

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Clifton Newman, Circuit Court Judge

RECEIVED

SEP 19 2016

S.C. SUPREME COURT

DARRYL FRIERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ROBERT D. CORNEY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
) 2007-GS-40-04362
) 2007-GS-40-04363
) 2007-GS-40-04364
) 2007-GS-40-04344

State of South Carolina,
Plaintiff,
vs.
Darryl Frierson,
Defendant.

)
)
) TRANSCRIPT OF RECORD
)
)

December 3, 2008
Columbia, South Carolina

B E F O R E :

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

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

DANIEL R. GOLDBERG, ASSISTANT SOLICITOR
Attorney for the Plaintiff

E. DEON O'NEIL, ASSISTANT DEFENDANT
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 DECEMBER 3, 2008

2 THE CLERK: Please raise your right hand.

3 (Defendant complies.)

4 THE CLERK: Do you swear or affirm to tell the
5 truth, the whole truth, and nothing but the truth,
6 so help you God?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Mr. Frierson, are you under the
9 influence of alcohol, drugs or medication?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Have you ever been evaluated for
12 your mental health?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And this is through the Department
15 of Mental Health?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And that is the evaluation
18 Mr. O'Neil has handed up to the Court?

19 MR. O'NEIL: Yes, Your Honor.

20 THE COURT: What is your understanding of the
21 conclusions and findings?

22 MR. O'NEIL: That he is both criminally
23 responsible and capable of conforming his actions.

24 THE COURT: Okay. There is also a
25 recommendation that he receive mental health

1 treatment during his incarceration?

2 MR. O'NEIL: Yes, Your Honor.

3 THE COURT: Okay. All right, the Court will
4 review this report.

5 Mr. Frierson, you are here for the offenses of
6 assault and battery of a high and aggravated
7 nature, criminal conspiracy, kidnapping and armed
8 robbery. And this is all in relation to what we
9 call the armored heist case; is that correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Listen to the State. And
12 the Court is very familiar with the case because I
13 have sentenced other Defendants in this regard.
14 But the State will present evidence that they are
15 indicating is respectively individualized for you.

16 All right.

17 MR. GOLDBERG: Thank you, Your Honor.
18 Investigator Eisenhower is here from the Sheriff's
19 Department and can fill you in on Mr. Frierson's
20 involvement.

21 THE COURT: Okay.

22 MR. EISENHOWER: Thank you, ma'am. Again,
23 this was on May 11th, 2007, Bluff and Atlas Roads.

24 Mr. Frierson was actually one of the drivers
25 of the armored truck. And the investigation

1 revealed that he is one of the persons involved in
2 actually initiating the plan, helping bring in
3 other people and conspire with them on how they
4 were going to complete the robbery.

5 That night he is one of the first people I
6 talked to. And obviously he played the role of a
7 victim while his injuries were much less severe, if
8 at all, if there were any injuries at all, because
9 they weren't visible, much less severe than Mr.
10 Jones, the other driver, who is considerably older
11 than him that was assaulted pretty severely.

12 We later, as the investigation continued, we
13 determined obviously that he was a suspect. And we
14 did recover a large amount of money from a vehicle
15 he was in control of in Darlington, South Carolina,
16 several million dollars. He was cooperative. Not
17 initially, but after we made an arrest he did
18 cooperate and confess to his portion of the crime.

19 THE COURT: Okay.

20 MR. GOLDBERG: Your Honor, obviously those are
21 some barebone details, and considering today's
22 situation where we are simply entering the plea and
23 will be holding sentencing, the State will
24 definitely go into much further detail about the
25 case at the appropriate time, but at this time we

1 would ask you to accept the plea and hold the
2 sentence in abeyance pending the trial of his
3 Co-Defendant, Mr. Lyde, scheduled for January the
4 12th.

5 And again, as I indicated yesterday, the
6 victim, Mr. Jones, did not wish to be present. And
7 the company will be notified of today's proceeding
8 as well and again notified for any sentencing
9 hearing.

10 THE COURT: Okay. And, Mr. Frierson, do you
11 agree with your participation in this whole scheme?

12 MR. O'NEIL: He agrees that under the theory
13 of "hand of one is the hand of all" he is guilty.
14 He disagrees with the portion of his Co-Defendant's
15 statement that he initially came up with this idea,
16 spear-headed this idea, but he does agree to the
17 extent that he is guilty under the "hand of one is
18 the hand of all."

19 THE COURT: Okay. But then he would agree *coll.*
20 with other offenses as well?

21 MR. O'NEIL: Yes, Your Honor.

22 THE COURT: Okay. Sir, how do you wish to
23 plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: Do you understand that by pleading

1 guilty to this offense you are going to give up all
2 of your constitutional rights?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And that would include your right
5 to remain silent and the right to actually go to
6 trial and challenge the State's evidence and
7 present Defense testimony and evidence on your
8 behalf?

9 THE DEFENDANT: Yes, ma'am..

10 THE COURT: You understand this would also
11 present a felony on your record?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And that with respect to the
14 offense of kidnapping and armed robbery, those are
15 considered violent and most serious categorical
16 offenses?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And that means that you have a
19 strike on your record?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: To the extent that you got
22 additional strikes on your record for serious or
23 most serious offenses, you could find yourself
24 looking at life without the possibility of parole?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. And that would mean that
2 the judge would have no discretion in terms of
3 entering any other sentence for you.

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. With respect to the pleas
6 as well, like I said, it would be a felony on your
7 record plus strikes, and those are consequences of
8 this plea. Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Do you understand that you
11 will be participating potentially in the trial of
12 Mr. Dominic Lyde; is that correct?

13 MR. O'NEIL: Potentially, yes, Your Honor.

14 THE COURT: Okay. And just know that today
15 the Court is accepting your plea. The State is
16 recommending that they defer sentence because they
17 are interested in your cooperation. I don't know
18 what negotiations have been done with respect to
19 the case. I don't need to know at this time. But
20 you need to know that to the extent that you don't
21 participate in the negotiations as they have
22 requested in terms of testifying or otherwise, that
23 you can find yourself not having a substantial
24 recommendation for sentencing at that time.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And in other words, negotiations
4 are dependent upon how you might participate with
5 respect to the sentence -- I mean, the trial of
6 Mr. Lyde, who chose -- is the only Defendant I'm
7 aware of who has chosen actually to go to trial.

8 THE DEFENDANT: Okay.

9 THE COURT: Okay. All right, I just want to
10 make that clear at this time. The Court will not
11 be sentencing you today. Are you satisfied with
12 the representation of your attorney?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And do you feel like he has gone
15 over the nature of these charges, your maximum
16 possible punishment and your constitutional rights?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And do you feel that he has
19 answered all your questions, addressed any concerns
20 so that you can make an informed and intelligent
21 decision about whether you should plead guilty or
22 go to trial?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And have you had enough time to
25 speak with him about the matter?

1 THE DEFENDANT: Yes, ma'am. *

2 THE COURT: Okay. And speak up. Have you
3 understood all of my questions?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And have your answers been
6 truthful?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. And what is your age?

9 THE DEFENDANT: Twenty-two.

10 THE COURT: Okay. You obviously are very
11 young to be involved in something so substantial at
12 this time, but I do respect that you are admitting
13 your guilt here today and coming forward and
14 indicating your participation in the role and
15 trying to bring this case to some conclusion.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay, Mr. O'Neil?

18 MR. O'NEIL: And, Your Honor, Mr. Frierson's
19 mother and stepfather are here. His mother
20 actually compiled a pretty healthy group of
21 recommendations. I told Mr. Goldberg I would get a
22 copy of those to him and also will want Your Honor
23 to get a copy of those a little bit before the
24 actual sentencing phase so Your Honor will have an
25 ample opportunity to review those.

1 THE COURT: Okay. And due to circumstances
2 that both counsel are aware of, I may or may not be
3 the sentencing judge of this case, but I will make
4 sure it got to the appropriate hands.

5 MR. GOLDBERG: And, Your Honor, the only other
6 thing I would add is that, out of an abundance of
7 caution, I know that in the past occasionally there
8 has been mix-ups where those who have pled guilty
9 and not been sentenced for one reason or another
10 have been released from the jail accidentally.

11 THE COURT: Right.

12 MR. GOLDBERG: And I would just ask Your Honor
13 to put something on the sentencing sheet indicating
14 that he is absolutely to remain in custody until
15 sentencing has been handed down on these cases so
16 that there will be no confusion about that.

17 THE COURT: Okay, I will do so.

18 Sir, do you have any questions of the Court?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: All right. Is there anything we
21 need to add to make sure that he understands the
22 plea at this time, Mr. O'Neil?

23 MR. O'NEIL: No, Your Honor.

24 THE COURT: Okay. All right. Thank you all.

25 MR. GOLDBERG: Thank you, Your Honor.

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(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

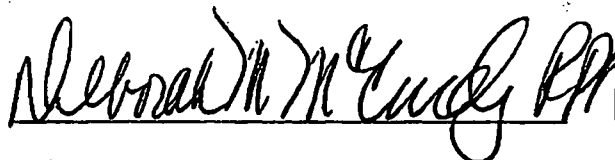
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 3rd day of December, 2008.

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

October 13, 2011



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)
07-GS-40-4365
07-GS-40-4368
08-GS-40-1180
07-GS-40-4358
07-GS-40-4359
07-GS-40-4362
07-GS-40-4364
07-GS-40-4429

THE STATE
vs.) TRANSCRIPT OF RECORD
)
DOMONIQUE BLAKENEY,)
DOMINIC LYDE,
JEREMY MCPHAIL,
AND DARRYL FRIERSON

August 24, 2009
Columbia, South Carolina

B E F O R E:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

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

DANIEL R. GOLDBERG, ASSISTANT SOLICITOR
Attorney for the State

CHARLIE JOHNSON, ESQ.
Attorney for Defendant Blakeney

PRISCILLA NAY
Official Court Reporter

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INDEX OF WITNESSES

NONE

EXHIBITS

NO.	DESCRIPTION	ID	EV
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NONE

1 THE COURT: Before we proceed with the sentencing, at
2 the last hearing, I do recall Investigator Eisenhower had
3 asked about the fourth picture of the evidence. There has
4 been no formal motion filed at this time but had the
5 parties even discussed that issue with each other?

6 THE SOLICITOR: No, Your Honor.

7 THE COURT: Given that right now, I suggest you go
8 forward with the forfeiture proceedings as with the
9 sentencing of the defendants. As you all know, we've got
10 a serious matter here and I'm going to ask everybody
11 remain seated until the appropriate time of the sentence.
12 If you have been to these proceedings, you are obviously
13 aware there are very diverse views as to how I should
14 sentence the defendants in this matter. The only thing
15 that's going to satisfy this happening -- but if that's
16 the case and if you are not able to contain yourself, I
17 ask you leave now.

18 The deputies have been instructed that to the extent
19 there are any outbursts in the courtroom that they are to
20 immediately remove you from these proceedings as if
21 necessary they have the court's authority to take anyone
22 into custody for which you might be held in contempt and
23 either jailed or fined. I just need you to understand
24 that we have to observe courtroom decorum and for purposes
25 of security measures as well.

1 Now, I have reviewed all of the evidence in this case
2 that was presented by the Solicitor's office at the last
3 hearing as well as various documents by the counsel,
4 listened to your oral as well as reviewed your written
5 statements and various other documents in the case and I
6 am now ready to focus on the sentencing but first I want
7 to make a few remarks. I find this is a very serious and
8 significant crime and I find no justifiable executions or
9 explanations.

10 The defendants engaged in a well-thought-out plan
11 that was conceived well before the date of the incident.
12 Some of the defendants tried and attempted to commit this
13 crime the week before had an opportunity to reflect when
14 it didn't go well and then later on unfortunately were
15 successful. The defendants' families and their attorneys
16 have asked me to be lenient and to focus on the character
17 of these defendants and the lack of our no significant
18 prior record but I have to balance that with the depravity
19 of the issues in this case and their conduct both
20 individually and collectively and any sincere cooperation
21 with law enforcement's efforts to resolve the case among
22 other things.

23 I have considered the various roles in this case and
24 have ultimately concluded that this is a classic case of
25 why our state has the law of what we call the hand of one

1 is the hand of all. This case particularly fits that law
2 because each defendant had a succinct role that they had
3 to carry out their responsibilities, be aware of the
4 other's roles and let the plan go forward, including
5 specifically, and at a minimum, having knowledge that for
6 something of this magnitude to be able to be carried off
7 there either had to be an inside person or someone would
8 have to be brutally beaten or killed for this plan to be
9 successful.

10 After the incident, law enforcement expended
11 substantial resources to investigate this matter and bring
12 it to conclusion during which time many of the defendants
13 denied their involvement initially so now we're at the
14 point of sentencing and the defendants being punished for
15 their bad choices. The unanticipated and even unintended
16 consequences of the crime which at a minimum were the
17 armed robbery and kidnapping of an innocent and
18 hard-working citizens who suffered and continue to suffer
19 severe physical and mental injuries and for which the
20 defendants, particularly Darryl Friarson, showed no mercy
21 at the time of the incident, placing millions of
22 unaccounted for dollars in the community among friends,
23 relatives, and strangers and the damaging effects on
24 Express Teller Services as well as his employees.

25 Defendants Friarson's actions are particularly

1 troubling because you committed what I consider the
2 ultimate betrayal. You allowed a person who served as
3 your father-like figure, mentor, friend, a role model, and
4 a fellow employee to be seriously harmed despite that each
5 of you in this very dangerous occupation had to rely upon
6 each other for your safety and protection and you allowed
7 him to be beaten unnecessarily and did nothing to assist
8 in his help.

9 Now, my sentencing range is a minimum of ten years
10 for the armed robbery up to 75 years if these sentences
11 were to run consecutively. I will accept the State's
12 negotiated sentences with the counsel respectively which I
13 understand to be with defendants Jeremy McFail and
14 Domonique Lyde only, of 15 to 28 years. Is that correct,
15 Mr. Goldberg?

16 THE SOLICITOR: Yes, ma'am.

17 THE COURT: All right. At this time, I will proceed
18 with sentencing of certain of the individuals, as
19 indicated before there no registry by the State with the
20 sexual registry for the kidnapping offenses. We will
21 proceed with Mr. Paul Whittaker. Right here is fine. All
22 right. Given that, it appears to me at the last couple of
23 hearings that which Mr. Whittaker was involved that this
24 is the individual in which you believe there was some
25 initial cooperation and actually some assistance in you

1 breaking the case. I am going to need Mr. Goldberg to
2 assist me with the time for credit served with these
3 individuals. Do you have this information available?

4 THE DEFENDANT: Your Honor, I don't have the exact
5 information in front of me but I request gather it pretty
6 easily.

7 THE COURT: I'll go ahead and deal with the
8 sentencings.

9 THE DEFENDANT: I know he served 18 months prior to
10 being released on bond.

11 THE COURT: We have an exact date? That's what the
12 Department of Corrections would require I will find that
13 out but you are hereby sentenced to the offense of
14 criminal conspiracy to three years. All right.
15 Mr. Domonique Lyde, your sentences will run concurrent.
16 You're sentenced to the offense of criminal conspiracy for
17 five years, assault and battery of a high and aggravated
18 nature for ten years, and your armed robbery and
19 kidnapping, 28 years.

20 Mr. Jeremy McFail, your sentences shall also run
21 concurrent. Criminal conspiracy, five years, assault and
22 battery of a high and aggravated nature, ten years and,
23 your armed robbery and kidnapping, 25 years.

24 I have also considered on the motion for
25 reconsideration the offenses of Mr. Kelvey Blakeney and

1 Mr. Domonique Blakeney. There were issues with respect to
2 one of these individuals having a prior record. The Court
3 would note that there was an inquiry made into the arrest
4 because at all sentencing hearings I have to know what the
5 prior record is, whether it's an arrest or a conviction
6 for my consideration. The consideration was not given to
7 the fact that one of these individuals may have committed
8 an armed robbery as would be noted because one of them did
9 not have a prior record and I sentenced them to the same.
10 In that respect, a motion for reconsideration is
11 respectfully denied. The sentence will remain at 25
12 years.

13 And then lastly, Mr. Darryl Friarson. For the
14 offense of criminal conspiracy, Mr. Darryl Friarson, you
15 are sentenced to five years consecutive to that I will
16 sentence you to assault and battery of a high and
17 aggravated nature ten years and your armed robbery and
18 kidnapping 30 years. These particular sentences of the
19 assault and battery of a high and aggravated nature, your
20 armed robbery and kidnapping will run concurrent with each
21 other but consecutive to your criminal conspiracy. Are
22 there any other issues from this court?

23 THE SOLICITOR: Nothing from the State, your Honor.

24 THE COURT: From the defense?

25 MR. JOHNSON: No, Your Honor.

1 THE COURT: Proceedings are concluded.

2 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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1 CERTIFICATE OF REPORTER

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4 STATE OF SOUTH CAROLINA)

5 COUNTY OF RICHLAND)

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8 I, Priscilla Nay, Official Court Reporter for the
9 Eleventh Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Richland County, South Carolina, on the 24th day of
15 August, 2009.

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

18

19

January 24, 2010

20

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22

23 _____
Priscilla Nay, Court Reporter

24

25

WITNESSES

(S) INV. KEVIN ISENHOWER RCSD

ARREST WARRANT NUMBER

J557207

ACTION OF GRAND JURY

TRUE BILL

Sharon Nelson

Person of Grand Jury

SEP 12 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007 GS-40 4362

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

105

THE STATE

vs.

DARRYL CLARENCE FRIERSON

Indictment for

**ASSAULT AND BATTERY
OF A HIGH AND
AGGRAVATED NATURE**

SC Code: 17-25-80 C/L

CDR Code: 0013

Glass MIS/UNC

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

Defendant

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

Defendant

Witness

C.C.C. PES. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Sharon Nelson
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

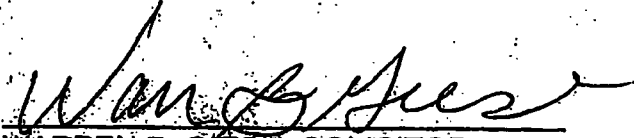
INDICTMENT

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That DARRYL CLARENCE FRIERSON did in Richland County on or about May 10, 2007, commit an assault and battery upon the victim, David Jones, constituting an unlawful act of violent injury to the person of the said victim accompanied by circumstances of aggravation, to wit: the infliction of serious bodily injury and/or the use of a deadly weapon, all in violation of §17-25-30 (Common Law), Code of Laws of South Carolina, 1976, as amended).

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


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE

VS.
Darryl Frierson
AKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: ABHAN

in violation of § C/L of the S.C. Code of Laws, bearing CDR Code # 0 0 1 3

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST Daryl Frierson Defendant Demone Attorney for Defendant SC Bar # 74914
Solicitor

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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: 07-65-90-4369
☒ 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. from 5/16/07 and 8-29-09 Amended
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

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: Remain in custody until
Sentencing Complete Indigents

☐ Appointed PD or appointed other counsel, §34-13 TP

☐ Requires \$500 be paid to Clerk during probation.

*Fine:
\$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 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
\$90.11 TP (SCCJA Surcharge) \$5 \$ _____
TOTAL \$ _____

Amey McCalland Clerk of Court/Deputy Clerk Leanne McCalland

Court Reporter: D. McCalland

PRESIDING JUDGE

Judge Code: 2946
Sentence Date: 8/24/09

Demone
CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

27

WITNESSES

(S) INV. KEVIN ISENHOWARD RCSD

ARREST WARRANT NUMBER

J557205

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

Date:

SEP 12 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-40-4369

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE
vs.

DARRYL CLARENCE FRIERSON

Indictment for

CRIMINAL CONSPIRACY, C/L
CONSPIRACY DEFINED

SC Code: 16-17-410

CDR Code: 049

Class FEL-F

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

Defendant

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

Defendant

Witness

G.C.C. BLS AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. C. C. P. & G. S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

INDICTMENT

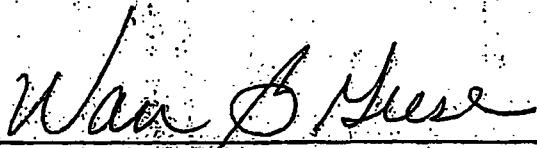
COUNTY OF RICHLAND

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

CRIMINAL CONSPIRACY OR CONSPIRACY DEFINED

The DARRYL CLARENCE FRIERSON did in Richland County on or about May 10, 2007, unlawfully and wilfully unite, combine, conspire, confederate, agree and have tacit understanding, with co-defendants, for the purpose of committing the crime of armed robbery, in violation of §16-17-410, Code of Laws of South Carolina, (1976, as amended).

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


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

123-28

COUNTY OF
STATE

Richland

INDICTMENT/CASE#: 2007-GS-40-4363

AKA:

Race: B

Sex: M

Age: 22

DOB:

SS#:

Address: 1

City, State, Zip:

Columbia SC 29223

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Criminal Conspiracy

in violation of § 16-17-410

of the S.C. Code of Laws, bearing CDR Code #

0049

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

D. J. Gelberg

Solicitor

Darryl Frierson

Defendant

Attorney for Defendant

SC Bar # 74814

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. beginning 5/16/07☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$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 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

\$90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ _____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Beginning in custody until sentencing complete Judge Child

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

RESIDING JUDGE

CERTIFIED TRUE COPY

OF ORIGINAL FILED.

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

Court Reporter: D. M. Cundy P. Nay

Judge Code: 2941

Sentence Date: 8/24/07

SCCA/217 (07/2008)

WITNESSES

(S) INV. KEVIN ISENHOWER RCSD

ARREST WARRANT NUMBER

J557202

TRUE BILL
ACTION OF GRAND JURY

Sharon Wilson
Foreperson of Grand Jury

Dt SEP 12 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-4364

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE
vs.

DARRYL CLARENCE FRIERSON

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095
Class FEL/A(V)

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
ORIGINAL FILED
J. K. H. 2/17/98
C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

INDICTMENT

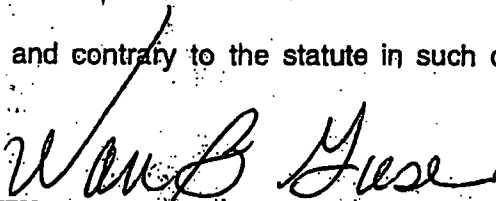
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That DARRYL CLARENCE FRIERSON did in Richland County on or about May 10, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: David Jones, by force and arms, to wit: firearms, by any means whatsoever without authority of law. All in violation of §16-3-910, Code of Laws of South Carolina (1976) as amended.

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandINDICTMENT/CASE#: 2007-GS-40-4364

AKA:

Race: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Columbia SC 29223

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Smiley
SolicitorDarryl Frieson
DefendantBenomel
Attorney for Defendant74914
SC Bar #

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 §24-2-10 to be calculated and applied by the State Department of Corrections. beginning 5/16/07☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

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: _____

Remain in custody until sentence complete
Judge Childs☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine:

\$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	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
\$90.11 TP (SCCJA Surcharge)	\$5	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter: D. McCurdyP. Nax

SCCA/217 (07/2008)

2007 ORIGINAL FILED,
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

33

WITNESSES

(S) INV. KEVIN ISENHOWARD RCSD

ARREST WARRANT NUMBER

J557183

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 12 2007

VERDICT

Foreperson of Petit Jury
ate:

DOCKET NO. 2007-GS-40-4429

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE

vs.

DARRYL CLARENCE FRIERSON

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)

CDR Code: 0189

Class FEL-A(V)

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

Defendant

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

Defendant

Witness:

C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
SEP 12 2007
C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

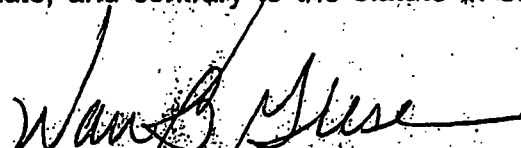
INDICTMENT

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That DARRYL CLARENCE FRIERSON did in Richland County on or about May 10, 2007, commit an armed robbery by feloniously taking from the person or presence of David Jones, by means of force or intimidation goods or monies of Express Teller Services such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of §16-11-390(A) Code of Laws of South Carolina, (1976, as amended).

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


WARREN B. GIESE, SOLICITOR

COUNTY OF Richland
STATEINDICTMENT/CASE#: 2007 -GS- 40 - 4429VS.
Darryl FriersonAW#: J-557183

AKA: _____

Date of Offense: 5-10-07Race: B Sex: M Age: _____S.C. Code §: 16-11-330(A)

DOB: _____ SS#: _____

CDR Code #: 0139

Address: _____

City, State, Zip: Columbia SC 20223

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed RobberyIn violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Darryl Frierson Darryl Frierson James Omer 74874
Solicitor Defendant Attorney for Defendant SC Bar #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: 07-65-40-4567☒ 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. beginning 5/16/07 due 8-27-07☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

pmts. of \$ _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ paid to Public Defender Fund

§35.13 (Public Def/Prob) \$500 \$ _____

Other: Driver in custody until sentencing complete judge child

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (If paid in installments) \$ _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

§90.11 TP (SCCJA Surcharge) \$5 \$ _____

☐ Requires \$500 be paid to Clerk during probation.

TOTAL \$ _____

Clerk of Court/Deputy Clerk

RESIDING JUDGE

Court Reporter: P. NaryJudge Code: 244
Sentence Date: August 6, 2007CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeannette W. Winters
Clerk of CourtRICHLAND COUNTY
SOUTH CAROLINA

2010CP4004277

STATE OF SOUTH CAROLINA

County of Richland

Darryl C. Frierson 336466
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

In the Court of Common Pleas

JEANETTE M. McBRIDE
C.C.P. & G.S.

2010 JUN 28 PM 2:34

FILED
RICHLAND COUNTY

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Corr. Inst. Rt. 2 Box 100,
McCormick SC 29899
2. Name and location of Court which imposed sentence Richland County of General
Sessions 1701 Main St. Columbia SC 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-40-4429 Armed Robbery - 30 yrs credit time served
 - (b) 2007-GS-40-4362 Assault and Battery of a High & Aggravated Nature 10 yrs credit time se
 - (c) 2007-GS-40-4363-Criminal Conspiracy - 5 yrs credit for time served
2007-GS-40-4364 Kidnapping - 30 years credit for time served.
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) Sentence imposed August 24, 2009
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ~~X~~

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

Yes

7. If you answered "yes" to (6), list

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

i. The S.C. Court of appeals

ii. 2

iii.

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

i. Direct Appeal Denied

ii.

iii.

(c) the date of each such result:

i. Direct Appeal Denied January 27, 2010

ii.

iii.

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

i.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) " "

(c) " "

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

(a) Please see Attachments

(b)

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Please see Attachments that consist

(b) of 15 pgs of grounds and their

(c) support facts

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. " "
- iii. " "
- iv. " "

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

- i. N/A
- ii. " "
- iii. " "
- iv. " "

(c) the disposition thereof:

- i. N/A
- ii. " "
- iii. " "
- iv. " "

(d) the date of each such disposition:

- i. N/A
- ii. " "
- iii. " "
- iv. " "

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

- i. N/A
- ii. " "
- iii. " "
- iv. " "

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N / A
- ii. " "
- iii. " "

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

- i. N / A
- ii. " "
- iii. " "

15. If any ground set forth in (9) 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) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N / A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Direct appeal Denied Jan 27, 2010
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Mr. Dean O'Neil
1701 Main Street
- ii. Post Office Box 192
Columbia, SC 29201
- iii. _____

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

- i. Plea and sentencing
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

1. ~~Revoke~~ Vacate of sentence
Time reduction

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

No

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Darryl Frierson # 336466, 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.

Darryl Frierson

SWORN to and subscribed before me this 23

day of June, 19 2010

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED
2010 JUN 28 PM 2:35
JEANE L. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

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

I, Darryl Frierson, 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 therefor.

Darryl Frierson
Applicant

SWORN or affirmed to and subscribed before me this

23 day of June, 19 2010

J C Franklin
Notary Public

My Commission Expires 12-16-2019

57- 4429 }
4362 } WSI
4363 }
4364 } certified

2010CP4004277 6-21-10

To whom this may concern:

I, Darryl C. Frierson #336466
is requesting a copy of the original PCR-copy
that is being mailed with this letter.
Please see to it that the copy that I'm
requesting for has a certify copy with a
clocked date stamped copy.

JEANE J. McBRIDE
C.C.P. & G.S.
2010 JUN 28 PM 2:34

FILED
RICHMOND COUNTY

if when the
order -
suppress the
other guy's
statement

Respectfully Submitted
S/ Darryl Frierson
Darryl C. Frierson #336466
386 Redemption Way
McCormick SC 29899
MCCI Corr. Inst.

Tracking
research
did not do
it.
Hypothetical
Mobles did it
Leo Morris

never knew
statute exist
Attachmah
fail polygraph
- bug case - SP
Paul Whitaker
did not know

4th Amendment
Right

Did not have warrant

Case #s: 2007-GS-40-4429, 4362, 4363, 4364
U.S. v. Knotts
- Supreme Court did in

1980's

no S.C. case law almost none

I. Mobile Tracking Devices: 17-30-140

1. According to the "George Town Law Journal" Pg 149 (Thirty-Fifth Annual Review of Criminal Procedure 2006), the use of pen registers and trap & trace devices without a court order is prohibited.

Any government attorney may apply for such an order, and a court may issue the order if it finds that the information is relevant to an on going criminal investigation. An order is valid for up to sixty days and extensions may be granted for additional sixty day period.

- Attitude to the hearing
- did not challenge this

II. Cumulative Supplement To Code Of Law Of South Carolina 1976 Annotated Volume 8 (2008)

Pg 130 Law: 17-30-140

2) Mobile tracking devices; contents of application for order authorizing use; standards for installation and monitoring; definition.

avoid to pretrial hearing
all evidence suppressed

leverage of a better deal
since 2007-2008
20 cases
ruling on it some

no. S.C.

JEFFREY L. BRIDGE
C.C.P. 40
G.S.

JUN 28 PM 2:34

RICHLAND COUNTY
FILED

Attachment # 1

Case #³ 2007-GS-40-4429,
4362, 4363, 4364

Mobile Tracking Devices : 17-30-140

A.) The Attorney General or any solicitor may make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of mobile tracking device by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this state.

B.) An application under subsection (A) of this section must include:

- 1.) A statement of the identity of the applicant.
- 2.) A certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an on going criminal investigation being conducted by S.C. Law Enforcement Division or any law enforcement entity of a political subdivision of this state.

C.) The standards established by the U.S. Supreme Court for the installation and monitoring of mobile tracking devices apply to the installation and use of any device as authorized by this section.

Attachment #1

Case #s: 2007-GS-40-4429,
4362, 4363, 4364

D.) As used in this section a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

In conclusion, my lawyer was well aware of the investigator illegally placing a tracking device on my vehicle. During my preliminary hearing my lawyer (PD) questioned did the investigator (Kevin I.) have a warrant for the device he placed on my car; with a shameful facial expressions Kevin I. announced that he did not have a warrant for the device. Soon after that it was as if it was never brought up in my first hearing. My lawyer told me that it was legal which was a lie. An order is a must. With that being said the prosecutor and investigator used illegal evidence during my court hearing. (Aug 10th 09)

- Common Law: Verbal evidence which ~~orders~~ derives immediately from unlawful entity and unauthorized arrest is no less the "fruit of official illegality" than more common tangible fruits of unwarranted intrusion, and 4th Amend may protect against over hearing of verbal statement, as well as against

3 of 3

Resume on Back

more traditional seizure of paper ~~Const~~ and
effects. Fed. Rules Crim. (C.A. Const. Amend 4
Rules 3, 4, 18 U.S.C.A. U.S.

Attachment # 2

Case #: 2007-GS-40-4429,
4362, 4363, 4364Search and Seizures17-13-140 / 4th Amend

My home was raided twice. The first time the investigators raided my house there was a search warrant present. I have a copy in this packet. There was a second search where there was no warrant present. According to Amendment 4 and Law 17-13-140 the second search was illegal.

4th Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Attachment #2

Case #s: 2007-GS-40-4429,
4362, 4363, 4364

Search & Seizures

I. State v. McKnight

A) Search and Seizures: Search warrant affidavit which is itself insufficient to establish probable cause may be supplemented before magistrate by sworn oral testimony, however, sworn oral testimony, standing alone.
Code 1976, 17-13-140

B) Search and seizures: Search warrant supported solely by officer's sworn oral testimony was defective, due its failing to meet affidavit requirement of warrant statute, though sworn oral testimony could be sufficient to satisfy constitutional requirement for oath or affirmation, 4th Amend Code 1976 17-13-140

The Constitutions of the United States and the State of S.C. require that search warrants be "supported by oath or affirmation" U.S. Const. Amend. IV; S.C. Const. Art I, Section 10.

Attachment #3

Case #s: 2007-GS-40-4429,
4362, 4363, 4364

Indictment

I. The State Respondent

V.

Dwayne L. Bullard

No. 3442 Pg 436 2d Series 560

A. An indictment is required to perform two functions:

1. It should inform the accused of the charge against him by listing the elements of the offense charged and it should be sufficiently specific to protect the accused against double jeopardy. In South Carolina an indictment shall be deemed and judged sufficient and good in law, which in addition to allegations as to time and place as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided. 35-7-80

23-17-20

Attachment #3

Case #'s: 2007-GS-40-4429,
4362, 4363, 4364

Indictments

On my indictment it clearly states the wrong dates of when my accused crime took place. The crime originally happened on the 11th of May 2007. Fortunately on all four indictments including my warrants clearly state that the crime happened on May 10th of 2007 which is false. Another reason why I would not have pleaded if I had knowledge of this, plus I did not sign my indictments.

