

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

OCTAVIA DENISE BELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001096

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 12-GS-10-2333
	)	
Octavia D. Bell,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on June 26, 2013, before The Honorable R. Markley Dennis, Jr., in Courtroom 3B of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Chad Simpson, Assistant Solicitor
9TH CIRCUIT SOLICITOR'S OFFICE
.... Appearing for State of South Carolina

Beattie Butler, Esq.
CHARLESTON COUNTY PUBLIC DEFENDER
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1 (OFF-THE-RECORD CONFERENCE IN CHAMBERS)

2 (DEFENDANT PRESENT)

3 THE COURT: This is the State of South
4 Carolina versus Octavia D. Bell. You are
5 Octavia Bell?

6 DEFENDANT: Yes, sir.

7 THE COURT: Ms. Bell, I have been
8 presented with Indictment 2012-2333 which
9 charges you with the offense of kidnaping;
10 do you understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: Mr. Butler is your lawyer
13 and he has advised you of the nature of that
14 offense and the possible punishment for that
15 offense?

16 DEFENDANT: Yes, sir.

17 THE COURT: And I've had conversations
18 with your lawyer and the State concerning
19 this case. I'm going to hear from the
20 solicitor and -- but there's another
21 indictment that has not been presented to
22 me this morning for armed robbery; do you
23 understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: And you've talked with Mr.

1 Butler about that, as well?

2 DEFENDANT: Yes, sir.

3 THE COURT: And they're going to tell
4 me some things about that. That -- we are
5 going to do this plea this morning, as I
6 understand it, -- have you been advised --
7 it's called bifurcating the plea. I am going
8 to take your plea but I am not going to
9 impose the sentence today. Do you understand
10 that?

11 DEFENDANT: Yes, sir.

12 THE COURT: And that's how you wish to
13 proceed on this matter?

14 DEFENDANT: Yes, sir.

15 THE COURT: And your lawyer has
16 explained to you that on Indictment 12-2333
17 that I could sentence you up to thirty years
18 on that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Understanding the nature of
21 the offense and the potential sentence, what
22 is your plea: guilty or not guilty?

23 DEFENDANT: Guilty.

24 THE COURT: Are you totally satisfied
25 with your lawyer?

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1 DEFENDANT: Yes.

2 THE COURT: Any complaints about the
3 way that he has handled your case?

4 DEFENDANT: No, sir.

5 THE COURT: You hesitated. And I
6 understand, having been a lawyer, that you
7 were in hopes of having some better arrange-
8 ments but those didn't come?

9 DEFENDANT: Yes, sir.

10 THE COURT: And you understand that he
11 doesn't control that?

12 DEFENDANT: Yes, sir.

13 THE COURT: That's just unfortunately
14 the circumstances. I used to tell clients
15 that I wasn't trying to be flippant or smart
16 with them but, 'I am a lawyer, I can't make
17 facts disappear.'

18 DEFENDANT: Yes, sir.

19 THE COURT: He can't change certain
20 things. You understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: As I understand from our
23 conversations, Mr. Simpson, there's no
24 recommendations as to things that might have
25 or could have happened, but -- there are no

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1 recommendations in this case?

2 SOLICITOR SIMPSON: Correct, Your
3 Honor, it is a straight-up plea.

4 THE COURT: A straight up plea?

5 SOLICITOR SIMPSON: Yes, sir.

6 THE COURT: And that is your under-
7 standing as well, Mr. Butler?

8 MR. BUTLER: Yes, sir, it is.

9 THE COURT: Have you discussed this
10 matter fully with your client, sir?

11 MR. BUTLER: Yes, sir.

12 THE COURT: Has she been advised fully
13 of her rights and consequences of her plea?

14 MR. BUTLER: She has.

15 THE COURT: And you have investigated
16 the matter fully on her behalf?

17 MR. BUTLER: I have.

18 THE COURT: In fact, this was one of
19 the cases on my trial docket this morning and
20 we are taking this plea, but you were
21 prepared to try this case if necessary?

22 MR. BUTLER: Yes, sir.

23 THE COURT: Do you concur with her
24 decision to enter the plea to kidnaping,
25 based on your investigation?

1 MR. BUTLER: I do.

2 THE COURT: Ms. Bell, is all of that
3 correct?

4 DEFENDANT: Yes, sir.

5 THE COURT: And you understood that
6 your lawyer was prepared to go forward with
7 trial today?

8 DEFENDANT: Yes, sir.

9 THE COURT: But your desire is to enter
10 this plea on this charge?

11 DEFENDANT: Yes.

12 THE COURT: You realize and understand
13 that if I accept this plea that you will not
14 have a trial?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that
17 means you will give up your right to have a
18 jury trial in this matter?

19 DEFENDANT: Yes, sir.

20 THE COURT: And that today we will
21 delay sentencing, do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: When we come back for me to
24 impose sentence, should you change your mind,
25 it will be too late. Do you understand that?

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1

DEFENDANT: Yes, sir.

2

THE COURT: Do you understand that if

3

you went to trial that the State would have

4

to prove you guilty?

5

DEFENDANT: Yes, sir.

6

THE COURT: Do you understand that you

7

do not have to prove that you are innocent?

8

DEFENDANT: Yes, sir.

9

THE COURT: Because you will not have

10

a trial, the State would not have to do that

11

here this morning. And now, because you are

12

pleading guilty, you will not have the

13

opportunity to confront the witnesses against

14

you. That means to hear them, to see them,

15

to have your lawyer challenge their

16

testimony; you understand that?

17

DEFENDANT: Yes, sir.

18

THE COURT: Is it your desire to give

19

up this constitutional confrontation as well?

20

DEFENDANT: Yes, sir.

21

THE COURT: And you realize that you

22

don't have anything to prove, or to disprove.

23

You don't have to say a word, and I would

24

tell the jury that, that you have absolutely

25

no obligation. The only party that has any

1 burden of proof is the State of South
2 Carolina; do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: In fact if they did, if
5 they considered that, that would violate the
6 oath that they'd took. I tell them that
7 also. Do you understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: That won't happen now
10 because you're entering this plea. You
11 realize that?

12 DEFENDANT: Yes, sir.

13 THE COURT: And you won't be having a
14 trial now because you are entering this plea.
15 Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Have there been any threats
18 or any promises, at all, to get you to enter
19 this plea?

20 DEFENDANT: No, sir.

21 THE COURT: Okay. Tell me the facts,
22 please, sir.

23 SOLICITOR SIMPSON: Thank you, Your
24 Honor. These facts all surround a Kangaroo
25 gas station on Sam Rittenberg.

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1 A young female, age twenty-five, named
2 Tameka Judge, was a cashier at that Kangaroo
3 gas station. Tameka Judge is the defendant's
4 cousin. She was fired by the manager, Dale
5 Brinson. There was some misuse of lottery
6 tickets and she was fired for-cause by the
7 manager.

8 This was an acrimonious firing. It
9 didn't go well. Dale asked for -- Ms.
10 Brinson asked for the keys, her keys to the
11 cash register and to the store back. Tameka
12 refused and left, said that she would only
13 give them to the district manager.

14 Accordingly, the gas station made plans,
15 had plans in place to change some of the
16 locks. Unfortunately this incident happened
17 before that.

18 It is alleged -- and I just want to
19 quickly note that we have a charge of armed
20 robbery, kidnaping and grand larceny that I
21 don't believe that we've mentioned. It is
22 the position of the State that all three of
23 those charges are somewhat intertwined. I
24 say that because, you know, I think that it
25 is sort of a qualified guilty plea to just

1 the kidnaping allegations, but I am going to
2 present the big picture.

3 THE COURT: I understand.

4 SOLICITOR SIMPSON: Shortly following
5 Tameka Judge's firing, it's alleged that
6 Tameka got with her cousin, the defendant
7 before you today, Octavia Bell, and crafted a
8 plan to get back at the gas station, to make
9 some money in the process.

10 Dale Brinson hired Tameka's replacement,
11 also present in the courtroom today, Teresa
12 Johnson. She was transferred from another
13 store and I think that this was her second
14 shift, working the morning of December 2nd,
15 2011.

16 At that time in the store, there was just
17 a window that the customers came up to.
18 Octavia first approached the store as someone
19 that they wouldn't recognize, asked for a cup
20 of coffee. Teresa opened the store door for
21 her so that she could come in, make her own
22 coffee.

23 Octavia then asked her where some items
24 were, essentially a ruse to get her to come
25 out from behind the counter. She came out

1 from behind the counter and showed her where
2 the items where, then turned to go back
3 behind the counter to get to work.

4 It is alleged at that time that Ms. Bell
5 grabbed her from behind, reached her arm
6 around with a stun gun or a taser, threatened
7 her if she didn't comply with what she wanted
8 her to do.

9 Teresa Johnson was then pulled into the
10 walk-in cooler of the Kangaroo gas station.
11 Duct tape was then applied to her head, to
12 her face, over her eyes, to her arms and
13 body. She was ordered to lay down in this
14 cooler. And as if the point wasn't already
15 made adequately, they then smashed some beer
16 bottles -- Ms. Bell is alleged to have
17 smashed beer bottles on the floor. She laid
18 there on the floor, head covered in duct
19 tape, arms covered in duct tape and covered
20 in broken glass, told to stay put.

21 We think that the evidence will show that
22 at this point that Tameka, the ex-employee,
23 Octavia's cousin, came into the Kangaroo gas
24 station. They locked the doors, they put
25 signs up that the register was down and that

1 the store was temporarily closed.

2 Because Tameka had worked there, she was
3 familiar with the surveillance equipment and
4 at this time they pulled -- either Octavia or
5 Tameka pulled all the cameras out of the
6 ceiling and out of the walls, pulled the
7 equipment out of the office and poured motor
8 oil all over it; effectively destroying any
9 surveillance tapes.

10 Tameka, who still had workable keys,
11 opened the cash register. Luckily the cash
12 register is on a ten-minute delay for just
13 this kind of occurrence. They had to sit for
14 ten minutes and wait for that register to
15 open.

16 During this time, Dale Brinson, the
17 manager, decided that she would check on her
18 new employee. She came up to the store,
19 noticed the signs, thought it was really odd.
20 She opened, with her keys, and came into the
21 store. At that time she identified Octavia
22 Bell, again with the taser, as the person who
23 came at her with the taser. The taser is a
24 commercially available stun gun, but when you
25 set it off it's a scary thing; it's got the

1 electricity that makes the noise. She
2 grabbed Dale Brinson or came at her with the
3 taser.

4 Brinson was sort of able to -- she'd
5 dropped her purse. She had a jacket that she
6 was wearing. She just basically took off,
7 scared to death, down the road, leaving her
8 car and her purse at the gas station.

9 The register opened. There was
10 approximately thirty-five hundred dollars
11 (\$3,500) stuffed in all the separate
12 identifiable manila envelopes. All the money
13 was taken.

14 They then fled the store, with the money
15 and with Dale Brinson's car -- and that's the
16 basis for the grand larceny charge.

17 THE COURT: Okay.

18 SOLICITOR SIMPSON: The police responded
19 quickly. They did a really thorough job in
20 this case. Octavia and her cousin were
21 located very nearby, in the T-Bones parking
22 lot in West Ashley, really close to this
23 Kangaroo gas station.

24 The money and all the separate envelopes
25 and what would be identified as the drop bag

1 for the bank were all found in the trunk of
2 the car. Octavia, when they came up and
3 arrested her was in the front passenger seat.
4 In the door pocket right next to her was
5 Teresa Johnson's phone. Teresa would testify
6 that, 'they took my phone when they had me on
7 the floor.' The taser was right behind Ms.
8 Bell, in the backseat. The duct tape was
9 underneath the seat that Ms. Bell was sitting
10 in. Both of the witnesses would identify Ms.
11 Bell as the person who came in, duct taped
12 her, put her on the floor and tasered Dale
13 Brinson.

14 She gave a statement. It wasn't what
15 I'd call a full confession, it was somewhat
16 qualified. But it gave basically three
17 versions, and her final version was -- and I
18 believe that this is the version today and
19 why she is accepting the kidnaping plea. She
20 said that she was the first one in the store,
21 that she was the person that had Teresa come
22 around the counter but that at that point a
23 man, dressed up as a woman, who Teresa never
24 saw, came behind her and did all the acts
25 constituting the armed robbery and the

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1 kidnapping. But she admits to being there.
2 She actually said that she held open the
3 cooler door for the -- for this mystery
4 person to do these acts. The testimony from
5 the witnesses involved never heard or saw a
6 second person.

7 THE COURT: I understand.

8 SOLICITOR SIMPSON: Both of the
9 victims are here in the courtroom today and
10 do wish to address the court. I've explained
11 to them that that is really more appropriate
12 for ---

13 THE COURT: I will -- I know that they
14 will want to come back on the sentencing date
15 but I -- I will defer that to sentencing.
16 All I want to do at this point is decide
17 whether I can accept this plea. Then at the
18 time that I impose the sentence, I'd love to
19 hear from them.

20 SOLICITOR SIMPSON: And I explained
21 that to them. They are comfortable with
22 that. They are going to be back on the
23 sentencing date.

24 THE COURT: I'm sorry to inconvenience
25 you but I think it's more appropriate that I

1 would hear you at that time, because then I
2 am going to hear fully from Mr. Butler and
3 Ms. Bell on that issue, as well. This is
4 dealing with the technical part to get to
5 that point.

6 SOLICITOR SIMPSON: Sure. And,
7 finally, Your Honor, just to preserve sort of
8 the unusual procedural posture that we are in
9 right now, in no way is this plea to
10 kidnaping conditioned upon dismissal of the
11 armed robbery or grand larceny. We are going
12 to wait to sentencing to determine what to do
13 with those charges. We will properly address
14 that.

15 THE COURT: I understand. Ms. Bell, is
16 the factual recitation, based on what your
17 lawyer has shared with you, his investiga-
18 tion. You do agree -- I am not asking you if
19 you agree with the accuracy of that, but do
20 you agree that there are people that will
21 testify to those things?

22 DEFENDANT: Yes, sir.

23 THE COURT: Somebody is going to take
24 the stand and say all of that?

25 DEFENDANT: Yes, sir.

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1 THE COURT: I know that your -- what I
2 understand from your statement -- and your
3 lawyer has explained to you that the hand of
4 one is the hand of all?

5 DEFENDANT: Yes, sir.

6 THE COURT: That you assisted in
7 basically restraining Ms. Judge and assisted
8 in getting her into the cooler; knowing full
9 well that she was being restrained, ---

10 DEFENDANT: Yes, sir.

11 THE COURT: --- illegally and improper?

12 DEFENDANT: Yes, sir.

13 THE COURT: Your lawyer has explained
14 that kidnaping is the moment that you
15 restrict somebody's movement?

16 DEFENDANT: Yes, sir.

17 THE COURT: That is technically kid-
18 naping. Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Your lawyer has explained
21 that?

