

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

CHAZMONTE BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212406

A P P E N D I X

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) }
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

v.)

CHAZMONTE BROWN,)
DEFENDANT.)

Transcript of Record
09-GS-21-00664, 10-GS-21-1754
December 15, 2010
Florence, South Carolina

BEFORE:

THE HONORABLE MICHAEL G. NETTLES, JUDGE

APPEARANCES:

PATRICIA S. PARR, ESQ.
Assistant solicitor

KAREN E. PARROTT, ESQ.
Attorney for defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. PARR: May it please the Court, this is
2 Chazmonte Brown, 2009-664. He's now before the court,
3 although we picked a jury this morning, to plead guilty to
4 armed robbery for a negotiated sentence of 15 years.
5 Mr. William Hayes is in the courtroom today and is in
6 agreement with that sentence. He is also pleading guilty
7 to two new pending charges. They're distribution of
8 marijuanas first offense to be included with the 15 years.

9 THE COURT: Ms. Parrott, do you represent Mr.
10 Brown?

11 MS. PARROTT: I do, Your Honor.

12 THE COURT: Have you explained to him the offense
13 of armed robbery, the fact that he could receive a minimum
14 mandatory 10, maximum 30 on this offense, and distribution
15 of marijuana, the fact he could receive up to five years
16 on each of these two separate and distinct offenses, the
17 elements of each of these offenses, potential offenses, and
18 his constitutional rights?

19 MS. PARROTT: Yes, Your Honor.

20 THE COURT: How does he wish to plead?

21 MS. PARROTT: Guilty, Your Honor.

22 THE COURT: You agree with his decision to do so?

23 MS. PARROTT: Yes, Your Honor.

24 THE COURT: Do you feel if called upon to do so,
25 the State could prove him guilty beyond a reasonable

1 doubt?

2 MS. PARROTT: Yes, Your Honor.

3 THE COURT: All right. Does he understand that
4 armed robbery is a violent and most serious offense
5 subject to the two strike rule, does he understand that?

6 MS. PARROTT: Yes, Your Honor.

7 THE COURT: Does he understand the fact that it's
8 violent will adversely affect his custody status; does he
9 understand that?

10 MS. PARROTT: Yes, Your Honor.

11 THE COURT: Does he understand that he'll serve
12 this sentence day for day subject to the 85 percent rule?

13 MS. PARROTT: Yes, Your Honor.

14 THE COURT: All right. Does he understand he's
15 losing his driver's license with regard to the marijuanas
16 offenses?

17 MS. PARROTT: Yes, Your Honor.

18 THE COURT: Very good. All right, let's place
19 Mr. Brown under oath if we could.

20 CLERK OF COURT: Please raise your right hand.

21 WHEREUPON,

22 **CHAZMONTE BROWN,**

23 having been duly sworn by the Clerk of Court, testified
24 as follows:

25 THE COURT: Mr. Brown, are you under the influence

1 of any drugs or alcohol here today?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Are you experiencing any kind of
4 physical or mental problem that could prevent you from
5 understanding what's going on here today?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: You need to speak up so I can hear you.

8 THE DEFENDANT: No, sir.

9 THE COURT: Very good. Pay very close attention to
10 Ms. Parr as she summarizes the facts that bring us here
11 today.

12 MS. PARR: May it please the Court, in regards to
13 indictment 2009-66-- 664, the defendant was -- has been
14 indicted for armed robbery and possession of weapon during
15 commission of a crime of violence. This incident occurred
16 on November 15th, 2008. On that particular evening this
17 defendant and four other co-defendants planned to rob
18 Mr. William Hayes. It started out they were looking for
19 someone to rob. This defendant was the -- or is -- was
20 involved with co-defendant Latisha Cochran. Ms. Cochran
21 was the co-defendant who called Mr. Hayes on the phone.
22 She had him on speakerphone as they were planning to do
23 this robbery. Ms. Cochran's position was to lure him out
24 of his home to go to a club. They were around the corner
25 when they actually called Mr. Hayes, and at that time

1 where they were parked was in the front of the home of one
2 of our witnesses, Mr. Rodriquez Russell. Mr. Russell saw
3 that car parked there when he came home. It was a Camry
4 owned by another co-defendant, Quentin Epps, who is here
5 today.

6 In any event, after they made the telephone call
7 they went and parked on the side road closer to where Mr.
8 Hayes' store and home was. This defendant along with
9 co-defendant Montarrio Graham and Jerry Bush got out of
10 the vehicle armed with a weapon. Mr. Chazmonte Brown had
11 a shotgun and -- I mean, I'm sorry, Mr. Brown had a
12 handgun and Montarrio Graham had the beebie pistol and
13 Jerry Bush had the shotgun. When Mr. -- they were dressed
14 in dark clothing; they had masks on. And when Mr. Hayes
15 came out of his house to go to his vehicle they jumped him
16 at that time. They, all three of them, pulled the weapons
17 out on him, and he tried to get away from them but ended
18 up dropping, falling to the ground. They asked him for
19 his money. They went through his pockets, took the money.
20 Montarrio Graham hit him in the head with the gun and
21 broke it. That fell in the roadway. They took about five
22 hundred dollars from Mr. Hayes, and as they fin-- once
23 they got the money, then this defendant took his handgun
24 and shot two to three times in the air. At that time Mr.
25 Hayes was still on the ground, but Rodriquez Russell heard

1 the shots. He became suspicious and called law
2 enforcement and also looked out. He saw that same vehicle
3 that he saw earlier drive by his house and that, and saw
4 the three defendants, three of these codefendants --
5 Montarrio Graham and Chazmonte Brown and Jerry Bush --
6 jump into the vehicle and take off and they went right
7 past him. He could not identify them to say who it was,
8 but he could say what size they were.

9 Law enforcement came immediately. They found that
10 Mr. Hayes had been injured. They called EMS. They found
11 his gun. They found his keys in the middle of the roadway
12 in relations to his house. They also found the broken gun
13 in two parts, and they took pictures of the scene.
14 Mr. Hayes' credit cards were also taken. Those credit
15 cards were used at Wal-Mart here in Florence, and you
16 know, he had reported them stolen. And that's how the
17 investigation kind of got started. Quentin Epps'
18 girlfriend had heard about it. Well, the defendant, well,
19 he told her what had happened and she notified the Lake
20 City Police Department and the investigation began then.
21 She gave a statement to Investigator McAllister and then
22 the investigation started. They were able to go back and
23 pull the credit card records from Wal-Mart, and then
24 Mr. Epps did give a statement saying who all had been
25 involved, and the co-defendant Latisha Cochran because

1 Ms. Cochran tried to use the credit card the following
2 Sunday at Captain D's and someplace else. And first she
3 gave a statement saying she just found it and then she
4 came back and gave, you know, after they confronted her
5 with the evidence they had found out how she was involved,
6 and so they were all charged.

7 In terms of Mr. Chazmonte's record I'll tell you
8 about the new charges. He has in 2004 a conviction for
9 shoplifting and a marijuana charge. He also has
10 conviction for unlawful weapon in 2007, and it looks like
11 giving false information to a police officer. In regards
12 to the new charges, they involve distribution of
13 marijuana. On September 20-- on/about September 23rd,
14 2010, Lieutenant Cooper with the Florence -- with the Lake
15 City Police Department, used a confidential informant who
16 purchased a quantity of marijuana from Mr. Brown on that
17 particular day. The CI was outfitted and a copy of the
18 tapes were provided to defense counsel. Then on
19 September 28th, 2010, he made another distribution charge
20 to a CI as well.

21 THE COURT: Very good. Mr. Brown, are those facts
22 true and accurate?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you, in fact, guilty of two
25 separate and distinct counts of distribution marijuana

1 first?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Are you indeed guilty of
4 armed robbery?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You stand before me pleading guilty but
7 you don't have to plead guilty to anything. You could
8 exercise your right to a jury trial. In that process the
9 jury would determine whether or not the State could
10 actually prove you guilty beyond a reasonable doubt. I
11 would charge the jury as a matter of law that you're
12 presumed to be innocent. No one could require that you
13 take the witness stand; however, if you wanted to you
14 could. You could subpoena witnesses on your own behalf.
15 In addition to that you and your lawyer could
16 cross-examine the State's witnesses, have an opportunity
17 to eyeball them and confront them as they testified
18 against you. You realize by pleading guilty you're giving
19 up all these rights?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Still wish to plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you indeed guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Plea negotiation is a

1 negotiated 15 year sentence all to run concurrent?

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

3 THE COURT: Is that right, Ms. Parrott?

4 MS. PARROTT: Yes, Your Honor.

5 THE COURT: Is that right, Mr. Brown?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Brown, are you satisfied with your
8 lawyer?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understood all your conversations
11 with her?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You need any additional time to confer
14 with her?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anybody promised you anything,
17 threatened you, pressured you, mistreated you in any way,
18 shape or form, in an effort to get you to plead guilty
19 here today?

20 THE DEFENDANT: No, sir.

21 THE COURT: It's been your decision to plead
22 guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you indeed guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You understood all my questions?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have your answers been truthful?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand that you have ten days
6 to appeal any decision I might render here today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Based on your testimony I find there's
9 a substantial factual basis for your plea; that your
10 decision was freely and voluntarily entered into knowingly
11 and intelligently with consent of competent counsel with
12 whom you say you're satisfied. I'll accept your plea and
13 be glad to hear from you and your lawyer with regard to
14 mitigation.

15 MS. PARROTT: Thank you, Your Honor, may it please
16 the Court. Your Honor, Chaz and I have met on this first
17 case quite a long time ago. And as you've already stated
18 previously earlier today, this case is two years old and
19 so I have been talking with him since about April of 2009
20 and he was interviewed by our office even previous to
21 that. Talked about in depth what exactly this was, talked
22 about the strikes and how this is a most serious, but that
23 if he was ever to get in trouble again for anything that
24 was a serious or most serious, depending on which one and
25 how many, that he certainly was setting himself up for

1 life without parole and the connotations that certainly
2 carries with it. He spent a great deal of time on this
3 armed robbery charge before he was able to -- before I was
4 able to get a bond reduction hearing and he was able to
5 bond out. And I'm not -- we were checking with the
6 clerk's office, Your Honor, to get an exact date and I
7 cannot find out exactly how many that was, but I know it
8 was around a year that he was actually down in Effingham
9 before he was able to bond out. He then appeared back
10 before this court in October of this year and the judge
11 decided to revoke his bond based on the new charges as
12 well and I -- since that time he has been down in
13 Effingham, I believe, for a total of 58 days.

14 But in meeting with him and talking with him I've
15 talked with his previous employer as was requested. I
16 talked with his mother today; and I know that she would
17 like to be here, Your Honor, but she's been in the
18 hospital with her mother who is having some severe
19 problems from what she was telling me today, and in fact,
20 might even be on the way to MUSC. But I have had
21 interaction with his family, Your Honor, talking about his
22 case and I know that one of his concerns is his family and
23 particularly his child that I believe is four years of
24 age. And he also has another child, Your Honor, but he is
25 engaged to a young lady and that weighs heavily on him as

1 has all of this. But I would ask if you would go along
2 with the negotiated sentence of 15 years. I'm sorry that
3 he didn't take the offer that was previously made to him
4 that might have even cut it down further, but he would
5 ask, if you would, if you would go along with the 15.

6 THE COURT: Does he understand what the grand jury
7 is?

8 MS. PARROTT: Yes, Your Honor.

9 THE COURT: Does he waive presentment with regard
10 to the grand jury?

11 MS. PARROTT: On the drug charges, yes, Your Honor.

12 THE COURT: Is that true, Mr. Brown?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Mr. Brown, on indictment
15 2010-GS-21-1754 on the offense of distribution marijuana,
16 the sentence of the Court is you be committed to the State
17 Department of Corrections for a period of five years.
18 Sentence to run concurrent, credit for one year. With
19 regard to indictment 2010-GS-21-1754, distribution of
20 marijuana, the sentence of the Court is you be committed
21 to the State Department of Corrections for a period of
22 five years. Sentence to run concurrent, credit for one
23 year. With regard to indictment 2009-GS-21-664, armed
24 robbery, the sentence of the Court is you be committed to
25 the State Department of Corrections for a period of 15

1 years. Sentence to run concurrent, credit for one year.

2 Good luck to you.

3

4

*** * * END OF REQUESTED TRANSCRIPT OF RECORD * * ***

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of July, 2011.

Frances Bakis-Ray

FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

FORM 5

STATE OF SOUTH CAROLINA)

County of FLORENCE)

IN THE COURT OF COMMON PLEAS

III: 03

2011-CP-21-1171

CHAZMONTE BROWN # 334443)

Full name and prison number (if any) of Applicant)

v.

State of South Carolina

VERIFIED TRUE COPY APPLICATION FOR
Conrad R. Sparrow
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

POST-CONVICTION RELIEF

JOHNIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC
MAY 11 2011 11:03 AM

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lee C. I. Darlington North # 2153
990 WISACKY Hwy., Bishopville, S.C. 29810
2. Name and location of Court which imposed sentence FLORENCE COUNTY
GENERAL SESSIONS, FLORENCE, S.C. 29501
3. Name(s) of co-defendant(s) (if any) LATISHA COCHRAN, TERRY BUSH,
MONTEIRIO GRAHAM, QUENTIN EPPS.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) UNKNOWN

(b) _____
(c) _____

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

(a) LATE DECEMBER, 2010, 15 YEARS.
(b) _____
(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

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

No

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

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

i. _____
ii. _____
iii. _____

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

i. _____
ii. _____
iii. _____

(c) the date of each such result:

i. _____
ii. _____
iii. _____

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

i. _____
ii. _____
iii. _____

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

(a) Did not know I could appeal / file Court PCR.

- (b) _____
- (c) _____

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

- (a) FRANULOUS/ILLEGAL WARRANTS & INDICTMENTS
- (b) _____
- (c) _____

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

- (a) SEE ATTACHMENT "A" AT END OF APPLICATION
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

No

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) Did not know I could challenge convictions.
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES.
- (b) your trial, if any? _____
- (c) your sentencing? YES.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. KAREN PATT / Public Defender
City-County Complex, 180 N. Irby St. Florence, S.C. 29501
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA AND SENTENCING
 - ii. _____
 - iii. _____

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

That all convictions and sentences against this Applicant be immediately vacated with defendant be removed back to Florence County for re-trial

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

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of FLORENCE)

VERIFICATION

I, CHAZMONTE LEWIS BROWN # 334443, 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.

Chazmonte Brown

SWORN to and subscribed before me this 5 day of May 2011.

J. Bracey Gunn (L.S.)
Notary Public

My Commission Expires: 5-16-12

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

I, Chazmon Lewis Brown #334443, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Chazmon Lewis Brown
Applicant

SWORN or affirmed to and subscribed before me this

5 day of May 2011.

Bruce J. Dunn
Notary Public

My Commission Expires: 5-16-12

CLERK OF COURT
JCCP & CS
SOUTH CAROLINA
MAY -6 AM 11:04

LED

Attachment "A": (Questions 10(A) AND 11(A))

Allegation "A"
Fraudulent / Illegal Warrants
AND Indictments.

This Applicant alleges through newly discovered evidence that arresting officers from the Florence County South Carolina Sheriff's Office lacked sufficient Probable Cause to bring accusations of criminal wrongdoing against Applicant and to obtain arrest warrants to confine Applicant, said Probable Cause being far below the legal standards demanded by South Carolina State Legislature.

Newly discovered evidence in this grave matter will prove Florence County South Carolina Sheriff's Office acted hastily and far short in meeting South Carolina law in arresting and confining Applicant, and coupled with prudent and fair level of State and Federal review will clearly prove that the Applicant, ONE CHAZMONTE Lewis Brown, SCDC # 334443, is being held unlawfully in the U.S. State of South Carolina in clear violation of his

(Page #1 of 2)

2011 MAY -5 11:04
CORRE RECEPTION
COUNTY CLERK
SHERIFF'S OFFICE
LEED

United States' Federally protected Constitutional Rights to legal DUE PROCESS and Equal Pro-
tections, and that this Applicant should be
immediately released from custody on Bail
until such time as the Florence County
South Carolina Judiciary decides whether
or not to re-process Applicant on these
charges in this matter.

of Chazmonte Brown
Chazmonte Brown #334443
DATE: 5-5-11

25 WITNESSES
CHIEF BILLY BROWN LCPD

Mcallister

PROS: PSP

D/O: 11-15-2008

ARREST WARRANT NO.

1332185 (1); 1332185 (2).

ACTION OF GRAND JURY

TRUE BILL.

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2009 - GS - 21 - 00664
The State of South Carolina,

County of FLORENCE

PSP

COURT OF GENERAL SESSIONS

JUNE TERM 2009

THE STATE

vs.

CHAZMONT LEWIS BROWN

Indictment for

ARMED ROBBERY
AND
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME

FILED

2009 JUN -4 PM 1:25

CLERK OF COURT
FLORENCE COUNTY

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

)

C.A. NO. 11-CP-21-1171

Chazmonte Brown,

)

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)

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Applicant,

)

)

**RETURN AND MOTION
TO DISMISS**

VS.

)

)

State of South Carolina,

)

)

)

Respondent.

)

)

)

_____)

In response to the post-conviction relief application filed May 5, 2011, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the June 2009 term of the Florence County Grand Jury for armed robbery and possession of a weapon during a violent crime. Applicant also was charged with two counts of distribution of marijuana. Karen E. Parrott, Esquire, represented Applicant. On December 15, 2010, Applicant pled guilty to all charges except the gun charge and was sentenced by the Honorable Michael G. Nettles to fifteen years imprisonment. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions and Applicant's records from the Department of Corrections.

Respondent reserves the right to amend its return upon the receipt of further information or materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully based on after-discovered evidence, alleging: "arresting officers from the Florence County . . . Sheriff's Office lacked sufficient probable cause to bring accusations on criminal wrongdoing against Applicant and to obtain arrest warrants to confine Applicant, said probable cause being far below the legal standards demonstrated by South Carolina State Legislature." Applicant present no facts to support this assertion.

III.

Applicant merely alleges the discovery of lack of probable cause without any specific factual allegations describing the "new evidence." The State submits this allegation is vague and general in its terms and is insufficient to create a question of fact entitling Applicant to an evidentiary hearing.

The Applicant also fails to make specific allegations of whether the evidence meets the requirements of after discovered evidence. See State v. South, 310 S.C. 504, 427 S.E.2d 666 (1993); Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983); State v. Pierce, 263 S.C. 27, 207 S.E.2d 414 (1974). In Hayden, the Supreme Court held that:

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely

cumulative or impeaching.

The State submits the Applicant has failed to allege the "new evidence" could not, by the exercise of due diligence, have been discovered before his prior PCR hearing. Most importantly, the "new evidence" offered by the Applicant is in no way material to the issue of guilt or innocence and it is not such evidence as would probably change the result if a new trial was had. Further, the Applicant did not even have a trial. He pled guilty, and he thereby waived any right to contest the sufficiency of the evidence. In conclusion, the State submits this allegation should be summarily dismissed because the situation as set forth in the Application does not meet the requirements of after discovered evidence. South, supra; Hayden, supra.

IV.

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

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

WHEREFORE, having made Return, Respondent requests that this Court dismiss this Application with prejudice.

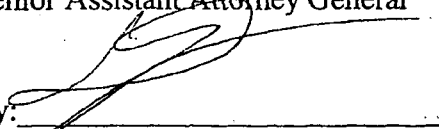
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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Senior Assistant Attorney General

By: 
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July 8, 2011.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

COURT OF COMMON PLEAS

CHAZMONTE BROWN)
334443)

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
11-CP-21-1171

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

February 03, 2012
Florence, South Carolina

B E F O R E :

THE HONORABLE WILLIAM H. SEALS, JUDGE

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

CHARLES T. BROOKS, III, ESQ.
Attorney for the Petitioner

DAVID SPENCER, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. SPENCER: Your Honor, this case is
2 Chazmonte Brown v. South Carolina. We've actually
3 got a motion to dismiss on this matter, and then
4 we'll be prepared to go forward. But as I
5 understand, opposing counsel has advised me that
6 Mr. Brown might have a motion of his own. This is
7 2011-CP-21-1171. This application was filed May 5th
8 of 2011. And I'll let Mr. Brooks make his motion
9 first, which I'll probably be opposing.

10 THE COURT: All right, Mr. Brooks.

11 MR. BROOKS: May it please the Court,
12 Judge. Mr. Brown and his family informs me -- his
13 family called me Wednesday afternoon and said that
14 ~~they were hiring Tricia Blanchett, a lawyer in~~
15 Columbia, to be retained this PCR. I confirmed that
16 with Mr. Brown this morning. That is the plan and
17 that as a result he has instructed me to ask the
18 Court for a continuance.

19 THE COURT: All right. Mr. Spencer.

20 MR. SPENCER: Your Honor, this case was
21 filed in May of 2011 so it's been a while. One
22 thing that I think we will definitely need to take
23 care of is my recollection is he's asking for a time
24 cut which you can't get in PCR. And Your Honor, if
25 that's the case, I mean, there really isn't much

1 point in doing much else because you can't get that
2 kind of relief anyway. But I would oppose the
3 motion for a continuance, Your Honor.

4 THE COURT: Mr. Brooks, have you heard
5 from the lawyer that she is being hired?

6 MR. BROOKS: I can't say to the Court that
7 I've taken a call or email or any correspondence
8 from Ms. Blanchett. I do know her.

9 THE COURT: Right.

10 MR. BROOKS: The only thing I got is
11 Mr. Brown's family member called. They didn't talk
12 with me. They talked to one of the ladies in my
13 office and she said, hey, Mr. Brown's family, I
14 think it might have been his father, I'm not sure,
15 that they were hiring Tricia Blanchette and that I
16 didn't need to handle the case on Friday. Of
17 course, you know, when I got here and talked to
18 Mr. Brown he confirmed that that's what was in the
19 works. He indicated that Ms. Blanchette wanted the
20 continuance so obviously to be on the case so that's
21 all I have, Judge.

22 THE COURT: I'm gonna deny.

23 MR. SPENCER: On the time cut, Your Honor,
24 that is the case in this case, that's the other
25 case. So he wasn't asking for time cut, he was

1 asking for new trial. But I still do object to the
2 continuance motion.

3 THE COURT: I'm gonna deny the motion. If
4 you had heard from her in any form or fashion I may
5 have continued it, but you haven't heard anything.
6 You haven't got any letters. You haven't gotten any
7 calls. It's been eight months. It's time to go
8 ahead and dispose of it.

9 MR. BROOKS: All right. You heard what he
10 said. There you go.

11 THE COURT: I'm ready when you are.

12 (Attorney Brooks confers with petitioner Brown.)

13 MR. SPENCER: Your Honor, this is -- well,
14 I've already announced case 2011-CP-21-1171, Your
15 Honor. Applicant was indicted for armed robbery and
16 possession of a weapon during a violent crime. He
17 was also charged with two counts of distribution of
18 marijuana. He was represented by Ms. Parrot. He
19 pled guilty on December 15th of 2010. He pled
20 guilty to all the charges except the gun charge I
21 believe was dropped, and he was sentenced by Judge
22 Nettles to 15 years imprisonment on the armed
23 robbery. And my return doesn't reflect it, but I
24 believe five years concurrent sentences to
25 distribution of marijuana charges. Your Honor, at

1 this time I just ask Mr. Brooks to set out his
2 allegations for the record.

3 THE COURT: All right. Mr. Brooks.

4 MR. BROOKS: Please the Court, Judge, my
5 client has put the allegations on the record in his
6 filings, and that's what we're going forward on
7 today.

8 THE COURT: Go ahead and call your first
9 witness.

10 MR. BROOKS: We would call Mr. Brown to
11 the stand.

12 **WHEREUPON,**

13 **CHAZMONTE BROWN,**

14 having been duly sworn by the Court, testified as
15 follows:

16 THE COURT: If you'll have a seat and
17 state your name for the record.

18 THE WITNESS: Chazmonte Brown.

19 **DIRECT EXAMINATION**

20 BY MR. BROOKS:

21 Q Mr. Brown, you had Ms. Parrot represent you?

22 A Yes, sir.

23 Q And you pled guilty. It's a negotiated deal of
24 15 years?

25 A Yes, sir.

FW - C. BROWN - DIRECT

1 Q Now I want to make sure you understand that if.
2 Judge Seals grants your post-conviction relief you
3 could go back and face -- I'm trying to count it --
4 30 for armed robbery, plus 5 for possession, two
5 counts of distribution of marijuana. Do you
6 remember what the judge told you what the maximum
7 amounts you could get on the marijuana?

8 A Yes, sir.

9 Q If you did the math you could go back and face
10 probably well over 50 years if --

11 A Yes, sir.

12 Q --if you get your PCR granted, you understand
13 that?

14 A Yes, sir.

15 Q Is it still your desire to go forward?

16 A Yes, sir.

17 Q Okay. Now you pled guilty with Ms. Parrot
18 representing you. Tell the Court why you pled
19 guilty and why it should be overturned.

20 A I pled guilty because when I was getting ready
21 to go to trial, when she came and notified me that
22 Sunday I supposed to went up that Monday but went up
23 there Tuesday. And they had brought a federal
24 inmate from the county to testify against me which I
25 never knew and never seen before in my life which I

PW - C. BROWN - DIRECT

1 was going to trial until he was presented that he
2 was going to testify me, said he knew something
3 about my case, but I never seen him a day before in
4 my life. Been in the county Monday, that's when I
5 seen him, and that's because we was going to prayer
6 calls and things like that.

7 Q Now is -- I have to ask this question 'cause you
8 know it's going to come up.

9 A Yes, sir.

10 Q And we talked about it.

11 A Yes, sir.

12 Q Why didn't you still go to trial even though you
13 said you didn't know this fella, he wasn't around
14 you?

15 A Because I already knew that they was going to put
16 him on the stand and he was going to fabricate, and
17 at the time I knew one of the -- one of my
18 codefendants already had caught time for the same
19 reason, and I didn't want to take those chances.

20 Q Okay, all right, I understand. What other issues
21 you had with Ms. Parrot's representation of you?

22 A I just spoke with her once. I went and I spoke
23 with her for when she came and when I did about a
24 year in the county. When I came back she brought me
25 for a bond reduction and spoke to her one or two

FW - C. BROWN - DIRECT

1 times before I came back to court.

2 Q And you got out after that bond reduction; is
3 that correct?

4 A Yes, sir.

5 Q And how long were you out before this case was
6 called?

7 A Six months, six or seven months.

8 Q Now this case started off as going to trial?

9 A Yes, sir.

10 Q Okay. And then during that that's when you ended
11 up pleading guilty; is that correct?

12 A Yes, sir.

13 Q Do you feel that your plea was forced?

14 A Yes, sir.

15 Q And is that because of the federal inmate?

16 A Yes, sir.

17 Q Is there anything else that Ms. Parrot did that
18 you want to tell the Court about?

19 A Lack of evidence wasn't presented as the victim

20 said he couldn't identify. They had nothing that

21 put me there, no case or any, the time of the

22 accident that happened, whatever. Nothing was

23 presented to me. No fingerprints, me on camera.

24 Nothing other than a felon said that I did something

25 with him.

PW - C. BROWN - CROSS

1 Q Okay. Is there anything else you want to tell
2 the judge about your PCR case?

3 A No, sir.

4 Q All right. Answer any questions the attorney
5 general has.

6 **CROSS-EXAMINATION**

7 BY MR. SPENCER:

8 Q Which person is this that you're alleging was
9 going to testify against you?

10 A I can't really -- I think his name was John
11 Bailey.

12 Q John Bailey?

13 A Yes, sir, a federal inmate. This was in Florence
14 County.

15 Q Did you tell Ms. Parrot about John Bailey?

16 A No, she didn't even tell me about him until the
17 day of trial.

18 Q And so you were worried and you were going to get
19 convicted for the armed robbery charge, right?

20 A Yes, sir.

21 Q And so you pled guilty to avoid a harsher
22 punishment, right?

23 A No, I -- can you rephrase it. You said that I
24 was ---

25 Q You pled guilty because you were worried you'd

PW - C. BROWN - CROSS

1 get over 30 years.

2 A Oh, yes, sir, for something I didn't do, and they
3 was going to have somebody fabricate on the stage,
4 on the stand, that I told them something or anything
5 like that.

6 Q And you were so worried about that that you told
7 the judge twice that you were guilty, right?

8 A I told him I was guilty. I don't know about
9 twice.

10 Q The judge asked you, are you indeed guilty and
11 you told him yes, sir. Right?

12 A Yes, sir.

13 Q Then he told you, then you told the judge that
14 you were satisfied with your attorney, right?

15 A Yes, sir.

16 Q And he asked you, do you need any additional time
17 to confer with her and you told him no, right?

18 A Yes, sir.

19 Q And when the judge asked if anyone promised you
20 anything, threatened you, pressured you, mistreated
21 you in any way shape or form in an effort to get you
22 to plead guilty here today, you said no, right?

23 A Yes, sir.

24 Q And you told the judge it was your decision to
25 plead guilty?

FW - C. BROWN - CROSS

1 A I think so, yes, sir.

2 Q And then he asked you, again, are you indeed
3 guilty, and you told him yes, sir?

4 A Yes, sir.

5 Q And when he asked you if you understood the
6 questions and whether they were truthful answers you
7 told him those answers were true, right?

8 A Sir?

9 Q When he asked you if you understood the questions
10 you said you did?

11 A Yes, sir.

12 Q And when he asked you if those were truthful
13 questions you said they were?

14 A Yes, sir.

15 MR. SPENCER: Your Honor, I have no
16 further questions.

17 THE COURT: All right. Anything further?

18 MR. BROOKS: No, sir.

19 THE COURT: You may step down.

20 If you'd call your next witness.

21 MR. BROOKS: We call Ms. Parrot to the
22 stand.

23 THE CLERK OF COURT: If you would place
24 your left hand on the Bible and raise your right
25 hand.

PW - K. PARROT - DIRECT

1 WHEREUPON,

2 **KAREN ELIZABETH PARROT,**

3 having been duly sworn by the Clerk of Court,
4 testified as follows:

5 THE CLERK OF COURT: Be seated and state
6 your name for the record.

7 THE WITNESS: My name is Karen Elizabeth
8 Parrot.

9 **DIRECT EXAMINATION**

10 BY MR. BROOKS:

11 Q Ms. Parrot, you represented Mr. Brown?

12 A I did.

13 Q And that's in the course of the Public Defender's
14 Office?

15 A Yes, Your Honor. Yes, sir.

16 Q Do you remember this witness coming in? What can
17 you tell us about this federal inmate?

18 A As I recall it was a last minute witness that
19 they were all of a sudden coming up with. The way
20 that this case was prepared for trial was that he
21 had already had one co-defendant who had been tried
22 and convicted and sentenced and that was Latisia
23 Cochran. She had received I believe 13 years. The
24 second person that was involved in this case was
25 actually Quinton Epps, and he was going to testify

PW - K. PARROT - DIRECT

1 against him. I believe he had pled but not been
2 sentenced in anticipation of testifying against his
3 co-defendants because this trial was against
4 Chazmonte as well as Montario Graham. And then
5 there was the last person that was yet to be tried
6 was a Jerry Bush, and I believe he ended up pleading
7 as well. Mr. Montario Graham was found guilty. And
8 Mr. Brown decided to plead after we had already
9 started the trial with his co-defendant for the
10 negotiated sentence of the 15 years and the others
11 to run concurrent.

12 Q So everything that Mr. Brown was talking about is
13 federal inmate is that previously accurate?

14 A That's, I mean, I believe it's something that
15 came up at the last minute but the case was prepared
16 in anticipation of the fact that he was going to
17 have at least one person that was a co-defendant
18 that was going to testify against him, and there was
19 an independent witness named Rodriguez Russell that
20 he had asked me to track down and we were able -- we
21 were trying to find out information about this
22 person 'cause he did not believe he would come and
23 testify against him but the State was telling me
24 that, yes, in fact, he was a witness to the car
25 being there and that he was going to testify.

PW - K. PARROT - DIRECT

1 Q Beg the Court's indulgence, Your Honor.

2 Ms. Parrot, when did you realize that the State had
3 this last minute witness?

4 A I don't recall. I mean, it's as of last minute
5 witnesses somebody that wasn't included in any of
6 the discovery materials that was provided to me may
7 have been, it may have been like the last of week
8 prior but I was meeting with him, with Chazmonte up
9 until trial because, in fact, his bond had been
10 revoked because he had gotten, he'd got more
11 charges. And we actually had a hearing where the
12 solicitor and the narcotics officer himself actually
13 stood up and testified about why they wanted his
14 bond revoked and the judge granted it. So he was in
15 Effingham for about 58 or so, I think, days
16 according to the transcript prior to trial.

17 Q What I was trying to figure out is, if you could
18 recall how much time between the time you found out
19 about this witness before you relayed it to him if
20 you can recall.

21 A I don't recall; but as I said, the case was
22 prepared in anticipation of other witnesses who to
23 me would have more credibility anyway because one of
24 them is a codefendant and another one is an
25 eyewitness. It's not somebody who's got a snitch

PW - K. PARROT - CROSS

1 reason to try and get a better sentence as opposed,
2 you know, as someone down at the jail.

3 MR. BROOKS: No other questions.

4 THE COURT: All right. Anything further?

5 MR. SPENCER: Briefly, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. SPENCER:

8 Q Is it fair to say there was plenty of evidence
9 which Mr. Brown could -- for which Mr. Brown could
10 get convicted on armed robbery charge?

11 A His co-defendant was. Actually, two of his
12 co-defendants were.

13 Q And whose decision was it to plead guilty?

14 A It's always the client's decision.

15 MR. SPENCER: I have no further questions.

16 THE COURT: All right. Anything further?

17 MR. BROOKS: No other questions, Judge.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Mr. Brooks.

21 MR. BROOKS: Briefly, based on the
22 testimony presented by my client we would ask the
23 Court to grant his post-conviction relief and give
24 him a new trial in this matter. We think that we've
25 put forth a case on those grounds, Judge.

1 THE COURT: All right. Mr. Spencer.

2 MR. SPENCER: Judge, we got a transcript
3 where he says twice he's guilty. He also neglected
4 to mention agreed with the facts that were presented
5 during the guilty plea hearing. Obviously there was
6 plenty of evidence that he could get convicted of
7 and he made a choice to avoid a harsher sentence;
8 and this John Bailey, whatever he might have
9 testified to, seems pretty minor versus all these
10 co-defendants that would come out and testify
11 against him.

12 THE COURT: All right. I'm gonna deny the
13 application.

14

15

16 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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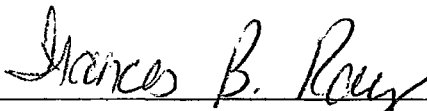
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 21st day of September, 2012.



FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Chazmonte Brown,)
)
)
 Applicant,)
)
)
 VS.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. NO. 11-CP-21-1171

ORDER OF DISMISSAL

2012 JUN 19 PM 3:47
 COURT CLERK
 FLORENCE COUNTY, SC
FILED

This matter is before this Court by way of an application for post-conviction relief (PCR) filed May 5, 2011. The State made its return and motion to dismiss on July 8, 2011. A hearing into the matter was convened at the Florence County Courthouse on February 3, 2012. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. Also testifying was Karen E. Parrott, Esquire. This Court also had before it the PCR application, the State's return, the transcript of Applicant's guilty plea proceedings, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the June

LWS

2009 term of the Florence County Grand Jury for armed robbery and possession of a weapon during a violent crime. Applicant also was charged with two counts of distribution of marijuana. Karen E. Parrott, Esquire, represented Applicant. On December 15, 2010, Applicant pled guilty to all charges except the gun charge and was sentenced by the Honorable Michael G. Nettles to fifteen years imprisonment. Applicant did not appeal his conviction or sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes alleges ineffective assistance of counsel and that his plea was involuntary. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for

counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). 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); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Applicant complains that his plea was involuntary because his co-defendant was going to testify against him and fabricate testimony. Additionally, Applicant was concerned because another co-defendant was convicted at trial and Applicant did not want to meet the same fate. The plea transcript reveals that Applicant pled guilty to an armed robbery committed with four co-defendants. Tr. pp. 5-8. Applicant agreed with the solicitor's statement of facts and admitted guilt at the guilty plea proceeding. Tr. pp. 8-9. Counsel testified that it was Applicant's decision to plead guilty. The

transcript further reveals that Applicant was extensively advised of his trial rights including the right to confront witnesses. Tr. p. 9, lines 6-19.

This Court finds Applicant has failed to meet his burden of proving either prong of Strickland. In doing so, this Court gives great weight to counsel's testimony and finds it credible. This Court does not find Applicant's testimony credible. This Court denies the application.

CONCLUSION

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

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (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), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 18 day of June, 2012.



William H. Seals, Jr.
Presiding Judge
12th Judicial Circuit

Mission, South Carolina