

RECEIVED

NOV 20 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

CLARK INABINETT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-210228

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

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

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

TRIAL TRANSCRIPT 1

APPLICATION FOR POST-CONVICTION RELIEF35

RETURN45

APPLICANT’S TRIAL BRIEF50

POST-CONVICTION RELIEF HEARING TRANSCRIPT54

PLAINTIFF’S EXHIBIT 1, LETTER TO CLARK INABINETT FROM
CHARLIE JOHNSON100

ORDER OF DISMISSAL101

CLERK OF COURT RECORDS119

STATE OF SOUTH CAROLINA) GENERAL SESSIONS
County of Richland) 2009-GS-40-10794
THE STATE,)
vs.) TRANSCRIPT OF RECORD
CLARK INABINET,)
DEFENDANT,)

February 24, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE L. CASEY MANNING, JUDGE.

APPEARANCES:

VANESSA C. SHIPLEY, ASSISTANT SOLICITOR
Attorney for the State

CHARLIE J. JOHNSON, JR., ESQ.
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 CLARK INABINET, after being duly
2 sworn, testified as follows:

3 MS. SHIPLEY: May it please the Court, Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. SHIPLEY: Standing before you is Clark Inabinet
6 represented by Charlie Johnson from the private bar. He
7 is here to plead guilty to a negotiated sentence for ten
8 years on armed robbery under North Carolina vs. Alford.

9 The benefit for the North Carolina vs. Alford is
10 dismissal of an assault with intent to kill charge, which
11 is indictment 2009-10794.

12 THE COURT: Mr. Johnson, you represent Clark
13 Inabinet?

14 MR. JOHNSON: Yes, I do, Your Honor.

15 THE COURT: Have you explained to Mr. Inabinet the
16 charge contained in this indictment, the possible
17 punishment and his rights, including his constitutional
18 right to a jury trial?

19 MR. JOHNSON: Yes, I have, Your Honor.

20 THE COURT: And in your opinion, does Mr. Inabinet
21 understand the charge, the punishment and his rights?

22 MR. JOHNSON: In my opinion, he does.

23 THE COURT: How does he indicate to you he wishes to
24 plead, guilty or not guilty?

25 MR. JOHNSON: He indicated he wishes to plead guilty

1 under --

2 THE COURT: Guilty under North Carolina vs. Alford --

3 MR. JOHNSON: That's correct.

4 THE COURT: -- that's been outlaid. If I say
5 "guilty", I mean guilty under North Carolina vs. Alford.

6 THE DEFENDANT: I understand that.

7 THE COURT: Do you agree with his decision to do so?

8 MR. JOHNSON: Yes, I do, Your Honor.

9 THE COURT: From your investigation of the facts and
10 circumstances around this case, do you feel that the state
11 could produce sufficient evidence to convince a jury here
12 in Richland County of Mr. Inabinet's guilt beyond a
13 reasonable doubt, and if he were to stand trial on this
14 charge, his conviction would be probable?

15 MR. JOHNSON: I believe that it is, Your Honor.

16 THE COURT: All right. Now, has Mr. Inabinet been
17 ordered to submit to a mental examination to determine his
18 competency to stand trial?

19 MR. JOHNSON: No, he has not.

20 THE COURT: Any question in your mind, Mr. Johnson,
21 that Mr. Inabinet is not competent to enter this guilty
22 plea?

23 MR. JOHNSON: There is no question in my mind, Your
24 Honor.

25 THE COURT: All right. You are Clark Inabinet; is

1 that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Where are you from, Mr. Inabinet?

4 THE DEFENDANT: Connecticut. I was born in
5 Orangeburg. I was raised in Stamford, Connecticut.

6 THE COURT: Did you grow up in Cordova or somewhere?

7 THE DEFENDANT: Excuse me?

8 THE COURT: Cordova in Orangeburg County. What part
9 of Orangeburg County?

10 THE DEFENDANT: I -- listen, I've never been there
11 other than a visit unless you --

12 THE COURT: Did you grow up in Hartford, Connecticut?
13 Where did you grow up?

14 THE DEFENDANT: Stamford, Connecticut.

15 THE COURT: All right. Now, you heard your lawyer,
16 Mr. Johnson, tell me that he has explained to you the --
17 well, let me back up a little bit since you're going to
18 jail for ten years.

19 Let me make sure. You understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Before I can accept your plea of guilty,
22 it's necessary for me to make sure that you're making this
23 plea freely and voluntarily. To do that, Mr. Inabinet, I
24 need to ask you a series of questions.

25 At any point during my questioning of you, if you do

1 not understand anything I say or any words that I use,
2 please stop. I'll be more than happy to repeat anything I
3 say, Mr. Inabinet.

4 Additionally, I'll be more than happy to stop this
5 plea to allow you as much time that you feel you may need
6 to consult with your lawyer, Mr. Johnson. Do you
7 understand, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How old are you, Mr. Inabinet?

10 THE DEFENDANT: Excuse me?

11 THE COURT: How old are you?

12 THE DEFENDANT: Forty-seven.

13 THE COURT: All right. How far did you go in school?

14 THE DEFENDANT: I have a bachelor's degree in
15 business.

16 THE COURT: All right. Where did you go to school?

17 THE DEFENDANT: Westchester Business Institute with a
18 minor from the University of Connecticut.

19 THE COURT: In Storrs?

20 THE DEFENDANT: Yes. No. I went to the Stamford
21 branch.

22 THE COURT: Okay. Have you ever been in Storrs?

23 THE DEFENDANT: Yeah. We used to go up there for our
24 games and so forth, yes, sir.

25 THE COURT: Okay. Now, you heard your lawyer,

1 Mr. Johnson, tell me that he has explained to you -- well,
2 did I ask you if you had ever been treated for any
3 alcohol, drug abuse, anything like that?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you taken any medications, drugs or
6 alcohol in the last 24 hours?

7 THE DEFENDANT: No.

8 THE COURT: All right. Are you today aware of any
9 physical, nervous or emotional problem that might keep you
10 from understanding what you're doing?

11 THE DEFENDANT: Emotionally --

12 THE COURT: Yeah, I understand.

13 THE DEFENDANT: ---I'm kind of over the line but...

14 THE COURT: You know what you're doing?

15 THE DEFENDANT: I'm fine.

16 THE COURT: Good.

17 You agree, Mr. Johnson, that Mr. Inabinet knows what
18 he's doing here today?

19 MR. JOHNSON: I agree, Your Honor.

20 THE COURT: Okay. Now, you heard your lawyer,
21 Mr. Johnson, tell me that he has explained to you the
22 charge contained in this indictment, the possible
23 punishment, and your rights, including your right to a
24 jury trial and that you understand these things; is that
25 correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Mr. Inabinet, you're before
3 me on indictment number 2009-10799 amended, State vs.
4 Clark Inabinet. This is an attempt for armed robbery. Do
5 you understand these charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The indictment alleges, Mr. Inabinet,
8 that you did here in Richland County on or about
9 ~~October 26th~~ October 26th, 2008 commit a robbery by feloniously taking
10 from the person or presence of Troy Barrow by means of
11 force, intimidation, good or monies belonging to Circle K,
12 being described as United States currency and/or cigars
13 with the intent to deprive the owner permanently of such
14 property.

15 You went in, and you robbed the Circle K. That's
16 what you want to plead guilty to, is that correct, under
17 North Carolina vs. Alford?

18 THE DEFENDANT: Under North Carolina, yeah, I'm not
19 admitting to anything.

20 THE COURT: I understand. I understand.

21 THE DEFENDANT: But it's...

22 THE COURT: We know Alford. That's why she laid it
23 out very well, but they're dropping something for us. If
24 you went to trial, there's a good chance you might be
25 convicted and looking at 30 years.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You're taking a deal.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: That's what you want to do. These are
5 the allegations that you're not admitting to --

6 THE DEFENDANT: Right.

7 THE COURT: -- but you're willing to be sentenced to.

8 THE DEFENDANT: That's correct.

9 THE COURT: All right. Knowing then, sir, that you
10 could go to jail for 30 years by pleading guilty to armed
11 robbery, do you still want to plead guilty under North
12 Carolina vs. Alford to this allegation, taking advantage
13 of the deal they have offered you? Is that fair enough?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Now, Mr. Inabinet, when you
16 plead guilty, you have to give up certain basic rights.
17 Even under North Carolina vs. Alford, once again, if I say
18 "guilty", I mean guilty under Alford.

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. If I ain't going to give you the
21 deal, I'll stop and let you withdraw. Okay. You
22 understand that?

23 THE DEFENDANT: Yeah.

24 THE COURT: Make sure you understand everything.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: When you plead guilty, you have to give
2 up certain basic rights. First of all, your right to
3 remain silent, which is your right against
4 self-incrimination, which is your right to say nothing at
5 all. No one can make you come in here and admit that you
6 did this. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You're going to waive that right, and
9 under Alford, you can say, "I didn't do it."

10 THE DEFENDANT: Yes, sir.

11 THE COURT: But you know, you've got to waive that
12 right.

13 Also, when you plead guilty, Mr. Inabinet, even under
14 Alford, you have to give up your constitutional right to a
15 jury trial. That's the most important thing. Now, you
16 know and understand what a jury trial is, don't you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you want one?

19 THE DEFENDANT: I'm going to plead guilty, Your
20 Honor.

21 THE COURT: I understand.

22 THE DEFENDANT: I mean, not plead guilty, but I'm
23 going to accept --

24 THE COURT: I understand.

25 THE DEFENDANT: -- what's being put forward.

1 THE COURT: What's why they have Alford. It lets you
2 take advantage of the deal. That's where if we pull a
3 jury, they'd have to convince all 12 of them that you
4 committed the robbery at Circle K.

5 If you don't convince all 12 that you did it, then
6 you could be acquitted and maybe walk out of here, but you
7 want to give up your right a jury trial; is that correct?

8 THE DEFENDANT: I am going to do that, yes, sir.

9 THE COURT: All right. Also, when you plead guilty
10 under Alford, you have to give up your right to confront
11 and be confronted by the witnesses against you. That is
12 your right to see, hear, and cross-examine any witnesses
13 the State would call to testify against you during trial.

14 Also, you'd give up the right to subpoena witnesses
15 who might say, "He wasn't there. He didn't do it,"
16 whatever. You understand all these things?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're going to waive all of these
19 rights --

20 THE DEFENDANT: I'm entering this plea under Alford.

21 THE COURT: -- and enter this plea under Alford; is
22 that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Now, you understand the
25 rights I just went through with you?

1 THE DEFENDANT: Yes, sir. I'm clear on everything,
2 Your Honor.

3 THE COURT: You want to waive them and give them up?

4 THE DEFENDANT: Yes.

5 THE COURT: Now -- and once again, they'll be taken
6 from -- you're going to be sentenced as if --

7 THE DEFENDANT: Yeah.

8 THE COURT: You're going to be sentenced to ten
9 years, unless they talk me out of the ten years. They
10 might. Of course, I'm hoping you might, he might, she
11 might. I don't know, but I'm probably going to give you
12 the ten years.

13 Let's see. Let me ask you this: Anybody promise you
14 anything? Anybody threaten you in any way in order to get
15 you to plead guilty, except for the deal with the Alford
16 and ten years?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: Nobody said, "You better plead guilty."
19 They tricked you into it? You know what you're doing?

20 THE DEFENDANT: I'm back into a coroner, it's fair to
21 say, but I'm fine with it.

22 THE COURT: Okay. That's fine. You can even say
23 that under Alford.

24 The deal is ten years, right?

25 MS. SHIPLEY: Yes, sir.

1 THE COURT: And credit for time served, I assume?

2 MS. SHIPLEY: Yes.

3 THE COURT: What are you dropping --

4 MS. SHIPLEY: November --

5 THE COURT: The lynchpin was what?

6 MS. SHIPLEY: He was arrested November 10th, '08, to
7 give him credit since then, and I'm dismissing assault
8 with intent to kill.

9 THE COURT: All right. That's -- that's the basis of
10 the deal, right, Mr. Johnson?

11 MR. JOHNSON: I agree.

12 THE COURT: And you understand this?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you still want to
15 continue?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, are you satisfied with the manner in
18 which your lawyer here, Mr. Johnson, has advised and
19 represented you on this charge?

20 THE DEFENDANT: Charlie's a good guy.

21 THE COURT: Now, have you talked with him for as long
22 and for as often as you feel it necessary for him to
23 properly represent you?

24 THE DEFENDANT: Not really.

25 THE COURT: Do you need to talk to him some more?

1 THE DEFENDANT: I mean, I talked to him enough to
2 understand where I'm at, but I mean, there's a lot of
3 things I could have said or...

4 THE COURT: Well, here's your chance.

5 THE DEFENDANT: There's no needed, Your Honor.
6 I'm -- I got to get this going. You know, life is short,
7 man. I'm wasting it sitting here.

8 THE COURT: And you're 47. I understand.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But anyway, do you have any complaints
11 against Mr. Johnson?

12 THE DEFENDANT: Yeah.

13 THE COURT: What?

14 THE DEFENDANT: No.

15 (Laughing.)

16 THE COURT: I mean, if you've seen his brothers...

17 THE DEFENDANT: I mean, I'm sorry, Your Honor. I
18 kind of keep -- I laugh to keep from crying.

19 THE COURT: I understand. Look, I've done this a
20 long time, okay. I've even been to Storrs, Connecticut.

21 THE DEFENDANT: Yes, sir. I don't want them white
22 people to see me.

23 THE COURT: I've been to Hartford, too, but Storrs is
24 like a dairy farm.

25 THE DEFENDANT: There's lots of farms there.

1 THE COURT: Yeah, yeah. The road from Hartford to
2 Storrs is a lonely one. Anyway.

3 THE DEFENDANT: I've been there around '81.

4 THE COURT: Do you have any complaints against anyone
5 in the sheriff's department who arrested you, the Richland
6 County Sheriff's Department?

7 (Pause.)

8 (There was no response.)