22 DEFENDANT: Yes, sir.

23 THE COURT: No question that you
24 participated in her being placed in the
25 cooler?

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1 DEFENDANT: (Pause).

2 THE COURT: Be careful what you answer.
3 I'm considering everything that you are
4 saying. You have to convince me that you
5 want to plead guilty. If that's not the
6 case, we can go to trial. You've said right
7 now that you were not involved in the armed
8 robbery, so they've got to prove that. Did
9 you assist in having her detained and placed
10 in the cooler?

11 DEFENDANT: Yes, sir.

12 THE COURT: No question about that?

13 DEFENDANT: Yes (sic), sir.

14 THE COURT: Have you truthfully
15 responded to all of my questions?

16 DEFENDANT: Yes, sir.

17 THE COURT: Mr. Butler, it's your
18 desire that we -- that you've talked with her
19 about bifurcating this, taking the plea. Do
20 you believe that she fully understands what
21 she is doing here today?

22 MR. BUTLER: She does.

23 THE COURT: And you've indicated that
24 you believe that she's made this decision
25 freely, voluntarily, knowingly and

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1 intelligently?

2 MR. BUTLER: In the way that we under-
3 stand those words, yes.

4 THE COURT: Okay. All right.

5 MR. BUTLER: She doesn't want to do any
6 of this.

7 THE COURT: Oh, I understand that this
8 isn't what she wants to do.

9 MR. BUTLER: Right. The way that we use
10 those words, yes.

11 THE COURT: But knowingly -- you know
12 what you're doing here today?

13 DEFENDANT: Yes, sir.

14 THE COURT: You know that when you come
15 back -- and I'm retaining this for sentencing
16 purposes. I am returning, I think July 29th
17 is the term of court that I have for General
18 Sessions. I would like to sentence you
19 during that time. Now, please understand
20 something, ma'am. This plea, I've accepted
21 it. I'm going to impose a sentence when it
22 is called again. If you aren't here, that's
23 your choice -- I just won't hear from you.
24 I'd hear from your lawyer and anybody else
25 that he wants me to hear from, but a sentence

1 would be imposed.

2 DEFENDANT: Yes, sir.

3 THE COURT: And you understand also
4 that the State has not ruled -- has not at
5 this point dismissed anything. And as I
6 understand from our conversations, while the
7 bond might be off this particular charge,
8 you're still on bond on the armed robbery
9 charge. Do you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: And the grand larceny
12 charge. Do you understand that? Those
13 charges are still alive. Do you understand
14 that, ma'am?

15 DEFENDANT: Yes.

16 THE COURT: Do you? You looked puzzled
17 that I am telling you that.

18 DEFENDANT: I understand. Yes, sir.

19 THE COURT: Nothing has happened with
20 those charges right now. The State may
21 consider something, but that's up to them.
22 I have taken a plea on one, kidnaping.

23 DEFENDANT: Yes, sir.

24 THE COURT: That is the sentence (sic)
25 that I am going to sentence you on. I can

1 impose up to thirty (30) years. Do you
2 understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: So you understand that
5 everything that you've done since this
6 occurred and everything that will happen from
7 now until July when you come back, it's going
8 to be significant to me. Okay?

9 DEFENDANT: Yes, sir.

10 THE COURT: And it's your desire that I
11 -- and this is partly -- and we are
12 postponing this partly because of what you
13 want. Is that correct?

14 DEFENDANT: Yes, sir.

15 THE COURT: You want a chance to get
16 some things in order?

17 DEFENDANT: Yes, sir.

18 THE COURT: I am allowing you to do
19 that by deferring this. Do you understand?

20 DEFENDANT: Yes, sir.

21 THE COURT: So I expect to see you when
22 the State calls this case again. Okay?

23 DEFENDANT: Yes, sir.

24 THE COURT: All right. Thank you,
25 Solicitor. Thank you, Mr. Butler. I've

1 signed it and we will just hold this in
2 abeyance. I apologize again for the victims
3 having to return. Thank you.

4 (HEARING CONCLUDED)
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Charleston, South Carolina
March 8, 2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 12-GS-10-2333
	)	
Octavia D. Bell,	)	
	)	
Defendant.	)	

TRANSCRIPT OF SENTENCING HEARING

The within Hearing in the above-captioned matter was held on July 30, 2013, before The Honorable R. Markley Dennis, Jr., in Courtroom 4D of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Chad Simpson, Assistant Solicitor
 9TH CIRCUIT SOLICITOR'S OFFICE
 Appearing for State of South Carolina

Beattie Butler, Esq.
 CHARLESTON COUNTY PUBLIC DEFENDER
 ...Appearing for Defendant

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SOUTH CAROLINA JUDICIAL BRANCH

FORWARD

JUL 31 2013 10:01 AM

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Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: This is the State of South
2 Carolina versus Octavia Bell?

3 SOLICITOR CHAD SIMPSON: Yes, sir.

4 THE COURT: As I recall, this is where they
5 went into the store and -- yeah, I remember.
6 They went in the store, worked together and
7 arranged for it to be ---

8 SOLICITOR CHAD SIMPSON: Correct, Your
9 Honor.

10 THE COURT: There was a sign on the door or
11 something to that effect.

12 SOLICITOR CHAD SIMPSON: Our major point,
13 Your Honor, is that the employee who is present
14 today, Teresa Johnson, was -- by this defendant --
15 threatened with a taser, was taken into a walk-in
16 cooler, duct taped about her body and a bottle was
17 broken and -- may I approach, Your Honor?

18 THE COURT: Sure.

19 SOLICITOR CHAD SIMPSON: I have shared this
20 with Defense Counsel.

21 THE COURT: Okay.

22 SOLICITOR CHAD SIMPSON: (Tendering), this
23 was taken in the cooler. The police found it
24 afterwards. One of the victims, Teresa Johnson,
25 had spent a pretty good amount of time in that

1 cooler, on the ground, with duct tape around her
2 body and her head.

3 It was stated at some point during the
4 robbery, we believe when they were waiting for the
5 timed safe to open, the manager, Ms. Brinson, who
6 is also present today and wishes to address you,
7 Your Honor. She came to check on her employee.
8 She came to unlock the door and she stated at that
9 time -- what the State alleges is that Ms. Bell
10 charged her with the taser and actually set off
11 the taser at her. She fled, leaving her car;
12 which was taken, and that's the basis of the grand
13 larceny.

14 So the basic position that we are in
15 today, and it's somewhat procedurally interesting,
16 as we were preparing a few weeks ago to go to
17 trial, Ms. Bell entered a plea to kidnapping.

18 THE COURT: Right.

19 SOLICITOR CHAD SIMPSON: As we put on
20 the record, that plea was not conditioned on the
21 dismissal of the armed robbery or grand larceny
22 charge. We were nevertheless ready to accept that
23 as, shall we say, a qualified acceptance of guilt.

24 To get to the point, Your Honor, what we
25 are asking you to do today -- Tameka Judge, to

1 whom we extended the -- Ms. Bell's cousin, who I
2 guess was the "brains" of this operation, the
3 inside part of the inside job, accepted the plea
4 to armed robbery with a ten-year sentence.

5 We are asking in your discretion for a
6 higher sentence for Ms. Bell. That request --
7 though I am not putting an amount on that. We
8 are leaving that up to you.

9 I will tell you that request is based on
10 a two-fold -- one, on the fact that while Ms.
11 Judge may have been the inside part of the job
12 but that it was the actions of Ms. Bell that
13 made this an armed robbery and a kidnaping.

14 THE COURT: Okay.

15 SOLICITOR CHAD SIMPSON: As opposed to
16 just a strong arm situation.

17 That fact that Ms. Bell is here today
18 pleading guilty, she deserves credit for that,
19 obviously. But as I stated, under the
20 circumstances we believe this to be a somewhat
21 qualified admission of guilt and an admission of
22 guilt which came on the eve of trial. Weigh
23 that how you will, Your Honor. The State is
24 asking for some degree more than Ms. Judge in
25 that it was Ms. Bell's actions that made this an

1 armed robbery and Ms. Bell's actions that made
2 this a kidnapping.

3 It could have been pursuant to a plan
4 together, certainly we wouldn't allege that.

5 But we are asking, in recognition of those two
6 points, something larger than Ms. Judge
7 received.

8 THE COURT: They were both charged with
9 the same crime, Solicitor?

10 SOLICITOR CHAD SIMPSON: Correct. You
11 do want to ---

12 THE COURT: The hand of one is the hand
13 of all, so it really makes no consequence. They
14 were both involved.

15 SOLICITOR CHAD SIMPSON: That's
16 correct.

17 THE COURT: While she had a gun,
18 without this person being involved it probably
19 doesn't happen at all.

20 SOLICITOR CHAD SIMPSON: Correct.

21 THE COURT: So she's the main player;
22 as I'm looking at it, the insider is the main
23 player, not the ---

24 SOLICITOR CHAD SIMPSON: Ms. Judge was
25 certainly the insider.

1 THE COURT: Well, we -- I mean, she's
2 one of the big culprits, too. But I understand
3 what you're saying. I get it. Any difference
4 in the prior record?

5 SOLICITOR CHAD SIMPSON: There is a
6 difference in the prior records. Ms. Judge had
7 none.

8 THE COURT: Okay.

9 SOLICITOR CHAD SIMPSON: Forgive me,
10 Your Honor, you've got a busy morning and ---

11 THE COURT: That's all right. Go
12 ahead, take your time. No problem. Solicitor,
13 that is certainly a factor. The other parts --
14 while I've taken into account before, and have
15 been affirmed and reversed on this issue, uh,
16 *Bradham* makes it pretty clear what you do and do
17 not do. So -- (pause).

18 SOLICITOR CHAD SIMPSON: Thank you,
19 Your Honor. I apologize. Ms. Bell has an '04
20 conviction for threats and intimidation; an '07
21 conviction for breach of trust and financial
22 transaction card theft; and an April 2000
23 conviction for driving under suspension and
24 false info. That is not a horrific prior record
25 but Ms. Judge had none.

1 THE COURT: Well, the threats were --
2 the threats are -- when was that, in '04?

3 SOLICITOR CHAD SIMPSON: Yes, sir, in
4 2004, '07 and '08.

5 THE COURT: All right. Thank you. I
6 will be glad to hear from the victims at this
7 point. Give me your full name. Good morning.

8 DALE BRINSON: Good morning, Your
9 Honor. My name is Dale Brinson. I am the
10 manager of the Kangaroo.

11 THE COURT: Yes, Ms. Brinson.

12 DALE BRINSON: You'll have to excuse
13 me. I've never been in this position before in
14 my life.

15 THE COURT: I understand.

16 DALE BRINSON: I hope to God that I
17 never will be put back in this position in my
18 life. That morning when I came to work to check
19 on my employee, who had just started -- she'd
20 worked for the company but she had just started
21 in that store two days prior; which I should
22 have been there, which is what the plan was.

23 Tameka and Ms. Bell had all intentions of
24 coming to that store that day to hurt me for me
25 doing my job for firing her for stealing lottery

1 and playing lottery while on the clock. That is
2 something that you just don't do, steal, play
3 lottery. The intention was to hurt me but when
4 they found out that they had the wrong one, that
5 it wasn't even me that they'd put in the cooler
6 -- because she didn't know me, to recognize that
7 that was not me behind the counter that morning.
8 She doesn't work for Kangaroo, doesn't have
9 anything to do with the Kangaroo company. They
10 went to another plan and they -- they were
11 surprised when I showed up. Even though the
12 Solicitor said that she was not the inside
13 person, she was the one at the door who tried to
14 pull me in and tase me, three different times,
15 to get me in the store, to keep me from getting
16 away from them, from them getting caught. So I
17 feel that she had no less intentions than what
18 Tameka had. They came there to hurt me that day
19 because of what I had to do for my job and I
20 feel like she should be held to the highest
21 level of responsibilities for her actions in
22 that store that day. She knew -- she was told
23 what Tameka was going to do. She didn't try to
24 prevent it by telling somebody and telling them
25 'hey, she's about to do something.' She joined

1 in ---

2 THE COURT: I understand.

3 DALE BRINSON: --- with the inten-
4 tions of hurting me and to do whatever else that
5 they did that day.

6 THE COURT: I am not suggesting that
7 she is not as guilty. I did not say that.

8 DALE BRINSON: I know that, sir. I
9 didn't say that. I just wanted you to know how
10 strongly I feel that she was not an innocent
11 person in this, because she was the second hand.

12 THE COURT: She has already admitted
13 her guilt, so she certainly is not an innocent
14 person.

15 DALE BRINSON: Yes, sir. I just want
16 to thank the police officers, Chad and Sergeant
17 Bailey for all that -- all the work that they
18 did in this case, that morning in catching them.

19 I also want to say that this has been a
20 lot of trauma in my life since this has
21 happened. I'm going to doctors and everything
22 else because of this. I don't even walk out of
23 the door there safe, or in the door safe any-
24 more.

25 THE COURT: I understand.

1 DALE BRINSON: I just hope that while
2 she is in jail that she sits there and thinks
3 about how much trouble she's caused someone
4 else, someone that she didn't even know. That
5 they'll never, by the grace of God that day and
6 never any other day, be able to try and harm
7 somebody ever again.

8 Also, I have one more statement to make,
9 Your Honor. That day that they were paroled,
10 going up for the reasonings of their case and
11 their family was there and said that they had
12 family to go -- that they wanted them home at
13 Christmastime and everything. Well, we also had
14 family that wanted us to come home from just a
15 day of work

16 THE COURT: I understand. Yes, ma'am.

17 DALE BRINSON: And if they had got
18 their way that day, I don't think that would
19 have happened.

20 And I would just like to thank you for
21 your time and everything that y'all have done
22 for us in this case.

23 THE COURT: Thank you, ma'am.
24 Appreciate it.

25 TERESA COLEMAN: Teresa Coleman, I was

1 Teresa Johnson. On the day that this incident
2 took place, there was -- it was life changing
3 for me, to say the least.

4 THE COURT: I am sure.

5 TERESA COLEMAN: I, too, have had to
6 go to therapy. I'm still on anxiety pills. I
7 still get a twinge going in work. I am pretty
8 sure -- no one can really tell you but I'm
9 pretty sure that we are all led in the
10 directions that we need to go. I don't feel
11 sorry for Octavia but I do feel sorry for her
12 family. I do believe that she deserves
13 punishment -- and I know that we all do things
14 that we don't get punished for. I do believe
15 that she knew that day when she did the things
16 that she was doing that they were wrong.
17 Whether or not she was targeting me or if she
18 wasn't, she knew -- we've all have our -- we all
19 have a conscience to know right from wrong and,
20 on that, I think that she should be held
21 accountable on all actions -- the taser, the
22 duct tape and all that, they knew what they were
23 doing.

