

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

VOLUME II OF II

Appeal from Aiken County
Tanya A. Gee, Circuit Court Judge

RECEIVED
NOV 14 2016
S.C. SUPREME COURT

JAVIER HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000570

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

JULIE COLEMAN
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

PAGES 501 - 525

INDEX

INDEX.....i

TRIAL TRANSCRIPT DATED SEPTEMBER 20, 2010..... 1

FINAL BRIEF OF APPELLANT 329

FINAL BRIEF OF RESPONDENT 358

STATE V. HICKSON, OP. NO. 2012-UP-661 (S.C. Ct. App. Filed December 19, 2012)..... 396

REMITTITUR..... 398

APPLICATION FOR POST-CONVICTION RELIEF 399

RETURN..... 424

AMENDMENT TO PRIOR PCR APPLICATION 429

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 19, 2015 432

PLAINTIFF’S EXHIBIT # 1 (STATEMENT OF CHARLES SMALLS) 507

PLAINTIFF’S EXHIBIT # 2 (STATEMENT OF TOMMY PARKER) 508

ORDER OF DISMISSAL..... 509

INDICTMENTS AND SENTENCE SHEETS 520

1 jury charge is perfectly fine absent the
2 concerning words that the Court now has taken
3 issue with.

4 Furthermore, Your Honor, Justice Toal
5 continues to go on to note that the
6 unconstitutional burden shifting does not result
7 in reversible error when the error was harmless
8 beyond a reasonable doubt.

9 I would specifically note the Court of
10 Appeals' opinion finding that there was no error
11 due to the overwhelming evidence, or that any
12 error by the trial court in the case of the
13 hearsay evidence was harmless error. And, again,
14 that ties into the alibi witnesses with the
15 overwhelming evidence analysis in the PCR that we
16 have. And given those facts --

17 THE COURT: I find that, to me, it's a very
18 interesting aspect of this particular case that
19 we have an appeal already where there was error
20 that's been found with the hearsay statements.
21 The Court of Appeals said that that error was
22 harmless.

23 Now, we have an issue on PCR, at least one,
24 perhaps more, but at least one where there's an
25 issue with the jury charge. And, again, the

1 argument is it's not prejudicial.

2 Well, when do cumulative errors become
3 prejudicial? Is that settled in South Carolina?

4 MR. GOURLEY: We do not have cumulative
5 error in South Carolina, Your Honor.

6 THE COURT: Do we not have it or is it not
7 settled?

8 MR. GOURLEY: I don't believe it's settled
9 under Florida V Nickson or something like that.
10 I'm not quite sure. I'll be happy to read it for
11 you.

12 I'm not aware of any cumulative error
13 analysis. I know there was a question up at the
14 Supreme Court where they failed to address it or
15 declined to address it that day.

16 THE COURT: This isn't a situation where we
17 are talking about necessarily cumulative errors
18 completely in the context of a PCR. We have an
19 appeal where we have a definitive error that's
20 been identified and a harmless error analysis
21 employed.

22 It just makes you wonder whether if there
23 had just been one tick more if the Court of
24 Appeals would have employed that harmless error
25 analysis.

1 MR. GOURLEY: Right. Well, Your Honor,
2 obviously I can't say what the Court of Appeals
3 will do. But certainly, Your Honor, I would just
4 again submit to the Court that the overwhelming
5 evidence in this trial transcript negates any
6 kind of prejudice suffered by any of the alleged
7 errors submitted by Mr. Hickson today.

8 THE COURT: Okay. And let's just go over
9 what you claim is the overwhelming evidence.
10 There's video surveillance. However, the faces
11 are obscured. And then we have a girlfriend and
12 co-, -- a girlfriend of a co-defendant and a
13 co-Defendant who testified.

