

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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DEC 11 2012

S.C. Supreme Court

JAMES ALEXANDER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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Defense
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of Richland)	2009-GS-40-3284
)	
)	
THE STATE,)	
)	
)	
VS.)	TRANSCRIPT OF RECORD
)	
JAMES ALEXANDER,)	
)	
DEFENDANT,)	

May 11, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

DOLLY JUSTICE-GARFIELD, ASSISTANT SOLICITOR
Attorney for the State

MARK SCHNEE, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

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C O N T E N T S

EXHIBITS:

STATE

NO.	DESCRIPTION	ID	EV
1	Photograph	3	
2	Photograph	3	
3	Photograph	3	
4	Photograph	3	
5	Photograph	3	
6	Photograph	3	
7	Photograph	3	
8	\$236 cash	3	

DEFENSE

NO.	DESCRIPTION	ID	EV
1	Motion	3	
2	Voir Dire	3	
3	Pretrial Motions	3	

Certificate of Reporter

40

1 (WHEREUPON, State's Exhibits Nos. 1 -8 were marked
2 for identification only.)_

3 (WHEREUPON, Court's Exhibits Nos. 1 - 3 were marked
4 for identification only.)

5 MS. JUSTICE-GARFIELD: The State calls James
6 Alexander.

7 THE CLERK: Raise your right hand, please.

8 (Raises left hand.)

9 Your other right hand.

10 JAMES ALEXANDER,

11 after being duly sworn, testified as follows:

12 THE COURT: You can proceed.

13 MS. JUSTICE-GARFIELD: Thank you, Your Honor, may it
14 please the Court. Before you is James Alexander with his
15 attorney, Mr. Mark Schnee of the private bar.

16 Mr. Alexander is pleading guilty today as charged
17 to armed robbery. Your Honor, the State originally served
18 Mr. Alexander with notice to seek life without parole.
19 We are withdrawing that today. We were prepared to proceed
20 with trial. He is pleading guilty straight up.

21 THE COURT: Okay. Mr. Alexander, are you under the
22 influence of any alcohol, drugs or medication?

23 THE DEFENDANT: Yes, ma'am, I am.

24 THE COURT: Okay. And tell me about that.

25 THE DEFENDANT: I take medicine for my hand. The

1 police slammed my hand.

2 THE COURT: Okay.

3 THE DEFENDANT: And I take medicine for my nerves,
4 and I take crazy medicine for my nerves, you know what
5 I mean, Prozac and Risperdal.

6 THE COURT: Okay. Going to the medicine for your
7 hand, is that just a pain medicine or something?

8 THE DEFENDANT: It's -- no, ma'am. It's pain
9 medicine, Mobic and Tegritol.

10 THE COURT: Okay. Is that affecting you proceeding
11 today, the pain medicine?

12 THE DEFENDANT: No, ma'am, not really.

13 THE COURT: Okay. What do you mean by not really?

14 THE DEFENDANT: I mean, I can -- I can go on. I can
15 go on. I'm -- I'm in a stable mind.

16 THE COURT: Okay. All right. When is the last time
17 you took your pain medicine?

18 THE DEFENDANT: This morning, ma'am.

19 THE COURT: Okay. Are you okay to proceed today with
20 the guilty plea?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. All right. And then when you say
23 crazy medicine, what are you talking about?

24 THE DEFENDANT: Prozac, Risperdal.

25 THE COURT: And when is the last time you took that?

1 THE DEFENDANT: This morning, ma'am.

2 THE COURT: Is that affecting you proceeding?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: What diagnosis do you have?

5 THE DEFENDANT: Like what?

6 THE COURT: Meaning like what's the condition they
7 told you that you have as a result of them making you take
8 this medicine?

9 THE DEFENDANT: Oh, my hand. For my hand and
10 from -- for the depression and I take for the depression
11 and for sleep.

12 THE COURT: Okay. And you're okay --

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: -- to go forward with your plea?

15 Okay. You understand that there was a True Bill
16 indictment, which meant that the Grand Jury had the
17 opportunity to look at the evidence that the State may
18 present with you at trial?

19 THE DEFENDANT: Yes, ma'am, I did.

20 THE COURT: Okay. And they determined that there was
21 enough evidence to hold you over for trial. Do you
22 understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. So I'm going to relay the
25 indictment to you right now, okay.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Listen carefully. It indicates that
3 this offense occurred in Richland County on or about
4 April 16, 2009; that you committed a robbery by taking
5 away from the person or presence of Duayne Smith by means
6 of force or intimidation certain goods or money.

7 Do you agree with that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: You also either had a weapon, or you made
10 him believe that you had a weapon. How do you wish to
11 plead?

12 THE DEFENDANT: Guilty, ma'am.

13 THE COURT: Is anyone forcing or threatening you to
14 plead today?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Are you doing so freely and voluntarily?

17 THE DEFENDANT: Like as far as what, ma'am?

18 THE COURT: Meaning that nobody is making you plead?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You're doing so because you are, in fact,
21 guilty?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And you agree that you actually committed
24 the offense of armed robbery?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Have you had enough time to speak with
2 your attorney about the matter?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You realize that the Court was ready to
5 let you go to trial today?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Because you wanted a trial originally,
8 right?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay.

11 THE DEFENDANT: And the only reason -- excuse me,
12 ma'am.

13 THE COURT: Sure.

14 THE DEFENDANT: The only reason I wanted that is
15 because I was scared because Dajuan Green, and his family
16 said they was going to fight me because -- if I wasn't
17 involved with them, go to trial, if I was -- if I was to
18 go to trial and stand on him, they was going to jump me.

19 THE COURT: All right. But you had the ability to
20 go to trial and challenge any evidence. Do you understand
21 that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And that to the extent that you felt
24 threatened, you had the ability to let your attorney know,
25 who could have let the authorities know. You understand

1 that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And just like you're being prosecuted for
4 a crime, then the State could have also tried to pursue
5 criminal charges against potentially anybody threatening
6 you, as well?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: So you realize that those were some
9 options, even though you may have felt some type of fear?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. And you were ready still to proceed
12 to trial until you decided to plead today?

13 THE DEFENDANT: I want to plead.

14 THE COURT: Okay. That's what I'm saying. So your
15 attorney has gone over the evidence with you that the State
16 would have had against you at trial?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And that you also understand that because
19 of a prior conviction, that you were facing life without
20 the possibility of parole?

21 THE DEFENDANT: Yes, ma'am; Yes, ma'am.

22 THE COURT: You are aware that at the conclusion of
23 the trial, that that would have been the sentence the court
24 would have given you?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. And that's based on you already
2 having had a series or most serious strike on your record
3 already?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You realize that armed robbery is a
6 felony, as well?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And that this will place you in a category
9 of violent and most serious strike on your record?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: To the extent that you get a plea and/or
12 conviction for a serious or most serious offense, you will
13 face life without the possibility of parole.

14 In other words, you already have a strike on your
15 record, apparently. That's why they sought life without
16 the possibility of parole. This is another strike on your
17 record. Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And I doubt very seriously that you'll
20 be given any other options to plead to anything less than
21 life without the possibility of parole if you commit a
22 crime that carries a serious or most serious offense. I
23 mean a strike against you. Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: In the future.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: We hope you will never be back before the
3 court.

4 THE DEFENDANT: Oh, no, no. No, ma'am, no.

5 THE COURT: But if you commit an offense that has a
6 strike, armed robbery, murder, kidnapping, any high
7 offense that carries a strike of a serious or most serious
8 offense, then that will make you an automatic life
9 without parole candidate.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Have you had enough time to
14 speak with your attorney?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Have you discussed trial strategies,
17 trial evidence and potential defenses in the case?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay.

20 THE DEFENDANT: I guess so. I guess so.

21 THE COURT: So you were ready to proceed to trial
22 after having discussions with him?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. And then you all discussed your
25 options of pleading and going to trial, correct?

1 THE DEFENDANT: Uh-huh.

2 THE COURT: And it is now your decision to plead?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And that with respect to your plea, you
5 realize the Court was willing, ready and able to draw a
6 jury at two o'clock, and it's now 3:35 or so.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: So you have had -- even since two o'clock
9 when the Court was ready to go ahead and draw the jury,
10 you had another hour-and-a-half in addition to all the
11 time you've had, to make the decision.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Because the Court allowed you and your
14 attorney to speak further and for your attorney to continue
15 to negotiate with the Solicitor; is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. Now that you're pleading, you're
18 pleading because you are, in fact, guilty; is that correct?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: That's because you did commit the offense
21 that I just indicated?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Is that correct? There is no doubt in
24 your mind that you committed that offense?

25 THE DEFENDANT: I didn't -- I didn't have a gun, but

1 yes, I did. Yes, I was. I was there with them boys. Yes,
2 I was, ma'am.

3 THE COURT: Okay. And did you make somebody believe
4 that -- or fear that you had a gun?

5 THE DEFENDANT: No. I was with them, but I ain't -- I
6 wasn't nowhere around -- nowhere -- on those grounds, but
7 I was with them, but I ain't had no gun in my hand.

8 THE COURT: And were you with somebody who had a gun?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. So you were -- understand that
11 under our laws, you have what you call the hand of one,
12 hand of all?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: That if you are acting in concert with,
15 or with other people, to commit an offense, you can be
16 charged with the same offense.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you know that they were going to commit
19 the armed robbery and you helped them further that
20 crime along, then you could be charged with the same
21 offense?

22 THE DEFENDANT: Oh, yes, ma'am.

23 THE COURT: Okay. So whether you had the gun or
24 not, then you could still be charged with this offense.
25 Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Your attorney talked to you about that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Now, with respect to this plea,
5 as I indicated, you could have gone to trial. That is
6 one of your constitutional rights. Do you wish to waive
7 all constitutional rights?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Let's go over some of that. You
10 give up your right to remain silent. You understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: As well as your right to a jury trial?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: You do understand the State had to prove
15 you guilty beyond a reasonable doubt and convince 12
16 jurors that you were, in fact, guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: The State could not have required you to
19 testify against yourself at the trial. Do you understand
20 that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Because they have to prove you guilty.
23 You don't have to prove yourself innocent. Do you
24 understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: On the other hand, you could have put
2 forward defenses. You could have testified on your
3 behalf. You could have put forward some evidence or had
4 other people testify for you. Do you understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: But you didn't have to because you could
7 have made them prove you guilty.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: But you give up any chance to challenge,
10 object to, try to get the Court to discredit or suppress
11 or throw out any of their evidence at this time.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. At a trial, or even prior to trial,
16 you could have done that, but when you plead, you can't
17 challenge any of their evidence at this time?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. Now, that doesn't mean that defense
20 counsel won't have a chance to tell me a little bit about
21 you and fight hard for a particular sentence or so, but
22 you can't challenge these facts that they have now indicated
23 that you did these acts.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you're not challenging them anyway

1 because you said you did do them.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. All right. Are you satisfied with
4 how your attorney has worked for you?

5 THE DEFENDANT: Oh, he's a -- he's a very good dude.
6 He did -- he did his job, ma'am.

7 THE COURT: All right. Do you need to ask him any
8 further questions at this time?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Okay. If you do, let the Court know. I
11 gave you an hour-and-a-half or more, and I'll give you
12 more time. Have you understood my questions?

13 THE DEFENDANT: Yes, ma'am, I did.

14 THE COURT: Have your answers been truthful?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. So I can assume you understood
17 the questions, and your answers were truthful?

18 THE DEFENDANT: Correct.

19 THE COURT: Okay. The Court will accept your plea.
20 You'll have ten days to appeal any guilty plea or
21 sentence.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: If you need to do that, you need to let
24 your attorney know, okay.

25 THE DEFENDANT: Yes, sir -- yes, ma'am.

1 THE COURT: Okay. Now, listen carefully as the State
2 gives me additional facts to indicate what their
3 investigation revealed, and then you and your attorney
4 or anyone who wishes to speak on your behalf, I'll be happy
5 to listen to you, all right.