24 THE COURT: Thank you. Anything else,
25 Solicitor?

1 SOLICITOR CHAD SIMPSON: The State has
2 nothing further, Your Honor.

3 THE COURT: Very well. Mr. Butler?

4 BEATTIE BUTLER: Thank you, Judge. Ms. Bell
5 is twenty-eight years old. She has a GED, is
6 the mother of four children. She has been out
7 two years now. In those two years, she's
8 obtained a really good job, working the front
9 desk at the Comfort Inn. She's attended Trident
10 Tech and doing well.

11 As Mr. Simpson told you, we were on the
12 verge of trial when we came to this -- what I
13 will call a pragmatic resolution.

14 For her benefit, I have to remind Your
15 Honor that she denies using a taser and denied
16 planning a robbery. What she's told me all
17 along is that her cousin, Tameka, who worked at
18 the Kangaroo was up upset that she was getting
19 fired and recruited Octavia to go over and scare
20 the woman that had -- had either threatened to
21 fire her or had fired her that morning. I can't
22 remember what stage that was.

23 But she told police and she's told me and
24 what she admitted in front of Your Honor was
25 that she assisted in some way in getting the

1 employee in the cooler. What I explained to her
2 in preparation of the trial is that that fact,
3 in and or itself, 'makes you guilty. That fact,
4 in and of itself, exposes you to zero-to-thirty
5 and you'll -- that armed robbery is ten-to-
6 thirty and your codefendant got ten. So for all
7 practical purposes your statement to the police
8 puts us at ten to thirty.' So that's how we got
9 here.

10 Ten years was a good enough offer at one
11 point. I think that it is still fair. She was
12 not the person working on the inside.

13 As far as the threats and intimidation,
14 I'd never heard of that before. I've done
15 sixteen years and I've never heard of that. I
16 asked her and she said that happened when she
17 was in high school. I noticed that the
18 disposition as -- that it happened at school.
19 Fifteen days suspended upon enrollment in the
20 Alternatives Program. I doubt that was anything
21 very serious.

22 She has many family members here. I've
23 let them know that you're in the middle of a
24 trial and have asked that only two of them
25 speak.

1 THE COURT: Sure.

2 BEATTIE BUTLER: If you'd hear from her
3 mother, Ms. Francine Bell. I told her that she
4 is going to prison and that the -- Judge Dennis
5 definitely wants to hear from you. I know that
6 some of you want to -- I've told you and Ms.
7 Bell, and I'll tell you again, that she's going
8 to prison. The judge definitely wants to hear
9 what you have to say.

10 FRANCINE BELL: Good morning.

11 THE COURT: Good morning.

12 FRANCINE BELL: I am Octavia Bell's
13 mother. Well, the incident that happened -- I
14 raised her the way that she was supposed to be
15 raised. I didn't cause -- this mix-up right
16 here, I didn't raise her like that.

17 THE COURT: Oh, I'm sure.

18 FRANCINE BELL: I am just asking you,
19 for the sake of grandkids, to please have a
20 little mercy on Octavia. This is my first --
21 I'm going -- (emotional). I am just asking for
22 you to please have mercy on Octavia. Octavia
23 have -- I know what she done was wrong. I know
24 that was wrong. And if I could turn the hands
25 of time back, it wouldn't have happened.

1 THE COURT: I understand.

2 FRANCINE BELL: But for my grandchildren
3 -- Octavia is a good girl. She is a good girl.
4 She will work, she will do -- you know, she is
5 doing what she is supposed to do and everything
6 right now. At some point -- at that time it was
7 a little hard for her because there was a little
8 situation that she got into. Being hard-headed
9 and following the leader, this is where she ends
10 up at. So I am just asking for the sake of the
11 kids if you would please have mercy on Octavia.
12 She is gonna have -- I raised her, I did the
13 best that I could. I don't know what else to
14 say. I'm just asking for you to please, please,
15 sir, please -- oh, God, please help me, Jesus.
16 Just help her, Your Honor. She has four kids
17 that she was trying to raise. She was trying to
18 do what she was supposed to do, what's right.
19 At that time it was peer pressure. It was. It
20 was peer pressure, I can tell you. So if I go
21 back to that day, I would, and she wouldn't do
22 anything wrong. But I can't -- it's already
23 happened. It's been an eye-opener for
24 everybody. It had to stop. It had to stop. So
25 I'm just asking you to be lenient on my

1 grandkids' mama. They have lost -- would you
2 please have mercy on her. She ---

3 THE COURT: Ma'am, I understand.

4 BEATTIE BUTLER: If you could hear from
5 her sister. Her sister wants to address the
6 court. Ms. Jaqual Copeland.

7 THE COURT: Please give us your name
8 for the record.

9 JAQUAL COPELAND: I just want to say
10 that I know what Octavia did was wrong. I do
11 understand that she will be going to prison, but
12 I want you to please understand that she is not
13 a bad person. She's helped me so much. So much
14 in life. I just wish that I could exchange
15 places with her right now.

16 THE COURT: No, you don't.

17 JAQUAL COPELAND: Please, Your Honor,
18 please, for the children, -- my son turns
19 fifteen years old today. I don't know how I
20 am going to tell him this on his birthday. I
21 understand that what has to happen has to
22 happen, is going to happen. I just ask for
23 mercy, just for the children. She helps out
24 everyone so much. She's a good parent. I
25 just ask for mercy, just for the sake of the

1 children; not even for me, just for the sake of
2 the children so that they can have their
3 Octavia, their mom. Thank you.

4 THE COURT: Thank you, ma'am.

5 BEATTIE BUTLER: And, Judge, Ms. Bell
6 would like to address the court.

7 DEFENDANT: First of all, I want to
8 apologize to Ms. Brinson and Ms. Teresa for what
9 y'all went through. I want to apologize.

10 I also want to apologize to the court.
11 I know that what I did was wrong. But as far as
12 the -- the two years that I was out, I went, I
13 started taking classes, I got a job, I went and
14 got my GED. I went to Trident Tech and started
15 taking classes. I went to IOP (sic) because I
16 needed someone to talk to, I went and got help.
17 I started getting help from the medical, I
18 started getting help from people and I'm on the
19 right track now. I know that I am guilty. I
20 joined the stop violent crimes -- like with
21 kids. I joined the -- I've joined a lot in the
22 two years that I have been out. It's been hard
23 because everybody's looking at my record, my
24 pending charges. So far as me trying to move
25 forward into what I really want to do in life,

1 it's hard because of these charges. It's like
2 everyone is, 'oh, her past', 'her past.'

3 I got four kids: a seven-year-old, a
4 four-year-old, a five-year-old and a five months
5 old. They all -- I'm all that they have. I am
6 a single mother. Their father have -- their
7 father is incarcerated right now on a murder
8 charge. They don't have anybody. If I go, they
9 really are not going to have anybody.

10 Like I said, I'm really -- I joined the
11 church, my church family be behind me. I was
12 supposed to be here yesterday. I came yesterday
13 and they didn't have my name on anything. So
14 now today I'm here. I'm not even prepared --
15 I'm prepared but I don't have everybody, like my
16 church family, because they -- they've got my
17 back, they stand behind me, but they couldn't be
18 here today because we had to rush right here. I
19 didn't know anything about this whole day.

20 And the two years that I was out, I was
21 getting myself together. I wasn't just laying
22 around and 'oh, just...' -- I was working on
23 classes. I've got a lot going on with myself.
24 I wanted to go to school for criminal justice.
25 I started studying that. I probably can't do

1 that, go to school, pursue that because of my
2 charges, but I started, you know, studying
3 criminal justice and studying. Classes are to
4 go back -- I go back on August the 17th. It's
5 like I started a whole lot to get myself
6 together.

7 And I do apologize to the victims and
8 to my family also, and my kids also, for even
9 taking them through this and being here.

10 THE COURT: Thank you, ma'am. Anything
11 else?

12 BEATTIE BUTLER: No, sir.

13 THE COURT: I appreciate what everybody
14 said. The victims, I apologize for the trauma.
15 Of course what I do today, and I tell people
16 this all the time, and I'm not trying to be
17 flippant with you but that's what the civil side
18 deals with, those continuing problems. We don't
19 deal with that on the criminal side, it doesn't
20 have anything to do with the sentence that I
21 will impose.

22 If I thought for a second that giving her
23 thirty years would immediately alleviate all
24 your physical and mental problems, I would do it
25 in a second. But it wouldn't. I am well aware

1 of that.

2 I understand that you've changed and have
3 done some things. It is a shame that you didn't
4 do that before. Therein lies the problem. At
5 least from what I have heard, on the day that
6 this happened, you had three children that were
7 depending upon you -- desperately. But you
8 chose to do something that was totally
9 inconsistent with being a mother, that was
10 totally inconsistent with being what you were
11 taught by your mother, totally inconsistent with
12 what your church family believes is best for
13 you. I don't know whether you had that church
14 family then or not. If you didn't, then it's a
15 shame that you didn't but those options were
16 there.

17 Everything that you've told me just now,
18 and we could ask everybody in this room and get
19 the same answer, we are doing what we are
20 supposed to do. We are leading lives that we
21 are supposed to lead. Are we supposed to get
22 credit for that? No. That's what you're
23 supposed to do. You don't get accolades for
24 doing what you should do.

25 I understand that you did that. The

1 problem is -- and I'm convinced that you are
2 sincere with your apology.

3 DEFENDANT: Yes, sir.

4 THE COURT: The problem that I see
5 today, and I don't know what it is. I really
6 don't. I asked a young man about four years
7 ago, he was nineteen I think, or was eighteen
8 when he shot a man in the chest with a nine
9 millimeter gun. He turned to him -- fortunately
10 he didn't kill him, but he turned to him during
11 the plea and said, "I'm sorry." I asked him, I
12 said, "Sorry"? I said, "What did you think was
13 going to happen when you pulled a pistol and
14 shot him in the chest?" You know what he told
15 me? "Nothing."

16 People need to think about what they do
17 before they do it, not afterwards. Everybody in
18 this room has that. We all are faced with the
19 decision every single day of our lives, and you
20 know this, to do the right thing or the wrong
21 thing. They're abundant, every day. You have
22 to make those choices. The tough choice is to
23 say "No." There is peer pressure, I understand.
24 I've raised three children and now have the
25 fortune, great fortune of having five

1 grandchildren. So, you know, it's a -- it's a
2 tremendous obligation. But they -- understand,
3 too, that we lead by example. What you chose to
4 do, you weren't leading by example; were you?
5 And the problem that we have is that the
6 sentencing -- it's multifaceted. Your lawyer
7 went to class, I went to class, for the theory
8 of criminal law. They talk about the theory
9 behind sentencing and everything that in a
10 perfect world, all the various factors that are
11 fashioned into a sentence. But the one thing
12 that I see over and over again, and I saw it
13 when I was a lawyer too, and my clients didn't
14 want to think about that either. Retribution,
15 one; correcting, two; setting an example for the
16 public, making a statement so that somebody else
17 -- that it may deter others from doing that.
18 But there is one part that nobody wants to talk
19 about, the punishment. It's punishment for what
20 you did. Quite frankly, to be honest with you,
21 given what happened, you're fortunate that the
22 codefendant had a minimum sentence, really.

23 That was -- let me just tell you
24 something. Armed robbery is bad. It's bad.
25 Because you don't know -- when a person is

1 robbed, probably one of the worse crimes in the
2 world is going through what has just been
3 expressed. 'Am I going to live or am I going to
4 die?' But I -- I remember vividly, I can see it
5 right now -- Mr. Butler, I don't think that you
6 were there in '96, Columbia, but there was a
7 trial in Columbia about the Broad River
8 uprising. Oddly enough, much like you, this
9 lady worked in the cafeteria, it was her first
10 day on the job. She was held captive by the
11 group that took over the cafeteria. They put
12 her in a room similar to yours, not a cooler but
13 a storage room where they kept bags of rice.
14 She remembers them coming in and cutting the
15 bags. I remember her testimony here today, she
16 said "I was thinking that was going to be me.
17 They were going to come in and they were going
18 to stick me next. How long will I live before I
19 pass out? How long will I breathe? What's it
20 going to feel like? What will my family ---' --
21 all those thoughts that pass through your head.
22 I bet you didn't think about those things when
23 you were doing what you did. Did you? Because
24 you were taught not to do that, I'm sure.
25 Weren't you? Saying "I'm sorry" is very nice

1 but that is just the first step.

2 All right. The sentence of the court,
3 and I will take into consideration, I have to,
4 and I would normally, -- I can't -- I agree
5 with you that the record is not tremendously
6 significant, but there's a distinction in my
7 mind when somebody has been involved with the
8 law, on the criminal side, and I can't ignore
9 that for sentencing purpose and be true to --
10 so I understand.

11 I am going to fashion a sentence that --
12 I don't know, Solicitor, whether this is what
13 you're looking for but this is the sentence that
14 I am going to impose. The sentence of the court
15 is that you be committed to the Department of
16 Corrections for a term of eleven (11) years.
17 Does she have any time served, Mr. Butler?

18 BEATTIE BUTLER: Two weeks and four
19 days.

20 THE COURT: So that's eighteen days.

21 BEATTIE BUTLER: (Sidebar with
22 defendant), yes, sir, two weeks and four days.

23 THE COURT: All right. So that's
24 eighteen days. I will give you credit for
25 eighteen days jail time. Good luck, ma'am.

1 BEATTIE BUTLER: Thank you, Judge.

2 THE COURT: And I am not going to keep
3 these reports, so I will give those back to you
4 (Mr. Simpson).

5 SOLICITOR CHAD SIMPSON: Thank you,
6 Your Honor.

7 (HEARING CONCLUDED)

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State of South Carolina v Octavia D. Bell
Case No. 12-GS-10-2333
Hearing of July 30, 2013
Before The Honorable R. Markley Dennis, Jr.

1

2

3

STATE OF SOUTH CAROLINA)

4

) CERTIFICATE

5

COUNTY OF CHARLESTON)

6

7

I, the undersigned Deborah Garrison, Circuit Court

8

Reporter for the 9th Judicial Circuit, hereby

9

certify that the foregoing is a complete and

10

accurate transcript of the hearing held in the

11

within action heard on July 30, 2013, before The

12

Honorable R. Markley Dennis, Jr.;

13

I further certify that I am neither kin nor

14

counsel to any of the parties and have no interest

15

in the outcome of this action.