9 THE COURT: Yep?

10 THE DEFENDANT: You know what, the Bible said, "Even
11 a fool can be considered wise when they know when to keep
12 their mouth shut," so I'm going to --

13 THE COURT: It's hard impeach Siberia.

14 Do you have any complaints against anyone in the
15 solicitor's office?

16 THE DEFENDANT: No, I don't have any complaints.

17 THE COURT: You know, when you go to jail, you have
18 the right to appeal this guilty plea.

19 THE DEFENDANT: Yeah.

20 THE COURT: You've got to file a Notice of Intent to
21 Appeal within ten days of today's date.

22 After you're in jail, if you want to complain about
23 your lawyer, the sheriff's department, the solicitor's
24 office or anybody else, you need to file a Post Conviction
25 Relief application within one year of today's date. Do

1 you understand all of that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. So you're satisfied with the
4 deal? You want me to go along with it? Is that fair
5 enough?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. I'll be happy to hear about
8 it.

9 MS. SHIPLEY: I'll stand on the indictment, Your
10 Honor.

11 THE COURT: Well, y'all get so wise and smart around
12 here.

13 All right. I find that there is a substantial
14 factual basis for your plea, Mr. Inabinet. I further find
15 your decision to plead guilty to be freely, voluntarily
16 knowingly and intelligently made; that you've had the
17 advice of competent counsel with whom you indicate to me
18 you're satisfied.

19 You want to take advantage of the offer, I mean the
20 deal they've offered you, and I'm going to go along with
21 it.

22 Mr. Johnson, I'll be happy to hear from you.

23 MR. JOHNSON: I have nothing at all to say, Your
24 Honor.

25 THE COURT: Mr. Inabinet, this is a big deal, I know.

1 I wish you well, okay.

2 On indictment 2009-10799, the sentence is ten years
3 credit for time served. Good luck --

4 MS. SHIPLEY: Thank you, Your Honor.

5 THE COURT: -- pursuant to the deal that's been
6 worked out.

7 (Whereupon, the proceedings were concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)	
	)	COURT OF GENERAL SESSIONS
County of Richland	)	bond hearing
)	
)	
THE STATE OF SOUTH CAROLINA,)	
)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
CLARK INABINET,)	
)	
DEFENDANT,)	

February 25, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

VANESSA C. SHIPLEY, ASSISTANT SOLICITOR
Attorney for the State

ANASTASIA WALKER, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 MS. SHIPLEY: Good afternoon, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, ma'am.

4 MS. SHIPLEY: Standing before you is Clark Inabinet
5 represented by Ms. Anna Walker from the Public Defender's
6 Office.

7 Your Honor, the defendant was charged with two
8 counts, one being armed robbery and the other one being
9 assault with intent to kill. This incident occurred on
10 the 26th of October shortly after -- close to one a.m. in
11 the morning. Troy --

12 THE COURT: I'm sorry, the 26th of October, 2008?

13 MS. SHIPLEY: Yes, ma'am.

14 It was at 12:50 a.m. The store clerk working at the
15 Circle K, which is located at 2807 Atlas Road, it's right
16 there on the corner of Bluff and Atlas, was working alone
17 in the store. His name is Troy Barrow.

18 He indicated that at that time he noticed a car pull
19 up to the -- pump number five at the gas station. He
20 observed the defendant enter the store.

21 As soon as the defendant got to the regist--- to the
22 desk where the register is, the victim went to assist him.
23 The next thing he knows, the defendant is producing a
24 black in color handgun demanding money from the register.

25 I just got done observing the surveillance tape. At

1 that point, the victim described the subject as wearing a
2 very unique shirt. It essentially is an excellent quality
3 video where you see sort of like a Hawaiian type shirt.
4 Also, the defendant is not disguising himself at all.

5 I recognized him in the box as soon as I walked in
6 the courtroom because I just saw him on tape, never seen
7 him before in my life.

8 At that point, Your Honor, the victim is having
9 trouble opening the register. You can see him sort of
10 panicking, "I can't open it." So the defendant instructs
11 him to go to the next register. At that point, the victim
12 goes to that register and is able to open that register
13 for him and is complying as best as he can putting the
14 drawer with the cash on the counter.

15 The defendant then is seen with the handgun still
16 pointed at the victim grabbing the cash, and it was about
17 \$60 worth of cash.

18 At that point, the victim is just standing back doing
19 nothing just in panic, and the defendant then leaves the
20 store. As he's leaving, he turns around and shoots at the
21 victim barely missing the victim, hitting the glass behind
22 the counter where the victim is.

23 You see the victim drop immediately to the floor and
24 begin to crawl to get to the phone. At that point, the
25 defendant flees the vehicle -- flees in a vehicle.

1 The victim provides a description of that vehicle, a
2 late '90s Pontiac Bonneville white in color with tinted
3 windows and some aftermarket rims.

4 At that point an investigation is conducted in this
5 case. Investigator Don Robinson did some research on the
6 defendant and found out that he dates a girl named Angela
7 Hopkins.

8 He then did a driveby and noticed a car fitting the
9 description provided by the victim in the driveway, and so
10 at that point he grabs, gets the victim, and says "Come
11 look at the car and tell me if you recognize it."

12 So they do sort of a show-up identification of the
13 car, and the victim is adamant that is the same car he saw
14 the defendant drive away in from the gas station, pump
15 number five.

16 I'm not sure if you're aware of this gas station, but
17 it's very well lit at night, Your Honor. So the victim
18 had no problem seeing it.

19 At that point, Your Honor, because of the probable
20 cause, a search warrant is obtained. A lawful search
21 warrant is executed at the residence.

22 The defendant is in the residence with his
23 girlfriend, and the pistol fitting the same description as
24 the pistol used in the robbery is found in a closet.

25 At that point, the defendant is immediately

1 Mirandized verbally, and he begins to apologize in front
2 of the officers to his girlfriend, and then at that point
3 the deputy who is assisting Investigator Robinson said,
4 "Did you do this?" He said "Yeah", then he changes his
5 story, then he goes, "No, no, no, no."

6 At that point, Your Honor, the defendant was arrested
7 for assault with intent to kill for shooting at the victim
8 and armed robbery.

9 What is so alarming about this case, Your Honor, is
10 that another man, another store clerk, was working five
11 days later on November 4th, 2008 and saw the defendant
12 come back to the store. He lives close by.

13 She -- or this individual recognized him because that
14 store clerk had also reviewed the surveillance camera. As
15 I indicated, it's excellent quality, and at that point saw
16 the individual get back into a dark green pickup truck and
17 lo and behold, the defendant has -- is the registered
18 owner of a dark green pickup truck.

19 The victim, Mr. Barrow, could not be present this
20 afternoon, and his manager, Ms. Peggy Owens, also wished
21 to be here, was unable to get away, to find people to
22 cover them at their shifts at the store, but I have shared
23 this letter that has been submitted with Ms. Walker, and I
24 would like to read it at the appropriate time.

25 THE COURT: Who is the letter written by?

1 MS. SHIPLEY: Peggy Owens, the store manager.

2 THE COURT: Yes, ma'am.

3 MS. SHIPLEY: Your Honor, it says, "To the Court, my
4 name is Peggy Owens, the manager of the Circle K that was
5 robbed by Mr. Inabinet.

6 On behalf of my company, myself, and my employees, I
7 am writing in regards to Mr. Inabinet's bond hearing. We
8 are concerned that he will have an easy time making bond
9 if the amount is lowered.

10 I don't feel that anything should be made easy for
11 him, as he has not made anything easy for me or my
12 employees. As a rule, it is difficult to find night
13 workers in this type of work, but now it is much more
14 difficult.

15 People want a sense of security when at work, and
16 they should be able to have that. After the robbery, my
17 employees are paranoid and jumpy worried that we will get
18 robbed again mainly because it was said that the suspect
19 lived in the neighborhood.

20 I don't believe that he has any concern or remorse
21 for the fear he has placed. After the robbery he came
22 into the store as a regular customer. He casually
23 strolled in, paid for gas and cigars like he had every
24 right to be there, and this was just two weeks after
25 holding my employee at gunpoint.

1 It is a huge concern to us that he lives in our
2 neighborhood and may soon be free to walk in our store
3 again. Hopefully you will take this into consideration
4 when making your decision. Sincerely, Peggy Owens,
5 Manager, Circle K, Atlas Road."

6 Subsequent to the arrest, Your Honor, D.N.A. was
7 collected, swabs were done at the register, and I am in
8 receipt of the D.N.A. report.

9 One of the swabs that was taken, Your Honor, was of
10 left -- left side of the exterior of the cash register,
11 and that -- that swab came back matching his D.N.A. So
12 the evidence in this case is overwhelming.

13 He is clearly a danger to the people of this store.
14 He has returned with arrogance, Your Honor, and we
15 respectfully request that you deny his request for a bond
16 reduction. \$175,000 is a reasonable bond considering he
17 fired at an unarmed man who had complied with his demands.

18 He does have a prior criminal history. From South
19 Carolina he has got a 2007 fraudulent check, and then he
20 also has a record from Connecticut, which I would submit
21 shows he has got ties to other communities and is a flight
22 risk.

23 He was convicted on October 9th, 1997 for two counts
24 of assault or -- either assault in the second degree.
25 It's hard to read the rap sheet, Your Honor, but he got

1 two years consecutive, so that tells me it was two counts.

2 He was also convicted August 29th of 1995 in
3 Connecticut for assaulting a police officer, and he
4 received six months jail minimum with a six month jail
5 maximum consecutive sentence. That is all from the State,
6 Your Honor.

7 THE COURT: Ms. Walker?

8 MS. WALKER: Thank you, Your Honor. May it please
9 the Court. Just to give you a little background about
10 Mr. Inabinet, he was raised in Connecticut, Your Honor,
11 but he has been here in South Carolina for over four
12 years, actually, a little longer. He's been in the south
13 since 2004, so I think it's been a little bit longer.

14 He's 45 years old. I find that he's an educated
15 person. He's a hard worker, and since he has been with
16 Ms. Hawkins, he has taken on the responsibility of taking
17 care of his twin daughters. He is very attached to them
18 and loves them very much, Your Honor.

19 Your Honor, as far as addressing this case, we won't,
20 of course, try the case right now, so I'll try to keep any
21 addressing of the facts to a minimum other than I know
22 that Mr. Inabinet would like to know as far as making any
23 comments in front of Investigator Robinson or any
24 deputies, he indicates that he was apologizing to his
25 fiancée because of what was happening, not because he had

1 done it or anything of that sort and that he never
2 indicated to Mr. Robinson that he had done it. He has
3 made no other statements as far as I am informed.

4 Your Honor, as I said before, my client -- he does
5 have ties in other communities; but he has very strong
6 ties here.

7 He is in communication with Ms. Hopkins. She was
8 supposed to be here today, Your Honor. I was informed
9 that she was going to be here today. She may have some
10 problem with work I was not informed of, but as far as I
11 knew, she had been calling me during the week. I left her
12 messages as to where to be and what time, so I imagine
13 some incident came up. I'll contact her shortly
14 thereafter.

15 Your Honor, my client's bond is set at \$175,000, and
16 it does have a 10 percent option, but being close to
17 \$20,000, it is next to impossible for my client.

18 He would -- he would submit to the Court, Your Honor,
19 that his change of circumstances would be that
20 Mr. Inabinet is the sole provider for his family.

21 He owns his own business. He did regular work for
22 multiple different people in the community, and since he
23 has been incarcerated, he hasn't been able to provide for
24 his family. Your Honor; he has had trouble paying any of
25 the bills. One of their vehicles is repossessed.

1 I know that she had sold some things or something of
2 that nature in order to pay the last mortgage, and I think
3 it's only a matter of time before she loses the house,
4 Your Honor. She is just unable to provide for her two
5 children just herself. Mr. Inabinet was the sole
6 provider.

7 Your Honor, my client is not asking for a P.R. bond
8 or asking for anything unreasonable, Your Honor. I think
9 he would like just a little more of an opportunity to try
10 to be able to get bond, somewhere in the range of 75 to
11 \$100,000 so maybe his family and other members can come up
12 with some money to get a 10 percent option, Your Honor.

13 I don't think Mr. Inabinet is looking for anything
14 unreasonable in light of these charges, and we
15 respectfully submit that to you.

16 THE COURT: Thank you.

17 THE DEFENDANT: May I say something to you, Your
18 Honor?

19 THE COURT: Yes, sir.

20 THE DEFENDANT: I had the whole thing prepared to
21 say, and Anastasia warned me against it.

22 My family means everything to me, right, and under
23 normal circumstances, I wouldn't be standing here before
24 you, all right.

25 In regards to the seriousness, I'm trying to say that

1 she won't let me mention, all right, but you know, I have
2 -- I'm -- for my -- I'm prepared to take full
3 responsibility for anything or what have you. I would
4 just like to help this, all right.

5 I need to make sure that Angie and my babies are good
6 before anything -- this is all settled. All right.
7 That's my only concern, all right. I just won't even
8 explain myself without going into it, so I'm just going to
9 say it.

10 I just have to -- I can sit here and talk while doing
11 the face, all right, and you don't know me from left to
12 right. I can only show you who I am, what I am and what I
13 represent.

14 I just hope that -- just give me a chance to prove to
15 you who I am. This -- this one incident doesn't define
16 me. Just give me a chance to prove who I am. I just
17 can't let my wife, soon-to-be wife, should have been
18 married November 4th of last year before this whole thing
19 came up.

20 I just need to know that, whether I'm sent away for
21 five years or 20 years, the day I leave, they're satisfied
22 and culpable (sic). I get out there. As I said, this is
23 my busiest time of year right now, all right, and --

24 THE COURT: What type of work do you do,
25 Mr. Inabinet?

1 THE DEFENDANT: I'm a carpenter. I rebuild,
2 refurbish homes. In fact, Lieutenant Padgett, I put some
3 work on his house last year, last summer. Like I said, I
4 just -- I don't know what to say.

5 THE COURT: Thank you.

6 THE DEFENDANT: Yes, ma'am.

7 MS. WALKER: Thank you, Your Honor.

8 THE COURT: Anything further, Ms. Walker?

9 MS. WALKER: I'm sorry?

10 THE COURT: Anything further?

11 MS. WALKER: Nothing further, Your Honor.

12 THE COURT: Who set the initial bond?

13 MS. SHIPLEY: It was a magistrate judge, Your Honor.

14 I don't have the name of the judge.

15 MS. WALKER: Was it Judge Edmonds (phonetic)?

16 THE DEFENDANT: Yes, ma'am.

17 MS. WALKER: Okay.

18 THE DEFENDANT: Edmonds.

19 MS. SHIPLEY: He was not arrested until
20 November 11th, 2008 some two weeks after this crime.

21 THE DEFENDANT: And my whole needy family.

22 THE COURT: Based on the facts at this particular
23 time and considering Mr. Inabinet's background and ties to
24 the community and the seriousness of the charges and
25 whether or not he's a danger to the community, I don't see

1 a reason to reduce the bond at this particular point.

2 Is there a -- this is on a track or not on a track?

3 MS. SHIPLEY: It's on a track. He has already had a
4 first appearance. His first appearance date would have
5 been October -- excuse me, December 8th.

6 THE COURT: December 8th?

7 MS. SHIPLEY: December 8th was his first appearance,
8 so he was put on a track two, which means we have to
9 dispose of the case within 180 days.

10 THE COURT: 180 days from when?

11 MS. SHIPLEY: The date of his first appearance, Your
12 Honor. So his second appearance -- I can look it up in
13 the computer real quick and come back and tell you when
14 that is, but depending on what his intentions are, if he
15 wants to plead guilty or go to trial, it will be dealt
16 with at the second appearance. All the discovery has been
17 turned over.

18 MS. WALKER: And, Your Honor, I still have a couple
19 of things I need to review with my client. I just got the
20 video today. The D.N.A. came in a few days ago, I
21 believe, if I'm correct on that.

22 THE COURT: I'll state that if it's not disposed of
23 within the 180 days, then you can renew your motion at
24 that point.

25 MS. WALKER: Thank you.

1 MS. SHIPLEY: Thank you.

2 (Whereupon, the proceedings were concluded.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

County of Richland

2010CP4004731
In the Court of Common Pleas

Clark Inabinett Sr. #339406

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

vs.

State of South Carolina 5th Circuit

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2010 JUL 19 PM 1:19
JEANNETTE W. MC
C.O.P. & G.S.
RICHLAND COUNTY
FILED

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Kershaw Correctional Institution 4848 Goldmine Hwy
Kershaw, South Carolina 29067
2. Name and location of Court which imposed sentence Richland County Judicial Center 1701
Main Street Columbia, South Carolina 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Warrant # J563251 mo # 09GS4010799
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 24, 2010
 - (b) _____
 - (c) _____

5. 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 _____

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

NO

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

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

- (a) While at Kirckland R: E I was not allowed any access to legal reference(s). (I filed a grievance on this)
- (c) _____

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

- (a) My court appointed attorney did not attempt to defend me
- (b) I wanted to go to trial and was lied to by my attorney
- (c) Ineffective Assistance of Counsel

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

- (a) Please see Attached Enclosure
- (b) _____
- (c) _____

Clark Inabinett # 339406
 Kershaw Correctional Inst.
 4808 Gold Mine Highway
 Kershaw SC 29067

10
 1 of 5

Statement of Fact(s)

I Clark Inabinett Sr. hereby swear that the proceeding statement(s) are actual and true. That the persons mentioned forwith are actual participants and record of these accounts are documented via the proceedings of recorded and stored by the court reporter(s) in the employ of the office of the clerk of the Court of Richland County.

1) On November 10, 2008 I was arrested at my home "4313 Crestlite drive Columbia South Carolina". The charges go as follows: warrant # J-563249 Assault/ Assault with intent to kill and warrant # J-563251 Armed Robbery. Subsequently I was booked and placed in detention at Albin S. Glenn Detention Center. I was appointed Anastasia Walker as counsel to represent me on these charges. I explained to Ms. Walker at that time that I had no memory of the night this incident supposedly occurred. All I could muster was that I was out on the night of Oct 25 (Saturday) 2008 at a place named the "Ale House" located on Bellline Boulevard. I was shooting pool with two young women and buying drinks from about 11:30 PM until I started to feel nauseous and left to go home. I also remembered stopping to get cigars but not much more other than awaking behind the wheel of my car that Sunday morning sitting in my driveway when my wife served me breakfast I still felt sick and vomitted a number of times that morning and throughout the day. I attributed it to having been drinking since about 2pm the previous day. I am not a doctor but I believe that

out that the girls I was entertaining (Tammie and Lisa) (which we found out were only bar names) were known by the regulars at the @le house as shake down artists. They would party with and pal up to men and try to exchange sex for money and if that did not work they would at times slip something in the @ drinks and roll their targets. I did remember talking with these women about leaving with them until I started to feel sick. At which time I chose to go home. After learning these facts I insisted that Anastasia find these girls and question them. This was in late November 2008. She made no effort to investigate so I had my brother-in-law Marvin (wore joy) hang around and try to track one or both of these girls down. At that time she introduced herself to Marvin as Mandy, and he expressed to me that she tried to pick him up also, until he mentioned my name and asked her to admit she put something in my drink. I wrote Anna and pleaded with her to do an immediate investigation because Marvin said they at the club had signs posted stating the place would be closing up in April 09. This letter to Anna was sent in March 09. "She still did not start an investigation". In August of 2009 MisWalker finally came to me with a plea of 10 yrs violent for Armed Robbery and I refused and asked for her dismissal. I was then appointed Charlie J. Johnson as pro bono counsel on Sept 9, 2009. Again I explained to Mr. Johnson the position I was in, but by this time I had total recall of the events of Oct 25 2008 and asked that he research

10 cont.
3 of 5

my claim that I was drugged and that I did not in fact rob the gas station. But that I did shoot the window and floor of the establishment in retaliation of Troy propositioning me with^(a) homosexual advances and statements. I instructed mister Johnson also to go to the solicitor (Vanessa Shipley) and explain my position and try to arrange a plea. Here again I state an effectual counsel, Mr. Johnson never attempted to track down the witness (Mandy) I spoke of, nor did he do any investigation(s) or make any effort to support my claim. He never spoke up one time at my court appearances in my defense or to even build a defense to go to trial. At one particular hearing I tried to have him dismissed for lack of representation and misconduct (This fool interviewed me in the solicitor's office without my knowledge of where we were) asking questions and the prosecuting attorney was there not 6 or 8 feet away in an open office listening to all our conversation. At this point I had had enough and sought to dismiss Mr. Johnson and was told by a judge Neuman that "I either go to trial with Johnson or defend myself". At that point I felt totally exasperated at the whole situation. I was locked up from November 10, 2008 until Feb 2010. My first public defender blew my chance to get my only witness. My pro bono attorney was blatantly working with the prosecution and doing nothing on my behalf. Hell when I asked to have him dismissed because he flat out lied to me (saying there was no such thing as a defense for being drugged without my knowledge the solicitor acted as though it was the

10 cont.

5 of 5

out. ⑤ My plea of guilty was not made intelligently on my part, so I do share some blame here. I just ask that the court please allow for a new trial that all the facts of this debacle be brought forth.

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court?

ND

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

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) My first attempt at filing
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Not effectively
- (b) your trial, if any? N/A
- (c) your sentencing? Not effectively
- (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? N/A

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

- (a) the name and address of each attorney who represented you
 - i. Anastasia L. Walker Richland County Public Defenders
office 1701 Main St Columbia, SC 29201
 - ii. Charlie S Johnson Sr. 1911 Pickens St. Columbia SC 29202
 - iii. _____

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

- i. Pre-hearing and Bond hearing
- ii. sentencing
- iii. _____

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

I wish to get a new trial so that all the facts of this case can be aired and/or get a fair sentence for what I did commit.

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

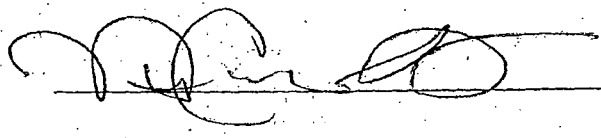
No -

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Mister Clark Inabinett, 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.



SWORN to and subscribed before me this 24

day of May, 19 2010

Catherine A. Amerson (L.S.)
Notary Public

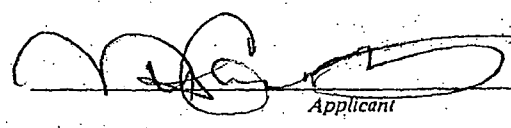
My Commission Expires: My Commission Expires December 22, 2018

2010 JUL 19 PM 1:49
JEANNETTE W. MCBRIDE
C.C.P. & Q.S.
RICHLAND COUNTY
FILED

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

I, Mister Clark Inabinett # 339406, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

24 day of May, 19 2010

Catherine A. Amerson
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
	)	2010-CP-400-4731
INABINETT Clark, # 339406,)	
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 19, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Charlie J Johnson, Esquire. On February 24, 2010, the Applicant pled guilty and was sentenced by The Honorable L. Casey Manning. The Applicant had been indicted and/or pled guilty to the following: Armed Robbery - (2009-GS-40-10799). According to the South Carolina Department of Corrections, the Applicant is serving a 10 year sentence for "Armed Robbery."

II.

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

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

III.

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

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

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

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

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

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

September 22, 2010

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2010-CP-400-4731

Clark Inabinett, 339406

Applicant,

vs

State of South Carolina,

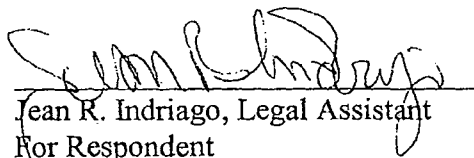
Respondent.

)
)
)
) 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(s) by depositing same in the United States mail, postage prepaid:

Robert L. Brown, Esquire
Post Office Box 100261
Columbia, South Carolina 29202

DATED this 28th day of September, 2010.


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
Clark Inabinett, #339406,	)	C/A No.: 2010-CP-40-4731
)	
Applicant,)	
)	
vs.)	
)	
State of South Carolina,)	
)	
Defendant.)	

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on July 19, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by the Honorable Alison Renee Lee on December 19, 2011.

B. Applicant's application states that he is seeking relief from the sentence of ten (10) years imprisonment imposed by the Honorable L. Casey Manning on February 24, 2010, for the crime of Armed Robbery (Indictment No.: 2009-GS-40-10799).

C. The Applicant was represented by Charlie J. Johnson, Jr., Esquire of the private Bar.

D. On November 10, 2008, Applicant was arrested and charged with two (2) crimes: Armed Robbery and Assault with Intent to Kill. The charges arose from the robbery of a Circle K store on Atlas Road in the early morning of October 26, 2008.

E. On the evening of October 25, 2008, Applicant went to The Ale House restaurant in Columbia where he believes he was slipped a "mickey" by a girl he talked with there. He became nauseous and disoriented and left the bar. He has very little

memory of what happened the rest of the evening. He remembers stopping at the Circle K near his home and seeing the clerk, Troy Barrow, who he had met on a number of occasions. The clerk made a sexual advance on the Applicant who responded by pulling out a handgun to scare him off, firing two (2) shots on the way out. He failed to pay for a few cigars he had in his hands and left. Because Applicant was a well-known businessman in the area, who had frequented the Circle K nearly one hundred (100) times over the years, he was easy to find. He was arrested on November 11, 2008, and detained.

F. Shortly thereafter, Applicant was appointed Anastasia Walker, Esquire, of the Public Defenders Office. Despite Applicant's request, his attorney did not investigate the Ale House situation to determine if corroboration for Applicant's diminished capacity could be obtained. In August 2009, without doing anything more than request a bond reduction, Applicant's counsel met with him at the detention center and told him she had a plea offer (10) years. Applicant was outraged that his attorney had nothing to investigate and prepare a defense, so he demanded that she be relieved. On September 9, 2009, Charlie J. Johnson, Jr., Esquire, was appointed to represent Applicant.

G. Applicant saw Mr. Johnson four (4) times while in jail. They talked about the case but Mr. Johnson never shared the State's discovery with Applicant. At 3:30 a.m. on February 24, 2010, the Applicant was awakened at the detention center and informed that he was being transported to court. At the courthouse, Applicant met with Mr. Johnson who took him to a room and showed him the surveillance video of the Circle K robbery. Mr. Johnson informed the Applicant that he had no defense to present; that they were up for trial; and that Applicant could get thirty (30) years if he didn't agree to plead guilty in exchange for a ten (10) year sentence. Mr. Johnson stated that this was the best deal he could get with the Solicitor and that Applicant should plead guilty and then file a PCR to get his time cut. Based upon these revelations, the Applicant felt he had no choice but to plead guilty, although he insisted on maintaining his innocence. Mr. Johnson was able to get the Solicitor to allow the plea under *North Carolina vs. Alford*.

II. Legal Issue

Plea counsel was deficient in representing Applicant because he did nothing to prepare a defense, forcing Applicant to take a "no contest" plea.

III. Legal Authority

For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). This does not only apply to trials - this same standard applies to a guilty plea. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991). The advice Applicant received from his plea counsel failed to meet the standards for attorneys. Tollett v. Henderson, 411 U.S. 258, 98 S.Ct. 1602, 36 L.Ed 2d 235 (1973). t

Applicant did not appeal the plea. Now, the Applicant is challenging the voluntariness of his guilty pleas and this PCR evidentiary hearing is the only forum to raise this issue. State v. Barton, 325 S.C. 522, 530 n. 6, 481 S.E.2d 439, 443 n. 6 (Ct. App. 1997) (any challenge to the knowing and voluntary nature of appellant's plea could be raised only in a petition for post-conviction relief); In the Interest of Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (where sole issue before appellate court was competency to enter plea and issue was not raised at the time of the plea, issue was procedurally barred; proper avenue to challenge a guilty plea which was not objected to at the time of its entry was through post-conviction relief); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (absent timely objection at a

plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of post-conviction relief).

Applicant asserts that he did not validly waive his constitutional right to a trial by jury. When a PCR applicant alleges that he was denied the right to exercise one of his constitutional rights, the sole inquiry is whether he was informed of that right, and if so, whether he validly waived it. If there is no knowing and intelligent waiver, then the remedy is a new trial. See, e.g., Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) (no valid waiver of right to counsel, new trial ordered); Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) (same).

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. Strickland v. Washington, 466 U.S. at 687. As this was a guilty plea, Applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Here, the evidence shows that Applicant only agreed to plead guilty upon ineffective recommendations of his attorney. Therefore, Applicant’s attorney did not demonstrate “reasonableness under professional norms” that satisfies the requirements of the Sixth Amendment. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989).

PRAYER FOR RELIEF

Based on the foregoing, Applicant prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to the Richland County Court of General Sessions.



David E. Belding
 Post Office Box 11964
 Columbia, SC 29211-1964
 Phone: 803-665-3161
 Fax: 866-220-6352
 Email: dar820@sc.rr.com
 ATTORNEY FOR APPLICANT

January 11, 2012

State of South Carolina

Court of Common Pleas

County of Richland

2008-CP-40-1038

Mister Clark Inabinett, Sr. :

-VS-

TRANSCRIPT OF RECORD

The State of South Carolina :

January 11, 2012
Columbia, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge.

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

David E. Belding, Esquire
Attorney for the Applicant

Brian T. Petrano, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

I N D E X

Witness

Mister Clark Inabinett, Sr.

Direct Examination by Mr. Belding.....5

Charlie J. Johnson, Jr.

Direct Examination by Mr. Belding.....31

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
P-1	Letter to Clark Inabinett from Charlie Johnson		41

1 The Court: Okay. What do we have? Mr. Inabinett here?

2 Mr. Petrano: Mr. Inabinett.

3 The Court: All right.

4 Mr. Petrano: Thank you, Your Honor. May it please the
5 Court? This is Mr. Clark Inabinett, 2010-CP-40-04731. He
6 filed his application on July 19th, 2010. He pled guilty in
7 front of Judge Manning on February 24th, 2010. He was
8 represented at the ultimate plea itself by Mr. Charlie J.
9 Johnson, Jr., who, for the record, is here present in the
10 courtroom. A lot of the allegations mention a previous
11 attorney, Ms. Anastasia Walker, who is also here present in
12 the courtroom.

13 You should have two transcripts: The plea itself from
14 February 24th, 2010, and then there's a February 25th, 2009.
15 I'm going to call that a motion to continue. I'm not really
16 sure if that's the correct way to characterize it, but
17 ultimately there were two charges, both from the April 2009
18 term of the Richland County grand jury: 2009-GS-40-10799.
19 That was armed robbery, got 10 years for that. The second
20 charge was nol prossed in exchange for the plea. That was
21 10794. That was an assault with intent to kill. It was an
22 Alford plea and a negotiated sentence of 10 with that agreed-
23 upon dismissal of the AWIK.

24 He did get the 10 as agreed. There was no direct
25 appeal. I will turn it over to Mr. David Belding, the

1 applicant's current counsel of record. Thank you.

2 **The Court:** Let me make sure I have everything.

3 **Mr. Belding:** I understand.

4 **The Court:** One plea was in front of Judge Manning and
5 one was in front of Judge Lee?

6 **Mr. Belding:** No, I think that Judge Lee, Brian -- part
7 of that was a bond reduction motion, too, and also a
8 continuance and I wasn't really -- I think that clouds the
9 issue. I think we're mostly---

10 **The Court:** All right.

11 **Mr. Petrano:** Well, we can toss it out. I just---

12 **The Court:** I just want -- you know, I don't look at
13 anything I don't need to look at. That's why I'm---

14 **Mr. Belding:** I think Judge Manning's transcript is more
15 relevant.

16 **The Court:** All right. I have Judge Manning's
17 transcript.

18 **Mr. Petrano:** And I wasn't trying to cloud any issue.
19 We just had two transcripts. I put it in the packet, Judge.

20 **The Court:** Okay.

21 **Mr. Belding:** And it is confusing because the dates are
22 almost the exact same but a year apart, and we didn't want to
23 get you confused.

24 **Mr. Petrano:** And that's absolutely correct. I did the
25 same thing.

1 **Mr. Belding:** May it please the Court? I'd like to call
2 Mr. Clark Inabinett to the stand.

3 **The Court:** All right, Mr. Inabinett. Come around.

4 **Mr. Belding:** I'll hand a brief up.

5 Mister Clark Inabinett, Sr., after being duly
6 sworn, testified as follows:

7 **Bailiff:** State your full name for the record for me.

8 **The Witness:** Mister Clark Inabinett, Sr., and, yes,
9 that is my first name, sir. M-I-S-T-E-R. They just don't
10 acknowledge it.

11 **Mr. Belding:** Thank you, Your Honor. May it please the
12 Court?

13 Direct Examination

14 By Mr. Belding:

15 Q. Mr. Inabinett, you're currently serving time for armed
16 robbery; is that correct?

17 A. Yes, sir.

18 Q. Where are you incarcerated right now?

19 A. At Kershaw Correctional.

20 Q. Okay. And you have a sentence of 10 years.

21 A. Yes, sir.

22 Q. Now, I think I want to just go through briefly... Would
23 you -- and most of this is attached to your P.C.R.

24 application so it's already in the record, but could you

25 summarize what happened on the night of October the 25th,

1 2008, when you went out to the Ale House on Beltline?

2 A. Well, myself and my brother-in-law, Marvin, were just
3 cutting loose. My nephew had just came back from Iraq, his
4 second tour in Iraq, and we were just celebrating him making
5 it home safe. And I got -- we got lit. I mean, we were lit
6 for the entire day. We went over to the Ale House about
7 10:30, 11:00 that night, started drinking and then some more
8 and then I hooked up with these two young girls. All right?

9 And eventually one of them put something in our drinks,
10 I guess to try to move the party along, and then I didn't
11 start -- I started to feel bad, so I left. And on the way
12 home I stopped at the Circle K to get some cigars. I smoke
13 Hav-A-Tampa cigars. And the clerk that works there, Tron -
14 Troy, excuse me, Troy - Tron -- we call him Tron, but Troy --
15 and, you know, he just made some sexual advances at me and I
16 just flipped out. I just went crazy.

17 At first I didn't remember a lot about it, but, you
18 know, through a lot of prayer and things, I got my full
19 recollection back. But, you know, I shot up the gas station
20 basically and scared him up to scare him up and, you know, I
21 had given him a bill to pay for the cigars and---

22 Q. How big a bill?

23 A. \$10.

24 Q. A \$10 bill.

25 A. \$10 bill. And, you know, after this -- I shot one shot

1 at the window. All right? He was standing at this register
2 right here, and I shot at the window and said, you know,
3 "Man, stop playing with me. This is the last time I'm going
4 to take this from you," blah, blah, blah. And he was trying
5 to open that cash register and it wouldn't open, so he
6 shifted over to the other cash register and he opened it, you
7 know. And I'm like -- I said -- I don't want to curse, but I
8 said: Hurry the F. up, you know, and let me get out of here.
9 And he's just standing there like he was stuck on stupid. So
10 I fired another shot in the floor beside me, and he finally
11 got the register open and he was like, "Look, just get it.
12 Just get it."

13 So I reached over the counter and I pulled out the first
14 stack of bills. It was like, I don't know, maybe a 20 or so.
15 And I dropped down on the floor and I reached over again.
16 There was fives. And then when I got to ten, I took that and
17 I took my cigars and stuffed it in my shirt pocket.
18 Actually, I had already put the cigarettes in my pocket
19 because I got them from the first side of the register over
20 there. I put the cigars in my pocket, and then I started to
21 leave the store and he turned around and he said to me that:
22 You know you f'd up; you know you f'd up.

23 I turned back around at him and I said, "Just remember
24 what the hell I told you," you know, and I left the store.
25 And then about two weeks later -- I think it was the day

1 after I voted for Barak Obama, I believe, they came. I was
2 sitting at dinner with my wife and my daughters, and they
3 came and arrested me, said -- they didn't tell me what I was
4 under arrest for until I got to Two Notch Road. I figured,
5 you know, it wasn't no big deal, you know, because I had
6 started to get little bits and pieces, but I didn't have a
7 full memory, but I did have -- I know that something went
8 wrong because we went to the gas station that morning -- that
9 next -- not that Sunday but the following Sunday and my wife
10 was like, "Why is everybody staring at us?" you know, and I
11 had already seen this thing on the news, but I wasn't worried
12 about any armed robbery. The heck with it, you know.

13 Q. Well, those are -- those are the basic facts---

14 A. Yes, sir.

15 Q. ---that you included in your application. So let me go
16 back through a little bit of that just to see if I can
17 understand why you did that. Now, first of all, how old are
18 you right now?

19 A. Fifty-two.

20 Q. And---

21 A. I'll be 52 in March.

22 Q. How old were you at the time of this incident?

23 A. Forty-eight.

24 Q. Forty-eight. And what is your educational level?

25 A. I have a Bachelor's Degree in business from the

1 University of Connecticut.

2 Q. Okay. And how long did you live in South Carolina prior
3 to October of 2008?

4 A. From 2004. I came down here from Connecticut.

5 Q. Okay. Been here a little over four years?

6 A. Yes, sir.

7 Q. And what was your occupation?

8 A. I'm a contractor. I run Inabinett Construction.

9 Anybody that's in Columbia has seen my trucks rolling around.

10 Q. Okay. You are the owner?

11 A. Yes, sir.

12 Q. Are you licensed with the---

13 A. Yes, sir, L.L.C.---

14 Q. Were you at that time licensed with L.L.R.?

15 A. Yes, sir.

16 Q. Okay. As a contractor?

17 A. Yes, sir.

18 Q. Okay. Residential specialty or general contractor?

19 A. We do commercial work but mostly in residential
20 reconstruction and remodeling.

21 Q. Okay. Have you ever been charged with or convicted of a
22 theft crime---

23 A. No, sir.

24 Q. ---prior to this one?

25 A. No.

1 Q. Okay. What kind of a prior record do you have?

2 A. In the state of Connecticut I used to be a drug dealer,
3 and somebody had robbed me and hurt my mother and I found out
4 who they were and I retaliated and I was put in prison for
5 arson because they couldn't prove the murder. The person
6 never came to court. But I had set fire in the back of the
7 house and waited for the person to come out of the front of
8 the house. I got 15 years for the arson.

9 Q. Okay. All right. But you're not a property offender.

10 A. No, sir.

11 Q. You're not a -- you don't steal.

12 A. I always work for what I want. If I can't work for it,
13 I'll hustle for it.

14 Q. Okay. The night you went out -- October 25th, 2008, you
15 went to the Ale House. Did you have any money with you?

16 A. Yes, sir.

17 Q. How much?

18 A. Probably about \$1200.

19 Q. \$1200 cash with you?

20 A. Yes, sir. Anybody that knows me knows I don't leave my
21 house without \$500 in my pocket.

22 Q. Okay. So you didn't need to rob a store to get money.

23 A. No, sir.

24 Q. Okay. Now, you testified and wrote to the judge in your
25 P.C.R. application that something happened at the Ale House.

1 A. Yes, sir.

2 Q. You said some girls -- by the way, they weren't underage
3 girls.

4 A. No, sir.

5 Q. Okay. Good.

6 A. I hope not anyway.

7 Q. Okay. But that they put something in your drink; is
8 that correct?

9 A. Yes, sir. Yes, sir. She had -- I tell you -- and this
10 was a memory that I remembered after it, and I was telling
11 Charlie about this when he was my attorney.

12 Q. And Charlie is your attorney?

13 A. My -- my -- yes, sir.

14 Q. Okay.

15 A. And, you know, she had mentioned that, you know, she had
16 -- this girl, Mandy -- we found out that wasn't her real
17 name. My brother-in-law found that out. That, you know,
18 when I kept telling them that I didn't feel good and I was
19 getting ready to leave and she was like, "Don't worry about
20 it. It's just the Ecstasy taking effect." And I was like,
21 "What?" You know, and then I had to get out of there. You
22 know, it was no -- I'm not going to be caught out like that.
23 I'm allergic -- I'm allergic to codeine products, cocaine and
24 stuff like that. So if I was going to fall out, I was going
25 to fall out at my own house.

1 store. They know me by name. The manager there knows me by
2 name. I mean, I have a credit account there. These people
3 know who I am.

4 Q. Okay. So if you had wanted to commit an armed robbery,
5 you wouldn't have gone to a store---

6 A. Not in my own---

7 Q. ---where you---

8 A. ---neighborhood.

9 Q. Okay. Now---

10 **Court Reporter:** I'm sorry. Y'all are talking on top of
11 each other. Could you repeat that?

12 **The Witness:** I said not in my own neighborhood, no.

13 By Mr. Belding:

14 Q. Okay. You wouldn't have gone to a store where everyone
15 knew you.

16 A. No.

17 Q. Okay. The clerk, Troy Barrow---

18 A. Yes, sir.

19 Q. ---had you met him before?

20 A. Yes. He'd been working there for about four or five
21 months.

22 Q. Okay. And you said something about something that he
23 said that bothered you. Would you -- would you elaborate on
24 that?

25 A. Well, you know, I walked in the store and I asked him

1 for a pack of cigars, and as he was going around the counter
2 he said, "You're always coming in here for cigars. When are
3 you going to let me get a hold of that cigar of yours?" I
4 just -- from there I just went off, haywire. That's the part
5 I didn't really recollect until when Charlie showed me the
6 video, and I was like, yeah, you know, and started putting
7 the pieces together there.

8 Q. Okay. Now, you had apparently a gun with you at the
9 time.

10 A. Sir, I live on Bluff Road in Columbia, South Carolina.
11 I don't even cut my grass without my pistol in my back
12 pocket.

13 Q. Okay. Dangerous part of town?

14 A. Very.

15 Q. Okay. So it was a couple of weeks later before you were
16 actually arrested is---

17 A. On November 10th, the day after I vote -- I voted on
18 November 8th, and two days after that they came and got me
19 that Wednesday night.

20 Q. Okay. Now, after you were arrested did you get a
21 lawyer?

22 A. No, sir.

23 Q. Okay. When did you finally get a lawyer to represent
24 you?

25 A. The Court appointed me Anastasia Walker. At that time

1 we had -- my wife and I -- you know, I had just invested a
2 lot of money in a project that I was working on, you know, so
3 I couldn't really afford to get an attorney at the time.

4 Q. Okay.

5 A. I had like \$28,000 worth of building materials sitting
6 in my yard that, you know, my wife was ultimately responsible
7 for. You know, we had to sell some stuff to replace that
8 money.

9 Q. I understand. Okay. Now, Mr. Anastasia Walker, she's
10 with the public defender's office; correct?

11 A. Yes, sir.

12 Q. Did she come to see you while you were in jail?

13 A. Yes, sir.

14 Q. Okay. And what did y'all talk about?

15 A. About the case generally. Ana was an excellent lawyer.
16 She just had too much on her plate, you know. We talked
17 about building a defense on diminished capacity. Well,
18 actually she said South Carolina doesn't have -- what is it?
19 She wanted to build the case around involuntary intoxication.

20 Q. Okay. All right. Did she -- did you tell her about the
21 girls at the Ale House?

22 A. Yes, sir.

23 Q. The one called Mandy?

24 A. Yes, sir.

25 Q. All right.. Did she go and look into that and find out

1 if she could find these people or anything?

2 A. No. See, this -- in the earlier part of 2009 my
3 brother-in-law, Marvin, did all of the legwork, you know,
4 trying to find this girl, you know, go to the Ale House and
5 so forth. And Anastasia, she had -- I guess she said she was
6 going to put her investigator on it and finally did get
7 around to the investigation around August, but at that point
8 they had changed management and the crowd had changed and so
9 forth and nobody remembered me there, so it was moot. You
10 know, the entire thing was moot.

11 Q. All right. How did you get from Anastasia Walker as
12 your lawyer to Mr. Charlie Johnson?

13 A. Because Anastasia wanted me to take a plea deal, and I
14 wanted to go to trial. If I lost, then I lost, but at least
15 I went down trying to defend myself. And the fact that she
16 -- she was just too busy. You know, there were some things
17 that I wanted her to look up and take care of, and she just
18 never got around to them until after the fact, especially
19 with the investigation of this girl Mandy. And Marvin had
20 found her; you know what I'm saying? And what's his name?
21 Dennis -- Denny, the guy that owns the bar, you know, he had
22 some things that he was going to help us out with and, you
23 know, she just let all that slip by, and it made me, you
24 know, to lose, to be honest, confidence in her and I just,
25 you know, just asked her to step aside and she did.

1 Q. So she did request a bond reduction for you when you
2 went to the hearing in front of Judge Lee; correct?

3 A. Yes, sir, in front of Judge Lee.

4 Q. But you didn't get a bond reduction.

5 A. Well, Judge Lee at that particular time, you know, just
6 -- Vanessa Shipley made this big to-do about me being so
7 violent and arrogant and out of control that she was afraid
8 for the safety of the people at the gas station, and Judge
9 Lee said, well -- you know, I explained to her that, you
10 know, my finances were starting to dwindle and my wife -- you
11 know, we had just repossessed our car and so forth. And
12 Judge Lee said, well, I'll tell you what. In six months --
13 well, she told Vanessa Shipley to file the case and she said
14 it was supposed to be fast-tracked or something like that,
15 and, you know, she said if it wasn't resolved to, you know,
16 come back in front of her and she would make a decision then,
17 and we never got back in front of her for one reason or
18 another.

19 Q. So at what point did you have Ms. Walker replaced as
20 your attorney?

21 A. When she passed up on the investigation to find this
22 Mandy girl and I had told her I didn't need her anymore, and
23 she didn't want to go to trial. She said she couldn't win --
24 she didn't think she could win it, you know, and I wasn't
25 really concerned. I figured -- you know, I'm a firm believer

1 in Christ. You know, I'm not the most perfect man in the
2 world, but I believe that the truth will set you free, and I
3 was just banking on that.

4 Q. Okay. So in September of 2009, does that sound like the
5 right time when Charlie Johnson took over your defense?

6 A. Well, actually I got a letter in my paperwork right
7 there when Charlie took over. I didn't meet Charlie until
8 about two months after he was appointed.

9 Q. Okay.

10 A. I actually had to write Judge Childs in order to get an
11 order for him to come see me.

12 Q. All right. Now, so you found out that Charlie Johnson
13 was appointed to represent you. You're still in jail at the
14 detention---

15 A. Yes, sir.

16 Q. ---center; correct?

17 A. Yes, sir.

18 Q. And a couple of months later is the first time you meet
19 him?

20 A. Yes, sir.

21 Q. You have to write a letter. Okay. Between the time he
22 was appointed, how long was it until you actually pled
23 guilty?

24 A. I didn't plead guilty until February of 2010.

25 Q. All right.

1 A. Yes, sir.

2 Q. Between September of 2009 and February 24th of 2010, how
3 many times did you see Mr. Johnson?

4 A. I saw him when he came to introduce himself to me. I
5 saw him when he -- my wife couldn't -- he wouldn't return any
6 of her calls or anything. I wrote him a letter telling him
7 that, you know, it's either now or never. You need to come
8 see me. I saw him at that time. I saw him when he came and
9 he told me about -- you know, he was going to -- he had to go
10 see the video and he was waiting for discovery from Vanessa
11 Shipley. I saw him about five times total.

12 Q. Okay.

13 A. Yes, sir.

14 Q. And in those five times you had a chance to talk to him
15 about your defenses?

16 A. What I wanted to do so far, yes, sir.

17 Q. Okay. All right. Ultimately on February the 24th of
18 2010 were you awakened early in the morning and told you were
19 going to court?

20 A. Yeah. No, not the 24th. It was before that. The 24th
21 is the day I pled.

22 Q. Okay.

23 A. It was maybe about a week before -- a week or two before
24 that because in between that I had asked for Charlie to be
25 dismissed. Angela, my wife, my partner at that time, had

1 decided we'd take some money out of her 401(k) and get me a
2 paid lawyer. And we went in front of Judge Newman, and Judge
3 Newman decided that, you know, either I go to trial with
4 Charlie or represent myself, quote/unquote, you know. But
5 sometime in February Charlie woke me up and told me we were
6 going to go -- I mean, they woke me up and told me I was
7 going to court, and I went and met him here and he took me
8 and interviewed me in the solicitor's office and I was upset
9 about that. That's when I asked him to---

10 Q. In the actual solicitor's office?

11 A. He interviewed me in the solicitor's office.

12 Q. Okay. All right. What -- what did y'all talk about?

13 A. A little bit of everything. You know, I watched the
14 video and got a clearer understanding of what was on the
15 video, and actually I wrote Vanessa a letter prior to that,
16 you know, before I even saw the video that, you know, there's
17 no need for me to lie about it. You know what I'm saying?
18 My wife, Angela, went and saw the video, and she said, you
19 know, M.C. -- everybody calls me M.C. She said, "You know,
20 M.C., you may as well just tell the truth, you know." And,
21 you know, so I figured let me just see what's on this video.

22 Q. Okay. So you actually viewed the surveillance video of
23 the robbery---

24 A. In the solicitor's---

25 Q. ---at the---

1 A. ---office---

2 Q. ---Circle K?

3 A. Yes.

4 Q. Sorry.

5 A. That's when he brought me into the solicitor's office to
6 see the video.

7 Q. Okay. Did that video help refresh your recollection of
8 what had happened---

9 A. It brought back total recollection. I -- I'm sorry.

10 Q. He's too fast, I know.

11 **Court Reporter:** Well, y'all keep overlapping as you're
12 talking.

13 **Mr. Belding:** Sorry. Okay. I apologize, Ms. Helms.

14 By Mr. Belding:

15 Q. All right. Did that video -- viewing that video, did
16 that help refresh your recollection---

17 A. Yes, sir.

18 Q. ---of what happened?

19 A. Yes, sir. You know, it brought back full memory, and I
20 was trying to point out to Charlie some points there that if
21 you look on the video you could see me putting the cigars in
22 my pocket.

23 Q. Correct.

24 A. Correct? But at no point did you ever see me -- you see
25 me reach over and pull the money out of the register, but at

1 no point did anything come back across that register and go
2 in my pocket or in my hand or anything like that. I begged
3 Charlie, you know, find out whether the police found any
4 money on the floor because all the money was on the floor
5 behind that counter where I dropped it at, you know, so...
6 And that's why I burst out on Ms. Shipley like that when she
7 said I took \$60 out of the store. You know, I don't have any
8 reason to steal from anybody.

9 Q. Well, for one thing, you had a thousand dollars with you
10 anyway.

11 A. I had more than a thousand dollars in my pocket.

12 Q. All right. Two, they---

13 A. Probably around \$900 in my hand because---

14 Q. ---also---

15 **Court Reporter:** I'm sorry. Please let him finish the
16 question before you start responding.

17 **Mr. Belding:** All right. I'll try to make questions
18 shorter, too. Sorry.

19 By Mr. Belding:

20 Q. Also, it's your testimony that you left money there.

21 A. Yes, sir.

22 Q. Is that correct?

23 A. Yes, sir.

24 Q. All right.

25 A. Left money -- left their money there. I took my money

1. back.

2. Q. What was your money that you took back?

3. A. Ten-dollar bill.

4. Q. Ten-dollar bill.

5. A. Yes, sir.

6. Q. Okay. Ultimately, that was the only thing that was
7. taken out of the store was the \$10 and the cigars; correct?

8. A. Yes, sir.

9. Q. Okay. Now -- but you had a gun with you, too, and did
10. you see on the surveillance video that you fired a couple of
11. shots?

12. A. Yes, sir. Four total.

13. Q. Four?

14. A. Yes, sir.

15. Q. Okay. What was your reason for firing those shots?

16. A. I just wanted to intimidate him. I just wanted -- you
17. know, this thing had gone on for about maybe a month, a month
18. and a half. I mean, he even accosted me in front of my wife,
19. you know what I'm saying, not directly but indirectly; you
20. know, when we were in the store and she was back there
21. getting a bottle of water and I was at the counter ordering
22. lottery tickets and whatnot. And then it just -- you know, I
23. just -- that particular night the alcohol said make him stop.

24. Q. Okay. And were these -- again, I think you said this.

25. Were these some kind of sexual advances?

1 A. Yes, sir.

2 Q. Okay.

3 A. The guy, Troy, is a homosexual.

4 Q. Okay. Now, after you and Mr. Johnson reviewed the
5 surveillance video, what did you all decide to do?

6 A. Well, he took me in this -- after I looked at the video
7 and, you know, I -- Charlie -- he took me in this little
8 room. He asked somebody that was there, "Is there somewhere
9 we can talk?" Because I told him, you know, this is crazy.
10 You know what? And, you know, he kept -- while we were
11 looking at the video, he kept trying -- he was saying things
12 to me to try to alter my thinking, you know, and I'm saying,
13 "No, you're trying to make me think I'm crazy. I'm not
14 crazy. I see what's going on here. Look at this." You
15 know, like the way I came in the store -- a certain way I
16 came into the store, you know, and where we started at and
17 how the solicitor -- how he told -- the solicitor explained,
18 you know, in a transcript or whatever it is she sent him
19 that, you know, where the money was taken from and so forth.
20 I'm like, "No," because when I came in I was on the left
21 side, you know, and then I shifted over to the right side,
22 you know, pointing out specific things.

23 And, you know, then he took me into another room, and
24 that's when I found out that I was in the solicitor's office
25 because he -- he called -- Ms. Shipley called out, "Well,

1 thank you, Charlie." I'm like, "What the devil is going on
2 here, you know?" And it kind of made me upset.

3 Q. At what point did you and Mr. Johnson talk about
4 pleading guilty to armed robbery?

5 A. Well, he had been talking to me about arranging a plea
6 from day one, you know, all four times he came to me, and he
7 asked me, you know, what would I accept. I said, "I'll
8 accept responsibility for what I did, you know." And he
9 said, "Well, she's only offering 10 years." And I'm like,
10 "Listen. I'm an old man. I can't do 10 years, you know."
11 You know, if I had actually went in there and tried to rob
12 this guy, I'd take responsibility for robbing him, you know,
13 but I didn't try to rob him and I won't take responsibility
14 for robbing him. And that's when I told him, even at the
15 plea, you know, I'm not going to plead guilty to this. I'm
16 not -- I will not.

17 He told me at that time, "Well, it doesn't make any
18 sense to say that to the judge," you know, and I was kind of
19 upset about that, not being able to voice -- not being -- you
20 know, you always get a chance to, you know, tell the judge
21 what's on your mind, you know, and that kind of made me upset
22 as well. And even Judge Casey when he was talking to me he
23 said, "Are you sure you understand what you're saying is
24 you're not pleading guilty -- you're not going to plead
25 guilty, but you're going to accept the offer?" I said, "Yes,

1 Your Honor. I just need to get this done so I can move
2 forward with my life."

3 Q. And let me make sure I understand. You did say you were
4 willing to take responsibility for what you had done.

5 A. Uh-huh.

6 Q. What exactly was it that you had done?

7 A. For firing off the firearm and, you know, intimidating
8 this guy and for taking the cigars without paying for them.

9 Q. Okay. Ultimately you didn't pay for the cigars---

10 A. I didn't pay---

11 Q. Correct?

12 A. ---for the cigars.

13 Q. Through all of this.

14 A. Yes, sir. And I had told him I would make restitution.
15 for the windows. I'm a contractor. I can get a good deal on
16 the glass and I'll do the work myself.

17 Q. Now, as to -- ultimately you did appear in front of
18 Judge Manning and pled guilty to armed robbery, and you were
19 allowed to enter that plea under something called North
20 Carolina versus Alford. Do you know what that is?

21 A. The Alford document means that I'm accepting an offer
22 but I'm not going to plead guilty because there's enough
23 evidence to convict me if I chose to go...

24 Q. Okay. And you understood that fully---

25 A. I understood that fully at the time.

1 Q. Okay. Did you know what sentence you were going to get?

2 A. Yes.

3 Q. You knew you were going to get 10 years.

4 A. Yes.

5 Q. And yet you entered an Alford plea anyway.

6 A. Yes.

7 Q. Did Mr. Johnson say anything to you about what you
8 should do next?

9 A. He told me to take the plea and then to come back on the
10 Alford document and he would help me in any way he could.

11 Q. In what form? A P.C.R.?

12 A. A P.C.R., yes, sir.

13 Q. Okay.

14 A. File a P.C.R.

15 Q. All right. Did you think that Mr. Johnson adequately
16 represented you---

17 A. No---

18 Q. ---in this case?

19 A. ---because when I -- I'm sorry. I apologize. You know,
20 when I -- the entire time I was telling Charlie to make my
21 position known to Vanessa, and then when I told Judge Newman
22 that, you know, that I was intoxicated and that I was looking
23 to -- I told Judge Newman that Charlie told me there was
24 no -- no -- no unwillful (sic) intoxication law, you know,
25 and that I was -- you know, I would rather go to trial and

1 take my chances with that. Shipley acted like that was the
2 first time she had heard it. She made some statement about
3 something I said to Judge James, and I clarified to her: I
4 never told you how I ingested the Ecstasy. You know, I just
5 told you that it was in my system, you know, and she made it
6 seem like she had no idea what the heck I was talking about
7 and that it just -- it showed me that he was not relaying my
8 -- I wrote her a letter myself, you know, trying to explain
9 myself to her.

10 Q. Did she respond to that letter?

11 A. No, she never did.

12 Q. Okay. I understand that.

13 A. Yeah.

14 Q. All right. So the bottom line is you don't feel that
15 either Ms. Walker or ultimately Mr. Johnson, who represented
16 you at the plea, effectively represented you in pressing your
17 defense to the charges against you.

18 A. No, sir. No, sir. If they had -- at least I mean -- at
19 least I could have just addressed what my concerns were at
20 some point and, you know, the law, it guarantees me a fair
21 trial and the right to be heard and the right to confront my
22 accuser. I told Charlie on more than one occasion and I even
23 put it in my letter to the solicitors: If you try me --
24 Troy, he's scary. If you put him on the trial where I am
25 here right now, he'll break down crying and he'll tell the

1 truth. It's as simple as that.

2 Q. Okay.

3 A. And I tried -- I told Charlie that. I told Miss
4 Anastasia that, you know, and the only reason I let go of
5 Anastasia is because she's just got -- there's no way -- you
6 know, she had too many things to -- when she was with me, she
7 was with me. You know what I'm saying? But when she was
8 away from me, you know, she had other clients she had to
9 worry about. That was just too much. I didn't think I could
10 get the representation the way I needed it because we're
11 talking about my life here, you know, and, you know, I could
12 do two or three years because I earned that, you know, but
13 10, 12 years, I didn't earn that.

14 Q. I understand what you're saying. Again, this is your
15 day in court. This is your evidentiary hearing on this
16 P.C.R. Is there anything else you'd like to tell Judge
17 Kinard about the reasons you feel you're entitled to relief
18 in this case?

19 A. Well, yes, sir. I mean, first and foremost, Your Honor,
20 I believe in my community. I believe in the people I serve
21 out there, you know. Like I told Anastasia, I taught the
22 kids martial arts in the park, you know, and my -- for me to
23 go into that neighborhood and try to do something disruptive
24 just is beyond me. All right? The representation that I had
25 from Charlie was just not fair to me, and then I think that

1 if he had pressed my issues and pressed my case -- and he
2 didn't even make a defense for me. He told Judge Newman he
3 was ready to go to trial, but he told me he had no defense.
4 That's not representation. That's absolute lying, you know.

5 And I just believe that -- you know, Your Honor, I'm a
6 good man. You know, I'm sure everybody says that, but my
7 actions speak for themselves. If you talk to anybody in my
8 neighborhood -- those people at that store know me by name,
9 Your Honor, every one of them. You know, so what's his name,
10 Robinson, the guy that arrested me, he knew who I was from
11 the first night. He even -- I even got a letter from -- a
12 letter I wrote to, what's her name, Shipley where Robinson --
13 and he -- the people in the store told him that I was in
14 there. They told him how many cars I have. Okay? I've got
15 an Escalade. I've got a green Chevy pickup. I've got a
16 black Ford F-150 that I use for work. You know, he knew all
17 this stuff, so I mean...

18 You know, if I had had a chance to -- I mean, I'd rather
19 go down fighting than accept that plea but I -- for two years
20 I sat in that jail with nobody helping me, you know, and I
21 just got tired of it. You know, I said, "The heck with it.
22 I can help myself." You know? And if I get a -- they
23 wouldn't even let me go to the law library but once a month
24 for each dorm. You know, what the heck is going on here in
25 South Carolina, man? What happened to innocent 'til proven

1 guilty? Come on, man.

2 Q. All right, Mr. Inabinett. Well, I appreciate it very
3 much. Your Honor, no further questions. Thank you.

4 Mr. Petrano: No questions.

5 The Court: You can step down.

6 Mr. Belding: Your Honor, I'd like to call Charlie
7 Johnson to the stand.

8 The Court: Okay, Mr. Johnson.

9 Charlie J. Johnson, Jr., after being duly sworn,
10 testified as follows:

11 Direct Examination

12 By Mr. Belding:

13 Q. Would you state your full name for the record, sir?

14 A. Charlie J. Johnson, Jr.

15 Q. All right. Mr. Johnson, you're an attorney licensed in
16 South Carolina in good standing?

17 A. Yes, I am.

18 Q. What is your area of practice?

19 A. Criminal law.

20 Q. How long have you been doing that, sir?

21 A. About 17 years.

22 Q. Okay. Primarily Richland County?

23 A. Primarily Richland. Basically the whole state. I've
24 been all over.

25 Q. Okay. Do you recall representing Mr. Clark Inabinett?

1 A. Yes, I do.

2 Q. Okay. And as I understood it, you were the second
3 lawyer. Was there much of a file that you inherited once you
4 got appointed to this case?

5 A. I got the complete discovery eventually.

6 Q. Okay. Okay. Between -- the record I saw said that you
7 were appointed on September the 9th of 2009. Does that sound
8 about right to you?

9 A. I guess that's when I was appointed.

10 Q. Okay.

11 A. So I don't disagree with that.

12 Q. I wouldn't expect you to remember the date. I'm just
13 representing to you that's what I read. Do you recall how
14 soon you were able to see Mr. Inabinett at the Richland
15 County Detention Center?

16 A. No, I don't.

17 Q. Okay. He testified that you saw him a number of times.
18 Does that square with your recollection of your interaction
19 with him?

20 A. Yes, I met with him a number of times.

21 Q. How -- had you already gotten the State's discovery
22 before you saw him the first time?

23 A. I don't think so.

24 Q. Okay. What point do you remember getting the State's
25 discovery?

1 A. Sometime later only. I don't remember the exact dates
2 that I got it but sometime between seeing him the first time
3 and going to the plea.

4 Q. Okay. Did you view the surveillance video of the
5 Circle K robbery before you showed it to Mr. Inabinett?

6 A. On numerous occasions, yes.

7 Q. Okay. What were you looking for?

8 A. Seeing if I had any evidence to indicate that either it
9 wasn't him or some evidence -- just seeing what evidence they
10 had.

11 Q. Would you tell Judge Kinard how good a surveillance
12 video was it?

13 A. It was extremely good. You could see his face clearly.

14 Q. Good lighting?

15 A. Good lighting. It wasn't dark. You could see it. I
16 mean, it was an extremely good view.

17 Q. In focus.

18 A. You could see the car leaving.

19 Q. You could see his car leaving?

20 A. You could.

21 Q. All right. Based upon the surveillance video that you
22 saw, did you talk to Mr. Inabinett about pleading guilty?

23 A. Yes.

24 Q. Had you talked to Mr. Inabinett about the problems he
25 had experienced earlier in the evening, getting something put

1 in a drink and...

2 A. I talked about that, but he also explained to me that
3 prior to that date he was also drinking quite a bit and that
4 he admitted that he was fired up and he was somewhat drunk as
5 well. One of the problems he have is that because they
6 arrested him, after the actual case there was -- there was no
7 way to get in any medical evidence to show that he was
8 intoxicated or that there was something dropped in it. By
9 the time I got it, there was nobody to testify as to putting
10 anything in it. There was no evidence that it happened
11 except for his own testimony. I'm not saying that it didn't
12 happen, but going forward in a trial it would just be
13 impossible to prove. So it would be up to a jury whether to
14 believe him or not to believe him.

15 Q. I understand. And as I understood Mr. Inabinett's
16 testimony, he wasn't even arrested for a couple of weeks
17 after the robbery.

18 A. That's correct.

19 Q. And then you didn't actually get involved until it had
20 been ten months or something after the robbery.

21 A. That's correct.

22 Q. Okay. So at that point there wasn't really anything for
23 you to investigate at the Ale House?

24 A. No.

25 Q. Okay. Did you have any other defense strategies that

1 Mr. Inabinett asked you to work on?

2 A. Well, I mean, there was no other defense strategy. I
3 truly believe, knowing Clark, that he's not a bad guy. He
4 probably did not go in there to rob the people or do that.
5 It could have been because of intoxication; I understand
6 that. But I was trying to explain to him -- he said he
7 didn't take the money. Well, that's one thing, but he took
8 the cigar. Just the cigars alone with a gun is armed
9 robbery.

10 I was also trying to explain to him that it was not what
11 his -- before a jury it would not be what his intent was. It
12 would be the belief of the person that was being robbed. So
13 it wasn't -- if he shot at someone and he didn't intend to
14 shoot -- to shoot them - he was just trying to scare them -
15 if the person he was shooting at believed he was trying to
16 kill them or shoot them, that would be -- that's what would
17 have to be shown at trial, and he just couldn't seem to
18 understand that concept.

19 Q. Well, and he had testified that he sent a letter to Ms.
20 Shipley pressing his case. Did you get a copy of that
21 letter?

22 A. No, I didn't get a copy of the letter, but apparently --
23 I mean, basically he always admitted that he was there and he
24 did it. He was just saying he didn't intend on the final
25 results of what he was charged with, and as I told him: It's

1 not what his intent was. It was actually what the people
2 that was being robbed believed he was doing and what they
3 could show.

4 Q. In my conversations with Mr. Inabinett, it's clear to me
5 that he feels you did not adequately push a defense for him.

6 A. I had no defense to push.

7 Q. Okay. You couldn't create one yourself.

8 A. No. For armed robbery, as I'm sure you're aware, it's
9 mandatory 10 to 25 years. For assault with intent to kill, I
10 think it's 25 years as well, I think, 25 or 30. If it's run
11 consecutive, he was looking at 60 years or more, 50 to
12 60 years. I got -- I was able to get them to agree on an
13 Alford plea, where he would not have to say that he
14 intentionally did it, to get the least amount of time he
15 could get for what he was charged. A judge could not give
16 him less than 10 years, but a judge could give him a lot more
17 than 10. He got 10 years.

18 Q. Okay.

19 A. I did the best I could for him. As a defense attorney,
20 it doesn't pay me for my clients to go to jail and do a lot
21 of time. Too many people won't come to hire me with that.
22 So I did the best that I could under the circumstances.

23 Q. Did you feel at the time that he got the benefit of the
24 bargain with the State?

25 A. He did because initially they might have offered 10, but

1 as it went on, Ms. Shipley was changing because she was
2 saying: I can show that he shot at the person. He admits
3 that he shot at the person. He's saying he was trying to
4 scare him, but as we know, it's not what he intended to do
5 but the person thought he was shooting at him because he said
6 he was trying to intimidate the person. That's assault with
7 intent to kill.

8 Q. And that charge was dropped in exchange for the Alford
9 plea.

10 A. That charge was dropped as well as he got the least
11 amount of time he could for armed robbery.

12 Q. As you think back on it, Mr. Johnson, did -- are you
13 satisfied that Mr. Inabinett was willing to plead even under
14 Alford to avoid going to trial?

15 A. I think he looked at the circumstances, and while nobody
16 wants to go to jail for 10 years or for a day, he looked at
17 the circumstances and I believe that he understood that if he
18 went to trial, as I explained to him, and was found guilty
19 that he could be looking at a considerable amount more time
20 than 10 years. He was 47 at the time. I know that he did
21 not want to do the 10 years. I know he don't want to do 10
22 years now, but it was my job to try to do the best I could
23 for him under the circumstances, and I truly believe that if
24 we went to trial he would have been found guilty and I would
25 never see him alive on this side -- on this side of the

1 fence. So I did the best I could.

2 Q. Okay. At the plea in front of Judge Manning, you did
3 indicate that your client desired to plead guilty. As I
4 understand it from Mr. Inabinett in his testimony, he wanted
5 to go to trial. Are you satisfied in your own mind that he
6 made a rational, voluntary, informed decision to plead guilty
7 in front of Judge Manning?

8 A. I believe he did. That's why -- that's why it was
9 changed to a North Carolina versus Alford because I know that
10 in his heart he felt that he did not intend on robbing the
11 person, but it's not my position as an attorney to work with
12 someone's heart. It's to look at the facts of the case and
13 the law, and the law has no heart. It is what it is. And
14 under the law, he was guilty of armed robbery.

15 Q. Prior to the plea, did you get a chance to explain to
16 Mr. Inabinett what an Alford plea was?

17 A. Yes.

18 Q. Okay. Did you get a chance to explain the potential
19 punishments that he was facing that you just described?

20 A. On numerous occasions.

21 Q. Okay. It was curious -- why would the -- why did you
22 interview him in the solicitor's office?

23 A. Because that's the only place that we could show the
24 video.

25 Q. That's where the machine was?

1 A. Right.

2 Q. Okay. Did anyone in the solicitor's office bother you
3 or listen in or---

4 A. No one was in the room. The door was shut.

5 Q. You had complete privacy?

6 A. Yes, I did. And, once gain, there was nothing really to
7 be private about. We had no private conversation. We just
8 looked at the video.

9 Q. Okay. Even -- now, he had already gotten rid of Ms.
10 Walker as his attorney. Did he also ask you to be relieved
11 as counsel?

12 A. Yes.

13 Q. When did that occur?

14 A. I don't remember the dates, but he did. He made a
15 motion.

16 Q. Prior to the date he pled.

17 A. And he told me he wanted to do it, and I brought it
18 before the Court.

19 Q. What were his grounds?

20 A. He said that we had -- I don't remember, but I think he
21 just said that we just couldn't agree on how to proceed with
22 his case.

23 Q. Ultimately though when he appeared in front of Judge
24 Manning, Judge Manning asked him if he was satisfied with the
25 services of you, his lawyer, and he indicated that he was.

1 Do you remember that?

2 A. Yes.

3 Q. How -- can you explain to us how he went from trying to
4 get you relieved as counsel to telling Judge Manning that he
5 was satisfied with your services?

6 A. I mean, I think he just -- he always realized that I was
7 honest with him. He might not like what I was telling him,
8 but I was telling him the truth. I think he just realized
9 that it was what it was. I mean, I just told him the truth.

10 Q. So one of the things he didn't like was when you told
11 him you had no defense?

12 A. Right.

13 Q. Okay. In your 17 years of criminal defense experience,
14 is there anything you could have done to defend Mr. Inabinett
15 in light of the security surveillance video from the Circle K
16 robbery?

17 A. There was nothing. If there was something, I would have
18 done it. But I also told him to file a P.C.R. because I
19 wanted somebody else to look at what I did to make sure that
20 if I did miss something that he would have the opportunity to
21 get a new trial.

22 Q. Did you actually tell him that in writing?

23 A. Yes, I did, too.

24 Q. Let me ask if you recall sending Mr. Inabinett that
25 letter, if that's the letter you're talking about.

1 A. Yeah. I usually send it to most of my clients after --
2 after I have -- after the case has been completed, I send a
3 letter out basically saying that they file a P.C.R. because
4 it gives the opportunity for another attorney or someone else
5 to look at -- look at the case and see if there's something I
6 missed. And I have enough sense to know that I don't know
7 everything so that if somebody else can find something I
8 missed, it would give him the opportunity to have a new
9 trial.

10 Mr. Belding: All right. Your Honor, I'd move that this
11 be admitted as Applicant's 1.

12 The Court: Okay.

13 Mr. Petrano: I would object. He's testified to it. We
14 don't need the letter. Thank you.

15 The Court: He's just creating P.C.R.'s for us, but
16 that's neither here nor there.

17 Mr. Belding: Thank you, Your Honor.

18 (Plaintiff's Exhibit 1 was received in evidence.)

19 By Mr. Belding:

20 Q. And I'm just curious -- I haven't written any letters
21 like this. The last time you talked to Mr. Inabinett, I
22 mean, you essentially encouraged him to file a post-
23 conviction relief petition; correct?

24 A. Yes.

25 Q. And did you feel at the time there was anything you had

1 done inadequately?

2 A. No. I didn't feel that there was anything I had done
3 inadequately, but I send that to all my clients or at least I
4 tell every one of my clients to check it, to check me
5 because, like I say, at the end of the day I go home; they go
6 to jail. So they need to have a right to have somebody look
7 at everything I do. I don't presume that everything I do is
8 correct.

9 Q. You don't take this personally.

10 A. No.

11 Q. I understand. As we sit here today now with the benefit
12 of hindsight, are you aware of anything you could have done
13 to defend Mr. Inabinett better?

14 A. The only thing -- I can't think of anything. As I said,
15 the main problem was the solicitor's office. I tried to get
16 the solicitors to even agree to maybe drop the armed robbery
17 down to strong arm where then there wouldn't be a mandatory
18 10-year sentence, and with the shooting and the video, they
19 refused to do it. So then my next form of action was to try
20 to get him the least amount of time that I could which in
21 this case was 10 years.

22 **Mr. Belding:** I understand, Mr. Johnson. I appreciate
23 it. No further questions, Your Honor.

24 **Mr. Petrano:** No questions.

25 **The Court:** You can step down.

1 **The Witness:** Thank you.

2 **Mr. Petrano:** Your Honor, may this witness be excused
3 from his subpoena?

4 **Mr. Belding:** Without objection, Your Honor.

5 **The Court:** Okay. Mr. Johnson, you're free to go.

6 **Mr. Belding:** Your Honor, that's the applicant's case,
7 and our position is we would move to have the sentence
8 vacated on the grounds of ineffective assistance of counsel.
9 There was no investigation into his defenses, and they put
10 him in a position where he had to plead guilty because he had
11 no one with either one of his lawyers to press the defense
12 that he had to these charges.

13 **The Court:** And what defense was that?

14 **Mr. Belding:** An excellent question, Your Honor. I
15 can't find an exact defense theory in this state that matches
16 what he testified to in terms of we don't have something
17 known as involuntary intoxication. We don't have something
18 called diminished capacity. I think if he had had some
19 witnesses from the bar that would say somebody slipped him a
20 mickey or put Ecstasy in his drink, he may have been able to
21 get a jury to find reasonable doubt---

22 **The Court:** Maybe so, but at this point you've got to
23 produce those witnesses before I can---

24 **Mr. Belding:** And my---

25 **The Court:** ---consider that. So unfortunately he can't

1 win.

2 **Mr. Belding:** I understand what you're saying. Of
3 course, it goes without saying that because there was no
4 investigation done, I'm hampered there, too.

5 **The Court:** Right. I understand, but that's just tough
6 luck. Ten years is tough to serve when you have to serve
7 85 percent, but it was the minimum and, you know, he's in
8 there shooting guns. Voluntary intoxication is not a
9 defense. If it was demonstrated that somebody slipped him a
10 mickey, then he's got something, but we don't have that. I
11 can't consider that, can I? All right.

12 **Mr. Petrano:** You have his testimony, of course, but
13 then...

14 **The Court:** Right.

15 **Mr. Petrano:** The State's position would, of course, be
16 that that was known all along and he---

17 **The Court:** Right. And the Alford plea -- there's a
18 good reason for it. He didn't -- Judge Manning went over it
19 in detail. He's not admitting it, and he's taking the
20 benefit of the bargain and that's what he got. Sorry.

21 **Mr. Petrano:** And I wanted to comment, if I took my
22 notes correctly, just one very brief thing. On the stand he
23 said, "That night the alcohol said to me," and then he kind
24 of wavered off. But it was the alcohol were his words, I
25 believe. If I got my notes right -- if I'm wrong, the record

1 will reflect that, but that's why he finally snapped and shot
2 at the clerk.

3 **The Court:** And Mr. Johnson testified to that, too, that
4 he had told him that.

5 **Mr. Petrano:** Thank you.

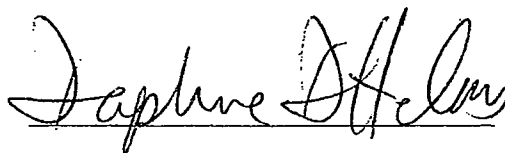
6 **Mr. Belding:** Thank you, Your Honor. I appreciate your
7 attention.

8 (Whereupon, the proceedings were concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 11th of January, 2012.

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

June 20, 2012

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in black ink and is positioned above the typed name.

Daphne D. Helms, court reporter

Charlie J. Johnson, Jr.
ATTORNEY AND COUNSELLOR AT LAW

Charlie J. Johnson, Jr.

charlie@cjjjlaw.com

1911 Pickens St.
Columbia, South Carolina 29201
(803) 256-7001

MAILING ADDRESS
P.O. Box 11212
Columbia, SC 29211
FAX (803) 256-7002

May 3, 2010

Clark Inabinet
Inmate No: 339406
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

RE: Clark Inabinet vs. State of South Carolina

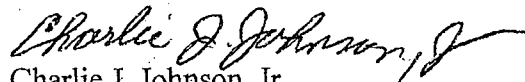
Dear Mr. Inabinet:

In response to your letter dated 3/22/10, I have enclosed a complete copy of your file.

I would suggest that you file for a PCR. I would allow for another attorney to check behind me and determine if I did my job correctly. If I missed something it might lead to you getting another trial or a different and better outcome.

If you have any questions regarding the above matter, please do not hesitate to contact me.

Sincerely,



Charlie J. Johnson, Jr.
Attorney at Law

CJJJR



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2010CP4004731

Mister Clark Inabinett, 00339406,

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RECEIVED
2012 MAR 12 PM 12:11
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 19, 2010. The Respondent made its Return on September 30, 2010. An evidentiary hearing into the matter was convened on January 11, 2012 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by David Belding, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's plea counsel, Charlie J. Johnson, Jr., Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated following a February 24, 2010 guilty plea before the Honorable L. Casey Manning to the following:

Grand Jury Term	Indictment Number	CCR, S.C. Code *	Charged Offense Potential Sentence * Offense Description	Sentence Received	Sentenced to Lesser Offense?
4-09	2009GS4010799	0139 16-11-0330(A) * 10-30 *	Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadl	10	No
4-09	2009GS4010794	0768 17-25-0030 * 10 *	Assault / Assault with intent to kill (AWIK)	not pros	No
NOTES: Alford plea to armed robbery for a negotiated sentence of (not 10) years and dismissal of AWIK charge				TOTAL 10	POSSIBLE 40

The Applicant did not appeal his conviction/sentence.

In the PCR application, the Applicant made the following allegations:

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

(a) While at Kirkland R.I.E I was not allowed any access to legal reference(s). (I filed a grievance on this)

(c) _____

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

(a) My court appointed attorney did not attempt to defend me

(b) I wanted to go to trial and was lied to by my attorney

(c) Ineffective Assistance of Counsel

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

(a) Please See Attached Enclosure

(b) _____

(c) _____

# 10 1 of 5	Clark Inabinett #339406 Kershaw Correctional Inst: 4888 Gold Mine Highway Kershaw SC 29067 Statement of Facts)
	I Clark Inabinett Sr. hereby swear that the proceeding statements(s) are actual and true. That the persons mentioned forthwith are actual participants and record of these accounts are documented via the proceedings of recorded and stored by the court reporter(s) in the employ of the office of the clerk of the Court of Richland county.
	) On November 10, 2008 I was arrested at my home "433 Crestite drive Columbia South Carolina". The charges go as follows: warrant # J-563249 Assault / Assault with intent to kill and warrant # J-563251 Armed Robbery. Subsequently, I was booked and placed in detention at Alvin S. Glenn Detention Center. I was appointed Anastasia Walker as counsel to represent me on these charges. I explained to Ms. Walker at that time that I had no memory of the night this incident supposedly occurred. All I could muster was that I was out on the night of Oct 25 (Saturday) 2008 at a place named the "Me House" located on Bellline Boulevard. I was sharing pool with two young women and buying drinks from about 11:30 PM until I started to feel nauseous and left to go home. I also remembered stopping to get cigars but not much more other than awaking behind the wheel of my car that Sunday morning sitting in my driveway when my wife served me breakfast I still felt sick and vomitted a number of times that morning and throughout the day. I attributed it to having been drinking since about 3pm the previous day (Sat 10/25/08). I later found

it to cont

5

out that the girls I was entertaining (Tammie and Lisa) (which we found out were only bar names) were known by the regulars at the @le house as shake down artists. They would party with and pal up to men and try to exchange sex for money and if that did not work they would at times slip something in the @ drinks and roll their targets. I did remember talking with these women about leaving with them until I started to feel sick. At which time I chose to go home. After learning these facts I insisted that Anastasia find these girls and question them. This was in late November 2008. She made an effort to investigate so I had my brother-in-law (Marvin Warejoy) hang around and try to track one or both of these girls down. At that time she introduced herself to Marvin as Mandy, and he expressed to me that she tried to pick him up also, until he mentioned my name and asked her to admit she put something in my drink. I wrote Anna and pleaded with her to do an immediate investigation because Marvin said they at the club had signs posted stating the place would be closing up in April 09. This letter to Anna was sent in March 09. "She still did not start an investigation". In August of 2009 Ms Walker finally came to me with a plea of 10 yrs violent for Armed Robbery and I refused and asked for her dismissal. I was then appointed Charlie J. Johnson as pro bono counsel on Sept 9, 2009. Again I explained to Mr. Johnson the position I was in, but by this time I had total recall of the events of Oct 26, 2008 and asked that he do research

10/20/08
3 of 5

my claim that I was drugged and that I did not in fact rob the gas station. But that I did shoot the window and floor of the establishment in retaliation of Troy propositioning me with homosexual advances and statements. I instructed mister Johnson also to go to the solicitor Vanessa Shibley and explain my position and try to arrange a plea. Here again I state an effectual counsel, Mr. Johnson never attempted to track down the witness (Mandy) I spoke of, nor did he do any investigation(s) or make any effort to support my claim. He never spoke up one time at my court appearances in my defense or to even build a defense to go to trial. At one particular hearing I tried to have him dismissed for lack of representation and misconduct (This fool interviewed me in the solicitors office without my knowledge of where we were) asking questions and the prosecuting attorney was there not 6 or 8 feet away in an open office listening to all our conversation. At this point I had had enough and sought to dismiss Mr. Johnson and was told by a judge Neuman that "I either go to trial with Johnson or defend myself." At that point I felt totally exasperated at the whole situation. I was locked up from November 10, 2008 until Feb 2010. My first public defense blew my chance to get my only witness. My pro bono attorney was blatantly working with the prosecution and doing nothing on my behalf. Hell when I asked to have him dismissed because he flat out lied to me (saying there was no such thing as a defense for being drugged without my knowledge) the solicitor acted as though it was the

pic cont.
4 of 5

first she had heard of it and tried to say I had told judge James that I took the drug willingly. My transcripts of that day in front of the judge is incomplete and in my new trial I would bring the actual audio recording into evidence to dispell any misconseption that the solicitor has (intentionally in my opinion) brought forth. I have solid evidence in the way of Anastia Walker whom explicitly told me that "Vanessa Shipley" was not going to try and do what was right by me in the way of justice for she had expressed disdain towards me and said I was arrogant. I did not plea out of guilt, I pled out of exasperation of the injustice forced upon me and the duress of being locked up for 18 months in the richland county jail. Mrs Shipley and sheriff Robinson has shown bias towards me, and I have the right constitutionally to confront my accuse(s). I also am guaranteed a fair and impartial jury. The solicitors office is and was created to administer justice to and for the people. I am/was a tax payer and am a natural citizen of the United States of America and as such am entitled to be treated fairly and justly at the hands of the law. The 14th ammendment clearly states such. There for I submit that ¹ I was not afforded Effective Representation ² My court appointed attorney failed to investigate the ~~circumstances~~ the circumstances surrounding my arrest. ³ "Never" did either make "contact" with my "alibi witness." ⁴ My Plea was made under "duress" of an extended incarceration without the benefit of "proper legal representation" through.

# 10 cont. 3 of 5	
int ⑤	My plea of guilty was not made intelligently on my part, so I do share some blame here. I just ask that the court please allow for a new trial that all the facts of this debacle be brought forth.

18. State clearly the relief you seek in filing this application. I wish to get a new trial so that all the facts of this case can be aired and/or get a fair sentence for what I did commit

Through his appointed counsel, the following pre-trial brief was submitted:

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on July 19, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by the Honorable Alison Renee Lee on December 19, 2011.

B. Applicant's application states that he is seeking relief from the sentence of ten (10) years imprisonment imposed by the Honorable L. Casey Manning on February 24, 2010, for the crime of Armed Robbery (Indictment No.: 2009-GS-40-10799).

C. The Applicant was represented by Charlie J. Johnson, Jr., Esquire of the private Bar.

D. On November 10, 2008, Applicant was arrested and charged with two (2) crimes: Armed Robbery and Assault with Intent to Kill. The charges arose from the robbery of a Circle K store on Atlas Road in the early morning of October 26, 2008.

E. On the evening of October 25, 2008, Applicant went to The Ale House restaurant in Columbia where he believes he was slipped a "mickey" by a girl he talked with there. He became nauseous and disoriented and left the bar. He has very little

1

A handwritten signature in black ink, appearing to be 'Clark', written in a cursive style.

memory of what happened the rest of the evening. He remembers stopping at the Circle K near his home and seeing the clerk, Troy Barrow, who he had met on a number of occasions. The clerk made a sexual advance on the Applicant who responded by pulling out a handgun to scare him off, firing two (2) shots on the way out. He failed to pay for a few cigars he had in his hands and left. Because Applicant was a well-known businessman in the area, who had frequented the Circle K nearly one hundred (100) times over the years, he was easy to find. He was arrested on November 11, 2008, and detained.

F. Shortly thereafter, Applicant was appointed Anastasia Walker, Esquire, of the Public Defenders Office. Despite Applicant's request, his attorney did not investigate the Ale House situation to determine if corroboration for Applicant's diminished capacity could be obtained. In August 2009, without doing anything more than request a bond reduction, Applicant's counsel met with him at the detention center and told him she had a plea offer (10) years. Applicant was outraged that his attorney had nothing to investigate and prepare a defense, so he demanded that she be relieved. On September 9, 2009, Charlie J. Johnson, Jr., Esquire, was appointed to represent Applicant.

G. Applicant saw Mr. Johnson four (4) times while in jail. They talked about the case but Mr. Johnson never shared the State's discovery with Applicant. At 3:30 a.m. on February 24, 2010, the Applicant was awakened at the detention center and informed that he was being transported to court. At the courthouse, Applicant met with Mr. Johnson who took him to a room and showed him the surveillance video of the Circle K robbery. Mr. Johnson informed the Applicant that he had no defense to present; that they were up for trial; and that Applicant could get thirty (30) years if he didn't agree to plead guilty in exchange for a ten (10) year sentence. Mr. Johnson stated that this was the best deal he could get with the Solicitor and that Applicant should plead guilty and then file a PCR to get his time cut. Based upon these revelations, the Applicant felt he had no choice but to plead guilty, although he insisted on maintaining his innocence. Mr. Johnson was able to get the Solicitor to allow the plea under *North Carolina vs. Alford*.

II. Legal Issue

Plea counsel was deficient in representing Applicant because he did nothing to prepare a defense, forcing Applicant to take a "no contest" plea.

III. Legal Authority

For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). This does not only apply to trials - this same standard applies to a guilty plea. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991). The advice Applicant received from his plea counsel failed to meet the standards for attorneys. Tollett v. Henderson, 411 U.S. 258, 98 S.Ct. 1602, 36 L.Ed 2d 235 (1973). t

Applicant did not appeal the plea. Now, the Applicant is challenging the voluntariness of his guilty pleas and this PCR evidentiary hearing is the only forum to raise this issue. State v. Barton, 325 S.C. 522, 530 n. 6, 481 S.E.2d 439, 443 n. 6 (Ct. App. 1997) (any challenge to the knowing and voluntary nature of appellant's plea could be raised only in a petition for post-conviction relief); In the Interest of Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (where sole issue before appellate court was competency to enter plea and issue was not raised at the time of the plea, issue was procedurally barred; proper avenue to challenge a guilty plea which was not objected to at the time of its entry was through post-conviction relief); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (absent timely objection at a

plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of post-conviction relief).

Applicant asserts that he did not validly waive his constitutional right to a trial by jury. When a PCR applicant alleges that he was denied the right to exercise one of his constitutional rights, the sole inquiry is whether he was informed of that right, and if so, whether he validly waived it. If there is no knowing and intelligent waiver, then the remedy is a new trial. *See, e.g., Wroten v. State*, 301 S.C. 293, 391 S.E.2d 575 (1990) (no valid waiver of right to counsel, new trial ordered); *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990) (same).

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. *Strickland v. Washington*, 466 U.S. at 687. As this was a guilty plea, Applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Here, the evidence shows that Applicant only agreed to plead guilty upon ineffective recommendations of his attorney. Therefore, Applicant’s attorney did not demonstrate “reasonableness under professional norms” that satisfies the requirements of the Sixth Amendment. *Cherry v. State*, 300 S.C. 115, 386 S.E. 2d 624 (1989).

At the evidentiary hearing, Applicant proceeded on the allegations stated in the brief.

A handwritten signature in black ink, appearing to be 'Clark', written over a large, loopy flourish that extends across the width of the page.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Applicant testified and explained that he and some friends were partying that night and they got "lit." The Applicant explained that he thinks someone spiked his drink with ecstasy. The Applicant explained that when he stopped at the gas station to buy a cigar the clerk made a sexual advance at him. The Applicant explained that had happened before with that clerk and that he (the Applicant) wanted to make a point and he fired several shots with his gun. The Applicant explained that he left with the money he originally intended to pay for the cigar with and with the cigar. The Applicant explained that he does not have a full complete memory of the night. The Applicant explained that he wanted to go to trial and pursue a defense of involuntary intoxication but that his attorney never did a proper investigation to support his claim of being slipped a mickey.¹ The Applicant explained that seeing the video of the incident with his new attorney, plea counsel

¹ *Slipped a mickey*: Slang term for a drink laced with a drug (especially chloral hydrate) given to someone without their knowledge in order to incapacitate them.

<http://www.urbandictionary.com/define.php?term=slipped%20a%20mickey>

Inabinett, Clark - Order of Dismissal (2010CP4004731)

Page 12 of 18

Charlie J. Johnson, Jr., brought his memory back. The Applicant explained that he only wanted to intimidate the clerk, that that night the alcohol said to do something to stop the clerk's advances.

Plea counsel testified that he recalled his representation of the Applicant. Plea counsel explained his background and experience. Plea counsel explained that he got a complete copy of the discovery and that in this case the video was extremely good, you could even see his car leaving. Plea counsel explained that based on the video, his advice was to plea guilty. Plea counsel explained that they discussed the spiked drink issue but that they only really had his testimony to support that claim and he had otherwise admitted to drinking heavily that evening. Plea counsel explained that even absent the shooting, taking the cigars without paying while welding a gun was a complete concession to the elements of armed robbery – and his subjective intent is not entirely relevant compared to the victim's reasonable interpretation of the event. Plea counsel explained that he is satisfied with his advice and that an Alford plea was the best approach. Plea counsel explained that the State would not budge from the armed robbery and drop it to a strong armed robbery – but that he did get the minimum for armed robbery.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined

the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

There is no credible evidence of involuntary intoxication. The Applicant essentially confessed to the elements of the crimes he plead guilty to committing. The Applicant admitted that the video jogged his memory and that he intentionally shot the place up to make a point regarding the clerk's repeated unwanted sexual advances. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

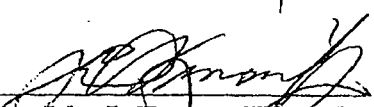


This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has 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 and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 21st day of February, 2012.


 The Honorable J. Ernest Kinard, Jr.
 Presiding Judge
 Fifth Judicial Circuit

Camden, South Carolina.

119

WITNESSES

(s) SGT. DON ROBINSON - RCSD

ARREST WARRANT NUMBER

J563251

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: JAN 15 2010

VERDICT

Foreperson of Petit Jury
Date:

AMENDED

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2009

91

THE STATE
vs.

CLARK INABINET

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

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

Defendant

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

Defendant

Witness:

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

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

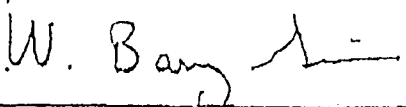
INDICTMENT

At a Court of General Sessions, convened on April 15, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Clark Inabinet did in Richland County on or about October 26, 2008, commit a robbery by feloniously taking from the person or presence of Troy Barrow, by means of force or intimidation goods or monies belonging to Circle K, being described as US Currency and/or cigars, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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



 WARREN B. GIESE, SOLICITOR

12

WITNESSES

(s) SGT. DON ROBINSON - RCSD

ARREST WARRANT NUMBER

J563251

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JAN 15 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-10799

AMENDED

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2009

91

THE STATE

vs.

CLARK INABINET

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive present and future rights to a trial by jury and to the Grand Jury.

Defendant

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

Defendant

Witness:

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

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 15, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Clark Inabinet did in Richland County on or about October 26, 2008, commit a robbery by feloniously taking from the person or presence of Troy Barrow, by means of force or intimidation goods or monies belonging to Circle K, being described as US Currency and/or cigars, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

W. B. Giese

WARREN B. GIESE, SOLICITOR

J-563251

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

THE STATE RCSD 0810249526
against:

Clark Inabinet

Address:

Race: Height: 6 Weight: 247

DL State: SC DL #: 100605322

DOB: 3 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Donald Robinson - 555

Offense: Armed Robbery

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Clark Inabinet on 11/11/08

K. Gathers
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street,
P O Box 192
Columbia, SC 29202.

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

County/ Municipality of

Richland Bond Court

Personally appeared before me the affiant Donald Robinson

being duly sworn deposes and says that defendant Clark Inabinet

did within this county and state on or about 10/26/2008

State of South Carolina (or ordinance of County/ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about October 26, 2008 while at 2807 Atlas Road in the Olympia Magisterial District of Richland County, it is believed that the defendant, Clark Inabinet, did commit the crime of Armed Robbery because he did enter into the business armed with a pistol with the intent to rob. The def. approached the clerk, presented a small caliber pistol, and demanded money from the register. After receiving the money the def. fled the scene in a white Pontiac Bonneville. This incident is stored on surveillance video. The def. vehicle has been identified by the clerk and the defendant has been identified by video.

Affiant and others are witness to prove same.

Signature of Affiant

Donald Robinson

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/26/2008 defendant Clark Inabinet

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 11/11/2008

T. Edmond (L.S.)
Signature of Issuing Judge

T. Edmond

Judge Code: 7154

Judge's Address 201 John Mark Dial Road

Columbia, SC 29209-

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

AFFIDAVIT

ORIGINAL
CERTIFIED TRUE COPY
OF ORIGINAL FILED
S.C. Attorney General
November 11, 2008
518
C.C.P. & C.S.
RICHLAND COUNTY
SOUTH CAROLINA

2008 NOV 12 AM 11:18
C.C.P. & C.S.

BAIL set by

WITNESSES

Judge Edmond
on 11-11-08

Type and Amount: _____

Name of Surety: ITS GUARANTY COMPANY

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

COUNTY OF Richland
STATE VS. CLARK INABINET
AKA:
Race: Sex: M Age: 46
DOB: SS#: 6
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2009GS4010799
A/W#: J563251
Date of Offense: 10/26/2008
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

NC vs. ALFORD

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: SHIPLEY, VANESSA SC Bar# 15523 Defendant
Charles J. Jones SC Bar# 9001 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 12/10/08
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS
PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Recipient, *Fine, and Amount. Rows include various assessment and surcharge fees such as § 14-1-206 (Assessments 107.5 \$), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, § 47.12 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$100, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, § 90.7 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.
CERTIFIED TRUE COPY OF ORIGINAL FILED.
Jeanette McBride, Presiding Judge
K. Tracy, Court Reporter
RICHLAND COUNTY SOUTH CAROLINA
Judge's Code: 2061
Sentence Date: 2-24-10

Clerk of Court/ Deputy Clerk
Court Reporter: K. Tracy
SCCA/217 (11/2009)