

**VOLUME II OF II**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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MICHAEL P. CORNELIUS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001792

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APPENDIX

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ATTORNEYS FOR RESPONDENT

**RECEIVED**

MAR 11 2019

S.C. SUPREME COURT

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Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. Respondent therefore requests this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

## VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, James F. Rogers, Esquire regarding when the hearing should be set.<sup>4</sup>

Respectfully submitted,

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JOHN W. McINTOSH  
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January 25, 2013

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<sup>4</sup> The current PCR Roster for the 5<sup>th</sup> Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

CORNELIUS Michael P - )  
# 00210317, )

2012CP4007573

Applicant, )

v. )

**CERTIFICATE OF SERVICE**


State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

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

**James F. Rogers, Post Office Box 11070 , Columbia, SC 29211**

DATED January 25, 2013.

  
\_\_\_\_\_  
Jean R. Indriago  
Legal Assistant

RICHLAND COUNTY  
FILED  
2013 JAN 29 PM 12: 02  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF RICHLAND ) FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL P. CORNELIUS, #210317 ) Civil Action No. 2012-CP-40-7573

Plaintiff, )

vs. )

STATE OF SOUTH CAROLINA, )

Respondent. )

**PRE-TRIAL MEMORANDUM**

2016 JUL -7 AM 11:12  
 RECEIVED BY M. POBRIDE  
 CLERK, S.C. & G.S.  
 RICHLAND COUNTY  
 FILED

Michael Cornelius submits to the Court this Post-Conviction Relief (hereinafter, "PCR") hearing memorandum to support his application for a new trial. As grounds for this PCR application, Cornelius states that his counsel rendered ineffective assistance that deprived him of his constitutional right to a fair trial.

**INTRODUCTION**

Michael P. Cornelius (hereinafter, "Cornelius"), an African-American male, was arrested on the charge of armed robbery. His court-appointed counsel, Tivis Sutherland, Esquire, represented Cornelius for both the trial and sentencing portions of the proceedings. During voir dire, Mr. Sutherland failed to raise a *Batson* challenge despite the prosecutor's use of three of his four peremptory strikes on potential African-American jurors. The jury found Cornelius guilty.

Sutherland's failure to raise a *Batson* challenge in the face of the prosecutor's use of three of her four peremptory strikes on potential African-American jurors constitutes ineffective assistance of counsel, necessitating a new trial in this matter.

**BACKGROUND**

On February 19, 2009, Cornelius was arrested and charged with armed robbery. After initially being represented by J. Rhodes Bailey, Esquire, at the bond hearing stage, on April 15th,

Tivis Sutherland, Esquire, was appointed by the court to represent Cornelius at trial. Cornelius entered a plea of not guilty. On June 7th, 8th and 9th, a jury trial was held during the June 2010 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper, Jr.

During voir dire, Mr. Sutherland failed to raise a *Batson* challenge despite the prosecutor's use of three of her four peremptory strikes on potential African-American jurors: a retired former employee of BellSouth; an auto technician; and a school bus driver. The government only used one peremptory strike, its third strike, on a white juror, a graduate student. Ultimately, eight white jurors sat on the jury in Cornelius's case, measured against only four African-American jurors.

The jury returned a verdict of guilty. After trial, Cornelius was sentenced to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45(A)(1)(A). Cornelius timely appealed his convictions and sentence. On March 7, 2012, Cornelius's appeal was dismissed by the South Carolina Court of Appeals. On November 9, 2012, Cornelius filed an application for Post-Conviction Relief (hereinafter, "PCR").

### **LEGAL STANDARD**

The Sixth Amendment to the United States Constitution guarantees the accused the right to competent counsel. U.S. Const. amend. VI. A claim of ineffective assistance of counsel arises where counsel is so ineffective that it deprives the accused of this constitutional right. *Strickland v. Washington*, 466 U.S. 668, 669 (1984). Claims of ineffective assistance of counsel are analyzed under the test outlined in *Strickland. Id.* The *Strickland* test asks the following two questions: (1) whether counsel's representation "fell below an objective standard of reasonableness"; and (2) whether the petitioner was prejudiced by his attorney's substandard performance. *Id.*

In determining whether counsel's conduct was deficient, the petitioner must show that the acts or omissions of counsel were outside of the "wide range of professionally competent

assistance.” *Strickland*, 466 U.S. at 669. Importantly, the prejudice prong of the *Strickland* test is *not* outcome determinative. *Id.* at 702-03. Rather, the applicant must only show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 703. Thus, the standard used for the *Strickland* test is one of “reasonable probability,” which is *less* than a preponderance. *Id.* at 694. Reasonable probability is defined as a probability that is sufficient to undermine confidence in the outcome of the trial. *Id.* at 669.

