

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

JOMAR ANTAVIS ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002025

APPENDIX

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN J. HUNTER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA.

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2012-GS-46-3367

7 JOMAR ROBINSON,

8 Defendant.

9 -----x

10 September 6, 2012

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE JOHN C. HAYES

15

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

17 WILLI THOMPSON, Esquire

18 Attorney for the Plaintiff

19

20 PHILIP JAMIESON, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1 THE COURT: All right.

2 PLAINTIFF ATTORNEY: Your Honor, standing before
3 you today is defendant, Jomar Robinson. He is
4 represented by Philip JamiEson. He was originally
5 charged with murder under Indictment 2010-GS-46-3367.
6 He is pleading guilty to the lesser included offense of
7 voluntarily manslaughter. We negotiated an 18-year
8 sentence to run concurrent to the sentence he is
9 currently serving and also he is pleading guilty as
10 charged to 2010-GS-46-3367-A, possession of firearm
11 during the commission of a violent crime. We negotiated
12 a five-year sentence on that charge to run concurrent
13 with the voluntarily manslaughter plea and also the
14 sentence he is currently serving.

15 We are dismissing after this plea indictment
16 2010-GS-46-3368.

17 THE COURT: How old are you Mr. Robinson?

18 THE DEFENDANT: Thirty.

19 THE COURT: You are represented by Mr. Jamieson?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you satisfied with his services?

22 THE DEFENDANT: Yes.

23 THE COURT: I see written on here it was indicated
24 to me earlier that you are entering your plea under
25 what is called an Alford Doctrine, that means to me

1 that you are maintaining your innocence but you have
2 determined that it is in your best interest to enter a
3 plea based on the negotiations that have been handled
4 and also based on your belief that were you to go to
5 trial there is a strong likelihood or probability that
6 the jury would find you guilty of either murder or
7 voluntary manslaughter, is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you are pleading guilty under
10 Alford with that understanding?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you are currently incarcerated, is
13 that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what kind of sentence do you have?

16 THE DEFENDANT: Life without parole.

17 THE COURT: You are charged with murder. It is
18 alleged that on or about September 28, 2008 you had
19 feloniously and with malice aforethought killed Ernest
20 Tolbert.

21 You are pleading to voluntarily manslaughter which
22 carries two to thirty years in jail. You are also
23 charged with possessing a firearm during the commission
24 of a violent crime which carries up to five years in
25 jail. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: It is alleged at the time you shot Mr.
3 Tolbert you did possess a firearm while committing a
4 violent crime of murder. You are pleading to
5 voluntary manslaughter. Voluntary manslaughter is
6 also a violent crime. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In addition to carrying two to thirty
9 years voluntarily manslaughter is a felony, is a most
10 serious offense and it is not a parole eligible
11 offense. Do you understand those things?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have any questions about any of
14 that?

15 THE DEFENDANT: No, sir.

16 THE COURT: How do you plead to voluntary
17 manslaughter?

18 THE DEFENDANT: Guilty.

19 THE COURT: How do you plead to possession of
20 firearm?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you today up the influence of
23 anything that would cause you to be intoxicated?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you entering the plea to this

1 charge, Mr. Robinson, freely and voluntarily.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand Mr. Robinson you
4 have a right to a trial by jury on this charge and you
5 and presumed innocent of this charge until such time
6 as the State is able to prove prove your guilt beyond
7 a reasonable doubt. As to this charge you have the
8 right to the remain silent, the right to confront the
9 witnesses against you, and have the right to have your
10 witnesses made to come to Court to testify on your
11 behalf. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions about that?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you advised him of all those
16 rights?

17 MR. JAMIESON: I have Your Honor.

18 THE COURT: Mr. Robison, I advise you that when
19 you enter a plea of guilt to offense to a crime that, as
20 to that offense you are giving up all those rights I
21 just talked to you about and you are also giving up any
22 defense that you might have to the charge, do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Knowing all those things I ask again

1 how do you plead to voluntarily manslaughter?

2 THE DEFENDANT: Guilty.

3 THE COURT: How do you plead to possession of a
4 firearm during the commission of a violent crime?

5 THE DEFENDANT: Guilty.

6 THE COURT: Have you ever been in psychiatric
7 treatment or received mental health?

8 THE COURT: No.

9 THE COURT: I will ask you to listen while given
10 the facts.

11 MR. BRACKETT: Your Honor, should this case had
12 proceeded to trial the State would have presented that
13 on September 28, 2008 at approximately ten p.m.
14 officers with the York Police Department responded to
15 the coin laundry on Blackburn Street in York, South
16 Carolina regarding a shooting. When they arrived they
17 found Mr. Ernest Tolbert lying in the street face down
18 in front of the store bleeding from a gunshot wound to
19 his abdomen. He was unresponsive and had shallow
20 breathing. There was a plastic bag lying underneath
21 Mr. Tolbert that had a revolver wrapped in a towel.

22 Mr. Tolbert was transported to Piedmont Medical
23 Center where he was pronounced dead in the emergency
24 room. Forensic Pathology report stated the cause of
25 death was a gunshot wound to one the right side of the

1 abdomen. Mr. Tolbert was 63 years old.

2 Law enforcement collected evidence but
3 unfortunately were not able to and determine a suspect
4 until over a year later when at investigation lead to
5 Jomar Robinson. Officers met with Robinson at the
6 South Carolina Department of Corrections where he was
7 currently serving a life sentence on unrelated drug
8 offense.

9 Officers advised Mr. Robinson of his Miranda
10 rights. He understood those rights and during a
11 videotaped interview told officers on the night of
12 shooting involving Mr. Tolbert that he left his
13 girlfriend's home and went to wait on a ride from
14 another girl. He was dressed all in black and
15 carrying a high point 385. He stated he entered the
16 laundromat to the get a drink when he saw the victim
17 Mr. Tolbert come out of the bathroom. He stated, oh,
18 you are trying to rob me and Mr. Tolbert reached and
19 pulled out a gun that was in a plastic bag and when
20 Mr. Tolbert went into the bag Mr. Robinson shot him.

21 THE COURT: Do you agree with all that Mr.
22 Robinson?

23 THE DEFENDANT: Yes, sir.

24 THE CLERK: Mr. Robinson, I accept your plea. I
25 find they are freely, voluntarily and knowingly

1 entered with the advise of competent counsel with whom
2 you are satisfied. They have been entered under the
3 Alford Doctrine. The facts support your plea.

4 If anybody wants to speak on behalf of the
5 decedent.

6 Yes, ma'am, your name.

7 MS. TOLBERT: My name is Shanterrica Tolbert. It
8 has been a hard three to four years. I just wanted
9 you to know the character of my father. He was a man
10 of respect. Dignified. Everybody knew him in the
11 community. In fact he worked three jobs for me to go
12 to college so we could have a better life and on
13 behalf of my other siblings, my mother and my
14 children it has been really hard and I am glad today
15 that I can finally at least believe in the justice
16 system that I could get a little bit of peace.

17 My father, friend, a husband, an uncle, a
18 grandfather who has a granddaughter who will never
19 know him because she was only two-weeks old when he
20 was killed and I just wanted to say thank you guys
21 today because I think I can breath again, and it has
22 been hard. It has been really hard.

23 THE COURT: I understand. Thank you.

24 MS. BANKETT: My name is a Alisa Bankhand
25 (phonetics).

1 I just wanted to say that my uncle was a good man.
2 He didn't deserve what he got. It was senseless. It
3 has been really, really hard. He has grandchildren that
4 will never know him, never know the kind of person he
5 was. He was a church going man. He did work three
6 jobs. He was just a good guy all around, and I am just
7 glad justice is going to be served today and I
8 appreciate the fact that I can count on the system to do
9 what we need them to do. Now we can have some peace.
10 It is not closure like we wanted, but it is closure just
11 the same and we all feel a lot better and we thank you.

12 THE COURT: Yes, ma'am thank you. Anybody else?

13 MR. THOMPSON: That's it.

14 THE COURT: Mr. Jamison.

15 MR. JAMISON: Your Honor as Mr. Robison told you
16 he is thirty years old. Went through the 9th grade in
17 school. He is currently serving time as this is
18 negotiated sentence I am not going to belabor the Court
19 with a lot of mitigation on his part.

20 I want to mention again and reaffirm he is pleading
21 under the Alford theory and also a part of our
22 negotiation was that he would get credit for time from
23 the date of the warrant which I believe is April 23,
24 2010. He will get credit for that time.

25 THE COURT: Mr. Robison, anything you want to say?

1 THE DEFENDANT: No, sir.

2 THE COURT: Voluntarily manslaughter, the sentence
3 is 18 years. It is to run concurrent with the pistol
4 charge, possession of a firearm during the commission of
5 a violent crime, sentence on that is five years. Again
6 those are to run concurrent and I have given you credit
7 for 867 days.

8 MR. JAMIESON: Thank you Your Honor.

9 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 6th day of September, 2012.

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

June 30, 2014

Aileen Butler

FORM 5

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

County of York

2014 APR 24 AM 11:30

IN THE COURT OF COMMON PLEAS

Somar Robinson #281722

Full name and prison number (if any) of Applicant

v.

State of South Carolina

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION

RECEIVED
2014 APR 23 PM 2:51
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
RECEIVED
2014 APR 23 PM 3:19
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCINSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lieber Corr. Inst.
2. Name and location of Court which imposed sentence York County General Session Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Voluntary Manslaughter, Poss of a Firearm during Comm. of violent

- (b) Crime #2010-GS-460-3367
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-6-12
- (b) 18 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Alford Plea
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 29, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
 (c) _____

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

- (a) See Attachment
 (b) _____
 (c) _____

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

- (a) See Attachment
 (b) _____
 (c) _____

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

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

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

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

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

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

N/A

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

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

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

(a) This is my first opportunity to raise them
 (b) _____
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. Philip W. Jamieson / Attorney at Law
242 Oakwood Street
 ii. Rock Hill, S.C. 29730

iii. _____

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

i. _____

ii. _____

iii. _____

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

New Trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Samar Robinson, 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 9th
day of April, 2014.

Ludrea Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this
9th day of April, 2014.


Notary Public

My Commission Expires: May 26, 2020

Attachment

The Applicant set forth this Cause of Action Pursuant to the Jurisdiction that are set forth in chapters 17-27-20(1)(6) Collateral attack upon his Conviction at any grounds of alleged error heretofore available under this uniform Post Conviction Act that are being submitted or amended.

The Applicant asserts at this time (1) ineffective assistance of trial Counsel. Applicant also asserts that due to his lack of understanding of the Law, Applicant request that Counsel be appointed Pursuant to M. 1(6) SCRCiv. P. and S.C. Code of Laws 17-27-90.

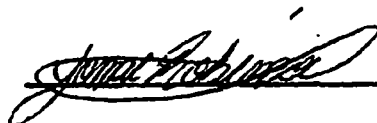
Applicant asserts that there are further grounds to be raised but due to the lack of records and the assistance of Counsel, it would be Chronologically impossible for the Applicant to carry such burden to show his entitlement for relief by a preponderance of the evidence and for the appointment of Counsel to insure that all available grounds for relief are included in the application.

Therefore, Applicant request that this Court appoint Counsel in the above mention application. Applicant moves this Honorable Court to grant leave to amend this application in this cause of action due to the lack of Counsel and Applicant is a Lay Person at Law

Applicant seeks this Court approval of this application so that Applicant right to a PCR won't be deem abandon due to the fact that Applicant has only one year to file this application from the date of a Final Judgment or from the remittitur to the Lower Court which ever come first.

Respectfully Submitted,

Date 4/9/14



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Jomar Robinson, #281722,

2014-CP-46-1296

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 23, 2014¹, 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 York County Clerk of Court. The Applicant was indicted at the September 2010 term of the York County Grand Jury for Murder (2010-GS-46-3367) and Possession of a Weapon during the Commission of a Violent Crime (2010-GS-46-3367A). Phillip Jamieson, Esquire, represented him. On September 6, 2012, the Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) before the Honorable John C. Hayes, III and was sentenced, pursuant to a negotiated sentence, to confinement for eighteen (18) years for Voluntary Manslaughter, as a lesser included offense of Murder, and five (5) years, concurrent, for the possession charge.

¹ While this date would technically place this application beyond the statute of limitations, the notary public signed the application on April 9, 2014.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals dismissed his appeal on March 29, 2013. The Remittitur was issued on April 17, 2013.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
2. "Applicant also asserts that due to his lack of understanding of the law."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon

as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

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

V.

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

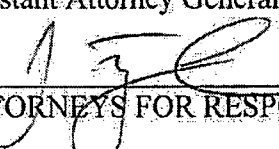
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 22, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2014-CP-46-1296

JOMAR ROBINSON,)

Applicant,)

vs)

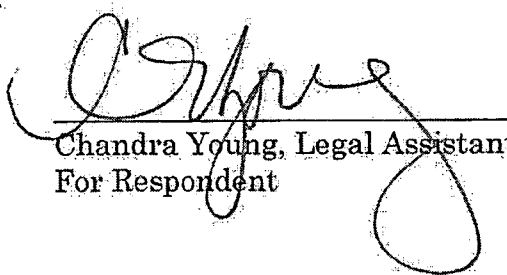
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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:

W. Michael Hemlepp, Jr., Esquire
 3027 S. Paraham Rd
 York, SC 29745

DATED this 22nd day of July, 2014.

 Chandra Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2014-CP-46-1296
	)	
JOMAR ANTAVIS ROBINSON,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA.	)	
	)	
	)	
	)	

January 22nd, 2015
York, South Carolina

BEFORE:

THE HONORABLE J. DERHAM COLE , JUDGE.

APPEARANCES:

WILLIAM MICHAEL HEMLEPP, JR., ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the State

AMINAH R. HARDY
Official Court Reporter

INDEXWITNESS

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EXHIBITS

No.	Description	Page
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(No exhibits were marked.)

P R O C E E D I N G S

THE COURT: This is Jomar Robinson, case number 2014-46-1296.

Mr. Hemlepp, do you represent Mr. Robinson?

MR. HEMLEPP: I do, Your Honor.

THE COURT: Are y'all ready to proceed on the application?

MR. HEMLEPP: Your Honor, if I could put something on the record. I have a motion to make and then I want to put something on the record before proceeding.

THE COURT: Okay.

MR. HEMLEPP: Today, in talking with Mr. Robinson, I discovered that he had allegations that he wished to make that were not contained in his petition. As the Court is aware, most PCR petitions are written by inmates who do not have legal counsel helping them write the petition. It was my intention to move to amend his petition to include ineffective assistance of counsel for failure to investigate the underlying facts of the case and failure to investigate an alibi defense.

I have told the Attorney General's office this. I actually told the Assistant Attorney General earlier. It is my understanding that they're going to consent to us being able to amend and being able to go forward. However, because these are new to me, and there is

1 documentation in evidence that I need to obtain, I was
2 prepared to move for a continuance in order to be fully
3 prepared. The Court indicated that you would allow us to
4 take testimony, but would leave the record open for me to
5 get more information and have a subsequent evidentiary
6 hearing on this matter on another date leaving it open.

7 I talked it over with my client. He was very nervous
8 about that because he believed he was going to come to
9 court today and this would be his only opportunity in
10 court. I explained to him the Court can leave the record
11 open for us to be able to make a complete record and he
12 agrees that he is willing to do that. His big concern,
13 and assurances from the Court would be helpful, that you
14 will, indeed, not be making a ruling today, but at another
15 time, another date when we flesh out the record.

16 THE COURT: I will not be make a ruling today. I
17 will make a ruling after all the evidence has been
18 submitted.

19 MR. HEMLEPP: Thank you, Your Honor. And with that,
20 we're ready to proceed and I would call my client to the
21 stand. And Your Honor, for the record, my motion to
22 amend, is that granted?

23 MR. JOHNSON: No objection.

24 THE COURT: No objection, it's granted.

25 JOMAR ROBINSON, after having been duly sworn,

1 testified as follows:

2 MR. HEMLEPP: May it please the Court, Your Honor?

3 THE COURT: Yes.

4 MR. HEMLEPP: Thank you.

5 DIRECT EXAMINATION

6 BY MR. HEMLEPP:

7 Q Mr. Robinson, would you please give us your full name
8 and would you spell your last name for the court reporter
9 to get into the record?

10 A Jomar Antavis Robinson, R-O-B-I-N-S-O-N..

11 THE COURT REPORTER: How do you spell your middle
12 name?

13 THE APPLICANT: A-N-T-A-V-I-S.

14 Q Now, Mr. Robinson, have you ever testified in a
15 courtroom before?

16 A No, sir.

17 Q Now, do you remember us talking about the need for
18 you to be clear and understandable? I need you to be able
19 to talk about as loudly as I am so that Judge Cole can
20 hear you and that the Attorney General's office can hear
21 you. Can you do that for me?

22 A Yes, sir.

23 Q Okay. Little bit louder. How old you?

24 A Thirty-two, sir.

25 Q Okay. And where do you live? You're currently in

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 the Department of Corrections, but before that, where did
2 you live?

3 A York, South Carolina.

4 Q Okay. And you are now serving time in the Department
5 of Corrections?

6 A Yes, sir.

7 Q When did you first go to the Department of
8 Corrections?

9 A 2009.

10 Q And was that for this charge or another charge?

11 A For another charge, drugs.

12 Q While you were in the Department of Corrections on
13 that charge, were you arrested on this charge?

14 A Yes, sir.

15 Q Okay. They served a warrant?

16 A No, I was investigated, you know what I'm saying,
17 from the beginning, but these allegations was brought
18 while I was already serving a life sentence for drugs.

19 Q Okay. Did you -- did you get served with a warrant
20 in this case? Do you know what a warrant is?

21 A Yeah, I know what a warrant is. After I was made to
22 confess, that's what you asking?

23 Q No. Were you served with a warrant?

24 A Yes, yes, yeah.

25 Q And what was the charge on the warrant?

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 A Murder.

2 Q Murder?

3 A Yes, sir.

4 Q I'm sorry?

5 A Yeah, murder.

6 Q Now, on the warrant, it had a description of what
7 they are accusing you of. Did you know anything about
8 that incident?

9 A No, sir.

10 Q Okay. Have you ever been questioned prior to going
11 to the Department of Corrections about that incident?

12 A No, sir.

13 Q Okay. That incident relating to a September 2008
14 murder of an Ernest Tolbert. Did you know Ernest Tolbert?

15 A Not -- didn't know him, but I knew of him. I knew
16 that was his occupation, that he worked at the laundromat.

17 Q So after you go to the Department of Corrections and
18 they -- and before you were served with this warrant, you
19 said they investigated you?

20 A Yes, sir.

21 Q How did they investigate you if you were in the
22 Department of Corrections?

23 A I was in the Department of Corrections. They had an
24 inmate that was here amongst the justice center that was
25 locked up for some other charges and mentioned my name

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 saying that I told him that I committed this crime. And
2 the investigators brought him a cell phone in here and had
3 him making calls to me at McCormick Correctional
4 Institution asking me and talking to me about this
5 incident right here, this alleged incident, which I
6 eventually pled guilty to, and asking me did I do it, did
7 I remember telling him that I done it. And, you know, I
8 told him no to everything because the whole conversation
9 was frivolous and I didn't get it. Because I didn't do
10 it.

11 Q Were you questioned by law enforcement about this?

12 A Yes, sir, I was.

13 Q And where was -- where did that happen?

14 A It happened in McCormick Correctional Institution.

15 Q How many times were you questioned by law
16 enforcement?

17 A He came like two, three, times. And, like, the third
18 time he came, he asked me to take a polygraph test. And I
19 told him I refused to take a polygraph without a lawyer
20 being present, and so I was locked up and placed in
21 solitary confinement.

22 Q How long after talking to the detective and refusing
23 to take the lie detector test were you placed -- how long
24 a period of time until you were placed in solitary --

25 A The very same day.

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q Same day?

2 A Very same day.

3 Q How long were you in solitary confinement?

4 A Forty-four days.

5 Q Forty-four days.

6 A Forty-four days.

7 Q During that time, did they continue to question you?

8 A Yes, absolutely.

9 Q Okay. And why did the solitary confinement end after
10 forty-four days?

11 A Because I was forced -- I made a confession. I made
12 a coerced confession. I was forced to make a confession.

13 Q What do you mean you were forced to make a
14 confession?

15 A I got no sleep, my lights stayed on constantly. They
16 brought me my food. I had hair in my food, visible hair,
17 visible dirt. I couldn't eat it. Lost an excessive
18 amount of weight. I was told that since I was already
19 currently serving a life sentence for drugs, that if I
20 didn't take this plea and if I went to trial, a new trial,
21 I would receive the death penalty.

22 Q They told you that while you were in solitary while
23 you were being questioned?

24 A Yes, sir.

25 Q Did you have an attorney at that time?

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 A While I was in solitary?

2 Q Uh-huh.

3 A I was -- after I made my confession and whatnot, I
4 was appointed Mr. Jamieson. But at the time, I didn't
5 have an attorney because I was already serving life
6 without parole for a drug violation.

7 Q You had told them that you didn't want to take the
8 lie detector test, a polygraph test --

9 A Yes, sir.

10 Q -- without a lawyer? Did you at any other time ask
11 for a lawyer when they were questioning you?

12 A Yes, sir, I asked for a lawyer from the very
13 beginning.

14 Q Okay. So after 44 days in solitary under these
15 conditions, you were then -- you then made a statement and
16 did that statement admit to the allegations in the
17 warrant, admit to the murder?

18 A Yes, sir.

19 Q Okay. Was that true?

20 A No, sir.

21 Q You were then arrested on this and you said that
22 Mr. Jamieson was appointed to you. How long after your
23 statement was Mr. Jamieson appointed to you?

24 A Pretty much immediately.

25 Q Well, there's a process that has to go forward, so

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 what period of time? Are we talking about -- and it
2 doesn't have to be exact. Are we talking about days? Are
3 we talking about weeks? Are we talking about months?

4 A Maybe a month.

5 Q Maybe a month?

6 A Maybe a month.

7 Q Okay. When was the first time you had the
8 opportunity to talk to Mr. Jamieson?

9 A The first time I had an opportunity to speak to
10 Mr. Jamieson, I believe I was already -- had been brought
11 back to the Moss Justice Center.

12 Q Okay. Okay. Was that within that month that you
13 talked about?

14 A I think it was a little after.

15 Q Okay. When you spoke to Mr. Jamieson, did you
16 explain to him the circumstances of the statement?

17 A Yes, sir, I did.

18 Q And the phone calls?

19 A Yes, sir, I did.

20 Q Okay. Did you also go -- did you also talk to
21 Mr. Jamieson about any defenses that you may have had?

22 A Yes, sir, I did.

23 Q Do you -- aside from the fact that your contention is
24 that you had nothing to do with it, did you also have
25 evidence that you were somewhere else, an alibi?

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 A Yes, sir, I did.

2 Q Did you talk to Mr. Jamieson about that?

3 A Yes, sir, I did.

4 Q Did you give him names?

5 A Yes, sir, I did.

6 Q Okay. Eventually, you, on September 6th of 2012,
7 entered a plea here in this courthouse. Do you remember
8 that?

9 A Yes, sir.

10 Q And was Mr. Jamieson there?

11 A Yes, sir.

12 Q Okay. Under this plea -- you pled guilty under a
13 doctrine called Alford. Do you remember that?

14 A Yes, sir, I do.

15 Q What is your understanding that Alford meant?

16 A My understanding of an Alford plea is that by --
17 at -- by pleading guilty, that I'm not pleading -- I'm not
18 admitting to no guilt, I'm just admitting that I would
19 rather take the plea because I feel like I was represented
20 inadequately. And I also felt like that based on the
21 evidence that my attorney seen that they had against me
22 and what they was going to bring against me that I would
23 be found guilty regardless, you know. Like it was just,
24 like, they had overbearing evidence and I just took the
25 plea.

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q At any time, did you tell the judge that you were not
2 satisfied with Mr. Jamieson?

3 A Yes, sir, I did.

4 Q Okay. Was that at that plea?

5 A No, sir, not at the plea. I had made --

6 Q When was that?

7 A I had made motions before I even went forward with
8 the trial, you know what I'm saying, that I wasn't
9 satisfied with Mr. Jamieson's representation. I mean, I
10 was writing numerous amounts of letters, wouldn't get no
11 letters back.

12 Q Who did you write letters to?

13 A To Mr. Jamieson.

14 Q Okay.

15 A And I was making phone calls. I had the family
16 making phone calls, you know. I had a private
17 investigator that was working with Mr. Jamieson, Scott
18 Bernard, and he had my alibi's name, address, phone number
19 and everything. He was telling me he constantly couldn't
20 get in touch with him, but I was constantly in contact
21 with her and she was like nobody's been coming to talk to
22 her about anything --

23 MR. JOHNSON: Objection to what that witness had to
24 say, Your Honor, that's hearsay.

25 THE COURT: Sustained.

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 BY MR. HEMLEPP:

2 Q Mr. Robinson, you can't testify to what somebody else
3 said to you. You can only testify to what you know.

4 A All right.

5 Q At the guilty plea when the Court asked you if you
6 were satisfied with Mr. Jamieson --

7 MR. HEMLEPP: Beg the Court's indulgence.

8 BY MR. HEMLEPP:

9 Q The Court asked you how old you were, you said you
10 were 30. Were you represented by Mr. Jamieson? You said,
11 Yes, sir. Are you satisfied with his services? You said,
12 Yes. Why did you say yes?

13 A Because I didn't really know no better, to be honest
14 with you. I thought everything that -- after everything
15 we talked about and I voiced all my concerns, you know,
16 and my concerns was overruled and I just didn't think
17 that -- you know, by him being my counsel and whatnot that
18 he knew what was best for me, you know, and I just went
19 with it. Because, I mean, I was pretty much -- I was kind
20 of blinded to the law. I didn't know the law. Still not
21 very familiar with the law, you know. Thought it would be
22 in my best interest. I really didn't know.

23 MR. HEMLEPP: Answer any questions that the Attorney
24 General may have or that the Court may have.

25 Your Honor, I would like to leave the record open to

JOMAR ROBINSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 recall him at the appropriate time after I'm able to get
2 some records that he's referred to in his testimony.

3 THE COURT: You may.

4 MR. HEMLEPP: Thank you, Your Honor.

5 MR. JOHNSON: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION:

8 BY MR. JOHNSON:

9 Q Mr. Robinson, at this guilty plea, you stated you
10 were satisfied with counsel, right?

11 A Yes, sir.

12 Q Now, you're saying you're not satisfied with counsel?

13 A No, sir.

14 Q So what you're telling the Court today is that you
15 lied at the guilty plea. You said yes and now you're
16 saying no. So you're telling a different story at the
17 guilty plea than you are here today, correct?

18 A No, sir, I'm not telling a different story. You
19 know, I'm just -- it's just been brought to my
20 attention -- I'm more knowledgeable of the law now and I'm
21 more knowledgeable of the rights that I had and the rights
22 that were violated. That's why -- you know, after I made
23 a guilty plea, that's why now I'm like no, I'm not
24 satisfied with Mr. Jamieson's representation.

25 Q So you're telling me that yes and no mean the same

JOMAR ROBINSON - CROSS-EXAMINATION BY MR. JOHNSON

1 thing?

2 A I'm not telling you that at all.

3 Q You said yes at the guilty plea and it's completely
4 different than what you're saying here today, right?

5 A Yes.

6 Q Correct?

7 A Correct.

8 Q You're currently serving a life without parole
9 sentence, right?

10 A Correct.

11 Q And you were serving that when you got these charges?

12 A Correct.

13 Q Okay. And you say that you're unfamiliar with the
14 law, correct?

15 A Correct.

16 Q Okay. But the plea court explained to you the
17 charges and sentences that you were facing, right?

18 A Correct.

19 Q And you said you understood those?

20 A Correct.

21 Q And that you wanted to plead guilty to those,
22 correct?

23 A No, I didn't want to plead guilty, I wanted to go to
24 trial.

25 Q That's not what you told the plea court under oath

JOMAR ROBINSON - CROSS-EXAMINATION BY MR. JOHNSON

1 that day, did you?

2 A I told the plea court I accepted to take the plea
3 after Mr. Jamieson had put it to me that if I went to
4 trial and would lose trial, then I would receive the death
5 penalty for something I clearly didn't do.

6 Q But the whole issue with the death penalty, you
7 didn't tell that to the plea court when you had the
8 opportunity, did you?

9 A No, Mr. Jamieson advised me not to.

10 Q You pled to this freely and voluntarily, did you not?
11 Nobody threatened you, nobody forced you?

12 A I mean, I feel like I was forced in a way. I do feel
13 like I was forced to plead because, like I told you, I
14 wanted to go to trial, you know what I'm saying, but the
15 way Mr. Jamieson put everything to me, let me know -- told
16 me in so many words that the trial was not what I wanted
17 to do.

18 Q But you never said that in open court when you had
19 the opportunity under oath, did you?

20 A No, sir.

21 Q Okay. So you pled freely and voluntarily, correct?

22 MR. HEMLEPP: Your Honor, objection, asked and
23 answered.

24 BY MR. JOHNSON:

25 Q That's what you told the Court that day, that you

JOMAR ROBINSON - CROSS-EXAMINATION BY MR. JOHNSON

1 pled freely and voluntarily, correct?

2 A Yes, sir.

3 Q And that's under oath, right?

4 A Yes, sir.

5 Q And the Court asked about your Constitutional rights
6 and you said you understood those, right?

7 A Yes, sir.

8 Q And that you wanted to give up any defense you had to
9 accept the plea, correct?

10 A Yes, sir.

11 Q That included an alibi defense, you understand that?

12 A No, sir, I didn't understand that.

13 Q That's any defense, any defense, that's what you
14 testified to at the hearing, right?

15 A Well, I didn't understand that.

16 Q Is that what you stated at the hearing, yes or no?

17 A If you have it and it's on the record.

18 MR. JOHNSON: Your Honor, I submit that's on Page 5,
19 Line 24.

20 BY MR. JOHNSON:

21 Q You also stated at the guilty plea that you agreed
22 with the facts as stated by the solicitor, correct?

23 A Meaning?

24 Q Meaning, the solicitor stated that the police
25 responded to the coin laundromat. They found the victim

JOMAR ROBINSON - CROSS-EXAMINATION BY MR. JOHNSON

1 lying in the street face down with a gunshot wound, that
2 there was a plastic bag with a revolver underneath the
3 victim. And that the officer met with you, you admitted
4 to the shooting, but said that the victim pulled a gun on
5 you first, correct?

6 A Correct.

7 Q And then you agreed with those facts, right?

8 A Correct.

9 Q At the guilty plea under oath, correct?

10 A Correct.

11 Q But now you're saying you didn't commit this crime,
12 right?

13 A No, sir, I didn't.

14 Q That's what -- you're saying now today under oath
15 here in this courtroom that you didn't commit the crime?

16 A No, sir, I didn't.

17 Q So were you lying then or are you lying now?

18 A I was forced to make -- I was just sticking with the
19 course, the confession I was forced to make then. Now
20 that I'm aware of all my rights that I have, I'm speaking
21 on behalf of me and I'm telling the Court that I didn't
22 commit that crime.

23 Q So you lied at the guilty plea is what you're saying?
24 Under oath, you lied at the guilty plea because you agreed
25 with the facts as stated by the solicitor, correct?

JOMAR ROBINSON - CROSS-EXAMINATION BY MR. JOHNSON

1 A I mean, if that's how you going to look at. I'm not
2 going agree to that. I'm not going to say I was blatantly
3 lying. I was misled.

4 Q The solicitor stated the facts and then you say,
5 yeah, that's what I agree to. Is that not what you said?

6 A That's because --

7 Q Yes or no, I need that answer, yes or no? That's all
8 I need.

9 A Yes.

10 Q Okay. So you're saying something completely
11 different here today?

12 MR. HEMLEPP: Objection, Your Honor, to this line of
13 questioning. This has been asked and answered. He's gone
14 over it.

15 THE COURT: Sustained.

16 BY MR. JOHNSON:

17 Q So you also state that you were satisfied with
18 counsel, right?

19 A At the time.

20 Q At the guilty plea. But here, you're saying you
21 wrote letters, and before this guilty plea ever happened,
22 you tried to bring up the fact that you were unsatisfied
23 with counsel, right?

24 A Correct.

25 Q Okay. But when you went to go plea, you never told

JOMAR ROBINSON - CROSS-EXAMINATION BY MR. JOHNSON

1 the plea judge that, right?

2 A Correct.

3 MR. JOHNSON: No further questions, Your Honor.

4 MS. MOODY: Just briefly, Your Honor.

5 REDIRECT EXAMINATION:

6 BY MR. HEMLEPP:

7 Q Mr. Robinson, of course, there's a transcript of this
8 hearing. There was a court reporter there just as there
9 is today and everybody has a copy of the transcript. Did
10 the judge tell you what the law was with regard to coerced
11 confessions at your plea? Did he explain whether a
12 confession could be coerced?

13 A Not to my knowledge.

14 Q Did you ever hear the word "alibi" during your plea?

15 A No, sir.

16 MR. HEMLEPP: Thank you. Nothing further.

17 THE COURT: You may step down.

18 MR. HEMLEPP: Your Honor, I'm not in a position to
19 rest, but I have no further witnesses at this time.

20 MR. JOHNSON: Call Phil Jamieson to the stand, Your
21 Honor.

22 PHILLIP JAMIESON, after having been duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION:

25 BY MR. JOHNSON:

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 Q Good morning, Mr. Jamieson.

2 A Good morning.

3 Q Can you please tell the Court how long you've been
4 practicing law?

5 A Be 13 years now.

6 Q And what percentage of your practice --

7 A Actually, 14 years, I'm sorry.

8 Q Excuse me. What percentage of that is criminal?

9 A Over the course of time -- it varies from time to
10 time, but over the course of time, about 50 percent.
11 Sometimes a little more family and less criminal,
12 sometimes more criminal and less family, but over those 14
13 years, about half and half.

14 Q And have you handled murder cases before?

15 A Yes, several.

16 Q Have you taken some of those to trial?

17 A Yes.

18 Q Please tell the Court how you became involved in this
19 case.

20 A I was appointed to represent Jomar Robinson by the
21 State of South Carolina.

22 Q And about how many times did you meet with
23 Mr. Robinson?

24 A I looked back over my notes, 18 or 20 times.

25 Q Did you file discovery in this case?

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 A Yes.

2 Q And did you review that with Mr. Robinson?

3 A I reviewed it with him and gave him a copy of it.

4 Q Did you hire a private investigator in this case?

5 A Yes, I did.

6 Q What all investigation did you do in this case?

7 A I met with Mr. Robinson a number of times. I
8 reviewed the discovery in the case. I traveled to the
9 Department of Corrections on two or three occasions,
10 interviewed personnel there about coerced confessions.
11 Myself and the investigator interviewed some witnesses
12 that Mr. Robinson gave us. And we attempted to interview
13 another witness that turned out be a person that didn't
14 exist.

15 Q Let's take those one at a time, Mr. Jamieson. You
16 stated that you interviewed people at the Department of
17 Corrections about a coerced confession. Who all did you
18 speak to?

19 A The investigator at the Department of Corrections and
20 some correctional officers that were working at the time.
21 Mr. Robinson had told me that he was in solitary
22 confinement when he confessed. And there was a video of
23 that confession and he was wearing clothes that are
24 typically associated with being in solitary confinement.
25 And so I talked to a lieutenant at the Department of

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 Corrections and the investigator at the Department of
2 Corrections. The investigator was present when the police
3 met with him on every occasion. The lieutenant was the
4 person who was directly responsible for putting him in
5 solitary confinement.

6 Q Did you review that information with Mr. Robinson?

7 A Yes, I did.

8 Q Did he seem to understand your conversation with him
9 concerning the coerced confession?

10 A He certainly seemed to, yes.

11 Q So even though there's no mention of a coerced
12 confession at the guilty plea, you would have covered that
13 issue with Mr. Robinson?

14 A We covered it extensively. As I said, I went to the
15 Department of Corrections and interviewed people and the
16 investigator went on a different occasion -- he went with
17 me as well, but he went one other time and talked with
18 them as well.

19 Q Did he seem to fully understand the coerced
20 confession issue?

21 A Yes.

22 Q And had this case gone to trial, would that have been
23 one of your defenses?

24 A That certainly would have been an issue we raised,
25 yes.

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 Q Would you have had a Jackson v. Denno hearing?

2 A Yes. Essentially, there was very little, if any,
3 forensic evidence that connected Mr. Robinson to this
4 crime, so his confession would have been the principle
5 evidence that the State relied on. We certainly would
6 have tried to suppress that if we could.

7 Q You also state that Mr. Robinson gave you a list of
8 witnesses to contact. Who were those witnesses? Do you
9 have a list of those witnesses?

10 A He gave us a name of a woman he was living with at
11 the time that this offense occurred and we talked to her.
12 He gave us a list of a person who the police had already
13 identified who stated to the police that they had loaned
14 Mr. Robinson a gun two days prior to this offense
15 occurring. We talked to that person. We talked to the
16 person who had made the phone call -- or tried to talk to
17 the person that had made the phone call to Mr. Robinson.
18 He wouldn't talk with us.

19 Mr. Robinson, essentially, his story was that he was
20 living with a woman. He had met with another woman that
21 same night and he was supposed to meet her at the
22 laundromat for her to pick him up. We -- he gave us the
23 name of that person. In fact, he gave us two different
24 names. We never were able to locate that person. And we
25 eventually told him we weren't able to locate that person

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 and he admitted that that person didn't exist.

2 Q So he admitted to you that he gave you false
3 information?

4 A Yes. His initial representation that he was -- the
5 person that he was supposed to meet that night would
6 provide an alibi, but that person didn't exist.

7 Q So the issue of alibi defense did come up during the
8 process of your representation?

9 A It came up in the sense that we discussed it. I
10 never gave notice of an alibi defense because no witness
11 could ever be located that would substantiate the alibi.

12 Q If you could have substantiated it, would that have
13 been a defense?

14 A Sure. Yeah, absolutely.

15 Q Once you figured out you could not substantiate that
16 witness, did you explain that to Mr. Robinson?

17 A Yeah, that's how the conversation occurred where he
18 admitted that person didn't exist.

19 Q Did he ever admit to committing this crime?

20 A He did in a confession. And he gave details in the
21 confession that were certainly consistent with what was
22 found there.

23 Q He also brings up the fact that he was dissatisfied
24 with your services. Did you ever have a contentious
25 relationship with Mr. Robinson?

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 A Mr. Robinson was a difficult client to deal with and
2 yes, I did have some contentious relationships with him.

3 Q Did you ever move to be relieved?

4 A We discussed that, and I think, if I recall, we did
5 have a hearing in front of the judge. The judge gave him
6 the option to represent himself or stay with me and he
7 withdraw his motion to have me relieved.

8 Q And after that motion occurred, did your relationship
9 mend itself?

10 A Yeah, it actually got quite a bit better after that.
11 I think in some sense, it was a test to see if I would put
12 him in front of a judge to have me relieved. And once he
13 saw that I did that, I think our relationship got
14 considerably better.

15 Q Did he cooperate with you during the course of your
16 representation?

17 A Yes, he did.

18 Q And told you his side of the story?

19 A Many times.

20 Q Assisted in his own defense?

21 A Absolutely.

22 Q Did you negotiate with the State on Mr. Robinson's
23 behalf?

24 A Several times, yes.

25 Q And what was the final negotiation?

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 A Mr. Robinson was able to get an 18-year sentence to
2 voluntary manslaughter that ran concurrent to the time he
3 was already serving, so didn't increase his time at all.

4 Q Did you ever threaten or the State ever threaten
5 Mr. Robinson with the death penalty?

6 A No, there was never any mention of the death penalty
7 either by the State or by me or by Mr. Robinson, for that
8 matter?

9 Q During the confession, the taped confession, was
10 there any mention of the death penalty?

11 A No, not on tape.

12 Q This was, in fact, a negotiated sentence?

13 A Yes, it was.

14 MR. JOHNSON: Court's indulgence, Your Honor.

15 BY MR. JOHNSON:

16 Q Did you ever force or threaten Mr. Robinson to plead
17 guilty?

18 A No, sir.

19 Q Did you ever tell him what answer to say at the
20 guilty plea?

21 A No.

22 Q Whose decision was it to plead?

23 A Mr. Robinson's. I told him on several occasions that
24 the only person that can make that decision was him
25 because he would either benefit or suffer because of his

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 decision.

2 MR. JOHNSON: Thank you, Mr. Jamieson.

3 That's all the questions I have at this time, Your
4 Honor.

5 CROSS-EXAMINATION:

6 BY MR. HEMLEPP:

7 Q Mr. Jamieson, did Bernard Investigations create a
8 report for you?

9 A They created a time sheet, but not a report.

10 Q So there's no -- they created a time sheet because
11 they were billed by the hour?

12 A Yes.

13 Q Would that time sheet have -- was it itemized?

14 A Yes.

15 Q And you still have a copy of that?

16 A I think I do, yeah.

17 Q Okay. But there was no -- was there any written
18 communication as to the findings of the investigation and
19 what Scott Bernard found on the investigation?

20 A No, he didn't give me a written report.

21 Q It was oral?

22 A We met on a number of occasion, but he not give me a
23 written report. And he typically doesn't do that.

24 Q Sure. Sure. In criminal investigations, I've hired
25 Scott before. Did you take notes of your meetings with

PHILLIP JAMIESON - CROSS-EXAMINATION BY MR. HEMLEPP

1 Scott Bernard?

2 A Sometimes.

3 Q And do you still have those notes?

4 A Probably do. I can look for them.

5 Q When you went to the Department of Corrections, did
6 you keep your time or did you keep notes of that?

7 A I kept the time, yes. I don't know if I kept notes
8 or not. I can look for that.

9 Q So would we be able to look in your file and see the
10 dates that you went to the Department of Corrections?

11 A Yes.

12 Q Where would that be found? In a calendar?

13 A It's in the time sheet that I filed with indigent
14 defense and it's also -- if my calendar still exist, it
15 would be on my calendar as well.

16 Q But you would have kept -- that was back in the day
17 when indigent defense required itemized billing?

18 A Yes.

19 Q And you did that in this case?

20 A Yes.

21 Q Did you subpoena any records from the Department of
22 Corrections?

23 A Yes, I did.

24 Q In the records from the Department of Corrections,
25 was there any record of my client being in solitary?

PHILLIP JAMIESON - CROSS-EXAMINATION BY MR. HEMLEPP

1 A Yes.

2 Q Did they give a reason?

3 A They gave -- they gave two reasons. The first person
4 I talked to was an investigator who stated that it was
5 their policy when someone was charged with a crime to
6 segregate them from the rest of the population. And then
7 they also said Mr. Robinson had been found guilty of a
8 disciplinary infraction and that they had not punished him
9 at the time, but punished him subsequently. And their
10 explanation for doing it subsequently was that they didn't
11 have room to segregate him at the time the offense
12 occurred and they had to do it later. The punishment was
13 some confinement in solitary and at the time he committed
14 the offense, they alleged they did not have room for him
15 at that time.

16 Q Was there any documentation for that?

17 A There was a documentation of several disciplinary
18 offenses. There wasn't any documentation that I saw that
19 indicated there wasn't room in solitary at the time he
20 committed the offense, but a room subsequently opened up.

21 Q Well, I'm actually kind of specifically thinking
22 about -- the first thing you said was he was in solitary
23 confinement because it was their policy that once you get
24 charged with a crime to separate him?

25 A Yes. Now, that was an investigator telling me that,

PHILLIP JAMIESON - CROSS-EXAMINATION BY MR. HEMLEPP

1 that was not what was in the Department of Corrections
2 records.

3 Q Okay. Did you make note of that?

4 A Yes.

5 Q And do you know his name? I mean, would your file
6 have that name?

7 A Probably. I'd have to look and see. I don't recall
8 his name at this point.

9 Q Now, you were in the courtroom a moment ago when the
10 applicant testified, were you not?

11 A Yes.

12 Q And you heard testimony about an inmate at the Moss
13 Justice Center making telephone calls?

14 A Yes.

15 Q Did you investigate that?

16 A We attempted to talk to that person, he wouldn't talk
17 with us.

18 Q And by us, you and Scott Bernard?

19 A Yes.

20 Q Did you attempt to talk to him?

21 A No, no, Scott is the one who approached him and he
22 wouldn't talk to him.

23 Q Did he give you -- he reported that back to you
24 orally?

25 A Yes.

PHILLIP JAMIESON - CROSS-EXAMINATION BY MR. HEMLEPP

1 Q Would that be reflected on the bill?

2 A I don't know. I haven't looked specifically for
3 that.

4 Q The applicant was incarcerated the entire time you
5 represented him?

6 A Yes.

7 Q And there was a portion of the time he was in the
8 Department of Corrections and a portion of the time he was
9 at the Moss Justice Center?

10 A He was incarcerated both places, but at different
11 times.

12 Q So when you met him, the different times that you met
13 with him that you have testified to, was that at the
14 Department of Corrections or was that at the Moss Justice
15 Center?

16 A Most of it was at Moss.

17 Q Do you remember when he was moved here?

18 A I don't remember off the top of my head, no. I
19 probably have that in my file, but I don't remember
20 exactly when he came here.

21 Q I see today you have a file in your hand. Is that
22 the entire file in this case?

23 A I have a lot of information printed out. There's
24 also a computer disk in here that has some additional
25 information on it. It's a complete file in that regard.

PHILLIP JAMIESON - CROSS-EXAMINATION BY MR. HEMLEPP

1 Q Was the discovery provided by computer disk or was
2 that you scanning your own documents and work product into
3 the computer?

4 A The discovery was provided by computer, but I printed
5 much of it out. I don't know that I printed every page,
6 but I printed a lot of it.

7 Q And the reason I asked is that, as you heard at the
8 beginning of this hearing, we're not going to conclude it
9 today. And I'm going to make a motion to the Court to get
10 access to your file and I wanted to see if you were in a
11 position to be able to do that and comply with the order
12 of the Court. You can do that pretty easily?

13 A Yeah.

14 MR. HEMLEPP: Thank you, Mr. Jamieson.

15 Beg the Court's indulgence. Thank you, Your Honor, I
16 have no further questions for Mr. Jamieson.

17 Thank you, Mr. Jamieson.

18 MR. JOHNSON: No redirect at this time, but would
19 like to ask your permission to call him at the subsequent
20 hearing if need be.

21 THE COURT: You may.

22 Thank you. You can step down.

23 MR. JOHNSON: At this time, the State has no further
24 witnesses.

25 MR. HEMLEPP: Your Honor, I apologize, I didn't mean

1 to interrupt. Under the post-conviction relief act, there
2 are rights to discovery in nontemporal cases only upon
3 permission of the Court, so I'm moving at this time for
4 permission from the Court to obtain the file from
5 Mr. Jamieson, his case file in this case as well as an
6 order to get Scott Bernard's file, Bernard Investigations,
7 his file in this case.

8 THE COURT: Any objection?

9 MR. JOHNSON: I would object to any work product of
10 Mr. Jamieson's.

11 MR. HEMLEPP: Well, this is related to his
12 representation.

13 THE COURT: Well, yeah, that's -- I mean that's what
14 it's about. That's what ineffective assistance is, it's,
15 basically, work product, is it not?

16 Mr. Jamieson, do you have any reason you cannot
17 provide the file to Mr. Hemlepp?

18 MR. JAMISON: I'm sorry, Your Honor, I didn't hear
19 what you said.

20 THE COURT: Do you have any reason why you cannot
21 provide a copy of your file to Mr. Hemlepp?

22 MR. JAMISON: I'd simply ask if he wants to make
23 copies that he make them.

24 THE COURT: That's fine, yeah.

25 MR. JAMISON: But I can certainly make it available.

1 THE COURT: You'll make arrangements to make it
2 available to him to copy?

3 MR. JAMISON: Yes, sir. I'd ask that it, of course,
4 be preserved and returned to me.

5 THE COURT: Oh, absolutely.

6 MR. HEMLEPP: And what I would anticipate, and I
7 don't mind putting this on the record, I don't need a
8 whole lot. I'd like to be able to look through the file
9 and make copies of what I need from the file. And we can
10 make an arrangement for me to come to your office to do
11 that. I'm happy to do that. So I want to be
12 accommodating. I want to have access to the file, but I
13 want to be accommodating.

14 THE COURT: Is that satisfactory?

15 MR. JAMISON: Yes, sir, I'll certainly make it
16 available.

17 THE COURT: All right. Y'all make arrangements. If
18 you need any assistance from me, let me know. Okay.

19 MR. HEMLEPP: And the second would be Scott Bernard's
20 file because he doesn't have the file.

21 THE COURT: I understand. I guess the Attorney
22 General would have to get ahold of Mr. Bernard. I don't
23 have Mr. Bernard here, so I can't discuss it with him.

24 MR. HEMLEPP: Absolutely.

25 THE COURT: But the Attorney General can get ahold of

1 Mr. Bernard and discuss it with him. If he has an issue
2 with it, y'all let me know.

3 MR. HEMLEPP: Wonderful. Thank you, Your Honor. And
4 with that, I have nothing further for today.

5 THE COURT: And how much time do y'all -- are you
6 requesting to hold the record open until we meet again?

7 MR. HEMLEPP: That's a question I haven't even
8 thought about before, which is why I'm taking a moment to
9 respond. I have a term of PCR court, my last term of PCR
10 court under my contract week after next, which is in
11 Lancaster. And I have the bulk of that term. I think
12 there may be a couple other attorneys with a couple other
13 cases, but most of that time is going to me. I need an
14 opportunity to get records and look at the records. I'm
15 also going to subpoena some records from the Department of
16 Corrections if they're not in Mr. Jamieson's file. I
17 don't see it going beyond 30 days, but less than that may
18 be a stretch. So I kind of don't know the answer to that
19 because I don't know the things that are outside my
20 control, like how long it would take me to get the records
21 from the Department of Corrections. I need to look at his
22 file to see if he's got the records already. I'm trying
23 to answer as completely as I can. It all comes down to
24 I'm not really sure. And I'm certainly --

25 THE COURT: Let's put it on 30-day time frame and if

1 for some reason something comes up that interferes with
2 that time frame, y'all let me know in advance.

3 MR. HEMLEPP: I can do that, Your Honor. Thank you,
4 Your Honor.

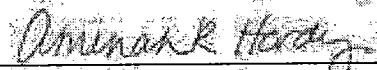
5 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

I, Aminah R. Hardy, CM, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
Common Pleas for York County, South Carolina, on the 22nd
day of January, 2015.

November 20th, 2016



Aminah R. Hardy

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Jomar Robinson,
S.C.D.C. No. 281722,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-1296

ORDER OF DISMISSAL

FILED-RECEIVED
2016 AUG 24 AM 8:50
DAVID J. JAMIESON
CLERK OF COURT
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 23, 2014. Respondent made its Return on or about July 22, 2014. An evidentiary hearing into the matter was convened on January 22, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and initially represented by W. Michael Hemlepp, Jr., Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Applicant testified on his own behalf. Phillip Jamieson, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2010 term of the York County Grand Jury for Murder (2010-GS-46-3367) and Possession of a Weapon during the Commission of a Violent Crime (2010-GS-46-3367A). Phillip Jamieson, Esquire (hereinafter "Counsel"), represented him. On September 6, 2012,

Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) before the Honorable John C. Hayes, III and was sentenced, pursuant to a negotiated sentence, to confinement for eighteen (18) years for Voluntary Manslaughter, as a lesser included offense of Murder, and five (5) years, concurrent, for the possession charge.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals dismissed his appeal on March 29, 2013. The Remittitur was issued on April 17, 2013.

Allegations

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

1. Ineffective Assistance of Counsel
2. "Applicant also asserts that due to his lack of understanding the law."

At the PCR hearing, Applicant moved to amend his application to add the allegations of ineffective assistance of counsel due to Counsel's failure to investigate and failure to present an alibi.

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he was already in SCDC when he was served with the arrest warrants for the murder and weapons charge. He testified that he does not know about the incident and does not know the victim. Applicant testified that another inmate told law enforcement that Applicant told the inmate that Applicant committed the crime. Applicant testified that he was questioned by law enforcement two to three times and during the third time he was asked to take a polygraph but refused.

Applicant testified that he made a confession and was appointed Counsel to represent him one month after the confession. He testified that he admitted to the murder but this confession was not true. He testified that he explained the confession to Counsel and went over potential defenses with him.

Applicant testified that he told Counsel about potential witnesses. He testified that the private investigator had contact information for potential alibi witnesses. He further testified that he told the plea court that he was satisfied with Counsel because he did not know any better.

Counsel Phil Jamieson's Testimony

Counsel testified that he was appointed to this case. He testified that he met with Applicant eighteen to twenty times prior to trial. He testified that he filed for and received all discovery. Counsel testified that he hired a private investigator, who met with Applicant and reviewed the discovery. He testified that the investigator interviewed people at the Department of Corrections about a possible coerced confession and interviewed Applicant's potential witnesses. Counsel testified that he spoke with his investigator and correctional officers. He testified that he did not get a written report from the investigator but took notes about their meetings. He testified that he watched the video of Applicant's confession and that this was the principal evidence that would have been used at trial.

Counsel testified that he investigated Applicant's potential witnesses who included a woman he was living with at the time and the person who loaned him a gun. He testified that Applicant's story was that he was supposed to meet a different woman at the laundromat. He also testified that Applicant admitted to giving false names. Counsel testified that he discussed Applicant's alibi with him but no witness could be located to substantiate his claim. He further

testified that Applicant gave details in his confession that were consistent with the scene of the crime.

Counsel testified that he negotiated with the State for Applicant to plead guilty. He testified that the State's final offer was for Applicant to plead guilty to voluntary manslaughter for eighteen years. He testified that he did not threaten or coerce Applicant to plead guilty nor did he tell Applicant how to answer the plea judge's questions. He testified that it was ultimately Applicant's decision to plea.

III. APPLICABLE LAW

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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any

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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record

must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

This Court finds that Applicant has failed to show that Counsel was ineffective in any way during his representation. Applicant asserted that he told Counsel about potential witnesses and this Court finds Counsel's testimony credible that he investigated the potential witnesses and could not find any witness to corroborate Applicant's alibi. To the extent that Applicant alleges that Counsel was ineffective for failing to properly investigate, this Court finds that Applicant has failed to show what any additional investigation would have been. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Additionally this Court finds that Applicant has failed to prove that he was prejudiced as he has failed to show that he would have proceeded to trial but for Counsel's advice. The plea court accepted Applicant's plea as being made freely, voluntarily, and knowingly after a lengthy colloquy advising Applicant of the rights he was giving up by pleading and explaining the potential sentence and the State's negotiation. Applicant has made no indication that he would rather have gone to trial, and as such has failed to show that he was prejudiced by Counsel's actions.

As Applicant has failed to prove both prongs of Strickland this Court finds that his application for post-conviction relief must be dismissed.

All Other Allegations

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

V. CONCLUSION

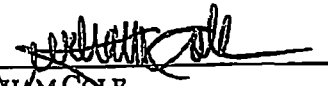
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563; 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of August, 2016.


J. DERHAM COLE
Presiding Judge
Sixteenth Judicial Circuit

 South Carolina

WITNESSES

U / Ligon

ARREST WARRANT NUMBER

65355

ACTION OF GRAND JURY

RUE BILI

Patricia S. Moore
eperson of Grand Jury
8/21/08

VERDICT

Guilty

Gregory H. Hinds
eperson of Petit Jury
te: 02-10-09

DOCKET NO. 2008-GS-46-03141

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

**POSSESSION OF COCAINE BASE (CRACK)
WITH INTENT TO DISTRIBUTE WITHIN
PROXIMITY OF A PUBLIC PARK OR
PLAYGROUND**

SC Code: § 44-53-445
CDR Code: 108

After being fully advised as to my
legal rights, I hereby waive presentment
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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

**POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE
WITHIN PROXIMITY OF A PUBLIC PARK OR PLAYGROUND**

That on or about March 20, 2008, in York County, South Carolina, the Defendant, Jomar Antavis Robinson, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a quantity of cocaine base, otherwise known as crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, within a one-half mile radius of the grounds of York Recreational Complex, a public park located in the County of York, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

DEU / Ligon

adm

ARREST WARRANT NUMBER

J-165357

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Moore
Foreperson of Grand Jury

8/21/08

VERDICT

Guilty

G. Antavis
Foreperson of Petit Jury

Date: *02-06* 02-10-09.

DOCKET NO. 2008-GS-46-03142

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

VS.

JOMAR ANTAVIS ROBINSON

Indictment for

**POSSESSION OF COCAINE BASE (CRACK)
WITH INTENT TO DISTRIBUTE**

SC Code: 44-53-375

CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment 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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE

That on or about March 20, 2008, in York County, South Carolina, the Defendant, Jomar Antavis Robinson, did possess with intent to distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

DEU: / Ligon

adm

ARREST WARRANT NUMBER

J-165358

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Moore

Foreperson of Grand Jury

Date: 8/21/08

VERDICT

Guilty of lesser offense
Subsection A

Erin H. Hest

Foreperson of Petit Jury

Date: 07-10-09

DOCKET NO. 2008-GS-46- 03143

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

RESISTING ARREST

SC Code: 16-9-320(b)

CDR Code: 256

After being fully advised as to my legal rights, I hereby waive presentment 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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

RESISTING ARREST

The Defendant, Jomar Antavis Robinson, did in York County, South Carolina, on or about March 20, 2008, knowingly and wilfully assault, beat, or wound Officer Ligon, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer Ligon, is a law enforcement officer, in violation of Section 16-9-320(b), Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

DEU / Ligon

adm

ARREST WARRANT NUMBER

J-165359

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Moore

Foreperson of Grand Jury

Date: 8/21/08

VERDICT

Guilty

Gregory W. W. W.

Foreperson of Petit Jury

Date: 07-10-04

DOCKET NO. 2008-GS-46- *03144*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

CARRYING A PISTOL UNLAWFULLY

SC Code: 16-23-20

CDR Code: 044

After being fully advised as to my legal rights, I hereby waive presentment 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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

CARRYING A PISTOL UNLAWFULLY

The Defendant, Jomar Antavis Robinson, in York County, South Carolina, on or about March 20, 2008, unlawfully carry about his person a firearm, described as follows: a 9mm Ruger pistol, all in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

U / Ligon

ARREST WARRANT NUMBER

5360

ACTION OF GRAND JURY

UE BILL

Patricia S. Moore
person of Grand Jury
8/2/08

VERDICT

Guilty

Geri Pitts
person of Petit Jury
02-10-09

DOCKET NO. 2008-GS-46- 03145

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

POSSESSION OF MARIJUANA

SC Code: § 44-53-370
CDR Code: 182

After being fully advised as to my legal rights, I hereby waive presentment 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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008 the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

That on or about March 20, 2008, in York County, South Carolina, the Defendant, Jomar Antavis Robinson, did knowingly or intentionally possess a quantity of marijuana, controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not being the Defendant's first offense, and such possession not having been authorized by law, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

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


ASSISTANT SOLICITOR