6 THE DEFENDANT: Yes, ma'am, Your Honor.

7 THE COURT: Ms. Garfield?

8 MS. JUSTICE-GARFIELD: Thank you, Your Honor. As I
9 said in a prior plea, the victim in this case, Mr. Duayne
10 Smith, at the time and presently, he was employed with
11 D.J. Rebar.

12 He is a resident of Rock Hill, South Carolina but
13 he comes to Columbia on Monday mornings to report to his
14 job and gets sent to wherever, what project there may be,
15 and upon completion of that project for the week, he goes
16 back to Rock Hill where he resides with the mother of his
17 child and his young daughter, and he has child on the way.

18 Your Honor, he is a very hard-working young man, and
19 on that particular week, April 16th, 2009, his boss
20 called him, Mr. Shirley Kelly, and told him if he wanted
21 to come by his house that evening, he could go ahead and
22 be paid. That way he could travel on back to Rock Hill
23 for a long weekend.

24 He got a ride over to the neighborhood where his boss
25 lived. That would be on Lang Street over near the Watkins

1 Nance Elementary School area. He got paid. His boss gave
2 him exactly \$236.

3 He then left Lang Street and traveled towards St.
4 Louis Street intending to reach his final destination of
5 Gonzales Gardens, which is where his mother resides and
6 where he lived during the week while he was at work.

7 The mother of his child, Tracy, who is also present
8 in the courtroom with him, was traveling from Rock Hill
9 to pick him up. They hoped to pick him up while he was
10 walking to Gonzales Gardens and then head on back to Rock
11 Hill.

12 He was walking by St. Louis Street when he passes
13 by three unknown black males. He passes by the three of
14 them without incident, at which time when he gets past
15 them, he hears what he describes as a ching-ching noise.

16 He says it could have been something just like change
17 in a pocket or what he believed it could have been, the
18 cocking of a gun.

19 He turns around to find the three males approaching
20 him, and at that point, later identified James Alexander,
21 who is before you, saying to him, "You know what time it
22 is. Give us what you got."

23 At that time, Dajuan Green, who is later identified
24 as Dajuan Green, pulls a shotgun on him, and Mr. Alexander
25 directs the other individual to go through his pockets.

1 They go through his pockets, and they take from him
2 two cell phones, one of which was a personal cell phone,
3 and one of which was what he calls is a boost cell phone.
4 It's a phone they use on the job sites to be able to talk
5 to each other one way, sort of like a Nextel device or
6 even like a C.B., to kind of put it in perspective. Taken
7 from him was the \$236 cash.

8 At that time, the three black males left going through
9 a backyard across the back of the school. The victim,
10 Mr. Smith, here is very familiar with this area, as he
11 grew up back there.

12 He proceeds to follow them in the neighborhood
13 keeping an eye on them, not a continuous eye but enough
14 to where he's walking around the corners to know where
15 they are.

16 He eventually gets to McAllister Street where City
17 of Columbia Police Department officers are on the scene
18 responding an unrelated assault charge.

19 He goes up to them and informs them, "Please help
20 me. I've just been robbed. These three males just robbed
21 me," and Mr. Smith continues to chase after him, after
22 the three individuals.

23 At that time, one of the officers with the Columbia
24 Police Department, Officer Powalski, begins a foot chase
25 chasing these individuals.

1 She chases them into a back yard on Orr Street, at
2 which time they jump over a fence. She is not able to
3 complete the jumping of the fence, and the other officers
4 who were on the scene, as well as other officers in the
5 area, began to saturate the area and set up the perimeter,
6 all where these individuals are seen.

7 These three black males continue to run through back
8 yards eventually running through an apartment complex.
9 It's sort of the shape of a horseshoe, Your Honor, where
10 these gentlemen, three gentlemen, are sitting outside.

11 They all are residents of this apartment complex.
12 They take a lot of pride in their home because their
13 grandfather actually built these apartments, so they keep
14 an eye on all the residents around to make sure they don't
15 have any criminal activities within the premises of the
16 residences.

17 They see these individuals running through. They
18 know they're not up to any good. They don't belong in
19 this apartment complex.

20 At that time, Mr. Jimmy Hall, one of the residents,
21 begins to take chase, chases them through the back of his
22 yard. At that time, the three individuals jump over a
23 fence.

24 The other two individuals that are sitting there
25 proceed to walk back toward Ogden Street. At that time,

1 the police are all on the scene. They have seen the
2 individuals. They are blocking them with road blocks in
3 their cars causing them to run in and out.

4 The third unknown individual did get away. It would
5 be our theory that he escapes with the gun. The gun was
6 not recovered in this case.

7 Eventually, in front of those apartments on Ogden
8 Street, Sergeant Yacobucci and Officer Emmitt Gilliam
9 with the Columbia Police Department are able to corner
10 Mr. Alexander, and they're able to apprehend them after
11 a very long fight.

12 Mr. Alexander was not cooperative. He was very
13 combative, and eventually Sergeant Yacobucci actually had
14 to be checked out at the hospital, as well as the defendant,
15 because he had been subject to O.C. spray.

16 Dajuan Green is also apprehended by Officer
17 Ridgeway, and on the ground is found the two cell phones
18 in the vicinity of where Mr. Green is apprehended.

19 The victim runs on the scene. He has run so far and
20 is so upset by what has happened to him, he becomes
21 physically sick there on the scene.

22 He is able to identify his two cell phones, and they
23 were returned to him. He informs immediately to a law
24 enforcement officer that these are two of the guys that
25 robbed me, and he points out that Mr. Alexander is the

1 one that directed the individuals what to do and that
2 Mr. Green is the one that had the gun.

3 After Mr. Alexander is checked out at the E.R., he
4 is taken to the Alvin S. Glenn Detention Center where he
5 is searched as -- does an inventory search, and in his
6 shoe, Your Honor, is found the \$236 that had been taken
7 from the victim, the exact same denomination,
8 11-twenties, one-ten, one-five, and one one-dollar-bill
9 that the victim had prior reported he had just been paid.

10 Your Honor, I'll just show you what would have been
11 State's Exhibit Number 7, a photograph of the money that
12 was taken from Mr. Alexander's shoe.

13 That's the extent of the facts. I do have other
14 information to put on the record.

15 THE COURT: Okay.

16 Sir, you disagree with any of those facts?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And what do you disagree with?

19 THE DEFENDANT: The money -- the money was on my own
20 card the whole time.

21 THE COURT: The money was in your what?

22 THE DEFENDANT: In my -- it's a card, it's a card they
23 give you at the county jail.

24 THE COURT: Okay.

25 THE DEFENDANT: The money was on my card. They came

1 and took it off Saturday -- Sunday. Monday morning after
2 I was to order -- about to order at the canteen, and it
3 wasn't on there. They took it -- they said they
4 came -- they came back and took it off.

5 THE COURT: Are you suggesting that you took the money
6 into the jail to have a canteen account?

7 THE DEFENDANT: No. It was my money. You can -- it
8 was my money I had in my pocket, but at that whole time --

9 THE COURT: Okay. But --

10 THE DEFENDANT: -- they put that in my that book.

11 THE COURT: -- the victim is alleging that you stole
12 the money from him.

13 THE DEFENDANT: I didn't steal that money from that
14 man.

15 THE COURT: Okay. What is it that you claim that you
16 did that makes you plead guilty to a charge of armed
17 robbery?

18 THE DEFENDANT: Yeah, my medicine is messing with
19 me right now.

20 MS. JUSTICE-GARFIELD: Your Honor.

21 THE DEFENDANT: I'll plead. I'm going to plead
22 guilty to all of it.

23 THE COURT: I need to know what you did.

24 THE DEFENDANT: The money and all, I'm pleading guilty
25 to all of it.

1 THE COURT: I need to know what you did in your words.

2 THE DEFENDANT: This is what I did. This is
3 what -- this is what I did.

4 THE COURT: What? Go ahead.

5 THE DEFENDANT: When I -- when we -- when we seen this
6 man, I snatched -- I snatched the money out of this man -- out
7 of this man's hand. Dajuan, Dajuan.

8 THE COURT: So you did snatch some money?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: From the --

11 THE DEFENDANT: Dajuan --

12 THE COURT: -- the victim?

13 THE DEFENDANT: -- snatched the cell phone, and the
14 third man had the gun in the man's face.

15 THE COURT: So you snatched money from the victim?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And then a co-defendant snatched cell
18 phones?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And then another person had -- another
21 co-defendant had a gun?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. Okay. You -- do you agree that
24 you may not have known exactly the dollar amount that you
25 took from the victim?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Okay. All right. So if the -- at the
3 time that you -- the police got you, though, you had some
4 money on you?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Would it be money that was taken from the
7 victim?

8 THE DEFENDANT: I had his money and my money.
9 That's --

10 THE COURT: Okay. So you're just disputing the
11 amount?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. But you had the victim's money and
14 your money?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. And I would consider that -- you
17 still took it by means of force or intimidation?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And one of you had a gun?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Did you state these words that the
22 Solicitor just mentioned, "You know the deal," essentially?
23 "You know what time it is? You know the deal?"

24 THE DEFENDANT: No. I didn't state those. I
25 didn't --

1 THE COURT: You didn't state any words?

2 THE DEFENDANT: The third person stated that I took
3 the money from him.

4 THE COURT: But you took it while somebody was holding
5 a gun?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And you took it while somebody gave the
8 command, so to speak?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: So you were part of the --

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: -- armed robbery in which there was a gun.
13 (There was no response).

14 I need you to say yes or no.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: In which there was some intimidation of
17 the victim?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And there was some force, because there
20 was a gun, as well?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And that a cell phone and money, at least,
23 was taken from the victim?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And a gun pointed toward the victim?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And this was three people involved,
3 meaning defendants?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And you were one of these three people?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And you knew that when the gun was pointed
8 or this command was given, the intent was to rob the
9 victim?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: That's clear to you?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Did you think there was any other intent?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: So taking the money was on purpose?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: It didn't just fall out of his pocket or
18 anything like that?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You purposefully went toward him, and
21 you meant to take the money; is that correct?

22 THE DEFENDANT: I was told to take the money, ma'am.

23 THE COURT: Okay. But you did take it?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Did anybody have a gun to your head to

1 make you take it?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: So you meant to harm him?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And you harmed him by taking the goods
6 off his person?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Off his -- in his possession, okay.

9 Anything else you want to tell me what you did or
10 what you understand was the --

11 THE DEFENDANT: That's all I --

12 THE COURT: -- crime to be about --

13 THE DEFENDANT: -- did, ma'am.

14 THE COURT: Okay. All right. So you might have a
15 dispute on the money, but you're not disputing that he
16 was robbed at gunpoint?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. All right. Where was I?

19 MS. JUSTICE-GARFIELD: You have not accepted the plea
20 yet.

21 THE COURT: Okay. All right. So that's right. We
22 were at the point of you disagreeing with any of the facts.

23 Is there anything else you disagree with?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Okay. I find that those -- what I have

1 indicated to you meets the elements of the crime of armed
2 robbery, so I will accept the plea.

3 Okay: All right. State?

4 MS. JUSTICE-GARFIELD: Thank you, Your Honor. Just
5 for the record, Mr. Alexander explained to you that one
6 of reasons he didn't want to plead is because of
7 intimidation from Mr. Green.

8 I just want the record to reflect this is the first
9 the State has ever heard of that. That's never been
10 relayed.

11 We would have certainly taken the appropriate
12 action, had we been aware of that. Also, at the
13 appropriate time, I'd like you to listen to Mr. Smith,
14 who would like to address the court, as well as -- I believe
15 while they are not listed as victims, Sergeant Yacobucci
16 and Officer Gilliam, certainly, I perceive them to be
17 victims, as they were fought.

18 He probably should have been charged with assault
19 on a police officer while resisting arrest, as well.

20 THE COURT: But they participated in apprehending
21 him?

22 MS. JUSTICE-GARFIELD: Yes, ma'am.

23 THE COURT: Okay. Very -- I'm finally hearing you.

24 Okay. Let's start with Mr. Smith. State your name
25 again for the record.

1 THE VICTIM: Duayne Smith.

2 THE COURT: Okay.

3 THE VICTIM: Yes. On the night I was approached by
4 these three men who robbed, they devastated me. I will
5 never walk again at night because with them approaching
6 me like that, I never thought I would be robbed like that.

7 I mean, he's a young fellow, but he -- he can do better
8 with himself. He don't need to be out there robbing
9 people, stealing and doing bad stuff to people that can
10 harm people like that.

11 I was scared that night for my life. I was scared
12 I would never see my baby no more. I didn't know if the
13 gun was loaded or not, but I was brave enough to catch
14 them because I know they had done it to more than one people,
15 the way they robbed.

16 I really think Mr. Alexander was the head man of the
17 mob. That's all I have to say, Your Honor.

18 THE COURT: Okay. Thank you. All right.

19 All right. Officers, just state your name for the
20 record, please.

21 OFFICER: Ma'am?

22 THE COURT: Just state your name for the record.

23 OFFICER: Officer Yacobucci.

24 THE COURT: Okay.

25 OFFICER: Your Honor, the only thing I wanted to point

1 out is after Mr. Alexander was cornered, he was between
2 a fence, a house and myself.

3 He did turn around me at that point in time and try
4 to go for the gun. I ended up having to use the O.C. as
5 a defensive weapon.

6 At that point in time, it slowed him down enough for
7 me to grab his shirt. He tried to pull away, and that's
8 when Officer Gilliam had to come and tackle him.

9 I still had the O.C. spray. In the course of doing
10 that, being exhausted, I pretty much drank a whole bunch
11 of my own O.C. spray, so I ended up going to the hospital.

12 THE COURT: Okay.

13 OFFICER: Your Honor, I'm Officer Emmet Gilliam,
14 it's the same thing as the other officer just said, when
15 I noticed him trying to grab me, I had to tackle him, take
16 him down, which he still persisted to fight with me.

17 He still had to have a little resistance until the
18 Mace really started kicking in on him, and that's when
19 he finally gave up.

20 THE COURT: Thank you. Okay.

21 MS. JUSTICE-GARFIELD: Your Honor, we are
22 withdrawing the intent to seek life without parole. We
23 just want the record to reflect this is being done in
24 agreement with law enforcement, as well as the victim,
25 something the victim desired to be able to get some

1 closure.

2 I can tell you Mr. Smith, just to say a few words
3 on his behalf, this traumatized him. He contacted me
4 almost immediately after I was assigned the case. He has
5 continued to call me repeatedly to check on the status
6 of the case.

7 He has always been early to every meeting we ever
8 had. All he ever wanted to do is make sure these guys
9 are put away so that his family could be safe.

10 To go through Mr. Alexander's prior record, Your
11 Honor, he has from 2003, a possession of stolen vehicle
12 conviction. He was given a Y.O.A. sentence.

13 He has, in 2002, a false swearing and grand larceny
14 conviction. He was given five years suspended to time
15 served followed by two years' probation, and from 2002,
16 March of 2002, he was convicted for carjacking and
17 sentenced to a sentence of eight years to be followed by
18 two years' probation.

19 He completed that sentence on December 1st, 2008.
20 He had -- then filed a community supervision violation,
21 I believe in March of 2009, and this offense was committed
22 in April of 2009 following that violation, approximately
23 137 days after being released from prison.

24 THE COURT: Okay. Sir, do you disagree with the
25 prior record?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Okay. And you did have a violation while
3 on community supervision, as well?

4 THE DEFENDANT: No, ma'am. I never violated.

5 THE COURT: Okay. What do you indicate your basis
6 for that?

7 THE DEFENDANT: The only -- excuse me, ma'am, the
8 only thing -- the only thing that they violated, was because
9 of this charge right here.

10 MS. JUSTICE-GARFIELD: On March 3rd, 2009,
11 according to the Alvin S. Glenn Detention Center website,
12 he was charged with violation of community supervision.

13 THE COURT: Okay. This offense occurred in April.
14 That violence was in March.

15 MR. SCHNEE: And Your Honor, I've never been given
16 paperwork for a violation of community supervision.

17 THE COURT: Well, let's --

18 MR. SCHNEE: This plea is going to be a violation no
19 matter what.

20 THE COURT: Okay. But did you go back in jail while
21 on community supervision?

22 THE DEFENDANT: Yes, ma'am. The only reason I went
23 back to jail, because they said I ain't -- I ain't paid
24 the rest of the money. That's the only reason I went back
25 to jail.

1 THE COURT: Well, they don't generally --

2 THE DEFENDANT: The only --

3 THE COURT: -- violate you only for money. They may
4 violate you for your attempts or --

5 THE DEFENDANT: No. My grandmother's --

6 THE COURT: -- your --

7 THE DEFENDANT: My grandmother's phone got cut off.
8 I went up there. They said -- she said --

9 THE COURT: Were you on G.P.S.?

10 THE DEFENDANT: Yes. They put me -- put me in jail.

11 THE COURT: Okay. Well, you violated your G.P.S.
12 That must be what it's for, okay.

13 Okay. Now, just to make it clear, because you made
14 some references to some medicine, are you fine right now?
15 Do you understand what the Court is asking you, and
16 discussing with you?

17 THE DEFENDANT: I'm -- I'm all right, ma'am.

18 THE COURT: Okay. All right. Thank you.

19 All right. Mr. Schnee?

20 MR. SCHNEE: Thank you, Your Honor. May it please
21 the Court.

22 I'd first like to say that Mr. Alexander has never
23 told me that he was not guilty of this. That was never
24 a discussion between us.

25 The only discussion we've ever had was armed

1 robbery, strong armed robbery, and what weapon, if any,
2 he would have. Those are the only discussions that were
3 ever going on with Mr. Alexander.

4 So it is not like he constantly said, "No, I didn't
5 do it. No, I didn't do it," and then decide to come at
6 the last minute and say, "I want to plead guilty."

7 It is a difficult decision for him, because he was
8 not the one with the gun. No one alleges he ever touched
9 a gun that day or any time in the past years. It's a
10 difficult decision and hard for him to come to admit that
11 he participated in the armed robbery and that he's guilty
12 of armed robbery when I know he firmly believes all he
13 did was forcibly take the money from someone.

14 THE COURT: Uh-huh.

15 MR. SCHNEE: And that's really what the statement
16 was. I just wanted Your Honor to be aware of that.

17 THE COURT: Okay.

18 MR. SCHNEE: My client has only made it through the
19 11th grade. He does have a seven-year-old daughter who
20 is about to turn eight. He is 25 years old, about to turn
21 26 himself.

22 Since he's been out on -- when he was out on
23 community supervision, he had a couple of jobs doing day
24 labor, worked with Liberty Tax Service.

25 Like you heard in the facts of case, my client was

1 not the one with the gun. According to the State, it was
2 Dajuan Green. My client's understanding is it was the
3 third person. I don't know which it is. The third person
4 was never found.

5 I've spoken extensively with my client about the
6 third person, and it was Dajuan Green's friend, and he
7 doesn't even know him.

8 Dajuan Green, obviously, was just before you earlier
9 today and pled guilty. He had a record himself, not quite
10 as substantial, but he did have a record.

11 I would respectfully request that you give James a
12 very similar sentence. I know my client's record,
13 especially with the carjacking, you certainly have to pause
14 at that.

15 I would respectfully request if you're going to give
16 him any more time, only one or two more years, since my
17 client was not the one with the gun.

18 I know my client's family has been very supportive
19 of him. They've been here all day, been in touch with
20 him and his mother. I know they love him very much, his
21 mother, his grandmother and his sister and his brother.
22 I know they are going to help him when he does get out
23 because he will get out. I know they will help him do
24 the right thing and make sure this doesn't happen
25 again.

1 THE COURT: Okay. Anything further from the State?

2 MS. JUSTICE-GARFIELD: No.

3 THE DEFENDANT: Can I say something, ma'am?

4 THE COURT: Yes.

5 THE DEFENDANT: Hey, I apologize if I did anything
6 wrong with Mr. Smith. I didn't mean no harm by -- by doing
7 what I did. I was -- I was scared myself because I
8 even -- because I was in fear. I was really threatened.
9 Even if that's -- that's all I really want to say. If
10 he -- if he -- if he --

11 THE COURT: You felt like you were threatened?

12 THE DEFENDANT: No. I felt -- I was threatened -- I
13 feel like I was threatened because I didn't do -- because
14 my -- my co-defendant, they threatened me that same
15 night. "Oh, you -- if -- you know you're going to jail,
16 so don't -- you -- you got to do better, so you take -- better
17 not take the stand on me."

18 THE COURT: Okay. Did you understand that you could
19 have raised these issues even at trial or even before now?

20 THE DEFENDANT: Not really, ma'am, because I was on
21 that medicine at that time.

22 THE COURT: Did you tell your counsel about any of
23 that?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: So this is the first time any of us are

1 hearing this?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. Do you need to speak with your
4 client any further?

5 MR. SCHNEE: Just one second.

6 THE COURT: Okay.

7 (Pause).

8 MR. SCHNEE: Your Honor, they were threatening my
9 client in the county jail.

10 THE COURT: Okay.

11 MR. SCHNEE: It wasn't -- the incident itself my
12 client admits to the committing.

13 THE COURT: In other words, the night of the event,
14 the charge you're here about now, nobody made you take
15 the money from the victim.

16 THE DEFENDANT: Yes, they did, ma'am, the same night.

17 THE COURT: Okay. You just said that --

18 THE DEFENDANT: I'm telling you --

19 THE COURT: -- in the jail, they threatened you.

20 THE DEFENDANT: In the jailhouse, they were
21 threatening -- in the jailhouse, they were threatening
22 me, right?

23 THE COURT: Right.

24 THE DEFENDANT: And on the street, they
25 threatened -- they threatened me when this happened.

1 THE COURT: Okay. But you realize you could have
2 challenged this at trial to say you were acting under
3 some kind of duress or coercion or just whatever? You
4 just admitted you never told this to your lawyer.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: But you agree you knew what you were
7 doing when you were committing the acts?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Did anybody pull a gun on you?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Okay. Anything by either side?

12 MS. JUSTICE-GARFIELD: The first I've ever heard of
13 any of this, Judge.

14 THE COURT: Okay. And he is indicating on the record
15 this is the first any of us ever heard of it.

16 Do you still wish to plead?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. The Court has accepted your plea.
19 Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Anything else by anyone else?

22 THE DEFENDANT: No.

23 THE COURT: Okay. You get credit for time served
24 since April 16, 2009?

25 MR. SCHNEE: Yes, Your Honor.

1 THE COURT: Okay. You're hereby sentenced to the
2 State Department of Corrections for 16 years.

3 MR. SCHNEE: Thank you.

4 MS. JUSTICE-GARFIELD: Thank you, Your Honor. Could
5 we ask you to put no contact with the victim?

6 THE COURT: No contact with the victim.

7 (Whereupon, the proceedings were concluded.)
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200CP407157

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

James Alexander
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

2010 OCT 14 AM 9:01
JEANNETTE W. MOORE
C.C.P. & C.S.
FILED
RICHLAND COUNTY

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention Perry Correctional Institute

2. Name and location of Court which imposed sentence Richland County General Sessions 16 yrs 8590

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 09-6540-3284 Armed Robbery

(b) _____

(c) _____

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

(a) 5-11-2010 16 yrs 8590

(b) _____

(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

no

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

(a) the name of each Court to which you appealed:

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

(b) the result in each such Court to which you appealed:

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

(c) the date of each such result:

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

(d) if known, citations of any written opinion or orders entered pursuant to such results:

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

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Plea Counsel
- (b) Involuntary Guilty Plea
- (c) Due Process Violation

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

- (a) Memorandum of law will be sent
- (b) once I am appointed Counsel
- (c) _____

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) Because this is my first PCR and can
- (b) only be raised in a P.C.R.
- (c) _____

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

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

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

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

- i. Mark Schree
Richland Co. Public Defenders office
- ii. 1701 Main St
Columbus, S.C. 29201
- iii. _____

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

- i. Plea
- ii. Sentencing
- iii. _____

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

Vacated

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

no

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, James Alexander, 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.

x James Alexander

SWORN to and subscribed before me this 28th day of September, 192010.

