

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Orangeburg County

Honorable Diane Schafer Goodstein, Circuit Court Judge

---

RECEIVED

AUG 08 2017

S.C. SUPREME COURT

JARROD JACQUES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000172

---

APPENDIX

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Appellate Defender

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**INDEX**

|                                                                           |    |
|---------------------------------------------------------------------------|----|
| INDEX .....                                                               | i  |
| GUILTY PLEA TRANSCRIPT DATED SEPTEMBER 22, 2011.....                      | 1  |
| APPLICATION FOR POST-CONVICTION RELIEF FILED JUNE 26, 2012.....           | 20 |
| RETURN DATED NOVEMBER 28, 2012 .....                                      | 27 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT<br>DATED OCTOBER 25, 2016 ..... | 32 |
| ORDER OF DISMISSAL FILED FEBRUARY 2, 2017 .....                           | 62 |
| INDICTMENT AND SENTENCING SHEET .....                                     | 69 |

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF ORANGEBURG ) COURT OF GENERAL SESSIONS  
 3 ) No. 2011 GS 38 1075

4 STATE OF SOUTH CAROLINA )  
 5 )  
 6 versus )  
 7 JARROD JACQUES )  
 8 Defendant )  
 9 )  
 10 )

Orangeburg, South Carolina  
 September 22, 2011

11 B E F O R E :

12 HONORABLE EDGAR W. DICKSON, Presiding Judge  
 13

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

15 For the State:

\_\_\_\_\_  
 SORENSON, Esq.  
 Solicitor

16 For the Defendant:

\_\_\_\_\_  
 CHISOLM, Esq.

17  
 18 Reporter Present:

HARRY A. WALKER

19  
 20

21

22

23

24

25

HARRIET P. BENNETT  
 Reporter, S. C. Court Administration  
 46 Regency Oaks Drive  
 Summerville, S.C. 29485

1 (The within matter came before the Court for hear-  
2 ing on September 22, 2011)

3 SOLICITOR: This is Jarrod Jacques, Your Honor --  
4 first name is J A R R O D -- who is pleading guilty on  
5 Indictments 2011 GS 38 1075.

6 The original Indictment was for murder, and we are  
7 accepting a guilty to attempted murder.

8 THE COURT: Please swear Mr. Jacques.

9 (Defendant sworn by the Clerk for purposes of  
10 this matter)

11 THE COURT: All right, Mr. Jacques, you are twenty-four  
12 years old?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right, and how far did you go in  
15 school?

16 DEFENDANT: Tenth grade, sir.

17 THE COURT: Where were you going?

18 DEFENDANT: (inaudible) High.

19 THE COURT: And why did you stop?

20 DEFENDANT: I got arrested.

21 THE COURT: Not for this charge?

22 DEFENDANT: No, sir.

23 THE COURT: All right, Mr. Jacques, before you got  
24 arrested on this charge, were you working anywhere?

25 DEFENDANT: No, sir. I was going to school.

1 THE COURT: Where were you going to school?  
2 DEFENDANT: (Inaudible) High.  
3 THE COURT: And you're 24?  
4 DEFENDANT: Yes, sir.  
5 THE COURT: How are you going to school? You hav--  
6 en't been in jail since the tenth grade have you?  
7 DEFENDANT: No, sir. I did a YOA sentence.  
8 THE COURT: Okay.  
9 DEFENDANT: I did some time in County Jail and they  
10 sentence me to a YOA, and I did like fourteen months up the  
11 road.  
12 I came back home and stayed home seven months and I got  
13 violated for failing a drug test.  
14 THE COURT: Okay.  
15 DEFENDANT: I went back and came back home. I stayed  
16 home and three months they violated me again for a lateral  
17 charge for -- I don't know really.  
18 I came back home and stayed home two months this time  
19 and I'm here right now.  
20 THE COURT: And then you got here?  
21 DEFENDANT: Yes, sir.  
22 THE COURT: Okay. Mr. Jacques, have you ever been  
23 treated for any mental health issues?  
24 DEFENDANT: No, sir.  
25 THE COURT: Are you taking any kind of medication?

1           DEFENDANT: No, sir.

2           THE COURT: Are you under the influence of alcohol  
3 or drugs?

4           DEFENDANT: No, sir.

5           THE COURT: You are thinking clearly and know exactly  
6 what you're doing here today?

7           DEFENDANT: Yes, sir.

8           THE COURT: And it's my understanding you are here to  
9 plead guilty to attempted murder?

10          DEFENDANT: Yes, sir.

11          THE COURT: And you were originally indicted for a  
12 murder charge?

13          DEFENDANT: Yes, sir.

14          THE COURT: Is that correct?

15          DEFENDANT: Yes, sir.

16          THE COURT: Now, the only recommendation from the  
17 Solicitor's Office I have is that you be sentenced to from  
18 ten to twenty-five years. Is that your understanding?

19          DEFENDANT: Yes, sir.

20          THE COURT: Okay, has anybody promised you anything  
21 to get you to plead guilty?

22          DEFENDANT: No, sir.

23          THE COURT: Has anyone threatened you to get you to  
24 plead guilty here today?

25          DEFENDANT: No, sir.

1 THE COURT: Are you pleading guilty freely and volun-  
2 tarily?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay. Mr. Chisolm, you represent Mr.  
5 Jacques?

6 MR. CHISOLM: I do, Your Honor. One matter I don't  
7 think has been addressed.

8 THE COURT: Okay.

9 MR. CHISOLM: We talked about pleading under Alford.

10 THE COURT: All right. Mr. Jacques, it's my under-  
11 standing that you wish to enter a plea under North Carolina  
12 versus Alford.

13 That means that should the State -- should you go to  
14 trial on these charges, you believe there is a substantial  
15 likelihood that you would be found guilty following that  
16 trial if you go to trial.

17 Is that correct?

18 DEFENDANT: Yes, sir.

19 THE COURT: Whenever I say anything regarding how do  
20 you plead or anything like this, I'm noting on the record  
21 you are pleading under North Carolina versus Alford.

22 Okay?

23 DEFENDANT: Yes, sir.

24 THE COURT: Mr. Chisolm, have you gone over the evi-  
25 dence the State has with the Defendant?

1 MR. CHISOLM: I have, Your Honor.

2 THE COURT: And you have advised him of the law, the  
3 possible sentences and his constitutional rights?

4 MR. CHISOLM: I have, Your Honor.

5 THE COURT: And has he understood everything you have  
6 discussed with him?

7 MR. CHISOLM: He has, Your Honor.

8 THE COURT: Okay. All right, sir. Did he tell you  
9 that he wishes to plead guilty to this charge?

10 MR. CHISOLM: He did.

11 THE COURT: Do you believe it's in his best interests  
12 to plead guilty?

13 MR. CHISOLM: Yes, sir, I do.

14 THE COURT: Mr. Jacques, your attorney has told me  
15 that he has discussed this case with you, is that correct?

16 DEFENDANT: Yes, sir.

17 THE COURT: And he has reviewed the evidence with you  
18 in this case?

19 DEFENDANT: Yes, sir, he did.

20 THE COURT: And he has gone through the law, any possi-  
21 ble sentences and your constitutional rights with you. Is  
22 that correct?

23 DEFENDANT: Yes, sir.

24 THE COURT: Has he had plenty of time to meet with  
25 you?

1 Have you had plenty of time with him?

2 DEFENDANT: I did, but I didn't.

3 THE COURT: Okay, do you need some more time to talk  
4 with him?

5 DEFENDANT: Yes, sir, I do.

6 THE COURT: Then we'll stand down right now, and you  
7 can go talk with him right now. Okay?

8 We'll pick back up with this. Okay?

9 DEFENDANT: Okay

10 (Whereupon, other matters taken up by the Court for a  
11 brief time, after which this matter resumed)

12 THE COURT: Ms. Harry Dot, we are back on the record  
13 with Jarrod Jacques. He has taken a short time to talk  
14 with Mr. Chisolm. I believe he had a couple more questions  
15 he needed to ask his attorney.

