

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY Q. ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001248

APPENDIX

LAURA R. BAER
Appellate Defender

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ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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APPEARANCES OF COUNSEL

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FOR THE DEFENDANT: Julie M. Shivers, Esquire
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Moncks Corner, South Carolina 29461

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[None]

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Guilty Plea
May 18, 2015

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THE COURT: Are you Anthony Q. Robinson?

MR. ROBINSON: Yes, ma'am.

THE COURT: Please swear the defendant.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Robinson is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you will give the Court in this matter will be the truth, the whole truth, and nothing but the truth, so help you God]

MR. ROBINSON: Yes, ma'am.

THE CLERK OF COURT: Thank you.

THE COURT: Sir, you are here to plead guilty on 2014-GS-45-222. This is a Williamsburg County case.

Ms. Shivers, does your client waive venue?

MS. SHIVERS: Yes, Your Honor.

THE COURT: Mr. Robinson, you understand this is not Williamsburg County? You are in Berkeley County here today.

MR. ROBINSON: Yes, ma'am.

THE COURT: Do you wish for me to hear your case to accept your plea?

MR. ROBINSON: Yes, ma'am.

THE COURT: Thank you.

You do not have to plead guilty. By pleading

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1 guilty, you are giving up certain rights: your right to
2 a jury trial; your right to have a jury determine your
3 guilt beyond a reasonable doubt based upon the evidence
4 the State presents, as well as any evidence you may
5 introduce; your right against self-incrimination; your
6 right to say nothing at all; your right to confront and
7 be confronted by the witnesses against you, as well as
8 the right to call witnesses on your own behalf. By
9 pleading guilty here today, you give up any defense that
10 you may have to this charge.

11 Do you understand those rights?

12 MR. ROBINSON: Yes, ma'am.

13 THE COURT: And do you waive those rights at this
14 time?

15 MR. ROBINSON: Yes, ma'am.

16 THE COURT: Understanding the charge that you are
17 facing, the fact that I could sentence you up to five
18 years in the department of corrections and fine you up
19 to \$5,000, how do you plea to threatening the life of a
20 public official?

21 MR. ROBINSON: Guilty.

22 THE COURT: Are you pleading guilty because you, in
23 fact, are guilty?

24 MR. ROBINSON: Yes, ma'am.

25 THE COURT: Anybody promise you anything, threaten

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1 you, force you to plead guilty here today?

2 MR. ROBINSON: No, ma'am.

3 THE COURT: Whose decision was it for you to plead
4 guilty?

5 MR. ROBINSON: Mine.

6 THE COURT: Have you been satisfied with the
7 services of Ms. Shivers and Mr. Schwacke?

8 MR. ROBINSON: Yes, ma'am.

9 THE COURT: Any complaints about the way they have
10 handled this case?

11 MR. ROBINSON: No, ma'am.

12 THE COURT: You do have the right to appeal this
13 plea and the sentence I will impose, but you or your
14 attorney must do so within ten days. Do you understand?

15 MR. ROBINSON: Yes, ma'am.

16 THE COURT: Please listen to the facts. Mr.
17 Washington?

18 MR. WASHINGTON: Thank you, Judge. May it please
19 the Court.

20 Judge, this incident began back in 2004. Mr.
21 Robinson was sentenced out in Darlington County, by
22 Judge Newman, for murder. Judge Newman gave him life in
23 prison.

24 On or about January 13th of 2012, the defendant,
25 obviously upset with the judge, ended up writing a

7

State v. Anthony Robinson
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1 letter to him stating that he was going to have him
2 killed. There were a number of other individuals in
3 this letter, but that was the gist of it. The letter
4 was sent to Judge Newman's P.O. Box in the Kingstree
5 area of Williamsburg County.

6 It was actually meant for a friend of the defendant
7 to go out and kill Judge Newman, obviously, since Mr.
8 Robinson was serving life and didn't have the ability to
9 do it, so he asked for a friend to do it.

10 Those are the facts of the case, Judge.

11 THE COURT: And the State takes no position as to
12 sentencing?

13 MR. WASHINGTON: That's right. We recommend
14 concurrent, obviously. And we are dismissing two other
15 charges as well.

16 THE COURT: All right. And I had spoken with the
17 victim, Judge Newman, so he did not wish to be present
18 for the plea.

19 Mr. Robinson, you heard the facts as presented by
20 the State. Are those facts true, sir? Is that what you
21 did?

22 MR. ROBINSON: Yes, ma'am.

23 THE COURT: I find a substantial factual basis for
24 your plea. Your decision to plead guilty has been
25 freely, voluntarily, knowingly, and intelligently made.

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May 18, 2015

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You have indicated to the Court you've had the advice and counsel of a competent attorney, two competent attorneys, with whom you've told the Court you are satisfied. I hereby accept your plea of guilt.

Ms. Shivers, I understand Mr. Robinson is facing a life sentence. Anything I need to know about your client before I impose sentence?

MS. SHIVERS: No, Your Honor.

THE COURT: Mr. Robinson, anything you wish to tell me before I impose sentence?

MR. ROBINSON: No, ma'am.

THE COURT: It's the order of the Court on 2014-GS-45-222 that you be committed to the State Department of Corrections for a term of five years. That will run concurrent with the time that you are currently serving.

Good luck to you, sir. Thank you.

[PLEA CONCLUDES AT 11:28 A.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Kristi L. Harrington, on Monday, May 18, 2015.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of January, 2016.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF *Williamburg*)

Anthony Q. Robinson #322734
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

5 CP45 4 30 APPLICATION FOR 5 CP45 438

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention *Kirkland Maximum Security Unit*
2. Name and location of Court which imposed sentence *Beckley County Court*
3. Name(s) of co-defendant(s) (if any) *None*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *2014-65-45-222*
 - (b) *2014-65-45-223*
 - (c) *2014-65-45-224*
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *June 2015 (or Mtd)*
 - (b) _____

CP45-2 P115:10

(c) _____

6. 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 _____

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

No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) 5 ~~6~~ discovered claims after the 10 day deadline

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Violation of statute of limitation resulting in void indictments.

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

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

- (a) The Supreme Court order signed by Chief Justice Sean Hooper Tolson on May 13, 2013 concerning the 365 Day Benchmark
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? X
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? X
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? X
- (d) any other petitions, motions or applications in this or any other Court? X

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) My 1st PCR on these charges

(b) _____

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. _____ Julie M. Shivers, ESQ
219 N. Hwy 52 / Suite E
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. All
 - ii. _____
 - iii. _____

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

That all sentencing & charges be vacated due to 365 day benchmark being violated.

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

No

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

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

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

Anthony G. Robinson
Applicant

SWORN or affirmed to and subscribed before me this

28th day of July, 2013.

[Signature]
Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of Williamsburg

I, _____, 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.

Anthony G. Robinson

SWORN to and subscribed before me this 28th
day of July, 2015

[Signature]
Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Anthony Robinson, #322734,)	2015-CP-45-438
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 2, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the July 2014 term of the Williamsburg County Grand Jury for threatening life, person, or family of public official (2014-GS-45-0222) and two counts of throwing bodily fluids by prisoner (2014-GS-45-0223; -0224). Julie M. Shivers, Esquire represented Applicant. On May 21, 2015, Applicant pled guilty before the Honorable Kristi L. Harrington. Judge Harrington sentenced Applicant to five years running concurrently to his previous charges from Darlington County. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel
 - a. Failing to move to dismiss the indictments.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

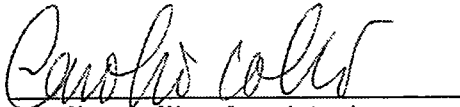
January 27, 2016.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	
)	
)	2015-CP-45-438
)	
ANTHONY Q. ROBINSON, #322734,)	
)	
Applicant,)	
)	
vs.)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this 27th day of January, 2016.


 Caroline Collins, Legal Assistant
 For Respondent

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I N D E X

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1 MS. COLEMAN: May it please the court?

2 THE COURT: Yes.

3 MS. COLEMAN: This is *Anthony Robinson vs. The State*
4 *of South Carolina*, docket number 2015-CP-45-438. Applicant
5 is presently confined in the South Carolina Department of
6 Corrections pursuant to orders of commitment of the
7 Williamsburg County clerk of court. Applicant was
8 true-bill indicted at the July 2014 term of the
9 Williamsburg County Grand Jury for threatening life,
10 person, or a family of a public official, and two counts of
11 throwing bodily fluid by a prisoner. Julian Shivers,
12 Esquire, represented the applicant.

13 On May 21, 2015, applicant pled guilty before the
14 Honorable Kristi L. Harrington. Judge Harrington sentenced
15 applicant to five years, running concurrently to his
16 previous charges from Darlington County. Applicant did not
17 appeal his guilty plea or sentence.

18 Applicant filed a timely application for
19 post-conviction relief on September 2, 2015, alleging he
20 was being held in custody unlawfully based on the following
21 allegations: ineffective assistance of counsel, failing to
22 move to dismiss the indictments. The state filed its
23 return January 27, 2016, and he's present today and
24 represented in this matter by Mr. Lance Boozer.

25 THE COURT: All right, Mr. Boozer.

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

4

1 MR. BOOZER: Thank you, Your Honor. If it pleases the
2 court?

3 THE COURT: Yes, sir.

4 MR. BOOZER: We'd go ahead and call Mr. Robinson to
5 the stand.

6 THE COURT: All right, Mr. Robinson, come on around.
7 They'll show you where to go.

8 ANTHONY ROBINSON, BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 BAILIFF: Please state your full name, and spell your
11 last name for the record.

12 WITNESS: Anthony Robinson, R-o-b-i-n-s-o-n.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION BY MR. BOOZER:

15 Q. Mr. Robinson, how are you doing today?

16 A. All right.

17 Q. Okay, and if you would, Madame Court Reporter has got
18 to take everything down, so just speak up you while we're
19 speaking today, okay? Mr. Robinson, do you know what
20 you're doing here today?

21 A. Yes, sir.

22 Q. All right, and what is that?

23 A. State my claims for my post-conviction relief.

24 Q. And that's right. You, you filed an application for
25 post-conviction relief?

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

5

1 A. Yes, sir.

2 Q. All right, and do you understand what it is that you
3 are asking this court for today?

4 A. Yes, sir.

5 Q. All right, and what is that?

6 A. To have a fair, a fair trial based on the claim that I
7 present.

8 Q. Okay, and what were you convicted of?

9 A. They dropped the two throwing bodily fluids. I was
10 convicted of threatening of a public life -- of a public
11 official.

12 Q. Okay, and you understand that the only relief this
13 court can grant today if you are successful is that you go
14 back and face a new trial on those original charges?

15 A. Yes, sir.

16 Q. And, and is that what you want?

17 A. Yes, sir.

18 Q. Okay. If you would, tell us. Who represented you for
19 these charges?

20 A. Ms. Julie Shivers.

21 Q. All right. When did you first -- when were you first
22 charged with, with these charges?

23 A. The threatening charge, I was, I was charged -- I was,
24 I was brought the warrant, it was 2012. I have to look at
25 the paperwork. I'm not certain of the exact date.

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

6

1 COURT REPORTER: Speak up, please.

2 A. On the threatening charges, I was served the warrant
3 on October the 4, 2012, and the throwing bodily fluid
4 charges, I was served the warrant on June 20, 2013.

5 Q. Okay, and then were you later indicted for these?

6 A. Yes, sir.

7 Q. Okay. When Ms. Shivers -- were you -- how many times
8 do you think you met with her?

9 A. I think I just met with her when I went to the
10 courtroom, but we been, we been writing letters to each
11 other.

12 Q. Okay. Y'all, y'all would correspond via letter?

13 A. Yes, sir.

14 Q. Had -- prior to the day that you pled guilty, had you
15 ever met her?

16 A. No, sir.

17 Q. Had y'all ever spoken on the phone?

18 A. No, sir.

19 Q. Okay. What sort of preparation did you guys do for
20 your case before you actually pled guilty?

21 A. Besides -- she presented the plea bargain to me, but
22 it was a situation concerning -- when I asked for the
23 motion discovery, she sent it. But I was transferred to
24 another institution, which was Kirkland, and by the time I
25 got it, it was, like, six months later because they

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

7

1 withheld my legal mail, and I have a, I have a pending
2 civil action between that, and so I didn't get -- never got
3 my motion of discovery until she gave me a copy after I had
4 pled. So, I never had, I never had my motion discovery,
5 and that's basically it.

