

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Jean H. Toal, Circuit Court Judge

JERELL JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000916

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS

3

4 STATE OF SOUTH CAROLINA)
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 JERELL JACKSON and)
 9 TOMMIE JOHNSON)
 10 Defendants)

11 Charleston, South Carolina
 12 March 2, 2015/ March 3, 2015
 13 2013 GS 10 6400; 6402; 6403;
 14 6378; 6379 (Jackson)
 15 2013 GS 10 6406; 6407; 6389
 16 (Johnson)

17 B E F O R E :

18 HONORABLE KRISTI L. HARRINGTON, Judge Presiding

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

20 For the State: C. KIDD, Esq.
 21 L. MEILKEY, Esq.
 22 Assistant Solicitors

23 For Defendant Jackson: M. DETREVILLE, Esq.

24 For Defendant Johnson: C. PARNELL, Esq.

25 Reporter Present: MIA PERRON

26

27 HARRIET P. BENNETT
 28 Reporter, S. C. Court Administration
 29 46 Regency Oaks Drive
 30 Summerville, S.C. 29485

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EXHIBITS

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3 (NO EXHIBITS WERE MARKED OR PROFFERED)

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1 (The within matter came before the Court for hearing
2 on March 2, 2015, at 11:34 A.M.)

3 THE COURT: If you would state your name for the re-
4 cord and the party you represent?

5 SOLICITOR KIDD: Yes, Your Honor. I'm Culver Kidd,
6 and I represent the State versus Jerell Jackson and State
7 versus Tommy Johnson. Sitting with me is Lauren Meilkey.

8 I have the Indictment numbers.

9 THE COURT: Have you got the Indictment numbers, Madam
10 Court Reporter?

11 REPORTER: I do.

12 THE COURT: Okay, we've got them.

13 SOLICITOR: Okay.

14 THE COURT: And you are going forward . .

15 SOLICITOR: Going forward on two counts of armed rob-
16 bery and one count of burglary in the first degree; two
17 counts of possession of a firearm during the commission
18 of a violent crime.

19 THE COURT: All right, thank you. Mr. Detreville?

20 MR. DETREVILLE: I'm sorry, Your Honor.

21 THE COURT: Who do you represent?

22 MR. DETREVILLE: Jerell Jackson. I represent Mr. Jackson.

23 THE COURT: And if you'll state your name?

24 MR. DETREVILLE: Michael Detreville for the Defense.

25 THE COURT: And who is at your table with you?

1 MR. DETREVILLE: Mr. Jackson, obviously, and my para-
2 legal, Jan Donald.

3 THE COURT: Thank you.

4 MS. PARNELL: Thank you, Your Honor. Christina Dixon
5 Parnell, and I represent the Defendant, Tommie Johnson, and
6 at my table as second chair is Jason King of the Public
7 Defender's Office.

8 THE COURT: All right. Ms. Parnell, I understand
9 there was an offer made last evening to your client.

10 Please state it on the record.

11 MS. PARNELL: That's correct, Your Honor.

12 (Brief pause)

13 THE COURT: Are you uncomfortable there? I mean, you
14 can ask your client if there is any question, or you can
15 approach.

16 MS. PARNELL: Your Honor, Mr. Johnson would be plead-
17 ing to one count of armed robbery and one count of burg-
18 lary first.

19 THE COURT: Was that the offer, Mr. Kidd?

20 SOLICITOR: That's correct.

21 THE COURT: And that offer I assume expires once we
22 . .

23 SOLICITOR: Yes, it does.

24 THE COURT: . . start with . .

25 SOLICITOR: And we would defer sentencing until after

1 the trial, and that offer would expire.

2 THE COURT: All right, and are you making a recommend-
3 ation as to sentence?

4 SOLICITOR: It would be contingent on an assessment
5 of cooperation during the trial, and his testimony.

6 THE COURT: All right. Please state your name for
7 the record.

8 MR. JOHNSON: Tommie Johnson.

9 THE COURT: Mr. Johnson, please raise your right hand
10 to the best of your ability.

11 TOMMIE JOHNSON, being duly
12 sworn, testified as follows:

13 THE COURT: You may put your hand down. All right.

14 Sir, was that offer conveyed to you?

15 MR. JOHNSON: Yes.

16 THE COURT: And do you have any questions about that
17 offer?

18 MR. JOHNSON: No, maam.

19 THE COURT: What do you wish to do with that offer?

20 MR. JOHNSON: Stomp on it.

21 THE COURT: You do not want it?

22 MR. JOHNSON: No, I don't.

23 THE COURT: Do you understand that once we begin the
24 pre-trial motions the State is not going to give you that
25 offer?

1 MR. JOHNSON: Yes.

2 THE COURT: Was that a yes?

3 MR. JOHNSON: Yes.

4 THE COURT: All right. You understand that that --
5 just from where I sit, I don't know anything about the
6 facts; I haven't heard any testimony, but it significantly
7 would reduce your exposure to Department of Corrections
8 time.

9 Do you understand what that means?

10 MR. JOHNSON: Yes.

11 THE COURT: And do you need any more time to talk to
12 Ms. Parnell about this offer?

13 MR. JOHNSON: No.

14 THE COURT: All right. Thank you.

15 Have there been any offers made to your client, Mr.
16 Detreville?

17 MR. DETREVILLE: No, Your Honor.

18 THE COURT: All right, thank you.

19 What is pending? What pre-trial motions are pending?

20 SOLICITOR: I believe Ms. Parnell has a motion to sever.

21 THE COURT: Does the State have any motions?

22 SOLICITOR: No, maam. I don't think we have any
23 Jackson-Denno issues. We don't have any interview issues.
24 We don't have any -- there was no identification proced-
25 ure was done.

1 So I do not perceive any pre-trial hearings that the
2 State would -- that there would be for the State.

3 THE COURT: All right. What about your pre-trial
4 motions, Mr. Detreville?

5 MR. DETREVILLE: Your Honor, I think our motions are
6 fairly straight-forward. I'm asking for disclosure of any
7 information as to the witnesses who will be testifying at
8 trial; any deals made with witnesses who will be testifying.

9 I would make a motion to sequester the witnesses also,
10 Your Honor.

11 THE COURT: All right. Any objection to sequestering
12 of witnesses from the State?

13 SOLICITOR: None from the State, Your Honor, except
14 that my case agent, Michael Bridges, could not be here to-
15 day but he soon will be.

16 THE COURT: Any objection, Ms. Parnell?

17 MS. PARNELL: No objections, Your Honor.

18 THE COURT: Thank you. Your sequestration is in-
19 voked. Tell me about the -- have there been any deals?

20 What is your position as to . .

21 SOLICITOR: Judge, we have entered into or proffered
22 agreements with all three Codefendants, including Mr.
23 Johnson. Our proffered agreements have always been that
24 there are no deals. Your cooperation from the position
25 that you hope to receive leniency from me will abide and

1 apply irregardless. So there have been no concrete deals.

2 However, they have all signed the proffered agreements,
3 have come to my office and been debriefed, have been re-
4 corded and they have cooperated with our office, with me.

5 There have been no plea offers and negotiations or
6 arrangements with any Defendants other than the one dis-
7 closed by Mr. Johnson.

8 THE COURT: Mr. Detreville, anything further on that
9 matter? It appears there are no negotiated deals.

10 MR. DETREVILLE: No, Your Honor. That will suffice.
11 Thank you, Your Honor.

12 THE COURT: Does that address all of your pre-trial
13 motions then?

14 MR. DETREVILLE: Yes, maam.

15 THE COURT: All right. Ms. Parnell, feel free to
16 come to the podium now if you wish.

17 MS. PARNELL: Thank you, Your Honor. Your Honor, my
18 motion to sever was Emailed . .

19 THE COURT: You were fine unless you just need -- you
20 are fine. She's just going to talk.

21 So the motion is to sever the Indictments? Correct?

22 MS. PARNELL: Yes, Your Honor, that is correct.

23 THE COURT: What's the State's position?

24 SOLICITOR: Your Honor, we would object. Trying these
25 cases together is appropriate.

1 I also think it is important for the record that a
2 severance would subject these Defendants to a potential
3 second unlawful armed robbery which would expose -- if we
4 tried them separately, these are two armed robberies that
5 are separated by two days.

6 If the Court tries these cases separately, it would
7 expose both of these Defendants to life without parole in
8 the second trial, if the severance were granted.

9 THE COURT: All right, Ms. Parnell. I'll be happy
10 to hear your argument.

11 Sometimes the State will agree, so I didn't really --
12 I just wanted to see what their position was.

13 Thank you.

14 MS. PARNELL: Thank you, Your Honor. We have here
15 South Carolina law that the joinder is proper under the
16 circumstances where the offenses are of the same general
17 nature or character and where they point to the same facts
18 or in a series of transactions, as well as were committed
19 by the same offender, and they require the same or similar
20 proof.

21 I think again, Your Honor, that while there are some
22 similarities that could be pointed out between the Indict-
23 ments, we have the one armed robbery charge on July 11th
24 that is just a particular charge from that incident that
25 occurred outside a motel room that was rented by my client,

1 Mr. Johnson.

2 Then there is the separate armed robbery which is con-
3 nected to a burglary first degree charge from three days
4 later, and that is the one that relates to what occurred
5 outside of the home of that victim.

6 Your Honor, although there are similarities between
7 them, they clearly do not arise from the same transaction
8 and one does not comply with the elements of the other.

9 A case on point would be the State versus Rice, and
10 that would be the case where the Court of Appeals affirmed
11 the Trial Court's joinder of murder and the crack cocaine
12 but that was because the earlier investigation led to the
13 crack charge.

14 Essentially one arose out of the other and prompted
15 the other, but there were no interwoven elements really
16 there.

17 In this case, Your Honor, I don't believe that there
18 is a way to argue that one preceded the other and had any
19 kind of causal connection between the two separate events.

20 The locations are very distinct one from the other.
21 One at a motel room that was rented by Mr. Johnson, my
22 client, and the other one being outside of the home of the
23 victim.

24 Your Honor, there are three days between the two and
25 it would require the same or similar proof. That is one

1 of the elements I would ask Your Honor to analyze. There
2 are two different victims who would testify. The two vic-
3 tims are unrelated, so essentially the evidence the State
4 is going to put up is as to two different armed robbery
5 cases that have nothing to do one with the other.

6 I don't believe that there are the same CoDefendants
7 involved in both of these cases, although that in and of
8 itself does not make it a case that is improper for a
9 joinder.

10 Your Honor, there is another case which is the City
11 against Chapman, and that is a case that involved the adul-
12 teration of milk. It was basically done by a milk producer
13 prior to sale, was being added, and for each occurrence, in
14 each separate indictment, they were joined together. The
15 cases were nearly identical.

16 The Court found that there was a simple chain of cir-
17 cumstances where the producer was adding water to the milk
18 in that manner in order to sell it which was basically a
19 simple process, Your Honor, and they were proven by the
20 exact same evidence.

21 They were of the same general nature, and the Court
22 found that no real rights of any Defendant had been jeo-
23 pardized in that case.

24 I think that our case is clearly distinguishable from
25 that case. There is no way to even claim that they are

1 even close to the same, and while there are similarities,
2 and I can name them for Your Honor, there are many variables.
3 There is location, the manner, the victims and other things
4 which distinguish the cases.

5 I would also think that there would be substantial
6 prejudice to the Defendant where if you were to try just
7 the one the jury might acquit them, where they might find
8 guilt after hearing facts of both. I mean, what are the
9 chances they would acquit them of both?

10 Your Honor, two of the Defendants are charged in both
11 of the offenses, the July 11th and three days later, but
12 the location, as I said before, and the time of day --
13 one occurring at about 8:35 P.M. and the other occurring
14 at about four A.M. at the victim's house.

15 Your Honor, in one of the occurrences there was a
16 confrontation outside of the motel room before anything
17 else had taken place, and the other is alleged to have
18 occurred outside the home and at the home of that victim.

19 Your Honor, I also would like to bring up another
20 thing, and that is the tape. The tape is important to
21 the charges the Defendants are facing, which are felony
22 charges.

23 Referring back to the Chapman case, the milk adulter-
24 ation case, those were misdemeanor charges, and I would
25 point out the fact that my client is facing two counts

1 of armed robbery, burglary first degree, with a potential
2 of life in prison, and he would face two separate counts
3 if they were joined together.

4 Your Honor, these are the main points I would make in
5 asking the Court to separate these out or whether a join-
6 der is proper or improper.

7 THE COURT: Thank you. Mr. Kidd?

8 SOLICITOR: Thank you, Your Honor. May it please the
9 Court?

10 To give a little factual background, a couple of
11 things, what we have in this case is we have two Defendants
12 and then we have two females, which one having a relation-
13 ship to one of these Defendants, being put on Backpage
14 dot com for prostitution services.

15 These two events arise out of the john or the client
16 of these two prostitutes being robbed, one on July 11th
17 and one on July 14th.

18 So it is in response to a Backpage ad with the same
19 phone number, in which the client shows up and is robbed.
20 Same Backpage ad, same phone number.

21 They go to the client's house in the July 14 case and
22 where they come to rob the client. So that is how these
23 things progressed.

24 So if we rely on the State's evidence in the first
25 case, not only are we relying on the victims but the facts

1 of setting up of these two robberies for good reason. But
2 also the arrest is at the same time as well as the proximate
3 cause in developing the arrests.

4 We have an identification of (inaudible) and Chocolate
5 as the two prostitutes that were asked to respond. The
6 officer, Officer Bridges, on his response the 14th is advised
7 that there is a -- there is an armed robbery and a
8 description of the offenders. was given.

9 Then on July 14th when he responds to the -- to another
10 armed robbery call involving (inaudible) and Chocolate, he
11 sure knows then that those two are connected, and so without
12 this second offense the State would have no way of proving
13 the first.

14 So we rely on the second offense to relate back to
15 the first offense that was responded to where the same two
16 individuals were involved in the July 11th robbery.

17 So the offenses are of the same general nature with
18 the prostitutes on call and the robbery -- same general nature,
19 same series of transactions, same ad, same web site
20 in both.

21 The State is required to meet the same degree of the
22 proof. Testimony of CoDefendants, the stolen property recovered
23 from the motel room.

24 The only difference being the additional testimony of
25 the two victims of the armed robberies.

1 If Your Honor remembers the same argument that I made
2 in front of you recently, I think the analogy always comes
3 back to the same analysis. Under the case law, I feel if
4 I was simply trying the July 14th armed robbery and you
5 wouldn't let me talk about the July 11th armed robbery un-
6 der a prior bad act count -- there is no prejudice that
7 they can argue about applying those facts at the same time
8 as the information about the other armed robbery is allowed
9 in my case in chief on the July 14th armed robbery.

10 So while I have looked at the case law and I understand
11 it, in my mind it all hinges on a 404 B analysis. Quite
12 frankly, Judge, the only way I could ever prove the July 11th
13 armed robbery would be to talk about the July 14th armed
14 robbery. No other way my detective was able to make an
15 arrest. That is out there and inner-connecting the two.

16 So I don't see any way they can argue prejudice if
17 the information were allowed, or allowed as to both of
18 them. I think that is the core of my position, Judge, and
19 it is a discretionary ruling -- I understand that, but I
20 don't think severance is appropriate under these circum-
21 stances.

22 THE COURT: Do you take any position, Mr. Detreville?

23 MR. DETREVILLE: Your Honor, I stand with Ms. Parnell
24 and her argument. I believe that her analysis is correct
25 here, and I would second that.

1 THE COURT: So you are joining with her in her motion?

2 MR. DETREVILLE: I am joining in the motion, Your Honor.

3 THE COURT: Thank you. Any response?

4 MS. PARNELL: Thank you, Your Honor. If I may, you
5 know, to address the Court on the Lyle issue there is case
6 law as well, and the elements to consider is whether some-
7 thing is properly brought forth in the indictment as op-
8 posed to whether something can properly be brought up in
9 a trial.

10 Your Honor, still I believe there is one issue you
11 have to decide and take into consideration, that being
12 whether there is a proper or improper joinder.

13 Just the mere fact that both Defendants were charged
14 in two cases in which there was an arrest only after the
15 second one occurred, it does not give that type of connec-
16 tion that you would see woven in the same fabric.

17 There are some cases where I believe that that was af-
18 firmed. Even though the Defendants are the same, there are
19 different victims which they have to prove different facts,
20 in a different location, different time, different days.

21 I don't see how the State would be prejudiced by only
22 being able to try one of these cases, or how it would be
23 prejudiced in only being able to try one series of events.
24 Not being able to try the July 11th case at this time,
25 they would still be able to try the July 14th incident.

1 I don't see how -- I mean, it would require the same or
2 similar proof. Even though the Defendants are the same,
3 there is clearly different evidence that would be required
4 to be shown. Even giving that consideration, I don't see
5 how the State would be prejudiced by having to try one
6 set of facts.

7 Thank you, Your Honor.

8 THE COURT: Is there any response, Mr. Kidd, to that?

9 SOLICITOR: Your Honor, but for the July 14th robbery
10 and the similarities, we would never have known about the
11 July 11th one. So we cannot prove the July 11th robbery
12 without the information about the July 14th robbery.

13 That is how they are connected and that is why it
14 would be proper to try them together.

15 There is another element here, and that is that these
16 individuals are the ones who committed the July 11th robbery
17 and are responsible for the July 14th robbery. So
18 that is why they are together and have to be proven by the
19 same evidence.

20 It is not that -- in every indictment there are going
21 to be some convictions and there is going to be some separations,
22 but it is about the admissibility of evidence
23 and what evidence is allowed to be introduced as to the
24 particular crime.

25 It would be the same evidence as to each, and it is

1 my position that the evidence on both of those cases would
2 be necessary to prove any one single one. That is why it
3 is proper that they be joined.

4 THE COURT: Mr. Detreville, anything further?

5 MR. DETREVILLE: No, Your Honor.

6 MS. PARNELL: I believe the State has determined that
7 it cannot prove the July 11th without the July 14th which
8 is why they do not agree to the motion to sever.

9 If they cannot prove one without trying the other, it
10 would be up to them to do what is necessary to do a more
11 detailed investigation as to each in order to prove it
12 without the other, Your Honor.

13 Your Honor, as to a Lyle motion, it may or may not be
14 necessary but I included that just in case it was to be-
15 come an issue.

16 THE COURT: All right. Are there any other motions
17 we may need to take up at this time?

18 MS. PARNELL: Your Honor, if you were to grant my mo-
19 tion to sever, there may be some things we would need to
20 discuss about the Lyle motion.

21 THE COURT: Do we have anything else?

22 MR. KIDD: No, maam.

23 THE COURT: Let's take a few moments before we go
24 further.

25 (Whereupon, the Court took a brief recess)

1 THE COURT: Anything further?

2 MR. KIDD: No, Your Honor. I think we will be able
3 to move rather quickly in the morning.

4 THE COURT: As to the motion by Mr. Johnson, which
5 was joined in by Mr. Jackson, to sever the Indictments,
6 based on the information I have been given, I do find the
7 circumstances could be proven by the same evidence and are
8 of a similar general nature.

9 As a matter of fact, and I think this was indicated
10 by Mr. Kidd at least -- if the cases were separated and
11 the motion to sever were granted there would be the oppor-
12 tunity for the Defendants to receive a life without parole
13 sentence on the second charge.

14 I will note your exception to my ruling and to your
15 objection to going forward.

16 Is there anything on the Lyle issue I need to address?
17 Anything before we recess today?

18 SOLICITOR: No, Your Honor. Since we have a little bit
19 of time I want to make sure -- I think there could poten-
20 tially be an additional argument as to some information
21 about Mr. Jackson.

22 MR. DETREVILLE: It's a little bit touchy because Ms.
23 Gilliankirk who is a prostitute associated with Mr. Jackson
24 -- I think there may be some involvement of abuse in
25 their relationship.

1 SOLICITOR: I believe she is the mother of his child-
2 ren, and she has alleged that he has been striking her or
3 similar things.

4 While I agree that typically that might not be appro-
5 priate, in this case with Ms. Gilliankirk -- she is a very
6 -- she does not want to be here. I guess that's the best
7 way I can put it.

8 I think it would go a long way to explain not only why
9 she was involved in the prostitution and things like that,
10 but also to give her testimony or changing her story in
11 some ways because of fear of Mr. Jackson.

12 So I did want to bring that to the Court's attention
13 so when we get into that line of testimony it wouldn't be
14 without the Court having information on it.

15 I just wanted to air that out before we take testimony
16 from that witness.

17 THE COURT: Mr. Detreville?

18 MR. DETREVILLE: I was aware of the potential in her
19 testimony, Your Honor, and I plan to object to it contem-
20 poraneously, rather than addressing the issues now. I plan
21 to question its relevance.

22 We are talking about testimony concerning violence as
23 against Ms. Gilliankirk, holding a gun to her head and as
24 well numerous things that don't have anything to do with
25 armed robbery or burglary or anything of that nature.

1 It would seem to me that its probative value would be
2 outweighed by its prejudicial effect. It seems more cal-
3 culated to inflame the jury against Mr. Jackson than it
4 does to prove that Mr. Jackson was involved in an armed
5 robbery.

6 That would be my position, Judge, if I were objecting
7 to it contemporaneously. It shouldn't come in.

8 Thank you.

9 SOLICITOR: It may be a bit premature to go into that
10 at this time. The proper time would be prior to her testi-
11 fying.

12 My point in eliciting the testimony would just be to
13 prove conduct similar and to show the effect the fear of
14 that conduct has on the witness.

15 THE COURT: Let me make a determination when we are
16 in the trial of the case.

17 Is there anything further?

18 SOLICITOR: Not to my knowledge, Your Honor.

19 THE COURT: Mr. Detreville?

20 MR. DETREVILLE: No, Your Honor.

21 THE COURT: Ms. Parnell?

22 MS. PARNELL: Nothing further, Your Honor.

23 THE COURT: All right, we will be back then at ten
24 A.M. tomorrow.

25 Thank you.

1 (The within matter came back before the Court on March
2 3, 2015)

3 THE COURT: Ms. Parnell, are you ready?

4 MS. PARNELL: Yes, maam.

5 THE COURT: Please swear the Defendant.

6 (Whereupon, Defendant Tommie Johnson was sworn by the
7 Clerk)

8 THE COURT: Mr. Kidd, what is the offer?

9 SOLICITOR: To plead guilty to one count of armed rob-
10 bery that occurred on July 13, 2013, and we would defer
11 sentencing until after the trial.

12 THE COURT: And is that 2013 GS 10 6406 that he's
13 pleading guilty to?

14 SOLICITOR: Yes, maam.

15 THE COURT: And that occurred on July 14?

16 SOLICITOR: July 13.

17 THE COURT: And you are dismissing the others?

18 SOLICITOR: Dismissing the accompanying burg first and
19 the other armed robbery charge.

20 THE COURT: Mr. Johnson, you are here to plead guilty
21 on 2013 GS 10 6406 which is a true-billed Indictment for
22 armed robbery.

23 I can sentence you from ten years to up to thirty
24 years. Do you understand that is the possible punishment?

25 DEFENDANT JOHNSON: Yes, maam.

1 THE COURT: Do you also understand that this is a vio-
2 lent and a most serious offense?

3 DEFENDANT: Yes, maam.

4 THE COURT: Do you understand what those two classi-
5 fications mean to you?

6 DEFENDANT: Yes, maam.

7 THE COURT: Explain it in your own words so that I
8 understand what those mean.

9 DEFENDANT: That if I have another charge . .

10 THE COURT: It is what we consider to be a most ser-
11 ious offense, and what most serious means in the law, and
12 Ms. Parnell has probably explained it to you in terms of
13 strikes . .

14 DEFENDANT: Right.

15 THE COURT: So if you get another -- after this con-
16 viction if you have a combination of another most serious
17 or a serious the State can sentence you -- can file a mo-
18 tion and ask that you be confined in the Department of
19 Corrections for the rest of your life.

20 Do you understand what that means?

21 DEFENDANT: Yes, maam.

22 THE COURT: So that is a very serious classification.
23 You understand that?

24 DEFENDANT: Yes.

25 THE COURT: Do you understand what violent means?

1 DEFENDANT: Yes, maam.

2 THE COURT: Tell me as far as classifications what it
3 means to you?

4 DEFENDANT: Something like most serious.

5 THE COURT: All right. It does mean that but in legal
6 classifications what that means is -- typically it has to
7 do with how long you would have to be there before you
8 would be eligible for parole. Do you understand?

9 DEFENDANT: I understand.

10 THE COURT: So what I tell Defendants about it is that
11 they would have to do day for day there. Do you under-
12 stand that you would do day for day what I sentence you to?

13 DEFENDANT: Yes, maam.

14 THE COURT: Do you understand both of those terms as
15 you prepare to go forward here today?

16 DEFENDANT: Yes, maam.

17 THE COURT: How old are you?

18 DEFENDANT: Twenty-eight.

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

20 DEFENDANT: Two years of college.

21 THE COURT: What type work do you do?

22 DEFENDANT: Right now I work (inaudible).

23 THE COURT: What do you do there?

24 DEFENDANT: (Inaudible)

25 THE COURT: Are you married? Do you have children?

1 DEFENDANT: No, maam.

2 THE COURT: Have you ever been treated for mental
3 illness?

4 DEFENDANT: No, maam.

5 THE COURT: Have you been treated for abuse of alcohol
6 or drugs?

7 DEFENDANT: No, maam.

8 THE COURT: Sir, do you understand that by pleading
9 guilty here today you are giving up certain rights, your
10 right to have a jury trial; the right to have a jury deter-
11 mine your guilt beyond a reasonable doubt based upon the
12 evidence the State presents as well as any evidence you
13 may introduce; your right to self incrimination or the
14 right to say nothing at all; your right to confront and be
15 confronted by witnesses against you, as well as the right
16 to call witnesses on your behalf?

17 By pleading guilty here today, you give up any de-
18 fense you may have to this charge.

19 Do you understand all of those rights?

20 DEFENDANT: Yes.

21 THE COURT: And do you waive those rights at this
22 time?

23 DEFENDANT: Yes, maam.

24 THE COURT: Understanding the charge you are facing,
25 the maximum possible punishment and the consequences of

1 this plea, how do you wish to plea to armed robbery?

2 DEFENDANT: Guilty.

3 THE COURT: Are you pleading guilty because you are
4 in fact guilty?

5 DEFENDANT: Yes.

6 THE COURT: Anybody promised you anything, threatened
7 you, forced you to plead guilty here today?

8 DEFENDANT: No, maam.

9 THE COURT: Have you been satisfied with the services
10 of Ms. Parnell?

11 DEFENDANT: Yes, maam.

12 THE COURT: Any complaints about the way she has hand-
13 led this case?

14 DEFENDANT: No, maam.

15 THE COURT: You will have the right to appeal this
16 plea and any sentence that I impose once I impose it, but
17 you or your lawyer must do so within ten days. Do you un-
18 derstand?

19 DEFENDANT: Yes, maam.

20 THE COURT: After I listen to the facts from the
21 Solicitor I will have one or two questions, and then I will
22 defer sentencing to a later time.

23 Do you understand that?

24 DEFENDANT: Yes, maam.

25 THE COURT: Thank you. Mr. Kidd?

1 MR. KIDD: Thank you, Your Honor. May it please the
2 Court?

3 This incident occurred on July 14, 2013. The Defen-
4 dant, Daryl Hampton, responded to an advertisement on Back-
5 Page dot com for a prostitute, and that prostitute along
6 with the Defendant and CoDefendant Jerell Jackson, along
7 with another CoDefendant Shakeera Jefferson, responded to
8 Mr. Hampton's residence on Blue House Drive in Ladson in
9 Charleston County.

10 While the victim was engaged in sex acts with Code-
11 fendant Gilliankirk, this Defendant and CoDefendant Jerell
12 Jackson entered the residence. Jerell Jackson was armed
13 with a firearm.

14 They held the victim at gunpoint and stole a couple
15 hundred dollars as well as a watch and a play station.

16 They were subsequently arrested the following day at
17 the Relax Inn in North Charleston where the stolen property
18 was recovered.

19 Mr. Johnson has made a statement to myself as well
20 as CoDefendants indicating their participation in the armed
21 robbery.

22 THE COURT: His prior record?

23 SOLICITOR: Your Honor, a prior burg second and a
24 couple of misdemeanors. One unlawful carrying, Your Honor,
25 and I can go into his record more fully at sentencing.

1 THE COURT: All right. Thank you.

2 Mr. Johnson, you have heard the facts presented by
3 the State. Are those facts true? Is that what you did?

4 DEFENDANT: Yes, maam.

5 THE COURT: I find a substantial factual basis for
6 your plea; that your decision to plead guilty has been
7 freely, voluntarily, knowingly and intelligently made.

8 You have indicated to the Court that you have had the
9 advice and counsel of a competent attorney, with whom you
10 have told the Court that you are satisfied.

11 I hereby accept your plea of guilt and will defer the
12 sentencing until a later point in time.

13 Thank you, Mr. Johnson.

14 (Conference at the bench off the record between coun-
15 sel and the Court)

16 (Other business taken up by the Court)

17 (TRANSCRIPTION NOTE: I am advised that you have re-
18 ceived the guilty plea entered by the CoDefendant Tyrell
19 Jackson. .I do not find any jury selection proceeding in
20 the hard drive furnished by Court Administration for the
21 transcription requested in this case)

JB

22

23

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25

CERTIFICATE

1
2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared from the records of Mia
5 Perron to the best of my ability, having been heard in the
6 Court of General Sessions for Charleston County on March
7 2 and 3, 2015.

8 FURTHER: I certify that I am neither of kin nor coun-
9 sel to any party to this matter, nor do I have any interest
10 in the same.

11 September 26, 2016

12 *Harriet P. Bennett*
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STATE OF SOUTH CAROLINA

VS.

JERELL JACKSON and
TOMMY JOHNSON,

DEFENDANTS.

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Tuesday, March 3, 2015, Commencing at 10:02 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Culver Kidd, Esquire
Lauren Mulkey, Esquire
9th Circuit Solicitor's Office
101 Meeting Street, Suite 400
Charleston, South Carolina 29402

FOR THE DEFENDANT:

J. Michael DeTreville, Esquire
Attorney at Law
Post Office Box 31925
Charleston, South Carolina 29417

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CERTIFICATE OF COURT REPORTER

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EXHIBITS

[None]

State vs. Jerell Jackson
March 3, 2015

PROCEEDINGS

THE COURT: Please swear Mr. Jackson.

THE CLERK OF COURT: If you could, sir, please raise your right hand.

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

MR. JACKSON: [Indicates affirmatively]

THE COURT: Mr. Jackson, you are here to plead guilty under Alford on two indictments: 2013-GS-10-6378 and 2013-GS-10-6402. Both are true billed indictments for the offense of armed robbery. I can sentence you, on an armed robbery charge, from ten years up to thirty years.

Do you understand that's the possible punishment?

MR. JACKSON: Yes, ma'am.

THE COURT: I can -- you also need to know --

And this is without recommendations, Solicitor?

MR. KIDD: That's correct, Your Honor. Other than that they run concurrent.

THE COURT: Run concurrent.

You are aware that an armed robbery charge is classified as a violent offense?

State vs. Jerrell Jackson
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1 MR. JACKSON: Yes, ma'am.

2 THE COURT: Do you understand what that
3 classification will mean to you as far as the potential
4 for parole?

5 MR. JACKSON: Yes, ma'am.

6 THE COURT: Do you understand this is also a most
7 serious offense?

8 MR. JACKSON: Yes, ma'am.

9 THE COURT: And you understand what that will mean
10 for you in the future?

11 MR. JACKSON: Yes, ma'am.

12 THE COURT: Tell me -- explain what that means in
13 your own words, what most serious means.

14 MR. JACKSON: Considered as a capital crime.

15 THE COURT: It is one of the most serious, meaning
16 it is classified as an offense that carries with it two
17 strikes, in essence, and those strikes will subject you
18 to -- if you have -- if you commit an offense that is
19 serious or most serious that the State could, on that
20 offense, elect to seek the potential for life without
21 parole.

22 Do you understand what that means?

23 MR. JACKSON: Yes, ma'am.

24 THE COURT: And how old are you?

25 MR. JACKSON: Thirty-five, Your Honor.

State vs. Jerell Jackson
March 3, 2015

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

2 MR. JACKSON: High school graduate.

3 THE COURT: Where did you go to high school?

4 MR. JACKSON: Volano [phonetic] Senior High.

5 THE COURT: How long have you been in custody?

6 MR. JACKSON: Twenty months, approximately.

7 MR. DETREVILLE: July 15th, 2013, Your Honor.

8 THE COURT: Have you ever been treated for the
9 abuse of drugs or alcohol?

10 MR. JACKSON: No, ma'am.

11 THE COURT: Ever been treated for mental illness?

12 MR. JACKSON: No, ma'am.

13 THE COURT: Sir, you understand we have a jury
14 downstairs waiting. You do not have to plead guilty or
15 guilty under Alford.

16 MR. JACKSON: Yes, ma'am.

17 THE COURT: You give up your right to a jury trial?

18 MR. JACKSON: Yes, ma'am.

19 THE COURT: You give up your right to have a jury
20 determine your guilt beyond a reasonable doubt based
21 upon the evidence the State presents, as well as any
22 evidence you may choose to introduce.

23 MR. JACKSON: Yes, ma'am.

24 THE COURT: Your right against self-incrimination,
25 your right to say nothing at all. Your right to

State vs. Jerrell Jackson
March 3, 2015

1 confront and be confronted by the witnesses against you,
2 as well as the right to call witnesses on your behalf.

3 Do you understand?

4 MR. JACKSON: Yes, ma'am.

5 THE COURT: Do you give up that right?

6 MR. JACKSON: Yes, ma'am.

7 THE COURT: By pleading guilty here today, you give
8 up any defense that you may have to either of these
9 charges.

10 Do you understand that, sir?

11 MR. JACKSON: Yes, ma'am.

12 THE COURT: Understanding the charges that you are
13 facing, the possible punishment, as well as the
14 consequences of this plea, how do you plea to armed
15 robbery that was committed on July 14?

16 MR. JACKSON: Guilty.

17 THE COURT: How do you plea to the armed robbery on
18 July 11th?

19 MR. JACKSON: Guilty.

20 THE COURT: And you had previously indicated that
21 you wish to plead guilty under Alford. Are you pleading
22 guilty, guilty under Alford, or something else?

23 MR. JACKSON: Guilty under Alford.

24 THE COURT: Sir, do you believe this plea is a
25 benefit to you?

1 MR. JACKSON: Yes.

2 THE COURT: And I'm going to listen to the facts.

3 Mr. Kidd, if you will tell me the facts. I know
4 that I've heard them on the codefendant but just to this
5 portion of the record, if you'll tell me the facts.

6 MR. KIDD: Yes, Your Honor. May it please the
7 Court.

8 The first incident occurred on July 11th, 2013.
9 This defendant, in the days preceding that, struck a
10 relationship with Brittany Gillenkirk, a codefendant in
11 this case. Herself and another codefendant, Shakeera
12 Jefferson, were placed on backpage.com and advertised to
13 provide sexual services.

14 On July 11th, 2013, the victim, Bruce Brisbane,
15 contacted this defendant's cell phone via the
16 backpage.com ad to have sexual interaction with
17 Ms. Gillenkirk. He responded to the North Charleston
18 Inn, which is located in North Charleston. He entered
19 room 117, which was rented to the codefendant, Tommy
20 Johnson, at the time. He began talking with Ms.
21 Gillenkirk.

22 Ultimately, he thought she did not appear as she
23 did in the photographs, and exited the room and got into
24 his car in an attempt to leave. At that point this
25 defendant and the codefendant, Tommy Johnson, pulled

State vs. Jerell Jackson
March 3, 2015

1 their car behind his so he could not leave, confronted
2 him in the parking lot. This defendant struck him one
3 time in the face, and brandished a firearm on him, and
4 stole \$100 from him.

5 That victim then reported to police the armed
6 robbery, gave a description of the suspects, their
7 vehicle, and the monikers of the prostitutes as Honey
8 and Chocolate as the ones he contacted off the backpage
9 website.

10 Subsequently, on July 14th, 2013, another victim,
11 Darrell Hampton, also responded to the same ad on
12 backpage.com, contacted the defendants through this
13 defendant's cell phone, arranged for sexual services to
14 be provided by Honey, which is Brittany Gillenkirk, the
15 girlfriend of this defendant. They responded to that
16 victim's residence on Blue House Road in Ladson. Ms.
17 Gillenkirk entered the residence. They began engaging
18 in sexual activity.

19 At some point she stopped the sexual activity, got
20 a phone and made a call to them and described the
21 location of the residence. This defendant and the
22 codefendant, Tommy Johnson, then came to the door where
23 they were let in by Ms. Gillenkirk. This defendant
24 brandished a .40 caliber pistol on the victim,
25 Mr. Hampton. They went through is house. They stole

State vs. Jerell Jackson
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1 his Rolex, a Play Station, and approximately \$200 in
2 cash, and fled the scene.

3 That victim -- although some delay of about twenty
4 hours, ultimately reported to the police, gave a
5 description, and actually got a new phone and called the
6 number again on backpage to set up a fake other
7 transaction, advised the police where they were located.
8 Michael Bridge, of the North Charleston Police
9 Department, responded to the Relax Inn in North
10 Charleston, where he saw a car matching the description
11 and the codefendant, Tommy Johnson, sitting outside of a
12 hotel room number 118 at the Relax Inn. He made contact
13 with him. Saw the other codefendants matching the
14 description. Subsequently did a knock-and-talk where he
15 smelled marijuana, detained the suspects. And he saw
16 the Play Station and the Rolex on the counter, obtained
17 a search warrant, found the firearm and the stolen
18 property, as well.

19 That's a succinct factual recitation to the Court
20 in the two armed robbery charges.

21 His prior record, Your Honor, is a 1999 simple
22 assault; a 2000 false information to police; '01, minor
23 possession of alcohol; 2003 DUS third; '05 unlawful
24 carrying; 2009 CDV; and a 2011 possession of marijuana
25 second.

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1 You know, this is a case that was kind of tough to
2 round up the victims. These are, you know, obviously
3 cases they're not thrilled about prosecuting in the
4 first place. So they're not here right now at
5 sentencing, and I don't think they would mind that, not
6 having to be here.

7 With that being said, in speaking with the
8 codefendant's, you know, this is the course of action
9 which, you know, obviously, no one is a -- has got clean
10 hands in this, from the victims, who were johns, to the
11 prostitutes, to the defendants. But there has to be
12 some sort of line in the sand of what is the worse
13 conduct that we're going to find that needs to be
14 punished.

15 These are two armed robberies that happened within
16 about a seventy-two-hour period. And, Judge, I think
17 something in the fifteen- to twenty-year range would be
18 appropriate in this case.

19 THE COURT: You've heard the facts as presented by
20 the State, sir. Are those facts true? Is that what you
21 did -- I'm sorry.

22 Do you believe that the State could produce
23 witnesses that would testify to those facts and a jury
24 most probably would find you guilty beyond a reasonable
25 doubt?

State vs. Jerell Jackson
March 3, 2015

1 MR. JACKSON: Yes.

2 THE COURT: Have you been satisfied with the
3 services of your attorney?

4 MR. JACKSON: Yes.

5 THE COURT: Any complaints about the way he has
6 handled this case for you?

7 MR. JACKSON: No, ma'am.

8 THE COURT: You will have the right to appeal this
9 plea and the sentence that I do impose here today, but
10 you or your attorney must do so within ten days.

11 Do you understand?

12 MR. JACKSON: Yes, ma'am.

13 THE COURT: Are you pleading guilty under Alford
14 freely and voluntarily, knowingly and intelligently?

15 MR. JACKSON: Yes, ma'am.

16 THE COURT: I find a substantial factual basis for
17 your plea to two counts of armed robbery. You have
18 indicated to the Court you have had the advice and
19 counsel of a competent attorney with whom you've told
20 the Court you are satisfied. I hereby accept your plea
21 of guilt under Alford on indictment 2013-GS-10-6378, one
22 count of armed robbery, and 2013-GS-10-6402, one count
23 of armed robbery.

24 Mr. DeTreville, I'll be happy to hear from you.

25 MR. DETREVILLE: Thank you, Your Honor.

State vs. Jerrell Jackson
March 3, 2015

1 As stated previously, Mr. Jackson is a high-school
2 graduate and a long-term resident of South Carolina. He
3 has been engaged in responsible employment throughout
4 his employable years. He's a skilled brick mason and at
5 the time of this arrest was working for a Robert Johnson
6 Brick Masons. He was a forty-hour-a-week lunch-pail
7 working man at the time of his arrest, Your Honor.

8 Mr. Jackson has two beautiful children that count
9 on him and rely on him, and I believe that that
10 contributes somewhat to Mr. Jackson's upsetness, shall
11 we say, this morning, Your Honor.

12 Mr. Jackson is surrounded by a loving family who is
13 supportive of him. And he has family here today. His
14 mother and his sister are both here to support him.

15 With the exception of certainly some mistakes that
16 Mr. Jackson has made, heretofore he has been a good and
17 responsible tax-paying resident of the Lowcountry area.

18 We would ask, given his prior record, certainly
19 there are -- there's a -- are a couple of blemishes on
20 his record, nothing of the caliber of the current
21 offenses. But we would certainly ask that the Court
22 impose the minimum sentence on Mr. Jackson. He is, as
23 has been stated previously, thirty-five years old and if
24 he were to serve a ten-year sentence with five served,
25 he would be in his mid forties by the time sentence was

State vs. Jerell Jackson
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1 complete and I think certainly would have learned a
2 lesson from this. And I think he will be a model inmate
3 during this time within the penal system.

4 Your Honor, his mother has indicated that she would
5 like to address the Court, if that's okay with Your
6 Honor. She's seated in the back, if the Court will
7 hear.

8 THE COURT: I'll hear from Mom.

9 Ma'am, I'll need you to state your full name for
10 the record. Just stand right there. State your full
11 name for the record and spell your last name.

12 MS. PETERSON: My name is Madeline Peterson.
13 P-E-T-E-R-S-O-N.

14 THE COURT: Thank you.

15 MS. PETERSON: I just wanted to ask the Court --
16 Jerell is really a good man, overall. He really is. He
17 had employment at the time that this occurred. He's a
18 good father to his boys. He's a good son to me.
19 Anything that I needed done for him -- by him, he was
20 always there for me. He was always there for his
21 siblings. And I just ask the Court -- he's my
22 firstborn, and I really need him. Please be lenient
23 with his sentencing for him. Thank you.

24 THE COURT: Thank you.

25 Anything you wish to tell me, Mr. Jackson?

State vs. Jerell Jackson
March 3, 2015

1 MR. JACKSON: [No response]

2 THE COURT: Mr. Jackson, this is one of the
3 detriments of pleading guilty under Alford, is I really
4 can't ask you any questions as to why you did or didn't
5 do this. It seems -- based upon what I'm hearing from
6 your mom, and your prior record, this seems somewhat out
7 of character for you. But I cannot -- I'm going to
8 sentence you based upon the facts as presented and the
9 very serious nature of both of these offenses.

10 Anything else, Mr. DeTreville?

11 MR. DETREVILLE: Nothing, Your Honor.

12 THE COURT: It's the order of the Court on 2013-GS-
13 10-6378 and 6402, they will run concurrent, that you be
14 committed to the State Department of Corrections for a
15 term of twenty years. Give you credit for 596 days.

16 Good luck to you, sir.

17 MR. DETREVILLE: Thank you, Your Honor.

18 [SENTENCING CONCLUDES AT 10:53 P.M.]
19
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State vs. Jerell Jackson
March 3, 2015

C E R T I F I C A T E

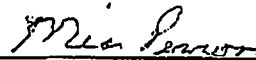
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the sentencing held before the Honorable Kristi L. Harrington, on Tuesday, March 3, 2015.

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

Dated this 22nd day of December, 2015.



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

FORM 5

STATE OF SOUTH CAROLINA

County of North Charleston

2015-CP-10-6113

IN THE COURT OF COMMON PLEAS

JERELL JACKSON #3163218

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2015 NOV -9 PM 4:40
JULIE J. ARISTIDES
CLERK OF COURT

INSTRUCTIONS B 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 Broadriver Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions 9th Judicial Circuit
3. Name(s) of co-defendant(s) (if any) Tammie Johnson, Shakeera Jefferson, and Brittany Gillenkirk
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery - Indictment # 2013.G.51006402

(b) Armed Robbery - Indictment # 2013G610016378

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 3, 2015 - Armed Robbery 10 yrs.

(b) March 3, 2015 - Armed Robbery 10 yrs.

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

Ineffective Assistance of Counsel, My lawyer failed to file for my appeal.

8. If you answered Ayes@ to (7), list:

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) My lawyer failed to file for an appeal after my request for him to do so.

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Involuntary Guilty Plea
- (c) Due Process Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Unreasonable diligence and promptness
- (b) Coerced Guilty Plea
- (c) Lack of Investigation, Misadvised in urging me to accept plea
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A

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

(a) P.C.R. is the only forum to raise these issues
 (b) Ineffective Assistance of Counsel in failing to appeal.
 (c) N/A

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

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

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

(a) the name and address of each attorney who represented you:

i. Michael DeTreville; Law & Mediation, LLC
714 St. Andrews Blvd., P.O. Box 31925, Charleston, SC. 29417
 ii. N/A
 iii. N/A

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

i. Arraignment, Trial, and Sentencing
 ii. N/A
 iii. N/A

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

Conviction and sentencing vacated and remanded
for a new trial.

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of North Charleston)

VERIFICATION

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

Verell Jackson Sr.

SWORN to and subscribed before me this 3rd
day of November, 2015.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: _____ My Commission Expires
March 5, 2018

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

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

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

Jerrell Jackson Sr.
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of November, 2015.

Susan H. Frye
Notary Public

My Commission Expires

My Commission Expires: March 5, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Jerell Jackson, #363218,

2015-CP-10-6113

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post conviction relief (PCR) filed November 9, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted by the October 2013 term of the Charleston County Grand Jury for two (2) counts of Armed Robbery (2015-GS-10-6378, -6402). J. Michael DeTreville, Esquire represented the Applicant. On March 3, 2015, the Applicant pled guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant to twenty (20) years for each count. The sentences run concurrently. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea"
3. "Due Process Violation"

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

III.

For purposes of this Return, Respondent interprets Applicant's first allegation to be an allegation of ineffective assistance of counsel. In a post-conviction relief action, 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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 Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

The Applicant also alleges his guilty plea was involuntary. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566

(4th Cir. 1976). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to

this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

The Applicant's third claim is an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

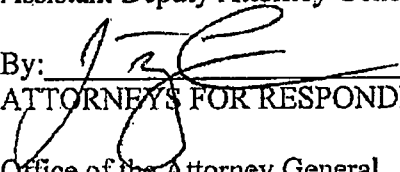
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

MAY 9th, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JERELL JACKSON, #363218

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

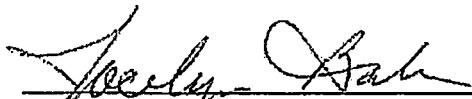
2015-CP-10-6113

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Dr Ste 300
Charleston, SC 29405-8587

DATED this 9th day of May, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2016-CP-10-06113

JERELL JACKSON,	)	
Applicant,	)	TRANSCRIPT OF RECORD
-vs-	)	September 14, 2016
STATE OF SOUTH CAROLINA,	)	Charleston, South Carolina
Respondent.	)	

B E F O R E:

The Honorable Jean Toal, Judge.

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

Rodney Davis, Esquire
Appearing for the Applicant

James R. Johnson, Esquire
Keondra Campbell
Appearing for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Jerell Jackson	24	39	44	--
4	Michael Detreville	46	57	--	--
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E X H I B I T S

2	NO.	DESCRIPTION	ID.	EV.
3	Court's 1	Proffer	63	63
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1 (September 14, 2016.)

2 THE COURT: All right. This is the matter of
3 Jerell Jackson against the State, 2015-CP-10-6113.

4 Counsel, you may proceed, and please,
5 counsel, identify yourself. The court counsel is a
6 student at the Charleston School of Law presenting for
7 the State as a special admitee under the rules of the
8 South Carolina Supreme Court that allow student practice
9 before the Courts of South Carolina under supervised
10 conditions. Her supervisor is present.

11 Mr. Johnson, counsel, you may go forward.
12 Each side state your name very clearly for the Clerk of
13 Court so she can put it on the record.

14 MS. CAMPBELL: May it please the Court, Your
15 Honor: My name is Keondra Campbell, and I'm a 3-L at the
16 Charleston School of Law. I'm being supervised today by
17 Mr. Johnson with the district attorney's office.

18 May I have permission from the Court to
19 participate today?

20 THE COURT: Yes, you may. Granted.

21 MS. CAMPBELL: Thank you. Mr. Jackson was
22 indicted October 7, 2017 by the Charleston County Grand
23 Jury for two counts of armed robbery. The incidents
24 associated with these indictments occurred on July 11,
25 2013 and July 13, 2013.

1 Mr. Jackson entered a guilty plea on March 3,
2 2013 in front of the Honorable Kristi L. Harrington. The
3 Honorable Kristi L. Harrington sentenced Mr. Jackson to
4 20 years for each indictment with the sentences running
5 concurrently. An appeal was filed by Mr. Jackson.

6 Mr. Jackson filed a timely PCR on January 20,
7 2015. State filed a return on May 9, 2016. Mr. Jackson
8 is represented here today by Mr. Davis.

9 THE COURT: Very good. Mr. Davis, Mr. Jerrell
10 Jackson is present in the courtroom. Welcome,
11 Mr. Jackson.

12 Mr. Davis, you may proceed.

13 MR. DAVIS: Thank you, Your Honor. May it
14 please the Court: I'm in a unique position in the
15 courtroom the day of the hearing to respectfully ask for
16 a continuance, and I'll certainly make a record for that.

17 Normally -- I think there were three off of
18 this docket that ahead of time asked the chief
19 administrative judge, for one reason or another, for a
20 continuance. I certainly try to address them ahead of
21 time.

22 This is a unique case, Your Honor, and I'll
23 lay out the reason why Mr. Jackson, knowing that it will
24 delay a PCR, would respectfully ask you grant a motion
25 for continuance. He filed the PCR, Your Honor, on

1 November 9, 2015. I was appointed right around Christmas
2 of last year, so it has been just over eight months.

3 That is, we understand, a good amount of
4 time. It has been sufficient time, but these were two
5 separate alleged armed robberies involving the same
6 codefendant and therefore the same witnesses as far as
7 codefendants testifying.

8 There would be two different alleged victims
9 in these alleged armed robberies. I was provided the
10 State's reply as well as the transcript of the guilty
11 plea. In the meeting with and in discussing with my
12 client -- I will be forthright with the Court: I was
13 confused early on.

14 One of the complaints -- in discussing with
15 me, he complained about that his attorney was not present
16 during the picking of the jury, and in 21 years of
17 handling criminal court, I didn't see how that would be
18 possible. But certainly if it was, it would be a ground
19 for us to go forward, but I did not see how that could
20 have been possible.

21 Through more investigation, and most
22 importantly speaking with Mr. Detreville, who is in the
23 courtroom today, who is the attorney for these charges --
24 actually meeting with him, there was a difference in
25 recollection about how this plea off of a trial docket --

1 so it was a trial docket. It was docketed for trial
2 along with one of the four codefendants, and there was
3 some confusion about that. Mr. Detreville and his staff
4 were quite helpful in sorting it out, and when I spoke
5 with Mr. Jackson, it made a lot more sense.

6 So we now understand that this was on the
7 trial docket for the week of March 2nd, which was a
8 Monday. This was not the first trial up, so any matters
9 pertaining to this trial would have started on Tuesday,
10 March 3rd; however, the transcript I have for Tuesday,
11 March 3rd, commences at 10:02 a.m.

12 The first question after Mr. Jackson is sworn
13 by Judge Harrington is: Mr. Jackson, you're here to
14 plead guilty under Alford.

15 It goes straight into the plea colloquy, Your
16 Honor. It is clear that there is a partial transcript
17 that would certainly include the picking of the jury for
18 both codefendants. That unlikely provides us anything,
19 but since this was a plea off the trial docket -- and the
20 final quirk, Your Honor, which has happened to me, but it
21 happens rarely, codefendant worked out a deal the day of
22 trial.

23 And information -- a bomb goes off, and
24 you're reassessing the situation. Ultimately, that was
25 one of the factors that led Mr. Jackson to enter the plea

1 rather than going forward on trial. So there very well
2 may be -- Your Honor, we don't know. We may get the
3 transcript.

4 There may be nothing that assists us
5 whatsoever, but I spoke at great length with Mr. Jackson,
6 and knowing that the next available term is December 5th,
7 I would hope the partial transcript we don't have would
8 not be lengthy, and we would hope to get by then and be
9 prepared to go on that docket. But whether that happens
10 or not, he understands that if you grant a continuance,
11 we would not go forward today.

12 He would be the one suffering from that
13 consequence, but still, making sure that I and he look at
14 everything we want to look at, out of an abundance of
15 caution, I would respectfully request a continuance so
16 that we could obtain the partial transcript we do have to
17 ensure there is nothing in there and we're not missing
18 anything, or if there were discussions about plea
19 negotiations or there was discussion about
20 attorney-client relationship that was placed on the
21 record, it certainly would be fodder for supporting our
22 grounds at the PCR hearing. So, respectfully -- and,
23 unfortunately, I know it's a list minute, open court
24 request, but we would request a continuance in this
25 matter.

1 THE COURT: Mr. Davis, the transcript that
2 you're looking for is a of a transcript of what you think
3 might have preceded the swearing of Mr. Jackson on March
4 the 3rd?

5 MR. DAVIS: That's correct, Your Honor.

6 THE COURT: Because what had been contended
7 to begin with was that his lawyer wasn't present at the
8 selection of a jury, but the selection of the jury would
9 have probably taken place the day before, on March the
10 2nd; is that right?

11 MR. DAVIS: That's possible. That's one of
12 the things I discussed with Mr. Detreville, his staff,
13 and through all that discussion, it seems pretty clear
14 that there was no matter dealt with in Mr. Jackson and
15 his codefendant, Tommy Johnson's case that was handled on
16 Monday. So, again, I don't think the transcript is going
17 to be lengthy, but it's going to be picking of the jury,
18 but I don't believe there will be anything that would
19 assist us in any way.

20 THE COURT: So your contention is that on
21 March the 3rd, a jury was actually picked, and after
22 that, Mr. Jackson pled guilty?

23 MR. DAVIS: Correct, Your Honor. Mr. Johnson
24 first, his codefendant, and then Mr. Jackson.

25 THE COURT: March the 3rd, a jury is picked,

1 and -- but then the codefendant pleads guilty before Mr.
2 Jackson pleads guilty, and is what you're looking for the
3 codefendant's transcript or Mr. Jackson's transcript?

4 MR. DAVIS: Bluntly, all of it, Judge. I
5 need to ensure that Mr. Detreville -- I'm sure he handled
6 that process appropriately. There should be the colloquy
7 handling Mr. -- and I keep forgetting, Your Honor,
8 Johnson's plea. Certainly that plea was the catalyst --
9 some we're going to agree with, some we're going to
10 complain about, but certainly Mr. Johnson's plea the
11 morning that the trial was to begin was the catalyst that
12 led to Mr. Jackson pleading guilty.

13 So I would like to view that as well because
14 certainly what discussions he and Mr. Detreville had
15 about that plea are crucial to Mr. Jackson's decision to
16 plead guilty. And, finally, Your Honor, in case there
17 were any discussions concerning Mr. Jackson's decision or
18 thoughts of pleading guilty or going to trial or any
19 discussions about the relationship between Mr. Jackson
20 and Mr. Detreville that were made in open court in
21 between the picking of the jury and the guilty plea, you
22 know, essentially that could be of benefit to us.

23 If none of that exists, I think I'm obligated
24 to run it to the dead end and tell Mr. Jackson I have it
25 now, there is nothing there, but at least I've opened

1 that door and reviewed that information.

2 THE COURT: All right. When the matter was
3 put forward for a plea, what was recited by Mr. Culver
4 Kidd, who was the solicitor, was as follows, and I'm
5 looking at the transcript of the March 3rd, 2015 plea
6 characterized as an Alford plea at page eight.

7 Mr. Kidd says: The first incident occurred
8 on July the 11th of 2013. This defendant, in the days
9 preceding that, struck a relationship with Brittany
10 Gillenkirk a codefendant in this case. Herself and
11 another codefendant, Shakeera Jefferson, were placed on
12 Back Page dot com. and advertised to provide sexual
13 services.

14 On July 11th of 2013, the victim, Bruce
15 Brisbane, contacted this defendant's cellphone via Back
16 Page ad to have sexual interaction with Ms. Gillenkirk.
17 He responded to the North Charleston Inn, which is
18 located in North Charleston. He entered room 117, which
19 was rented to a codefendant, Tommy Johnson, at the time.
20 He began talking with Ms. Gillenkirk.

21 Ultimately, he thought she did not appear as
22 she did in the photographs and exited the room and got in
23 his car and attempted to leave. At this point, this
24 defendant, meaning Mr. Jackson, and the codefendant,
25 Tommy Johnson, pulled their car behind him so he could

1 not leave, confronted him in the parking lot. This
2 defendant struck him one time in the face and brandished
3 a firearm on him and stole \$100 from him.

4 That victim then reported to the police the
5 armed robbery, gave a description of the suspects, their
6 vehicle, and the monikers of the prostitutes as Honey and
7 Chocolate as the ones he contacted off Back Page.

8 And then there's a recitation of another
9 victim, also responding to Back Page dot com. The
10 individual for which services were solicited was Brittany
11 Gillenkirk, the girlfriend of this defendant, and they
12 responded to victim's residence on Blue House Road in
13 Ladson.

14 At some time after Ms. Gillenkirk engaged
15 with the victim, she made a call to Mr. Johnson and
16 Mr. Jackson, and they came to the house and brandished a
17 40 caliber pistol on the victim.

18 And then there's a discussion about the
19 various activities that occurred, and, again, this is a
20 recitation of the activity of Mr. Johnson and Mr. Jackson
21 in connection with these two women who advertised on Back
22 Page dot com.

23 Now, this was an Alford plea on Mr. Jackson's
24 part, so, of course, that is a plea in which you don't
25 admit your guilt, but you say there is enough evidence by

1 way of what I just recited that was recited by the
2 solicitor that the jury, beyond a reasonable doubt, would
3 find that he was guilty of the offenses charge.

4 That's what happened in this piece of
5 activity, and, of course, the activity of Mr. Jackson and
6 Mr. Johnson was thoroughly discussed, and a very strong
7 plea made by his family about -- in litigation.

8 I am reluctant, I'll be honest with you, to
9 postpone this thing simply because I can't imagine that
10 there would be anything in the plea of Mr. Johnson that
11 would affect one way or another this Alford plea that's
12 been interposed by Mr. Jackson on the record that I have
13 recited in which he does not contest any of the
14 activities recited by the solicitor on his part, on Mr.
15 Johnson's part, and otherwise recites that this would be
16 voluntarily done and so forth and so on.

17 Can you specify what you believe or what
18 Mr. Jackson believes might be contained otherwise in the
19 transcript of Mr. Johnson that might bear on the
20 decisions that we would make here today about
21 Mr. Jackson's post-conviction relief?

22 MR. DAVIS: Yes, Your Honor. I'll answer
23 that two ways: First of all, just so the Court is clear,
24 factually, the two victims in the two cases -- and you
25 read part of the State's colloquy.

1 THE COURT: Right.

2 MR. DAVIS: Neither one of them identified
3 either of the males, so they cannot provide
4 identification. They provide, certainly, factual
5 scenario of the crime, the offenses, the two offenses
6 were committed, but they do not. The female codefendants
7 early on began cooperating with the State and provided
8 identification.

9 Mr. Detreville and staff were very helpful
10 with this. Both females corresponded with my client and,
11 I believe, the State as well. Multiple different stacks,
12 probably an inch thick, of letters from each so that
13 there were various stories that Mr. Detreville could and
14 would have. So while the female codefendants do provide
15 factual basis and an identification, Mr. Jackson
16 understood Mr. Detreville would pursue credibility
17 questions if this was going to trial.

18 Ultimately, it's a fact that lifelong friend
19 and codefendant Mr. Johnson pleads off of the trial
20 docket before Mr. Jackson provides factual basis for the
21 offenses and identification of someone he's known his
22 whole life.

23 Like I said, it's the ultimate catalyst.
24 Again, there were other factors that let to the ultimate
25 catalyst that led to the Alford plea. Your Honor, since

1 it's specifically to your question, what I would suggest
2 is, to be frank with the Court, there may not be
3 anything. And I do need to tell the Court, if you grant
4 this and we're entitled to review the transcript, there
5 may not be anything, but we don't know that until we look
6 into that.

7 What might -- and I'm cautious to speculate,
8 but two concerns I do have: Not the content,
9 necessarily, of Mr. Johnson's colloquy because I think,
10 as you recognize, that this was an Alford. Mr. Jackson
11 did not. I've heard everything he said. I agree with it
12 100 percent. That is his right.

13 Ninth Circuit -- I'm not sure. I don't think
14 most circuits do this. I think it's something local
15 solicitors adopted from the federal system, but instead
16 of plea agreements for cooperation, 99 percent of the
17 time here in the Ninth Circuit, it is a use immunity
18 agreement, we will not use the words you give us back
19 against you, but anything else is fair game.

20 To that extent, Mr. Johnson pled and did
21 enter an Alford agree. Mr. Johnson was aware he pled and
22 was going to, if need be, testify against him. That
23 proffer was done that day, and Mr. Detreville has a copy
24 of it. Things were moving pretty quickly, ended up
25 pleading at 10 o'clock in the morning, so things moved

1 relatively quickly.

2 We've all been in the trial courtroom. I'm
3 sure Judge Harrington: We've got a jury waiting. Is he
4 going to or is he not going to? and we certainly
5 understand that. My concern would be whether there is
6 something either in -- not necessarily the colloquy, but
7 the whole process of Mr. Jackson pleading and agreeing to
8 cooperate with the State.

9 I would hope this proffer was discussed on
10 the record, that document, that promise, how that witness
11 could have been questioned, had a trial before the Court;
12 that's something we have independent of the Court.

13 If there was any promise by the State -- they
14 generally don't here in the Ninth Circuit, but whether on
15 the record there was, because we don't have that part of
16 it, and then it's not the picking of the jury, it's not
17 Mr. Johnson's plea, it's in the gaps: Was there anything
18 discussed about Mr. Jackson? Was there anything
19 discussed about Mr. Jackson, Mr. Detreville's
20 relationship?

21 Certainly we now have complaints about Mr.
22 Detreville and the way he handled his case. Mr. Jackson
23 testified about discussions that were had prior to this
24 week, the March 2nd week. I think he recalls pretty
25 clearly the discussions they had in the booth like you

1 allowed me this morning, so the behind the scenes
2 information we have a pretty good grasp on.

3 What I'm concerned with is if there is a
4 nugget of information that I'm just not privy to that may
5 be in that transcript, and I certainly understand and
6 respect the Court's time, and certainly you're down here
7 handling this special session. We do not make this
8 request just to delay or cause trouble with the Court.

9 In the an abundance of caution, my client's
10 request, I want to make sure I've looked through
11 everything. If it's a dead end, it's a dead end.
12 Certainly we know the State is here. They would be here
13 this week anyway. We certainly appreciate and understand
14 the students from law school being here. We discussed
15 that at the bench previously. We understand Mr.
16 Detreville is here, local attorney.

17 Everybody is ready to go, and we understand.
18 This is not something in the eight months I had that I
19 picked up on. I own that. I don't want to be in that
20 position, but that's the reality of that. Mr. Jackson is
21 the one that is going to suffer any consequences of the
22 delay, we would argue to the Court.

23 The state of the Court, it's a minor delay.
24 If we were successful today, it would put things in
25 motion quickly, but the chance he would not -- and, with

1 all due respect, you sat on the Supreme Court. If we
2 went forward with what information we had with the
3 background and the things leading up, we'll present that.
4 If we're not successful, not only would we likely appeal
5 those, we would appeal the fact that he didn't review the
6 transcript.

7 THE COURT: Understood. Well, Ms. Campbell,
8 your response.

9 MS. CAMPBELL: Your Honor, I would like to
10 defer to Mr. Jackson.

11 THE COURT: Very good. Mr. Johnson?

12 MR. JOHNSON: May it please the Court, Your
13 Honor: As counsel Davis said, this is the first time
14 I've heard of this this morning, that this other
15 transcript may or may not exist.

16 We respectfully ask you to deny the
17 continuance. We do have Ms. Campbell here to argue.
18 She's been preparing for this case for the past few
19 weeks. We have Mr. Detreville here. It's just a waste
20 of resources; you know, two SCDC guards have to take Mr.
21 Jackson back and forth. There may or may not be
22 existence of this transcript.

23 Everybody is here, ready to go. I wish you
24 would deny this continuance motion, Your Honor.

25 THE COURT: Thank you, Mr. Jackson. Here is

1 what I am going to do: I am going to hear this matter
2 and deny this motion at the present time, and I am going
3 to assess the situation at the close of all testimony,
4 Mr. Jackson, to see whether we should hold this matter
5 open for further hearing on the matter.

6 I'm going to be back here in October and
7 would be able to have a resumption of this matter at that
8 time, and that might give some emphasis to have a quick
9 turnaround on whatever they need further by way of
10 transcripts or anything of that nature. So my thinking
11 is that we go forward, but that depending on what we hear
12 in these proceedings, we'll perhaps hold it open for
13 further submission by Mr. Jackson after a transcript is
14 received, and both counsel can determine whether or not
15 there's anything in there that is worthy of further
16 presentation and, if so, we can reconvene the hearing for
17 that purpose, Mr. Davis.

18 MR. DAVIS: May I speak with my client
19 briefly?

20 THE COURT: You may.

21 MR. DAVIS: Your Honor, thank you very much.
22 We understand, and I wanted to explain the Court's ruling
23 to my client, Judge, so we're prepared to go forward, I
24 would ask you to review the risks and consequences. I
25 have in great detail with my client, but if you would go

1 through that on the record, the risks and benefits of
2 going forward on a PCR -- because, Judge, pled guilty on
3 the two armed robberies two years concurrent. Obviously,
4 as we know, each armed robbery carries a possible
5 punishment of a mandatory minimum of 10 up to 30 served
6 at 85 percent.

7 I've reviewed that with my client. He knows
8 if we were successful he would start anew, but if you
9 could go through that on the record with him, I certainly
10 would appreciate it.

11 THE COURT: Very good. All right. You will
12 begin with Mr. Jackson. I can assure he is your first
13 witness. Bring him around, and we'll swear him in so
14 we'll have things on the record.

15 JERELL JACKSON,
16 having been first duly sworn,
17 was examined and testified as follows:

18 THE WITNESS: Jerell Jackson, J-a-c-k-s-o-n.

19 THE COURT: Good morning, Mr. Jackson.

20 THE WITNESS: Good morning, ma'am.

21 THE COURT: Before you begin your testimony
22 as directed by Mr. Davis and any cross-examination, I
23 want to be sure you understand where you are in these
24 proceedings.

25 You have filed an application for

1 post-conviction relief with regard to your plea to two
2 armed robberies, and in that application, you have cited
3 ineffectiveness of counsel, and one of the things you say
4 is that your counsel failed to file a timely appeal.

5 Do you recall that?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: That sets up a dynamic that needs
8 to be discussed with you. There is a possible way to
9 petition for a review under what's called the White
10 decision. If it turns out if you asked your attorney to
11 file your appeal and you requested him to do it and he
12 did not do it, there might be some way to have it
13 reviewed on direct appeal.

14 Has that been discussed with you at all?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: And what you have done in light
17 of that discussion is to set forth the grounds of lack of
18 diligence and promptness, coercion of a guilty plea, and
19 lack of information and misadvising you of accepting this
20 plea as a result of your application; am I correct?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: And that is a little bit
23 different than what you might raise, if anything, on a
24 direct appeal. Do you understand that?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: All right. And you understand
2 that the consequences of an application being granted for
3 post-conviction relief is you have to go through the same
4 things and be faced with either trial or a plea again.

5 Do you understand that is what would happen?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: And, of course, you were
8 sentenced to 20 years on the two charges concurrent, but
9 you could get more than that if you were retried.

10 Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: But, nonetheless, you want to
13 proceed with your application for post-conviction relief?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Is there anything else you would
16 like to say about that aspect of it before we proceed in
17 the normal fashion with Mr. Davis?

18 THE WITNESS: No, ma'am.

19 THE COURT: Very good. Thank you so much,
20 sir. Mr. Davis, you may proceed.

21 MR. DAVIS: Your Honor, if I may pick up on
22 the appeal issue, again, I want to thank Mr. Detreville
23 and his staff on this. I have talked extensively with my
24 client about this, even this morning showing him
25 documents that I received last week from Mr. Detreville's

1 office. Judge, to be clear, the procedural history is --
2 and I can certainly make these a record, but, ultimately,
3 we're going to tell you we're not moving forward on
4 requesting a White appeal.

5 That's the ultimate conclusion of this, but,
6 for the record, Mr. Detreville did file the notice of
7 intent on this case, served it on the Attorney General.
8 There was a letter, couple letters, from the Court of
9 Appeals requesting more information under Rule 203. That
10 was not replied to by Mr. Detreville.

11 It was his understanding that appellate
12 defense had it from the moment that he had filed. He
13 requested an extension. It was granted; however, without
14 any subsequent explanation, the Court ultimately
15 dismissed it and remitter was sent back.

16 To his credit, Mr. Detreville would testify
17 to that if we intended to proceed on that, but I've
18 talked with Mr. Jackson at great length about what a
19 direct or belated appeal focuses on as opposed to what a
20 PCR focuses on, and it's his understanding -- and at the
21 appropriate time, I will even ask Mr. Jackson to put some
22 of this on the record. But the complaints are clearly,
23 through our discussions, about what led to his decision
24 to plead guilty, not about the judge's conduct in the
25 court during the plea. We don't believe there is any

JERELL JACKSON - DIRECT EXAMINATION

1 grounds that we would have for a belated appeal, so we
2 would not be going forward on that ground.

3 THE COURT: Very good. You may proceed.

4 DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. Mr. Jackson, let's get some preliminary things out
7 of the way. How old are you, sir?

8 A. Thirty-seven, sir.

9 Q. Could you just speak up a little bit for us, sir?

10 A. Yes, sir.

11 Q. How far did you go in school?

12 A. Graduated from high school.

13 Q. And I believe that was in 1997.

14 A. Yes, sir.

15 Q. And where was that?

16 A. In California, sir.

17 Q. And you moved to South Carolina when you were how
18 old?

19 A. Eighteen, sir.

20 Q. Been here ever since?

21 A. Yes, sir.

22 Q. When you were originally charged with these two
23 offenses, these two armed robberies, who originally was
24 your attorney?

25 A. Mr. Detreville.

JERELL JACKSON - DIRECT EXAMINATION

1 Q. Now, you heard me talk just briefly with the Court
2 about the issue on your appeal and any problems with the
3 way Mr. Detreville handled that. Did you hear that
4 discussion?

5 A. Yes, sir.

6 Q. Does that accurately reflect the discussions we
7 would have about that?

8 A. Yes, sir.

9 Q. Based on those discussions, do you wish to pursue
10 any issues dealing with the appeal, or do you wish to
11 waive those and discuss other complaints?

12 A. Waive them and discuss other complaints.

13 Q. During the time Mr. Detreville represented you,
14 could you tell him how many times y'all would have met
15 and spoken?

16 A. In a two-year time period, approximately four to
17 five times.

18 Q. And how long were the length of these meetings
19 when you would have discussions?

20 A. Maybe 20 minutes at the most.

21 Q. Let's break up the discussions into discussions
22 that were quite a bit before the trial date and then
23 those at the week of trial, all right?

24 A. Yes, sir.

25 Q. In the earlier ones, what would have been the

JERELL JACKSON - DIRECT EXAMINATION

1 nature of those discussions? What did y'all talk about?

2 A. Primarily when I first met Mr. Detreville, he
3 discussed a plea from the very beginning, and I refused
4 it. We spoke about what my codefendants were allegedly
5 saying and statements that were given to either the
6 solicitor or whoever was giving us these charges, but I
7 was optimistic with being able to use a lot of those
8 things against my codefendant in the beginning.

9 Q. Is it fair to say that your trial strategy that
10 you discussed, in fact, it wasn't me, it wasn't you; is
11 that the trial strategy?

12 A. No. The trial strategy was to reveal the truth,
13 that it was a completely different scenario other than
14 how it was painted from the beginning.

15 Q. And during those discussions, I believe your
16 recollection is Mr. Detreville's optimistic about your
17 chances.

18 A. Yes, sir.

19 Q. Just to deal with one other thing you referenced
20 there, you said in one of the earliest meetings he came
21 to you with an offer that you refused; is that right?

22 A. Yes, sir.

23 Q. Just to deal with that, do you recall how many
24 offers you were given during the course of this case
25 until it ultimately resolved?

1 A. Five.

2 Q. And you turned down all five offers?

3 A. Yes, sir.

4 Q. You were aware prior to your plea of the
5 information provided by the two gentlemen that were
6 complaining that they were robbed?

7 A. Yes, sir.

8 Q. That would have been information Mr. Detreville
9 shared with you?

10 A. Yes, sir.

11 Q. Did he provide you with your Rule 5 or your
12 discovery, or did he simply review it with you when you
13 met?

14 A. He reviewed it with me when we met.

15 Q. You did not independently have a copy?

16 A. No, sir.

17 Q. You were aware prior to going to court the
18 information that the two female codefendants had, first
19 of all, provided to law enforcement.

20 A. Not both of them.

21 Q. Okay.

22 A. Just one.

23 Q. Can you tell the Court what your recollection was
24 about the information provided by your codefendant to law
25 enforcement.

JERELL JACKSON - DIRECT EXAMINATION

1 A. Brittany Gillenkirk was the codefendant who made
2 up these allegations or cooperated with law enforcement.
3 It wasn't until later on, until Shakeera Jefferson either
4 gave a verbal statement or a written statement. It's
5 still not clear to me because I still don't have -- I
6 don't obtain all of the information of my Rule 5, Rule 6
7 combo. It was just very unclear to me, the whole time,
8 even during the day of my trial.

9 Q. Prior to that day, had you and Mr. Detreville had
10 discussions about either one of the females and the
11 information? Did y'all discuss that?

12 A. We discussed Brittany, but we really didn't
13 discuss Shakeera because he didn't feel that Shakeera
14 would have been any harm to me.

15 Q. You were aware that in addition to information
16 provided to police, Brittany was writing multiple letters
17 in this case, correct?

18 A. Yes, sir.

19 Q. You were privy to that information?

20 A. Yes, sir.

21 Q. Letters written to you?

22 A. Yes, sir.

23 Q. And you provided those to your attorney?

24 A. Yes, sir.

25 Q. Did y'all discuss how you might use that

JERELL JACKSON - DIRECT EXAMINATION

1 information if you went to trial?

2 A. Yes, sir.

3 Q. Is it fair to say Brittany's information was often
4 inconsistent on which statement or letter was reviewed?

5 A. Yes, sir.

6 Q. Mr. Tommy Johnson was also arrested in relation to
7 these two armed robberies, correct?

8 A. Yes, sir.

9 Q. Can you tell the Court how you know Tommy?

10 A. Me and Tommy, we've known each other for a long
11 time. We played semi-pro football and arena football
12 together for multiple years. He's like an uncle to my
13 sons. I was very close with one of his brothers that
14 passed away in 2010, and he's just been a close friend of
15 the family for a long time.

16 Q. I'll move forward to the week of the trial and the
17 resolution of this case, okay?

18 A. Yes, sir.

19 Q. In the week leading up to this trial, do you
20 recall what meetings you had with Mr. Detreville?

21 A. Within a week's time period before trial, he had
22 came to the county jail and we sat there for
23 approximately an hour. At that time, he was still
24 optimistic about the case. We didn't discuss anything
25 about pleas. We did discuss how he would question the

JERELL JACKSON - DIRECT EXAMINATION

1 credibility of my codefendants.

2 Q. Meaning Brittany and Shakeera?

3 A. Yes, sir.

4 Q. But it was at this time, the week before trial, it
5 was your understanding you and Mr. Johnson were both
6 going to be tried together; is that correct?

7 A. Yes, sir.

8 Q. Now, would it have been in that discussion the
9 week before the trial date, or at some earlier
10 discussion, that you would have talked to Mr. Detreville
11 about the claims of the two gentlemen, alleged victims,
12 when would you have had discussions with Mr. Detreville
13 about those two gentlemen?

14 A. They were always unclear in the whole case because
15 Mr. Detreville never knew whether they were going to
16 cooperate or not even all the way up until the trial
17 date. He said to me that he didn't even know if they
18 were here or not, so I was never aware if -- or aware of,
19 excuse me, if there was going to be victim cooperation or
20 not.

21 Q. When you say he didn't even know if they were here
22 or not, are you talking about in the area, or are you
23 talking about the day of the trial whether they were in
24 the courtroom?

25 A. Whether they were in the courtroom or not.

JERELL JACKSON - DIRECT EXAMINATION

1 Q. Was there anything specifically you asked Mr.
2 Detreville to do as it pertained to the accusers?

3 A. Yes, sir.

4 Q. What was that?

5 A. Perform a formal investigation on these
6 allegations against me.

7 Q. So the Court will understand formal investigation,
8 what did you want him to do?

9 A. Go ask them questions, ask them what their plans
10 were with going forward with trial. I asked him, Ask
11 what type of punishment they would seek for me and my
12 codefendants.

13 Q. To your knowledge, was any of that done?

14 A. No, sir.

15 Q. At any point during the time we've discussed in
16 talking with Mr. Detreville, leading up to the week
17 before the trial date, had you expressed any interest in
18 any type of a guilty plea to Mr. Detreville?

19 A. No, sir.

20 Q. So the Court will understand, ultimately could you
21 tell the Court what charges went away way when you pled
22 guilty under Alford to the two armed robberies.

23 A. Burglary and two commissions of a weapon during
24 the event of a violent crime.

25 Q. All right. Let's move our attention to the week

JERELL JACKSON - DIRECT EXAMINATION

1 of trial. At some point it became apparent that
2 Mr. Johnson was not going to trial; is that correct?

3 A. Yes, sir.

4 Q. Can you tell the Court how you're informed of
5 that.

6 A. The morning that our trial was supposed to begin
7 on March 3rd, I had an attorney visit in the back with
8 Mr. Detreville, and it was after me and Tommy had both
9 came to the courtroom together and told Justice
10 Harrington that we were prepared to go forward with the
11 trial. And approximately 15 minutes after that, me and
12 Mr. Detreville met in the back, and he told me that
13 Mr. Johnson had taken a plea.

14 Q. Can you tell the Court about discussions that you
15 had given that shocking news?

16 A. Well, he told me that was basically the nail in
17 the coffin for me and that if I did not take a plea, that
18 I would get life and that I would never see my children
19 again or my family again, and he would rather that I take
20 the plea and see my family and my kids later rather than
21 to never see them again.

22 Q. Was there a discussion about your record or lack
23 of a record? Was there a discussion between you and Mr.
24 Detreville about that?

25 A. He stated to me that being that my record wasn't

JERELL JACKSON - DIRECT EXAMINATION

1 extensive at the time that my punishment shouldn't be too
2 cruel or too serious, excuse me, if I decided to take a
3 plea.

4 Q. Did he promise you a sentence, or at least a range
5 of a sentence?

6 A. He made it lean more towards ten years being that
7 I don't have an extensive record and that I don't have
8 any priors or I've never been in trouble or nothing of
9 this nature before in my life.

10 Q. Let's deal with that for just a second. You had
11 never been in General Sessions Court prior to March 3rd
12 of the date right here, 2015?

13 A. No.

14 Q. Okay. So that time and this time are your times
15 in Circuit Court, correct?

16 A. Yes, sir.

17 Q. So I think your words were he was leaning towards
18 a not serious sentence. Did he talk about an actual
19 number, a number of years?

20 A. Ten years.

21 Q. So after you found out your codefendant had pled
22 guilty, you're talking to Mr. Detreville, it's his
23 opinion that you no longer go to trial and plead guilty;
24 is that correct?

25 A. Yes, sir.

JERELL JACKSON - DIRECT EXAMINATION

1 Q. He told you if you went to trial you would be
2 found guilty; is that correct?

3 A. Yes, sir.

4 Q. And if you were found guilty, you would get a life
5 sentence; is that correct?

6 A. Yes, sir.

7 Q. Contrary, he's suggesting that you plead guilty,
8 and if you did, because of your lack of record, you would
9 get ten years on the armed robberies.

10 A. Yes, sir.

11 Q. During that conversation, or any conversation
12 before you went in the courtroom to present this Alford
13 plea, did you and Mr. Detreville discuss a document
14 called a proffer that dealt with Mr. Johnson?

15 A. No, sir.

16 Q. Did you ever see a document called a proffer that
17 dealt with Mr. Johnson?

18 A. No, sir.

19 Q. Were there any discussions about how Mr.
20 Detreville might deal with Mr. Johnson during his
21 testimony if you continued to trial?

22 A. No, sir.

23 Q. There were discussions preparing you to enter the
24 plea, however, correct?

25 A. Yes.

JERELL JACKSON - DIRECT EXAMINATION

1 Q. Let me back up one second. Approximately how long
2 was this discussion with Mr. Detreville after Mr. Johnson
3 pled before you went into the courtroom?

4 A. We spoke about it for approximately ten minutes,
5 and then he brought my mother into the back, and that's
6 the point that broke me. She came in crying and frantic
7 about the decision to go forward with trial, and I don't
8 know what he and her had discussed, but she was very
9 adamant that I take the plea because he led her to
10 believe as well that if I didn't, I was going to get
11 life, and ten minutes later he brought me in the
12 paperwork. He told me to say yes to every question that
13 was asked of me. He asked me not to look at the
14 solicitor, to remain looking forward, and to agree to
15 everything that I was asked.

16 Q. During that ten minutes --

17 MR. DAVIS: Forgive me, Your Honor. May I
18 have just a minute, please.

19 BY MR. DAVIS:

20 Q. During that ten-minute discussion, did you and Mr.
21 Detreville discuss the definition of an Alford plea, what
22 an Alford plea is? Did you have that discussion?

23 A. Yes, sir.

24 Q. And it was during that time that Mr. Detreville
25 gave you instructions about how to handle yourself in

JERELL JACKSON - DIRECT EXAMINATION

1 court?

2 A. Yes, sir.

3 Q. And, in fact, that's what you did. You entered
4 the courtroom and went through on an Alford plea to the
5 two robberies; is that correct?

6 A. Yes, sir.

7 Q. Let's flip it for just a second, Mr. Jackson.
8 We've heard about several things that went into your
9 decision to go forward under an Alford plea.

10 What was your frame of mind at the time of that
11 ten-minute discussion? What was your mindset as to Mr.
12 Detreville's act to go forward on a trial if you had
13 asked for a trial, to continue on?

14 A. First of all, I was devastated, and, second of
15 all, I've never felt from the beginning, since me and Mr.
16 Detreville met, that he was prepared for my trial. I
17 sent a formal dismissal of counsel form that was filed
18 and dated through the Clerk of Court to remove him from
19 my case in 2014, which for some reason it wasn't granted.

20 I didn't go to court for it. I didn't know what
21 to do at the time of my trial date, and he led me to
22 believe I didn't have a choice but to take the plea.

23 Q. To be clear for the Court, your motion to have Mr.
24 Detreville relieved was after he was appointed to your
25 case?

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1 A. Yes, sir.

2 Q. So he was the attorney at the time you sent that
3 record to the Court, correct?

4 A. Yes, sir.

5 Q. No action was ever taken on that motion?

6 A. No, sir.

7 Q. Were you given any explanation by Mr. Detreville
8 why no action was taken on that matter?

9 A. No, sir.

10 MR. DAVIS: Your Honor, if I could have just
11 a moment.

12 Mr. Jackson, just a few more questions.

13 BY MR. DAVIS:

14 Q. As to the discussion, ten-minute discussion before
15 you entered the court to present the Alford plea, you
16 said that Mr. Detreville had your mother come speak with
17 you; is that right?

18 A. Yes, sir.

19 Q. And in the Charleston County courthouse, in one of
20 ten courtrooms, would she have met with you in one of the
21 little booths nearby the courtroom?

22 A. Yes, sir.

23 Q. Was he in there with her when you spoke through
24 the glass?

25 A. Yes, sir.

JERELL JACKSON - DIRECT EXAMINATION

1 Q. Did you request that or is that something he did
2 of his own accord?

3 A. That's something had he did on his own. The
4 bailiff also entered the room and said to him that she
5 was not supposed to be in there and that he knew that,
6 and he replied to the bailiff he didn't know she couldn't
7 come in there and have a few words with me.

8 Q. She was asked to leave at that point?

9 A. Yes, sir.

10 Q. Okay. Ultimately, did you rely on Mr.
11 Detreville's advice whether to plead guilty under Alford
12 or continue to trial?

13 A. Yes, sir.

14 Q. Mr. Jackson, I think that's all I have, but in an
15 abundance of caution, is there any additional complaints
16 about Mr. Detreville's either discussions or preparation
17 with you that you would like the Court to know about?

18 A. I wasn't satisfied with his service toward me from
19 the very beginning, and all that I asked for is that I
20 get a chance to go through with my trial so we can build
21 the truth to this matter and get this behind all of us.

22 This thing is a giant misunderstanding, and being
23 that I have a lack of knowledge when it comes to law, I
24 just feel like not just for myself, but for my
25 codefendants as well, I just believe we deserve a fair

~~JERELL JACKSON - CROSS-EXAMINATION~~

1 chance to revealing the truth, and that's all I want.

2 Q. Thank you.

3 A. That's all I want is for the truth to be revealed.

4 MR. DAVIS: Thank you. The other attorney
5 will have questions for you.

6 THE COURT: All right. Ms. Campbell?

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q. Good morning, Mr. Jackson.

10 A. Good morning.

11 Q. How much time are you currently serving?

12 A. Twenty years, ma'am.

13 Q. And do you understand if you would have been
14 charged with the burglary charge, that would have given
15 you a sentence anywhere from 15 years to life?

16 A. Yes, ma'am.

17 Q. You do understand if you are granted this PCR, you
18 will be facing these charges?

19 A. Yes, ma'am.

20 Q. You can testify to the fact that you and Mr.
21 Detreville did meet a number of times; is that correct?

22 A. Yes, ma'am.

23 Q. And you also testified to the fact that you didn't
24 understand things associated with your trial leading up
25 to the trial; is that correct?

~~JERELL JACKSON - CROSS-EXAMINATION~~

1 A. Excuse me?

2 Q. I'll rephrase the question. You did testify that
3 you met with Mr. Detreville; is that correct?

4 A. Yes.

5 Q. And when you did meet with Mr. Detreville, you
6 also testified things weren't clear; is that correct?

7 A. Yes.

8 Q. At any time did you ask Mr. Detreville any
9 questions associated with your trial?

10 A. Multiple questions.

11 Q. And did your questions get cleared up?

12 A. No.

13 Q. Now, did Mr. Detreville explain to you your
14 charges, what charges you were being charged with
15 initially?

16 A. Yes.

17 Q. And he explained to you what time would be
18 associated with those charges if you were found guilty?

19 A. Yes.

20 Q. Whose idea was it to plead guilty?

21 A. His.

22 MS. CAMPBELL: Your Honor, could I direct the
23 Court's attention to page 12 of the transcript?

24 THE COURT: Are you going to ask a question
25 of Mr. Jackson out of the transcript?

~~JERELL JACKSON - CROSS-EXAMINATION~~

1 MS. CAMPBELL: Yes, Your Honor. I just
2 wanted to verify the last question that I just asked him.

3 THE COURT: All right. You may move forward.
4 Mr. Jackson, are you familiar with the transcript of your
5 hearing on the plea?

6 THE WITNESS: No, ma'am.

7 THE COURT: All right. There is a transcript
8 here, and Ms. Campbell proposes to read from that
9 transcript in connection with her questioning of you, and
10 that's what she's going to be doing now.

11 We talked about the transcript some and there
12 is some question about whether maybe there is some more
13 than what I've been provided with, but she's going to ask
14 you a question out of what we have been provided with.
15 Do you understand?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Go ahead.
18 Mr. Campbell, it's on page 12 of the transcript where
19 you're going to be asking him --

20 MS. CAMPBELL: Yes, Your Honor.

21 BY MS. CAMPBELL:

22 Q. Starting with line number 13, the Court asked you:

23 Mr. Jackson, are you pleading guilty under
24 Alford freely and voluntarily, knowingly, and
25 intelligently?

4 Q. So is it fair to say Mr. Detreville did not force
5 you to plead guilty?

8 Q. I'll rephrase my question for you. Is it fair to
9 say that Mr. Detreville did not force you to plead
0 guilty?

15 MS. CAMPBELL: Your Honor, may I consult with
16 Mr. Johnson for a moment?

18 MS. CAMPBELL: I would also like to direct
19 the Court's attention to page 12, Mr. Jackson's
20 dissatisfaction with his attorney.

24 | Mr. Jackson, you did reply yes.

25 The Court also asked you: Are there any

JERELL JACKSON - CROSS-EXAMINATION

1 complaints about the way your attorney handled this case
2 for you, Mr. Jackson?

3 You replied: No, ma'am.

4 Now, were these truthful statements at this
5 time?

6 A. No.

7 Q. So you do not tell the truth under oath.

8 A. No.

9 MS. CAMPBELL: Your Honor, I just wanted to
10 consult with Mr. Johnson for a moment.

11 THE COURT: All right. Ms. Campbell?

12 BY MS. CAMPBELL:

13 Q. Mr. Jackson, were you familiar with your
14 constitutional rights to a jury trial?

15 A. Yes.

16 Q. And did you waive those rights, Mr. Jackson?

17 A. I cannot remember, honestly.

18 MS. CAMPBELL: Your Honor, I would also like
19 to turn the Court's attention to page 6 of the
20 transcript, line number 13.

21 BY MS. CAMPBELL:

22 Q. Mr. Jackson, sir, you understand you have a jury
23 downstairs waiting, and you do not have to plead guilty
24 or guilty under Alford?

25 Your response was: Yes, ma'am.

JERELL JACKSON - REDIRECT EXAMINATION

1 The Court also asked you: Do you give up
2 your right to a jury trial?

3 Mr. Jackson, you responded with: Yes, ma'am.

4 Now, were these also truthful statements, Mr.
5 Jackson?

6 A. Those were all follow-ups due to the error in
7 advice from Mr. Detreville. All I did was follow his
8 instructions on whoa I needed to do one I came back to
9 the courtroom after signing my plea.

10 Q. I'm sorry, Mr. Jackson. Yes or no. I didn't get
11 your answer. Were those truthful statements?

12 A. No.

13 MS. CAMPBELL: Thank you, Your Honor. Those
14 are the only questions I have.

15 THE COURT: Thank you, Ms. Campbell. Mr.
16 Davis, anything on reply?

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. Out of an abundance of caution, you may have
20 already made these clear for the judge, but you indicated
21 several places in your transcript the answers are not
22 truthful. Can you tell the Court why you gave those
23 answers?

24 A. Because he told me to answer those questions like
25 that.

JERELL JACKSON - REDIRECT EXAMINATION

1 Q. To obtain what result?

2 A. The Alford plea.

3 Q. And if you proceeded through the Alford plea, what
4 did you anticipate the end result being, the sentence
5 being?

6 A. At the most being, I didn't have a record and
7 these were things he explained to me before taking the
8 plea, to get ten years and to be able to fight those ten
9 years once I obtained them.

10 Q. Based on all the complaints you presented to the
11 Court today, had those been handled differently back in
12 March of 2015, would you have pled guilty under Alford or
13 would you have gone to trial?

14 A. I would have went to trial.

15 Q. Did you follow Mr. Detreville's advice back in
16 March of 2015?

17 A. Yes, I did.

18 Q. Did you feel you could have gone to trial in March
19 of 2015 with Mr. Detreville?

20 A. No.

21 MR. DAVIS: No other questions. Thank you.

22 THE COURT: All right. Mr. Jackson, I have
23 no further questions. You may come down.

24 THE WITNESS: Yes, ma'am.

25 MR. DAVIS: Your Honor, the applicant will

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 call Mr. Detreville.

2 MICHAEL DETREVILLE,
3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DETREVILLE:

7 Q. Mr. Detreville, could you tell the Court when you
8 were appointed on Mr. Jackson's case.

9 A. I don't recall specifically. I think it was some
10 time in --

11 THE COURT: Speak up a little bit, Mr.
12 Detreville.

13 THE WITNESS: I'm sorry, ma'am. I believe it
14 was some time in early 2014, perhaps.

15 BY MR. DAVIS:

16 Q. You were appointed based on the conflict of
17 interest with the public defender's office?

18 A. That's correct.

19 Q. The public defender represented Mr. Johnson; is
20 that your understanding?

21 A. Yes.

22 Q. As you represented Mr. Jackson throughout the
23 course of his case, it's pretty clear that he intended to
24 fight these charges?

25 A. Absolutely.

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 Q. Is it accurate that there was more than one offer
2 that was provided by the State that he refused?

3 A. That's my recollection, yes.

4 Q. If this had gone to trial, what was your strategy
5 for a defense from Mr. Jackson?

6 A. In summary, I would say that the whole trial would
7 have rested on the credibility of the testimony of Mr.
8 Jackson's codefendants. At the time we were preparing
9 for trial, it was -- those codefendants would have been
10 the two female codefendants, and, certainly, as Mr.
11 Jackson has testified earlier, there became a third
12 defendant, essentially, on the date of trial, but largely
13 it would have centered on problems with the consistency
14 of accounts of what happened given by the codefendants
15 and related credibility issues.

16 Q. Briefly stated, both of these alleged armed
17 robberies were johns being robbed and female codefendants
18 were prostitutes, and allegedly two gentlemen came in and
19 robbed the johns. That's the quick summary --

20 A. That would be the prosecutor's summary, correct,
21 yes.

22 Q. Fair enough. And so it's your position on behalf
23 of Mr. Jackson that those stories, like you said
24 originally of the two females, two prostitutes, was just
25 not believable.

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 A. I would say yes, based on the fact that they gave
2 so many different versions of what actually transpired
3 that it would be impossible to know which of those
4 versions was factually accurate.

5 Q. Mr. Jackson remained in jail on bond on those
6 charges until the March Court date; is that right?

7 A. Yes.

8 Q. And given this, for all intents and purposes,
9 throughout the course of your representation up until the
10 March date was at trial, your meetings with him -- is it
11 fair that you had a handful of meetings with him?

12 A. I don't think I could say with any specificity how
13 many times I met with Mr. Jackson. I do tend to disagree
14 with his testimony somewhat. I would put it more
15 approximately a dozen meetings.

16 Q. On a trial where the strategy is, That's
17 inaccurate; I'm not guilty of that; that didn't happen,
18 is it fair to say a majority of your representation does
19 not require your client's input on something like that?

20 A. I don't think in our discussions with -- in my
21 discussions with Mr. Jackson we ever broached, seriously
22 broached, the topic of him testifying in trial.
23 Generally not considered a great defense strategy, and
24 not something that he and I, in our discussions, felt
25 like was going to be necessary at trial, so not a lot of

1 direct witness preparation took place in that regard.

2 Q. You were focussed on the witnesses that were
3 aligned against him?

4 A. Cross-examination.

5 Q. You had these multiple statements, including
6 letters from the female codefendants; is that correct?

7 A. Voluminous amount, I would describe it as.

8 Q. And you used that information to prepare how you
9 would deal with their testimony if this had gone to
10 trial?

11 A. Yes.

12 Q. Contrastingly, with the two accusers, other than
13 what was provided in the discovery, did you or anyone
14 employed by you speak with the two accusers?

15 A. No.

16 Q. When ultimately Mr. Johnson on the day of trial
17 pleads guilty and then becomes a third cooperating
18 codefendant, did you have some time to reveal with Mr.
19 Jackson the proffer agreement Mr. Johnson had entered
20 into?

21 A. I don't recall specifically sharing a written
22 proffer agreement with him, no.

23 Q. Neither did you discuss how you might
24 cross-examine Mr. Johnson as to his credibility, even
25 with that proffer. You didn't have that discussion with

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 Mr. Jackson, did you?

2 A. I don't recall whether we had that discussion or
3 not.

4 Q. Certainly the fact that Mr. Johnson went from a
5 trial codefendant to a cooperating witness codefendant, I
6 think we talked definitely about a bomb going off in your
7 plans; is that fair?

8 A. I think that's a fair statement, yeah.

9 Q. This is before Judge Harrington, correct?

10 A. That is correct.

11 Q. You were able to speak with Mr. Jackson in one of
12 the secure booths outside the courtroom?

13 A. Certainly we spoke. I don't recall exactly where.
14 I think maybe some of it was in one of the booths. I
15 feel like some of the conversation we had that was in
16 the -- I don't know if you would describe it as the
17 hallway, back behind one of these doors, but I don't
18 think it was all in a booth.

19 Q. It's fair that with the jury waiting time was
20 limited.

21 A. There was a pinch for time. I think that's a fair
22 assessment.

23 Q. And given what you then knew, that the codefendant
24 Mr. Johnson was going to be a cooperating witness
25 codefendant, it was your advice to Mr. Jackson to not

1 continue with trial but to enter a plea?

2 A. Yes.

3 Q. You were aware of Mr. Jackson's lack of a prior
4 record before the start of the trial.

5 A. Yes. My recollection is that he may have had some
6 minor things on his record but nothing -- I don't think
7 any felonies, nothing violent, anything of that sort.

8 Q. Given the offenses to which he was being asked to
9 plead by the State and the range of punishment on those
10 offenses, did you advise in your opinion about what he
11 could expect as a sentence?

12 A. I'm sorry. Could you repeat that?

13 Q. Sure. Given the offenses he was pleading guilty
14 to, two armed robberies, given the range of sentences on
15 these armed robberies, 10 to 30 on each, did you
16 advise -- and his record, did you advise him as to what
17 sentence he could expect if given the plea?

18 A. My recollection of the conversation was that I
19 did, in fact, tell Mr. Jackson that I was hopeful that we
20 could get something on the lower end of the range for the
21 armed robbery charges, but certainly, yes, I would have
22 told him that the judge had 100 percent discretion in
23 terms of giving him a sentence anywhere from 10 to 30
24 years and that the judge would ask him if anybody had
25 made him any promises about sentence, things of that

—MICHAEL DETREVILLE - DIRECT EXAMINATION—

1 nature, and, you know, did anybody promise him anything
2 in that regard.

3 Q. Is it fair that you were concerned for your client
4 that if he continued that he ultimately would face a life
5 sentence?

6 A. I would say it's always concerning when somebody
7 is facing a charge that carries a potential life
8 sentence. Was I particularly concerned that Mr. Jackson
9 would have gotten a life sentence? Not really, but, you
10 know, it's out there as something that could happen, and
11 if you have an opportunity to take that off of the table,
12 certainly that's an advisable thing in my professional
13 opinion, generally.

14 Q. As to his case specifically, though, is it fair to
15 say that the general factual nature, the general factual
16 nature of both armed robberies, were quite similar?

17 A. They were similar.

18 Q. And on the March 3rd date, you were -- the
19 allegations of armed robberies are separate dates,
20 separate accusers.

21 A. That's correct.

22 Q. So on the March 3rd date, you were going forward
23 on one of the two armed robberies, correct?

24 A. I don't recall that.

25 Q. It was your opinion and your advice with

1 Mr. Johnson changing his position that once that
2 happened, this was a trial that was likely to be
3 unsuccessful.

4 A. I thought that leading up to trial, I thought that
5 having Mr. Johnson as a codefendant, that he was
6 something of an ally, so to speak, in our defense, that
7 the two of them had a very similar defense to one
8 another. I think that once that alliance was gone and
9 once Mr. Johnson became a witness for the prosecution, I
10 think that it became a case of all three codefendants
11 testifying against Mr. Jackson, and I also felt like
12 Mr. Johnson didn't have the inherent credibility issues
13 that the two other codefendants had.

14 Certainly, he had given statements that tended
15 to -- or that painted himself in an innocent light, so to
16 speak, but he had been consistent in those stories, and I
17 think him changing his story from innocent to State's
18 witness was not nearly as harmful as his credibility as
19 the multiple accounts of the other witnesses.

20 Q. Of the three, he was the strongest witness against
21 Mr. Jackson?

22 A. Certainly.

23 Q. If these were separate armed robberies -- and Your
24 Honor, I will certainly check the record and may ask the
25 Court to reference a part in the transcript, but if these

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 were separate trials, your analysis of the evidence
2 against Mr. Jackson as to the second alleged armed
3 robbery after Mr. Johnson pled would have been this same
4 analysis; is that fair?

5 A. I think so, but I don't have a recollection that
6 there was going to be two trials. My recollection is
7 they were being tried at the same time. I could be
8 incorrect about that. I don't think the analysis under
9 that hypothetical, so to speak, would -- I think that
10 that's correct, it wouldn't change the calculus of the
11 underlying defense.

12 Q. I guess what I'm getting at is the fear of a life
13 sentence would have been robbery convictions, second
14 robbery convictions, two most serious, life. That was
15 the fear, of life; is that correct?

16 A. Sure. The fear of a life sentence was in my mind
17 on the table, burg first indictment.

18 Q. Really quickly on that, as part of this Alford
19 plea, it was your understanding, and you conveyed to Mr.
20 Jackson, these two weapon charges would go away based on
21 his Alford plea; is that correct?

22 A. That was the State's offer.

23 Q. Even with all this information presented to Mr.
24 Jackson, he still maintained his innocence, and that's
25 why it was an Alford plea, correct?

1 A. Yes.

2 Q. Despite all of that -- or, let me correct that,
3 given all of that, it was your advice that he accept the
4 Alford plea as presented by the State?

5 A. I felt that there was a reasonable possibility,
6 based on the evidence that the State was going to
7 present, that they would be able to garner a conviction
8 against Mr. Jackson, even if he was innocent of a crime.

9 Q. And if he didn't take this plea that morning --
10 the jury was waiting to start the trial immediately,
11 correct?

12 A. My recollection was coming to court, being ready
13 to start the trial.

14 Q. So if the pleas weren't successful, he would be
15 facing all the consequences we discussed previously?

16 A. Yes.

17 Q. Was it important that the plea go through?

18 A. Time was of the essence at that particular
19 juncture.

20 Q. And so despite that being an Alford plea, you
21 advised him to get this plea done, you need to answer
22 affirmatively to the judge.

23 A. I don't recall specifically having that
24 conversation with Mr. Jackson. I tried to do it the same
25 way with every individual that I represent who does a

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 plea. So that I -- you know, with that consistency, I
2 feel I could testify later if need be if that transpired.
3 I don't remember telling him to say yes to the judge's
4 questions. What I typically tell somebody in that
5 situation is that the judge is going to ask you a series
6 of questions, and sometime was being condensed here
7 somewhat, so I would have run through it very quickly
8 with him: Well, the judge is going to ask you a series
9 of questions. If you want the plea, you have to answer
10 the questions a certain way.

11 I don't think I told him he has to say yes. I
12 don't think the answer to all the questions was yes, but
13 I certainly would have told him, You have to answer the
14 questions in a certain way, which would be fairly
15 apparent from the questions, if you want to take an
16 offer.

17 The only ones that I would tell him that he would
18 have to respond yes to would be the ones about his
19 constitutional rights, and, generally, when I'm telling
20 him, or telling a client, how to -- you know, that those
21 are going to be the questions, that's also my explanation
22 in my last explanation of what those rights are which
23 you're giving up and that you do have to say yes to those
24 answers if you do want to take a plea.

25 Q. Ultimately, Mr. Jackson did enter the Alford plea,

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 but he was reluctant enough that he felt it necessary to
2 have his mother speak to him about the deal; is that
3 right?

4 A. I don't recall that that was my idea. His mother
5 was present in the courtroom that day, and I had spoken
6 to her a couple of times leading up to the trial, so we
7 were familiar with one another. My recollection is she
8 approached me and asked if she could talk to him.

9 I'm not 100 percent clear on that, but that's my
10 general recollection of it, but yes, Mr. Jackson was a --
11 reluctant, reticent regarding a plea, yes.

12 MR. DAVIS: Your Honor, if I could have just
13 a moment.

14 Mr. Detreville, no further questions. Thank
15 you.

16 THE COURT: Ms. Campbell, reply?

17 CROSS-EXAMINATION

18 BY MS. CAMPBELL:

19 Q. Good morning, Mr. Detreville.

20 A. Good morning.

21 Q. I just have a couple questions for you today. Did
22 Mr. Jackson ever indicate that he did not understand your
23 discussions about the charges or about his rights during
24 your representation of him?

25 A. Not that I recall.

MICHAEL DETREVILLE - DIRECT EXAMINATION

1 Q. Did you feel that the plea would be in Mr.
2 Jackson's best interest?

3 A. Yes.

4 Q. Would you have proceeded to trial had he insisted
5 on going forward?

6 A. Yes.

7 Q. Did you put any pressure on Mr. Jackson to make
8 him plead guilty?

9 A. I don't know if pressure is the right word. I
10 felt like a plea was in Mr. Jackson's best interest, so I
11 was -- we had a lot of conversations about that,
12 particularly that day. Pressure isn't the right word,
13 though.

14 Q. Mr. Detreville, is it fair to say that it was Mr.
15 Jackson's decision to plead guilty at trial?

16 A. Yes.

17 MS. CAMPBELL: Your Honor, may I have a
18 moment to consult with Mr. Johnson?

19 THE COURT: Of course.

20 BY MS. CAMPBELL:

21 Q. Is it fair to say you never threatened or coerced
22 Mr. Jackson to plead guilty?

23 A. No, of course not.

24 MS. CAMPBELL: Your Honor, we have no further
25 questions.

1 THE COURT: Thank you, Ms. Campbell. I have
2 a few, Mr. Detreville.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: This matter consisted of two
5 separate incidents whereupon Mr. Jackson and Mr. Johnson
6 acted with Ms. Gillenkirk and Ms. Jefferson to commit
7 robberies on the clients of these two ladies, as I
8 understand it.

9 THE WITNESS: I think that's certainly what
10 the State contended.

11 THE COURT: And the State contends there was
12 a third that was actually a setup, a fake situation,
13 where the second individual that was allegedly robbed
14 agreed to help the police set up a situation; do you
15 recall that?

16 THE WITNESS: I do, now that you mentioned
17 it.

18 THE COURT: And it was during that situation
19 at the Relax Inn that Mr. Johnson and Mr. Jackson were
20 arrested, as I understand it.

21 THE WITNESS: The victim assisted -- I think
22 he had their cellphone number still and under some
23 pretense contacted them and arranged some sort of
24 meeting, and that's how the arrest of the defendants took
25 place.

1 THE COURT: He arranged a meeting with the
2 two women, the john did, and went to the Relax Inn and
3 police were there observing, and they observed a car in
4 which Mr. Jackson and Mr. Johnson were, as I understand
5 it?

6 THE WITNESS: I don't remember it that
7 specifically, ma'am, but that sounds correct.

8 THE COURT: And then they blocked Mr. Jackson
9 and Mr. Johnson after things started to fall apart in the
10 meeting with Ms. Gillenkirk and Ms. Jefferson.

11 THE WITNESS: I recall it being a setup,
12 almost like a sting, so to speak.

13 THE COURT: Sting.

14 THE WITNESS: Yes, ma'am. The exact details
15 of that I'm not 100 percent clear on, because I don't
16 think it is something that we necessarily were going to
17 address at trial in the case other than the issue with
18 the firearm.

19 THE COURT: Right. It was recited as the
20 factual predicate for the State's charge at the time of
21 the plea.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: All right. And one of the things
24 that was recited is when the police went into the room at
25 the Relax Inn where the sting was to take place, they

1 found a Play Station, a Rolex, and a gun.

2 THE WITNESS: My recollection is that the gun
3 was found in a car, but the other items, I believe that's
4 correct.

5 THE COURT: Was there -- in terms of
6 evidence, was there any other evidence besides these
7 statements and so forth which tied Mr. Jackson to these
8 alleged crimes, like fingerprints or anything else
9 besides the identification made by the women?

10 THE WITNESS: I don't recall there being any
11 forensic evidence or anything of that nature being
12 involved in the case.

13 THE COURT: So the biggest evidence against
14 him would have been the evidence by the two women
15 involved.

16 THE WITNESS: Prior to Mr. Johnson entering
17 the proffer agreement?

18 THE COURT: Prior to Mr. Johnson's
19 interposition the day of the trial of a guilty plea, the
20 evidence tying Mr. Jackson to this matter would have come
21 from the two women involved, right.

22 THE WITNESS: The two women involved and
23 potentially the victims as well.

24 THE COURT: Right. Do you recall whose car
25 it was?

1 THE WITNESS: Where the gun was located?

2 THE COURT: Yes.

3 THE WITNESS: I think it was Mr. Jackson's,
4 but I don't remember specifically.

5 THE COURT: All right. The proffer to
6 Mr. Johnson, do you have that proffer? Did you see that
7 proffer?

8 THE WITNESS: Yes, ma'am. I have it as part
9 of my file.

10 THE COURT: What are the details of it?

11 THE WITNESS: May I retrieve it?

12 THE COURT: Certainly. I think he has his
13 files up here, Mr. Davis.

14 THE WITNESS: I believe I gave Mr. Davis a
15 copy of it. It may take me a few minutes to find it. I
16 don't want to hold things up too much while I flip
17 through my file.

18 THE COURT: Let see if he can get it for you.

19 MR. DAVIS: I believe I only have the
20 documents pertaining to the appeal. That's all I've got.

21 THE COURT: Can you hand it to the court
22 reporter. Madame Court Reporter, will you mark that as
23 Court's Exhibit 1? Come up and look at it before it's
24 received.

25 MR. DAVIS: May I take it and let my client

1 review it briefly? I've discussed it with him, but may I
2 just show it to him?

3 THE COURT: Certainly. Any objections?

4 MS. CAMPBELL: None from the State, Your
5 Honor.

6 MR. DAVIS: None from the applicant, Your
7 Honor.

8 THE COURT: All right. Mr. Detreville, we're
9 going to mark that as Exhibit 1, but if you would
10 interact with the court reporter to get a copy to put in
11 or make a copy for yourself, if that's a copy -- probably
12 is just a copy.

13 THE WITNESS: It appears to be a copy.

14 THE COURT: Just be sure you get a copy to go
15 back in your files, and we'll keep this one that we
16 marked as the original exhibit.

17 THE WITNESS: Certainly.

18 (Court's Exhibit No. 1 was marked for
19 identification.)

20 THE COURT: So tell me what the proffer says.

21 THE WITNESS: As I believe was discussed
22 earlier, these proffer agreements in the Ninth Circuit,
23 my experience with them, is they're all generally exactly
24 like this one in they're pretty vague in terms of --
25 they're very careful to not make an exact offer in

1 exchange for testimony which, you know, I feel like is
2 certainly designed to protect the witness from
3 cross-examination on that subject at trial, whether
4 there's a quid pro quo for testimony --

5 THE COURT: I understand, but does he agree
6 to testify against Mr. Jackson?

7 THE WITNESS: May I take a moment to review?

8 THE COURT: Yes.

9 THE WITNESS: I think the specific passage
10 referring to testifying against Mr. Jackson would be,
11 Client must also testify fully and truthfully at any
12 trials or other proceedings if called upon to do so by
13 the State subject to prosecution for perjury for not
14 testifying truthfully.

15 Client's failure to be fully truthful and
16 forthright at any stage will, in sole election to the
17 State, cause the obligations of the State within this
18 agreement to become null and void.

19 THE COURT: And the agreement is for a plea
20 to what?

21 THE WITNESS: There was no specific reference
22 to a plea offer being made to Mr. Johnson under the terms
23 of this agreement. It's simply you tell the truth; you
24 testify when and where we tell you to testify with a -- I
25 think the portion regarding the offer, so to speak, is a

1 tacit understanding between the Solicitor's office and
2 defense counsel.

3 THE COURT: All right, sir. Did you get any
4 information as to why -- what kind of tacit
5 understanding, if any, there was about what he would get?

6 THE WITNESS: In this case, I don't think it
7 was quite as tacit. Mr. Johnson had actually pled guilty
8 that morning. I don't recall whether he was sentenced
9 that day or if he was sentenced later, but he did
10 actually plead guilty.

11 THE COURT: Do you know what he ultimately
12 got?

13 THE WITNESS: I want to say he got ten years,
14 Judge.

15 THE COURT: All right.

16 THE WITNESS: But I'm not 100 percent certain
17 on that. I did know at one point, but I don't recall
18 exactly, but I think it was ten years.

19 THE COURT: Turning to another subject,
20 there's been mention of a motion to relieve you as
21 counsel that was filed after you were appointed counsel
22 but before this matter was pled.

23 Tell us about that.

24 THE WITNESS: I don't recall that. Mr.
25 Jackson may have filed a motion to relieve me as counsel,

1 but I know he was never heard on that issue in court. So
2 I'm not certain where exactly that went in terms of
3 procedurally, but I don't recall specifically the
4 contents of any motion or anything of that nature.

5 THE COURT: And, finally, was there ever any
6 information generated from the law enforcement about the
7 ownership of the gun?

8 THE WITNESS: May I look at my file briefly?

9 THE COURT: Yes. What is said as the matter
10 is indicted and what is said as the matter is pled is
11 that Mr. Jackson brandished the gun.

12 My question is, was there any information
13 about the ownership of the gun?

14 THE WITNESS: I'm sorry. I don't recall,
15 specifically. I was looking, perhaps, for the return on
16 the search warrant that was conducted, but I don't see
17 where it specifically says this gun belonged to
18 X individual.

19 THE COURT: All right. Mr. Detreville,
20 that's fine. If you don't know it, you don't know it.

21 THE WITNESS: I'm sorry.

22 THE COURT: That completes the Court's
23 questions.

24 Anything further from counsel?

25 MS. CAMPBELL: No, Your Honor. We don't have

1 anything further.

2 THE COURT: Mr. Davis, anything further from
3 you?

4 MR. DAVIS: Not of this witness, no. Thank
5 you.

6 THE COURT: All right. Very good. All
7 right, Mr. Detreville, you may step down. Thank you.

8 Let me turn first to Ms. Campbell and see if
9 wants to present anything further.

10 MS. CAMPBELL: No, Your Honor.

11 THE COURT: Let's let Mr. Detreville gather
12 up his materials.

13 All right. It is the ruling of the Court at
14 this time that this matter will be held open and
15 continued until I appear next in Charleston at the
16 October term, and, in the meantime, counsel will do the
17 following things: First of all, I direct that counsel
18 for the State make every effort to get the complete
19 transcript of anything else that went on in this matter,
20 and that would include both anything else that went on in
21 terms of the activity leading up to the plea of Mr.
22 Jackson, but also the plea of Mr. Johnson and anything
23 else that went on in connection with this case at all by
24 way of jury selection or anything else.

25 And I know, Mr. Johnson, the court reporter

1 will be cooperative with you. Tell them we need it
2 before the October hearing. As soon as you're able to
3 obtain this material, please share it with Mr. Davis, and
4 both of you, counsel, collaborate with the clerk's
5 office.

6 I've got a full docket that week. Just
7 figure out some time that's mutually agreeable to you all
8 to be put on the docket, and we'll get to it at that
9 time.

10 MR. JOHNSON: When is that docket, Your
11 Honor?

12 THE COURT: It's the week of October the
13 10th, and I'm here for all five days that week, am I not?
14 So I think there would be plenty of opportunity during
15 those five days for you all to find a spot that is
16 acceptable to you all. Obviously, arrangements will need
17 to be made for Mr. Jackson to be present at the
18 proceeding, so I know y'all will take care of arranging
19 all those details.

20 Anything unclear? Any questions? Very good.
21 This matter is adjourned.

22 - - -

23 (Whereupon, the proceedings were concluded.)

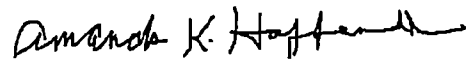
24 - - -

25

I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 14th of September 2016.

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

March 11, 2017



Circuit Court Reporter

The following constitutes the proffer agreement between the Attorneys for the State and Tommie Johnson, hereinafter referred to as "Client."

PROFFER AGREEMENT

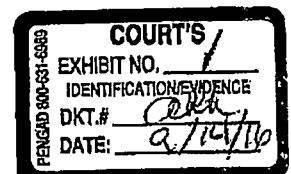
The purpose of Client making a Proffer is to provide the State with an opportunity to assess the value, extent, and truthfulness of Client's information about the criminal liability of Client and others.

Client has agreed to provide the State with statements and information, and to respond to questions so that the State may evaluate Client's statements and other information in making prosecutive decisions. By receiving Client's Proffer, the State does not agree to make any prosecutive decisions on the Client's behalf or to enter into a plea agreement, immunity or non-prosecutive agreement. The State makes no representation about the likelihood that any such agreement will be reached in connection with this Proffer.

By signing this "Proffer Agreement," Client agrees to be fully truthful and forthright with the Ninth Circuit Solicitor's Office and State and/or federal law enforcement agents in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings with no misstatements or material omissions of fact of Client's knowledge concerning violations of State or Federal laws, violent or non-violent. Also, Client understands that Client must fully disclose and provide truthful information to the State including any books, papers, documents or any other items of evidentiary value to the investigation. Client must also testify fully and truthfully at any trials or other proceedings if called upon to do so by the State, subject to prosecution for perjury for not testifying truthfully. Client's failure to be fully truthful and forthright at any stage will, at the sole election to the State, cause the obligations of the State within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State within this Agreement become null and void due to the lack of truthfulness on Client's part:

- (1) the State will file any and all charges known to the State; and
- (2) the State may use for any purpose any and all statements made and other information provided by Client in the Prosecution of Client on any charges, including perjury. Client accepts this provision being fully advised that, under SCRE 410, statements made by Client pursuant to this Agreement would not ordinarily be admissible in any criminal proceedings including perjury and making false statements unless the statements were made under oath, on the record, and in the presence of counsel.

Client agrees to submit to polygraph examination(s) by any qualified polygraph examiner should Client be requested to do so. Failure to pass any polygraph examination administered pursuant to this Agreement constitutes a breach of the Agreement, and the State may use for any purpose any statements made and other information provided by Client in the prosecution of Client on any charges.



Provided Client is truthful as described above, remaining terms of the Agreement are as follows:

1. No statements made or other information provided by Client during this Proffer or discussion will be used against Client in any State Court criminal case except as provided herein.
2. The State may make derivative use of and may pursue any investigation leads suggested by any statements made or other information provided by Client for the purpose of obtaining other evidence, which may be used in a prosecution of Client. This is necessary to prevent the State from having to prove that evidence it would introduce at any future trial is not tainted by any statements made or other information provided by Client during this Proffer.
3. In the event that Client is a witness at a trial or other proceeding concerning any matter discussed in this Proffer and testifies materially different from any statements made or other information provided during this Proffer, the State may cross-examine Client concerning any statements made or other information provided during this Proffer or use such to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised sua sponte by the Court) at any stage of the criminal prosecution (including bail, trial, and sentencing) should any prosecution of Client be undertaken.
4. The State agrees that any self-incriminating statements made and other information provided by Client during this Proffer will not be used in determining the applicable sentencing recommendation should Client be convicted or enter a guilty plea unless there is a breach of this Agreement. The provisions of this paragraph shall not be applied to restrict the use of any such statements or information:
 - (A) known to the State prior to the date Client makes this Proffer;
 - (B) concerning the existence of prior convictions and sentences;
 - (C) in a prosecution for perjury or giving false statement; or
 - (D) in the event there is a breach of the terms of this Agreement or subsequent plea agreement.

The obligations of and restrictions on the State within this Agreement are expressly contingent upon Client's abiding by federal, state, and local laws and complying with terms and conditions of any bond executed in this case. Therefore, Client's violation of federal, state, or local law or of the provisions of any bond executed in this case constitutes a breach of this Agreement, and upon such violation, the State may use for any purpose any and all statements made and other information provided by Client in the prosecution of Client on any charges.

To the extent the Government is entitled under this Agreement to offer in evidence any statements made or other information provided by Client or leads obtained there from, Client shall assert no claim under the United States Constitution, any Statute, Rule 410 of the South Carolina Rules of Evidence, or any other rule that such statements made or other information provided or any leads there from should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

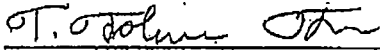
The parties hereby agree that this Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this Agreement are null and void.

Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit

By: 

E. Culver Kidd
Assistant Solicitor

I AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT:



Tommie Johnson
CLIENT

11 / 17, 2014
DATE

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
3 COUNTY OF CHARLESTON) Case No. 2015-CP-10-6113
4)
5 JERELL JACKSON,)
6 Applicant,)
7 vs.) Transcript of Record
8 STATE OF SOUTH CAROLINA,)
9 Respondent.) DATE: January 10, 2017
10)

11 B E F O R E:

12 THE HONORABLE JEAN TOAL

13 A P P E A R A N C E:

14 RODNEY D. DAVIS
15 Attorney for the Applicant

16 ALICIA OLIVE
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

1 THE COURT: All right. This is the matter of Jerell
2 Jackson.

3 MR. DAVIS: Your Honor, just one moment, please.
4 Mr. Jackson is coming out.

5 THE COURT: That's okay. I was just identifying who
6 is here. Rodney Davis is here and Alicia Olive.

7 MS. OLIVE: Yes, ma'am.

8 THE COURT: Very good. All right. In the matter of
9 Jerell Jackson against the State, this is a post-conviction
10 relief matter that has been heard at one time and then
11 adjourned.

12 Mr. Jackson is present. Nice to see you again,
13 Mr. Jackson. He is represented by Rodney D. Davis. The
14 State is represented by Alicia Olive. And we will just go in
15 the normal course as if we were starting from scratch.

16 So, Mr. Davis, you may proceed.

17 MR. DAVIS: Thank you very much, Your Honor. Just a
18 bit more for the record. Your Honor is right. Back on
19 September 14th of 2016, we were called for the evidentiary
20 hearing in this matter. I had requested a continuance at
21 that point based on a fuller transcript of the full
22 proceedings. Since all parties were present that day, Your
23 Honor decided we would move forward on as much as we could
24 that day. You took testimony from the relevant parties and
25 then kept the record open.

1 Since then, I have received a 29-page additional
2 transcript, which primarily deals with pretrial matters and
3 the guilty plea of co-defendant Tommy Johnson. This is
4 exactly the part of the transcript we were concerned about.
5 I reviewed it. I've talked to my client, Mr. Jackson, about
6 it. Your Honor, has a copy of the additional --

7 THE COURT: I have it and I have reviewed it.

8 MR. DAVIS: And, Your Honor, based on the review of
9 the additional transcript, we would not call any additional
10 witnesses. We do not have any additional questioning to
11 provide. The only thing I would point out, Your Honor, that
12 just goes on top of what we had already presented back in
13 September, if you will note on page 16, line 22, to refresh
14 Your Honor's memory, leading up to that, there were some
15 preliminary matters.

16 But then a party portion of the first 16 pages,
17 about half of the first 16 pages, is an argument by
18 Mr. Johnson's attorney, Ms. Parnell, of the public defender's
19 office, seeking to sever the two armed robbery cases. So the
20 meat of that first part of this transcript is her argument
21 attempting on Mr. Johnson to sever.

22 I will point out on page 16, line 22, ultimately,
23 Judge Harrington, after discussions on that argument, then
24 asks: Do you take any positions, Mr. DeTreville?

25 Your Honor, I stand with Ms. Parnell in her

1 argument. I believe her analysis is correct here and I would
2 second that; was Mr. DeTreville's response for his client,
3 Mr. Jackson.

4 We just simply point out that the heavy water was
5 being carried by Ms. Parnell there. I believe it was her
6 written motion and her argument. We would ask you -- the
7 only additional point from this transcript is just to point
8 out the level of preparation from Mr. Johnson's attorney,
9 public defender, vs. Mr. Jackson's attorney. Simply he
10 piggybacked on her argument rather than filing and presenting
11 his own argument.

12 Other than that, I don't believe we need testimony
13 to that. It's clear on the record. But other than that, we
14 would have nothing additionally to present on the applicant's
15 behalf. So that would be the applicant's case.

16 THE COURT: Okay. Mr. Davis, what I would like to
17 do now is to, of course, turn to Ms. Olive. And we will see
18 what more you want to present, if anything. And then I want
19 closing arguments from those both of you about exactly what
20 you want the Court to do in light of the additional material
21 that's come forward.

22 Ms. Olive.

23 MS. OLIVE: Your Honor, the State does not intend to
24 call any witnesses. It's our position that the transcript
25 speaks for itself. So we won't be furnishing any additional

1 evidence.

2 THE COURT: All right. Mr. Davis, how about you
3 summarizing for me exactly what Mr. Jackson is now requesting
4 the Court to do.

5 MR. DAVIS: Your Honor, certainly, she's the
6 adversary, but we've worked well with Ms. Olive and with my
7 client. And even Mr. DeTreville and I, we've been open and
8 forthright about our intentions here today. I will summarize
9 in a moment, but given this was a unique situation, if you
10 will recall, we were supposed to resume this back in October
11 when the hurricane hit. Through no fault of anyone's, of
12 course, that court was canceled. We had to find the next
13 available court date for Your Honor.

14 Respectfully, Judge, I know you listen carefully and
15 take notes and review all of the documents in all of the
16 cases, but this is now almost four months later. It's a
17 unique situation. I would request you consider obtaining --
18 Your Honor obtaining a transcript of the prior testimony.
19 I've got approximately seven pages of notes here myself and
20 was reviewing them to make sure we have provided everything,
21 even after the new part of the transcript. Again, I don't
22 believe we have anything else new, but even in just my review
23 of my notes, some, of course, but not all, the details came
24 back.

25 You do have the ability -- and I've talked to

1 Mr. Jackson about this. We know that would cause a bit of a
2 delay to obtain that. And he, of course, is eager to get a
3 positive result as soon as possible. But out of abundance of
4 caution, and given there was this significant delay, through
5 no fault of any of the parties, we would ask you to consider
6 requesting that transcript. You can review it at your
7 leisure and make a ruling.

8 Judge, ultimately, the thrust of our argument is
9 this, Judge, that we have provided sufficient evidence as to
10 both prongs of *Strickland*. We believe that Mr. Jackson's
11 testimony, even given the light compared to Mr. DeTreville's,
12 but he, Mr. Jackson, believed that his attorney, on one hand,
13 was not prepared for this significant case, the significant
14 trial; even though they were on the eve of the trial, that he
15 was not fully apprised of the risks and dangers of trial
16 and/or plea; that he was given conflicting advice about
17 whether to go to trial or plead guilty; that, ultimately,
18 when Mr. DeTreville, after Mr. Johnson had entered the plea,
19 began arguing on behalf of the guilty plea, we believe that
20 was heavy-handed and inappropriate.

21 If you recall, there was -- my client's mother, who
22 actually was able to make court today, be present today, is
23 here today, was brought into discussions. And we believe
24 that was inappropriate coercion from the trial that was ready
25 to start into the guilty plea.

1 If you give me a moment, Your Honor. Again, the
2 main thrust is simply ineffective assistance in, one, being
3 prepared for trial; and, two, undue influence into the guilty
4 plea. We would argue that that meets the first prong.

5 And the second prong, Your Honor, Mr. Jackson
6 himself testified that had matters been presented to him more
7 fully, more clearly, and more meetings, given the nature of
8 those charges and the fact they were trying two cases
9 together, that he would not have entered the plea and would
10 have continued on and undergone his constitutional right to a
11 jury trial.

12 So we believe there's evidence sufficient to meet
13 our burden as to both prongs. And we would ask you to grant
14 relief on his application, vacate the convictions and allow
15 him to begin anew.

16 If I can have just one moment, Your Honor. Again, I
17 don't want to re-argue every point, but I do want to make
18 sure I hit the highlights. If you give me just one moment.

19 Two final things. If you recall, this was presented
20 certainly as an *Alford* plea, which is obviously a unique --
21 viable, but unique way of resolving a case, which, on the one
22 hand, is beneficial, but also raises inherent risks because
23 it's not a complete admission of guilt.

24 If you also recall, that even during
25 Mr. DeTreville's testimony, he admitted there was no

1 discussion about whether Mr. Jackson would testify or not in
2 the lead-up to the trial. He did not interview the victims.
3 There was no thorough discussion of the proffer that
4 Mr. Johnson, the co-defendant, entered into to enter his
5 guilty plea, no discussion with the defendant about his
6 co-defendant.

7 They were, as Mr. DeTreville said, in a pinch of
8 time in deciding whether or not to continue on with trial or
9 plead guilty. And we would argue, given those specific
10 incidents and totality of the circumstances, we believe we
11 met our burden. Thank you very much.

12 THE COURT: Thank you, Mr. Davis.

13 Ms. Olive.

14 MS. OLIVE: Thank you, Your Honor. As Your Honor
15 well knows, the standard for ineffective assistance of
16 counsel is that counsel was both deficient and that the
17 alleged deficiency resulted in prejudice to the applicant.
18 In this case, because it was a guilty plea. Mr. Jackson
19 would have to show that, but for any deficiency of counsel,
20 he would not have pleaded guilty, but would have insisted on
21 going to trial.

22 It's the State's position that in this case,
23 Mr. Jackson has not met that burden. And, Your Honor, I am
24 at a bit of a disadvantage because I wasn't present at the
25 previous PCR hearing. But I do have Mr. Rutledge Johnson's

1 notes from that hearing which I'm going by. So, please, know
2 if I in any way mischaracterize any testimony from that
3 hearing, it's not intentional. It's simply because --

4 THE COURT: I appreciate that and appreciate your
5 professionalism going forward. I will assure you, I just
6 want to get some concept from both sides. But I will tell
7 you on the front end that I will order the transcript so that
8 each of you will have a chance to really look at this. I do
9 have some very complete notes. And I'm going to have some
10 observations to make at the end of this consistent with the
11 notes I've got, but you may proceed. And I take it in the
12 spirit you are giving it. But you are kind of picking up the
13 ball in the middle of the game.

14 MS. OLIVE: Thank you, Your Honor. I appreciate
15 that.

16 Your Honor, Mr. Jackson entered an *Alford* plea. And
17 by doing so, he agreed that the State had sufficient evidence
18 against him to prove him guilty at trial. Your Honor, in
19 this case, all three co-defendants were prepared to testify
20 against him. Counsel was aware of that. There was no
21 deficiency in counsel in any advice on the part of counsel to
22 advise Mr. Jackson to plead guilty, given the circumstances.

23 Your Honor, with respect to the -- with respect to
24 Mr. Davis's statement that the conclusion -- that the only
25 conclusion to be drawn based on this transcript that we've

1 acquired from Mr. Johnson's plea, that somehow Ms. Parnell
2 was the only person prepared, I don't think that that's the
3 necessary conclusion to be drawn simply by the fact that she
4 presented the argument that the cases should be severed and
5 that Mr. DeTreville joined in that. And, Your Honor, I would
6 argue that that has no bearing at all on the post-conviction
7 relief case or allegation of ineffective assistance of
8 counsel. It simply doesn't prove or disprove anything.

9 Again, Your Honor, it's our position that no
10 deficiency of counsel has been shown with respect to any of
11 the allegations. Mr. DeTreville's testimony that he did not
12 speak to the victims, there's no deficiency in the fact that
13 he didn't speak with the victims. He had their statements,
14 presumably in discovery. It's safe to assume, I believe,
15 that the victims were going to testify for the State.
16 Therefore, he would not have had anything to gain, really, by
17 speaking with the victims.

18 Furthermore, ultimately, Mr. Jackson did plead
19 guilty in this case pursuant to *Alford*, but he did enter a
20 guilty plea. It's our position he's made no showing that
21 that plea was entered based on deficient advice of counsel.
22 He was advised of -- he was appropriately advised of his
23 guilty plea. It was entered freely and voluntarily based on
24 the record. And, again, he's made no showing that counsel's
25 advice in any way rendered that plea involuntary.

1 With respect to prejudice, again, Your Honor, it's
2 our position that he's made no showing that the alleged
3 deficiency resulted in prejudice.

4 First, Your Honor, I know that Mr. Davis mentioned
5 that based on the totality of circumstances, but that -- we
6 don't have a cumulative error analysis in South Carolina. So
7 there's, in terms of prejudice, no totality of the
8 circumstances analysis. You have to look at each alleged
9 deficiency and to determine whether that particular
10 deficiency resulted in prejudice.

11 Regardless, in this case, because Mr. Jackson's
12 three co-defendants were prepared to testify against him at
13 trial, as was evidenced by the transcript that we obtained in
14 advance of this hearing, Your Honor, he would not -- it's our
15 position he's made no showing that he would have made the
16 choice to go to trial versus plead guilty with the facts as
17 they were, with the evidence as it was against him had he
18 gone to trial, Your Honor.

19 So, again, it's our position there's been no
20 deficiency and no prejudice shown. And we would ask Your
21 Honor to deny the post-conviction relief application.

22 THE COURT: All right. I will tell both of you, and
23 I think I've indicated some concern about this at the hearing
24 in September, I am concerned about the level of advice that
25 Mr. Jackson had about the implication of going to trial in a

1 setting where the charges had not been severed, that had
2 already been ruled upon, and in the setting where, right at
3 the 11th hour, the co-defendant, who had previously said,
4 when asked what he thought about the offer that was made, he
5 said, I'm going to stomp on it, I'm not going to take it.

6 And then right as this case was called for trial,
7 Mr. Johnson, the co-defendant, suddenly decided to plead and
8 to testify against Mr. Jackson.

9 Mr. DeTreville did not interview the victims or much
10 of anybody in connection with this case. And he was quite
11 candid about that. He did say he had a lot of conversations
12 with Mr. Jackson. And he agreed Mr. Jackson consistently
13 said, I don't want to plead in this case.

14 What is worrisome about the *Alford* plea is that it's
15 an admission that the State has enough to convict him. And
16 yet, he, when he made that plea, did not even have
17 information about what kind of proffer had been made in the
18 Johnson plea or what exactly would be said. He also did not
19 have complete information about what the -- what could be
20 done to attack Johnson's credibility or the credibility of
21 the victim witnesses or others that were involved in this
22 scheme, which was basically a scheme on the Internet to
23 entice a person to engage a prostitute, and then others would
24 come, the conspirators of the prostitute, would come and rob
25 the victim.

1 That -- there are two instances of armed robbery in
2 connection with two different occurrences that were a couple
3 of days apart in which this so-called similar scenario was
4 engaged in. One happened in a motel. The other happened at
5 the victim's house.

6 And if Mr. Jackson was going to plead, and
7 particularly with the knowledge that the co-defendant was
8 going to testify against him, he really needed to have some
9 pretty good information about what the strength of the case
10 the State was going to present was, what the witnesses were
11 going to say, and whether there were any kind of possible
12 avenues of attack against their credibility. That is the
13 reason we got this transcript of the Johnson plea, was in an
14 effort to try to discover what really was available to this
15 individual. I'm still very concerned about that, and giving
16 some strong consideration to granting the relief in this
17 matter.

18 But I don't want to do that and disadvantage the
19 State or Mr. Jackson until we get the transcript of the
20 testimony. It was very full testimony that was offered in
21 September. And I've got some good notes. And I'm sure
22 you've got good notes of Mr. Rutledge Johnson, but that's
23 really not fair to you, Ms. Olive.

24 So what I'm going to do, I've got a Form 4 up here,
25 and what I'm going to do is check the "other" box. And I'm

1 going to ask for the transcript or direct that a
2 transcript -- it was September 14th?

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: I'm going to have you take a look at
5 this. Because, generally, the State prepares these orders.
6 I'm using the Form 4, because I think it's simpler. And what
7 my order says is this: A transcript of the September 14th,
8 2016, hearing before the undersigned in this matter shall be
9 prepared and delivered to the State counsel for the applicant
10 and the Court. This matter shall remain open until the
11 transcript is received and a final order is entered.

12 And I think that ought to take care of it. What I'm
13 going to do is pass that to the clerk at this time. And
14 y'all can get copies of it for your files.

15 And, Ms. Olive, I'm going to hope that I can depend
16 on your kindness in contacting the court reporter and getting
17 the transcript prepared. Can you do that for me?

18 MS. OLIVE: Absolutely, Your Honor. And I would
19 request the opportunity to brief the issues.

20 THE COURT: Absolutely. This is an unusual case
21 with an unusual twist. I can -- I think I said this at the
22 hearing before. I am not an *Alford* fan. And since I've been
23 on back on the trial bench, I've been -- I have turned down
24 as many *Alford* pleas that I have accepted, because of the
25 kind of difficulties that has presented. I say that without

1 any criticism of the State or the defendants. But the Alford
2 plea is a particularly problematic thing here.

3 I notice that the more successful Alford pleas are
4 often made in connection with criminal sexual conduct
5 matters, child sexual abuse matters and things of that
6 nature, where evidence is very overwhelming, it's on the
7 record, and where defendant chooses to plead in that context.

8 This is not that kind of situation. And when you
9 add to that the pressure of the very late decision of
10 co-defendant refusing to plead, to plead, and, of course, mom
11 is there, as she is today, and she has deep concerns about
12 potential of her child going to jail for life, so the
13 situation is a very fraught situation.

14 And in that context -- and this isn't a regular
15 plea. It's an Alford plea. The focus then begins to look
16 very much in this situation at what the State's case was.
17 And it's a rather confusing scenario about what was actually
18 going to be offered, and not as, perhaps, a complete proffer
19 by a solicitor as might have been maybe a little bit more
20 helpful in having a record that I can review.

21 Again, this is not any reflection on how the parties
22 chose to solve this. But I'm in the posture of having to
23 review what was done. And the record is very scant about the
24 issues that I'm covering right now.

25 So that's the concern. But when we have a complete

1 transcript of what was actually said from the witness stand,
2 both of you may see this matter in a different light from the
3 way I'm looking at it now. And it would certainly -- I've
4 got some very detailed notes, but there's nothing like the
5 transcript to really understand it.

6 So, Mr. Jackson, Mr. Davis has done an exceptionally
7 good job for you in getting this matter moved forward. And I
8 know it's had some fits and starts along the way, but you are
9 facing a rather lengthy sentence. And I think a little bit
10 more delay to get this transcript is not going to
11 disadvantage you. I hope that's the way you feel about it.

12 MR. JACKSON: Yes, ma'am.

13 THE COURT: Very good. Well, thank you very much.
14 And so we will again say this matter is adjourned.

15 MS. OLIVE: Thank you, Your Honor.

16 (Whereupon, the proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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GS
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jerell Jackson, #363218,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-6113

ORDER OF DISMISSAL

FILED
2018 APR 17 AM 10:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before the Court by way of an application for post-conviction relief filed November 9, 2015, by Jerell Jackson (Applicant) alleging plea counsel was ineffective and his guilty plea was involuntary. Respondent made its Return on May 9, 2016, requesting an evidentiary hearing be held.

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An initial evidentiary hearing into the matter was convened September 14, 2016, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Keondra Campbell, a third year law student, appeared on behalf of the State under the supervision of Assistant Deputy Attorney General J. Rutledge Johnson of the South Carolina Attorney General's Office pursuant to Rue 401, SCACR. At the outset of the hearing, Applicant moved for a continuance to allow him to order pre-trial transcripts, including a possible transcript of a proffer of the plea agreement between the State and Applicant's co-defendant, Tommie Johnson. This Court denied Applicant's continuance request and proceeded forward with an evidentiary hearing. Applicant and plea counsel J. Michael Detreville testified. At the conclusion of the evidentiary hearing, this Court ordered the record be left open to allow Applicant time to order and the pre-trial transcript pertinent to his claims.

A second evidentiary hearing was convened January 10, 2017, at the Charleston County Courthouse. Applicant was present at the hearing alongside Counsel Davis. Assistant Attorney General Alicia Olive of the South Carolina Attorney General's Office appeared on behalf of the State. No additional testimony was taken at this time; however, argument was presented from both parties. The Court requested proposed orders from both parties.

The Court had before it a copy of the guilty plea transcript, a transcript of pre-trial proceedings, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the State's return. After reviewing the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds entitling him to relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its October 2013 term of court, the Charleston County Grand Jury indicted Applicant for two counts of armed robbery, two counts of possession of a weapon during the commission of a violent crime, and one count of first-degree burglary, stemming from two different robberies that occurred July 11, 2013, and July 14, 2013.

On March 2, 2015, Applicant appeared before the Honorable Kristi L. Harrington, circuit court judge, in the Charleston County Court of General Sessions for a pre-trial motions hearing alongside co-defendant Tommie Johnson. At the start of the hearing, Applicant's co-defendant

Johnson rejected the State's offer to plead to one count of armed robbery and one count of first-degree burglary without any recommendation as to a sentence in exchange for the dismissal of all other charges. (March 2-3, 2015 Tr. p. 5-7). Applicant's plea counsel informed the plea court no offers had been extended to Applicant. (March 2-3, 2015 Tr. p. 7). The State then placed on the record that it had entered into signed proffer agreements with all three of Applicant's co-defendants, including Johnson, but that no offers had been made as to sentencing or dismissal of charges. (March 2-3, 2015 Tr. p. 8-9). Thereafter, Applicant and co-defendant Johnson jointly moved to sever the July 11, 2013 incident from the July 14, 2013. At the conclusion of this hearing, Judge Harrington denied Applicant and his co-defendant's motion to sever. (March 2-3, 2015 Tr. p. 9-20). Next, Applicant moved *in limine* to prevent the State from eliciting testimony pertaining to the violate relationship (including physical abuse) between Applicant and co-defendant Gillenkirk, with whom Applicant has two children. (March 2-3, 2015 Tr. p. 20-22). Judge Harrington declined to rule on the motion at that time. (March 2-3, 2015 Tr. p. 22). Thereafter, court adjourned for the day.

The next morning, Judge Harrington accepted co-defendant Johnson's guilty plea to one count of armed robbery in exchange for the dismissal of the accompanying first-degree burglary charge and the other armed robbery charge. (March 2-3, 2015 Tr. p. 23). No negotiation or recommendation was made as to sentence and sentencing was deferred until after Applicant's trial. (March 2-3, 2015 Tr. p. 23-29).¹

¹Public records with the South Carolina Department of Corrections reveal co-defendant Johnson received a ten year sentence.

Later that same day—March 3, 2015—Applicant appeared before Judge Harrington and pled guilty pursuant to Alford² to two counts of armed robbery (2013-GS-10-6402 & 2013-GS-10-6378). In exchange for his guilty plea, the State dismissed two counts of possession of a weapon during the commission of a violent crime, and one count of first-degree burglary; the State made no recommendation as to a term of imprisonment but did recommend concurrent sentences. Judge Harrington sentenced Applicant to twenty years' imprisonment for each offense, with the sentences to be served concurrently.

Thereafter, Applicant filed a timely notice of appeal. On June 24, 2015, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the circuit court on July 24, 2015.

FACTUAL HISTORY

These charges arise from two separate but interconnected incidents related to postings for sexual services online. Applicant's co-defendants Gillenkirk (who was romantically involved with Applicant) and Jefferson, who went by the names Chocolate and Honey online, advertised as prostitutes on the website backpage.com. On July 11, 2013, a man (Victim 1) contacted Applicant's cellular phone obtained from the backpage.com advertisement and arranged to meet Gillenkirk at the North Charleston Inn in a room rented to co-defendant Johnson. Victim 1 entered the hotel room and began talking to Gillenkirk, but ultimately decided she did not look like her advertised photograph and exited the room, walked to his car, and attempted to leave. Applicant and co-defendant Johnson pulled their car behind Victim 1's car so he could not leave

² North Carolina v. Alford, 400 U.S. 25 (1970).

and accosted him. Applicant struck Victim 1 in the face, brandished a firearm, and stole a hundred dollars from him. Victim 1 called law enforcement, reported the armed robbery, and gave descriptions of Applicant and his co-defendants and their car, and the information regarding the backpage.com advertisement. (Plea Tr. p. 8-9).

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The second incident occurred three days later on July 14, 2013, when another man (Victim 2) responded to the same backpage.com advertisement. He arranged for co-defendant Gillenkirk to come to his home in Ladson to perform sexual services. Applicant and his co-defendants arrived at Victim 2's home and Gillenkirk went inside. Victim 2 and Gillenkirk began engaging in sexual activity, and at some point, she stopped the activity, called Applicant, and described the location of the residence. Applicant and co-defendant Jefferson came to the door and were let inside by Gillenkirk. Applicant brandished a pistol on Victim 2, ransacked his residence, and stole his Rolex watch, a Playstation, and two-hundred dollars. They fled the scene. (Plea Tr. p. 9-10).

Victim 2 reported the crime to law enforcement and gave a description of Applicant and his co-defendants. Victim 2 got a new phone, set up another meeting based on the backpage.com advertisement, and alerted law enforcement to the meeting location—Relax Inn in North Charleston. Officers with the North Charleston Police Department responded to the motel, where they observed a car matching the description provided by both victims in the parking lot and co-defendant Johnson sitting outside the motel room. Officers spoke with Johnson and then saw Applicant and the two female co-defendants. Officers performed a knock-and-talk, smelled marijuana, and detained Applicant and his co-defendants. Officers saw Victim 2's Rolex and

Playstation on the counter, obtained a search warrant, and subsequently found the firearm and stolen property. (Plea Tr. p. 10).

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for: "unreasonable diligence and promptness, lack of investigation, misadvice in urging me to accept plea."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he is a high school graduate who has lived in South Carolina since he was eighteen years old. (PCR Tr. #1 p. 24). He testified plea counsel represented him for two years prior to his plea and that they met four or five times. (PCR Tr. #1 p. 25-26). He testified they reviewed the statements from the victims and co-defendants and in the beginning he was "optimistic about using statements to his benefit. (PCR Tr. #1 p. 26). He testified plea counsel reviewed all discovery materials with him, including statements from both female co-defendants. (PCR Tr. #1 p. 28). He testified co-defendant Gillenkirk wrote him multiple letters with conflicting statements and he provided all of them to plea counsel. (PCR Tr. #1 p. 28-29). He and plea counsel discussed how these could be used to his benefit at trial. (PCR Tr. #1 p. 28-29).

Applicant testified he was presented with five different plea offers from the State and he turned all of them down. (PCR Tr. #1 p. 26-27). He testified the week prior to trial, he and plea counsel discussed trial strategy, and he described trial counsel as "optimistic" about his case. (PCR Tr. #1 p. 29). He testified they did not discuss plea offers during their meeting, but instead focused on how counsel would attack the credibility of his co-defendants at trial. (PCR Tr. #1 p.

29-30). Applicant testified they also discussed how the victims were not fully cooperating with law enforcement and the possibility they would not attend trial. (PCR Tr. #1 p. 30-31). He testified he wanted counsel to talk to the victims, see if they would attend trial, and what type of punishment they would seek. (PCR Tr. #1 p. 31).

Applicant testified he ultimately decided to plead guilty pursuant to Alford in exchange for the dismissal of the related first-degree burglary and two counts of possession of a weapon during the commission of a violent crime. (PCR Tr. #1 p. 31). Applicant testified that on the morning his joint trial with co-defendant Johnson was set to begin, counsel informed him Johnson elected to forgo trial and enter a guilty plea. (PCR Tr. #1 p. 31-32). Applicant testified counsel advised him he was likely to be convicted with Johnson testifying against him and that he should accept the State's plea offer. (PCR Tr. #1 p. 32-33). Applicant testified counsel thought he would likely get a sentence towards the lower end of the sentencing range for armed robbery based on his lack of a serious criminal record if he pled guilty, but that if he was convicted at trial, he would get a substantial sentence. (PCR Tr. #1 p. 33-34). He testified counsel explained what an Alford plea was and discussed the plea process with him briefly. (PCR Tr. #1 p. 34-35). He testified counsel also had his mother talk to him and urge him to accept the State's plea offer. (PCR Tr. #1 p. 35, 37). Applicant testified he did not want to plead guilty and wanted to proceed to trial, but did not feel plea counsel was prepared. (PCR Tr. #1 p. 45).

Applicant testified he was not satisfied with counsel's performance and filed a motion to have him relieved. (PCR Tr. #1 p. 35). He testified he never had a hearing on this motion. (PCR Tr. #1 p. 36-37).

Next, plea counsel was called to testify by Applicant. He testified he was appointed to represent Applicant in early 2014 based on a conflict of interest with the Public Defender's Office, who was representing co-defendant Johnson. (PCR Tr. #1 p. 46). He testified he met with Applicant approximately a dozen times. (PCR Tr. #1 p. 48). He recollected the State made several offers to Applicant throughout the course of his representation and Applicant turned these offers down. (PCR Tr. #1 p. 47). He testified his trial strategy was to attack the credibility of Applicant's co-defendants, particularly the two female co-defendants based on their numerous inconsistent statements, including the written correspondence Applicant provided him. (PCR Tr. #1 p. 47-49). He testified he did not think it would be necessary for Applicant to testify at trial based on this strategy of attacking the credibility of the State's witnesses, and therefore, they did not spend much time preparing him to testify. (PCR Tr. #1 p. 49). He testified he did not speak with either victim. (PCR Tr. #1 p. 49).

Plea counsel testified he spoke with Applicant on the morning of the plea after codefendant Johnson elected to forego their joint trial and plead guilty. (PCR Tr. #1 p. 50). He testified they discussed the significant impact this would have on Applicant's trial. (PCR Tr. #1 p. 50-51, 53). He expounded that leading up to trial, co-defendant Johnson had a similar defense strategy and they would have been able to work together as allies to attack the credibility of the victims and witnesses, but once Johnson elected to plead guilty and testify for the State, Applicant was likely to be convicted. (PCR Tr. #1 p. 52-53). He testified Johnson did not have the same inherent credibility problems that the female co-defendants had, making it harder to impeach him during trial. (PCR Tr. #1 p. 53). He testified he advised Applicant to plead guilty

pursuant to Alford because the State had ample evidence of guilt that would likely lead to Applicant's conviction. (PCR Tr. #1 p. 55).

He testified he advised Applicant to plead guilty. (PCR Tr. #1 p. 51). He testified he advised Applicant he could receive a sentence of any term of years between ten to thirty, but that based on his lack of serious criminal record, he hoped Applicant would receive a sentence on the lower end of that range. (PCR Tr. #1 p. 51). He testified he advised Applicant about what an Alford plea was and what would happen during the plea proceeding. (PCR Tr. #1 p. 56). He testified Applicant's mother requested to speak with him before the plea and he arranged for them to speak briefly. (PCR Tr. #1 p. 57). Counsel testified he does not recall Applicant ever filing a motion to relieve him as counsel. (PCR Tr. #1 p. 65).

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The proffer agreement for co-defendant Johnson was introduced as Court's Ex. No. 1. The proffer agreement does not make an exact offer in terms of exchange for Johnson's testimony, but does state Johnson must also "testify fully and truthfully at any trials or proceedings if called upon to do so by the State subject to prosecution for perjury for not testifying truthfully." (PCR Tr. #1 p. 64).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds trial counsel's testimony credible and finds Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty 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 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Applicant alleges plea counsel was ineffective for "unreasonable diligence and promptness, lack of investigation, misadvised in urging me to accept plea." This Court disagrees and finds Applicant failed to meet his burden of establishing counsel's deficiency regarding any of these aspects of his representation. The Court finds plea counsel adequately conferred with Applicant, met with him approximately twelve times, and reviewed all pertinent discovery materials with Applicant. Additionally, this Court finds counsel was prepared for trial when Applicant elected to forgo trial and enter a guilty plea, and fully advised Applicant of all aspects of his guilty plea. This Court finds Applicant pled guilty based on the evidence that would have been presented against him and not any alleged deficiency of counsel. Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary or counsel's advice to plead guilty deficient. Brady v. United States, 397 U.S. 742 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

Moreover, Applicant's speculative assertions that counsel was not prepared for trial are insufficient to establish any deficiency of counsel. In Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997), the circuit court found that Satterwhite's plea was involuntary because Satterwhite believed his counsel was not prepared for trial. Id., 325 S.C. at 258, 481 S.E.2d at 711. This Court reversed the grant of relief, noting that at the plea, Satterwhite was satisfied with counsel's services. The Supreme Court found that Satterwhite's "*belief* that counsel was unprepared for trial [when Satterwhite pled guilty] is not evidence that counsel was, in fact, not prepared." Id., 325 S.C. at 259, 481 S.E.2d at 712 (emphasis in original). Ultimately, this Court finds plea counsel was thoroughly competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in his best interest.

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Applicant alleges plea counsel failed to investigate his case prior to recommending Applicant accept the State's plea offer. However, Applicant failed to establish what additional investigation counsel should have undertaken or what the results such an investigation would have yielded. Moreover, plea counsel testified his trial strategy was to attack the credibility of Applicant's co-defendants, who were the State's primary witnesses, based on their numerous conflicting statements, and since he had copies of all their statements and letters, additional investigation was not necessary. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding failure to conduct an independent investigation is not per se ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information); Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses

respondent would have requested counsel pursue had counsel more fully prepared for the trial.”); See also Strickland, 466 U.S. at 691 (“[W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel’s failure to pursue those investigations may not later be challenged as unreasonable.”). This Court finds plea counsel’s performance was reasonable according to professional standards and his allegations that plea counsel was ineffective must be denied and dismissed with prejudice.

Furthermore, this Court finds Applicant is unable to establish any requisite prejudice from plea counsel’s alleged deficiencies based on the overwhelming evidence establishing Applicant’s guilt. In addition to the statements provided by all three of Applicant’s co-defendants, both witnesses provided descriptions of Applicant and his co-defendants, along with their car, and when arrested after the staged sexual encounter, all matched the victims’ descriptions. Additionally, the motel room where Applicant and his co-defendants were arrested contained the stolen property and gun used during the robberies. Therefore, it is unlikely the result of Applicant’s proceeding would have been different had he proceeded to trial. This Court finds counsel provided competent representation in light of the overwhelming evidence against Applicant. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). As Applicant is unable to meet his requisite burden of proof, this allegation must be denied and dismissed with prejudice.

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CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

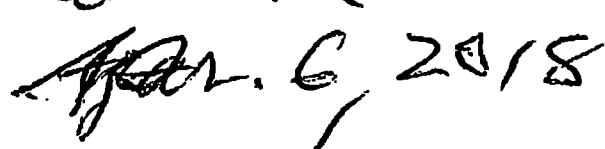
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 6th day of Apr., 2018.


JEAN H. TOAL
Presiding Judge
Ninth Judicial Circuit

, South Carolina

 Apr. 6, 2018

CDD20130705372

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013023823

ARREST WARRANT NUMBER

2013A1010203910

DATE OF ARREST

July 16, 2013

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

OCT 08 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1006402

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2013

THE STATE

vs.

JERELL JACKSON

DOB: 1979

B/M

Indictment for

Armed Robbery

FILED

10/15/2013 2:07:16 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 7, 2013 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about July 14, 2013, in Charleston County, South Carolina, at [REDACTED] North Charleston, South Carolina, the Defendant, Jerell Jackson, while acting alone or in concert with others, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Darell Hampton with the intent to permanently deprive the victim of possession thereof; in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


CULVER KIDD
ASSISTANT SOLICITOR

CDD20130705371

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013023530

ARREST WARRANT NUMBER

2013A1010203912

DATE OF ARREST

July 16, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury — OCT 08 2013
Date:

VERDICT

Foreperson of Petit Jury — Date:

INDICT

DOCKET NO. 2013GS1006378

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

October Term 2013

THE STATE

vs.

JERELL JACKSON

DOB: 1979

B/M

Indictment for

Armed Robbery

FILED

10/15/2013 2:07:16 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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


CULVER KIDD
ASSISTANT SOLICITOR