14 MR. GOURLEY: It's more than that, Your
15 Honor. I think essentially everything was
16 corroborated via the co-defendant's testimony.
17 Whatever the co-defendant testified to
18 essentially the additional witnesses
19 corroborated, whether it was a black Tahoe that
20 was being driven by the girlfriend and Artrell
21 Hickson and David Kearse in it with Mr. Javier
22 Hickson following in Sabrina Oakman's car, the
23 beige Chevy, they were all scheduled to go at the
24 Camellia Apartments at which point multiple
25 witnesses who lived across the hall in 703

1 identified them all out in the parking lot.
2 David Kearse was -- testified that they left that
3 place which was very close to the Federal Bank
4 which they robbed. At that point in time they
5 went in, they robbed, of course they were wearing
6 gloves, masks, there was no DNA evidence, no
7 eyewitnesses to see the victims {sic} but David
8 Kearse was arrested, I think approximately two
9 hours later within close proximity of the bank
10 underneath a shed by a church with money and a
11 gun. Again, he --

12 THE COURT: And this is the one who
13 received a YOA sentence?

14 MR. GOURLEY: Yes, Your Honor. He
15 testified against them.

16 And then you also have Ralph Wilson, I
17 believe, testified against them as well stating
18 that they had all planned to set this up and
19 actually notably Paul Jalony or Jalony Edwards
20 and Paul Jenkins were also two potential
21 co-defendants who helped conspire to plan this
22 robbery who were actually arrested on subsequent
23 or another robbery unrelated to this one. They
24 all testified.

25 Your Honor, I mean, I can continue to go on

1 but --

2 THE COURT: No, no.

3 MR. GOURLEY: -- it's more than just the
4 co-defendant's testimony alone. It was all
5 corroborated.

6 THE COURT: All right. Well, I thank
7 both of you for excellent arguments, excellent
8 presentation. This is a case that I'm going to
9 have to study. I'm going to have to read the
10 record. I do think that there are interesting
11 issues in this case and I will --

12 MR. GOURLEY: Certainly.

13 THE COURT: -- let y'all know of my
14 decision as soon as I make it.

15 MR. BOOZER: Thank you..

16 MR. GOURLEY: Thank you, Your Honor.

17 END OF CASE: 11:06 A.M.

18 ***

19 CERTIFICATE OF REPORTER

20 STATE OF SOUTH CAROLINA)

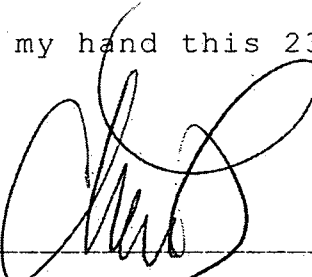
21 COUNTY OF AIKEN)

22 I, Cheri L. Young, Registered Professional
23 Reporter and Official Court Reporter for the State of
24 South Carolina, Second Circuit-At Large, do hereby
25 certify that the foregoing proceedings were written

1 stenographically by me using computer-aided translation;
2 further, that the foregoing is a true, accurate and
3 complete record, to the best of my skill and ability, of
4 all the proceedings had and evidence introduced in the
5 hearing of the captioned case, relative to appeal, in
6 the Court of Common Pleas for Aiken County, on the 19th
7 day of May, 2015.

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

10 I have hereunder set my hand this 23rd day of
11 May, 2016.

12
13
14 
15 Cheri L. Young, RPR
16 Official Court Reporter
17
18
19
20
21
22
23
24
25

State of South Carolina v. Javier Hickson

Statement of Charles Smalls

Date: 17 Aug, 09

Time: 09:15
Witnessed by: Stella Marie Walker

written by Michael W. Rutzong at my request

AT 08:35 MR. TIMMY PARKER PICKED ME UP
AT MY RESIDENCE Aiken, SC
MR. PARKER AND I WENT FOR COFFEE AND THEN
WENT TO MR. PARKER'S SISTER'S HOUSE (MS
ANALAH HICKSON). WE PICKED UP JAVIER
AND ARTRELL AT APPROXIMATELY 09:00. THE
DATE WAS JUNE 25, 2009. AFTER WE PICKED
UP JAVIER WE WENT TO MR. PARKER'S PLACE
OF BUSINESS (154 Berkeley Court). WE (MR.
PARKER, JAVIER, ARTRELL) TOOK ENGINES APART
AND CLEANED THE PARTS. WE SEPARATED THE
BAD PARTS FROM THE GOOD PARTS. JAVIER
AND ARTRELL WERE WITH ME AND MR. PARKER
UNTIL 4:30 PM, UNTIL THE TIME I WENT
HOME.

Charles Smalls

Sworn and Subscribed to before me this 17th day of August 2009.

Jennifer Rutland Barr

Notary Public
My Commission expires: 10-14-18

FILED 5.19.15
Eric Hedard
CLERK
Christa S. Knappfle 10⁵⁰
Deputy Clerk

PLAINTIFF'S
EXHIBIT
1 5/19/15
ASK

State of South Carolina v. Javier Hickson

Statement of: Tommy Parker

Date: 17 Aug 09

Time: 09:45

Witnessed by: Goretta Johnson Miller

Written at the request of Mr. Parker by Michael R.

On June 25, 2009 I picked up Javier Hickson from my sister's house (Beulah Hickson) on Willard Drive in Aiken at 09:00. JAVIER WANTED to learn auto mechanics and I agreed to teach him. AFTER I picked him up we went to 154 Brickley Ct. Aiken SC. ALSO with me was Charles Smalls. I ALSO picked up ARTRELL Hickson at the same time as I picked up JAVIER. We (JAVIER, ARTRELL, CHARLES AND I) remained at 154 Brickley Court until 16:30. At 16:30 (4:30 pm) JAVIER, ARTRELL, and I took Charles Smalls to 71 Moody Street Aiken, SC. Mr. Smalls wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP store on S.W. 4th and then we returned to 154 Brickley Court until 7:00 pm. JAVIER, HICKSON AND ARTRELL were with me the entire day.

Tommy Parker

Sworn and Subscribed to before me this 17th day of August, 2009.

Wanda Rutland Park

Notary Public My Commission expires: 10-14-18

5.19
Liz Hedard
CCCPAGS
Christina Knapp Dale
Deputy Clerk

PLAINTIFF'S EXHIBIT
2 5/19/09

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT

Javier Hickson, #306715,

) 2013-CP-02-1146

) Applicant,

) v.

) **ORDER OF DISMISSAL**

) State of South Carolina,

) Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 20, 2013. Respondent filed its return on July 9, 2013. An evidentiary hearing was convened on May 19, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2291) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0679). Michael Routzong, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on September 22, 2010, Applicant was sentenced to twenty-eight years imprisonment for Armed Robbery and five years'

FILED 3.16.16
Shirley Hodson
 10:00 AM
Christy [unclear]
 CLERK

imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hickson, Op. No. 2012-UP-661 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
 - a. Trial counsel's failure during pretrial to move to quash the arrest warrants in Applicant's armed robbery and possession of a weapon during the commission of a violent crime charges because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. Trial counsel's failure during pretrial to move to suppress evidence emanating from Applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - c. Trial counsel's failure to move to dismiss with prejudice against the State, Applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - d. Trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
 - e. Trial counsel's failure to advise Applicant as to the pros and cons of offering testimony, negligently advising Applicant not to testify, and failing to explain to Applicant that without his testimony, his attempt to corroborate his alibi witness testimony would be seriously compromised.

- f. Trial counsel's failure to request a Neil -vs- Biggers Hearing due to the fact that the alleged victim's bank employee never picked Applicant out of any type of photo array or line-up procedures prior to his arrest.
- g. Trial counsel's failure to move to strike Sabrina Oakman and Candice Patrice Bryant's trial testimony.

Applicant filed an amended application for post-conviction relief on March 12, 2015, alleging

that he was being held in custody unlawfully based on the following:

- h. "Although counsel made an objection to Bryant's statement coming into evidence, see Tr. p. 197, lines 14-15, yet counsel never introduced Bryant's statement into evidence but rather only had it marked for identification purposes. See Tr. p. 197, lines 16-21; pg. 258, lines 2-10, confirmed by the court reporter at trial judge's request. Counsel prejudiced me when he failed to make a contemporaneous objection. Nor did counsel get a ruling on his objection. Both errors denied me proper appellate review upon the merits."
- i. (d-1 and f) "Counsel prejudiced me when he failed to investigate or call my alibi witness Mr. Charles Smalls" "Counsel further prejudiced me when he failed to investigate or call Mr. Tommy Parker upon my behalf." "Counsel prejudiced my whole case by calling my alibi witnesses, knowing that the State was going to rely on this alleged co-defendant(s) theory/lies."
- j. Appellate counsel failed to file a Motion for Rehearing following the Court of Appeals' decision.
- k. Appellate counsel failed to raise the issue that Investigator Savell had not been qualified as an expert in facial recognition.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant presented testimony from Michael Routzong, Esquire (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return. Applicant further introduced various exhibits during the evidentiary hearing.

During the evidentiary hearing, Applicant stated Michael Routzong ("Trial Counsel") was appointed to represent him. Applicant stated that he met with Trial Counsel twice prior to bonding out, but that he did not meet with Trial Counsel after bonding out of prison. Applicant further stated that Trial Counsel informed him that he did not have any defenses to the charges he was facing. Applicant maintained that Trial Counsel should have moved to suppress the arrest warrants because they were conclusory and lacked probable cause.

Applicant recalled that Trial Counsel did not present a defense at trial, despite the fact that Applicant's defense was that he was not present at the time of the crimes alleged. Applicant stated he asked Trial Counsel to investigate his two alibi witnesses: Charles Smalls and "Uncle Parker."

Applicant opined that Trial Counsel should have requested a Neil v. Biggers hearing because there was an alleged photo lineup conducted by the police. Applicant stated Trial Counsel was ineffective for failing to investigate the State's witnesses Sabrina Oakman and Candice Bryant. Applicant further stated Trial Counsel should have investigated into whether his co-defendants David Kears and Randy Wilson received plea deals in exchange for their testimony at trial.

Applicant stated Trial Counsel was also ineffective for failing to make a motion for reconsideration. Additionally, Applicant stated Trial Counsel should have objected to Investigator Gregg Savel's testimony about Applicant's characteristics. Applicant noted that his co-defendant's counsel objected to this testimony, and Trial Counsel only joined the objection. Applicant further stated Trial Counsel was ineffective for failing to object to Candice Bryant's statement coming into evidence as well as the judge's jury instruction.

During the evidentiary hearing, Trial Counsel stated he was currently working for the Aiken County Public Defender's office. Trial Counsel stated he was appointed to represent Applicant in July 2009 and the trial began in September 2010. Trial Counsel stated that he met with Applicant at least two to five separate times. Trial Counsel opined that they met a sufficient number of times prior to trial and he was prepared for trial. Trial Counsel stated that he felt a plea offer would eventually be made to Applicant. Trial Counsel stated that he could not recall a plea offer ever being made to Applicant and that he did not see any basis to suppress the arrest warrant. Trial Counsel testified that he investigated the alibi witnesses and determined that they were not credible.

Trial Counsel recalled that Applicant did not want to testify at trial because he was concerned with being impeached with his prior record. Trial Counsel stated that he did not request a Neil v. Biggers hearing because there was never any identification procedure arranged by the police.

Trial Counsel stated that he had no information that either of Applicant's co-defendants received any pre-arranged plea deals in exchange for their testimonies. Trial Counsel further stated that he did object to Investigator Greg Savell's testimony regarding Applicant's characteristics as well as to Candice Bryant's statement coming into evidence. Trial Counsel additionally testified that he did not feel the judge's jury charge was objectionable.

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).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, (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.

1. Ineffective assistance of counsel for failing to move to suppress the arrest warrant.

Applicant's allegation of ineffective assistance of counsel due to Trial Counsel's failure to move to suppress the arrest warrant is meritless. Trial Counsel was not deficient for failing to move to suppress the arrest warrant because the warrant established probable cause. Furthermore, as the warrant was valid, Applicant can show no prejudice due to Trial Counsel's failure to suppress the warrant. Based on the foregoing, this allegation is denied and dismissed with prejudice.

2. Ineffective assistance of counsel for failing to call alibi witnesses.

Applicant's allegation that he received ineffective assistance of counsel for failing to call his alibi witnesses at trial is meritless. Trial Counsel was not deficient for failing to call the purported alibi witnesses because Trial Counsel interviewed those witnesses and determined their testimony was not credible. Accordingly, Trial Counsel articulated a valid strategic reason for not calling those witnesses. Although he stated that he regretted employing that strategy in hindsight, it was nevertheless a reasonable decision at the time it was made. Furthermore, Applicant failed to demonstrate prejudice because the alibi witnesses did not testify at the PCR hearing. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (a PCR applicant cannot show prejudice from counsel's failure to call a favorable witness to testify at trial if the witness does not testify at the PCR hearing or otherwise offer testimony within the rules of evidence).

3. Ineffective Assistance of Counsel for failing to request a Neil v. Biggers hearing based on the victim's identification of Applicant.

Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to request a Neil v. Biggers hearing is meritless. Trial Counsel was not deficient in failing to request a Neil v. Biggers hearing because there was no identification procedure arranged by the police.

4. Ineffective Assistance of Counsel for failing to investigate the States witnesses Sabrina Oakman and Candice Bryant.

Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to investigate State witnesses Sabrina Oakman and Candice Bryant is meritless. Applicant failed to show what more Trial Counsel could have done to investigate the State's witnesses. Furthermore, Applicant failed to present any evidence of what further investigation would have revealed. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). As a result, this allegation is denied and dismissed with prejudice.

5. Ineffective Assistance of Counsel for failing to investigate into whether Applicant's co-defendant had a plea deal in exchange for his trial testimony.

Applicant's allegation that he received ineffective assistance of counsel for failing to investigate into whether his co-defendant had a plea deal in exchange for his trial testimony is meritless. Trial counsel was not deficient in failing to investigate co-defendant Kears's plea deal. At the time of trial, counsel for applicant's co-defendant (Artrell Hickson) cross-examined Kears on the amount of time he faced and elicited testimony that Kears was facing less time because he was testifying against the Hicksons. (R. 247-48). Thus, it would have been redundant

for Applicant's attorney to repeat those questions. Additionally, Applicant cannot show prejudice.

6. Ineffective assistance of counsel for failing to file a motion for reconsideration.

Applicant's allegation that Trial Counsel was ineffective for failing to file a motion for reconsideration is meritless. Trial Counsel was not deficient in failing to file a motion to reconsider the Applicant's sentence because the Applicant never requested such a motion to be filed.

7. Trial Counsel was ineffective in failing to object to investigator Gregg Savell testifying to Applicant's characteristics.

Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to object to investigator Gregg Savell's testimony regarding Applicant's characteristics is meritless. This Court finds no deficiency or prejudice because Trial counsel did, in fact, object to this testimony. (R. 118-19).

8. Ineffective assistance of counsel for failing to object to the jury instruction.

Applicant's allegation that Trial Counsel was ineffective for failing to object the judge's jury instruction is meritless. Trial counsel was not deficient in failing to object to the jury instruction in which the judge used "fair and impartial" language. In State v. Daniels, the Supreme Court cautioned trial judges to remove any suggestion that "a criminal jury's duty is to return a verdict that is 'just' or 'fair' to all parties." The Court reasoned that such language could alter the jury's perception of the burden of proof and the reference to "all parties involved" may

cause jurors to believe they have a duty to decide whether their verdict is fair to the victim. Here, the trial judge's reference to an impartial verdict was certainly not objectionable, so the only potentially objectionable word was the word "fair." This reference, without more, does not rise to the level of the improper charge used in State v. Daniels. Furthermore, even if the charge was objectionable and Trial Counsel should have objected, Applicant has failed to show how he was prejudiced in light of the overwhelming evidence of his guilt.

9. Ineffective assistance of counsel for failing to object to Candice Bryant's statement being introduced into evidence.

Applicant's allegation that Trial Counsel was ineffective for failing to object to Candice Bryant's statement being introduced into evidence is meritless. Trial Counsel did object to the statement being introduced into evidence. (R. 197). As a result, Applicant can show neither deficiency nor prejudice.

10. Ineffective assistance of appellate counsel for failing to file a petition for rehearing following the denial of his appeal.

Applicant's allegation that appellate counsel was ineffective for failing to file a petition for rehearing following the denial of his appeal is meritless. Appellate counsel was not deficient in failing to file a petition for rehearing from the Court of Appeals' opinion because there was no evidence that Applicant requested him to file a petition for rehearing.

ALL OTHER ALLEGATIONS

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

CONCLUSION

Based on all the foregoing, 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.

Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 8th day of March, 2016.

Tanya A. Gae
TANYA A. GAE
Presiding Judge
Second Judicial Circuit

Columbia, South Carolina

WITNESSES

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

DOCKET NO. 2009GS0202291

The State of South Carolina

County of Aiken

SMR

ARREST WARRANT NUMBER

M020091 FILED December 10, 2009

Deborah A. Hester
Deputy Clerk
(Signature of Deborah A. Hester)

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

THE STATE
vs.

JAVIER HICKSON

ACTION OF GRAND JURY

True Bill

Forperson of Grand Jury

Date: December 10, 2009

VERDICT

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

Forperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR


STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY
§ 16-11-0330(A)

At a Court of General Sessions, convened on December 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That JAVIER HICKSON, along with others, did in Aiken County, South Carolina on or about June 25, 2009, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the persons or presence of [REDACTED] and [REDACTED] by means of force or intimidation goods or monies of Security Federal Bank, such goods or monies being described as follows: Four Thousand Nine Hundred Two and No/100 dollars (\$4,902.00), all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Aiken

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0202291

Javier Hickson vs.

AW#: M020091

Date of Offense: 6/25/2009

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: B Sex: M Age: 27

DOB: SS#:

Address:

City, State, Zip: AIKEN, SC 29803

DL# SID# SC01488918

CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

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

TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As Indicted, Less or Included Offense, Defendant Waives Presentment to Grand Jury, (Def.'s trial)

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

ATTEST:

Solicitor SC Bar # 74903 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 28 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.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-136.

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

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Set by SCOPPPS

Obtain GED

Attend Voc. Rehab. Or Job Corp.

May serve WE beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

mts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

Conditional Discharge, §44-63-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Presiding Judge: [Signature]

Judge Code: 0136

Sentence Date: Sept 22, 2010

Recipient			
*Fine:		\$	
\$14-1-208 (Assessments 107.5%)		\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
\$56-5-2995 (DUI Assessment)	\$12	\$	
\$56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
\$14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$	
\$60-21-114 (BUI Breath Test Fee)	\$50	\$	
\$56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5.00
\$44-63-450(C) (Conditional Discharge)	\$350	\$	
3% to County (if paid in installments)		\$	3.90
TOTAL		\$	133.90

Clerk of Court/Deputy Clerk

Court Reporter: SCCA217 (05/2010)

[Signatures]

WITNESSES

Aiken County Sheriff

J Sanders

Law Enforcement Case #: 09-035912

DOCKET NO. 2010GS0200679

The State of South Carolina

County of Aiken

SMR

ARREST WARRANT NUMBER

M020087

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE
vs.

JAVIER HICKSON

ACTION OF GRAND JURY

File Bill

April 15, 2010
J. Strom Thurmond
16-23-0490
55
District Clerk

Foreperson of Grand Jury
Date: April 15, 2010

VERDICT

CDR #: 0549

Indictment for

POSSESSION OF A FIREARM DURING
COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME

§ 16-23-0490

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A FIREARM DURING
COMMISSION OF OR ATTEMPT TO COMMIT
A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on April 19, 2010, the Grand Jurors of Aiken County present upon their oath:

That JAVIER HICKSON did in Aiken County on or about June 25, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, 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.


STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
STATE

IN THE COURT OF GENERAL SESSIONS

VS.
Javier Hickson

INDICTMENT/CASE#: 2010GS0200679

AKA: _____

AW#: M020087

Race: B Sex: M Age: 27

Date of Offense: 8/25/2009

DOB: _____ SS#: _____

S. C. Code §: 16-23-0490

Address: _____

CDR Code #: 0549

City, State, Zip: AIKEN, SC 29803

SENTENCE SHEET

DL# _____ SID# SC01486918

CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As Indicted, Less or Included Offense, Defendant Waives Presentation to Grand Jury. (ref. in initials)

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

ATTEST:

Solicitor [Signature] 74983 SC Bar # _____ 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 5 years 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: 09-65-02-2291

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.

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

Pursuant to 18 U.S.C. Section 822, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-68 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve WAE beginning _____

Fine: \$ _____ Substance Abuse Counseling

\$14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ \$ _____ Paid to Public Defender Fund

\$58-5-2995 (DUI Assessment) \$12 \$ _____ Other: _____

\$58-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

\$14-1-212 (Law Enforce. Funding) \$25 \$ _____

\$14-1-213 (Drug Court Surcharge) \$160 \$ 25.00

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

\$58-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

\$44-63-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 137.90

Presiding Judge [Signature]

Clerk of Court/Deputy Clerk [Signature] Judge Code: 0136

Court Reporter: [Signature] Sentence Date: Sept 22, 2010

SCCA717 (08/2010)