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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Honorable George C. James Jr., Circuit Court Judge

Case No. 2015-CP-23-05719

Michael Weatherspoon,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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FORM 5

STATE OF SOUTH CAROLINA )  
County of Greenville )  
Michael A Weatherspoon 352593 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

2015-CP-23- 057A

v.

State of South Carolina )  
)  
)  
)  
)

APPLICATION FOR  
POST-CONVICTION RELIEF

2015 SEP 17 PM 3 03

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER

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 clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correctional Institute  
990 Wisacky Highway, Bishopville SC 29010
2. Name and location of Court which imposed sentence Greenville County  
Courthouse 305 East North St. Greenville SC 29601
3. Name(s) of co-defendant(s) (if any) Not Applicable
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Murder 2013-GS-23-04778
  - (b) Attempted Armed Robbery 2013-GS-23-04779

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Voluntary Manslaughter: 15 years on Nov 12 2014
- (b) Attempted Armed Robbery: 15 years on Nov 12 2014
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty  Influenced, coerced
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. N/A
- 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 "no" to (7), state your reasons for not so appealing:
- (a) Lawyer never advise me of a appeal
- (b) Got Rush out the courtroom as soon as I took plea

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Actual Innocence and Insufficiency of Evidence
- (c) Prosecutor Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) \_\_\_\_\_
- (b) SEE ATTACHMENTS
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

(A) Ineffective Assistance of Counsel

(B) Actual Innocence and Insufficiency of Evidence

(C) Prosecutor Misconduct

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

(A) 1) Failure to Investigate, Prepare for trial, request continuance

- Fail to object to sufficiency of Indictment

2) Failure to inform of the right of Appeal

3) Failure to ask for a Directed Verdict

- A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McCombs (S.C. 2006) 368 S.C. 489  
629 S.E.2d 361

4) Failure to offer a proper Instruction of Accomplice Liability

- The court erred in failing to give a mere presence charge as part of that instruction.

(B) The State doesn't have enough evidence to even come up with a indictment. Never produce my statement they said I gave to them. That statement were used to come up with the arrest warrant.

(C) Trial Judge were prejudice because the victim were a Caucasian male part of the Special Forces. Trial Judge stop trial →

Numerous times telling my Attorney to make me take  
the Plea. I got convicted a day after Veteran Day,  
Nov 12, 2014.

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

no

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

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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) \_\_\_\_\_ N/A \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes \_\_\_\_\_
- (b) your trial, if any? Yes \_\_\_\_\_
- (c) your sentencing? Yes \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No \_\_\_\_\_

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

- (a) the name and address of each attorney who represented you:
  - i. Alex Stalvey 401 Pettigru St. Greenville, SC 29601
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Trial, Sentencing, and Plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Sentence Vacated

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

NO

STATE OF SOUTH CAROLINA )  
County of Greenville )

VERIFICATION

I, Michael Weatherspoon, 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.

Michael Weatherspoon

SWORN to and subscribed before me this 25 day of Aug, 2015.

Debra Sines (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, Michael Weatherspoon, 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.

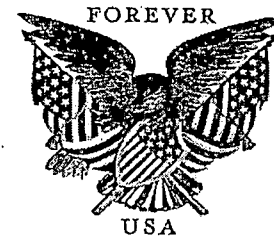
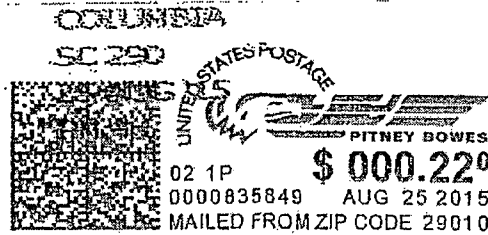
Michael Weatherspoon  
Applicant

SWORN or affirmed to and subscribed before me this  
25 day of Aug, 2015.

Debra Sines  
Notary Public

My Commission Expires: 11-4-2015

Michael Weatherspoon #352593  
Lee CE F1(A) 1140  
790 Wisacky Highway  
Bishopville, SC 29010



2015-CP-23- 05719

Paul B. Wickensimer  
Greenville County Clerk of Court  
305 East North Street  
Greenville, SC 29601

29601219099



1 STATE OF SOUTH CAROLINA : COURT OF GENERAL SESSIONS  
 2 : 2013-GS-23-4778  
 3 State of SC : TRANSCRIPT RECORD  
 4 vs :  
 5 Michael A. Weatherspoon :  
 6 :

7 November 12, 2014  
 Greenville, South Carolina

8 -----  
 9 BEFORE: The Honorable Edward W. Miller, Judge

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

11 Lisa Bentley, Esquire  
 Assistant Solicitor

13 Alex Stalvey, Esquire  
 Attorney for the Defendant

19 Caroline Hiskell  
 Thirteenth Circuit Court Reporter

20  
 21  
 22  
 23  
 24  
 25

State versus Weatherspoon

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I N D E X

(No Witnesses or Exhibits admitted at this hearing.)

## State versus Weatherspoon

## P R O C E E D I N G S

1  
2 THE BAILIFF: All rise, court is in session,  
3 the Honorable Edward Miller presiding.

4 THE COURT: Please be seated. Thank you.

5 Can I see the lawyers for a minute.

6 (Off the record bench conference.)

7 THE CLERK: In the case of 2013-GS-23-4778,  
8 the State versus Michael Antoinius Weatherspoon, indicted  
9 for murder. He's pleading to involuntary manslaughter.

10 In the case of 2013-GS-23-4779,  
11 Mr. Weatherspoon is indicted for attempted armed robbery  
12 and he's pleading to the same.

13 Mr. Weatherspoon, would you please raise your  
14 right hand.

15 MICHAEL ANTOINIUS WEATHERSPOON, having been  
16 duly sworn, testified as follows:

17 Thank you.

18 THE COURT: How many jail days does he have?

19 MS. BENTLEY: Seventy-five.

20 THE COURT: In the last 24 hours have you had  
21 any drugs, alcohol or medication?

22 DEFENDANT WEATHERSPOON: No, sir.

23 THE COURT: Speak up.

24 DEFENDANT WEATHERSPOON: No, sir.

25 THE COURT: Have you ever been treated for

## State versus Weatherspoon

1 substance abuse or mental illness?

2 DEFENDANT WEATHERSPOON: No, sir.

3 THE COURT: You're up here on two  
4 indictments. The first one is 2013-4778 alleges you did  
5 in Greenville County, January 30, 2012 unlawfully with  
6 malice aforethought commit the offense of murder by  
7 driving Tamika Weatherspoon to the residence of the victim  
8 providing her with a handgun that was used to shoot  
9 Douglas Burgess and he died as a result thereof, pleading  
10 to involuntary manslaughter that carries up to 30 years.

11 This is a Violent Offense which affects  
12 parole eligibility. It's a Most Serious Offense which  
13 means if you get offenses for two or more Most Serious  
14 Offenses you're eligible life in prison without parole.  
15 Do you understand?

16 DEFENDANT WEATHERSPOON: Yes, sir.

17 THE COURT: 2013-4779 alleges you did here in  
18 Greenville County, January 30, 2012 armed with a deadly  
19 weapon or alleging you were by actions or words with a  
20 representation of one you took by force or intimidation  
21 money or attempted to take money from Douglas Burgess.  
22 Attempted armed robbery carries 20 and that's also a Most  
23 Violent and Serious Offense. Do you understand that?

24 DEFENDANT WEATHERSPOON: Yes, sir.

25 THE COURT: Understanding the nature of the

## State versus Weatherspoon

1 charges against you and the maximum possible punishment,  
2 how do you want to plead?

3 MR. STALVEY: Judge, he keeps asking me about  
4 the 75 days time served. He's been in the Department of  
5 Corrections for two years ---

6 THE COURT: We'll get to that. How do you  
7 plead?

8 DEFENDANT WEATHERSPOON: Guilty.

9 THE COURT: Is that your free and voluntary  
10 choice?

11 DEFENDANT WEATHERSPOON: Yes, sir.

12 THE COURT: Do you understand you have a  
13 right to a trial by jury, we've already picked the jury,  
14 to continue in this course where you would be represented  
15 by a very competent attorney and you would have the right  
16 to continue to cross-examine the witnesses and the  
17 evidence put up against you? You'd have a right to compel  
18 in court all relevant and competent evidence in your  
19 defense or you can remain silent and your silence can not  
20 be held against you and you can never be compelled to  
21 incriminate yourself.

22 Do you understand all those rights?

23 DEFENDANT WEATHERSPOON: Yes, sir.

24 THE COURT: Do you want to give up those  
25 rights to enter this plea?

## State versus Weatherspoon

1                   DEFENDANT WEATHERSPOON: Yes, sir.

2                   THE COURT: Are you guilty?

3                   DEFENDANT WEATHERSPOON: Yes, sir.

4                   THE COURT: Are you totally satisfied with  
5 your lawyer?

6                   DEFENDANT WEATHERSPOON: Yes, sir.

7                   THE COURT: Do you have any complaints that  
8 you'd like to make about the way you've been treated in  
9 this case?

10                  DEFENDANT WEATHERSPOON: Not any more.

11                  THE COURT: Now is your time to make them.

12                  DEFENDANT WEATHERSPOON: I'm satisfied.

13                  THE COURT: I'm sorry?

14                  DEFENDANT WEATHERSPOON: No, sir.

15                  THE COURT: No complaints?

16                  DEFENDANT WEATHERSPOON: No, sir.

17                  THE COURT: Have you had enough time to  
18 review the evidence the State has against you?

19                  DEFENDANT WEATHERSPOON: Yes, sir.

20                  THE COURT: Any other facts -- tell me  
21 whatever it is you need to tell me.

22                  MS. BENTLEY: May it please the Court, I  
23 believe you already heard most of what happened and to  
24 reviewed some of the evidence that has not been admitted  
25 yet.

## State versus Weatherspoon

1                   On January 30, 2012, a little after  
2 9:00 a.m., this defendant dropped his sister off near the  
3 victim's residence in Greer and provided her with a loaded  
4 handgun. This defendant and his sister had been planning  
5 to rob the victim believing he had a number of guns and  
6 potentially amount of money in his house. An eyewitness  
7 was in the living room and saw his sister attempt that  
8 armed robbery and she subsequently saw the sister, Tamika  
9 Weatherspoon shoot Douglas Burgess. And Douglas Burgess  
10 in self-defense shoot Tamika Weatherspoon. Both those  
11 individuals died that morning. The victim called 911 and  
12 the police were immediately on the scene.

13                   Two days later, this defendant happened to be  
14 at Greer Municipal building. He was approached and he  
15 ended up giving what amounted to a confession telling  
16 police that he drove his sister to the location, that he  
17 provided her with a loaded gun, that he waited for her and  
18 that they had been planning to hit a lick.

19                   THE COURT: Alright. Is all that  
20 substantially true and correct?

21                   DEFENDANT WEATHERSPOON: No, sir.

22                   THE COURT: Alright, tell me what you did.

23                   DEFENDANT WEATHERSPOON: Dropped her off and  
24 that's it. I didn't say anything about hitting no lick.

25                   THE COURT: What did you think she was there

## State versus Weatherspoon

1 to do?

2 DEFENDANT WEATHERSPOON: Sell drugs. That's  
3 what she told me.

4 THE COURT: Did you know she was armed?

5 DEFENDANT WEATHERSPOON: She had it. I gave  
6 it to her that morning.

7 THE COURT: Okay. Alright. And you knew she  
8 was going in there with a gun to commit a crime, is that  
9 right?

10 DEFENDANT WEATHERSPOON: No, sir.

11 THE COURT: Let me ask you something, you  
12 think selling drugs is committing a crime?

13 DEFENDANT WEATHERSPOON: Yes, sir.

14 THE COURT: Think about that. You knew she  
15 was going in there to commit a crime, right?

16 DEFENDANT WEATHERSPOON: Selling drugs, yes,  
17 sir.

18 THE COURT: Alright. You understand that we  
19 have his principle called accomplice liability that hand  
20 of one is the hand of all?

21 DEFENDANT WEATHERSPOON: Yes, sir.

22 THE COURT: And you understand that going in  
23 to commit a crime with a handgun it's a reasonable natural  
24 consequence that shoots could be fired and people could  
25 die, do you understand that?

## State versus Weatherspoon

1                   DEFENDANT WEATHERSPOON: Yes, I'm familiar  
2 with the law, yes, sir.

3                   THE COURT: Okay. Well, so you claim you  
4 didn't think she was going in there to rob Mr. Burgess?

5                   DEFENDANT WEATHERSPOON: I had no idea, sir.

6                   THE COURT: What were all those text messages  
7 that we talked about?

8                   DEFENDANT WEATHERSPOON: Like I told the  
9 Greer Police Department, I supposed to did a burglary on  
10 the 28th but never went through with it.

11                   THE COURT: Well, I'm going to accept the  
12 plea of involuntarily as being freely, voluntary and  
13 intelligently made with the advice of a very competent  
14 attorney whom he states he is well satisfied and there is  
15 a substantial factual basis for the plea.

16                   I got some question about this armed robbery.

17                   MS. BENTLEY: Your Honor, I believe that the  
18 state would prove at trial that this defendant did know  
19 that his sister was going to commit the armed robbery.

20                   THE COURT: Well, let me back up and ask you  
21 this, do you think if we went through with this trial,  
22 there is a substantial likelihood that a jury would  
23 believe the evidence that the state has and that your  
24 sister was there to commit an armed robbery?

25                   DEFENDANT WEATHERSPOON: Could you repeat the

## State versus Weatherspoon

1 question again, Your Honor.

2                   THE COURT: If we went through a trial,  
3 having had plenty of opportunity to know what the evidence  
4 is, do you think there's a substantial likelihood that  
5 this jury or any jury would believe -- you think the state  
6 could prove to them that you sister went in to commit a  
7 robbery? It's what this jury would believe based on the  
8 evidence that the state has.

9                   DEFENDANT WEATHERSPOON: I would say, no,  
10 Your Honor, but that's just my opinion.

11                   THE COURT: Tell us about the evidence you  
12 have with respect to the robbery.

13                   MS. BENTLEY: With respect to the robbery,  
14 Your Honor, we have Janice Gonzales who previously  
15 testified that she was in the room when Tamika  
16 Weatherspoon knocked on the door. The jury heard that she  
17 knocked on the door, asked about Crystal, asked about  
18 using the phone and entered with her gun drawn and  
19 demanded guns and money.

20                   She was told by Mr. Burgess that he had no  
21 guns nor money but then spotted a gun on the table. She  
22 then pointed a gun at Janice and demanded she help her  
23 find guns and money and then shots were fired. In  
24 addition to that eyewitness testimony that clearly  
25 describes an attempted armed robbery occurred, we do have

## State versus Weatherspoon

1 text messages and a partial audio recording that we would  
2 introduce.

3           The text messages describe a lick that is  
4 being planned. This defendant mentions that lick not only  
5 with his sister, but with four or five other people. He  
6 asked them got any licks, I need a lick, and he's doing  
7 that in conjunction with talking about needing money.

8           There were no drugs found at the scene.  
9 There were no drugs found on Tamika Weatherspoon's person.  
10 There were no drug paraphernalia found anywhere in the  
11 home or anywhere else.

12           THE COURT: You heard that. Do you think  
13 there's a reasonable likelihood that the jury would infer  
14 from that that she was there for a robbery and not to sell  
15 drugs?

16           DEFENDANT WEATHERSPOON: But she going off  
17 some evidence that she can't really prove talking about  
18 four or five other people talking about going to hit a  
19 lick.

20           THE COURT: You heard what the evidence is  
21 that they would put up. What I'm asking you is, do you  
22 think that this jury would infer -- other than the  
23 eyewitness that says your sister went in there that  
24 demanded money and guns, there's other evidence out there  
25 with respect to these text message and all that, do you

## State versus Weatherspoon

1 think this jury could infer or is there a reasonable  
2 likelihood that this jury would believe she was there for  
3 an armed robbery. Do you understand? If they believed  
4 what the eyewitness said, do you think the jury would  
5 agree with that?

6 DEFENDANT WEATHERSPOON: I have no idea, Your  
7 Honor.

8 THE COURT: Well, I know that, but I'm asking  
9 you is there a reasonable -- is it reasonable that a jury  
10 could agree with that?

11 DEFENDANT WEATHERSPOON: I guess so.

12 THE COURT: Well, I'm going to accept that  
13 pursuant to Alford. And this is a negotiated sentence. I  
14 can't change it.

15 MS. BENTLEY: Negotiated to 15 years, Your  
16 Honor.

17 THE COURT: Alright. Anything you want to  
18 tell me?

19 DEFENDANT WEATHERSPOON: No, sir. I have a  
20 question, Your Honor. The time that I served in the  
21 Department of Correction, can I get time served with the  
22 15 years.

23 THE COURT: I checked and you'll be given  
24 credit to all of the time that you're entitled to under  
25 the law. Okay.

## State versus Weatherspoon

1                   DEFENDANT WEATHERSPOON: Thank you.

2                   THE COURT: Fifteen years on each of them.

3 They're concurrent.

4                   MR. STALVEY: Thank you, Judge.

5                   ---END OF TRANSCRIPT RECORD---

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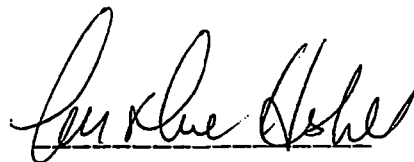
24

25

## State versus Weatherspoon

1  
2 I, the undersigned Caroline Hiskell, Official  
3 Court Reporter for the Thirteenth Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all  
6 proceedings had and evidence introduced in the trial of  
7 the captioned case, relative to appeal, in General  
8 Sessions, Greenville County, this 12th day of November,  
9 2014.

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

12  
13  
14  
15 

16 Caroline Hiskell  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Michael Antoinius Weatherspoon, )  
 S.C.D.C. No. 352593, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2015-CP-23-5719

**RETURN**

In response to the post-conviction relief application filed September 17, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2013 term of General Sessions for Murder (2013-GS-23-004778), and Attempted Armed Robbery (2013-GS-23-004779). Alex Stalvey, Esquire represented the Applicant.

On November 12, 2014, the Applicant pled guilty to voluntary manslaughter and attempted armed robbery. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 15 years for attempted armed robbery and 15 years for voluntary manslaughter. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the plea transcript.

## II.

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

1. Ineffective assistance of counsel.
  - a. "Failure to investigate, prepare for trial, request continuance"
    - i. "Fail to object sufficiency of indictment."
  - b. "Failure to inform of the right of appeal"
  - c. "Failure to ask for a directed verdict"
  - d. Failure to offer a proper Instruction of Accomplice liability"
    - i. "The court erred in failing to give a mere presence charge as part of that instruction."
2. "Actual Innocence and Insufficiency of Evidence"
  - a. "The State doesn't have enough evidence to even come up with a indictment. Never produce my statement they said I gave to them. That statement were used to come up with the arrest warrant."
3. "Prosecutor Misconduct"
  - a. "Trial Judge were prejudice because the vintim were a causian male part of the Special Forces. Trial Judge stop trial numerous times telling my Attorney to make me take the Plea. I got convicted a day after Veteran Day. Nov 12, 2014."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant has also alleged actual innocence. This Court, however, cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Applicant's allegation regarding his actual innocence is an inappropriate challenge to the sufficiency of the evidence. Id. at 423, 215 S.E.2d at 885 (“[T]he Uniform Post-conviction Procedure Act shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.”) (quotation omitted). Therefore, this allegation must be summarily dismissed.

#### V.

The Applicant has also alleged prosecutorial misconduct. The Respondent submits, however, that he has failed to satisfy his burden of proof on this issue. “[T]he test for reversible prosecutorial misconduct generally has two components: that (1) the prosecutor’s remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant’s substantial rights so as to deprive the defendant of a fair trial.” United States v. Chorman, 910 F.2d 102, 103 (4th Cir. 1990). In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted). This allegation must be summarily dismissed.

VI.

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

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

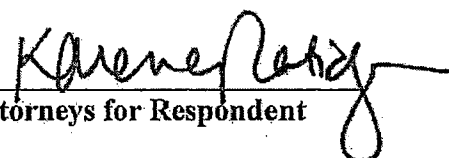
ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

January 29, 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
 )  
 )  
MICHAEL ANTOINIUS WEATHERSPOON, )  
SCDC #352593 )  
 )  
Applicant, )  
 )  
vs )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2015-CP-23-5719

AFFIDAVIT OF SERVICE BY MAIL

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

**Michael Antoinius Weatherspoon, 352593  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010**

DATED this 29th day of January, 2016.

  
\_\_\_\_\_  
Judy A. C. Carey, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2013GS2304778

Michael Antoinius Weatherspoon

A/W#: I584020

AKA:

Date of Offense: 1/30/2012

Race: BLACK Sex: M Age: 23

S.C. Code § : 16-03-0010, 0020

DOB: 1991 SS#: [REDACTED]

CDR Code #: 0116

Address: [REDACTED]

City, State, Zip: Duncan, SC 29334

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

[ ] CONVICTED OF or [X] PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Manslaughter, Voluntary

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
[ ] NON-VIOLENT [X] VIOLENT [ ] SERIOUS [X] MOST SERIOUS [ ] Mandatory GPS(CSC w/minor 1st or Lewd Act) [ ] §17-25-45

The charge is: [X] As Indicted, [ ] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: [X] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State

ATTEST: Lisa Bentley 77787 SC Bar# Michael Weatherspoon 71789 SC Bar#
Bentley, Lisa SC Bar# Michael Weatherspoon Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [ ] State Department of Corrections, [ ] County Detention Center,
for a determinate term of 15 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.

[X] CONCURRENT or [ ] CONSECUTIVE to sentence on:
[X] 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.
[ ] 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: Description, Amount, Total. Includes items like § 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, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.00

[ ] Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickman
Court Reporter: H. Skell
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 11-12-14

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
MURDER

At a Court of General Sessions, convened on **OCT 22 2013** the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL ANTOINIUS WEATHERSPOON did in Greenville County, on or about the 30th day of January, 2012, unlawfully and with malice aforethought commit the offense of Murder by driving Tamica Weatherspoon to the residence of victim and providing her with a handgun that was used to shoot DOUGLAS BURGESS and that DOUGLAS BURGESS died as a proximate result thereof. This is in violation of §16-3-0010 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
SOLICITOR

**WITNESSES**

Dale A Arterburn

Greer Police Department

2/1/2012

*DA* 10/22/13

**ARREST WARRANT NUMBER**  
1584020

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Signature]*  
**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

**DOCKET NO. 2013-GS-23-** 004778  
LAB

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**October**

**TERM 2013**

**THE STATE**

**vs.**

**MICHAEL ANTOINIUS WEATHERSPOON**

**Indictment for**

**0116**

**MURDER**

**VIOLATION § 16-03-0010**

**FILED**

**MAY 31 2013**

Clerk of Court  
Greenville County

ENTERED  
ACCT. *[Signature]*

ARREST WARRANT

1-584020

5630

STATE OF SOUTH CAROLINA

County/

Municipality of

2-9-12

Greer

THE STATE

12000002054

against

Michael Antoinius Weatherspoon

Address:

Duncan, SC 29334-

Phone:

SSN

Sex: M

Race: B

Height: 6

1

Weight: 160

DL State: SC

DL #:

DOB: 1991

Agency ORI #: 0230300

Prosecuting Agency: Greer Police Department

Prosecuting Officer: Dale A Arterburn - 9336

Offense: Murder / Murder

Offense Code:

0116

Code/Ordinance Sec:

16-03-0010, 0020

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

on

Michael Antoinius Weatherspoon

2/11/12

Signature of Constable/Law Enforcement Officer

460

RETURN WARRANT TO:

City Of Greer

100 South Main Street

Greer, SC 29650

ENTERED

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/

Municipality of

Greer

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant

Dale A Arterburn

who

being duly sworn deposes and says that defendant Michael Antoinius Weatherspoon

did within this county and state on or about 01/30/2012

violate the criminal laws of the

State of South Carolina (or ordinance of

County/

Municipality of

Greer

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

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:

BASED ON THE AFFIANT'S REPORT AND A STATEMENT FROM THE DEFENDANT AND OTHER EVIDENCE, THE DEFENDANT DID WITH MALICE AND AFORETHOUGHT COMMIT THE OFFENSE OF MURDER DURING THE COMMISSION OF AN ARMED ROBBERY, CAUSE THE DEATH OF THE VICTIM, DOUGLAS BURGESS BY DRIVING TAMICA WEATHERSPOON TO THE RESIDENCE OF THE VICTIM AND DID PROVIDE HER WITH A HANDGUN THAT WAS USED TO SHOOT, KILL MURDER AND END THE LIFE OF THE VICTIM. THIS OFFENSE DID OCCUR WITHIN THE CITY LIMITS OF GREER AND THE COUNTY OF GREENVILLE, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/

Municipality of

Greer

Affiant's Address 102 South Main Street GREER, SC 29650-

Affiant's Telephone (864)848-2155 x 0000

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 1/30/2012

defendant Michael Antoinius Weatherspoon

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

County/

Municipality of

Greer

) as set forth below.

DESCRIPTION OF OFFENSE: Murder / Murder

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 02/01/2012

Signature of Issuing Judge

Carroll Reynolds

Judge Code: 6652

Judge's Address 100 South Main Street Greer, SC 29650-

Judge's Telephone (864)848-5374

Issuing Court:  Magistrate  Municipal  ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

1194795  
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville  
STATE VS.

INDICTMENT/CASE#: 2013GS2304779

Michael Antoinius Weatherspoon

A/W#: 1584019

AKA:

Date of Offense: 1/30/2012

Race: BLACK Sex: M Age: 23

S.C. Code § : 16-11-0330(B)

DOB: 1991 SS#

CDR Code #: 0026

Address:

City, State, Zip: Duncan, SC 29334

DL#: SID#:

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Attempted armed, or allegedly armed, robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

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. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Use Recommendation by the State

ARREST: Lisa Bentley 77787 Bentley, Lisa SC Bar# Michael Weatherspoon 71739 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 15 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.  
 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

Recipient: \_\_\_\_\_

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: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Paul B. Wickens  
Court Reporter: H. Kell  
SCCA/217 (03/2011)

Presiding Judge: [Signature]  
Judge Code: 2130  
Sentence Date: 11-12-14


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
ATTEMPTED ARMED ROBBERY

At a Court of General Sessions, convened on **OCT 22 2013** the Grand Jurors of Greenville  
County present upon their oath:

That MICHAEL ANTOINIUS WEATHERSPOON did in Greenville County, on or about the 30th day of  
January, 2012, while armed with a deadly weapon, or while alleging either by action or words he was armed  
while using a representation of a deadly weapon or any object which a person present during the commission of  
the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force or intimidation,  
goods or monies from the person or presence of DOUGLAS BURGESS. This is in violation of §16-11-330 of the  
South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
SOLICITOR

**WITNESSES**

Dale A Arterburn

Greer Police Department

2/1/2012

*DA 10/22/13*

**ARREST WARRANT NUMBER**  
1584019

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Signature]*

**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*  
*Date:*

**DOCKET NO. 2013-GS-23-**  
LAB

004779

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**October TERM 2013**

**THE STATE**

**vs.**

**MICHAEL ANTOINIUS WEATHERSPOON**

**Indictment for**

**0026**

**ATTEMPTED ARMED ROBBERY**

**VIOLATION § 16-11-0330**

**FILED**

**MAY 31 2013**

Clerk of Court  
Greenville County

**ENTERED**  
**ACCT. 12/11**

ARREST WARRANT

1-584019 5630

STATE OF SOUTH CAROLINA

County/ Municipality of 29-12

Greer

THE STATE 12000002064

against

Michael Antoinius Weatherspoon

Address:

Duncan, SC 29334

Phone: SSN: Sex: M Race: B Height: 6 Weight: 160

DL State: SC DL #: DOB: 1991 Agency ORI #: 0230300

Prosecuting Agency: Greer Police Department

Prosecuting Officer: Dale A Arterburn - 9336

Offense: Robbery / Attempted armed, or allegedly armed, robbery

Offense Code: 0026

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

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 on Michael Antoinius Weatherspoon 2/9/12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Greer 100 South Main Street Greer, SC 29650

ENTERED stamp

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA County/ Municipality of Greer

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 516

Personally appeared before me the affiant Dale A Arterburn who

being duly sworn deposes and says that defendant Michael Antoinius Weatherspoon

did within this county and state on or about 01/30/2012 violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Attempted armed, or allegedly 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:

BASED ON THE AFFIANT'S REPORT ALONG WITH A STATEMENT FROM THE DEFENDANT AND OTHER EVIDENCE, THE DEFENDANT DID COMMIT THE OFFENSE OF ATTEMPTED ARMED ROBBERY IN THAT HE DID DRIVE TAMICA WEATHERSPOON TO THE RESIDENCE OF THE VICTIM, DOUGLAS BURGESS WHERE HE PROVIDED HER WITH A HANDGUN WITH THE INTENT TO COMMIT AN ARMED ROBBERY. SAID OFFENSE OCCURRED WITHIN THE CITY LIMITS OF GREER IN GREENVILLE COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of Greer

Affiant's Address 102 South Main Street GREER, SC 29650- Affiant's Telephone (864)848-2155 x 0000

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 1/30/2012 defendant Michael Antoinius Weatherspoon

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

County/ Municipality of Greer) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Attempted armed, or allegedly 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 02/01/2012 Carroll Reynolds Judge Code: 6652

Judge's Address 100 South Main Street Greer, SC 29650- Judge's Telephone (864)848-5374

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

State of South Carolina  
County of Greenville

Court of Common Pleas

Michael Weatherspoon	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2015-CP-23-5719
	)	
The State of S.C.	)	
	)	
<u>Defendant.</u>	)	

June 14, 2016  
Greenville, South Carolina

B E F O R E:

The Honorable George James, Judge.

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

Brian Johnson, Esquire  
Attorney for the Applicant

Patrick Schmeckpeper, Esquire  
Attorney for the State

Lisa Scott  
Circuit Court Reporter

I N D E X

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Cross-examination by Mr. Schmeckpeper..	23
ALEX STALVEY	
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Cross-examination by Mr. Johnson.....	45

- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits.

- - -

P R O C E E D I N G S

\* \* \* \* \*

1  
2  
3 MR. SCHMECKPEPER: Your Honor, I believe we're  
4 ready to proceed.

5 THE COURT: All right. Do you want to give me  
6 some background before we start?

7 MR. JOHNSON: Yes, sir, Your Honor. May it  
8 please the Court?

9 My client pled guilty to what I believe  
10 actually was voluntary manslaughter, and that's an  
11 issue that I will -- that my client wants to bring  
12 up, but, Your Honor, the background of it is my  
13 client -- apparently, they were on a trial docket  
14 and were in the middle of trial. And then at some  
15 point during that, his guilty plea took place.

16 And so my client is here today with his  
17 application for post-conviction relief alleging  
18 ineffective assistance of counsel, Judge. I think I  
19 can limit the issues that he'll be here to discuss  
20 today.

21 THE COURT: Okay.

22 MR. JOHNSON: One of the issues is, if you'll  
23 read the trial -- the trial transcript -- the  
24 transcript of the plea, the Court references that he  
25 was pleading to involuntary manslaughter several

1 times. And my client says because of that, his plea  
2 wasn't knowingly, intelligently, and voluntarily  
3 made.

4 THE COURT: Talking about he says that the  
5 trial Court said he pled to involuntary?

6 MR. JOHNSON: Yes, Your Honor. In the  
7 transcript, it references that he was pleading to  
8 involuntary manslaughter rather than voluntary.

9 The Attorney General actually reached out to  
10 the court reporter, and she confirmed that the Court  
11 said "involuntary" rather than "voluntary." We did  
12 confirm that for you.

13 THE COURT: Okay. According to the transcript  
14 page 3, it says after the words "the clerk," "In the  
15 case of," and it reflects the docket number,  
16 "indicted for murder, he's pleading to involuntary  
17 manslaughter."

18 MR. JOHNSON: Yes, sir, Your Honor.

19 THE COURT: "And he's indicted for attempted  
20 armed robbery and he's pleading to the same." He  
21 got -- what did he get, two concurrent 15-year  
22 sentences?

23 MR. JOHNSON: Yes, sir, Your Honor.

24 THE COURT: All right. Go ahead.

25 MR. JOHNSON: Thank you, Your Honor.

1           Another thing, Judge, as you'll see in the  
2 transcript, it appears that there was some banter  
3 back and forth between my current Applicant and the  
4 Court. And it appears that they accepted his plea  
5 under *U.S. v. Alford*.

6           My client is, again, alleging that his plea  
7 wasn't knowingly, intelligently, voluntarily made  
8 because that was not an issue that he -- he  
9 doesn't -- he didn't understand at the time what  
10 *U.S. v. Alford* was and did not discuss that with his  
11 attorney and no side conference was made so that he  
12 could discuss that with his attorney.

13           THE COURT: Okay. So the use of the word  
14 "involuntary" and his failure to understand what  
15 Alford plea was?

16           MR. JOHNSON: Yes, sir, Your Honor.

17           THE COURT: Okay. Anything else?

18           MR. JOHNSON: Actually, two more things, Judge.  
19 I'm sorry.

20           He would've liked to have appealed this  
21 sentencing plea, and so he's asking for a right to  
22 belated appeal.

23           And then finally, he feels that the -- the  
24 indictment was made -- should've been challenged.  
25 It was -- it wasn't pre-filed within 90 days, and

1 he'd like to ---

2 THE COURT: It wasn't what?

3 MR. JOHNSON: Pre-filed within 90 days.

4 THE COURT: Pre-filed?

5 MR. JOHNSON: Yes, sir, Your Honor.

6 THE COURT: What does that mean?

7 MR. JOHNSON: Filed with the clerk until a true  
8 bill can be made.

9 THE COURT: All right. Explain that to me.  
10 What -- what's the legal point on that?

11 MR. JOHNSON: Your Honor, he felt that ---

12 THE COURT: What would be -- what -- what  
13 is -- what is -- not what he feels. What is the --  
14 what is the straight issue on that, that the  
15 indictment was not filed with the Clerk of Court  
16 within 90 days of being true billed?

17 MR. JOHNSON: Yes, sir. For -- for -- for not  
18 filing with the Clerk within 90 days of him being --  
19 of being -- the warrant as being -- the  
20 pre-filing -- his indictment was not pre-filed with  
21 the Court within 90 days of his arrest, Judge.

22 THE COURT: Is that the law?

23 MR. JOHNSON: I think that the Court said --  
24 probably said that that's okay.

25 THE COURT: And it wasn't pre-filed. I must

1 apologize. I've never heard of something being  
2 pre-filed. I've heard of something being filed.

3 MR. JOHNSON: Yes, sir, Your Honor.

4 THE COURT: What is pre-filed?

5 MR. JOHNSON: Pre-filed -- before -- it's my  
6 understanding that before the defendants are  
7 indicted -- actually indicted, there is a -- a bit  
8 of a -- based of an indictment on -- filed with the  
9 Court that they would then stamp it true billed or  
10 otherwise.

11 And it's his position that they -- there  
12 should've been one that was pre-filed with the  
13 Court. And I -- he has ---

14 (To the Applicant.) Pull up your indictment.

15 (To the Court.) He has that it was filed with  
16 the Court on May 31, 2013, and then true billed in  
17 October of 2013.

18 Your Honor, he was charged with a crime on the  
19 30th day of January 2012, and he says that -- the  
20 fact that it was pre-filed the next year in May was  
21 a violation of the rules regarding indictment saying  
22 that his attorney should've challenged that.

23 THE COURT: But you'll be able to present to me  
24 the rules that were violated at some point when you  
25 get to that issue?

1           MR. JOHNSON: Sure, Your Honor. If -- if I  
2 could have just a second, I can see if I can assist  
3 my client with that.

4           THE COURT: All right.

5           (Counsel conferred briefly with Applicant.)

6           MR. JOHNSON: Apologies, Your Honor.

7           THE COURT: Yes, sir.

8           MR. JOHNSON: And I actually thought we had the  
9 rule, but I actually had to pull the rule on my  
10 phone so I apologize.

11          THE COURT: That's okay.

12          MR. JOHNSON: Okay. But it was -- what he's  
13 referring to is Rule 3 of the South Carolina Rules  
14 of Criminal Procedure. Rule 3(c), it says, "Within  
15 90 days after receipt of arrest warrant from the  
16 Clerk of Court, Solicitor shall take action on the  
17 warrants by preparing an indictment for presentment  
18 to the Grand Jury, which indictment shall be filed  
19 with the Clerk of Court, assigned a criminal case  
20 number, and presented to the Grand Jury." And  
21 that's what he's referring to.

22          THE COURT: All right. If you will -- all  
23 right. Well, I'll be glad to hear the evidence on  
24 that, and we'll go forward with all of it. Okay.  
25 Call your first witness.

1 MR. JOHNSON: Thank you so much, Your Honor.  
2 I'm going to call Michael Weatherspoon.

3 THE APPLICANT: (Approaching.)

4 MICHAEL WEATHERSPOON,  
5 having been produced and first duly sworn as a  
6 witness on behalf of the Applicant, testified as  
7 follows:

8 THE CLERK: Thank you. You may be seated.

9 THE APPLICANT: (Complying.)

10 THE CLERK: Please state your full name for the  
11 record.

12 THE APPLICANT: Michael Weatherspoon.

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q. All right. Mr. Weatherspoon, what type of  
16 sentence are you currently serving?

17 A. A 15-year sentence.

18 Q. On what charge?

19 A. Involuntary manslaughter and attempted armed  
20 robbery.

21 Q. Now, it's my understanding actually that the  
22 sentencing sheet says ---

23 A. It says "voluntary." The sentencing sheet --  
24 the sentencing sheet says "voluntary manslaughter."

25 Q. Yes, sir. And I'll get to that.

1 A. All right.

2 Q. Okay. But the sentencing sheet sentences you  
3 to 15 years concurrent sentences on voluntary  
4 manslaughter and what other charge?

5 A. You said what other charge?

6 Q. Yes, sir.

7 A. Attempted armed robbery.

8 Q. Okay. Now, where are you currently housed?

9 A. At Lee County Corrections Institution.

10 Q. All right. Now, when you were sentenced on  
11 these charges, was it a guilty plea or was it a jury  
12 trial?

13 A. Originally, I took a trial, but as according to  
14 my lawyer and the judge, they stopped the trial  
15 three times forcing me to take a plea.

16 Q. Okay. And you say -- and that's one of the  
17 bases for your application for postconviction  
18 relief?

19 A. Correct.

20 Q. And do you believe your guilty plea was  
21 intelligently, knowingly, and voluntarily made?

22 A. No, sir.

23 Q. All right. I'm going to ask you questions and  
24 I'd like you to please communicate to the Court your  
25 arguments for the same. Okay?

1 A. All right.

2 Q. All right. Now, was there an issue -- you just  
3 recently referred to a voluntary manslaughter. Will  
4 you please communicate to the Court, the judge right  
5 there, what it is that you mean?

6 A. Talking about the voluntary manslaughter?

7 Q. Yes, sir.

8 A. As in I pled -- it said in the -- I was  
9 indicted for murder as you can see, but it said I  
10 pled to involuntary on page 3 of the transcript,  
11 line 7 to 10. You know, I felt like it says -- give  
12 me a minute. Let me get everything situated.

13 MR. JOHNSON: Take your time, please.

14 THE COURT: Page 4. Page 3, line 9; and page  
15 4, line 10.

16 BY MR. JOHNSON:

17 Q. Mr. Weatherspoon, did you hear the comments  
18 from the Court?

19 A. Yeah, for a minute. I'm just trying to get  
20 everything together. Can you rephrase the question  
21 again, sir?

22 Q. Yes, sir. You communicated to the Court  
23 earlier, you referenced involuntary manslaughter --  
24 that you had pled to involuntary manslaughter.  
25 Please communicate to the Court what -- what your

1 issue was there.

2 A. Can you make a clear understanding what you're  
3 trying to say?

4 Q. What's the problem with the voluntary  
5 manslaughter here?

6 A. You said what's the problem with voluntary  
7 manslaughter?

8 Q. Yes.

9 A. It is -- basically, that's not what I pled to.  
10 As you can clearly see in the transcripts, I pled  
11 involuntary manslaughter because the 15 years  
12 already sentenced me with involuntary. If I pled to  
13 involuntary manslaughter, I would've gotten anywhere  
14 from zero to five. If they gave me 15 years, they  
15 over-sentenced me clearly. That made my plea  
16 involuntary, you know.

17 And, also, what I'd like to say, they failed to  
18 give me a proper instruction dealing with the  
19 maximum and the mandatory minimum for the element of  
20 that charge, which also made my plea involuntary.

21 THE COURT: All right. Say that part again.

22 THE APPLICANT: They failed to give a proper  
23 instruction of the maximum and the minimum or the  
24 element of the involuntary manslaughter.

25 As you can clearly see on page -- on page 4,

1           it's talking about the involuntary, which is said  
2           involuntary manslaughter carries up to 30 years,  
3           which is incorrect.

4           And, also, involuntary manslaughter is eligible  
5           for parole, which it's saying right here in line 11,  
6           page 4, it says this is a violent offense which  
7           affects parole eligibility, which also is showing  
8           proof that my plead -- I didn't have  
9           intelligently -- intel -- I didn't have a clear  
10          understanding what the plea that I was taking at the  
11          time according to the advice of my lawyer.

12          THE COURT: All right.

13          BY MR. JOHNSON:

14          Q.    Now, Mr. Weatherspoon, was your guilty plea --  
15          when they read you the facts as to -- to which you  
16          were to plead guilty, they're basically accusing you  
17          of the crime?

18          A.    Yeah.

19          Q.    Did you admit to committing that crime?

20          A.    No.

21          Q.    Okay. Can you communicate to the Court, based  
22          on your understanding of the transcript there and  
23          the situation, of how the Court accepted your plea  
24          under *U.S. v. Alford*?

25          A.    Basically, at the end he asked me a question

1           referring to -- he says, let me go to the question.  
2           Basically, he said, "You heard what the evidence is  
3           that they would put up. What I'm asking you is, do  
4           you think a jury would infer when an eyewitness says  
5           her sister went in there and demanded money and  
6           guns? There are other evidence out there with  
7           respect to these text messages ---

8           THE COURT: If you're going to read, you got to  
9           read slowly because I can't follow you.

10          THE APPLICANT: Oh, I'm sorry.

11          THE COURT: All right. Go ahead.

12          THE APPLICANT: You want me to start back over?

13          THE COURT: Yes, sir.

14          THE APPLICANT: "You heard what the evidence is  
15          that they would put up. What I'm asking you is, do  
16          you think that this jury would infer other than the  
17          eyewitness to say that your sister went in there to  
18          demand money and guns? There is other evidence out  
19          there with respect to -- to these text messages and  
20          all that.

21          Do you think that the jury could infer or is  
22          there -- or is there a reasonable likelihood that  
23          this jury would believe she was -- she was there for  
24          an armed robbery. Do you understand if they believe  
25          what the eyewitness -- eyewitness said, do you think

1 the jury would agree with that?"

2 I said, "I have no idea because you're asking a  
3 question. I have no idea. That's why I'm having a  
4 jury trial."

5 And then he went on and said, basically, you  
6 know, just switching up the question. He says,  
7 "Well, I know that, but I'm asking is there a reason  
8 for -- is there a reason that jury could agree?"

9 And I said, "I guess so." Once I said I guess  
10 so, he said, "Well, I'm going to accept that  
11 pursuant to Alford." I never knew what an Alford  
12 plea was. He never informed me of what an Alford  
13 plea was, so how can he accept a guilty plea or even  
14 say he's going to accept an Alford plea if I didn't  
15 know what an Alford plea was?

16 BY MR. JOHNSON:

17 Q. Okay. Do you know what an Alford plea is now?

18 A. A little bit. It basically says you can keep  
19 on demanding your innocence, you know. And it says  
20 in certain states, I really didn't get no clear  
21 understanding, but it basically said I -- I keep on  
22 demanding my innocence, and there's certain states  
23 only accepts this Alford plea or even brings the  
24 Alford plea up.

25 Q. Was it -- was it your intention or did you ever

1 discuss an Alford plea with your attorney?

2 A. No. Not a all.

3 Q. Okay. Was there ever a time when the plea was  
4 stopped and allowed you to confer with your attorney  
5 prior to finding out what the Alford plea was?

6 A. No. Not at all.

7 Q. Okay. And you believe you were prejudiced by  
8 the Court accepting your plea under *U.S. v. Alford*?

9 A. Correct.

10 Q. Now, after the plea was over, did you decide  
11 whether or not you wanted to appeal the guilty plea?

12 A. Correct.

13 Q. Can you please tell the Court, again, what your  
14 recollection of that situation is?

15 A. Prior to leaving, I asked my lawyer about my  
16 appeal, which never happened as you can see. That's  
17 the reason why I filed for -- just ran out the  
18 courtroom at the time, you know, and just...

19 Q. And would you like the Court to consider  
20 granting you a belated appeal at this time?

21 A. That would -- that would be nice because some  
22 of the grounds I argued on my -- on my application,  
23 it was referring to as saying it was supposed to be  
24 raised on appeal.

25 But my thing is, I would rather have a new

1 trial or ask for the sentence to be vacated because  
2 actually the evidence that they have is like  
3 especially the murder indictment, it doesn't meet  
4 what is required for the murder indictment. And the  
5 murder indictment -- the indictment should have been  
6 squashed before the trial even started.

7 Q. All right. Hold on. Let me slow you down.

8 A. All right.

9 Q. Let me ask you a question.

10 A. Yes, sir.

11 Q. You start -- you just started talking about the  
12 indictment.

13 A. Yeah.

14 Q. Okay. And you were here earlier today --  
15 earlier on your hearing when I tried to portray to  
16 the Court what my understanding of your complaint  
17 was.

18 A. Yeah.

19 Q. Can you please put it in your words what your  
20 problems are with the indictment, just straight to  
21 the Court?

22 A. Well, time 17 it's Rule 17-19-30, it says  
23 litigations is sufficiency ---

24 Q. Hold on. Let me slow you down. 17-19-30 of  
25 what code of law?

1 A. What code of law?

2 Q. South Carolina, United States, or what is it?

3 A. Yeah, South Carolina.

4 Q. Okay. Now continue. I'm sorry.

5 A. All right. It says, "Allegations sufficient  
6 for indictment for murder."

7 THE COURT: You got -- you've got to say it  
8 slowly. This lady is taking down everything you're  
9 saying.

10 THE APPLICANT: I'm sorry.

11 BY MR. JOHNSON:

12 Q. I know you're nervous, but slow down.

13 A. It says, "Every indictment for murder shall be  
14 deemed and adjudged sufficient and good in law  
15 which, in addition to setting forth the time and  
16 place, together with a plain statement, divested of  
17 all useless phraseology, of the manner in which the  
18 death of the deceased was caused, charges that the  
19 defendant did feloniously, willfully, and of his  
20 malice aforethought killed and murder the deceased."

21 My indictment -- let me get it real quick. My  
22 murder indictment -- where is my murder indictment?  
23 As stated that, "Michael Thomas Weatherspoon did in  
24 Greenville County on or about the 30th day of  
25 January 2012, unlawfully and with malice

1           aforethought committed murder by driving Tamika  
2           Weatherspoon to the residence of victim, provided  
3           her with a handgun that was used to shoot Douglas  
4           Burgess, and that Douglas Burgess died in the  
5           process as a result.

6                     This right here clearly shows that I never  
7           killed anyone. It never said anything about me  
8           killing anyone. This right here basically is like  
9           the hands of one, the hands of all, which are  
10          accessories, so I really don't know. It just  
11          doesn't meet the requirement of murder as you come  
12          up with indictment because I never killed anyone.

13          Q.     Did you have any problem with the way the  
14          indictment was filed?

15          A.     Yes, I did. Because that prevent -- prevented  
16          me from having -- how can I say -- prepare myself  
17          for the defense when I went to trial, you know,  
18          because this murder indictment is supposed to be  
19          thrown out, you know, because at the beginning of  
20          the trial, if this issue was raised, if you properly  
21          -- if my lawyer properly investigated my case, he  
22          would've seen this evidence clearly, you know. And  
23          the trial -- I would've been -- the case would've  
24          been out, period, you know, because you look at the  
25          indictment, it took them almost, what, about 16

1 months to come up with a proper indictment, so that  
2 right there alone is showing you the prejudices that  
3 they -- that they had against my case.

4 Q. Okay. Now, you referenced the trial and I  
5 knows there's -- there's no record. We don't have a  
6 transcript of the trial, but did the trial start or  
7 what?

8 A. My trial started on November -- November the  
9 10th, 2014. The trial lasted all day.

10 November 11th was Veteran's Day, so wasn't no  
11 court. I came back thinking I'm having a trial and  
12 was no one in there. So I asked my lawyer, I said,  
13 "Can I resume my trial?" So went back out and the  
14 judge called the Solicitor and my -- my attorney to  
15 the bench. You know, I'm hearing what's going on,  
16 so they sent me back out because the judge, I  
17 remember him saying, "Make him take this plea," so  
18 he sent me back out.

19 I told him, "No. I wanted to continue my  
20 trial." So we came back in, the judge called me  
21 once again. Sent me back out. And I said, "Can I  
22 speak to my father and my brother?"

23 So the only person he brought back to me, my  
24 dad, which he was at the time 67 years old. I'm  
25 wondering -- so I'm talking to my dad such-in-such,

1 such-in-such. And, you know, according to the  
2 advice of, you know, telling me to take the plea  
3 from my lawyer, that's the reason why I took the  
4 plea.

5 Q. Now, as far as the background facts, you say --  
6 you make the reference and anyone involved -- and  
7 we're almost done, Your Honor.

8 On what basis ---

9 THE COURT: We've got plenty of time.

10 MR. JOHNSON: Yes, sir, Your Honor. I  
11 apologize.

12 THE COURT: No need to rush.

13 MR. JOHNSON: Yes, sir, Your Honor.

14 BY MR. JOHNSON:

15 Q. On what basis were you -- did they connect you  
16 to the crime initially?

17 A. Reason why I said the cops out there because  
18 they brought that up in the guilty plea, as well.  
19 So -- and one of the issues I brought up in my  
20 transcript that mere presence doesn't -- doesn't  
21 constitute guilt just because the elements of the  
22 crime they charged me hands of one by me to say by  
23 being near present in the light -- how can I explain  
24 it?

25 Basically, dealing with my case. Dropping

1 someone off and leaving, that doesn't constitute my  
2 guilt because I had no prior knowledge of what the  
3 crime was going to be committed, you know, as  
4 according to the record. I never said anything  
5 about shooting and going in there to rob. My whole  
6 idea was she told me she was going there to sell  
7 drugs.

8 I understand I was still committing a crime,  
9 but I never knew anything about her going to commit  
10 no robbery.

11 MR. JOHNSON: Gotcha. If you will, please  
12 answer any questions the Attorney General has.  
13 Okay.

14 THE COURT: All right. Mr. Schmeckpeper.

15 THE APPLICANT: Oh, alrighty.

16 MR. SCHMECKPEPER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SCHMECKPEPER:

19 Q. Afternoon, Mr. Weatherspoon.

20 A. How are you doing?

21 Q. I got a couple questions for you.

22 A. Yes, sir.

23 Q. You testified you plead guilty to involuntary  
24 manslaughter?

25 A. You said that I pled guilty?

1 Q. Your testimony is that you pled guilty to  
2 involuntary manslaughter and not voluntary  
3 manslaughter?

4 A. You said involuntary?

5 Q. Yes.

6 A. Correct.

7 Q. Now, your lawyer explained that prior to  
8 pleading guilty, you were going to trial for murder,  
9 correct?

10 A. I'm listening.

11 Q. That's a question.

12 A. Oh, you said -- can you repeat the question?

13 Q. Prior to pleading guilty, you were in a trial  
14 for murder; is that correct?

15 A. Yep. Yes, sir.

16 Q. And at some point your attorney came to you and  
17 said, "The Solicitor's off -- offering a plea  
18 bargain"; is that correct?

19 A. I never wanted to take the plea. My whole time  
20 the whole intention ---

21 THE COURT: That's not the question. The  
22 question is, did your lawyer tell you they were  
23 offering you a plea?

24 THE WITNESS: Yes.

25 BY MR. SCHMECKPEPER:

1 Q. And while initially you may have said no, is it  
2 fair to say that eventually you agreed to take the  
3 plea?

4 A. On the advice of my lawyer.

5 Q. So that would be "yes"?

6 A. I wouldn't say on my advice, no, it wouldn't be  
7 me taking a plea.

8 Q. All right. When your lawyer explained the plea  
9 to you, what did he say the plea was for? What  
10 charge would you be pleading guilty to?

11 A. He really didn't say -- say too much because  
12 basically as -- basically, the judge was in his ear.

13 Q. So your lawyer didn't tell you what you'll be  
14 pleading guilty to?

15 A. Not really.

16 Q. Did he tell you how much time you'd be pleading  
17 guilty for?

18 A. Nah, because we was -- at the time we was  
19 negotiating, you know, because I said no. First, he  
20 said something about 20 years. I said, "No." I  
21 said, "Twenty years of my life." I said, "I'll be  
22 37." I said, "Could you put yourself doing  
23 20 years?"

24 He said, "Oh, no. No."

25 I said, "So how do you think I can do 20 years

1 in prison?" So it wasn't really the whole time  
2 schedule a negotiated plea because it was  
3 basically -- the judge was basically telling him  
4 make me take this plea.

5 Q. So your lawyer never told you, "This is a  
6 15-year negotiated sentence for voluntary  
7 manslaughter and attempted armed robbery"? He never  
8 said that?

9 A. No.

10 Q. Okay.

11 A. You said voluntary? You say -- you saying --  
12 you just said -- you said ---

13 Q. Did your lawyer tell you voluntary or  
14 involuntary?

15 A. Involuntary.

16 Q. Your lawyer said, "You're pleading involuntary  
17 manslaughter for 15 years"? That's what your lawyer  
18 told you?

19 A. Correct.

20 THE COURT: What did he say to you about  
21 attempted armed robbery?

22 THE WITNESS: He didn't say anything.  
23 Basically, it was all about the murder.

24 THE COURT: All right.

25 BY MR. SCHMECKPEPER:

1 Q. But he never told you you were pleading to  
2 attempted armed robbery?

3 A. He says -- no, sir.

4 Q. But the judge told you you're pleading to  
5 attempted armed robbery; is that correct?

6 A. You said the judge?

7 Q. Uh-huh.

8 A. Correct.

9 Q. And if you could turn your attention to page --  
10 do you have a transcript with you?

11 A. Which one, the plea -- the guilty plea?

12 Q. The plea transcript.

13 A. Yes, sir.

14 Q. Now, I know it says involuntary manslaughter.

15 A. Yeah.

16 Q. But you would agree that the judge told you  
17 involuntary manslaughter, that carries up to  
18 30 years, correct?

19 A. Yes, sir.

20 Q. And he also told you it was a violent, most  
21 serious offense, correct?

22 A. Correct.

23 Q. And he told you attempted armed robbery carries  
24 20 years, and that's also a most violent and serious  
25 offense?

1 A. Correct.

2 Q. And you said you understood all of that,  
3 correct?

4 A. You say that, yes, sir.

5 Q. And he asked how you wished to plead, and you  
6 said guilty, correct?

7 A. All because the conversation I'm thinking just  
8 agree with -- with the judge to all the questions.  
9 That's the only way because with the plea, I ain't  
10 think I had a right to even say anything as you can  
11 see that he asked me do I have any questions. I  
12 said, "Not anymore."

13 Q. And when the judge asked you if that was your  
14 free and voluntary choice, what was your response?

15 A. At the time it was yes, but I did not know  
16 about what he -- what he meant because I was  
17 ignorant. I did not know what he was referring to.

18 Q. Do you remember during your guilty plea when  
19 the judge advised you of the Constitutional rights  
20 you to have to waive to plead guilty?

21 A. Yeah, he just advised me like remain --  
22 continue my trial. But as when I tried to continue  
23 my trial, he stopped it, so...

24 Q. Just to clarify. I just want to make sure the  
25 record's clear. The judge told you that you had a

1 right to a trial by jury?

2 A. Correct.

3 Q. He told you that you had a right to continue to  
4 cross-examine witnesses, correct?

5 A. Correct.

6 Q. And did he tell you that you have the right to  
7 remain and that your silence could not be held  
8 against you and that you could never be compelled to  
9 incriminate yourself?

10 A. Correct.

11 Q. And did he ask you whether or not you wanted to  
12 give up those rights and enter a guilty plea?

13 A. Correct.

14 Q. What was your response?

15 A. I said, "Yes, sir." But at the time, like once  
16 again, the plea already been signed, so I'm just  
17 going on with -- with the judge, the questioning.  
18 You know, by me not being aware, like I said, I was  
19 ignorant to the law so I didn't know how -- I didn't  
20 know how important these rights that I was giving  
21 up. So that right there should've been clearly  
22 explained because I didn't no clear understanding of  
23 what's going on with me giving up these rights.

24 MR. SCHMECKPEPER: Beg the Court's indulgence.

25 THE COURT: All right.

1 BY MR. SCHMECKPEPER:

2 Q. During the guilty plea, you acknowledged that  
3 you took your sister over to the victim's house  
4 to -- I think you said, to sell drugs?

5 A. Correct.

6 Q. And that you provided her with a gun?

7 A. That was her gun. That's why I gave -- that's  
8 why I gave the Greenville Police Department a full  
9 audiotape. That's the reason why I gave them an  
10 oral statement of what was going on, which they  
11 don't have the videotape present.

12 Q. If you could turn your attention to page 8 of  
13 the guilty plea transcript, line 4. The judge asked  
14 you, "Did you know she was armed?"

15 And you responded, "She had it. I gave it to  
16 her that morning." Is that fair?

17 A. Yeah, that's true.

18 Q. It's true. And then the judge asked you, "And  
19 you understood that going in to commit a hand -- a  
20 crime with a handgun, it's a reasonably natural  
21 consequence that shoot -- shots could be fired and  
22 people could die. Do you understand that?"

23 And you said, "Yes. I'm familiar with the law.  
24 Yes, sir"; is that correct?

25 A. You said -- you said page 8?

1 Q. I went to page 10.

2 A. You went to page 10.

3 Q. Page 9. I apologize, 9.

4 A. And 10. Can you read -- reread the question,  
5 please?

6 THE COURT: Go to page 8, line 22. And read --  
7 read what the Court said.

8 THE APPLICANT: (Reading.) Okay. I'm familiar  
9 with it. Okay. What's your question?

10 BY MR. SCHMECKPEPER:

11 Q. Is that a fair representation of what happened  
12 at trial -- the guilty plea?

13 A. What does it have to refer to me? She killed  
14 someone. I have no control over that.

15 Q. All right. But you did give her a gun that  
16 morning, and you took her to commit -- to do a drug  
17 deal?

18 A. As I told Dale Asburn (phonetic) and I can't  
19 remember the other detective. I took her at seven  
20 o'clock that morning before I went to Greenville.

21 When she called and said she want -- she was  
22 going to sell drugs to this resident house, I -- I  
23 seen the gun. I ain't know any intentions about her  
24 going to sell the gun -- I mean, going there to sell  
25 drugs.

1 Q. And then turning to page 11 towards the end,  
2 the judge asks you, "Based on the evidence, if  
3 there's a reasonable probability that a jury  
4 could've inferred that you knew she was going there  
5 to commit an -- commit an armed robbery."

6 At first you said, "I have no idea." And then  
7 he asked you again, you said, "I guess so"; is that  
8 correct?

9 A. If you read -- and you said page 10?

10 Q. I think we're on page 11 now.

11 A. Okay. And what line?

12 Q. Start at page 20.

13 A. I just pled out to my lawyer. I'm not  
14 understanding what you're trying to -- what point  
15 you're trying to get across.

16 Q. All I'm asking ---

17 THE COURT: He's not trying to get a point  
18 across. He's asking you a question. He'll get his  
19 points across to me, so you just answer the  
20 question.

21 BY MR. SCHMECKPEPER:

22 Q. All I'm asking is if you agreed during your  
23 guilty plea eventually that based on the evidence,  
24 there was a reasonable probability that the jury  
25 could infer that you were -- that you knew your

1           sister was going in to commit an attempted armed  
2           robbery or armed robbery?

3           A.    Not attempted armed robbery, no, sir.

4           Q.    Look at -- look at line 11 of page 12.  You  
5           would agree that you said, "I guess so," correct?

6           A.    You said line 11, page ---

7           Q.    Line 11, page 12.

8           A.    (Reading.)  You're right, but I said that -- I  
9           said, "I guess so."

10                    Countless of times I said, "No.  No."  So he  
11           kept on -- kept seeing the tactics he kept using.  
12           He kept rephrasing his question as soon as I --  
13           guess soon as I -- he accepted it, so I have no  
14           idea.

15           Q.    And you would agree the last thing you asked  
16           the judge is you can credit for time served for your  
17           15 years, correct?

18           A.    Correct.

19                    MR. SCHMECKPEPER:  Beg the Court's indulgence.

20                    THE COURT:  (Affirmative response.)

21           BY MR. SCHMECKPEPER:

22           Q.    And you said you asked for an appeal?

23           A.    Correct.

24           Q.    When did you ask for an appeal?

25           A.    Walking out.

1 Q. Walking out from the guilty plea?

2 A. Yeah.

3 Q. So after a negotiated sentence of 15 years,  
4 walking out of the courtroom, you told your lawyer,  
5 "I want an appeal"?

6 A. Uh-huh. Yes, sir.

7 Q. You ever put that in writing? You ever send  
8 him a letter? You just asked for an appeal?

9 A. Correct.

10 MR. SCHMECKPEPER: Your Honor, I have no  
11 further questions.

12 THE COURT: Redirect?

13 MR. JOHNSON: I have no redirect, Your Honor.  
14 That's the Applicant's case.

15 THE COURT: All right. Thank you, sir. You  
16 can step down.

17 THE APPLICANT: (Complying.)

18 THE COURT: Any other witnesses?

19 MR. JOHNSON: No, sir, Your Honor. That's the  
20 Applicant's case.

21 THE COURT: Okay. Your witness.

22 MR. SCHMECKPEPER: Your Honor, the State calls  
23 Alex Stalvey.

24 THE WITNESS: (Approaching.) How you doing?

25 MR. JOHNSON: I'm doing all right.



1 A. Twelve years.

2 Q. And in that 12 years, roughly how much of your  
3 practice is dedicated to criminal work?

4 A. About five years.

5 Q. About five years. Now, was this your first  
6 felony case?

7 A. No, sir.

8 Q. Now, did you file -- were you the first  
9 attorney appointed in this case?

10 A. Yes, sir.

11 Q. Did you file for discovery?

12 A. Yes, sir.

13 Q. Did you review that discovery?

14 A. Yes, sir.

15 Q. Did you review it with the Applicant?

16 A. Yes, sir.

17 Q. Did he give you any witnesses to talk to?

18 A. I can't remember if he gave me any witnesses to  
19 talk to.

20 Q. But did you -- did you conduct any independent  
21 investigation?

22 A. Absolutely.

23 Q. Now, this was originally a trial case; is that  
24 correct?

25 A. That's correct.

1 Q. Now, explain to me what happened. Eventually,  
2 it was going for trial. And then I think the  
3 Applicant said that the next after -- the trial  
4 was the first day, there was a State holiday, it was  
5 Veteran's Day the second day, and the third day was  
6 a plea?

7 A. Sure. We started the trial and I can't  
8 remember the -- what day it actually started on, but  
9 we had opening statements. The State called a few  
10 witnesses, including one of the eyewitnesses.

11 This case involved an armed robbery.  
12 Mr. Weatherspoon's sister went to the deceased's  
13 house, and she was familiar with the -- with the  
14 victim in this case and walked in the door, pulled a  
15 gun. The victim had a weapon, as well. Gunfire was  
16 exchanged.

17 Prior to the victim getting his weapon, the --  
18 the female, who was the sister of this defendant,  
19 demanded money or asked where some guns were. She  
20 was familiar with the fact that the victim in the  
21 case had some weapons in the home.

22 Anyway, the -- during the robbery attempt,  
23 gunfire was exchanged, and the sister of the  
24 defendant as well as the victim in the case were  
25 killed.

1           There was an eyewitness that was in the home  
2           during this incident. The eyewitness was a woman  
3           that testified during the first day of trial. So  
4           that eyewitness testified, as well as some law  
5           enforcement witnesses.

6           After the first day of trial, I was ---

7           Q. Let me ---

8           A. Oh, I'm sorry.

9           Q. Let me cut you off right there real quick  
10          before we get there.

11          Prior to trial, was there any reason that you  
12          thought to have moved to quash the indictments?

13          A. No, sir.

14          Q. Now, is it gen -- generally your practice to  
15          review indictments?

16          A. Yes, sir.

17          Q. And if there's any reason to quash -- to move  
18          to quash the indictments, is it your practice to  
19          make that motion or move to quash indictments?

20          A. Sure. Yes, sir.

21          Q. All right. What were you saying? You said the  
22          end of the first day.

23          A. Right. I'm explaining how we got to the  
24          defendant's guilty plea.

25          After the first day, I was notified by the

1 prosecutor that there was some photographs of a  
2 crime scene that had not been provided to me in the  
3 discovery, which I felt could possibly give us an  
4 opportunity to ask for a mistrial.

5 But at that point, due to the fact that the  
6 case could've been mis-tried, the prosecutor was  
7 willing to offer Mr. Weatherspoon a negotiated plea  
8 of 15 years, which considering the fact that we were  
9 there on a murder case, he was looking at 30 years  
10 to life which I felt he was -- there was a very good  
11 chance he'd be convicted of. I thought it was a  
12 good opportunity for him to take, so that's how we  
13 ended up doing the guilty plea.

14 Q. Well, let's talk about this guilty plea. The  
15 first question may seem kind of silly. Did the  
16 prosecutor clarify whether or not he was offering 15  
17 years for voluntary manslaughter or involuntary  
18 manslaughter?

19 A. No. It was 15 years on the voluntary  
20 manslaughter.

21 Q. And did you re -- relay that to the Applicant?

22 A. Yes, sir.

23 Q. And did you explain to him that voluntary  
24 manslaughter is 15 years violent?

25 A. I explained to him the sentencing range for

1 voluntary manslaughter.

2 Q. Did you -- do you recall if at any time you  
3 told him he was plead -- he'd be pleading to  
4 involuntary manslaughter?

5 A. I never told him he was pleading to involuntary  
6 manslaughter.

7 Q. And did you explain to him the elements of  
8 voluntary manslaughter?

9 A. I can't remember if I explained the elements of  
10 voluntary manslaughter, but I explained to him that  
11 it was a lesser included offense of the murder  
12 charge that he was on trial for.

13 Q. And did you explain to him that he'd also be  
14 required to plead guilty to attempted armed robbery?

15 A. Yes, sir.

16 Q. And that the range was -- I think it was a  
17 15-year negotiated sentence?

18 A. Yes, sir.

19 Q. And did he ultimately agree to take that guilty  
20 plea?

21 A. He did.

22 Q. And did he, in fact, actually sign the  
23 sentencing sheet in this case?

24 A. He did.

25 Q. Does that sentencing -- sentencing sheet

1 reflect that he's pleading guilty to voluntary  
2 manslaughter or involuntary manslaughter?

3 A. I -- I haven't seen the sentencing sheet, but  
4 if I remember it correctly, it did, in fact,  
5 refer -- it did reflect that he was pleading to  
6 voluntary manslaughter and attempted armed robbery.

7 MR. SCHMECKPEPER: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 BY MR. SCHMECKPEPER:

10 Q. I'm just handing you the sentencing sheet.

11 A. Yes, sir. And he signed the one sentencing  
12 sheet for voluntary manslaughter on the murder  
13 indictment. And the second sentencing sheet for  
14 attempted armed robbery, he signed that as well.

15 Q. And did you believe there was a factual basis  
16 for those pleas?

17 A. Yes, sir.

18 Q. Let's talk about -- and I think he's arguing  
19 Alford. I'm just going to ask you these questions.  
20 You just said you thought there was a factual basis  
21 for a guilty plea. Did the judge explain the  
22 maximum and minimum range -- or the range of  
23 sentences for each of these crimes? And I've got  
24 the transcripts if you'd like to review it.

25 A. Yes, sir. Just refer me to the page and line.

1 I've got it in front of me.

2 Q. If you could look at page 4, starting around  
3 line 10.

4 A. Yes, sir. The judge advised Mr. Weather --  
5 Mr. Weatherspoon that voluntary manslaughter carried  
6 up to 30 years.

7 Q. And then starting on page 17, whether or not  
8 the judge explained the potential sentencing range  
9 for attempted armed robbery.

10 A. You said page 17 of the transcript?

11 Q. I apologize. Ling 5 -- or page 5, line 11.  
12 Scratch that. I apologize again. Page 4, line 17.

13 A. Yes, sir. The judge advised Mr. Weatherspoon  
14 that attempted armed robbery carries up to 20 years.

15 Q. And I'll try to get it right this time. If you  
16 could turn to page 5, starting around line 12.  
17 Would you agree that the trial -- or the -- the  
18 Court explained to the Applicant the rights he's  
19 required to waive in order to plead guilty?

20 A. I agree that the judge advised Mr. Weatherspoon  
21 if he wanted to continue with his trial and he would  
22 have the right to cross-examine the witnesses in the  
23 case and challenge the evidence that the State  
24 sought to introduce against him.

25 Also, I agree that the judge advised him of his

1 right to call witnesses and ask the Court to -- or  
2 have the subpoena power of the Court to compel  
3 witnesses to testify in any defense that he may  
4 assert.

5 Also, that he was advised by the Court of his  
6 right to remain silent. And he was advised by the  
7 Court that if he asserted his right -- or if he --  
8 that his right to remain silent would be -- would  
9 not be held against him and that the jury would be  
10 instructed ---

11 Q. And he ---

12 A. Well, strike that. He -- he was advised he had  
13 a right to remain silent, that his right could not  
14 be held against him, and that he could never be  
15 compelled to incriminate himself. Those were the  
16 rights that he clarifies to him.

17 Q. And he waived those rights and pled guilty?

18 A. Yes, sir.

19 Q. Would you agree that there was a substantial  
20 benefit provided from his guilty plea?

21 A. Yes, sir.

22 Q. I think you mentioned earlier he was facing a  
23 life sentence and the State had a pretty strong  
24 case?

25 A. Yes, sir.

1 Q. Moving on for a movement.

2 THE COURT: I'm sorry. What did you say?

3 BY MR. SCHMECKPEPER:

4 Q. I apologize. Moving on for a moment. Did the  
5 Applicant ever ask you to file an appeal?

6 A. I cannot remember if he ever asked me to file  
7 an appeal. I don't remember ever talking to him  
8 about filing an appeal of his guilty plea. I can't  
9 remember having a conversation with him after he  
10 entered his guilty plea.

11 Q. If he had asked -- if he had asked you for an  
12 appeal, would you have filed an appeal?

13 A. Yes, sir, I would've.

14 MR. SCHMECKPEPER: Beg the Court's indulgence.

15 THE COURT: All right.

16 BY MR. SCHMECKPEPER:

17 Q. Going back to the indictment for one moment.  
18 Did you feel that you were on notice to the elements  
19 of each offense to the extent that you could defend  
20 against each of these charges?

21 A. The -- you're asking if I was aware of the  
22 elements of the offenses he was going to trial for?

23 Q. Did the indictment put you on notice of what  
24 you would have to defend against?

25 A. Yes, sir.

1 MR. SCHMECKPEPER: I have no further questions.

2 THE COURT: Cross?

3 MR. JOHNSON: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. Do you recall that the plea was accepted under  
7 *U.S. v. Alford*?

8 A. Yes, sir.

9 Q. Okay. Was that something that you recall  
10 discussing with Mr. Weatherspoon?

11 A. No. I would -- I recall not discussing that  
12 with Mr. Weatherspoon. Mr. Weatherspoon and I never  
13 discussed an Alford plea, and it was -- I became  
14 aware that it was an Alford plea at the same time  
15 Mr. Weatherspoon was notified by the judge that it  
16 was an Alford -- or that he was going to accept the  
17 plea under *North Carolina v. Alford*.

18 Q. So you would agree that he verified he did not  
19 understand the ramifications of that at the time  
20 because y'all had not discussed it?

21 A. I agree that Mr. Weatherspoon and I had not  
22 discussed a plea under *North Carolina v. Alford*.  
23 And I -- I feel comfortable that Mr. Weatherspoon  
24 would not be able to understand the -- the aspects  
25 of that -- of that type of plea without discussing

1 it with me.

2 I don't know if he'd understand even if he had  
3 discussed it with me, but he certainly, in my  
4 opinion, would not understand that without  
5 discussing it with a lawyer or being explained that  
6 by a judge.

7 Q. Do you believe or do you agree or disagree that  
8 Mr. Weatherspoon with that issue may affect  
9 voluntary and intelligence of his plea?

10 A. If -- if the understanding of what *North*  
11 *Carolina v. Alford*? I'm not sure I understand your  
12 question, Mr. Johnson.

13 Q. I'm sorry, Mr. Stalvey. I'll rephrase.

14 Up until that point, Mr. Weatherspoon had not  
15 been able to acknowledge the facts as alleged by the  
16 Solicitor; is that correct?

17 A. That's correct.

18 Q. Okay. And without the *U.S. v. Alford*, the plea  
19 may not have been accepted?

20 A. That's correct. It did not appear that the --  
21 the transcript, we all reviewed it, will reflect  
22 that Mr. Weatherspoon was not willing and did not  
23 acknowledge the facts that were read or did not  
24 acknowledge that there was a substantial factual  
25 basis for his plea as read by the Solicitor.

1           At that point, the Court began to inquire -- or  
2           the line of questioning from the Court to  
3           Mr. Weatherspoon was certainly -- or certainly  
4           reflected that which was typically -- or that which  
5           typically takes place during an Alford plea.

6           It appears, and from what I remember, once the  
7           judge asked him those questions, the judge accepted  
8           the plea under *North Carolina v. Alford*. So I -- I  
9           don't think that Mr. Weatherspoon ever was advised  
10          that he was entering a plea under *North Carolina v.*  
11          *Alford*.

12          I don't -- I mean, I -- I -- I think he entered  
13          the plea freely and voluntarily, but whether he was  
14          explained -- I know I never explained what *North*  
15          *Carolina v. Alford* was to him. And I -- I think it  
16          would be up to this Court to decide whether Judge  
17          Miller explained that to him.

18          Q.    You also saw the transcript where it says  
19          initially that he was pleading to involuntary  
20          manslaughter. Do you remember that the court  
21          reporter -- that the Court -- was the Court  
22          confused? Did the Court say involuntary  
23          manslaughter, or did they say involuntarily  
24          manslaughter and you disagree with the transcript?

25          A.    No. I agree that the transcript is accurate.

1 I -- I don't remember that being a -- I don't  
2 remember Judge Miller saying involuntary  
3 manslaughter during the plea, but I certainly trust  
4 that the court reporter accurately recorded what --  
5 what happened. And it doesn't -- it would not  
6 surprise me if Judge Miller just misspoke during the  
7 plea and said involuntary manslaughter instead of  
8 voluntary manslaughter.

9 And I -- I point out that at the beginning of  
10 the plea, the Court read out involuntary  
11 manslaughter, so I think Judge Miller might've just  
12 had that stuck in his mind and that's why he  
13 misspoke throughout the plea.

14 Q. All right. Mr. Weatherspoon seems to believe  
15 and I think he testified that he thought that there  
16 was some pressure being placed upon you potentially  
17 to get him to plead guilty.

18 He is -- was there any -- can you confirm or  
19 deny Mr. Weatherspoon's suspicions that there were  
20 off-the-record conversations that may have put  
21 pressure upon your case to plead guilty?

22 A. No. I was -- I was under no pressure to -- to  
23 make him plead guilty. We had already started the  
24 trial. I was prepared. We were going forward.

25 I -- I'm -- so there was no pressure on me to -- to

1 make him enter a plea, and I certainly didn't feel  
2 any pressure from the judge.

3 I thought that by way of the State making a  
4 mistake and not the Solicitor, but the police  
5 officer or the Greer Police Department, by them  
6 failing to follow the discovery rules, we had an  
7 opportunity to get a -- a plea that was, I thought,  
8 in his best interest.

9 So I -- I was under no pressure from the judge  
10 or anybody else to do anything other than -- do  
11 anything in his case. I was -- I was doing what I  
12 thought was in his best interest. And when I say  
13 "him," I'm talking about Mr. Weatherspoon.

14 MR. JOHNSON: Yes, sir. Thanks for answering  
15 my questions. No further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. SCHMECKPEPER: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SCHMECKPEPER:

20 Q. Mr. Johnson asked you whether or not you were  
21 able to explain the ramifications of Alford to the  
22 Applicant. Compared to a regular guilty plea, what  
23 are the actual rami -- ramifications of an Alford  
24 plea in terms of practical consequences?

25 A. There are none in my opinion.

1 Q. And you said you still believe that his guilty  
2 plea was voluntary and knowingly?

3 A. Yes.

4 Q. And do you believe that if this had been an  
5 Alford plea from the get go, he would've decided to  
6 decline to plead guilty?

7 A. Well, let me go back to what your -- your  
8 previous question and you'd asked if I was -- and  
9 I'll -- I'll answer your next question after that,  
10 but you asked if I thought that his plea was entered  
11 voluntarily and knowingly.

12 I -- I've reviewed the transcript. I -- I --  
13 in my opinion, Mr. Weatherspoon knew what he was  
14 doing. Whether he was advised of all of his  
15 Constitutional rights by the Court, I can't -- I  
16 don't know.

17 But as far as my conversations with  
18 Mr. Weatherspoon prior to his plea, he understood  
19 that he was pleading guilty to the charge and that  
20 he was going to receive a 15-year sentence. He  
21 was -- he understood that because we were -- a lot  
22 of our conversation had to do with how much time he  
23 was going to get or how much credit he was going to  
24 get for the time that he would serve, so he  
25 understood the sentence he was going to get and

1 understood he was entering a guilty plea.

2 He certainly did not -- did not really want to  
3 go through with it, but after talking to his family  
4 and after talking to me for a good while, he -- he  
5 decided that -- to go through with it. I know he  
6 regrets it now, but I think at the time it was in  
7 his best interest and I still feel that way today.

8 And I'm sorry. Ask me the last question that  
9 you asked me, and I'll be happy to respond.

10 MR. SCHMECKPEPER: That's fine. I don't have  
11 any further questions, Your Honor.

12 THE COURT: All right. Any -- any other  
13 questions?

14 MR. JOHNSON: No recross, Your Honor.

15 THE COURT: Any objection to me asking a  
16 question?

17 MR. JOHNSON: No, sir.

18 THE COURT: Mr. Stalvey, the sentencing sheet  
19 for voluntary manslaughter references it being a  
20 waiver. I don't know why. Do you know why it was  
21 styled as a waiver as opposed to a lesser included?  
22 Do you have the sentencing sheet?

23 THE WITNESS: Yes, sir. I'm looking at the  
24 sentencing sheet. I do see -- Judge ---

25 THE COURT: It says "as indicted" maybe waiver

1 is scratched out. I don't -- I don't know, but  
2 undoubtedly voluntary manslaughter is a lesser  
3 included offense of murder, correct?

4 THE WITNESS: Yes, sir, Your Honor.

5 THE COURT: All right. I don't have any other  
6 questions. That's all I have. You -- you can step  
7 down. Thank you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Mr. Johnson, does -- does your  
10 client understand that if his application is granted  
11 or his appeal is granted -- well, this is from my  
12 perspective. If his application is granted, he's  
13 back in the saddle on murder and attempted armed  
14 robbery, he understands that?

15 MR. JOHNSON: I've had this discussion with him  
16 a couple of times.

17 THE COURT: All right. That's fine if he wants  
18 to go forward with it.

19 Okay. Any other witnesses from the State?

20 MR. SCHMECKPEPER: Your Honor, the State rests.

21 THE COURT: All right. Any arguments you'd  
22 like to present to me, Mr. Johnson? I've -- what  
23 I've got is some issues about what are the Appellate  
24 issues and what are the PCR issues. What's the  
25 State's position on the belated appeal, that he

1 asked his lawyer to file an appeal?

2 MR. SCHMECKPEPER: Your Honor, the State's  
3 position is that counsel's testimony is credible.  
4 He said that he doesn't remember being asked to file  
5 an appeal. That if he'd been asked to file an  
6 appeal, he would've filed one.

7 THE COURT: But the Applicant said, "I never  
8 got a chance to ask him because I was -- they  
9 ushered me out of the courtroom."

10 MR. SCHMECKPEPER: Your Honor, maybe I'm  
11 remembering the testimony differently. I thought  
12 the Applicant said he asked him as he was leaving  
13 the courtroom.

14 THE COURT: Oh, I -- is that what he said,  
15 Mr. Johnson?

16 MR. JOHNSON: I believe that's correct.

17 THE COURT: Okay. All right. Are these issues  
18 about the shortcomings in the plea coll -- plea  
19 colloquy, you're saying they go to his -- whether or  
20 not the plea was entered freely and voluntarily?

21 MR. JOHNSON: Yes, sir, Your Honor. I -- my  
22 personal stance as far as the voluntary/involuntary  
23 manslaughter, is I don't know that -- I think there  
24 was some understanding of the minimum and maximum  
25 sentences variances. Now, could that have ---

1 THE COURT: There was -- was an understanding?

2 MR. JOHNSON: I think -- I think for the  
3 minimum and maximum sentence.

4 Now, what he's telling me, and he's never  
5 indicated to me otherwise, was that essentially  
6 looking back on it, that was an issue that he didn't  
7 really understand. I guess he got down there and he  
8 started reading and he found out that maybe the  
9 process there was inappropriate.

10 Furthermore, Judge, I think the biggest thing  
11 here is probably the Alford issue because I think  
12 for a plea to be knowingly, intelligently, and  
13 voluntarily made, I guess speaking in the common  
14 sense way, you kind of got to understand what's  
15 going on. And if he was never -- if it was never  
16 explained to him why he was answering certain  
17 questions and where the Court was going with those  
18 questions, it may have been that he -- he'd had to  
19 proceed to trial and finish the trial.

20 It looked like to me that that's where they  
21 were going until the point in time where the --  
22 where the judge accepted it as an Alford plea, but  
23 the furthest he got to accepting the facts alleged  
24 were "I guess so." And with him not understanding  
25 that the plea was even going to be versus -- under

1           U.S. v. *Alford*, I would submit to you that that plea  
2           was not knowingly, voluntarily, or intelligently  
3           made.

4           THE COURT: All right. Mr. Schmeckpeper?

5           MR. SCHMECKPEPER: First, Your Honor, I'd just  
6           like to point out that guilty pleas are based on  
7           contract principles. And the only thing the judge  
8           need -- the Court needs to accept a guilty plea is  
9           for it to be knowingly, voluntarily, and  
10          intelligently entered.

11          And that means that the judge has explained the  
12          Constitutional rights being waived, specifically the  
13          right to trial, right to cross-examine witnesses,  
14          and the right to remain silent, and has gone over  
15          the maximum and minimum sentences. And this --  
16          there has to be a factual basis for the guilty plea.

17          THE COURT: Oh, doesn't the defendant at some  
18          point have to admit his guilt?

19          MR. SCHMECKPEPER: Yes, Your Honor. And ---

20          THE COURT: And --- go ahead.

21          MR. SCHMECKPEPER: --- and in this case he did  
22          that. Now, I think -- I think the *Alford* -- the  
23          *Alford* issue is kind of a red herring here.

24          First with respect to voluntary manslaughter,  
25          the applicant admitted to the facts of those -- of

1 the -- the facts of that charge. The "I guess so"  
2 only came in with respect to the attempted armed  
3 robbery. But prior to that, he admitted that he  
4 provided his sister with a gun and that she's going  
5 on a drug deal. Let me find it -- I can find the  
6 exact ---

7 THE COURT: Well, he said -- he said that he  
8 gave -- he gave her a gun and she was going to go  
9 sell drugs. You may have a point if he said, "I  
10 gave her a gun and I knew she was going there to rob  
11 her." So I'm trying to connect the dots, because on  
12 the one hand it seems like Mr. Weatherspoon got a  
13 pretty dog on good deal because of the road they  
14 were going down.

15 But the plea -- the plea transcript says --  
16 when he said, "Do you think the State can convince  
17 a -- or likely convince a jury with this evidence?"  
18 And he said, "No, I really don't." And he said, you  
19 know, they went on and on and on.

20 At the end the judge said, "Do you think  
21 there's at least a probability," or something like  
22 that, and he said, "I guess so." And then he -- the  
23 judge -- and the judge said, "Well, I'll take it as  
24 an Alford plea."

25 MR. SCHMECKPEPER: And, Your Honor, and that

1 specific section is if it's only with respect to the  
2 attempted armed robbery.

3 Looking at page 8, the judge even asked, "And  
4 you understood that going in to commit a crime with  
5 a handgun and that crime being going in to sell  
6 drugs, it's a reasonable natural consequence that  
7 shots could be fired and people could die? Do you  
8 understand that?" "Yes."

9 THE COURT: Is the law, hand of all?

10 MR. SCHMECKPEPER: That -- well, Your Honor,  
11 the hand of one, the hand of all, the accomplice or  
12 the extra person is responsible for all crimes or  
13 defenses that are incidental to the actual crime.  
14 And I think ---

15 THE COURT: And you're 100 percent correct on  
16 the robbery. Okay. If -- if -- if he knew she was  
17 going in to steal money from that guy at gunpoint,  
18 you've got it.

19 But according to what he said, that's what I've  
20 got to go by because it's got to be free and  
21 voluntary, he said she was going in there to sell  
22 drugs.

23 MR. SCHMECKPEPER: And, Your Honor, and --  
24 Judge ---

25 THE COURT: Is shooting death a natural and

1       probable consequence of a garden variety drug  
2       transaction?

3               MR. SCHMECKPEPER:  And, Your Honor, the fact  
4       that he knew she was going in there armed with a gun  
5       that he provided her, I think it's definitely  
6       natural consequences, definitely an incidental.

7               In any event, this is a -- this is an offense  
8       that the Applicant pled guilty to and the Applicant  
9       admitted that this was a -- that it was natural  
10       consequence.

11              I mean, this isn't a trial where we're  
12       discussing whether or not it's a directed verdict.  
13       This is after the Applicant has taken advantage of a  
14       beneficial plea deal, a 15-year negotiated sentence  
15       with counsel even -- when stated the trial wasn't  
16       going ---

17              THE COURT:  I'm sorry, but you're going too  
18       fast.  What'd you say?

19              MR. SCHMECKPEPER:  I apologize.  This is a --  
20       this is a situation where the Applicant took  
21       advantage of a beneficial plea deal, and now he's  
22       trying to get off on a technicality.

23              Your Honor, I think ---

24              THE COURT:  And face life.

25              MR. SCHMECKPEPER:  And face a life sentence.

1           THE COURT: Seems to me, the prosecutor would  
2 say, "Shoot yeah, let's go try him again. We had a  
3 good case until the cops messed it up."

4           MR. SCHMECKPEPER: And, Your Honor, he took  
5 advantage of that mess up.

6           THE COURT: Well, I'm saying, why wouldn't the  
7 prosecutor -- why wouldn't the State say, "Yeah, now  
8 the mess up on discovery is irrelevant because now  
9 they have the photos. They can't complain about  
10 that. Let's go try this guy for murder"?

11          MR. SCHMECKPEPER: Well, Your Honor,  
12 respectfully, this isn't about whether or not the  
13 State wants to retry him or not or whether or not  
14 he'd get a life sentence or not.

15          The question is whether or not he's shown -- or  
16 he's met his burden of proof that his plea wasn't  
17 knowing, intelligent, and voluntary.

18          When looking at the transcript and talking and  
19 listening to the credible testimony of counsel, it's  
20 clear the Applicant knew what he was getting into.  
21 It's clear that he understood what he was pleading  
22 guilty to.

23          THE COURT: All right. Okay. I understand  
24 what you're saying.

25          All right. Mr. Johnson, why is this a PCR

1 issue, just because of the free and voluntariness,  
2 not because of ineffective assistance? What was  
3 ineffective about what Mr. Stalvey did or didn't do?

4 MR. JOHNSON: And, Your Honor, I don't think  
5 testimony was given on that issue specifically.

6 THE COURT: You're pointing to irregularities  
7 in the plea colloquy, but I would assume that most  
8 folks would agree that Mr. Stalvey at least did what  
9 he could do to get him a pretty good deal under  
10 the -- at least in comparison to what he was facing.

11 MR. JOHNSON: Well, Your Honor, I -- I practice  
12 criminal defense too, and I think it's a great deal  
13 and I -- I don't think that's necessarily the issue  
14 before us and I guess that's the problem.

15 And I have spoken with Mr. Weatherspoon about  
16 that, and I -- I think he understands what he  
17 potentially is getting himself into, and nonetheless  
18 it's a situation where ---

19 (Applicant talking to counsel.)

20 MR. JOHNSON: I'm sorry, Judge.

21 THE COURT: It's all right.

22 MR. JOHNSON: But I believe, you know, when we  
23 go through the plea colloquy and we go through the  
24 various facts that we need to put on the record so  
25 that we can protect the Constitutional rights, and I

1 think when that isn't followed or when that is a  
2 situation where it's obvious from looking at even  
3 from the transcript that the client may not have  
4 understood what was going on, I think that's the  
5 most dangerous thing.

6 I mean, he had no clue that Alford was going on  
7 and it just happened. And I think you have an  
8 instance where that wasn't discussed with his --  
9 with his attorney or anything like that, and that's  
10 -- that's something he can't complain about, but he  
11 had no clue until he got down there and started  
12 refocusing and actually saw the transcript himself  
13 and I ask you to consider that.

14 THE COURT: All right. Anything else from the  
15 State?

16 MR. SCHMECKPEPER: Nothing, Your Honor.

17 THE COURT: And you said the victim's family is  
18 present?

19 MR. SCHMECKPEPER: Yes, Your Honor. We have  
20 representatives of the victim here. We have Richard  
21 Griffith.

22 THE COURT: Where's Mr. Griffith?

23 MR. GRIFFITH: (Standing.)

24 MR. SCHMECKPEPER: Then we have Samantha and  
25 James Howard.

1           THE COURT: Okay. All right. They understand  
2 that they -- they haven't been called as witnesses,  
3 but I'm going to extend them the courtesy and  
4 opportunity to tell me anything they want to tell  
5 me. Just keep your comments directed to me and this  
6 is not actual evidence in the case.

7           Anything you'd like to say, sir? And your name  
8 again?

9           MR. GRIFFITH: I am Richard Griffith. The  
10 victim was my brother-in-law.

11          THE COURT: Yes, sir.

12          MR. GRIFFITH: On that morning, we were  
13 supposed to go down and have a title changed over to  
14 a car that he had given me. And as far as him doing  
15 drugs or anything like that, no, sir, he did not do  
16 that. I know that for a fact because he had been  
17 through a liver transplant and he had some other  
18 health issues. And he was an all around good  
19 fellow. He'd help anybody he can.

20          THE COURT: All right. Thank you, sir. Anyone  
21 else? You're not obligated, but you can if you  
22 want.

23          MS. HOWARD: No. That's okay.

24          THE COURT: Thank you. All right.

25          Mr. Weatherspoon, what I'm going to do, is I'm

1 review the record in this case, which includes the  
2 information that's been given to me, the plea  
3 transcript and the accompanying documents. I'll be  
4 signing an order at some point that will say one of  
5 two things.

6 One, it will grant your application. Absent  
7 any appeals filed by the State, you will be retried  
8 at some point for murder and attempted armed  
9 robbery. You understand that?

10 THE APPLICANT: Yes, sir.

11 THE COURT: The other option I will have  
12 depending upon my review of the material is that I  
13 will deny your application.

14 In that instance, you can file an appeal and  
15 Mr. Johnson can explain to you what your time limits  
16 are on that because he -- I'll leave it to him to  
17 calculate all that. I'm not going to do that. You  
18 understand that?

19 THE APPLICANT: Yes, sir.

20 THE COURT: Do you have any questions?

21 THE APPLICANT: No, sir. Not at the time.

22 THE COURT: All right. Thank you, sir. You  
23 can have a seat. Anything else on this case?

24 MR. SCHMECKPEPER: Nothing from the State, Your  
25 Honor.

1 THE COURT: All right. Thank you very much.

2 MR. JOHNSON: Thank you, Judge.

3 (Proceedings concluded at 3:29 p.m.)

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

2

3                   STATE OF SOUTH CAROLINA

4                   COUNTY OF GREENVILLE

5

6                   I, the undersigned, Lisa Scott, Circuit Court  
7                   Reporter for the Thirteenth Judicial Circuit of the  
8                   State of South Carolina, do hereby certify that the  
9                   foregoing is a true, accurate and complete  
10                  transcript of record of all the proceedings and the  
11                  evidence introduced in the trial of the captioned  
12                  cause, relative to appeal in the Circuit Court for  
13                  Greenville County, South Carolina, on the 14th day  
14                  of June, 2016.

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

17

18

January 30, 2017

19

20

/s/Lisa Scott

21

22

*Lisa Scott*  
*Circuit Court Reporter*

23

24

25

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) THIRTEENTH JUDICIAL CIRCUIT

Michael A. Weatherspoon,  
S.C.D.C. No. 352593

) C.A. No. 2015-CP-23-5719

) Applicant,

) v.

) ORDER OF DISMISSAL  
(with prejudice)

) State of South Carolina,

) Respondent.

) ENTERED COMPUTER

2016 NOV 18 PM 3 29

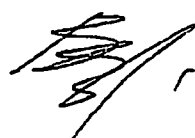
FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENHISMER

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 17, 2015. Respondent filed its Return on February 3, 2016. An evidentiary hearing into the matter was convened on June 14, 2016, at the Greenville County Courthouse. Applicant was present and testified in his defense. Applicant's plea counsel, Alex R. Stalvey, Esquire, also testified. Applicant was represented by Brian P. Johnson, Jr., Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The Applicant is incarcerated in the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2013 term of General Sessions for Murder (2013-GS-23-004778), and Attempted Armed Robbery (2013-GS-23-004779). Alex R. Stalvey, Esquire represented the Applicant.

On November 12, 2014, the Applicant pled guilty to voluntary manslaughter and attempted armed robbery. The Honorable Edward W. Miller sentenced the Applicant to concurrent



terms of 15 years for attempted armed robbery and 15 years for voluntary manslaughter. The Applicant did not appeal.

### **Allegations**

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

1. Ineffective assistance of counsel.
  - a. "Failure to investigate, prepare for trial, request continuance"
    - i. "Fail to object sufficiency of indictment."
  - b. "Failure to inform of the right of appeal"
  - c. "Failure to ask for a directed verdict"
  - d. Failure to offer a proper Instruction of Accomplice liability"
    - i. "The court erred in failing to give a mere presence charge as part of that instruction."
2. "Actual Innocence and Insufficiency of Evidence"
  - a. "The State doesn't have enough evidence to even come up with a indictment. Never produce my statement they said I gave to them. That statement were used to come up with the arrest warrant."
3. "Prosecutor Misconduct"

At the evidentiary hearing, Applicant proceeded on the allegation that his guilty plea was involuntary and on the allegation that his plea counsel was ineffective for failing to move to quash the indictment and failing to file a direct appeal.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I have 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, I have reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), I have made the following findings of fact and conclusions of law based upon all of the probative evidence presented.



### Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), 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, (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).

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." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have instead insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).



### Voluntariness of Plea

The applicant was indicted for murder and armed robbery. After his trial began, he pled to voluntary manslaughter and attempted armed robbery. The applicant claims the plea was involuntary because the plea judge referred to the manslaughter charge as involuntary manslaughter instead of voluntary manslaughter. The penalties for these two offenses are certainly much different, but it is clear from reading the record that the applicant was advised by the court that the maximum time he faced was 30 years, which is the maximum sentence for voluntary manslaughter. Additionally, the negotiated sentence was 15 years, which is far in excess of the 5 year maximum for involuntary manslaughter. It is abundantly clear that whatever label was put on the offense by the plea judge, the applicant knew exactly what he was pleading to. Additionally, the record establishes that the applicant entered a plea to attempted armed robbery, which carries a maximum of 20 years. The negotiated plea was to 15 years, to be served concurrently with the voluntary manslaughter sentence. Therefore, even if the plea judge misstated the voluntary manslaughter offense as involuntary manslaughter, that did not affect the voluntariness of the applicant's plea to attempted armed robbery.

Page 5 of the transcript reflects the applicant pled guilty to both offenses. He was advised that he could continue with his jury trial, that he had the right to confront witnesses, and that he had the right to remain silent; the applicant testified to the plea judge that he understood those rights and wanted to give them up and plead guilty. The plea judge asked the applicant if he was satisfied with his attorney and he said he was.

The case against the applicant was based on accomplice liability (hand of one hand of all). There was no real dispute that the applicant drove his sister to the victim's residence at approximately 9:00 a.m. on the day of the incident. The applicant stayed in the car while his sister



went inside. Once inside the residence, gunplay ensued and both the victim and sister were shot and died of their wounds. The State contended the applicant gave a statement to law enforcement that he and his sister were planning to "hit a lick", i.e., rob the victim of money and guns and that he gave his sister the loaded gun and waited for her in the car. An eyewitness would have testified that the sister attempted to rob the victim and the shooting occurred. There were text messages from the defendant to his sister and several others that he needed money and wanted to hit a lick.

Trial/plea counsel testified that once the trial began, he discovered that the State had not produced some photographs that should have been produced during discovery. He testified that he saw an opportunity to get a pretty good plea deal or get a mistrial. There is no evidence the case would have been dismissed with prejudice for discovery abuse.

During the plea colloquy, the solicitor went over the above facts. The judge asked the applicant if the facts were substantially true, and the applicant replied "[n]o, sir." He stated that he had given his sister a gun that morning and drove her to the victim's residence to sell drugs. He stated that he had no idea that his sister was going to try to rob the victim. At this point during the plea, the judge asked the applicant if he believed there was a substantial likelihood that the jury would believe the State's case. The applicant replied on page 10, lines 9-10, "I would say no, Your Honor, but that's just my opinion." In the response to the same question, the applicant replied on page 12, "I have no idea, sir." A few lines down, he stated in response to the same basic question, "I guess so."

The plea judge then stated that he would accept the plea under North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), and sentenced the applicant to two concurrent 15 year terms. At that point, the applicant asked if he would get credit for time served, the judge said he would, and the plea was concluded.

The applicant claims he had no idea what an Alford plea was. Trial counsel testified that he never discussed Alford with the applicant and that the applicant probably did not understand what an Alford plea was. In Alford, the U.S. Supreme court recognized the right of someone who is accused of a crime to negotiate with the State. If an Alford plea is entered, the defendant tells the court he is not guilty but that he wants to plead guilty to get the benefit of a deal. The defendant is sentenced as if he had admitted guilt.

In this case, it is clear that the applicant was not formally admitting he was guilty of a crime. It is clear that he wanted to plead guilty to get the benefit of a very good sentencing deal, i.e., the avoidance of a 30 year to life sentence for murder I exchange for a negotiated sentence of only 15 years. While the plea colloquy does not reflect the plea was initially presented as an Alford plea, it is abundantly clear that the applicant wanted to plead guilty and avoid a potential 30 year to life sentence.

I conclude that while the applicant was ignorant as to what an Alford plea was, he received the exact plea bargain he sought. Trial counsel performed extremely effectively in securing this deal for the applicant. When it became apparent that the State had not complied with discovery rules, counsel saw and took advantage of the opportunity to get a good result for his client. I conclude that counsel would have been ineffective if he had not sought this deal for the applicant and that he would have been ineffective had he tried to have the plea vacated based on his client's ignorance of Alford. Even if trial counsel was ineffective for not explaining Alford to the applicant, there is absolutely no credible evidence that the applicant would not have pled guilty had he known exactly what an Alford plea was. See Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010) ("A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below



an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.”).

The applicant testified that trial counsel never told him what he was pleading to or how much time he would get. I disagree, as I find credible trial counsel’s testimony that he explained to the applicant that the plea was for two concurrent 15 year sentences for voluntary manslaughter and attempted armed robbery. Trial counsel’s performance met and exceeded the objective standard of reasonableness. Even if it did not, there is no credible evidence that (1) had the applicant known what an Alford plea was or (2) had the plea judge used the term “voluntary” instead of “involuntary” when reviewing the manslaughter charge, that the applicant would not have pled guilty.

#### **Failure to Move to Quash Indictment**

The applicant claims the indictment was deficient in that it did not allege that he killed the victim. This allegation has no merit, as the indictment sufficiently alleged accomplice liability. He also alleges that trial counsel should have moved to quash the indictment because it was not filed within 90 days of his arrest. This is an apparent reference to Rule 3(c), SCRCrimP. South Carolina’s appellate courts have held in State v. Culbreath<sup>1</sup> and State v. Edwards<sup>2</sup> that this rule is administrative and not jurisdictional and does not invalidate a warrant or prevent subsequent prosecution.

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<sup>1</sup> 282 S.C. 38, 316 S.E.2d 681 (1984).

<sup>2</sup> 374 S.C. 543, 649 S.E.2d 112 (S.C. Ct. App. 2007) *rev'd on other grounds* by 374 S.C. 504, 682 S.E.2d 820 (2009).



### Failure to Appeal

The applicant maintains that he wanted to appeal after the plea was entered. I find credible trial counsel's testimony that he does not recall that the applicant asked him to appeal. I also find credible trial counsel's testimony that if the applicant had asked him to appeal, he would have filed an appeal. Since trial counsel did not file an appeal, I conclude the applicant did not ask him to.

Since there was no objection made at the time of the plea that the plea was not entered freely and voluntarily, the proper mode of attack is through the channel of post-conviction relief proceedings. State v. McKinney, 278 S.C. 107, 292 S.E. 2d 598 (1982).

Even if the applicant wished to appeal from his plea on an issue other than whether the plea was entered freely and voluntarily, the application must still be denied. After a trial, counsel is required to make sure a defendant is made fully aware of his right to appeal. "However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); Turner v. State, 380 S.C. 223, 670 SE2d 373 (2008).

An extraordinary circumstance requiring counsel to advise his client of the right to appeal from a guilty plea may arise when the defendant inquires about an appeal. The court has concluded that the applicant did not inquire about an appeal, so there is not such an extraordinary circumstance here.



Another extraordinary circumstance may exist in any given case when plea counsel legitimately believes that an appeal would have merit. Here, it is not likely that an appeal from the pleas would have had any merit. The court concludes that there was no reason for trial counsel "to think a rational defendant would want to appeal." See Turner, cited above.

#### **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, I find Applicant failed to present any evidence regarding such allegations. Accordingly, I find Applicant has abandoned any such allegations.

#### **CONCLUSION**

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


The Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRPC; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice 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. Applicant must be remanded to the custody of the South Carolina Department of Corrections.



November 4, 2016  
Sumter, S.C.



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GEORGE C. JAMES, JR.  
Presiding Judge  
Thirteenth Judicial Circuit