16

17

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21

Deborah Garrison

22

23

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Charleston, South Carolina

26

December 5, 2013

27

28

FORM 5

STATE OF SOUTH CAROLINA

2013-CP-10-5802
IN THE COURT OF COMMON PLEAS

County of _____

Omaria Denise Bell 356384

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

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2013 OCT - 1 PM 2:19
JULIE J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - 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 Leath Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions Charleston County
3. Name(s) of co-defendant(s) (if any) Tamika Judge
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) M995140

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 30, 2013
- (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?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Charleston County Clerk of Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. They wrote back saying a copy of my request
- ii. was forwarded to the Solicitors Office.
- iii. _____
- (c) the date of each such result:
- i. August 27, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

(11) State Concisely and in the same order the fact which support each of the grounds set out in (10):

(a) On numerous occasions I tried to contact Mr. Butler about my case I had no success, he did showed up in court to manipulate a guilty plea. I only spoke with him when it was time to go in court. Also on the day of my sentencing I had no knowledge on what time or when court was. I got a call at 9:45am asking where was I after I called numerous of time to see what day I go to court I even went to the courts to see when court was. In August 2013 two people from the solicitors office came to see me they told me they contacted Mr Butler so he could set up an appointment to speak with me and he call to do so.

(b) I wanted to plea nolo contendere he told me no I could not so I wanted to take it to trial he had me to believe if I take it to trial the judge was gonna give me 22 to 25 years. He also said if I took it to trial

the judge was gonna be mad because I waste there time and taxpayers money. He misled me in to thinking that this kidnapping charge couldn't be drop down to a lesser charge. The two people that came from the solicitor's office even told me that it could.

(C) I wasn't able to present anything in my own defense. He already had in mind what I was guilty of. Arm Robbery, Kidnapping and Grandlarceny. I told him I was there to assault the lady, he told me that was still kidnapping. The witness kept saying I was there to hurt her and that I had no knowledge of anything else. I was also misled by my co-defendant she had me thinking she was going to work only to do paperwork and I was to go in and scare her co-worker. She even had on her work clothes. Mr. Butler only came to me with one plea offer for 10 years. I believe I could've gotten better plea offering.

Other than the one for 10 years for Arm Robbery and kidnapping. I also believe if he was really working to help me he could have gotten more than one plea offer.

- (b) _____
 (c) _____

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

- (a) Ineffective assistance of counsel
 (b) I was misled, I was not adequately assisted
 (c) I wasn't able to present evidence in my own defense

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

- (a) We had no contact until it was time for court
 (b) He told me after trial I was gonna have 22 to 25 years
 (c) My voice wasn't heard at all.

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)? _____
 (d) any other petitions, motions or applications in this or any other Court? yes

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

- (a) the specific nature thereof:
 i. A motion to reconsider Sentencing
 ii. A motion to reconsider my charge
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Charleston County Clerk of Court
 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?

none

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

(a) which grounds have been presented:

i. N/A

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) NONE
- (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? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Blatle Butler 100 Broad Street
Charleston SC 29401 843-958-7580
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. the Sentencing and Plea.
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:
I believe I should be exonerated of the offense of kidnapping and get a lesser charge due to the fact I was misled, confused and scared. I also believe that I should be able to have a sentence reduction because my voice wasn't heard and the witness even knew why I was there.

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

Sentence reduction or new trial, and or a
lesser charge. I should be exonerated of the
offense of kidnapping.

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 Charleston)

VERIFICATION

I, Octavia Denise Bell, 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.

Octavia Bell

SWORN to and subscribed before me this 25th
 day of September, 2013.

Shonda K. Hill (L.S.):
 Notary Public

My Commission Expires: Jan. 8, 2015

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

I, Octavia Denise Bell, 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.

Octavia D. Bell
Applicant:

SWORN or affirmed to and subscribed before me this
25th day of September, 2013.

Dandee R. Hill
Notary Public

My Commission Expires: Jan. 9, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2013-CP-10-5806

Octavia Denise Bell, #356384,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post-conviction relief (PCR) filed October 1, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2012 term of the Charleston County Grand Jury for kidnapping (2012-GS-10-2333). The Applicant was represented by Beattie Butler, Esquire.

On June 26, 2013, the Applicant pled guilty as indicted. On July 30, 2013, the Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of eleven (11) years. The Applicant did not appeal her conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.

- a. Was misled and was not adequately assisted.
- b. Was not able to present evidence in my own defense.
- c. Had no contact until it was time for court.
- d. Trial counsel told me if I went to trial I was going to get 22-25 years.
- e. Misled to think kidnapping charge could not be dropped.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its

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

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

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

OCTAVIA DENISE BELL, #356384

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-10-5806

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney D. Davis, Esquire
 4000 Faber Place Drive
 Suite 300
 Charleston, SC 29405

DATED this 10th day of February, 2014

Anne R. Henley
 Anne Henley, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2013-CP-10-5806
 3 OCTAVIA DENISE BELL,)
 4 Plaintiff,) Transcript of Record
 5 vs.)
 6 THE STATE OF SOUTH) Date: December 14, 2015
 7 CAROLINA,)
 8 Defendant.

9 * * * * *

10

11 B E F O R E:

12 THE HONORABLE DEADRA JEFFERSON

13

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16

17 * * * * *

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19

20 Denise J. Lauder, RPR

21 Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4 - RODNEY DAVIS, ESQUIRE

5 Lowcountry Law Office

6 4000 Faber Place Drive, Suite 300

7 Charleston, SC 29405

8

9 REPRESENTING THE DEFENDANT:

10 J. RUTLEDGE JOHNSON, ESQUIRE

11 Rembert Dennis Building

12 1000 Assembly Street, Room 519

13 Columbia, SC 29201

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1 (The following proceedings were held
2 December 14, 2015, Charleston County Circuit Court,
3 at 12:05 P.M.)

4 THE COURT: Octavia Bell.

5 MR. DAVIS: Your Honor, one final thing
6 if I may, this was one that wasn't sure. If I may
7 step to the hallway, I have Ms. Linder under
8 Subpoena. Ms. Bell does want to go forward, if I
9 can just let Ms. Linder know. We can call other
10 witnesses first, if I can do that right now.

11 THE COURT: That's fine.

12 MR. DAVIS: Thank you, Your Honor.

13 THE COURT: This is Octavia Denise Bell
14 versus the State of South Carolina,
15 2013-CP-10-5806. This is before the court on an
16 Application for Post-Conviction Relief which was
17 filed on October 1, 2013. The State's return was
18 filed on February 14, 2014.

19 This matter has been continued, looks
20 like, on a couple of occasions. This is now before
21 the court for disposition of an evidentiary
22 hearing. It was continued on September 4th and
23 August 29th. State is represented by Mr. Johnson
24 and the Applicant is represented by Rodney Davis.

25 Ma'am, raise your right hand to be

1 sworn.

2 OCTAVIA DENISE BELL,

3 being first duly sworn, testified as follows:

4 THE APPLICANT: Yes, ma'am.

5 EXAMINATION.

6 BY THE COURT:

7 Q. State your full name for the record.

8 A. Octavia Denise Bell.

9 Q. Ms. Bell, you understand that the only
10 relief this court can order in an application for
11 post-conviction relief is a new trial?

12 A. Yes, ma'am.

13 Q. Do you understand that you would then
14 be subject to the full penalty for the kidnapping
15 charge on Indictment 2012-GS-10-2333?

16 A. Yes, ma'am.

17 Q. Do you understand that that carries a
18 maximum penalty of 30 years?

19 A. Yes, ma'am.

20 Q. And you understand that the Court
21 originally sentenced you to 11 years?

22 A. Yes, ma'am.

23 Q. And you understand that is a most
24 serious and violent -- do you understand that would
25 have to serve -- that you have the potential if

1 retried and convicted of receiving a 30-year
2 sentence?

3 A. Yes, ma'am.

4 Q. You understand you would have to serve
5 that sentence day for day?

6 A. Yes.

7 Q. And knowing that, do you still wish to
8 pursue this application for post-conviction relief?

9 A. Yes, ma'am.

10 Q. Are you doing this freely and
11 voluntarily and of your own will?

12 A. Yes.

13 Q. Are you suffering from any mental
14 disabilities or under the influence of any drugs or
15 alcohol?

16 A. No, ma'am.

17 Q. Okey-doke. You may be seated.

18 MR. DAVIS: Just couple of things in
19 addition to that. There was a related armed
20 robbery and grand larceny that was dismissed upon
21 the plea.

22 THE COURT: That sort of changes
23 things.

24 BY THE COURT:

25 Q. Ma'am, do you understand that in

1 getting a new trial, the State could then reinstate
2 those charges and seek life without the possibility
3 of parole?

4 A. Yes, ma'am.

5 Q. Are they separate incidents?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Does she already have any
8 strikes?

9 MR. DAVIS: I believe the kidnapping
10 was the first, Your Honor.

11 THE COURT: Does she have a record?

12 MR. JOHNSON: Yes, ma'am. She has a
13 2000 DUS and false information to the police; 2004,
14 threaten, intimidation; 2007, breach of trust and
15 financial transaction card theft.

16 THE COURT: So none of those are
17 strikes?

18 MR. JOHNSON: No, Your Honor.

19 THE COURT: What were the other
20 charges?

21 MR. JOHNSON: False information to
22 police --

23 THE COURT: No. No. No. That would
24 come back.

25 MR. JOHNSON: Oh, armed robbery and

1 simple possession of a weapon during the commission
2 of a violent crime.

3 THE COURT: And that carries five
4 years, and the armed robbery is 10 to 30.

5 MR. JOHNSON: Yes, Your Honor.

6 THE COURT: And then she -- kidnapping
7 is 30.

8 BY THE COURT:

9 Q. Ma'am, do you understand that you run
10 the risk of receiving, if convicted, a sentence of
11 up to 65 years?

12 A. Yes, ma'am.

13 Q. You understand that you would have to
14 serve that day for day?

15 A. Yes, ma'am.

16 MR. DAVIS: Your Honor, it would be
17 85 percent.

18 THE COURT: Yeah.

19 MR. DAVIS: I will say it this way.
20 They're qualified as no parole sentence so --

21 THE COURT: She would have to max out,
22 and that's pretty much day for day. And if he ran
23 them consecutively, that means -- whoever tried
24 her, if she were convicted they would run
25 consecutively, her pre-detention time would only

1 start from when each of those warrants were served.

2 So, potentially, the way that math
3 could work out -- I don't try to figure it out.
4 The regulatory body have the ability and the full
5 authority to do that and I don't want her having
6 any misapprehension about what's going to be served
7 and what wouldn't if she goes back to square one.

8 I need her to understand that she
9 wouldn't get any pre-detention time on what she's
10 already served. So when those charges came back,
11 she would only get the time she served
12 pre-detention in jail. She wouldn't get any of the
13 pre-detention time that she spent at the Department
14 of Corrections.

15 MR. JOHNSON: That's the State's
16 argument.

17 MR. DAVIS: May I have a moment?

18 THE COURT: That would be the
19 Department of Corrections' position.

20 MR. JOHNSON: Yeah.

21 MR. DAVIS: If I may have a moment.

22 (Brief pause.)

23 BY THE COURT:

24 Q. Ma'am, you understand that at the
25 current rate you have to serve 9.35 years and if

1 you go back again, as I've indicated, to square
2 one, you have the possibility of serving 65 years.
3 Do you understand that?

4 A. Yes, ma'am.

5 Q. Do you understand now you would not get
6 any pre-detention credit for those other charges?

7 A. Yes.

8 Q. And do you also understand that this
9 court -- in your post-conviction relief
10 application, you've asked for a lesser sentence.
11 Do you understand the Court could not do that?

12 A. Yes, ma'am.

13 Q. And the only thing that the Court would
14 be able to do is grant you a new trial?

15 A. Yes, ma'am.

16 Q. And knowing all that, do you still wish
17 to proceed with the application?

18 A. Yes, ma'am.

19 THE COURT: Okay. Let's proceed.

20 Call your first witness.

21 MR. DAVIS: We would call Stephanie
22 Linder to the stand.

23 THE COURT: If you would come to the
24 stand and be sworn.

25 STEPHANIE LINDER,

1 being first duly sworn, testified as follows:

2 THE CLERK: Please state your first and
3 last name and spell your last name.

4 THE WITNESS: Stephanie Linder,
5 L-I-N-D-E-R.

6 THE COURT: And just for the record,
7 the applicant was convicted of kidnapping to
8 2012-GS-10-2333, was represented by Beatty Butler
9 at the time. She pled guilty on July 30th of 2013.
10 No -- yes. She pled guilty June 26, 2013, and was
11 sentenced on July 30, 2013, to a period of
12 11 years. She did not appeal that conviction or
13 sentence.

14 Okay. You may proceed.

15 MR. DAVIS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. Ms. Linder, where are you currently
19 employed?

20 A. The Solicitor's Office.

21 Q. How long have you been employed in that
22 capacity?

23 A. Since 2005.

24 Q. And you've had very minor contact with
25 my client Ms. Octavia Bell, correct?

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STEPHANIE LINDER - DIRECT EXAM BY MR. DAVIS

1 A. Yes.

2 Q. Years ago?

3 A. Yes.

4 Q. I believe in 2013?

5 A. Yes. I believe toward the end of 2013.

6 Q. She was potentially a witness in a high
7 profile murder case in which you prosecuted; is
8 that correct?

9 A. Yes. Her name was in the police report
10 of a murder, State versus Tyrell Collins, in the
11 death of Solomon Chisolm. Her name was in the
12 report. We prepared the case for trial, it was
13 called to trial in September of 2013. Ms. Bell --
14 I had not communicated with her at that point, I
15 was not intending to call her.

16 There was a mistrial during the opening
17 statements of the defense. It was in front of
18 Judge Nicholson, and then the case was rescheduled
19 and heard in January of '14. And I did meet with
20 Ms. Bell in preparation of the retrial; however,
21 decided against calling her because she was
22 dishonest with law enforcement in the initial
23 police reports.

24 Q. She gave -- she gave a statement to law
25 enforcement soon after the homicide?

1 A. Yes.

2 Q. And when -- to fill in some blanks
3 there on what you just gave, there was a visit --
4 you went to Graham Correctional in Columbia to
5 visit Ms. --

6 A. I don't remember the name. It's the
7 women's one off of Broadriver Road in Columbia,
8 yes, sir. Myself and my investigator, Kenny
9 Barfield.

10 Q. And that would have been between the
11 mistrial and retrial?

12 A. Yes.

13 Q. And at that meeting you're saying that
14 she gave a different story than what she told law
15 enforcement?

16 A. Yes. The police reports indicate that
17 when she met with law enforcement and then had an
18 audio- and video-recorded interview with law
19 enforcement shortly after the murder, which was
20 October of '12 or '11, she indicated that she saw
21 the shooting and she saw the shooter.

22 When I finally met with her, she
23 indicated she did not see the shooting. She was
24 going to a family barbecue a street or two away on
25 the east side, and it was only after she heard the

1 shooting and heard of it from her family she walked
2 up to Mall Park and then told officers the story as
3 if she witnessed the shooting where she admitted
4 she did not.

5 Q. And so subsequently at the retrial she
6 was not called as a State's witness?

7 A. Correct.

8 Q. This was -- she was at Graham because
9 of her conviction?

10 A. Yes.

11 Q. Okay. And you had no part in
12 prosecuting her case?

13 A. No. Chad Simpson was the Solicitor on
14 her case.

15 Q. Do you recall when you went to Graham?

16 A. Yes.

17 MR. DAVIS: May I approach, Your Honor?

18 THE COURT: Uh-huh.

19 (APPLICANT EXH. 1, Copy of visitor's
20 log, was marked for identification.)

21 THE COURT: It's being marked for ID
22 only at this point.

23 MR. DAVIS: Yes, Your Honor.

24 May I approach?

25 THE COURT: You may.

1 BY MR. DAVIS:

2 Q. Let me show you what's been marked as
3 Applicant's Exhibit Number 1. And just take a
4 look --

5 THE COURT: For ID only.

6 Q. (BY MR. DAVIS) -- for ID only, and see
7 if that refreshes your memory as to when you
8 visited Ms. Bell.

9 A. Yes. I apologize. This says it's 8 --
10 I can't tell the handwriting -- 28 or 25 of '13.
11 So I misspoke then. I know I didn't call her, but
12 I saw her then in August of '13.

13 Q. You've been aware of Ms. Bell since you
14 received initial police reports of the homicide,
15 correct?

16 A. Yes.

17 Q. You were aware that at the time that
18 your murder case was pending she had criminal
19 charges pending, correct?

20 A. Yes.

21 Q. You were aware that she was represented
22 by Mr. Beatty Butler of the Public Defender's
23 Office?

24 A. Yes.

25 Q. You attempted to contact Ms. Bell

1 through Mr. Butler?

2 A. Yes.

3 Q. You e-mailed him on at least two
4 occasions, correct?

5 A. Yes.

6 Q. At one point the indication was no
7 problem with her, but you wanted to be present?

8 A. Correct.

9 Q. But no meeting ever happened prior to
10 her conviction?

11 A. Correct.

12 Q. Another attempt you received no
13 response from Mr. Butler in trying to meet with
14 her?

15 A. Yes.

16 Q. Prior to you going to Graham
17 Correctional, she contacted your investigator or
18 your office by letter; do you recall?

19 A. I believe so.

20 Q. At some point prior to you going to
21 Graham to meet with Ms. Bell, you were contacted by
22 the defendant in your case's attorney, Mr. King,
23 about Ms. Bell?

24 MR. JOHNSON: Your Honor, at this time,
25 I'm going to object. First of all, I don't think

1 it's in the application; and second of all, I don't
2 find it relevant as to whether or not Mr. Butler
3 properly represented her, considering that she pled
4 in June of 2013 and the Solicitor didn't meet with
5 her until August of 2013.

6 THE COURT: Repeat the question again.

7 MR. DAVIS: It was convoluted.

8 THE COURT: It was and I didn't follow
9 you, I'm sorry.

10 MR. DAVIS: The defendant in your case,
11 did his attorney prior you to meeting with Ms. Bell
12 contact you about Ms. Bell?

13 THE COURT: Tell me how that's
14 relevant.

15 MR. DAVIS: It ties into our whole
16 theme of -- one of the themes of ineffective
17 assistance of counsel.

18 THE COURT: You're going to have to
19 establish what Mr. Butler would have known about
20 the substance of that conversation and what he
21 disclosed or -- what you allege he did or did not
22 disclose during that.

23 MR. DAVIS: When we call him, we will
24 get into that.

25 THE COURT: And it's also -- you can

1 answer the question yes or no, but you can't say
2 what anybody said to you.

3 THE WITNESS: I know that Mr. King
4 contacted me. I know that Mr. King contacted me
5 about another eyewitness that Mary Ford was
6 representing. I do not recall off the top of my
7 head if Mr. King ever contacted me about Ms. Bell.

8 BY MR. DAVIS:

9 Q. You kept notes in this case?

10 A. Yes.

11 Q. Okay. If you would -- would a note of
12 your own writing refresh your memory?

13 A. Yes, absolutely.

14 MR. DAVIS: May I approach, Your Honor?

15 (APPLICANT EXH. 2, Handwritten notes,
16 was marked for identification.)

17 BY MR. DAVIS:

18 Q. I show you what has been marked as
19 Applicant's Exhibit 2 for ID only, and see if you
20 recognize that document.

21 A. Yes. These are my handwritten -- my
22 handwriting so these are notes -- it appears from
23 my notes -- you know, I'm not trying to be anything
24 less than forthright with the Court, but this is
25 years ago. It appears from my notes that I did

1 have a phone conference with Mr. King, who was the
2 defendant in my case Tyrell Collins' attorney, and
3 Lee Ginn, who is his investigator.

4 Q. That was on the 25th of April of --

5 A. '13.

6 Q. -- is that correct?

7 A. Yes.

8 MR. DAVIS: If I could have a moment,
9 Your Honor.

10 THE COURT: Yes.

11 BY MR. DAVIS:

12 Q. Ms. Linder, do you recall whether the
13 request to Mr. Butler to speak with Ms. Bell
14 occurred before or after that note?

15 A. I do not recall. I'm guessing it was
16 probably before.

17 Q. Was that done by e-mail; do you recall?

18 A. I know that I requested at least one
19 time via e-mail to Mr. Butler my interest in
20 speaking with his client.

21 MR. DAVIS: Your Honor, may I approach
22 again?

23 (APPLICANT EXH. 3, Copy of e-mail, was
24 marked for identification.)

25 (APPLICANT EXH. 4, Copy of e-mail, was

1 marked for identification.)

2 BY MR. DAVIS:

3 Q. Ms. Linder, I show you what was marked
4 for ID only as Applicant's 3 and 4. And let me
5 know if you recognize those documents.

6 A. They appear to be printout copies of
7 some of my e-mails. My name is on the top memo
8 head indicating I was the one that printed it.

9 Q. And is 3 an e-mail to Mr. Butler from
10 August of 2012?

11 A. Yes. Applicant's 3 for ID purposes I
12 sent Wednesday, August 1st of 2012, at 9:14 a.m.

13 Q. And the gist of it was to attempt to
14 speak to Ms. Bell, correct?

15 A. Yes.

16 Q. And then Exhibit 4, is that
17 December 31st of 2012?

18 A. Yes. Applicant's Number 4 I sent to
19 Mr. Butler Monday, December 31, at 9:03 a.m.

20 Q. And, again, that was an attempt to
21 speak to Ms. Bell, correct?

22 A. Yes. Oftentimes shortly after --
23 Mr. Chisolm's murder was October of '11. So
24 shortly after an incident occurs, I try to get my
25 hand on or locate possible witnesses, and then you

1 know, with murders, in many cases with the backup
2 with SLED, a lot of times the actual conversations
3 don't happen until a later time.

4 Q. And the only reason you would have had
5 to want to speak to Ms. Bell concerned the Solomon
6 Chisolm homicide which Tyrell Collins was the
7 defendant, correct?

8 A. Correct, that was the only reason I
9 wanted to speak to Ms. Bell, because she gave
10 multiple interviews to law enforcement for that
11 case.

12 Q. And Mr. Jason King from the Public
13 Defender's Office represented Mr. Collins in your
14 homicide case, correct?

15 A. Yes.

16 MR. DAVIS: Thank you, Ms. Linder.
17 That's all the questions we have.

18 THE COURT: Any questions for the
19 witness?

20 MR. JOHNSON: Yes, ma'am.

21 THE COURT: You may proceed.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q. Ms. Linder, good to see you again.

25 A. Nice to see you.

1 Q. Couple of quick questions. Were not
2 involved in the prosecution of Ms. Bell, correct?

3 A. No, not at all.

4 Q. Okay. Do you know anything about that
5 case?

6 A. Just that Chad Simpson was the
7 prosecutor. I don't know anything else.

8 Q. Did you ever promise her anything in
9 your case to entice her to plead guilty in her
10 case?

11 A. No. In fact, I never spoke to her
12 until after she was incarcerated and pled guilty to
13 her charges with Mr. Simpson.

14 MR. JOHNSON: No further questions,
15 Your Honor.

16 THE COURT: Any redirect?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: Any objection to the
19 witness being excused?

20 MR. DAVIS: Not by the Applicant.

21 MR. JOHNSON: None from the State.

22 THE COURT: Ms. Linder, you're excused.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: You're welcome.

25 You may proceed.

BEATTY BUTLER - DIRECT EXAM BY MR. DAVIS

1 MR. DAVIS: Thank you, Your Honor. We
2 would call Mr. Butler to the stand.

3 BEATTY BUTLER,
4 being first duly sworn, testified as follows:

5 THE CLERK: State your first and last
6 name for the record and spell out your last.

7 THE WITNESS: Beatty Butler,
8 B-U-T-L-E-R.

9 THE COURT: You may proceed.

10 MR. DAVIS: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. Mr. Butler, from 2011 to 2013, where
15 were you employed?

16 A. Public Defender's Office, Charleston.

17 Q. During that time, did you represent
18 Octavia Bell on the charges that we're here on PCR
19 today?

20 A. I did.

21 Q. There was a co-defendant in that case,
22 Ms. Tameka Judge; do you recall that?

23 A. I didn't recall her name. I remember
24 there was a co-defendant and that name sounds
25 familiar.

1 Q. When you represented Ms. Bell, was it
2 your advice to her that she should plead guilty on
3 her case -- accept a deal on her case or go to
4 trial?

5 A. My recollection and I'm going strictly
6 by memory is that there was no deal. The
7 complication for her case was that she had an
8 arguable defense to one charge or set of charges,
9 the armed robbery, but based upon what she told
10 police and what she was telling me, she had no
11 defense to the kidnapping. So that was the dilemma
12 that we were struggling with.

13 Q. Do you recall that the co-defendant
14 entered a plea prior to Ms. Bell?

15 A. I don't know, but I don't have any
16 reason to dispute it.

17 Q. Do you recall that this -- that Ms.
18 Bell's plea occurred on the eve of trial?

19 A. Yeah. That is what I recall. I
20 couldn't get Chad Simpson to dismiss the armed
21 robbery, even though it was a stun gun. That was
22 the issue; the weapon involved was a stun gun and I
23 thought there was an argument to be made that a
24 stun gun wasn't a deadly weapon and that it was at
25 most strong arm.

1 But Chad had researched the law in
2 other jurisdictions and said that he would rather
3 it go to the jury. So I -- I think they called the
4 case for trial. I think they called it and I said,
5 okay. And I even told Chad what I was going to do.
6 When they call it for trial, I'm going to advise
7 that she plead to the kidnapping and then if she
8 gets sufficient time on the kidnapping, my hope
9 would be that they would eventually dismiss the
10 armed robbery in the other charge, which is what
11 happened.

12 Q. You're aware that Ms. Bell was of
13 interest as a potential witness to the homicide of
14 Solomon Chisolm?

15 A. I knew her name came up in the
16 discovery. She and I discussed it at length and
17 she was not interested in testifying.

18 Q. Jason King represented Mr. Collins, the
19 defendant in the Solomon Chisolm murder, correct?

20 A. Yes.

21 Q. You were in the same office at the
22 time?

23 A. Yes.

24 Q. Do you recall there being some violence
25 against witnesses involved in that murder trial?

1 A. I do.

2 Q. Do you recall being contacted by Ms.
3 Linder in an attempt to talk to your client, Ms.
4 Bell?

5 A. I don't. I heard her testimony and I
6 see the e-mails, but I haven't looked at them. I'm
7 not in a position to dispute that, but I don't
8 independently recall that.

9 Q. At no time during your representation
10 of Ms. Bell did you provide her to the State or the
11 State access to her?

12 A. No. My only conversations with her --
13 with Ms. Bell were such that she wouldn't have been
14 of any assistance to them. If anything, I was
15 trying to encourage her in light of the
16 predicament, that if she did know something and
17 would cooperate that perhaps she should improve her
18 situation by doing so and she was adamant that she
19 could not and would not.

20 Q. Do you have any independent
21 corroboration of those conversations?

22 A. No.

23 Q. Ms. Bell had always maintained to you
24 that she did not have prior knowledge of what her
25 co-defendant was going to do in the sense of

1 robbery?

2 A. That's correct. They were going over
3 there to beat the girl up is my recollection.

4 Q. And as to that extent she had
5 maintained throughout your representation that she
6 didn't want to plead to charges the fact that she
7 didn't do it; is that fair?

8 A. That's -- I would say that's fair.

9 Q. So there was some intense conversations
10 on the eve of trial and they called the case for
11 the plea?

12 A. I don't recall how close the
13 conversations were to the plea or what would have
14 been the trial date. I remember that she was on
15 bond and was in my office and we had a lengthy
16 discussion in my office. I also seem to recall and
17 I can't swear to it that there was a time when she
18 was supposed to come to court and that she did not,
19 but I'm not positive about that.

20 What I recall, it was a lengthy
21 discussion in my office about her potential
22 cooperation and her struggling with the kidnapping
23 charge, which if you're a lawyer and you do
24 criminal law and you understand that most lay
25 people don't understand what kidnapping means.

1 They think it means that you took somebody's child
2 and left a ransom note.

3 So I had to explain to her that on the
4 facts that she was telling me in my office, just as
5 she had told the police, by escorting the woman and
6 putting her in the cooler she was guilty of
7 kidnapping.

8 Q. It was your advice that she plead to
9 the kidnapping in hopes of having the other charges
10 dismissed, and that's what happened?

11 A. Right. I was hoping to accomplish what
12 Chad would not do for me. He wouldn't dismiss
13 them. So I said, okay, I know what I will do. I'm
14 going to, when they call the case, have her plead
15 to some and not the others.

16 And I essentially said, okay, if you
17 want to go to trial now, then do it suspecting that
18 the judge would give her -- as long as he gave her
19 ten or more, there was really no reason to go
20 forward on the armed robbery, and that's what
21 happened.

22 Q. And you conveyed that opinion to Ms.
23 Bell?

24 A. I did.

25 Q. Did you in discussions with her about

1 suggesting that she plead guilty, did you suggest
2 to her that the judge would give her 25 years at
3 the end of the trial had she gone to trial?

4 A. I don't recall saying that, and I would
5 be -- my normal practice would be to not say that.
6 I might have said a judge very well may, but I
7 wouldn't predict with any degree of certainty what
8 a judge would do.

9 Q. Let's go back just a second to
10 information she would have had about the Solomon
11 Chisolm case. In your lengthy discussions with her
12 about that, do you recall recording her -- the
13 information on your phone as you discussed things?

14 A. No I, do not.

15 Q. Do you recall reviewing with her
16 photographs of the Solomon Chisolm crime scene?

17 A. No, I do not.

18 Q. Do you recall at some point suggesting
19 that she speak with Mr. Danny Prinner, a local
20 attorney?

21 A. I don't.

22 Q. In 2012, and up through the summer of
23 2013, at that time were you the deputy public
24 defender of Charleston County?

25 A. I was never the deputy public defender.

1 Q. What was your title?

2 A. Chief litigator.

3 Q. In that capacity, is it fair to say
4 that the cases you handled were usually serious or
5 most serious offences?

6 A. Yes.

7 Q. And a significant portion of those
8 ended up being trials by nature of the charge?

9 A. Probably more so than other lawyers,
10 yes.

11 Q. Were you, in fact, during that time,
12 again, we're talking -- let's limit it to 2013,
13 beginning of '13 up through the conviction in this
14 case. Were you at that time involved with a double
15 homicide case that you were preparing for?

16 A. Give me the dates again, I'm sorry.

17 Q. From the beginning of 2013, up through
18 -- Ms. Bell was sentenced in July. So up through
19 the middle of the year?

20 A. Through the middle of what year?

21 Q. 2013?

22 A. I've only tried one double homicide and
23 I tried it three times. So it probably was within
24 those dates. I can't give you the exact dates and
25 the trial would have been Ricky Williams.

1 MR. DAVIS: Your Honor, if I could have
2 a moment.

3 BY MR. DAVIS:

4 Q. Mr. Butler, when you were at the Public
5 Defender's Office, how would you notate visits with
6 clients or telephone conversation with clients?

7 A. I would write them in the inside of the
8 jacket of the file.

9 Q. Do you recall how many times you met
10 with her prior to her conviction?

11 A. I don't.

12 Q. If you saw the notes, would it refresh
13 your memory?

14 A. Of course it would.

15 (APPLICANT EXH. 5, Case log sheet, was
16 marked for identification.)

17 BY MR. DAVIS:

18 Q. I show you what's been marked as
19 Applicant's Exhibit Number 5, and see if you can
20 identify that document.

21 A. It's -- this appears to be the case log
22 sheet for Octavia Bell, and I see several notations
23 in my handwriting and my initials.

24 Q. How many of those notations are actual
25 meetings with her?

1 A. Two.

2 Q. And are there any of those notes that
3 involve telephone conversations with her?

4 A. No.

5 MR. DAVIS: Thank you, Mr. Butler. No
6 other questions.

7 Thank you, Your Honor.

8 THE COURT: Any questions for the
9 witness.

10 MR. JOHNSON: Just a couple. May it
11 please the Court.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q. Mr. Butler, you had testified earlier
16 that you had to explain the kidnapping charge based
17 on the information Ms. Bell related to; you is that
18 correct?

19 A. Right. The thing that made it
20 difficult was even on the version that she was
21 telling me in my office, she was guilty of
22 kidnapping.

23 Q. But then you had an argument about the
24 stun gun being a non deadly weapon versus a deadly
25 weapon and --

1 A. We didn't have an argument about that.
2 I probably would say that it's not a deadly weapon.

3 Q. That would be the argument at trial?

4 A. Yes. I wanted Chad to drop the armed
5 robbery and he wouldn't.

6 Q. And you relayed that to Ms. Bell?

7 A. Yes.

8 Q. Did you ever threaten or promise her
9 anything to plead guilty?

10 A. No.

11 Q. Whose decision was it to plead guilty?

12 A. Hers.

13 MR. JOHNSON: No further questions,
14 Your Honor.

15 MR. DAVIS: Just briefly.

16 REDIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. I don't think I made this clear, but
19 you testified that in talking at length about the
20 Solomon Chisolm murder, that Ms. Bell could not or
21 would not testify; is that your testimony?

22 A. My recollection is -- when I say could
23 not and would not, she didn't want to cooperate,
24 but she didn't know anything either is my
25 recollection of what she was saying. So it wasn't

1 as if she said, yeah, I know something, but I don't
2 want to get involved. It was, I'm not going to get
3 involved and I don't know anything any way.

4 Q. In general, in your experience
5 cooperation on a murder case could equal a benefit
6 on the deal -- a plea deal?

7 A. Yes.

8 Q. Especially a high profile murder case?

9 A. Yes.

10 MR. DAVIS: Thank you. Nothing else.

11 MR. JOHNSON: Nothing from the State.

12 THE COURT: Any objection to the
13 witness being excused? From the State?

14 MR. JOHNSON: No, Your Honor.

15 THE COURT: From the Applicant?

16 MR. DAVIS: No, Your Honor.

17 THE COURT: Sir, you're excused.

18 You may proceed?

19 MR. DAVIS: I will call Ms. Bell.

20 THE COURT: You can testify from there.

21 I will remind you, you are still under oath.

22 MR. DAVIS: May I be seated?

23 THE COURT: Yes.

24 And, ma'am, state your full name for
25 the record.

OCTAVIA BELL - DIRECT EXAM BY MR. DAVIS

1 THE WITNESS: Octavia Bell.

2 THE COURT: Do you have a middle name?

3 THE APPLICANT: Octavia Denise bell.

4 THE COURT: You may proceed.

5 MR. DAVIS: Thank you very much, Your
6 Honor. May it please the court?

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q. Ms. Bell, was Mr. Butler your attorney
11 for the entirety of your case?

12 A. Yes, sir.

13 THE COURT: Ma'am, I need you to speak
14 up.

15 THE APPLICANT: Yes, sir.

16 BY MR. DAVIS:

17 Q. You were arrested in late 2011; is that
18 correct?

19 A. December 5th, 2011.

20 Q. And between that date and when you
21 finally entered your guilty, how many times do you
22 remember meeting with Mr. Butler?

23 A. I would say three times at the most.

24 Q. You pled guilty to the kidnapping
25 charge just prior to your case on all three being

1 called or trial; is that right?

2 A. Yes.

3 Q. And leading up to that conclusion, had
4 Mr. Butler talked to you about potential defenses
5 to the kidnapping charge?

6 A. Yes, sir.

7 Q. Had he talked to you about potential
8 defenses to the armed robbery charge?

9 A. Yes.

10 Q. Had he talked to you about potential
11 defenses to a weapon charge?

12 A. Can you repeat the question?

13 Q. Sure. Did he talk to you about any
14 defenses to having a deadly weapon?

15 A. No, sir.

16 Q. In your discussions with Mr. Butler,
17 were there any discussion about lower charges?

18 A. Yes, sir. I wanted the arm robbery and
19 the grand larceny to get dropped, and the
20 kidnapping I was asking him if we could get it
21 dropped to like assault and battery. And he said
22 he was going to try to get the armed robbery and
23 grand larceny dropped, but the kidnapping would
24 have to stick.

25 Q. When you entered the guilty plea to the

1 kidnapping charge, did you feel that you had enough
2 discussions with Mr. Butler to be prepared to go to
3 trial?

4 A. No, sir.

5 Q. Did he talk to you about your testimony
6 at trial?

7 A. No, sir.

8 Q. Had he mostly talked to you about a
9 plea?

10 A. Yes, sir.

11 Q. And what was in his advice on whether
12 you should plead guilty or not?

13 A. He was telling me that I should plead
14 guilty to all three charges because the hands of
15 one is the hand of all in South Carolina. So I
16 should take the plea offer for ten years and I
17 turned it down and that's it.

18 Q. Do you recall approximately when there
19 was an offer of a ten-year sentence?

20 A. I think, like, August 2012.

21 Q. Would that have been to plead to some
22 of the charges or all of the charges; do you
23 recall?

24 A. To plead to all three of the charges.

25 Q. Did Mr. Butler ever talk to you about

1 what crimes are classified as most serious
2 offences?

3 A. No, sir.

4 Q. Did he discuss with you about how
5 convictions -- current convictions could cause a
6 higher sentence at a later date?

7 MR. JOHNSON: Objection to relevance,
8 Your Honor.

9 THE COURT: Sustained. How is that
10 relevant to the free and voluntariness of her plea?

11 MR. DAVIS: The two strikes law.

12 THE COURT: How is it relevant? She
13 said that he didn't tell her everything, but not
14 about range of penalty. About -- I'm going to give
15 you some latitude, but I really don't see that it's
16 relevant. I will reverse my ruling.

17 BY MR. DAVIS:

18 Q. Did he talk to you about how a current
19 conviction could cause more severe punishment at a
20 later date?

21 A. Yes, sir.

22 Q. Did he give you his opinion on what the
23 outcome of a trial could be?

24 A. Yes.

25 Q. And what was his opinion on that?

OCTAVIA BELL - DIRECT EXAM BY MR. DAVIS

1 A. He said if I took it to trial, the
2 judge could give me 22 to 25 years at trial.

3 Q. Did you ever become aware of other
4 cases that Mr. Butler was working on at the time he
5 was representing you?

6 A. Yes, sir.

7 Q. What information do you have about
8 another case?

9 A. That he was working on that he was
10 telling me about?

11 Q. Yes, ma'am.

12 A. He had a case where Solomon Chisolm, I
13 guess it was a CDV case, and his girlfriend -- he
14 was showing me pictures of that, showing me
15 pictures, trying to get me to talk about the
16 murder. So he was showing me pictures of Solomon
17 and his girlfriend and her face, how he fight her
18 to try to get me to talk.

19 Q. So you did have communications about
20 your knowledge of Mr. Chisolm?

21 A. Yes, sir.

22 Q. Did you have discussions about your
23 knowledge of Mr. Chisolm's homicide?

24 A. Yes, sir.

25 Q. Slightly off of that issue, are you

1 aware of any situations with Mr. Butler's
2 employment that were distracting him from working
3 on your case?

4 MR. JOHNSON: Objection to relevance,
5 Your Honor.

6 THE COURT: Sustained, relevance. And
7 you have to establish foundation that she would
8 have known that of her own personal knowledge, not
9 through hearsay.

10 MR. DAVIS: I ask that she be allowed
11 to answer that.

12 THE COURT: Only if you can establish
13 the foundation that she would know that of her own
14 knowledge. She cannot say what someone else told
15 her and I would be really surprised to know that
16 she would know anything about it of her own
17 personal knowledge as to what his employment
18 situation was.

19 If you can establish the foundation she
20 can answer the question. She can't say what
21 somebody told her and what she speculate because if
22 you can establish that she had foundation for
23 knowledge at the time she can answer it and that's
24 subject to you however establishing the foundation
25 for the question.

1 BY MR. DAVIS:

2 Q. Prior to your conviction, did you --
3 did you or did you not ask Mr. Butler to arrange
4 for you to speak to the Solicitor's Office about
5 Mr. Chisolm's homicide.

6 A. Yes, sir. He told me they didn't need
7 me.

8 Q. Had you been interviewed by law
9 enforcement closer to the time of the homicide?

10 A. Yes, sir.

11 Q. Did Mr. Butler ever allow you or
12 arrange for you to speak with the Solicitor's
13 Office?

14 A. No.

15 Q. At some point did you speak with a
16 Solicitor from Charleston County Solicitor's
17 Office?

18 MR. JOHNSON: Your Honor, I do have to
19 object. Maybe I let it go too far. I don't see
20 this in the Application in any of the allegations.
21 I don't know what her having to speak with Ms.
22 Linder on a separate case has anything to do with
23 Mr. Butler's representation so far as proving that
24 her guilty plea was not voluntarily given in this
25 case.

1 THE COURT: Mr. Davis.

2 MR. DAVIS: Your Honor, we'll tie it
3 up. We're arguing ineffective assistance of
4 counsel and it's a broad umbrella. What we are
5 simply going to get at, and we only have a few more
6 questions to this point.

7 I asked Mr. Butler at the end of his
8 testimony, certainly in this arena if a witness has
9 evidence that could cooperate and corroborate on
10 with the State on a case, obviously, it's valuable.

11 THE COURT: Sometimes. In our circuit,
12 however, that's not proven to be true. Has it? If
13 we were to pull the empirical data, people get just
14 as severe sentences when they testify and they
15 divert. So there's no guarantee that you're going
16 to get a better sentence if you testify, unless you
17 work out something with the Solicitor.

18 And you know that it is our Solicitor's
19 policy that when you plead and it's bifurcated, you
20 plead in the blind, she makes no deals with you.
21 And it's routine that they come to court and say
22 that it wasn't valuable to them or you weren't
23 consistent in your testimony. I've rarely seen it
24 to be of value to any defendant that has testified
25 under the deal.

1 MR. DAVIS: I will invite you to my
2 next plea, Your Honor.

3 THE COURT: It's the truth. I mean,
4 it's the reality and I don't know if it's different
5 in any circuit. I've had more than an abundance of
6 experience with it in this circuit and unless you
7 really provide something that is inordinately
8 valuable to the extent where you can work out a
9 negotiated plea, you're going to be treated just
10 like any other defendant.

11 So it just hasn't proved to be -- if
12 that's where you're headed, empirically, I think if
13 you pull the sentences, you're going to find that
14 doesn't bear out.

15 MR. DAVIS: It was very helpful for me
16 just recently in the last few weeks, Your Honor,
17 but that's the line of question.

18 THE COURT: Yeah, but it depends on
19 what your client had to say.

20 MR. DAVIS: I understand, Your Honor.
21 And that's what we're --

22 THE COURT: But you would have to prove
23 that and you would have had to prove that through
24 the Solicitor. Ms. Linder has already testified
25 that she was wasn't going to use her.

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OCTAVIA BELL - DIRECT EXAM BY MR. DAVIS

1 MR. DAVIS: And that's the part we're
2 getting into. That's the last area of questions.

3 THE COURT: I'm going to give you some
4 latitude, but I'm going to give more weight to Ms.
5 Linder's testimony because it's her decision. And
6 she said she wasn't going to use her, she would
7 have been a liability to her in the trial.

8 MR. DAVIS: I understand, Your Honor.

9 THE COURT: Because then they could
10 have impeached her with that.

11 MR. DAVIS: I understand, Your Honor.

12 THE COURT: You may proceed.

13 MR. DAVIS: Thank you.

14 THE COURT: Uh-huh.

15 MR. DAVIS: Give me a second, I'm not
16 sure what the question was.

17 THE COURT: Do you want the court
18 reporter to repeat the question?

19 MR. DAVIS: Thank you, Your Honor.

20 Pending question read, page 117, line
21 3.

22 THE COURT: Ma'am, you may answer the
23 question.

24 THE APPLICANT: I spoke with Stephanie
25 Linder. I spoke with Stephanie Linder in 2012 --

1 2013.

2 BY MR. DAVIS:

3 Q. This was after your conviction?

4 A. Yes, sir.

5 Q. This was at Graham Correctional where
6 you began your sentence?

7 A. Yes.

8 Q. 11-year sentence?

9 A. Yes, sir.

10 Q. No parole, correct?

11 A. Yes, sir.

12 Q. Be careful with this question: In
13 speaking with Ms. Linder, were you led to believe
14 that she at that point could do anything to benefit
15 you?

16 A. Yes, sir. When she came, when she
17 started talking, she said --

18 MR. JOHNSON: Objection to hearsay,
19 Your Honor.

20 THE COURT: Sustained, hearsay.

21 BY MR. DAVIS:

22 Q. I'm not asking what she told you,
23 but --

24 THE COURT: You can only say what you
25 did as a result of your conversation.

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OCTAVIA BELL - CROSS EXAM BY MR. JOHNSON

1 BY MR. DAVIS:

2 Q. After you spoke to her, did you have
3 reason to believe that she could or could not at
4 that point assist you in any way?

5 A. I don't understand.

6 Q. In your conversations with Ms. Linder
7 on August, looks to be, 28, 2013, after you spoke
8 with her, were you led to believe that the State
9 could do anything to help you with your sentence at
10 that point or not?

11 A. Yes, sir.

12 Q. Okay. Following that meeting, were you
13 Subpoenaed for trial in the trial against
14 Mr. Collins?

15 A. No, sir.

16 MR. DAVIS: That's all.

17 THE COURT: Any questions for the
18 witness?

19 MR. JOHNSON: Yes, Your Honor. May it
20 please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q. Ms. Bell, do you remember pleading
25 before Judge Dennis in this case?

1 A. Yes, sir.

2 Q. And you received 11 years in that case?

3 A. Yes, sir.

4 Q. And you told the judge it was your
5 desire to plead guilty in this case?

6 A. Yes, sir.

7 Q. Okay. And that was a straight-up plea,
8 so there was no negotiated sentencing?

9 A. No -- no, sir.

10 Q. So you were facing 0 to 30 years?

11 A. Yes, sir.

12 Q. You didn't plead guilty to the armed
13 robbery, did you?

14 A. No, sir.

15 Q. That was dismissed after you pleaded to
16 kidnapping, correct?

17 A. I think it was dismissed.

18 Q. Those charges don't exist right now?

19 A. Yes, sir.

20 Q. Okay. And you gave up the right to a
21 trial?

22 A. Yes.

23 Q. You gave up the right to confront any
24 witnesses that the State may have against you?

25 A. Yes, sir.

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OCTAVIA BELL - CROSS EXAM BY MR. JOHNSON

1 Q. And you gave up the right to remain
2 silent?

3 A. Yes.

4 Q. Nobody threatened you or promised you
5 to get you to plead guilty?

6 A. No, sir.

7 Q. And you agreed with the facts of the
8 case as presented by the State at the guilty plea,
9 correct?

10 A. Yes, sir.

11 Q. And you agreed that you committed
12 kidnapping in the case?

13 A. Yes, sir.

14 Q. And you answered those questions
15 truthfully, correct?

16 A. Yes.

17 Q. And you said that you were satisfied
18 with counsel at the plea hearing, correct?

19 A. Yes, sir.

20 Q. And I guess what I'm hearing today, you
21 are not satisfied with Mr. Butler's representation,
22 right?

23 A. Yes, sir.

24 Q. Okay. So did you lie at the guilty
25 plea, when you said you were satisfied with

1 counsel?

2 A. No, sir.

3 Q. So you must be lying today then if you
4 said you're not satisfied with his representation?
5 You can't have it both ways --

6 MR. DAVIS: Objection.

7 THE COURT: Overruled. You may
8 complete the question.

9 BY MR. JOHNSON:

10 Q. Were you lying at the guilty plea or
11 are you lying today?

12 A. I wasn't lying at the guilty plea and
13 I'm not lying today. At the time I was just ready
14 to get it over with. He rushed me into it and I
15 thought I was doing right by pleading guilty. I
16 really didn't want to plead guilty to kidnapping.

17 Q. But you never stopped the judge during
18 the plea hearing and said, I don't understand
19 what's going on, I don't want to do this, he's
20 rushing me, I don't want to plead guilty, did you?

21 A. No, sir.

22 Q. Okay. And actually at the sentencing
23 hearing you apologized for your actions, correct?

24 A. Yes, sir.

25 Q. Stating I know what I did was wrong,

1 correct?

2 A. Yes, sir.

3 Q. You also have been convicted of giving
4 false information to police?

5 A. Yes, sir.

6 Q. And you have also been convicted of
7 breach of trust and financial card transaction
8 theft?

9 A. Yes, sir.

10 Q. This isn't the first time that you
11 lied, is it?

12 A. No, sir.

13 MR. JOHNSON: No further questions.

14 THE COURT: Any redirect of the
15 witness?

16 MR. DAVIS: No, Your Honor.

17 THE COURT: Any further witnesses from
18 the Applicant?

19 MR. DAVIS: No.

20 THE COURT: Any witnesses from the
21 State?

22 MR. JOHNSON: None.

23 THE COURT: Is there -- do we need any
24 closing argument.

25 MR. DAVIS: Judge, I think you've heard

1 the Applicant's presentation.

2 THE COURT: Any closing argument?

3 MR. JOHNSON: No, you have the record
4 before you.

5 THE COURT: After reviewing the
6 totality of the record, that includes the
7 sentencing hearing as well as the qualification of
8 the guilty plea, which took place respectively on
9 June 26th and June 30th of 2013, I find the
10 Applicant has failed to meet her burden of proof by
11 preponderance of the evidence to have established
12 ineffective assistance of counsel.

13 The law is very clear that in order for
14 her to establish those prongs, and I'm going to cut
15 sort of -- cut and paste instead of going through
16 all this because I think we all know what the
17 standard is. In essence, she would have had to
18 have established that she would not have pled
19 guilty, but for Mr. Butler's errors and was
20 insistent on going to trial.

21 What I find most dispositive is the
22 transcript which was a contemporaneous record of
23 what actually took place in this case. I do not
24 find the testimony of Ms. Bell persuasive as
25 regards her recollection in hindsight of the

1 events.

2 I do not find credible that she was
3 promised anything by the State or there was any
4 impression that she was promised anything by the
5 State. I think if anything it was helpful on her
6 part, which is not unusual. I mean, she's a human
7 being. I would be hopeful as well. Everybody
8 wants to be hopeful about their situation. They're
9 always hoping that something positive could come
10 out of assisting the State, but the empirical proof
11 in this case does not bear that out.

12 Ms. Linder testified, and I find it
13 credible, that she did not see the Applicant until
14 August of 2013 and she pled guilty on June 26th of
15 2013. So she could not have had any reasonable
16 expectation of cutting a deal or given any sort
17 consideration in this matter in light of when Ms.
18 Linder saw her. And in addition to that, at least
19 in pleading guilty.

20 Maybe in some mitigation of sentencing
21 she had some expectation or some belief or some
22 hope, but that is not what is dispositive in this
23 case. What is dispositive is the qualifications of
24 the plea, whether it was free and voluntary and
25 knowingly entered. And she could not have had any

1 expectation at the time she pled guilty, she hadn't
2 met with Ms. Linder. And she indicates that while
3 the lawyer showed her some pictures and other
4 things and she asked to speak to the Solicitor
5 again, that still doesn't carry her burden of proof
6 because there's no evidence in the record that any
7 guarantees would have ever been made to her
8 regarding this.

9 And, again, it has been my experience
10 with the Solicitor's Office, not just here but
11 across the state, they don't make any plea deals
12 with you when you're going to testify because they
13 don't want you to be impeached with that. That
14 don't want a jury to hear you have some incentive
15 to not testify honestly.

16 So it is rare, if ever -- and I've been
17 doing this a long time. I have never had a case
18 where a deal or some promise of leniency was
19 guaranteed to somebody prior to them testifying,
20 just never seen it happen. Now, is there a hopeful
21 expectation that that would happen? Yes. And of
22 course defense counsel or -- will ask about that
23 because they want to be able to impugn the
24 credibility of the witness. Even though there's
25 not a deal in place, they still want the jury to

1 believe that they have some hopeful expectation
2 that a deal will be offered to them.

3 I made a comment earlier and I need to
4 clarify it, but I stand by it, that it has been --
5 I think if you pull the records in this county, as
6 well as most counties, there really just is little
7 if any empirical proof to bear out that because you
8 testify you're going to get leniency. And I can
9 point to several very high-profile cases we've had
10 in the last three or four years where it simply has
11 not happened. And there are many reasons for that
12 and that's the purpose why I'm going to clarify
13 what I stated.

14 It is rare, if ever, that people
15 actually testify the way they say they're going to
16 testify. And what happens is the State then comes
17 in and says, we've had three or four different
18 versions of this story, while the person testified,
19 it really didn't help us and, therefore, we're not
20 offering anything. And that's generally how it
21 plays out. Or the State's anticipation of what was
22 going to be helpful and what the defense thought
23 was going to be helpful, there was never really any
24 meeting of the minds. It is rarely, if ever,
25 reduced to a proffer and it rarely, if ever,

1 amounts to anything.

2 So generally I have -- unless there is
3 some proffer in place and a deal in place, which I
4 have never seen that either -- well, I've seen
5 proffers, but not a deal as to sentence, that it
6 ever really pans out to be that. And so -- but in
7 this case it really isn't germane one way or the
8 other because she didn't meet with Ms. Linder until
9 after her plea was qualified.

10 So she could not have had any
11 reasonable expectation that she was going to get
12 any sentencing leniency. If anything, she was
13 hopeful that if she offered some assistance that
14 they may come and present some mitigation at her
15 sentencing, but Ms. Linder has testified, and I
16 find credible, that after she spoke with her, that
17 she made the strategic decision not to call her
18 because she had not been honest with the police
19 and, therefore, she did not see any benefit to
20 calling her after the initial mistrial in September
21 of 2013.

22 But, again, what I find most persuasive
23 is the record in this case regarding the
24 applicant's guilty plea. At page 2, lines 12
25 through 13, she very clearly articulated that she

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1 understood the nature of the offense and the
2 penalty she was facing. She understood that the
3 matter was being bifurcated and that there were no
4 guarantees regarding sentencing.

5 And I'm jumping ahead, but the judge
6 even discusses with her that she understands there
7 is no guarantee that these other charges are going
8 to be dismissed. He goes through that with her in
9 great detail. And that's at page 3, lines 3
10 through 14; page 6, lines 19 through 25; and
11 page 7, line 1.

12 The judge discussed with her the range
13 of penalty and she indicated she understood that at
14 page 3, lines 15 through 19, and that she was in
15 fact pleading guilty at page 3, lines 20 through
16 23. She clearly articulated that she was satisfied
17 with her attorney's services at page 3, lines 24
18 through 25; and page 4, lines 1 through 25; and
19 page 5, line 1 through 25; and page 6, lines 1
20 through 11.

21 And that's a long amount of stuff about
22 attorney satisfaction. And that's because the
23 judge was reading her behavior for the record and
24 he noted that. And he wanted to make sure that she
25 was satisfied and make sure he was prepared and

1 questioned both her and Mr. Butler regarding his
2 preparedness, as well as her desire to go forward
3 and her satisfaction with their services. And he
4 asked her quite pointedly, are you saying you're
5 not satisfied, you know, because I have to qualify
6 this plea and if I'm not satisfied with your
7 responses I'm not going to qualify the plea. And
8 she indicates that she is, in fact, satisfied.

9 He also went through a lengthy
10 discussion with her about waiving her right to a
11 trial and what that meant. And that's at page 6,
12 lines 12 through 17 -- I think I can read my own
13 handwriting. I think that's 12 through 17, or it
14 might be 19; and page 7, lines 1 through 25; and
15 page 8, lines 1 through 16; that the plea was free
16 and voluntary, at page 8, lines 17 through 22.

17 The other lengthy recitation in this
18 record regarding the facts of this case -- and
19 oftentimes what courts will do, and what I have
20 done in many instances, and what Judge Dennis did
21 is he went through every element of the offence to
22 make sure she understood it and that she was, in
23 fact, not just under an umbrella pleading guilty to
24 kidnapping, but that she understood what each
25 element of kidnapping was, that she was sure she

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1 understood that and that she was pleading guilty to
2 each and every element of the offense of
3 kidnapping. And that's at page 8, lines 23 through
4 251; the entirety of page 9, page 10, page 11, page
5 12, 13, 14, 15, 16, and 17.

6 And she allocuted to every element of
7 kidnapping and to exactly what her actions were at
8 the time of this event and what she actually did as
9 it regarded kidnapping. And he had her state that
10 for the record, and she indicated that she was in
11 fact guilty of the elements of kidnapping.

12 The other interesting discussion that
13 sort of ties into that -- and also I included
14 page 18, lines 1 through 16. The other interesting
15 commentary that goes on in this record is where the
16 judge is talking to Mr. Butler and again going over
17 the nature of the offense, the nature of the
18 process that is against her and the charges.

19 And basically what Mr. Butler says is
20 she really doesn't want to plead guilty. She
21 really in her mind does not conceptually understand
22 what kidnapping is. She feels like she was not
23 guilty of it, but understands that under that our
24 definition of kidnapping that she is guilty. And
25 she wants the other option, which is not available,

1 which is basically to have the charges dismissed
2 and go home. Those are my words. I'm paraphrasing
3 what's said in the record, but that is very -- in
4 detail gone over on page 18, lines 17 through 22;
5 and 23 through 25; page 19, lines 1 through 3, as
6 well as the free and voluntariness and his belief
7 that she's entering into the plea freely and
8 voluntarily.

9 She indicates to the court that she's
10 being truthful at page 18, lines 14 through 16;
11 that her plea is knowing and voluntary at page 19,
12 lines 11 through 13; and that she clearly
13 understands these other charges are still
14 outstanding, there are no promises to her and there
15 is no guarantee these other charges will be nolle
16 prossed. And that's at page -- the technical term,
17 the Latin term for being dismissed. And that is at
18 page 20, lines 1 -- well, it's almost the whole
19 page, lines 1 through 23.

20 Based on the totality of the record, it
21 is clear that she entered into this plea freely,
22 voluntarily, knowingly, intelligently, that she
23 understood the consequences of her plea, she
24 clearly understood that she was waiving her
25 constitutional rights to a trial; I do not find any

1 evidence in the record that she was misled,
2 coerced, there was any undue influence and that she
3 was not fully informed of the nature of the charges
4 against her, the range of penalty, and her
5 constitutional rights, and I find that she has
6 failed to meet her burden of proof and the
7 application is denied.

8 I'm instructing the State to provide
9 the Court with a proposed order within 20 days, and
10 I know you want 30, but work with me. I'll give
11 you an extension if you need it.

12 And, Mr. Davis, the order will be
13 provided to you in the same format that the State
14 sends it to the Court, and that is in Word format
15 by e-mail.

16 Thank you very much.

17 (These proceedings were concluded at
18 1:21 p.m.)

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1 CERTIFICATE OF REPORTER

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I, Carol Denise Lauder, Registered

Professional Reporter and Notary Public for the

State of South Carolina at Large, do hereby certify

that the foregoing transcript is a true, accurate,

and complete record.

I further certify that I am neither related

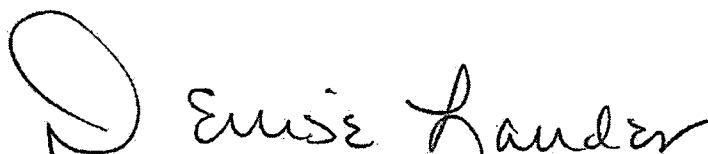
to nor counsel for any party to the cause pending

or interested in the events thereof.

Witness my hand, I have hereunto affixed my

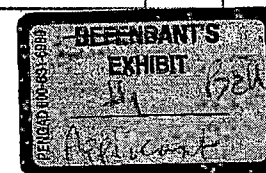
official seal this 4th day of August, 2016 at

Charleston, Charleston County, South Carolina.



Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

Date: 8/28/15

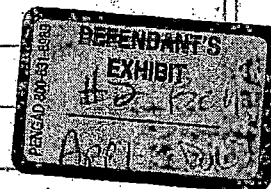
[illegible]

Octavia Bell

- rec'd vm ~ mo prior, left #
- April 25, 2013
- Lee Ginn & Jason - phone conf
- "wasn't there - told police what heard fr ppl @ block party on Hanover"

? friends w/Sol

? baby mama - Marvin Brown



Stephanie Linder

From: Beattie Butler
Sent: Wednesday, August 01, 2012 2:13 PM
To: Stephanie Linder
Subject: RE: Octavia Bell

COLLINS

I need to be present for any discussions. Thanks

From: Stephanie Linder
Sent: Wednesday, August 01, 2012 9:14 AM
To: Beattie Butler
Subject: Octavia Bell

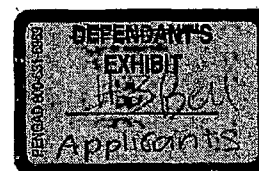
I see that you represent her.

She is a witness in a murder trial of mine. I would like to speak with her. Would you like to be present for that or can I just talk with her? I will not go near anything involving your case as my case is totally unrelated.

Pls advise.

Stephanie Bianco Linder

Managing Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
843.958.1925



Stephanie Linder

From: Stephanie Linder
Sent: Monday, December 31, 2012 9:03 AM
To: Beattie Butler
Subject: Octavia Bell

Expires: Saturday, June 29, 2013 12:00 AM

I contacted you before about your client. I need to speak with her, as she is an eyewitness in a murder case that I am prepping for trial.

If you let me know sometime within the next 30 days that we can meet with her, I would appreciate it. I don't think it is necessary for you to be present, as we will not discuss anything about her pending charges, however, I am trying to accommodate your schedule.

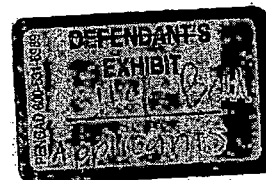
Pls advise a good time.

Thanks.

Stephanie Bianco Linder

Managing Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
843.958.1925

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NO RESPONSE
AS OF 3-12-13



DEFENDANT'S
EXHIBIT

RECEIVED JUN 21 1988

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Octavia Denise Bell, #356384,

2013-CP-10-5806

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

Presiding Judge:

Hon. Deadra L. Jefferson

Applicant's Attorney:

Rodney D. Davis, Esquire

Respondent's Attorney:

J. Rutledge Johnson, Esquire

Trial Counsel:

Beattie Butler, Esquire

Date of Hearing:

December 14, 2015

Court Reporter:

Denise Lauder

FILED
2016 APR 13 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 1, 2013. Respondent made its Return on February 10, 2015. An evidentiary hearing into the matter was convened on December 14, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney D. Davis, Esquire, and J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on her own behalf. Assistant Solicitor Stephanie Linder, Esquire, and Beattie Butler, Esquire, also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's PCR application, the State's Return and the guilty plea transcript.

1 of 10
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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April, 2012 term of the Charleston County Grand Jury for kidnapping¹ (2012-GS-10-2333). The Applicant was represented by Beattie Butler, Esquire.

On June 26, 2013, the Applicant pled guilty as indicted before the Honorable R. Markley Dennis. On July 30, 2013, the Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of eleven (11) years. The Applicant did not appeal her conviction or sentence.

In her Application, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Was misled and was not adequately assisted.
 - b. Was not able to present evidence in my own defense.
 - c. Had no contact until it was time for court.
 - d. Trial counsel told me if I went to trial I was going to get 22-25 years.
 - e. Misled to think kidnapping charge could not be dropped.

At the hearing, the Applicant proceeded on her claim of ineffective assistance of plea counsel.

¹ Kidnapping is a violent, most serious felony punishable by thirty (30) years' imprisonment. See S.C. CODE ANN. § 16-3-910 (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

SUMMARY OF TESTIMONY

At the evidentiary hearing, Assistant Solicitor Stephanie Linder testified she had contact with Applicant in 2013 because Applicant was a potential witness in a murder case. Ms. Linder testified she decided not to call Applicant as a witness because Applicant was dishonest with law enforcement in her statements; saying she observed the shooting and later changing her story. Ms. Linder also stated she had no involvement in the Applicant's prosecution. Ms. Linder testified that during the murder case, Applicant was represented by Beattie Butler, Esq., who said he did not mind Ms. Linder speaking with Applicant but just wanted to be present. Ms. Linder then explained she was contacted by the murder suspect's attorney and investigator around April 2013. Ms. Linder also confirmed that her emails to Mr. Butler were around August 2012 and December 2012. These emails concerned her wanting to speak with Applicant about the murder case. On cross-examination, Ms. Linder testified she did not have any interaction with Applicant's case. There were no promises made. Ms. Linder finally stated she only spoke with Applicant after Applicant was incarcerated and had pled guilty in this case.

Beattie Butler, Esq., plea counsel, testified he was with the Charleston Public Defender's office during Applicant's representation. He stated there was no plea offer in this case as, and while there was an arguable defense to one charge, Applicant had no defense to the kidnapping charge. He stated this created a "dilemma" for the Applicant as there was a potential defense to the armed robbery charge but no defense on the kidnapping charge. He stated her codefendant entered a plea prior to Applicant, in that Applicant's plea came on the eve of trial. He testified the arguable defense in this case was that the stun gun used was not a deadly weapon. He stated that the State offered to dismiss an armed robbery charge if she pled guilty to kidnapping.

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He testified that Applicant's name was involved in the other case (murder) and that the Applicant was not interested in testifying in that case. He stated he did not recall Ms. Linder contacting him, and he did not provide access by the Solicitor to Applicant. He stated he encouraged the Applicant to assist the State, but she could not and would not be of any assistance.

He stated he and the Applicant had lengthy discussions about potentially testifying. As to the kidnapping charge, Applicant was struggling with the concept; however, Counsel explained that this was thoroughly based on Applicant's statements. Counsel testified his advice was to plead to the kidnapping and get the armed robbery charge dismissed. Counsel testified he conveyed this to Applicant. He further testified that his strategy or goal for disposition of the case was a plea to kidnapping and dismissal of the armed robbery and any other charges which he accomplished.

He testified he did not recall telling Applicant she would get 25 years if she pursued a trial, because Counsel does not predict what a judge will do. He testified that he may have cautioned the Applicant regarding a "worst case" scenario if convicted at trial. He denies the recording of any of his conversations with the Applicant on his cell phone. He further testified he did not recall reviewing the Solomon Chisolm crime scene. He also did not recall suggesting the Applicant speak with Daniel Prenner, Esq.

He testified that at the time of his representation of Applicant, he was the chief litigator in the Public Defender's office, trying the most serious cases. From January 2013 to July 2013, he only tried one double homicide and had to try the case three times: the Ricky Williams case.

Counsel stated while at the Public Defender's office, he would notate visits by writing on the inside of the jacket file and does not recall how many meetings he had with Applicant. On the jacket file it indicated two meetings with Applicant with no notes concerning phone calls.

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On cross-examination counsel testified that based on Applicant's version of the facts, she was guilty of kidnapping. He denies he made any threats or promises to get the Applicant to plead guilty. Lastly, he stated it was Applicant's decision to plead guilty. On redirect examination, He clarified that Applicant could not and would not get involved in the other case because she denied any knowledge about the murder. He then stated if she actually knew something, she could have gotten a benefit for her cooperation. He further testified that the Applicant had no interest in testifying and refused to give any information to help her situation.

Applicant testified that Counsel represented her throughout the entire case after her arrest on December 5, 2011. Applicant testified she met with counsel three times and discussed potential defenses to her pending charges including the kidnapping and armed robbery charges; however, she denies any discussion of the weapons charge. Applicant stated they discussed lesser included offenses, and attempting to get the kidnapping charge reduced to assault and battery. However, Counsel informed her that he could get the armed robbery and gun possession charges dropped, but the kidnapping would stick. Applicant then stated she did not think Counsel was prepared for trial, as they did not discuss her testimony in preparation for a trial. Applicant stated she and Counsel spoke mostly about a plea, and it was Counsel's advice to plead guilty to the kidnapping charge. Applicant claimed there was an offer of a 10 year sentence to plead all three charges. Applicant also claims she and Counsel did not talk about most serious offenses or about strikes and enhancements.

Applicant claimed Counsel told her if she were to proceed to trial, the judge could give her 22 to 25 years in prison. Applicant then stated she became aware of Counsel working on other cases, namely the Solomon Chisolm case, in which she claims Counsel showed her pictures and tried to get her to talk about the incident. Applicant stated she had information about the Chisolm homicide, but

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that Counsel stated the Assistant Solicitor did not need her testimony. Applicant then stated Counsel would not allow her to speak with the Solicitor's office. Upon this Court's questioning to clarify the Applicant's testimony, Applicant stated that the Solicitor said there was no plea offer because she was lying to the police. Applicant further testified she spoke with Ms. Linder in 2013, but only after her conviction while incarcerated at Camille Graham Correctional Institution.

On cross-examination, Applicant admitted that in her plea colloquy, she had no complaints with her counsel and knew this was a straight up plea. Applicant admitted she gave up her rights to trial and that there were no threats or promises to get her to plea. She also admitted that she agreed with the facts as articulated by the State, and agreed that she committed the crime of kidnapping. Applicant admitted that she answered the plea colloquy questions truthfully. She lastly admitted that she had convictions for giving false information to police and breach of trust.

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 witness presented at the hearing, closely pass upon her credibility and weigh her testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges she received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence."

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Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while finding Assistant Solicitor Linder's and Counsel's testimony credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel and the plea court advised Applicant of the charges and the range of penalty the charges carried (Tr.

2: 7-25; 3:1-23; 17: 1-22). Counsel negotiated with the State in Applicant's best interest (Tr. 4: 2-25; 5:1-25; 6: 1). The Applicant was advised of the bifurcation of accepting the plea and sentencing would occur at a later date. (Tr. 3: 3-14; 6: 19-25, 7: 1). This Court finds Applicant made the decision to plead guilty on her own accord with the help of counsel (Tr. 3: 20-23; 5: 9-25; 6:1-11). The Applicant was satisfied with her attorney and had no complaints. (Tr. 3: 24-25; 4: 1-4). The Applicant hesitated slightly when stating she had no complaints about her attorney because she had hoped for a better arrangement but understood her attorney could not control that. (Tr. 4: 5-25; 6: 1-11). Additionally, this Court finds Applicant made the decision to plead guilty freely and voluntarily without any threats or promises from anyone else (Tr. 8: 17-22). The Applicant understood she would not have a trial and was giving up those constitutional rights. (Tr. 6: 12-17; 7: 1-25; 8: 1-16). Furthermore, this Court finds the Applicant was not threatened or promised anything to enter into the plea. (Tr. 5: 9-25; 6:1-11). The elements of kidnapping were established by the Solicitor and the applicant gave a full allocution of the facts and her actions at the plea hearing. (Tr. 8: 23-25; 9-17; 18: 1-16). This Court finds the Applicant provided truthful answers in her plea colloquy, and her decision to plea was knowing and voluntary. (Tr. 18: 14-16; 19: 11-13). The Applicant was not promised any charges would be dismissed as a result of this plea. (Tr. 20: 1-23).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met her

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burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

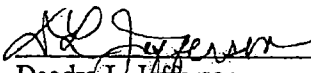
This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant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

IT IS THEREFORE ORDERED:

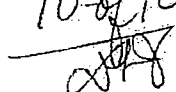
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

9-24-10
JPG

AND IT IS SO ORDERED!


Deadra L. Jefferson
Presiding Circuit Court Judge
Ninth Judicial Circuit

April 12, 2016
Charleston, South Carolina

10-01-10


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B-20111208266

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1119792

ARREST WARRANT NUMBER

M995140

DATE OF ARREST

December 5, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 04/03/2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1002333

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2012

THE STATE

vs.

OCTAVIA DENISE BELL

DOB: 1

B/F

Indictment for

Kidnapping

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

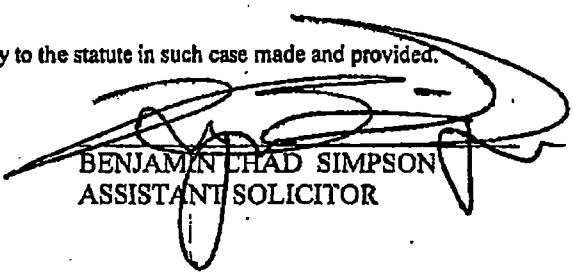
INDICTMENT

At a Court of General Sessions, convened on April 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about December 4, 2011, the Defendant, OCTAVIA DENISE BELL, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Theresa Johnson, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR