

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable R. Lawton McIntosh, Circuit Court Judge

DAVONTAY DARRELL HENSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001968

APPENDIX

VICTOR R. SEEGER
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

JUSTIN J. HUNTER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

JUL 13 2018

S.C. SUPREME COURT

INDEX

INDEX i

GUILTY PLEA HEARING TRANSCRIPT DATED MAY 28, 20151

APPLICATION FOR POST-CONVICTION RELIEF23

RETURN.....33

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 31, 201739

ORDER OF DISMISSAL73

INDICTMENTS84

State of South Carolina.,) In the Court of General
) Sessions for York
)
 County of York.) Case No.: 2010-GS-46-04457
) 2010-GS-46-04457(A)
) 2010-GS-46-04458
) 2010-GS-46-04459

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Davontay Darrell Henson.,)
)
 Defendant.)
)

Transcript of Record
 Plea

May 28, 2015
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge.

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

Mr. Willy Thompson, Deputy Solicitor
 Sixteenth Circuit Solicitor's Office
 1675-1A York Highway York, SC 29745
 803.628.3020
willy.thompson@yorkcountygov.com
 For the Plaintiff

Mr. Philip W. Jamieson
 Attorney at Law
 242 Oakland Avenue
 Rock Hill, South Carolina 29730-4022
 803.366.0405
Pjamieson@jamiesonlawfirm.com
 For the Defendant

ORIGINAL

Wanda S. Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To The Honorable John C. Hayes, III

- 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

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

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

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
------------	--------------------	-----------	-------------

No Exhibits were received into the record.

1 (COURT IN SESSION/ON THE RECORD AT 03:05 PM.)

2 THE COURT: Thank you. Take your seats. Good
3 afternoon.

4 SOLICITOR THOMPSON: May it please the court, your
5 Honor.

6 THE COURT: Yes, sir.

7 SOLICITOR THOMPSON: The *State of South Carolina*
8 *versus Davontay Darrell Henson*. Mr. Henson is represented
9 by Philip Jamieson of the York County Bar and he's before
10 the court today to enter pleas under *North Carolina versus*
11 *Alford* to a number of indictments. I'll go through those
12 now.

13 All have been True Billed so he does not have to waive
14 presentment as to any of the indictments. However the
15 defendant in a prior hearing did request that your Honor
16 recuse himself from further proceedings. He is waiving
17 that today as well and would ask the court to inquire of
18 him as far as that goes as well.

19 THE COURT: Yeah. Mr. Henson, the last time you were
20 here in the same courtroom with Mr. Jamieson and the issue
21 was whether Mr. Jamieson would continue to represent you
22 and I required him to do that. And as you left you ask me
23 not to -- and I wasn't offended -- not to hear any more of
24 your cases and I said that's fine. But you're back before
25 me now. Is it all right if we go forward here with me on

1 this set of pleas?

2 MR. HENSON: Yes, sir.

3 THE COURT: Okay. Thank you.

4 SOLICITOR THOMPSON: May it please the court, your
5 Honor.

6 THE COURT: Yes, sir.

7 SOLICITOR THOMPSON: Again, these are Indictments
8 2010-GS-46--4-4-5-7 wherein the Defendant is charged with
9 murder. He's pleading guilty under *North Carolina versus*
10 *Alford*. 2010-GS-46-4-4-5-7(A) which is the second count of
11 that first indictment for possession of a firearm in the
12 commission of a violent crime to which the defendant is
13 pleading guilty under *North Carolina versus Alford*.

14 2010-GS-46-4-4-5-8 for assault and battery with intent
15 to kill. 2010-GS-46-4-4-5-9 for armed robbery. 2010-GS-
16 46-4-4-6-0 for armed robbery. 2010-GS-46-4-4-6-1 for armed
17 robbery. And on those charges he is pleading -- all of his
18 charges pleading guilty under *North Carolina versus Alford*.

19 As part of the plea agreement we will be dismissing
20 several indictments. 2010-GS-46-4462 for criminal
21 conspiracy. And then the second count on each of the
22 indictments for armed robbery and the second count for
23 assault and battery with intent to kill are all counts of
24 possession of a firearm during the commission of a violent
25 crime. Those charges will be dismissed as part of the

1 plea. The only possession of a firearm during the
2 commission of a violent crime that the defendant would
3 plead to is the one as it relates to the murder indictment
4 which is 4457(A) on that indictment. The other counts will
5 be dismissed as part of the plea.

6 Your Honor, the negotiation for this case is for the
7 thirty year sentence on murder and that all other sentences
8 run concurrent to that thirty year sentence. So, in other
9 words, a thirty year day-for-day sentence as to the murder
10 with all other charges running concurrent.

11 As I said, your Honor, the defendant is represented by
12 Philip Jamieson of the York County Bar. The victim's
13 families are here. They do not wish to address the court
14 but they are here and present for the plea at this time and
15 the State is ready to proceed as well.

16 The defendant is to received credit for time served.
17 He was arrested on September 8th of 2010 in Baltimore. We
18 would give him credit for the time that he has served since
19 then. He has been continually incarcerated since that time
20 on these charges and our calculation is that that's one
21 thousand three hundred and ninety-three days.

22 Of course this case was tried once before before your
23 Honor and the defendant was convicted and at that time
24 given a life sentence. He appealed the sentence and was
25 over turned on a *Bruton* issue. We are back before the

1 Court now; the defendant has had ample time to examine the
2 case that the State can present against him and is now
3 entering his pleas under *North Carolina versus Alford* to
4 take the benefit of this bargain.

5 THE COURT: Mr. Henson, how old are you?

6 MR. HENSON: Twenty-three.

7 THE COURT: You represented by Mr. Jamieson?

8 MR. HENSON: Yes, sir.

9 THE COURT: Are you satisfied with his service?

10 MR. HENSON: Yes, sir.

11 THE COURT: It might be good if y'all stood up, I
12 could see you a little better.

13 (ATTORNEY JAMIESON AND DEFENDANT DAVONTAY HENSON STOOD
14 BEFORE THE COURT.)

15 THE COURT: These are all True Billed Indictments.

16 You're charged with murder; murder carries from thirty
17 years up to life imprisonment. It is a violent offense. A
18 violent offense is the type of offense and all the other
19 offenses that are violent. I'll go ahead and tell you what
20 a violent offense is now. A violent offense is an offense
21 which carries with it the prospect that while you are
22 incarcerated you will not be eligible for certain programs
23 non-violent offenders are allowed to enjoy.

24 Do you understand that?

25 MR. HENSON: Yes, sir.

1 THE COURT: This is a most serious offense as are the
2 armed robberies and the assault and battery with intent to
3 kill. A most serious offense is the type of offense, which
4 if in your life time you receive two most serious or a
5 combination of three serious and most-serious offenses, you
6 would be subject to being incarcerated for life without
7 parole. That is a true life sentence.

8 Do you understand that?

9 MR. HENSON: Yes, sir.

10 THE COURT: It's alleged that all of these events
11 occurred here in York County on or about October the 1st
12 2009. The murder count alleges that with malice
13 aforethought you killed Tyrone Quantarious King by means of
14 shooting him. Do you understand that charge and the
15 potential penalty?

16 MR. HENSON: Yes, sir.

17 THE COURT: Now, I understand that you are entering
18 plea under what's called the *Alford* doctrine. That means
19 to me that you are maintaining your innocence on these
20 charges; however, you are determined or have determined
21 that it is in your best interest to go forward with these
22 negotiated sentences for a couple of reasons; one, because
23 you do have a negotiated sentences which -- and then the
24 other is that you are -- is that the facts that the State
25 would present to a jury based on that is in your mind a

1 strong likelihood that you would be found guilty. Is that
2 the reason that you're entering your plea under *Alford*?

3 MR. HENSON: Yes, sir.

4 THE COURT: And in fact you have been tried and found
5 guilty and that was set aside. But those are the reasons
6 you're entering your plea under *Alford*?

7 MR. HENSON: Yes, sir.

8 THE COURT: You're also charged with possession of a
9 firearm during the commission of a violent crime; on that
10 charge it carries up to an additional five years.

11 How do you plead to murder? How do you plead to
12 murder?

13 MR. HENSON: How do I plead?

14 THE COURT: Yeah.

15 MR. HENSON: I plead guilty today.

16 THE COURT: Under *Alford*?

17 MR. JAMIESON: Under *North Carolina versus Alford*.

18 THE COURT: I understand when you say guilty all the
19 time. I'm gonna accept that as guilty under *Alford* so you
20 don't have to say that every time. I understand that.

21 How about how do you plead to possession of a firearm
22 during the commission of a violent crime?

23 MR. HENSON: Yes, sir.

24 THE COURT: Guilty?

25 MR. HENSON: Yes, sir.

1 THE COURT: All right, you have three armed robberies.
2 These carry a minimum of ten years in jail and up to thirty
3 years in jail. I didn't tell you that murder is a felony
4 but it is as are the armed robberies. The armed robberies
5 are a most serious and they are violent and they carry with
6 them -- I don't think it would matter under the
7 circumstances here but they carry with them a no-parole
8 provision.

9 Do you understand that as to these three armed
10 robberies?

11 MR. HENSON: Yes, sir.

12 THE COURT: It's alleged on the same date as to murder
13 October 1st, 2009 you did commit armed robbery by taking a
14 cell phone and a wallet from Henry Jackson on Byars Street.

15 How do you plead to that?

16 MR. HENSON: Guilty.

17 THE COURT: It's alleged in the second indictment that
18 you on that same date took from Tyrone King at that same
19 address, [REDACTED] a cell phone and other items of
20 value. How do you plead to that?

21 MR. HENSON: Guilty.

22 THE COURT: The third armed robbery alleges that on
23 that same date you took things of various items of value
24 from Kenny Cunningham again on [REDACTED] All these
25 are alleged to have been done by using force or

1 intimidation by holding the victim at gunpoint and that you
2 committed them with a deadly weapon. So how do you plead
3 to armed robbery with Mr. Cunningham?

4 MR. HENSON: Guilty.

5 THE COURT: How do you plead to armed robbery with Mr.
6 King as the victim?

7 MR. HENSON: Guilty.

8 THE COURT: And how do you plead to armed robbery with
9 Mr. Jackson as the victim?

10 MR. HENSON: Guilty.

11 THE COURT: You're also charged with assault and
12 battery with intent to kill. It is also a violent and most
13 serious offense. This carries twenty years?

14 SOLICITOR THOMPSON: Yes, your Honor.

15 THE COURT: This carries up to twenty years in jail
16 and its alleged that that occurred on or about October 1st
17 2009 when you committed an assault and battery upon Kenny
18 O'Brian Cunningham by shooting him with a firearm. This
19 occurred at [REDACTED] [REDACTED] [REDACTED] Do you understand that
20 charge?

21 MR. HENSON: Yes, sir.

22 THE COURT: How do you plead to that?

23 MR. HENSON: Guilty.

24 THE COURT: Now, the State has told me what the
25 agreement, the negotiated sentence is and it's marked on

1 the sentencing sheets as being negotiated sentences. Other
2 than what the Solicitor told me as far as the negotiated
3 sentence is, has anyone made any other promise or threats
4 to cause you today to enter your plea of guilt to these
5 charges?

6 MR. HENSON: No, sir.

7 THE COURT: As to these charges are you today entering
8 your pleas freely and voluntarily?

9 MR. HENSON: ,Yes, sir.

10 THE COURT: ,Are you under the influence of anything
11 that would cause you to be intoxicated?

12 MR. HENSON: ,No, sir.

13 THE COURT: ,Mr. Henson, you have a right to a trial by
14 a jury on these charges. They could be all tried at one
15 time as they all come out of one event. You are presumed
16 innocent of the charge, each of these charges, until such
17 time as the State would be able to, if it could, to prove
18 your guilt beyond a reasonable doubt. As to the charges
19 you have the right to remain silent, the right to confront
20 the witnesses against you and you have the right to have
21 your witnesses made to come to court to testify on your
22 behalf.

23 Do you understand you have all these rights?

24 MR. HENSON: Yes, sir.

25 THE COURT: Do you have any questions about any of

1 them? Do you have any questions about any of those rights?

2 MR. HENSON: No, sir.

3 THE COURT: I advise you, Mr. Henson, that by entering
4 pleas of guilt to these charges that as to these charges
5 you're giving up these rights and you're also giving up any
6 defense that you might have to these charges.

7 Do you understand that?

8 MR. HENSON: Yes, sir.

9 THE COURT: I ask again, how do you plead to the
10 murder of Tyrone Quantarious King?

11 MR. HENSON: Guilty.

12 THE COURT: How do you plead to armed robbery
13 involving Henry Jackson?

14 MR. HENSON: Guilty.

15 THE COURT: How do you plead to armed robbery
16 involving Tyone King?

17 MR. HENSON: Guilty.

18 THE COURT: How do you plead to armed robbery
19 involving Kenny Cunningham?

20 MR. HENSON: Guilty.

21 THE COURT: How do you plead to assault and battery
22 with intent to kill with the victim being Kenny O'Brian
23 Cunningham?

24 MR. HENSON: Guilty.

25 THE COURT: And how do you plead to having possessed a

1 firearm at the time of the attempted murder -- I mean at
2 the time of the murder?

3 MR. HENSON: Guilty.

4 THE COURT: All right, I'm gonna ask you to listen
5 while I'm given the facts by the Solicitor.

6 SOLICITOR THOMPSON: May it please the Court, your
7 Honor. This occurred on October the 1st of 2009 around
8 eleven o'clock on [REDACTED] [REDACTED] in Rock Hill at the
9 residence of Maurice Jackson. That's Henry Maurice
10 Jackson. Mr. Jackson is present in the courtroom today.

11 Mr. Jackson was on the porch of his residence with a
12 couple of his friends Kenny Cunningham and Tyrone King.
13 They had been having a leisurely afternoon and into the
14 evening of that night; however, this defendant as the State
15 proved in the case before and would seek to prove again if
16 we went to trial which our trial date was scheduled for
17 June 22nd; that this defendant along with his co-defendants
18 Donta Reid, Aileen Newman and Samantha Ervin got together
19 discussing the possibility of robbing someone.

20 Ultimately they ask Donta Reid about the possibility
21 of robbing his friend Maurice Jackson. He reluctantly
22 agreed but ultimately did agree to do that; went to Maurice
23 Jackson's house to see who was there with Maurice. They
24 figured they would have some marijuana and maybe some money
25 that they could take. At the time that he was at the house

1 he then realized the other two victims were there; that
2 Kenny Cunningham was there and Tyrone King. He borrowed
3 the cell phone of Maurice Jackson to call back to one of
4 his co-defendants to let them know that there were two
5 other people in addition to Maurice being there on the
6 porch.

7 After doing that he went back and met with them. They
8 at that point decided that of course since they knew Donta
9 Reid he would not go back and since they knew Samantha
10 Ervin that she would not go back so Aileen Newman and Donta
11 Reid or Aileen Newman and this defendant went back with Mr.
12 Henson having a rifle at the time; the rifle being a .22
13 that was rigged to fire automatically.

14 He hide that within his pants as they went to the
15 residence. As they approached Aileen Newman or Aileen
16 Newman went up and began to ask if they had a smoke that
17 she could have. When she approached they started paying
18 attention to her. The defendant was immediately behind her
19 and came into the yard pulling the rifle telling them that
20 this was a robbery at that time. Aileen Newman began going
21 through each of the victim's pockets. The defendant as
22 well stepped up to the porch and at least went through the
23 pockets of two or patted down two of the young men who were
24 on the porch; according to their testimony that they took
25 from them cell phones, wallets, cash, a box of cigarettes

1 that actually had a marijuana cigarette or two in it and
2 they stole those at that point in time.

3 As they began to leave the yard each one of the
4 victim's had totally cooperated, did not resist in any way,
5 as they began to leave the yard Aileen Newman said
6 something back to her co-defendant and according to the
7 testimony was something to the effect of either they've
8 seen my face, do something, or as back to shoot them or do
9 something or shoot at them because of the fact that they
10 had seen her face. The defendant had put a bandanna -- had
11 a hoodie on to cover his face; however, Maurice Jackson in
12 his testimony was able to say that he noticed a Baltimore
13 accent from the defendant who was from Baltimore; that
14 Maurice Jackson has relatives from Baltimore so he recalls
15 and knows what that accent is.

16 As well while he could not see the face of the person
17 and did not know them he could tell that they had dreds and
18 he told that to the police who called that out along the
19 radio when they were calling out a description of the
20 defendant. But as soon as Aileen Newman said that
21 apparently this defendant then began to fire the gun.
22 Numerous shots were fired at that point. Kenny Cunningham
23 was shot in the leg and the foot. Unfortunately Tyrone
24 King was shot in the head and died immediately or very soon
25 thereafter as a result of that gunshot wound.

1 The defendant's fled then at that point meeting up
2 with their co-defendant's who Samantha Ervin then drove
3 back to her place where they were staying. They ultimately
4 dispersed later that night and into the next day. As the
5 police became aware of the evidence they were able to find
6 out through the victims, through Maurice Jackson, that
7 Donta Reid had come by and made a strange comment on the
8 phone call. And when they did that they talked to Donta
9 Reid who then gave several statements some of which only
10 implicated himself and one of the women and then he
11 implicated ultimately or initially another person who
12 wasn't involved at all, a Mr. Jeter, and then it wasn't
13 until his court's date that he actually implicated this
14 defendant.

15 But in implicating some of the women when they were
16 questioned they immediately began telling the police of all
17 the people involved; that Jeter was not involved, that it
18 was Henson that was involved in the shooting. They
19 testified in the prior trial and the evidence the jury
20 considered convicted both Mr. Reid and Mr. Henson at that
21 trial.

22 To let the Court know as far as the plea under *North*
23 *Carolina versus Alford*, according to the testimony of the
24 co-defendant's they had been smoking marijuana that day and
25 drinking alcohol and were under the influence of that at

1 the time; that they made the decisions that they made and
2 at the time of the robbery and that the defendant would
3 have also been under the influence of those at the time.

4 In addition the defendant is receiving the benefit of
5 a bargain in this case as far as entering a plea in order
6 to receive a reduced sentence as to what he received the
7 last time. The State had already prepared to go to trial
8 on the 22nd. I will let the court know that all of the
9 witnesses who testified in the last trial were available
10 and ready to testify in this trial except for one who is
11 Shalika Black who was a peripheral witness who we know
12 where she's moved but had not official served her with a
13 subpoena yet.

14 All the other law witnesses are under subpoena and had
15 been talked to if not by myself by our investigators and so
16 that their testimony has not changed; it would be the same.
17 And in fact I have personally gone and spoken with both
18 Aileen Newman and Samantha Ervin and they have both said
19 that they will fully cooperate in the trial if it were
20 necessary in a new trial and they would testify their
21 testimony had not change it was the same as it was before.
22 So the State was ready and as far as proof the State could
23 prove the exact same case as we had the last time. Even
24 providing the officer again from Baltimore who arrested the
25 defendant there.

1 As the Court may recall he was arrested some nine
2 months later, sorry, eleven months later in Baltimore where
3 he had fled. The police had used many things from the
4 Marshall service and other police agencies in Baltimore to
5 try and find the defendant after the crime occurred here.
6 The defendant immediately was gone from school at that
7 point here in York County without properly withdrawing.
8 His sister as well immediately was gone from school after
9 this happened without properly withdrawing.

10 His sister ultimately registered for school in
11 Baltimore and ultimately we found out the defendant had
12 moved to Baltimore with his mother and his sister and had
13 been hiding there; of course, shaved the dreds off; was
14 using a fake name when he was arrested. And at that point
15 when they ran his fingerprints they found out that he was
16 wanted in South Carolina and that he actually was Davontay
17 Henson.

18 So the State was ready to go forward and would be able
19 to present the exact same case as we presented before, your
20 Honor, and I feel confident in that. And we were prepared
21 to do so and in showing that he would likely be convicted I
22 believe that is obviously the case at this point as well.

23 THE COURT: Mr. Henson, do you agree that were you to
24 go to trial and, of course, there has been a previous
25 trial, you agree that those would be the facts that the

1 State would present to the jury?

2 MR. HENSON: Yes, sir.

3 THE COURT: All right. I accept your pleas. I find
4 they're freely voluntarily knowingly and intelligently
5 entered; entered with the advice of competent counsel with
6 whom you are satisfied. I find the facts support your plea
7 and I -- you've signed pleas of guilt.

8 Now had anybody said earlier but just to make sure
9 that any of the victims want to speak?

10 SOLICITOR THOMPSON: Yes, your Honor, I'll double
11 check.

12 No, your Honor, none of the victim's family wishes to
13 speak.

14 THE COURT: Mr. Henson, I'll hear what Mr. Jamieson
15 has to say on your behalf and then be glad to hear from
16 you.

17 MR. JAMIESON: Your Honor, Mr. Henson is now twenty-
18 three years old. At the time this happened he was
19 seventeen years old. He has matured significantly in that
20 period of time and frankly he's matured quite a lot since I
21 first stated talking with him. He is a different young man
22 that I first approached. He lived here in Rock Hill at the
23 time this happened and attended Northwestern High School.
24 He went through the tenth grade. He is from Baltimore.
25 Some of his family are from Baltimore. His grandmother and

1 other family members are in the courtroom on his behalf.
2 They do not wish to address the court.

3 Mr. Henson has shown, as I said, a fair amount of
4 maturity since I first started talking with him. I believe
5 this plea will allow him to come out and be a constructive
6 member of society and that's his hope as well, your Honor.

7 While he was in prison he worked on his GED and
8 attended -- intends to continue that and other programs and
9 try to make something of himself.

10 THE COURT: Mr. Henson, anything you want to say?

11 MR. HENSON: No, sir.

12 THE COURT: All of these are to run concurrent.

13 On all of these you're getting credit for a hundred
14 and thirty -- One thousand, three hundred and ninety-three
15 days. That is from 9/8/2010. On the murder and the three
16 armed robberies each of those -- again they're all to run
17 concurrent -- they're all for thirty years.

18 On the assault and battery with intent to kill the
19 sentence is twenty years. And on the possession of a
20 firearm during the commission of a violent crime five
21 years. Thank you.

22 MR. JAMIESON: Thank you, Judge.

23 SOLICITOR THOMPSON: Thank you, your Honor.

24 (END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 General Sessions for York County, South Carolina, on 28 th day of May, 2015.

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

Wanda Nelson
 Wanda Nelson, CVR
 Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: October 22 / 2016

STATE OF SOUTH CAROLINA

COUNTY OF York

Davontae D. Henson #348736
Plaintiff(s)

vs.

S.C. Attorney General Office
Defendant(s)

(Please Print)

Submitted By: Davontae D. Henson
Address: P.O. Box 205
Ridgeville, S.C. 29472

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP- 46 - 2637

SC Bar #: S.C. Attorney General
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

* If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Constructions (1100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Libel (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Eminent Domain (510) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | <input type="checkbox"/> Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mortgage Lien (530) |
| <input type="checkbox"/> Breach of Contract (140) | <u>20 -CP-</u> | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (540) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (550) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (60) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |

- | | | | |
|--|---|---|---|
| <input checked="" type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Administrative Law/Relief | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript of Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SC DOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement | <input type="checkbox"/> Worker's Comp (960) |
| | | <input type="checkbox"/> Payment Rights Application (760) | <input type="checkbox"/> Zoning Board (970) |
| | | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Public Service Commission (990) |
| | | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (80) | <input type="checkbox"/> Employment Security Commission (991) |

- | | | | |
|--|---|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Automobile Arb (610) | <input type="checkbox"/> Unfair Trade Practices (610) | | |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Foreign Subpoenas (650) | | |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (600) | | |
| <input type="checkbox"/> Sexual Predator (610) | | | |

Re-sudour the Davontae D. Henson 10/05/16

Submitting Party Signature: Davontae D. Henson Date: 8-10-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

CO-RECEIVED
FORM 5

2016 SEP -7 AM 11:32

STATE OF SOUTH CAROLINA

COUNTY OF *York*

Devontae D. Hanson, #348736

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

v.

State of South Carolina, *Office of Attorney General*
Respondent.

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC
IN THE COURT OF COMMON PLEAS

2016 CP 46 2637

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 *Lieber Correctional Institution*
2. Name and location of Court which imposed sentence *York County General Session Court*
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *Armed Robbery 2010-GS-46-04461-04461A, 2010-GS-46-04460-*
 - (b) *04460A, 2010-GS-46-04459-04459A Assault + Battery with intent to Kill. 2010-*
 - (c) *GS-46-04458-04458A Murder 2010-GS-46-04457-04457A*
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *May 28, 15*
 - (b) *30 Years*

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. _____

ii. Reversed

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) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See Attach Sheet

(a) _____

(b) _____

(c) _____

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. *South Carolina Supreme Court on Direct Appeal*

ii. *January 22, 2014*

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. *N/A*

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) *I was not advised by trial counsel of the right to raise them*

(b) _____

(c) _____

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

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

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. Philip Jamieson, ATTORNEY AT LAW
- ii. 242 Oakland Ave.
- iii. Rock Hill, S.C. 29730
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

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

New Trial

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

No

Attach Sheet

Pursuant to S. C. Code of Laws section 17-27-10 to 120 An Application for Post Conviction Relief filed pursuant to Chapter 17 section 17-27-20 (1)(c) must be filed within one (1) year after entry of a Judgment of or within one (1) year after the sending of the remittitur to the lower Court from an appeal of the final decision upon an appeal which ever is later.

Applicant set forth this Cause of action pursuant to the Jurisdiction that are set forth in Chapter 17 section 17-27-20 (1)(c) "Collateral attack upon and grounds of alleged error heretofore available under this uniform Post Conviction Act that are being submitted or amended.

The Applicant asserts the following ground for relief at this time (1) ineffective assistance of trial Counsel. Applicant also asserts that due to his lack of understanding of the Law, Applicant request that Counsel be appointed pursuant to 71.1 (d) SCRCiv. P. and S.C. Code of Laws 17-27-90.

Applicant asserts that there are further grounds to be raised but due to the lack of records and without such, and the assistance of Counsel it would be Chronologically impossible for the applicant to carry such a burden to show his entitlement for relief by a Preponderance of the evidence, and for the appointment of Counsel to insure that all available grounds for relief are included in the application, S.C. Code of Law 17-27-90.

Therefore, Applicant request that this Court appoint Counsel in the above mention application, Applicant moves this Honorable Court to grant leave to amend this application in this Cause of action due to the lack of Counsel and Applicant is a lay person at law. Applicant seeks this Court approval of this application so that Applicant right to a PCR won't be deem abandon.

Respectfully Submitted,

August 8, 2016

Darontay D. Henson
Darontay D. Henson #348736

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Demetrius D. Henson

SWORN to and subscribed before me this 8
day of August, 2016.

John K. B. (L.S.)
Notary Public

My Commission Expires: JUNE 20, 2026

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

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

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

Darlington D. Henson
Applicant

SWORN or affirmed to and subscribed before me this
8 day of August, 2016.

L. K. B.
Notary Public

My Commission Expires: JUNE 20, 2026

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
)
DARRELL D. HENSON, #348736)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-2637

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Leah B. Moody, Esquire</u> Address: <u>Law Office of Leah B. Moody, LLC</u> <u>PO Box 1015</u> <u>Rock Hill, SC 29731-7015</u> Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Justin J. Hunter, AAG</u> Bar No. <u>101254</u> Address: <u>PO Box 11549</u> <u>Columbia, SC 29211</u> Phone: <u>(803) 734-3737</u> Fax: <u>(803) 734-4113</u> E-mail: _____ Other: _____									
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO										
SECTION II: Motion/Order Type										
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant 	November 28, 2016 Date submitted									
SECTION III: Motion Fee										
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason) <table style="margin-left: 20px; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support										
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect										
<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party										
<input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief										
<input type="checkbox"/> Motion for Stay in Bankruptcy										
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)										
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions										
Name of Court Reporter: _____										
<input type="checkbox"/> Other: _____										
JUDGE'S SECTION										
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____									
CLERK'S VERIFICATION										
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____										

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

Davontay Darrell Henson, #348736,

Applicant,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-2637

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 7, 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 York County. Applicant was indicted by the December 2010 term of the Grand Jury for York County for murder (2010-GS-46-04457), assault and battery with intent to kill (2010-GS-46-04458), three counts of armed robbery (2010-GS-46-04459, 04460, 04461), and five counts of possession of a firearm during the commission of a violent crime (2010-GS-46-04457A, 04458A, 04459A, 04460A, 04461A). Applicant was represented by Philip Wayne Jamieson, Esquire. On May 28, 2015, Applicant pled guilty under *Alford* to all charges. Pursuant to the plea, all possession of a firearm indictments were dismissed other than the one relating to the murder indictment (-04457A). Applicant was sentenced on May 28, 2015 by the Honorable John C. Hayes, III to a negotiated sentence of thirty years imprisonment for murder, thirty years imprisonment for each count of armed robbery, twenty years imprisonment for assault and battery with intent to kill, and five years imprisonment for

possession of a firearm during the commission of a violent crime, all to be served concurrently. Applicant was given credit for 1,393 days of time served.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal in an order filed September 9, 2015. State v. Henson, Appellate Case No. 2015-001241 (Filed S.C. Ct. App. 2015). The Remittitur was returned on September 25, 2015.

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

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons: Ineffective Assistance of Counsel.

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.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code

of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. Respondent will move to strike any amendments withheld until the last minute where such amendments result in prejudice to Respondent. See Rules 15(a)-(b), SCRCF.

V.

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

[Signatures on following page]

VI.

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


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

November 28, 2016

1 STATE OF SOUTH CAROLINA

2 -----x

3 Davontay Darrell Henson,

4 Applicant,

5 Case No.

6 -against-

2016-CP-46-02637

7 State,

8 Respondent.

9 -----x

10 July 31, 2017

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE R. LAWTON MCINTOSH, Judge.

15

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

17 LEAH B. MOODY, Esquire

18 Attorney for the Applicant

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the State

22

23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Davontay Darrell Henson			
4	Ms. Moody	5		
5	Mr. Hunter		19	
6				
7	Philip Jamison			
8	Mr. Hunter	14		
9	Ms. Moody			
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

E X H I B I T S

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

NO.

DESCRIPTION

I.D.

EVD.

NO EXHIBITS INTRODUCED

1 MR. HUNTER: May it please the Court, Your Honor.
2 The first case today is Davontay Henson versus State
3 versus State of South Carolina, 2016-CP-46-2637.

4 Your Honor, he was indicted 2010 in York County for
5 murder, ADWIK, three counts of armed robbery and five
6 counts of possession of a weapon during a violent
7 crime. He was represent by Mr. Phil Jamieson.

8 On May 28, 2015 he plead under Alford before Judge
9 Hayes and was sentenced to -- pursuant to a negotiated
10 sentence to thirty years for murder, twenty years for
11 ABWIK, thirty years for the armed robbery charges and
12 five years for the weapons charge.

13 Your Honor, he did file a direct appeal. This was
14 dismissed on September 9, 2015. Remittitur was sent
15 September 25, 2015. He filed this current action
16 September 7, this 2016. He is present today
17 represented by Miss Leah Moody.

18 THE COURT: Miss Moody.

19 MS. MOODY: Thank you. Your Honor, may it please
20 the Court.

21 THE COURT: Yes, ma'am.

22 MS. MOODY: The State does correctly state the
23 procedural history in this case. I would just explain
24 to the Court there was a trial and that trial and this
25 was a second time that trial was sent back. So he's

1 bringing before the Court the plea that he actually
2 did on that day and that was with Mr. Jamieson.

3 THE COURT: Okay.

4 MS. MOODY: At this time I would call Mr. Henson
5 to the stand as our first witness.

6 THE COURT: Come around.

7 DAVONTAY DARRELLL HENSON, called as a witness,
8 having been duly sworn by the clerk, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MOODY:

12 Q Mr. Henson, could you please state your full name for
13 the record?

14 A Davontay Darrell Henson.

15 Q And where are you currently incarcerated?

16 A Lee Correctional Institution.

17 Q And can you explain to the Court which charges caused
18 you to be at the Lee Correctional Institution?

19 A A murder charge, armed robbery, a firearm charge and --
20 murder, armed robbery, a firearm charge and assault and battery
21 with intent to kill.

22 Q And you entered a plea on those charges, correct?

23 A Yes, ma'am.

24 Q And who was your attorney at that time?

25 A Mr. Phil Jamieson.

1 Q And was he your original attorney?

2 A No, ma'am.

3 Q How long was he your attorney?

4 A He was my attorney for 15 months.

5 Q All right. And during that 15 months did you have
6 opportunity to met with him?

7 A Yes, ma'am.

8 Q Okay. And how often did you met with him?

9 A I actually met with him I think -- and I can't
10 remember. It was about three to four times.

11 Q Okay. And did you go over your case with Mr. Jamieson?

12 A Yes, I went over my case with Mr. Jamieson a few times.

13 Q And were you able to see the Discovery in your case?

14 A Yes, ma'am.

15 Q And as far as going over your case what if anything did
16 you talk about with your attorney regarding trial?

17 A Can you say that again.

18 Q What, if anything, did you all discuss regarding a
19 trial?

20 A Actually I asked him to call a few witnesses in my
21 behalf, to come and testify on my behalf. I talked to him about
22 that. I actually talked to him about that. I questioned him
23 about me being sentenced to life and that he couldn't -- that I
24 was a juvenile at time and that wasn't -- they couldn't do that.

25 Q So how old were you at the time of these crimes?

1 A I was the age of 17.

2 Q Okay, and where were you living at 17?

3 A I was living in Rock Hill, South Carolina.

4 Q Okay. And so one thing I forgot to ask you. You filed
5 ineffective assistance of counsel against your attorney?

6 A Yes, ma'am.

7 Q And that's Mr. Jamieson, can you state for the Court
8 those grounds?

9 A Well, one of them I'm saying he was ineffective as
10 trial counsel because my trial counsel either lied to me or did
11 not know that I could not receive a life sentence and therefore
12 I should take a plea for thirty years. I say that was wrong
13 information. I couldn't receive a life sentence because I was a
14 juvenile during the time of these charges. Had I known -- had I
15 known that I wouldn't have took the plea.

16 Q So how did you learn that you couldn't receive a life
17 sentence?

18 A I actually received a letter from the Cornell Justice
19 Center.

20 Q The what?

21 A Carnell -- here you go. That's the letter I received
22 from him right here.

23 MS. MOODY: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, ma'am.

1 Q You received a a letter from Cornell?

2 A Yes, ma'am.

3 Q And this is Cornell Law School?

4 A Yes, ma'am.

5 Q And I am going to show you this envelope. That's the
6 envelope that the letter came in?

7 A Yes, ma'am.

8 Q And when did you receive that?

9 A I received it June 12, 2015.

10 Q Okay. And when did you plead?

11 A I plead May the 28th, 2015.

12 Q Okay. And on that letter -- who is that letter
13 addressed to?

14 A Davontay Henson.

15 Q Okay. And so --

16 MS. MOODY: If I may, Your Honor, show this.

17 Q Mr. Henson, if you could -- this is the letter that you
18 indicate you received and can you tell the Court what that
19 letter informs you?

20 A It informs me -- I can read the letter.

21 THE COURT: If you just pass it up I will look at
22 it.

23 MS. MOODY: All right.

24 (WHEREUPON, a letter was handed to the judge)

25 Q So when you say it informed you, it told you about

1 being a juvenile and whether you could be sentenced?

2 A Yes, ma'am.

3 Q Okay. And so did you have that discussion with Mr.
4 Jamieson?

5 A Yes, ma'am. I had a discussion before I even took my
6 plea and he told me that was not the truth.

7 Q Okay. So how did you all get on that conversation
8 before you took your plea?

9 A Because I was insisting on going to trial.

10 Q Okay, and why were you insisting on going to trial?

11 A Because I wanted to prove my innocence.

12 Q So this relates back to the first trial that you had?

13 A Yes, ma'am.

14 Q Okay, and that trial the verdict, or the conviction was
15 overturned?

16 A Yes, ma'am.

17 Q And based on the conversation with Mr. Jamieson was
18 that the basis of why that case was overturned?

19 A Ask me that question again.

20 Q Was your first trial conviction overturned based on the
21 fact that you were juvenile?

22 A No, ma'am. It was dealing with a confrontational
23 clause issue.

24 Q So again how did you all get to the subject of you
25 being a juvenile and not being able to be sentenced a certain

1 way?

2 A Because actually I wrote -- I actually wrote Georgetown
3 University and I asked them about a certain case but they
4 couldn't actually give me case law because I didn't cite the
5 case but they sent me a newspaper article stating Miller versus
6 Alabama and it was dealing with that and that's when I came --

7 Q Wait a minute. When you say dealing with that, dealing
8 with what?

9 A Dealing with the issue of a juvenile couldn't be
10 sentence to life in prison.

11 Q And so you brought that up to Mr. Jamieson?

12 A Yes, ma'am.

13 Q And what if anything did he tell you?

14 A He said that I could be sentenced to life.

15 Q Okay.

16 A I could be sentenced to life and I was telling him no.
17 But since he was my attorney I took his advice. I took his
18 advice on that because I'm not a lawyer. I'm not a lawyer. I
19 really don't understand the law.

20 Q So when you say you took his advice what was your
21 advice?

22 A That I should take a plea instead of going to trial and
23 getting life. Being sentenced to life in prison.

24 Q Okay. So the plea -- at that time had you gotten a
25 plea offer?

1 A The plea offer was thirty years.

2 Q Okay. So this is in the context of you all talking
3 about accepting the plea offer?

4 A No, ma'am.

5 Q Go ahead.

6 A I'm sorry. Can you ask me again. I'm sorry.

7 Q When I say in the context, so at the time that you all
8 are meeting --

9 A Yes, ma'am.

10 Q -- do you all talk about the juvenile sentencing?

11 A Yes, ma'am.

12 Q And then you talk about the offer that came from the
13 State?

14 A Yes, ma'am.

15 Q Okay, so on the same day?

16 A Yes.

17 Q So on that same day at that time he advised you you
18 needed to take the plea because you could get life?

19 A Yes, I could get life if I go to trial and be found
20 guilty.

21 Q And then what if anything else did he advise you in
22 terms of whether you went to trial or if you took a plea? Did
23 he advise you of anything else?

24 A He advised me that the plea, the thirty-year plea would
25 be 85 percent. If I was to take the 30-year plea it would be a

1 85 percent sentence.

2 Q Okay. But now as to that plea what would -- you would
3 be pleading to which charge?

4 A I would be pleading to the murder charge.

5 Q Okay. And so he said you would serve 85 percent?

6 A Yes.

7 Q On murder?

8 A Yes, ma'am.

9 Q Okay. And did he give you any other sentencing advice?

10 A The calculation -- my calculation of my days. I was
11 getting time credit for time served for the time that I had done
12 previous to the plea agreement.

13 Q Okay. And what date were you taken into custody on
14 these charges?

15 A September the 9th of 2010.

16 Q Okay. And so when you say you would get credit for
17 time served it's from September 9, 2015 -- excuse me, 13?

18 A No, it's 2000 -- September 9, 2010.

19 Q 2010. I'm sorry. September 9, 2010 you would get
20 credit from that day until May 28, 2015?

21 A Yes, ma'am.

22 Q Okay. And to your knowledge did you get that credit?

23 A No, ma'am, I didn't get all the credit. It was like a
24 year -- a year something off of the calculation of the days.

25 Q Okay. And how do you know that it was a year off?

1 A I did calculation of the days and it didn't add up to
2 the date, September the 9th 2010 to the May 28, 2015 didn't add
3 up to take date.

4 Q Now were you in custody continuously from September
5 9th?

6 A Yes, ma'am.

7 Q Okay, and in fact in the transcript the State informs
8 the Court that you were in custody continuously?

9 A Yes, ma'am.

10 Q And did you and your attorney prior to going before the
11 Court calculate your time that you had for credit?

12 A Yes, ma'am.

13 Q And did it come out to be the number that you were told
14 1393 days? Was it 1393 days?

15 A 1300?

16 Q One thousand, three hundred and ninety-three days?

17 A Was that the calculation.

18 Q Right, is that the correct calculation?

19 A No, ma'am.

20 Q Okay. And so, as far as the sentencing calculation you
21 recognize that the judge can't make the Department of
22 Corrections change your sentencing; the days that you get credit
23 for, correct?

24 A Okay.

25 Q They can't go in and calculate the days, right

1 A Who?

2 Q The Court.

3 A No, I didn't know that.

4 Q Just follow me here. They're not the Department of
5 Corrections --

6 A Yes, ma'am.

7 Q -- calculating your days, the Court is not?

8 A Yes, ma'am.

9 Q Okay, but on your sentencing sheet the information that
10 was provided in court the Court wrote the days -- the number of
11 days that you should receive credit for?

12 A Yes, ma'am.

13 Q And the only relief you are asking in terms of that is
14 you would like the Court to put the correct number of days that
15 you are entitled to on the sentencing sheet?

16 A Yes, ma'am.

17 Q Okay. And you got that information from who at the
18 Department of Corrections?

19 A I actually talked to the classification and I provided
20 them with it and I was like -- I provided them with the
21 information and classification, me and her talked, and I was
22 like how is my release date September of 2041 when I have been
23 incarcerated since September the 10, 2010. I mean September the
24 9, 2010. That's not thirty years, that's 31 years and that's
25 when we came up that the days was miscalculated.

1 Q And so you just want the correct calculation
2 configured?

3 A For that issue, yes, ma'am.

4 Q And as to the your lawyer telling you that you would
5 serve 85 percent on the murder charge, you're asking for what
6 relief for that?

7 A I'm asking for -- I'm actually asking for a new trial
8 on that issue because had I known I wouldn't have took that
9 plea. I wouldn't take thirty years at one hundred percent. I
10 wouldn't have took it.

11 Q When you one hundred percent do you mean day for day?

12 A Yes, ma'am. I didn't know the difference between that.

13 Q So, what is your understanding as to the other charges
14 that you have or that you had at the beginning? Do you
15 understand that those charges could -- they will come back?

16 A Like come --

17 Q The charges that you originally were charged with --

18 A Yes, ma'am.

19 Q You understand that they could all be back on the table
20 again?

21 A Yes, ma'am.

22 Q And you're willing to take that chance?

23 A Yes, ma'am.

24 Q Okay. As far as the other issue that you mentioned in
25 terms of your ineffective assistance of counsel --

1 MS. MOODY: I beg the Court's indulgence.

2 Q You mentioned that at the time you were talking about
3 the plea with your attorney that your lawyer told you could get
4 life without parole?

5 A Yes, ma'am.

6 Q And what relief are you -- well, you're asking for the
7 same relief based on that issue as well that you are given
8 another trial?

9 A Yes, ma'am.

10 Q Is there anything else that your lawyer did not do that
11 you feel he should have done in representing you?

12 A I feel as though he should have investigated more. He
13 should have investigated more on whether or not I was to be
14 sentenced to life or not.

15 Q Okay. And did he ever explain to you the case law
16 thank you mentioned to him, what the difference might have been
17 with that case and your situation?

18 A No, ma'am. No, ma'am.

19 Q So how many times did you all talk about that?

20 A I actually wrote letters through the Clerk of Court
21 asking forward some letters to Mr. Phil Jamieson dealing with
22 that issue and that was -- I did that a few times and he came up
23 there and we talked. Actually I file to relieve as counsel and
24 I said in a hearing of trying to relieve him as my counsel I
25 brought that -- if I can remember -- I brought that issue up too

1 as well dealing with that.

2 Q Dealing with life without parole?

3 A Please ask me the question again.

4 Q How many times did you all talk about the life without
5 parole?

6 A I wrote through the Clerk of Court. He came and talked
7 to me a few times and every time he came to talk to me out of
8 three or four times I brought that up.

9 Q Okay. Did you all discuss any medications that you
10 were taking at the time?

11 A Yes, I told him I was taking Remeron.

12 Q And your issue with regard to the medication you were
13 taking could you explain to the Court?

14 A I actually got off the medication because it was
15 causing me drowsiness and I couldn't function as normal as I was
16 without the medication. So I asked to be took off the
17 medication once I got back to SCDC because I couldn't function
18 off of it.

19 Q And as far as that is concerned did you expect for your
20 attorney to do anything about that?

21 A About the medication?

22 Q Yes.

23 A He could have asked what kind of effect the medication
24 have on me because at the time I was taking it I wasn't
25 functioning right. It was -- I wasn't functioning right on that

1 medication at all.

2 Q What do you mean you weren't functioning right?

3 A Drowsiness, laziness, dizziness, confusion. It was
4 just tot much for me. So I asked them to remove it because some
5 things I didn't understand when I was on it.

6 Q So you asked your attorney to get you off of it?

7 A No, I asked counselors to remove me from the
8 medication.

9 Q Which counselors?

10 A At the department of corrections.

11 Q This was after your conviction?

12 A Yes, ma'am.

13 Q So during the time that I mean -- help me understand
14 you're saying the Remeron effected your plea on that day, on May
15 28th?

16 A Yes, ma'am.

17 Q Okay. And did you explain that to your lawyer?

18 A No, ma'am.

19 Q But you did tell him that you were on Remeron?

20 A Yes, ma'am.

21 Q Did you explain that to the Court? Did you tell the
22 Court that?

23 A No, it was on the plea agreement. I did not tell the
24 Court that.

25 Q When you say "plea agreement" do you mean the plea

1 affidavit?

2 A Yes, ma'am.

3 MS. MOODY: I beg the Court's indulgence.

4 Q And the plea affidavit was signed on the same day of
5 your plea?

6 A Yes, ma'am.

7 Q One last thing. As far as your relief that you are
8 seeking from the Court, you're asking for a new trial? For the
9 Court to grant your relief and grant you a new trial?

10 A Yes, ma'am.

11 Q Is there any other relief you are seeking from the
12 Court?

13 A No, ma'am.

14 MS. MOODY: No further questions for this witness
15 Your Honor. Please answer any questions.

16 THE COURT: Cross examination.

17 MR. HUNTER: May it please the Court.

18 CROSS EXAMINATION

19 BY MR. HUNTER:

20 Q So you said the Remeron you put that in the plea
21 affidavit, is that correct?

22 A Yes, ma'am. Yes, sir.

23 Q And the judge asked you if you were under the influence
24 of anything you said no, right?

25 A Yes, sir.

1 Q So you're saying that, and you're testifying you never
2 told your attorney you were taking that medicine?

3 A No, I told him I was taking Remeron. I told my
4 attorney.

5 Q But you never told him it effected your ability to
6 understand things?

7 A No, sir.

8 Q Okay. Now with the life imprisonment I guess
9 allegation, I just want to be clear. Are you talking about life
10 without parole or life?

11 A Life, life without parole.

12 Q Okay. Were you served with life without parole notice?

13 A No, what -- can you ask me that question. What kind of
14 notice is that?

15 Q Did the State ever tell you that they were going to
16 seek life without parole?

17 A That's what my attorney told me and that's what they
18 were seeking if I were going to trial, yes, sir.

19 Q Did you see any documents that said that?

20 A From my last trial I had the same documentations in my
21 motion because this was the second time I was here.

22 Q So before the plea -- before that plea hearing -- after
23 your trial, but before the plea, did you ever see any paper work
24 about life without parole?

25 A No, sir.

1 MR. HUNTER: I don't have anything else.

2 THE COURT: Redirect?

3 MS. MOODY: No further questions.

4 THE COURT: Thank you, sir. You may step down.

5 Any other witnesses?

6 MS. MOODY: No, sir.

7 MR. HUNTER: Your Honor, the State would call Mr.

8 Phil Jamieson.

9 PHILIP JAMIESON, called as a witness, having been
10 duly sworn by The Clerk, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. HUNTER:

14 Q Good morning Mr. Jamieson. Please state your name for
15 the record.

16 A Philip Jamieson.

17 Q Where are you employed?

18 A I am self employed as a criminal defense attorney.

19 Q Were you doing the same when you represented Mr. Henson
20 here?

21 A Yes.

22 Q Could you just briefly go over the inception of your
23 representation?

24 A I was appointed to represent Mr. Henson after he had a
25 conflict with his previous attorney. Mr. Henson had been

1 convicted of the charges he was charged with. Had been given a
2 life sentence. His case was overturned on a Bruton issue and
3 came back to York County to be tried again. I was appointed to
4 represent him.

5 Q Okay. Can you go over the plea negotiations you had
6 with the State?

7 A I talked to Mr. Thompson pretty extensively about Mr.
8 Henson's case. Trying to get him in a better situation than he
9 had previously been in. The case appeared to be a pretty strong
10 one. They had three co-defendants who were willing and had
11 previously testified against him and were prepared to testify
12 again against him. We eventually negotiated a sentence of
13 thirty years.

14 Q And did you relay those offers to -- or the offer to
15 Mr. Henson?

16 A Yes, I did.

17 Q When you met with him was that in a York County?

18 A Most of the time, yeah.

19 Q And just to be clear, did you discuss anything with his
20 prior attorney about plea offers before that trial?

21 A No, I didn't talk to his prior attorney about any
22 offers he may have been communicated. But my understanding was
23 the situation had not changed very much based on conversations I
24 had with the prosecutor.

25 Q And you received all the Discovery?

1 A Yes, I did.

2 Q Did you go over that with Mr. Henson?

3 A Several times.

4 Q Were there any issues with it? Anything you felt was
5 missing or any issues with the State in obtaining that
6 Discovery?

7 A No, as far as I know they were fully compliant with the
8 law in regards to revealing Discovery. There did not appear to
9 be anything missing.

10 Q Okay. Now can you go over his decision to plead
11 guilty?

12 A We talked extensively. I met with Mr. Henson seven
13 times prior to him entering a plea. I told him essentially that
14 if he went back to trial he would be facing the same situation
15 he was previously with co-defendants who were willing and able
16 to testify against him. That he had been convicted previously
17 and my assessment was it was highly likely he would be convicted
18 again.

19 Q Now did you ever give him any prediction on what he
20 would be facing if he went to trial?

21 A I told him that if he went to trial he would be facing
22 the same witnesses, the same evidence and the result would
23 likely be the same.

24 Q Now as far as the potential sentence is concerned, did
25 you tell him the potential sentences on the charges that he was

1 facing?

2 A Yes, I told him potential sentences.

3 Q Now was there any discussion with the State of life
4 without parole notice?

5 A They never gave notice in the second trial. I'm sure
6 they must have in the first trial, but they did not in the
7 second trial.

8 Q So you never received any sort of formal notice from
9 the State?

10 A No.

11 Q Did you ever discuss the fact that he would be facing a
12 life sentence at least on the murder charge?

13 A Not that I recall, but he certainly had gotten life
14 previously so.

15 Q Okay, did you tell him -- did ever tell him that if he
16 went back he could get life without parole?

17 A No, the only thing I told him was that he would be
18 facing the trial that he had previously had with the same
19 witnesses, the same evidence and the result certainly was a
20 conviction on that occasion and there was no reason it would be
21 different with a subsequent trial.

22 Q Okay. Now did you tell him -- or I guess let me back
23 up. Did he discuss with you these cases, this Miller verses
24 Alabama and cases that stated that a juvenile can not get LWOP?

25 A He did discuss some cases with me about that, yes.

1 Q Did you give him any opinion on that subject?

2 A Not that I recall. I don't know specifically if we
3 discussed Miller versus Alabama. My notes don't reflect that.

4 Q Okay. And are you familiar with that case?

5 A Somewhat.

6 Q And do you know if that case talks about life
7 imprisonment or life imprisonment without parole? Let me back
8 up. Does that case talk about life imprisonment?

9 A No.

10 Q It talks about --

11 A Life without the possibility of parole.

12 Q Now, on the time calculation issue, do you remember how
13 that was calculated on the plea waiver form?

14 A No, not specifically. I know that I talked to Mr.
15 Thompson who was the prosecutor about giving him the maximum
16 amount of time that he was entitled to, and he agreed to do that
17 and even extended some of the time to -- part of the time he was
18 held in Baltimore. But no, I don't remember specifically how
19 the math was done.

20 Q Okay. Now, with this murder charge, did you tell him
21 that was 85 percent?

22 A No.

23 Q And as far as his medication is concerned, did you have
24 any concerns about his understanding of the plea hearing?

25 A As I said I met with him seven times and I met with him

1 the day that we did the plea. He did not appear to be under the
2 influence of drugs or any other substance. At the time he
3 mentioned to me he was taking that medication. I asked him
4 about it and I asked him if it caused him any difficulties. He
5 indicated that it did not. He didn't appear to be not
6 comprehending as far as I could tell and the judge asked him the
7 same question and he responded that it was not affecting him.

8 Q Okay. And if you felt it was affecting him would you
9 let the judge know?

10 A Certainly.

11 Q Okay.

12 A And if he had behaved any differently on that day than
13 he had on any of the six or seven times I would have mentioned
14 it.

15 Q Okay.

16 MR. HUNTER: That's all I have. Thank you for
17 your time.

18 THE COURT: Cross examination.

19 MS. MOODY: Thank you.

20 CROSS EXAMINATION

21 BY MS. MOODY:

22 Q Good afternoon Mr. Jamieson. As far as the discussion
23 or the negotiations, you previously testified you said it was
24 pretty bad in terms of his situation?

25 A Well, again he had three co-defendants who were willing

1 to testify against him. There was a person who had survived the
2 robbery who was willing to testify against him. He had been
3 convicted previously, so I would consider that to be pretty bad,
4 yes, ma'am.

5 Q Okay, I thought you were meaning the actual offer, plea
6 offer?

7 A Did I think that was bad?

8 Q Yes.

9 A No, that's mandatory minimum for what he was charged.

10 Q No. He had previously been to trial and I know you
11 didn't discuss with his previous attorney about any plea
12 negotiations. You talked to Mr. Thompson, correct?

13 A Yes.

14 Q What, if anything, did you all talk about the original
15 plea offer?

16 A I don't think that we had any discussion. Are you
17 talking about the offer he was given at his first trial?

18 Q Yes.

19 A I don't know that we had any discussion about that. If
20 we do I don't recall what it was.

21 Q Okay. So the first offer you relaid to him was the
22 thirty years?

23 A The best I recall, yes, ma'am.

24 Q Okay. And when you discussed that at that time what
25 was his response to the thirty years?

1 A He vacillated back and forth about going to trial on a
2 couple of different occasions. But he certainly didn't jump at
3 the first offer of thirty years.

4 Q And as far as -- I mean you talked to him about the
5 trial starting over from the beginning basically. That it would
6 be the same witnesses, basically the same testimony the State
7 would present in his case. Did you look at his previous ruling
8 from the Court or the Supreme Court on his first case?

9 A Yes.

10 Q And did you discuss with him what the difference was
11 and how it still would be the same?

12 A Yes.

13 Q Okay, and did he seem to understand that?

14 A He seemed to, yes.

15 Q Okay. And so at that point what was his response as
16 far as the thirty years?

17 A Well, eventually he came to see that was the better
18 choice for him.

19 Q And what, if anything, did you explain to him regarding
20 life versus life without parole?

21 A I don't know specifically what I said to him. I
22 explained the difference between the two and I explained to him
23 that he had gotten life previously. And of course he knew that.
24 But I don't know that I explained -- I don't know specifically
25 what we discussed except for what the difference between the two

1 were.

2 Q So what was that difference that you told?

3 A That if he got life without parole it would be actual
4 life sentence. He would go in and never come out again.

5 Q Okay. And then on the life?

6 A He would have the potential to be released at some
7 point in time.

8 Q So when he starts talking about 85 percent and
9 day-for-day, was that part of your conversation?

10 A I'm not sure I understand the question.

11 Q Well, you were here in the courtroom right when he was
12 testifying?

13 A Yes.

14 Q He indicated that he was told that he would be serving
15 85 percent and he did not understand that he would be serving
16 day-for-day on the murder?

17 A Yeah, I heard him testify to that.

18 Q So what, if anything, did you all discuss about how
19 much time he would be serving?

20 A I told him -- I didn't tell him it was 85 percent
21 crime. I told him he would be serving the full sentence. But
22 that he would get credit for time served and that would reduce
23 some of the time that he would be there.

24 Q Okay. And did he understand that?

25 A He appeared to at the time.

1 Q Did he have any more questions about -- he mentioned
2 the Miller v. Alabama. Did he at that time when you discussing
3 how much time he would serve did he discuss that with you any
4 further?

5 A Not that I recall but he may have.

6 Q So did you do any -- did you do any research as it
7 relates to the letter that he received or the case information
8 he received?

9 A I did research the case law in the case, yes.

10 Q And did you all discuss that?

11 A Yes.

12 Q Did he appear to understand that information?

13 A I thought so at the time.

14 Q So what ultimately -- you said he vacillated back and
15 forth on the plea offer. What ultimately led to him taking a
16 plea offer?

17 A I assume that he made the decision that he ran the risk
18 of getting more time if he went to trial and I think he did run
19 the risk of getting more time if he went to trial. And the fact
20 that all these charges were running concurrently rather than
21 consecutively his evaluation was that it was a better choice to
22 make.

23 Q So when you say more time you are talking about adding
24 in the other offenses?

25 A Yes.

1 Q Okay. And did you all talk about what consecutive and
2 concurrency meant in terms of all of these charges?

3 A Yes.

4 Q Did you go through how much time he could possibly get
5 if he got the max on everything?

6 A Yes.

7 Q And did he appear to understand?

8 A He appeared to at the time.

9 Q And how long after you all discussed that information
10 did he decide to plead, do you recall?

11 A I don't. As I said I met with him seven times. It was
12 towards the end of our meetings that he decided to accept the
13 plea offer.

14 Q What if anything did the State indicate would happen if
15 he didn't accept this offer?

16 A That they would take him to trial. That they had the
17 witnesses available and they had checked with the witnesses and
18 they were still willing to testify. I had a private
19 investigator talk with them as well and they indicated the same
20 to him. They indicated they were prepared to go to trial if
21 need be.

22 Q So, there was just -- who went to who in terms of the
23 plea offer? Did the State make a plea offer or did you ask them
24 for a plea offer?

25 A I don't remember. When I looked through my file I saw

1 an e-mail from Mr. Thompson making the formal offer but I'm sure
2 we went back and forth. I don't know.

3 Q All right. Were you -- this is the last question --
4 were you the person that calculated his credit for his time
5 served?

6 A No.

7 Q Or did the State do it?

8 A Not to my knowledge. Again, I don't remember. I don't
9 remember the math specifically. But not to my knowledge.
10 Generally speaking I don't do that because the Department of
11 Corrections seems to have their own method for determining those
12 things and it's pretty hard to predict what they are going to
13 do. I generally tell people what I think the time served is
14 going to be with the caveat that the Department of Corrections
15 seems to have their own mind about that sort of thing.

16 MS. MOODY: Beg the Court's indulgence. No
17 further questions for this witness. Thank you.

18 MR. HUNTER: Nothing else, Your Honor.

19 THE COURT: Thank you. May this witness be
20 excused.

21 MR. HUNTER: Certainly.

22 MS. MOODY: No objection.

23 THE COURT: Other witnesses?

24 MR. HUNTER: No more witnesses from the State,
25 Your Honor.

1 THE COURT: All right. I am going to ask the
2 State, Mr. Hunter, to draft an Order denying the
3 petition on the following grounds; one, was that he
4 didn't investigate -- counsel didn't investigate two
5 witnesses, but there was no showing of what those
6 witnesses would have testified to. The case he is
7 referring to Akins versus Byers, doesn't mean you
8 can't get life. It just means they have a procedure
9 where you have a hearing. I don't find his testimony
10 credible that he would only do 85 percent on murder.
11 In fact the transcript states that this was a
12 day-to-day charge as introduced by the state. He got
13 credit for 1,393 days in the record.

14 As far as medications, he told the judge it was not
15 affecting him and also there is no evidence of what
16 the medications affect on him would have had. So, all
17 in all he has failed to establish his petition. If
18 you draft me an Order please sir.

19 MR. HUNTER: Yes, Your Honor. Thank you.

20 MS. MOODY: Thank you.

21 (END OF TRANSCRIPT)
22
23
24
25

C E R T I F I C A T E

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

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 31st day of July, 2017.

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

January 1, 2018

Aileen Butler

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Davontay Darrell Henson,)
 S.C.D.C. No. 348736,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-2637

ORDER OF DISMISSAL

FILED-RECEIVED
 2017 SEP 15 PM 2:08
 DAVID L. JAMIESON
 C. CLERK
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 7, 2016. Respondent made its Return on or about November 28, 2016. An evidentiary hearing into the matter was convened on July 31, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Phil Jamieson, Esquire, also testified.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Applicant was indicted by the December 2010 term of the York County Grand Jury for murder (2010-GS-46-04457), assault and battery with intent to kill (2010-GS-46-04458), three counts of armed robbery (2010-GS-46-04459, 04460, 04461), and five counts of possession of a firearm during the commission of a violent crime (2010-GS-46-04457A, 04458A, 04459A, 04460A, 04461A). Applicant was represented by Philip Wayne Jamieson (hereinafter referred to as "Counsel"), Esquire. On May 28,

2015, Applicant pled guilty under North Carolina v. Alford¹ to all charges. Pursuant to the plea, all possession of a firearm indictments were dismissed other than the one relating to the murder indictment (-04457A). Applicant was sentenced on May 28, 2015 by the Honorable John C. Hayes, III to a negotiated sentence of thirty years imprisonment for murder, thirty years imprisonment for each count of armed robbery, twenty years imprisonment for assault and battery with intent to kill, and five years imprisonment for possession of a firearm during the commission of a violent crime. All sentences were to be served concurrently. Applicant was given credit for 1,393 days of time served.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal in an order filed September 9, 2015. State v. Henson, Appellate Case No. 2015-001241 (Filed S.C. Ct. App. 2015). The Remittitur was returned on September 25, 2015.

PCR Allegations

In his application, Applicant alleges he is being held in custody unlawfully for ineffective assistance of counsel. At the hearing he testified that Counsel was ineffective for giving erroneous advice concerning his possibility of a life sentence, giving erroneous advice concerning his parole eligibility, failing to correct the amount of time-served he was credited, failing to investigate, and failing to ascertain the effect of Applicant's medication during the plea hearing.

II. APPLICABLE LAW

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

¹ 400 U.S. 25 (1970).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the

attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds the testimony of Applicant's counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Advice concerning the possibility of a life sentence

Applicant testified that Counsel was ineffective because he either gave erroneous advice or did not know that Applicant could not get a sentence of life without parole as a juvenile. Applicant testified that after his plea, he corresponded with the Cornell Juvenile Justice Center, who informed Applicant that pursuant to Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, (2012) minors cannot receive a sentence of life without parole. Applicant testified that Counsel told him that he faced a life sentence for the murder charge and testified that this is erroneous advice because of the holding in Miller.

Counsel testified that there was no notice from the State to seek a sentence of life without parole. He testified that he never told Applicant that he could receive a sentence of life without parole. He further testified that he understood Miller v. Alabama to concern minors being sentenced to life without parole and not simply life sentences. Counsel testified that he explained to Applicant the differences between a life sentence that has the possibility of parole and a sentence of life without parole.

This Court finds that Counsel was not ineffective concerning his advice about Applicant's potential sentence. "Miller v. Alabama requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." Aiken v. Byars, 410 S.C. 534, 545,

765 S.E.2d 572, 578 (2014). This Court finds that Applicant's concern with Miller v. Alabama does not apply in his case because he was not facing a sentence of life without parole. This Court finds that Counsel's testimony to be credible that he explained that Applicant was facing a sentence of thirty years to life imprisonment for murder, and not a sentence of life without parole. As Counsel gave correct advice concerning Applicant's potential sentences, his advice was not deficient, nor was Applicant prejudiced by his advice. Accordingly, this allegation must be dismissed.

Advice concerning parole eligibility

Applicant testified that Counsel told him that he would only have to serve 85% of his sentences as a result of his guilty pleas. Counsel testified that he never told Applicant that he would only have to serve 85% of his sentence. He further testified that Applicant appeared to understand the amount of time he would be serving at the plea hearing. Applicant's convictions for murder, ABWIK, and armed robbery are no-parole offenses. Murder must be served day for day, and ABWIK and armed robbery require Applicant to serve 85% of the sentence before he can be eligible for early release, discharge, or community supervision. See S.C. Code § 24-13-150. The record reflects that Applicant's signed plea waiver form indicates that those charges are "no-parole" and that murder is also "day for day."

It is well settled that parole eligibility or ineligibility is a collateral consequence of sentencing about which a defendant need not be specifically informed. See Brown v. State, 306 S.C. 381, 382, 412 S.E.2d 399, 401 (1991) ("Parole eligibility ... is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a guilty plea."). See also Jackson v. State, 349 S.C. 62, 64, 562 S.E.2d 475, 475-476 (2002) ("It is well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need

not advise a client of his parole eligibility, or ineligibility, in order to render effective assistance.”). The classification of a crime as violent and the attendant consequences of that classification are also collateral issues, and defendants need not be informed about them. Smith v. State, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997). A guilty plea may be attacked “if the defendant’s attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice.” Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997) (internal citations omitted). In order to prevail on a claim of ineffective assistance of counsel regarding erroneous advice as to parole eligibility, an applicant must prove counsel’s advice induced his decision to plead guilty or proceed to trial. See Griffin v. Martin, 278 S.C. 620, 621, 300 S.E.2d 482, 482 (1983) (upholding PCR Court’s decision denying relief because the applicant “failed to prove his attorney’s erroneous advice concerning parole eligibility induced his guilty plea....”).

This Court finds that Counsel was not deficient in his advice and Applicant has failed to meet his burden of proving that Counsel gave erroneous advice. This Court finds that Applicant’s testimony that Counsel told him he would only have to serve 85% of his sentences is not credible. This Court finds that Counsel provided credible testimony that he did not advise Applicant that he would only have to serve 85% of his sentences. As Counsel did not give erroneous advice, this Court finds that his actions were not deficient. Applicant has also failed to prove prejudice as he has failed to show that he was induced to plead guilty based on parole eligibility advice or that he would have rather proceeded to trial but for Counsel’s actions. Accordingly, this allegation must be dismissed.

Time-served issue

Applicant alleged that the plea court did not calculate his amount of time-served. Counsel testified that he did not do any calculation concerning Applicant’s time-served because the South

Department of Corrections does all calculations.

This Court finds that Applicant's allegation does not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered *non-collateral* attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. In Cooper the petitioner made a similar claim as Applicant here, that he was not given correct credit for the time served before his conviction. The South Carolina Supreme Court in Cooper stated that PCR was improper for the petitioner because by challenging the duration of the sentence, the petitioner was trying to enforce his sentence under law and therefore *not* challenging the validity of the underlying conviction or sentence. Id. A claim for time served is a *non-collateral* attack of a conviction and must be pursued through Administrative Procedures Act (APA). Id.

This Court finds that Applicant's allegation that the amount of time-served was not calculated correctly concerns a matter which must first be raised through SCDC's disciplinary or grievance procedure. If Applicant is dissatisfied with the decision rendered by SCDC, then he may seek review of the decision under the APA. As this allegation fails to state a claim for post-conviction relief, it must be dismissed.

Failure to investigate

Applicant alleged that Counsel was ineffective for failure to investigate. Applicant claimed that Counsel should have investigated more concerning the potential for a life sentence.

Applicant testified that he met with Counsel three to four times prior to the plea and wrote him a letter. He testified that they went over his case and examined discovery. He testified that he asked Counsel to call witnesses for his defense.

Counsel testified that he met with Applicant seven times and went over discovery. He testified that the State had a strong case at trial, which included three codefendants and the victim testifying against Applicant. He testified that his private investigator talked to the witnesses from Applicant's first trial and they told him that they would testify the same as they did in the first trial.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). This Court finds that Counsel undertook reasonable investigation that included hiring a private investigator to interview potential witnesses. This Court finds that Counsel met with Applicant prior to the plea and discussed the evidence. This Court finds that Applicant has failed to show how Counsel's investigation was deficient. Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show how the outcome would have been different and that he would not have pled guilty but would have gone to trial had Counsel undertaken different investigation.

This Court further finds that Applicant has failed to show that Counsel was ineffective for failing to investigate or call witnesses. This Court finds that Counsel provided credible testimony

that his private investigator interviewed witnesses and discovered that their testimony would likely be the same as they were at the first trial. This Court finds that Applicant has failed to show that Counsel's actions were deficient in this regard. Similarly, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions. The South Carolina Supreme Court has "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id., 333 S.C. at 303, 509 S.E.2d 809 (citing Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995)). Applicant has failed to produce witnesses at the PCR hearing and thus cannot establish that he was prejudiced by Counsel's failure to call witnesses. Accordingly, this allegation must be dismissed.

Counsel's failure to ascertain the effect of Applicant's medication

Applicant alleged that Counsel was ineffective for failing to establish the effect that Applicant's medication had on his understanding and ability to function at the plea hearing. He testified that he could not function on his medication and that Counsel should have asked him how the medication was affecting him. He testified that his medication was listed on the plea affidavit. Applicant further testified that he did not tell Counsel that he was on medication.

Counsel testified that Applicant did not appear to be under the influence of medication at the plea hearing. He testified that he asked if the medication would cause Applicant difficulties and Applicant told him that it would not.

This Court finds that Applicant has failed to prove that Counsel was ineffective. This

Court finds that Counsel's actions were not deficient as Counsel inquired about Applicant's medication and Applicant gave no indication that his medicine made him unable to understand the plea proceeding. This Court finds that Applicant never gave any indication to Counsel or the plea judge that he could not understand the plea proceedings or that his medication was hindering his cognitive or functional abilities at the plea hearing. The record reflects that the plea judge asked Applicant if he was "under the influence of anything that would cause [Applicant] to be intoxicated," and Applicant replied "no, sir." Plea Transcript p. 12, ll. 10-12. This Court finds that Applicant has failed to show how his medication negatively affected his ability to understand the plea proceeding. Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show that his plea was involuntarily given or that he would have proceeded to trial but for Counsel's actions. Accordingly this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

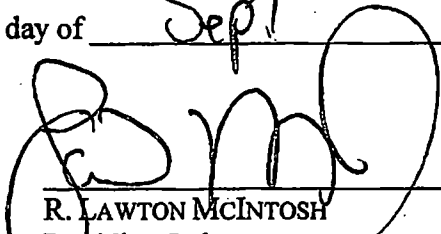
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

of post-conviction relief. Rule 71.1(g), SCRCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 1st day of Sept, 2017.



 R. LAWTON MCINTOSH
 Presiding Judge
 Sixteenth Judicial Circuit

Anders, South Carolina

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY INDICTMENT

COUNTY OF YORK

2016 SEP -8 AM 8:26

At a Court of General Sessions, convened on December 9, 2010, the Grand Jurors of York County present upon their oath:

COUNT ONE – ARMED ROBBERY

Davontay Darrell Henson did in York County on or about October 1, 2009, feloniously steal a cell phone and/or other items of value from the victim, Tyrone King, at [REDACTED] [REDACTED] [REDACTED] in Rock Hill, South Carolina. Davontay Darrell Henson stole said items by means of force or intimidation by holding the victim at gunpoint. Davontay Darrell Henson committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

Davontay Darrell Henson did in York County on or about October 1, 2009, possess a firearm while committing the violent crime of armed robbery against Tyrone King in Rock Hill, South Carolina, all in violation of Section 16-23-490, *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.


DEPUTY SOLICITOR

WITNESSES
RHPD / HERRING

mac

ARREST WARRANT NUMBER
COUNT ONE - K614301
COUNT TWO - K614303

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 12.7.10

VERDICT
Count 1 Guilty

Count 2 Guilty
[Signature]
Foreperson of Petit Jury
Date: 11-18-2011

DOCKET NO. 2010-GS-46-04461
2010-GS46-04461A

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

DECEMBER 9, TERM 2010

THE STATE

vs.

DAVONTAY DARRELL HENSON

Indictment for

COUNT 1 - ARMED ROBBERY
SC Code: § 16-11-0330
CDR Code: 0139

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME
SC Code: 16-23-0490
CDR Code: 0549

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

Defendant

I Davontay Darrell Henson
hereby appear in my own proper person and plead guilty to the within indictment or to

Armed Robbery

[Signature]
Defendant

Witness:
[Signature]
C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

CERTIFIED TRUE INDICTMENT
 2016 SEP -8 AM 8:27

At a Court of General Sessions, convened on December 9, 2010, the Grand Jurors of York County present upon their oath:

COUNT ONE – ARMED ROBBERY

Davontay Darrell Henson did in York County on or about October 1, 2009, feloniously steal a cell phone, a wallet and/or other items of value from the victim, Henry Jackson, at [REDACTED] in Rock Hill, South Carolina. Davontay Darrell Henson stole said items by means of force or intimidation by holding the victim at gunpoint. Davontay Darrell Henson committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
 COMMISSION OF A VIOLENT CRIME**

Davontay Darrell Henson did in York County on or about October 1, 2009, possess a firearm while committing the violent crime of armed robbery against Henry Jackson in Rock Hill, South Carolina, all in violation of Section 16-23-490, *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.


 DEPUTY SOLICITOR

WITNESSES

RHP/D / HERRING

mac

ARREST WARRANT NUMBER

COUNT ONE - K614299
COUNT TWO - Dir.Ind. In Re. K614299

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 12.9-10

VERDICT

Count 1 Guilty

Count 2 Guilty

[Signature]
Foreperson of Petit Jury
Date: 11-18-2011

DOCKET NO. 2010-GS-46-04460
2010-GS46-04460A

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

DECEMBER 9, TERM 2010

THE STATE

vs.

DAVONTAY DARRELL HENSON

Indictment for

COUNT 1 - ARMED ROBBERY

SC Code: § 16-11-0330
CDR Code: 0139

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

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

Defendant

Davontay Darrell Henson
hereby appear in my own proper person and plead guilty to the within indictment or to

Armed Robbery

[Signature]
Defendant

Witness:
[Signature]
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT
)
 COUNTY OF YORK) 2016 SEP -8 AM 8:27

At a Court of General Sessions, convened on December 9, 2010, the Grand Jurors of York County present upon their oath.

COUNT ONE – ARMED ROBBERY

Davontay Darrell Henson did in York County on or about October 1, 2009, feloniously steal various items of value from the victim, Kenny Cunningham, at [REDACTED] in Rock Hill, South Carolina. Davontay Darrell Henson stole said items by means of force or intimidation by holding the victim at gunpoint. Davontay Darrell Henson committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
 COMMISSION OF A VIOLENT CRIME**

Davontay Darrell Henson did in York County on or about October 1, 2009, possess a firearm while committing the violent crime of armed robbery against Kenny Cunningham in Rock Hill, South Carolina, all in violation of Section 16-23-490, *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.


 DEPUTY SOLICITOR

WITNESSES

RHPD / HERRING

mac

ARREST WARRANT NUMBER

COUNT ONE - K614297
COUNT TWO - Dir. Ind. In Re. K614297

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 12-9-10

VERDICT

Count 1 Guilty

Count 2 Guilty

[Signature]
Foreperson of Petit Jury
Date: 11-18-2011

DOCKET NO. 2010-GS-46-04459
2010-GS46-04459A

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

DECEMBER 9, TERM 2010

THE STATE

vs.

DAVONTAY DARRELL HENSON

Indictment for

COUNT 1 - ARMED ROBBERY

SC Code: § 16-11-0330
CDR Code: 0139

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

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

Defendant

I Davontay Darrell Henson
hereby appear in my own proper person and plead guilty to the within indictment or to

Armed Robbery

Davontay Darrell Henson
Defendant

Witness:
Shirley A. Simpson
C.C.O. PLS. AND G.S.

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

INDICTMENT
) CERTIFIED TRUE COPY
) 2016 SEP -8 AM 8:27

At a Court of General Sessions, convened on December 9, 2010, the Grand Jurors of York County present upon their oath:

COUNT ONE: ASSAULT & BATTERY WITH INTENT TO KILL

Davontay Darrell Henson did in York County on or about October 1, 2009, willfully and unlawfully with malice aforethought commit an assault and battery upon Kenny O'Brian Cunningham by shooting the victim with a firearm. The crime occurred at [REDACTED] [REDACTED] [REDACTED] in the City of Rock Hill, South Carolina. All in violation of 16-3-0620, *Code of Laws of South Carolina*, (1976, as amended).

COUNT TWO: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Davontay Darrell Henson did in York County on or about October 1, 2009, possess a firearm while committing the violent crime of assault and battery with intent to kill against Kenny O'Brian Cunningham in Rock Hill, South Carolina, all in violation of Section 16-23-490, *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.


 DEPUTY SOLICITOR

WITNESSES

RHPD / Herring

mac

ARREST WARRANT NUMBER

COUNT ONE : K614307

COUNT TWO: In Re: K614307

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *12-9-10*

VERDICT

Count 1 *Guilty*

Count 2 *Guilty*

Foreperson of Petit Jury
Date: *11-18-2011*

DOCKET NO. 2010-GS-46- *04458*
2010-GS46- *04458A*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 9, 2010 TERM

THE STATE

vs.

DAVONTAY DARRELL HENSON

Indictment for

COUNT ONE: ASSAULT & BATTERY
WITH INTENT TO KILL
SC Code: § 16-03-0620
CDR Code: 0014

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

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

Defendant

I *Davontay Darrell Henson*
hereby appear in my own proper person and plead guilty to the within indictment or to

*Assault & Battery with
Intent to Kill*

Darrell Henson
Defendant

Witness: *W. S. Jones*
C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

INDICTMENT
) CERTIFIED TRUE COPY
) 2016 SEP -8 AM 8:27

At a Court of General Sessions, convened on December 9, 2010, the Grand Jurors of York County present upon their oath:

COUNT ONE - MURDER

Davontay Darrell Henson did in York County on or about October 1, 2009, feloniously, willfully and with malice aforethought, kill one Tyrone Quantarious King by means of shooting said victim and Tyrone Quantarious King died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at [REDACTED] in Rock Hill, South Carolina.

COUNT TWO – POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Davontay Darrell Henson did in York County on or about October 1, 2009, possess a firearm while committing the violent crime of murder in Rock Hill, South Carolina, all in violation of Section 16-23-490, *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.


 DEPUTY SOLICITOR

WITNESSES

RHPD / Herring

mac

ARREST WARRANT NUMBER

COUNT ONE: K614309

COUNT TWO: DIR. IND. In Re: K614309

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury 12-9-10

VERDICT

Count 1 Guilty

Count 2 Guilty

Foreperson of Petit Jury Date: 10-18-2011

DOCKET NO. 2010-GS-46-04457
2010-GS46-04457A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 9, TERM 2010

THE STATE

vs.

DAVONTAY DARRELL HENSON

Indictment for

COUNT 1 - MURDER

SC Code: § 16-11-0330

CDR Code: 0139

COUNT 2 - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

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

Defendant

I Davontay Darrell Henson hereby appear in my own proper person and plead guilty to the within indictment or to

Both counts as indicted

Defendant

Witness:

Shelis CA Sweeney
C.D.C. PLS. AND G.S.