2 of 2

Attachment #4

Case #: 2007-GS-40-4429,
4362, 4363, 4364

Breach of Trust with Fraudulent Intent

I. Code of Laws Title 16

16-13-230 pg 501

A) A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny.

B) A person who violates the provisions of this section is guilty of a:

1) Misdemeanor triable in magistrates court if the amount is one thousand dollars or less. Upon conviction the person must be fined or imprisoned not more than is permitted by law without presentment or indictment by the grand jury.

2) Felony and upon conviction, must be fined in the discretion of the court or imprisoned not more than five yrs if the amount is more than one thousand dollars or more.

3) Felony and upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is five thousand dollars or more.

Attachment #4

Case # 2007-GIS-40-4429,
4362, 4363, 4364

Breach of Trust With Fraudulent Intent

Larceny: Person who commits breach of trust with fraudulent intention in South Carolina is guilty of larceny. (Black's Law Dictionary) Pg 881.

The essential elements of a "larceny" are an actual or constructive taking away of the goods or property of another without the consent and against the will of the owner or possessor and with a felonious intent to convert the property to the use of someone other than the owner.

4.) Elements of crime:

Time is not an element in the crime of "Breach of Trust with fraudulent intention, and it is not necessary to prove either the precise time or the precise amount laid in the indictment.

State v. Wells (1939) 162 SC 509, 161 SE 177,
citing State v. Dewees (1907) 76 SC 72, 56 SE 674

Attachment # 4

Case #s 2007-GS-40-4429,
4362, 4363, 4364

A Breach of Trust is where personal property of appreciable value and of which larceny may be committed is put into his possession it's becomes a trust, and while it so remains, if he conceives the purpose to convert that property to his own use and does it with intentions to deprive the owner of the use of that property, then that is a Breach of Trust with Fraudulent intent. State v. Shirer (1884) 20 S.C. 392 Bell v. Clinton Oil Mill (1924) 129 SC 242.

In conclusion, being that I was employed at the company and my position required me to transfer loads of money, I'm suppose to be facing the "Breach of Trust" charge according to the element of this crime. Unfortunately, I was charged with Armed Robbery, Kidnapping, Assault with high and aggravated nature, and conspiracy things that I did not do. The hands of one is the hands of all (A theory not law).

Attachment #5

1 of 5

Case # 2007-GS-40-4429

2007-GS-40-4362

2007-GS-40-4363

2007-GS-40-4364

State of Facts

I. Ineffective Assistance of Legal Counsel

A) Investigator

B) Prosecutor

C) Appointed Public (Assistant) Defender

D) Judge

1) Investigator : Ineffective

During my preliminary hearing the investigator (Kevin Isenhower) clearly stated that they did not have a warrant for the tracking device that was placed on my vehicle. The Prosecutor was also present during this hearing. Still yet they continued to use the GPS system as evidence during my G.S. court hearing, by law that was illegal. The investigator and prosecutor exercised my constitutional rights by placing all of my Co-D's (codefendants) faults (illegal purchases) on me to get him a better deal. During my court hearing the investigator announced that there were lots of new items and receipts that belonged to me. They

Attachment 5#

Case # 2007-GS-40-4429

were found in Paul Whitaker's possession. None of the purchase items show any signs of being mine. That's because it belonged to Paul Whitaker. One of the items was a singular cell phone that was clearly in his name. The prosecutor had full knowledge of this and still supported the investigator's unlawful actions. The investigator also promised leniency if I told them where to find money. I allowed them to coerce my statement. I was intoxicated while doing so. I requested to take a polygraph to prove my innocence and was denied.

B. Prosecutor: (Solicitor) Ineffective

The prosecutor had full knowledge of the investigator not having a warrant for the "GPS (Mobile Tracking Device)" that the investigator illegally placed on my car. The solicitor also had full knowledge of the investigator illegally searching my household (no warrant present). The solicitor supported the deal that the Judge's investigator gave Paul Whitaker (my co-defendant) for being the first to cooperate. That act exercises my constitutional rights because they place all of what Paul Whitaker bought on me, including one's with his name on it.

Attachment #5

Case # 2007-GS-40-4424

They found all of the illegal purchases made by Paul Whitaker in his possession. To make him less of a criminal they had to place all his faults on me. That is called "exercising my constitutional rights", which is illegal according to the Law of South Carolina.

2007-GS-40-4362

2007-GS-40-4363

2007-GS-40-4364

C. Assistant Public Defender : Ineffective

To He did not put favorable issues that were in my favor. I. The illegal search of my house.

II. The tracking device illegally placed on my car.

III. The promising sentence that he told my family and I, he said I wasn't going to receive no more than ten to fifteen years. That's why I signed the plea.

IV. He told me the plea wasn't going to get any better and that I had to go up in front of the judge with my co-defendants. He did not explain the difference between the Judge and solicitor to me clearly. I thought they both was against me.

V. I didn't understand the charges against me which enabled me to answer the Judge.

- 3 of 5 -

co-D got
less
25 years
talk to his
mother

before she
got the case
Knew co-D
had got 25 yrs
= 2 co-D
cousin
1 year

Attachment #5

Case #2007-GS-40-4429
4362, 4363, 4364VI. He neglected my request for a polygraph.Told him
* gave him
a polygraph.
King leader.

D. Honorable Judge: Ineffective

1) The Judge supported the solicitor and investigator's decision to ignore the policy of investigation.

2) Failed to do anything about the illegal investigation.

3) During my sentencing hearing I was treated unfairly. This was a "ABHAN" case dealing with the theory not law but theory of "the hands of one is the hands of all." We're all suppose to be charged with the same charges and receive similar sentences according to the theory. I received ten yrs more then everyone else not including the two who received nonviolent sentences. I played the least roll according to the police report and my co-defendents' statements. I feel that my decision to plea was forced. Also being that I worked at the company I was suppose to be facing the "Breach of Trust" or just "Conspiracy".

Attachment #5

Case # 2007-GS-40-4429

4362, 4363, 4364

In conclusion, I had a very well experienced lawyer from the beginning (Public Defender) who told me I was going to do ten yrs. They (SC.) switched lawyers on me and gave me an inexperienced "assistant public defender" I didn't understand why the change and since the change everything went downhill. Also I did not understand the change because it was a very high profile case. Another point, none of my positives were taken in consideration. I have a numerous amount of achievements from my community to College. I have a beautiful daughter and a caring supportive family. I've never been in trouble prior to this case. I was treated unfairly. I was sentence to 35yrs while everyone else was sentence 10 yrs less then what I received.

Wong Sun v. South Carolina (83 pg 407)
-Criminal Law-

Evidence seized during unlawful search DF 336466 cannot constitute proof against victim of search, and exclusionary prohibition extends to indirect as well as to direct products of such invasions (Amendment 4)

5 of 5

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

FRIERSON Darryl C, # 336466,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-400-4277

RETURN

FILED
 2010 JUL 21 PM 1:09
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 28, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Dean O'Neil, Esquire. On August 24, 2009, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: ABHAN, Criminal Conspiracy, Kidnapping and Armed Robbery - (2007-GS-40-4362;4363;64;44). According to the South Carolina Department of Corrections, the Applicant is serving a 35 year sentence for "Kidnapping."

II.

Attached and/or incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return

State's Return - (2010-CP-400-4277) - Applicant: FRIERSON Darryl C

Page 1

upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Nicole Singletary, Esquire regarding when the hearing should be set.¹

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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July 20, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

I N D E X

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Deon O'Neil	
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No Exhibits Introduced.		
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1 MR. CORNEY: May if please the court, Your Honor?

2 THE COURT: Yes, sir.

3 MR. CORNEY: Thank you, Your Honor. Your Honor, this
4 is Darryl Frierson, docket number 2010-CP-40-4277. Mr.
5 Frierson was true-bill indicated at the September 2007 term
6 of the Richland County Grand Jury for assault and battery
7 of a high and aggravated nature, kidnapping, and criminal
8 conspiracy. Mr. Frierson appeared December 3, 2008, before
9 Judge Childs, at which time he pled guilty as indicted.
10 Sentencing was held in abeyance at that point pending the
11 trial of a co-defendant involved in the case.

12 Mr. Frierson appeared again before Judge Childs on
13 August 24, 2009, at which time he was sentenced to ten
14 years -- five years for the assault and battery of a high
15 and aggravated nature, five years for conspiracy -- and
16 consecutive to those two are two thirty-year terms for the
17 kidnapping and armed robbery.

18 Mr. Frierson filed an appeal. It was dismissed as no
19 issue was preserved for appeal. The remitter was issued
20 January 8, 2010, and filed a timely PCR application June
21 28, 2010.

22 Just as a preliminary matter, Your Honor, you'll note
23 in your packet up there three different transcripts. Been
24 a little bit of confusion. The December 3, 2008, one is
25 the actual plea, and sentencing is on August 24, 2009, the

D. FRIERSON - DIRECT EXAMINATION BY MS. SINGLETARY

4

1 sentencing transcript. The third one in there is from a
2 co-defendant, and it's got the full statement of the facts
3 in there. So, we included it just, just to get an overall
4 feel of the charges and everything.

5 THE COURT: All right.

6 MR. CORNEY: He is represented by Ms. Nicole
7 Singletary today, and just to note Mr. Deon O'Neil is here
8 as well, who was his plea attorney.

9 THE COURT: All right, Ms. Singletary.

10 MS. SINGLETARY: Thank you, Your Honor. If it pleases
11 the court? We would like to call Darryl Frierson to the
12 stand.

13 THE COURT: All right.

14 DARRYL FRIERSON, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 BAILIFF: State your full name for the record.

17 WITNESS: Darryl Frierson.

18 DIRECT EXAMINATION BY MS. SINGLETARY:

19 Q. Mr. Frierson, where are you currently housed at?

20 A. McCormick Institution.

21 Q. And you just heard the attorney general say that you
22 actually entered into a guilty plea here in Richland
23 County?

24 A. Yes, ma'am.

25 Q. And who were you actually represented by?

1 A. Mr. Deon O'Neil.

2 Q. Was Mr. O'Neil the only attorney that represented you
3 from the public defender's office?

4 A. No, ma'am. My initial attorney was Lauren Mobley.

5 Q. Okay, and how long would you say that Lauren Mobley
6 was actually your attorney prior to Deon O'Neil actually
7 entering, becoming your attorney?

8 A. Probably about ten months, I want to say. Maybe a
9 little longer.

10 Q. And when Ms. Mobley was actually your attorney, could
11 you tell the court about how many times you actually met
12 with her?

13 A. It's been a while, but I'm estimating now probably six
14 times, I want to say.

15 Q. Okay, and at some point -- and you heard me testify to
16 the fact that Mr. O'Neil took over your case. About how
17 many times would you say from the time Mr. O'Neil took over
18 your case until the time of the guilty plea that you
19 actually met with Mr. O'Neil?

20 A. Speaking on that, he was pretty consistent as far as
21 showing up visiting. From the time period where he was my
22 lawyer and to go to court, the court hearing, I would say
23 around about the same amount.

24 Q. Okay.

25 A. Probably so.

D. FRIERSON - DIRECT EXAMINATION BY MS. SINGLETARY

6

1 Q. So, you would say in the entire duration of time that
2 the Richland County public defender's office represented
3 you, you received about twelve different visits from two
4 different attorneys?

5 A. Yes, ma'am.

6 Q. And let's go into some of the communications,
7 conversations that you actually had with these attorneys.
8 This case was actually a very high profile case. Would you
9 agree?

10 A. Yes, ma'am.

11 Q. Your case is one that actually was on *America's Most*
12 *Wanted*.

13 A. Yes, ma'am.

14 Q. And would you say that the fact this case was actually
15 a high-profile case, would you say that that affected the
16 process of your case?

17 A. I would say so.

18 Q. Okay, and when you actually spoke to Ms. Mobley or --
19 and/or Mr. O'Neil, and I'm saying both of them, but when
20 you actually answer the question, please address to the
21 court which specific attorney that you're referring to,
22 okay? When you actually spoke to them about the facts of
23 your case, could you tell us, what were some of the things
24 that you all actually discussed?

25 A. Well, obviously it mostly about, you know, the time I

1 might receive or possible getting home. With Lauren
2 Mobley, she was concrete about me getting anywhere from no
3 less than ten, no more than fifteen. She pressed that to
4 my family, specifically my mother, and she consistently
5 told me that. She was very persistent as far as telling me
6 the range, about how much time I'm really going to be
7 looking at. You know what I'm saying?

8 Now, she said that long as I keep my mouth shut and
9 don't talk too much about my case where somebody could
10 actually testify against me or whatever, that I should
11 receive that time, anywhere from ten to fifteen.

12 Q. So, is it your testimony that when Lauren Mobley
13 actually represented you, she made concessions to you that
14 you would get a sentence of? And when I say you will get,
15 meaning that she told you that if you were to go in front
16 of the judge on a guilty plea, that it was definite that
17 you would receive a sentence between the range of ten years
18 and fifteen years?

19 A. Yes, ma'am. She, she had me under the impression.
20 She actually said that I should get no less than ten. She
21 told -- especially my mother. She told me. She told my
22 mother that I'm going to do ten years. That's what she
23 said. She was, like, now it's possible that it -- well, I
24 won't even say possible. She said it was more of a chance
25 that I might get more, but it would be no than fifteen.

D. FRIERSON - DIRECT EXAMINATION BY MS. SINGLETARY

8

1 Q. And did you rely on that in making your decision as to
2 whether to plea or got to trial?

3 A. Yes, ma'am. I put my trust in her. I put everything
4 in her, and being that it's my first time experiencing,
5 dealing with the system -- I never dealt with any system
6 before. I have no prior history.

7 THE COURT: Let me ask who we're talking about.

8 MS. SINGLETARY: Lauren Mobley, Your Honor.

9 THE COURT: Lauren Mobley.

10 MS. SINGLETARY: Yes, Your Honor. She's no longer
11 with the public defender's office but, however, she was Mr.
12 Frierson's attorney for the first ten months, Your Honor.

13 THE COURT: All right.

14 BY MS. SINGLETARY:

15 Q. And to be clear, you stated that if you would have
16 been informed of something differently other than a
17 guaranteed sentence, which is your testimony, by Ms.
18 Mobley, that you would have actually decided to go to trial
19 than to take a plea?

20 A. Yes, ma'am.

21 Q. Okay. Now, did anything change from the conversations
22 that you had with Ms. Mobley and her telling you that you
23 were getting a minimum of ten -- well, you had to get a
24 minimum of ten because of the fact that you had an armed
25 robbery charge, but you would get no more than fifteen

1 years. Did anything change when Mr. O'Neil became your
2 attorney as it relates to that specific issue?

3 A. Yeah. I would say the conversation, conversation
4 changed a little bit.

5 Q. How did it change?

6 A. Sentence wise, he told me that he really don't see us
7 winning. It was if going to trial was not a option. He
8 wasn't as confident. The strategy was to come and express
9 to the court the type of person I am, the type of person I
10 was as far as living on the street. As far as going to
11 college, maintaining a 3.9 in computer engineering, making
12 the Nation Honor Roll and, you know, honor school, football
13 scholarship. Never get in any trouble. Apply myself to
14 children programs and, you know, trying to become a mentor.
15 That's basically what the strategy -- other than that,
16 there was no other defense.

17 Q. So, at what point, Mr. Frierson, did you tell Ms.
18 Mobley or either Mr. O'Neil -- and again be very specific
19 in your answer which attorney it is -- that you told them
20 that your wishes was to go to trial?

21 A. When Mr. O'Neil became my attorney. The numbers that
22 he was really telling me, I really didn't want to go for,
23 you know what I'm saying? I didn't want to accept that.
24 So, I said I want to go to trial. But the lack of
25 confidence, you know what I'm saying, made me plead out.

D. FRIERSON - DIRECT EXAMINATION BY MS. SINGLETARY

10

1 And he was telling me -- like I said before, the only
2 difference that we had -- or the strategy is just to get
3 the court to know me. Other than that, there was really no
4 other way of going about it.

5 Q. Now, let me ask you this. Did you ever receive a copy
6 of your discovery in this case?

7 A. Partially. Partially.

8 Q. And explain to me why you say that it was partial
9 discovery.

10 A. Because the discovery I got, you know, was when I was
11 detained at Richland County, it had -- they didn't have the
12 full discovery. But would I got to McCormick and I got
13 another discovery mailed to me, it had more than it had in
14 it when I got it at Richland County.

15 Q. Okay, and let's clarify this because this is
16 important. It is your testimony that once you were housed
17 at Richland County detention center, that you did receive
18 some discovery from your attorney?

19 A. Yes, ma'am.

20 Q. But it was not until after your guilty plea that you
21 discovered that the initial discovery that you actually
22 received was not a complete copy of your discovery?

23 A. Yes, ma'am.

24 Q. And is it your testimony that you received a second
25 copy of your discovery while you were housed at the

1 McCormick Institution?

2 A. Yes, ma'am.

3 Q. And what additional information was in the discovery
4 that you received after your guilty plea that was not
5 present when you took the guilty plea?

6 A. Some of the -- they had a tracking device that was
7 placed on my car, and they had additional information on
8 that, information as far as my co-d's, information,
9 discoveries, and statements. Matter of fact, specifically
10 Paul Whitaker. And also some of the police reports, they
11 weren't in the first one, the initial one I got. Like,
12 there was an illegal search at my mom's house and that
13 wasn't in the first one, the first motion discovery I had.
14 It was in the second one.

15 Q. Now, if you were actually privy to that information
16 prior to your guilty plea, would you have decided to
17 continue to plead guilty, or would you have taken the case
18 to trial?

19 A. I'd'a take it to trial. I'd'a take it to trial.

20 Q. So, that information that you got later on was
21 instrumental in you making a decision as to go to trial or
22 plead?

23 A. Yes, ma'am.

24 Q. Okay, and you actually -- and let's go to this. We're
25 going to the side now for a second. Mr. Frierson, did you

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1 have the direct appeal ---

2 A. No, ma'am.

3 Q. --- in this case?

4 A. No, ma'am.

5 Q. Okay, and is it your testimony that your attorney did
6 not file notice of intent to appeal? Let me rephrase that.
7 Did Mr. O'Neil -- did you tell Mr. O'Neil after the guilty
8 plea that you wanted to appeal the sentence?

9 A. Yes, ma'am.

10 Q. And did he indeed appeal that sentence?

11 A. To my knowledge, yes.

12 Q. Okay, and why were you not given a direct appeal?

13 A. They have a deadline that you have to meet, and you
14 have to state -- argue issues as far as why, why I deserve
15 a direct appeal, being that I pleaded out. I had to do it
16 on my own.

17 At the time, the institution was going through a few
18 difficulties, function in the yard. Someone had got
19 murdered, and we went on lockdown for two weeks, and they
20 held my discovery up front. I wasn't allowed to receive it
21 because it had a map, they had a few maps in there, and it
22 wasn't allowed at the institution for a inmate to have a
23 map, not unless the warden approves it.

24 The direct appeal application came with a motion. So,
25 they withheld it for two weeks. Then after that, another

1 incident came about, and that was like another week,
2 another work or two so.

3 So, you only get thirty days, and they withheld it
4 from me, and I didn't have the proper time to put adequate
5 information I that I needed to, you know, get the job done.

6 Q. So, let's clarify this. Mr. Frierson, would you say
7 that it is, it was your fault why you didn't get to send
8 the correct information to the Court of Appeals ---

9 A. No, ma'am.

10 Q. --- in order for your direct appeal to be heard?

11 A. No, ma'am.

12 Q. And it's true that you actually did not get the
13 paperwork telling you that you had thirty days to actually
14 answer the actual notice of appeal until after thirty days?

15 A. Yes, ma'am.

16 Q. So, at the time you actually received the information
17 saying that you need to respond to the appellate court, you
18 had already passed your deadline?

19 A. Yes, ma'am.

20 Q. So, sitting here today, the only remedy that you have
21 for your conviction is this post-conviction relief?

22 A. Yes, ma'am.

23 Q. Okay. Now, let's go back to -- you mentioned
24 something about a tracking device.

25 A. Yes, ma'am.

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1 Q. And just to give the court some background, why is it
2 so important to your case about the placement of this
3 tracking device?

4 A. The tracking device issue was brought up in the
5 preliminary hearing by Mr. O'Neil himself. He asked was
6 there a warrant, did they have a warrant for it, any type
7 of order. The investigator, which was Eisenhower, said no.
8 Dan Goldberg was present at the time, which is the
9 prosecutor on my case. From there, we didn't push any
10 further.

11 When he came to visit me, I kept bringing up the same
12 subject as far as the tracking device because it was
13 illegal, and most of the -- I would say a lot of the
14 evidence came from them using the tracking device leading
15 up to the arrest and et cetera.

16 Q. And let's, let's -- let me slow you down, Mr.
17 Frierson. At this point, prior to the police department
18 putting the mobile tracking device on your vehicle, had you
19 actually --- had there been a warrant for your arrest in
20 this case?

21 A. Repeat that one more time? I had to catch the
22 beginning of it.

23 Q. Okay. Let me back up for you. Okay, at what
24 opportunity was the Richland County Sheriff's Department
25 able to put this tracking device on your vehicle?

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1 A. During the same time -- during around the time the
2 crime actually happened. They didn't have a warrant for my
3 arrest until about four or five days later.

4 Q. So, as a result of the Richland County Sheriff's
5 Department putting this tracking device of your vehicle, a
6 arrest warrant, arrest warrant came out for your arrest in
7 this crime?

8 A. Yes, ma'am.

9 Q. Okay. Now, did you speak to Ms. Mobley, Lauren Mobley
10 about the constitutionality and any Fourth Amendment rights
11 that -- of yours that may have been actually frustrated by
12 the actions of the police department?

13 A. I don't think so. Around this time, I think the
14 transaction between Mr. O'Neil taking over the case was
15 happening around this time. Really I might have seen him
16 one more time. I might have seen him one more time after
17 the preliminary hearing which the tracking device was
18 brought up on, and we really didn't even discuss about
19 that.

20 Q. Okay. So, you're saying that you and Mr. -- Mr.
21 O'Neil never talked to you about the Fourth Amendment
22 violations or possible Fourth Amendment violations by the
23 Richland County Sheriff's Department as it relates to their
24 placement of the mobile tracking device?

25 A. We talked about it, but he had told me that there was

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1 -- it was allowed. It was legal because they put it on the
2 outside of my car, the bumper, which didn't make sense to
3 me because it's not defeating any purpose. It's still
4 getting the job done. So, when I got to SCDC, to McCormick
5 Institution, I went in the law library and studied it, and
6 there is no degree as far as using tracking devices. It
7 says that you must have a order or a warrant from the
8 magistrate or the judge or the attorney general.

9 Q. And in your case, Investigator Eisenhower did not have
10 a warrant to place this tracking device on your vehicle?

11 A. No, ma'am.

12 Q. And he did not go through the proper procedures?

13 A. No, ma'am.

14 Q. Okay, and you were not -- you did not become aware of
15 the fact that the constitutionality of this mobile tracking
16 device could have been contested if you would have decided
17 to go to trial?

18 A. Yes, ma'am.

19 Q. Now, if Mr. O'Neil would have told you at the time
20 that there was a specific statute that actually related to
21 the Richland County Sheriff's Department putting this
22 mobile tracking device on your vehicle, would you have --
23 would that have changed your mind about pleading or going
24 to trial?

25 A. Yes, ma'am.

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1 Q. If you knew you could have challenged the
2 constitutionality of this Fourth Amendment violation, would
3 you have went to trial?

4 A. Yes, ma'am.

5 Q. And at that time you pled, again you did not know that
6 this statute was in existence?

7 A. No, ma'am. I went according to Mr. O'Neil's word as
8 far as it being legal.

9 Q. Okay.

10 A. Putting it on the outside the car, the bumper.

11 Q. And it was Mr. O'Neil's advice that the actions of the
12 police were legal?

13 A. Uh-huh.

14 Q. Okay.

15 COURT REPORTER: Speak up, please.

16 A. Yes, ma'am.

17 Q. Okay, and let me ask you this. As a result of this
18 mobile tracking device that the Richland County Sheriff's
19 Department actually put on your vehicle, according to the
20 discovery that you did receive, was there any additional
21 information, any additional evidence that they were saying
22 that they had against you was retrieved by the result of
23 this tracking device?

24 A. Yes, ma'am. As a matter of fact, in my transcript it
25 says that they'd didn't have to come to me. I came to

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1 them. They were using the tracking devices. You know,
2 they really just set me up to get arrested. I got arrested
3 probably about a block away from my house. Then they were
4 saying all type of -- they were tracking me down and saying
5 that I was shopping at all these malls, where in actuality
6 my daughter's mother works at Magnolia Mall. Well, at the
7 time she worked -- at the current time, she was.

8 It showed that I was going there back and forth. You
9 know, but being that they didn't know me, they didn't know
10 that's, you know, that's not out of the ordinary, you know?
11 I normally go there, you know, to pick her up or bring her
12 some lunch, or I'd go pick up my daughter. We'd go pick
13 her up, she'd follow me home, whatever. But I normally
14 made trips from Columbia to Florence area, the Pee Dee
15 area. They were saying that I was shopping, spending all
16 this types of money, and no evidence behind it, you know?

17 As far as my co-defendant, Paul, Paul Whitaker, he had
18 a bunch of merchandise in his house, had, you know, cash
19 here and there. And they, what they did was all the stuff
20 that they had against him, they put on me, and they were
21 saying that those were my stuff, you know, and all the
22 receipts. It was a cell phone, and it was in his name, and
23 they tried to say all that stuff was mine, it belonged to
24 me. So, really, they was trying to slamming me. They were
25 trying to make me look bad so they could have publicity on

1 their side.

2 Q. Okay, and again, you stated that if you would have
3 known this information at the time of your plea, that you
4 would not have pled guilty?

5 A. No, ma'am.

6 Q. Okay. Now, could you tell some of -- the court some
7 of the other issues that you have as it relates to this
8 post-conviction relief, specifically the prosecutorial
9 misconduct?

10 A. Well, from what my understanding -- I want to say
11 there's this case, *Kyle vs. Woodtaker*. It says that even
12 though the prosecutor, the prosecutor does not do any
13 investigation or anything like that, it's his job, his or
14 her job to know all favorable things that apply to this
15 case done by any government, any other agency, including
16 the police and investigators. So, they're following --
17 their responsibility, it's their responsibility to know
18 everything that's going down as far as the strategy that
19 the investigators are using or, like I said, any other
20 agency.

21 Q. And how does that specifically relate to your case and
22 the, and the co-defendant in your case, Mr. Whitaker?

23 A. The tracking device, even though it was illegal, it
24 was the prosecutor's responsibility to know about that and
25 to put a pause on it. Or if not, correct the incorrect.

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1 Still yet they went forward and used it against me in my
2 court hearing. Paul Whitaker, all the stuff that was found
3 in his house which was not in my possession -- it was
4 nothing found in my house -- they placed on me, and I'm
5 pretty sure that's against my constitutional rights, you
6 know? And I believe they done that just to give him a
7 better deal because he was initially charged with all the
8 charges that me and my co-defendant had, you know what I
9 mean?

10 And as far as the hands of one, hands of all, being
11 that it is a theory, it's a practice theory -- there's no
12 SCDC code on it -- if that's the case, why we all have
13 flipflop numbers? If it's the hands of one, hands of all,
14 we get charged with the same charges, why are we not all
15 charged -- well, why weren't we sentenced with the same
16 number?

17 Q. And let me stop you right now, and just for
18 clarification, what you were referring to a few minutes ago
19 is the fact that one of your co-defendants in this case,
20 Mr. Whitaker.

21 A. Yes, ma'am.

22 Q. Actually was initially charged with the same charges
23 that you were charged with.

24 A. Yes, ma'am.

25 Q. Which is armed robbery, criminal conspiracy, and so

1 forth, but he actually was allowed to get his charges
2 reduced, and he pled to a five-year sentence.

3 A. Yes, ma'am.

4 Q. And that is what you were trying to relate to the
5 court a few minutes ago?

6 A. Yes, ma'am.

7 Q. And let me actually ask you this, Mr. Frierson. At
8 the time of your plea, were you privy to the fact that your
9 co-defendant's charges were reduced, and that he was
10 actually pleading to a five-year sentence?

11 A. No, ma'am.

12 Q. At what point did you find out about that?

13 A. After I signed my plea papers, my sentencing hearing.

14 Q. And how did you find out about that?

15 A. During a hearing.

16 Q. And be more specific.

17 A. When we were getting sentenced, the last hearing,
18 there was a negotiated plea between him and the prosecutor
19 as far as giving testimony. And being initial help, the
20 eye witness of the case, what they did was everything they
21 had against him they placed on me and gave him a lesser
22 time. I think it was under conspiracy zero to five. Did
23 eighteen months in the county and a few months SCDC, and
24 he's home now.

25 Q. And did Mr. -- in your prep, did Mr. O'Neil for your

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1 guilty plea or in preparation for a trial, did he actually
2 relay that information to you, that your co-defendant was
3 actually going to testify against you if you decided to go
4 to trial?

5 A. Yes, ma'am.

6 Q. And at what point did Mr. Neal tell you that?

7 A. Well, he didn't specific tell me Paul Whitaker. He
8 said that if I do decide to go to trial, most of my
9 co-defendants will testify against me.

10 Q. Okay, but did Mr. O'Neil tell you the substance of the
11 testimony that your co-defendants would likely testify to
12 at trial?

13 A. No, ma'am.

14 Q. Okay, and because Mr. O'Neil told you that your
15 co-defendants were going to testify against you at trial,
16 did, did that influence your decision as to whether to go
17 to trial or to plead guilty?

18 A. Well, I was told it was best, best in my interest to
19 plead out being that if I go to trial, I might -- well, I
20 was going to get the max.

21 Q. Okay.

22 A. So, yeah, that kind of scared me, yeah.

23 Q. And so it did influence whether or not ---

24 A. Yes, ma'am.

25 Q. --- you were going to go to trial?

1 A. Yes, ma'am.

2 Q. Or whether or not you were going to plea? Okay, and
3 let me ask you this. When you and Mr. O'Neil reviewed the
4 discovery, did you all come up with possible defenses and
5 strategies for trial?

6 A. No, not strong ones, not concrete ones, not really.
7 You know, like I said, the best strategy that he presented
8 was to get to know me and in his, in his own words the D.J.
9 That's my family name. Get to know D.J.

10 Q. Okay, and when you say the only defense you all had
11 was to get to know D.J., I mean, what do you mean by that?

12 A. Well, like I said before, he, he wanted to express who
13 I was, you know, what type of person I was. That I'm not
14 criminalist, you know? And really, that was the best
15 approach.

16 Q. And to express who you were to whom?

17 A. To the court, to the people, to the state, to the
18 judge.

19 Q. And what did Mr. O'Neil, in your opinion, do to
20 express that to the court?

21 A. He spoke upon -- he just -- everything that I
22 eventually said he repeated in his own, he did it in his
23 own words -- I'm sorry, I repeated.

24 Q. Okay.

25 A. If you don't mind, I want to say something else.

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1 Q. Go ahead.

2 A. If I was to go to trial and Paul Whitaker took the
3 stand and testified against me, wouldn't that be a false
4 testimony being that they -- all the stuff that they had
5 against him they put on me, and that he was going to have
6 to really back that up and really say that?

7 Q. Okay, and let me ask you this question. Did you and
8 Mr. O'Neil actually talk about the fact that if your
9 co-defendants were to testify against you, that there could
10 be possible information that he could use to impeach the
11 testimony of your co-defendants?

12 A. No, ma'am.

13 Q. Okay. Did you all talk about whether or not your
14 co-defendants had any prior convictions, and whether or not
15 that could have been used at trial if the judge allowed
16 those convictions in?

17 A. I actually brought that up myself because being that
18 they have prior history -- well, some of them have prior
19 history -- I kind of asked myself how come we're falling
20 under hand of one and we're sentenced under the same thing?
21 If they have prior history, how would that go about, you
22 know what I'm saying? But we didn't get any results out of
23 that.

24 Q. Let me ask you this. Did you and Mr. O'Neil talk
25 about any *Bruton* or *Crawford* issues that may arise if you

1 all were to go to trial?

2 A. No, not really, not in detail. We didn't really talk
3 in detail about what would happen if we got to trial
4 because it was already said that it would be best for my
5 interest to plea out.

6 Q. So ---

7 A. That I might get less time.

8 Q. So, do you know if -- what *Bruton* issues would be?

9 A. No.

10 Q. Do you know what *Crawford* issues would be?

11 A. No, ma'am.

12 Q. So, you didn't discuss that with your counsel?

13 A. No, ma'am.

14 Q. Okay. Now, let me ask you this. When you actually
15 spoke to Mr. O'Neil about this case, was there any
16 investigation that you asked for Mr. O'Neil to do into the
17 facts of your case?

18 A. You might have to come back to that question. I have
19 to think about it.

20 Q. Well, maybe, let me rephrase it.

21 A. Well, the tracking device, yes, the tracking device.
22 I asked him to, you know, further pursue that, see what we
23 could get out of that. When he came back to visit me, he
24 told me what I told you. That it was, it was legal if they
25 put it on the outside of my car, which they did. They put

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1 it inside the bumper, the back bumper. Other than that, we
2 had a private investigator named, I want to say Mr. McGee,
3 I think his name is, and nothing really came out of that.

4 Q. Could that have been Investigator, could it have been
5 Investigator McNeeley?

6 A. Yes, that's the name.

7 Q. That actually investigated it?

8 A. I apologize.

9 Q. Okay. Now, other than Mr. O'Neil coming down to the
10 jail six times, is there anything else you feel that he
11 should have done and didn't do in his representation of
12 you?

