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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Greenville County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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STEVE LEON GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001565

---

APPENDIX

---

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 STEVE LEON GRIFFIN, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2014-GS-23-07782

TRANSCRIPT OF RECORD

FEBRUARY 1, 2016  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

ELIZABETH MAJOR  
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

CHRISTOPHER SCALZO, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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WITNESS

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CERTIFICATE OF REPORTER

11

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were produced during this hearing)

1           **MADAME CLERK:** Your Honor, this is case number 2014-GS-  
2   23-7782, Steve Leon Griffin, indictment for armed robbery  
3   and possession of a weapon during the commission of a  
4   violent crime. He is pleading to attempted armed robbery.  
5   And it is a true bill.

6           Would you raise your right hand, please. Do you swear  
7   or affirm that the -- to tell the truth, the whole truth and  
8   nothing but the truth so help you God?

9           **MR. GRIFFIN:** Yes, I do.

10          **MADAME CLERK:** Thank you.

11          **THE COURT:** How long has he been in jail?

12          **MS. MAJOR:** Five hundred and seventy-three days.

13          **MR. SCALZO:** Since July 7th of 2014.

14          **THE COURT:** All right, Mr. Griffin, in the last twenty-  
15   four hours have you had any drugs, alcohol or medication?

16          **MR. GRIFFIN:** No, sir.

17          **THE COURT:** Have you ever been treated for substance  
18   abuse or mental illness?

19          **MR. GRIFFIN:** Substance abuse.

20          **THE COURT:** Tell me about that. What was it?

21          **MR. GRIFFIN:** I was -- I was enrolled in Solutions for  
22   rehab, rehabilitation center.

23          **THE COURT:** Yeah.

24          **MR. GRIFFIN:** And after serving about ninety days there  
25   they told me that since I was on the Sex Offender Registry I

1 would have to leave the program. So ---

2 **THE COURT:** All right.

3 **MR. GRIFFIN:** --- that ended that.

4 **THE COURT:** Well, you sober today, right?

5 **MR. GRIFFIN:** Yes, sir.

6 **THE COURT:** Any competency issues?

7 **MR. SCALZO:** No, sir.

8 **THE COURT:** This indictment -- and he's pleading to  
9 count one, is that right?

10 **MS. MAJOR:** Yes, Your Honor.

11 **THE COURT:** This indictment alleges that you did in  
12 Greenville County, June 27, 2014, armed with a deadly weapon  
13 or alleging you were, while using a representation of a  
14 deadly weapon you took by force or intimidation U.S.  
15 currency from Ivy Custis (phonetics), an employee with the  
16 Stop-N-Go gas station, tendering a plea to attempted armed  
17 robbery, which carries twenty -- up to twenty years.

18 This is a violent offense, which impacts your parole  
19 eligibility. And it is a most serious offense. And if you  
20 get convictions for two or more most serious offenses you  
21 are eligible for life in prison without parole. Do you  
22 understand that?

23 **MR. GRIFFIN:** Yes, sir.

24 **THE COURT:** How do you want to plead to it?

25 **MR. GRIFFIN:** Guilty.

1           **THE COURT:** Is that your free and voluntary choice?

2           **MR. GRIFFIN:** Yes, sir.

3           **THE COURT:** You understand you have an absolute right  
4 to a trial by jury where you'd be presumed innocent unless  
5 and until the State could prove you guilty beyond any  
6 reasonable doubt of each and every element of the offense  
7 you're charged with? You'd have a right to confront and  
8 cross examine the witnesses and the evidence put up against  
9 you by the State.

10           You'd have a right to compel in court all relevant and  
11 competent evidence in your own defense or you can remain  
12 silent. Your silence cannot be held against you. And you  
13 can never be compelled to incriminate yourself.

14           **MR. GRIFFIN:** Yes, sir.

15           **THE COURT:** Do you understand all those rights?

16           **MR. GRIFFIN:** Yes, sir.

17           **THE COURT:** You want to give them all up to enter this  
18 plea?

19           **MR. GRIFFIN:** Yes, sir.

20           **THE COURT:** Are you guilty?

21           **MR. GRIFFIN:** Yes, sir.

22           **THE COURT:** Are you totally and completely satisfied  
23 with your lawyer?

24           **MR. GRIFFIN:** Yes, sir.

25           **THE COURT:** Do you have any complaints you want to make

1 about the way you've been treated in this case?

2 **MR. GRIFFIN:** No, sir.

3 **THE COURT:** And have you had enough opportunity to view  
4 the evidence the State has against you?

5 **MR. GRIFFIN:** Yes, sir.

6 **THE COURT:** Okay. Listen while they tell me about it.

7 **MS. MAJOR:** Your Honor, on June 28th, 2014 the  
8 Defendant entered the Stop-N-Go convenience store at 1630 on  
9 East North Street. He passed the clerk a note demanding  
10 money and threatening to kill her if she pressed the alarm.

11 He then pulled his shirt up slightly and displayed a  
12 gun. The clerk pulled her gun, which she kept on her person  
13 and pulled the trigger, however, the safety was on  
14 preventing her from shooting the Defendant. The Defendant  
15 ran out of the store.

16 **THE COURT:** Okay. True?

17 **MR. GRIFFIN:** Yes, sir.

18 **THE COURT:** What's his record?

19 **MS. MAJOR:** 1979, defrauding an innkeeper, resisting  
20 arrest. '81, four counts of forgery, housebreaking and  
21 larceny. '84, robbery, forgery, housebreaking and larceny.

22 **THE COURT:** Slow down a little bit. Strong arm  
23 robbery?

24 **MS. MAJOR:** Um ...

25 **THE COURT:** It doesn't matter. Robbery, housebreaking,

1 grand larceny.

2 MS. MAJOR: Escape.

3 THE COURT: Escape.

4 MS. MAJOR: '88, ABHAN, escape and larceny.

5 THE COURT: Okay.

6 MS. MAJOR: '92, resisting arrest and fraud check. And  
7 then from Georgia, '98, theft and destruction or removal of  
8 property subject to a security interest and ---

9 THE COURT: Um-hum (affirmative).

10 MS. MAJOR: --- rape.

11 THE COURT: All right. All true?

12 MR. GRIFFIN: Yes, sir.

13 THE COURT: All right. Mr. Scalzo, what you want to  
14 tell me?

15 MR. SCALZO: May it please the Court, Your Honor. As  
16 you can see from the sentencing sheet, he's fifty-five years  
17 old. He does have some developing medical issues. They  
18 found a spot on his pancreas while he's been in the jail.  
19 He's, obviously, been in the jail quite a while.

20 The original offer was for an eleven year sentence on  
21 one of the armed robberies. It, obviously, is an eighty-  
22 five percent case, no parole. We would ask Your Honor to  
23 consider something in that range.

24 It's going to place him -- eleven years is ten on the  
25 eighty-five percent. So anything above eleven is another

1 ten, eleven, twelve years. He'll clearly be sixty-five,  
2 sixty-six, sixty-seven years old by the time he gets out.

3 That's been a significant portion of what's been going  
4 on as far as his negotiations and why he's here pleading.  
5 We would just ask Your Honor to take that into consideration  
6 and consider a sentence that is similar to the eleven, if  
7 not the eleven that was originally offered.

8 **THE COURT:** What do you want to tell me? How long were  
9 you out of prison before you did this?

10 **MR. GRIFFIN:** I got out of prison in March, 2013.

11 **THE COURT:** So nine months later or is it more than  
12 that? No, more than that.

13 **MR. SCALZO:** A little bit more.

14 **THE COURT:** Well, why did you wait til now?

15 **MR. GRIFFIN:** It was -- I was a substance abuser.

16 **MR. SCALZO:** No, he means -- you're asking him about  
17 the plea?

18 **THE COURT:** Yeah.

19 **MR. SCALZO:** A lot of it had to do with negotiations  
20 with, I mean, really we were negotiating over numbers.

21 **THE COURT:** All right. Well, I'm going to give him  
22 thirteen years, credit for the time he's been in. Good luck  
23 to you.

24 **MR. SCALZO:** Thank you, Judge.

25 **MS. MAJOR:** Thank you, Your Honor.

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 1st day of February 2016.

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

November 27, 2016

*S/Susan W. Hudgins*

---

Circuit Court Reporter

007782

DOCKET NO. 2014-GS-23-  
EEM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2014 <sup>2015</sup>

THE STATE

vs.

STEVE LEON GRIFFIN

WITNESSES

R T Irvin

(AS)

Greenville Police Department

7/7/2014

ARREST WARRANT NUMBER

2014A2320601591 ✓

2014A2320601592

ACTION OF GRAND JURY

TRUE BILL

*Wayne Shephardson*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

VERDICT

*Foreperson of Petit Jury*

Date:

0025  
0439

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

POSSESSION OF WEAPON DURING THE

COMMISSION OF A VIOLENT CRIME

VIOLATON § 16-23-0490

FILED

AUG 29 2014

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )

INDICTMENT FOR  
 COUNT ONE-ARMED ROBBERY  
 COUNT TWO-POSSESSION OF WEAPON DURING THE  
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **SEP 22 2015** the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE-ARMED ROBBERY

That STEVE LEON GRIFFIN did in Greenville County, on or about the 27th day of June, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. Currency from the person or presence of Ivey Custis an employee of Stop & Go gas station. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO-POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That STEVE LEON GRIFFIN did in Greenville County, on or about the 27th day of June, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

*Elizabeth Mason*  
 SOLICITOR

BAR # 74805

1542400

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville  
STATE VS.

INDICTMENT/CASE#: 2014GS2307782

Steve Leon Griffin

A/W#: 2014A2320601591

AKA:

Date of Offense: 6/28/2014

Race: BLACK Sex: M Age: 55

S.C. Code § : 16-11-0330(A)

DOB: -1960 SS#: [REDACTED]

CDR Code #: 0139

Address: [REDACTED]

City, State, Zip: Greenville, SC 29607

DL#: SID#:

SENTENCE SHEET

\*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: Attempted Armed Robbery 16-11-330

in violation of § 16-3-330(B) of the S.C. Code of Laws, bearing CDR Code # 0025-0026

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

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

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

ATTEST: Elizabeth Major 74805 SC Bar# [Signature] Defendant [Signature] C. [Signature] Attorney for Defendant 70522 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 13 months/years or  under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 593 JACS  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP days/hours Public Service Employment  
Total: \$ plus 20% fee: \$  
Payment Terms: Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning  
\$ paid to Public Defender Fund  
Other:

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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

Clerk of Court/ Deputy Clerk Paul [Signature]  
Court Reporter: Audrey [Signature]  
SCCA/217 (03/2011)

Presiding Judge [Signature]  
Judge Code: 2130  
Sentence Date: 2-1-2016

FORM 5

STATE OF SOUTH CAROLINA )

County of Greenville )

Steve Leon Griffin 121940 )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-23-

FILED IN COURT OF COMMON PLEAS  
GREENVILLE COUNTY, S.C.  
PAUL B. WICKENBARGER  
2016 SEP 12 12:06 PM  
41

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Greenville County  
Greenville, South Carolina.
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014 GS 2307782
  - (b) \_\_\_\_\_

(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) Violation of Due Process 5<sup>th</sup> 14<sup>th</sup>
- (c) \_\_\_\_\_

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

- (a) Counsel advised applicant to plead to unindicted offense
- (b) The Court lacked Subject-Matter Jurisdiction to convict applicant
- (c) \_\_\_\_\_

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

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

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

- (a) the specific nature thereof:
  - i. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A

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) Exclusive State PCR grounds
- (b) Exclusive State PCR grounds
- (c) Exclusive State PCR grounds

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Christopher Scalzo  
Greenville Co. Public Defender 305 E. North St Greenville S.C.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

I, Steve L. Cupler, 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.

Steve L. Cupler  
Applicant

SWORN or affirmed to and subscribed before me this

5th day of July, 2016.

Nancy C. Merchant  
Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE )	FOR THE THIRTEENTH JUDICIAL CIRCUIT
Steve Leon Griffin, )	CASE No. _____
Applicant, )	
v. )	MEMORANDUM OF LAW
THE STATE, )	IN SUPPORT OF APPLICATION
<u>Respondent.</u> )	FOR POST-CONVICTION RELIEF

Corre now, the applicant, above named, presents his Memorandum of Law in Support of his Application for Post Conviction Relief and would show the following unto the Honorable Court.

### STATEMENT OF THE CASE

The applicant was indicted by the Greenville County Grand Jury at the September 2015 term of General Sessions Court for Armed Robbery and possession of a Weapon during the commission of a Violent Crime (2014-GS-23-7792). He was represented at trial by Christopher D. Scalzo, Esq., the State was represented by Elizabeth Major, Esq., Thirteenth Circuit Solicitor. The applicant went to trial on the charges on February 1, 2016 before the Honorable Judge Edward Miller. The applicant pled guilty to "Attempted Armed Robbery" and Judge Miller sentenced him to thirteen (13) years. The State dismissed the Weapon charge against the applicant. No appeal was filed on the applicants behalf.

The applicant was denied the right to effective assistance of counsel; Trial Counsel advised him to plead guilty to an unindicted "Attempted Armed Robbery" offense.

In this case, the applicant was charged in an indictment with "Armed Robbery" which charged him as follows:

That Steve Leon Griffin did in Greenville County, on or about the 27th day of June 2014, while armed with a deadly weapon or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person presents during the commission of the robbery would reasonably believe to be a deadly weapon." Take by means of force or intimidation, goods or monies described as U.S. currency from the person of Ivey Custis an employee of Stop and Go Gas Station. This was in violation of §16-11-330(A) of S.C. Code of Law (1976) as amended.

While the applicant's above indictment clearly charged him with "Armed Robbery", his trial counsel advised him to accept a guilty plea offer by the solicitor to a lesser-included offense of "Attempted Armed Robbery". The applicant contends that "asportation" (taking of goods and money) is an essential and material element to a finding of guilt for Armed Robbery, moreover, a lesser-included offense is one whose elements that are not part of the crime charged, then it is not "the lesser-included offense". See State v. Dickenson 716 S.E. 2d 895 (2011).

Here, as tested by the holding in Dickenson, it cannot be seriously argued by the State that the "Attempted Armed Robbery" to which the applicant pled guilty to was the "lesser-included offense" of his indicted "Armed Robbery charge". In Martin v. Ellison, 223 S.E. 2d 415, our Supreme Court held that only when the literal application of a statute produces an absurd result will it consider a different meaning.

1. It is well settled Common Law in South Carolina that Strong Armed Robbery is the lesser-included offense to Armed Robbery.

Notwithstanding, as Attempted Armed Robbery does not include any element of "Asportation," it most certainly would lead to an absurd result to consider it the lesser-included offense of Armed Robbery. Likewise by a similar analogy, it would also lead to an absurd result to consider "Attempted Murder" as the lesser-included offense of murder absent the element of <sup>the</sup> death of the victim. Ellison infra.

Finally, in reliance on the above argument, (he) applicant submits that inasmuch as "Attempted Armed Robbery" is not "the lesser-included offense" of his indicted "Armed Robbery" offense, his counsel's advice for him to plead guilty to the Attempted Armed Robbery offense was ineffective assistance of counsel that was prejudicial as it subjected him to a conviction upon an unindicted offense. See Edmon v. State, 534 S.E. 2d 682 (S.C. 2000)

The trial court lacked Subject-Matter Jurisdiction to accept the applicants' guilty plea to an unindicted "Attempted Armed Robbery" offense.

For consideration of the applicants' claim in this instance, he submits that his "sentencing sheet / commitment order" does not indicate that he did, in fact, execute a signed waiver for presentment of the "Attempted Armed Robbery" offense to which he pled guilty to without signing a valid waiver for ~~a~~ presentment of this offense.

Accordingly, it is well-settled Common and Statutory law in South Carolina that the trial court lacks Subject-Matter Jurisdiction to hear a guilty plea unless (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; (3) and the offense waived is a lesser-included charge of the one charged in the indictment. Campbell v. State, 575 S.E. 2d 928 (S.C. 2000)

Steve Leon Griffin 121940  
 Perry C.I. Q2-A109  
 4300A Klawin Rd  
 Pelzer, S.C. 29669

Date August 29, 2016

Indictment # 2014 GS 2307782

Dear Clerk of Court:

On February 1, 2016 I entered a Plea in Greenville County General Sessions in front of the Honorable Judge E. Miller. At this time I am requesting a copy of the transcript from that plea proceeding. It is very important to my PCR process.

At this time I am indigent and unable to pay any costs for this requested transcript.

Thank you very much for your time and consideration in this matter.

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

I, Steve Leon Griffin hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my request / Application, I declare under penalty of perjury that the following fact is true.

- (1) Because of my poverty I am unable to pay costs of said request / or proceeding or give security thereof.

SWORN or affirmed to and subscribed before me this 29th day of August, 2016

Nancy C. Michael  
 NOTARY PUBLIC

My Commission expires 1-23-2021

Steve Leon Griffin  
 STEVE LEON GRIFFIN  
 121940

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Steve Leon Griffin, #121940,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-5256

RETURN<sup>1</sup>

ENTERED COMPUTER

2017 JUN 23 PM 3 18

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

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 12, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted by the September 2015 term of the Grand Jury for Greenville County for count one of Armed Robbery and count two of Possession of a Weapon during the Commission of a Violent Crime (2014-GS-23-07782). Applicant was represented by Christopher D. Scalzo, Esq. On February 1, 2016, Applicant pled guilty to the lesser included offense of Attempted Armed Robbery and was sentenced by the Honorable Edward W. Miller to thirteen years imprisonment for Attempted Armed Robbery.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

<sup>1</sup> Respondent requests counsel be appointed.

SCANNED

## II.

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

1. Ineffective Assistance of Counsel
  - a. "Counsel advised Applicant to plead to an unindicted offense."
2. "Violation of Due Process"
  - a. "The court lacked subject matter jurisdiction to convict applicant."

## III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

#### IV.

Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343

S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant was indicted by the Greenville County grand jury for Armed Robbery and Possession of a Weapon during the Commission of a Violent Crime. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Applicant pled guilty to the lesser included offense of Attempted Armed Robbery. Therefore, the Respondent would move for summary judgement on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

V.

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

VI.

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.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that counsel be appointed and an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

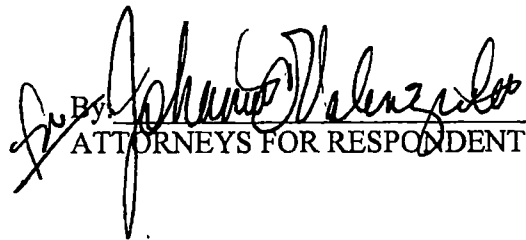
ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
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Senior Assistant Deputy Attorney General

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By   
ATTORNEYS FOR RESPONDENT

12 Jan., 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 STEVE LEON GRIFFIN, #121940 )  
 )  
                                   Applicant, )  
                                   ) )  
                                   vs )  
 STATE OF SOUTH CAROLINA, )  
 )  
                                   Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2016-CP-23-5256

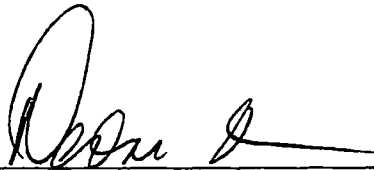
AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSINGER  
 2017 JAN 23 PM 3 19

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:

**Mr. Steve Leon Griffin, #121940**  
**Perry Correctional Institution**  
**430 Oaklawn Road**  
**Pelzer, SC 29669**

DATED this the 12<sup>th</sup> day of January, 2016.



Deonna Rogers, Legal Assistant  
 For Respondent



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There were no exhibits.

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1 THE COURT: Whenever you're ready.

2 MS. KINARD: Thank you, Your Honor, may it  
3 please the Court. This is the matter of Steve  
4 Griffin vs. The State of South Carolina. It's case  
5 No. 2016-CP-23-5256. We're before the Court on a  
6 Application for Post-Conviction Relief that was filed  
7 by Mr. Griffin on September 12th, 2016. He is  
8 presently confined in The South Carolina Department  
9 of Corrections pursuant to Orders of Commitment of  
10 the Clerk of Court for Greenville County.

11 Mr. Griffin was indicted at the September 2015  
12 term of the Greenville County Grand Jury for one  
13 count of armed robbery and two counts of possession  
14 of a weapon during the commission of a violent crime.  
15 He was represented by Chris Scalzo. On February 1st,  
16 2016, Mr. Griffin pled guilty to the lesser included  
17 offense of attempted armed robbery and was sentenced  
18 by the Honorable Edward W. Miller to 13 years  
19 imprisonment for attempted armed robbery.

20 The State is present and ready to proceed.  
21 Mr. Griffin is present and represented by Rodney  
22 Richey.

23 THE COURT: Yes, sir, Mr. Richey.

24 MR. RICHEY: Thank you, Your Honor, we call  
25 Mr. Griffin.

STEVE GRIFFIN-DIRECT BY MR. RICHEY

1 THE COURT: All right.

2 THE CLERK: Mr. Griffin, please place your left  
3 hand on the Bible and raise your right hand.

4 STEVE GRIFFIN, after being duly sworn,  
5 testified as follows:

6 THE CLERK: Please state your full name for the  
7 record.

8 THE WITNESS: Steve Leon Griffin.

9 THE CLERK: Thank you, you may be seated.

10 DIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q Mr. Griffin, where are you currently  
13 incarcerated?

14 A Perry Correctional Institution.

15 Q And what are you incarcerated for?

16 A Attempted armed robbery. I plead guilty to  
17 attempted armed robbery February 1, 2016.

18 Q All right. And what type of sentence did you  
19 get?

20 A Thirteen years.

21 Q All right. And who represented you on those  
22 charges?

23 A Mr. Chris Scalzo.

24 Q And you filed an Application for Post-Conviction  
25 Relief alleging that he ineffectively represented you; is

## STEVE GRIFFIN-DIRECT BY MR. RICHEY

1 that correct?

2 A Yes, sir. That in part, yes, sir.

3 Q That was what?

4 A That was part of my allegations, yes, sir.

5 Q Okay. And you believe that he did not  
6 effectively represent you because you did not have an  
7 opportunity to review the discovery?

8 A Yes, sir.

9 Q Okay. And did you -- did Mr. Scalzo go over the  
10 discovery with you?

11 A He mentioned--

12 MS. KINARD: Objection. That argument is not  
13 listed in his application.

14 MR. RICHEY: Hold on.

15 MS. KINARD: Unless it is hidden somewhere.

16 THE COURT: I'm skipping through what I have  
17 before me.

18 I don't see it, Mr. Richey, what about you?

19 MR. RICHEY: I believe he's alleging ineffective  
20 assistance of counsel. And, Your Honor, I believe  
21 that going over the discovery information with him is  
22 entitled Ineffective Assistance of Counsel.

23 THE COURT: All I see reference to is, and I'll  
24 admit I'm skimming through it, matters relating to  
25 the sufficiency of the Indictment.

STEVE GRIFFIN-DIRECT BY MR. RICHEY

1 MS. KINARD: Yes, Your Honor, the only  
2 allegations, by my interpretation as well, are  
3 ineffective assistance related to him pleading to  
4 what he called an unindicted offense. And a due  
5 process violation regarding subject matter  
6 jurisdiction.

7 MR. RICHEY: And I think, Your Honor, he alleged  
8 ineffective assistance of counsel, I don't think that  
9 should be narrowed to that extent. I think he  
10 alleged ineffective assistant of counsel, if The  
11 State, you know if, they want a more definite  
12 statement, they could have filed for one. Which is  
13 usually the case. But I think if the gentleman puts  
14 on the application, ineffective assistance of  
15 counsel, he should have a right to testify to how his  
16 counsel was ineffective. And if they believe that  
17 that was too broad, they could have brought a motion  
18 before The Court for a more definite statement.  
19 Which is brought all the time in these cases.

20 MS. KINARD: Your Honor, I don't disagree, we do  
21 bring motions for more definite statement. But in  
22 this case it was a very definite and specific  
23 statement of the allegation. Which was that plea  
24 counsel advised him to plead to a unindicted offense.  
25 I don't believe it's before The Court to go into any

STEVE GRIFFIN-DIRECT BY MR. RICHEY

1           discovery matters or anything other than the  
2           allegation regarding the allegedly unindicted  
3           offense.

4           MR. RICHEY: Well, I think the application is  
5           clear on Page 3 where it says, Ineffective assistance  
6           of counsel, A, and violation of due process, B.

7           So, this allegation was set forth -- I agree  
8           with the Attorney General, it's really clear what's  
9           on his application. And I would just tell The Court  
10          we're not going to be here all day on these  
11          allegations. And I believe that he should be allowed  
12          to testify to these things.

13          THE COURT: I'll overrule the objection and let  
14          you proceed.

15          MR. RICHEY: Thank you.

16          MS. KINARD: Thank you, Your Honor.

17 BY MR. RICHEY:

18          Q     So, Your Honor -- excuse me. So sir, do you  
19          believe that he did not share the discovery, is that  
20          correct?

21          A     Yes, sir.

22          Q     Okay. And that's part of the allegations,  
23          correct?

24          A     Yes, sir.

25          Q     Okay. And if -- you believe that if he went

## STEVE GRIFFIN-DIRECT BY MR. RICHEY

1 over and showed you discovery, you would not have pled  
2 guilty, correct?

3 A Correct. I would have knew that the -- I would  
4 have knew then, if I had discovery, I would have also knew  
5 that the attempted armed robbery was an unindicted  
6 offense. If I had had the discovery.

7 Q So, if you had that material, you would have  
8 knew that the charge against you was not indicted,  
9 correct?

10 A Yes, sir.

11 Q And do you believe that Mr. Scalzo was  
12 ineffective for not raising that objection in the  
13 indictment?

14 A Yes, sir.

15 Q And you believe had he raised that issue, you  
16 would have won, correct?

17 A Yes, sir.

18 Q Okay. And you believe that The Court lacked  
19 jurisdiction because of that, correct?

20 A Yes, sir.

21 Q And you understand that if you get a new trial,  
22 you're going to get a new trial on the armed robbery,  
23 correct?

24 A Yes, sir.

25 Q And that you received 13 years on this case but

## STEVE GRIFFIN-CROSS BY MS. KINARD

1 you would be facing 30 years if you actually won all this?

2 A Yes, sir, I do.

3 Q And you do understand that you're projected to  
4 be released in 2025, correct?

5 A Yes, sir.

6 Q And that this case will probably take at least  
7 another year and a half to two years?

8 A Yes, sir.

9 Q And knowing that, you want this Court to rule on  
10 whether this lawyer ineffectively represented you?

11 A Yes, sir, I do.

12 Q And that's the beef you have with him, these  
13 indictments and this discovery; correct?

14 A Yes.

15 MR. RICHEY: Thank you, answer any questions the  
16 Attorney General has for you.

17 THE COURT: Cross-examination.

18 MS. KINARD: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. KINARD:

21 Q Good morning, Mr. Griffin.

22 A Good morning.

23 Q Now, when you were at this plea, do you remember  
24 pleading to this offense in court?

25 A Yes, I do.

## STEVE GRIFFIN-CROSS BY MS. KINARD

1 Q Do you recall any discussion with your attorney  
2 beforehand about this being a lesser included offense?

3 A No. What we discussed was that if he wanted --  
4 if I wanted to get a nonviolent sentence, he would go talk  
5 to Ms. Major and see if they could work something out, get  
6 it to go down. I never knew that it was defective -- it  
7 was a defective thing until after I got my motion for  
8 discovery. I never knew. I was told in that little room,  
9 this little room outside the courtroom, I was told that  
10 The Judge was going to ask me certain questions. And one  
11 of the questions would be if I was satisfied with my  
12 attorney? I should answer yes to that. If anybody had  
13 promised me anything, had we negotiated anything? I was  
14 to answer no to that.

15 Q Do you recall what your original Indictment was  
16 for?

17 A Armed robbery.

18 Q And you're aware of that Indictment?

19 A Yes.

20 Q And do you recall during the plea hearing The  
21 Judge asking you questions?

22 A Yes.

23 Q And do you recall him stating that, You are  
24 tendering a plea to attempted armed robbery?

25 A Yes.

## STEVE GRIFFIN-CROSS BY MS. KINARD

1 Q Okay. So, you recall pleading to a different  
2 charge?

3 A Yes.

4 Q Okay. But you said that your attorney did not  
5 tell you that they were related charges?

6 A I was under the impression that the attempted  
7 armed robbery charge was going to be a nonviolent charge.

8 Q So, is your issue more with the classification  
9 that you received?

10 A No. My issue is that the attempted armed  
11 robbery was unindicted. And I should have known. I -- it  
12 wasn't -- I wasn't indicted for attempted armed robbery.  
13 I was indicted for armed robbery.

14 Q The facts that The Solicitor read during your  
15 plea hearing, are they the same facts that existed  
16 regarding the armed robbery indictment?

17 A No.

18 Q No, it wasn't the incident at the Stop and Go  
19 Gas Station?

20 A No. No.

21 Q What were you indicted for for the armed  
22 robbery?

23 A They said I went in the store and robbed the  
24 Stop and Go. That I armed robbery the Stop and Go.

25 Q And were those facts alleged at your plea

## STEVE GRIFFIN-CROSS BY MS. KINARD

1 hearing?

2 A Excuse me?

3 Q Nevermind, I'll move on to another question,  
4 that's fine, thank you. Regardless, before you received  
5 the discovery, when you did enter this plea, you did it  
6 knowingly and voluntarily; is that correct?

7 A No. After I received my motion for discovery  
8 and I looked at everything that they had, I couldn't have  
9 made a conscious decision. Knowing what they had me in,  
10 it wasn't -- it wasn't -- I mean, I was, no.

11 Q Before you got your discovery, at the time of  
12 the plea, with all the information you had at the time of  
13 the plea, did you make a conscious choice that you thought  
14 was in your best interest and entered that plea knowingly  
15 and voluntarily?

16 A I made my choice that day based on what  
17 Mr. Scalzo had told me that he had talked to Ms. Morgan  
18 [verbatim]. And this is what they were going to come up  
19 with. And that it was in my best interest right then to  
20 go ahead and take that. And I'm thinking that he knew  
21 something that maybe I didn't know. And so.

22 MS. KINARD: Thank you very much, I have no  
23 further questions.

24 MR. RICHEY: No other questions.

25 THE COURT: Thank you, may step down.

CHRIS SCALZO-DIRECT BY MR. RICHEY

1 THE WITNESS: Yes, sir.

2 MR. RICHEY: We call Chris Scalzo.

3 THE CLERK: Mr. Scalzo, please place your left  
4 hand on the Bible, raise your right hand.

5 CHRIS SCALZO, after being duly sworn,  
6 testified as follows:

7 THE CLERK: Thank you, please state your name  
8 for the record.

9 THE WITNESS: Christopher Dean Scalzo.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Mr. Scalzo, where are you employed?

14 A I work for the Greenville County Public  
15 Defender's Office.

16 Q How long have you been employed there?

17 A This is my 15th year.

18 Q And do you recall representing Mr. Steve Leon  
19 Griffin?

20 A I do.

21 Q And did you represent him on a armed robbery  
22 charge?

23 A Yes.

24 Q And at the time of your representation, did that  
25 conclude into a guilty plea to attempted armed robbery?

## CHRIS SCALZO-DIRECT BY MR. RICHEY

1 A Yes.

2 Q Do you recall in your representation whether you  
3 went over the discovery information with Mr. Griffin?

4 A Yes, I went over discovery with him.

5 Q Did you go over the indictments with him?

6 A I don't know if I went over the indictments. I  
7 usually don't go over the indictments word for word. We  
8 work off of whether or not they've been indicted or  
9 whether or not it would be a waiver. So, that's generally  
10 how I do it.

11 Q Do you believe that these charges that he pled  
12 to should have been indicted?

13 A No. The attempted armed robbery, you're talking  
14 about?

15 Q Yes, sir.

16 A No, I don't think it needed to be indicted.

17 Q Can you tell me why?

18 A It would have been a lesser include -- he was  
19 charged and indicted for the armed robbery.

20 Q Yes, sir.

21 A They were moving forward on a lesser charge,  
22 attempted armed robbery. We viewed it as a lesser  
23 included of the armed robbery, therefore, he would not  
24 need to have that charge go before the grand jury for a  
25 indictment or a new indictment.

## CHRIS SCALZO-DIRECT BY MR. RICHEY

1 Q Okay. Did you -- did you discuss that with him?  
2 Do you recall?

3 A I don't recall whether or not we discussed the  
4 processing of whether or not it needed to go in front of  
5 the grand jury or not. No, I don't remember whether I did  
6 or did not.

7 Q Do you believe that this plea was advantageous  
8 from him?

9 A Yes. I mean, the focus -- the focus would have  
10 been, let's get you out of a mandatory minimum of 10, a  
11 maximum of 30 and into a no mandatory minimum and a  
12 maximum of 20. He had other charges, other armed robbery  
13 charges that would have been dismissed and were dismissed  
14 as a result of this resolution. So, the focus would have  
15 been on this case resolving several cases and it being  
16 what we would call a lesser included for less overall  
17 time.

18 Q Okay. And so, did Mr. Griffin ever tell you he  
19 did not do this?

20 A Do this particular charge?

21 Q Yes. Do you recall?

22 A I don't recall, we had several discussions,  
23 there were several different cases. And I don't have my  
24 file up here. We would have -- I know we tried to get  
25 evidence related to all the different cases. Whether

CHRIS SCALZO-DIRECT BY MR. RICHEY

1 there were videos and various things like that. If he had  
2 said, No, I didn't do this, I'm not pleading guilty to  
3 this, then either we would not have pled to this or we  
4 would have tried to find a different charge that he could  
5 agree to. I work under the assumption, he knows that  
6 they're wanting him to plead guilty. If he's going to  
7 tell me he didn't do it, then I'm going to tell them he  
8 didn't do it. I don't generally ask people did you do  
9 this or not do this? You're going to have to tell me  
10 whether you did it. I'm assuming you did it if you want  
11 to plead guilty to it.

12 MR. RICHEY: One moment, Your Honor.

13 BY MR. RICHEY:

14 Q And that's why on the sentencing sheet, he  
15 wasn't asked to initial his waiver, correct?

16 A Right. And my practice and literally I do it  
17 with every sentencing sheet, I do it with every client for  
18 the purpose of being able to remember, is I will go over  
19 from his name to the charge that, you know, to what the  
20 charge was, what the charge he's pleading guilty to.  
21 Because sometimes they're different based on the  
22 Indictment. Might not read the Indictment but I'll go  
23 over the fact that you were indicted for armed robbery and  
24 now you're pleading guilty to attempted armed robbery. To  
25 whether it's violent box is checked or whether the most

## CHRIS SCALZO-CROSS BY MS. KINARD

1 serious or serious is checked. Lesser included versus  
2 not. Waiver.

3 My practice when it's a waiver case, is I  
4 literally circle the little line where they got to put  
5 their initials. And on the sentencing sheet you'll see  
6 there's an X next to Mr. Griffin's name, I wrote that X  
7 because I always write an X next to their name because I  
8 tell, you have to sign where the X is. And then I sign --  
9 and I only sign after they've signed. So, that would be  
10 my practice every time I do any sentencing sheet, plea,  
11 trial, doesn't matter what it is.

12 Q So, it's your position that this is not a waiver  
13 case, correct?

14 A Correct. That was my understanding and that  
15 would be my position now.

16 MR. RICHEY: Thank you, answer any questions  
17 Attorney General has.

18 THE COURT: Cross-examination.

19 MS. KINARD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. KINARD:

22 Q Mr. Scalzo, you said that you represented  
23 Mr. Griffin on several charges?

24 A Yes, ma'am.

25 Q And this one does not necessarily stand out

## CHRIS SCALZO-CROSS BY MS. KINARD

1 because everything went as you thought it would, according  
2 to the plea?

3 A What do you mean by stand out?

4 Q You stated that you couldn't remember the  
5 specifics of this case in particular because it didn't  
6 seem like an abnormal plea; is that correct?

7 A It didn't seem like an abnormal plea but let me  
8 make it clear. It's not that I don't remember the  
9 specifics of this case, the Stop and Go case. The defense  
10 was asking me about whether or not he was saying he was  
11 guilty or not guilty of this particular offense. I  
12 remember the separate cases. And this was the Stop and  
13 Go. And that's part of problem was we had to keep them  
14 straight. So, we had to make sure we were dealing with  
15 the right case so we were not pleading guilty to something  
16 we had a tremendous dispute over. So, I don't know if  
17 that answered your question or not.

18 Q It absolutely did, thank you for that  
19 clarification. Was this ever going to be a trial?

20 A There was several times where it was potentially  
21 a trial; yes.

22 Q Now, in part of prepping for that trial, did you  
23 actually get into the preparation phase? I should phrase  
24 it that way.

25 A We got into the preparation phase from the

## CHRIS SCALZO-CROSS BY MS. KINARD

1 standpoint of collecting evidence. There were videos.  
2 And there were notes. I even have on this printout I  
3 printed out from our computer system, where we sent a  
4 subpoena. I don't know if it was in this particular case  
5 because there were several cases. But we were gathering  
6 evidence from our point of view. We never got to the  
7 point where we sat down and said okay, we're actually  
8 going to try this case. Because we got to the point where  
9 Mr. Griffin did not want to try the case. We were looking  
10 to resolve the case by a plea. If that happens, then  
11 we're not preparing for a trial in a normal way that you  
12 would under the preparation of a trial.

13 Q As part of preparation for any event, you did  
14 review his discovery with him?

15 A Yes.

16 Q And he was aware of the indictment as you stated  
17 before, the generalities of it and what that meant for  
18 him?

19 A Yeah, I would have gone over, particularly in a  
20 situation like this where we had several different  
21 robberies, the same charges but we needed to separate what  
22 the allegations were for each event. I would have gone  
23 over case number one was this one, case number two was  
24 this one. I read the police reports to him. I would have  
25 gone over everything I thought we had. I probably, unless

## CHRIS SCALZO-CROSS BY MS. KINARD

1 he specifically asked me, would not have just given him  
2 the Indictment and said here, read the Indictment. I'm  
3 not withholding it from him but I'm more focused on the  
4 police reports and other evidence in this case.

5 Q And as part of that did you discuss the elements  
6 that The State would have to prove?

7 A Yeah, although I probably didn't use the word  
8 elements. I mean, I would have talked about they would  
9 have to prove you had a weapon. That's the difference  
10 between armed robbery and common law robbery. We wanted  
11 common law robbery but there was a long time where we were  
12 negotiating to try to get to common law robbery or some  
13 form of a lesser charge that would take it out of violent  
14 and no parole, that kind of thing.

15 Q Can you describe the negotiations that you  
16 participated a little more, please?

17 A It took a long time. We definitely, in talking  
18 to Mr. Griffin, we had proposals that we -- that through  
19 me, obviously, I made The Solicitor, Ms. Major, several  
20 different times. Several times she said, I got to think  
21 about what I'm going to do, I'll get back to you. We went  
22 sort of around and around over several months.  
23 Eventually, she just essentially said, I can't do better  
24 than what I've already said. So, I was unable to back her  
25 off of where she was.

## CHRIS SCALZO-CROSS BY MS. KINARD

1 Q And you certainly explained that to Mr. Griffin?

2 A Well, yeah. We kept going back and forth. I  
3 knew what he wanted. I would tell him, here's what she's  
4 saying to me so he would understand the position that he  
5 was in and the negotiations.

6 Q Do you think he understood what he was pleading  
7 to when he entered the courtroom that day?

8 A Yes.

9 Q And that was attempted armed robbery?

10 A Yes.

11 Q And he understood the ramifications and  
12 potential punishments of that plea?

13 A Yeah, he would have known that because I think I  
14 would have said that to him prior. The Judge certainly  
15 said it to him in the plea.

16 Q And did he understand all of the constitutional  
17 rights that he was forgoing by pleading guilty?

18 A I believe he did. Judge asked him about it in  
19 the courtroom, so. And he answered yes.

20 Q Did he ever voice any disagreement with you  
21 about your representation of him? Or ask you for anything  
22 that you couldn't provide or tell you that you were  
23 ineffective in any way other than filing of this  
24 application?

25 A No. I mean, I'm sure over the course of time he

## CHRIS SCALZO-CROSS BY MS. KINARD

1 probably would have said, Hey, you haven't done this, can  
2 you do this? Or we would have had those discussions. But  
3 if you're asking at the time of the plea, by time we got  
4 to the plea, he was not saying to me, Hey, you didn't do  
5 this, we need to get this done. You know, my  
6 understanding was that we were on the same page at the  
7 point of the plea.

8 Q Thank you. So, you're on the same page, he  
9 understood what he was doing and he believed it was in his  
10 best interest to enter this plea?

11 A I don't substitute my judgment for his judgment.  
12 So, I don't tell him this is your best interest or not  
13 your best interest. Unless he asks me, Hey -- if I tell  
14 him what do you want to get out of it? And I'll tell you,  
15 if you go this way, here's what I think is going to happen  
16 if you go this way, here's what I think happens. I  
17 don't -- in 15 years, I don't get into the business of  
18 telling clients, I think this is the best thing for you or  
19 I don't think this is the best thing for you. That's  
20 there choice, they're the ones going to prison or not.  
21 I'm not going to prison so I don't substitute my opinion  
22 for theirs.

23 Q Understood. Regardless, he had all the  
24 information he needed to make a decision?

25 A Yes.

## CHRIS SCALZO-REDIRECT BY MR. RICHEY

1 Q Okay. And he made that decision it on his own  
2 accord?

3 A I believe he did. That's what I was giving him  
4 information for.

5 Q And it was your understanding that he, as he  
6 stated, he wasn't threatened or coerced or promised  
7 anything?

8 A No. Certainly not by me and not -- I didn't  
9 witness any of that.

10 MS. KINARD: I have no further questions, thank  
11 you.

12 MR. RICHEY: I do have one follow up.

13 THE COURT: Sure.

14 REDIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q In this case, the case that you actually pled  
17 to, there was no weapon and no video. Was the big part of  
18 the negotiations was get rid of those other cases? Was --  
19 those other cases were in play; is that correct?

20 A In play you said?

21 Q Yes.

22 A Yes, they certainly were prosecutable cases.

23 Q So, it was negotiations not on this individual  
24 case that had to do with the other cases, getting rid of  
25 them -- for example, if you get rid of this one, you get

## CHRIS SCALZO-REDIRECT BY MR. RICHEY

1 rid of the other ones?

2 A Yeah, that was obviously part of the package of  
3 resolution.

4 MR. RICHEY: Okay, thank you.

5 MS. KINARD: Nothing further, thank you.

6 THE COURT: Thank you, you may step down.

7 MR. RICHEY: No other witnesses, Your Honor.

8 MS. KINARD: No witness from The State, Your  
9 Honor.

10 THE COURT: Be glad to hear argument.

11 MR. RICHEY: Your Honor, I would say in all good  
12 faith that the evidence is what it is and testimony  
13 has been presented. And I'll leave His Honor to  
14 determine what the outcome should be.

15 THE COURT: All right.

16 Ms. Kinard.

17 MS. KINARD: Thank you, Your Honor. I certainly  
18 always agree with that statement that Mr. Richey just  
19 made, it's certainly up to Your Honor. But we  
20 believe that there has been nothing presented that  
21 would indicate that having this knowledge, as  
22 Mr. Griffin alleges, would have changed the plea.  
23 It's apparent that he knew what he was pleading to,  
24 the time he could get, the classification that he  
25 would be under. That Mr. Scalzo presented all this

1 evidence and information needed for him to make a  
2 voluntary plea. Which Judge Miller found that he  
3 did. So, for those reasons we don't believe that  
4 he's met his burden and this application should be  
5 dismissed.

6 THE COURT: Okay. I agree with the position of  
7 the Attorney General on this case. And find that the  
8 application should be denied and dismissed. And ask  
9 the Attorney General to please prepare an Order.

10 MS. KINARD: Yes, Your Honor, thank you.

11 (WHEREUPON, the proceedings were concluded.)  
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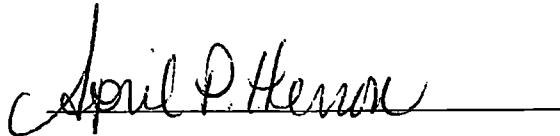
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF GREENVILLE        )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of February, 2017.

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

October 25, 2017



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 Steve Leon Griffin, #121940, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-5256

**ORDER OF DISMISSAL  
 WITH PREJUDICE**

ENTERED COMPUTER

FILED-CLERK OF COURT  
 PAUL B. WOODEN  
 GREENVILLE, SC

2017 JUL -5 PM 4:46

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This matter comes before the Court by way of an application for Post-Conviction Relief filed September 12, 2016. Respondent made its Return on or about January 12, 2017. An evidentiary hearing into the matter was convened on February 22, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by Rodney W. Richey, Esquire. The Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Christopher D. Scalzo, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records for the Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted by the September 2015 term of the Grand Jury for Greenville County for count one of Armed Robbery and count two of Possession of a Weapon during the Commission of a Violent Crime

(2014-GS-23-07782). Applicant was represented by Christopher D. Scalzo, Esquire. On February 1, 2016, Applicant pled guilty to the lesser included offense of Attempted Armed Robbery and was sentenced by the Honorable Edward W. Miller to thirteen years imprisonment for Attempted Armed Robbery.

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

1. Ineffective Assistance of Counsel
  - a. "Counsel advised Applicant to plead to an unindicted offense."
2. "Violation of Due Process"
  - a. "The court lacked subject matter jurisdiction to convict applicant."

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

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

#### **Ineffective Assistance of Counsel**

This Court interprets Applicant's allegations as a claim that his guilty plea was improper due to ineffective assistance of counsel. Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. (Rule 71.1 (e), SCRCPP). When an applicant alleges ineffective assistance of counsel, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having



produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

To receive relief, an Applicant must prove that counsel’s performance was both deficient and prejudicial. Attorneys are held to an objective standard of “reasonably effective assistance” under “prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). The presumption will always be that counsel was effective and the applicant must overcome this presumption to receive relief. Id., 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an Applicant must prove that counsel’s deficient performance was so poor that the Applicant prove that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Strickland, 466 U.S. at 694. In a PCR action, an Applicant who has pled guilty must prove that because of counsel’s deficient performance, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (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). An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial



counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. See Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

This Court finds Counsel provided effective assistance in this case. Counsel testified that he advised Applicant of all the charges and the potential sentences the charges carried. Counsel also reviewed all of the discovery with Applicant. Counsel advised Applicant of all of his Constitutional rights, including his right to a jury trial, to remain silent, to confront accusers, and so forth. Counsel testified that it was ultimately Applicant's decision to plead guilty, based on their discussions. He further testified that he was handling several charges for the applicant, and that pleading guilty would resolve those all of them without risking a mandatory minimum sentence. In Applicant's testimony, he stated that he did not know that he was no indicted on attempted armed robbery until he got his discovery after his plea; however, he further testified that he believed taking a guilty plea was in his best interest. Counsel testified that the attempted armed robbery did not need to be separately indicted because it was being viewed as a lesser included offense. It is evident from the record that the questions asked by the plea court and the responses given by Applicant that he made the decision to plead guilty freely and voluntarily. This Court further finds that Applicant was fully aware of his rights and those rights that he was waiving.

Additionally, Applicant's allegation that the circuit court lacked subject matter jurisdiction due to a defective indictment is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719



(2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Greenville County Grand Jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Moreover, the Applicant pled to Attempted Armed Robbery, a lesser included offense of the charge he was indicted for. The Applicant here cannot show any irregularity, because the indictment in question is sufficient on its face.

Therefore, Applicant having failed to prove any deficiency by Counsel as required by Strickland, his application is denied and dismissed with prejudice.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.



**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of July, 2017.

  
 \_\_\_\_\_  
 BROOKS P. GOLDSMITH  
 Presiding Judge  
 Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina