

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED  
DEC 21 2018  
S.C. SUPREME COURT

—————  
Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge  
—————

CHRISTOPHER JAVIER COBB,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000751  
—————

APPENDIX  
—————

TAYLOR D GILLIAM  
Appellate Defender

ALAN WILSON  
Attorney General

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

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General  
P.O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

TRANSCRIPT OF HEARING HELD APRIL 4, 2016.....1

TRANSCRIPT OF SENTENCING HEARING HELD DECEMBER 6, 2016 .....13

APPLICATION FOR POST-CONVICTION RELIEF .....27

RETURN AND MOTION FOR MORE DEFINITE STATEMENT .....35

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING  
HELD DECEMBER 11, 2017 .....42

ORDER OF DISMISSAL .....67

INDICTMENT .....77

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
)  
PLAINTIFF, )  
)  
-VS- )  
)  
CHRISTOPHER JAVIER COBB, )  
)  
DEFENDANT. )  
\_\_\_\_\_ )

2014-GS-23-8215A & B

TRANSCRIPT OF RECORD

APRIL 4, 2016  
GREENVILLE, SOUTH CAROLINA

**B E F O R E:**

THE HONORABLE EDWARD W. MILLER

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

**ATTORNEY FOR PLAINTIFF:**

KATRINA SALISBURY  
ASSISTANT SOLICITOR

**ATTORNEY FOR DEFENDANT:**

C. CARLYLE STEELE, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

INDEX

WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

12

**EXHIBITS**

<b><u>NO</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>ID</u></b>	<b><u>EVIDENCE</u></b>
------------------	---------------------------	------------------	------------------------

(No Exhibits Were Produced During This Hearing)

1           **MADAME CLERK:** Your Honor, this is case number 2013-GS-  
2           23-8215A and 8215B, Christopher Javier Cobb, indictment for  
3           murder and possession of a weapon during the commission of a  
4           violent crime, pleading to assault and battery of a high and  
5           aggravated nature. It is a true bill.

6           **THE COURT:** Thank you.

7           **MADAME CLERK:** Would you raise your right hand, please.  
8           Do you swear or affirm to tell the truth, the whole truth  
9           and nothing but the truth so help you God?

10          **MR. COBB:** Yes, ma'am, I do.

11          **MADAME CLERK:** Thank you.

12          **THE COURT:** All right. You can put your hand down, Mr.  
13          Cobb. In the last twenty-four hours have you had any drugs,  
14          alcohol or medication?

15          **MR. COBB:** No, sir, I have not.

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

18                 (Defendant consulting with his attorney)

19          **MR. COBB:** No, sir, I have not.

20          **THE COURT:** Okay. You understand what's going on  
21          today? That's what I'm trying to find out.

22          **MR. COBB:** Yes, sir.

23                 (Defendant consulting with his attorney)

24          **MR. STEELE:** He said when he was in the Boys Home he  
25          had a drug class. That's what he wanted to tell you.

1           **THE COURT:** Okay. Well, you're sober today, right?

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

3           **THE COURT:** All right. I've published the indictments.  
4 Count one alleges you did in Greenville County December 18,  
5 2012 unlawfully with malice aforethought kill Chiquita  
6 Johnson by gunshot wounds, okay?

7           (Defendant consulting with his attorney)

8           **THE COURT:** That's what the indictment alleges, but  
9 you're tendering a guilty plea to assault and battery of a  
10 high and aggravated nature. That carries up to twenty years  
11 in prison as a maximum sentence. It's classified as a  
12 violent offense, which impacts parole eligibility. And it's  
13 a serious offense. If you get convictions for three or more  
14 serious offenses you are eligible for life in prison without  
15 parole. You understand that?

16           **MR. COBB:** Yes, sir, I do.

17           **THE COURT:** Okay. Understanding the nature of the  
18 charge and the maximum possible punishment, how do you want  
19 to plead? Guilty or not guilty?

20           (Defendant consulting with his attorney)

21           **MR. COBB:** Guilty.

22           **THE COURT:** Okay. Is that your ---

23           **MR. STEELE:** You have to listen ---

24           **THE COURT:** You need to just talk to me for a little  
25 bit.

1           **MR. COBB:** Okay. I'm sorry. I don't really -- I mean,  
2 ---

3           **THE COURT:** Okay. Well, I'm going to -- if you don't  
4 understand my question, you let me know. I'll get it  
5 explained for you.

6           **MR. COBB:** Yes, sir.

7           **THE COURT:** Is that choice, that decision to plead  
8 guilty to aggravated assault and battery, is that your own  
9 free choice?

10          **MR. COBB:** Yes. I don't -- I just don't understand who  
11 the victim is ---

12          **THE COURT:** Well, we're going to get to the facts in a  
13 minute, okay?

14          **MR. COBB:** Okay.

15          **THE COURT:** Nobody's forcing you to do that, is that  
16 right?

17          **MR. COBB:** No, sir.

18          **THE COURT:** Okay. And you understand you have an  
19 absolute right to a trial by jury. That jury is sworn and  
20 sitting back there ready to go. The State would have to  
21 prove you guilty.

22                 (Defendant consulting with his attorney)

23          **THE COURT:** I'm explaining your rights to you.

24          **MR. STEELE:** Focus on him.

25          **THE COURT:** Okay. You'd be presumed innocent

1 throughout the course of the trial unless and until the  
2 State could prove you guilty beyond any reasonable doubt of  
3 each and every element of the two crimes that you're charged  
4 with if you went to trial.

5 You'd have a right through your lawyer to cross examine  
6 the witnesses and the evidence against you by the State.  
7 And you'd have a right to put up any evidence in your own  
8 defense. Or you can remain silent. Your silence cannot be  
9 held against you. And you can never be compelled to  
10 incriminate yourself. Do you understand all those rights?

11 **MR. COBB:** Yes, sir, I do.

12 **THE COURT:** Do you want to give them up to enter this  
13 plea? You have to waive those rights to plead guilty. Is  
14 that what you want to do?

15 **MR. COBB:** Yes, sir.

16 **THE COURT:** Are you satisfied with your lawyer?

17 **MR. COBB:** Yes, sir, I am.

18 **THE COURT:** Okay. And do you know basically what the  
19 evidence is? You've been through all the discovery with  
20 your attorney?

21 **MR. COBB:** Yes, sir, I have.

22 **THE COURT:** Okay. Listen while the State gives me the  
23 facts.

24 **MS. SALISBURY:** May it please the Court, Your Honor?

25 On December 18th of 2012 just before about nine pm officers

1 with the sheriff's office responded to a report of shots  
2 having been fired at Highland Square Apartments, which is on  
3 Pine Creek Court Extension here in Greenville County.

4 In the course of the investigation the police  
5 discovered more than twenty shell casings at the scene that  
6 were determined to have been from at least four different  
7 firearms. The investigation revealed that this Defendant  
8 and co-defendants, including Desmond Parks and Darnell Cobb,  
9 approached other defendants, Aaron Goodwin and Ray Dupree  
10 among others, and a conflict escalated.

11 Many of those involved in the conflict were armed with  
12 firearms. And at some point shots were fired by several  
13 participants. Ms. Johnson was seated in a car near the site  
14 of the conflict and was struck in the left temple and killed  
15 almost instantly as a result of that gunshot.

16 Ballistically the evidence would show that that shot  
17 came from a .38 caliber firearm. Mr. Aaron Goodwin was  
18 initially charged with her murder. And after speaking with  
19 other witnesses law enforcement elected to charge other  
20 participants in the crime based on the fact that these  
21 defendants initiated and escalated the conflict for which  
22 gunshots were a nature and probable consequence. Those are  
23 the facts as they would be presented at trial.

24 **THE COURT:** Okay. Do you agree with those facts  
25 substantially?

1           **MR. COBB:** Yes, sir, I do.

2           **THE COURT:** Okay. And you've made a couple of  
3 statements in this case, is that right?

4           **MR. COBB:** Yes, sir, I have.

5           **THE COURT:** All right. And I understand the first one  
6 is very different from the second one. Is that right?

7           **MR. COBB:** Yes, sir.

8           **THE COURT:** Which one's true?

9           **MR. COBB:** The second one is true.

10          **THE COURT:** Okay. Are there any additions or  
11 subtractions you need make with ---

12          **MR. COBB:** No, sir.

13          **THE COURT:** --- respect to that?

14          **MR. COBB:** No, sir.

15          **THE COURT:** Okay.

16          **MR. COBB:** I kind of took it more serious once I got  
17 charged with it. I mean, you know, at first I didn't want  
18 to be telling on anybody or anything, but ...

19          **THE COURT:** Okay. All right. Well, I'm going to  
20 accept the plea as being freely and voluntarily given with  
21 the advice of a very competent attorney with whom he states  
22 he's well satisfied and that there is a substantial factual  
23 basis for the plea.

24                 I've accepted your plea. You're adjudged guilty, but  
25 I'm going to defer sentencing. I understand that part of

1 the arrangement is that you provide truthful testimony in  
2 the future, is that right?

3 **MR. COBB:** Yes, sir.

4 **THE COURT:** And that may not be easy to do. It may be  
5 difficult, but you've heard the saying the truth will set  
6 you free?

7 **MR. COBB:** Yes, sir.

8 **THE COURT:** And it's true. It wouldn't -- people  
9 wouldn't say it over all these centuries if it wasn't true.  
10 Sometimes it seems easy early to tell a lie to try and get  
11 out of the way, but I'll tell you right now, it's much  
12 cheaper to pay the up-front price because it all comes home  
13 to roost at one point or another.

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

15 **THE COURT:** So you tell the truth and hopefully we can  
16 stop some of this senseless violence and killing. It's got  
17 to stop.

18 **MR. COBB:** Yes, sir.

19 **THE COURT:** Okay. I'm going to allow him to remain on  
20 his bond. And you do what your lawyer says and you follow  
21 through on your agreement, okay?

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

23 **THE COURT:** A man's word is his bond. Yeah, what else?

24 **MR. COBB:** I have one more question. Will I still have  
25 a murder on my record, on my ---



## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 4th day of April 2016.

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

August 26, 2017

*Susan W. Hudgins*

---

Circuit Court Reporter

STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 COUNTY OF GREENVILLE ) 2014-GS-23-8125A  
 )  
 ) ORIGINAL  
 )  
 STATE OF SOUTH CAROLINA )  
 ) PLAINTIFF)  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 CHRISTOPHER JAVIER COBB )  
 ) DEFENDANT)

December 6, 2016  
 Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, Judge.

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

KATRYNA SALISBURY, ASSISTANT SOLICITOR  
Attorney for the State

CARLYLE STEELE, ESQ.  
Attorney for the Defendant

APRIL HERRON  
Official 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

**INDEX OF WITNESSES**

CHRISTOPHER COBB

Examination By The Court . . . . .4

There were no exhibits.

» > o < «

Sentencing . . . . .6

Certificate of Reporter . . . . .14

## CHRISTOPHER COBB-EXAMINATION BY THE COURT

1 MS. SALISBURY: Your Honor, this is a deferred  
2 sentence.

3 THE COURT: Okay.

4 THE CLERK: Your Honor, this is Indictment  
5 2014-GS-23-8215A. This is Christopher Javier Cobb,  
6 indicted for murder, pleading to assault and battery  
7 of a high and aggravated nature. It is a true bill.

8 Please raise your right hand.

9 CHRISTOPHER COBB, after being duly  
10 sworn, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q All right, are you Christopher Javier Cobb?

14 A Yes, sir, I am.

15 Q How old are you?

16 A Thirty years old.

17 Q How far did you go in school?

18 A I got a GED. I've went to Job Core and  
19 studied -- and became a mason. And also went to  
20 Greenville Tech for two years.

21 Q All right. Are you under the influence of any  
22 alcohol, drugs or medication of any type which would make  
23 you impaired this morning?

24 A No, sir, I'm not.

25 Q Do you have any health or mental issues which

## CHRISTOPHER COBB-EXAMINATION BY THE COURT

1 would keep you from understanding what's going on here  
2 today?

3 A No, sir, I do not.

4 Q All right. You're represented by Mr. Steele,  
5 have you had sufficient time to talk with him about your  
6 charges?

7 A Yes, sir, I have.

8 Q Has he answered all the questions you had?

9 A Yes, sir.

10 Q Has he done all the investigation which you felt  
11 was appropriate?

12 A Yes, sir.

13 Q All right. You have a charge here of assault  
14 and battery of a high and aggravated nature, which carries  
15 up to 20 years. Do you understand that charge?

16 A Yes, sir, I do.

17 Q All right. And how do you wish to plead? I  
18 apologize, I just kind of got in my little routine.

19 MR. STEELE: Sorry, Your Honor.

20 THE COURT: All right. I guess -- all right,  
21 we're going back, let's start over here, okay.

22 BY THE COURT:

23 Q All right. Mr. Cobb, you have pled guilty to  
24 this, it looks like on April the 4th --

25 Is that what that date is, 2016?

## CHRISTOPHER COBB-EXAMINATION BY THE COURT

1 MS. SALISBURY: Yes, sir, Your Honor.

2 BY THE COURT:

3 Q And we're here for a deferred sentencing. And  
4 you still wish to go forward, is that correct?

5 A Yes, sir, I do.

6 Q Okay. All right. I'm going to hear from the --  
7 and I guess you do realize -- this is something a little  
8 different -- you realize that you have a right to appeal  
9 the sentence and your plea but you would have to do so  
10 within 10 days from today and in writing.

11 A Yes, sir.

12 SENTENCING

13 THE COURT: All right, I'll be glad to hear the  
14 facts.

15 MS. SALISBURY: Yes, sir, Your Honor. With  
16 respect to the allegations, the facts that were  
17 presented to Judge Miller back in April were that on  
18 December 18th of 2012, officer with the sheriff's  
19 office responded to a shooting at Highland Square  
20 Apartments, which is on Pine Creek Court Extension  
21 here in Greenville County. Police learned that both  
22 a male victim and another female, Ms. Nakita Johnson,  
23 had been shot. The female victim, Ms. Johnson, was  
24 struck in the head and did not survive.

25 During the course of their investigation, police

1 learned from witnesses that this Defendant, along  
2 with Desmond Parks, a Darnell Cobb and other  
3 unidentified individuals, approached a group outside  
4 one of those apartment buildings. The defendants and  
5 the group exchanged words, that fight escalated and  
6 several individuals that was in that conflict were  
7 armed with handguns and at some point shots were  
8 fired by both sides of that conflict.

9 The two sides engaged in an extended fire fight.  
10 Police recovered 19 shell casings from the area and  
11 several projectile fragments. And learned that one  
12 of the shooters fired at least five rounds from a  
13 revolver, determining that at least 24 shots were  
14 fired as part of this exchange. One of the rounds  
15 from that revolver struck Ms. Johnson in the left  
16 temple. Where witnesses described that she was  
17 watching the conflict from a parked car. Ballistic  
18 analysis determined that the shots were fired from a  
19 .45 caliber, a .380, a 9mm and a .38. Based on the  
20 witnesses statements that they obtained, police  
21 believed that the conflict was, in fact, gang  
22 related.

23 This Defendant was one of five individuals  
24 charged as part of that exchange. He agreed to  
25 testify and that's the basis for The State's

1 reduction in the charge. There was no evidence that  
2 this Defendant, himself, was armed with a firearm or  
3 that he fired any shots. But based on the theory  
4 that the Defendant was part of that group and  
5 participated in that confrontation, he was  
6 responsible for the victim's death.

7 Those were the allegations presented to Judge  
8 Miller. The -- Ms. Nakita Johnson's mother,  
9 Ms. Betty Johnson is present. And I do believe that  
10 she would like to address The Court at the  
11 appropriate time about sentencing. The State's  
12 making no recommendation. The reduction was the  
13 benefit that the Defendant received as part of his  
14 agreement to testify.

15 THE COURT: Okay. All right.

16 All right, I'll be glad to hear from the -- what  
17 I'll do is I'll hear from the victim's family and  
18 then I'll be glad to hear from you, Mr. Steele,  
19 anything you want to tell me.

20 MR. STEELE: Thank you, Your Honor.

21 THE COURT: Please state your name.

22 MS. JOHNSON: Betty Johnson. I'm Nakita  
23 Johnson's mother. And I don't think -- I feel  
24 like -- I know she was in the wrong place at the  
25 wrong time. And my thing is I'm hurt right now

1           because my daughter is gone. She been taken from me.  
2           And I'm tired of everybody going to court, most of  
3           them getting off. Then I'm just hurt right now. The  
4           simple fact that she didn't deserve this. If that  
5           night never happened the way it did, that these  
6           people had to just go start something with other  
7           people, she would still be here. She didn't deserve  
8           this. A innocent person dead just because people  
9           shooting. And I think justice need to be served.

10           THE COURT: I thank you for being here and I'm  
11           sorry for your loss.

12           MS. JOHNSON: Thank you.

13           THE COURT: Any prior record?

14           MS. SALISBURY: A 2008 conviction for criminal  
15           domestic violence and possession of marijuana.

16           THE COURT: And, I guess, how long was he in  
17           jail? Did he serve any time in jail?

18           MS. SALISBURY: I have three days, Your Honor.

19           THE COURT: All right.

20           All right, Mr. Steele, I'll be glad to hear from  
21           you.

22           THE CLERK: Thank you, Your Honor. I appreciate  
23           that opportunity. First of all, I'll start off by  
24           telling The Court that we agree with the recitation  
25           of facts as stated by The State. Particularly, that

1 part about Mr. Cobb not having a gun. He did not  
2 have a gun, he did not shoot anybody. This is a  
3 horrible tragedy. It happened four years ago this  
4 month, December 20, 2012. He has authorized me to  
5 say, and he would say it and will say it, how sorry  
6 he is about what happened to Ms. Johnson.

7 Ms. Johnson was his friend.

8 And I think if asked, Ms. Johnson's mother will  
9 confirm this, she had been at Mr. Cobb's apartment  
10 earlier that evening. They had engaged in a social  
11 occasion. And then they left. And then he went out  
12 there. And when the shooting started, he took off.  
13 And nobody's alleging that he shot anybody. And, in  
14 fact, he's been completely debriefed about what  
15 happened.

16 And perhaps most importantly, Your Honor, I'm  
17 urging The Court not to put him in jail. And in  
18 support of that I would tell you the following.  
19 First of all, I've already told you, and The State  
20 has too, this happened four years ago. He stayed in  
21 jail a few days and he got out. He was originally  
22 indicted, or originally charged through warrant  
23 rather, with attempted murder. A couple years into  
24 the case he was indicted by the Grand Jury for  
25 murder. He continued out on bond.

1           In fact, he was given, because he had had a  
2           couple of years under his belt, he was given a  
3           recognizance bond on the murder. He continued out on  
4           the same terms that he had been out on for the  
5           previous two years. He continued to work. You heard  
6           him tell you that he's a qualified brick mason. He  
7           works for an outfit called McGee. And he also works  
8           part-time on his own. He picks up jobs any time  
9           anybody needs any masonry work done, if they call on  
10          Mr. Cobb, he can do it for them. He's been doing  
11          this for this entire time.

12           He and I actually prepared for the trial of this  
13          case last spring. I was, at least, his second  
14          lawyer. I don't know if there was anybody but there  
15          was somebody prior to me. And I think that lawyer  
16          had a conflict. And then I was given the case. And  
17          Mr. Cobb and I, we road around, we talked to  
18          witnesses, we subpoenaed witnesses, we were ready for  
19          trial. And we came up here for trial and we decided  
20          to enter the plea that Your Honor is going to  
21          sentence him on today.

22           Throughout that entire time he's not had a speck  
23          of trouble. He's got his mother here with him.  
24          Every time I ride by Calhoun Towers, I see this lady  
25          sitting out front. She lives down there, he helps

1 take care of her.

2 I think I've known you for about how long, 40  
3 years?

4 MS. COBB: yes, sir.

5 MR. STEELE: Known his momma for a long, long  
6 time. She was a friend of mine long before he was  
7 born. He helps with her. He's not had any problems.  
8 And there was a lot of confusion out there. And I  
9 don't mean that what I'm about to say to be critical  
10 of anybody, but my investigation, and that is talking  
11 to witnesses out there in the community, would  
12 indicate that one individual, a fella known as Tator,  
13 who may have even fired the first shot, never was  
14 charged in this thing. Another individual was  
15 exonerated or had his charges dropped based upon the  
16 stand your ground law. Mr. Cobb's brother, Darnell,  
17 he got a home incarceration sentence. And I think  
18 that all of these persons involvement was probably on  
19 the par with what this man did.

20 Mr. Cobb knows he shouldn't have been out there.  
21 He knows he shouldn't have been engaged in this  
22 exchange that went on. But to reiterate, perhaps the  
23 most important fact of all, he didn't shoot anybody  
24 and nobody is saying that he did. And I'm asking you  
25 to consider his four years of good behavior. I think

1           that's a pretty good indication of what he's going to  
2           do from here on. And give him a sentence that allows  
3           him to continue working through his trade of brick  
4           masonry. Allow him to continue to take care of his  
5           mother. And she needs him. Allow him to continue to  
6           demonstrate to this Court and to the Johnson family  
7           that this gentleman didn't intend for anything bad to  
8           happen. That he has extreme regret. That Ms. Nakita  
9           Johnson was he friend and along with her family. He  
10          can't imagine what they're going through. But to the  
11          degree that he knew her as a friend, he also mourns  
12          her death. He's sorry about what happened.

13                 I can't tell you as a man, he and I have spent a  
14          lot of time in my automobile together going around  
15          talking to witnesses. And he's intelligent, too  
16          intelligent to be mixed up in this to tell you the  
17          truth. And he's well spoken. He's polite. He  
18          understands his conversations with me. And he's been  
19          a gentleman throughout. And I want the record to  
20          reflect that whatever happens up here today, that I  
21          appreciate Christ Cobb as a client and it's been my  
22          honor to represent him. So, I'm urging you in the  
23          strongest terms, Your Honor, based upon all this,  
24          give him a sentence that enables him to prove to you  
25          and to the Johnson family and to everybody that he

1 will never be in any more trouble.

2 His prior record, I think, was pointed out, is  
3 eight years old. His good behavior while out on this  
4 bond has been four years. Give him an opportunity,  
5 if The Court would, to continue this.

6 THE COURT: Anything you want to tell me,  
7 Mr. Cobb?

8 MR. COBB: Once again, I want to apologize to  
9 the victim's family. And it's been hard for me for  
10 the last four years. It's a burden. Shakita  
11 [verbatim] Johnson was a good friend of mine. And I  
12 just want to say I apologize to Ms. Johnson, Larry  
13 and Coby and, you know, the rest of the family.

14 MR. STEELE: He knows them all. In fact, he  
15 talks to them. I think Ms. Johnson will agree he  
16 spoke to her this morning. In a congenial,  
17 respectful, polite terms.

18 THE COURT: All right, anything else?

19 MR. STEELE: No, sir.

20 THE COURT: All right, sentence of the Court is  
21 10 years suspended on four years and three years  
22 probation.

23 (WHEREUPON, the proceedings were concluded.)  
24  
25

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

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF GREENVILLE        )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the Sixth day of December, 2016.

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

August 20, 2017

  
APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of Greenville )  
SCDC# )  
Christopher Javier Cobb 310711 )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2017-CP-23-

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED - CLERK OF COURT  
 PAUL B. WING  
 GREENVILLE, SOUTH CAROLINA  
 2017 JUN 13 PM 3:44

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Goodman Correctional Facility located at 4556 Broadview Road Columbia SC 29210.

2. Name and location of Court which imposed sentence \_\_\_\_\_

3. Name(s) of co-defendant(s) (if any) - NONE -

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Indictment # 2014-GS-2308215A - Arrest Warrant

(b) 2014-GS-2308215A - Assault & Battery High ~~Aggravated~~ Aggravated  
Nature,

(c) \_\_\_\_\_

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

- (a) Sentence Date Ten years Suspended
- (b) ~~four~~ years Incarceration Three years Probation.
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty  \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Attorney never made me aware that I had right.
- (b) \_\_\_\_\_

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

- (a) Prosecutor misconduct
- (b) Ineffective Assistance of Plea Counsel
- (c) \_\_\_\_\_

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

- (a) State v. GENTRY, 640 S.E.2d (2005)  
See Attachment "Appendix" of Application.
- (b) Applicant was not indicted for ABHAB, nor
- (c) does documentation show where he waived an indictment - no subject matter jurisdiction

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

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

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- 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?

- \_\_\_\_\_
- \_\_\_\_\_

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 ASSISTANCE OF PLEA COUNSEL -
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

MOTION TO REHEAR OR REVERSAL JUDGMENT. 56(e) motion

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

(a) the name and address of each attorney who represented you:  
INEFFECTIVE PLEA COUNSEL - ATTORNEY C. CARLYLE STEELE,  
16 Whitsett Street Greenville SC 29601

- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

i. PLEA + SENTENCING - ABOVE MENTIONED ATTORNEY.

- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Immediate Release From S.C. Department of Corrections  
and Vacation of Sentence Imposed.

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

NO

STATE OF SOUTH CAROLINA )  
County of Greenville )

VERIFICATION

I, CHRISTOPHER JAMES COBB, 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.

Christopher James Cobb

SWORN to and subscribed before me this 23<sup>rd</sup>  
day of May, 2017.

Kristen R. Romper (L.S.)  
Notary Public

My Commission Expires: 09/08/2019

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

I, CHRISTOPHER JAVIER COLLO, 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.

Christopher Javier Collo  
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of May, 2017.

Kristine R. Hanger  
Notary Public

My Commission Expires: 09/08/2019

# ATTACHMENT (APPENDIX - ALLEGATION "A" + "B" 10(A) + 11(A).

---

Prosecutor misconduct "A"

Ineffective assistance Counsel "B"

This Applicant alleges through discovered evidence that arresting officers from Greenville South Carolina Sheriff's office lacked sufficient ~~probable~~ <sup>Probable</sup> cause to bring accusations of criminal wrong doing ~~to~~ against Applicant and to obtain arrest warrants to confine Applicant, said Probable Cause being far below the legal standards demanded by South Carolina state legislature. Discovered evidence by Applicant ~~to~~ in this grave matter will prove Greenville County South Carolina Sheriff's office acted hastily and far short in meeting South Carolina law in arresting and confining Applicant, and coupled ~~with~~ <sup>Prudent</sup> and fair level of state and federal review will clearly prove that Applicant one CHRISTOPHER JAVIER Cobb #00 31611 is being held unlawfully in the U.S. State of South Carolina in clear violation of his united state federally protected constitutional rights to legal due process and equal protections, and that Applicant should be immediately released from custody on bail until such time as the Greenville County Judiciary decides whether or not to reprocess Applicant on these charges in this matter.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Christopher Javier Cobb, #370711,	)	2017-CP-23-3816
	)	
Applicant,	)	
	)	<b>RETURN AND MOTION FOR</b>
v.	)	<b>MORE DEFINITE STATEMENT</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on June 13, 2017, would respectfully show this Court:

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In September of 2014, the Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2014-GS-23-8215). Carlyle Steele, Esquire, represented Applicant. Assistant Solicitor Katryna Salisbury, Esquire, prosecuted the case. On April 4, 2016, Applicant pled guilty to assault and battery of a high and aggravated nature before the Honorable Edward W. Miller. Sentencing was deferred. On December 6, 2016, Applicant was sentenced by the Honorable Petty H. Gravely to a youthful offender sentence not to exceed six years and ordered restitution. Applicant did not appeal his conviction or sentence.

**II.**

On December 18, 2012 just before nine in the evening officers with the Sheriff's office of Greenville County responded to a report of shots fired at Highland Square Apartments, which is on Pine Creek Court Extension in Greenville County. In the course of the investigation the police

discovered more than twenty shell casings at the scene that were determined to have been from at least four different firearms. The investigation revealed Applicant and his co-defendants, approached other defendants, and a conflict escalated. Many of those involved in the conflict were armed with firearms. And at some point shots were fired by several participants. The victim was seated in a car near the site of the conflict and was struck in the left temple and killed almost instantly as a result of that gunshot. The evidence would show that that shot came from a .38 caliber firearm. One of the co-defendant was initially charged with the victim's murder and after speaking with other witnesses law enforcement elected to charge other participants in the crime based on the fact that these defendants initiated and escalated the conflict. Plea Tr. 7-8

### III.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutor misconduct
2. Ineffective Assistance of Plea Counsel
  - a. Applicant was not indicted for ABHAN, nor does documentation show where he waived an indictment
  - b. No subject matter jurisdiction.

Attached to this Return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### IV.

Respondent hereby moves for a more definite statement with regard to the allegation of prosecutor misconduct. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon*

*which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

**VII.**

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

**VIII.**

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

**[Signature page follows]**


Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General

By:   
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

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

October 11, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 CHRISTOPHER JAVIER COBB, 370711 )  
 )  
                                   Applicant, )  
                                   ) )  
                                   vs )  
 STATE OF SOUTH CAROLINA, )  
 )  
                                   Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2017-CP-23-3816

AFFIDAVIT OF SERVICE BY MAIL

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

**R. Mills Ariail, Jr., Esquire**  
**11 North Irvine Street; Suite 11**  
**Greenville SC 29601**

DATED this 11<sup>th</sup> day of October, 2017.

  
 Judy A. Carey, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
 COUNTY OF GREENVILLE ) 2017-CP-23-03816  
 )  
 )  
 )  
 )  
 CHRISTOPHER JAVIER COBB )  
 ) APPLICANT)  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 THE STATE OF SOUTH CAROLINA )  
 ) RESPONDENT)  
 \_\_\_\_\_)

**ORIGINAL**

December 11, 2017  
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

R. MILLS ARIAIL, JR., ESQ.  
Attorney for the Applicant

DESHAWN MITCHELL, ESQ.  
Attorney for the Respondent

APRIL HERRON  
Official Court Reporter

INDEX OF WITNESSES

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

CHRISTOPHER COBB

Direct By Mr. Ariail . . . . . 5  
Cross By Mr. Mitchell . . . . . 14

CARLYLE STEELE

Direct By Mr. Mitchell . . . . . 17  
Cross By Mr. Ariail . . . . . 20

There were no exhibits.

» > o < «

Certificate of Reporter . . . . . 25

1 THE COURT: All right, Mr. Mitchell.

2 MR. MITCHELL: May it please the Court, Your  
3 Honor?

4 THE COURT: Yes, sir.

5 MR. MITCHELL: This is 2017-CP-23-3816,  
6 Christopher Cobb vs. The State of South Carolina.  
7 The Applicant is presently confined in the South  
8 Carolina Department of Corrections pursuant to Orders  
9 of Commitment of the Greenville County Clerk of  
10 Court. In September of 2014 the Greenville County  
11 Grand Jury indicted The Applicant for murder and  
12 possession of a weapon during the commission of a  
13 violent crime. Mr. Carlyle Steele represented The  
14 Applicant. On April 4th, 2016, The Applicant pled  
15 guilty of assault and batter of a high and aggravated  
16 nature before The Honorable Edward W. Miller.  
17 Sentencing was deferred. Judge Gravely sentenced  
18 Applicant on December 6th, 2016, to the original  
19 return, Your Honor, continue [verbatim] of wrong  
20 sentence. The correction is what Mr. Cobb received  
21 was a 10 year sentence suspended to four years and  
22 three years probation. The original returned noted  
23 that he received a YOA which is incorrect.

24 THE COURT: Okay.

25 MR. MITCHELL: He is present in the courtroom

CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 today represented by Mr. Ariail.

2 THE COURT: All right, Mr. Ariail.

3 MR. ARIAIL: Yes, Your Honor, we're ready to  
4 proceed and I would call Mr. Cobb as our first  
5 witness.

6 THE COURT: All right, Mr. Cobb, if you'd come  
7 up, please.

8 THE CLERK: Mr. Cobb, please place your left  
9 hand on the Bible and raise your right hand.

10 Christopher Cobb, after being duly sworn,  
11 testified as follows:

12 THE CLERK: Thank you, you may be seated. State  
13 your name for the record.

14 THE WITNESS: Christopher Javier Cobb.

15 DIRECT EXAMINATION

16 BY MR. ARIAIL:

17 Q Mr. Cobb, how you doing today?

18 A I'm fair.

19 Q Okay, good. And we're here in regards to your  
20 PCR that you filed in this matter. We discussed this in  
21 depth, I want to go through a little bit about the  
22 background in regards to your representation by  
23 Mr. Steele. He represented you on these, I guess, it was  
24 an initial murder and possession of a weapon during the  
25 commission of a violent crime; is that correct?

## CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1           A     Yes, sir.

2           Q     Okay. Now, when -- it appears that you were  
3 indicted in sometime of September 2014 for those charges.  
4 When did Mr. Steele start to represent you on those  
5 charges?

6           A     I'm not quite sure of the exact time when he was  
7 appointed. I'm not even sure.

8           Q     Maybe I can take you back this way. When you  
9 were arrested on these charges, did you post bail or bond  
10 or get out at any time?

11          A     For the murder?

12          Q     Yes.

13          A     I was indicted, no, I signed a PR bond on the  
14 murder charge.

15          Q     Okay. So, you got out and you weren't  
16 incarcerated while this was pending; is that correct?

17          A     About four years, right.

18          Q     Okay. Now, during that time Mr. Steele  
19 represented you or was appointed to represent you; is that  
20 correct?

21          A     Yes, sir.

22          Q     Okay. And, I guess, from the initial time you  
23 met with him and had discussions about your case; is that  
24 correct?

25          A     Yes, sir.

## CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 Q How many times you think you met with him during  
2 the time he represented you?

3 A Numerous times, more than five.

4 Q Okay. Now, during that time did y'all go over  
5 the discovery in this case that they had?

6 A We went through discovery through and through,  
7 yeah.

8 Q Okay. So, did you feel like you had an  
9 understanding of what the evidence was that was going to  
10 be used against you?

11 A Yes, sir.

12 Q Okay. Did y'all have discussions of the  
13 elements of each of these crimes, murder and possession of  
14 a weapon; do you remember that?

15 A Yes, sir.

16 Q Okay. So, he basically told you, this is what  
17 they got to prove, this is what they have to show to a  
18 jury to convict you beyond a reasonable doubt; is that  
19 correct?

20 A Yes, sir.

21 Q Okay. So, at some point in time this case is  
22 going on and it appears the you decide to plead guilty; is  
23 that correct?

24 A Yes.

25 Q Okay. You pled guilty at some point in time for

## CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 assault and battery high and aggravated, correct?

2 A I pled guilty at the trial.

3 Q Okay. So, they start the trial; is that  
4 correct?

5 A Right.

6 Q And at some point in time you decide you wanted  
7 to plead guilty, is that right?

8 A Yes.

9 Q Okay. Now, the trial began, you were charged  
10 with the murder and possession of a weapon, correct?

11 A Right.

12 Q Okay. And so, tell me how during this trial  
13 that it came that y'all decided to plead guilty and how, I  
14 guess, the charges were reduced down like they were?

15 A Well, I came into the courtroom thinking, you  
16 know, that we pretty much were going to win the case. I  
17 mean, they call a recess and they you put me in the back  
18 in a holding cell. And that's when Mr. Steele came with  
19 me -- came with me with the plea. But before court, I'm  
20 thinking that, you know, we're going to win the trial. I  
21 wanted to go to trial then.

22 Q Okay. And so, that's why you started with the  
23 trial?

24 A Right.

25 Q And he brought you a plea and what was -- it was

## CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 a plea --

2 A The plea was assault and battery high and  
3 aggravated. And, you know, I asked him -- I asked him if  
4 he thought we were going to win. And then why would I be  
5 taking a plea? And that's when he informed me that the  
6 solicitor would make it look like a gang shooting. And I  
7 would be facing 30 years. I mean, he said I could get  
8 this being innocent the way the court work. So I was  
9 afraid it was time to plead because he said I could go  
10 home if I signed that plea.

11 Q Okay. So, he -- when he brought the plea back  
12 he kind of told you all the, I guess, the circumstances to  
13 it, what could happen --

14 A Correct.

15 Q You're saying that he told you would go home  
16 that day?

17 A Yes, it was a suspended sentence. He said I  
18 would plead today and I would come back later on in the  
19 year for sentencing which I did?

20 Q Okay. So no, he didn't say that if you plead  
21 now, they're going to sentence you now and then you'll go  
22 home today for good?

23 A No sentencing, just sign the plea.

24 Q Okay. So, just sign the plea?

25 A Yes, sir.

## CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 Q Okay. So, basically you had to come back  
2 because, I guess, there were other people they were trying  
3 for this case; is that correct?

4 A Yes. They told me if I testified against the  
5 shooter, then they would drop it down to assault and  
6 battery.

7 Q Okay. And you agreed to do that?

8 A Yeah. But I also, I mean, I didn't feel like I  
9 would get any jail time because when I spoke to  
10 Mr. Steele, initially, he told me that I should get no  
11 more than what my brother received, which was one year  
12 house arrest and three years probation. But when I came  
13 back for my sentencing, I guess, Mr. Steele didn't recall  
14 that.

15 Q Okay. So, what you're saying is that you  
16 remember that being told that you weren't going to get any  
17 jail time?

18 A He never said I wasn't going to get any jail  
19 time, but I kind of felt secured when he told me I should  
20 get no more than what my brother got.

21 Q Okay. And how much did your brother get?

22 A One year house arrest and three years probation.

23 Q Okay. So, I guess, after you pled you came back  
24 and you were sentenced at some point in time; is that  
25 correct?

CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 A Correct.

2 Q Okay. And after you received that four years,  
3 did you have a discussion with Mr. Steele about appealing,  
4 making a motion to reconsider or anything of that nature?

5 A Yeah, I asked about the appeal. He filed a  
6 motion to reconsider which was denied.

7 Q Okay. Did you -- and I know you filed this PCR.  
8 And in regards to Mr. Steele being ineffective. I want to  
9 go through a little bit about what you say that he did  
10 that prejudiced you in regards to this. Can you tell me  
11 how you believe what he did in regards to that plea in  
12 those four years as to how that prejudiced you.

13 A I mean, I just feel like he knew that, I mean, I  
14 was innocent. And he let me sign a plea. And, I mean, I  
15 don't think I should have signed that plea.

16 Q Okay. And so, you believe that you should have  
17 gone forward with the trial to see if you'd been  
18 successful?

19 A I do.

20 Q Okay. Did you and him discuss -- I mean, it  
21 appears that y'all had a discussion about the  
22 ramifications that if you went forward, that you were  
23 looking at potentially life?

24 A Correct.

25 Q Okay. So, did y'all make a decision together

## CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 and did you ultimately make the decision to say I want to  
2 plead guilty and put this behind you, I guess?

3 A I was never sure making the decision, I just  
4 kind of just followed -- you know, I exercised my rights  
5 to my attorney.

6 Q Okay. But do you remember going forward and  
7 doing the guilty plea?

8 A I do.

9 Q Okay. Why did -- you're saying now that you  
10 didn't want to do that.

11 A I took the plea because he told me even though  
12 he felt I was innocent, that I could still face life in  
13 prison. So, I was afraid, yeah. So, I signed the plea.

14 Q Okay. What other items would you like to raise  
15 today, you know, concerning representation of Mr. Steele?

16 A Well, I was informed that Mr. Steele knew that  
17 Ms. Reid, the lady that wrote the statement on me that got  
18 me arrested, after I signed the plea, she recanted her  
19 statement. But, you know.

20 Q Was that after you did the plea?

21 A That was after I signed the plea. She went out  
22 in the hallway an he spoke to Susannah Ross.

23 Q Okay.

24 A She said she wanted to recant her statement.  
25 She no longer wanted to have anything to do with the case.

CHRISTOPHER COBB-DIRECT BY MR. ARIAIL

1 But this was never reported to The Judge.

2 Q Okay. Did Mr. Steele use that during the  
3 sentencing to help you in any way?

4 A No, sir.

5 Q Okay. You're saying that Ms. Reid was the one  
6 that withdrew and when she -- tell me exactly what she  
7 said and what she recanted. What was her statement?

8 A She told Susannah Ross that her statement wasn't  
9 true, she no longer wanted anything to do with the case  
10 and she was leaving the courthouse.

11 Q Okay. And you're saying that he should have  
12 done something with that to be able to aide you in either  
13 the sentencing or a withdrawing your plea at that time?

14 A Right. I'm no lawyer but I feel like that's  
15 newly discovered evidence.

16 Q Okay. Are there any other items that you would  
17 like to raise to The Court about his representation or  
18 things that you believe he didn't do that he should have  
19 done?

20 A No, sir.

21 Q Okay.

22 Your Honor, I have no further questions.

23 THE COURT: Okay, Mr. Mitchell,  
24 cross-examination, sir.

25 MR. MITCHELL: Thank you, Your Honor, may it

## CHRISTOPHER COBB-CROSS BY MR. MITCHELL

1 please The Court.

2 CROSS-EXAMINATION

3 BY MR. MITCHELL:

4 Q Good morning, Mr. Cobb, how are you?

5 A I'm good. And you?

6 Q I'm doing well. Mr. Ariail asked you -- asked  
7 you a question about whether your attorney ever told you  
8 that you would not get any jail time, do you recall that  
9 question?

10 A I do.

11 Q And what was your answer?

12 A No.

13 Q So, he never promised you that you wouldn't get  
14 any jail time?

15 A No, he told me I should not get any jail time.  
16 He never promised me I wouldn't.

17 Q Okay. Did you remember the day of the guilty  
18 plea where you pled guilty?

19 A I do.

20 Q Okay. And do you remember The Judge advising  
21 you about potential penalties that you faced if you pled  
22 guilty?

23 A Yes, sir, I do.

24 Q Okay. And do you remember The Judge asking you  
25 if you wanted to give up your rights to a trial and plead

## CHRISTOPHER COBB-CROSS BY MR. MITCHELL

1 guilty?

2 A Yes, sir.

3 Q And do you remember telling him that you did  
4 want to do that, correct?

5 A I do.

6 Q Okay. And do you remember the solicitor reading  
7 the facts on the cause on the record.

8 A Vaguely.

9 Q Okay. Do you remember agreeing with those  
10 facts?

11 A During that time I asked The Court who was my  
12 victim? I'm still not sure who my victim is.

13 Q Okay. I just want to make sure I'm clear about  
14 this. Whose decision was it to plead guilty, Mr. Steele  
15 or yours?

16 A It was Mr. Steele's but I went along with it.

17 Q It was Mr. Steele's decision?

18 A Right.

19 Q So, when The Judge asked you if you were  
20 satisfied with your attorney, what did you tell him?

21 A I told him yes.

22 Q Okay. And so, Mr. Steele took the guilty plea  
23 for you? Were he standing there or were you standing there  
24 answering the questions?

25 A We both stood there.

CARLYLE STEELE-DIRECT BY MR. MITCHELL

1 Q Okay. But The Judge was addressing you,  
2 correct?

3 A Correct.

4 MR. MITCHELL: That's all the questions I have  
5 for him.

6 THE COURT: Okay.

7 Any redirect, Mr. Ariail?

8 MR. ARIAIL: No, Your Honor.

9 THE COURT: Okay. All right, thank you,  
10 Mr. Cobb, you can step down. I appreciate your being  
11 here.

12 MR. ARIAIL: That's our case, Your Honor.

13 THE COURT: Okay.

14 Anything from The State?

15 MR. MITCHELL: Your Honor, The State would call  
16 Mr. Carlyle Steele to the stand.

17 THE COURT: Okay.

18 THE CLERK: Mr. Steele, place your left hand on  
19 the Bible, raise your right hand.

20 CARLYLE STEELE, after being duly sworn,  
21 testified as follows:

22 THE CLERK: Thank you, you may be seated. And  
23 please state your name for the record.

24 THE WITNESS: Carlyle Steele.

25 DIRECT EXAMINATION

## CARLYLE STEELE-DIRECT BY MR. MITCHELL

1 BY MR. MITCHELL:

2 Q Good morning, Mr. Steele, how are you?

3 A Fine.

4 Q Good. How long have you practiced law here in  
5 South Carolina?

6 A Forty-three years.

7 Q How much of that time have been devoted to  
8 criminal law?

9 A The whole time.

10 Q Okay. How did you become appointed with this  
11 case? Were you retained or were you appointed?

12 A Appointed, sir.

13 Q Okay. And could you tell me a little bit about  
14 the facts of the case?

15 A His first lawyer represented him for a period of  
16 time and it was found to be a conflict in the  
17 representation with the first lawyer. And that's why I  
18 was appointed. And when I was appointed I met with  
19 Mr. Cobb and he and I began our preparation for trial. He  
20 and I road around, we talked to several witnesses, I'm  
21 going to say four or five, maybe more. And we put  
22 subpoenas out on those witnesses and we were ready for  
23 trial.

24 Q Okay. And what was Mr. Cobb alleged to have  
25 done or what kind of crime would he have alleged to

## CARLYLE STEELE-DIRECT BY MR. MITCHELL

1 committed?

2 A The charge was murder.

3 Q The charge was murder? Okay. Now, backing up  
4 just a little bit, do you recall how many times you met  
5 with him?

6 A I think what Mr. Cobb said is correct, a bunch  
7 of times. He and I had a good rapport. And I dare to say  
8 we probably still do. But we met a bunch of times in the  
9 office and we went to the neighborhood where this  
10 occurred. And we went and tracked down witnesses and  
11 talked to them. We may have met as many as 10 times, I  
12 don't know.

13 Q Is it fair to say that you would have went over  
14 the charges and the elements of each charge with him?

15 A Yes, sir.

16 Q Okay. And I guess moving forward, in terms of  
17 preparing for this actual case, were you preparing for a  
18 trial or did he tell you that he wanted to plead guilty,  
19 how did that conversation take place?

20 A Well, obviously, his main desire was not to go  
21 to jail but yes, we were preparing for trial.

22 Q Okay. And I'm assuming, based on the testimony  
23 that we've heard from Mr. Cobb, can you tell me a little  
24 bit about what transpired on that day where he was going  
25 forward to trial but ultimately pled guilty?

## CARLYLE STEELE-DIRECT BY MR. MITCHELL

1           A       We came to court for the trial, just like  
2 Mr. Cobb said. And I can't remember when the offer of  
3 assault and battery high and aggravated nature came. It  
4 could have already been out there and we discussed it that  
5 day more fully or it could have come that day. His  
6 testimony indicated that it came that day and that's  
7 possible, I don't remember.

8           Q       Okay. And is it -- would it be fair to say that  
9 you would have discussed the offer with him and went over  
10 his benefits as opposed to not going to trial?

11          A       That's right, we did.

12          Q       Okay. And is it fair to say that it was his  
13 decision to plead guilty?

14          A       It's always the defendant's decision, yes. As  
15 indicated during his plea, he made the decision. But I'm  
16 not going to say that I didn't tell him I thought it was  
17 probably a good idea. The ABHAN looked pretty good  
18 compared to a potential life sentence for murder. While  
19 we had a good defense, anybody who tries criminal cases  
20 knows that there are no sure things up here. And I  
21 thought, frankly, that I could talk The Judge into not  
22 putting him in jail. And for that I was wrong, I'm sorry.

23          Q       Well, let me ask you this, you never promised  
24 him that he wouldn't get any jail time?

25          A       No, and he didn't say I did just now. No, sir,

## CARLYLE STEELE-CROSS BY MR. ARIAIL

1 I did not.

2 Q Okay. Ever any issues with Mr. Cobb's  
3 competency or anything?

4 A No, sir, he's a fine young man, a very  
5 intelligent young man. I've known his family for probably  
6 35 years. I see his mother sitting back there, I've known  
7 his mother for a very long time.

8 Q Very good.

9 Thank you, Mr. Steele, please answer any  
10 questions that Mr. Ariail may have.

11 MR. ARIAIL: Thank you, Your Honor, may it  
12 please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. ARIAIL:

16 Q Mr. Steele, how you doing today?

17 A All right.

18 Q Good. In regards to the guilty plea, I just  
19 want to understand a little bit. So, during the trial  
20 apparently, somebody approached you or you approached the  
21 solicitor, they wanted to be able to plead it to assault  
22 and battery high and aggravated; is that correct?

23 A I can't remember if we already had the offer or  
24 if it came that day. Ms. Salisbury was the solicitor.  
25 And I think the way it sounded from Mr. Cobb's testimony,

## CARLYLE STEELE-CROSS BY MR. ARIAIL

1 maybe we got the offer that day, I don't remember. But at  
2 some point we were offered that.

3 Q Okay. And y'all discussed it in detail, I mean,  
4 he said y'all had conversations about what could happen if  
5 he went forward with the trial or if he pled guilty.

6 A We talked about all possibilities, yes, sir.

7 Q And at to time, you're saying, did you tell him,  
8 you're not going to get any jail time for this?

9 A No, sir. And as I already told the government  
10 over here, he didn't say I did. No, sir, he knows I  
11 didn't tell him that. I told him there was risk involved  
12 either way.

13 Q Right.

14 A I thought we minimized the risk by taking the  
15 plea.

16 Q Okay. He's mentioned after he came out there  
17 was some statement of recanting of the statement by one of  
18 the witnesses, Melissa Reid, I think her name was. Do you  
19 recall anything about that? Anybody providing you  
20 information that, you know, could have helped him or would  
21 have effect your decision on how to proceed in this case?

22 A I don't remember that.

23 Q Okay. So, you don't have any -- don't remember  
24 any conversation with Susannah Ross about anything about a  
25 witness recanting?

## CARLYLE STEELE-CROSS BY MR. ARIAIL

1           A     I don't remember none of that. And Mr. Cobb's  
2 an honest fella. If he says something like that happened,  
3 I believe him. But I don't remember anything about it.

4           Q     Okay. And you don't remember him telling you  
5 anything about that that would warrant either some motion  
6 to withdraw the plea or some attempt for mitigation at his  
7 sentencing or anything like that?

8           A     No, sir, I had real strong mitigation. And I  
9 came to court with some confidence that I was going to get  
10 him a sentence comparable to his brother's. But I failed  
11 in that.

12          Q     Okay. All right.

13                     Your Honor, I have no further questions.

14           THE COURT: Okay.

15           Redirect, sir?

16           MR. MITCHELL: No, Your Honor.

17           THE COURT: Okay, thank you, Mr. Steele, I  
18 appreciate your being here, sir.

19           MR. MITCHELL: No other witnesses, Your Honor.

20           THE COURT: Okay. Good enough.

21           All right, anything either The Applicant for The  
22 State would like to say in closing? I don't require  
23 it but I give you the opportunity if you'd like to.

24           MR. ARIAIL: No, Your Honor.

25           MR. MITCHELL: No, sir.

1 THE COURT: Okay. All right. I've read the  
2 transcript of record both at the guilty plea and at  
3 the sentencing phase. I've also had the opportunity  
4 to review the application together with the return.

5 Mr. Cobb, I'm going to respectfully deny your  
6 Post-Conviction Relief Application. But I want to  
7 tell you why. I don't want to tell you because I  
8 just arrived at that arbitrarily without thinking  
9 about it. I've read the application -- or excuse me,  
10 the guilty plea transcript and I understand what  
11 you're saying. You've taken an oath today and  
12 Mr. Steele has vouched for you and indicated that  
13 you're an honest fella and he I believe that to be  
14 true. So, in keeping with my belief that you're an  
15 honest fella, I believe that you told the truth at  
16 the guilty plea. That is, I believe that when you  
17 were asked questions under oath, that you honestly  
18 answered those questions. And it's clear from the  
19 record and primarily from the record established by  
20 Judge Miller, that you have made a decision freely  
21 and voluntarily to enter the plea that day.

22 Specifically, on Page 6 he asked you, Is that  
23 your choice? That decision to plead guilt to  
24 aggravated assault and battery, is that your own free  
25 choice?

1           Yes.

2           Nobody's forcing you to do that; is that right?

3           No, sir.

4           And you understand you have a right to a jury  
5 trial? The State would have to prove you guilty.

6           And you understood all of those rights that he  
7 articulated and explained to you that day. I  
8 understand that as you sit in the Department of  
9 Corrections serving your sentence, that there's  
10 always second guessing that goes on. I get it. And  
11 it's only natural that you would sit and second guess  
12 and think about what you did and what happened. But  
13 there has been no credible evidence to demonstrate  
14 that trial counsel was deficient or that that  
15 deficiency materially effected the outcome of your  
16 case. Actually, in looking at the facts of the case  
17 and looking at the sentence that was handed down, I  
18 think I would be doing you a disservice in this  
19 instance to grant your appeal -- or excuse me, your  
20 Post-Conviction Relief.

21           That's not what my decision is made on. Just  
22 know I if granted it, you would be looking at another  
23 20 years. And I think the calculus that you used at  
24 the time was, okay, what are the chances of me being  
25 found guilty under the hands of one is the hand of

1 all. And it looks to me like based on the facts that  
2 were recited into evidence, the facts to which you  
3 agreed and what you said on the record, that there  
4 was a fairly strong case for the hand of one is the  
5 hand of all, that is accomplice liability. And the  
6 consequences of you being convicted at trial, of the  
7 original charges, are much greater than the sentence  
8 that you received. Much greater. And you just would  
9 be starting over from scratch if I granted your PCR.

10 So, I'm going to deny your PCR Application on  
11 the grounds that you haven't proven that your counsel  
12 was deficient. And I base that entirely on the  
13 transcript and what you said at the time. Okay. But  
14 I honestly believe, as I sit here, that your better  
15 served right now to live with what you got as opposed  
16 to going back and rolling the dice again. Because  
17 that's a huge risk to take. Huge risk to take.  
18 You're a fairly young man, you would be in jail for a  
19 long time for the charges that were originally levied  
20 against you. But in this case you're going to get  
21 out, you're going to be fine. I feel comfortable  
22 that you will. Okay. Good luck to you, sir.

23 (WHEREUPON, the proceedings were concluded.)  
24  
25

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

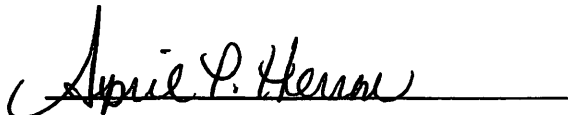
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF GREENVILLE        )

I, APRIL P. HERRON, Official Court Reporter for  
the Thirteenth Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the trial of  
the captioned case, relative to appeal, in the Court of  
Common Pleas for Greenville County, South Carolina, on the  
11th day of December, 2017.

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

July 23, 2018



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 Christopher Javier Cobb, #370711, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-3816

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED  
 2018 MAR 22 PM 1:11  
 GREENVILLE

2018 MAR 22 PM 1:11

*JW*

This matter comes before the Court by way of an application for post-conviction relief filed on June 13, 2017 by Christopher Javier Cobb (Applicant). Respondent made its Return on or about October 11, 2017. An evidentiary hearing into the matter was convened on December 11, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail Jr, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General’s Office.

At the hearing, Applicant testified on his own behalf. Applicant’s Plea Counsel C. Carlyle Steele, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant’s convictions, the transcript from Applicant’s guilty plea, the PCR application, Respondent’s Return and Applicant’s records from the Department of Correction. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In September of 2014, the

*RM7*

Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2014-GS-23-8215). Carlyle Steele, Esquire, represented Applicant. Assistant Solicitor Katryna Salisbury, Esquire, prosecuted the case. On April 4, 2016, Applicant pled guilty to assault and battery of a high and aggravated nature (ABHAN) before the Honorable Edward W. Miller. Sentencing was deferred. On December 6, 2016, Applicant was sentenced by the Honorable Petty H. Gravely to ten years imprisonment which was suspended upon the service of four years and three years' probation. Applicant did not appeal his conviction or sentence.

### **FACTUAL HISTORY**

On December 18, 2012 just before nine in the evening, officers with Greenville County Sheriff's Office responded to a report of shots fired at Highland Square Apartments, which is on Pine Creek Court Extension in Greenville County. In the course of the investigation the police discovered more than twenty shell casings at the scene that were determined to have been from at least four different firearms. The investigation revealed Applicant and his co-defendants, approached other defendants, and a conflict escalated. Many of those involved in the conflict were armed with firearms and at some point shots were fired by several participants. The victim was seated in a car near the site of the conflict and was struck in the left temple and killed almost instantly as a result of that gunshot. One of Applicant's co-defendant was initially charged with the victim's murder and after speaking with other witnesses law enforcement elected to charge other participants in the crime including Applicant based on the fact that those defendants initiated and escalated the conflict. Plea Tr. 7-8.

### ALLEGATIONS

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

1. Prosecutor misconduct
2. Ineffective Assistance of Plea Counsel
  - a. Applicant was not indicted for ABHAN, nor does documentation show where he waived an indictment.
  - b. No subject matter jurisdiction.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive

relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he met with Plea Counsel numerous times and reviewed his discovery with Plea Counsel. Applicant also testified Plea Counsel went over with him the elements of the crimes he was charged with and the potential sentences. He testified initially he wanted to go to trial but ended up pleading because his attorney told him he could go home if he pled guilty. Applicant testified Plea Counsel never told him he would not get any jail time but Plea Counsel

knew he was innocent and convinced him to plead guilty.

Plea Counsel testified he had been practicing law for forty three years and a large part of that time had been devoted to criminal law. Plea Counsel testified he met with Applicant numerous times and explained the charges Applicant was facing as well as the sentences for those charges. Plea Counsel testified they had a good defense if the case went to trial but also explained to Applicant the risk of going to trial. Plea Counsel testified he rode around the crime scene several times and subpoenaed several witnesses to testify at trial if Applicant had chosen to proceed with a trial. Plea Counsel testified he never promised Applicant he would not get any jail time.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel or any other constitutional deprivations entitling him to post-conviction relief. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court's specific finding regarding Applicant's allegation of ineffective assistance of counsel:

This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. This Court further finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. This Court further finds the plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's

constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses told the plea judge that he was satisfied with his attorney. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

### Subject Matter Jurisdiction

Applicant also alleges ineffective assistance of counsel in his application in that the plea court did not have subject matter jurisdiction to hear his plea as he was not indicted for ABHAN nor did he waived presentment to the grand jury. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Greenville County Grand Jury for murder and possession of a weapon during the commission of a violent crime. The indictments allege that criminal offenses occurred in Greenville County. Applicant was prosecuted for these charges in Greenville County Court of General Sessions. While Applicant is correct that he was charged with murder and ABHAN is not a lesser included offense of murder nor did he waive presentment for this charge, Applicant received the plea deal he bargained for. This Court finds Plea Counsel was not deficient for challenging Applicant’s guilty plea to ABHAN and that Applicant can show no prejudice as he sufficiently lowered the exposure he was facing for murder (30 years to life) by pleading guilty and receiving **only four years**. Accordingly, Applicant has failed to present any facts or evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to preside. Therefore, this allegation is dismissed with prejudice.

### Prosecutorial Misconduct

Applicant alleged in his application prosecutorial misconduct. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of prosecutorial misconduct. Accordingly, this Court denies and dismisses this allegation.

Furthermore, to the extent Applicant is claiming prosecutorial misconduct has been discovered post-trial, and could not have been discovered, in the exercise of due diligence, prior to trial, in evaluating post-trial Brady<sup>1</sup> claims, the applicant must show (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10<sup>th</sup> Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385. Applicant has failed to show the State withheld any

---

<sup>1</sup> Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

9/29/97

evidence that would have produced a different outcome at his trial. Accordingly, this Court denies and dismisses this allegation.

**CONCLUSION**

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 21st day of March, 2018.



ROBIN B. STILWELL  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
MURDER and POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on SEP 16 2014 the Grand Jurors of Greenville  
County present upon their oath:

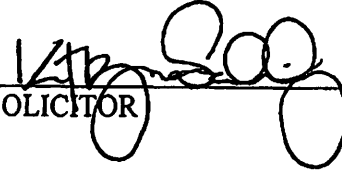
COUNT I:

That CHRISTOPHER JAVIER COBB did in Greenville County, on or about the 18th day of December, 2012,  
unlawfully and with malice aforethought kill CHIQUITA JOHNSON by means of gunshot wounds, and that  
CHIQUITA JOHNSON died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina  
Code of Laws (1976) as amended.

COUNT II:

That CHRISTOPHER JAVIER COBB did in Greenville County, on or about the 18th day of December, 2012,  
possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit:  
MURDER. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR BAR # 73989

a2B

**WITNESSES**

A L Bailey

Greenville County Sheriffs Office

2/7/2013

**ARREST WARRANT NUMBER  
DIRECT PRESENTMENT**

B/M DOB: [REDACTED] 1986 SS: [REDACTED]

**ACTION OF GRAND JURY  
TRUE BILL**

*Ridg T. Hall*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

Date:

000215 A

DOCKET NO. 2014-GS-23-  
KBS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2014

THE STATE

vs.

CHRISTOPHER JAVIER COBB

*Steele*

Indictment for

3410 AND 0549

**MURDER and POSSESSION OF A WEAPON  
DURING THE COMMISSION OF A VIOLENT  
CRIME**

VIOLATION §16-03-0029 AND §16-23-490

*CC*  
**ENTERED  
AUG 11 2014**