

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Anderson County
Frank R. Addy, Circuit Court Judge

S.C. SUPREME COURT

MALE DWAYNE CURRY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001250

APPENDIX

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State of South Carolina v. Male Dwayne Curry
Case Nos. 2012-GS-04-00079, 00080 and 2011-GS-39-01650, 01651, 01679
Hearing of August 15, 2013
Before The Honorable J. Cordell Maddox

I-N-D-E-X

AUGUST 15, 2013
(STATE OF SOUTH CAROLINA v. MALE DWAYNE CURRY)
(PLEA HEARING)
(2012-GS-04-00079, 00080
2011-GS-39-01650, 01651, 01679)

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IDENTIFICATION ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(2:45 P.M.)

1
2
3 (NOTE: PLEAS FOR FOUR DEFENDANTS WERE TAKEN AS A
4 GROUP. THE FOLLOWING TRANSCRIPT IS PREPARED FOR MALE
5 DWAYNE CURRY ONLY.)

6 THE COURT: Okay, what we got? Generally.

7 MR. CAMPBELL: May it please The Court?

8 THE COURT: Yep.

9 MR. CAMPBELL: Your Honor, before you is Well Mane
10 Cur- (sic) -- Well (sic) -- Dwayne Male Curry on, uh --
11 uh, he's pleading on indictment number 2012-GS-04-79,
12 it's a attempted armed robbery; and 80, uh, attempted
13 armed robbery. Um, those are the two counts of Anderson.

14 He's also waiving presentment of three counts --
15 it's all the same incident, uh, time period out of, um,
16 Pickens County. Those charges are 2011-GS-39-1650 for
17 attempted, um, armed robbery, 1651 kidnapping, and 1679
18 possession of a weapon.

19 Uh, there is a negotiated sentence of fifteen years.
20 This is an agreement with the Pickens County Solicitor's
21 Office and Mr. Hervery, uh -- Mr. Young has worked out,
22 um, regarding this.

23 I also hand up his waiver of rights in which he is,
24 uh, allowing the Pickens County cases to be heard in this
25 jurisdiction, Your Honor.

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1 And credit for seven hundred and sixty-four days.

2 **THE COURT:** So fifteen years is the recommendation?

3 **MR. YOUNG:** It's a negotiated sentence, Your Honor.

4 **THE COURT:** Okay, so fifteen years, okay.

5 (After long pause) So some of these are waivers,
6 right?

7 **MR. CAMPBELL:** Yes, sir.

8 **THE COURT:** Okay. Yes, sir?

9 (WHEREUPON, INDICTMENTS FOR DEFENDANT CHRISTOPHER
10 LEON BALLENTINE WERE PRESENTED TO THE COURT BY SOLICITOR
11 JOSHUA B. ALLEN.)

12 (WHEREUPON, INDICTMENT FOR DEFENDANT ANGEL JEANETTE
13 COMPTON WAS PRESENTED TO THE COURT BY SOLICITOR JOSHUA B.
14 ALLEN.)

15 (WHEREUPON, INDICTMENTS FOR MCCARTHY STEWART
16 ADDLEMAN WERE PRESENTED TO THE COURT BY SOLICITOR AUSTIN
17 C. McLAIN.)

18 **THE COURT:** All right, I need all of you to raise
19 your right hand.

20 (WHEREUPON, MALE DWAYNE CURRY, CHRISTOPHER LEON
21 BALLENTINE, ANGEL JEANETTE COMPTON, AND MCCARTHY STEWART
22 ADDLEMAN WERE JOINTLY DULY SWORN AND TESTIFIED AS
23 FOLLOWS:)

24 **THE COURT:** All right, I'm gonna ask you some
25 questions. I don't mean to disrespect, but I have to

5 5

State of South Carolina v. Male Dwayne Curry
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1 point to you so we can keep it straight on the record.

2 First, Mr. Curry, um, several of your cases -- I
3 guess maybe the Pickens County cases -- have not been
4 sent to the Grand Jury. Do you understand you have a
5 right to have your cases sent to the Grand Jury?

6 **MR. CURRY:** Yes, sir.

7 **THE COURT:** And are you waiving that right?

8 **MR. CURRY:** Yes, sir.

9 **THE COURT:** You also have the right to have, um, the
10 Pickens County cases heard in Pickens County. That's
11 your right of venue. Do you understand that?

12 **MR. CURRY:** Yes, sir.

13 **THE COURT:** And are you waiving your right to have
14 these cases heard in Pickens County?

15 **MR. CURRY:** Yes, sir.

16 **THE COURT:** Okay. And you don't have any problem
17 with us doing them all at once here in Anderson?

18 **MR. CURRY:** No, sir.

19 **THE COURT:** Okay. All right, any of you had any
20 drugs or alcohol within the last twenty-four hours?

21 **MR. CURRY:** No, sir.

22 **MR. BALLENTINE:** No, sir.

23 **MS. COMPTON:** No, sir.

24 **MS. ADDLEMAN:** No, Your Honor.

25 **THE COURT:** Okay. Any of you been threatened in any

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1 way or promised anything to get you to plead guilty?

2 **MR. CURRY:** (After pause) No, sir.

3 **THE COURT:** Okay, that's all right; you napping on
4 me?

5 **MR. CURRY:** No, sir.

6 **THE COURT:** All right.

7 **MR. BALLENTINE:** No, sir.

8 **MS. COMPTON:** No, sir.

9 **MS. ADDLEMAN:** No, Your Honor.

10 **THE COURT:** Have all of you had plenty of time to
11 speak with your lawyer and you're satisfied with their
12 services?

13 **MR. CURRY:** Yes, sir.

14 **MR. BALLENTINE:** Yes, sir.

15 **MS. COMPTON:** Yes, sir.

16 **MS. ADDLEMAN:** Yes, Your Honor.

17 **THE COURT:** All right. Do all of you understand you
18 have to waive your constitutional rights, including your
19 right to a jury trial, your right to remain silent, your
20 right to confront the witnesses that would testify
21 against you, and your right to put up a defense? Are you
22 giving up all those rights?

23 **MR. CURRY:** Yes, sir.

24 **MR. BALLENTINE:** Yes, sir.

25 **MS. COMPTON:** Yes, sir.

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1 **MS. ADDLEMAN:** Yes, Your Honor.

2 **THE COURT:** Now, except for Mr. Curry -- Mr. Curry,
3 you understand on a negotiated sentence that, uh, I have
4 to either accept the fifteen years or I'll allow you to
5 step down. Do you understand that?

6 **MR. CURRY:** Yes, sir.

7 **THE COURT:** Okay. The rest of you, do you
8 understand that there are recommendations that I don't
9 have to accept? I can take your plea and sentence you to
10 the maximum allowable by law. Do you understand that?

11 **MR. BALLENTINE:** Yes, sir.

12 **MS. COMPTON:** Yes, sir.

13 **MS. ADDLEMAN:** Yes, sir.

14 **THE COURT:** Okay. And you're all satisfied with
15 your lawyers? I may be repeating myself and excuse me.

16 **MR. CURRY:** Yes, sir.

17 **MR. BALLENTINE:** Yes, sir.

18 **MS. COMPTON:** Yes, sir.

19 **MS. ADDLEMAN:** Yes, Your Honor.

20 **THE COURT:** And have all the attorneys had plenty of
21 time to speak with your clients? Do you think they
22 understand the elements to the charge and the waiver of
23 constitutional rights?

24 **MR. YOUNG:** (As to Mr. Curry) Yes, sir.

25 **MR. TAVERNIER:** (As to remaining three Defendants) I

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1 have, Your Honor and believe they do.

2 **THE COURT:** Okay. Do each of you want to plead
3 guilty to the charges against you and are you guilty?

4 **MR. CURRY:** Yes, sir.

5 **MR. BALLENTINE:** Yes, sir.

6 **MS. COMPTON:** Yes, sir.

7 **MS. ADDLEMAN:** Yes, Your Honor.

8 **THE COURT:** All right, I'm gonna accept all the
9 pleas and find them freely and voluntarily made based
10 upon the advice of Counsel.

11 And I find that Mr. Curry, uh, has waived his right
12 to jurisdiction and venue in Pickens County on the
13 Pickens County cases.

14 Uh, and that each party has waived their
15 constitutional rights knowingly and voluntarily.

16 Yes, sir?

17 **MR. CAMPBELL:** May it please The Court. Your Honor,
18 the Pickens County and the Anderson County cases all stem
19 out of a same chain of events. Uh, it was July 13, 2011.
20 Um, Mr. Curry approached a -- a Cauley Friedman
21 (phonetic) -- this is the Pickens County charges.

22 And -- and for the record, Anderson County also
23 charged for the same victim which we are dismissing that
24 charge---

25 **THE COURT:** Okay.

1 **MR. CAMPBELL:** ---um, for the crime that came over
2 here.

3 Um, he approached her in a parking lot of, um, Bi-Lo
4 in Clemson. At some point he approached her, got into
5 the car with her, uh, had a -- presented a hand gun, told
6 her to drive to Anderson, came to Anderson, made her go
7 to a ATM machine where she withdrew a hundred fifty, uh,
8 dollars, and then had her drive to Anderson near the
9 Mall -- to the Waffle House near the Mall. He called
10 someone, uh, he dropped her off. Uh, she dropped him off
11 there. At that point he actually, according to the case
12 file, apologized to her.

13 Then, um, while deputies with the Sheriff's Office
14 in Pickens County and also the deputies in Anderson
15 County were starting to work that, they got another call
16 regarding, uh, attempted armed robbery in the Ingle's
17 parking lot here downtown, uh, on Main Street in which,
18 um -- this is the Anderson County cases -- in which he
19 approached, uh, two ladies -- young girls -- that were in
20 a car. Um, presented a weapon but they ran off and at
21 that point he left.

22 Um, the officers at, uh, I believe it was the
23 Clemson Police Department, once they got a description
24 from Ms. Friedman, um, kinda -- I think they saw him or
25 knew -- saw him earlier that day, he matched the

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1 description, they brought him in, eventually he gave a
2 confession regarding these, uh, acknowledged that he was,
3 um, on crack I believe it was at the time.

4 Mr. Curry, um, we attempted to get this case ready
5 for trial. He had Mr. Potter as an attorney, he had
6 Mr. Tavernier as attorney, and now Mr. Young represents
7 him. Mr. Young has been able to facilitate agreement
8 between Pickens County, uh, Solicitor's Office and our
9 office and we have met with all the victims in the case
10 that wanted to cooperate and -- and are in agreement
11 with, uh, the fifteen years.

12 **THE COURT:** Okay.

13 **MR. CAMPBELL:** And I have also talked to the
14 prosecutor who's handling the Pickens County. He's in
15 agreement also.

16 **THE COURT:** All right, so this basically wraps
17 everything up and ends it?

18 **MR. CAMPBELL:** Yes, sir, it ends. And as a result,
19 we are actually dismissing the two firearms charges and
20 the attempted armed robbery -- or, the armed robbery
21 charge that we had pending dealing with the same victim.

22 **THE COURT:** Okay. All right, Mr. Curry, do you
23 agree with all those facts?

24 **MR. CURRY:** Yes, sir.

25 **THE COURT:** Okay. Yes, sir?

1 **MR. YOUNG:** Your Honor, if it please The Court,
2 we -- we're just asking that you accept the
3 recommendation -- or, the negotiations. Uh, we believe
4 it's a fair and just settlement of the entire case.

5 And, uh, Mr. Curry and I have had many conversations
6 about his options and everything and, um, we believe this
7 is the best resolution for everyone.

8 **THE COURT:** Okay. Mr. Curry, what happened to you
9 that day? You just were on crack and you kinda went
10 crazy?

11 **MR. CURRY:** Yes, sir.

12 **THE COURT:** Okay. All right, I'm gonna accept your
13 plea and I'm gonna accept the negotiated sentence.

14 Um, the sentence on each of these to run concurrent
15 with credit for seven hundred and sixty-four days is
16 fifteen years.

17 Good luck to you, okay -- good luck. Thank you,
18 Mr. Young, I appreciate your help today.

19 **MR. YOUNG:** You're welcome.

20 **THE COURT:** Okay, Mr. Ballentine.

21 (WHEREUPON, CIRCUMSTANCES OF INDICTMENTS REGARDING
22 MR. CHRISTOPHER LEON BALLENTINE WERE PRESENTED TO THE
23 COURT, PLEAS ACCEPTED AND SENTENCING COMPLETED.)

24 (WHEREUPON, CIRCUMSTANCES OF INDICTMENT REGARDING
25 MS. ANGEL JEANETTE COMPTON WAS PRESENTED TO THE COURT,

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1 PLEA ACCEPTED AND SENTENCING COMPLETED.)

2 (WHEREUPON, CIRCUMSTANCES OF INDICTMENTS REGARDING
 3 MS. MCCARTHY STEWART ADDLEMAN WERE PRESENTED TO THE
 4 COURT, PLEAS ACCEPTED AND SENTENCING COMPLETED.)

5 (WHEREUPON, HEARING ENDED AT 3:00 P.M.)

6 *****END OF REQUESTED TRANSCRIPT*****

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE OF REPORTER
3 COUNTY OF ANDERSON)
4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
8 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL
10 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
11 GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON
12 THE 15TH DAY OF AUGUST 2013.

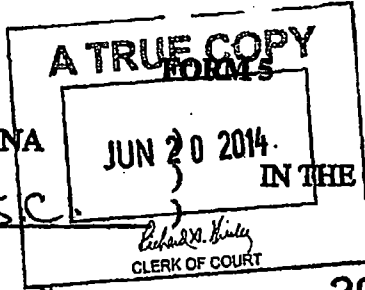
13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.
15
16
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21 *Vivian H. Cross*
22 VIVIAN H. CROSS, COURT REPORTER
23 TENTH CIRCUIT AT LARGE
24 SEPTEMBER 25, 2014
25

14

STATE OF SOUTH CAROLINA

County of ANDERSON, S.C.



IN THE COURT OF COMMON PLEAS

Male Dwayne Curry #151935
Full name and prison number (if any) of Applicant

v.

State of South Carolina

2014-CP-04-1293

APPLICATION FOR
POST-CONVICTION RELIEF

FILED CLERK'S OFFICE
JUN 20 2014
ANDERSON, S.C.
GENERAL SESSIONS
AND
CRIMINAL DIVISIONS
36

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INSTITUTION
990 WISACKY HIGHWAY BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence ANDERSON COUNTY
COURTHOUSE, ANDERSON, S.C. P.O. BOX 8002, ANDERSON, S.C. 29622
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (ATTEMPTED ARM ROBBERY, INDICTMENT # 2012-GS-04-0079)
(ATTEMPTED ARM ROBBERY, INDICTMENT # 2012-GS-04-0080)

(b) Kidnapping, Indictment # 2011GS3901650 (attempted armed robbery)
(c) Indictment # 2011GS3901650 (pos. Firearm, Indictment # 2011GS3901657)

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

- (a) AUG. 15, 2013 15 YEARS FOR ALL CHARGES AND TO PLN
- (b) CONCURRENT.
- (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?

I REQUESTED TO MY LAWYER TO DO SO RIGHT AFTER I PLEAD GUILTY,

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

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) MY ATTORNEY TOLD ME BEING THAT I PLEAD GUILTY THAT I HAVE

- (b) to file a (pcc) Post Conviction Relief Application
- (c) I request to my lawyer to do so right after I plead guilty

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) DENIAL OF FIFTH, SIXTH AND FOURTEENTH AMENDMENT U.S.
- (c) DENIAL OF DUE PROCESS.

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

- (a) COUNSEL'S DEFICIENT PERFORMANCE IN REPRESENTATION
- (b) RIGHTS WERE NOT PROTECTED DUE TO COUNSEL'S ERRORS.
- (c) APPLICANT WILL AWARD THE APPLICANT DUE COUNSEL IS AFFOR

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

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

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

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

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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?

First Filing For PCR.

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. N/A

ii. _____

iii. _____

18

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) First Filing for post conviction Relief
- (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? guilty plea
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

- (a) the name and address of each attorney who represented you:
 - i. Andrew T. Potter ; Kurt Tavelier, Harvey B. O. Young Esq's.
 - ii. Anderson County public Defenders office
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. guilty plea
 - ii. _____
 - iii. _____

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

VACATE SENTENCES AND CONVICTIONS AND REMAND.

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 ANDERSON, S.C.)

VERIFICATION

I, Dwaine Mark Curry, 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.

Dwaine M. Curry

SWORN to and subscribed before me this 14 day of June, 2014.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED CLERK'S OFFICE
ANDERSON, SC
2014 JUN 20 PM 2 37
CORRECTIONAL PLEAS AND
GENERAL SESSIONS

A TRUE COPY
JUN 20 2014
6
Richard S. Hines
CLERK OF COURT

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

I, Dwayne Mark Curry, 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.

Dwayne Mark Curry
Applicant

SWORN or affirmed to and subscribed before me this

16 day of June, 2014.

[Signature]
Notary Public

My Commission Expires: 11-4-2015

FILED CLERK'S OFFICE
ANDERSON, SC
2014 JUN 20 PM 2 37
COMM. PLEAS AND
GENERAL SESSIONS

A TRUE COPY
JUN 20 2014
7
Richard A. Nix
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	TENTH JUDICIAL CIRCUIT
)	
Male D. Curry,)	C.A. No. 2014-CP-04-1293
S.C.D.C. No. 151935,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel has been requested)
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed June 20, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the January 2012 term of the Anderson County Grand Jury for two counts of Attempted Armed Robbery (2012-GS-04-0079; -0080), Kidnapping (2011-GS-39-1651), Attempted Armed Robbery (2011-GS-39-1650) and Possession of a Weapon during the Commission of a Violent Crime (2011-GS-39-1679). Applicant was represented by Herverly Young, Esq. On August 15, 2013, the Applicant pled guilty to two counts of Armed Robbery.¹ The Honorable J. Cordell Maddox, Jr., sentenced Applicant, pursuant to recommendations, to an aggregate term of imprisonment for fifteen (15) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina

¹ Pursuant to negotiations, Applicant waived presentment of indictment numbers 2011-GS-39-1650; -1651; and -1679.

Department of Corrections and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel's deficient performance in representation"
2. "Denial of Fifth, Sixth, and Fourteenth Amendment[s] U.S."
 - a. "Rights were not protected due to Counsel's errors"
3. Denial of Due Process
 - a. "Applicant will amend the Applica[tion] once Counsel is appointed"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, 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, 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, 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. 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, 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 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, 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).

Respondent submits that 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, 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.

Applicant also alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution.

Applicant claims the Court and State failed to fulfill its part of a negotiated plea agreement. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

V.

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

VI.

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

(SIGNATURE BLOCK ON NEXT PAGE)

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *J. Whitmire*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 25th, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
 MALE DWAYNE CURRY, #151935)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

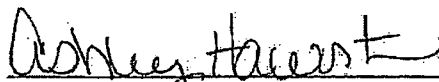
2014-CP-04-1293

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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Hugh Wingo Welborn, Esquire
PO Box 173
Anderson, SC 29622

DATED this 25th day of June, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

1	State of South Carolina	
2	County of Anderson	In the Court of Common Pleas
3		
4	Male Dwayne Curry,)
5	Applicant,) 2014-CP-04-1293
6	-vs-) September 1, 2015
7	State of South Carolina,)
8	Respondent.) Transcript of Record
9	_____)	

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B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

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

Hugh Wingo Welborn, Esquire
Attorney for Applicant

John Walter Whitmire, Esquire
Attorney for the State

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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I N D E X

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HERVERY YOUNG	
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Cross-Examination By Mr. Welborn	26
Reporter's Certificate	30

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
1	Waiver	10	11

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 2:27 p.m.)

4 THE COURT: This is, I believe, if we may, we'll
5 go ahead and go on the record. This is case
6 14-CP-04-1293, Male Dwayne Curry versus the State of
7 South Carolina.

8 Gentlemen, are we ready to proceed on this matter?

9 MR. WHITMIRE: Yes, your Honor.

10 THE COURT: Very good. I did have a chance to
11 review the packet which was e-mailed to me yesterday,
12 and, apparently, Mr. Curry is imprisoned on a 15-year
13 sentence as the result of a plea of guilty, I believe
14 it was, to attempted robbery or armed robbery, rather,
15 and kidnapping.

16 MR. WELBORN: Two counts of attempted armed
17 robbery and kidnapping.

18 THE COURT: Very good. Glad to hear your case,
19 Mr. Welborn.

20 MR. WELBORN: Your Honor, may it please the Court.
21 On behalf of Mr. Curry, he has asked a while ago that I
22 get this matter continued. I'll be glad to explain to
23 the Court why he wants to do that. I have had this
24 case for some time. I have corresponded faithfully.
25 When he would send letters, I would promptly respond.

1 And we talked over the phone a couple of weeks ago, and
2 he has a new issue about whether or not he was properly
3 indicted, and he explained that this case, three of the
4 cases for which he agreed to have transferred to
5 Anderson, that it was his understanding that he had not
6 been indicted on those three cases. And there's
7 actually some colloquy in the transcript that discusses
8 with Judge Maddox whether or not he had been indicted,
9 and I think there was a suggestion he probably had not
10 been indicted. However, my client told me later that
11 he had signed a waiver, and I just looked at it in
12 Pickens where he had actually been indicted on the
13 various same three charges, I would assume. And so we
14 came here. Then there's some colloquy about he's
15 waiving indictment of those three charges for which
16 he'd already been indicted. And he then signed,
17 although he said that there was some doctoring of the
18 documents on the sentencing sheet. But he signed the
19 sentencing sheet where he waived indictment, and
20 there's from the Pickens cases three checkmarks by some
21 type of typewriter, computer, et cetera, that he waived
22 indictment. He thinks there was some monkey business
23 with that, that it wasn't correct. And for some reason
24 he says that he never would have pled guilty to these.
25 I've tried to explain to him that basically he's

1 arguing about a distinction without a difference. It's
2 sort of like saying you have got six or a half a dozen.
3 He was indicted and he waived indictment but signed off
4 that he waived it, so I don't quite understand his
5 position, but he's debated that with me pretty
6 vigorously, says I'm not prepared and has asked that
7 this matter be continued so that I can be prepared to
8 argue his position on this.

9 I'm prepared to go forward. He does not want me
10 to go forward. He wants to be continued. And if the
11 Court would like to question him about his concerns on
12 that, I'm sure the Court can do that. I'll do whatever
13 the Court says. But that's his concern, for some
14 reason that this was some monkey business. He never
15 would have pled had he known there was some monkey
16 business.

17 THE COURT: All right. Which indictments are you
18 referring to?

19 MR. WELBORN: Pickens. And I'll name the numbers.
20 It's indictment case number 1650, indictment number
21 1679, and indictment number 51 -- 1651, yes, sir.
22 That's correct. And I have the sentencing sheets that
23 I sent him by mail to explain that I thought his
24 position didn't have the merit he hoped it had. They
25 had been checked as "waive indictment," but he wants to

1 debate that with the Court and says I'm not prepared.

2 THE COURT: Solicitor, I do not know that I
3 received copies of those particular indictments. Do
4 you have those? They're not in my packet, and I don't
5 know that I remember seeing them yesterday -- oh, wait.
6 Hold on. I stand corrected. They are in the packet.
7 Hold on. I'm inclined to go forward.

8 If there's something that is presented by way of
9 testimony or that gives the Court any kind of cause for
10 concern or pause or hesitation, the Court always has
11 the option of leaving the matter open and addressing it
12 at a later point in time, but we have everyone here to
13 proceed. So to the extent that we are able and to the
14 extent that we can address any issues that have merit,
15 I would prefer to move forward. And, certainly, if
16 there is evidence presented warranting additional time,
17 the Court would be more than happy to leave the record
18 open and revisit this again at a later point in time.
19 But I would much rather move forward and see where we
20 stand, especially since we have inconvenienced a number
21 of people today. So I'm going to deny your motion for
22 a continuance but with those caveats.

23 MR. WELBORN: May it please the Court, may I call
24 my first witness?

25 THE COURT: Please.

1 MR. WELBORN: Call Male Curry.

2 THE COURT: Sir, if you will come up, please, and
3 be sworn.

4 MALE DWAYNE CURRY,
5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: Please state and spell your name for
7 the reporter.

8 THE WITNESS: Male Dwayne Curry, C-u-r-r-y.

9 MR. WELBORN: May I approach the bench -- I mean
10 the witness?

11 THE COURT: Please.

12 DIRECT EXAMINATION

13 BY MR. WELBORN:

14 Q Mr. Curry, I'm approaching you to hand you the
15 materials that we looked over a little while ago in
16 case you want to look through some of those as I ask
17 you some questions, and I'm going to ask you some
18 questions about this entire case. You are Male Dwayne
19 Curry; is that correct, sir?

20 A Yes, sir.

21 Q And you are incarcerated having pled guilty to the
22 following matters: Two counts of armed robbery; is
23 that correct?

24 A Yes, sir.

25 Q And there was some charges that you waived

1 indictment on, and actually some of these charges came
2 out of Pickens County as well; is that correct?

3 A No, sir. I didn't waive no indictment, no, sir.

4 Q Okay. Well, let me rephrase the question. You
5 agreed at one point in a guilty plea hearing -- you did
6 plead guilty to these; is that correct, sir?

7 A At one point I did plead guilty, yes, but my
8 attorney has sat there and told me I was indicted. So
9 that led me to go ahead and plead guilty.

10 Q And you pled guilty to these charges on or about
11 the 15th of August 2013; is that correct?

12 A Yes, sir.

13 Q Now, in pleading guilty, then, during that
14 particular hearing, do you remember the Court asking
15 you some questions about waiving the presentment of
16 three Pickens County charges, waiving presentment to
17 the Grand Jury and going ahead and pleading guilty
18 here? Do you remember those questions?

19 A At the time, at the time I sat there and I thought
20 that Judge Maddox was referring to the waiver of the
21 jurisdiction and venue that I signed. That's the only
22 thing I signed. I did not know nothing about no Grand
23 Jury.

24 Q Okay. Now, when you say waiving jurisdiction and
25 venue, then you thought you were not pleading guilty to

1 what ultimately you ended up pleading guilty to here;
2 is that correct?

3 A Yes, sir.

4 Q Now, how did that come about? How did you end up
5 pleading to things that you just told the Court you
6 weren't going to plead guilty to, that you thought you
7 were simply waiving the right courthouse in which to
8 have these things heard?

9 A I had three different attorneys that all led to
10 Mr. Harvey (sic) Young. And I asked him several times,
11 "Have I been indicted for the charges in Pickens
12 County?" And from him to the solicitor and everybody
13 saying yes, I had been indicted. On August the 15th,
14 2013, when I went in front of Maddox, right before I
15 went in front of Judge Maddox, they brought me a piece
16 of paper with the waiver of rights and venue stuff and
17 on there clarify that I was indicted.

18 Q You have that with you today, don't you?

19 A Yes, sir.

20 Q Can I see that for a moment?

21 A Yes, sir.

22 Q I'm looking at -- and I'll show it to opposing
23 counsel and the Court in a moment -- case number 1650
24 and case number 1679 in County of Pickens where you
25 waived jurisdiction of venue, presence of appointed

1 counsel, and it was checked that you were indicted in
2 Pickens County on these charges. Did you sign this
3 piece of paper, sir?

4 A Yes, sir.

5 Q Have you got that signature with you, that second
6 page?

7 A Yes, sir.

8 Q Let me see that as well.

9 So on the 15th of August -- this is when this was
10 signed and dated -- was this done in Anderson County or
11 was this done in Pickens County?

12 A It was done in Anderson County.

13 Q So what you just gave me, even though it says
14 County of Pickens, it refers to Pickens cases, but you
15 did it right here in Anderson?

16 A Yes, sir, about ten minutes before I went in front
17 of the judge.

18 MR. WELBORN: Your Honor, I would like for a copy
19 of this to be made and put into the record if the Court
20 would?

21 THE COURT: Without objection?

22 MR. WHITMIRE: Without objection, your Honor.

23 THE COURT: Very good. We'll make a copy of that
24 for the record, and it will be Applicant's 1.

25 (WHEREUPON, Applicant's Exhibit Number 1 was

1 marked for identification.)

2 MR. WELBORN: I move into evidence, your Honor.

3 MR. WHITMIRE: Without objection.

4 THE COURT: Very good. That will be Applicant's

5 1. Give it to her.

6 (WHEREUPON, Applicant's Exhibit Number 1 was

7 admitted into evidence.)

8 BY MR. WELBORN:

9 Q So you were in Anderson and you pled guilty in
10 Anderson to a couple of charges, and you ended up
11 pleading to three Pickens County charges the same day,
12 same time; is that correct?

13 A Yes, sir.

14 Q Now, tell the Court your complaint about why you
15 felt that you should not have been pleading guilty on
16 the Pickens charges?

17 A Well, I wouldn't have pled guilty to the Pickens
18 charges if I never found out that I actually wasn't
19 indicted. I would have taken the Anderson County
20 charges to trial for the attempted armed robbery. And
21 here, once I found out that I was indicted afterwards,
22 after the judge sat there and said this and that, I
23 didn't quite understand him. And I asked Mr. Young
24 afterwards, "Why did you allow me to plead guilty to
25 charges that I wasn't indicted on?" He's saying

1 that -- he told me that they can bring an indictment
2 any day, any time, but that wasn't the point. I kept
3 stressing to every attorney, public defender that I had
4 that led up to him that I wanted to go to trial with
5 the Anderson County charges for the two attempted armed
6 robberies because of the victim statements and because
7 one of them wouldn't have never been attempted armed
8 robbery, it would have been a strong armed robbery
9 which would have been lesser anyway, so I would have
10 never pled guilty to a total of over 15 years for a
11 charge that carries 20 years.

12 Q Now, you also pointed out and I will provide for
13 the Court to reference, I'm referring to three
14 sentencing sheets. That's Pickens versus Dwayne Curry.

15 And those indictments, 1650, 1651 and 1679, if the
16 Court is ready I'll proceed in discussing that.

17 THE COURT: Go ahead, please.

18 BY MR. WELBORN:

19 Q Now, Mr. Curry, you told me in looking at these
20 sentencing sheets which I sent to you in the mail
21 showing that it had been checked off that you waived
22 presentment to the Grand Jury of your Pickens County
23 cases --

24 A Uh-huh.

25 Q -- you told me a while ago, "Well, all this

1 writing is filled in after the fact," that you simply
2 signed your name and the judge then fills in the
3 sentencing stuff, which is essentially correct.

4 A Uh-huh.

5 Q So you told me, I believe, your position is that
6 through some inadvertence or mistake that you, it was
7 put on here that you waived indictment and you really
8 had not done that. Is that what you tried to tell me?

9 A Yes, sir.

10 Q Is it your position, then, that the sentencing
11 sheet, since it goes to the judge after you signed it,
12 he writes in here the sentencing, is it your position
13 that there was some scrivener's error or mistake that
14 it got checked off that you waived indictment of the
15 Pickens County cases to the Grand Jury? Is that a
16 mistake?

17 A Yes, sir.

18 Q Now, you're asking for a new trial. Tell the
19 Court very precisely why you want a new trial on this.

20 A I want a new trial for the simple fact that the
21 Anderson County charges, like I said, I would have went
22 to trial with them because I felt that I could have
23 beat the Anderson County charges. Okay. They scammed
24 up the Pickens County charges, so I choose to just go
25 ahead and take the 15 year plea, get all of it

1 resolved. But, like I said, if I knew I wasn't
2 indicted for the charge of Pickens County, I would want
3 to take Anderson County charge to trial.

4 Q Since they had taken such a long time to even
5 bring this to indictment or waive it here in Anderson,
6 like two years, were you thinking perhaps you're never
7 going to be indicted and it would go away anyway?

8 A Yes, sir. I felt I never would have been
9 indicted.

10 Q Did you talk to your lawyer, Mr. Young, about any
11 of that?

12 A Yes, sir, I did.

13 Q And what did you tell him and what did he tell
14 you?

15 A He told me I was indicted. The same date
16 August 15th, the hearing, he told me I was indicted and
17 led me to sign this here.

18 Q Now, you've alleged in your application that your
19 lawyer had deficient performance and representation. I
20 think the State believes that's a little vague. What
21 do you mean by that?

22 A What I mean by that there is that -- I mean he
23 didn't properly fully investigate my case, my case and
24 stuff, and he wasn't really prepared for my trial. I
25 mean, I had Kurt Tavernier before him, and I had

1 Mr. Young not even three, four weeks, and I felt that
2 he wasn't prepared for my case.

3 Q What specifically caused you to feel that way?
4 What questions did you ask him that he couldn't answer,
5 as an example?

6 A I asked him, kept asking about the Pickens County
7 indictment. Can I get an indictment sheet just like I
8 got for Anderson County, and he could never present
9 one.

10 Q You've also alleged you have denial of your Fifth,
11 Sixth and Fourteenth Amendments. Tell the Court what
12 you mean specifically of how those rights were denied.

13 A Well, I mean, my due process, I mean, I have a
14 right to concerning -- I mean, I'm not -- it's hard
15 to -- I mean, it's hard for me to explain, but I'm not
16 familiar or good with the law.

17 Q Well, Fifth Amendment oftentimes is the right to
18 remain silent. Did you give that up and you would have
19 not given that up, is that what you're trying to tell
20 the Court?

21 A Yes. I would have never gave that up.

22 Q And Sixth Amendment oftentimes is associated with
23 having a right to counsel. Tell me about that.

24 A Well, I mean, the right to counsel. I mean, I
25 had, like I said, I had four different public defenders

1 and that led up to one of them even threatened me. I
2 have to work on that. But at the same time, they kept
3 giving me public defender after public defender. And I
4 felt the public defender's office was totally against
5 me.

6 Q And the 14th Amendment, you're just sort of
7 incorporating all that --

8 A Yes.

9 Q -- and saying the 14th Amendment, these various
10 rights have been violated; is that correct?

11 A Yes.

12 Q You said your rights weren't protected due to your
13 lawyers errors. What rights were not protected? The
14 ones you just said; is that what you're referring to?

15 A The ones I just said and also here I found out
16 later that, you know, by me pleading guilty to the
17 kidnapping, I have to sign as a registered sex
18 offender, which that case had nothing dealing with sex
19 or nothing. And I feel that, you know, my rights have
20 been violated.

21 Q Let's talk about that kidnapping. Now, you were
22 put on the sex offender list; is that correct?

23 A Yes, sir.

24 Q And you think -- did your lawyer tell you you were
25 going to have that or did he discuss that with you?

1 A No, sir.

2 MR. WHITMIRE: Objection; relevance. Registry is
3 outside of the scope of PCR. It's a collateral
4 consequence.

5 THE COURT: Overruled. You can continue.

6 BY MR. WELBORN:

7 Q Did he talk about, you know, "If you plead guilty
8 to kidnapping, you may go on the registry, you may not.
9 It's the discretion of the judge," or, "It has to do
10 with exactly what the crime is"? Did he explain any of
11 that to you?

12 A No, sir, the elements or none of that.

13 Q When did you find out you were on the registry,
14 Mr. Curry?

15 A I found out about two months ago, actually.

16 Q How did you find that out?

17 A I found that out from receiving a sentencing sheet
18 of SCDC and stuff, and they got on here that I have to
19 sign as a registered sex offender. And that's when I
20 wrote concerning the court, wrote back here to the
21 court trying to get that straightened out.

22 Q Now, in the colloquy the conversation between the
23 Court and the prosecutor of what happened, there's not
24 anything about the kidnapping that indicates you tried
25 to sexually assault anyone. There's none of that in

1 there, is there?

2 A No, sir.

3 Q You think that that would have affected, perhaps,
4 the sentencing if your lawyer had pointed that out?
5 Perhaps you wouldn't be on the registry?

6 A Yes, sir.

7 Q Okay. Now, Mr. Curry, I want to make sure that I
8 ask and you've answered everything that you've
9 complained about. Okay?

10 A Yes, sir.

11 Q Now, what else do you want to tell the Court about
12 that I've not asked you that you think is very critical
13 for the Court to hear so that you can get
14 post-conviction relief?

15 A Well, I mean, like I say, I've been arrested on
16 July the 13th, 2011, concerning these charges and went
17 to court August 15th of 2013, which is two years and
18 one month later. And, like I say, I kept asking,
19 concerned about me being indicted and stuff. And if I
20 never would have been indicted, if I found out I never
21 was being indicted, then I never would have pled guilty
22 to nothing besides -- I would have took it to trial.

23 Q Couple more questions and I'll be through,
24 Mr. Curry. You understand that this transcript
25 indicates that you answered yes to the Court's

1 questions, you understood what you were doing, you had
2 no complaints. Those usual questions. You've read
3 that, I'm sure, haven't you?

4 A Yes, sir.

5 Q What's your response to that, how you basically
6 said you understand you're giving up your various
7 rights and you have no complaints against your lawyer
8 and you are giving up a trial? Why did you plead
9 guilty? Because I know that's going to be an issue
10 here.

11 A Well, because, like I say, I quite -- I mean, at
12 the time I didn't quite understand Judge Maddox. And
13 like he said, I was kind of trying to put the pieces
14 together of what he was asking me. Because as you look
15 on page of the transcript, page six, line two and
16 three, you see where it says, you know, okay. As I'm
17 napping on it. I'm trying to think and put it right,
18 what he want me to put it, my attorney. My attorney
19 kept telling me to say yes to a lot of questions and
20 then no. And here I was sitting there, and I just
21 paranoid, scared.

22 Q You were scared?

23 A Yeah. I was just scared. So that's one reason
24 why he asked me was I napping and not listening.

25 Q Did Mr. Young threaten you in any way?

1 A No, sir. I'm not going to say he threatened me.

2 Q Did he tell you if you don't do this today, you're
3 going to get a whole lot more time?

4 A Yes, he did. He tell me that right before I
5 signed this, the waiver of the jurisdiction and venue.

6 Q And when he said that, did that have something to
7 do with why you went and pled guilty on this?

8 A Yes, sir.

9 Q But for that, would you just have insisted on a
10 trial?

11 A I would have insisted on going to trial.

12 Q Thank you. Answer anything the Court or opposing
13 counsel may have.

14 MR. WHITMIRE: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. WHITMIRE:

17 Q Mr. Curry, why did you spend two years in pretrial
18 detention?

19 A Why did I spend two years in pretrial?

20 Q What were you doing? Why were you arrested?

21 A Why was I arrested? For a crime they say I
22 committed.

23 Q You were -- they, the police, said you the
24 committed this crime July 13, 2011?

25 A Yes, sir.

1 Q All occurring the same day. You were arrested in
2 Anderson October 29, 2011?

3 A No, sir.

4 Q Did they serve an arrest warrant on you and give
5 you a piece of paper?

6 A Yeah, they gave -- yes, sir.

7 Q And Anderson prosecuted you because the Pickens
8 County law enforcement, sheriff's office, initiated the
9 investigation, correct?

10 A Yes, sir.

11 Q So you were aware you were facing these charges
12 from the Bi-Lo in Clemson and I believe the Ingles here
13 in Anderson?

14 A Yes, sir.

15 Q You're aware you're facing these charges for
16 more -- for a sufficient amount of time, a year plus?

17 A No, sir.

18 Q Explain.

19 A Actually, I got arrested for charges in Pickens
20 County and Anderson, came to Anderson County. And I
21 got arrested for the kidnapping, attempted armed
22 robbery, and a pistol charge. Anderson County also sat
23 there and let Pickens hold me, and they sat there and
24 came back, I want to say October of the same year,
25 couple of months later.

1 Q We're talking all 2011, correct?

2 A Sir?

3 Q We're looking at 2011?

4 A Yes. Two months.

5 Q Mr. Young was your last attorney in Anderson?

6 A Yes, sir.

7 Q How many times did he meet with you?

8 A About three.

9 Q Did he review the State's evidence with you?

10 A Yes. Concerning Anderson, yes.

11 Q Did he go over the victim's statement with you?

12 A Sir?

13 Q Did he go over the victim's statement with you?

14 A Yes, sir, he did.

15 Q It's my understanding you're upset today because
16 you weren't indicted properly?

17 A Properly because I would have took it to trial,
18 wouldn't have pled.

19 Q But you knew the charges that you were facing in
20 both counties?

21 A Yes, sir.

22 MR. WHITMIRE: No further questions.

23 Thank you.

24 THE COURT: Anything on redirect?

25 MR. WELBORN: No redirect.

1 THE COURT: Thank you. You can step down, sir.

2 MR. WELBORN: That's our case, your Honor.

3 THE COURT: Attorney General.

4 MR. WHITMIRE: State briefly calls counsel to
5 testify, Mr. Hervey Young.

6 HERVEY YOUNG,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. WHITMIRE:

10 Q Good afternoon, Mr. Young.

11 A Good afternoon.

12 Q Mr. Young, what's your current title?

13 A I'm circuit public defender for the Tenth Judicial,
14 Circuit.

15 Q How long have you practiced criminal law?

16 A 21 years.

17 Q Do you recall your representation of Mr. Curry's
18 case?

19 A I do.

20 Q Had a chance to review your file in anticipation
21 of testifying today?

22 A Yes.

23 Q When did you inherit Mr. Curry's case from his
24 prior appointed counsel?

25 A It was somewhere around late June of, I think it

1 was 2013 -- '14. '13. June of 2013. He had had --
2 Andy Potter initially was appointed on this case.
3 There was a difference of opinions between Mr. Curry
4 and Mr. Potter, so his case was reassigned to Kurt
5 Tavernier. Mr. Tavernier and Mr. Curry, in preparing
6 the case for trial, had what almost became a physical
7 altercation, so as a result I took over his case.

8 Q Did you have a chance to review the two prior
9 attorneys, their files and notes, before meeting with
10 Mr. Curry?

11 A Yes. It's all one continuous file.

12 Q Can you explain the posture of the case at the
13 moment you inherited it?

14 A When I received it, there was some discussions
15 about a plea, but his case was being prepared for
16 trial. In fact, it was scheduled for trial the week of
17 August the 12th, which is the week that he pled guilty.

18 Q What were the initial holdups in plea
19 negotiations?

20 A I think the main holdup was that Mr. Curry, he was
21 adamant that on the Anderson County charges that he
22 wanted a jury trial.

23 Q During the course of your representation, what
24 made Mr. Curry change his mind?

25 A I can't say exactly what made him change his mind,

1 but I do know that he was -- he was facing the related
2 charges over in Pickens County as well as the charges
3 in Anderson County. Because of his criminal record, he
4 was exposed, that if a package deal wasn't worked out
5 for him, he was exposing himself to life without
6 parole.

7 Q Have you had the opportunity to meet with and
8 consult with Mr. Curry's Pickens attorney?

9 A I spoke with him a couple of times over the
10 telephone. Not so much about, you know, "What's the
11 posture of your case?" But just basically in us
12 preparing for jury trial, we explored the option of
13 whether or not they were in a position to work out
14 something on their end that can go along with what was
15 being proposed by the solicitor in Anderson County to
16 basically bring together a package deal for him.

17 Q Did you share your efforts on this matter with
18 Mr. Curry?

19 A Yes.

20 Q Leading up to his guilty plea, did he offer any
21 hesitation on going forward with the plea?

22 A Only because he was adamant that he wanted a jury
23 trial, but I think in looking at the grand scheme of
24 things, he saw that his exposure was a little bit
25 higher than the risk factor there.

1 Q Did you share with him your impression of the
2 evidence in the Anderson case?

3 A Yes.

4 Q On the day of the guilty plea hearing, if
5 Mr. Curry had changed his mind and was adamant about
6 going forward to trial, what would you have done?

7 A We would have went forward with the jury trial.

8 Q And, ultimately, whose decision was it to enter
9 the guilty plea?

10 A Ultimately it's the client's.

11 Q Final question. You prepared and worked this case
12 to the best of your ability?

13 A Yes.

14 Q Thank you. Please answer any questions that
15 opposing counsel may have for you.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MR. WELBORN:

19 Q Mr. Young, did he talk to you at all about some of
20 these concerns that he's not really been indicted yet?

21 A No. And I would not have been able to -- wouldn't
22 have entertained any of those because they were Pickens
23 charges anyway, and he was represented by counsel over
24 there. I would have referred him over to his attorney
25 over there.

1 Q Did you tell him on the day that he pled guilty;
2 "If you don't do this today, you're probably going to
3 get a much lengthier sentence"?

4 A I probably would have told him that we're going to
5 jury trial if he didn't want to take the plea.

6 Q Did you threaten him in any way?

7 A Of course not.

8 Q Did you tell him that, "It's now or never. If you
9 don't do it today, you're going to have to have a jury
10 trial"?

11 A I probably would have told him that because his
12 case was on the trial docket for that week.

13 Q Did he indicate to you any type of concern on his
14 part about pleading guilty to any of this?

15 A I'm sorry. Say that again.

16 Q Did he indicate to you his concerns about pleading
17 guilty to any of these things?

18 A Prior to us going to court, he was adamant that he
19 wanted to have a jury trial. And then once we were
20 able to work out a package deal that encompassed
21 everything from Pickens County and everything from
22 Anderson County, I discussed the plea offer with him,
23 left it with him for a few days and came back to visit
24 him, and he decided to accept the plea offer. There
25 was never any hesitation at that point in time until,

1 you know, I received the information that he had filed
2 a PCR.

3 Q Did he complain to you about his denial of Fifth,
4 Sixth, or Fourteenth Amendment rights at that time?

5 A He did not.

6 Q Did he complain to you about any of your
7 performance at that time?

8 A He did not.

9 Q Did he complain to you about anything at that
10 time?

11 A About Mr. Potter and Mr. Tavernier.

12 Q He didn't like his representation by them; is that
13 correct?

14 A That's a nice way of putting it.

15 Q All right. Thank you. That's all I have.

16 MR. WHITMIRE: No redirect.

17 THE COURT: Thank you, sir. Thank you for your
18 patience in staying with us this morning.

19 MR. WHITMIRE: The State requests Mr. Young be
20 released from his subpoena.

21 MR. WELBORN: No objection.

22 THE COURT: Nothing additional from the state,
23 then?

24 MR. WHITMIRE: State rests its case, moves for a
25 directed verdict on the ineffective assistance of

1 counsel for failing to discuss, advise, notify
2 information concerning the indictment. In Mr. Curry's
3 own testimony from the stand, he testified that he, in
4 fact, was aware of why he was arrested. He knew the
5 charges he was facing. Pursuant to *U.S. v. Cotton* and
6 *Gentry*, those documents serve the function in this
7 case. I'd be happy to answer any other questions your
8 Honor may have related to the specific allegations that
9 came out of his testimony.

10 THE COURT: Very good.

11 Anything in addition to present?

12 MR. WHITMIRE: No, your Honor. State rests.

13 THE COURT: Mr. Welborn.

14 MR. WELBORN: Judge, my client has stated his
15 position. I don't know how to say it any better. I
16 ask that you rule in this matter.

17 THE COURT: Very good. Thank you very much. I
18 typically take these matters under advisement. You
19 will have a Form 4 from me probably sometime tomorrow
20 morning. All right? Pleasure to work with y'all in
21 this case and pleasure to meet you, Mr. Curry. Take
22 care of yourself, sir.

23 (WHEREUPON, the hearing ended at 3:03 p.m.)

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

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 1st day of September 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

August 30, 2016



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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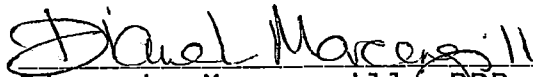
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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 30, 2016



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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ANDERSON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2016 MAY 26 AM 11:11

COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
COMMON PLEAS AND)
GENERAL SESSIONS) C.A. No. 2014-CP-04-1293

Male D. Curry,
S.C.D.C. No. 151935

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL
(with prejudice)

TRUE COPY

MAY 31 2016

Richard D. Hines
CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 20, 2014. Respondent responsive pleadings followed. An evidentiary hearing into the matter was convened on September 1, 2015 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the January 2012 term of the Anderson County Grand Jury for two counts of Attempted Armed Robbery (2012-GS-04-0079; -0080), Kidnapping (2011-GS-39-1651), Attempted Armed Robbery (2011-GS-39-1650) and Possession of a Weapon during the Commission of a Violent Crime (2011-GS-39-1679). Applicant was represented by Hervery Young, Esq. On August 15, 2013, the Applicant pled guilty to two counts of Armed Robbery.¹ The Honorable J. Cordell

¹ Pursuant to negotiations, Applicant waived presentment of indictment numbers 2011-GS-39-1650; -1651; and -1679.

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Maddox, Jr., sentenced Applicant, pursuant to recommendations, to imprisonment for fifteen (15) years. Applicant did not appeal his conviction or sentence.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- (a) Ineffective assistance of counsel for failing to investigate defenses to the State's case on the Anderson County Ingles offenses.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified that he desired a jury trial on the Anderson County that occurred at downtown grocer. Applicant offered his opinion that he "could have beat" the Anderson County charges because of weaknesses in the victims' statements. He testified that he thought the Anderson cases would "go away" when he entered his aggregated guilty plea. In support of his claim of ineffective performance, Applicant testified that he entered guilty pleas on offenses that had never been indicted.

Counsel testified to his course of conduct during the representation. Due to Applicant's difficult demeanor and attitude, counsel was the third attorney to represent Applicant on the Anderson charges. Counsel offered a brief summation of the efforts made by Applicant's prior two attorneys on this case. Counsel also outlined the State's evidence and his personal efforts to get familiarized with Applicant's case. Counsel explained that Applicant's case was on the trial docket the week he decided to accept the State's combined plea offer. He further noted that he deferred to Applicant's Pickens County counsel on the Pickens County charges throughout the representation. Counsel, among other things, explained his efforts in negotiating a joint resolution for all of Applicant's cases. Once the plea offer was made, counsel immediately

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conveyed it to Applicant. Counsel insisted upon giving Applicant several days to think about it before Applicant made the ultimate decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds that Applicant is suffering a case of "buyer's remorse" and not ineffective assistance of counsel. In light of counsel's credible testimony, Applicant has abandoned his burden to present any legitimate evidence to show that he had any legitimate defenses to the charges in questions that had they been investigated, Applicant would have rejected the joint plea agreement.

INEFFECTIVE ASSISTANCE OF COUNSEL

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

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professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

Applicant has fallen well short of meeting his burden to prove (a) ineffective assistance of counsel for failing to investigate defenses to the State's case on the Anderson County Ingles offenses.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's

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actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information.” Strickland, 466 U.S. at 691. “In short, inquiry into counsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions, just as it may be critical to a proper assessment of counsel’s other litigation decisions.” Id., 466 U.S. at 691. “There is no need to “scour the globe on the off-chance that something will turn up.” Rompilla v. Beard, 545 U.S. 374, 383 (2005). “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010).

This Court finds counsel’s testimony convincing and credible and Applicant’s testimony mostly suspect and unavailing. Furthermore, Applicant has failed to produce convincing, let alone credible, evidence that would allow him to depart from the presumption of verity in his statements and assurances to the Plea Judge. See Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed). Ultimately, Applicant’s case solely rests upon his own unavailing, wishful post hoc testimony. Applicant simply made the knowing, intelligent, and voluntary decision to waive presentment on the indictments at issue to obtain the benefit of the joint plea agreement. Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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

CONCLUSION

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

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

[Signature block on following page]



IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 25th day of Sept., 2015.



HONORABLE FRANK R. ADDY, JR.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina

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ANDERSON SC
2016 MAY 26 AM 11:12
COMMON PLEAS AND
GENERAL SESSIONS

DOCKET NO. 2012GS04 00079

A TRUE COPY
JUN 20 2014
Richard X. Hines
CLERK OF COURT

WITNESSES

6. M Aikens, Anderson Police Dept.

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
JAN 24 2012

Term

ARREST WARRANT NUMBER

1723885, 1723887

THE STATE

vs.

Male Dwayne Curry

COMMITMENT

8/15/13-RT

ACTION OF GRAND JURY
TRUE BILL
JAN 24 2012
[Signature]

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

RLC

Indictment for
Robbery / Attempted armed, or allegedly armed,
robbery
SC Code: 16-11-0330(B)
CDR Code: 0026

Possession of a Weapon During the
Commission of a Violent Crime
SC Code: 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JAN 24 2012, the Grand Jurors of Anderson County present upon their oath:

Robbery / Attempted armed, or allegedly armed, robbery

That Male Dwayne Curry did in Anderson County, within the city limits of Anderson, South Carolina, on or about July 13, 2011, while armed with a deadly weapon or while alleging, either by action or words he was armed while using a representation of a deadly weapon or any object which a person presents during the commission of the robbery reasonably believed to be a deadly weapon, attempt to take by means of force or intimidation, goods, or monies from the person or presence of [REDACTED] This is in violation of 16-11-330(B) of the South Carolina Code of Laws (1976), as amended.

Possession of a Weapon During the Commission of a Violent Crime

That Male Dwayne Curry did in Anderson County, within the city limits of Anderson, South Carolina, on or about July 13, 2011, possess a firearm during the commission of the violent crime of Attempted Armed Robbery. All in violation of Section 16-23-490, *Code of Laws of South Carolina* (1976), as amended.

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

R. L. Campbell
 ASSISTANT SOLICITOR

DOCKET NO. 2012GS04 00080

A TRUE COPY
JUN 20 2014
Richard X. Kiley
CLERK OF COURT

WITNESSES

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M Aikers, Anderson Police Dept.

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
JAN 24 2012

Term

ARREST WARRANT NUMBER

1723884, 1723886

THE STATE

vs.

Male Dwayne Curry

COMMITMENT

8/15/13-RT

ACTION OF GRAND JURY
TRUE BILL

JAN 24 2012

Foreperson of Grand Jury
Date:

RLC

VERDICT

Indictment for
Robbery / Attempted armed, or allegedly armed,
robbery
SC Code: 16-11-0330(B)
CDR Code: 0026

Possession of a Weapon During the
Commission of a Violent Crime
SC Code: 16-23-0490
CDR Code: 0549

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

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

Rame L Campbell

ASSISTANT SOLICITOR