

STATE OF SOUTH CAROLINA **RECEIVED**

IN THE SUPREME COURT

DEC 19 2012

Appeal from Florence County **S.C. Supreme Court**

William H. Seals, Jr., Circuit Court Judge

SYLVESTER DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-211387

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

SYLVESTER DAVIS, JR.,)

DEFENDANT.)

TRANSCRIPT OF RECORD

2009-GS-21-1587

December 13, 2010

Florence, South Carolina

BEFORE:

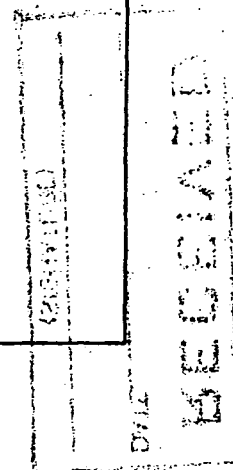
THE HONORABLE MICHAEL G. NETTLES, JUDGE

APPEARANCES:

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Solicitor

ROBERT E. LEE, ESQ.
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter



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(There were no exhibits submitted.)

1 THE COURT: Mr. Clements, you're recognized.

2 MR. CLEMENTS: Thank you, Your Honor, if it
3 please the Court. Your Honor, standing before you is Mr.
4 Sylvester Davis, Jr., with his attorney Mr. Robert Lee,
5 court appointed attorney. He's pleading guilty, Your
6 Honor, to indictment 2009-GS-21-1587, Your Honor, which is
7 an indictment for armed robbery and, Your Honor, an
8 indictment for accessory before the fact. It's an
9 indictment for armed robbery and an indictment for murder,
10 Your Honor. He's pleading guilty to the armed robbery
11 charge. He's pleading guilty, Your Honor, to accessory
12 before the fact of murder which I guess that's not a
13 lesser included offense; ~~he'll need to waive presentment~~
14 ~~on that count.~~ And that is on indictment 2009-GS-21-1587,
15 Your Honor.

16 And there's also, Your Honor, indictment
17 2009-GS-21-1597, which is an indictment for armed robbery.
18 He's pleading guilty under Alford on that, Your Honor.
19 This is a separate incident. He's pleading guilty to
20 indictment 2009-GS-21-1594, which is an indictment for
21 armed robbery, a separate incident. He's pleading under
22 Alford for that, Your Honor. And indictment
23 2009-GS-21-1596 which is an indictment for armed robbery,
24 a separate incident, which he's pleading guilty under
25 Alford on that. And we are recommending concurrent on

1 these charges, Your Honor.

2 THE COURT: All right, might counsel approach the
3 Bench for just one moment.

4 (WHEREUPON, counsel approached the Bench for an
5 off-the-record discussion.)

6 THE COURT: Mr. Lee, do you represent Mr. Davis?

7 MR. LEE: Yes, sir, I do.

8 THE COURT: Have you explained to him the offense
9 of armed robbery, the fact that he could receive a minimum
10 mandatory 10, and a maximum 30 with regard to each of
11 these armed robbery offenses, and he has four separate and
12 distinct offenses of armed robbery; is that correct?

13 MR. LEE: Yes, sir.

14 THE COURT: And does he understand that there's a
15 minimum mandatory 10, maximum 30 on each of these
16 offenses?

17 MR. LEE: He does.

18 THE COURT: And does he understand that this falls
19 within a very special category of offenses known as
20 violent offenses which adversely affects his custody
21 status, and it's a most serious offense subject to the two
22 strike rule?

23 MR. LEE: He does, Your Honor.

24 THE COURT: And does he understand the
25 elements of each of these offenses, potential defenses,

1 and his constitutional rights?

2 MR. LEE: He does.

3 THE COURT: With regard to accessory before the
4 fact of murder, this matter has not been before the grand
5 jury. Does he understand what the grand jury is?

6 MR. LEE: He does.

7 THE COURT: Does he waive presentment?

8 MR. LEE: He does.

9 THE COURT: All right. And he indicates that he is
10 gonna plead guilty to each of these offenses?

11 MR. LEE: He has.

12 THE COURT: And I understand that there has been
13 a agreement with regard to an Alford plea with regard to
14 one of these offenses, and what is that?

15 MR. CLEMENTS: Your Honor, the three armed
16 robberies that are not related to Mr. Chaffin, Your Honor,
17 and --

18 THE COURT: Give me those indictment numbers.
19 They're --

20 MR. CLEMENTS: Indictment 09-1594, 09-1596, and
21 09-1597.

22 THE COURT: All right. Mr. Lee, on these three
23 matters which were not related to the accessory before the
24 fact of murder, you indicate that he's pleading guilty
25 pursuant to Alford; is that correct?

1 MR. LEE: That's correct, Your Honor.

2 THE COURT: Do you believe the facts of this case
3 warrant an Alford plea? Particularly, do you believe that
4 there's overwhelming evidence to establish his guilt of
5 these three separate and distinct counts of armed robbery?

6 MR. LEE: I do, Your Honor.

7 THE COURT: Do you believe that he's getting a
8 benefit of a bargain with regard to going forward with him
9 here today?

10 MR. LEE: I do.

11 THE COURT: Does he understand that even though
12 there -- he's not admitting guilt with regard to these
13 armed robberies I will treat it just as if he pled guilty.
14 He understands that; doesn't he?

15 MR. LEE: Yes, sir.

16 THE COURT: He also understands that he'll have
17 three convictions for these Alford pleas just as if he
18 pled guilty, does he understand that?

19 MR. LEE: Yes, sir, he does.

20 THE COURT: All right. Does he understand the
21 elements of each of these offenses, potential defenses,
22 and his constitutional rights?

23 MR. LEE: Yes, sir.

24 THE COURT: And does he understand that
25 accessory before the fact of murder carries with it a

1 minimum mandatory 30 year maximum life, does he
2 understand that?

3 MR. LEE: Yes, sir, he does.

4 THE COURT: Does he also understand that that
5 likewise falls within the violent category, the most
6 serious offense?

7 MR. LEE: Yes, sir.

8 THE COURT: With regard to one of the more
9 important collateral consequences of this plea have you
10 explained to him that this is a non-parolable offense
11 subject to the 85 percent rule?

12 MR. LEE: He had asked me that. That I just -- I
13 guess I misstated to him, but he now knows that.

14 THE COURT: Okay, very good. Take just a moment
15 and explain that to him.

16 (Attorney confers with defendant.)

17 MR. LEE: He understands, Your Honor.

18 THE COURT: Very good. All right, Mr. Davis, you
19 understand what the grand jury is; don't you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you waive presentment? You
22 waive presentment to the grand jury?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very good. All right, let's place Mr.
25 Davis under oath if we could.

1 CLERK OF COURT: Please raise your right hand.
2 WHEREUPON,

3 **SYLVESTER DAVIS, JR.,**
4 having been duly sworn by the Clerk of Court, testified as
5 follows:

6 THE COURT: Mr. Davis, are you under the influence
7 of any drugs or alcohol here today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you experiencing any kind of
10 physical or mental problem that could prevent you from
11 understanding what we're doing here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Very good. I want you to pay very
14 close attention as the State summarize the facts that
15 bring us here today.

16 MR. CLEMENTS: First, Your Honor, let me tell you
17 about Mr. Davis' prior criminal history. He has a
18 conviction for unlawful weapon in 2004, a conviction for
19 possession of a stolen vehicle valued over one thousand
20 dollars but less than five thousand dollars on that same
21 date, Your Honor, 2004. Also Your Honor, on the same
22 court date he has a conviction for resisting arrest.

23 Further, Your Honor, he has a conviction for
24 burglary second degree violent, which he received five
25 years on. Court date was 12/9/04. And also a grand

1 larceny over a thousand but less than five thousand. The
2 conviction date was that same date of 12/09/04. Your
3 Honor, he has a burglary second degree violent conviction
4 from 1/5 of '05 and a grand larceny of that same date,
5 value under five thousand dollars. And also, Your Honor,
6 he had a parole revocation on January 2009, which is after
7 these events occurred, Your Honor.

8 Your Honor, let me know -- let me allow you to know
9 who is in the courtroom here today. Your Honor, the
10 investigators on this case were Investigators Thomas
11 McFadden and Investigator Chad Collins with Florence
12 County Sheriff's Office, and they had assistance from
13 probably most of the Sheriff's Office. We have Captain
14 Mike Nunn here today, Lieutenant Jason Doar, and Captain
15 Brett Camp as well. Your Honor, we also have the family
16 that came from Florida of Mr. Claire Chaffin. And when I
17 state the names of the family members I'm asking them,
18 Your Honor, to raise their hand so you will know which one
19 I'm talking about. Your Honor, Mr. Chaffin's three
20 daughters are here: Miss Alice Thompson, Miss Mary
21 Rhodes, and Miss Kathlene Dow. Your Honor, son-in-law Mr.
22 Mike Rhodes is here and grandchildren Mike Rhodes, Jr.,
23 and Jamie Thompson. Your Honor, Mr. Claire Chaffin, you
24 may be aware from reading the papers, Your Honor, was
25 tri-- was a 80, more than 80 years old veteran of World

1 War II, decorated hero, fought on the island of Iwo Jima
2 and several other battles in the Pacific campaign. And he
3 was an American hero, Your Honor, part of our greatest
4 generation. Your Honor, he'd still do one arm push-ups at
5 his age when he passed away, Your Honor. He was on a
6 trip, Your Honor, to meet up with some other marine
7 veterans and they had a meeting to go to and then he was
8 going on to Canada, Your Honor. He would travel I-95 a
9 lot and he always stayed at the Thunderbird Inn in
10 Florence.

11 Your Honor, he was there at the Thunderbird Inn.
12 He was accosted there by Deondre Michael Scott and
13 Sylvester Davis, Jr. They had been robbing people at the
14 motels at I-95 and 52. He was confronted there at his
15 room by Deondre Scott. He kind of chased Mr. Scott out of
16 his room. He was coming out after Mr. Scott and Mr. Davis
17 came up. Mr. Davis fired a couple of shots, did not hit
18 Mr. Chaffin. According to Mr. Davis' testimony at Mr.
19 Scott's trial he could have hit Mr. Chaffin if he'd wanted
20 to 'cause he was close enough to, and law enforcement did
21 not dispute that. The evidence shows he was pretty close,
22 but he fired in the vicinity of Mr. Chaffin into the wall
23 and into a window and 'cause Mr. Chaffin, when he was
24 coming out the door after Mr. Scott, when he saw Mr. Davis
25 he turned to come after Mr. Davis and Mr. Davis shot at

1 him. And he says that the reason, and he gave testimony,
2 the reason was to get Mr. Chaffin stopped. Mr. Chaffin
3 stopped, looked at him, and did his hands like that. And
4 Mr. Scott fired shot and Mr. Chaffin was shot under the
5 arm pit. It went into his chest cavity and he died as a
6 result of those wounds.

7 Mr. Scott went to trial. Mr. Scott received a life
8 sentence. And Mr. Davis testified. Mr. Davis testified
9 and he said under oath, which was the truth, that we had
10 made no promises to him, but he was there to tell what
11 happened. He showed remorse. He was cross-examined very
12 vigorously. His testimony was not shaken. And he
13 testified, we believe, to very truthfully. It matches up
14 with all the evidence that law enforcement was aware of.
15 And the State did appreciate his testimony. We made him
16 no promises; however, Your Honor, here today we've
17 recommended concurrent sentences on some other charges,
18 Your Honor, some that he is pleading to under Alford.