16 Is that right, sir?

17 DEFENDANT: Yes, sir.

18 THE COURT: And you have now finished with Mr.  
19 Chisolm?

20 DEFENDANT: Yes, sir.

21 THE COURT: Okay. Was that enough time?

22 DEFENDANT: Yes, sir.

23 THE COURT: You don't need to talk to him any more?

24 DEFENDANT: No, sir.

25 THE COURT: Did he answer all your questions?

1 DEFENDANT: Yes, sir.

2 THE COURT: Okay. Are you satisfied with his services  
3 as your attorney?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you want a jury trial on the charge?

6 DEFENDANT: No, sir.

7 THE COURT: All right, sir. Mr. Jacques, do you un-  
8 derstand that if you do not agree with my decision you  
9 have ten days from today's date in which to file a notice  
10 of intent to appeal?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. Mr. Jacques, the Indictment I  
13 have is Indictment Number 2011 GS 38 1075 which was true-  
14 billed by the Grand Jury on May 25th of 2011.

15 The Indictment is for murder, and the State is allow-  
16 ing you to plead to attempted murder, as I understand it,  
17 but these are the allegations in the Indictment.

18 I will go over the allegations with you. Okay?

19 DEFENDANT: Yes, sir.

20 THE COURT: The Indictment alleges that you did in  
21 Orangeburg County on or about June 12, 2010, with malice  
22 aforethought, did kill one Samuel Simmons by means of a  
23 gunshot wound to the head, and that the victim died as a  
24 result of that shot.

25 Do you understand the allegations contained in this

1 Indictment?

2 DEFENDANT: Yes, sir.

3 THE COURT: Okay. The State is allowing you to plead  
4 to a charge of attempted murder. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: How do you wish to plead to that charge?

7 DEFENDANT: Guilty.

8 THE COURT: Under North Carolina versus Alford, is  
9 that right?

10 DEFENDANT: Yes, sir.

11 THE COURT: Okay, sir. Thank you, sir.

12 All right, Mr. Sorenson.

13 SOLICITOR: Thank you, Your Honor. May it please the  
14 Court?

15 THE COURT: Yes, sir.

16 SOLICITOR: This offense occur back in the early morn-  
17 ing hours of June 12, 2010, in the parking lot of a Shell  
18 station on (inaudible) Street in Orangeburg, South  
19 Carolina.

20 Basically, what led up to this night, Your Honor, was  
21 kind of an ongoing feud between two groups of young men  
22 here in Orangeburg, each with some affiliation to differ-  
23 ent gangs here in Orangeburg.

24 Through our investigation and in talking to witnesses,  
25 there had been several altercations involving weapons among

1 these young men kind of leading up to this night.

2 Your Honor had an opportunity to see last week the  
3 trial of a Codefendant, Arnold Smith, who was one of the  
4 people kind of congregating out in that parking lot on this  
5 night, a large number of people congregating there.

6 The Defendant came up in a grey car with two other  
7 individuals and getting out. The witnesses identified Mr.  
8 Jacques and indicated that he had a weapon.

9 He got out of the vehicle and they basically get into  
10 an altercation with two other young men, Brandon Bradley  
11 and Donald Jamar Harmon, out there that ultimately ended  
12 up with them exchanging gunfire between these individuals.

13 As a result of that exchange of gunfire, there were  
14 several vehicles that were hit. There was a young lady  
15 that was hit in the head but thankfully that was a graz-  
16 ing wound.

17 Unfortunately, a bystander, Mr. Simmons, who was in  
18 the parking lot, was also hit in the head and died as a  
19 result of his injury.

20 Mr. Jacques, along with the guy -- he was subsequently  
21 ID'd but he did not give a statement when he was arrested.  
22 Through our investigation, Your Honor, as Your Honor heard  
23 during the trial, we feel that we would be able to prove  
24 that Mr. Jacques was seen on the video.

25 If Your Honor recalls from the testimony of a young

1 lady, who I think was probably our first witness in the  
2 trial last week -- her vehicle was struck as she was pulling  
3 out of the parking lot, and we believe it was Mr. Jacques's  
4 bullet that struck and hit her vehicle as she was pulling  
5 away.

6 Additionally, Your Honor, if you recall, there was a  
7 significant amount of testimony of the Codefendant, Mr.  
8 Harmon, regarding several of these individuals and the gang  
9 affiliation.

10 We have been able to corroborate some of that through  
11 records we have received from the Department of Corrections  
12 when Mr. Jacques was up there. He did admit to being a mem-  
13 ber of an assassination gang. He's got tattoos to that ef-  
14 fect and they had intercepted also some correspondence to  
15 that effect that would corroborate it also.

16 He did indicate that he had been a member of that  
17 gang since he was thirteen years old, so it is our inform-  
18 ation basically that out of the people involved he was  
19 probably the highest ranking member that was involved in  
20 that group.

21 So we kind of thought he was kind of probably a ring  
22 leader in the group, or that showed up at least in the  
23 parking lot that night.

24 THE COURT: Mr. Jacques?

25 SOLICITOR: Mr. Jacques, yes, sir.

1           As far as a prior record, Your Honor, he does have  
2   the charge he alluded to earlier. Back in 2005 he was  
3   convicted of an assault and battery of a high and aggra-  
4   vated nature and also a burglary second degree, which is  
5   what he received a youthful offender sentence for.

6           His rap sheet does corroborate what he's told you, and  
7   he has been revoked on that YOA two times.

8           THE COURT: All right. Mr. Jacques, you have heard  
9   what the Solicitor has said about the circumstances that  
10   led to your arrest?

11          DEFENDANT: Yes, sir.

12          THE COURT: And as well what he said about your prior  
13   record?

14          DEFENDANT: Yes, sir.

15          THE COURT: Which you had already told me about, here  
16   today?

17          DEFENDANT: Yes, sir.

18          THE COURT: Mr. Jacques, do you understand that if I  
19   accept your guilty plea here today this will show up as a  
20   conviction?

21          DEFENDANT: Yes, sir.

22          THE COURT: And it is a violent and most serious of-  
23   fense?

24          DEFENDANT: Yes, sir.

25          THE COURT: Your attorney has gone over all of this

1 with you and what it means to have a strike against you?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you understand what that means?

4 DEFENDANT: Yes, sir.

5 THE COURT: All right. Understanding all of that, do  
6 you want me to accept your guilty plea here today?

7 DEFENDANT: Yes, sir. May I speak?

8 THE COURT: I mean, you can. I'm going to give you  
9 an opportunity to speak.

10 Normally what happens is I just find out whether you  
11 want me to accept the plea, and after I accept the plea  
12 then your attorney and you will be allowed to speak.

13 DEFENDANT: Yes, sir.

14 THE COURT: Today -- is that fine with you?

15 DEFENDANT: Yes, sir.

16 THE COURT: Or would you rather tell me now?

17 DEFENDANT: No, go ahead, and I'll let him speak  
18 first.

19 THE COURT: Okay. Now, I'm going to go back through  
20 what I've asked to make sure that you want me to accept  
21 your guilty plea to this charge. Is that correct?

22 DEFENDANT: Yes, sir.

23 THE COURT: The attempted murder charge?

24 DEFENDANT: Sir, I . . .

25 THE COURT: You've just pled guilty to it and now I

1 have to accept if you want me to.

2 DEFENDANT: Yes, sir.

3 THE COURT: You want me to accept it?

4 DEFENDANT: Yes, sir.

5 THE COURT: All right, Mr. Jacques. I find that you  
6 are pleading guilty under North Carolina versus Alford,  
7 and your plea is voluntarily and intelligently made; that  
8 you've had the advice and counsel of a lawyer; that you  
9 have said you are satisfied with the services of your law-  
10 yer.