## ARGUMENT

### **I. Failure to Raise a *Batson* Challenge**

The South Carolina Supreme Court has held that trial counsel will be considered ineffective when it fails to raise a meritorious claim at trial. *See Sikes v. State*, 323 S.C. 28, 448 S.E.2d 560 (1994) (concluding that trial counsel’s decision to forgo a valid Fourth Amendment claim “fell below an objective standard of reasonableness.”). When counsel fails to raise a meritorious claim, both the performance and prejudice prongs of *Strickland* are satisfied. *See Sanchez v. State*, 351 S.C. 270, 569 S.E.2d 363 (2002); *accord Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001). (concluding that trial counsel’s failure to object to inadmissible hearsay provided by the victim’s parents which corroborated the victim’s accusations satisfied the two-pronged *Strickland* test).

In *Batson v. Kentucky*, 476 U.S. 79, 89 (1986), the Supreme Court of the United States held the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States forbids a prosecutor from challenging potential jurors solely on account of their race or on the assumption that African American jurors as a group will be unable to impartially consider the State’s case against an African American defendant. *State v. Stewart*, 413 S.C. 308, 313, 775 S.E.2d 416, 419 (Ct. App. 2015), reh’g denied (Aug. 20, 2015), cert. denied (May 19, 2016).

In order to bring a successful *Batson* challenge, the defendant must establish a *prima facie* case by showing proof of the following three elements: (1) the defendant is a member of a cognizable group; (2) the prosecution has removed members of such a group; and (3) circumstances raise an “inference” that the challenges were motivated by race.” *Id.* at 96. Importantly, a pattern of exclusionary strikes is unnecessary for finding an “inference” of discrimination. *See Snyder v. Louisiana*, 552 U.S. 472, 478 (2008); *see also U.S. v. Vasquez-Lopez*, 22 F.3d 900, 902 (9th Cir. 1994) (holding that “the constitution forbids striking even a single prospective juror for a discriminatory purpose”). *Batson* challenges have become commonplace in today’s criminal courts, and the failure to make a *Batson* challenge is no longer assumed to be a reasonable trial strategy. Ashley C. Harrington, *Batson versus Strickland: Evaluating Ineffective Assistance of Counsel Claims Resulting from the Failure to Object to Race-Based Peremptory Challenges*, 89 N.Y.U. L. Rev. 1006, 1025 (2014).

The composition of the jury panel along with other statistical evidence are factors that may be considered when determining whether a party engaged in purposeful discrimination. *See State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990). Moreover, courts have relied not only on the high proportion of African-Americans stricken from the jury list, but also have relied on the disproportionate rate of strikes used against African-Americans. *See Fernandez v. Roe*, 286 F.3d 1073, 1078-79 (9th Cir. 2002); *see also Turner v. Marshall*, 63 F.3d 807, 813 (9th Cir. 1995), overruled on other grounds by *Tolbert v. Page*, 182 F.3d 677 (9th Cir. 1999).

For example, in *Turner*, the Ninth Circuit held that the disproportionate rate of strikes used against potential African-American jurors provided support for an inference of discrimination during jury selection. *Turner*, 63 F.3d 807, 813. The court relied on the following two pieces of statistical evidence to support its holding: (1) the percentage of available African-Americans

challenged; and (2) the percentage of peremptory challenges used against African-Americans. Approximately 30 % (11 out of 37) of the venire persons who participated in voir dire were African-American, yet the prosecutor “used a significantly higher percentage of its peremptory challenges – 56 percent – against African-Americans.” *Id.* This evidence persuaded the court to find the inference of discrimination during jury selection needed to establish a *prima facie* case under *Batson*. *Id.* at 814. Similarly, the court in *Fernandez* relied on the disproportionate rate of strikes against potential Hispanic jurors to support an inference of discrimination sufficient to find a *prima facie* *Batson* violation. *Fernandez*, 286 F.3d 1073, 1078. The prosecutor in *Hernandez* struck four out of seven (57%) potential Hispanic jurors. *Id.* Although Hispanics constituted only 12% of the venire, over 21% (four out of nineteen) of the juror challenges were used against Hispanics, and the court found that “[t]hose challenges, standing alone, are enough to raise an inference of racial discrimination.” *Id.*

