

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JAN 13 2013

S.C. Supreme Court

DONQUES HOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212075

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ALAN WILSON
Attorney General

JOHN WALT WHITMORE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

GUILTY PLEA TRANSCRIPT 1

APPLICATION FOR POST-CONVICTION RELIEF24

RETURN36

POST-CONVICTION RELIEF HEARING TRANSCRIPT43

ORDER OF DISMISSAL80

INDICTMENTS91

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

STATE OF SOUTH CAROLINA)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	2007-GS-04-179
)	
)	
)	
State of South Carolina	)	TRANSCRIPT OF RECORD
)	
vs)	
)	
Donques Hood)	
)	

March 3, 2009
Anderson, South Carolina

B E F O R E:

THE HONORABLE ALEXANDER MACAULAY, Judge

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

ANTHONY LUMFORD, Esquire
Assistant Solicitor
Attorney for the State

SCOTT ROBINSON, Esquire
Attorney for the Defendant

Caroline Hiskell

Circuit Court Reporter

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

(There was no exhibits or witnesses presented.)

1 P R O C E E D I N G S

2 THE COURT: State ready to proceed?

3 MR. LUMFORD: Yes, Your Honor.

4 THE COURT: Defense?

5 MR. LUMFORD: Yes, Your Honor.

6 THE COURT: Solicitor, call your first case.

7 MR. LUMFORD: Thank you, Your Honor. May it
8 please the Court, standing before you is Donques M. Hood.
9 He is charged with Indictment 2007-179 with criminal
10 conspiracy, 2007-180 armed robbery and possession of a
11 firearm during the commission of a violent crime, 2007-531
12 armed robbery, 2007-534 criminal conspiracy, 2007-530
13 kidnapping, 2007-529 kidnapping, 2007-528 kidnapping,
14 2007-527 armed robbery, 2007-526 criminal conspiracy,
15 2007-538 armed robbery and possession of a firearm during
16 the commission of a violent crime, 2007-533 criminal
17 conspiracy. He is represented by Scott Robinson, Your
18 Honor.

19 THE COURT: I notice on the Indictments 533,
20 538 that the defendant is identified as Donques M. Hood.
21 On 526, the defendant is identified as Donques D. Hood.
22 What's your client's name?

23 MR. ROBINSON: Donques D. Hood.

24 THE COURT: What does the "D" stand for?

25 DEFENDANT HOOD: DeMarcus.

1 THE COURT: So it's not "M"?

2 DEFENDANT HOOD: Yes, sir.

3 THE COURT: Would you please raise your right
4 hand.

5 DONQUES D. HOOD, having been duly sworn,
6 testified as follows:

7 Thank you, sir.

8 Solicitor, what's the minimum and maximum
9 sentence on criminal conspiracy?

10 MR. LUMFORD: Up to five years, \$5000 fine,
11 sir.

12 THE COURT: Zero to five years.

13 MR. LUMFORD: Yes, sir.

14 THE COURT: Armed robbery?

15 MR. LUMFORD: Minimum 10, maximum 30, Your
16 Honor.

17 THE COURT: Kidnapping?

18 MR. LUMFORD: Up to 30, Your Honor.

19 THE COURT: Zero to thirty.

20 MR. LUMFORD: Yes, Your Honor.

21 THE COURT: Is a recommended sentence in this
22 case?

23 MR. LUMFORD: No, Your Honor.

24 THE COURT: Possession of a weapon during the
25 commission of a violent crime?

1 MR. LUMFORD: Up to five years, Your Honor.

2 THE COURT: Zero to five?

3 MR. LUMFORD: Yes, sir.

4 THE COURT: Mr. Robinson, you represent the
5 defendant?

6 MR. ROBINSON: I do, Your Honor.

7 THE COURT: Have you explained to the
8 defendant the charges contained in the indictment and the
9 possible punishments and his Constitutional Rights
10 including his rights to a jury trial?

11 MR. ROBINSON: I have, Your Honor.

12 THE COURT: In your opinion, does the
13 defendant understand the charges, punishments and his
14 Constitutional Rights?

15 MR. ROBINSON: Yes, sir.

16 THE COURT: Your investigation of the facts
17 and circumstances of these cases you feel as though the
18 State has sufficient evidence to prove the defendant
19 guilty beyond a reasonable doubt should he stand trial and
20 would be found guilty on each of these charges?

21 MR. ROBINSON: Yes, sir.

22 THE COURT: Are you aware of any physical,
23 mental, or emotional problems that might keep the
24 defendant from understanding what he's doing?

25 MR. ROBINSON: No, sir.

1 THE COURT: Mr. Hood, you have entered a
2 guilty plea and I need to make sure that you understand
3 and your plea is entered into freely and voluntarily
4 entered with a full understanding as to the nature of the
5 offenses as well as the possible punishments and
6 consequences of your plea. I need to ask you some
7 questions and if you do not understand the question,
8 please stop me and I will explain them to you. Also,
9 during the questioning, if you need to consult with your
10 attorney, you'll be permitted to do that. Do you
11 understand?

12 DEFENDANT HOOD: Yes, sir.

13 THE COURT: How old are you, sir?

14 DEFENDANT HOOD: Twenty-six.

15 THE COURT: You just turned 26. How far did
16 you go in school?

17 DEFENDANT HOOD: All the way to the 12th
18 grade.

19 THE COURT: You did not finish, but you went
20 to the 12th grade?

21 DEFENDANT HOOD: Yes, sir.

22 THE COURT: What kind of work do you do?

23 DEFENDANT HOOD: I was a cook at Denny's.
24 Mainly it was cook work. I cooked at nursing homes and
25 type of work like that.

1 THE COURT: Are you married, sir?

2 DEFENDANT HOOD: No, sir.

3 THE COURT: Do you have any children?

4 DEFENDANT HOOD: Yes, sir.

5 THE COURT: How many children?

6 DEFENDANT HOOD: I have two, sir.

7 THE COURT: And how old are your children?

8 DEFENDANT HOOD: Seven and 13 months.

9 THE COURT: And who do your children live
10 with?

11 DEFENDANT HOOD: My fiance.

12 THE COURT: Have you ever been treated for
13 alcohol, drugs or mental illness?

14 DEFENDANT HOOD: No, sir.

15 THE COURT: And have you had any medication,
16 drugs, or alcohol within the last 24 hours?

17 DEFENDANT HOOD: None that wasn't prescribed
18 to me.

19 THE COURT: What medicine was prescribed to
20 you?

21 DEFENDANT HOOD: Blood medicine and Voltaren.

22 THE COURT: Does that affect your ability to
23 understand and appreciate what you're doing?

24 DEFENDANT HOOD: No, sir, it doesn't.

25 THE COURT: Are you aware of any physical,

1 emotional, or mental problems that might keep you from
2 understanding what you're doing today?

3 DEFENDANT HOOD: No, sir.

4 THE COURT: Now, your attorney as stated that
5 he explained to your these charges, possible punishments
6 and your Constitutional Rights; is that correct?

7 DEFENDANT HOOD: Yes, sir.

8 THE COURT: You're pleading guilty to the
9 offenses of criminal conspiracy, three indictments, armed
10 robbery, three indictments, and kidnapping, three
11 indictments, and possession of a weapon during a violent
12 crime, one indictment. The maximum sentence for criminal
13 conspiracy is five years and \$5,000. If I should
14 sentencing consecutively on those offenses, it would be 15
15 years and \$15,000; armed robbery is 10 years minimum and
16 30 years maximum so you could be sentenced to 30 years to
17 90 years on the armed robbery; kidnapping 0 to 30, the
18 lowest I could sentence you, again, to 90 years, and then
19 the possession of a weapon during the commission of a
20 violent crime is zero to five years. If I would sentence
21 you consecutively, you could be sentenced to 185 years --
22 excuse me -- 200 years and \$15,000, do you understand
23 that?

24 DEFENDANT HOOD: Yes, sir.

25 THE COURT: Are you on probation or parole?

1 DEFENDANT HOOD: No, sir.

2 THE COURT: Do you fully understanding the
3 nature of the charges against you?

4 DEFENDANT HOOD: Yes, sir.

5 THE COURT: And do you understand the range
6 of possible punishments?

7 DEFENDANT HOOD: Yes, sir.

8 THE COURT: Now, do you understand that when
9 you plead guilty, Mr. Hood, you give us important
10 Constitutional Rights. You give up the right to remain
11 silent, that is the right to say nothing at all. You can
12 not be compelled to testify against yourself or give
13 evidence against yourself. It's called a right against
14 self-incrimination, do you understand that?

15 DEFENDANT HOOD: Yes, sir.

16 THE COURT: You also give up your right to a
17 jury trial. In a jury trial, you would presume to be
18 innocent and the State would have the burden of proving
19 your guilt beyond a reasonable doubt. All 12 members of
20 the jury would have to agree unanimously that you are
21 guilty beyond a reasonable doubt on any of the charges
22 they find you guilty on, do you understand that?

23 DEFENDANT HOOD: Yes, sir.

24 THE COURT: Also, you give up your right to
25 confront and that is to cross-examine any witnesses called

1 against you as well as your right to call witnesses on
2 your own behalf, do you understand that?

3 DEFENDANT HOOD: Yes, sir.

4 THE COURT: Do you understand if you plead
5 guilty, you give up any defenses you may have to these
6 charges?

7 DEFENDANT HOOD: Yes, sir.

8 THE COURT: You waive any defenses you may
9 have, do you understand that?

10 DEFENDANT HOOD: Yes, sir.

11 THE COURT: Also, if you've given any
12 incriminating statement in any of these cases, do you
13 understand when you plead you waive or give up your right
14 to challenge any statement you've given in accordance to
15 your Constitutional Rights, do you understand that?

16 DEFENDANT HOOD: Yes, sir.

17 THE COURT: Do you understand all of these
18 rights?

19 DEFENDANT HOOD: Yes, sir.

20 THE COURT: Do you understand when you plead
21 guilty you waive or give up these rights?

22 DEFENDANT HOOD: Yes.

23 THE COURT: Do you understand when you plead
24 guilty you admit the truth of the charges made against
25 you?

1 DEFENDANT HOOD: Yes, sir.

2 THE COURT: Solicitor, has the defense been
3 allowed access to all the Discovery according to Brady
4 Rule 5?

5 MR. LUMFORD: He has, Your Honor.

6 THE COURT: Is that correct, Mr. Robinson?

7 MR. ROBINSON: That's correct.

8 THE COURT: Mr. Hood, understanding the
9 nature of the offenses and consequences of the guilty
10 plea, how do you plead to each of these indictments?

11 DEFENDANT HOOD: I want to plead guilty.

12 THE COURT: And that's to all indictments?

13 DEFENDANT HOOD: Yes, sir.

14 THE COURT: Eleven indictments?

15 MR. LUMFORD: Yes, sir.

16 THE COURT: You're pleading guilty to all 11
17 indictments?

18 DEFENDANT HOOD: Yes, sir.

19 THE COURT: Have there been any negotiations,
20 Mr. MR. LUMFORD?

21 MR. LUMFORD: There were prior to the calling
22 of the trial, Your Honor, and I will go ahead and say that
23 the male co-defendants that participated as Mr. Hood did
24 received 20 years, Your Honor. The female co-defendant
25 received 15 years.

1 THE COURT: You didn't represent those
2 co-defendants but is that your understanding,
3 Mr. Robinson?

4 MR. LUMFORD: That's my understanding.

5 THE COURT: So there are no agreements here
6 in this case?

7 MR. LUMFORD: No, Your Honor.

8 THE COURT: Is that your understanding,
9 Mr. Hood?

10 DEFENDANT HOOD: Yes, sir.

11 THE COURT: Has anyone suggested or
12 represented to you any sentence or condition of sentence
13 or other matter affecting your plea here today? In other
14 words, has anyone said if you plead guilty today then you
15 would get a particular sentence?

16 DEFENDANT HOOD: No, sir.

17 THE COURT: Are you pleading guilty because
18 you are guilty or because of some lenient representation
19 by the State?

20 DEFENDANT HOOD: Because I am guilty.

21 THE COURT: You fully discussed all aspects
22 of the case with your lawyer?

23 DEFENDANT HOOD: Yes, sir.

24 THE COURT: Do you need more time to talk to
25 your lawyer?

1 DEFENDANT HOOD: No, sir.

2 THE COURT: Are you completely satisfied with
3 the services of Mr. Robinson as your attorney?

4 DEFENDANT HOOD: Yes, sir.

5 THE COURT: Has anyone promised you anything
6 with a hope of reward to get you to plead guilty?

7 DEFENDANT HOOD: No, sir.

8 THE COURT: Has anyone suggested to you a
9 sentence, conditional sentence, or other similar matter?

10 DEFENDANT HOOD: No, sir.

11 THE COURT: Has anyone threatened you or used
12 force to get you to plead guilty?

13 DEFENDANT HOOD: No, sir.

14 THE COURT: Has anyone pressured you or
15 intimidated you to get you to plead guilty?

16 DEFENDANT HOOD: No, sir.

17 THE COURT: Has anyone connected with this
18 case; the solicitor, the police officer, or any other
19 person mistreated you in any way?

20 DEFENDANT HOOD: No, sir.

21 THE COURT: You had enough time to make up
22 your mind to decide whether you want to plead guilty?

23 DEFENDANT HOOD: Yes, sir.

24 THE COURT: Have you understood my questions?

25 DEFENDANT HOOD: Yes, sir.

1 THE COURT: Is there anything you want to ask
2 me about what we went over?

3 DEFENDANT HOOD: No, sir.

4 THE COURT: You may have discussed parole or
5 parole eligibility with your lawyer or other people,
6 ****do you understand?

7 DEFENDANT HOOD: Yes, sir.

8 THE COURT: You understand you have a right
9 to appeal your guilty plea and the sentence that I hand
10 down and you have 10 days to do so, do you understand?

11 DEFENDANT HOOD: Yes, sir

12 THE COURT: All right, what are the facts of
13 these cases?

14 MR. LUMFORD: If it please the Court, Your
15 Honor, as stated earlier Mr. Hood was one of the
16 co-defendants. There were six co-defendants involved in
17 most of these matters and it dwindled down to five on a
18 couple of them.

19 I'll go chronologically, Your Honor.
20 December 17, 2005, the Little Caesars on Shockloferry(ph)
21 Road in Anderson County, South Carolina was robbed.
22 Mr. Hood in that instance was a look out parked at the
23 Taco Bell. He didn't actually go inside the Little
24 Caesars. One of the co-defendants did brandishing a gun
25 and did lock three people in a walk-in cooler hence the

1 kidnapping charges.

2 January 25, 2006, at the Ingles Supermarket
3 on Highway 24, again, the individuals had conspired to rob
4 that grocery store. Again, Mr. Hood did not actually go
5 into that store. He did give a statement, Your Honor,
6 admitting guilt in all of these robberies. He says in his
7 statement that he was watching for cops. They were all on
8 three-way telephones and he could hear everything that was
9 being said when they robbed the place.

10 Then on May 10, 2006, the same Little Caesars
11 on Shockloferry(ph) Road, they did conspire again to go
12 rob that. Again, in that instance, Mr. Hood was not
13 brandishing a weapon and did not enter the pizza place.
14 He actually, again, according to his statement went riding
15 around paroling looking for cops, knew full well what was
16 going to happen and did, in fact, split the proceeds of
17 these robberies. Whenever they got money, they all went
18 back to a central location and split the loot, so to
19 speak.

20 Then July 31, 2006, the Ingles Supermarket on
21 Highway 81 in Anderson County, this instance Mr. Hood did,
22 in fact, go into that store with one of the other
23 co-defendants, both of whom were brandishing weapons.
24 They were both wearing masks. Mr. Hood was wearing a
25 Scream Halloween mask, the other individual was wearing a

1 camouflage hunting mask. By Mr. Hood's own statement, he
2 says, "I was wearing a black shirt and black sweat pants,
3 a Scream mask. I had a black .380," which was the
4 handgun. He did say, "I didn't have to put the gun on
5 anybody."

6 I've looked at the video, Your Honor, as well
7 as Mr. Robinson. He did not, in fact, put the gun on
8 anybody but that's because the assistant manager was the
9 only one in the store. The other individual, the
10 co-defendant, who was with Mr. Hood jumped the customer
11 service counter and forced her to the ground at gunpoint.
12 Mr. Hood was down on the floor pacing with his gun back
13 and forth in front of the counter, but there was no one
14 else in the store so he didn't actually point the gun at
15 anyone but he was armed.

16 The, in fact, didn't get any money out of
17 that robbery. The safe was locked and they couldn't open
18 it.

19 Then on October 4, 2006, Mr. Hood was in a
20 vehicle on Midway Road in Anderson County which was
21 stopped by law enforcement. Midway Road, for Your Honor's
22 benefit is actually right near Highway 81 Ingles.
23 According to the co-defendant's statements they were going
24 back to that Ingles to rob it again because they didn't
25 get any money out of it the first time. In that car where

1 Mr. Hood and the other two individuals were, they did find
2 two handguns, the Scram Halloween mask and the camouflage
3 hunting mask were all located in that vehicle, Your Honor.

4 THE COURT: Do you agree with all the facts
5 in this cases as recited by the solicitor?

6 DEFENDANT HOOD: Yes, sir.

7 THE COURT: Prior record.

8 MR. LUMFORD: Not really much, Your Honor. I
9 think he's got a few forgeries. He has numerous
10 forgeries, Your Honor, from 2001; open container of beer
11 or wine, DUS, operating an uninsured motor vehicle, and
12 then these offenses, Your honor.

13 THE COURT: Only convictions for driving
14 forgery.

15 MR. LUMFORD: And open container, yes, sir.

16 THE COURT: Does that sound like your record?

17 DEFENDANT HOOD: Yes, sir.

18 THE COURT: Each and every aspect of your
19 answers given today absolutely true?

20 DEFENDANT HOOD: Yes, sir.

21 THE COURT: Okay. I find that there is a
22 substantial factual basis each of these offenses to plead
23 guilty and it's the defendant's decision to plead guilty
24 to these indictments freely and voluntarily knowingly and
25 intelligently made with the advice of counsel in which he

1 has stated he is fully satisfied. The defendant's plea of
2 guilty are accepted.

3 Defendant Donques DeMarcus Hood also known as
4 Marcus Donques M. Hood who in open court of his own proper
5 person pleads guilty to Indictment No. 2007-GS-04-179 and
6 180, 526, 527, 528, 529, 530, 531, 533, 534 and 538
7 commencing sentence of the Court.

8 Anything else from the State?

9 MR. LUMFORD: Nothing from the State, Your
10 Honor.

11 THE COURT: Mr. Robinson, what do you want to
12 tell me?

13 MR. ROBINSON: Your Honor, if it please the
14 Court, I have his fiance with me today. She'd like to
15 talk in a second. Your Honor, I'd like the Court to look
16 at the sentences the co-defendants received in this case.
17 He doesn't have much of a prior record, mostly driving,
18 forgeries, open container as the State said.

19 Your Honor, he was in jail for a while on
20 these charges and he got out and started working again,
21 taking care of his child. He was living with his fiance
22 and his father. I believe he is a former police officer
23 and he was living there, and then he got picked back up
24 again, but Your Honor, he is a young man and he's got a
25 lot going for him. And if you look at his record and look

1 at his past, it seems like this one big aberration he had
2 in his life created a huge problem for him and Donques is
3 very very sorry and remorseful about this ever happening.
4 He gone through tears and everything you can imagine.

5 He is standing before the Court today taking
6 responsibility both on behalf of himself and also his
7 family because he wants to get his GED and get some skills
8 because he did not complete high school.

9 Your Honor, we would ask for a more lenient
10 sentence in the 10 to 15 year range for him, minimum
11 sentence in this case because he was a look out. There is
12 no excuse for participating in this type of crime but we'd
13 ask the Court to consider the lack of a prior record in
14 this case and the fact that he does have family, a fiance
15 and two children and he wants to do something with his
16 life. He acknowledges his life and he wants to be able to
17 be a productive citizen and we'd ask the Court to take
18 that into consideration.

19 Your Honor, at this time, I'd like to have
20 his finance to identify yourself and speak on his behalf.

21 THE COURT: Yes, ma'am. Please identify
22 yourself.

23 MS. HINDRICK: Christian Hindrick(ph). We
24 were in high school together and when I got pregnant and
25 he stepped up and his family took me in and we've been

1 together since then. When this incident occurred, we had
2 broke up for a year and he met these bad people. That
3 doesn't excuse his behavior but for the past we've been
4 together, he's always been there for his children. We
5 have a seven year old and a one year old and he's always
6 gotten up in the middle of the night. He's been a very
7 active father, taken the boys camping and they love him
8 and he loves them, and he's surrounded by good people.

9 My father is a police officer, his brother is
10 as minister, it doesn't excuse this bad year, but, a
11 future would be (inaudible). His mother is disabled and
12 couldn't be here today but he has a very loving family.

13 And I want you to take into consideration that he's. A
14 wonderful person and I've never met anyone who didn't like
15 him or he didn't like. Thank you.

16 THE COURT: Thank you, sir.

17 DEFENDANT HOOD: I'd like to say that I'm
18 very sorry and I ask you to be lenient on this sentence.

19 THE COURT: Anything else from the State?

20 MR. LUMFORD: No, Your Honor.

21 THE COURT: Mr. Robinson?

22 MR. ROBINSON: No, Your Honor.

23 THE COURT: How much time have you done?

24 DEFENDANT HOOD: Seven months ---

25 MR. LUMFORD: Ten months.

1 THE COURT: Are you appointed?

2 MR. ROBINSON: Yes, sir.

3 THE COURT: Anything else from the State?

4 MR. LUMFORD: No, sir.

5 THE COURT: Mr. Robinson?

6 MR. ROBINSON: No, sir.

7 THE COURT: Mr. Hood?

8 DEFENDANT HOOD: No, sir.

9 THE COURT: State versus Donques DeMarcus

10 Hood also known as Donques M. Hood the sentence of the
11 Court in Indictment No. 2007-GS-04-179, the defendant be
12 committed to the State Department of Correction for a term
13 of five years; Indictment No. 2007-GS-04-180, the sentence
14 of the Court is the defendant be committed to the State
15 Department of Corrections for a term of 20 years
16 (inaudible). Indictment No. 2007-GS-04-526 the sentence
17 of the Court is you be committed to the State Department
18 of Corrections for a term of five years (inaudible);
19 Indictment 2007-GS-04-527 the sentence of the Court is you
20 be committed to the State Department of Corrections for a
21 term of 20 years (inaudible); Indictment 2007-GS-04-528
22 the sentence of the Court is that you be committed to the
23 State Department of Corrections for a term of 20 years
24 (inaudible); Indictment 2007-GS-04-529, the sentence of
25 the Court is that you committed to the State Department of

1 Corrections for a term of 20 years (inaudible); indictment
2 2007-GS-04-531, the sentence of the Court is that you be
3 committed to the Court for a term of 20 years (inaudible);
4 Indictment No. 2007-GS-04-533, the sentence of the Court
5 is that you be committed to the State Department of
6 Corrections for a term of five years (inaudible);
7 Indictment No. 2007-GS-04-534 the sentence of the Court is
8 that you be committed to the Department of Corrections for
9 a term of five years (inaudible); Indictment No. 2007-GS-
10 04-538 is that you be committed to the State Department of
11 Correction for five years (inaudible); Indictment No.
12 2007-GS-04-530 the sentence of the Court is that you be
13 committed to the Department of Corrections for a term of
14 30 years provided on the service of 20 years balance is
15 suspended to probation for five years, special condition
16 of provided is that you obtain your GED and pay a fine of
17 \$500. All sentences are to run concurrent and you are to
18 be given credit for time served.

19 Good luck to you, sir.

20 ---END OF TRANSCRIPT RECORD---

21

22

23

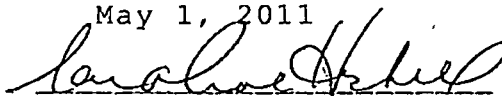
24

25

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Anderson County, South Carolina on
8 the 3rd day of March, 2009.

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

11
12
13 May 1, 2011

14 

15 Caroline Hiskell
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
County of Anderson)

IN THE COURT OF COMMON PLEAS

Donques Demarcus Hood 333563
Full name and prison number (if any) of Applicant)

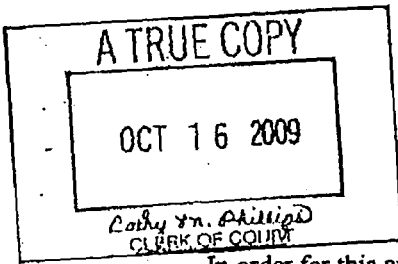
2009-CP-04-4129

v.)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)



FILED-CLERK'S OFFICE
ANDERSON SC
OCT 16 A 8:34
COMMON PLEAS AND
GENERAL SESSIONS

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 Anderson County Detention Center
2. Name and location of Court which imposed sentence Anderson Circuit Court
Anderson County, SC 100 South Main Anderson, SC 29601
3. Name(s) of co-defendant(s) (if any) Aubrey Brooks, Samantha Brooks,
Neil Helpful, Holly Night, Justia Griffin, Brandon Harris.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-04-180, 2007-GS-04-179, 2007-GS-04-531

2007-65-04-527, 2001, 65-04-
 (b) 2007-65-04-538, 2007-65-04-530, 2007-65-04-533
 (c) 2007-65-04-532, 2007-65-04-535, 2007-65-04-534
 2007-65-04-528, 2007-65-04-529, 2007-65-04-526, 2007-65-0

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

- (a) Sentence was imposed 3/3/09
- (b) The term of 20 years
- (c) To be ran concurrently

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Yes I plead guilty
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere

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

No

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

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

(a) Did not know what an appeal was, I was not informed of the option to appeal.

- (b) I was not properly informed about an appeal.
- (c) _____

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

- (a) Ineffective Assistance Counsel
- (b) Involuntary plea
- (c) _____

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

- (a) Did not ever recieve motion of Discovery until 2 day before art/No counse from lawyer
- (b) I was forced into plea by threath of Life sentence. Prior to sentenc I was into we wer going to trial. But ended up having to plea. I was told to write down on pg
- (c) _____

12. Prior to this application have you filed with respect to this conviction: converted into plea by If I don't plea I will receive life sent

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

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

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

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

None prior to this Application.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) Ineffective Assistant counsel / My first Challenge in this conviction
- (b) Involuntary Guilty plea / My first challenge in this conviction
- (c) This is my first conviction / First time ive needed to exercise my rights.

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

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

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

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

- i. Scott Robinson
P.O. BOX 10042
- ii. Greenville, SC 29603
- iii. _____

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

- i. My court date on which my sentence was imposed
3/3/09.
- ii. When I filed a motion on a failure to appear,
I was represented by Scott Robinson
- iii. _____

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

The reversal of Guilty plea.
Vacate of Sentence

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of _____)

VERIFICATION

I, Donques Hood, 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.

SWORN to and subscribed before me this 1st day of July 2009.

[Signature] (L.S.)
Notary Public

My Commission Expires: May 12th, 2014

2009 CP - 04 - 4129

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

I, Donques Hood, 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.

Donques Hood
Applicant

SWORN or affirmed to and subscribed before me this 16 day of October, 2009.

[Signature]
Notary Public

My Commission Expires: May 12th 2014

FILED-CLERK'S OFFICE
ANDERSON SC
2009 OCT 16 A 8:34
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Donques D. Hood, #333563
Applicant,

Case No.: 2009-CP-04-4129

v.

State of South Carolina,
Respondent.

AMENDMENTS TO POST-CONVICTION
RELIEF APPLICATION

Applicant hereby amends answer to questions 10 and 11 of his Post-Conviction Relief Application to state the following:

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

(A). Applicant was denied effective assistance of counsel in violation of the Sixth Amendment of the United States constitution and Article I. Section 14 of the South Carolina constitution.

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

(A). Applicant was provided deficient performance by his attorney, in the the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the proceeding was prejudiced and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland v. Washington, 466 U.S. at 694.

Moreover, claims alleging that trial counsel was ineffective for failing to object to trial court errors are cognizable in a P.C.R. proceeding. This includes failing to object to inadmissible evidence. Dawkins v. State, 345 S.C. 151, S.E.2d 260 (2001); Failure to object to hearsay; improper arguments by the prosecution Matthews v. State, 200 WL 1887491 (S.C., S.Ct., Decided June 12, 2002); Erroneous jury instructions Plyer v. State, 309 S.C. 408, 424 S.E.2d 477 (1992); Counsel deficient for failing to object to improper charge of malice, which shifted burden of proof from the State to the defendant; or any matter that could be reviewed on direct appeal if not for counsel's failure to properly preserve the issue.

Accordingly a claim alleging the trial counsel was ineffective for failure to object to an indictment obtained through willful acts of perjury and gross prosecutorial misconduct can be raised in a P.C.R. proceeding pursuant to the Strickland standard of review.

[PERJURY AND GROSS PROSECUTORIAL MISCONDUCT]

Here Applicant argues that trial counsel's provided ineffective assistance by allowing the State, without objection, to charge, convict and sentence him under indictments obtained through willful acts of perjury and prosecutorial misconduct.

Therefore, Applicant would show this Court the following:

(1). Applicant's indictment docket No. 2007-GS-04-533, states that in a Court of General Sessions, and upon their oath, the Grand Jurors convened on February 20, 2007. This indictment is stamped as a TRUE BILL.

(2). Applicant's indictments Docket No.(s) 2007-GS-04-526, 527, 528, 529, 530, 531, 532, 533, 534, 535, and 538, similarly

misleading or incomplete information on a document, record, form, or report required by the law of this State.

B(2). A person who violates the provisions of subsection A(2) is guilty of a misdemeanor, and upon conviction must be imprisoned not more than six (6) months or fined not less than one hundred dollars (\$100.00) or both.

C. A person may be convicted under this section ...if he/she commits perjury by his/her own act, consent, or agreement.

FIRST, it should be noted that a criminal indictment is a document required by the law of this State. In State v. Gentry, 363 S.C. 96, 610 S.E.2d 494 (2005), our State Supreme Court held that an indictment is a "Notice Document" required by both our State constitution and statutory law. (See S.C. Constitution Article I §11 and Article V §22; and S.C. Code Ann. §17-19-10 (2003) "[No] person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a Grand Jury ..."Except in specific instances."

Therefore, for purposes of establishing an offense of perjury against Public Justice, a State indictment would satisfy the document requirements specified under subsection A(2) S.C. Code Ann. §16-9-10.

SECOND, it should also be noted that Assistant Solicitor Scott McMahan is required to know this State's laws and has special responsibilities to see that justice is done, and is held to the highest standard of professional conduct and ethics. (See Appellate Court Rules, Rule 407 Rules of Professional Conduct, Rule 3.8 Comment; and Quattlebaum).

In fact, the Solicitor holds a Quasi-Judicial Position, see State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975); State v. King, 222 S.C. 108, 71 S.E.2d 798 (1952) ...[He] the Solicitor,

Adams v. United States Ex rel, McCann, 317 U.S. 269, 275, 276, 63 S.Ct. 236, 240 87 L.Ed 268 (1942).

"Counsel ... has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Id. 466 U.S. at 689, 104 S.Ct at 2065.

A criminal attorney is constitutionally required to conduct pretrial investigation and discovery, and file any necessary motions to suppress. See Eq Kimmelman v. Morrison, 477 U.S. 365, 385 (1986).

It is conclusively shown that false information is contained in applicant's TRUE BILL indictments. That the false information is on the face of the indictments and easily discoverable. "Any competent attorney would not have hesitated to enter an objection or move to suppress Applicant's defective indictments. Especially, given the certainty of prevailing on such motion.

All attorney's licensed to practice law in South Carolina are required to know and understand this State's Statutory law and Rules related to the lawful return of True Bill indictments.

Therefore, it would seem, or be an untenable position for trial counsel to now claim ignorance of the law.

South Carolina law sets forth clear provisions for challenging defects in indictments. (See S.C. Code Ann. §17-19-90), "Every objection to an indictment for any defect apparent on the face thereof, shall be taken by demurrer or motion to squash such indictment before the jury shall be sworn and not afterwards.

Unquestionably, trial counsel should have utilized §17-19-90 to challenge Applicant's True Bill indictments. In summary, the false information is apparent on the face of the indictments and easily discoverable through an examination of the documents.

Accordingly, trial counsel provided a deficient performance in not entering an objection to Applicant's defective indictment, or moving to squash.

convictions and sentences cannot be allowed to stand because to do so, the State would have to now become a knowing party to the Solicitor's acts of perjury and gross misconduct and maintain Applicant's indictments in its records. Thereby representing those acts to the public.

Above, Applicant has established a claim of ineffective assistance of trial counsel by showing that:

- (1). Counsel's performance was deficient in failing to object to the defective indictments.
- (2). Because prejudice is presumed due to the Solicitor's acts of perjury and gross misconduct.

Accordingly and based on the foregoing, Applicant's conviction and sentences should be vacated.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
	)	2009-CP-04-4129
)	
Donque Demarcus Hood, #333563,)	
Applicant,)	
)	
v.	)	RETURN AND REQUEST FOR
	)	APPOINTMENT OF COUNSEL
)	
State of South Carolina,)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 16, 2009, 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 Anderson County Clerk of Court. The Applicant was indicted at the January 2007 term of the Anderson County Grand Jury for Criminal Conspiracy (2007-GS-04-0179), and Armed Robbery and Possession of a Firearm During the Commission of a Violent Crime (2007-GS-04-180). Applicant was subsequently indicted at the February 2007 term of the Anderson County Grand Jury for four counts of Criminal Conspiracy (2007-GS-04-526, -532, -533, -534), two counts of Armed Robbery (2007-GS-04-527, -531), three counts of Kidnapping (2007-GS-04-528, -529, -530), Unlawful Carrying of a Pistol (2007-GS-04-535), and Armed Robbery and Possession of a Firearm During the Commission of a Violent Crime (2007-GS-04-538). Applicant was represented by Scott Robinson, Esquire. On March 3, 2009, the Applicant entered a guilty plea. He was sentenced by the Honorable Alexander S. Macaulay to a concurrent sentences

totaling a period of twenty (20) years incarceration. The Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Did not know what an appeal was. I was not informed of the option to appeal."
 - b. "Did not ever receive motion of discovery until two days before court."
 - c. "No counsel from lawyer."
2. Involuntary Guilty Plea
 - a. "I was forced into a plea by threat of life sentence."
 - b. "Prior to sentence, I was informed we were going to trial, but ended up having to plea."
 - c. "Coerced into pleading."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Here, in addition to making allegations pertaining to Plea Counsel's performance in preparation for and during the Plea Hearing, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal

(for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this

determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). 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 defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). 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).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 7, 2010.

STATE OF SOUTH CAROLINA	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	THE COURT OF COMMON PLEAS
	)	2009-CP-04-04129
DONQUES HOOD,)	
)	
PLAINTIFF,)	
)	
VERSUS)	
)	
STATE OF SOUTH CAROLINA,)	
	)	DATE: MARCH 7, 2012
DEFENDANT.	)	ANDERSON, SOUTH CAROLINA

POST-CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

KAELOE E. MAY, ATTORNEY AT LAW
ATTORNEY FOR THE STATE

HUGH W. WELBORN
ATTORNEY FOR THE DEFENDANT

SCOTT ROBINSON
WITNESS

PROVIDED FOR: SCCID

FOR COPIES CONTACT: JO RICE
JRICE@SCCOURTS.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 THE COURT: This is Donques Hood, 333563, versus The
2 State of South Carolina. This is case number:
3 2009-CP-04-4129. Mr. Welborn.

4 MR. WELBORN: Your Honor, if it pleases the Court, we
5 call Mr. Hood to the stand.

6 THE COURT: Okay. Come around, sir.

7 (After being duly sworn by the Clerk of Court, Mr.
8 Hood testified as follows:)

9 CLERK OF COURT: If you would step around and state
10 your name for the record, please.

11 MR. HOOD: Hello, my name is Donques Hood.

12 THE COURT: Spell your last name, please, sir.

13 MR. HOOD: H-O-O-D, Hood.

14 DIRECT EXAMINATION OF DONQUES HOOD BY MR. WELBORN

15 Q Mr. Hood, you were before the Court, Judge Macaulay,
16 here back on March 3, 2009.

17 A Yes, sir.

18 Q You were indicted for criminal conspiracy and armed
19 robbery and possession of a firearm during the
20 commission of a violent crime, armed robbery, criminal
21 conspiracy, kidnapping, kidnapping, kidnapping, armed
22 robbery, another conspiracy, armed robbery, and the
23 possession of a firearm during the commission of a
24 violent crime. Is that correct? Is that what you
25 were indicted for?

1 A Yes. That's what I was indicted for.

2 Q And you were represented by Scott Robinson, also
3 present here today. Is that correct?

4 A Yes, sir.

5 Q Now, on that particular day in court, you pled guilty
6 to these charges and I believe that there was no
7 recommended sentence in that particular case. Is that
8 correct?

9 A No, sir. Not recommended and no suggestion. No
10 recommend, no, sir.

11 Q Okay. And so, you did what is called a "straight-up"
12 plea. Is that correct?

13 A Yes, sir.

14 Q Now, I believe when they were talking to you on the
15 record that day, from the transcript on page 8, line
16 21, that you were told that you could be sentenced to
17 185 years to 200 years and a fine of \$15,000.00, and
18 you said you understood that. Is that correct?

19 A Yes, sir.

20 Q Now, you told me and you've said in your application
21 for post-conviction relief -- let me back up. You got
22 20 years and that was all run concurrent. Is that
23 correct?

24 A Yes, sir.

25 Q And you did not appeal that. Is that correct?

1 A No, sir.

2 Q Now, you've alleged that your lawyer gave you
3 ineffective assistance of counsel, and I'm going to go
4 through this slowly. You said that you did not know
5 what an appeal was.

6 A Yes, sir.

7 Q And I'm quoting, "I was not informed of the option to
8 appeal."

9 A Yes, sir.

10 Q So, are you telling the Court that in this trial
11 transcript, no one said you had the right to appeal?

12 A No. I guess he did say that I could appeal, but I
13 really didn't know what an appeal was. I had no clue
14 at the time what an appeal really meant.

15 Q Have you -- so, what you're saying, I think, on page
16 14 of the transcript, line 8, the Court asked you, "Do
17 you understand you have the right to appeal your
18 guilty plea sentence within 10 days," and you said you
19 understood that. Is that correct?

20 A Yes, I did.

21 Q What about that did you not really understand?

22 A About that question?

23 Q Yes.

24 A What an appeal was, what it was to appeal. I said yes
25 to it, I said yes to a lot of those questions that I

1 probably should not have said yes to.

2 Q Well, did you stop at that point and ask your lawyer
3 what an appeal was?

4 A No, sir. No, sir, I didn't, I ---

5 Q Is there a reason why you didn't do that?

6 A Because, I guess, because of the fear or pressure that
7 I had that I was -- I had already told him that I
8 would plead downstairs in the basement, so, basically,
9 I had to carry it out, and so that's why I said yes to
10 the appeal, that I understood an appeal and all the
11 other questions in the transcript.

12 Q All right. So, are you telling the Court then, if you
13 had known what an appeal was, you would have appealed
14 your sentence?

15 A Most definitely. Yes, sir.

16 Q Are you telling the Court that you would have insisted
17 on going to trial?

18 A Yes, sir.

19 Q Are you now telling the Court that, but for your
20 attorney not explaining what an appeal was, you would
21 have said, "I don't want an appeal, or I don't want to
22 plead guilty, you would have insisted on trying the
23 case in front of a jury. Is that correct?

24 A Yes, sir. I would have.

25 Q And you were willing to expose yourself to about 185

1 years?

2 A Yeah. Honestly, I mean, that's a big risk, but I'm
3 not guilty of some of those charges in those
4 indictments.

5 Q Let's talk about what you are not guilty of. What are
6 you not guilty of?

7 A Well, I'm not guilty of the kidnappings, for one.

8 Q How many kidnappings -- there were three, I believe.

9 A Yes, sir.

10 Q How many are you not guilty of?

11 A Three. I'm guilty of none of the three, sir.

12 Q All right. Are you guilty ---

13 A I had no knowledge of those kidnappings.

14 Q Are you guilty of any kidnapping charge here?

15 A No, sir. Absolutely not.

16 Q Why did you not tell your lawyer that?

17 A I did tell him that down in the basement. I told him
18 that I did not want to sign a plea agreement to the
19 kidnapping and he said, "Are you aware that you could
20 receive life without parole and that even if you're
21 not guilty of the kidnappings, they could bring you up
22 here and try you on one charge and find you guilty, so
23 hence that, that's why I agreed and went forward with
24 the kidnappings.

25 Q Now, is there any reason why you didn't tell the Court

1 any of that when you were up there?

2 A Basically, because I said I would and it was out of
3 fear, plain and simple, pretty much. I was just
4 scared, basically.

5 Q Thank you. Now, you said your next little element is
6 that you did not ever receive a motion for discovery
7 until two days before court. Tell the Court about
8 that. What were you looking for that you didn't get
9 until two days before court?

10 A Well, I just wanted to see the evidence that it
11 appeared that they had against me, that the State was
12 trying to bring forth and accuse me of. I wanted to
13 know what they had against me, what kind of evidence
14 did they have against me.

15 Q And when you got that two days before court, did you
16 ever look at it, at any point in time?

17 A Yes, sir. I looked at it. I looked at it with him.
18 He came to the courthouse.

19 Q Was there anything in there that alarmed you, that you
20 felt wasn't right in some fashion?

21 A Well, yeah, some things. Yes, sir.

22 Q What were those things?

23 A One, the indictments were not even correct.

24 Q Let's talk about that. What was not correct about the
25 indictments?

1 A Was not right about the indictments?

2 Q Yes, sir. What was not correct about the indictments
3 related to your amended application here. Okay?
4 What's not correct about those indictments?

5 A Okay. Except, could I just, could I just read it off?

6 THE COURT: No, sir. You can't read your application.
7 Is that what you are asking to do, to read from your
8 application here?

9 MR. HOOD: Yes, sir.

10 THE COURT: I have it. I can read it. Okay? I don't
11 want you to read it.

12 MR. HOOD: Okay.

13 THE COURT: You can look at it and use it to
14 paraphrase what you want to say. Okay?

15 MR. HOOD: All right. You're telling me not to read
16 from my amended application, just to paraphrase it?

17 THE COURT: Yes. I'm not going to let you to read it
18 and take up so much time. I will read it myself, so I
19 don't need you to read it to me. Okay?

20 MR. HOOD: Yes, sir.

21 THE COURT: But, go ahead.

22 MR. HOOD: Okay.

23 A Oh, yeah, on the indictments. Basically, well, I'll
24 try to paraphrase. Basically, because my indictments
25 were defective, because it says, for one, it was

1 presented upon a jury on a certain day, on February
2 20th, I believe, and Anderson County had no court of
3 general sessions on February 20th. I have the court
4 term calendar from the administrator showing that
5 there was no court in Anderson County in general
6 sessions, so if the prosecutor brought forth this,
7 how could that be possible when there was no court on
8 the 20th? And also, on at least five or six of my
9 indictments have misspelled names, which I understand
10 it could be scribner's error, but my lawyer failed to
11 even find that that was wrong, that that was
12 misspelled, so how could you investigate my case
13 properly if you didn't even catch a simple error of a
14 misspelled name.

15 THE COURT: Say that again?

16 MR. HOOD: I said, he failed to catch a misspelled
17 name on the indictment in plain daylight, so how could
18 I ever even have a chance at defense if he didn't
19 catch that simple error, basically, is what I'm
20 saying.

21 THE COURT: Okay.

22 Q Now, when you saw this in this discovery that you were
23 looking over two days before trial, did you point
24 these things out to your lawyer?

25 A No, sir, because it was so much stuff, it was

1 overwhelming. I mean, we didn't talk about that. We
2 talked about a video that was supposed to be me, but
3 we never really, we never really -- all we went over
4 were statements and the video. We never discussed any
5 of these things ---

6 Q All right.

7 A --- that I'm bringing forth.

8 Q Is there any reason why you didn't bring this to the
9 Court's attention on your plea day and say, "I haven't
10 had enough time to look at this. I need more time
11 with my lawyer."

12 A Is there no reason why I brought it up?

13 Q Why would you not ask the Court for more time to talk
14 to your lawyer, is my question.

15 A During trial day?

16 Q Yes. On that plea day.

17 A On the plea day. Well, I didn't know I could. I
18 thought that was the last step, that I had to go forth
19 with the plea, because I was supposed to go to trial
20 and then I was kind of help talked into pleading and
21 so I thought that was the last step, that I could not
22 do that.

23 Q Now, and again, I'm representing you, sir, but I have
24 an obligation to the courthouse and there are things
25 and I'm going to let you explain them.

1 A All right.

2 Q You said on page 11, line 11, I didn't want to plead
3 guilty to all the indictments.

4 A Uh-huh.

5 Q Now, at this point in time, if you knew about the
6 problems in the case, why did you not tell the Court,
7 "Stop, I want to talk to my lawyer about something."

8 A Because, I told you, at the courthouse, I never even
9 looked at the indictments. I didn't really see none
10 of this until after I was convicted. I never really
11 looked over the indictments, because I didn't receive
12 those until that Friday, right before I was to plead,
13 I think, Monday we were to go to trial, on Monday or
14 Tuesday. So, I never ---

15 Q Thank you. On page 12, line 20, you said, "Because
16 I'm guilty. That's why I'm pleading guilty." Why
17 didn't you tell the Court, at that time, that you were
18 really not guilty?

19 A Pretty much, because I said I would go forth with the
20 guilty plea and I know that I could be found guilty on
21 some of the charges, like conspiracy. I could be
22 found guilty on that, and so, therefore, I thought I
23 had to go forward with it.

24 Q So, you were guilty of some charges?

25 A Yeah. I told you that. I admitted that.

1 Q What charges were you guilty of, Mr. Hood?

2 A I'm guilty of conspiracy and I'm guilty of knowing
3 about the armed robbery, you know, some things in it,
4 but I'm not guilty of the kidnapping and the gun
5 charges, none of that stuff.

6 Q I want you to be very specific, to the Court, what you
7 were guilty of.

8 A I am guilty of conspiracy to armed robbery, in knowing
9 about the armed robbery, but that's it. I'm not
10 guilty of those kidnappings. I had no knowledge of
11 the kidnappings. Even during the conspiring, that was
12 never brought up. That was never brought up.

13 Q Are you guilty of armed robbery?

14 A No, sir.

15 Q Are you guilty of possession of a firearm during the
16 commission of a violent crime?

17 A No, sir.

18 Q Again, is there any reason, besides what you've
19 already stated, why you didn't tell the Court that on
20 that particular day?

21 A Same reasons, sir. I was going to plea.

22 Q Now, you've alleged in "C" that "No Counsel from
23 Lawyer". Are you trying to say that he didn't talk to
24 you? Is that what you are trying to say?

25 A Pretty much, no. No.

1 Q Well, tell me, how many times did Mr. Robinson meet
2 with you?

3 A Okay. Once, we went to a bond hearing, I received a
4 bond, got a bond and received a bond. That's one.
5 And then the second time, no three times. One time
6 when I was out on bond, I came to, I think it was roll
7 call, and the last time where we said we was going to
8 trial, on that Friday, and that he thought we had some
9 kind of a good case on that Friday when he brought
10 more discovery at Anderson County, and that was it.
11 That was the third time.

12 Q All right. Under number two of your application, you
13 call this, "Involuntary Guilty Plea," you state, "I
14 was forced to plea by threat of life sentence." Is
15 that pretty much self-explanatory, that Mr. Robinson
16 said you could go to jail for life, if convicted?

17 A Yeah, pretty much.

18 Q Did he threaten you in some way?

19 A Okay, well, not so -- Well, he told me about the life
20 sentence. I guess he didn't threaten me. He was
21 telling me what could happen, basically, if I went
22 upstairs and tried to go to trial.

23 Q Well ---

24 A I don't know if you would call that a threat.

25 Q Again, I'm not trying to be repetitive, but is there

1 any reason why you didn't tell the Court right then
2 and there, because right now, today, you are telling
3 the Court these things. Why didn't you do it then?

4 A Once again, because I had already told him that I
5 would plea. I didn't know that I had that option to
6 stop it. You know, counsel and I had a understanding
7 and I was, basically, standing up underneath the judge
8 and I didn't know that I had an option, basically.

9 Q You also said on 2-B, "Prior to sentencing, I was
10 informed we were going to trial, but ended up having
11 to plea." What do you mean by that?

12 A Okay, when I first met him, or, you know, when he
13 first talked to me about it, he said we had a good
14 enough case to go to trial. He did say we had a good
15 enough case to go to trial and that day, we came,
16 three days right before I was supposed to go to trial,
17 he said we had a case, but it kind of looked like, you
18 know, it's not looking good for you, you should take
19 the plea, basically. And so, I guess that's,
20 basically, how I come up with that idea.

21 Q All right. You said you were coerced into pleading.
22 Besides what you've told the Court, is there anything
23 you want to add to that?

24 A No, sir. Just telling me that if I didn't, I'd
25 probably see life without parole.

1 Q And you felt coerced by him saying that?

2 A Pretty much. Yeah.

3 Q Now, let's talk a little bit more about these
4 indictments in your amended application, your Amended
5 Post-Conviction Application for Relief. Let's talk
6 about that a little bit more.

7 A All right.

8 Q You said, in essence, that someone who indicted you,
9 committed perjury. That's what you said in here.

10 A That's what I said.

11 Q So, tell the Court what you mean by that.

12 A Basically, misleading information saying that, "I
13 presented this upon a grand jury in front of grand
14 jury, 12 people and the foreman, I guess, saying you
15 presented this and this is what we are going to indict
16 Donques Hood on," and I'm saying that there was not a
17 court of general sessions that day, according to the
18 court administrator, so how could you present this in
19 front of the grand jury in a court of general
20 sessions, not a court of common pleas, the court of
21 general sessions, how could you present that when
22 there was no general sessions that day.

23 Q Now, in your app ---

24 A --- I don't know how that can be, and that's how they
25 committed misconduct.

1 Q In your application, your Amended Post-Conviction
2 Relief Application that opposing counsel has, you
3 actually quoted that the grand jurors convened on
4 February 20, 2007, according to the indictment, and it
5 came back as a true bill. Is that correct?

6 A That's correct.

7 Q And it said that the grand jury convened on February
8 20, 2007. Is that correct?

9 A Correct.

10 Q And then it said, another indictment 2007-GS-04- 170
11 and 180, that the grand jury convened on January 23,
12 2007, and it was true billed. Is that correct?

13 A Yes, sir. That's correct.

14 Q Now, you say in your amendment here, that on those
15 dates, January 23rd and the week of the 20th of
16 February, that no court was held and no court could
17 possibly have true billed these indictments. Is that
18 correct?

19 A Yes, sir.

20 Q So, what you are basically saying is that, somebody,
21 and I believe you are alleging the solicitor ---

22 A That's whose name was on it.

23 Q Okay. That he just decided he'd stamp true bill and
24 risk his career and be disbarred and all that, by
25 doing it. Is that, basically, correct?

1 A Yes, sir. That's what I'm saying.

2 Q So, for the Court's understanding, do you have any
3 reason to say why he would do something like that?

4 THE COURT: Tell me again, what he did, allegedly.

5 MR. WELBORN: He's alleging that there was no court
6 held during the time that "true bill" was stamped on the
7 indictments.

8 THE COURT: That there was no grand jury...

9 MR. HOOD: Yeah, that the grand jury, that the grand
10 jury -- he's saying that the grand jury convened in front
11 of the grand jury on this day in the court of general
12 sessions, and I'm saying, according to what the court
13 administrator said, not what I'm saying, I'm not saying it.

14 THE COURT: All right. Go ahead. I'm sorry. Excuse
15 me.

16 MR. HOOD: Because I wasn't there, you know what I'm
17 saying, but according to the court term calendar.

18 Q So, what you are saying then, is, that these
19 indictments, because of these irregularities, are
20 improper and should be dismissed and that your plea
21 should be stricken because they were incorrectly done.
22 Is that correct?

23 A Yes, sir.

24 Q And just so the Court can understand, completely, what
25 you are trying to say.

1 A Uh-huh.

2 Q Have you got your stuff in front of you up there? If
3 not, I'll bring it up there and let you look at it.

4 A Okay.

5 Q I want you to tell the Court, very specifically, what
6 dates you are alleging that the indictments say they
7 met and you know they didn't because there was no
8 court meeting during those weeks.

9 A (Looks through document) All right. One of the dates
10 is February 20, 2007. This indictment is stamped as a
11 true bill. Do you want me to read all the indictment
12 numbers?

13 Q Yes. Please do.

14 A Okay. Applicant's indictment docket numbers: 2007-
15 GS-04-526 and 527, 528, 529, 530, 531, 532, 534, 535,
16 533, 538. Similar statement, the grand jury convened
17 on February 20, 2007. These indictments were stamped
18 true billed and states grand jury presentment upon
19 their oath. Okay? On the other indictments, docket
20 numbers: 2000-GS-04-170, 180, the state states that
21 the grand jury convened on January 23, 2007. This
22 indictment was true billed and states grand jury
23 presentment upon their oath.

24 Q Thank you. Now, at what point did you discover these
25 things? Was it after your plea date was already over?

1 A Yeah.

2 Q How did you get this information to know this, later?

3 A When I started looking at my indictments. When I
4 started looking at my indictments. When I finally
5 received them. I think I wrote you and you sent me my
6 indictments, along with the Brady material, but I
7 never received them until after I was convicted.

8 Q So, it's your testimony then that your lawyer should
9 have known about that, checked the indictment dates
10 and made sure that they were correct and the grand
11 jury actually met. Is that it?

12 A That's what lawyers should do.

13 Q What else did Mr. Robinson not do? But for that
14 conduct, you would have insisted on going to trial.
15 Anything else?

16 A Yes, he should have objected to that, objected to
17 squash, basically.

18 Q Okay. Thank you. Answer anything the Court may have.

19 THE COURT: Ms. May?

20 MS. MAY: Thank you. May it please the Court, Your
21 Honor.

22 CROSS EXAMINATION OF DONQUES HOOD BY MS. MAY

23 Q Mr. Hood, do you realize at your guilty plea ---

24 A Ma'am?

25 Q At your guilty plea, do you recall the solicitor

1 reciting the facts of your case?

2 A Yes, ma'am.

3 Q Okay. And, specifically, the solicitor indicated that
4 you gave a statement and admitted guilt to all armed
5 robberies. Is that correct?

6 A Yes, ma'am.

7 Q And you agreed with all the facts submitted by the
8 solicitor. Correct?

9 A Yeah. I agreed with him.

10 Q Okay. And that was the truth. Correct?

11 A Pretty much. Yeah.

12 Q And I believe Mr. Welborn said, that at the guilty
13 plea hearing, you told the judge that you wanted to
14 plead guilty.

15 A Yes, ma'am.

16 Q And was that the truth?

17 A Yeah. I told him, guilty.

18 Q And do you recall the judge asking you if you were
19 pleading guilty because you were guilty or because of
20 some promise made to you?

21 A Do I remember all of that?

22 Q Do you recall the judge asking you that?

23 A Yeah.

24 Q And you told the judge that you were pleading guilty
25 because you were guilty. Correct?

- 1 A Yes, ma'am.
- 2 Q And you also told the judge at the time of your guilty
3 plea that you didn't need any more time to speak with
4 Mr. Robinson. Is that correct?
- 5 A Yes, ma'am.
- 6 Q And that you were completely satisfied with Mr.
7 Robinson's representation. Is that correct?
- 8 A Yes, ma'am.
- 9 Q And do you recall telling the judge that you had had
10 enough time to make up your mind to decide whether to
11 plea?
- 12 A Yes, ma'am.
- 13 Q And do you recall the judge asking you if anyone
14 pressured or forced you to enter a guilty plea?
- 15 A Yes, ma'am.
- 16 Q And you answered, "No". Correct?
- 17 A Yes, ma'am.
- 18 Q And was that the truth?
- 19 A Yes, ma'am.
- 20 Q And I believe Mr. Welborn covered this, but just for
21 clarity, you do recall that the judge informed you
22 that you had the right to appeal.
- 23 A Yes, ma'am.
- 24 Q And do you recall the judge informing you that you had
25 10 days to appeal?

- 1 A Yes, ma'am.
- 2 Q And you told the judge that you understood?
- 3 A Yes, ma'am.
- 4 Q Did you understand?
- 5 A Not all of it, no, ma'am. I did not know what I was
6 supposed to appeal or was my lawyer supposed to do it
7 or what.
- 8 Q Just for clarity, you said that you did not see your
9 indictments prior to entering your plea?
- 10 A Prior to entering my plea?
- 11 Q Uh-huh.
- 12 A No. I had arrest warrants and all that, but I don't
13 remember the indictments. No.
- 14 Q So, you ---
- 15 A Until the motion came.
- 16 Q So, did you look at your indictments before you
17 entered your guilty plea?
- 18 A Yeah, three days before. Yeah.
- 19 Q You looked at your indictments three days before you
20 pleaded guilty?
- 21 A Three days before. Yes.
- 22 Q And just so I can be clear on what I heard before, is
23 it your testimony that Mr. Robinson did not threaten
24 you in order to get you to plead guilty?
- 25 A Yes, ma'am.

1 Q Okay.

2 MS. MAY: I have no further questions, Your Honor.

3 THE COURT: Mr. Welborn, any follow-up?

4 MR. WELBORN: No, sir.

5 THE COURT: Would you step down, please, sir?

6 MR. WELBORN: That's our case, Your Honor.

7 THE COURT: All right. Ms. May, call your witness,
8 please.

9 MS. MAY: Your Honor, the State would like to call Mr.
10 Scott Robinson.

11 (After being duly sworn by the Clerk of Court, Scott
12 Robinson testified as follows:)

13 CLERK OF COURT: Take the stand, please, sir, and
14 state your name for the record.

15 MR. ROBINSON: My name is Scott B. Robinson.

16 DIRECT EXAMINATION OF SCOTT ROBINSON BY MS. MAY

17 Q Mr. Robinson, how long have you been practicing law?

18 A The short answer is 18 years.

19 Q And how much of that has been criminal law?

20 A Probably 80%.

21 Q And do you recall whether you were appointed or
22 retained on this case?

23 A Appointed.

24 Q Do you recall how many times you met with Mr. Hood?

25 A I don't recall independently. I would meet with him

1 enough times to discuss the case, go over the
2 discovery and go over the log, the defenses and all
3 that kind of stuff, with him.

4 Q Were you able to discuss the elements of the charges,
5 every charge that was pending against Mr. Hood?

6 A Yes, ma'am.

7 Q And did you discuss what the State would require you
8 to prove at a trial?

9 A Yes.

10 Q Did you read the indictments with Mr. Hood?

11 A No. I have no independent recollection of that. If I
12 had, though, I would have reviewed them with him as
13 far as that, but I have no independent recollection of
14 sitting down with him and going over the indictments.
15 I, normally, my normal course of practice is to do
16 that, to go through, basically, the whole file.

17 Q Do you recall, yourself, reviewing the indictments
18 prior to the plea?

19 A Not independently. No, I don't.

20 Q Do you have the indictments with you today?

21 A Let me see. (Looks through documents) If you have a
22 copy of the ---

23 MS. MAY: Your Honor, may I approach?

24 THE COURT: Yes, ma'am, you may.

25 Q Do those indictments appear to be true billed?

1 A Yes.

2 Q Do you have any reason to believe those were not true
3 billed?

4 A No. I don't.

5 Q What is your understanding of when grand juries meet
6 to indict?

7 A What is my understanding of it?

8 Q Yes.

9 A It is a secret meeting that they have that no one,
10 that no one goes -- the Solicitor goes there, it's a
11 group of people and it's either no-billed or true-
12 billed and I don't know if they -- I was listening to
13 the testimony. I don't necessarily know that that
14 would be available information for people. I think
15 the court time, as far as general sessions and common
16 pleas, I don't know that the grand jury has a schedule
17 that is on the Court Administration Website or
18 anything like that. I'm not sure about that.

19 Q And did you review the possible sentences for each
20 offense?

21 A Yes.

22 Q And did you discuss Mr. Hood's version of what
23 happened?

24 A I did. The issue that we had from the beginning,
25 because I was appointed in 2006, about three years

1 before this plea. He gave several statements
2 admitting to the different offenses in this case. He
3 was a look-out in some of the cases, and not others,
4 and as far as a gun, he had a .380 that he talked
5 about in one of his statements and he talked about in
6 these different armed robberies, going with several
7 different people. There was a video that the
8 solicitor and I both looked over. It's a picture of
9 him, he's not shown sitting there pointing a gun at
10 anybody, but he's got a gun and the other person is
11 robbing these people.

12 Q And you filed a Brady and Rule 5 motions in this case?

13 A I did. Yes.

14 Q And in addition to the video, do you recall what the
15 other discovery materials were?

16 A It would be incident reports. It was Officer Gebing,
17 I think, was the officer in charge of the
18 investigation. Incident reports, the warrants. Any
19 sort of information that they had was provided to me.
20 They had videos. I had an opportunity to come look at
21 those videos and, of course, the statements that were
22 given by Mr. Hood in this case were also given to me.

23 Q Was Mr. Hood able to watch the video?

24 A I don't know. I don't have any independent
25 recollection of that. I'm not sure.

1 Q Do you recall going over the contents of the video
2 once you watched it?

3 A I would. That is one of my practices. If I had
4 looked at the video, I would have told him what was on
5 the video and I think that was discussed at the plea,
6 when the solicitor mentioned that.

7 Q And, did y'all discuss possible defenses?

8 A We talked about -- you can talk about defenses in this
9 case, but the issue that would come in is this concept
10 of "hand of one is the hand of all" first, and the
11 fact that there were several confessions to armed
12 robberies. We would have to have a Jackson v. Denno
13 hearing. If we planned to go to trial, we would have
14 a Jackson v. Denno hearing to see whether or not those
15 statements were voluntarily made and if that had
16 happened, I think it would have been a different kind
17 of case.

18 Q And did you discuss or explain what "the hand of one
19 is the hand of all" meant, with Mr. Hood?

20 A Yes. I gave him an example of it. Let me go back a
21 little bit. This is 2009, and I have a pretty good
22 memory, but I would normally go over that with
23 clients, giving examples and so forth, and whether or
24 not they understand that.

25 Q It's your testimony then, that the likelihood of

1 challenging the statements or confessions would not be
2 good?

3 A I think it would have been a difficult sell. He is an
4 intelligent guy. He's got no, there were no issues as
5 far as education that I found, nothing that would
6 indicate that he had any problems understanding
7 anything and as a result of that, I believe he
8 understood all my conversations and it's just
9 difficult when you give statements like that and you
10 put yourself in this fix.

11 Q And I believe there were a number of co-defendants in
12 this case. Is that correct?

13 A There were. Yes.

14 Q Did they give any statements to the police?

15 A Yes.

16 Q Did you receive those statements in your discovery?

17 A Yes.

18 Q Did you review those statements with Mr. Hood?

19 A Yes. He would have received a copy of any discovery
20 that I had.

21 Q Do you feel you had sufficient time to prepare Mr.
22 Hood's case?

23 A Yes.

24 Q And did you engage in negotiations on Mr. Hood's
25 behalf?

1 A Yes, with the prosecutor. Correct. We did.

2 Q Do you recall the terms of the offers or if there were
3 any offers?

4 A Not really great offers in this case, because they had
5 everyone else that was implicated. One person, I
6 believe, entered a plea, got 20 years. I think that
7 was a kind of bellwether for Judge Macaulay and there
8 was another co-defendant. I believe she got 15 years.
9 A part of the strategy was, the different charges, he
10 had a lot of different charges, armed robberies and so
11 forth, and if the State had chosen to, as their most
12 serious and violent, they could have chosen to go
13 forward on each one, individually, and then,
14 potentially, a certain length of parole after a couple
15 of those in this case. Mr. Hood talked about, in his
16 statements, about the armed robberies that had been
17 committed. With the statements that he gave in this
18 case, he was looking at least on two of those armed
19 robberies, of serving life without parole if he had
20 gone to trial.

21 Q And you advised him of that fact?

22 A Yes.

23 Q Do you recall Mr. Hood advising you that he did not
24 want to plead to the kidnapping charges?

25 A No.

1 Q Did you ever advise him that he was not going to be
2 pleading to any kidnapping charges?

3 A This was "hand of one, hand of all".

4 Q I believe you said there were not great offers, but
5 did you discuss the various plea offers with Mr. Hood?

6 A I really was hoping that they would drop some things,
7 possibly. I wish we could have done better. I really
8 do, but unfortunately, we were dealt a hand and Judge
9 Macaulay, I think, gave him the best sentence in this
10 case. It wasn't perfect, but he could have given him
11 a lot more time. He could have faced a lot more time
12 at trial. I do believe that the prosecutor would have
13 served him with life without parole, because there was
14 a lot of anger about this, as far as there were
15 several different places that were robbed and he
16 admitted in his statements that he had a gun. So, I
17 think he got, it wasn't perfect, but I think he got
18 the best in the situation.

19 Q Now, I believe Mr. Hood stated earlier that his case
20 had been called to trial. Is that correct?

21 A I don't know about that. I have no recollection of
22 that, what I have is his plea here and I don't know
23 that.

24 Q Did you discuss with Mr. Hood, the options available
25 in terms of the benefits and the drawbacks of going to

1 trial versus pleading guilty?

2 A Yes. I did. In fact, the biggest issue in this case,
3 biggest issues I should say, were the statements and I
4 don't believe that, based on -- these were clearly his
5 signatures. He signed each one of these. He signed
6 waivers on each one of the statements. I don't
7 believe that that would have been successful.

8 Q Was it Mr. Hood's decision to plead guilty?

9 A Yes.

10 Q And did he ask you to file an appeal?

11 A No. He did not.

12 Q Did he ask you what an appeal meant or that he had no
13 understanding of it?

14 A No. I thought the judge told him he had the right to
15 appeal in 10 days.

16 Q And in reviewing the plea, do you think there is a
17 factual or legal basis for it?

18 A I really don't. Judge Macaulay went through the whole
19 plea colloquy. He could have said something. He
20 could have. If he had wanted to sentence him to
21 consecutive time, he could have sentenced him to a lot
22 of time in this case and I think that was the reason
23 why he chose a plea instead of a trial, because at a
24 trial, the victims would be there, it would put people
25 through a lot of hardship as far as the victims and so

1 forth, and they would have asked for a lot of time,
2 I'm sure. I think he would have been sentenced
3 accordingly.

4 Q Did you pressure Mr. Hood in any way to plead guilty?

5 A No. I did not.

6 MS. MAY: Your Honor, I have no further questions of
7 this witness.

8 THE COURT: Mr. Welborn?

9 MR. WELBORN: No questions.

10 THE COURT: Thank you. May this witness be excused?

11 MS. MAY: Yes, Your Honor.

12 THE COURT: Any further witnesses?

13 MS. MAY: No, sir.

14 THE COURT: Any reply, Mr. Welborn?

15 MR. WELBORN: No, sir.

16 THE COURT: Just one second, please. Mr. Welborn,
17 would you like to be heard any further?

18 MR. WELBORN: Would the Court bear with me?

19 THE COURT: Yes, sir.

20 MR. WELBORN: (Consults with his client) No, sir. I
21 think the testimony -- we would depend on my client's
22 testimony.

23 THE COURT: Very good. Ms. May, would you like to be
24 heard further?

25 MS. MAY: Just briefly, Your Honor. With regard to

1 the indictments, I believe the State v. Gentry, that
2 addresses that issue, as well as the fact that the
3 indictments have been true billed and according to the
4 Court Administration Website, the grand jury can meet
5 outside of general sessions. I believe that I'm correct.
6 And we do not believe that is sufficient to prove the grand
7 jury did not meet on that date and we don't question that
8 the indictments were actually true billed by the solicitor.

9 THE COURT: All right. Thank you. I'm denying the
10 petition. I find that Mr. Hood has failed to demonstrate
11 for me his burden of proof. In doing so, let me say this:
12 if you look at the plea colloquy that took place, clearly,
13 Judge Macaulay explained to Mr. Hood: his constitutional
14 rights, including his right to remain silent, right to a
15 jury trial, explained to him the burden of proof beyond a
16 reasonable doubt being on the State, explained to Mr. Hood
17 his right to confront and cross examine witnesses, call
18 witnesses on his behalf and explained that he gave up any
19 defenses that he may have when he plead guilty and, in
20 fact, he admitted to the truth of the charges against him
21 by pleading guilty. Mr. Hood expressed his understanding
22 of all that.

23 Further, the trial court discussed with Mr. Robinson
24 whether or not there had been sufficient time to go through
25 discovery and Brady materials, which was answered in the

1 affirmative, and there's no evidence to the contrary.

2 What I find enlightening, this case had been
3 negotiated for some time, apparently, and then it was
4 called for trial, that day. Mr. Hood, unfortunately, like
5 so many defendants out there, had to make a hard choice and
6 I think, quite candidly, he admitted that, "I wasn't really
7 being threatened as much as I was being told the fact that
8 I was looking at 200 years by my attorney, or I can plea."
9 If you plea, there's a common idea amongst some attorneys
10 out there that you will get more time just by being found
11 guilty. That may be true, it may not be true with some
12 judges, but I know that's a common conception out there.

13 All that being said and done, I looked at your
14 allegations in your Amended Post-Conviction Relief
15 Application and you've challenged the sufficiency of the
16 indictments. First, I find that the indictments are
17 sufficient and regular on their face. There's nothing
18 about the indictments and the allegations as to each of the
19 charges or anything else concerning the indictments,
20 including the true bill indication by the grand jury. It
21 doesn't indicate anything is irregular. In fact, Mr. Hood
22 candidly admitted, you didn't personally know, but you were
23 depending on the website and I agree with Ms. May, the
24 website is not something you can stand on as far as proving
25 that the grand jury was not in session. You presented no

1 evidence that they weren't. In fact, they have a right to
2 meet at other times, and so, you failed to meet your burden
3 in that regard.

4 Also, you mentioned the fact that your middle initial,
5 Donques, I believe, they had it improper on there and
6 somehow this seemed to infer or indicate or affected the
7 validity of your indictment or indictments. Number one, I
8 find that those are non-jurisdictional defects. They were
9 pointed out to the court prior to your pleading and you
10 went ahead and pled and once that information was brought
11 to the court's attention, they were actually corrected, but
12 even so, going ahead and pleading at that point is a waiver
13 of any of alleged defects which, again, I find are non-
14 jurisdictional and I'm referring to the case of State
15 versus Thomason and that's 534 S.E. 2d 708, which basically
16 says, "A guilty plea generally acts as a waiver of all
17 non-jurisdictional defects and defenses and a guilty plea
18 leaves open for review only the sufficiency of the
19 indictments and waives all other defenses." My law clerk
20 just pointed out to me that I just read from State versus
21 Munsch, 338 S.E. 2d 329.

22 As I stated, the defendant has failed to meet his
23 burden of proof as to all allegations of ineffective
24 assistance of counsel and as to any other allegations that
25 may be specifically stated or inferred. He's not

1 demonstrated deficient performance by trial counsel and any
2 prejudice resulting from that and he has not demonstrated
3 that but for the trial counsel's deficient performance he
4 would have gone to trial instead of pleading guilty. In
5 fact, I think, quite the opposite is true. You were faced
6 with going to trial and 200 years and you went and took a
7 chance in front of Judge Macaulay. With that being said,
8 your petition is denied. Thank you, sir.
9 Ms. May if you will draw up an order. Give it to Mr.
10 Welborn before giving it to me. If there's an objection,
11 Mr. Welborn, if y'all can't resolve it, send me those and
12 we'll take care of it. Thank you.

STATE OF SOUTH CAROLINA)
) CERTIFICATE
 COUNTY OF ANDERSON)

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON MARCH 7, 2012 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 16TH DAY OF AUGUST, 2012.



JO RICE
 OFFICIAL COURT REPORTER

FILED-CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA ANDERSON SC)

COUNTY OF ANDERSON 2012 APR 18 A 11: 29)

2009-CP-04-4129

COMMON PLEAS AND
GENERAL SESSIONS)
Donques Hood, #333563,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

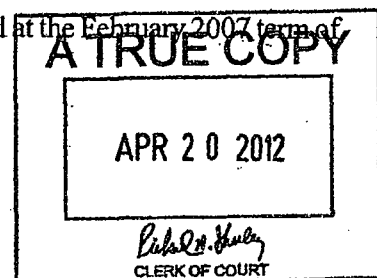
Respondent.)

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 16, 2009. Respondent made its Return on January 7, 2010. An evidentiary hearing into the matter was convened on March 7, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Scott Robinson, Esquire (Mr. Potter) Applicant's plea counsel. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the January 2007 term of the Anderson County Grand Jury for Criminal Conspiracy (2007-GS-04-0179), and Armed Robbery and Possession of a Firearm During the Commission of a Violent Crime (2007-GS-04-180). Applicant was subsequently indicted at the February 2007 term of



the Anderson County Grand Jury for four counts of Criminal Conspiracy (2007-GS-04-526, -532, -533, -534), two counts of Armed Robbery (2007-GS-04-527, -531), three counts of Kidnapping (2007-GS-04-528, -529, -530), Unlawful Carrying of a Pistol (2007-GS-04-535), and Armed Robbery and Possession of a Firearm During the Commission of a Violent Crime (2007-GS-04-538).

Applicant was represented by Scott Robinson, Esquire. On March 3, 2009, the Applicant pled guilty. He was sentenced by the Honorable Alexander S. Macaulay to concurrent sentences totaling a period of twenty (20) years incarceration. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective Assistance of Counsel
 - a. "Did not know what an appeal was. I was not informed of the option to appeal."
 - b. "Did not ever receive motion of discovery until two days before court."
 - c. "No counsel from lawyer."
 - d. Failure to challenge the indictments
2. Involuntary Guilty Plea
 - a. "I was forced into a plea by threat of life sentence."
 - b. "Prior to sentence, I was informed we were going to trial, but ended up having to plea."
 - c. "Coerced into pleading."

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that the plea judge informed Applicant at his guilty plea that Applicant could appeal but Applicant did not understand what that meant. Applicant testified that he did not ask plea counsel about an appeal because Applicant was scared and that if

Applicant had understood what an appeal was then Applicant would have appealed. Applicant testified that he was not guilty of the kidnapping charges, that he told plea counsel he did not want to sign the plea agreement to the kidnapping charges, but that counsel told Applicant he could receive a life sentence without a plea agreement. Applicant testified that his responses at his guilty plea hearing were made out of fear.

Applicant testified that he was never informed of the evidence that the state had. Applicant testified that his name was misspelled on the indictments and that the indictments were falsified as being true-billed because the grand jury was not in session when Applicant indictments were issued. Applicant testified that he and counsel reviewed a video and the statements, that Applicant did not ask the plea court for more time to speak with counsel because Applicant did not know he could do that. Applicant testified that he was guilty of conspiracy, knowing about all the Armed Robberies, but that he was not guilty of the gun charges and the kidnapping charges. Applicant testified that he did not have prior knowledge that kidnappings were going to take place and that Applicant was also not guilty of Armed Robbery.

Applicant testified that he met with plea counsel three times, one of which was Applicant's bond hearing. Applicant testified that counsel did not threaten Applicant to plead guilty but did inform Applicant that he could receive a life sentence if Applicant was convicted at trial. Applicant testified that at his first meeting with counsel, counsel told Applicant that he had a good enough case to go to trial, that just before Applicant was to go to trial counsel informed Applicant that the case was not good and Applicant should plead.

Mr. Robinson's Testimony

At the PCR hearing plea counsel testified that he was appointed to represent the Applicant, that he met with Applicant on more than one occasion, and that he discussed the elements of the charges and what the state had prove with Applicant. Counsel testified that it was his normal to procedure to review the indictments with his clients if counsel was in possession of the indictments and that counsel had no reason to believe Applicant's indictments were falsely true-billed. Counsel testified that he reviewed the possible sentences with Applicant as well as discussed the Applicant's version of the facts. Counsel testified that he filed Rule 5 and Brady motions, received the discovery materials that included incident reports, a video, warrants, and various statements.

Counsel testified that he reviewed the discovery materials with Applicant, that counsel did not recall if Applicant viewed the video but that counsel did discuss the video and its contents with Applicant. Counsel testified that Applicant was fully aware of the video and its contents, and that the video showed that Applicant did not point the gun. Counsel testified that he discussed possible defenses with Applicant, that counsel would have requested a Denno hearing if Applicant proceeded to trial because Applicant had given confessions. Counsel testified that Applicant had given three statements to police in which he talked about having a gun during the robberies and that Applicant was the lookout. Counsel testified that he explained 'hand of one hand of all' to Applicant.

Counsel testified that he and Applicant discussed challenging Applicant's statements but that it was not likely they would win such a challenge. Counsel testified that he and Applicant reviewed Applicant's co-defendant's statements together. Counsel testified that he had sufficient time to prepare the Applicant's case and that he engaged in plea negotiations with the state on the Applicant's behalf. Counsel testified that the offers made by the state were not very good, that

Applicant had a lot of charges, and that the state could have tried Applicant in a fashion that Applicant could have received a sentence of life without parole. Counsel testified that Applicant's co-defendants received sentences of twenty and fifteen years. Counsel testified that discussed all plea negotiations with Applicant and that Applicant never advised counsel that he did not want to plead to the kidnapping charges.

Counsel testified that he and Applicant discussed the benefits and drawbacks of pleading guilty versus going to trial and that the biggest issue Applicant faced was the statements for which Applicant had signed waivers. Counsel testified that Applicant made the decision to plead guilty and that counsel did not pressure Applicant into pleading guilty. Counsel testified that Applicant never requested for counsel to file an appeal and that counsel did not believe there was any factual or legal basis to appeal.

III. APPLICABLE LAW

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

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

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

Applicant asserts that counsel was ineffective for failing to inform him of his right to appeal. This Court finds that Applicant has failed to meet his burden of proof. When the question is whether counsel was ineffective in failing to file a direct appeal from the conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Counsel testified that Applicant never asked counsel to file an appeal and that counsel did not believe there was any legal or factual basis to appeal. Moreover, at the guilty plea hearing the plea judge asked Applicant, "you understand you have a right to appeal your guilty plea and the sentence that I hand down and you have 10 days to do so, do you understand?" (Tr. p.14, lines8-10). The Applicant indicated to the plea judge that he understood his right to appeal. (Tr. p.14, line11). Under these circumstances, counsel's failure to file an appeal was not unreasonable. This Court finds that the Applicant did not present any evidence or testimony that would entitle Applicant to a belated appeal. Therefore, this Court finds that this allegation is denied and dismissed.

The Applicant asserts that counsel was ineffective for failing to timely provide the discovery materials to Applicant; for failing to adequately advise Applicant; and for failing to challenge the indictments. This Court finds that Applicant failed to meet his burden of proof. Counsel testified that he received the discovery materials and reviewed the materials with Applicant. Applicant testified that counsel discussed the video and the statements with Applicant. This Court finds that the

discovery materials were provided to Applicant in some fashion and that there has not been any evidence presented to the contrary. The guilty plea transcript reflects that Applicant indicated he had fully discussed all aspects of the case with counsel and that Applicant was completely satisfied with counsel's services. (Tr. p.12-13).

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronic, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice. Therefore, this Court finds that these allegations are denied and dismissed.

Applicant asserts that counsel was ineffective for failing to challenge the indictments of the

grounds that Applicant's name was misspelled and that the indictments were not properly true-billed. This Court has reviewed the indictments and finds the indictments to be regular and sufficient on their face. The indictments were properly true billed by the grand jury and the Applicant failed to present compelling evidence to the contrary. A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Absent evidence to the contrary, the courts will presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996). The misspelling of a name in the indictment is classified as a non-jurisdictional defect. Thompson v. State, 357 S.C. 192, 593 S.E.2d 139 (2004). This Court finds and the record reflects that the misspelling of Applicant's name was addressed at the beginning of the guilty plea hearing and corrected. (Tr. p.3-4). Guilty pleas act as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985). This Court finds that Applicant has failed to show that counsel's performance was deficient as Applicant failed to offer any basis on which counsel could have objected. This Court finds that Applicant cannot prove resulting prejudice; therefore, this allegation is denied and dismissed.

2. Involuntary Guilty Plea

Applicant asserts that he was coerced into pleading by the threat of a life sentence and that prior to the plea hearing Applicant was informed he was going to trial but ended up having to plea. This Court finds that Applicant has failed to meet his burden of proof in showing that his guilty plea was involuntary. At the plea hearing the Applicant indicated to the plea judge that counsel explained to the Applicant the charges, the possible punishments, and Applicant's constitutional rights. (Tr. p.8, lines4-7). Applicant indicated that he fully understood the charges against him and the range of

possible punishments. (Tr. p.9, lines2-6). The plea judge informed Applicant of his right to a jury trial and Applicant indicated that he understood his right to a jury trial. (Tr. p.9, lines16-23). Applicant indicated that he understood by pleading guilty he was waiving his right to a jury trial (Tr. p.10, lines17-22). The Applicant admitted the truth of the charges against him. (Tr .p.10-11). The Applicant indicated to the plea judge that he was completely satisfied with the services of plea counsel. (Tr. p.13, lines2-4). Additionally, the Applicant indicated to the plea judge no one had threatened or pressured Applicant to get him to plead guilty and that Applicant had had enough time to decide whether to plead guilty. (Tr. p.13, lines11-23). This Court finds the overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

V. CONCLUSION

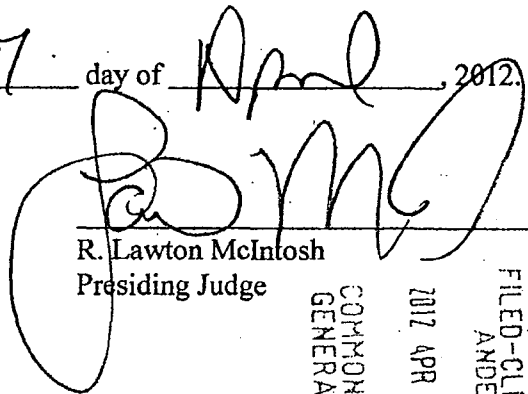
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRPC; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 17 day of April, 2012.


 R. Lawton McIntosh
 Presiding Judge

Anderson South Carolina

FILED-CLERK'S OFFICE
 ANDERSON SC
 2012 APR 18 A 11: 29
 COMMON PLEAS AND
 GENERAL SESSIONS

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
ARMED ROBBERY
16-11-330 (A) [0139]

POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on 16-23-0490 [0549] FEB 20 2007
the Grand Jurors of ANDERSON County present upon their oath:


COUNT 1: ARMED ROBBERY

That Donques M. Hood did in Anderson County on or about July 31, 2006 attempt to take and carry away from the business of Ingles cash by means of force, threats or intimidation with intent to deprive the owner permanently of such property while armed with a deadly weapon. All in violation of Section 16-11-330 (A), Code of Laws of South Carolina, (1976), as amended.

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

That Donques M. Hood did in Anderson County on or about July 31, 2006 possess a firearm during the commission of a violent crime, to wit: Armed Robbery in violation of Code Section 16-3-10/16-3-20, Code of Laws of South Carolina, 1976), as amended.

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


SOLICITOR

WITNESSES

C. MCBRIDE - ACSD

Court 2 - Nbl Piss

Art McEllen



1998 11 27

ARREST WARRANT NO. J421697
J421878

ACTION OF GRAND JURY
TRUE BILL

FEB 20 2007

Foreman of Grand Jury *Joe Stone*
Foreperson

VERDICT

Foreman of Petit Jury

Date:

92

DOCKET NO. 2007-95-04-538

The State of South Carolina,

ANDERSON

County of

COURT OF GENERAL SESSIONS

FEB 20 2007 TERM

THE STATE

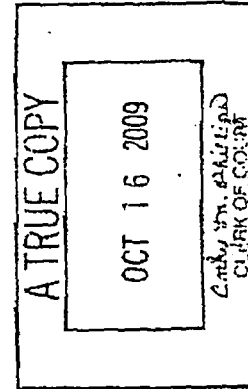
vs.

DONQUES M. HOOD

Blw issued 3/5/08 - emp
Blw Recalled 3/3/09 - Pt

Indictment for

ARMED ROBBERY
16-11-330(A) [0139]
POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME
16-23-0490 [0549]



3/4/09 - emp

WITNESSES
C. MCBRIDE - ACSD

No. 1 Pres 3-4-09
[Signature]



ARREST WARRANT NO. 1180507

ACTION OF GRAND JURY
TRUE BILL

FEB 20 2007

Foreman of Grand Jury *[Signature]*
Foreperson

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2007-15-04-535

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS

FEB 20 2007 TERM _____

THE STATE

MSM vs.

DONQUES M. HOOD

Blw issued 3/5/08 (copy)
PW Recalled 3/3/09 - Rt

Indictment for

UNLAWFUL CARRYING OF A PISTOL
16-23-0020, 0050 (A)(2) [0044]

A TRUE COPY

OCT 16 2009

Cathy M. Phillips
CLERK OF COURT

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR

CRIMINAL CONSPIRACY
16-17-0410 [0049]

At a Court of General Sessions, convened on FEB 20 2007,
the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL CONSPIRACY

THAT THE DEFENDANT, DONQUES M. HOOD DID IN ANDERSON COUNTY,
ON OR ABOUT OCTOBER 4, 2006 UNLAWFULLY AND WILFULLY UNITE,
COMBINE, CONSPIRE, CONFEDERATE, AGREE AND HAVE TACIT
UNDERSTANDING WITH JUSTIN H. GRIFFIN AND SAMANTHA BROOKS FOR THE
PURPOSE OF COMMITTING THE CRIME OF ARMED ROBBERY. ALL IN
VIOLATION OF 16-11-330 CODE OF LAWS OF SOUTH CAROLINA, (1976).

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


SOLICITOR

WITNESSES

C. MCBRIDE - ACSD

DOCKET NO. 2007-GS-04-534

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS

FEB 30 2007

TERM _____

A TRUE COPY
OCT 16 2009
Cathy M. Allison
CLERK OF COURT

THE STATE

MSM

vs.

DONQUES M. HOOD

ARREST WARRANT NO.

J421890

*Blw Issued 3/5/08 (emp)
Blw Recalled 3/3/09 - RT*

03/04/09 emp

ACTION OF GRAND JURY

TRUE BILL

FEB 20 2007

Foreman of Grand Jury:

Geo. [Signature]
Foreperson

Indictment for

CRIMINAL CONSPIRACY

16-17-0410 [0049]

VERDICT

Foreman of Petit Jury

Date:

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
KIDNAPPING
16-03-0910 [0095]

FEB 20 2007

At a Court of General Sessions, convened on _____
the Grand Jurors of ANDERSON County present upon their oath:

KIDNAPPING

That Donques D. Hood did in Anderson County on or about December 17, 2005
unlawfully seize, confine, kidnap, inveigle, decoy, abduct and/or carry away Ashley M.
Maynard without the authority of law.

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


SOLICITOR

WITNESSES
R. GEBING - ACSD

DOCKET NO. 2007-65-04-530

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS

FEB 20 2007 TERM _____

MSM THE STATE

DONQUES D. HOOD

J421824

ARREST WARRANT NO. _____

Blw issued 3/5/08 - emp
Blw recalled 3/3/09 - RT

ACTION OF GRAND JURY

TRUE BILL

FEB 20 2007

Foreman of Grand Jury

[Signature]
Foreperson

VERDICT

Indictment for

KIDNAPPING
16-03-0910 [0095]

Foreman of Petit Jury

Date:

A TRUE COPY
OCT 16 2009
Clerk of Court
CLERK OF COURT

03/04/09 - emp