13 A. Well, for one, I just want to say one thing. I
14 actually believe he tried his best, you know? He's a
15 humble person. He was aggressive, but it just wasn't good
16 enough, you know? I don't think he was ready for this type
17 of case, being that it was high profile and the magnitude
18 of the case, but I do believe he tried his best, you know?

19 Other than that, yeah, it could have been a lot done.
20 As far as pressing the issue of the tracking device, the
21 Paul Whitaker situation as far as the false testimony, and
22 the plea offer, and all that, I could have been informed.
23 I wish I was informed of it, you know, because I wouldn't
24 have -- well, I don't know if I would be here now, but I
25 would have taken other options. That's it; that's all I

1 got to say as far as that.

2 Q. And it's your testimony, and I want to sum up your
3 testimony, that the fact that you did not get a direct
4 appeal in this case was due to the fact that Mr. O'Neil
5 sent the notice of the direct appeal to you at the
6 McCormick Institution, but he sent it to you enclosed in
7 the rest of his -- of your discovery?

8 A. Yes, ma'am. That's how I received it.

9 Q. And that's how you received it, and because of just
10 some things that occurred at the institution at the time,
11 you were unable to actually get the paperwork telling you
12 that you -- that your client -- your counsel had filed a
13 notice of appeal, and so thirty days after, you were
14 actually supposed to respond to that appeal?

15 A. Yes, ma'am. When we finally came off of lockdown,
16 another issue came about. We were locked down probably
17 about a week and a half. And then when everything got back
18 to normal operations, I still wasn't allowed to bring my
19 motion back because the map was an issue apparently.

20 What took place was I had to go up front and really
21 come up there and visit. I had to sit inside the warrant
22 office and really pick through it. I couldn't really sit
23 down and really go through it the way I wanted to do
24 through it, you know?

25 The issue was the that warrant had no proof, but he

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1 had to go through it first, and he was so busy, so he said,
2 that it took a while. I want to say a week and a half or
3 more for him to actually sit down and go through it and get
4 me the approval to take it back to my cell or -- you know,
5 and I could go through it myself and study it, do things I
6 needed to do to proper -- get the proper information I
7 needed, you know what I'm saying, to build up a defense for
8 myself. You know, so all that just killed the deadline.

9 Q. And the other major issue is that you would have -- if
10 you would have known that Mr. O'Neil could have contest the
11 constitutionality of the mobile tracking device that was
12 placed on your car which ultimately led to your arrest, you
13 would have went to trial rather than take the actual case
14 -- take the plea offer?

15 A. Yes, ma'am, unless the plea was going to come out
16 better.

17 Q. But ultimately it actually ---

18 A. Yeah.

19 Q. --- the fact that you did not ---

20 A. The fact that I took the plea is because he wasn't
21 confident in me, you know? I didn't have the information
22 that I know now. What I know now, I would have went to
23 trial because I had a better defense.

24 Q. Now, is there anything else you would like for this
25 court to know as it relates to your post-conviction relief?

1 A. Related to the post-conviction relief? No.

2 MS. SINGLETARY: Your Honor, I have no further
3 questions at this time.

4 THE COURT: Yes, sir.

5 MR. CORNEY: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. CORNEY:

7 Q. Mr. Frierson, you had some co-defendants in this case,
8 right?

9 A. Yes, sir.

10 Q. Quite a few actually. I think there was maybe five or
11 six?

12 A. Yes, sir.

13 Q. Okay. You weren't the first one to plead, were you?

14 A. No. No, sir.

15 Q. Okay, I think Domonique and Kelby Blakney pled before
16 you?

17 A. Yes, sir.

18 Q. Okay, and you were aware they had entered a plea
19 agreement, right?

20 A. Yes, ma'am. I mean, yes, sir.

21 Q. And I think that they, they entered their plea January
22 2008?

23 A. Yes, sir.

24 Q. Okay, and you didn't come in and enter your plea until
25 December of that same year. So, a good eleven months

1 later?

2 A. Yes, sir.

3 Q. Okay, and the Blakneys received twenty-five years on
4 their charges, right?

5 A. Yes, sir.

6 Q. The same charges you had?

7 A. Yes, sir.

8 Q. Okay, and during your plea, the trial court asked you
9 whether you had been advised of your maximum and minimum
10 sentences you were facing on the charges, right?

11 A. Say it again one more time?

12 Q. During your plea, the plea judge asked you whether Mr.
13 O'Neil had gone over the maximum and minimum sentences that
14 you were facing on the charges?

15 A. Yes, sir.

16 Q. And you said that he had, right?

17 A. Yes, sir.

18 Q. Okay. So, you knew full well the potential sentences
19 that you could get based on these charges when you entered
20 the plea?

21 A. Yes, sir.

22 Q. Okay. I want to talk just very briefly about this GPS
23 you talked about that was placed on your car. Do you have
24 any idea when it was placed, when it was placed on the car?

25 A. I was told the exact day, but if not the same morning

1 of the crime.

2 Q. Day of the crime?

3 A. While I was in the hospital, yes, sir.

4 Q. Okay. It wasn't placed on your car when you were
5 answering questions for police at the police station?

6 A. That's not what I was told.

7 Q. Okay, and you don't know anything about whether there
8 was a search warrant or a warrant -- I mean, I apologize,
9 not a warrant -- whether, whether that the court had said
10 that they could put that GPS device on your car? You're
11 not aware of that at all?

12 A. Well, during the hearing, the question was brought up
13 and the investigator said no, they did not have a order or
14 warrant to put it on the car.

15 Q. Okay. All right, and the GPS was pretty much used by
16 the solicitor to show that you had had contact with your
17 co-defendants after this crime, right? Okay, and that's a
18 yes?

19 A. Yes. Yes, sir.

20 Q. Okay, but there were also cell phone records pulled by
21 the solicitor to show that you have been in contact with
22 these co-defendants during that same period of time, right?

23 A. Yes, sir.

24 Q. Okay. So, those cell phone records pretty much show
25 the same information the GPS showed. You'd been in contact

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1 with these people they wanted to show you were in contact
2 with.

3 A. Well, that's one.

4 Q. Okay, and they used it to make your arrest as well.
5 They knew when you were coming to Columbia.

6 A. Make the arrest, to slander, keep track of me period.

7 Q. Okay.

8 MR. CORNEY: Beg the court's indulgence for one
9 moment, please.

10 Q. All right, and throughout your plea hearing and the
11 plea to the sentencing that followed after that, it was the
12 solicitor's position that you were kind of the mastermind
13 of this whole thing, right?

14 A. Yes, sir.

15 Q. So, that could have been the reason you received a
16 harsher sentence than your co-defendants, right?

17 A. Yes, sir.

18 Q. Okay, and you actually worked for the armored car
19 company that was robbed in this incident?

20 A. Yes, sir.

21 Q. And you were in the car when it happened?

22 A. Yes, sir.

23 Q. And the solicitor brought that to the judge's
24 attention during the plea and sentencing, right?

25 A. Yes, sir.

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1 Q. Okay, and said that you had breached trust of your own
2 employee sitting in that car by allowing him to be robbed
3 during this entire thing?

4 A. Yes, sir.

5 Q. Okay. So, that could have potentially been a reason
6 that, if the judge bought into that, why you were sentenced
7 more harshly than, say, a co-defendant than they got for
8 the same charges?

9 A. Understandable.

10 MR. CORNEY: I beg the court's indulgence for one
11 minute, Your Honor.

12 (A PAUSE.)

13 Q. And I think you said a minute ago that, something
14 about that if you had received a better plea or -- you
15 would have either liked to have received a better plea or
16 gone to trial, right? You said if you had been offered a
17 better plea, you might not have necessarily done to trial?

18 A. Well, I would have took the plea that was initially
19 offered from my initial lawyer.

20 MR. CORNEY: Okay. That's all the questions I have.

21 THE COURT: Anything else?

22 MS. SINGLETARY: Thank you, Your Honor. Just briefly.

23 THE COURT: Sure.

24 REDIRECT EXAMINATION BY MS. SINGLETARY:

25 Q. Mr. Frierson.

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1 A. Yes, ma'am.

2 Q. The attorney, the assistant attorney general asked you
3 a few minutes ago about the fact that your co-defendants
4 pled eleven months earlier than you actually pled in this
5 case.

6 A. Yes, ma'am.

7 Q. In all actuality, you were, out of all of your
8 co-defendants, the last person to actually plead guilty.

9 A. Yes, ma'am.

10 Q. And could it have been that during that time, you were
11 actually trying to come up with a decision as to whether or
12 not or to plea or go to trial?

13 A. Yes, ma'am, I was.

14 Q. I mean, matter of fact, tell us. What were you doing
15 during those eleven months? What was your thought process?

16 A. I was trying to study, but being that I had a bond of
17 over 800,000 -- no. Matter of fact, it was over \$150,000.
18 The jail, Richland County, they didn't allow those who had
19 -- who receive a bond over 150, about \$150,000, they didn't
20 allow them to go to the law library. So, I was really
21 trying to look, I was really trying to look forward to my
22 lawyer really trying to step up and really try to make
23 something out of this, and I was trying to study.

24 Q. And I'm sorry to interrupt you. When you mean you
25 were trying to study, what were you studying for? Was it

1 to make a decision as to whether or not to plea or go to
2 trial?

3 A. Yes, ma'am. Yes, ma'am. If I could -- if I'd'a had
4 the information that I needed, I would have went to trial.
5 That's what I was trying to find: information that I needed
6 to go to trial.

7 Q. And as it relates to the tracking device versus cell
8 phone records, and the assistant attorney general asked you
9 the question as to whether or not the police department got
10 the same information from the cell phone records as it
11 relates to the actual tracking device. You don't know for
12 certain whether or not they got the same information
13 because those are two different types of, like, I guess,
14 communications, two types of ways to track someone?

15 A. Yes, ma'am.

16 Q. And it's your testimony that if it was not for you not
17 contesting through your attorney the constitutionality of
18 the mobile tracking device, that you would have decided to
19 go to trial versus take a plea?

20 MR. CORNEY: Your Honor, she's leading right there,
21 and I don't think it's a correct characterization of what
22 he's testified to today. He's been pretty back and forth
23 as to whether he would have gone to trial or taken a better
24 plea had one been offered.

25 THE COURT: All right. The record will speak for

1 itself. You may proceed.

2 MR. CORNEY: Thank you, Your Honor.

3 MS. SINGLETARY: Thank you, Your Honor. I have no
4 further questions, Your Honor.

5 WITNESS: Can I add something?

6 MS. SINGLETARY: Okay. Go ahead.

7 WITNESS: If they would have looked further into my
8 phone bill, they'd have seen the same numbers in there
9 periodically, remotely throughout each year, you know? So,
10 by him saying that staying in contact, actually two of my
11 co-defendants, two of my co-defendants are related to me,
12 and we grew up together, you know, and I deal with them on
13 a regular basis, you know? I actually talked one into
14 going to college with me because he wanted to go to the
15 army, and I told him to try college out. We would buddy
16 up.

17 Also, at the time I was not the mastermind; I was not
18 mastermind of this crime. I was going through a lot at the
19 time dealing with family issues. My daughter had came over
20 with an issue. My ex-fiancee's -- I want to say boyfriend
21 or however you want to call him, the person she was dealing
22 with. And my mother and my grandmother, they was going
23 through a lot, and they went through surgeries. They
24 already had an issue, issues that could have caused them to
25 go to death, you know, during the surgeries: brain tumor

1 removal, hysterectomy.

2 I just wasn't mentally stable at the time, you know,
3 and they're saying I was the mastermind. How could I be
4 the mastermind when I didn't know who was going to do what,
5 or I didn't even know a couple of the co-d's that was going
6 to be involved, you know what I'm saying? So, that's
7 really all I wanted to say.

8 MS. SINGLETARY: Are you sure there is nothing else
9 you would like to add to the record, Mr. Frierson?

10 WITNESS: I would have went to trial if I had the
11 proper information.

12 MS. SINGLETARY: Your Honor, I have no further
13 questions.

14 THE COURT: All right, you may step down.

15 (THE WITNESS EXITS THE STAND.)

16 MS. SINGLETARY: Your Honor, at this time, we would
17 like to call Attorney Deon O'Neil to the stand.

18 THE COURT: All right.

19 DEON O'NEIL, BEING DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 BAILIFF: State your full name for the record.

22 WITNESS: Deon O'Neil.

23 DIRECT EXAMINATION BY MS. SINGLETARY:

24 Q. Mr. O'Neil could you tell us how you became aware, or
25 how did your representation of Mr. Frierson actually start?

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1 A. Well, Mr. Frierson was originally arrested, I think,
2 around May of 2007, May 23rd around -- or May 16th of 2007.
3 He was originally appointed to Lauren Mobley in the public
4 defender's office.

5 I actually -- at that time, the public defender's
6 office had a policy that individual attorneys didn't do
7 their own prelims. We had scheduled preliminary hearing
8 dates. I actually conducted Mr. Frierson's preliminary
9 hearing on June 5th of 2007 and then subsequent to that,
10 Ms. Mobley left the public defender's office around the
11 beginning of February 2008 to pursue a career in the Peace
12 Corps, and I was assigned to Mr. Frierson's case on
13 February 20th of 2008.

14 Q. So, from February 20th in 2008 until the time that you
15 actually -- until the guilty plea of Mr. Frierson, you
16 actually represented him solely?

17 A. I did. I did.

18 Q. And about how many times would you say that you
19 actually had a meeting with Mr. Frierson at the Alvin S.
20 Glenn Detention Center?

21 A. I don't have my complete notes of all my jail visits,
22 but Mr. Frierson is probably correct. It would have been
23 at least six times, probably a little bit more than six.
24 Probably in the, in the range of six to ten would probably
25 be right at.

1 Q. And in those meetings with Mr. Frierson, did you all
2 discuss any defenses or strategies as it relates to going
3 to trial on his cases?

4 A. Well, my -- I actually conducted the preliminary
5 hearing with Mr. Frierson. That was before I was actually
6 his assigned attorney. And I -- the only real strategies
7 that we had or legal issue we had was the tracking device
8 that they placed on his car. They placed a tracking device
9 on, on his vehicle there, in was my recollection, when he
10 was being questioned by law enforcement at the sheriff's
11 department headquarters upon initial questioning.

12 I asked the investigator at the preliminary hearing
13 whether or not there were any court orders or whether or
14 not there were any warrants for that tracking device. He
15 indicated that there were none, no orders, no warrants for
16 that.

17 So, I conferred at that time with Mr. Frierson's
18 attorney, Ms. Mobley. At that time, I was already -- since
19 I did the preliminary hearing, I was already going to be
20 assigned as Mr. Frierson's second seat if his case
21 progressed to trial at that point. So, me and Ms. Mobley
22 did research on that particular issue after the preliminary
23 hearing, after that. I think at that time, we didn't have
24 the discovery in Mr. Frierson's case at that particular
25 point either. So, it was our first, our first -- the first

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1 chance that we actually realized there was no warrant for
2 the tracking device and that they actually had a tracking
3 device.

4 So, we actually at that time searched the -- we had a
5 case that's on both South Carolina case law and Supreme
6 Court case law, and we found there were no South Carolina
7 case law that was on point with that particular issue.
8 There was some Supreme Court case law that were on point or
9 almost on, almost on point on that particular issue.

10 And that Supreme Court case law, I think it was the
11 *Knotts* case, if I remember correctly off the top of my head
12 here. It specifically said that at that time, as long as
13 the tracking device was placed on the outside of the
14 vehicle, there were no, you know, Fourth Amendment rights
15 implicated at that point. And I think both me and Ms.
16 Mobley then addressed that, relayed that particular point
17 to Mr. Frierson. Of course, there's been subsequent
18 Supreme Court case law that came out recently that, that
19 kind of overturned that position. But at that time, that
20 was my understand of the law.

21 I was not aware of the statute that Mr. Frierson
22 cites. I think it's 17-31-40. I, I was personally not
23 aware of that statute as relates to the particular issue of
24 mobile tracking devices, and I don't think Ms. Mobley was
25 aware of that statute either. I know I -- to my knowledge,

1 I didn't address that statute with Mr. Frierson and to my
2 knowledge, Ms. Mobley did not address that statute Mr.
3 Frierson either.

4 Q. So, Mr. O'Neil, it would be your testimony that at the
5 -- the main issue that you discussed with Mr. Frierson was
6 the mobile tracking device?

7 A. That was, that was really the only issue at that
8 point. Mr., Mr. Frierson was the worker, the other driver
9 of the, of the armored truck that night. When he came in
10 through the normal investigation for the -- after the armed
11 robbery and he was interviewed by police, they didn't feel
12 as though he was being truthful with them at that point
13 because his injuries were -- didn't compare to the injuries
14 that the other driver had.

15 So, they placed a tracking device on his car, and they
16 followed him, followed his movements that weekend. And I
17 remember from the incident reports and talking with the
18 investigators, they didn't, they didn't feel as though his
19 actions on -- the tracking device, tracking device showed
20 that his actions didn't reflect the action of a person that
21 was just carjacked and arm robbed at their job, which that
22 raised their suspicions.