6 Q. Okay. So, these, the charges that you had that we're
7 talking about today, you, you were incarcerated and are
8 currently incarcerated for something unrelated to this?

9 A. Yes, sir.

10 Q. Okay, and so you were just stating that you had some
11 issues with your mail. Do you have a pending legal suit
12 challenging some of those issues?

13 A. Yes, sir.

14 Q. All right, and that's separate and apart from this,
15 right?

16 A. Yes, sir. It, it concerned the motion, but it's
17 separate from the PCR.

18 Q. All right. So, when was the first time you ever saw
19 your discovery in this case?

20 A. Right after I pled.

21 Q. All right. Tell the court. You obviously filed your
22 application for post-conviction relief?

23 A. Yes, sir.

24 Q. What is your -- tell the court what your issues are
25 with regard to Ms. Shivers's representation of you.

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

8

1 A. Besides when I got my motion discovery, my other
2 issue, it's, it's, it's not really concerned -- it's
3 dealing with a Supreme Court order.

4 Q. Okay, and what is that?

5 A. The ---

6 Q. What kind of issue?

7 A. The 365 day ---

8 Q. Okay.

9 A. --- statute of limitation.

10 MR. BOOZER: Your Honor, at this time -- I've already
11 shared this with opposing counsel. Mr. Robinson's provided
12 to me, it deals with the challenge that he has today of an
13 administrative order of the court. I'd like to go ahead
14 and mark that as Applicant's Exhibit 1.

15 THE COURT: You want to mark it or are you going to
16 seek to introduce it?

17 MR. BOOZER: We'll introduce it and then we'll mark
18 it, Judge.

19 THE COURT: Okay. You can go ahead and mark it
20 without hearing any ---

21 MS. COLEMAN: No objection.

22 THE COURT: Okay, no objection to it coming in either?

23 MS. COLEMAN: No. No objection.

24 THE COURT: All right, then go ahead and mark it and
25 enter it then as Petitioner's or Applicant's Number 1.

1 MR. BOOZER: Thank you, Your Honor.

2 THE COURT: All right.

3 (ORDER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
4 NUMBER 1.)

5 MR. BOOZER: I'm already up here, but may I approach
6 the witness, Your Honor?

7 THE COURT: Yes, sir.

8 MR. BOOZER: Thank you.

9 BY MR. BOOZER:

10 Q. Mr. Robinson, I'm going to hand you what's been marked
11 as Applicant's Exhibit 1, and you were just referencing
12 what you believed to be one of your issues dealing with
13 what you said was 365 day order.

14 A. Yes, sir.

15 Q. Explain that to the court.

16 A. It's a Supreme Court order from the Chief Justice Jean
17 Toal in which it states eighty percent of all criminal
18 cases in each circuit should be disposed of within 365 days
19 from the defendant's arrest unless a written order is
20 provided saying that it's exceptional circumstances, which
21 none was -- no written order was provided in my case.

22 Therefore, saying that basically my situation, basically
23 my warrants was in 2012, 2013, which was way more than 365
24 days, and that's my -- that's one of my claims.

25 Q. Okay, and, and so do you believe that that order was

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

10

1 violated in your case?

2 A. Yes, sir..

3 Q. All right. Did you have any discussion with your
4 attorney about that?

5 A. I did mention it to her.

6 Q. Okay, and what was her response?

7 A. I mean, it was -- it wasn't, it wasn't held as a
8 serious -- I felt like it wasn't held as a serious, a
9 serious problem that I was bringing up. I felt like it was
10 disregarded.

11 Q. Did you feel like she should have pursued it?

12 A. Yeah, I felt like it should have been.

13 Q. All right. Now, obviously you entered a plea in this
14 case. Is that right?

15 A. Yes, sir.

16 Q. Why is it that -- you obviously went before the court
17 and entered into the plea. Why did you do that?

18 A. I felt like I had to. At that same time, I didn't
19 have my paperwork to really prepare myself to go to trial
20 because like I said, I only -- I got my motion after I
21 pled. So, I felt like I ain't -- I didn't have another
22 choice.

23 Q. What, what did you learn from your motion of discovery
24 or, or Rule 5 materials? What did you learn that made you
25 regret entering your plea?

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

11

1 A. I wanted to challenge the writing analysis.

2 Q. You wanted to challenge a handwriting analysis?

3 A. Yes, sir.

4 Q. Okay. Tell the court a little bit about that.

5 A. I mean, it's basically just the handwriting analysis
6 that they was comparing from other documents that I have to
7 the letter. And I just, I just, I really want, I really
8 want to challenge it.

9 Q. And it was something that was alleged to have been
10 written by you?

11 A. Yes, sir.

12 Q. Okay. Did you have any discussion with your lawyer
13 prior to your plea about trying to challenge any
14 handwriting or written statements?

15 A. I did tell her that I wanted -- I did brought that up
16 -- bring that subject up to her.

17 Q. And what was her response to that?

18 A. I mean, she just told me the choices I, I basically
19 had. She explained to me what was going on, what -- the
20 choices I, I basically had and I just, I went ahead. Not
21 having, not having the -- I mean, I didn't have my motion
22 discovery. So -- but I still brought the situation up,
23 which I brought up in a preliminary hearing about the
24 writing analysis.

25 Q. Was there anything else that you discovered in your

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

12

1 Rule 5 materials that made you want to, to go to trial?

2 A. I mean, that's basically what the whole case based on,
3 the letter, the writing, appearance of letters.

4 Q. Did you ever review the note or letter that was
5 alleged to have been written with your lawyer?

6 A. No. I -- afterward. I didn't get my motion until
7 after I pled.

8 Q. So, you never had an opportunity to, to review the
9 actual letter ---

10 A. I didn't have ---

11 Q. --- with your lawyer?

12 A. I didn't have a opportunity to prepare for trial
13 period.

14 Q. Well, did ---

15 A. Got no material.

16 Q. Did you guys ever have any discussion about what your
17 trial strategy would be?

18 A. Yeah. She, she, she explained that -- she gave me the
19 steps of, of how the jury -- how I pick the jury and that
20 she had wanted to motion me, bring some motions.

21 Q. Okay. Did, did she describe any sort of strategy as
22 far as witnesses that you would call or what you guys would
23 attempt to attack at a trial had you had a trial?

24 A. Not, not, not in deep detail.

25 Q. Is that something you wish she would've done with you?

A. ROBINSON - DIRECT EXAMINATION BY MR. BOOZER

13

1 A. I mean, if I had more time, my motion, I, I would
2 have, I would called some witnesses.

3 Q. Did she give you the copy of the Rule 5, or how did
4 you come about getting those materials after your plea?

5 A. Oh, yeah, she gave me the copy that she had.

6 Q. And do you know why she gave it to you after you pled?

7 A. No. I asked her, I, I asked her for it. Before I
8 pled, I let her know I didn't never get a copy, but I just
9 got it afterward. She gave it to me afterward.

10 Q. And, and you're probably going to be asked this here
11 shortly, but obviously there is a transcript of your guilty
12 plea before the court and, and you made statements that you
13 were guilty of this crime, that you were pleading guilty
14 because you were guilty. Why did you make those statements
15 that day?

16 A. I felt like that was, that was just all part of the
17 procedure. So, I just went with the program.

18 Q. Okay. Were those, those statements that you were
19 making, were they true or, or -- at that time that you were
20 making them?

21 A. I mean, I felt like I have to make them if I were
22 pleading guilty. Then that was, like I said, that was part
23 of the program, so I felt like I had to make those
24 statements.

25 Q. Now, other than receiving your Rule 5 materials after,

A. ROBINSON - DIRECT EXAMINATION / CROSS-EXAMINATION 14

1 after your plea and other than the 365 day order that you
2 feel like your lawyer should've raised, is there anything
3 else that we've not discussed that you feel like your
4 lawyer should have done for you or, or didn't do for you
5 during her representation?

6 A. No, sir.

7 Q. Okay.

8 MR. BOOZER: Please answer any questions the state may
9 have, okay?

10 WITNESS: Okay.

11 THE COURT: All right, Ms. Coleman, your witness.

12 MS. COLEMAN: Thank you.

13 THE COURT: Let me hold that exhibit, Mr. Boozer,
14 wherever it is, so I can take a look at it. Thank you.

15 All right.

16 CROSS-EXAMINATION BY MS. COLEMAN:

17 Q. Good morning, Mr. Robinson. How are you?

18 A. Good morning.

19 Q. You testified a moment ago that you did not meet with
20 your attorney in person until the guilty plea. Is that
21 right?

22 A. Yes. Yes, ma'am.

23 Q. Did you say that you had communicated in a letter to
24 each other?

25 A. Yes, ma'am.

A. ROBINSON - CROSS-EXAMINATION BY MS. COLEMAN 15

1 Q. Okay. Did you -- in those letters, did you ever give
2 your attorney any leads or witnesses to investigate?

3 A. No, ma'am.

4 Q. Okay, and you stated a moment ago that you would have
5 called witnesses if you had gone to trial, or you wish that
6 she would have called witnesses. Is that right?

7 A. After I made my motions, correct.

8 Q. What witnesses would you have called?

9 A. Some that was at the institution where I was at that I
10 dealt with on a regular basis that was aware of my charges.

11 Q. And are any of those witnesses here today?

12 A. No, ma'am.

13 Q. Okay. At the guilty plea, do you recall waiving your
14 constitutional rights, like your right to a jury trial and
15 your right to remain silent?

16 A. Yes, ma'am. That was a part of this.

17 COURT REPORTER: Keep your voice up, please.

18 Q. Do you recall telling the plea judge that you were
19 satisfied with your attorney's services?

20 A. Yes, ma'am.

21 Q. Okay, and you had no complaints against your attorney
22 then, right?

23 A. No, ma'am.

24 Q. Okay. Do you recall telling the judge that no one was
25 promising or threatening you in order to plead guilty?

A. ROBINSON - CROSS-EXAMINATION BY MS. COLEMAN

16

1 A. Yes, ma'am.

2 Q. Do you recall telling the judge that you were indeed
3 guilty of this crime?

4 A. Yes, ma'am.

5 Q. Do you recall agreeing with the facts presented by the
6 state at the plea hearing?

7 A. Yes, ma'am.

8 Q. So, do you want to go back and face a trial on these
9 charges?

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. COLEMAN: Thank you. No further questions.

13 THE COURT: All right, any redirect, Mr. Boozer?

14 MR. BOOZER: No redirect, Your Honor.

15 THE COURT: All right, thank you, sir. You may step
16 down.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, Mr. Boozer, you may call your
19 next witness.

20 MR. BOOZER: No further witnesses on the applicant's
21 behalf.

22 THE COURT: Applicant rests.

23 All right, Ms. Coleman.

24 MS. COLEMAN: State calls Julie Shivers.

25 THE COURT: Ms. Shivers.

J. SHIVERS - DIRECT EXAMINATION BY MS. COLEMAN

18

1 Q. And did you have that phone call?

2 A. I did.

3 Q. How many letters would you say you wrote back and
4 forth? Just an estimate if you don't have the exact
5 number.

6 A. I have approximately six that I wrote him, and then he
7 wrote me several as well.

8 Q. Okay. Did you file any Rule 5 or *Brady* motions?

9 A. I did.

10 Q. Okay, and did you get a chance to review the discovery
11 with the applicant?

12 A. I reviewed the discovery. I sent it to him at SCDC,
13 and then I also wrote a letter indicating what the trial
14 strategy would be, and then we discussed it on the phone
15 conference as well.

16 Q. Okay, and can you tell us a little bit about that
17 trial strategy?

18 A. Yes. The big issue that I saw was the fact that the
19 AG, when they initially had the letter that they said that
20 he authored, the only thing that they did was pull his PCR
21 application to do a handwriting analysis. They never
22 actually got a warrant for a handwriting exemplar from the
23 actual client. So, the handwriting analysis itself
24 indicated that the same person authored the letter as the
25 PCR application, but nothing tied it directly to the

1 client. So, the strategy was to challenge the letter being
2 admissible at all at trial.

3 Q. Okay. Did the applicant tell you his version of the
4 facts? Did he talk to you about this letter at all?

5 A. We talked about it.

6 Q. Okay. Did you discuss any -- well, possible defenses,
7 I was going to say, but you just talked about the
8 handwriting challenge ---

9 A. Right.

10 Q. Okay.

11 A. Because if the letter wasn't included, then there
12 wouldn't be a case against him.

13 Q. Right. So, the state had no other evidence against
14 him besides the letter?

15 A. No.

16 Q. Okay. Did you discuss the elements of the charge with
17 the applicant?

18 A. I did.

19 Q. Okay. Did the applicant give you any witnesses to
20 investigate?

21 A. He had, I believe he had me call his parents, I want
22 to say, but I, when I spoke with him -- I believe I spoke
23 with him about the trial date and whether or not they
24 wanted to attend the trial. But I don't believe that they
25 were going to testify at trial, but I do recall speaking --

J. SHIVERS - DIRECT EXAMINATION BY MS. COLEMAN

20

1 I believe it was his mother and his father.

2 Q. So, he didn't -- or, excuse me, did he give you any
3 witnesses at the institution at SCDC that might testify at
4 the trial in his behalf?

5 A. No.

6 Q. Okay. Did you review the applicant's constitutional
7 rights before his guilty plea?

8 A. I did.

9 Q. Did he ever tell you that he did not understand
10 something?

11 A. No.

12 Q. Were there any plea negotiations with the state in
13 this case?

14 A. There were. We were actually set to pick a jury on
15 the day of the plea. When he got there, he indicated he
16 wished to change his plea, and the state agreed to extend
17 the same offer that they previously had extended, which was
18 to dismiss the two bodily fluids charges, and then to run
19 this charge concurrent with his current sentence.

20 Q. Okay. Whose decision was it to plead guilty
21 ultimately?

22 A. It was his.

23 Q. And regarding the order that the applicant just
24 entered as Exhibit Number 1 -- this is the 365 day
25 scheduling order -- were you familiar with this before his

1 plea?

2 A. I don't, I don't believe he mentioned that. I mean, I
3 don't know that he sent that to me. No.

4 Q. He did not send that to you?

5 A. I, I don't recall that. I can look through here if
6 you wish.

7 Q. Yeah, take your time and flip through.

8 (A PAUSE.)

9 A. He does mention it in a letter dated -- let me see.
10 It looks like I received in February of 2015.

11 Q. So, did you look into this order when he mentioned it?

12 A. I looked into, like, the way in which our cases are
13 going. He wished to have a trial. So, I don't believe
14 that it was applicable in this case. He was indicted by
15 the grand jury, and they were calling the case to trial at
16 his request and I, I got that scheduled as quickly as I
17 could after.

18 Q. So, did you -- because of this order, did you ever any
19 legal reason to move to dismiss the indictments?

20 A. No.

21 Q. Okay. Did, did you think that if you had moved to
22 quash the indictments on this basis, it would have been
23 successful?

24 A. No, I do not.

25 MS. COLEMAN: Thank you. No further questions.

J. SHIVERS - CROSS-EXAMINATION BY MR. BOOZER

22

1 THE COURT: Mr. Boozer.

2 MR. BOOZER: Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. BOOZER:

4 Q. How are you, Ms. Shivers?

5 A. Fine.

6 Q. Now, did you indicate that you did not actually meet
7 with Mr. Robinson until y'all were actually in court for
8 the plea?

9 A. Not in person, no.

10 Q. Okay, and y'all would correspond via letter or I think
11 you may have said y'all had a telephone conference?

12 A. We did.

13 Q. Okay. Do you recall -- well, let me say this, or let
14 me ask this. If y'all were communicating via letter or
15 telephone conference, were y'all able to review the
16 discovery together?

17 A. I explained to him via letter and through the phone
18 conference my analysis of the discovery, but I wasn't able
19 to do it simultaneously with him because obviously we
20 weren't in the same location. But I sent him the discovery
21 and then I made the phone conference for after he should
22 have received it. I had no indication at the time we had
23 our phone conference in May that he didn't have it. I
24 explained to him that the case was being called to trial,
25 what the trial strategy was, and that the AG had agreed to

1 change the venue based on the, the victim in this case, and
2 potentially any negative impact that would have on him to
3 have it heard in Williamsburg County. So, we, we discussed
4 all that on phone conference.

5 Q. Did -- were you ever made aware that Mr. Robinson was
6 having trouble with SCDC getting email to him?

7 A. Not until the day of the plea, and I gave him an extra
8 copy of everything at that time.

9 Q. When you say you gave him a copy of everything at that
10 time, what, what would that have been?

11 A. The Rule 5.

12 Q. Okay. Were y'all set to actually enter a plea that
13 day, or were you going to have a trial that day?

14 A. No, we were going to have a trial. We were set to
15 pick a jury, and then I had sat through jury qualification,
16 and then I went back to discuss this matter with him, and
17 he indicated at that time that he wished to change his plea
18 and enter a plea at that time.

19 Q. Did, did you guys, did y'all review prior to him
20 entering the plea any sort of questions that would be asked
21 by the court when he was entering the plea?

22 A. I mean, I typically have a affidavit, acknowledgment
23 of rights given up by a guilty plea, and so I routinely go
24 over that exact verbiage, which are the questions that the
25 judge goes over with all the clients asking whether or not

J. SHIVERS - CROSS-EXAMINATION BY MR. BOOZER

24

1 they've consumed any drugs or alcohol within the last
2 twenty-four hours, whether or not they were promised
3 anything, they understood that they're giving of their
4 right to a jury trial, their right to confront witnesses,
5 the right to cross-examine witnesses, the right to
6 challenge any evidence against them, the right to present
7 witnesses, to get on the stand and testify, or to choose
8 not to testify. That the jury wouldn't be able to use that
9 as evidence against him, and that he would be giving -- oh,
10 he would be giving up his right to subpoena witnesses, and
11 that he would be giving up all those rights if he entered a
12 guilty plea.

13 Q. Did you have any contact with Mr. Robinson after the
14 plea?

15 A. Yes. He actually wrote me a letter and requested my
16 help on another matter.

17 Q. Okay. Did you give to him any discovery materials at,
18 at that point?

19 A. The matter was unrelated to this charge. So, would
20 that letter -- my response letter wouldn't have included
21 that because it addressed specifically the other matter
22 that he wrote me about.

23 Q. Now, you had indicated that you guys were actually
24 going to go to trial. What sort of trial preparations did
25 you make before this trial?

1 A. I had fully prepared like I do any other trial.

2 Particularly focused on the pretrial motions, which was to
3 suppress the letter, the letter.

4 Q. Did you have discussions with Mr. Robinson about that
5 motion or any other trial strategy?

6 A. I did on our phone conference in May, and I believe I
7 also -- I wrote it to him in a letter as well.

8 Q. And going back to the order -- we'll just call it the
9 365 day order -- you agree that you didn't pursue any sort
10 of request for dismissal for not, I guess, disposing of the
11 case within 365 days?

12 A. No.

13 Q. Okay. Do you think that that's something that it
14 would have been beneficial to make because there is a
15 chance that it could have been, I guess, thrown out or
16 dismissed?

17 A. I believe that the place for that would have been at a
18 pretrial motion after we picked the jury, and we didn't get
19 that far because he chose to plead.

20 Q. Had you prepared to make any sort of pretrial motion
21 to that effect?

22 A. I'd have to look in here.

23 (A PAUSE.)

24 A. I don't see it specifically written here. So, I can't
25 say for sure at this point.

J. SHIVERS - CROSS-EXAMINATION BY MR. BOOZER

26

1 Q. Did you discuss that particular motion or 365 day
2 order with Mr. Robinson?

3 A. I don't recall that. I don't know that -- if we spoke
4 about it on our phone conversation. I see that he mentions
5 in one letter that he sent me in February and I don't -- in
6 my -- I don't know see that I address that in my response
7 letter in February.

8 MR. BOOZER: Court's indulgence, Your Honor?

9 THE COURT: Yes, sir.

10 (A PAUSE.)

11 MR. BOOZER: Thank you, ma'am. That's all the
12 questions I have.

13 THE COURT: Any redirect?

14 MS. COLEMAN: No redirect.

15 THE COURT: Thank you, ma'am. You may step down.

16 (THE WITNESS EXITS THE STAND.)

17 MS. COLEMAN: State has no further witnesses.

18 THE COURT: The state rests.

19 Anything in reply, Mr. Boozer?

20 MR. BOOZER: Nothing further, Your Honor.

21 THE COURT: All right. Thank you. I'll be glad to
22 hear argument now for the purpose of the record.

23 Mr. Boozer.

24 MR. BOOZER: Your Honor, basically we'll just rely on,
25 on the testimony as, as presented today. I do think that

1 Mr. Robinson's main two claims, that being that he feels
2 like she should have pursued some sort of relief pursuant
3 to the order that's been marked as Exhibit 1, you know, the
4 argument, I guess, would be it's pretty rare in a lot of
5 instances to have some sort of automatic kickback or, or
6 dismissal in a case like this. And, and his position is
7 that in her zealous representation, she should have pursued
8 trying to get this case dismissed because it wasn't being
9 -- pursuant to the, to the Supreme Court's order.

10 With regard to not having his discovery, obviously Mr.
11 Robinson's testified that the only time he met with his
12 lawyer was at the actual plea. So, obviously they couldn't
13 physically review any of the discovery before that date.
14 He also indicated, and if Your Honor believes his
15 testimony, that he's having issues with SCDC, and he is
16 currently involved in some civil litigation against the
17 Department because he's not getting his mail. He's
18 indicated and testified that he couldn't review his
19 discovery until after the plea. Had he done that, he would
20 have seen that maybe he could have challenged that
21 handwriting, and that is one of the reasons that he pled
22 guilty, because he know he had that defense, I guess, at
23 that time. So, Judge, that's why we would ask Your Honor
24 to grant this application.

25 THE COURT: Thank you, Mr. Boozer.

1 Ms. Coleman.

2 MS. COLEMAN: Yes, Your Honor. The state would ask
3 that this applicant be denied. Ms. Shivers has testified
4 and shown that she did -- she went well and above the --
5 well above and beyond that standards of representation here
6 that she needed to do. She was not able to meet with him
7 in person, but they did communicate several times over
8 letters, and she scheduled a phone call and discussed
9 everything with him. As she testified, he did not bring to
10 her attention that he didn't receive his discovery in the
11 mail, and as soon as she found out at the guilty plea, she
12 gave him a copy of everything.

13 It was his choice to plead guilty, as she said. He
14 testified during the colloquy with the plea judge that he
15 was guilty of this crime. He wished to plead guilty. He
16 understood all the rights he was giving up.

17 As far as the 365 day order goes, I, I think that Ms.
18 Shivers is correct in saying that probably would not have
19 been successful if she had moved to quash the indictment.
20 This was an order that, of course, is -- it was Chief
21 Justice, Chief Justice Toal's goal to move scheduling and
22 get trials on the docket faster, but I don't think that was
23 an issue in this case. She said she scheduled the trial as
24 quickly as possible. I think that solicitors' offices
25 every day, the goal might be within 365 days.

1 THE COURT: Well, I guess the question I have for both
2 the state and Mr. Boozer is, you know, we don't have
3 conditional guilty pleas in South Carolina. Did he, did
4 Mr. Boozer, your client, waive his right to move for a
5 dismissal based upon this administrative order by pleading
6 guilty? You wish to address that in your argument?

7 MR. BOOZER: Court's indulgence, Your Honor?

8 THE COURT: Yes.

9 (A PAUSE.)

10 MR. BOOZER: Your Honor, I think my client's position
11 would be that I guess he didn't feel like his lawyer was
12 doing -- taking the steps to represent him properly, and
13 her not asking the court to dismiss the indictment based on
14 what he perceived as a violation of that order sort of led
15 to the involuntarily guilty plea aspect of it. That would
16 be his position.

17 THE COURT: Okay. Gotcha.

18 Do you wish to address that, Ms. Coleman, in your
19 argument?

20 MS. COLEMAN: The state would just argue that you're
21 correct. He did waive his right to complain about the
22 scheduling of his trial by pleading guilty, and it wasn't
23 -- when he chose to plead guilty, it no longer was an issue
24 as to when the trial was scheduled. So, on those grounds,
25 we ask you to deny. Thank you.

1 THE COURT: All right. Well, what I'm going to do, as
2 I always do in PCR matters -- Mr. Robinson, I'm talking to
3 you. I want to make sure you understand that I'm going to
4 take the matter under advisement, okay? I'm going to
5 consider your testimony that you gave here today, as well
6 as I've got a packet full of information. I want to make
7 sure I take adequate time to review everything, read
8 everything, and then I will be in touch with your lawyer as
9 well as the state's lawyer and let them know my decision.
10 I hope to have a decision within the next ten days, okay?

11 Thank you sir. That concludes this hearing.

12 **--- 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 WILLIAMSBURG COUNTY, SOUTH CAROLINA, ON THE 7TH DAY OF NOVEMBER, 2016.

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

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 15TH, 2017

2013-05-13-01

EN 1
Applicant's
11-7-16

The Supreme Court of South Carolina

Re: 365 Day Benchmark

ADMINISTRATIVE ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4,

IT IS ORDERED that eighty percent of all criminal cases in each circuit in the State of South Carolina shall be disposed of within 365 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 365 days by written order if the court determines that exceptional circumstances exist in the case. This order does not create or define a right of a defendant to a speedy trial.

IT IS FURTHER ORDERED that the Chief Justice's order dated March 5, 1999 which states that all criminal cases shall be disposed within 180 days from the date of defendant's arrest is hereby rescinded.

IT IS SO ORDERED.

s/Jean Hoefler Toal
Jean Hoefler Toal, Chief Justice

May 13, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Anthony Robinson, #322734,

Applicant,

v.

State of South Carolina,

Respondent.

A CERTIFIED TRUE COPY
Sharon W. Bigger
IN THE COURT OF COMMON PLEAS
SHARON W. BIGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY
2015-CP-45-438

FILED
2017 MAY -14 PM 5:13

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 2, 2015. Respondent submitted its Return on January 27, 2016. An evidentiary hearing into the matter was convened on November 7, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the July 2014 term of the Williamsburg County Grand Jury for threatening life, person, or family of public official (2014-GS-45-0222) and two counts of throwing bodily fluids by prisoner (2014-GS-45-0223; -0224). Julie M. Shivers, Esquire represented Applicant. On May 21, 2015, Applicant pled guilty to threatening a public official before the Honorable Kristi L. Harrington. The other two charges were dismissed. Judge Harrington sentenced Applicant to five years running concurrently to his previous charges from Darlington County. Applicant did not appeal his guilty plea or sentence.



II. ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. Failing to move to dismiss the indictments.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified that he was served an arrest warrant on October 4, 2012 and on June 20, 2013, and he was indicted on these charges later. He stated that he met with Plea Counsel for the first time at the guilty plea. Applicant testified that he and Plea Counsel wrote letters to each other, but they never spoke on the phone. He stated that he did not see his discovery until after he pled guilty because his civil mail was withheld at the prison.

Applicant testified that a Supreme Court Administrative Order reads that criminal cases must be prosecuted within 365 days. Since his case had been pending longer than 365 days, Applicant opined that his charges should have been thrown out. Applicant testified that he told Plea Counsel about this Order, but she did not take it seriously. Applicant stated that Plea Counsel should have pursued this argument against his charges.

Applicant testified that he wanted to challenge the handwriting analysis in his Rule 5 materials, because he did not believe that his handwriting matched the threatening letter that the State alleged he sent to a public official. He stated that he told Plea Counsel that he wanted to challenge this evidence before the guilty plea, before they even had discovery. He stated that he never reviewed the threatening letter with Plea Counsel.

Plea Counsel testified at the evidentiary hearing that they were set to pick a jury for a trial on these charges, but the State extended a plea offer and offered to drop two of the charges, so they accepted the plea deal. She stated that her trial strategy was the challenge the letter, but she

stated that she never got Applicant's handwriting sample. Plea Counsel stated that she filed a pre-trial motion to suppress the letter based on handwriting.

Plea Counsel testified that Applicant mentioned the Supreme Court Administrative Order to her in February of 2015, but it was not applicable because Applicant wanted a trial, so they scheduled a trial as quickly as possible. She testified that she spoke with Applicant on the phone in May, but he never told her that he did not receive his discovery in the mail. She stated that she was not aware that Applicant did not have his discovery until the day of the plea, and as soon as she found out, she gave him a copy of the Rule 5 materials.

Plea Counsel testified that her regular practice is to go over a client's rights before a guilty plea, and she went over the acknowledgment of rights given up by pleading guilty form with Applicant before he pled. She stated that she saw no legal reason to move to dismiss Applicant's indictments because such a motion would not be successful.

IV. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must



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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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 (1985).

V. 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).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Counsel was ineffective in her advice surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. This Court finds that Plea Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant, as well as fully explained the possible outcomes in sentencing. This Court further finds that Plea Counsel was not ineffective for failing to challenge the indictments, as any challenge to them would not have been successful. The record and the testimony clearly show that Plea Counsel represented Applicant well within the standards of professional norms.

Furthermore, this Court finds that Applicant has not shown that he was prejudiced by any of Plea Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial but for Plea Counsel's actions. Accordingly this allegation must be dismissed.

Because Applicant has failed to meet his burden of proof for both prongs on the Strickland test, this allegation is denied and dismissed with prejudice.

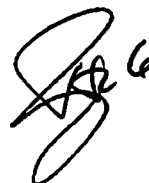
ADMINISTRATIVE ORDER

This Court finds that Applicant's allegation regarding Plea Counsel's failure to challenge his indictments under a Supreme Court Administrative Order is meritless. Any such challenge to his indictments would have been unsuccessful. Furthermore, Applicant waived his right to make this challenge when he pled guilty to the crime.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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



VI. CONCLUSION

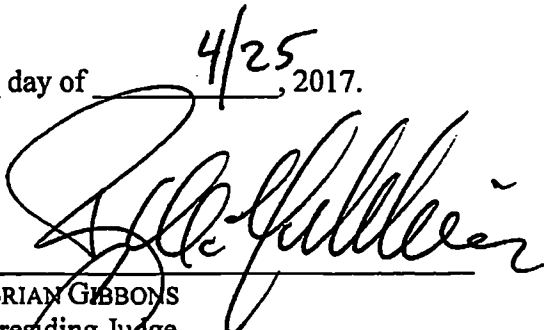
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this _____ day of 4/25, 2017.



 BRIAN GIBBONS
 Presiding Judge
 Third Judicial Circuit

_____, South Carolina

WITNESSES

Andy Bethea-SLED

DOCKET NO. 2014-GS-45-0222

The State of South Carolina

County of Williamsburg

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

COURT OF GENERAL SESSIONS

AUGUST

TERM

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

ARREST WARRANT NUMBER

2012A4510100305

**THE STATE
vs.**

Defendant

ACTION OF GRAND JURY

TRUE BILL

Date 7/31/14

Anthony Robinson

Witness:

Shelley Dawn
Foreperson of Grand Jury
Date: 7/31/14

C.C.C. Pls. And G.S.

VERDICT

Indictment for

THREATENING PUBLIC OFFICIAL

SC Code: 16-3-1040

CDR Code: 2605

Class Mis/Unclassified

Foreperson of Petit Jury
Date:

WITNESSES

Justin Whack-Williamsburg County Sheriff

ARREST WARRANT NUMBER

2013A4510100550

ACTION OF GRAND JURY

TRUE BILL

Date 7/31/14

Shelley Bowers

Foreperson of Grand Jury

Date: 7/31/14

VERDICT

05/18/2015

Nolle Pros- plea to

2014-GS-45-222

Foreperson of Petit Jury

Date:

Docket Number 2014-GS-45-0223

The State of South Carolina

County of Williamsburg

COURT OF GENERAL SESSIONS

AUGUST Term

THE STATE

vs.

Anthony Robinson

DEFENDANT

Indictment for

Throwing of Bodily Fluids by a Prisoner

24-13-0470
Felony/D
CDR Code 2526

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

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

Defendant

Witness:

C.C.C. Pls. And G.S.

2015 MAY 18 PM 1:09
CLERK OF COURT
WILLIAMSBURG, S.C.

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF GENERAL SESSIONS

A-CERTIFIED TRUE COPY
Sharon W. Staggars
SHARON W. STAGGARS
CLERK OF COURT
WILLIAMSBURG COUNTY

INDICTMENT

At a Court of General Sessions, convened on July 31, 2014 the Grand Jurors of
Williamsburg County present upon their oath:

THROWING OF BODILY FLUIDS

That Anthony Robinson did, in Williamsburg County on or about June 19, 2013
commit an assault and battery upon the victim, Assistant Solicitor Tyler Brown,
constituting an unlawful act of violent injury to the person of the said victim in that he was
a person under arrest who attempted to throw or threw body fluids including, but not
limited to, urine, blood, feces, vomit, saliva, or semen to wit: by spitting in the assistant
solicitor's face, in violation of §24-13-470 of *THE 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.

ALAN WILSON/ KBA
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

Justin Whack-Williamsburg County Sheriff

ARREST WARRANT NUMBER

2013A4510100551

ACTION OF GRAND JURY

TRUE BILL

Date: 7/31/14

Shelley Bowers

Foreperson of Grand Jury

Date: 7/31/14

VERDICT

05/18/15

Nolle Pros - plea to

2014-GS-45-222

Foreperson of Petit Jury

Date:

Docket Number 2014-GS-45-0224

The State of South Carolina

County of Williamsburg

COURT OF GENERAL SESSIONS

AUGUST Term

THE STATE

vs.

Anthony Robinson

DEFENDANT

Indictment for

Throwing of Bodily Fluids by a Prisoner

24-13-0470
Felony/D
CDR Code 2526

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

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

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
2015 MAY 18 PM 1:09
CLERK OF COURT
WILLIAMSBURG, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF GENERAL SESSIONS

A CERTIFIED TRUE COPY
Shane W. Stiggers
SHANE W. STIGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

INDICTMENT

At a Court of General Sessions, convened on July 31, 2014 the Grand Jurors of Williamsburg County present upon their oath:

THROWING OF BODILY FLUIDS

That Anthony Robinson did, in Williamsburg County on or about June 19, 2013 commit an assault and battery upon the victim, State Law Enforcement Division Agent Andrew Bethea, constituting an unlawful act of violent injury to the person of the said victim in that he was a person under arrest who attempted to throw or threw body fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen to wit: by spitting in the SLED Agent's face, in violation of §24-13-470 of *THE 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.

ALAN WILSON/ KBA
SOUTH CAROLINA ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

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COUNTY OF WILLIAMSBURG
STATE VS. Anthony Q. Robinson

INDICTMENT/CASE#: 2014-GS-45-00222

AKA:
Race: B Sex: M Age: 30

AW#: 2012A4510100305
Date of Offense: 2012-01-13
S.C. Code §: 16-03-1040

DOB: [redacted] 1985 SS#:
Address: Kirkland Correctional Institute
City, State Zip Columbia, SC 29210
DL# SC SID#

CDR Code # 0541

SENTENCE SHEET

A CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

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

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or X PLEADS TO: Threatening the Life of a Public Official (0-5 years)

in violation of § 16-3-1040(A) of the S.C. Code of Laws, bearing CDR Code # 541

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

The charge is: X As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial)

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

ATTEST: [Signatures] 78996 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 5 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

X CONCURRENT or CONSECUTIVE to sentence on:

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 SC Code §17-25-135. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Table with columns for Recipient, Description, Amount, and Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, §35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33.7, 1B TP (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, §90.11 TP (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

Other: [blank lines]

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

Court Reporter:
Sentence Date: May 14, 2015
PRESIDING JUDGE: [Signature]
Judge Code: 211511

[Signature] Clerk of Court/Deputy Clerk
Court Reporter: Mia Perron