19 Your Honor, there was a group of people in
20 Darlington including Deondre Scott and Brandon Moses and
21 Eric O'Brian and Mr. Davis was involved in some degree.
22 There were several armed robberies that took place at
23 different motels on I-95 and 52 when they came to the
24 shooting of Mr. Chaffin and they were able to gain a lot
25 of evidence and solve a lot of the armed robberies. There

1 were other armed robberies, Your Honor, involved in this
2 that Mr. Davis was charged in that we've dismissed
3 pursuant to this plea. But these three that I'm gonna
4 talk about in a moment he's pleading to under Alford, we
5 believe we have evidence to convict him beyond any doubt
6 and that we believe is why he's pleading under Alford and
7 because we have offered him a concurrent sentence on these
8 charges.

9 On Mr. Chaffin's murder, Your Honor, where he was
10 an accessory and armed robbery, if there's any other facts
11 you need to hear about that particular case, Your Honor, I
12 defer to Investigator Collins and to Investigator McFadden
13 if there's anything additional you need on that case,
14 which is indictment 09-1587.

15 THE COURT: I'll be glad to hear from anybody who
16 would like to speak.

17 MR. CLEMENTS: Regarding Mr. Chaffin?

18 INVESTIGATOR MCFADDEN: Yeah, yes ---

19 THE COURT: I think -- one thing that we probably
20 do need to put on the record and you made clear that,
21 during the process of this killing there was a robbery
22 that took place. There was some financial gain. We
23 probably need to put on the record what that was.

24 MR. CLEMENTS: Your Honor, we know there was a
25 cell phone taken from Mr. Chaffin; as a matter of fact, we

1 found out that it was mixed in with other things from
2 other robberies. We didn't find out until actually in the
3 process of the trial that Mr. Chaffin's phone was taken.
4 And there were some other things that were missing, Your
5 Honor, that were not recovered. A briefcase was not
6 recovered. One thing, though, he did have a lot money on,
7 Mr. Chaffin had a lot of money on him. That was not taken
8 because when the shooting occurred then they immediately
9 jumped into the car and left. But there was an armed
10 robbery and that was the purpose what they were there for
11 was the purpose was for armed robbery and end up being
12 something much worse.

13 Your Honor, on indictment 09-1594 involves Susan
14 Klugal, Your Honor, who was the victim in that case, Your
15 Honor, and she was -- they were robbing her at the
16 restroom at the southbound rest area on I-95 in Florence
17 County as you head north to Dillon. She was followed into
18 the restroom by Mr. Davis and two co-defendants. They
19 grabbed her from behind, covered her mouth, told her that
20 they had a gun, and asked her for money. And she was
21 unable to be here, Your Honor. She is from Satellite
22 Beach, Florida, but wanted me to relay to the Court, Your
23 Honor, that she had a fat lip, bruises on her face, a
24 wrenched neck, scrapes on her feet, ankles, and knees and
25 stiffness in her neck for two, three weeks after the

1 incident. And she says that it's affected her to the
2 degree that she will never go into a public bathroom ever
3 again, even with someone else. And that are the facts on
4 that indictment, Your Honor.

5 On indictment 09-1597 Mr. Paul Bacote from
6 Darlington, South Carolina, was the victim. He was unable
7 to be here today because of his work schedule, Your Honor.
8 But he was at 2111 West Lucas Street when two defendants
9 while in possession of a handgun robbed him, demanded
10 items from him and they took items including his 1997
11 Chevrolet Tahoe, which during the time when Mr. Davis was
12 arrested on Mr. Chaffin's charges he was riding in the
13 Tahoe and his girlfriend was driving the Tahoe. And that
14 happened at the motel on Lucas Street which is the Days
15 Inn on 52 which is Lucas Street and I-95.

16 Your Honor, on indictment 09-1596 the victim was
17 Mr. Billy Ritter from Robins, North Carolina. He was
18 unable to be here, but when he was robbed he thought that
19 he was going to be shot. Your Honor, he was unable to be
20 here because of his work, but he wanted to -- us to relate
21 to you that he thought he was actually going to be shot
22 and killed and scared him to death and they took items
23 from him at gunpoint. And that was also, I believe, at
24 the Days Inn.

25 Is that correct?

1 INVESTIGATOR COLLINS: Yes, sir, I do believe it
2 was.

3 INVESTIGATOR MCFADDEN: Yeah.

4 MR. CLEMENTS: That was also at the Days Inn,
5 Your Honor. Mr. Chaffin's incident was at the
6 Thunderbird. And the gun taken from Mr. Ritter at that --
7 when he was robbed was the gun actually that was used in
8 Mr. Chaffin's situation that Mr. Davis had, which he threw
9 out of the car I believe when he was apprehended. He
10 threw it out of the window of the Tahoe.

11 But those are the facts in a nutshell, Your Honor.
12 If there's any additional facts you need I'll be glad --
13 on these events -- I'll be glad to give them to you, Your
14 Honor. I feel like we've got enough to substantiate the
15 plea on all these. He's looking at a lot of time.
16 Whatever Your Honor thinks is appropriate, but we would
17 like to emphasize again, Your Honor, that he testified.
18 He testified truthfully, and he testified when he didn't
19 have to. We didn't make him any promises. We didn't make
20 him any promises whatsoever, but he said he wanted to
21 testify and he testified and he didn't have to.

22 THE COURT: All right, very good.

23 MR. CLEMENTS: I would ask that you hear from
24 the family, Your Honor, at the appropriate time.

25 THE COURT: I will. And we're gonna with a little

1 bit more detail with regard to the plea negotiations.
2 Let's talk with Mr. Davis about these three separate and
3 distinct armed robberies for which you're pleading
4 pursuant to North Carolina versus Alford. Mr. Davis, with
5 regard to these offenses, what you're doing is you're
6 tendering a plea before this Court but you're maintaining
7 your innocence. You're not admitting your guilt with
8 regard to these three indictments, 2009-GS-21-1596,
9 2009-GS-21-1594, and 2009-GS-21-1597. To these particular
10 offenses you're standing before me maintaining your
11 innocence; but in order for me to accept this plea, you
12 have to agree that the State would have overwhelming
13 evidence to establish your guilt with regard to these
14 offenses. Do you agree with that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Based on that I'll accept
17 the plea with regard to these separate and distinct
18 offenses of armed robbery. Mr. Davis, with regard to
19 indictment 2009-GS-21-1587 and 2009-GS-21-1587 with
20 regard to the incident that happened at the Thunderbird
21 Motel, the armed robbery, are those facts true and are you
22 indeed guilty of armed robbery?

23 THE DEFENDANT: At the Thunderbird?

24 THE COURT: Yes.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Are you indeed guilty of accessory
2 before the fact of murder?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. You stand before me
5 pleading guilty on each of these offenses but you don't
6 have to plead guilty to anything. You can exercise your
7 right to a jury trial. In that process the jury would
8 determine whether or not the State could actually prove
9 you guilty beyond a reasonable doubt. I would charge the
10 jury as a matter of law that you're presumed to be
11 innocent. No one could require that you take the witness
12 stand. However, if you wanted to you could and you could
13 subpoena witnesses on your own behalf. In addition to
14 that you and your lawyer could cross-examine the State's
15 witnesses. You'd have an opportunity to eyeball them and
16 confront them as they testified against you. Do you
17 realize that by pleading guilty you're giving up all these
18 rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Mr. Clements, you've
21 alluded to the plea negotiations; and if I understand them
22 correctly, the plea negotiations are essentially they're
23 -- that you're recommending concurrent time. Is that
24 correct?

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: All right. And you did acknowledge
2 that he assisted with regard to the trial of the principal
3 in the murder case?

4 MR. CLEMENTS: Yes, Your Honor.

5 THE COURT: And there was no further
6 negotiations whatsoever?

7 MR. CLEMENTS: No further negotiations or
8 promises were made.

9 THE COURT: Is that true?

10 MR. CLEMENTS: As a matter of fact, Your Honor, it
11 really wasn't a negotiation. I just came in here today
12 and told him that these other counts we were going to
13 recommend concurrent.

14 THE COURT: Very good. Is that correct, Mr. Lee?

15 MR. LEE: Yes, sir.

16 THE COURT: Is that correct, Mr. Davis?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Mr. Davis, are you
19 satisfied with your lawyer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you understood all your
22 conversations with him?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you need any additional time to
25 confer with him?

1 THE DEFENDANT: No, sir.

2 THE COURT: You need to answer up so I can hear
3 you, Mr. Davis.

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Any complaints
6 whatsoever?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Has anyone promised you
9 anything, threatened you, pressured you, mistreated you in
10 any way, shape, or form in an effort to get you to plead
11 guilty here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: I'm sorry, I couldn't hear you. You're
14 soft spoken, Mr. Davis, speak up just a little bit.

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Has it been your decision
17 to enter a plea here today?

18 THE DEFENDANT: Yes. Yes, Your Honor.

19 THE COURT: All right. You understand that you
20 have ten days to appeal any decision that I might render
21 here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Based on your testimony I find
24 there's a substantial factual basis for your plea, that
25 your decision was freely and voluntarily entered into

1 knowingly and intelligently with consent of competent
2 counsel with whom you say you're satisfied.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I'll accept your plea, and I'll be glad
5 to hear from the family at this time.

6 MR. CLEMENTS: Your Honor, I'd ask that, and
7 when they address the Court, that they stand and please
8 state your name for the record.

9 THE COURT: I want each of y'all to understand --
10 thank y'all for being here. I'm sorry for the position
11 that you find yourself in, and I know it's a very
12 difficult situation. It's not necessary that you speak,
13 but I'll be glad to hear anybody and anything that you
14 would like to tell me. I want to hear it if you want to
15 say it. It's not necessary that you speak. The only
16 instruction I give is that you direct all comments
17 directly to me. I always find that to be a little bit
18 better if we could, and I'll be glad to hear -- just
19 identify yourself for the record before you speak. I'll
20 be glad to hear anybody at this time.

21 Yes, ma'am, your full name.

22 MR. DOW: Kathelene Ann Dow.

23 THE COURT: Thank you.

24 MR. DOW: I am Claire Chaffin's oldest daughter.
25 Our father's death was, and robbery, was devastating to

1 our family, especially to me because he used to drive 14.
2 hours straight when he traveled alone. When my mother
3 traveled with him they would stop at the Thunderbird, but
4 when he drove after my mother's death he would drive
5 straight through and I asked him not to drive straight
6 through because I was worried about him. And our father
7 was a hero to us, not because he won the silver star and
8 saved seven people off the front line on Saipan, but
9 because -- he never talked about the war so we didn't
10 really know that 'til we were grown. He was helpful to
11 everybody. He would help his neighbors with their roofs
12 and their barns, and in his '80s. He was 83 when he died.
13 He would stop on the road and help people that were broken
14 down, take people to the doctor. He was always -- he
15 always was a compassionate person and always helpful to
16 others. He had a smile on his face and a twinkle in his
17 eye. He could do one handed pushups. Like I said, he
18 built barns. His older brother is 91 and he just built a
19 addition on to his house. They were a long -- a family
20 with longevity. They lived a long -- and they were, you
21 know, able to -- my uncle is able to do everything still.
22 I mean, they were very healthy people.

23 I am thankful that Mr. Davis did testify on my
24 father's behalf; but I'm also concerned because he did
25 fire some, discharged his gun. And he -- when you carry a

1 gun in a robbery or anything there's always, there's
2 always a chance that somebody will be killed or
3 circumstances get out of hand. And you know, when you're
4 carrying a weapon you never know what's going to happen,
5 and I think he should be dealt with accordingly on that
6 subject.

7 But my father also was missing a money clip. He
8 went to Ireland and he had a money clip with a shamrock on
9 it, and that was never found. We've never found that too
10 so that would probably add to the robbery.

11 THE COURT: Very good. Thank you.

12 MR. DOW: Thank you.

13 THE COURT: Who would like to be next? Yes, sir,
14 your full name.

15 MR. RHODES: My name is Michael Rhodes, Jr. I'm
16 the son of Mary Ruth, the second daughter. Just a brief
17 history about my grandfather. He was born in Jackson,
18 Michigan to a very poor family, grew up on a farm with
19 seven other siblings. At the age of 16 his mother signed
20 a waiver for him to go war to fight the Pacific at which
21 time he became a medic. He chose to save lives and help
22 other people. During his time he served on Tinian, Roi
23 Namure, Saipan and Iwo Jima and on Saipan, as my aunt
24 alluded to, where he won the silver star.

25 Some of the things our family have kind of

1 struggled with is at the age of 16, 17, my grandfather
2 made a choice to go over, go to the Pacific to help fight
3 for our country and fight for what he believed in and had
4 since come back and fought for the rights of Sylvester and
5 Deondre Scott who actually robbed him, torment him and
6 others, and actually ultimately ending in his murder. For
7 as long as I've known my grandfather he's always been a
8 very helpful person. All the stories my mom told me from
9 him growing up is they always had family who -- if
10 somebody needed a helping hand they were always in there
11 living with them, helping them out best they could,
12 getting them back on their feet. When my parents, when
13 they were building their house, even though my grandfather
14 lived in Miami and Fort Lauderdale and my parents live in
15 Gainesville, he would drive the six hours up on the
16 weekends to help them put the roof on on different parts
17 of the house and everything like that. He was just -- you
18 couldn't ask too much of him because he'd volunteer before
19 you got a chance to even ask. He was just that kind of a
20 guy.

21 My grandfather, eventually when he got older and
22 retired, instead of choosing just to kind of subside and
23 everything he decided to continue on. He participated in
24 the UF World History presentation which is the University
25 of Florida and then he also chose to mentor young marines.

1 In addition to that, he mentored myself and my cousin
2 Jamie or -- yeah, my cousin Jamie, and the rest of our
3 cousins throughout our whole, or youthfulness in growing
4 up.

5 My grandfather is actually a very prideful man. He
6 always attended all the events he could, our high school
7 graduations, weddings. It doesn't matter what distance he
8 was. He 's even been known to go visit second cousins for
9 their weddings who hasn't seen in ten years. And in
10 addition to that, as also my aunt alluded to, he's known
11 for showing off and doing one handed pushups in front of
12 other veteran marines and firefighters at various veterans
13 events. My grandfather was not just a good person. He
14 was pretty much the example that good people follow. For
15 as long as I've known him he's always been the epitome of
16 following the twelve points of scout law which is
17 trustworthy, loyal, helpful, friendly, courteous, kind,
18 obedient, cheerful, thrifty, brave, clean and reverent.
19 Thank you.

20 THE COURT: Very good. Thank you, sir.

21 THE VICTIM ADVOCATE: Thank you, Your Honor.

22 MR. CLEMENTS: Your Honor, Mr. Chaffin was a real
23 hero. And the same age Deondre Scott was when he took Mr.
24 Chaffin's life and he was robbing people, Sylvester Davis
25 was the same age that Mr. Chaffin was when he signed up to

1 be a medical corpsman and go fight for our country. I
2 just think that's such a, an ironic just a position
3 between the individuals there in what they chose to do
4 with their lives. Your Honor, the State is grateful that
5 Mr. Davis testified against Mr. Chaffin's killer, but
6 there was a lot more before the fact Mr. Davis could have
7 done to prevent this from happening and just take that in
8 consideration, Your Honor.

9 Also, Your Honor, on the record I'd like to
10 recognize Ms. Dana Eason, the victim witness advocate for
11 the Sheriff's Office whose done an outstanding job. I
12 think this family is ready to adopt her and take her from
13 us, but I want to make sure that she gets recognized on
14 the record. And Your Honor, I defer, if there's anything
15 else that Captain Camp or Captain Nunn would like to add
16 on behalf of the Sheriff's Department because their entire
17 Sheriff's Department and Sheriff Boone himself, they've
18 grown very close to this family and this is very close to
19 their hearts.

20 THE COURT: Very good. I'll be glad to hear Mr. --
21 Captain Nunn.

22 MR. NUNN: Nothing, Your Honor. Thank you.

23 THE COURT: Very good.

24 MR. CLEMENTS: Captain Camp.

25 THE COURT: Yes, sir.

1 CAPTAIN CAMP: Your Honor, I would just like to
2 say that I am extremely proud of what the Sheriff's Office
3 was able to provide under the circumstances of this
4 family. There was a lot of time put into this case. This
5 actual case involved a number of investigators who have
6 worked behind the scenes on this case. We did everything
7 we could to come to justice on this. And this family has
8 driven back and forth from Florida to South Carolina on a
9 number of occasions and we have become very, very close to
10 them. As the Solicitor said they, you know, have been in
11 contact with this family and almost talks to them on a
12 weekly basis ever since this incident has happened. So
13 Your Honor, we would appreciate that you serve justice as
14 you see be.

15 THE COURT: Anything further from the State?

16 MR. CLEMENTS: No, Your Honor.

17 THE COURT: Mr. Lee, you're recognized. I'll be
18 glad to hear from you and your client and anybody who
19 would like to speak on his behalf.

20 MR. LEE: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. LEE: Mr. Clements. Your Honor please, I was
23 appointed to represent Mr. Davis, and I've been
24 representing him since his incarceration over a year. And
25 he's asked, he and I have gone over what I'm going to say

1 and I'm going to cover most of what he wants to say
2 because he tells me kind -- I say it better.

3 First of all, we would like to thank the Chaffin
4 family because we wouldn't be here, we wouldn't have had
5 the negotiations. The Solicitor wouldn't have done what
6 he did without their approval. And so we begin by
7 thanking them because in their search for justice they
8 have tempered justice with mercy. We also have to thank
9 the law enforcement because they have also been involved
10 in this and given their approval. And so we come here
11 realizing all the folks who are involved and who have
12 allowed us to come do this.

13 It's interesting to represent a client like this.
14 I've known Sylvester now a year, and I feel like I've
15 known him a lot longer. You spend time talking with
16 someone and getting to know them and their background and
17 where they come from and what they know and don't know.
18 It's been most interesting to me to have and help
19 Sylvester learn who Mr. Chaffin was. And the reason I say
20 that is that if we go -- you go through the facts of this
21 and what Mr. Clements didn't tell Your Honor is that one
22 thing that struck Sylvester was that when Mr. Chaffin came
23 out of the room chasing Deondre Scott and turned and saw
24 him and he saw that Sylvester had a gun and began to back
25 away, he said to -- he was always telling me that he had

1 no fear. And I looked at him and I said, well, you
2 understand why. He said, no, I don't. And it was that
3 point he began to learn who Mr. Chaffin was. And I told
4 him, I said, Tom Brokaw refers to this Mr. Chaffin's
5 generation as the greatest generation. And he asked who
6 Tom Brokaw was. And so I began to share with him, and at
7 that time in the past year we've had movies and those kind
8 of things as to what that generation did, what those
9 battles really meant or what this man really meant to his
10 country, to his family. I've had the opportunity to go on
11 the internet and get things from where he's from, postings
12 his family has made. I've even seen Mr. Chaffin give a
13 speech on YouTube and talk about what he did. Those are
14 things that Sylvester and I have talked about. I think in
15 going through that it's been a process to get where he is
16 because Mr. Scott's initial defense was this was some sort
17 of accident. When I told Sylvester that's what it was, is
18 that what he said, he literally physically reacted and
19 said that wasn't what happened, all this was no accident.
20 That he understands there are no do-overs in life, but you
21 do have a chance to put things right. And that's the
22 conversations that Mr. Clements had with him before he
23 testified, and that's been really the theme of what Mr.
24 Clements talked to Sylvester about was this is your chance
25 to put things right.

1 And Sylvester understands the loss. He understands
2 the loss on a lot of levels beyond just the impact this
3 has on his life. And we've talked about the fact of the
4 decisions that day and how at any point when he came to
5 the fork in the road had he taken the other path he would
6 be anywhere else but here. But he understands he is here
7 and he's accepted responsibility and he stands before you.
8 He's not trying and asking for a do-over; he's simply
9 trying to put things right.

10 In talking with him about Mr. Chaffin I think I
11 told Sylvester the thing that probably sums him up the
12 best is the advertisements you see now where the Marines
13 don't accept applications, just commitments. And I think
14 from everything I've read and I've shared with Sylvester
15 that probably shared, sums Mr. Chaffin up more than
16 anything else. That he was a man of commitment. It's
17 obvious that he was committed to his family. He was
18 committed to his friends, his community, and to his
19 country. And I think had he been here, if he was here
20 today, he would shun from the word hero and just say I was
21 committed. I think, though, that it's best summed up in
22 what you can see him say on YouTube when he talks about
23 helping people as a corpsman and having to make decisions
24 between the times who lived and who died. Is there was a
25 story he tells about a man who was shot 13 times and he

1 looked at him and said, we'll take him but I don't think
2 he'll make it. And that later on he was going to a
3 hospital and this man called to him and he went to him and
4 said, do you remember me. He said, well no. He said,
5 well I'm the guy who was shot 13 times you didn't know
6 would make it. Mr. Chaffin what appears as I have said
7 these things and I think sums up to me. He said there
8 were so many I wish I could have saved, but I was not able
9 to.

10 We recognize and Sylvester recognizes, he
11 understands the loss he's caused, not just to himself, not
12 just to this family. But I think he's come to realize
13 that when someone loses their life in this manner we lose
14 as a whole, as a society we become a lesser. So Your
15 Honor, he comes here as unworthy as he is, asking for
16 justice and asking for mercy but doing so recognizing his
17 own crimes and accepting responsibility for it.

18 THE COURT: All right. Mr. Davis, I'll be glad to
19 hear anything you got to say, but I'm gonna ask you to
20 make your comments directly to the Court.

21 THE DEFENDANT: I'm sorry for what happened.
22 And you know, even though I didn't pull the trigger I know
23 that I have consequences that I must face. There's a lot
24 that I have and I shouldn't have, you know, and I just
25 want to say sorry to the family for any pain that I caused

1 y'all family, you know. I just want to say sorry.

2 THE COURT: Anything further, Mr. Lee?

3 MR. LEE: No, sir.

4 THE COURT: We'll stand at ease for about five
5 minutes.

6 (WHEREUPON, a recess was taken from the proceedings.)

7 THE COURT: Mr. Davis, Mr. Lee is to be
8 commended for going through the significance of World
9 War II and the havoc that you've caused. I, like Mr. Lee,
10 probably suspected that you didn't really have any
11 understanding about what World War II was and what it
12 meant to this country. I, as a matter of fact, before Mr.
13 Lee gave his presentation, one of the things that I was
14 gonna require was that when and if you ever get out of
15 jail I was gonna as a condition of your release, it was to
16 gain a rudimentary understanding of what World War II was
17 and specifically the Pacific campaign. And it sounds as
18 though Mr. Lee has already done that. You know that Japan
19 is the country that brought us in to World War II. And
20 particularly Iwo Jima, of all the -- I mean, it was a
21 difficult campaign, but the battle of Iwo Jima is
22 particularly important because that was the island we
23 needed to get in order to have bombs to reach Japan. It
24 was particularly difficult fighting because it was a
25 island that was made up of just volcanic ash. You

1 couldn't hardly run in it; you couldn't build defensive
2 positions. And you probably have learned through your
3 lawyer that that's the iconic picture that they have the
4 Battle of Iwo Jima where the soldiers are raising the
5 flag. That's what that's all about. It's a very
6 significant battle in World War II. And I think it's
7 important -- and I didn't know exactly the definition. I
8 knew what a silver star was but this is what it says. A
9 silver star may be awarded to any person who while serving
10 in an armed capacity with armed forces to distinguish
11 himself, who distinguishes himself by extraordinary
12 heroism. That's what that was all about. I'm gonna ask
13 during your period of incarceration that you reflect on
14 what, what all this is about, and I'm gonna ask that you
15 study and gain a knowledge of what all you've ended here
16 through your conduct.

17 I do remind you that I've taken in consideration
18 the fact you have assisted the State in the prosecution of
19 your co-defendant, but you know you have to accept
20 responsibility. You understand that; don't you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I do remind you that this is a
23 no-parole offense, and for all practical purposes you will
24 serve it day for day subject to the 85 percent rule. You
25 understand that?

1 THE DEFENDANT: You say day for day?

2 THE COURT: For subject to the 85 percent rule.
3 You understand that?

4 THE DEFENDANT: Oh, yes, sir.

5 THE COURT: Very good. All right. Mr. Davis, on
6 indictment 2009-GS-21-1587, accessory before the fact of
7 felony, that being murder, the sentence of the Court is
8 that you be committed to the State Department of
9 Corrections for a period of 45 years. This sentence is to
10 run concurrent.

11 With regard to 2009-GS-21-1596, armed robbery,
12 the sentence of the Court is that you be committed to the
13 State Department of Corrections for a period of 30 years.
14 This sentence is to run concurrent.

15 With regard to indictment 2009-GS-21-1594, armed
16 robbery, the sentence of the Court is you be committed to
17 the State Department of Corrections for a period of 30
18 years. Sentence is to run concurrent.

19 With regard to indictment 2009-GS-21-1597, armed
20 robbery, the sentence of the Court is you be committed to
21 the State Department of Corrections pursuant -- to the
22 State Department of Corrections for a period of 30 years.
23 The sentence is to run concurrent.

24 With regard to indictment 2009-GS-21-1587 armed
25 robbery, the sentence of the Court is that you be

1 committed to the State Department of Corrections for a
2 period of 30 years. The sentence is to run concurrent.
3 Good luck to you.

4 MR. LEE: If Your Honor please, can we get credit
5 for time served?

6 THE COURT: And that would be -- and the time
7 served is what?

8 MR. LEE: One year and six months approximately.

9 THE COURT: The -- as a matter of fact, that's a
10 statutory mandate. He's entitled to credit for time
11 served. That's not really discretionary. Good luck.

12 Thank y'all for being here.

13

14 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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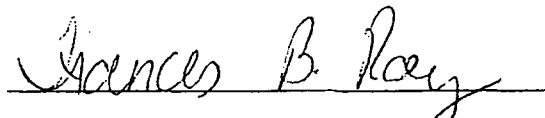
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina,
this 18th day of November, 2011.



FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

WITNESSES

Chad Collins

Florence County Sheriff

DOCKET NO. 2009-GS-21-1587

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2009

THE STATE

vs.

DONDRE MICHAEL SCOTT

SYLVESTER DAVIS, JR.

E. L. CLEMENTS, III

ARREST WARRANT NUMBER

H705702 H705703 K615108

K615109 2009GS2101587B

2009GS211587A

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

MURDER,
ARMED ROBBERY, AND
POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

2009 OCT -1 AM 9:53

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR MURDER, ARMED
ROBBERY, & POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on OCTOBER 1, 2009 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

That SYLVESTER DAVIS, JR. and DONDRE MICHAEL SCOTT did in Florence County, on or about June 8, 2009, feloniously, wilfully and with malice aforethought kill one Clair C. Chaffin, by means of shooting him with a handgun while committing an Armed Robbery at 2004 West Lucas Street in Florence, SC, and that the said Clair C. Chaffin did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060 S. C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

That SYLVESTER DAVIS, JR. and DONDRE MICHAEL SCOTT did in Florence County, on or about June 8, 2009, while armed with a deadly weapon, or while alleging, either by actions or words, that they were 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, to wit: handguns, did feloniously rob Clair C. Chaffin, by means of force or intimidation, goods or monies of the said Clair C. Chaffin; in violation of Sections 16-11-0330(A) and 16-01-0060 S.C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION OF WEAPON
DURING THE COMMISSION OF VIOLENT CRIME

That SYVESTER DAVIS, JR. and DONDRE MICHAEL SCOTT did in Florence County, on or about June 8, 2009, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: handguns, during the commission or attempted commission of a violent crime, to wit: Murder and/or Armed Robbery; in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

E. L. Clements

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

38 STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-21-1587

AW#: 2009GS2101587C

Date of Offense: 6/8/2009

S.C. Code §: 16-01-0040; 16-01-0050

CDR Code #: 0002

SENTENCE SHEET

VS.
SYLVESTER DAVIS JR.

AKA:

Race: B Sex: M Age: 26

DOB: SS#:

Address:

City, State, Zip: Darlington, SC 295320000

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADS

TO: ACCESSORY / ACCESSORY BEFORE THE FACT OF A FELONY, GENERAL PROVISION (VIOLENT IF VIOLENT FELONY)

In violation of § 16-01-0040; 16-01-0050 of the S.C. Code of Laws, bearing CDR Code # 0002

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1st or Lewd Act)

The charges is: ☐ As indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation

☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

Solicitor

SC Bar # 15295

Defendant

Attorney for Defendant

SC Bar # 63052

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 45 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: 12-13-10

☒ 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.

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:

☐ Set by SCDPPPS

Recipient:

*Fine: \$
\$14-1-206 (Assessments 107.5%) \$
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
\$56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
\$14-1-212 (Law Enforce. Funding) \$25 \$
\$14-1-213 (Drug Court Surcharge) \$150 \$
\$50-21-114 (BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
\$44-53-450(C) (Conditional Discharge) \$350 \$
3% to County (if paid in installments) \$
TOTAL \$ 105.00

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Presiding Judge

Judge Code:

Sentence Date

12/10/10

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

SYLVESTER DAVIS JR.

AKA:

Race: B Sex: M Age: 26

DOB: SS#:

Address:

City, State, Zip: Darlington, SC 295320000

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADS

TO: ARMED ROBBERY, ROBBERY WHILE ARMED WITH DEADLY WEAPON

In violation of § 16-11-0330(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. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST:

Solicitor

SC Bar # 15255

Defendant

Attorney for Defendant

SC Bar # 6305

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 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: 12-13-10☒ 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.

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 ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ _____

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 105.00Clerk of Court/Deputy Clerk W. B. SmithCourt Reporter: P. Balis Ray

SCCA217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-21-1587

AW#: K615109

Date of Offense: 6/8/2009

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Michael J. Smith

Judge Code: _____

Sentence Date December 13, 2010

FILED FORM 5

STATE OF SOUTH CAROLINA 2011 SEP 26 PM 1:41

COUNTY OF Florence

CONNIE REEL-SHOARIN

CCCP & GS

FLORENCE COUNTY, SC

Sylvester Davis #306869
Full name and prison number (if any) of Applicant.

IN THE COURT OF COMMON PLEAS

2011-CP-21-2537

v.

State of South Carolina

CERTIFIED: A TRUE COPY

Connie Reel-ShoarCLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 South Carolina Department of Corrections: Perry Prison
2. Name and location of Court which imposed sentence Florence, Florence County
3. Name(s) of co-defendant(s) (if any) Dondre Michael Scott
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-21-15870, Armed Robbery while armed
 - (b) Murder and Possession of a Weapon
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12-13-10, 30 years for Armed Robbery
 - (b) 12-13-10, 45 years for Accessory Before the Fact

- (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) My Attorney was suppose to file a direct appeal
- (b) Because I didn't know how to file a direct appeal
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

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

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. None
- 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) _____
- (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. Jack W. Lawson, Jr., 180 N. Irby St., MSC-N, Florence, SC 29501

ii. Robert E. Lee, P.O. B 10916, Marion, SC 29571

iii. _____

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

i. Jack W. Lawson Jr., arraignment

ii. Robert E. Lee, Plea and Sentencing

iii. _____

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

Immediate release

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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.

Sylvester Davis

SWORN to and subscribed before me this 7
day of Sept, 2011

Daryl Hume (L.S.)
Notary Public

My Commission Expires: Jan 28, 2018

FILED
2011 SEP 26 PM 1:41
CONNIE REEL-SHEARN
CCOP & GS
FLORENCE COUNTY, SC

**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.

Sylvester Davis
Applicant

SWORN or affirmed to and subscribed before me this
7 day of Sept, 2011

Dave [Signature]
Notary Public

My Commission Expires: Jan 28, 2018

FILED
2011 SEP 26 PM 1:41
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Brief

Ineffective Assistance of Counsel

Counsel was ineffective for to file a motion for dismissal after the trial court failed to dispose of applicant's case within the 180 day Mandatory time frame that was issued by the Chief Judge of the South Carolina Supreme Court on March 5, 1999. Counsel's ineffectiveness is the direct cause for applicant's imprisonment.

Subject Matter Jurisdiction

Trial Court forfeited its Jurisdiction when it failed to dispose of Applicant's case within 180 days, in accordance with the South Carolina Supreme Court Order dated March 5, 1999. Trial Court could exceed the 180 days by a written order for continuance, if there was exceptional circumstances in the case. Trial Court failed to request a continuance. "Gentry" affects. Only Subject Matter Jurisdiction in defective indictments. It do not apply to the Subject Matter in question. The 180 day order is Mandatory.

FILED

2011 SEP 26 PM 1:42

CONNIE REEL-SHEARER
CCCP & GS
FLORENCE COUNTY, SC

1999-03-05-01

The Supreme Court of South Carolina

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution,

IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 180 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 orders of Chief Justice Lewis dated August 17, 1983, and January 13, 1984, which appear at pages CC-ADMIN 12 and 13 of the South Carolina Court Register, are hereby rescinded.

s/Ernest A. Finney, Jr.
ERNEST A. FINNEY, JR.
CHIEF JUSTICE

Columbia, South Carolina
March 5, 1999

1999-03-05-01

The Supreme Court of South Carolina

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution,

IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 180 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 orders of Chief Justice Lewis dated August 17, 1983, and January 13, 1984, which appear at pages CC-ADMIN 12 and 13 of the South Carolina Court Register, are hereby rescinded.

s/Ernest A. Finney, Jr.
ERNEST A. FINNEY, JR.
CHIEF JUSTICE

Columbia, South Carolina
March 5, 1999

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	C/A NO.: 11-CP-21-2537
Sylvester Davis, #306869,	)	
	)	
Applicant,	)	
	)	MOTION TO AMEND APPLICATION
vs	)	FOR POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Pursuant to SCRCP, Rules 15 and 71.1, the Applicant, by and through counsel, move to amend the Application for Post-Conviction Relief in the manner set forth in the attached Amended Application for Post-Conviction Relief.

TURNER, PADGET, GRAHAM & LANEY, P.A.

Florence, S.C.

January 31, 2012

By: _____

Arthur E. Justice, Jr.
319 South Irby Street
Post Office Box 5478
Florence, SC 29502-5478
(843) 662-9008

ATTORNEYS FOR THE APPLICANT

FILED
2012 JAN 31 AM 11:39
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	C/A NO.: 11-CP-21-2537
Sylvester Davis, #306869,	)	
	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
vs	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Pursuant to the Uniform Post-Conviction Procedure Act, *S.C. Code Ann.* §§ 17-27-10 et seq., the Applicant files this Amendment for Post-Conviction Relief to add the following additional grounds for relief.

1. Applicant's plea of guilty to accessory/accessory before the fact was not voluntary in that Applicant was not properly advised by his counsel, Robert E. Lee, such that Applicant knowingly waived his right to presentment of the charge of accessory/accessory before the fact of a felony to the Grand Jury.

TURNER, PADGET, GRAHAM & LANEY, P.A.

Florence, S.C.

January 31, 2012

By: _____

Arthur E. Justice, Jr.
319 South Irby Street
Post Office Box 5478
Florence, SC 29502-5478
(843) 662-9008

ATTORNEYS FOR THE APPLICANT

CERTIFIED: A TRUE COPY

Annice Reel Shearin
CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.

2012 JAN 31 AM 11:39
CORINNE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Sylvester Davis, #306869,)

Applicant,)

vs)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 11-CP-21-2537

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of January, 2012 served a copy of the foregoing Motion to Amend Application for Post-Conviction Relief and Amended Application for Post-Conviction Relief upon counsel of record by faxing a copy of the same to:

David Spencer, Esquire
 Assistant Deputy Attorney General
 Fax No.: (803) 253-6283

Donna R. Labin
 Secretary to Arthur E. Justice Jr.

2012 JAN 31 AM 11:39
 DONNIE REEL-SHEARIN
 C.C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

Donnie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 11-CP-21-2537
COUNTY OF FLORENCE	)	
	)	
Sylvester Davis, #306869	)	
	)	
	)	
Applicant,	)	RETURN
	)	
VS.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application (PCR) filed September 26, 2011, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the October 2009 term of the Florence County Grand Jury for murder, armed robbery, and possession of a weapon during the commission of a violent crime. Robert E. Lee, Esquire, represented Applicant. On December 13, 2010, Applicant pled guilty to accessory after the fact to murder and armed robbery and was sentenced by the Honorable Michael G. Nettles to concurrent sentences of forty-five years imprisonment for the accessory charge and thirty years imprisonment for armed robbery. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, and the guilty plea transcript.

Respondent reserves the right to amend its return upon the receipt of further information or materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, *Id.* Applicant must overcome this presumption in order to receive relief. Cherry, *Id.*

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88

L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits 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, an evidentiary hearing is likely needed to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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.

VI.

WHEREFORE, having made Return, Respondent requests that this Court dismiss this Application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

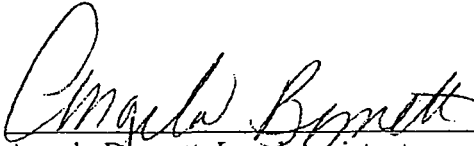
December 13, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2011-CP-21-2537
	)	
SYLVESTER DAVIS, #306869	)	
	)	
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:

Arthur E. Justice, Esquire
P.O. Box 5478
Florence, South Carolina 29502

DATED this 16th day of December, 2011


Angela Bennett, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

GENERAL SESSIONS COURT

SYLVESTER DAVIS)
306864)

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
11-GS-21-2537

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

February 1, 2012
Florence, South Carolina

B E F O R E :

THE HONORABLE WILLIAM H. SEALS, JUDGE

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

ARTHUR JUSTICE, JR., ESQ.
Attorney for the Petitioner

DAVID SPENCER, ESQ.
Attorney for the Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 MR. SPENCER: Your Honor, the next case
2 I'm going to call is 2011-CP-21-2537. That is
3 Sylvester Davis versus State. Mr. Davis is sitting
4 with his attorney Mr. Arthur Justice. Your Honor,
5 from my understanding Mr. Davis I believe — beg the
6 Court's indulgence.

7 THE COURT: Sure.

8 (Pause.)

9 MR. JUSTICE: I can give you the
10 procedural history on this one. Mr. Davis was
11 indicted for murder and armed robbery, possession of
12 a weapon during a violent crime. During the
13 October 2009 term of grand jury he was represented
14 by Mr. Robert E. Lee who is here today. Applicant
15 pled guilty to accessory after the fact to murder
16 and armed robbery sentenced by Judge Nettles to 45
17 years imprisonment for accessory charge and 30 years
18 imprisonment for armed robbery. I think there is a
19 mistake in the return. I believe it was three
20 counts of armed robbery that he pled to or was —

21 MR. JUSTICE: He pled to three other
22 counts of armed robbery, Alford plea.

23 THE COURT: All right.

24 MR. SPENCER: And that's — so I would
25 amend the return to reflect it was three Alford

1 pleas, three separate counts of armed robbery in
2 that regard. Your Honor, he is represented here
3 today, as I said before, by Mr. Arthur Justice. At
4 this time I would just ask that Mr. Justice set out
5 the allegations for the record.

6 THE COURT: All right. Mr. Justice.

7 MR. JUSTICE: May it please the Court.

8 THE COURT: Sure.

9 MR. JUSTICE: We also -- I hope it got to
10 the file in time yesterday. We filed a motion to
11 amend and a proposed amended application setting
12 forth additional grounds. Mr. Davis in his initial
13 application raised a couple of issues. The first
14 issue is that there is a -- there is a order from
15 the Supreme Court dated 1999. That order by Chief
16 Justice Finney at the time orders that all criminal
17 cases be disposed of within 180 days from the date
18 of defendant's arrest. BY that cert the Court may
19 continue a criminal case beyond 180 days by written
20 order; and in this case, Mr. Davis who was
21 approximately 18 months before he appeared before
22 the court for a trial, decided at that time to plead
23 guilty. And I cannot locate -- to my knowledge
24 there is not a written order extending the, or
25 continuing the case beyond that 180 days. That's

1 the first issue Mr. Davis raised.

2 In addition, in my amended application he
3 raised the issue that his plea to the accessory was
4 not voluntary, that Mr. Davis did not understand,
5 what, was not properly explained that offense. He
6 waived the presentation of that offense to the grand
7 jury. And also in that regard Mr. Davis asserts
8 that he did not understand, was not explained that
9 the hand of one is the hand of all on these charges
10 and that the accessory charge to which he was
11 pleading guilty to carried, potentially carried the
12 same sentence as the murder charge.

13 THE COURT: All right. I'm ready to
14 proceed whenever you are.

15 MR. JUSTICE: We call Mr. Davis to the
16 stand.

17 THE CLERK OF COURT: If you would walk
18 around and go over to the witness stand. Place your
19 left hand on the Bible, raise your right hand to the
20 best of your ability.

21 THE DEFENDANT: Yes, ma'am.

22 WHEREUPON,

23 **SYLVESTER DAVIS,**
24 having been duly sworn by the Clerk of Court,
25 testified as follows:

PW - S. DAVIS - DIRECT

1 THE CLERK OF COURT: Walk around and be
2 seated. State your full name for the record.

3 THE WITNESS: Sylvester Davis.

4 THE COURT: All right.

5 **DIRECT EXAMINATION**

6 BY MR. JUSTICE:

7 Q Mr. Davis, how old are you?

8 A 28.

9 Q Where are you currently incarcerated?

10 A Perry Institute.

11 Q And in 2010 did you appear in this court before
12 Judge Nettles?

13 A Yes, sir.

14 Q At that time did you plead before the court as to
15 certain offenses?

16 A Yes, sir, I had plead, but I didn't understand
17 the plea.

18 Q Okay, I'll get to that in a minute. First of
19 all, were you appointed an attorney to defend you?

20 A Yes, sir.

21 Q That attorney was Robert Lee?

22 A Yes, sir.

23 Q Okay. How many times did Mr. Lee meet with you
24 prior to the date you entered your plea of guilty?

25 A I believe either two, two or three.

PW - S. DAVIS - DIRECT

1 Q Did you advise Mr. Lee of information that you
2 had that would potentially exonerate you from the
3 charges?

4 A Yes, sir.

5 Q Okay. Ultimately did you testify in a
6 codefendant's trial?

7 A Yes, sir.

8 Q Okay. And what were you told by Mr. Lee or the
9 Solicitor's Office in regard to that testimony?

10 A With what the -- what they told me was that the
11 sentence, sentence that I got, would not be light.
12 At the same time, as I told my lawyer Mr. Lee, that
13 I ain't know nothing, but he still went ahead and be
14 like trying to work with the Solicitor to get my
15 co-D time. He did -- went against it. And he was
16 like, well, this is your best bet and we end up
17 pleaing out to the best bet. Because I was going to
18 trial -- I wanted to go to trial. Mr. Lee said I
19 ain't had no arguments because he didn't do, really
20 because he didn't do a proper investigation. He
21 didn't actually study none on the case. He
22 didn't -- he didn't put nothing in the case 'cause I
23 have too many -- I write him or give him information
24 about witnesses. He didn't even return my letters,
25 any of that.

PW - S. DAVIS - DIRECT

1 Q Now at any time during Mr. Lee's representation
2 of you did you and Mr. Lee discuss obtaining a
3 continuance ---

4 A No, sir.

5 Q ---of your trial?

6 A No, sir.

7 Q At any time to your knowledge were you given
8 paper or anything that indicated that a continuance
9 had been obtained?

10 A No, sir.

11 MR. JUSTICE: Your Honor, at this time I
12 would just hand up a copy of that 1999 order ---

13 THE COURT: Thank you.

14 MR. JUSTICE: ---for your referral. Your
15 Honor, I view that issue at this point really just
16 as a matter of law. I got factual information from
17 Mr. Davis on this, but I think this first issue is
18 just a matter of law for the Court interpretation of
19 that order.

20 BY MR. JUSTICE:

21 Q Mr. Davis, at the time that you pled guilty you
22 pled guilty to accessory of, before the fact of a
23 felony; is that correct?

24 A Yes, sir.

25 Q Now that was not --- that was not an indictment.

PW - S. DAVIS - DIRECT

1 You weren't indicted for that by the grand jury,
2 correct?

3 A No, sir, I wasn't.

4 Q Now in the transcript of the guilty plea you were
5 asked by Judge Nettles if you understood that
6 charge, you were waiving presentation of that charge
7 to the grand jury. Do you recall that?

8 A Yes, sir, I recall.

9 Q Did you understand at the time what that meant?

10 A No, sir.

11 Q Okay. Let me show you -- may I approach the
12 witness, Your Honor. Let me show you your sentence
13 sheet on that particular charge.

14 A Yes, sir.

15 Q If you will note that it's checked waiving the
16 presentment to the grand jury.

17 A Yes, sir.

18 Q You see that? And is that your signature beside
19 that?

20 A No, sir, actually that's S.C., initials is S.D.

21 Q And is that your signature?

22 A Yes, sir, that's my signature. That's my
23 signature.

24 Q All right. Now in explaining to you about the
25 pleading guilty to the accessory before the fact,

PW - S. DAVIS - DIRECT

1 did Mr. Lee explain to you anything about the murder
2 indictment or the charge of accessory before the
3 fact? Did he explain to you anything about the hand
4 of one is the hand of all? Have you ever heard
5 about that?

6 A No, sir, they never — they never brought that up
7 in the trial or in the case, period. He just told
8 me I was going to get charged with murder and I'd be
9 facing a murder charge.

10 Q Did he explain to you that accessory before the
11 fact of felony was a different charge?

12 A No, sir. Well, he didn't even say that. He said
13 that the charge I was going to plead to carried from
14 10 to 30. And when I got in court the judge said
15 that it carried from 30 to life.