23 So, they, in turn, actually stop him on the way back
24 to Columbia. And then his co-defendant eventually
25 confesses there. His co-defendant is in the car with him.

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1 His co-defendant confesses. Mr. Frierson eventually gives
2 a statement, and then all the other co-defendants
3 eventually give a statement.

4 So, my position as his attorney -- I say all that to
5 say this. My position as his attorney was he had already
6 confessed to his involvement in the crime. His statement
7 indicated that there was planning done for this crime, and
8 they all conducted this crime. His co-defendants, all
9 four, all five give statements saying that there was
10 preplanning for this crime, and they all said that it was
11 Mr. Frierson's idea to start this, this crime, and that
12 there were proceeds turned over from this robbery here.

13 So, when it comes to strategies to go to trial, our
14 only strategy would have been if there was some sort of
15 legal way to keep all of that, all those statements and
16 that material out of, out of court here.

17 And we didn't, in our case law review, we didn't find
18 any case law that, case law that would support a kind of a
19 fruit of a poisoned tree doctrine that the search of the --
20 or the tracking of, tracking of his car was illegal.
21 Therefore, anything that they got from tracking would have,
22 would have been thrown out. We didn't find anything, case
23 law that indicated that, and that's what we relayed to Mr.
24 Frierson.

25 Q. And you brought up *United States vs. Knotts* a few

1 minutes ago as it relates to you told Mr. Frierson about
2 the actual tracking device that the police put on his, on
3 his vehicle. And based on your review of that Supreme
4 Court case, you actually told Mr. Frierson that you could
5 not contest the constitutionality of the mobile tracking
6 device. Is that your testimony?

7 A. Yes. That's correct.

8 Q. And it's also your testimony that at the time, even
9 though it, it was good law at the time, statute number --
10 statue section 17-31-40 was available to Mr. Frierson also.

11 A. That's correct.

12 Q. It's a State of South Carolina statute.

13 A. It -- I was not aware of that statute at the time we
14 had this discussion. Upon me being aware of the statute --
15 I guess mainly because Mr. Frierson's PCR application --
16 I've since looked at that statute. It, it appears on its
17 face to be applicable to his situation, and it would have
18 availed to him a opportunity to have a pretrial hearing to
19 determine whether or not the state had followed the
20 prescriptions of that statute and if not -- my
21 understanding of, my reading of the statute is that he
22 would have had an opportunity to try to get all evidence
23 derived from the illegal tracking device suppressed at
24 trial.

25 Q. And let me ask you this question: Now, you stated

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1 earlier that as a result of the police actually putting
2 this tracking device on Mr. Frierson's vehicle, they were
3 able to obtain statements from all the other co-defendants?

4 A. Basically what happened was they tracked Mr.
5 Frierson's activities. This occurred over a weekend. They
6 tracked his activities over the weekend, and that he was
7 going to malls and other various places that, in their
8 opinion, would not be indicative of someone who had just
9 been the victim of a crime. So, that raised their
10 suspicions.

11 So, upon Mr. Frierson's return back to Columbia, they
12 used the tracking, tracking device to know his location to
13 stop him. When they stopped him in his vehicle here, he
14 was in the car with one of his co-defendants. I think
15 Kelby Blakney at that particular point.

16 At that point, Mr. Kelby Blakney had -- they seized
17 his cell phone when they arrested him at that point, and
18 Mr. Kelby Blakney had photos of the money there on his cell
19 phone. Then subsequent to that, Mr. Kelby Blakney
20 confessed to his involvement in the crime, implicating Mr.
21 Frierson. They in turn used that statement Mr. Blakney had
22 gave, along with Mr. Whitaker's statement, to show to Mr.
23 Frierson. Then Mr. Frierson gave a statement implicating
24 himself as well.

25 Q. And so is it your opinion that if -- at the time, at

1 the time of Mr. Frierson's arrest and your representation
2 of Mr. Frierson, if you knew of the existence of South
3 Carolina Statute 17-31-40, that you would have utilized
4 that to actually do a motion to suppress certain evidence
5 recovered by the state?

6 A. Yes. At the very least, we would have had the hearing
7 that the statute prescribes to try to get that, that
8 information suppressed.

9 Q. And in this statute that you have become aware of now,
10 what does the statute say as it relates to mobile tracking
11 devices and what the -- what law enforcement has to do in
12 order to place a mobile tracking device on a suspect's
13 vehicle?

14 A. My, my understanding of the statute is that they have
15 to get either a court order or a warrant either from a
16 circuit court judge or a search, a search warrant in order
17 to place that mobile tracking device on the vehicle.

18 Q. Okay. Thank you.

19 MS. SINGLETARY: Beg the court's indulgence, Your
20 Honor?

21 THE COURT: Yes.

22 (COUNSEL CONFERS WITH APPLICANT.)

23 Q. Just a few last questions. Mr. O'Neil, you actually
24 -- after the sentencing of Mr. Frierson, you actually filed
25 a motion to reconsider the sentence in this case. Is that

1 correct?

2 A. I did.

3 Q. And what happened as a result of the motion to
4 reconsider?

5 A. We filed a motion to reconsider. We actually asked
6 for it -- we filed a motion to reconsider on September 1st
7 of 2009, and we asked for a hearing for that motion to be
8 heard. But I think on, according to my records, on
9 November 19th of 2009, that motion to reconsider was denied
10 by Judge Childs without a hearing.

11 Q. And that motion to reconsider was denied without a
12 hearing, you said?

13 A. That's correct?

14 Q. Okay, and after the motion to reconsider, you actually
15 filed notice of intent to appeal in this case?

16 A. Yes. According to my records, I think, according to
17 my records, we filed a motion to appeal, notice of appeal I
18 think around November 24th of 2009.

19 Q. And once you actually filed that notice of intent to
20 appeal on November 24, 2009, is it your testimony that the
21 basis of that appeal, you actually listed as Rule
22 203(d)(1)(b) as the basis as to why you were appealing the
23 decision?

24 A. That's correct.

25 Q. Okay, and that ruling basically says that the reason

1 why you're appealing is that there is no true
2 constitutional violations that were done at the plea, but
3 that your client insists that you appeal the guilty plea?

4 A. It is -- was my feeling that there were no issues
5 preserved during his guilty plea to appeal, but he insisted
6 on appealing and requested that an appeal be done. So, I
7 filed it on his behalf.

8 Q. Okay, and as a result of you doing so, you actually
9 received a letter from the Court of Appeals?

10 A. I think I received a letter from the Court of Appeals.
11 I think it was dated November 30th of 2009.

12 Q. And at that time that you actually received that
13 letter from the Court of Appeals, you actually sent a
14 letter to Mr. Frierson?

15 A. Yeah. I think I received the letter from the Court of
16 Appeals. I think it was received in my office on December
17 2nd of 2009. I, in turn, sent it, sent a letter to Mr.
18 Frierson on December 7, 2009, indicating that I had filed
19 his appeal and that I was going forward this correspondence
20 to him, this correspondence from the Court of Appeals. And
21 told him that this letter gave him the Court of Appeals'
22 address, gave him the notice of appeal that I filed, and
23 told him that he had twenty days from the date of the
24 letter in which to provide the court in writing what issues
25 he thought were preserved for appeal.

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1 Q. And once you actually sent that letter to Mr.
2 Frierson, did you send that letter separate from any
3 discovery that you had of Mr. Frierson, or did you
4 accompany this letter with discovery that you were sending
5 to Mr. Frierson?

6 A. I didn't personally send it to Mr. Frierson. It would
7 have been, it would have been either my paralegal or
8 another in our young lady in our office that we utilize to
9 handle the inmates' requests for discovery after they've
10 been sentenced.

11 But Mr. Frierson, and I don't have a particular letter
12 that he requested his discovery, a copy of discovery after
13 his sentencing. So, it probably would have went in the
14 same packet together as just correspondence went to him.

15 Q. And are you aware of the fact that Mr. Frierson did
16 not get a direct appeal on his case?

17 A. I think, I think that's correct.

18 MS. SINGLETARY: Your Honor, I have no further
19 questions.

20 THE COURT: Cross by the state?

21 CROSS-EXAMINATION BY MR. CORNEY:

22 Q. Now, Mr. O'Neil, during your meetings with Mr.
23 Frierson, did you have the opportunity to review the
24 potential sentences he was facing on the charges?

25 A. I did.

1 Q. Okay, and he was facing pretty substantial time on the
2 charges as indicted?

3 A. Yes, sir.

4 Q. Ever promise him any particular sentence? Ever tell
5 him he should expect getting a certain sentence based on
6 those charges?

7 A. I never did.

8 Q. Okay. So, he was fully aware of the nature -- or the
9 potential sentences he could get if he did enter a guilty
10 plea to the charges as indicted?

11 A. He was aware that I guess two of at least three of the
12 charges carried up to thirty years. He could get anywhere
13 from ten to thirty years. He had to get at least ten
14 because armed robbery had a mandatory minimum of ten years.

15 Q. Okay. Did you discuss with him the potential, I
16 guess, benefits and drawbacks of going to trial versus
17 taking a plea during those discussions?

18 A. I did.

19 Q. Okay. What was his stance on pleading from the get go
20 during your meetings? What was the overall feel based on
21 how you wanted to address, address his case?

22 A. His position was always, in my discussions with him,
23 that this was not his idea. In my conversations with Mr.
24 Frierson, his position was always this was is not his idea.
25 He was just kind of -- he'd mentioned to his cousins that

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1 he worked in this trucking, this armored truck business,
2 and that somehow they came up with the idea to rob the
3 truck. When I say them, I'm mean referring to his cousins,
4 and that he didn't do anything to essentially stop this
5 idea from festering here. But he didn't -- he wasn't a
6 part of it.

7 My discussions with Mr. Frierson dealt with I -- dealt
8 with -- I gave him the -- if I could -- I couldn't -- when
9 it come to court, it's essentially about what can and
10 cannot be proven, not necessarily, you know, really about
11 what happened.

12 And my discussion with him was that he gave a
13 statement indicating that he was part of this plan, and
14 that his co-defendants gave statements indicating he was
15 part of this plan. And that our chances of winning at
16 trial were slim, based on the fact that they had gave those
17 statements and he had gave those -- given those statements.
18 And that if he went to trial, all his co-defendants --
19 basically at the time, before I even got this case, tow of
20 his co-defendants had already received twenty-five year
21 sentences.

22 So, I told Mr. Frierson if he decided to go to trial,
23 those two co-defendants, even though they were his cousins,
24 were probably going to be the first people lined up in line
25 to testify against him based on the statements they had,

1 they had already given.

2 So, it was my advice to him at that point, based on
3 the evidence he was facing and my understanding of what the
4 case law at that time was, that he should probably -- our
5 best strategy would have been to plead guilty and try to
6 present a picture of him that was different than the one
7 that the prosecution was painting of his actions on that
8 particular night.

9 Q. Okay, and the solicitor's position on the whole thing
10 was that he was the mastermind. He worked for this
11 company, and he had played a very active role in getting
12 these people together to rob this truck.

13 A. That was their position, yes.

14 Q. In your investigation in preparation for this case,
15 tell me a little bit about the search of his mother's house
16 that Mr. Frierson mentioned a minute ago. Do you have any
17 recollection of that?

18 A. I think there were two searches of his mother's house
19 that occurred in this case. I think the second search --
20 there was a warrant that -- there was consent at one time
21 for a search, if I remember, of Mr. Frierson's, Mr.
22 Frierson's mother's residence. There was a second search,
23 I think, that there was not a warrant for, but I don't
24 think there was anything germane to the case that was
25 recovered in that second search.

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1 Q. Okay. Did you have the opportunity to go through the
2 victim's statements, co-defendants' statements, all these,
3 all these implicating statements with Mr. Frierson?

4 A. Yes.

5 Q. Okay, and Mr. Frierson was given a polygraph test by
6 the police as part of their investigation? Do you recall
7 that?

8 A. He was initially given a polygraph test when he, when
9 he, when he was first interviewed by the police. I think
10 Mr. Frierson wanted to do an additional polygraph test once
11 we talked, but he was initially given a polygraph test when
12 he -- immediately after the interview, he was taken to
13 headquarters to give his statement about the incident. I
14 think he was given a polygraph there at headquarters.

15 Q. All right. Wouldn't it be fair to say that the police
16 made Mr. Frierson -- had some interest in him, made him a
17 suspect pretty early on in their investigation based on
18 what they found?

19 A. Yes.

20 Q. Okay. I want to talk a little bit about this GPS
21 monitoring device. Based on your understanding, I think
22 your testimony was that at the time, you believe the police
23 action was, was a legal action. It wasn't a violation of
24 the Fourth Amendment search and seizure clause. Is that
25 correct?

1 A. That's correct.

2 Q. Okay. Do you recall, and I think you said it was
3 placed on his car when he came in for questioning at the
4 police station?

5 A. That's my, that's my recollection. That they brought
6 him in. Initially after the incident, I think he went to
7 the hospital to get checked out, and then they brought him
8 in to the headquarters. They interviewed him, polygraphed
9 him, didn't like what he was saying based on those
10 interviews and polygraph and the extent of his injuries.
11 And while he was there at the police station, they placed
12 the tracking device on his vehicle.

13 Q. Okay. So, at that point in time after they questioned
14 him, they, they likely had him as -- keyed as a suspect at
15 that point?

16 A. They didn't have -- they were suspicious of his story
17 at that point and suspicious of why he didn't have the same
18 nature of injuries that the other -- the other driver was
19 beaten pretty severely, and Mr. Frierson was not injured
20 nearly as the other driver was injured. So, they were very
21 suspicious of why that was the case.

22 Q. Okay, and if you would just very, very briefly just
23 overall give me a sense of what you read in that Knotts
24 opinion that you referred to when it comes to GPS
25 monitoring of suspect cars.

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1 A. As long as the, as long as the tracking device was not
2 on the -- was not intruding the vehicle, I guess for lack
3 of a better word, then it did not raise Fourth Amendment
4 implications. And that was the case in Mr. Frierson's
5 case.

6 Q. Okay, and you never had any interplay in a case before
7 between that Knotts opinion and the South Carolina statute
8 dealing with GPS devices?

9 A. When I, when I did my, my research on the issue,
10 this statute didn't even come up in my, in my case law
11 research. To my understanding, to my knowledge, there is
12 no South Carolina case law that addresses this statute at
13 all.

14 Q. Okay. So, whether it's placed on a public area or
15 private area, whether the GPS is placed on the car in a
16 public property or private property, any, any indication as
17 to whether that makes a difference to you based ---

18 A. As it ---

19 Q. --- on your understanding?

20 A. As it relates to statute or Supreme Court law?

21 Q. Well, as to both as to those interplay. Do you know
22 whether that has any, any influence on the -- on whether
23 it's admissible or illegal?

24 A. My understanding from all the case law reading that I
25 have done, this statute doesn't appear in any case. There

1 is no case law on the statute that Mr. Frierson cited. If
2 they had any case law on the statute that Mr. Frierson
3 cited, it would have -- I would have been aware of the
4 statute. The reason why I wasn't aware of the statute,
5 because there was no case law that addressed this
6 particular statute there that he, he was referring to.

7 Q. Okay. Do you think that the information that was
8 received from the GPS tracking device could have been
9 obtained through police by through other means had they not
10 been able put that GPS on his car?

11 A. The information that they could not have gotten from
12 any other means were, were the fact that he was traveling
13 to these other locations. He was going to the mall. That
14 was, that's what raised their suspicions about him more
15 than anything else. He had just been a victim of a crime,
16 but yet, according to him, he was out shopping, out going
17 to malls, various clubs, and that sort of thing.

18 That's what -- that, from my understanding, that's the
19 most -- that's the initial, most damning thing they got
20 from the GPS searching. And then that led them to stop his
21 vehicle and ultimately get a picture off the cell phone of
22 one of his passengers, and then ultimately both him and one
23 of his passenger/co-defendants to confess and give
24 statements implicating themselves.

25 Q. Okay, but after his questioning with police, when they

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1 started to believe that he was a somewhat suspicious person
2 involved in this, I mean, there's nothing that could have
3 stopped them from getting in a car and following him around
4 to see whether he drove to the mall or anywhere like that,
5 correct?

6 A. That, that's correct, but he, when he was driving, he
7 wasn't driving here in Columbia. This didn't occur in
8 Columbia. He was down in the Florence County area.

9 Q. Okay, but as you said, there were -- his co-defendants
10 had made statements against him, had implicated him, and as
11 he gave a statement himself, there were other things that,
12 that would have led to the inevitable discovery that he was
13 involved in this situation.

14 A. Well, those things were, were not before the tracking
15 device. They all came, came after the tracking device.

16 Q. Right, but they, but they, they ultimately would have
17 implicated him anyway into this thing, whether the GPS had,
18 had shown he was going to the mall or having suspicious
19 behavior anyway.

20 A. If, if the co-defendants would have give statements,
21 those statements would have implicated Mr. Frierson if
22 those subsequent statements would have been consistent with
23 the statements that they wound up giving in the very
24 beginning.

25 Q. Okay, and as part of your plea negotiations, did you

1 discuss with the solicitor Mr. Frierson potentially being
2 cooperative with them in some way in this case?

3 A. That's correct. During, during that time period, that
4 elevens months where one of -- two of the co-defendants had
5 pled guilty and Mr. Frierson and the other co-defendants
6 had not pled guilty, there was one co-defendant that was
7 still unaccounted for. He was, he was arrested shortly
8 after my representation of Mr. Frierson.

9 So, and he was the co-defendant they had the least
10 amount of information on. So, one of my conversations with
11 Mr. Frierson was we were hoping that this co-defendant
12 would opt for a trial so he could testify against the last
13 co-defendant. I think his -- that was Dominic Lyde.

14 Q. Okay.

15 MR. CORNEY: Beg the court's indulgence for just one
16 minute.

17 Q. As part of your preparation with Mr. Frierson for the
18 plea, were you able to go over with him that he was giving
19 up his right to a trial by entering this plea?

20 A. Yes.

21 Q. Okay, and he understood that by doing so, he was
22 giving up his right to challenge the evidence, to challenge
23 the admissibility of any of these things at trial?

24 A. It was my understanding that he understood that if he
25 pled guilty, he was not going, he was not going to have a

D. O'NEIL - CROSS-EXAMINATION BY MR. CORNEY

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1 trial, nor have any of the benefits that went with having a
2 trial.

3 Q. Okay, and in your opinion, he voluntarily decided to
4 take this plea and waive those rights?

5 A. Yes, sir.

6 Q. Okay. As far as the direct appeal goes, what is your
7 normal practice when it comes to filing an appeal from the
8 guilty plea of one of your clients?

9 A. After probably dealing with probably over a thousand
10 guilty pleas in my career, there rarely are any times where
11 there have been issues preserved for appeal during a guilty
12 plea. Therefore, my normal practice if there have not been
13 any issues preserved for appeal during a guilty plea, I
14 will file a notice of appeal similar to what I filed in Mr.
15 Frierson's case.

16 Q. Okay. When the court responds to you with that
17 letter, you forward that on to the -- to your -- to the
18 client for him to submit any allegations he may have as
19 against you?

20 A. That's correct.

21 MR. CORNEY: I believe that's all the questions I
22 have.

23 THE COURT: Anything further, Ms. Singletary?

24 MS. SINGLETARY: Nothing, Your Honor.

25 EXAMINATION BY THE COURT:

1 Q. Mr. O'Neil, looking at this case of *State vs. Copeland*
2 that says the fruit of poisonous tree doctrine, it does not
3 preclude admission of testimony of defense's accomplice.

4 So, if that rule applied to this case, independent of the
5 police following Mr. Frierson, did you have all the
6 co-defendants who said he was involved in it?

7 A. Well, like I said, I'm not -- I guess my potential
8 advice to Mr. Frierson wouldn't have been on the *Copeland*
9 case. I think the statute Mr. Frierson mentions in his
10 PCR, which 17-31-40, provides the kind of independent
11 poisonous tree analysis that I think, if I'm not correct,
12 includes any sort of statements or any sort of evidence
13 that, that was obtained based on the illegal mobile
14 tracking device.

15 Q. So, you would, you would extend that to everything the
16 police found out after following him?

17 A. That, that would have at least been my argument had I
18 known about the statute at the time that I represented Mr.
19 Frierson. That would have been the argument I would have
20 made to the court at the hearing I would requested based on
21 the statute.

22 Q. Well, at the time, were you aware of the *Copeland* case
23 that says that the fruit of the poisonous tree does not
24 extend to confessions by co-defendants?

25 A. I was aware of that case. I guess my argument to the

D. O'NEIL - EXAMINATION BY THE COURT

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1 court would have been that this particular statute is more
2 specific as it relates to evidence that's received from a
3 mobile tracking device and, therefore, is on more point and
4 probably therefore, more controlling than the more general
5 fruit of the poisonous tree analysis given by *Copeland*.

6 Q. So, if you have the police following him since he's a
7 suspect because he's in this robbery where he works for the
8 mobile -- the armored car place, armored truck place,
9 armored car, I guess, and he's the driver of the armored
10 car. He leads his partner into an ambush, in an armed
11 robbery where they pretend to beat him. They really beat
12 up and seriously injure the other person, other employee,
13 and then rob the vehicle of how many millions of dollars?

14 A. I think it was over \$9 million.

15 Q. 9 million, robs the vehicle of \$10 million and in
16 questioning him and giving him a lie detector test and all,
17 they were suspicious because he wasn't beat up. And
18 they're following him around, and as a result of following
19 him, they get some information about the co-defendant?

20 A. As a result of following him, they get suspicious of
21 him and, therefore, stop him and get a picture off the
22 co-defendant's cell phone, and then subsequently bring both
23 of those gentlemen back to headquarters and get statements
24 from both of them individuals.

25 Q. And who confesses?

1 A. His co-defendant confesses. My recollection of the
2 facts, the co-defendant confesses first, and then he
3 confesses. When I say he, I'm referring to Mr. Frierson.

4 Q. All right. Then later on, how many people were
5 arrested and charged with this?

6 A. There were a total of -- there were two Blakney
7 co-defendants that were brothers, and there were Dominic --
8 there was Lyde, McFall, and Benjamin.

9 Q. So, there ---

10 A. So, there were a total of four other co-defendants.

11 Q. Yes, but at the time of his guilty plea, how many of
12 them had confessed?

13 A. At that time of his guilty plea?

14 Q. Yes.

15 A. All of them except -- at least all of them. Maybe not
16 Dominic Lyde, so at least all of them except Dominic Lyde.

17 Q. So, if you delete the, the guy, the co-defendant whose
18 cell phone picture with money they got, if you delete that
19 one, then you have confessions of all of these other
20 co-defendants. Wouldn't that be admissible under Copeland
21 anyway?

22 A. At a potential trial for Mr. Frierson?

23 Q. Yes.

24 A. Well, it would depend on if those co-defendants would
25 testify. We didn't, me and Mr. Frierson in my visitation

D. O'NEIL - EXAMINATION BY THE COURT

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1 didn't address any *Bruton* issues because I didn't feel as
2 though those issues were implicated.

3 Q. They were not -- they would have had a -- maybe they
4 had a separate trial, but if they were the one, they were
5 all -- everyone is confessing and trying to hope for the
6 best sentence possible, what possible chance would he have
7 had to win at a trial, given the fact that everyone
8 confessed and everyone implicated him as being the person
9 who set it up from the inside, or at least who wasn't
10 simply there for the ride? It wasn't mere presence; he was
11 involved in the crime.

12 A. I think the most damning thing for Mr. Frierson was
13 his own statement. And I think the mobile tracking device,
14 if we won that argument at a hearing, then we could have
15 got his own, Mr. Frierson's, statement suppressed, and then
16 at least we'd have a fighting chance at a trial. We could
17 just say that the other co-defendants are just blaming him
18 because he's the obvious fall guy. That would have been my
19 advice to him. You know, of course it would have been Mr.
20 Frierson's decision whether or not he wanted to take it.

21 Q. Did he ever express an interest in having a trial?

22 A. He did.

23 Q. He wanted to prove that he was not guilty?

24 A. From what my, my first conversation with Mr. Frierson
25 always was that he, he -- this was not his idea, and he was

1 not in agreement with these gentlemen to commit this crime.

2 That was always my conversations -- that was always his,
3 his response to me about the facts of the case.

4 Q. Did they end up proving a connection between him and
5 these other guys?

6 A. They -- it's, it's definitely some connection.

7 Q. A connection. Either they grew up together, they were
8 in school together?

9 A. Two ---

10 Q. Related to each other?

11 A. Of the five co-defendants, two of them were his
12 cousins, and at least two of the five co-defendants I think
13 Mr. Frierson did not know.

14 Q. So, aside from not knowing two of them, he had a
15 connection to all the rest of them anyway?

16 A. He has a connection with at least three of the
17 co-defendants: two cousins and one other student.
18 Whitaker, I think, was a student with him as well.

19 THE COURT: Anything else, state or defense?

20 MR. CORNEY: No, Your Honor.

21 MS. SINGLETARY: No, Your Honor.

22 THE COURT: All right. Thank you, sir.

23 WITNESS: Thank you, Your Honor.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: All right, anything further on this case?

1 MS. SINGLETARY: Yes, Your Honor. If I may?

2 THE COURT: Yes.

3 MS. SINGLETARY: Your Honor, I have actually shown
4 this memorandum of law in support of the PCR application
5 amended that was actually written by my client, Mr.
6 Frierson, to the assistant attorney general. My client
7 would ask that I actually submit this up to the court, Your
8 Honor, for the court to actually review in reference to the
9 -- his actual PCR application.

10 MR. CORNEY: Your Honor, I would oppose it just
11 because we make it pretty clear in our returns and in
12 everything else that we'll oppose any amendments that are
13 made day of the hearing. He's had plenty of time to amend
14 his application. I'm pretty sure there are some allegation
15 set forth in there that weren't brought up at this hearing,
16 and it's an untimely amendment at this point in time, Your
17 Honor.

18 I don't think there's any Rule 11 issues or anything
19 like that as it's going through his counsel first. But as
20 far as it being an untimely amendment, we make it pretty
21 clear that they need to be made well in advance of the
22 hearing to be considered.

23 THE COURT: What is it he's trying to include?

24 MS. SINGLETARY: Your Honor, as it relates -- he
25 actually has some Brady prosecutorial misconduct issues as

1 it relates to *Brady* violations, Your Honor.

2 In addition to that, and I had a chance to look at
3 this. I was given this by my client downstairs prior to
4 the hearing starting, Your Honor. He in addition to
5 talking about prosecutorial misconduct, he also talks about
6 false evidence that would be given by one of his
7 co-defendants in the case, Your Honor.

8 Additionally, he talks about, he goes extensively and
9 talks about the mobile tracking device which is some -- I
10 mean, we've already brought that up before the court, Your
11 Honor. But he just has a list of cases that he would ask
12 for the court to actually review as it relates to that
13 issue, Your Honor.

14 In addition, as it relates to ineffective assistance
15 of counsel, he lists several different cases that he would
16 like the court to actually review as it relates to that
17 issue.

18 THE COURT: All right. Well, I'm not going to
19 consider anything not filed prior to today. He obviously
20 has a lot of time to think of things and want to present
21 more and more things, but I'm not going to consider
22 anything additional.

23 MR. CORNEY: Thank you, Your Honor.

24 MS. SINGLETARY: Your Honor, well, at this time, we
25 would actually make our argument before the court asking

1 for the court to actually grant my client's post-conviction
2 relief, Your Honor.

3 You have actually heard the testimony of my client.
4 That he stated that at the time that he was actually
5 considering whether or not to go to trial or to take a
6 plea, that one of the main issues in this case was actually
7 the mobile tracking device, Your Honor.

8 Mr. Deon O'Neil actually testified as to the fact
9 that, in his opinion as Mr. Frierson's attorney, that was
10 one of the main issues, and that was kind of the turning
11 point in the investigation for law enforcement.

12 As to Mr. O'Neil testimony, Your Honor, he stated that
13 at the time when he did research, he actually told Mr.
14 Frierson that the actions of the police were legal, and
15 that there were no Fourth Amendment issues that were --
16 that could be contested. Mr. Frierson's testimony actually
17 concurs with what Mr., Mr. O'Neil says.

18 However, Your Honor, as Mr. O'Neil stated, that this
19 statute which we have brought up over and over again which
20 is South Carolina Statute 17-31-40, was in effect at that
21 time, Your Honor. And as my client stated, that if he was
22 aware prior to this guilty plea of this statute, that he
23 would have elected to actually go to trial rather than to
24 take a plea.

25 Your Honor, as Mr. O'Neil has actually testified to,

1 the fact, yes, the police were suspicious of Mr. Frierson
2 at the time. But they did not have any concrete evidence,
3 any evidence that you could say beyond a reasonable doubt
4 that he was actually a part of this actual offense. It was
5 not until they actually put this mobile tracking device on
6 his vehicle and actually was allowed to follow him around
7 Florence County -- which Richland County did not have
8 jurisdiction just to go within the city limits or the
9 county of Florence County -- and actually follow Mr.
10 Frierson around to see where he was going and what he was
11 doing. However, this mobile tracking device actually
12 allowed them to do so, Your Honor.

13 As a result of that mobile tracking device, the police
14 officers waited until Mr. Frierson made it back to Richland
15 County where they had jurisdiction in order to stop Mr.
16 Frierson. At that point when they stopped Mr. Frierson, at
17 that point is when they see the actual cell phone with
18 pictures of the money. At that point, that all leads to
19 his co-defendant, who was in the car with him at that time,
20 confessing, which additionally leads to Mr. Frierson giving
21 a statement, which additionally leads to all these other
22 co-defendants making a statement, Your Honor.

23 If it was not for this tracking device, Your Honor,
24 and the fact that Mr. Frierson did not know that he could
25 actually attack the constitutionality of this tracking

1 device, Your Honor, Mr. Frierson has told this court that
2 he would not have went to trial. Your Honor, he would have
3 had a hearing where these issues actually could have been
4 discussed. However, he did not have it at the time.
5 Therefore, Your Honor, when he actually gave his guilty
6 plea, he didn't voluntarily and intelligently enter into
7 that plea, Your Honor.

8 As the assistant solicitor stated, that during the
9 plea colloquy, the judge actually said that do you know
10 that you're giving up defenses as it relates to pleading
11 guilty. Well, Your Honor, Mr. Frierson didn't even know
12 that he had this defense available to him, and it could
13 have been easily ascertainable if Mr. O'Neil would have
14 looked at this statute and actually informed Mr. Frierson
15 about this statute.

16 Mr. Frierson was able to come upon this statute by
17 himself. However, it was too late. He hasn't had a direct
18 appeal in this case for the constitutionality, I mean, for
19 him to bring up the issues about all of this, Your Honor.
20 So, we respectfully ask that you grant his post-conviction
21 relief at this time.

22 THE COURT: Okay.

23 MR. CORNEY: Your Honor, I don't, certainly don't --
24 and in regard to GPS, I certainly don't hold myself out as
25 a Fourth Amendment issue expert. I believe it is a very

1 complex area of law.

2 But it, it is my understanding that prior to the
3 recent decision in *U.S. vs. Jones* in the U.S. Supreme
4 Court, GPS monitoring devices placed on a car in a public
5 area where a defendant is being, being developed as a
6 suspect and they have suspicion to do that was -- is not a
7 search and seizure within the meaning of the Fourth
8 Amendment prior to this *U.S. vs. Jones* holding that just
9 recently came out. And that's exactly what the case
10 decided is even in public areas, you know, that, that is a,
11 that is a search and seizure under the Fourth Amendment
12 vis-a-vis the development of a warrant. And that's exactly
13 what my understanding of the holding of *U.S. vs. Jones* is.

14 Like I said, I'm certainly not an expert in the area,
15 but Mr. Frierson's car, the GPS was placed on his car after
16 questioning when they had suspicion about him, and they
17 started to develop him as a suspect. They placed it on the
18 car in the parking lot of a police department, a public
19 area.

20 I don't think that a warrant needed to be had at that
21 time. And certainly Mr. O'Neil didn't need to foresee that
22 the law was going to change as it just recently did in *U.S.*
23 *vs. Jones*.

24 More importantly, we're talking about an inevitable
25 discovery issue here. There's no prejudice to Mr.

1 Frierson. Even if this GPS monitoring device did infringe
2 on his rights, I mean, we've got overwhelming co-defendant
3 statements that implicate him. Surely the police would
4 have developed him as a suspect. It had loads of evidence
5 to place him, to place him under arrest and charge him with
6 these crimes. It was all an inevitable discovery issue.

7 In addition to that, Mr. Frierson waived his right to
8 challenge the evidence by pleading guilty. He knew he had
9 the right to trial. The judge advised him you're going to
10 waive every kind of right that's out there whether you knew
11 about it or not. You're waiving any right to challenge any
12 of this evidence, and you're okay with doing that, and he
13 said he was. Went forward with it and took the, took the
14 benefit of the advantageous plea offer.

15 He was facing some serious time: essentially a life
16 sentence on the charges as they stood. And we would just
17 ask the court respectfully deny Mr. Frierson's PCR
18 application. Thank you, Your Honor.

19 RULING OF THE COURT:

20 THE COURT: All right. Well, the test in the law with
21 regard to a guilty plea, the applicant must show that there
22 is a reasonable probability that but for counsel's alleged
23 errors, he would not have pled guilty, and he would have
24 insisted on going to trial. The burden of proof in
25 connection with the issue of inadequate, ineffective

1 assistance of counsel is on the defendant. I find that the
2 defendant has failed to meet that burden of proof.

3 It appears that the primary basis for the defendant's
4 guilty plea is the hope of some sort of lenient sentence
5 from Judge Child during sentencing. However, Judge Childs
6 coined the phrase ultimate betrayal. She stated that she
7 considered the actions of Mr. Frierson to be:

8 The ultimate betrayal. He allowed a person who
9 served as a father-like figure, mentor, friend,
10 role model, and a fellow employee to be seriously
11 harmed despite that each of you in this very
12 dangerous occupation had to rely on each other
13 for your safety and protection. And you allowed
14 him to be beaten unnecessarily and did nothing to
15 assist in his help.

16 So, the judge considered the relative roles of
17 everyone in this offense. She considered the role of Mr.
18 Frierson to be that of being the ultimate betrayal.

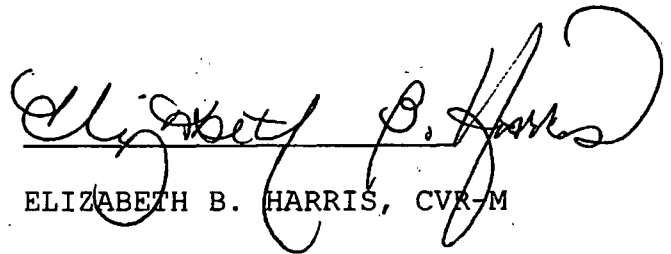
19 I think that given the review of the total record of
20 this case as I have done, that notwithstanding Mr. O'Neil
21 not knowing about this particular statute, that the results
22 would have been the same. He would have pled guilty, and
23 he would have received the same sentence. I deny the PCR.

24 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR KERSHAW COUNTY, SOUTH CAROLINA, ON
THE 14TH DAY OF FEBRUARY, 2012.

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



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

AUGUST 3RD, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
Darryl Frierson, # 336466,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-04277

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2012 MAR 27 PM 2:48
JEANETTE W. McBRIDE
C.G.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 28, 2010. The Respondent made its Return on July 20, 2010. An evidentiary hearing into the matter was convened on Tuesday, February 14, 2012, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Nicole Singletary, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

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

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the September 2007 term of the Richland County Grand Jury for Assault and Battery of a High and Aggravated Nature, Armed Robbery,

Kidnapping and Criminal Conspiracy (2007-GS-40-4362, 4363, 4364 and 4429). Deon O'Neil, Esquire, represented him on the charges. On December 3, 2008, Applicant appeared before The Honorable J. Michelle Childs at which time he pled guilty to the charges as indicted; sentencing was held in abeyance at that time. On August 24, 2009, Applicant appeared against before Judge Childs at which time he was sentenced to concurrent terms of ten (10) years imprisonment for Assault and Battery of a High and Aggravated Nature and five (5) years for Criminal Conspiracy, to be followed consecutively by two (2) concurrent thirty (30) years terms of imprisonment for Kidnapping and Armed Robbery, for an aggregate forty (40) year sentence.

A timely notice of appeal was filed, but later dismissed by the South Carolina Court of Appeals by dated January 8, 2010. The Remittitur was sent the same day.

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

I. Mobile Tracking Devices: 17-30-140

1. According to the "George Town Law Journal" pg 149 (Thirty-Fifth Annual Review of Criminal Procedure 2006), the use of pen registers and trap & trace devices without a court order is prohibited. Any government attorney may apply for such an order, and a court may issue the order if it finds that the information is relevant to an on going criminal investigation. An order is valid for up to sixty days and extensions may be granted for additional sixty day periods.

Mobile Tracking Devices : 17-30-440

A.) The Attorney General or any solicitor may make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of mobile tracking device by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this state.

B.) An application under subsection (A) of this section must include:

- 1.) A statement of the identity of the applicant.
- 2.) A certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an on going criminal investigation being conducted by S.C. Law Enforcement Division or any law enforcement entity of a political subdivision of this state.

C.) The standards established by the U.S. Supreme Court for the installation and monitoring of mobile tracking devices apply to the installation and use of any device as authorized by this section.

D.) As used in this section a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

In conclusion, my lawyer was well aware of the investigator illegally placing a tracking device on my vehicle. During my preliminary hearing my lawyer (PD) questioned did the investigator (Kevin I.) have a warrant for the device he placed on my car; with a shameful facial expression Kevin I. announced that he did not have a warrant for the device. Soon after that it was as if it was never brought up in my first hearing. My lawyer told me that it was legal which was a lie. An order is a must. With that being said the prosecutor and investigator used illegal evidence during my court hearing. (Aug 10th 09)

-Common Law: Verbal evidence which ~~orders~~ derives immediately from unlawful entity and unauthorized arrest is no less the "fruit of official illegality" than more common tangible fruits of unwarranted intrusion, and 4th Amend may protect against over-
 vision of verbal statements as well as physical

State of Facts

I. Ineffective Assistance of Legal Counsel

A) Investigator

B) Prosecutor

C) Appointed Public (Assistant) Defender

D) Judge

1) Investigator: Ineffective

During my Preliminary hearing the investigator (Kevin Isenhower) clearly stated that they did not have a warrant for the tracking device that was placed on my vehicle. The Prosecutor was also present during this hearing. Still yet they continued to use the GPS system as evidence during my G.S. court hearing, by law that was illegal. The investigator and prosecutor exercised my constitutional rights by placing all of my Co-D's (codefendants) faults (illegal purchases) on me to get him a better deal. During my court hearing the investigator announced that there were lots of new items and receipts that belonged to me. They

were found in Paul Whitaker's possession. None of the purchase items show any signs of being mine. That's because it belonged to Paul Whitaker. One of the items was a singular cell phone that was clearly in his name. The prosecutor had full knowledge of this and still supported the investigator unlawful actions. The investigator also promised leniency if I told them where to find money. I allowed them to coerced my statement. I was intoxicated while doing so. I requested to take a polygraph to prove my innocents and was denied.

B) Prosecutor: (Solicitor) Ineffective

The prosecutor had full knowledge of the investigator not having a warrant for the "GPS (Mobile Tracking Device)" that the investigator illegally placed on my car. The solicitor also had full knowledge of the investigator illegally searching my household (no warrant present). The solicitor supported the deal that the Judge & investigator gave Paul Whitaker (my co-defendant) for being the first to cooperate. That act exercises my constitutional rights because they place all of what Paul Whitaker bought on me, including one's with his name on it.

They found all of the illegal purchases made by Paul Whitaker in his possession. To make him less of a criminal they had to place all his faults on me. That is called "exercising my constitutional rights", which is illegal according to the Law of South Carolina.

2007-G.S-40

2007-G.S-40-

2007-G.S-40-

C) Assistant Public Defender : Ineffective

1) He did not put favorable issues that were in my favor:

I. The illegal search of my house.

II. The tracking device illegally placed on my car.

III. The promising sentence that he told my family and I, he said I wasn't going to receive no more than ten to fifteen years. That's why I signed the plea.

IV. He told me the plea wasn't going to get any better and that I had to go up in front of the judge with my co-defendants. He did not explain the difference between the Judge and solicitor to me clearly. I thought they both was against me.

V. I didn't understand the charges against me which enabled me to answer the Judge.

VI. He neglected my request for a polygraph.

D). Honorable Judge: Ineffective

1) The Judge supported the solicitor and investigator's decision to ignore the policy of investigation.

2) Failed to do anything about the illegal investigation.

3) During my sentencing hearing I was treated unfairly. This was a "ABHAN" case dealing with the theory not law but theory of "the hands of one is the hands of all." We're all suppose to be charged with the same charges and receive similar sentences according to the theory. I received ten yrs more then everyone else not including the two who received nonviolent sentences. I played the least roll according to the police report and my co-defendents' statements. I feel that my decision to plea was forced. Also being that I worked at the company I was suppose to be facing the "Breach of Trust" or just "Conspiracy".

In conclusion, I had a very well experienced lawyer from the beginning (Public Defender who told me I was going to do ten yrs. They (S.C.) switched lawyers on me and gave me an inexperienced "assistant public defender". I didn't understand why the change and since the change everything went downhill. Also I did not understand the change because it was a very high profile case. Another point, none of my positives were ~~to~~ taken in consideration. I have a numerous amount of achievements from my community to College. I have a beautiful daughter and a caring supportive family. I've never been in trouble prior to this case. I was treated unfairly. I was sentence to 35 yrs while everyone else was sentence 10 yrs less then what I received.

Wong Sun v. South Carolina (83 pg 407)

- Criminal Law -

Evidence seized during unlawful search DF 336466 cannot constitute proof against victim of search, and exclusionary prohibition extends to indirect as well as to direct products of such invasions (Amendment 4)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985)

Illegal Mobile Tracking Device (GPS)

Applicant alleges his guilty plea was entered involuntarily as a result of counsel's ineffectiveness where counsel failed to discuss with Applicant the potential to challenge the evidence at trial based on an illegally installed GPS tracking device. Specifically, Applicant alleges that had he known he could make a motion to suppress evidence against him stemming from the state's use of a warrantless GPS tracking device on his car, he would not have pled but rather proceeded to trial.

Applicant testified he was originally represented by Lauren Mobley, Esquire, for roughly ten (10) months prior to Deon O'Neil, Esquire (hereafter "counsel"), taking over his representation. Applicant stated he met with counsel roughly six (6) times leading up to the plea hearing, saying counsel was "pretty consistent showing up" to meet with him at the jail. Applicant said during their meetings, both counsel and counsel's private investigator reviewed the GPS issue with him including that it had been put in place without a warrant to do so. Applicant said counsel discussed Fourth Amendment protections with him and whether he believed this tracking device violated those rights, ultimately telling Applicant he believed it was placed on the car legally as it was put on the outside of his bumper while the car was parked in a public parking lot. Applicant went on to say he did not recall discussing potential defenses to be

used at trial with counsel, but rather only recalled discussions about potential mitigating information to be used during sentencing. Applicant testified counsel never mentioned the possibility of contesting the legality of the warrantless GPS tracking device at trial, but said he “actually believed [counsel] tried his best”. Applicant finished by stating he did believe the solicitor had copies of his cell phone records that may have been able to show similar time and location information received by police through the GPS device.

Counsel testified he initially represented Applicant at his preliminary hearing in June of 2007, but only took over representation of Applicant from Lauren Mobley on February 20, 2008, after Mobley left the public defender’s office. Counsel said the only thing at issue in Applicant’s case was the legality of the GPS device placed on Applicant’s car. Counsel recalled the GPS was placed on Applicant’s car without a warrant while Applicant was at the police station for questioning into the robbery. Counsel articulated that he and Applicant spent extensive time researching the legality of a warrantless GPS tracking device, ultimately relying on the U.S. Supreme Court case U.S. v. Knotts, 460 U.S. 276, 103 S.Ct. 1081 (1983). Counsel said based on Knotts, he believed Applicant’s Fourth Amendment rights were not violated as the device was placed on the outside of Applicant’s car in a public area where Applicant (as in Knotts) could have no reasonable expectation of privacy.¹ Counsel said he did not investigate the legality of the GPS tracking device based on S.C. Code § 17-30-140, nor was he aware of the statute at the time of Applicant’s plea. Counsel stated, had Applicant proceeded to trial, his main strategy would have been to suppress any evidence gathered against Applicant as a result of the GPS device, but he did not believe there were any valid grounds to suppress the extremely

¹ It must be noted the holding in Knotts has since been clarified in the recent U.S. Supreme Court decision of United States v. Jones, No. 10-1259 (January 23, 2012); however, this is of little consequence to this Court’s determination of the sufficiency of counsel’s performance in anticipation of future changes in the law is not required of defense attorneys. See Gilmore v. State, 315 S.C. 453, 445 S.E.2d 454 (S.C. 1994).

incriminating and damaging statements given by co-defendants against Applicant. Counsel finished by stating he believed there was a "very slim" chance of Applicant winning at trial based on the state's evidence against him.

Based on the testimony presented at the and a thorough review of the plea transcript, this Court finds Applicant failed to carry his burden in proving counsel was ineffective in this regard. Further, this Court finds counsel's testimony to be credible while finding Applicant's testimony to be wholly incredible. Counsel performed extensive investigation into the GPS monitoring issue during his case preparation, ultimately relying on U.S. Supreme Court case law in determining there had been no Fourth Amendment violation based on the status of the law at the time. Counsel acted in reasonably objective reliance on the then valid Supreme Court case law and made an appropriate determination that, while he did not believe a motion to suppress would be successful, he would attempt to challenge the legality of the GPS device at trial if Applicant decided to proceed to trial. Applicant was aware and fully advised of the ability to challenge the legality of the GPS at trial based on his discussions with counsel. Applicant's voluntary and informed decision to enter a guilty plea precluded counsel from attempting to suppress the evidence obtained through the GPS device. Additionally, the plea judge specifically advised Applicant on the record that by entering the plea Applicant was waiving his right to challenge the state's evidence against him, which Applicant acknowledged he understood. (See December 3, 2008 Plea Tr. p. 7, lns 1 - 9.) Therefore, I find no deficiency on counsel's part in his investigation and preparation regarding the warrantless GPS monitoring device.

Further, this Court finds Applicant has failed to prove resulting prejudice based on this alleged deficiency. Applicant has failed to convince this Court that, had counsel taken some further action regarding this GPS device or done some further investigation into S.C. Code § 17-

30-14, Applicant would have proceeded to trial to face such serious charges rather than enter a plea. See Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985) (*With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial.*) Additionally, this Court finds that even if counsel had been successful in suppressing the evidence found as a result of the GPS device, the outcome of Applicant's case would have been no different as there was overwhelming evidence of his guilt. Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991)(*prejudice cannot be proven where there is overwhelming evidence of a defendant's guilt*). Accordingly, this Court finds Applicant has failed to carry his burden in proving counsel was ineffective for failing to properly investigate or prepare to suppress the evidence obtained through the GPS tracking device placed on Applicant's car.

Erroneous Sentencing Advice

Applicant contends his guilty plea was also entered involuntarily as a result of counsel's ineffectiveness where counsel advised Applicant he would receive a certain sentence under the plea. Applicant testified that during his pre-plea meetings with counsel, counsel told him to expect to receive a sentence of between ten (10) and fifteen (15) years imprisonment under the terms of the plea agreement. Applicant stated had he known he was going to receive more than fifteen (15) years in prison, he would have insisted on going to trial rather than enter the plea as he did. Applicant later stated he "would have liked to have taken a better plea if one had been offered". Counsel, conversely, testified he never promised Applicant any particular range of sentences to expect and stated he believed Applicant was well aware of the sentencing range he was facing on the charges. Counsel also stated he believed he gave Applicant all the information to make an informed and intelligent decision whether to plea, and Applicant ultimately made the

voluntary decision to enter the pleas as he did with full understanding of the potential realistic sentences he faced.

This Court finds counsel's testimony to be credible while finding Applicant's testimony to be wholly incredible. Applicant has failed to convince this Court he entered this plea involuntarily based on erroneous sentencing advice from counsel. Counsel never made any promises to Applicant about a sentence he should expect to receive, but rather fully informed Applicant of the sentencing range he was facing. Applicant made the voluntary and informed decision to plea.² Therefore, this Court finds Applicant has failed to carry his burden in proving counsel was deficient in this regard, as well as in proving prejudice resulting therefrom.

Failure to File Direct Appeal

Applicant also alleges counsel was ineffective in failing to perfect a direct appeal on Applicant's behalf. Applicant stated counsel did file a notice of appeal on his behalf, but the appeal was ultimately dismissed as Applicant did not meet the filing deadline under Rule 203(d)(1)(B)(iv), SCACR. Applicant went on to state he didn't receive any of the paperwork from the jail mailroom until after the thirty (30) day timetable to file a responsive pleading had lapsed. Counsel testified that, although he did not see any issues preserved for appeal, he filed a notice of appeal on November 24, 2009, in accordance with Applicant's requests. Counsel went on to state he received the Rule 203(d)(1)(B)(iv) letter from the Court of Appeals on November 30, 2009, which he forwarded to Applicant with a letter letting Applicant know the procedure and timeline for filing his responses to the Court of Appeals.

This Court finds Applicant has failed to establish both deficiency and prejudice in this regard. Counsel properly filed the notice of appeal and forwarded the relevant paperwork on to

² The plea transcript also reflects Applicant acknowledged counsel had advised him of the potential sentences he was facing on the charges and reflects Applicant felt he had the proper information to make an informed and intelligent decision about whether to plea. (December 3, 2008 Plea Tr. p. 9).

Applicant with instructions to allow Applicant to file any *pro se* responses or additions he may have had. Whether the Department of Corrections' mailroom got the papers to Applicant in a timely manner is not an issue before this Court and in no way changes this Court's analysis of the reasonableness of counsel's performance. Therefore, this Court finds no deficiency in performance. Further, Applicant has failed to set forth any issues preserved for appeal that he may have raised and/or had his plea overturned on and, therefore, Applicant cannot prove prejudice as a result of the appeal not going forward. Therefore, this allegation is without merit and must be dismissed.

CONCLUSION

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

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

CW

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27th day of March, 2012.



Clifton B. Newman
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.