11 I find there is a factual basis for you to plead guilty  
12 to this charge of attempted murder, so I will accept your  
13 guilty plea.

14 Mr. Chisolm, do you want to speak first?

15 MR. CHISOLM: I believe I do, Your Honor. May  
16 it please the Court?

17 THE COURT: Yes, sir.

18 MR. CHISOLM: Mr. Jacques is twenty-four years old,  
19 and he has a tenth grade education. Your Honor, I don't  
20 believe you got into his job skills, but he has had a lot  
21 of work as a barber. He also has done some work as well  
22 as a plumber, although he doesn't have a certificate or  
23 anything like that. So he has worked in the past.

24 Mr. Jacques would agree that what happened is a  
25 senseless incident and tragic. It never should have

1 happened. The murder should have been prevented. It was  
2 preventable.

3 He didn't know about all the problems that had hap-  
4 pened between these guys beforehand. As he told you, he  
5 had gotten out of prison I think a month or two previously.

6 So a lot of this stuff had been going on between them  
7 was probably while he was locked up. He didn't go look-  
8 ing for these guys and he didn't shoot a gun at any of the  
9 victims in this case.

10 I think the evidence from the trial would tend to in-  
11 dicate that Donald Harmon was most likely the person who  
12 shot the attempted murder victim.

13 He was shooting at the car Mr. Jacques arrived in,  
14 the people that were shot were basically in the back-drop  
15 of that car. I believe he said as much on the stand.

16 I think the evidence would also point to him being  
17 the shooter of Mr. Simmons, the man who was killed, and  
18 he pled to that last week.

19 In short, I think we could probably account for all  
20 the actual shooters in the case, and I think that means  
21 that Mr. Jacques didn't shoot anybody, either the attempted  
22 murder victim or the murder victim.

23 We are here today because Mr. Jacques acknowledges  
24 that there is a real possibility that if we had gone to  
25 trial that there would be enough evidence the jury would

1 hear that they could find these other guys shot these vic-  
2 tims and tie him in under the hand of one is the hand of  
3 all theory.

4 That has been discussed for a long time now, and he  
5 acknowledges that. That's why we're here today.

6 THE COURT: Okay.

7 MR. CHISOLM: He doesn't agree with all the account of  
8 how this all came about and his involvement, but he does  
9 acknowledge that scenario, and that's why we're here today,  
10 to take advantage of a plea to the attempted murder charge,  
11 Your Honor.

12 THE COURT: He had a gun?

13 MR. CHISOLM: Pardon me?

14 THE COURT: He had a gun that night?

15 MR. CHISOLM: His position would be that he did not

16 have a gun, Your Honor. At the trial we would have argued  
17 that he did not shoot a gun that day.

18 I'm not here trying the case and I don't want to get  
19 into too many details on that, but that would be our posi-  
20 tion.

21 THE COURT: Okay.

22 MR. CHISOLM: Your Honor, I would like to say this  
23 was a bad incident -- there's no way around it -- and our  
24 position would be that amongst the Codefendants in this  
25 case his involvement would be minimal.

1           He hasn't that person who started the shoot-out, and  
2 he didn't hit any of the victims. It is our position his  
3 involvement was relatively minor.

4           Because of that, I would simply ask that you consider  
5 a sentence at the bottom of the range, the ten year range.

6           I ask that you give him credit for the time he has  
7 already served. He's been in since June 22nd of 2010, and  
8 I believe he has said he would like to address the Court.

9           Thank you.

10          THE COURT: All right, sir. I'll be glad to hear from  
11 you, Mr. Jacques.

12          DEFENDANT: Thank you, Your Honor. As my attorney has  
13 said, I just had came home April 15th of 2010 when I was  
14 violated on the collateral thing.

15          (Portion not audible) When the incident occurred, I  
16 wasn't aware a kid had a gun in the car. I didn't know  
17 what was going on because I just came home. If I did, I  
18 never would have got in the car. If I had known they was  
19 going to do this I wouldn't be there with them. I was  
20 going to the store and they came by. I thought they was  
21 close friends and I would talk to them about what's been  
22 going on. I never did know what was going on because I  
23 just came home.

24          The homies were around the car and they didn't see me  
25 so I start walking beside the car so I wouldn't be caught

1 hanging out with them. Then Brandon start shooting and  
2 so I ducked beside a blue Mercury that was out there. Then  
3 I raise up and pointed at Brandon to tell him I wasn't  
4 with them. (Portion inaudible)

5 So I jump in the car and I know I can't be around  
6 where they are. I heard all the gunshots going on. If I  
7 had known they had a gun in that car I wouldn't be in the  
8 car with them.

9 THE COURT: Okay. Anything else you want to say?

10 DEFENDANT: Just that I didn't shoot a gun at  
11 anybody, sir.

12 THE COURT: Okay.

13 (Brief pause in proceeding)

14 THE COURT: All right. Mr. Jacques, the sentence of  
15 the Court is that you be committed to the State Department  
16 of Corrections for a period of sixteen years.

17 I'll give you credit for the time you have served.

18 Good luck to you, sir.

19 ..... END OF REQUESTED TRANSCRIPT OF RECORD .....

20

21

22

23

24

25

## CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Harry A. Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on September 22, 2011.

FURTHER, I certify that I am neither or kin nor counsel to any party to this action, nor do I have any interest in the same.

June 21, 2013

*Harriet P. Bennett*

## FORM 5

STATE OF SOUTH CAROLINA

County of OrangeburgDellid Sagues

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

FILED FOR RECORD  
WINNIE B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

2012-CP-38-01014

APPLICATION FOR

POST-CONVICTION RELIEF

**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 Leiber Correctional Institution
2. Name and location of Court which imposed sentence GENERAL SESSIONS  
190 Gibson PO Box 9000 Orangeburg SC 29116
3. Name(s) of co-defendant(s) (if any) DeLanth Hayes  
Ronald Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2010-C-38-1750, -1751
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) SEPTEMBER 22 - 2011. 16 YEARS.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty AFTER A PLEA OF guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
HAVE NOT APPEAL.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) PLEA guilty did not know you could HAVE APPEAL
- (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denial of Due Process.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) The Reliability of the eyewitness identification.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Have not
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Have not
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Have not
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_
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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

*None*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_
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. ASH. Chilesam. OFFICE OF THE PUBLIC DEFENDER.  
FIRST JUDICIAL CIRCUIT 190 BIGEON STREET Room 110.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. ARRAIGNMENT AND PLEA
- ii. SENTENCING
- iii. \_\_\_\_\_

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

New Trial

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

I am not

STATE OF SOUTH CAROLINA )

County of Orangeburg SC )

VERIFICATION

I, Jarrod Jacques, 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.

Jarrod Jacques

SWORN to and subscribed before me this 14th  
day of June, 2012

Sylvia Jones (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

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

I, Jarrod Jacques, 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.

Jarrod Jacques  
Applicant

SWORN or affirmed to and subscribed before me this  
14th day of June, 2012

Sylvia Jones  
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIRST JUDICIAL CIRCUIT  
)

) 2012-CP-38-01014  
)

Jarrold Jacques, #310037,

) Applicant,  
)

) v.  
)

) State of South Carolina,  
)

) Respondent.  
)  
)

**RETURN**  
(Appointment of Counsel Requested)

---

In response to the post-conviction relief application filed June 26, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted during the May 2011 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-1075). Applicant was represented by Ash Chisholm, Esquire. On September 22, 2011, the Applicant pled guilty to before the Honorable Edgar W. Dickson to the lesser included offense of Attempted Murder. Pursuant to plea negotiations between the Applicant and the State, Judge Dickson sentenced Applicant to confinement for a period of sixteen years. No direct appeal was filed.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The guilty plea hearing transcript has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Denial of due process."
  - a. "The reliability of the eyewitness identification."

## III.

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

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

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

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

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

#### IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

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

By:

Megan E. Harrigan  
Attorneys for the Respondents

November 28, 2012.

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF ORANGEBURG     | ) |                              |
|                          | ) |                              |
|                          | ) | 2012-CP-38-01014             |
| JARROD JACQUES, 310037,  | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

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

**C. Bradley Hutto, Esquire**  
**Williams & Williams**  
**Post Office Box 1084**  
**Orangeburg, SC 29115**

DATED this 28<sup>th</sup> day of November, 2012.

Lauren Meara  
 Lauren Meara, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF ORANGEBURG ) CASE NO.: 2012-CP-38-01014

JARROD JACQUES )

APPLICANT )

v. )

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA )

RESPONDENT )

**ORIGINAL**

Tuesday, October 25, 2016

COMMENCING AT:

Dorchester County Courthouse

St. George, South Carolina

Before The Honorable Diane Schafer Goodstein, Judge

APPEARANCES:

For the Applicant:

C. Bradley Hutto, Esquire

Williams and Williams

Post Office Box 1084

Orangeburg, South Carolina 29116

For the State:

Ruston Neely, Esquire

Assistant Attorney General

Office of the Attorney General

Post Office Box 11549

Columbia, South Carolina 29211-1549

Heather R. Landry, CVR  
 Official State Reporter

INDEX

|                                        |    |
|----------------------------------------|----|
| Proceeding .....                       | 3  |
| Applicant's Witness: Ash Chisholm      |    |
| Direct Examination by Mr. Hutto.....   | 4  |
| Cross-Examination by Mr. Neely.....    | 12 |
| Applicant's Witness: Jarrod Jacques    |    |
| Direct Examination by Mr. Hutto.....   | 16 |
| Cross-Examination by Mr. Neely.....    | 25 |
| Redirect Examination by Mr. Hutto..... | 27 |
| Reporter's Certificate .....           | 30 |

EXHIBITS

|            |                    |                 |
|------------|--------------------|-----------------|
| <u>NO.</u> | <u>DESCRIPTION</u> | <u>PAGE NO.</u> |
|------------|--------------------|-----------------|

NO EXHIBITS INTRODUCED

1 (The proceeding began at 10:15 a.m.)

2 THE COURT: Yes, sir.

3 MR. NEELY: Thank you, Your Honor. This is the case of  
4 Jarrod Jacques versus the State of South Carolina, case  
5 number 2012-CP-38-01014. The applicant is presently  
6 confined in the South Carolina Department of Corrections  
7 pursuant to orders of commitment with the Clerk of Court for  
8 Orangeburg County. He was indicted during the May of 2011  
9 term of court by the Orangeburg County Grand Jury for  
10 murder. Applicant was represented by Ash Chisholm. And on  
11 September 22, 2011, the applicant pled guilty before the  
12 Honorable Edgar Dickson to a lesser included offense of  
13 attempted murder. And Judge Dickson sentenced the applicant  
14 to confinement for a period of 16 years.

15 THE COURT: Okay. All right. And he is present with  
16 us today with his attorney. Anything before we proceed this  
17 morning?

18 MR. HUTTO: No, ma'am.

19 THE COURT: All right. Mr. Hutto, call your first  
20 witness.

21 MR. HUTTO: We call Ash Chisholm.

22 (ASH CHISHOLM, after being duly sworn, testified as  
23 follows:)

24 THE COURT: Your witness.

25 MR. HUTTO: Thank you.

Direct Examination of Mr. Chisholm by Mr. Hutto

4

DIRECT EXAMINATION

BY MR. HUTTO:

Q. Mr. Chisholm, you're a South Carolina licensed attorney?

A. Yes, sir.

Q. Where do you currently work?

A. I work at the Dorchester County Public Defender's Office.

Q. And prior to that, did you have a job with the Orangeburg County Public Defender's Office?

A. Yes, sir; I did.

Q. In connection with your position there, at some point in time did you have the opportunity to represent Jarrod Jacques in a legal capacity?

A. I did.

Q. How did you come to represent him?

A. I was appointed.

Q. All right. And Mr. Jacques, when he came to you as a client, is this the first time that he had been a client of yours?

A. I believe so.

Q. All right. And did you meet with him about his case?

A. I did.

Q. What was he charged with?

A. He was originally charged, I believe, with murder. And

1 I believe it's either one or two counts of attempted murder  
2 if I'm not mistaken.

3 Q. All right. And just so the Court has a flavor of the  
4 general charge, correct me if I'm wrong, but this has  
5 basically been characterized as a gang shooting between two  
6 rival gangs that happened near the Bojangles in Orangeburg?

7 A. Yes, sir.

8 Q. Okay. Basically two groups of folks arrived in various  
9 cars and there were also other people unrelated that were  
10 around the station and gunfire broke out, correct?

11 A. That's correct.

12 Q. All right. How many people were killed?

13 A. One.

14 Q. And how many other -- were there other people shot that  
15 were not killed?

16 A. I think there was either one or maybe two other people  
17 that were shot. I think fragments -- that kind of thing.

18 Q. Okay. And Mr. Jacques was in one of the vehicles that  
19 witnesses testified that people had guns?

20 A. Yes, sir.

21 Q. Okay. And did you review the evidence that was  
22 available through discovery with him?

23 A. I did.

24 Q. Okay. Did you seek out -- as far as you know, did you  
25 seek out and find all of the statements and evidence and

Direct Examination of Mr. Chisholm by Mr. Hutto

1 videos that were available related to this crime that you  
2 could discuss it with him?

3 A. Yes.

4 Q. Okay. And was there a video?

5 A. Yes, sir.

6 Q. Okay. And, in fact, in that video -- was Mr. Jacques  
7 shown in that video?

8 A. Yes, sir.

9 Q. Okay. And through your discussions, you're aware that  
10 it's his contention that he did not have a gun and he did  
11 not shoot anybody?

12 A. Yes, sir.

13 Q. Okay. And in fact in that video, does it show him with  
14 a gun?

15 A. At one point during the video, it shows what the person  
16 the State says is Mr. Jacques rise up over a car, and you  
17 can see he makes a gesture. Our position at trial would've  
18 been he was pointing. The State's position is that at that  
19 point he was firing a gun.

20 Q. Okay. The video was not clear enough to clearly show  
21 whether there was anything in his hand or not. But his  
22 position was he was pointing and did not have a gun in his  
23 hand?

24 A. Yes, sir.

25 Q. Okay. The State was going to take -- you believe that

1 the State was going to take the position that he did have a  
2 gun in his hand?

3 A. I do.

4 Q. Was there anything other than that video that was less  
5 than clear to corroborate whether or not Mr. Jacques had a  
6 gun in his hand?

7 A. There were two witnesses that I recall that would admit  
8 to Mr. Jacques to having a gun at least that day. One was a  
9 store clerk who gave a statement that I believe it said  
10 Mr. Jacques, she saw him fire a gun. I retained an  
11 investigator, got a statement from her. Ultimately, her  
12 testimony at trial, I believe, would've been that she  
13 couldn't say for certain who was shooting and that kind of  
14 thing. She couldn't really remember. There was another  
15 witness who was actually -- I don't think he was ever  
16 charged in the incident, but he rode to the scene in the car  
17 with Mr. Jacques and a couple of codefendants that gave a  
18 statement just before we were -- when we were gearing up for  
19 trial basically that said Mr. Jacques was in the car with  
20 him and that he got out along with another codefendant and  
21 that they both had guns.

22 Q. Okay. So leading up to the trial preparation and for  
23 the several months leading up to the trial, Mr. Jacques was  
24 under the impression that the video showed him with no gun  
25 in his hand and that the witness at the store who originally

Direct Examination of Mr. Chisholm by Mr. Hutto

8

1 said there was a gun in his hand had basically backed away  
2 from that. Is that right?

3 A. Yes, sir.

4 Q. Okay. But as you neared trial, this other witness  
5 either gave a new statement or appeared for the first time?

6 A. Right.

7 Q. Did you make that aware to Mr. Jacques that this other  
8 witness had come forward sort of at this late date near the  
9 trial?

10 A. Yes, sir.

11 Q. Okay. So Mr. Jacques was planning with you as his  
12 attorney starting to go forward and have a trial. Is that  
13 correct?

14 A. Yes, sir. I believe we actually qualified the jury  
15 before.

16 Q. All right. And did you believe that you had some  
17 evidence that at least, if not a lot of evidence, that you  
18 could present that my raise questions of reasonable doubt?

19 A. What I had was basically -- through the ballistic  
20 evidence I had, I think we could've shown that he didn't  
21 fire the gun that shot the person who died. I think we  
22 could've pinned out who actually shot that bullet.

23 Q. And that gun was never placed in his hands?

24 A. Correct.

25 Q. Okay. All right. And other than that, there were a

1 myriad of witnesses who were going to say a lot -- as a  
2 chaotic scene would be, a lot of witnesses were saying a lot  
3 of things because they were seeing it from different vantage  
4 points?

5 A. Yes, sir.

6 Q. Okay. But there was no one person that said that  
7 Mr. Jacques -- that they could positively say they saw  
8 Mr. Jacques fire a shot at anybody?

9 A. The one person that I recall that said they saw him  
10 firing a shot is the same clerk that ultimately through my  
11 investigator said that she couldn't really remember who was  
12 shooting.

13 Q. All right. Mr. Jacques has contended that he wanted  
14 not to not be tried in a group; that he wanted not to --  
15 that he wanted a trial with him being the sole defended. He  
16 thought he had a better chance that way. Did you have  
17 discussions with him about that?

18 A. That's definitely something we would have discussed. I  
19 don't know that we ever got to a point where I would've made  
20 that motion or not. But, I mean, that's something we  
21 would've requested. Based on what we had, I would've felt  
22 optimistic it would have been granted. But that's something  
23 we would've definitely looked into.

24 Q. Regardless of the fact that it might not have been  
25 granted, he would've fared better in a single trial. Do you

1 not agree?

2 A. I believe so.

3 Q. Okay. All right. What discussions did you have with  
4 him that led up to his decision to actually, even after the  
5 trial process commenced, to back away from that and plead  
6 guilty?

7 A. As we got closer to trial, we got the new statement  
8 that I referenced from the guy that was in the car with him  
9 that says he had a gun when got out. Also there were, I  
10 think, five or six codefendants in the case. And we  
11 essentially had word that one of these codefendants was  
12 going to be testifying at trial. Things were kind of moving  
13 around pretty quickly as we geared up for trial. But things  
14 kind of fell into place that changed the case there close to  
15 the end.

16 Q. All right. With the knowledge that the new witness had  
17 come forward and given the statement a week or two ahead  
18 that said he had a gun and the knowledge that maybe one of  
19 the codefendants is going to say something that y'all didn't  
20 know what yet. You explained all of that to Mr. Jacques?

21 A. I did.

22 Q. And you believed at the time that he received that  
23 information that he understood what he was doing when he  
24 made the decision?

25 A. I did.

1 Q. Okay. Can you say that you ever made a motion to sever  
2 his case from the codefendants?

3 A. I'm looking through my notes. I don't see where I ever  
4 made the motion.

5 Q. Okay. Tell us why you believe that that would not have  
6 been successful if you had made that motion.

7 A. Basically, what we had are five or six codefendants,  
8 all of the same witnesses, all on the same incident. And,  
9 basically, my concern was everything was so tied together  
10 that you've got three codefendants and a witness that puts a  
11 gun in his hand riding to the scene together, and you got  
12 the two guys on the other side. I felt they were so linked  
13 together that it probably wouldn't have been granted.

14 Q. Okay. At any point in time after you all -- well, let  
15 me say it this way. Y'all got up in front of Judge Dickson  
16 and started the process of a plea, and then Mr. Jacques said  
17 he needed more time to talk to you. Do you remember that?

18 A. I don't remember that, but I did read through the  
19 transcript that was provided. I can't recall the  
20 conversation.

21 Q. All right. Excuse me one second.

22 (Brief pause.)

23 MR. HUTTO: That's all the questions I have, Your  
24 Honor.

25 THE COURT: All right. Cross-examination, Mr. Neely?

1 MR. NEELY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. NEELY:

4 Q. Mr. Chisholm, just as a way of some background  
5 information, when were you admitted to the bar in South  
6 Carolina?

7 A. I believe it was 2008.

8 Q. And since 2008, how much of your experience has been in  
9 criminal defense?

10 A. The entirety. I started out with the public defender's  
11 office.

12 Q. So you've been in trial before?

13 A. Yes, sir.

14 Q. And you were geared up for trial in this case?

15 A. Yes, sir.

16 Q. Whenever you're gearing up for trial for this case, did  
17 you go over the defenses with your client?

18 A. Yes, sir. I mean, I pretty much told him what we would  
19 be trying to be doing in trial and whatever the questions  
20 that I had lined up for the witnesses and all that kind of  
21 stuff.

22 Q. And did you have discussions with him about the  
23 strength of those arguments?

24 A. I did.

25 Q. What did you tell him the strength of those arguments

1 are going to be?

2 A. Well, like I said, the real strength of the case as to  
3 the murder charges, I think ballistically we could show that  
4 someone else fired the gun. The problem we had in the case  
5 was -- if I can go into the facts a little bit?

6 Q. Certainly.

7 A. You had two guys that are already in this gas station  
8 parking lot when the car that's carrying the defendant  
9 arrives. Two people, one the State would allege is  
10 Mr. Jacques, approached one of these guys in the parking  
11 lot. After this confrontation, they started to walk away  
12 and one of the guys that's in the parking lot, they  
13 approached, pulled out a gun; they started shooting and then  
14 it's just shots all over the place. The State's position  
15 would've been that one of the defendant's -- I can't  
16 remember if they were saying it was Mr. Jacques or the  
17 codefendant -- basically flashed a gun during that  
18 confrontation that had prior bad blood. So our concern was  
19 that the State could convince the jury that they approached,  
20 flashed a gun, had prior bad dealings, and that's what set  
21 the entire thing off; that they could try to wrap them in  
22 with hand of one, hand of all, basically.

23 Q. And actually during the plea itself, you used that as  
24 mitigation for the sentencing part of it, didn't you?

25 A. Yes, sir.

1 Q. And during your discussions with your client, did he  
2 give you his side of the story?

3 A. Yes, sir.

4 Q. And is that what you presented at trial?

5 A. Excuse me?

6 Q. Is that what you were planning of presenting at trial?

7 A. I can't recall if he intended to testify to that if  
8 that's what you mean.

9 Q. I mean, that's what I'm asking. And you're  
10 understanding of the case is that the actual victims in the  
11 case weren't gang members on either side. Is that correct?

12 A. Right.

13 Q. It was bystanders that were murdered and shot?

14 A. Yes.

15 Q. Did you go over with your client what you thought the  
16 range the judge would give him was?

17 A. I did.

18 Q. What was the range you told him?

19 A. The original offer we received from the solicitor was a  
20 range of I believe 10 to 25 years. I spoke in chambers with  
21 the judge and basically I got the indication that he was  
22 going to sentence him somewhere between 15 and -- one moment  
23 -- fifteen to 20 years. That's kind of the range that I  
24 told Mr. Jacques that I believe the judge would sentence him  
25 to.

1 Q. Okay. So you did relay that conversation to your  
2 client?

3 A. I did.

4 Q. And he made the decision to plead with that knowledge?

5 A. Yes, sir.

6 Q. And during your discussions with your client, was he  
7 involved in his own defense?

8 A. Yes, sir.

9 Q. And you seemed to have an intelligent conversation with  
10 him?

11 A. Yes, sir.

12 Q. He understood what was going on?

13 A. Yes.

14 MR. NEELY: That's all the questions I have, Your  
15 Honor.

16 THE COURT: All right. Redirect?

17 MR. HUTTO: No, ma'am.

18 THE COURT: And thank you. Is this witness free to  
19 leave? Do you have anything else.

20 MR. HUTTO: Nothing.

21 THE COURT: Very well.

22 MR. NEELY: No objection from the State, Your Honor.

23 THE COURT: All right. Very well. You're free to go.  
24 Thank you, sir. All right. Call your next witness.

25 MR. HUTTO: We call Jarrod Jacques.

Direct Examination of Mr. Jacques by Mr. Hutto

16

1 (JARROD JACQUES, after being duly sworn, testified as  
2 follows:)

3 THE COURT: Your witness, Mr. Hutto.

4 MR. HUTTO: Thank you.

5 DIRECT EXAMINATION

6 BY MR. HUTTO:

7 Q. Mr. Jacques, we're here today because of a  
8 post-conviction relief petition that you filed regarding a  
9 plea that took place in Orangeburg County. You understand  
10 that?

11 A. Yes, sir.

12 Q. Okay. At the time of the plea, Mr. Chisholm, who just  
13 testified, was your attorney. Is that right?

14 A. Yes, sir.

15 Q. Okay. And in preparation for the trial of this case,  
16 was it your contention that you relayed to him that you did  
17 not have a gun and did not shoot a gun?

18 A. Yes, sir.

19 Q. Okay. And what did Mr. Jacques do in order to keep you  
20 advised as to what was going on with the preparation for the  
21 trial?

22 THE COURT: You mean Mr. Chisholm?

23 Q. I mean Mr. Chisholm.

24 A. He ain't really do nothing. He just kept trying to put  
25 a gun in my hand.

1 Q. Right. And did you ever have a gun in your hand?

2 A. No, sir.

3 Q. All right. Were you aware that there was a woman that  
4 might have been a clerk at the store who said that you had a  
5 gun and you were shooting it at pump number -- the direction  
6 of pump number 6?

7 A. Yes, sir.

8 Q. All right. But you heard Mr. Chisholm just say that  
9 actually when they interviewed that woman she sort of backed  
10 away from you having the gun. Is that right?

11 A. Yes, sir.

12 Q. Were you aware that he had done that on your behalf?  
13 That he had gotten an investigator to talk to her?

14 A. No, sir.

15 Q. Did not. All right. I know early on there was nobody  
16 else that talked about you having a gun. But later near the  
17 trial another person, Mr. Dwight, came forward and said that  
18 you got out of the car with a gun. Did Mr. Chisholm tell  
19 you about that statement?

20 A. Yes, sir.

21 Q. Okay. And even knowing that that witness was going to  
22 say that, you still wanted to go forward with a trial?

23 A. Yes, sir.

24 Q. Did you tell Mr. Chisholm that you wanted to go forward  
25 with a trial?

1 A. Yes, sir.

2 Q. Did he inform you that the way the State intended to  
3 try your case was to try all of the codefendants together?

4 A. Yes, sir. He told it was me, Harmon, Bradley and Smith  
5 was getting tried all together.

6 Q. All right. When he told you that, what was your  
7 reaction?

8 A. I was asking him why all of us getting tried together?  
9 Why can't I get a separate trial?

10 Q. Why did you not want to be tried with those other guys?

11 A. Because it's the hand of one, hand of all; one guilty,  
12 I'm guilty.

13 Q. Okay. And so you wanted to be tried separately?

14 A. Yes, sir.

15 Q. Did you tell that to Mr. Chisholm?

16 A. Yes, sir.

17 Q. Do you recall that he ever make a motion to get the  
18 trial divided so you could ---

19 A. No, sir.

20 Q. Wait a minute. Let me ask my question first. Did you  
21 remember him ever making a motion to the judge to ask the  
22 judge to divide the case and let you have a separate trial?

23 A. No, sir.

24 Q. Okay. With you there when they started the process of  
25 selecting the jury?

1 A. No, sir. I was there, but they wasn't selecting no  
2 jury.

3 Q. Not yet?

4 A. No, sir.

5 Q. Okay. All right. At what point in time did y'all talk  
6 about not having a trial and then going in front of Judge  
7 Dickson for a guilty plea?

8 A. Once they was starting the trial, like, a week -- a  
9 week -- a week before the trial.

10 Q. Okay. And did you understand what you were doing when  
11 you got in front of Judge Dickson?

12 A. I did. But I knew it was because -- I don't remember.  
13 It was crazy, like, trying two people and I'm not guilty.  
14 You feel me? So if he would get found guilty, I would have  
15 been guilty.

16 Q. Okay. Let me make sure I got the -- well, first, let  
17 me ask you this: How old are you now?

18 A. Twenty-nine. I'll be 30 next month.

19 Q. So when this happened you were around 23 or ---

20 A. Twenty-three.

21 Q. Twenty-three. All right. And had you been in any  
22 trouble with the law prior to this?

23 A. Yes, sir.

24 Q. What was that?

25 A. ABHAN and burglary second.

1 Q. And you got a youthful offender sentence on that?

2 A. Yes, sir.

3 Q. Did you do active time?

4 A. Yes, sir.

5 Q. How long had you been released from youthful offender  
6 before this incident took place?

7 A. Two months.

8 Q. Okay. What's your educational background? How far did  
9 you go in school?

10 A. Tenth grade.

11 Q. Tenth grade. Where was that?

12 A. Orangeburg Wilkinson.

13 Q. Okay. The week before your case came to court, did  
14 they actually have a trial on one of the codefendants?

15 A. Yes, sir.

16 Q. And was he found guilty?

17 A. He pled guilty.

18 Q. He pled guilty after the trial started?

19 A. Yes, sir.

20 Q. And he got sentenced to 31 years?

21 A. Yes, sir.

22 Q. Okay. And he's the person that everybody believed was  
23 actually the person that fired the shot that killed the  
24 person. Is that right?

25 A. Yeah, after 11 months. But at first, Donald Holmes was

1 charged with murder; then 11 months down the line, they  
2 indicted everybody for murder.

3 Q. Okay. And your contention was that you relayed to  
4 Mr. Chisholm is that you were just there but you did not  
5 have a gun and did not shoot anybody?

6 A. Yes, sir.

7 Q. All right. If that's the case, then why did you make  
8 the decision after talking to him to get in front of Judge  
9 Dickson that morning or that day and go in front of the  
10 judge to begin a process of a guilty plea?

11 A. Because Mr. Chisholm wasn't no help. He wasn't trying  
12 to help me.

13 Q. Okay. What is it that you contend that he could have  
14 done or should have done that he did not do?

15 A. Argue my points and discovery that was in the motion  
16 that never mentioned me being the shooter. He never wanted  
17 to argue that.

18 Q. Okay. The video -- you were able to see the video?

19 A. Yes, sir.

20 Q. And the video does not show you with a gun in your  
21 hands ---

22 A. No, sir.

23 Q. Okay. And did anybody in your car have a gun?

24 A. No, sir; not that I know of when I first got in the  
25 car. But after the incident, they said Ronald had a gun.

1 Q. Okay. When you got in the car to drive to wherever  
2 y'all -- y'all ended up at the Bojangles. But wherever you  
3 were going when you got in the car, you didn't think anybody  
4 in the car had a gun?

5 A. No, sir.

6 Q. All right. And were you on, at that time, parole or  
7 something that ---

8 A. Yes, sir.

9 Q. That would've been a problem if you got in the car with  
10 somebody with a gun, right?

11 A. Yes, sir.

12 Q. All right. Well, today is your day to tell the Court  
13 why you think Mr. Chisholm did not do everything he could do  
14 for you. And part of the issue is if you contended all of  
15 these things that he hadn't done, when Judge Dickson asked  
16 you if you were satisfied with Mr. Chisholm, why didn't you  
17 tell Judge Dickson then that you wanted him to make a motion  
18 to sever the trial or you wanted him to make a motion about  
19 the gun?

20 A. I ain't know I could do that.

21 Q. Okay. He didn't -- Mr. Chisholm didn't tell you you  
22 could do that?

23 A. No, sir.

24 Q. All right. Are you asking the Court to give you a new  
25 trial so those motions can be made on your behalf?

1 A. Yes, sir.

2 Q. All right. You were sentenced to 16 years. Is that  
3 right?

4 A. Yes, sir.

5 Q. You've done five of those?

6 A. Six and a half.

7 Q. Six and half. All right. You understand that if the  
8 Court gave you a new trial, and then later a jury convicted  
9 you, you might end up with more time than what you got  
10 remaining on your sentence now?

11 A. Yes, sir.

12 Q. Knowing all of that, you still want to ask the Court  
13 today to give you a new trial?

14 A. Yes, sir.

15 Q. All right. And the reason you want the Court to give  
16 you a new trial is you say Mr. Chisholm did not do  
17 everything that he could have done or should've done for  
18 you?

19 A. Yes, sir.

20 Q. But in fact Judge Dickson sort of asked you that in  
21 court, had he done anything -- did you want him to do  
22 anything else? And you didn't say anything at that time.  
23 Explain to the judge why that is.

24 A. I felt like it was too late. It wasn't really no need  
25 because the trial was in process. And I can't get no lawyer

1 or nothing, so . . .

2 Q. Okay. Did you understand at the time you were making  
3 this decision that your options -- I know they weren't the  
4 options you wanted -- but the options that you were faced  
5 with were either go to trial with codefendants or make a  
6 separate plea deal?

7 A. Yes, sir.

8 Q. Is that what he told you you could do? That's what  
9 Mr. Chisholm told you you could do?

10 A. No, sir.

11 Q. All right. What did he tell you you could do?

12 A. He tell me go to trial, like -- I couldn't really  
13 remember everything he told me, but he wasn't really trying  
14 to help me.

15 Q. Okay. Do you believe that he tricked you into pleading  
16 guilty?

17 A. Yes, sir.

18 Q. Why is that?

19 A. Because the motion tell it all. It doesn't say I did  
20 anything and he was saying that, but he kept saying I had a  
21 gun.

22 Q. Okay. Well, that is what one of the witnesses, one of  
23 the late witnesses, also was saying, right?

24 A. Yes, sir.

25 Q. Okay. But you're asking the Court today to grant you a

1 new trial and let you vacate this sentence and remain  
2 incarcerated until you can have that new trial. Is that  
3 right?

4 A. Yes, sir.

5 Q. Okay.

6 MR. HUTTO: Answer any questions that the Attorney  
7 General might want to ask you.

8 THE COURT: Cross-examination?

9 MR. NEELY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. NEELY:

12 Q. Now, Mr. Jacques, the story that you've kind of told  
13 today on direct examination is that you didn't have a gun  
14 and didn't fire any bullets, correct?

15 A. Yes, sir.

16 Q. And that was actually your same story you told Judge  
17 Dickson at your plea, right?

18 A. Yes, sir.

19 Q. So your story hasn't changed from then to now?

20 A. Yes, sir.

21 Q. And you told Judge Dickson that you wanted to plead  
22 under State v Alford, correct? Do you remember that?

23 A. North Carolina -- North Carolina ---

24 Q. That's right. North Carolina versus Alford?

25 A. That's right.

1 Q. You remember that?

2 A. Yes, sir.

3 Q. And do you remember discussions that you had with  
4 Mr. Chisholm about what that meant?

5 A. Yes, sir.

6 Q. And what were those discussions?

7 A. Say that a possibility I could go to trial and got  
8 found guilty, so -- that's all he told me.

9 Q. Right. So what you're admitting to was that they could  
10 maybe prove you're guilty at trial, but you weren't  
11 admitting that you did it?

12 A. Yes, sir.

13 Q. But he told you that the consequences for that plea are  
14 the exact same as a regular guilty plea?

15 A. No, sir.

16 Q. He didn't?

17 A. No, sir.

18 Q. The judge explained that, didn't he?

19 A. Yes, sir.

20 Q. Okay. And when the judge asked you if you're satisfied  
21 with the services of your attorney, you said "Yes, sir",  
22 didn't you?

23 A. Yes, sir.

24 Q. And you were under oath at that time?

25 A. Yes, sir.

1 Q. So were you telling the truth?

2 A. Yes, sir.

3 Q. Okay. So you were satisfied with the services of your  
4 attorney?

5 A. At the moment I was.

6 Q. Okay. And he had told you that the range the judge  
7 might sentence you to?

8 A. He told me 10; 10 to 20.

9 Q. Okay. And you got 16?

10 A. Yes, sir.

11 Q. But he asked for 10 for you, didn't he?

12 A. Yes, sir.

13 Q. Okay. And when Judge Dickson asked you if you wanted  
14 him to accept the guilty plea, you told him yes?

15 A. Yes, sir.

16 Q. After he asked if you were guilty?

17 A. Yes, sir.

18 MR. NEELY: Beg the Court's indulgence.

19 THE COURT: Okay.

20 MR. NEELY: No more questions from the State, Your  
21 Honor.

22 THE COURT: Very well. All right. Redirect?

23 REDIRECT EXAMINATION

24 BY MR. HUTTO:

25 Q. Based on anything you've been asked by the attorney for

1 the Attorney General, is there anything else that comes to  
2 your mind that you're claiming that Mr. Chisholm didn't do  
3 for you or did for you?

4 A. He really did nothing.

5 Q. You said that a couple of times. But when he said he  
6 sent out an investigator and he discussed the case with you,  
7 when you say he didn't do nothing, in my understanding you  
8 mean he didn't make the motions in front of the judge you  
9 wanted him to make?

10 A. Yes, sir.

11 Q. Is there anything else besides that?

12 A. No, sir.

13 Q. Okay.

14 MR. HUTTO: I don't have any other questions.

15 THE COURT: All right. Recross?

16 MR. NEELY: Nothing from the State, Your Honor.

17 THE COURT: Thank you, sir. You can come on back down  
18 to the table beside Mr. Hutto. Call your next witness,  
19 please.

20 MR. HUTTO: Let me confer with him one second.

21 THE COURT: Sure.

22 (Brief pause.)

23 MR. HUTTO: No other witnesses, Your Honor.

24 THE COURT: Very well. Thank you so much. All right.  
25 Thank you, Mr. Jacques. All right. Yes, sir, Mr. Neely?

1 MR. NEELY: The State has no witnesses to call, Your  
2 Honor.

3 THE COURT: All right. Very well. Thank you. I'll  
4 take the matter under advisement. Thank you so much.

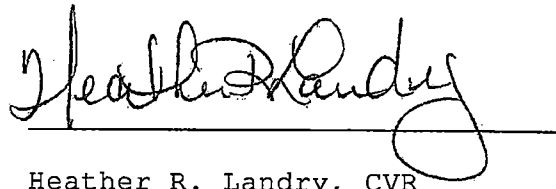
5 (The proceeding concluded at 10:48 a.m.)  
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STATE OF SOUTH CAROLINA            )  
                                          )    CERTIFICATE OF REPORTER  
COUNTY OF CHARLESTON            )

I, HEATHER R. LANDRY, Official Court Reporter for the  
Judicial Department of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had in the  
hearing of the captioned case, in the Court of Common Pleas  
for Dorchester County, South Carolina, on the 25TH day(s) of  
October 2016.

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

April 17, 2017

A handwritten signature in cursive script, reading "Heather R. Landry", written over a horizontal line.

Heather R. Landry, CVR  
Official Court Reporter

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Jarrold Jacques, #310037, )

2012-CP-38-1014

Applicant, )

v. )

State of South Carolina, )

Respondent. )

ORDER OF DISMISSAL

**RECEIVED**  
FEB 02 2017  
S.C. SUPREME COURT

This Court convened an evidentiary hearing into the matter on October 25, 2016, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by C. Bradley Hutto, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

**ATTEST: TRUE COPY**

Applicant's plea counsel, Ash D. Chisholm, Esquire (hereinafter, "plea counsel") was present and testified. Legal arguments were heard based on the plea transcript. This Court had before it a copy of the plea transcript, the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

W. B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted during the May 2011 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-1075). Applicant was represented by Ash D. Chisholm, Esquire. On September 22, 2011, the Applicant pled guilty before the Honorable Edgar W. Dickson to the lesser included offense of Attempted Murder. Pursuant to plea negotiations between the Applicant and the State, Judge

Dickson sentenced Applicant to confinement for a period of sixteen years. No direct appeal was filed.

## **II. ALLEGATIONS**

Applicant alleged the following grounds in his application:

1. Denial of due process.
2. The reliability of the eyewitness identification.

This Court construes the written PCR application's allegations as being addressed by the following issues presented at the evidentiary hearing:

1. Plea counsel was ineffective for failing to make a motion to sever the trial between codefendants.
2. Guilty plea was involuntary because plea counsel was not prepared to defend Applicant's innocence at trial.

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

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). 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. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As an initial matter, this Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))). Therefore, this Court dismisses Applicant's application for the reasons set out below:

**A. Whether Plea Counsel Was Ineffective for Failing to Make a Motion to Sever the Trial Between Codefendants**

At the evidentiary hearing, Applicant asserted plea counsel failed to make a motion to sever the codefendant's trials and because of this he felt compelled to plead guilty. Plea counsel testified if Applicant had elected to proceed to trial he would have made the motion to sever codefendant's trials. Plea counsel testified he told Applicant this. Plea counsel also advised Applicant he did not believe the motion to sever would be successful. This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony

credible in this regard.

This Court finds Applicant was aware plea counsel would have made the motion to sever had he proceeded to trial. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be unknowing or involuntary. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

**B. Guilty Plea Was Involuntary Because Plea Counsel Was Not Prepared to Defend Applicant's Innocence at Trial.**

At the evidentiary hearing, Applicant claimed he told plea counsel he did not have a firearm in his possession nor did he know his codefendants' had a firearm in their possession. Applicant claimed he felt forced to plead guilty because plea counsel would not argue Applicant did not have a firearm. Plea counsel testified there was a video of the incident, which showed Applicant during the gunfire exchange. Plea counsel testified he was prepared to go to trial and had investigated potential trial witnesses. Plea counsel testified it was unclear whether there was a firearm in Applicant's hand in the video and his primary argument at trial would have been Applicant did not have a firearm. Plea counsel advised Applicant even if the jury believed Applicant did not have a firearm, it was uncertain whether Applicant would get a verdict of not guilty at trial under the legal theory 'the hand of one is the hand of all.' This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony credible in this regard.

Applicant admitted the only thing he thought plea counsel didn't do for him was make the motion to sever the trial between codefendants. Applicant admitted that he understood and accepted the plea deal. Applicant admitted he was satisfied with his attorney at the time of the

plea.

There was testimony elicited from Applicant and plea counsel concerning a potential fact witness at trial. The witness originally gave a statement to law enforcement that Applicant had a firearm during the shooting. Plea counsel testified his investigator had spoken to that witness and the witness would potentially recant their statement. Plea counsel testified he did not believe the witness's statement was dispositive on the issue and the case would hinge on the video, in which Applicant was depicted.

This Court finds plea counsel had an articulated trial strategy, had adequately investigated, and was appropriately prepared to defend Applicant at trial. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be unknowing or involuntary. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

#### C. All Other Allegations

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

#### IV. CONCLUSION

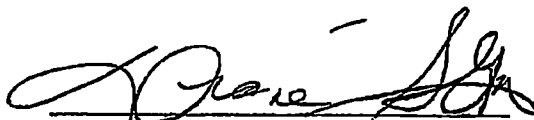
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9 day of January, ~~2016~~ <sup>2017</sup>

  
 DIANE GOODSTEIN  
 Presiding Judge  
 1<sup>st</sup> Judicial Circuit

, South Carolina

James Shumpert

Orangeburg County Sheriff

ARREST WARRANT NUMBER  
2011ORB42

Arrested: June 17, 2010

ACTION OF GRAND JURY  
**TRUE BILL**

*Quene B. Adams*

Date: MAY 25, 2011  
Foreperson of Grand Jury  
Date: May 25, 2011

VERDICT

Foreperson of Petit Jury  
Date:

**The State of South Carolina**  
**County of ORANGEBURG**

**COURT OF GENERAL SESSIONS**

**May 23, 2011 TERM**

**THE STATE**  
**vs.**

Jarrod Jacques

**Indictment for**  
**MURDER**

SC Code: 16-3-10

rights, I hereby waive presentment to a Grand Jury.

Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY  
*Winnifred B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

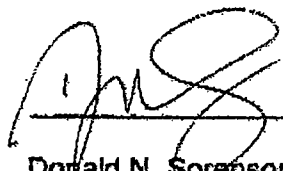
INDICTMENT  
2011GS38-1075

At a Court of General Sessions, convened on May 23, 2011 the Grand Jurors of Orangeburg County present upon their oath:

**MURDER**

That in Orangeburg County on or about June 12, 2010, with malice aforethought, the defendant, Jarrod Jacques did kill one Samuel Sims by means of a gunshot wound to the head. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10. of the South Carolina Code of Laws. as amended.

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

  
Donald N. Sorenson, Solicitor

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Orangeburg

VS  
Jarrod Jacques

AKA:

Race: B

Sex: M

Age: 24

DOB:

SS#:

Address:

DL#:

SID#:

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was:

TO: Attempted Murder

In violation of § 16-2-29 of the S.C. Code of Laws, bearing CDR Code #

3410

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC  
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(Defendant Initial)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State.

ATTEST:

Sorenson, Donald N.

9512  
SC Bar#

Jarrod Jacques

Attorney for Defendant

7426  
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 16 ~~months~~ years ☐ 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 Dept. 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

PTUP

Total: \$        plus 20% fee: \$       Payment Terms:       ☐ set by SCDPPPS       Recipient:       

\*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    | \$              |
| 56-5-2985 (DUI Assessment)             | \$12     | \$              |
| 56-1-286 (DUI Breath Test)             | \$25     | \$              |
| Proviso 47.9 (Public Def/Prob)         | \$500    | \$              |
| § 73.3, 1B TP (Law Enforce. Funding)   | \$25     | \$25.00         |
| § 33.7, 1B TP (Drug Court Surcharge)   | \$150    | \$              |
| § 50-21-114 (BUI Breath Test Fee)      | \$50     | \$              |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/fee | \$              |
| Proviso 90.5 (SCCJA Surcharge)         | \$5      | \$5.00          |
| § 44-53-450(C) (Conditional Discharge) | \$350    | \$              |
| 3% to County (if paid in installments) |          | \$3.40          |
| <b>TOTAL</b>                           |          | <b>\$133.40</b> |

Harry Dots Walker

Harry Dots Walker

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2011GS38-1075

A/V#:

2011ORB42

Date of Offense:

6/12/2010

S.C. Code §

16-3-10

CDR Code #:

0116

## SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS       days/hours Public Service EmploymentObtain 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 FundOther:       ☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 47.12 requires \$800 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

2153

September 22, 2011