Steven T. Milantley, S.
Notary Public

My Commission Expires: November 7, 2016

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

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

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

x James Alexander
Applicant

SWORN or affirmed to and subscribed before me this 28th day of September, 192010.

Steven T. Milantley
Notary Public

My Commission Expires November 7, 2016

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
ALEXANDER James -)	2010CP4007157
# 00294834,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 14, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Mark Schnee, Esquire. On May 11, 2010, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs.

¹
<http://www4.rcgov.us/publicindex/PCCaseDetails.aspx?County=40+&Casenum=2010CP4007157&CourtType=G&CaseType=Civil&CourtAgency=40002>

The Applicant had been indicted and/or pled guilty to the following: Armed Robbery

- (2009-GS-40-3284).²

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Armed Robbery
<u>Sentence Start Date</u>	04/16/2009
<u>Sentence Length</u>	16 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	05/13/2010
<u>Committing County</u>	Richland
<u>Location</u>	Perry
<u>Projected Release Date</u>	12/16/2023
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00294834&youth=N&type=F>

III.

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

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's

50

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

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the

issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Robert L. Brown, Esquire, Esquire regarding when the hearing should be set.³


Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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February 4, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2010CP4007157) - Applicant: ALEXANDER James
Page 6 of 6

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
James Alexander, #294834,)	C/A No.: 2010-CP-40-7157
)	
Applicant,)	
)	
vs.)	
)	
State of South Carolina,)	
)	
Defendant.)	

APPLICANT'S TRIAL BRIEF

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

I. Statement of Facts of the Case.

A. This case was filed on October 14, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by Consent Order of the Honorable Alison Renee Lee on December 19, 2011.

B. Applicant's application states that he is seeking relief from the sentence imposed in Indictment No.: 2009-GS-40-3284 (Armed Robbery

C. Applicant pled guilty before the Honorable J. Michelle Childs, on May 11, 2010, and was represented by Mark Schnee, Esquire, Assistant Public Defender. Applicant was sentenced to sixteen (16) years imprisonment.

D. Following his arrest on April 16, 2009, the Applicant did not make bond and was detained until his plea appearance thirteen (13) months later. Prior to the date of the guilty plea, Applicant saw his attorney two (2) times while in jail pending trial. The final opportunity Applicant had to talk with his attorney was at the Richland County Judicial Center shortly before his plea.

Applicant did not deny being one (1) of the three (3) people involved in the robbery

(*Transcript* pg. 22 ln. 11-14). The judge, still trying to get a satisfactory response, asked Applicant "What is it that you claim you did that makes you plead guilty to a charge of armed robbery?" and the Applicant replied "Yeah, my medicine is messing with me right now." (*Transcript* pg. 22 ln. 15-19);

e. after hearing from the victim, Applicant asked the Court "Can I say something, ma'am?" Given permission to speak, Applicant stated "Hey, I apologize if I did anything wrong with Mr. Smith. I didn't mean no harm by -- by doing what I did. I was -- I was scared myself because I even -- because I was in fear. I was really threatened." (*Transcript* pg. 36 ln. 3-8). The Court asked Applicant "nobody made you take the money from the victim" to which Applicant responded "Yes, they did ma'am, the same night." (*Transcript* pg. 37 ln. 14-16).

II. Legal Issue

Plea counsel was deficient in representing Applicant and, but for such errors, there is a reasonable probability that the outcome of the case would have been different.

III. Legal Authority

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

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991).

As the South Carolina Supreme Court held in *Stalk v. State of South Carolina*, Opinion No. 26697 (August 10, 2009), Applicant must present some evidence that had plea counsel done an investigation he would have found a witness or evidence that was helpful to Applicant; that is, something that would have affected counsel's advice to Applicant to accept the plea bargain offered or that would have caused Applicant to decline to accept it. Here, the testimony clearly shows that plea counsel did no investigation and was completely unprepared to advocate Applicant's case at the plea hearing. In fact, plea counsel was unaware of Applicant's mental health history and the medications the Applicant was taking.

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

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

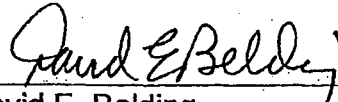
The second step in the analysis—whether Applicant was prejudiced by the

deficient representation. *Strickland v. Washington*, 466 U.S. at 687. As this was a guilty plea, Applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Here, the evidence shows that Applicant's attorney did no investigation or trial preparation and simply negotiated a guilty plea without making a legal determination of whether the State could prove all elements of Armed Robbery. The Applicant relies on *State v. Muldrow*, (S.C. S.Ct. Opinion No. 25414, 2002) as authority on the necessity of proving both elements or the offense should be remanded for resentencing under the common law offense of Strong Arm Robbery.

Therefore, Applicant's attorney did not demonstrate "reasonableness under professional norms" that satisfies the requirements of the Sixth Amendment. *Cherry v. State*, 300 S.C. 115, 386 S.E. 2d 624 (1989).

PRAYER FOR RELIEF

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



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ATTORNEY FOR APPLICANT

February 13, 2012

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2010-CP-40-7157

James Alexander,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Transcript of Record

February 13, 2012
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

David E. Belding, Esquire
Attorney for the Applicant

Rob A. Corney, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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<u>Witness/Description</u>	<u>Page No.</u>
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
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No Exhibits Introduced.

1 MR. CORNEY: The next case we have is going to be
2 James Alexander.

3 THE COURT: All right.

4 MR. CORNEY: It's docket number 2010-CP-40-07157. Mr.
5 Alexander was true-bill indicted at the August 2009 term of
6 the Richland County grand jury for armed robbery. He pled
7 guilty before the Honorable J. Michele Childs on May 11,
8 2010, as indicated and received a sixteen year sentence.

9 He filed a timely PCR application, and prior PCR
10 counsel Rob Brown had filed a motion for a mental
11 evaluation October 31, 2011. I have that motion in my
12 file. I don't know. I believe it's still pending at this
13 point in time, but it was filed by prior PCR counsel. So,
14 I don't know if Mr. Belding may know a little more about
15 that. But he is represented by Mr. David Belding today.

16 THE COURT: All right, Mr. Belding.

17 MR. BELDING: Your Honor, I'm not going to make a
18 motion for a continuance on that basis. I've never seen --
19 and I don't think Mr. Alexander's been evaluated at all.
20 But I have spoken to him, and I think that I am not a
21 psychiatrist nor a psychologist, but I think that if we
22 went on *McNaughten* rule grounds, that it would be
23 determined that he was competent to stand trial and assist
24 in his defense because he's been able to do so here in the
25 PCR. So, we would just like to proceed.

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

4

1 THE COURT: All right.

2 MR. BELDING: Your Honor, at this time, I'd like to
3 call Mr. James Alexander to the stand.

4 THE COURT: All right, Mr. Alexander.

5 JAMES ALEXANDER, BEING DULY SWORN,
6 TESTIFIES AS FOLLOWS:

7 BAILIFF: State your full name for the record.

8 WITNESS: James Alexander.

9 MR. BELDING: Thank you, Your Honor. May it please
10 the court?

11 DIRECT EXAMINATION BY MR. BELDING:

12 Q. Would you state your full name for the record?

13 A. James Alexander.

14 Q. Okay. Be sure and speak up so the court reporter and
15 the judge can hear you. You comfortable up there?

16 A. No. I kind of, kind of nerve.

17 Q. I understand. I understand.

18 THE COURT: Let me just ask this question. We've got
19 two other guys over here. So, after this case, we have two
20 more?

21 MR. CORNEY: We have three more. One, one's going to
22 take a little bit longer, I believe. This might be the
23 last one we'll fit in before we break.

24 (A PAUSE.)

25 THE COURT: Go ahead.

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

5

1 BY MR. BELDING:

2 Q. Mr. Alexander, where are you incarcerated at this
3 time?

4 A. Perry Correction.

5 Q. How long have you been there?

6 A. Say since, say about two year.

7 Q. Okay.

8 A. No -- yeah, I ain't -- for about two years.

9 Q. Okay. Where did you grow up?

10 A. Columbia.

11 Q. Okay. How old are you now?

12 A. I'm twenty-seven.

13 Q. How, how far did you go in school?

14 A. I went to the tenth grade.

15 Q. What school ---

16 A. Tenth, eleventh grade.

17 Q. Okay. What school were you attending?

18 A. Lower Richland.

19 Q. Okay. Were you being promoted along?

20 A. Yes, sir.

21 Q. With the rest of the people your age?

22 A. Yes, sir.

23 Q. Okay. Why did you not graduate?

24 A. Got locked up.

25 Q. Okay. Were you a juvenile at that time?

1 A. Yes, sir.

2 Q. Did you go to the Department of Juvenile Justice?

3 A. Yes, sir.

4 Q. Okay. Prior to this case that we're here about, how
5 many times had you been sent into custody with the
6 Department of Youth Services, Department of Juvenile
7 Justice?

8 A. One time.

9 Q. Just that one time? Okay. Now, how long had you been
10 out of jail when this incident occurred?

11 A. Six months, sir.

12 Q. Okay. Now, do you recall when you were arrested?

13 A. What date? You talking about day?

14 Q. Yes.

15 A. No, sir.

16 Q. Okay. If I told you that I've got records that show
17 that you were arrested on April the 16th of 2009, does that
18 sound about right to you?

19 A. Yes, sir.

20 Q. Okay. What do you recall you were arrested for?

21 A. Armed robbery.

22 Q. Okay. Now, when was that supposed to have taken
23 place?

24 A. Somewhere on, like, St. Louis Street.

25 Q. Okay. You know, was it the same day you got arrested?

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

7

1 A. Yes, sir.

2 Q. Okay. All right. Where is St. Louis Street?

3 A. I ain't, I ain't familiar with that side town. I'm
4 from the country.

5 Q. Okay. I'm sorry. That's right. You were from Lower
6 Richland?

7 A. Yeah.

8 Q. Okay. So, you don't even know what part of town that
9 was in?

10 A. No, sir.

11 Q. Okay. How did you get there that day?

12 A. Working. I was working. I was working at the
13 Liberty's, at the Liberty's Tax place on Millwood.

14 Q. Okay.

15 A. And, you feel me, I was walking. I was walking down
16 the street, you feeling me, me and two other, me -- they
17 say there was two other dudes, but it was one. You feeling
18 me? We was walking. You feeling me?

19 Q. Okay. Did you know a gentleman named DuJuan Green?

20 A. I ain't know him. I just met him that night.

21 Q. Okay. What time of, what time of day are we talking
22 about here?

23 A. Around 9:00. That's what, that's what -- 9:00.

24 That's what they say.

25 Q. At night or during the day?

- 1 A. At nighttime, sir.
- 2 Q. At 9:00 at night, okay, and it was in April?
- 3 A. Yes, sir.
- 4 Q. Right? Was it a warm day?
- 5 A. Yes, sir.
- 6 Q. Okay, even at 9:00 at night, correct?
- 7 A. Yes, sir.
- 8 Q. All right. Now, did you just meet DuJuan Green that
- 9 day?
- 10 A. Yes, sir.
- 11 Q. Okay. Was there another person that was walking with
- 12 you?
- 13 A. Not that I remember, sir.
- 14 Q. Okay. You only remember you and DuJuan?
- 15 A. Yes, sir.
- 16 Q. All right. Do you remember coming across a man who
- 17 ultimately, I believe, identified himself as Dwayne Smith?
- 18 A. Yeah. That's, that's, that was the victim.
- 19 Q. Yeah.
- 20 A. But I don't know him.
- 21 Q. Okay. What happened?
- 22 A. Mr. -- all right, Mr. Smith asked Mr. Green to buy
- 23 some weed. When Mr. Green went in his pocket to sell it to
- 24 him, you feeling me, Mr. Smith said he ain't want it. So,
- 25 that's when Mr. DuJuan -- that's when Mr. Green choked him

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

9

1 out, and I went in his pocket. That's when we, that's when
2 we ran.

3 Q. Okay. Did you get the money that had been in Mr.
4 Smith's pocket?

5 A. Yes, sir.

6 Q. Okay. All right. Now, did either of you have a gun
7 with you?

8 A. No, sir.

9 Q. Okay. Now, I understand Mr. Smith testified at the,
10 at the plea that DuJuan Green was carrying a shotgun. Is
11 that true?

12 A. That what, that what he said. That what he said at
13 the court, in the court, in the courthouse, right.

14 Q. Yes.

15 A. But it wasn't, it was never no gun.

16 Q. Okay. All right. In fact, it was odd. The victim
17 told police a story where he got the money: paid by his
18 employer. Exactly how much money it was, \$236, and exactly
19 what denominations that money was in that added up to \$236.
20 Isn't that right?

21 A. Yes, sir.

22 Q. And that exact money was found on you?

23 A. Yes, sir.

24 Q. Isn't that correct? Okay, and you didn't deny that,
25 did you?

1 A. No, sir.

2 Q. Okay. Now, you were arrested and charged, charged
3 with armed robbery?

4 A. Yes, sir.

5 Q. Okay, and did you get a lawyer to represent you?

6 A. I got two lawyers.

7 Q. Okay. Who was the first one?

8 A. Ms. Tracy Pinnock and the second was Mark Schnee.

9 Q. Okay. Were they both with the public defender's
10 office at that time?

11 A. I'm not sure whether Mark Schnee was with. I know Ms.
12 Tracy Pinnock was with them.

13 Q. Okay. Did you, did you pay for Mr. Schnee ---

14 A. Oh. No, sir.

15 Q. --- to appear? Okay. Did anyone, to your knowledge,
16 pay Mr. Schnee to represent you?

17 A. No, sir. Not that, not that I know of. My, my family
18 ain't paying for him.

19 Q. Okay. Now, as I understand from the records, you were
20 arrested on April 16th of 2009, and you stayed in jail at
21 the detention center ---

22 A. Thirteen months.

23 Q. Okay. During that thirteen months, did you get a
24 chance to talk to the first lawyer, Ms. Pinnock?

25 A. All she wanted to do was let me go down the road

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

11

1 fifteen years.

2 Q. What? Please tell me what you mean by that.

3 A. She was, like, you going -- you feeling me? You might
4 as well go ahead and take the plea because they got, they
5 got enough to indict you with. And, you feeling me, she
6 was, like, going down the road fifteen years, you feeling
7 me? I, I, I tell her no. I wanted to go to trial.

8 Q. Did you ever actually -- did Ms. -- and I think I'm
9 saying her name right -- Pinnock, did she ever actually
10 tell you about a plea offer that the state had made for ---

11 A. Yes, sir.

12 Q. --- you to consider? What was that offer?

13 A. Fifteen years.

14 Q. Eighteen?

15 A. Fifteen.

16 Q. Fifteen years. Okay. How did, how did it come to
17 pass that that lady was no longer your lawyer?

18 A. Because I, I fired her.

19 Q. How did you fire her?

20 A. I had help writing a motion to dismiss counsel.

21 Q. Okay. Someone at the jail helped you?

22 A. Yes, sir.

23 Q. Okay. Did you actually appear in front of a judge?

24 A. Yes, sir.

25 Q. Do you remember which judge it was?

1 A. Ms. Childs.

2 Q. Okay, and did Ms. Childs allow you to have your lawyer
3 be changed?

4 A. Yes, sir.

5 Q. Okay. Now, then your next lawyer, was that Mr. Mark
6 Schnee?

7 A. Yes, sir.

8 Q. Is he here in the courtroom?

9 A. He right there.

10 Q. Okay. Now, Mr. Schnee, during the -- how long was he
11 your lawyer before you went and pled guilty to this armed
12 robbery?

13 A. I got it. Hold on.

14 (A PAUSE.)

15 Q. Let me ask you this, Mr. Alexander. I found a note
16 that may be in your handwriting. See if this refreshes
17 your memory. Had you been in jail for five months before
18 you ---

19 A. Yes, sir.

20 Q. --- saw Mr. Schnee?

21 A. Yes, sir.

22 Q. Okay. So, that would have put it some time around
23 maybe September 2009, something like that maybe?

24 A. Something like that.

25 Q. Okay. All right. Now, when you first met him, how

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

13

1 long did you get to talk to him?

2 A. About -- the first time I think was about ten, about
3 -- hold on. The first time was five to ten minutes.

4 Q. Okay.

5 A. That was, that was on the introduction.

6 Q. Okay. He just wanted to let you know who he was,
7 okay, and then did you get to talk to him again?

8 A. Yeah. The second time was, like, ten to fifteen
9 minutes. That was ---

10 Q. Okay.

11 A. He was asking me, he asked me to plead. I told him
12 not. I told him not. I'm not pleading to armed robbery.

13 Q. Okay. Why did you tell him you weren't going to plead
14 to armed robbery?

15 A. Because I, I felt, I felt as though, I felt as though
16 they, they've -- it ain't, it ain't no -- that's not a
17 armed robbery you ain't got, you ain't no weapon or
18 nothing.

19 Q. Okay. All right. Now, and as, as was stated in
20 court, though, it was stated by the victim that there was
21 actually three people there. Do you remember that?

22 A. Yes, sir.

23 Q. Did the third person have a gun?

24 A. No, sir.

25 Q. Okay. Do you know the third person's name?

1 A. No, sir.

2 Q. Was that person ever found by the police?

3 A. No, sir.

4 Q. Was a gun ever found ---

5 A. No, sir.

6 Q. --- by the police? Okay. Were you willing to plead
7 guilty to strong-arm robbery?

8 A. Yes, sir.

9 Q. Did you tell that to either of your attorneys?

10 A. Yes, sir.

11 Q. All right. Now, based with -- based upon that, what
12 did Mr. Schnee advise you to do?

13 A. He said plead, said go ahead and, go ahead and -- you
14 might -- he said go ahead and plead guilty. He was, like,
15 go ahead and plead guilty because y'all are too young to go
16 to trial.

17 Q. What did that mean, you were too young to go to trial?

18 A. Basically, basically I feel, I feel as though, I feel
19 as though he probably said it because it's a lot, it's a
20 lot of young brothers back here keep, you feeling me,
21 going, going back there with too, with too much time. Now
22 you feeling me? He probably ain't wanted me to get too
23 much -- a lot of, a lot of time. He want -- probably ain't
24 wanted me to get me a life sentence.

25 Q. Were you facing a life sentence?

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

15

- 1 A. I'm facing life without parole.
- 2 Q. Okay. Had someone told you that?
- 3 A. Mark, Mark Schnee told me that.
- 4 Q. Okay. Is that because of your prior record?
- 5 A. Yes, sir.
- 6 Q. Okay, and you didn't want to face life without parole,
7 did you?
- 8 A. Ain't nobody want to face life without parole.
- 9 Q. I understand that. Okay. Excuse me. Did ultimately
10 -- and the next May, a little over a year later like you
11 said, thirteen months, you appeared in front of Judge
12 Childs to plead guilty. Do you remember that?
- 13 A. Yes, sir.
- 14 Q. Okay. Now, the day that you, you appeared, May 11th
15 of 2010, how well do you remember that hearing?
- 16 A. Not too well. I was on medication, sir.
- 17 Q. Okay. Tell me a little bit about this medication.
18 What, what, what would you take medication for?
- 19 A. I got, I got -- I take, I take Tegretol.
- 20 Q. What is that?
- 21 A. It's, like, it's supposed be, like, depression pill,
22 but if -- and the mood swings, right? And I take Remeron.
23 That's, that's to help, that's to help you sleep.
- 24 Q. Okay.
- 25 A. And now you feeling me, they, they did have me on

1 Prozac, but they, they took me off, and they had me on
2 Rexi, Rexidol. They took me off. Zoloft, they took me
3 off, saying them things don't work. They, they, they ain't
4 been helping.

5 Q. And at the very beginning of the hearing in front of
6 Judge Childs, you told her about these medications, didn't
7 you?

8 A. Yes, sir.

9 Q. What were you taking Prozac for?

10 A. And Pro, Prozac was, like, depression pill, you
11 feeling me? I, I had went on suicide -- I been going on
12 suicide, suicide watch, and you feeling me? They had put
13 me on, they had put me on it.

14 Q. Okay. When, when Judge Childs was talking to you
15 about this plea, this guilty plea you were offering to
16 make, and I'm going to read from the transcript, Mr.
17 Alexander, if it's all right.

18 On page 21, one of the, one of the things she asked
19 you was: You listened to the state talk about their version
20 of the facts, what happened that day with Mr. Smith.

21 Okay, you remember that?

22 A. Yes, sir.

23 Q. And then she said: Okay. And she asked you: Sir, do
24 you agree with any of those facts?

25 And your -- you remember your response?

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

17

1 A. No, sir.

2 Q. You said: Yes, ma'am.

3 A. I don't remember.

4 Q. You disagreed.

5 A. I don't remember that, sir. I was on medication, like
6 I said.

7 Q. Okay.

8 A. But if I did, if I did say yes, ma'am, I don't
9 remember it, though.

10 Q. Okay, and one of the things you disagreed with was the
11 money. You said: The money, the money was on my own card
12 the whole time.

13 What did that mean?

14 A. It mean they took -- when they, when they, when they
15 got it off me, they put, they put it straight on my card,
16 you feeling me? Three days later, they come and take my --
17 take it off my card. So, they -- so, it was on my whole --
18 on my -- they was going -- it was on my card the whole
19 time. They could have -- they -- then they, that's when
20 they came, got the search warrant, and took it off my card.

21 I ain't -- I'm not denying that, you feeling me, that
22 I, I didn't take the money from the dude. Like I said, I
23 did. I took the money, but was never no gun.

24 Q. Okay. When the police arrested you, did they find the
25 cash money on you, the \$236?

1 A. No, sir. They found, they, they got -- they put on my
2 account when they shook, when they shook me down when I got
3 to the county jail.

4 Q. Okay. All right, and did they write down the exact
5 numbers of the bills so that it added up to the money?

6 A. Yes, sir.

7 Q. So, is that how they were able to tie together what
8 Mr. Smith said he had robbed from him and what you had on
9 you when you were arrested?

10 A. I guess so, sir.

11 Q. Okay. Do you recall the judge asking you, because you
12 made the statement, do you recall her asking you: What is
13 it that you claim you did that makes you plead guilty a
14 charge of armed robbery?

15 Do you remember her asking you that?

16 A. No, sir.

17 Q. Well, I will represent to you on page 22 at line 15 --
18 it's line 18. You said: Yeah. My medicine is messing with
19 me right now.

20 A. Yeah. I, I, I believe I said that.

21 Q. Okay. So, tell me. To the best of your recollection,
22 what was your mental state as you were in the courtroom
23 standing in front of Judge Childs?

24 A. I was, I was on so -- I was on so much medicine that I
25 don't even feel like I was, I was in the courtroom that

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

19

1 day. I was on, like, five different, like, four, five
2 different medicine. I ain't knew where I was at.

3 Q. Okay. Do you recall listening to Mr. Smith, the
4 victim, address the judge?

5 A. No, sir.

6 Q. Do you recall asking the judge, Judge Childs, if you
7 could say something, and you were given permission by the
8 judge to speak?

9 A. Yes, sir. I remember that.

10 Q. Do you recall saying, after she gave you permission:
11 Hey, I apologize if I did anything wrong with Mr.
12 Smith. I didn't mean no harm by, by doing what I
13 did. I was, I was scared myself because I even
14 -- because I was in fear. I was really
15 threatened.

16 MR. BELDING: I'm reading from page 35, Your Honor.

17 Q. Do you recall saying those words to Judge Childs?

18 A. Not really, but I, I believe I did.

19 Q. Okay, and, and, and then the judge asked you. She
20 said -- because you said something about being threatened,
21 and Judge Childs asked you. She said: You know, but nobody
22 made you take the money from the victim. And you
23 responded: Yes, they did, ma'am, that same night.

24 Do you recall saying that?

25 A. Yes, sir.

1 Q. What does that mean?

2 A. I don't -- it mean, it mean what it, what it mean.

3 Q. Okay. Who threatened you that same night?

4 A. Man, I been hearing voice -- I been hearing voices all
5 night. All that night, I been hearing voices, you feeling
6 me?

7 Q. Okay.

8 A. It could have been anybody talking to me.

9 Q. All right. Prior to going to appear in front of Judge
10 Childs, did you pass any kind of mental health examination
11 to see if you were competent ---

12 A. No, sir.

13 Q. --- to assist?

14 A. I still, I still ain't got -- Mr., Mr., Mr., the other
15 guy, December 16th Judge Casey Manning granted me the --
16 granted me a evaluation, but I never went.

17 Q. And that still hasn't happened, has it?

18 A. No, sir.

19 Q. Have you ever had any kind of a diagnosis? Do you
20 know what that means?

21 A. No, sir. You explain it to me?

22 Q. Well, let me just ask it a little better. Has any
23 doctor ever told you that you have any kind of a mental
24 condition?

25 A. Not that, not that I know of.

J. ALEXANDER - DIRECT EXAMINATION BY MR. BELDING

21

1 Q. Now, and you've told me already that you said you had
2 had a depression, right?

3 A. Right, depression. I got -- I'm -- that's one, that's
4 one that they -- the doctor, we got a mental health
5 counselor. She, you feel me, she tell me that I'm -- I be
6 depressed all the time, walking around with my head down
7 all the time, and you feeling me? Like I ain't got a care
8 in the well -- in the world. That's, that's one of -- I
9 think that's one of my diagnoses, though.

10 Q. Did you ever have anyone give you any other kind of a
11 diagnosis that you have any kind of mental condition of any
12 kind that you remember?

13 A. No, sir.

14 Q. Okay.

15 A. I probably got some when I was little. I don't
16 remember, though.

17 Q. Okay. How long have you taken medication?

18 A. Since I was two years old.

19 Q. Okay, and what was the medication for?

20 A. A lot, a lot of things.

21 Q. Okay. Do you have -- you, you mentioned earlier to
22 Judge Newman that you have had a number of arrests in your
23 life, correct?

24 A. No. I only had, I only got car jacking and some other
25 ones, you feeling me? I don't remember, I don't remember

1 the name of it.

2 Q. I understand. Did any of those cases before this one
3 involve a gun, you using a gun?

4 A. Not, not really. I just pleaded guilty. We ain't
5 have -- I ain't have a gun. We just -- I just pleaded
6 guilty to it just like this one, you feeling me? The man
7 that -- it was a car jacking, but the man, you feeling me,
8 I ain't have a gun, you feel me? I just pleaded guilty. I
9 just pleaded guilty to it, not knowing what I was doing.

10 Q. The day on May 11th of 2010, when you were brought to
11 the courthouse to appear in front of Judge Childs, did you
12 know why you were coming here?

13 A. No. No, sir. They just -- you feeling me? I just
14 seen other people go, you feeling me, come, come to the
15 courthouse. They was leaving the dorms going to the
16 courthouse, going to with courthouse for, like, trials and
17 stuff. I thought I was, I thought I was going to trial
18 that day.

19 Q. Okay. Now, had Mr. -- when was the last time had you
20 talked to Mr. Schnee before you came here that day? Do you
21 know?

22 A. No, sir.

23 Q. When you got here that day, did you get a chance to
24 talk to Mr. Schnee?

25 A. Yes, sir. I got ---

1 Q. What did y'all talk about?

2 A. We, we talk, we basically talking about the, about
3 the, you feeling me, this case, this case. Like, he's,
4 like, oh, do you, do you, you feeling me, you too young.
5 You too young. You ought to go and plead because you're
6 too, you're too young to go to trial.

7 He kept, he kept saying it several time, you feeling
8 me? He even said it in front of my grandmomma, my mom, and
9 my little sister. And, you feel me, my grandmomma, she got
10 upset, and when she, when she started crying, I started
11 crying. So, you feeling me, that, that, that -- it made,
12 made me think. And, like I ain't want to lose my
13 grandmomma. If I get life, she'll -- she even said if you
14 get life, it'll, it'll hurt me. And I was, like, no. You
15 feeling me? I ain't -- I mean, you feel me? Just go ahead
16 and do what Mark, what Mark said. Go ahead and plead. You
17 feel me? Plead to it.

18 Q. Did he ask you to make a decision?

19 A. No, sir. No, sir.

20 Q. As we sit here today, did he tell you to plead guilty?

21 A. Yeah. He said go ahead, plead guilty.

22 Q. Okay.

23 A. You too young to go to trial.

24 Q. Did he tell you what you were pleading guilty to?

25 A. Armed robbery.

1 Q. Okay. Did you question him about why am I pleading
2 guilty ---

3 A. Yeah.

4 Q. --- to armed robbery?

5 A. I said, I said I'm not going to plead to armed
6 robbery.

7 Q. Let me ask you something. Didn't you have -- wasn't
8 there some potential for a defense in this case to armed
9 robbery? In other words, isn't it true that the victim
10 statement that ---

11 A. Yeah. You got it. I got it right here. It state --
12 if you mind me reading? It's right, it's right here. If
13 you mind me reading?

14 Q. No. Go ahead.

15 A. It say ---

16 MR. CORNEY: That's something, that's something that
17 I haven't seen before, and I don't know about entering it
18 in.

19 WITNESS: It's in my motion. I got three copies of my
20 motion.

21 MR. CORNEY: Okay, I don't know about entering it in
22 because the victim's not here to testify as to it, at least
23 as to the truth of the matter asserted in there. But
24 that's something I haven't seen up until this point.

25 THE COURT: Well, I want to hear what he's talking

1 about.

2 BY MR. BELDING:

3 A. It say:

4 Police investigation. I, Dwayne Smith, went to
5 pick up my check from my bossman, and I was
6 walking home. When I was walking past three,
7 three males, when they passed me, they, they ran
8 up and said give it up, and you know what time it
9 is. So, I pulled out two cell phone, and that
10 was not enough. One of the three said check him
11 some more. And one of them went into my pocket
12 and took \$236 from me. So, I ran to someone else
13 and asked them to call the police for me, and
14 some man said okay. So, I ran behind them, them
15 from Saluda Street, and they saw me and picked
16 up, picked up speed. So, I turned off, and I ran
17 in to a police and, and help -- and they helped
18 me. So, we -- so, we get two, get two of the,
19 two of the three.

20 Q. Did, did, did you talk to Mr. Schnee at any point
21 about whether you could have challenged the victim's
22 statements?

23 A. Yes, sir.

24 Q. About the fact that -- I mean, it's ---

25 A. He made three ---

1 Q. --- an April day, and people are just walking around
2 with a shotgun?

3 A. He made three different statement.

4 Q. Okay, what were the three different statements?

5 A. The other two, and the thing you got. When one of
6 them say DuJuan had it. They say DuJuan Green had a pistol
7 -- well, the sawed off, whatever they say. You feeling me?
8 Then they said, they say, you feeling me, the third man
9 had, you feeling me -- here it say, it say don't even --
10 they don't even state no gun in here.

11 Q. Right. Okay. So, the victim's story was confusing?

12 A. It ain't add up.

13 Q. Okay, but you never have denied that you took the
14 money from him. You just deny that anyone was armed with a
15 weapon?

16 A. Yes, sir.

17 Q. Do you recall if anyone acted like they had a weapon?

18 A. It was not ---

19 Q. You know, could have taken from a pocket ---

20 A. It wasn't nothing like that.

21 Q. Okay, all right, and no gun was ever found?

22 A. No, sir.

23 Q. Did, did the lawyer prior to you pleading guilty in
24 front of Judge Childs go through with you what kind of
25 questions you'd be asked by the judge?

J. ALEXANDER - DIRECT EXAMINATION / CROSS-EXAMINATION 27

1 A. No, sir.

2 Q. How did you know how to answer?

3 A. I was -- he's standing right here. I'm standing, I'm
4 standing right here. He all up in my ear. Do you -- yes,
5 yes, yes, yes, yes. You got to say yes. You got to say
6 yes. You got to say yes.

7 Q. Okay. The bottom line is did you feel you were
8 prepared for that guilty plea?

9 A. No, sir.

10 Q. Did you feel you were prepared to go to trial?

11 A. No, sir. I was going to go to trial. They was going
12 to send -- take me to trial that same day.

13 Q. I understand.

14 MR. BELDING: All right, thank you, Mr. Alexander.
15 Please answer any questions Mr. Corney has for you.

16 THE COURT: Mr. Corney.

17 CROSS-EXAMINATION BY MR. CORNEY:

18 Q. Mr. Alexander, do you have a copy of the transcript
19 with you up there from your ---

20 A. Which? Which.

21 Q. --- plea hearing?

22 A. No. No, sir.

23 Q. No?

24 (COUNSELORS CONFER.)

25 Q. I'm going to hand you the plea transcript. This is

1 page 23, and just take a look at that starting right down
2 here on line 13. I mean, that's you talking with the
3 court, that question and answer exchange with the court.
4 Page 23, starting with line 13.

5 (A PAUSE.)

6 A. It say...

7 Q. Okay, right there you say more than one time:

8 Yeah, there was a third person that had a gun,
9 right. One of my co-defendants had a gun.

10 Right there on page 13, you say: Snatch a cell phone
11 and the third man had a gun in the man's face.

12 A little bit further down, court says that:

13 And then another person had -- another
14 co-defendant had a gun? And you say: Yes, ma'am.

15 So, you're sitting there telling the court yeah, there
16 was some -- there was a third person there and they did
17 have a gun. We robbed this guy and took his money, right?

18 A. Well, it wasn't, it wasn't -- when I -- I ain't even,
19 I ain't even said that. I start shaking my head and Mark,
20 Mark was, like -- you feeling me? He's saying yes. He's
21 saying yes.

22 Q. All right. When you, when you entered this plea, was
23 Mr. Schnee going to jail at the end of this thing, or was
24 it you? I mean, it was your plea, right?

25 A. Saying it was my, it was my plea, sir.

J. ALEXANDER - CROSS-EXAMINATION BY MR. CORNEY

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1 Q. You were the one that was going to end up going to the
2 Department of Corrections at the end of this plea, not ---

3 A. Yes, sir.

4 Q. --- Mr. Schnee, right?

5 A. Yes, sir.

6 Q. Okay, but you sat there and just repeated word for
7 word ---

8 A. Yes, sir.

9 Q. --- whatever he was whispering in your ear?

10 A. Yes, sir.

11 Q. All right. Judge never said anything about ---

12 A. No, sir.

13 Q. --- aid from Mr. Schnee?

14 A. No, sir.

15 Q. And after the solicitor gave his, his version of the
16 facts and you, you responded to it, the court asked you if
17 you disagreed. You disagreed on the one point about the
18 money, but never disagreed that there was a gun involved, a
19 third person involved. Never said anything about that, did
20 you?

21 A. I'm telling you wasn't no gun involved.

22 Q. And you'd been on some medicine at the time of the
23 plea, and that's no secret. That was something that, that
24 the judge asked about, y'all talked about at the beginning
25 of the plea, right? Okay.

1 A. Yes, sir. Yes, sir.

2 Q. Okay, and you, you had told the judge at that point
3 that it wouldn't affect your ability to go forward with the
4 plea. I think your exact words on page 4, lines 10 through
5 21, where that colloquy goes, you said: I'm in a stable
6 mind. You remember that?

7 A. I wasn't in a stable mind.

8 Q. You just told, told the court that anyway?

9 A. No. Mark told me. He, Mark Schnee, told me to say
10 that.

11 Q. All right, he leaned over in your ear and said just
12 say you're in a stable mind? You're good to go?

13 A. He say, he say go, you feel me? You got, you got to
14 say yes. You got to say yeah.

15 Q. Okay.

16 A. He said it several time.

17 Q. Did he tell you tell the judge that he'd done a good
18 job? Did he say to say ---

19 A. Yes, sir.

20 Q. --- to say counsel is a, and I believe your exact
21 quote was:

22 A very good dude. He did his job, ma'am.

23 He whispered that in your ear?

24 A. Yes, sir.

25 Q. On page 15, line 3 through 6 where you told him he'd

J. ALEXANDER - CROSS-EXAMINATION BY MR. CORNEY

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1 done a good job?

2 A. Yes, sir.

3 Q. So, you were just sitting there, just ---

4 A. Going ---

5 Q. --- playing parrot, repeating whatever he said right
6 in your ear?

7 A. Going, I'm going off of what he said.

8 Q. Okay. You facing life without parole didn't have
9 anything to do with you wanting to take this plea, though?

10 A. Life without -- who want to take life? Who want to
11 get life without parole?

12 Q. All right. So, that played into it, too. You didn't
13 want to go to jail for the rest of your life. So, that
14 played a little bit of a part of why you wanted this plea,
15 right?

16 A. I ain't about -- I wasn't about to try to get life,
17 you feel me? I wasn't -- they wanted me to go to trial the
18 same day.

19 Q. Okay. So, this was your way out of getting life right
20 here, entering this plea. That's the way you were not
21 going to get life?

22 A. He said, he said, you feeling me, you too young to
23 take trial, go to trial.

24 Q. Okay, and you knew if you went to trial ---

25 A. I would have got life.

1 MR. CORNEY: All right. I believe that's all the
2 questions I have, Your Honor.

3 THE COURT: Step down, sir.

4 MR. BELDING: No redirect. Thank you, Your Honor.

5 (THE WITNESS EXITS THE STAND.)

6 (A PAUSE.)

7 MR. BELDING: Your Honor, I call Mr. Mark Schnee.

8 MARK SCHNEE, BEING DULY SWORN,

9 TESTIFIES AS FOLLOWS:

10 MR. BELDING: Please the court, Your Honor?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION MR. BELDING:

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

14 A. Mark Schnee.

15 Q. Okay. Mr. Schnee, are you in private practice now?

16 A. Yes, I am.

17 Q. At -- in May of 2010, were you still with the public
18 defender's office?

19 A. No, sir. I left the public defender's office, office
20 in August of 2009.

21 Q. Okay. It happens on the transcript -- I thought you
22 were already gone, and the transcript says you were still
23 the assistant public defender. So, that might be
24 inaccurate.

25 A. In terms of on the front page, I think the court

M. SCHNEE - DIRECT EXAMINATION BY MR. BELDING

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1 reporter just forgot.

2 Q. From history?

3 A. Right.

4 Q. All right. Now, you recall representing Mr.
5 Alexander, correct?

6 A. I do.

7 Q. Okay, and you represented him for a while before this
8 plea took place, correct?

9 A. Yes. I was appointed in November of '09, the end of
10 November.

11 Q. Okay. So, you had a good six months with some
12 holidays thrown in to work on this?

13 A. Correct.

14 Q. During the -- how many times do you think you met with
15 him at the detention center?

16 A. I met with -- I know I met with him at least two times
17 at length at the detention center. Met with him down in
18 holding once or twice. Might have seen him passing in the
19 detention center. You know, just a quick is anything going
20 on with an answer of no, I don't have any new information.
21 So, there might have been more that would have been very
22 brief, but a few in-depth visits.

23 Q. Okay. In all the conversations you had with Mr.
24 Alexander, were you able to develop a defense strategy in
25 this case?

1 A. There were a couple of things we discussed. First of
2 all, Mr. Alexander maintained that there was never a gun
3 used throughout all my meetings. The problem with that in
4 terms of going to trial is he would obviously have to
5 testify.

6 The problem that you run into with testimony is his
7 prior car jacking, which was an impeachable offense. And I
8 did prepare a motion and memorandum to exclude that. Being
9 a crime of dishonesty, it's automatically admissible. And
10 the fact that it's a car jacking, obviously it's highly
11 prejudicial. The jury, that was one of the things I wanted
12 to try to keep out, at least in terms of the type of
13 offense as opposed to some more -- some sort of theft.

14 Q. Okay. Did you, and this is probably trial strategy.
15 Did you think that you could put Mr. Alexander on the stand
16 to assert his innocence?

17 A. If the term car jacking was excluded, I think that
18 would have been a very strong possibility. That term
19 coming, that's, that pretty much destroys credibility in
20 front of a jury in terms of he has a prior car jacking.

21 Q. Okay. In the time you met with Mr. Alexander, tell us
22 what your impression was of his cognitive ability to
23 understand what's going on.

24 A. I never had any problem communicating with him. We,
25 we would talk for at least half hour, forty-five minutes on

M. SCHNEE - DIRECT EXAMINATION BY MR. BELDING

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1 some of the occasions. We certainly talked. I never saw
2 anything indicate that there was a competence issue.

3 Q. So, earlier I stated, not being a psychiatrist or
4 psychologist myself, I didn't see that for *McNaughten*
5 purposes he was incompetent. Do you agree with that?

6 A. Absolutely.

7 Q. Okay, but he's also limited in, in, in other ways?

8 A. Yes. I, I, I would agree with that.

9 Q. All right. Do you think he understood, that he fully
10 comprehended everything that you two talked about?

11 A. I, I can't be one hundred percent certain of that. I
12 know we had -- I, I knew he was on medication. I had met
13 with his family at least once or twice and talked to them
14 about it. He certainly was aware of the service of life
15 without parole notice and what that meant.

16 Q. And that's serious?

17 A. It's mandatory life.

18 Q. Yes.

19 A. Upon conviction.

20 Q. Did, did you see any point in trying to get any
21 mitigating kind of testimony or evidence in front of the
22 court to consider concerning his mental state, or the
23 medications he was taking that might have had some
24 mitigating effect?

25 A. In terms of trial?

1 Q. Well, or plea.

2 A. It was discussed during the plea he was taking
3 medication. I, I don't know that I used that in terms of
4 mitigation in any real way. I mean, if it's in the
5 transcript, it is. If not, then obviously it didn't.

6 Q. Okay. In your understanding of what took place at the
7 crime scene, did his co-defendant, Mr. DuJuan Green, was he
8 more of the ringleader?

9 A. You know, it was very clear, and I think at the end it
10 wouldn't have mattered. I certainly did have problems with
11 a lot of what the victim said in terms of his version of
12 the events.

13 I know I met with my client and one of the first
14 things he told me, that, that it was a drug deal
15 originally. And I certainly believe that, and the victim
16 obviously never said that. I found it hard to believe a
17 few things that the victim was saying in terms of the
18 events. But then, of course, there's the officer testimony
19 that my client was fleeing from the police as well, and
20 that kind of plays into what the jury's going to believe
21 and what they're not going to believe.

22 Q. Ultimately, you, did you conclude that it would
23 probably be in his best interest to plead guilty?

24 A. I think it's in any young man's best interest to avoid
25 mandatory life.

M. SCHNEE - DIRECT EXAMINATION BY MR. BELDING

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1 Q. Okay. Would you say it was not your decision for him
2 to plead guilty?

3 A. It was certainly not my decision. I did highly
4 recommend it. And I, I even believe I arranged for him to
5 talk to his family in the courtroom because they obviously
6 wanted him to not get life as well.

7 Q. Okay. The amount of time that he received, was that
8 time negotiated in any way?

9 A. No.

10 Q. Okay.

11 A. Not I recall.

12 Q. And, in fact, I believe Mr. DuJuan Green got twelve
13 years, but Mr. Alexander got sixteen. Is that -- do you
14 know if that's right?

15 A. I don't recall. I mean, it is entirely possible. I
16 don't specifically recall that. I wouldn't dispute it.

17 Q. Okay. I do recall from the transcript that you asked
18 that Mr. Alexander's sentence be commensurate with Mr.
19 Green's, which had taken place before.

20 A. I will certainly trust you.

21 Q. Okay. Is there...

22 (A PAUSE.)

23 Q. Did you ever tell Mr. Alexander that there was a
24 chance he could beat the charge?

25 A. Based on his testimony, I, I felt the best chance, the

1 best result for him possible would have been a strong-arm
2 robbery. If he testified exactly his version of the
3 events, there was no gun, then that equates to a strong-arm
4 robbery.

5 Q. Did you ever got to Dolly Justice Garfield and ask for
6 strong-arm robbery, strong-arm robbery on his behalf?

7 A. I'm sure I did.

8 Q. Okay. Can I assume that the answer would have been
9 no?

10 A. Correct.

11 Q. Okay.

12 A. The, the only offer I had ever received early on was
13 an offer of cap of fifteen years, and that was obviously
14 eliminated a few months later when she served life without
15 parole notice.

16 Q. Okay. All right.

17 MR. BELDING: Beg the court's indulgence.

18 (COUNSEL CONFERS WITH APPLICANT.)

19 MR. BELDING: Your Honor, I believe that I don't have
20 any further questions on direct examination of this
21 witness.

22 THE COURT: All right.

23 MR. CORNEY: I don't believe I've got any questions,
24 Your Honor.

25 THE COURT: All right, you may step down.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Any further witnesses?

3 MR. BELDING: No further witnesses, Your Honor. We
4 would move for post-conviction relief for the applicant.

5 THE COURT: Okay. The transcript, in addition to what
6 was testified to on page 12 when the judge asks Mr.

7 Alexander: And you were with somebody who had a gun? And
8 he said: Yes, ma'am. So, Judge Childs says:

9 Okay. So, you were -- understand that under our
10 laws, you have what you call the hand of one,
11 hand of all.

12 Alexander says: Yes, ma'am.

13 That if you are acting in concert with, or with
14 other people to commit an offense, you can be
15 charged with the same offense.

16 Yes, ma'am.

17 If you know that they are going to commit the
18 armed robbery and you help them further that
19 crime along, you could be charged with the same
20 offense.

21 Oh, yes, ma'am.

22 Okay. So, whether you had a gun or not, then you
23 could still be charged with the offense. Do you
24 understand that?

25 Alexander says: Yes, ma'am.

1 Your attorney talked to you about that?

2 He says: Yes, ma'am.

3 RULING OF THE COURT:

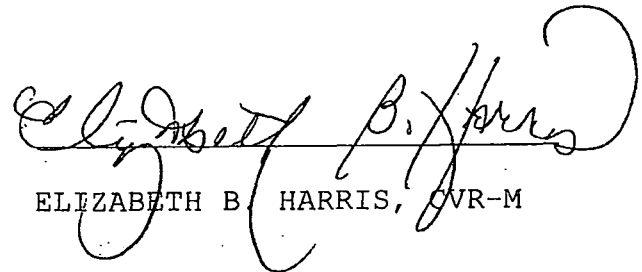
4 THE COURT: So, that, coupled with all the other
5 testimony today, I think clearly shows that the proper
6 offense was charged. Counsel did all he could to assist
7 the defendant and did the best he could out of a bad
8 situation, and I deny this PCR.

9 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF FEBRUARY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B HARRIS, OVR-M

COLUMBIA, SOUTH CAROLINA

JULY 7TH, 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 James Alexander, # 294834,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-07157

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
 C.C.P. & D.S.
 2012 MAR 27 PM 2:49
 RICHLAND COUNTY
 FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 14, 2010. The Respondent made its Return on February 8, 2011. An evidentiary hearing into the matter was convened on Monday, February 13, 2012, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by David Belding, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Mark Schnee, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Richland County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the August 2009 term of the Richland County Grand Jury for Armed Robbery (2009-GS-40-3284). Mark Schnee, represented him on

the charge. On May 11, 2010, Applicant pled guilty to the charge as indicted before the Honorable J. Michelle Childs and was sentenced to sixteen (16) years imprisonment. Applicant did not appeal his plea or sentence.

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Pub Counsel
 - (b) Intentionally Guilty Plea
 - (c) Due Process Violation
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Memoirandum of Law will be sent
 - (b) once I am appointed Counsel.
 - (c)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Motion for Mental Evaluation

According to a review in the record in this action, it appears prior appointed PCR counsel for Applicant filed a Motion for Mental Evaluation on October 31, 2011, which was still pending upon the convening of this evidentiary hearing. At the hearing, counsel for Applicant moved this Court to disregard the motion as it was one Applicant wished to abandon. Accordingly, this Court denies and dismisses Applicant's Motion for Mental Evaluation as Applicant has made the voluntary decision to abandon the motion.

Ineffective Assistance of Counsel – Involuntary Guilty Plea

Applicant alleges counsel was ineffective in his representation which in turn forced him to enter a plea involuntarily.

Applicant testified he was arrested on April 16, 2009, for this armed robbery charge after being out with his co-defendant Dajuan Green that night and running into the victim on the street. Applicant stated the victim was attempting to "buy weed" from he and Mr. Green when the alleged robbery occurred. Applicant went on to say he did not remember any third person being with him and Mr. Green that night, nor did he remember anybody involved having a gun with them. Applicant later testified he did in fact take money from the victim in this case because he was pressured to rob the victim and "had been hearing voices all night", but reiterated that there was no gun involved in the robbery. Applicant testified he was originally represented by Tracy Pinnock on the charge who was able to secure a plea offer from the state for fifteen (15) years imprisonment prior to being relieved from her representation. Applicant went on to say he recalled meeting with Mark Schnee (hereinafter "counsel") starting in September 2009, after which counsel told Applicant he was "too young to go to trial" because he was facing a potential life without parole sentence at trial based on his prior criminal history. Applicant plainly stated he decided to plea because he did not want to receive a life without parole sentence. Applicant said he did not know why he was at the courthouse on the day of his plea, nor did he remember his plea hearing because he was on several different medications at the time. Regarding his prior mental health history, Applicant testified "the doctor" told him he did not have any mental health issues, but he had been taking medication for depression as prescribed by a South Carolina Department of Corrections doctor since his arrest. Applicant finished by stating he felt forced to enter the plea as he believed counsel had failed to "do his job" in preparing the case.

Counsel testified he left the Public Defender's office in August of 2009 to pursue a career in private practice after which he was appointed to represent Applicant. Counsel testified Applicant was always adamant there was no gun involved in the incident, but that in order to get

that-allegation out at trial Applicant would have had to testify which would have been potentially problematic as Applicant had prior impeachable charges that would have come out. Counsel did state, however, he had prepared a motion to suppress the introduction of the prior criminal charges he would have used Applicant decided to proceed to trial. Counsel went on to say he never had any issues communicating with Applicant during their pre-plea meetings, nor did he have any concerns with Applicant's competence. Counsel said he was aware Applicant was on medications but did not think they affected his ability to understand or comprehend their discussions. Counsel also stated he believed Applicant was "certainly" aware of the life without parole potential he faced at trial. Counsel went on to say he believed pleading was in Applicant's best interest as he was a young man, and he did highly recommend Applicant accept the plea, but ultimately left the decision up to Applicant. Counsel also stated he did explain the accomplice liability theory of "hand of one is the hand of all" to Applicant, which he seemed to comprehend. Counsel finished by testifying he believed the best result Applicant could have hoped for was a strong arm robbery plea, which counsel requested from the solicitor but was rejected.

Based on the testimony presented at the hearing in conjunction with a thorough review of the trial transcript, this Court finds counsel was not ineffective and Applicant entered this plea voluntarily and intelligently after being fully advised by competent counsel acting within the range of reasonableness based on professional norms. Further, I find counsel's testimony to be credible while finding Applicant's testimony to be wholly incredible. The plea transcript in this instance speaks volumes as to Applicant's understanding of the charge he was facing, potential sentences, relevant accomplice liability theory and its application to these facts, and his expectations of counsel's representation. At one point during the plea, Applicant went as far as to say counsel was "a very good dude" who "did his job" as his attorney. (Pl. Tr. p 15, lns

3 - 13). Applicant's use of medication was an issue fully and properly flushed out at the plea hearing on the record, ultimately ending with Applicant stating he was "in stable mind" and was okay to proceed with the plea hearing. (Pl. Tr. p. 4, lns 14 - 21; p. 5, lns 2 - 3). Applicant went on to admit his guilt to the charges, as well as state there in fact had been a third man involved in the robbery who did have a gun. (Pl. Tr. p. 5, lns 20 - 22; p. 23, ln 14). Based on these statements made at the plea hearing, taken in light with the testimony presented before this Court at the PCR, this Court is firmly convinced Applicant has failed to carry his burden in proving counsel was deficient in any regard of his representation or that this plea was entered involuntarily. Applicant made the informed and voluntary decision to enter this plea to gain the benefit of the bargain in avoiding a potential life without parole sentence on a charge he readily admitted he was guilty of. Applicant's apprehension regarding the realistic possible sentence Applicant could have received at trial as relayed by counsel is not tantamount to coercion or a threat that would render the subsequent plea involuntary. Further, this Court finds Applicant has failed to sufficiently prove resulting prejudice based on these alleged deficiencies. Applicant plainly stated he entered the plea to avoid receiving a life without parole sentence at trial and in no way convinced this Court that, had counsel taken some further action, Applicant would have proceeded to trial to face such a severe sentence rather than take the benefit of a plea offer. *See Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985) (*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.*) Accordingly, this Court finds Applicant has failed to carry his burden in proving either counsel was ineffective or that this plea was entered involuntarily, and therefore this application is denied and dismissed with prejudice.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

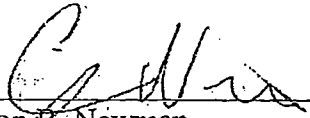
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

(Signature on Next Page)

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27th day of March, 2012.



Clifton B. Newman
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

(S) INV. N. DOW -CPD

The State of South Carolina
County of Richland

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

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

AUGUST TERM 2009

87

ARREST WARRANT NUMBER

K-612090

THE STATE
vs.

Defendant

Witness:

ACTION OF GRAND JURY

JAMES ALEXANDER

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

TRUE BILL

AUG 15 2009

Blanton
Foreperson of Grand Jury
Date:

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330 (A)

CDR Code: 139

Class A/F(V)

Foreperson of Petit Jury
Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAMES ALEXANDER
C.C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

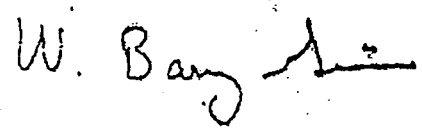
INDICTMENT

At a Court of General Sessions, convened on August 12, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That JAMES ALEXANDER did in Richland County on or about APRIL 16, 2009, commit robbery by feloniously taking from the person or presence of DWAYNE SMITH, by means of force or intimidation goods or monies, such goods or monies described as U.S. currency and two cellular phones, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor or other deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of 16-11-330, Code of Laws of South Carolina, (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

ARREST WARRANT

KE12090 K-612090 0910987
STATE OF SOUTH CAROLINA
 County/ Municipality of
COLUMBIA

THE STATE
against

JAMES ALEXANDER

Address: [REDACTED]

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 0 Weight: [REDACTED]
Date: _____ DL#: _____

Agency ORI#: SC0400100
Prosecuting Agency: CITY OF COLUMBIA
Prosecuting Officer: DOW N/WEISS H
Offense: ARMED ROBBERY
Offense Code: ARI
Code/Ordinance Sec: 16-11-330

This Warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
COLUMBIA The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

De' _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
COLUMBIA)

AFFIDAVIT

Personally appeared before me the affiant INV N DOW
being duly sworn deposes and says that defendant JAMES ALEXANDER
did within this county and state on 04/16/2009 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of COLUMBIA)
in the following particulars:
DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330

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:

ON 04/16/09, AT APPROXIMATELY 2119 HOURS, AT 3100 ST. LOUIS STREET,
CITY OF COLUMBIA, COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, THE
VICTIM, DWAYNE SMITH WAS WALKING HOME WHEN THE DEFENDANT AND TWO CO-
DEFENDANTS APPROACHED HIM ON FOOT. THE DEFENDANT INSTRUCTED ONE OF
THE CO-DEFENDANTS TO SEARCH THE VICTIM FOR MONEY WHILE HE INSTRUCTED
THE OTHER CO-DEFENDANT TO POINT A SHOTGUN AT THE VICTIM. THE CO-
DEFENDANT SEARCHING THE VICTIM WENT INTO THE VICTIMS LEFT REAR PANTS
POCKET AND STOLE APPROXIMATELY \$236.00 IN US CURRENCY AND TWO CELL

Signature of Affiant

Wole G. Dow

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
COLUMBIA)

Affiant's Address #1 JUSTICE SQ
COLA, SC
Affiant's Telephone 5453500

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 04/16/2009 defendant JAMES ALEXANDER
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of COLUMBIA) as set forth below:
DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330

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 04/17/2009)

Judge's Address CITY OF COLUMBIA, SC

(L.S.) MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone

Judge Code: 403003

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ERTIFIED TRUE COPY
OF ORIGINAL FILED
James W. Smith
C.C.P.R. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

09 APR 30 PM 3:58
FILED
RICHLAND COUNTY
C.C.P.R. & G.S.
JANETTER McBRIDE

K612090

Name JAMES ALEXANDER

Address (1) [REDACTED]

Address (2) _____

City/State/Zip COLUMBIA, SC

M B 6 01 140

Sex Race Hgt Wgt

Sworn to and subscribed before me

On 4/17/2009

[Signature] L.S.
Signature of Issuing Judge

Judge Code: 403003

CITY OF COLUMBIA

MUNICIPAL COURT

PO BOX 644

COLUMBIA, SC 29202

Description of Offense: ARMED ROBBERY 16-11-330

PHONES WITH INTENT TO DEPRIVE VICTIM OF SAME. THE DEFENDANT AND TWO CO-DEFENDANTS THEN FLED INCIDENT LOCATION ON FOOT. AFTER A BRIEF FOOT CHASE, THE DEFENDANT WAS APPREHENDED MINUTES LATER AT THE CORNER OF TWO NOTCH ROAD AND OGDEN STREET BY OFFICERS OF THE COLUMBIA POLICE DEPARTMENT. THE VICTIM WAS BROUGHT TO THIS LOCATION AND POSITIVELY IDENTIFIED THE DEFENDANT AS ONE OF THE INDIVIDUALS THAT ROBBED HIM.

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Jeanette Williams
C.C.P.#28.G.S.
RICHLAND COUN
SOUTH CAROLIN

Signature of Affiant:

[Signature]

Affiant's Address

#1 JUSTICE SQUARE

COLUMBIA SC 29201

Affiant's Telephone

545-3500

110

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE

INDICTMENT/CASE#: 09 -GS- 40 3284

VS:
James Alexander

A/W#: K-612090

AKA:

Date of Offense: 4/16/09

Race: Sex: Age:

S.C. Code §: 16-11-330 (A)

DOB: [REDACTED]

CDR Code #: 0139

Address: [REDACTED]

DL# SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The 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: [Signature] 13433 [Signature] [Signature]
Solicitor SC Bar # 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 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____ Substance Abuse Counseling

*Fine: \$ _____
\$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 \$ _____
\$56-1-289 (DUI Breath Test) \$500 \$ _____
\$35.13 (Public Def/Prob) \$25 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
\$90.11 TP (SCCJA Surcharge) \$5 \$ _____
TOTAL \$ _____

No Contact with Victim

Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature] CERTIFIED TRUE COPY

Judge Code: 2196 OF ORIGINAL FILED,
Sentence Date: 5-16-09 Jeanette W. McBride
C.C.C.P.&G.S.

Court Reporter: [Signature]
RICHLAND COUNTY SOUTH CAROLINA