16 Q Did you say anything to the judge at that time?

17 A Yes, sir, I had told him my lawyer didn't explain
18 that to me.

19 Q Now did Mr. Lee explain to you about waiving the
20 presentment of that charge?

21 A No, he didn't really explain. He said if I
22 didn't take the plea right then that the plea was
23 off the table and I would have to pick a jury right
24 then.

25 Q Okay. Did Mr. Lee explain to you that the

PW - S. DAVIS - DIRECT

1 potential sentence under the accessory charge could
2 be the same as murder charge?

3 A No, sir, he never explained that to me.

4 Q But the judge mentioned that to you during the
5 guilty plea itself. He said that it was 30 to life?

6 A That's -- he just told me, he told me that the
7 charge would carry from 30 to life.

8 Q Okay. Now in addition, Mr. Davis, you assert
9 that they also dropped a charge that was an
10 indictment?

11 A Yes, sir.

12 Q The possession of weapon?

13 A Possession of a firearm.

14 Q Okay. And what do you assert in regards to the
15 dropping of that charge?

16 A If I have know'd they was going to drop the gun
17 charge, that the armed robbery that they had me on I
18 thought I was pleading to one armed robbery. I
19 ain't know they was saying three 'cause the
20 solicitor said they were dropping the charges.

21 That's what they told me when I was -- when I signed
22 the plea sheets I didn't know that they was going to
23 charge me with all three of the armed robberies. I
24 didn't know they was going to drop the gun charge.

25 So if I know'd they was going to drop the gun

PW - S. DAVIS - CROSS

1 charge I wouldn't have pled to armed robbery. I
2 just didn't have knowledge of the plea that I was
3 pleading to.

4 MR. JUSTICE: Thank you, Your Honor.
5 That's all I have at this time.

6 THE COURT: All right, Mr. Spencer.

7 MR. SPENCER: Your Honor if I may, I just
8 want to take ten seconds to say something to
9 Solicitor Clements and then come right back.

10 THE COURT: Sure. Do you have a packet
11 for me on this case?

12 MR. SPENCER: Oh, I am sorry, I do have it
13 right here. I apologize, Your Honor. I'll be right
14 back.

15 (Pause.)

16 MR. SPENCER: Thank you, Your Honor I
17 apologize for that.

18 **CROSS - EXAMINATION**

19 BY MR. SPENCER:

20 Q Mr. Davis, I just want to ask you, first of all,
21 about this waiver of presentment charge. Do you
22 recall Judge Nettles explaining to you what a waiver
23 of presentment was?

24 A He explained it kind of, but he didn't get in
25 depth with what it was.

PW - S. DAVIS - CROSS

1 Q But he asked you if you understood and you said
2 yes?

3 A Yeah, I said what my lawyer told me to tell right
4 then 'cause he said that Mr. Lee -- Mr. Lee was
5 like, they go through that, he just going to say he
6 gonna read it off, just say, yes, you understand
7 what he's saying. That's what Mr. Lee told me to
8 say.

9 Q Okay. So what you're saying is Mr. Lee told you
10 how to answer the question?

11 A Yeah, I took his advice 'cause he said that the
12 Court would have mercy on me, just listen to what
13 they trying to lead -- about the plea.

14 Q Okay. And then concerning the hand of one hand
15 of all, what I wanted to ask you about that is now
16 you admit that you had fired some shots at the
17 victim and just you weren't trying to kill him,
18 right? You were just trying to stop him from
19 chasing y'all; is that fair to say?

20 A No, he wasn't chasing. There was fighting over
21 the guns.

22 Q Who was fighting over the guns?

23 A The victim and my co-D.

24 Q Okay. And this was during the armed robbery?

25 A Naw -- yeah, but y'all call it armed robbery,

PW - S. DAVIS - CROSS

1 yeah.

2 Q What do you call it?

3 A Well, I ain't know what it was 'cause I came up
4 on the scene after they was arguing so I don't know
5 what was going on.

6 Q So you weren't there with the co-defendants? Is
7 that what you're saying today?

8 A No, I ain't saying I went there with the
9 co-defendants. I didn't know what was going on.
10 That's what I'm saying.

11 Q What did you think — what were you and your
12 co-defendant doing?

13 A Well, we was at a place where, you know, drug
14 deals go down so it could have been anything.

15 Q You were at a motel, right?

16 A Yeah, at a motel.

17 Q Thunderbird Inn?

18 A Yeah.

19 Q So you and the co-defendant were at the
20 Thunderbird to deal drugs?

21 A We were out there about drugs.

22 Q What do you mean about drugs?

23 A We were out there, out there about drugs.

24 Q What's about drugs?

25 A We came out there to serve somebody and something

PW - S. DAVIS - CROSS

1 else happened. That's what happened.

2 Q You were coming out there to do what?

3 A To distribute drugs out there.

4 Q Okay. You were out there to sell drugs?

5 A Yeah.

6 Q With your co-D?

7 A No, my co-defendant was the driver. That's all
8 he was, was a driver.

9 Q He was driving you around so you could sell
10 drugs?

11 A Yeah.

12 Q Okay. And then he got out of the car and went to
13 the victim's room and what happened?

14 A I don't know. When I came back that's when the
15 little altercation was going down.

16 Q Okay. Do you recall apologizing to Judge
17 Nettles?

18 A Yes, that's what I apologized 'cause my lawyer
19 told me to apologize.

20 Q So you didn't mean it?

21 A I'm not saying that. I'm sorry that the man
22 died.

23 Q Well, do you mean you're sorry the man died? You
24 don't think you had any part in it?

25 A No, I came out there, but I didn't come out there

PW - S. DAVIS - CROSS

1 to rob nobody.

2 Q But you told Judge Nettles you were guilty,
3 right?

4 A Yeah, I told him what my lawyer told me to say.
5 I said, took his advice and took the plea and he
6 said just say that you're sorry because the more the
7 Court would have mercy on you if you say that you're
8 sorry.

9 Q So what you decided to do is lie to Judge
10 Nettles?

11 A No, I'm sorry that the victim had died. Yes, I
12 was sorry about that.

13 Q But you were telling Judge Nettles as if you felt
14 responsible for it, right?

15 A Naw, I ain't said that I was responsible for it.

16 Q Do you recall telling Judge Nettles, I'm sorry
17 for what happened and, you know, even though I
18 didn't pull the trigger I know that I have
19 consequences that I must face.

20 A Yeah. That's not saying I went out there to rob
21 the man.

22 Q But you didn't do anything wrong. What were you
23 apologizing for?

24 A Because I felt sorry for the man dying.

25 Q But you didn't do anything wrong. You didn't

PW - S. DAVIS - CROSS

1 cause that guy's death, you were just out there
2 selling drugs. But you weren't there to rob this
3 World War II vet, were you?

4 A No.

5 Q You didn't do anything wrong, right?

6 A But in the court's eyes they see that I did
7 something wrong.

8 Q So you thought the best thing to do —

9 A Being with my co-D they see that I was doing
10 wrong by being with him.

11 Q So you thought the best thing to do was lie to
12 Judge Nettles?

13 A That wasn't lying. I did feel sorry for the
14 victims.

15 Q What — you tell him there's a lot that I have
16 and should have, you know, I just want to say sorry
17 to the family for any pain that I caused y'all
18 family, you know, I just want to say sorry. What
19 pain did you cause the family?

20 A 'Cause if I wouldn't never went out there to sell
21 the drugs my co-D would have never got into it with
22 him. So actually, yeah, we wouldn't have been out
23 there.

24 Q So you were paying your driver, were you?

25 A Yeah.

PW - S. DAVIS - CROSS

1 Q So you're giving him a job, you know, you're
2 paying him. What did you do wrong?

3 A What did I do wrong? I sold the drugs. I
4 shouldn't have sold the drugs. I wouldn't have been
5 out there.

6 Q Do you recall Judge Nettles telling you you were
7 facing 30 years to life for the accessory before the
8 fact charge?

9 A Yeah.

10 Q Did you stop Judge Nettles and say, hey, I didn't
11 know that?

12 A Yeah.

13 Q Did you say, well, if that's the case I don't
14 want to go to trial?

15 A Naw, I -- that I could, told me to talk to
16 Mr. Lee, and Mr. Lee said that if I didn't take the
17 plea that I would have to pick my jury right then.
18 That's what that was 'cause they was rushing me.

19 Q So your contention is you were going to go to
20 trial that day?

21 A That's what Mr. Lee tell me.

22 Q And you were pleading guilty so you wouldn't get
23 a life sentence, right?

24 A Yeah, death penalty.

25 Q As a matter of fact, you were lying to Judge

PW - S. DAVIS - CROSS

1 Nettles so you wouldn't get a life sentence?

2 A No. I was taking the plea because I took the
3 advice of my lawyer. He said it would be in my best
4 interest to take that plea.

5 Q Were you satisfied with your attorney?

6 A No, not really. I'm not going to lie, no.

7 Q So you weren't happy with your attorney at that
8 plea?

9 A Naw, I didn't really want to take the 45 years;
10 but like he said, I didn't have no choice.

11 Q You were hoping for better. You were hoping for
12 30 years?

13 A 30 years? Naw.

14 Q What were you hoping for then?

15 A He talked to him earlier. He said that I could
16 get 20 years, 20, 30 years, no more. Now that was
17 assumption that I had. 20 to 30 years he said but
18 most likely they're not going to give you the max.

19 Q Mr. Davis, considering this is your day in court
20 I want to make sure that I'm clear on this. Your
21 attorney told you you could get ---

22 A 20.

23 Q ---as little as 20 years?

24 A Yeah, I told you that he told me two statutes on
25 the charge that I was facing carry from 10 to 30.

PW - S. DAVIS - CROSS

1 I -- when I got in court the judge said the charge
2 carried from 20 to life.

3 Q Now armed robbery carries 10 to 30. You agree
4 with me on that?

5 A No, he was telling me accessory, all my charges
6 together was carrying from 10 to 30.

7 Q Okay. At what point did you tell Judge Nettles,
8 listen, I don't want to plead guilty anymore because
9 I don't want 30 years?

10 A Naw, that's what I'm saying, that I didn't have
11 knowledge of -- I didn't know I could say whoa,
12 whoa, stop the plea, 'cause I ain't know this. He
13 said that if I don't take this plea right now that I
14 had to go to trial right then.

15 Q When Judge Nettles asked you if anyone promised
16 you anything, threatened you, pressured you,
17 mistreated you in any way, shape, or form in an
18 effort to get you to plead guilty you told him no,
19 sir, right?

20 A Yes, sir, because my lawyer told me to say that I
21 ain't been promised nothing.

22 Q But from what you're telling me are you saying
23 Mr. Lee is the one who promised you, pressuring you?

24 A Naw, see, this is what happened. When Mr. Lee --
25 Mr. Lee talked to me right before I went there to

PW - S. DAVIS - CROSS

1 plead. They pulled me out five minutes before the
2 judge got on the bench. So bam, he had the
3 sentencing sheets. The sentencing sheet said, one
4 of them said 30 years, 30 years to -- 10 to 30. The
5 other one didn't have the time on it. It was the
6 accessory of the -- all right, so he said you can
7 sign this accessory charge and it's armed robbery.
8 This armed robbery charge and accessory, they
9 carrying from 10 to 30. He said you can take these
10 pleas or you won't have to. He say now your best
11 interest is to take these pleas because they trying
12 to go to trial with you. So I said all right. I
13 say I'm gonna take the pleas, now you advise me this
14 is my best choice, I got no other choice. He say,
15 naw, you don't have no other choice unless you want
16 to go to trial.

17 So when I signed them they didn't have 45
18 years on none of them or from 30 to life. When I
19 got up here in front of the Court when the judge
20 told me it had carried 30 to life that's when I said
21 hold up, he didn't explain that to me.

22 Q Have you looked at your plea transcript?

23 A I never looked at my plea. I asked Mr. Lee for
24 one but he never 'cause the judge -- he told the
25 court reporter to hold up when he said 30 to life

PW - S. DAVIS - REDIRECT

1 and they hold up. He said explain that to your
2 client about the time.

3 Q So it should be in the transcript?

4 A I guess it should be there, should be. It should
5 be.

6 Q Okay. Well, maybe I've missed it but I don't see
7 it. The judge has the guilty plea transcript. What
8 kind of drugs were you dealing that night?

9 A Cocaine.

10 Q Okay. Who did you sell to?

11 A Well, they locked up now so.

12 Q Who did you sell to?

13 A Another person out there.

14 Q How much did you sell to them?

15 A A gram.

16 Q Thank you.

17 MR. SPENCER: Your Honor, I have no
18 further questions.

19 THE COURT: Anything further, Mr. Justice?

20 MR. JUSTICE: Yes, sir, briefly.

21 **REDIRECT EXAMINATION**

22 BY MR. JUSTICE:

23 Q Let me show you, again, the same sentencing sheet
24 I showed you earlier. That's the sentencing sheet
25 on your accessory. This, written out here beside

1 the plead box.

2 A Yes, sir.

3 Q It's 30 to life.

4 A Yes, sir.

5 Q Are you telling the Court that wasn't on there
6 when you signed?

7 A The 45 wasn't in there. That's what I'm telling
8 you.

9 Q And again, your statement, that's not your
10 initials?

11 A Yeah.

12 Q Beside the waiver of presentment?

13 A Presentation, yes, sir.

14 MR. JUSTICE: That's all I have, Your
15 Honor.

16 THE COURT: Anything further, Mr. Spencer?

17 MR. JUSTICE: No, I have nothing further
18 with this witness. Thank you.

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

20 THE WITNESS: All right. Thank you, sir.

21 MR. JUSTICE: We have no further
22 witnesses, Your Honor.

23 THE COURT: Mr. Spencer.

24 MR. SPENCER: I would call Mr. Lee to the
25 stand please.

RW - R. LEE - DIRECT

1 THE CLERK OF COURT: If you would place
2 your left hand on the Bible, raise your right hand.
3 WHEREUPON,

4 ROBERT E. LEE,
5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 THE CLERK OF COURT: Be seated and state
8 your name for the record.

9 DIRECT EXAMINATION

10 BY MR. SPENCER:

11 Q Mr. Lee, I wanted to first of all address the
12 allegation concerning the Supreme Court's order to
13 dispose of cases in 180 days. What's your
14 understanding of that order?

15 A My understanding has always been that that was an
16 order that was entered by the chief as a precursor
17 to the current docket system we have in general
18 sessions. But it didn't create a speedy trial
19 right, and I've never asked or moved for any
20 defendant to have a trial within 180 days. I don't
21 anticipate ever doing it until the legislature
22 passes a statute to require it to give them that
23 right.

24 Q As a general rule is delay a good thing nor a bad
25 thing for a defendant?

RW - R. LEE - DIRECT

1 A It's a good thing, and in this case it was. It
2 was an essential part of strategy.

3 Q And if you could explain to me a little bit about
4 why that would be important, or strategy in this
5 case?

6 A Well, in this case you had Sylvester and the
7 co-defendant were accused of having killed a World
8 War II literally hero, and there was plenty of press
9 and there was a lot of pressure and especially on
10 the solicitor to make these death penalty cases.
11 And when I initially met Sylvester I explained that
12 to him and subsequent conversations I explained it
13 to him. And for that reason I told him we need do
14 just the opposite. Instead of saying, raising our
15 hand saying we're here, we need to lay very low. In
16 fact, the Solicitor elected not to make these death
17 penalty cases although he did consider it. If I
18 remember correctly, the defendant who was actually
19 tried was under 18 at the time he committed the
20 crime so the United States State Supreme Court not
21 entitled to seek death penalty against him, but that
22 would have opened Sylvester to a shot of being
23 indicted and then seeking death penalty against him.
24 Q Did you explain to him the hand of one hand of
25 all?

RW - R. LEE - DIRECT

1 A I always explain to them the theory. That's an
2 essential part of this case. That was an essential
3 problem he has.

4 Q And you, I think you were present when Mr. Davis
5 testified about he was kind of merely present. He
6 was just out there conducting business. What did he
7 tell you happened?

8 A He, first of all, the -- if you back up and you
9 look at the charges which he pled the Alford plea
10 to, those were charges that took place in Richland
11 County, one of which was he and others took the
12 weapon. In fact, he and the boy who ultimately pled
13 was convicted in this case as a shooter. They took
14 the weapon of, a service weapon of a law enforcement
15 officer in Richland County, and so he was involved
16 in literally a crime spree. And his story was
17 always I didn't do it, but he's always present. And
18 if you go back to his transcript where he tells the
19 Court, he says, tells the Court that, you know, I
20 didn't do it but there are things that I have to
21 answer for. That's because he knew he had to answer
22 for things because I explained to him the hand of
23 one is the hand of all under the Pinkerton theory so
24 you looked at that. And finally he admitted what
25 his role in those offenses in Columbia were. Then

RW - R. LEE - DIRECT

1 he came in. We started talking about what happened
2 in Florence, and then it was all, you know, as it is
3 with all defendants, you know, there's this I'm
4 somehow not involved. And it -- as we talked to him
5 and over time and I explained to him the serious
6 time he was facing, the fact that under the theory
7 of hand of one is the hand of all he could be
8 subject to a murder charge, and the Solicitor having
9 these aggravating circumstances to seek the death
10 penalty. Then suddenly he began to tell me what
11 happened, that they went out, that he's supposedly
12 selling drugs and that was his thing. He was -- as
13 he explained, different criminals have different
14 things they do. There are what they call jump boys.
15 And they jump, rob people. There are drug dealers.
16 There are, you know, people who jack people with
17 guns. And that isn't really his thing. And so he
18 said they went out there, supposedly he was going to
19 do this drug dealing. The co-defendant was going
20 because he had been there previously and robbed
21 somebody. And he knew this, and so he was going to
22 check and see where the person was he was going to
23 sell. Mr. Sylvester was going to sell his drugs too
24 while he knew that his co-defendant was cruising
25 looking for somebody to rob. He came down and he

RW - R. LEE - DIRECT

1 was at one of the buildings in essence, you know,
2 keeping a lookout. And then he saw some commotion
3 towards the victim's room, walked down towards
4 there. As he walked up he saw the co-defendant run
5 from the room. He saw the victim run after him. He
6 fired a shot down trying to stop him. He fired a
7 shot above. And he tell me the most amazing thing
8 was this guy wasn't afraid at which point I told
9 him, you know, y'all had that World War II hero.
10 He'd been on Iwo Jima, that he wasn't afraid of
11 small arms, fire, and at which point he said that
12 the victim passed between the two cars. There was a
13 shot fired. The co-defendant stood up and he asked
14 me, he said why did you do that, why did you, did
15 you have to do that? And then they got in the car
16 and they left. And they went around and they took,
17 you know, steps to evade law enforcement. I mean,
18 that's what he said happened. And that's -- if he
19 go back to what he's testified under oath in the
20 trial of his co-defendant.

21 Q And you brought up an important point there. He
22 did actually testify against his codefendant?

23 A He did.

24 Q And he admitted actually being the first one to
25 fire a shot I guess in the victim's vicinity, if you

RW - R. LEE - DIRECT

1 will?

2 A He did. And that was supposedly he was going to
3 keep the victim in his room and allow the
4 co-defendant to get away, and when the victim wasn't
5 afraid and kept going and passed between the cars
6 they either shot to kill him.

7 Q Did you explain how much time he was facing on
8 accessory before the fact charge?

9 A Not only did I explain it because as part of his
10 testimony and his willingness to cooperate, the
11 Solicitor and I went out and met with him together
12 because the Solicitor wanted to hear what his
13 testimony was going to be. And the Solicitor began
14 by explaining to him, you know, just like you would
15 in a plea, you know, whatever he told him, you know,
16 he couldn't bind the court. And the Solicitor and I
17 together went over what sentencing option would be,
18 what the time option would be. And the Solicitor
19 himself covered with him and explained to him,
20 again, what the Pinkerton theory was and part
21 because he wanted to understand because when he got
22 on the stand those would be subjects about which he
23 would be cross-examined, that he didn't want him
24 going in to that trial with that being a problem.
25 You know, I was there. I explained it to him as

RW - R. LEE - DIRECT

1 well. You know, he's got a situation of amnesia
2 now.

3 Q And would you have told him he could get 20
4 years?

5 A For which charge?

6 Q For accessory before the fact charge?

7 A Yes. I explained as part of any Pinkerton.

8 Q What was the sentencing range you explained to
9 him that he's facing for accessory before the fact
10 of the murder?

11 A At present I don't remember what the range was.
12 I have to check my notes and see if I have that. I
13 would have carried the statute out 'cause that's
14 generally the way I do it.

15 Q Okay, I understand. But you would have read over
16 the statute and advised him based on the statute
17 what the sentencing range was?

18 A Well, and my biggest concern frankly would have
19 been the murder charge. That he was looking at 30
20 to life and that, you know, I explained to him in
21 our system now since we passed truth and sentencing,
22 that had the judge uttered those words life, that
23 meant pine box life.

24 Q And in fact, he came out with a sentence that was
25 a determinate sentence rather than a life sentence?

RW - R. LEE - DIRECT

1 A That's correct. His really orientation about it
2 was that he thought he was going to get a sentence
3 of 30 or less and that the Solicitor and I had both
4 talked with the judge about it beforehand. He knew
5 we had no assurance from the judge what the judge
6 was going to do. The Solicitor had told him he
7 would make this recommendation, except -- he wanted
8 to ask the judge not to use the word life so he
9 would be assured of having the ability to one day
10 get out of prison, and in fact, Judge Nettles didn't
11 do that.

12 Q Did you ever tell Mr. Davis how to answer Judge
13 Nettles' questions?

14 A No. What he's talking about is I have a -- I do
15 federal criminal work as well as state, and I have a
16 federal guilty plea questionnaire which tracks the
17 questions that a judge is going to ask a defendant.
18 And so I took that and I went through it with him
19 and I allowed him to see exactly what kind of
20 questions there are so he would have a chance in the
21 privacy of a conference room at the jail to say I
22 don't understand this question, what does it mean.
23 And we went through that. And I asked him, and so,
24 you know, if he says I told him to answer yes, I
25 didn't tell him to answer yes. I may have explained

RW - R. LEE - DIRECT

1 the question to him, led him to that answer, but I
2 don't instruct people how to answer.

3 Q Did you explain to him the grand jury presentment
4 rights?

5 A Yes, we did.

6 Q And he seemed to understand what your
7 conversation with them on that point?

8 A He understood those at the same time we explained
9 U.S. -- I mean, Alford v. Tennessee or Alford versus
10 North Carolina rather.

11 Q Did you bring your time with you to the stand?

12 A I do. I didn't take it to the stand. It's right
13 there.

14 MR. SPENCER: Your Honor, if I may bring
15 him the file.

16 THE COURT: Sure.

17 BY MR. SPENCER:

18 Q And do you have the questionnaire in there?

19 A No, 'cause I don't have -- in State court I don't
20 make them fill it out.

21 Q Okay.

22 A So I would dispose of that. But that's what he's
23 talking about because I don't -- because at any
24 substantial case of criminal cases I take that
25 questionnaire and review it, whether State or

RW - R. LEE - DIRECT

1 Federal. In federal court we do it because under
2 2255 which is a federal version of PCR the court has
3 a, you know, electronic filing. We a lot of times
4 file that and that tends to end it.

5 Q Mr. Davis testified that when Judge Alford told
6 him how much time he was facing on the accessory
7 before the fact charge he indicated Judge Nettles he
8 didn't understand. Do you recall that happening?

9 A Frankly, I mean, I don't. If that's in the
10 transcript then it's in the transcript, but I don't
11 have any special recollection of that.

12 MR. SPENCER: And Your Honor, if I may
13 just take a moment.

14 THE COURT: Sure.

15 BY MR. SPENCER:

16 Q I'm gonna hand you the guilty plea transcript and
17 I was hoping you could read starting -- I'm on page
18 6 and line 24. The judge asked about the exposure
19 on the charge. And if you could read that question
20 and your answer and let me know when you're done
21 with that.

22 A (Complies.)

23 Q I'm just trying to refresh your memory.

24 A Okay.

25 Q Okay. And does that refresh your memory as to

RW - R. LEE - DIRECT

1 how much time you would have told Mr. Davis he would
2 be facing for the accessory before the fact charge?

3 A Yeah.

4 Q And what -- how much time would you have told him
5 he was facing?

6 A It'd be 30 to life.

7 Q Thank you. Was Mr. Davis' case set for trial?

8 A No. In fact, there was no jury venire present.
9 What -- he is misstating the fact that I said to him
10 because he wanted to renegotiate the deal. And I
11 made it plain to him before we went out and the
12 Solicitor actually made it plain to him this was the
13 deal and either he could take this or he could not
14 take it but this was the deal. It wasn't that we'll
15 go right down, call a jury, because we didn't have
16 the venire present. In fact, that was the major
17 item set for that day given the press, exposure it
18 had gotten. And so when we got done there, my
19 understanding is the judge took, was going to take a
20 break before he took other pleas. So it wasn't a
21 situation where we had a jury panel sitting out and
22 we were, said kind of bring them on around, let's
23 strike.

24 Q Mr. Davis wanted a trial. Would you have gone to
25 trial?

RW - R. LEE - CROSS

1 A If he wanted a trial we'd got a trial.

2 Q Whose decision was it to plead guilty?

3 A It was his decision.

4 Q Thank you, Mr. Lee. I have no further questions.

5 THE COURT: Mr. Justice.

6 MR. JUSTICE: One question, Your Honor.

7 THE COURT: Sure.

8 **CROSS - EXAMINATION**

9 BY MR. JUSTICE:

10 Q You still have the transcript?

11 A I don't.

12 Q If you would look on page 7 of the plea
13 transcript. There was a time that you had to stop
14 and consult with Mr. Davis on during the plea.

15 A Yes.

16 Q Okay. And explain to me what that situation was,
17 what that issue was.

18 A The fact that it was a violent offense, it was
19 non-paroleable, and he had served 85, under
20 85 percent rule.

21 Q And that hadn't been explained to him previously
22 when you and Mr. Clements met with him?

23 A No. It had been explained to him he'd be
24 pleading to violent crime and 85 percent rule
25 because I told him that was also ---

RW - R. LEE - CROSS

1 Q But what was your misstatement? That's what I
2 guess I was asking. You indicated to the Court that
3 you had misstated something to him so you speak to
4 him again.

5 A Frankly I don't recall.

6 Q Okay, let me show you the sentence sheet on
7 accessory. Do you recall whether or not the 30 to
8 life was on that before Mr. Davis signed it?

9 A Frankly I don't.

10 Q Okay. And do you recall whether or not Mr. Davis
11 entered his initials right there on the edge
12 beside — do you have any recollection of that?

13 A Yeah, I — that I do 'cause he signed that and we
14 had him initial.

15 Q Okay. Now when did you explain the Alford pleas
16 to Mr. Davis? Prior to the time you and Mr.
17 Clements met with him?

18 A Yes, I — yes, sir.

19 Q So that had already been worked out?

20 A No, I had explained to him that was an option
21 because his problem was, you know, he — he wanted
22 to admit he was there, but he wasn't involved and
23 that's where we come into the Pinkerton theory that
24 the hand of one is the hand of all, the presence
25 being there. And a lot of times in general sessions

RW - R. LEE - CROSS

1 you will find that defendants can make that mental
2 leap because under an Alford plea they're not
3 pleading guilty they did it, they're saying that if
4 the government or if the State were to try me they
5 have sufficient evidence to convict me. That's why
6 I know he knows about what the Pinkerton theory was
7 because he understood they had sufficient evidence
8 with other defendants to convict him so that's why
9 we went with an Alford plea on those.

10 Q Okay. But my question was the -- for a lack of a
11 better word, deal, with Mr. Clements about the
12 Alford pleas did not advise until that morning, did
13 it?

14 A No, it'd arisen beforehand.

15 Q Thank you. That's all I have.

16 THE COURT: Anything further?

17 MR. SPENCER: I have no further questions,
18 Your Honor.

19 THE COURT: All right. Call your next
20 witness.

21 MR. JUSTICE: Your Honor, that would be
22 all the State's witnesses.

23 THE COURT: Thank you very much. I'll
24 take it under advisement today and have y'all a
25 ruling by this afternoon.

RW - R. LEE - CROSS

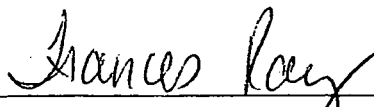
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered
Professional Reporter (RPR), court reporter for the
State of South Carolina, Twelfth Judicial Circuit,
do hereby certify that the foregoing proceeding is a
stenographic report and was transcribed through
computer-aided transcription; that the foregoing
transcript contains a true record of the
proceedings.

I further certify that I am neither
counsel for, nor related to nor employed by any of
the parties connected to the action, nor am I
financially interested in the action.

Witness my hand at Florence, South
Carolina, this 12th day of July, 2012.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Sylvester Davis, #306869)

FILED
2012 APR 13 PM 1:36
CONNIE REEL-SHEARON
CCCP & GS
FLORENCE COUNTY, SC

IN THE COURT OF COMMON PLEAS
C.A. NO. 11-CP-21-2537

Applicant,)

VS.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

CERTIFIED: A TRUE COPY

Connie Reel Shearon
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed September 26, 2011. The State made its return on December 13, 2011. A hearing was convened at the Florence County Courthouse on February 1, 2012. Applicant was present and represented by Arthur Justice, Jr., Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. His plea counsel, Robert E. Lee, Esquire, also testified. This Court also had before it the pleadings of both parties, the transcript of Applicant's guilty plea proceeding, the Applicant's records from the South Carolina Department of Corrections, and the Clerk of Court's records of the subject convictions.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted by the Florence County Grand Jury for murder, four counts of armed robbery, and possession of a weapon during the commission of a violent crime. Robert E. Lee, Esquire, represented Applicant. On December 13,

2010, Applicant pled guilty to accessory after the fact to murder and armed robbery and was sentenced by the Honorable Michael G. Nettles to concurrent sentences of forty-five years imprisonment for the accessory charge and thirty years imprisonment for armed robbery. Applicant pled guilty under Alford to the remaining armed robbery charges. Applicant did not appeal his convictions or sentences.

Prior to his guilty plea, Applicant testified against his co-defendant, Deondre Scott, who was tried and convicted of murder.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR 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 performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321

S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). 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); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Speedy trial - case should have been tried in 180 days

Applicant alleges counsel should have made a motion for speedy trial. Counsel testified that in his view, delay generally is beneficial to the defendant and so he generally would not file a motion for speedy trial. Counsel testified that delay was an essential strategy. This Court finds that Applicant has not met his burden of proof in the instant case.

First, the delay in this case, to the extent it could be called delay, was minimal. The murder occurred in June 2009 and Applicant plead guilty in December 2010, after his co-defendant was tried. Second, the March 5, 1999 order from Chief Justice Finney clearly states that the order "does not create or define a right of a defendant to a speedy trial." Third, this Court finds that Applicant was not prejudiced by any delay and Applicant has failed to present any evidence indicating how he was delayed. Finally, Applicant and his counsel pursued a strategy of cooperating against co-defendant Scott with obvious intent to mitigate his guilt. This is sound trial strategy and not possible until Scott was tried.

This Court finds Applicant has failed to meet his burden of showing counsel's performance was deficient and further, has failed to show how he was prejudiced. Accordingly, this allegation is denied.

Grand jury presentment

Applicant complains that he did not understand his right to have the accessory charge presented to the grand jury or what pleading under Alford meant. Counsel testified that he explained these rights and other rights to Applicant. This Court finds counsel's recollection more credible and gives it great weight, and this Court does not find Applicant's testimony credible. Applicant was pleading to accessory to murder in lieu of murder and therefore, waiver was appropriate. Applicant does not explain how counsel's purported deficiency would have altered his decision to plead guilty and this Court does not find a reasonably objective reason why this alleged deficiency would have led Applicant to forgo pleading guilty and proceed to trial. Stalk, supra. Accordingly, this Court finds Applicant has not met his burden of proving either prong of Strickland in regards to this allegation.

Penalty

Applicant complains that he did not know that the accessory charge carried the same penalty as murder, and if he had known that, he would not have pled guilty. This allegation is without merit. Applicant was advised by the plea court that the charge carried a penalty of thirty years imprisonment to life imprisonment. Further, counsel testified at the PCR hearing that he explained the range of punishment for this offense. This Court finds Applicant's testimony to the contrary is not credible and finds Applicant has not met his burden of proving counsel ineffective.

Applicant wanted to go to trial

Applicant alleges he did not want to negotiate a guilty plea and instead wanted to go to trial. The murder stems from a robbery at a hotel. Applicant's co-defendant, Scott, fired the fatal shot that killed the victim. Applicant alleges he was merely present. He alleges that he drove Scott to the hotel, but that Applicant was only present to sell narcotics.

Counsel testified that Applicant advised him that he took Scott to the hotel aware Scott was going to commit robberies while Applicant dealt drugs. Applicant was going to act as a look out. Applicant went to check on Scott, who fled a hotel room being chased by the victim. Applicant fired a shot in victim's direction in hopes of stopping victim's charge, but victim persisted. Co-defendant shot and killed the victim.

This Court finds that Applicant's recitation of events at the PCR hearing is not credible and is self-serving. Further, this Court finds counsel's testimony credible and gives it great weight. This Court finds that Applicant's decision to plead guilty was knowing and voluntary, and was, in fact, his decision. This Court finds Applicant has not met his burden of showing deficiency on the part

of counsel, and has not met his burden of showing prejudice from the alleged deficiency. This allegation is denied.

Hand of one, hand of all

Applicant alleges that counsel was ineffective for failing to explain accomplice liability to Applicant. In contrast, counsel testified that he did explain accomplice liability. Further, the facts relayed by Applicant to counsel clearly indicate that Applicant was guilty of murder under the theory of accomplice liability. Accordingly, this Court finds Applicant has not met his burden of proving this allegation.

CONCLUSION

Based on 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 advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 12 day of April, 2012.



William H. Seals
Presiding Judge
12th Judicial Circuit

Mauler, South Carolina

FILED
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CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC