

RECEIVED

OCT 13 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

JEROD KEYKENDALL HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002693

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ALICIA OLIVE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GUILTY PLEA TRANSCRIPT1

APPLICATION FOR POST-CONVICTION RELIEF22

RETURN29

TRANSCRIPT (APRIL 7, 2014)34

POST-CONVICTION RELIEF HEARING TRANSCRIPT40

ORDER OF DISMISSAL54

INDICTMENT60

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JEROD K. HARRIS,)
)
 DEFENDANT.)
 _____)

2011-GS-42-02429

TRANSCRIPT OF RECORD

MAY 31, 2012
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, II

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

ATTORNEY FOR PLAINTIFF:

ABEL GRAY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

ROBERT HALL
ASSISTANT PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

21

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Photo	10	10
S-2	Photo	10	10
S-3	Photo	10	10
S-4	Photo	10	10

1 (Whereupon several defendants were before the Court to
2 be prequalified for guilty pleas)

3 **THE COURT:** All right. When I call your name -- can
4 everyone hear me?

5 (Affirmative nods)

6 **THE COURT:** All right. When I call your name, if you
7 would, just raise your hand and let me just eyeball where
8 you are. Shanna Gates, Jerod Harris, Jalyssa Jones, Cecil
9 Leonard, Keith Pittman, Jason Pitts, Jamey Lee Trent, Gladys
10 Watson. All right. That should leave Terrance Garrett, and
11 then also Mr. Rodriguez, and then also Mr. Patrick Smith.
12 All right.

13 (Whereupon all defendants listed above were present and
14 raised their hand when called upon)

15 **THE COURT:** Everyone -- Mr. Garrett, and Mr. Rodriguez,
16 and Mr. Smith, if y'all will just not listen to me while we
17 go through this process or at least don't participate in
18 this process. But for everyone else, I need for you to
19 please listen to me for a few moments.

20 I have been advised that each one of you has one or
21 more matters that are presently pending in the Court of
22 General Sessions. Now, I've also been told that each one of
23 you has expressed a desire or an intent to want to enter a
24 plea to those matters.

25 As part of every plea that is presented in front of me,

1 we make a recording. This lady that's sitting way down
2 there to my left, the lady with the mask, she is a court
3 reporter. She's taking down everything that's said.

4 I tell you that because if ever during this process,
5 now or later today, if you need to speak to me, I need you
6 to speak up loud enough so that both she and I can hear you.
7 If we can't hear you, then we cannot accept your plea.
8 Likewise, if ever during this process, now or later today,
9 if you cannot hear me, immediately let me know, and I will
10 speak up as well.

11 Now in just a few moments I'm going to ask you a series
12 of questions. I'm going to ask you these questions as a
13 group, but I do not want you to think, nor do I wish for you
14 to conclude, that for some reason simply because I'm asking
15 you these questions as a group that for some reason these
16 questions are not important, because these questions are
17 very important.

18 The questions that I ask you and the answers you give
19 me to these questions help me decide whether or not I can,
20 in fact, accept your plea. So I need you to please listen
21 to them.

22 If you need to respond to the questions, I'm going to
23 ask that you stand up and let me call on you individually.
24 Just don't everybody speak out at once, but stand up and let
25 me call on you.

1 Now, if ever during this process if any of you wish to
2 speak to your lawyer, you just let me know, and I'll allow
3 you to talk to your lawyer in private.

4 I'm now going to call the names once again. This time
5 when I call your name, if you would, please stand and remain
6 standing. After everybody's name's been called and the
7 court reporter has your names down, then I'm going to ask
8 the clerk of court, the lady down here in the middle, I'm
9 going to ask her to swear you in. So please listen to her
10 and respond out loud when she asks you to do so. All right.

11 We've got Gladys Watson, Jamey Lee Trent, Jason Pitts,
12 Keith Pittman, Cecil Leonard, Jalyssa Jones, Jerod Harris,
13 Shanna Gates.

14 (Whereupon all the called defendants were standing)

15 **THE COURT:** All right. If you would, please raise your
16 right hand.

17 **MADAME CLERK:** Do you solemnly swear or affirm the
18 testimony you're about to give will be the truth, the whole
19 truth and nothing but the truth so help you God?

20 (Whereupon all the defendants answered affirmatively)

21 **THE COURT:** Thank you. You may be seated. Now here
22 are the questions that I need for you to please listen to.
23 During the last twenty-four hours have you taken any type of
24 substance that is adversely or negatively affecting your
25 ability to understand what we're doing today? If you have

1 taken something, I need for you to please stand.

2 (No response)

3 **THE COURT:** If you've ever been treated for any type of
4 substance abuse issues, for any type of drug or alcohol
5 issues, I need for you to please stand at this time if
6 you've ever received any type of substance abuse treatment.

7 (No response)

8 **THE COURT:** If you are satisfied with the work that
9 your lawyer has done for you, then I need for you to please
10 stand at this time if you're satisfied with the work that
11 your lawyer has done.

12 (Whereupon all defendants stood except for Keith
13 Pittman)

14 **THE COURT:** Let the record reflect that everyone stood
15 except -- what's your name, sir?

16 **MR. PITTMAN:** Pittman.

17 **THE COURT:** Except Mr. Pittman. Thank you very much.
18 You may be seated.

19 If you have been made any promises or if you have been
20 threatened in any way in order to get you to make the
21 decision to enter the plea, then I need for you to please
22 stand at this time if you have been promised anything or
23 threatened in any way.

24 (No response)

25 **THE COURT:** If the decision by you to enter the plea is

1 a free and voluntary decision on your part, then I need for
2 you to please stand at this time if this is a free and
3 voluntary decision.

4 (Whereupon all defendants stood)

5 **THE COURT:** Let the record reflect that everyone stood.
6 Thank you very much. You may be seated.

7 I need for you to understand that under the law you are
8 presumed innocent of the charge or charges that are
9 presently against you. And you are entitled to have a jury
10 trial on each and every charge that's presently against you.

11 At any jury trial that would take place it would be the
12 State that has the burden of proof. And the State would
13 have to convince all twelve members of a jury that you are,
14 in fact, guilty beyond a reasonable doubt of the charge or
15 charges that are against you.

16 In order to enter a plea, however, you have to give up
17 your right to that jury trial. But if you wish to have a
18 jury trial on any of the charges that are presently against
19 you, that is perfectly fine. We will simply schedule a jury
20 trial for you.

21 Is there anyone who wishes to have a jury trial on any
22 of the charges that are presently against you? If so, then
23 I need for you to please stand at this time if you wish to
24 have a jury trial.

25 (Whereupon Keith Pittman stood)

1 **THE COURT:** And, again, you're Mr. Pittman?

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

3 **THE COURT:** Thank you, sir. You may be seated.

4 I need for you to also understand that there are other
5 very important constitutional rights that you are entitled
6 to but that you have to give up in order to enter a plea.
7 You have to give up your right to confront and cross examine
8 the State's witnesses.

9 You also have to give up your right to present evidence
10 which you or your lawyer may feel would establish a defense
11 to the charge or charges against you. And you have to give
12 up your right of subpoena. And you have to give up your
13 right to remain silent.

14 Now, if you wish to give up those rights and go forward
15 with entering the plea at this time, then I need for you to
16 please stand.

17 (Whereupon all the defendants stood except for Keith
18 Pittman)

19 **THE COURT:** Let the record reflect that everyone except
20 Mr. Pittman stood. Thank you very much. You may be seated.

21 Again, if any of you wish to speak to your lawyer
22 during this process, just let me know and I'll allow you to
23 do so in private. Thank you very much.

24 **MR. PITTMAN:** Sir, can I speak with him?

25 **THE COURT:** All right. He'll come and talk to you in

1 just a second. Thank you, sir.

2 (Whereupon prequalification was ended)

3 **MR. GRAY:** Jerod Harris.

4 (Whereupon State's exhibits 1 - 4 were marked for
5 identification)

6 **MR. GRAY:** Thank you, Your Honor. May it please the
7 Court. Before you is Mr. Jerod Keykendall Harris on
8 indictment 2011-GS-42-2429. That's a true billed indictment
9 for attempted murder.

10 He's pleading guilty to that charge. There's a
11 negotiated sentence of fifteen years in this matter. He's
12 represented by Mr. Robert Hall.

13 I also have attached four exhibits for this plea.
14 Beyond the fifteen years the State is also dismissing a drug
15 charge once the plea is completed, Your Honor.

16 (Whereupon State's exhibits 1 - 4 were admitted into
17 evidence)

18 **THE COURT:** You are Mr. Harris?

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

20 **THE COURT:** Sir, I need to remind you that you remain
21 under oath. Do you understand that?

22 **MR. HARRIS:** Yes, sir.

23 **THE COURT:** And, sir, it is your intent to enter a plea
24 to the charge that was announced by the solicitor?

25 **MR. HARRIS:** Yes, sir.

1 THE COURT: How old are you, sir?

2 MR. HARRIS: Thirty years old.

3 THE COURT: How far did you go in school?

4 MR. HARRIS: To the eleventh grade.

5 THE COURT: Eleventh grade?

6 MR. HARRIS: Yes, sir.

7 THE COURT: Did you ever obtain a GED?

8 MR. HARRIS: No, sir.

9 THE COURT: Are you married, single, divorced, widowed?

10 MR. HARRIS: Married.

11 THE COURT: Do you have children?

12 MR. HARRIS: I have three little boys.

13 THE COURT: How old are they?

14 MR. HARRIS: One's fixin' to be four next week. And I
15 have a three year old and a two year old.

16 THE COURT: Prior to being arrested on this charge did
17 you have a job outside of the home?

18 MR. HARRIS: No, sir.

19 THE COURT: How were you supporting yourself
20 financially at the time?

21 MR. HARRIS: I had just come home from SCDC.

22 THE COURT: Living with family?

23 MR. HARRIS: My wife and my in-laws.

24 THE COURT: Ever serve in the military?

25 MR. HARRIS: No, sir.

1 **THE COURT:** On this particular charge, how long of time
2 have you been in jail?

3 **MR. HARRIS:** Seventeen -- like seventeen months.

4 **THE COURT:** Sir, if you would, I need for you to please
5 listen to the solicitor. He is going to tell us the facts
6 that are behind this case. And then I'll have some more
7 questions for you.

8 **MR. HARRIS:** Yes, sir.

9 **MR. GRAY:** Thank you, Your Honor. To my right is the
10 victim in this case, Mr. Scott Pender, and his mother. This
11 happened on December 17th, 2010 at approximately 6:30 pm at
12 [REDACTED] Road in Enoree, South Carolina.

13 The victim was there visiting his girlfriend. He heard
14 a commotion outside, came outside and saw this Defendant and
15 two other gentlemen in a car.

16 The two -- well, basically two gentlemen had weapons.
17 This Defendant got out of his car, started shooting in the
18 direction of the victim. The victim says he felt a force
19 against his body, knocked him down.

20 This gentleman came over to him. There was a street
21 lamp. It was about 6:30 at night, like I said, in December.
22 He could see his face clearly. He had seen him before. And
23 this gentleman pumped four bullets into him.

24 At that time he left, got in the car and left the
25 scene. Mr. Harris was found later along with co-defendants

1 in Laurens County.

2 As you can see by the pictures, the victim in this case
3 went to the ICU. And he had numerous injuries, numerous
4 bullet holes, some through and through and extensive rehab
5 and has since moved out of the State to, for a general
6 location, to the North East, Your Honor, to avoid any
7 possible confrontation like this again.

8 My understanding, they do not wish to speak. We've
9 talked about the negotiated sentence. And the victim and
10 his mother are in agreement with it, Your Honor.

11 **THE COURT:** Mr. Harris, were you able to hear the
12 solicitor when he told me the facts?

13 **MR. HARRIS:** Yes, sir.

14 **THE COURT:** Do you believe that as he stated the facts
15 that he is substantially correct?

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

17 **THE COURT:** And, sir, do you understand that this is
18 being presented to me as a negotiated plea?

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

20 **THE COURT:** And, therefore, if I accept the plea I will
21 be bound by the negotiations and will have to impose the
22 fifteen year sentence?

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

24 **THE COURT:** And that's what you want me to do?

25 **MR. HARRIS:** Yes, sir.

1 **THE COURT:** And, sir, do you understand that this
2 particular charge that you're pleading to is classified as
3 both a violent offense and also a most serious offense?

4 **MR. HARRIS:** Yes, sir.

5 **THE COURT:** And you have been able to talk to your
6 lawyer as to the consequences and ramifications of this
7 offense being classified as both a violent and most serious
8 offense?

9 **MR. HARRIS:** Yes, sir.

10 **THE COURT:** Understanding the negotiations as well as
11 the classification of violent and most serious and the
12 ramifications of those classifications, you still wish for
13 me to enter this plea?

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

15 **THE COURT:** Or rather, you still wish for me to accept
16 this plea?

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

18 **THE COURT:** Sir, are you, in fact, guilty of this
19 charge of attempted murder?

20 **MR. HARRIS:** Yes, sir, I am.

21 **THE COURT:** Have you been able to hear all of my
22 questions so far?

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

24 **THE COURT:** Have all of your answers been truthful and
25 honest?

1 **MR. HARRIS:** Yes, sir.

2 **THE COURT:** Discovery's been shared with the Defense?

3 **MR. GRAY:** Yes, sir, Your Honor.

4 **THE COURT:** Prior record?

5 **MR. GRAY:** 1999, possession; 2001, two CDV's, pistol
6 violation, resisting arrest, MIPP, under a thousand dollars;
7 2002, pistol arrest, driving without a license; 2006,
8 ABHAN; 2008, assault and battery; 2009, pointing and
9 presenting, and an AWIK.

10 He received five years, suspended to two years and
11 three years probation. My understanding, we're not
12 addressing the probation violation today.

13 **THE COURT:** You say the victims do not wish to ---

14 **MR. GRAY:** No, sir.

15 **THE COURT:** --- address the Court? Anything else from
16 the State?

17 **MR. GRAY:** No, sir, Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. HALL:** May it please the Court, Your Honor. First
20 off, we want to thank the State and Mr. Pender and his
21 family for the understanding and working with us on
22 resolving this in this manner.

23 As you can tell by Jerod's history, he has had a
24 history of violence. What has happened since -- in the
25 seventeen months plus he's been in jail, his wife, who is

1 present, Brittney, back here, had gone from I'm tired of it,
2 he's not changing to she has communicated with him and feels
3 that he has changed. His outlook has changed.

4 He's, I think, in almost every conversation we've had
5 he's concerned about his sons and the fact that what he has
6 done is going to keep him from being around his sons while
7 they're growing up, which, quite frankly, I think was an
8 issue with him growing up, not having the proper role model
9 there.

10 But he realizes he is the only one that can change
11 that, that he has had a transformation in his life thinking
12 about he's got a good woman who is going to give him another
13 chance, that he's got to change his life, and the only way
14 to do that is to get this behind him.

15 He understands he's going to have to serve a
16 substantial amount of time and he's going to miss those boys
17 growing up. But to be able to come out and be part of their
18 life, he has to be a different person. He can't continue
19 this lifestyle. He understands that's going to be not
20 acceptable. To her, it's not acceptable, to society. That
21 if he doesn't change, he does anything like this again, he's
22 going to be in prison for the rest of his life.

23 He understands the great offer that the State has given
24 him here, this opportunity to cut the time that he would
25 have to serve substantially. And, Your Honor, we ask that

1 you take the plea, give him the sentence.

2 If he -- I don't know how much is available for an
3 evaluation in mental health. I know that I've been through
4 the Department of Corrections, a mental health evaluation,
5 but I know I've had other clients that the way they're doing
6 things in the Department of Corrections now, they're
7 actually -- I've heard people say they used to make people
8 walk around and drugged. They would just over-medicate
9 them, but now they're actually doing a lot better.

10 I've had clients that could not have a rational
11 conversation with me because of issues they have. But now,
12 they come back and they're on proper medications, they can
13 think more rationally and make better decisions.

14 Now, he has family members here on the front row, these
15 four, including an aunt, Reverend Ellen, who, I think, is --
16 wants to address the Court at the appropriate time on behalf
17 of the family.

18 **THE COURT:** Sir, do you agree with everything that your
19 lawyer has just stated?

20 **MR. HARRIS:** Yes, sir.

21 **THE COURT:** Thank you, sir. Ma'am, if you would, we
22 are making a recording of everything that's said here. So
23 please speak up loud so that both the court reporter and I
24 can hear you. And just start by giving us your full name.

25 **REVEREND EVANS:** Yes, sir. I am Reverend Catherine

1 Cullen Evans. I am Jerod's father's sister.

2 First of all, I'd like to say that I'm speaking on
3 behalf of my brother, who could not get here overnight, and
4 the rest of our family. We are devastated by the events.
5 We are praying for the full physical and mental recovery of
6 the victim.

7 We also know another side of Jerod. Jerod can be,
8 although the record does not say so, he can be a very
9 compassionate, a very loving young man. The thing that is
10 going to -- there are some things that are going to make
11 this very hard for him and, I believe, cause this to be a
12 life changing experience.

13 My parents, who are his grandparents, in the time that
14 he's going to spend in prison, in all probability, will not
15 be alive when he's released. The other thing that is going
16 to destroy him is that he loves his sons to no end. And it
17 is going to destroy him because he is not going to be able
18 to be a part of their lives as they grow up.

19 And I'd just like to thank you for taking this plea
20 bargain under consideration. I realize that there is
21 nothing that can be done to undo what has already been done.
22 And we are praying that this will be a life changing
23 experience for him because there is a lot of good in him if
24 he will just work with the system and allow it to come out.
25 And I thank you for hearing me, sir.

1

(End of requested transcript of record)

1

Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Seventh Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Spartanburg County, South Carolina, on the 31st
9 day of May 2012.

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

12

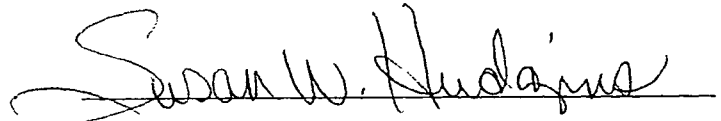
December 14, 2012

13

14

15

16

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF *Spartanburg*)

IN THE COURT OF COMMON PLEAS

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

ferod Keykendall Harris sr. 255423)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth 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 which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact or circumstance 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 *M^cCormick Correctional Institution*
2. Name and location of Court which imposed sentence *7th Judicial Circuit Court of Spartanburg County*
3. Name(s) of co-defendant(s) (if any) ~~*7th Judicial Circuit Court*~~ *James Allen Cullen, and Dontayvious Omar Westfield*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *M^y Indictment/casett M-751588 Murder/Attempted Murder*
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *5-31-12 I was sentenced to a negotiated 15 years from a 0-30 years and probation violation run concurrent with the 15 years*
 - (b) _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
MORRIS BLANCHET

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty no
- (c) after a plea of nolo contendere no
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) I was told that I could not appeal nothing, that I waived all my rights once I took the plea for the 15 years
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

- (a) Counsel failed to investigate my case, and adequately prepare for trial.
- (b) Gave me erroneous advise which caused me to give up my rights to trial by jury. I was Denied my 6th amendment Right
- (c) of the united states constitution.

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

- in (10): Counsel failed to investigate my case, and adequately
- (a) Prepare for trial. Gave me erroneous advise which caused
 - (b) me to give up my rights to trial by jury. I was Denied
 - (c) my 6th amendment Right of the united states Constitution.

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. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 NOV -5 PM 2:29
 M. HOPE BLACKLEY

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. _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

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? no
- (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. Robert B. Hall, Esquire, 366 North Church St. Suite 3000
Spartanburg, S.C 29303
- ii. _____
- iii. _____

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

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

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

clearly had ground for a self defense claim/Time served.

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

no

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 NOV -5 PM 2:29
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

Gerard K. Harris Sr.

I, Gerard K. Harris Sr., 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.

Gerard K. Harris Sr.

SWORN to and subscribed before me this 8th day of October, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires October 8, 2014
My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

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

Gerrod K. Harris Sr.
I, *Harris Sr.*, 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.

Gerrod K. Harris Sr.
Applicant

SWORN or affirmed to and subscribed before me this
8th day of October, 2012.

[Signature]
Notary Public

My Commission Expires
October 8, 2014

My Commission Expires: _____

FILED
CLERK OF COURT
PARTISBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Jerod Keykendall Harris, #255423,	)	2012-CP-42-4617
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 5, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-2429). Applicant was represented by Robert Hall, Esquire. On May 31, 2012, Applicant pled guilty to as indicted. Applicant was sentenced by the Honorable J. Mark Hayes, II to a negotiated sentence of fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to investigate my case and adequately prepare for trial,
 - b. Counsel gave me erroneous advice which caused me to give up my rights to trial by jury,
 - c. "I was denied my 6th amendment right of the United States Constitution."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

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

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

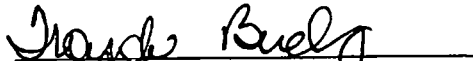
February 25, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG)	
	)	2012-CP-42-4617
)	
JEROD K. HARRIS, #255423)	
)	
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:

J. Brandt Rucker, Esq.
522 North Church St.
Greenville, SC 29601

DATED this 25th day of February, 2014


 Troyeshi Brailey, Legal Assistant
 For Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COMMON PLEAS COURT

Jerod Keykendall Harris,)
Applicant,)

TRANSCRIPT OF RECORD
2012-CP-42-4617

-vs-)
The State.)

April 7, 2014
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

J. BRANDT RUCKER, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

INDEX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MS. WHITE: Thank you, Your Honor.

2 This is the case of Jarod Harris vs. the State. It's
3 case No. 2012-CP-42-4617.

4 Mr. Harris is represented today by Mr. Brandt Rucker,
5 and I've been informed that he may have a motion to present
6 to the Court. So I'll turn over to him at this time.

7 THE COURT: Mr. Rucker.

8 MR. RUCKER: Your Honor, my client informs me that he
9 would rather have a private, retained attorney at this time
10 after thinking the case over. And that's all he's told me
11 about that issue.

12 THE COURT: All right. Mr. Harris, what have you got
13 to say about it?

14 THE APPLICANT: I didn't feel comfortable and that Mr.
15 Brandt Rucker was in my best interest, so I wanted to go
16 ahead and get me a paid attorney.

17 THE COURT: When are you going to do that?

18 THE APPLICANT: It'll be -- it should be soon.

19 THE COURT: Okay. Well, now, do you understand that
20 what you're asking me to do today is to terminate
21 Mr. Rucker's representation of you?

22 THE APPLICANT: Yes, sir.

23 THE COURT: In other words, you've got a
24 court-appointed lawyer, and if you terminate his services
25 today, then you're telling me you don't want a

1 court-appointed lawyer, you're going to hire somebody.

2 THE APPLICANT: Yes, sir.

3 THE COURT: If I -- your case is here today for a
4 hearing --

5 THE APPLICANT: Yes, sir.

6 THE COURT: -- on your application. If I terminate
7 his services today and I continue it so you can hire a
8 lawyer, do you understand in the future you're not going to
9 get another court-appointed lawyer?

10 You'll either have to hire one or you'll be
11 representing yourself.

12 THE APPLICANT: Okay.

13 THE COURT: Do you understand that?

14 THE APPLICANT: Yes, sir.

15 THE COURT: Do you still want to release him from any
16 further obligation?

17 THE APPLICANT: Yes, sir.

18 THE COURT: And you're going to hire somebody or
19 represent yourself.

20 THE APPLICANT: Yes, sir.

21 THE COURT: Do you understand you will not be allowed
22 to have another court-appointed lawyer?

23 THE APPLICANT: Yes, sir.

24 THE COURT: Okay. All right. Mr. Rucker is relieved
25 from any further obligation.

1 Mr. Harris is going to hire counsel. And he will not
2 be permitted to have another court-appointed lawyer.

3 END OF REQUESTED TRANSCRIPT OF RECORD

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Jerod K. Harris PCR	Page:
Mr. Harris' Comments.....	4
Cross by Ms. White.....	7

W I T N E S S E S

Mr. Robert Hall, Esquire:	Page:
Direct by Mr. Harris.....	8
Cross by Ms. White.....	11

E X H I B I T S

Applicant's Exhibits:	Marked:	Received:
(None)		
Respondent's Exhibits:	Marked:	Received:
(None)		
Court's Exhibits:	Marked:	Received:
(None)		
Reporter's Certification:.....		14

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

Reporter's Note: Some names in this transcript are spelled phonetically.

42

1 November 4, 2014

9:58 A. m.

2 (Off-the-Record Comments)

3 THE COURT: Sir, you're Mr. Jerod Harris?

4 MR. HARRIS: Yes, sir.

5 THE COURT: Okay, Mr. Harris. We're here on a — a PCR. You
6 don't have a lawyer with you?

7 MR. HARRIS: No, sir.

8 THE COURT: Okay. You're going to represent yourself in this
9 matter?

10 MR. HARRIS: Yes, sir. I'm going to have to, sir.

11 THE COURT: Okay.

12 MR. HARRIS: I was told I had to.

13 THE COURT: All right.

14 (Brief Pause)

15 MS. WHITE: And, Your Honor, just to clarify. He had an attorney
16 that had been appointed in our last term. He asked for that attorney to be
17 relieved. And Judge Couch informed him that, if he wanted to relieve his
18 appointed attorney, he would not be allowed to have another appointed
19 attorney, but he could retain an attorney or proceed pro se.

20 THE COURT: Okay.

21 MR. HARRIS: Yeah, that was Judge Cole, sir.

22 MS. WHITE: Oh, Judge Cole, sorry.

23 THE COURT: Okay. All right. All right, sir, what are the issues
24 that you want to discuss here today? I mean, I have your post-conviction relief
25 application paperwork, and I have looked at this. Is there any one, two, or

1 three things that you would like to point out?

2 **MR. HARRIS:** Well, the main thing I wanted to point — I wanted to
3 discuss was about that — about that one, my indictment issue.

4 **THE COURT:** An indictment issue?

5 **MR. HARRIS:** Yes, sir. I — I had — I had an amended
6 indictment (phonetic) under — under South Carolina Code 14-9-170, 14-5-
7 710, and 14-9-210.

8 **THE COURT:** Okay. 14-9-210, 14-5-710, and what was the other
9 code section?

10 **MR. HARRIS:** Sir?

11 **THE COURT:** You had three different code sections.

12 **MR. HARRIS:** Yes, sir. The other one was 14-9-170.

13 **THE COURT:** One, seven, zero (170)?

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

15 **THE COURT:** Okay. All right. If you'll bring your paperwork and
16 — and come on --- I'll tell you what I'm going to do. You need that table right
17 there. I'm going to let you be sworn right there.

18 You've got to speak up loud so she can hear you, okay?

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

20 **THE COURT:** Raise your right hand.

21 (Whereupon,

22 **Jerod K. Harris**

23 having been duly sworn, testified as follows:)

24 **THE COURT:** Okay. All right, sir.

25 **MR. HARRIS:** Yeah, hmmm — yeah, I was -- my indictment

1 issue, I was — that the Applicant — I had a lot of errors and was denied — I
2 was denied due process under the law and under equal protection — the
3 equal protection clause, you know, due to ah --- my — my indictment wasn't
4 convened when they said it was convened.

5 During the — during the General Sessions Court term under — under
6 the code 14 — 14-5-710. And the Court — the Court of General Sessions —
7 “The Court of General Sessions shall be held in Spartanburg for the month of
8 May on the third Monday after the fourth...” — normally, are made for one
9 week. And my indictment — I was indicated on the first Monday of May.

10 And then like those under *Evans vs. State* (phonetic), 611, S.E. 2 —
11 2(d), 510, that an indictment — an indictment will be deemed annulled — will
12 be deemed annulled (phonetic) if it's — if it's not a meeting (phonetic) during
13 such General Sessions Court term. (Phonetic)

14 (Brief Pause)

15 THE COURT: Okay.

16 MR. HARRIS: And, you know, the — and the South Carolina
17 Constitution, Article 102 mandates that — mandates that “No person may be
18 held to answer for any crime that — any crime in which that is not within the
19 —within the court unless all presentment of the indictments and that — and
20 under a similar indictment of the grand jury of the county where the crime had
21 been committed.”

22 And ah — the equal — the equal protection — the equal protection
23 clause must — the equal protection clause under the South — of South
24 Carolina has chosen to uphold the provisions (phonetic) of the protected
25 indictment because it must be — you know, must be — must be satisfied and

1 such a determination can be made on — to the law that the state — the state
2 government, the procedure under — under — the procedure under US —
3 under the seizure of US 4063 02 80 — 84 (phonetic) — 84 — the — the 14th
4 South Carolina Code 14-9-170 states that — states that the grand jury as
5 drawn, in accordance with the law, serves upon the Court of General Sessions
6 in each of the counties shall constitute the grand jury for the county court and
7 will meet with the county court of each — of each of its terms. (Phonetic)

8 And during — during the month of May — May the 5th, 2011, there was
9 not a term when they said they was a term to convene when they took an
10 oath.

11 And so, therefore — so therefore, that right there under — under *Evans*
12 *v. State*, 611, 5 — at 611, S.E. (2)(d) 510, that, that right there would be to be
13 anul — anything deemed annulled is invalid (phonetic) — is — is invalid.

14 (Brief Pause)

15 **MR. HARRIS:** And ah — you know, also that — that the absence
16 of an indictment, or any prior indictment, if the judge says there's a defect
17 which deprives — which deprives the Court to act — to act to — to sentence
18 me back in 2012, on May the 31st, when — when the indictment wouldn't be
19 nulled. (Phonetic)

20 But they didn't — so they didn't have the — I — I wasn't supposed to
21 get — I didn't supposed to get sentenced that day under that indictment.

22 (Brief Pause)

23 **THE COURT:** Okay. So your argument is that the indictment is —
24 is null and void under state law?

25 **MR. HARRIS:** Yes, sir.

1 **THE COURT:** Okay.

2 **MR. HARRIS:** And I — yes, sir, under state law and under the
3 Constitution.

4 **THE COURT:** Okay, yeah. Okay. Anything else you'd like to tell
5 me?

6 **MR. HARRIS:** No, sir, no, sir.

7 **THE COURT:** Okay. Would you like to call any other witness or
8 anybody? You have a right to do that. You're representing yourself now.

9 **MR. HARRIS:** Yeah, I — I want to call on Mr. Robert Hall.

10 **THE COURT:** Okay. Well, just a minute. I'm going to give the —
11 I'm going to give the State a chance to cross-examine. Yes, ma'am?

12 **MS. WHITE:** Your Honor, just one brief question.

13 **Cross Examination by Ms. White:**

10:05 A.m.

14 **Q.** Mr. Harris, was this an issue you raised to your attorney prior to your
15 guilty plea?

16 **A.** I didn't even know anything about that until after I got to prison and got
17 doing my research. It took me — it took me almost six months writing the clerk of
18 court to get my indictment. My attorney never gave me my indictment.

19 And I wrote — I wrote my counsel to get my motion. When I got my
20 motion a few weeks later, I'm going to trial. I wasn't supposed to be going to trial and
21 I did not have my — my discovery — it wasn't in my discovery or nothing. I didn't
22 know nothing about that.

23 **Q.** Okay. All right.

24 **A.** He never — he never explained nothing to me about it — about none of
25 that.

1 Q. And you acknowledge you pled to a negotiated sentence of 15 years —

2 A. Yes.

3 Q. ---- for attempted murder?

4 A. Yes, ma'am.

5 Q. And that a drug charge was dismissed?

6 A. Yes, ma'am.

7 MS. WHITE: Okay. Thank you. That's all I have here.

8 THE COURT: Okay. You want to call Mr. Hall?

9 MR. HARRIS: Yes, sir.

10 THE COURT: Okay. Mr. Hall, come up and be sworn.

11 (The witness complied with the request.)

12 (Whereupon,

13 Mr. Robert Hall, Esquire

14 having been duly sworn, testified as follows:)

15 THE COURT: Thank you. Tell us your name, please, on the
16 record.

17 THE WITNESS: Robert Hall.

18 THE COURT: All right. Yes, sir, you may — you may question
19 your witness.

20 Direct Examination by Mr. Harris:

21 Q. Yeah, okay. I want to know that, was you aware of the indictment
22 being — being — that it wasn't — that is wasn't valid? That it was invalid? Did you
23 that it was invalid? That it was invalid?

24 A. I'm sorry, Mr. Harris ----

25 Q. Was you ----

1 A. If you'll let me finish.

2 Q. Oh, I'm sorry.

3 THE COURT: Let him answer.

4 Q. All right.

5 A. I was communicating with some of my clients through the KIOSK, while
6 you were making your motion. I'm not exactly sure what you're saying is defective in
7 the indictment.

8 Q. And is was supposed — it — it's very defective. But ah, you didn't —
9 but you didn't never come to me and talk with me about this and I want to know why
10 didn't you challenge this? Did you study this and do your proper investigation upon
11 this?

12 A. Again, Mr. Harris, I'm not exactly sure what you are saying is wrong with
13 the indictment; why you're saying it's invalid.

14 Q. You not — you're not seeing why? Is that — is that what you said?

15 A. You're saying — you're saying that I didn't discuss the indictment being
16 invalid with you or being wrong. I don't know what you're saying is wrong with the
17 indictment.

18 Q. They hadn't been convened during General Sessions Court term like
19 they supposed to be, like it said it was. They did not have General Sessions Court
20 during that term, it being —

21 A. Oh, so, you're saying the term that you were going to be tried that you
22 would have to be indicted right before that?

23 Q. Yeah, you got to be — you got to be indicted during General Sessions
24 Court term when they got a General Sessions. That's the only time the grand jury
25 can be — can indict you.

1 A. No. The Supreme Court sets a schedule to make special jury —
2 General Session term for every time the grand jury is going to meet. I think the
3 Attorney General can request those. The solicitor can request those. And those are
4 set each year.

5 Occasionally, they have other terms, but that — that is a special
6 General Sessions term.

7 Q. During a trial, right?

8 A. No, it's — it's set as a General Sessions term for a grand jury.

9 Q. But General Sessions will be, regardless of what the trial — a trial is a
10 trial, not a jury trial, but the — the — the grand jury wouldn't consist of a jury trial,
11 right?

12 A. It's my understanding, that you do not have to be indicted and tried in
13 the same — at the same time that the special term of the oath (phonetic).

14 The — the grand jury is impaneled, the schedule is set, under a special
15 General — General Sessions term, just for the grand jury. That they meet on a day
16 and they con — and — and they're in session until their term is concluded.

17 That's the step that has to be made for somebody to be tried.

18 Q. Under 14-9- — 14-9-147 (phonetic) states that — states that the grand
19 jury — that the grand jury, upon General — the Court of General Sessions shall
20 constituted — shall be constituted for the county court and shall meet with the county
21 of each of its terms. (Phonetic)

22 Now, you have an appointed of term where they can and determine and
23 said they -- they said that was done. So you didn't have — after you did your
24 proper investigation for appointment that day (phonetic). Didn't you go to school for
25 this?

1 **A.** I — I still don't understand what you're saying is wrong. If you're saying
2 the grand jury met and then, some months later, your — your case was up, there's
3 nothing improper with that.

4 **Q.** It violated my due process for one because it take— you got to — you
5 got to — they got to indict you within 90 days. I was indicted 9 months later. And
6 you was my attorney; you supposed to recognize all of that.

7 **A.** No, no, sir. You don't have to be indicted within 90 days.

8 **Q.** Well — well — well, that's not true.

9 **THE COURT:** Don't argue with him now. Just ask him questions.

10 **MR. HARRIS:** Yes, yes, sir.

11 **A.** That's not right.

12 **MR. HARRIS:** That's all — that's all, Your Honor. That's all, Your
13 Honor.

14 **THE COURT:** You can ask him all the questions; you just can't
15 argue with him, okay? Are you through?

16 **MR. HARRIS:** Yeah, yeah. I'm through. I'm done.

17 **THE COURT:** Okay. Yes, ma'am?

18 **MS. WHITE:** Thank you. Just briefly, Your Honor.

19 **Cross Examination by Ms. White:**

20 **Q.** Mr. Hall, Mr. Harris I believe is arguing that he was not properly indicted
21 at a term of General Sessions. To your knowledge, are the terms sometimes not —
22 are set at different times. It's not necessarily the same time every month or every —
23 I mean, some counties don't even have the grand jury every month; do they?

24 **A.** That's correct. When I was a prosecutor in Gaffney, I don't think they
25 met every month. It was I think every three months.

1 Q. And the Supreme Court sets the schedule, but don't they also give the
2 administrative judge of the — of the County's General Sessions the ability to — to
3 schedule?

4 A. That's my understanding; they can. And the Solicitor can request that
5 the grand jury be convened additional time if they have more cases. So — but that's
6 something the — the authority given to them by the Supreme Court.

7 Q. In regards to reviewing the indictment, if you had seen an issue that you
8 thought rendered the — the indictment invalid, would you have raised that or
9 discussed that with Mr. Harris?

10 A. Absolutely. I've done that many times.

11 Q. And, in this situation, did you see anything that was irregular to you?

12 A. No. No, I did not.

13 Q. Okay. Did you — do you recall if you ever had a chance to go over
14 discovery or — or have Mr. Harris review the indictment?

15 A. I don't recall specifically reviewing the indictment. But we did go over
16 discovery. There was some — from the original discovery, we got — I think I had a
17 request through the solicitor and his secretary or whatever they're called,
18 administrative assistants, that I was missing some discovery.

19 I think in December of 2011, I finally got the rest of the discovery and
20 minus his — I made a copy and I believe hand delivered it; took it over to Mr. Harris
21 at that time. And my note says 12/9 of '11.

22 And we had been, for probably six months or better — more than six
23 months, I realized we had been missing discovery. They were slow about getting —
24 getting that discovery to us, but we did.

25 And we went over everything, back and forth negotiating. Mr. Harris

1 and his family felt like the victim was going to stay in New Jersey or New York, up in
2 the northeast where he was;

3 And, even though Mr. Gray was contending that he had contact with
4 him and they had the funds to bring him back, then, we filed a speedy trial motion.
5 We filed it in March, April, May, in there.

6 And the motion was granted and it was set for trial and they had
7 everybody lined up to testify.

8 **Q.** And, ultimately, was Mr. Harris, to your knowledge, aware of the charge
9 he was being tried for?

10 **A.** Absolutely.

11 **Q.** Was he on notice of what he was being tried for?

12 **A.** Absolutely.

13 **MS. WHITE:** Okay. Thank you. That's all I have, Your Honor.

14 **THE COURT:** Anything further, sir?

15 **MR. HARRIS:** No, sir.

16 **THE COURT:** Okay. Thank you. That concludes the hearing.

17 **MR. HARRIS:** Thank you.

18 **MS. WHITE:** Thank you, Your Honor.

19 **THE COURT:** Thank you.

20 **(Whereupon, the hearing concluded at 10:14 a.m.)**

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 13, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

March 28, 2015

/s/ Pamela S. Faucette

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Jerod Keykendall Harris, #255423,	)	2012-CP-42-4617
)	
Applicant,)	
)	
v.	)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 5, 2012. The Respondent made its Return on February 25, 2014. An evidentiary hearing was convened on November 4, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and proceeded *pro se*¹. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, testimony was provided by the Applicant and Robert B. Hall, Esquire. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the PCR Application, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-2429). Applicant was represented by Robert Hall, Esquire. On May 31, 2012,

¹ This Court notes that at a prior hearing on April 7, 2014, Applicant requested a continuance to allow him time to retain an attorney for this matter. Applicant was advised that if he chose to relieve appointed counsel, he would be required to either retain an attorney or proceed *pro se*. The Applicant chose to relieve appointed counsel and the Honorable J. Derham Cole signed an order on July 18, 2014, allowing for the continuance and relieving appointed counsel.

Applicant pled guilty to as indicted. Applicant was sentenced by the Honorable J. Mark Hayes, II to a negotiated sentence of fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to investigate my case and adequately prepare for trial,
 - b. Counsel gave me erroneous advice which caused me to give up my rights to trial by jury,
 - c. "I was denied my 6th amendment right of the United States Constitution."

At the hearing, Applicant indicated that he would proceed solely on an allegation of ineffective assistance of counsel for failing to object to a lack of jurisdiction because of an improperly convened grand jury. This Court finds that the Applicant voluntarily abandoned the other claims of ineffective assistance of counsel.

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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the

evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

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).

Applicant testified that he believed his indictment was invalid because of an illegally convened grand jury based upon S.C. Code Ann. §§ 17-5-710; 17-9-170; 17-9-210. Applicant testified that the signature of the foreman of the grand jury was dated May 5, 2011, and the indictment was filed with the Spartanburg Clerk of Court's office on May 11, 2011. Applicant testified that he reviewed the scheduled terms and the week of May 5, 2011, was not a term of General Sessions. Applicant argued that his due process and equal protection rights afforded through the S. C. Constitution Articles 1 & 2 were violated. Applicant testified that he only discovered this issue once he received a copy of his discovery materials after he was incarcerated.

Counsel testified that the South Carolina Supreme Court had issued an Order allowing for scheduling of grand jury terms and the Solicitor or Attorney General can request additional terms. Counsel testified that he did not recall seeing an issue with the indictment; however, he testified that if he believed there was an issue, he would have made a motion to quash. Counsel testified that he did review discovery materials with the Applicant, as well as file a speedy trial motion on Applicant's behalf, which was granted.

This Court finds that Counsel's testimony is most credible. This Court also finds that the Applicant has failed to meet his burden of proof as to this claim. 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 failed to make a showing that the indictment was not properly true billed by the grand jury.

This Court also finds that any "challenge to the indictment on the ground of insufficiency must be made before the jury is sworn." *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500

(2005). Counsel testified that he saw no issues with the sufficiency of the indictment, but would have made a motion to quash if he had. This Court finds no deficient conduct on Counsel's behalf. This Court also finds that because the Applicant failed to meet his burden of proving that the grand jury was improperly convened according to the laws of this State, this claim is denied and dismissed.

CONCLUSION

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

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

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 ____ day of _____, 2014.

R. KEITH KELLY
Presiding Judge

_____, South Carolina

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT FINE

M751588 FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAY 5 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

11-GS-42-2429

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Jerod Keykendall Harris

Indictment for
ATTEMPTED MURDER

SC Code: 16-3-0029
CDR Code: 3410
Class FEL-A

2011 MAY 11 AM 9:20

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 05 2011

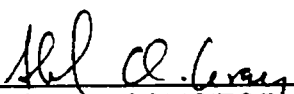
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Jerod Keykendall Harris did in Spartanburg County on or about December 17, 2010, with malice aforethought, intend and attempt to kill the victim, Scott Pender, to wit; by shooting the victim, all in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



ASSISTANT SOLICITOR