
10 counts of that in which he was sentenced to 138 months.

11 THE COURT: Anything you want to tell me.

12 DEFENDANT URATO: Just that I'm sorry and I
13 wish I didn't have a drug problem. I wish I could get
14 some help.

15 THE COURT: You on federal probation?

16 DEFENDANT URATO: Yes, Your Honor.

17 MR. CHAMBERS: I think his mother would like
18 to speak.

19 THE COURT: Yes, ma'am, state your name for
20 the record.

21 SPEAKER: (Inaudible) I've dealt with people
22 with substance abuse. If they don't get help, they're
23 never going to get cured. He was released from prison
24 where he was going to a very good doctor, he was told he
25 couldn't go to (inaudible). He was going to therapy and

State versus Joseph Dominick Urato

1 the doctor couldn't relate to him. I have a daughter here
2 who is bi-polar. For 17 years I fought and I knew what to
3 do for him. Joey was too far away from me. Today she
4 goes to a therapist and she takes her medication, but she
5 had a drug problem (inaudible), but there was somebody
6 there that fought for her because she was worth saving and
7 so is he. I just wanted you to know that. There are a
8 lot of people going through the same thing as I am. If
9 you're going to put him away, he needs to be put in an
10 institution.

11 THE COURT: All right, thank you. Is there
12 any victim input?

13 MR. GREGORY: The victim had been notified
14 and would like restitution and the representatives from
15 the Arthur State Bank are in the courtroom.

16 THE COURT: I'll give them the opportunity to
17 speak if they want.

18 (No response.)

19 Well, Mr. Urato, you are an intelligent
20 person and you clearly have a drug addiction, but we see
21 lots of people with drug addictions in here and with
22 mental illness. That's what we deal with for the most
23 part. I'm going to give you 30 years, provided upon 18
24 years. The balance is suspended, probation for three,
25 restitution pursuant to the order, five straight on the

State versus Joseph Dominick Urato

1 conspiracy concurrent with 30, suspended on probation
2 concurrent with the other one.

3 Good luck to you.

4 I got to put conditions on your probation.
5 Mr. Urato, the conditions on your probation will include
6 substance abuse counseling, random drug and alcohol
7 testing and required to pay \$500. to the Public Offender
8 Fund for your attorney.

9 Thank you very much.

10 ---END OF TRANSCRIPT RECORD---

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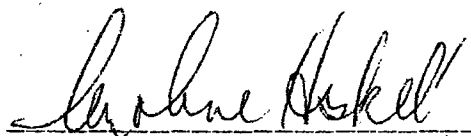
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State versus Joseph Dominick Urato

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I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth 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 case, relative to appeal, in the Court of General Sessions, Greenville, South Carolina on the 17th of January, 2012.

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



Caroline Hiskell

FORM 5

STATE OF SOUTH CAROLINA)
County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

JOSEPH DOMINICK UGATO 349299)
Full name and prison number (if any) of Applicant)

2012-CP-23-03617

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORR. INST.

2. Name and location of Court which imposed sentence GREENVILLE COUNTY
305 EAST NORTH STREET, GREENVILLE, S.C. 29601
3. Name(s) of co-defendant(s) (if any) DEBRON B PITTMAN BASLER

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-23-7946

- (b) _____
- (c) _____

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

- (a) JANUARY 17, 2012
- (b) 30yrs SUSPENDED TO 18yrs and 3yrs probation
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty when told by lawyer I would only get 10yrs.
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

YES.

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

- (a) the name of each Court to which you appealed:
 - i. SOUTH CAROLINA COURT OF APPEALS
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. HAVE NOT HEARD ANYTHING FROM COURT.
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. —
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. —
 - ii. _____
 - iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) —

- (b) _____
- (c) _____

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

- (a) LAWYER ADVISED ME THAT IF I PLEAD I WOULD GET A 10yrs NON VIOLENT SENTENCE. Probation OFFICER said it would be a 51/20
- (b) but SCDC has it as a non violent 85%

- (c) NEVER ENTERED BANK that I'm charged with. Never saw or shown INDICTMENT. I've been charged with wrong bank !!!

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

- (a) PADILLA V. KENTUCKY / CHAIDEZ V. U.S.
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? YES No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? YES

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

- (a) the specific nature thereof:
 - i. I appealed my SENTENCE because I WAS wronglx advised on the time I would be getting if I AGREEE to plea
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. South Carolina COURT OF Appeals
 - ii. _____
 - iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented.

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. PANDY CHAMBERS -
PUBLIC DEFENDERS OFFICE 305 E. NORTH ST GREENU. N.S.C. 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. my plea and sentencing
 - ii. _____
 - iii. _____

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

I WANT the 10yr nonviolent 51%/65% that was
add to me by lawyer or vacate total sentence and have
a trial of the right charges. At SAME TIME AS CO-DEFO

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

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

Joseph Urato

SWORN to and subscribed before me this 14th
day of May, 2012.

Lechean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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

Joseph D Ueatu
Applicant

SWORN or affirmed to and subscribed before me this
14th day of May, 2012.

Ludhean Bryant
Notary Public

My Commission Expires: May 26, 2020

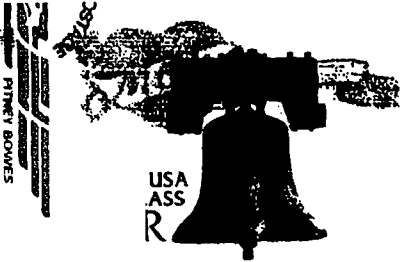
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2012-CP-23-03617

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GREENVILLE County Clerk of Court
305 EAST NORTH STREET
GREENVILLE, S.C. 29601

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-23-3617
COUNTY OF GREENVILLE)	
)	
Joseph Dominick Urato,)	
S.C.D.C. No. 349299,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief (PCR) application filed May 31, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2011 term of General Sessions for two (2) counts of bank robbery (2010-GS-23-7945; -7946) and conspiracy (2010-GS-23-7909). Randall L. Chambers, Esquire represented the Applicant.

On January 17, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirty years suspended on service of eighteen years and three years probation for one count of bank robbery,¹ thirty years suspended during probation for the second count of bank robbery, and five years for conspiracy. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville

¹ 2010-GS-23-7946.

County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.
 - a. "Lawyer advised me that if I plead I would get a 10 yrs nonviolent sentence."
2. Involuntary Guilty Plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)

(citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke,

282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

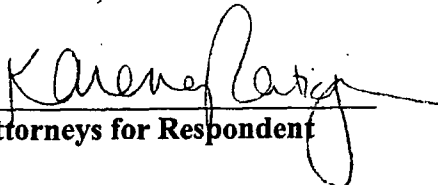
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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 31, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 JOSEPH DOMINICK URATO, 349299)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

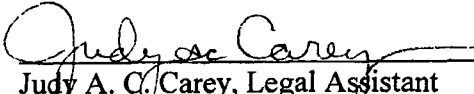
2012-CP-23-3617

AFFIDAVIT OF SERVICE BY MAIL

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

Joseph Dominick Urato, 349299
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472

DATED this 31st day of August, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

» > o < «

Certificate of Reporter 24

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1

8 9

Letters

1 THE COURT: Yes, ma'am.

2 MS. RATIGAN: Thank you, Your Honor, may it please
3 the Court. This is the case of Joseph Urato vs. The State
4 of South Carolina. The docket number is 2012-CP-23-3617.
5 The Applicant was indicted for two counts of bank robbery
6 and one count of conspiracy. He was represented on these
7 charges by Mr. Chambers. On January 17th of 2012 he pled
8 guilty before Judge Miller. He received concurrent
9 sentences of 30 years suspended to the service of 18 years
10 and three years probation for one count of bank robbery,
11 30 years suspended for the second count of bank robbery
12 and five years for conspiracy. He did not file an appeal.
13 And The State's ready to proceed.

14 THE COURT: All right, Ms. Ross.

15 MS. ROSS: Thank you, Your Honor. We first move
16 pursuant to Section 17-27-70 that the reply was not filed
17 within 30 days. And then move for summary judgment for
18 us. The application was filed 5/31/12 and the reply
19 8/31/12.

20 THE COURT: All right. Are you asking for a
21 dismissal pursuant to Rule 56 under the Rules of Civil
22 Procedure?

23 MS. ROSS: We just -- actually I'm going under
24 Section 17-27-70.

25 THE COURT: Okay.

1 MS. ROSS: Which says that that must be filed. But
2 56 is for the summary judgment, yes.

3 THE COURT: Okay. I believe there's a long standing
4 preference under the law for matters to be resolved on the
5 merits as opposed to a summary judgment fashion. In this
6 instance if, in fact, there was a filing of the return was
7 some deal late, I find that it has visited no prejudice
8 upon the Applicant in this instance. And therefore, I
9 respectfully deny your motion.

10 MS. ROSS: Thank you, Your Honor. Then we'd call
11 Joseph Urato.

12 THE CLERK: Place your left hand on the Bible, raise
13 your right hand.

14 JOSEPH URATO, after being duly sworn, testified
15 as follows:

16 THE CLERK: Thank you, may be seated. State your
17 full name for the record.

18 THE WITNESS: Joseph Dominick Urato.

19 DIRECT EXAMINATION

20 BY MS. ROSS:

21 Q Okay, Mr. Urato, in your application you've alleged
22 ineffective assistance of counsel. Can you briefly state
23 the basis for that allegation?

24 A The basis for that was before I walked into the
25 courtroom, I was dressed to pick a jury. I planned on

JOSEPH URATO-DIRECT BY MS. ROSS

1 going to trial. I wanted to go to trial. Mr. Chambers
2 walked in and said he had a deal for me for ten years if I
3 pled right now. I asked him if it was violent or
4 non-violent? He said he wasn't sure, he said he would go
5 check. He went back out of the room, I guess he came into
6 the courtroom and came back in and said it was
7 non-violent.

8 And I said, Where do I sign then?

9 He said, I will be right back.

10 He went back out, about 15 minutes later he came back
11 with a paper. I did not read them, I took his word for
12 it, signed the paper work expecting to go out there
13 getting a ten year deal.

14 Q Would you have gone to trial but for that 10 year
15 deal?

16 A Absolutely.

17 Q Now, did -- why didn't you appeal?

18 A I did appeal. I wrote a letter to The Clerk of Court
19 when I was at Kirkland. I got a letter back, a copy from
20 the Clerk of Court saying that they filed it. But when I
21 filed the return it says that I never did an appeal. But
22 I have a copy of that with me right now.

23 Q Okay. Can you show me the copy?

24 A Yes, ma'am.

25 Q Okay. Do you want me to put it in evidence?

JOSEPH URATO-DIRECT BY MS. ROSS

1 A Yes, ma'am.

2 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
3 identification only.)

4 MR. URATO: I have one more thing to say if I may?

5 BY MS. ROSS:

6 Q You can.

7 A Also, I wrote the South Carolina Court of Appeals. I
8 don't know if I was supposed to or not but this was the
9 letter they had sent back to me. Then when I received
10 that letter I had wrote Mr. Chambers after I received that
11 letter and never heard anything back for him.

12 MS. ROSS: Let's go ahead and put this in as well.
13 Just mark them as one exhibit. Then, can we make copies
14 for him for his file?

15 You want to make copies for your file?

16 A If you feel I need it.

17 Q I don't think you do.

18 Okay, just one.

19 THE COURT REPORTER: All of these as one?

20 MS. ROSS: Yes.

21 Your Honor, I ask that these be moved into evidence
22 at this time.

23 THE COURT: Okay, Ms. Ratigan --

24 Ms. Ross, is that Exhibits one and two?

25 MS. ROSS: I just made them one Exhibit.

JOSEPH URATO-DIRECT BY MS. ROSS

1 THE COURT: Okay, good enough.

2 MS. RATIGAN: I don't have any objection.

3 THE COURT: All right, without objection, the same is
4 moved into evidence without objection.

5 (WHEREUPON, Applicant's Exhibit No. 1 was admitted
6 into evidence.)

7 BY MS. ROSS:

8 Q So, those are all now in evidence regarding your
9 appeal. Did you have any other issues regarding the
10 Indictment?

11 A Yes. I wasn't fully aware or understood what they
12 meant when they tried to -- when they said they deemed
13 the -- the Indictment that they had the original
14 Indictment. I was under the impression I was getting the
15 ten years. So, when they asked me did I have a problem
16 with it, I believe he asked me twice.

17 I said, No, I don't have a problem with it.

18 Because, I mean, I was expecting to get the 10 years.
19 So, I thought we were just going through the formal
20 motions of the court proceedings. But apparently that
21 wasn't so. But I've come to -- what I don't understand as
22 what that is, it didn't go in front of the Grand Jury.
23 How can I plead to an Indictment that didn't go in front
24 of the Grand Jury? And no one stopped it. I mean, I'm
25 not a lawyer, I don't know these things. I mean, someone

JOSEPH URATO-DIRECT BY MS. ROSS

1 should have at least briefed me or let me know what I was
2 doing.

3 Q Briefly explain what was the problem with the
4 Indictment?

5 A From what I understand, the problem with the
6 Indictment originally was they were saying it was a
7 Wachovia Bank. And that's what I thought they were
8 fixing. Because I kept saying, I have nothing to do with
9 a Wachovia Bank. Then they switched it to -- it was
10 attempted robbery, originally. It was never bank robbery,
11 I never entered a bank. So, I was saying I didn't rob
12 that bank or even enter that bank. And they said, Well,
13 they switched it to the First Savers Bank. Because
14 apparently while me and my co-defendant were separated,
15 she had went into the First Savers Bank. Which I wasn't
16 aware of at the time. And that would have come out if we
17 went to trial. Because I would have testified to that.
18 But what happened was they changed it from attempted
19 robbery to bank robbery. I never entered that bank, I
20 never robbed that bank.

21 So, my whole grief with this whole thing is how am I
22 in SCDC for robbing a bank that was never robbed? If we
23 took the bank tellers or the bank president and they got
24 on the stand right now and asked them if their bank was
25 ever robbed, they would say no. And that would be the

JOSEPH URATO-DIRECT BY MS. ROSS

1 truth because it was never robbed. So how am I being
2 charged with a bank that was never charged [verbatim]?

3 Q So, you're saying that amended Indictment doesn't
4 give subject matter jurisdiction of that charge?

5 A No, ma'am. No, ma'am.

6 Q Are there any other allegations regarding the PCR?

7 A No.

8 Q All right.

9 A One more thing, I take that back, I'm sorry. I was
10 also under the impression that I was doing the
11 non-violent, it's a 65 percent. Why it's 85, I guess
12 because of a code but I'm doing 85 percent sentence. I'm
13 doing a non-violent 85. I've never even heard of a
14 non-violent 85. I've always done federal time. It's real
15 plan and simple. I don't mean to be -- please, I didn't
16 mean the way that sounded, I'm sorry. But I have been
17 arrested before, I won't deny that, I have made mistakes,
18 I'm not perfect. But I was under the impression of the
19 federal guidelines. I'm not familiar with The State.
20 That's what I meant to say. I'm not familiar with the
21 state statues, I'm more familiar with the federal
22 guidelines than the state statute.

23 MS. ROSS: If there's nothing further, then answer
24 any questions that The State has for you.

25

CROSS-EXAMINATION

JOSEPH URATO-CROSS BY MS. RATIGAN

1 BY MS. RATIGAN:

2 Q So, the plea, when you admitted you were guilty and
3 you said that you were absolutely satisfied with
4 Mr. Chambers and you agreed with the facts, was that all
5 because you thought you were getting that ten years?

6 A Yes, ma'am, it was.

7 Q Okay. And Mr. Chambers promised you if you pled
8 you'd get that ten years?

9 A Yes.

10 Q Okay. Well, at one point the Judge asked you if
11 anyone promised you anything to get you to plead guilty
12 and you said no. Why didn't you tell the Judge, Well
13 Mr. Chambers promised me I would get ten years?

14 A Because I was told not to. I was told that when you
15 go out there, don't admit that you were promised anything,
16 just go through the motions.

17 Q And you and Mr. Chambers, had you reviewed the
18 evidence including your Co-defendant's statements?

19 A Yes.

20 Q But your testimony is you would have gone to trial
21 but for this plea offer?

22 A Yes.

23 Q Okay.

24 MS. RATIGAN: That's all I have, Your Honor.

25 THE COURT: All right, any redirect?

JOSEPH URATO-CROSS BY MS. RATIGAN

1 MS. ROSS: No.

2 THE COURT: All right, Mr. Urato, you may step down,
3 thank you. I appreciate you being here.

4 MR. URATO: Thank you, I appreciate it.

5 THE COURT: Anything further from the Applicant?

6 MS. ROSS: No, Your Honor.

7 THE COURT: Okay.

8 MS. RATIGAN: The State would call Mr. Chambers.

9 THE CLERK: Place your left hand on the Bible, raise
10 your right.

11 RANDY CHAMBERS, after being duly sworn,
12 testified as follows:

13 THE CLERK: Please be seated. State your name for
14 the record.

15 THE WITNESS: My name is Randall Lee Chambers.

16 DIRECT EXAMINATION

17 BY MS. RATIGAN:

18 Q Mr. chambers, were you appointed in this case or were
19 you retained?

20 A Appointed.

21 Q Did you file the usual discovery motions?

22 A I did.

23 Q Did you receive those materials from The State?

24 A I did.

25 Q Did you review them with your client?

RANDALL CHAMBERS-DIRECT BY MS. RATIGAN

1 A I did.

2 Q Did those materials include a statement from the
3 Co-defendant?

4 A It did.

5 Q Did you review with your client the impact of the
6 Co-defendant's statement would have on your ability to
7 defend him, basically?

8 A That among a great many other things, yeah.

9 Q Did he tell you kind of his version of what happened
10 with all these charges?

11 A He did.

12 Q Did The State ever -- well let me back that up. Did
13 he authorize you to engage in plea negotiations or was it
14 going to be a trial from the start?

15 A Well no, it wasn't going to be a trial from the
16 start. Most of the time that I represented Mr. Urato, our
17 discussions centered around his desire for the charges to
18 go federal. Because obviously being involved in a bank
19 robbery, the feds could have taken this case and
20 prosecuted it. And that was what he wanted to do. If I
21 recall, he had some other charges that were pending in
22 Charleston, I want to say. And he put me in touch with an
23 FBI agent in Charleston. And I spoke with this FBI agent
24 on several occasions. This FBI agent did want the
25 charges. I mean, apparently Joseph was working with them

RANDALL CHAMBERS-DIRECT BY MS. RATIGAN

1 or doing something with them. But at any rate, they
2 wanted his cooperation and participation. And they wanted
3 those charges.

4 The FBI agent told me that he was going to speak to
5 the AUSA down there, and I don't know whether he did or
6 not. I spoke to Mark Moyer who was the Solicitor that's
7 prosecuting the case a lot of times. And about the case
8 going federal. And basically what he told me was, Hey, I
9 got these cases assigned to me, I'm going to prosecute it
10 until the feds take it. If the feds want it, they can
11 take it, I don't have any control over it. So, most of
12 our discussions was about that.

13 Now, we did talk a lot about the facts of the case.
14 And we were going to go trial. I wouldn't say that it was
15 our plan to go to trial from the beginning but certainly
16 up until the day of the trial, he's right we were on the
17 trial docket that day. He was dressed out, we were ready
18 to go to trial. I went back and had a discussion with him
19 and essentially told him that despite the best efforts
20 that I would give him, that I believed that the evidence
21 in this case was overwhelming against him and that he
22 would be convicted. So, at that point, based on my
23 recommendation, he made the decision to plead guilty.

24 Q Now, did Mr. Moyer ever make any kind of offer in
25 this case?

RANDALL CHAMBERS-DIRECT BY MS. RATIGAN

1 A You know, I honestly don't remember. And the counsel
2 for Mr. Urato can bear this out. That's a file that's
3 maintained by the Public Defender's Office. They have not
4 been able to locate the file. I wasn't able to go back
5 and look at it. This was just a case where Mr. Urato is
6 one of those clients that stand out. I remember him very
7 well. But I honestly don't remember if Mr. Moyer ever
8 made a specific plea offer or not. I talked to him a lot
9 but I don't remember whether there was a plea offer.

10 Q Okay. Do you recall -- Mr. Urato testified that the
11 day of the trial you came to him and said you had a ten
12 year, non-violent deal if he pled guilty. Do you recall
13 having that conversation with him?

14 A No, I didn't have that conversation with him. What I
15 talked to him about, again, I reiterated to him that I
16 thought they had a very good case. I told him, as I had
17 told him before, that if he went to trial, I believe he
18 would be convicted. And he would be convicted of bank
19 robbery, not just attempted bank robbery. It's true,
20 evidence was such that he never went into a bank but that
21 he was acting in concert with the co-defendant and that's
22 what she was going to testify to. And there was also some
23 other physical evidence of things that corroborated what
24 she would have said.

25 And I indicated to him that I believed that he, in

RANDALL CHAMBERS-DIRECT BY MS. RATIGAN

1 all likelihood, despite my best efforts, be convicted.
2 That there was a good likelihood, even with Judge Miller
3 presiding, that he would get somewhere around the maximum
4 sentence if he went to trial. And I think I probably did
5 say to him that I was going to try and that I thought we
6 had a chance at a ten year sentence. And if you look at
7 the transcript, I believe I asked for seven or eight,
8 thinking that the Judge would add a couple of years to it
9 and we had a good shot at a ten year sentence. But I
10 never told him that there was a deal for that.

11 I certainly never told him to answer any of the
12 questions untruthfully when he was asked those questions
13 by the Judge. And I will tell you that Mr. Urato is
14 probably one of the most intelligent and I would say
15 street savvy people that I have ever represented. So, I
16 know that he was sophisticated enough to not fall into a
17 trap like that.

18 Q Did you explain to him he would be pleading guilty
19 without a recommendation if he pled that day?

20 A I did explain that to him. And I told him, again, I
21 did say, I will try really hard, I think there's a chance
22 that we could get somewhere around ten years. And if you
23 look at the transcript from the plea, I spoke quite a bit
24 in trying to advance matters in mitigation and try to get
25 as good a sentence for Joseph as I could. I'd also add

RANDALL CHAMBERS-DIRECT BY MS. RATIGAN

1 that in addition to talking to him as many times as I did,
2 I had probably a dozen of conversations with his father
3 who is a lawyer in Hawaii. Who was also talking to Joseph
4 and advising him. And his father had said to me, Joseph
5 needs to plead guilty. So, I mean, there was a lot of
6 discussion and things, not only with Joseph, but with his
7 father who is a lawyer that lives in Hawaii about what was
8 going to happen in this case.

9 Q And the last question, it's clear from the plea
10 transcript that y'all went ahead and amended one of the
11 Indictments that day.

12 A Well, you know, I don't remember precisely that
13 happening. My recollection is that it had already been
14 amended. Not that I agreed to an amendment. Because, you
15 know, it's my practice to always look at the Indictment
16 before a trial starts. And I had been given a copy of the
17 Indictment that was correct. It had been amended to have
18 the correct bank on there. But they weren't able to
19 produce that that day. And I remember that the Judge had
20 some concern about that and he addressed it on the record.

21 Listen, if I made a mistake on the Indictment, then
22 the Judge should grant the PCR and let Joseph have another
23 trial. But my recollection is that I had seen the amended
24 Indictment, I didn't think there was anything wrong with
25 it. But if I made a mistake on that, give him another

RANDALL CHAMBERS-DIRECT BY MS. RATIGAN

1 trial.

2 Q Did you talk to Joseph about this whole amended
3 Indictment issue?

4 A You know, I don't think we had any discussion prior
5 to that, no. I mean, I think he's right. I think it all
6 happened when we were out here in court.

7 Q At some point in the transcript the Judge basically
8 asked your client if he's okay with it and he says he is.
9 Did y'all talk about it while it was transpiring actually
10 in the courtroom?

11 A Probably.

12 Q Did your client give you any kind of hesitance about
13 amending it and going forward, did he have any problem
14 with it?

15 A I don't remember that, no.

16 MS. RATIGAN: That's all I have, Your Honor.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MS. ROSS:

20 Q Okay, just -- so you don't have the file with you,
21 right?

22 A I don't know what happened to it.

23 Q And so, you can't produce the discovery or show any
24 evidence of the amended Indictment that had gone to the
25 Grand Jury?

RANDY CHAMBERS-CROSS BY MS. ROSS

1 A No, I mean, I remember that it happened. And the
2 reason that I remember that, frankly, is I refreshed my
3 memory in looking at the plea transcript. And that's what
4 I said to Judge Miller in the plea transcript was that I
5 had seen a copy of the amended Indictment. I don't
6 imagine I wouldn't have said that if that weren't true.

7 Q All right. Now, as far as -- were you pleading off
8 the trial docket?

9 A Yeah.

10 Q And so, Mr. Urato had wanted a trial despite his
11 father's advice and everyone's advice to plead guilty?

12 A Yeah, I mean, he had maintained, just as he said here
13 a few minutes ago, that, I think it was his girlfriend, at
14 any rate they were in town together, that she had
15 committed this robbery without his knowledge. That they
16 were in town together. And that she had committed this
17 robbery without his knowledge. But that wasn't what she
18 said. She had given a statement which he and I had gone
19 over. And seems like there was another witness or
20 somebody that saw him in a parking lot, I don't remember.
21 But I just remember, you know, I am -- listen I like to
22 try cases, I try lots of cases. I've probably tried this
23 year, 15 cases. And I especially like to try cases that I
24 think I can win.

25 I remember specifically this was one I didn't think I

RANDY CHAMBERS-CROSS BY MS. ROSS

1 was going to win. And I didn't want him to get maxed out
2 by the Judge. So, it was my opinion that they had an
3 overwhelming case against him and that's what I told him.
4 But yeah, I mean, he always maintained that -- that she
5 did that without his knowledge.

6 Q Okay. And then you testified earlier that it's quite
7 possible that you might have told him that you'd ask for
8 the ten years from that?

9 A I did tell him that. I mean, I said that I believe
10 that I've got a shot at getting a ten year sentence for
11 you.

12 MS. ROSS: All right, I got nothing further.

13 THE COURT: Any redirect?

14 MS. RATIGAN: No redirect. And we rest and ask
15 Mr. Chambers be excused.

16 THE COURT: Okay. Thank you, appreciate it.

17 All right. Okay.

18 Mr. Urato, I'm going to respectfully deny your
19 Post-conviction Relief Application. I've had the
20 opportunity to review the transcript of record. And I am
21 compelled to assume that while you were under oath and you
22 answered the questions that the Judge posed at the time of
23 the sentencing hearing, that you were being honest. I'm
24 constrained by the record in that regard. And it's clear
25 from the record that the Judge advised you of the maximum

1 possible penalty that you could have received under the
2 law for these offenses. And the maximum possible penalty
3 that you could have received under the law for these
4 offenses was substantially more than the actual sentence
5 that was handed down. When you look at those charges and
6 the penalties in the aggregate.

7 Notwithstanding what conversations you may have had
8 with your counsel before the time of the plea, you made a
9 specific representation to the Court that there were no
10 promises extended to you in which you relied to enter the
11 plea. And furthermore, you acknowledged your guilt on the
12 record. You waived all of your Constitutional rights.
13 And the Court found that you had entered into the plea
14 freely and voluntarily. And based on my review of the
15 transcript, in context with the testimony that has been
16 offered into the record today, I find that you entered
17 that plea freely and voluntarily.

18 In a Post-conviction Relief Application, you have the
19 burden -- the burden by the preponderance of the evidence
20 to demonstrate that counsel's representation was
21 deficient. And if so, that that deficiency materially
22 effected the charge and or the conviction. In this
23 instance I find that you've not met the burden of proof.
24 It's one thing to say it, it's another thing to prove it.
25 And I find that you've failed in your burden to prove it

1 by a preponderance of the evidence today. So, thank you
2 for being here and I wish you luck.

3 MS. ROSS: Judge, if you could just briefly address
4 the appeal issue as well. I haven't checked the date on
5 his notice of appeal but that might just help.

6 THE COURT: Well, the question is, I didn't hear -- I
7 have to deny that because I didn't hear any evidence that
8 that -- that counsel, that you requested counsel to make
9 that appeal for you. And under certain circumstances, I
10 can order that there be a belated appeal. But I have to
11 do that essentially finding that counsel failed to follow
12 the request of the client. In this instance what I have
13 is an attempted appeal that was not perfected because the
14 rules of court apparently were not complied with. That's
15 a completely different matter than counsel simply failing
16 to file the notice of intent to appeal.

17 And I don't know that under this set of circumstances
18 that I have the authority to order an belated appeal when
19 it isn't incident to deficient representation by counsel.
20 This was a deficient filing by the Applicant. And I don't
21 know under those circumstances, that I can order a belated
22 appeal. Therefore, I'll deny it on those grounds. If
23 there's any law out there that says something contrary to
24 what I have espoused, then give it to me and I'll be happy
25 to take a look at it. I derive no personal gratification

1 from denying an appeal, I just don't know that I have the
2 authority under the law to do it.

3 MS. ROSS: All right, thank you, Judge.

4 THE COURT: Thank you.

5 MS. RATIGAN: Thank you, Your Honor.

6 (WHEREUPON, the proceedings were concluded.)

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Office of the Clerk of Court
Greenville, South Carolina
Paul B. Wickensimer
Clerk of Court

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

EXFIL
/ 57
8-28-13
APPELLATE COURT
Division of Appellate Defense
1330 LADY STREET, Suite 401
Columbia, South Carolina
29201

February 2, 2012

Joseph D. Urato #349299
Kirkland Correctional Inst.
CII-63
4344 Broad River Rd.
Columbia, SC 29210

Re: Request for PCR Application

Dear Mr. Urato:

We are in receipt of your letter postmarked 1/26/2012. Your letter has been filed with 2010-GS-23-7946. Enclosed please find a copy of the PCR application as you requested.

Sincerely,
Paul B. Wickensimer
Clerk of Court

PAUL B. WICKENS, JR.
CLERK OF COURT
GREENVILLE COUNTY
305 E NORTH ST.
GREENVILLE, S.C. 29601

1-20-12

I JOSEPH DOMINICK URATO come to you
with the intent of appealing my sentence
of 18 years for IND. NO. 10-ES-23-7946 in front
of Judge Miller in the County of Greenville, S.C.
on 1-17-12.

I would also like to have the application
for a (PCR) Post Conviction Relief.

Thank you

JOSEPH D URATO SCDC # 349299

Joseph Urato

I482092

- Mailed PCR App.
- filed as Notice / Appeal



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 03, 2012

Mr. Joseph Urato #349299
Lieber Corr. Inst.
Po Box 205
Ridgeville SC 29472

Re: Correspondence received May 1, 2012

Dear Mr. Urato:

This office is in receipt of your letter received May 1, 2012. Please be advised you do not have a case pending in the Court of Appeals. If you were represented at trial by a Public Defender, appointed counsel or by retained counsel, you should immediately contact that individual and advise them of your desire to appeal. A notice of appeal must be served within ten (10) days after sentence is imposed.

STATE OF SOUTH CAROLINA
 COUNTY OF Miller

CASE # ~~H-7816~~ 12-3617

PLAINTIFF	<u>Joseph urato</u> <u>James Buford</u>	PLAINTIFF'S ATTORNEY	<u>S Ross</u>
DEFENDANT	<u>State</u>	DEFENDANT'S ATTORNEY	<u>K Retigan</u>
JUDGE	<u>Stilwell</u>	DATE	<u>8-28-13</u>

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 <u>letters</u>	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
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11	11	11
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14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

COURT REPORTER: April Herron

CLERK OF COURT Jan White

DATE RECEIVED 8/28/13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Joseph Dominick Urato,)
 S.C.D.C. No. 349299,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-3617

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL R. MICHELS
 2013 OCT 10 AM 10:10

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 31, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on August 28, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Randall L. Chambers, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2011 term of the Greenville County Grand Jury for two counts of bank robbery (2010-

RS 5

GS-23-7945, -7946) and conspiracy (2010-GS-23-7909). He was represented by Randall L. Chambers, Esquire.

On January 17, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirty years suspended on service of eighteen years and three years probation for one count of bank robbery,¹ thirty years suspended during probation for the second count of bank robbery, and five years for conspiracy. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "Lawyer advised me that if I plead I would get a 10 yrs nonviolent sentence."
2. "Probation officer said it would be a 51% but SCDC has it as a nonviolent 85%."
3. "Never entered bank that I'm charged with. Never saw or shown indictment. I've been charged with wrong bank!!!"

At the PCR hearing, the Applicant proceeded upon the ground of ineffective assistance of plea counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by

¹ 2010-GS-23-7946.

S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he planned on going to trial the day he went to court. The Applicant stated plea counsel told him he would receive a ten-year non-violent sentence if he pled guilty. The Applicant stated he signed the plea paperwork without reading it. The Applicant stated he told the plea judge he was guilty, agreed with the State’s recitation of the facts, and was “absolutely satisfied” with plea counsel because he believed he was going to receive a ten-year sentence. The Applicant stated he only pled guilty because he thought he would receive a ten-year sentence. The Applicant stated he did not understand what was happening at the plea hearing when there was discussion about amending the indictment. The Applicant stated the Court of Appeals subsequently told him there was no appeal in his case.

Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they also discussed the impact of the co-defendant's statement and the Applicant's version of events. Plea counsel testified the majority of the discussions with the Applicant concerned the Applicant's desire for these charges to be handled in federal court. Plea counsel testified the case was on the trial docket the day the Applicant pled guilty. Plea counsel testified he told the Applicant there was overwhelming evidence against him and that he would likely be convicted. Plea counsel testified he told the Applicant that he would be pleading guilty without a sentence recommendation but that he probably said he would try and get a ten-year sentence. Plea counsel testified he thought the indictment had already been amended prior to the plea hearing. Plea counsel testified there was nothing wrong with the decision to amend the indictment. Plea counsel testified he probably discussed the amendment with the Applicant during the plea hearing and did not recall the Applicant had any problem with it.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, pp.6-7; p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.5-7).

This Court finds the Applicant failed to meet his burden of proving plea counsel said he

would receive a ten year sentence if he pled guilty. Initially, this Court notes the Applicant has not presented any credible evidence in the form of documentation or testimony that a plea offer for a ten-year sentence ever existed. The sentence sheets signed by Applicant indicate the plea was entered without a recommendation. Plea counsel testified he never told the Applicant there was a ten-year recommendation or that he would receive such a sentence. This Court finds plea counsel's testimony is credible. While plea counsel did ask the plea judge for a seven or eight year sentence, this Court notes there is no mention in the plea transcript of a ten-year sentence. (Plea transcript, p.14). While the Applicant may have hoped for a ten-year sentence, he was not advised that he would receive such. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). The Applicant never mentioned he was pleading guilty in exchange for a ten-year sentence and, in fact, told the plea judge he had not been made any promises in exchange for his guilty pleas. (Plea transcript, p.6). This Court finds the Applicant's allegation that plea counsel advised him that he would receive a ten-year sentence is refuted by the plea transcript. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly advise him about amending the indictment. At the guilty plea hearing, the assistant

solicitor noted indictment 2010-GS-23-7946 should have been amended to read First Savers Bank as the location, not Wachovia. Plea counsel testified he was aware this amendment would take place. (Plea transcript, pp.7-9). The Applicant did not tell the plea judge he had any problems with the amendment of the indictment. (Plea transcript, p.11). This Court finds plea counsel properly explained the amendment issue to the Applicant. Plea counsel told the plea judge they had previously discussed the issue and the Applicant indicated he did not have a problem with the indictment. (Plea transcript, p.11). The plea transcript, therefore, refutes the Applicant's claim. See Stalk v. State, 375 S.C. at 300, 652 S.E.2d at 407. Further, this Court notes indictments are merely notice documents and it is clear from plea counsel's testimony that he was on notice that this amendment would take place. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005).

This Court finds the Applicant failed to meet his burden of proving he is entitled to a review of his direct appeal issues. The Applicant has failed to present any evidence that he asked plea counsel to file an appeal. Without such evidence, this Court cannot speculate about whether appellate review of the Applicant's guilty plea hearing is warranted.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to

meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

7
RBS

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8th day of OCT, 2013.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

GUILLET, South Carolina.

69

WITNESSES

David Weiner *[Signature]*

Greenville County Sheriffs Office

7/30/2010

ARREST WARRANT NUMBER

1481789

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-

LMM

007945

The State of South Carolina

[Signature]
County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010 2011

THE STATE

vs.

JOSEPH DOMINICK URATO

[Signature]
Indictment for

0257

BANK ROBBERY

VIOLATION § 16-11-0380

RECEIVED

OCT - 8 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

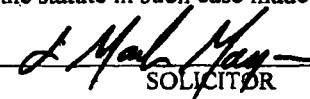
INDICTMENT FOR
BANK ROBBERY

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville

County present upon their oath:

That JOSEPH DOMINICK URATO did in Greenville County, on or about the 27th day of July, 2010, enter the Arthur State Bank, located at 1410 N. Pleasantburg Drive, Greenville, South Carolina, with intent to steal money, securities for money, or property, either by force, intimidation or threats. This is in violation of §16-11-0380 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Joseph Dominick Urato
AKA:
Race: WHITE Sex: M Age: 40
DOB: SS#:
Address:
City, State, Zip: Greenville, SC 29607
DL#: SID#:

INDICTMENT/CASE#: 2010GS2307945
A/W#: I481789
Date of Offense: 7/27/2010
S.C. Code § : 16-11-0380
CDR Code #: 0257

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Robbery / Entering bank, depository or bldg and loan association with intent to steal

in violation of § 16-11-0380 of the S.C. Code of Laws, bearing CDR Code # 0257
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Gregory, Jonathan M. SC Bar# 73601 Defendant; Attorney for Defendant; SC Bar# 65301

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 536 DATE
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

*Fine:
§ 14-1-206 (Assessments 107.5%)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$
TOTAL \$

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickens
Court Reporter: C. Hill
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 1-17-12

WITNESSES

David Weiner

NR

Greenville County Sheriffs Office

8/13/2010

ARREST WARRANT NUMBER

1482093

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-007909

LMM

The State of South Carolina

County of Greenville

Spil

COURT OF GENERAL SESSIONS

July

TERM 2010 2011

THE STATE

vs.

JOSEPH DOMINICK URATO

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville

County present upon their oath:

That JOSEPH DOMINICK URATO did in Greenville County, on or about the 27th day of July through the 30th day of July, 2010, willfully and unlawfully combine with DEBORAH PITTMAN BASLER for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: bank robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

ARREST WARRANT

1-482093

5331

STATE OF SOUTH CAROLINA

County/ Municipality of

8-16-10

Greenville

THE STATE 10-125786

against

Joseph Dominick Urato

Address:

Greenville, SC 29607-

Phone: SSN: Sex: M Race: W Height: 5 9 Weight: 190 DL State: #:

DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Offense Code: 0049

Code/Ordinance Sec: 16-17-0410

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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on Joseph Dominick Urato 8/13/10

JMB 544 / T. Davis 543 / M.A. 382 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions 305 E. North Street Greenville County Courthouse Greenville, SC 29601-2120

(CABLE)

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Personally appeared before me the affiant David Weiner who

being duly sworn deposes and says that defendant Joseph Dominick Urato

did within this county and state on or about 07/30/2010 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

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:

On 7-30-10 the defendant and codefendant did plan and conspire to commit a robbery. The defendant was found crouched behind his vehicle near the Wachovia Bank located at 19 W. Lewis Plaza. When approached by officers he was found to be in possession of a scarf to conceal his identity as well as rubber gloves and a canvas bag. The affiant also has a codefendants written statement that the defendant was preparing to enter the bank to commit a robbery. This offense occurred in Greenville County.

Signature of Affiant

DPL * 030.621

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5252

ARREST WARRANT

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

(I appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/30/2010 defendant Joseph Dominick Urato

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

County/ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Having found probable cause and the above affiant having sworn before me, 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

Sworn to and subscribed before me

on 08/13/2010

Signature of Issuing Judge (L.S.)

Gaybriel Gibson

Judge Code: 5032

Judge's Address 20 Mcgee St

Greenville, SC 29601-

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Joseph Dominick Urato
AKA:
Race: WHITE Sex: M Age: 40
DOB: SS#:
Address:
City, State, Zip: Greenville, SC 29607
DL#: SID#:

INDICTMENT/CASE#: 2010GS2307909
A/W#: I482093
Date of Offense: 7/30/2010
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

CONVICED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST Gregory, Jonathan M. SC Bar# 73601 Defendant Joseph Urato Attorney for Defendant RLL SC Bar# 65302

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 5-36 DAYS
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickman
Court Reporter: C. Hinkel
SCCA/217 (03/2011)

Presiding Judge D. W. Moore
Judge Code: 2130
Sentence Date: 1-17-12

WITNESSES	
David Weiner	
Greenville County Sheriff's Office	
8/13/2010	
ARREST WARRANT NUMBER	
1482092	
ACTION OF GRAND JURY	
TRUE BILL	
<i>Bobby L. Daum</i>	
FOREMAN GRAND JURY	
Foreperson of Grand Jury	
VERDICT	
Foreperson of Petit Jury	Date:

AMENDED INDICTMENT
DOCKET NO. 2010-GS-23-007946

~~009649~~
 DEEMED ORIGINAL
[Signature]
 11/27/12

[Handwritten mark]

JMG
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

JOSEPH DOMINICK URATO

Amended Indictment for
 0257
BANK ROBBERY
 VIOLATION § 16-11-0380

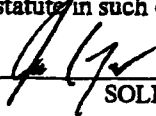
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
BANK ROBBERY

At a Court of General Sessions, convened on DEC 20 2011 the Grand Jurors of Greenville
County present upon their oath:

That JOSEPH DOMINICK URATO did in Greenville County, on or about the 30th day of July, 2010, enter the
First Savers Bank, located at 1818 Augusta Street, Greenville, South Carolina, with intent to steal money,
securities for money, or property, either by force, intimidation, or threats. This is in violation of §16-11-0380 of
the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

ARREST WARRANT

1-482092

5531

STATE OF SOUTH CAROLINA

County/ Municipality of

8-16-10

Greenville

THE STATE 16-125788

against

Joseph Dominick Urato

Address:

Greenville, SC 29607-

Phone: SSN:

Sex: M Race: W Height: 5 9 Weight: 190

State: #:

JOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: David Weiner - 0630

Offense: Robbery / Attempted robbery (charge as principal offense)

Offense Code: 0025

Code/Ordinance Sec: CL

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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Joseph Dominick Urato

on 8/13/10

J.M. R. SVY / T. Cass 573 / M. Akon
Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

(CAGLE)

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2008
SCCA 518

Personally appeared before me the affiant David Weiner who

being duly sworn deposes and says that defendant Joseph Dominick Urato
did within this county and state on or about 07/30/2010 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Greenville)

DESCRIPTION OF OFFENSE Robbery / Attempted robbery (charge as principal offense)

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:

On 7-30-10 the defendant and codefendant did plan and conspire to commit a robbery. The defendant was found crouched behind his vehicle near the Wachovia Bank located at 19 W. Lewis Plaza. When approached by officers he was found to be in possession of a scarf to conceal his identity as well as rubber gloves and a canvas bag. The affiant also has a codefendants written statement that the defendant was preparing to enter the bank to commit a robbery. This offense occurred in Greenville County.

Signature of Affiant

D.W.
63-621

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5252

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 or about 7/30/2010 defendant Joseph Dominick Urato

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

County/ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Attempted robbery (charge as principal offense)

Having found probable cause and the above affiant having sworn before me, 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

Sworn to and subscribed before me

on 08/13/2010

J.H. (L.S.)

Signature of Issuing Judge

Gaybriel Gibson

Judge Code: 5032

Judge's Address 20 Mcgee St

Greenville, SC 29601-

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Joseph Dominick Urato
AKA:
Race: WHITE Sex: M Age: 40
DOB: SS#:
Address: 13
City, State, Zip: Greenville, SC 29607
DL#: SID#:

INDICTMENT/CASE#: 2010GS2307946
A/W#: 1482092
Date of Offense: 7/30/2010
S.C. Code § : 16-11-0380
CDR Code #: 0257

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Entering Bank, Depository Or B

CONVICTED OF or PLEADS

in violation of § 16-11-0380 of the S.C. Code of Laws, bearing CDR Code # 0257
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC) §17-25-45 w/minor 1st-or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Gregory, Jonathan M. SC Bar# 73601 Defendant
Attorney for Defendant SC Bar# 65802

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 18 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 536 DAYS
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS Paul On 10-7-12

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL.

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickens
Court Reporter: C. H. H. Kell
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 1-17-12

Probation begins after completion of any early release program.