Multiple other courts have also used numerical evidence to support their finding of a *Batson* violation. For example, in *Drain v. Woods*, 902 F. Supp. 2d 1006 (E.D. Mich. 2012), the trial court *sua sponte* challenged the prosecutor who used seven of his nine peremptory challenges on African-Americans. *Drain*, 902 F. Supp. 2d at 1018. The defendant was an African-American male accused of murder. *Id.* at 1014, 1018. The court further concluded that the “DA’s failure to strike all blacks *does not insulate her from unlawful exclusion of others.*” *Id.* at 1021 (citing *United States v. Harris*, 192 F.3d 580, 587 (6th Cir. 1999)). Notably, the court also found that the defense counsel’s silence in the face of such racially-motivated strikes of potential black jurors constituted deficient assistance sufficient to grant the petitioner’s claim of ineffective assistance of counsel. *Id.* at 1025.

The Seventh Circuit has used numerical evidence to reverse a trial court's denial of a *Batson* challenge. See *Harris v. Hardy*, 680 F.3d 942 (7th Cir. 2012). In *Harris*, the prosecutor used seventeen of his twenty peremptory strikes on potential black jurors, and only two blacks served on the jury. *Harris*, 680 F.3d at 946. In reversing the trial court, the circuit court reasoned that 75% of the peremptory strikes were used to exclude 71% of the potential black jurors. *Id.* at 952. This evidence was persuasive enough for the circuit court to grant the petitioner a new trial. *Id.* at 965. This test asks whether there was an effect on the outcome of the jury selection process. *Id.* at 1036-37.

In applying *Batson* to *Strickland* Claims, courts often employ a composition-based approach focused on whether the unmade *Batson* challenge would have been successful.<sup>1</sup> See *Drain*, 902 F. Supp. 2d 1006 (affirming the IAC claim where trial counsel failed to raise a *Batson* challenge in the face of a pattern of strikes against black jurors and prejudice resulted from the trial continuing with a jury drawn from discriminatory means).

## II. Merits of the Unmade *Batson* Challenge

Here, the unmade *Batson* challenge should have been successful in seating a different jury than the jury that returned a verdict of guilty against Cornelius. The unraised *Batson* challenge by trial counsel for Cornelius should have been successful because it satisfied each of the three elements necessary for a successful challenge: (1) Cornelius is an African-American and thus a

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<sup>1</sup> Courts have been split as to how to interpret the “prejudice” prong of the *Strickland* test as it arises in the context of an unmade *Batson* challenge. Harrington, *Batson versus Strickland*, *supra* at 1026-27. Courts have used one of the two following approaches to determine whether an unchallenged peremptory strike implicating *Batson* satisfies the *Strickland* test’s prejudice prong: (1) an outcome-based test; and (2) a composition-based test. Harrington, *supra* at 1026. The composition-based test best protects the petitioner from facing a jury empaneled through discriminatory means. *Id.* at 1037; see also *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (stating that “[i]n essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors”) (emphasis added).

member of a cognizable group; (2) the government used three of its four peremptory strikes to remove potential African-American jurors from the panel; and (3) the circumstances surrounding this case create a strong inference that the peremptory challenges were motivated by race because 75% of the government's peremptory strikes were used on potential African-American jurors.

Here, the prosecution struck three African-American jurors, and one white juror. (Ex. 1 Richland County Judicial Center, Random Strike Sheet.) It appears likely that the first two potential African-American jurors were struck. (*Id.*)<sup>2</sup> The prosecution first struck a black male retired, BellSouth employee, then struck a black male auto technician, followed by a white male graduate student, and concluding with a black female school bus driver. (Trial Transcript at 33-37.) Notably, although a retired African-American was struck by the state, the state did not strike a retired white female. (*Id.* at 33, 38.) The jury ultimately comprised 33% African-American jurors.<sup>3</sup>

The prosecution's use of its strikes thus established the "prima facie showing that the challenge was based on race," dictating that, had the challenge been raised, the trial court should have followed the procedures established for a *Batson* hearing. *State v. Stewart*, 413 S.C. 308, 314, 775 S.E.2d 416, 419 (Ct. App. 2015). Had Mr. Sutherland successfully raised the *Batson* issue, he would have forced the state "to provide a race neutral explanation for the challenge." *Id.* Next, if a race neutral explanation had been provided, the court would have had to determine

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<sup>2</sup> The Trial Transcript indicates that the first juror was a black male, but the Strike Sheet indicates the juror was a white male.

<sup>3</sup> Although four black jurors were ultimately seated, roughly equating the percentage of the jury pool, there is no rule that the "failure to exclude one member of a protected class is sufficient to insulate the unlawful exclusion of others." *United States v. Harris*, 192 F.3d 580, 588 (6th Cir. 1999).

whether the opponent of the challenge has proved purposeful discrimination. *Id.* Those constitutional protections were not used in this case.

Here, while African-Americans constituted 36% of the pool, 75% of the prosecution's peremptory challenges were used on African-Americans. These numbers are more egregious than the statistics in *Turner v. Marshall*, 63 F.3d 807, 813 (9th Cir. 1995) (finding an inference of discrimination where 56% of the prosecutions peremptory challenges were used on African-Americans who comprised 30% of the venire) and *Fernandez v. Roe*, 286 F.3d 1073, 1078-79 (9th Cir. 2002) (finding a *Batson* violation when 29% of juror challenges were used against a Hispanic population that accounted for only 12% of the venire). Accordingly, the statistics present in the instant case are more compelling than in *Batson* challenges that have been successful in other jurisdictions.

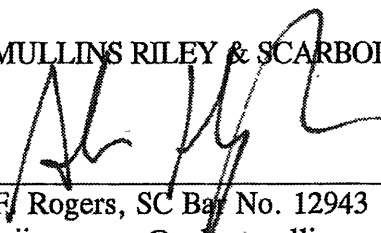
Moreover, the unmade *Batson* challenge here is also similar in its merits to the successful *Batson* challenges made in *Drain*. In *Drain v. Woods*, 902 F. Supp. 2d 1006 (E.D. Mich. 2012), the prosecutor used 7 of his 9 peremptory strikes on African-Americans compared to the prosecutors use of 3 of her 4 peremptory strikes on African-Americans here. The court held that trial counsel was ineffective for failing to raise a *Batson* challenge based on the similar strike rate (75%) to the rate employed here. Accordingly, the unmade *Batson* challenge should have been meritorious and would have resulted in the seating of a different jury. Accordingly, South Carolina case law supports a finding of ineffective assistance of counsel because trial counsel failed to raise a meritorious and timely *Batson* challenge in the face of racially-motivated peremptory strikes.

CONCLUSION

During the underlying trial in this matter, Cornelius was denied the right to effective assistance of counsel in violation of the Sixth Amendment of the U.S. Constitution because Cornelius's trial counsel failed to raise a timely *Batson* challenge in the face of the prosecutor's racially-motivated use of peremptory strikes. Accordingly, because both prongs of the *Strickland* test have been satisfied, Cornelius should prevail on his PCR claim of ineffective assistance of counsel and this Court should grant this PCR application and remand this case for a new trial.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: \_\_\_\_\_

  
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*Attorneys for Plaintiff Michael P. Cornelius*

Columbia, SC

July 7, 2016

**Richland County Judicial Center  
RANDOM STRIKE SHEET**

513

JUDGE NAME : Cooper, G Thomas Jr  
 TRIAL TYPE : Criminal  
 PANEL ID : COOPER 6/7/2010  
 COURTROOM 3A

DESCRIPTION : COOPER 6/7/2010

Sorted by: Random Nbr  
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	GRT	REMARKS
1 Jones, Billy L	152	W	M	( )	( )	( )	Seated
2 Povey, Sarah I	218	W	F	( )	( )	( )	Seated
3 Hillian, Leon D	124	B	M	(✓)	( )	( )	
4 Bush, Kevin T	43	W	M	( )	(✓)	( )	
5 Murrell, Eugenia L	201	W	F	( )	(✓)	( )	
6 Stuckey, Rae A	267	W	F	( )	( )	( )	Seated
7 Hartley, Bryan F	121	B	M	(✓)	( )	( )	
8 Kastner, Martha J	155	W	F	( )	(✓)	( )	
9 Edmondson, Michelle N	81	B	F	( )	( )	( )	Seated
10 White, Trinai D	289	B	F	( )	( )	( )	Seated
11 Hinson, Robert S	125	W	M	(✓)	( )	( )	
12 Becht, Debra J	21	W	F	( )	( )	( )	Seated
13 Truluck, Katherine T	277	W	F	( )	(✓)	( )	
14 Elder, Nathan S	84	W	M	( )	( )	( )	Seated
15 Fields, Michael R	89	W	M	( )	( )	( )	Seated
16 Manning, Donna D	179	W	F	( )	(✓)	( )	
17 Rhodes, Sam L JR	229	B	M	( )	( )	(✓)	excused
18 Streetman, Joshua D	266	W	M	( )	( )	( )	Seated
19 Riddle, William C	231	W	M	( )	( )	( )	Seated
20 Coppin, Richard R	63	B	M	( )	( )	( )	Seated
21 Daniels, Betty A	67	B	F	(✓)	( )	( )	
22 Nolting, Darren J	206	W	M	( )	(✓)	( )	
23 Randall, Jennifer P	224	W	F	( )	(✓)	( )	
24 Kuder, Wesley R	162	W	M	( )	( )	( )	Seated



**Richland County Judicial Center  
RANDOM STRIKE SHEET**

JUDGE NAME : Cooper, G Thomas Jr  
 TRIAL TYPE : Criminal  
 PANEL ID : COOPER 6/7/2010  
 COURTROOM 3A

DESCRIPTION : COOPER 6/7/2010

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLETF	DEF	CRI	REMARKS
25 Voorhees, Jacqueline M	282	B	F	( )	( )	( )	Seated
26 Tate, Donna C	270	W	F	( )	( )	( )	Seated
27 Leitch, Andrew A	169	W	M	( )	( )	( )	
28 Christian, Eric S SR	54	B	M	( )	( )	( )	
29 Johnson, Alberta D	148	B	F	( )	( )	( )	
30 Moore, Evelyn H	196	B	F	( )	( )	( )	
31 Grewe, Jessica M	109	W	F	( )	( )	( )	
32 Rumph, Carla G	239	B	F	( )	( )	( )	
33 Wright, Phyllis D	297	B	F	( )	( )	( )	
34 Gascon, Deborah J	95	W	F	( )	( )	( )	
35 Johnston, Shanna L	151	W	F	( )	( )	( )	
36 Smentek, Laura B	253	W	F	( )	( )	( )	
37 Griffin, Pamela H	110	W	F	( )	( )	( )	
38 Arnold, Gregg W	11	W	M	( )	( )	( )	
39 Tidd, James F	275	W	M	( )	( )	( )	
40 Horton, Karen N	133	W	F	( )	( )	( )	
41 Windsor, David E	293	W	M	( )	( )	( )	
42 Camp, Virginia	48	B	F	( )	( )	( )	
43 Goodwin, Hope L	103	B	F	( )	( )	( )	
44 Peterson, Aquinas M	213	B	M	( )	( )	( )	
45 Scoggins, Earl C SR	241	W	M	( )	( )	( )	
46 Phillips, Ellcentrell C	214	B	F	( )	( )	( )	
47 Shaw, Brittany M	245	W	F	( )	( )	( )	
48 Morrison, Tara B	199	W	F	( )	( )	( )	

**Richland County Judicial Center  
RANDOM STRIKE SHEET**

515

JUDGE NAME : Cooper, G Thomas Jr  
 TRIAL TYPE : Criminal  
 PANEL ID : COOPER 6/7/2010  
 COURTROOM 3A

DESCRIPTION : COOPER 6/7/2010

Sorted by: Random Nbr  
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLT	DEF	CRT	REMARKS
49 Gates, Kristen N	96	B	F	( )	( )	( )	
50 Kulac, Mustafa K	163	W	M	( )	( )	( )	

Total Number of Jurors: 50

\*\* END OF REPORT \*\*

#224 OK                      #239 OK  
 #103 OK                      #297 OK  
 #275 OK                      #214 OK  
 #48 OK                        #155 OK  
 #245 OK                      #289 OK  
 #63 OK                        #229 OK  
 #67 OK                        #275 OK  
 #163 OK                      #179 OK  
 #103 OK                      #124 OK  
 #196 OK  
 #124 OK  
 #199 OK  
 #224 OK  
 #89 OK  
 #148 OK  
 #43 OK  
 #213 OK

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

MICHAEL P. CORNELIUS, #210317 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No.: 2012-CP-40-7573


**CERTIFICATE OF SERVICE**

RICHLAND COUNTY  
FILED  
2016 JUL 7 AM 11:12  
JEANETTE W. MCBRIDE  
C.P. & G.S.

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Plaintiff Michael P. Cornelius, do hereby certify that I have served all counsel and/or parties in this action with a copy of the pleading(s) hereinbelow specified via U.S. Mail, postage prepaid, to the following addresses:

**PLEADINGS: PRE-TRIAL MEMORANDUM**

**SERVED:** Jessica Kinard  
Assistant Attorney General  
South Carolina Attorney General's Office  
Rembert C. Dennis Building  
Post Office Box 11549  
Columbia, SC 29201

  
\_\_\_\_\_  
Patty Alexander, Administrative Assistant  
Nelson Mullins Riley & Scarborough, LLP  
PO Box 11070  
Columbia, SC 29211

July 7, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
MICHAEL P. CORNELIUS, #210317	)	Civil Action No. 2012-CP-40-7573
	)	
Plaintiff,	)	
	)	
vs.	)	<b>FIRST AMENDED APPLICATION</b>
	)	<b>FOR POST-CONVICTION RELIEF</b>
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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Michael Cornelius hereby submits this First Amended Post-Conviction Relief (hereinafter, "PCR") Application. Michael Cornelius ("Applicant") hereby incorporates by reference the allegations contained in the initial Application for Post-Conviction Relief, and re-states as follows:

1. Applicant is incarcerated at Broad River Correctional Institute.
2. Applicant was sentenced on June 9, 2010 to Life without Parole in the Richland County, South Carolina, Circuit Court.
3. The indictment number was 2009-GS-40-1596.
4. A plea of "not guilty" was entered at time of trial.
5. An appeal was entered in Richland County Court from the judgment of conviction.
6. The appeal was dismissed on March 7, 2012.
7. Applicant bases his allegations that he is being held in custody unlawfully on the following:
  - a. Ineffective assistance of counsel.
    - i. Counsel's failure to properly investigate the Applicants case and discussing same with Applicant which caused the Applicant to not fully

understand the charges against him during the sentencing phase. Counsel only spent 3 to 4 weeks with Applicants case and was then taken to trial by jury. When Applicant clearly wanted to take a plea.

ii. Counsel advised Applicant to take a trial with knowledge of Applicants written statement by the state's detective of his guilt to the crime.

8. This is applicant's first PCR for his attorney's failure to investigate his prior record during the sentencing phase. These issues were not previously presented to the Court.

9. Applicant was not represented by an attorney during the arraignment.

10. Applicant was represented at trial and at sentencing by an attorney.

11. Applicant was represented during the appeal process.

12. Applicant was not represented during preparation of the initial PCR petition with respect to his conviction.

13. The names of each attorney of representation was:

a. Tivis Sutherland, Esquire, of Columbia, SC.

b. Wanda H. Carter, Appellate Defender.

14. Applicant was represented as follows during the following proceedings:

a. Tivis Sutherland – during trial and sentencing phase.

b. Wanda Carter – on direct appeal.

15. Applicant seeks relief in filing this application to vacate the prior conviction.

16. Applicant is not now under sentence from any other court.

**ADDITIONAL GROUNDS FOR RELIEF**

17. In addition to the grounds stated above, applicant states the following grounds for relief.

18. On June 7th, 8th and 9th, a jury trial was held during the June 2010 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper, Jr.

19. Applicant's trial counsel was Tivis Sutherland, Esq.

20. During voir dire, Mr. Sutherland failed to raise a *Batson* challenge despite the prosecutor's use of three of her four peremptory strikes on potential African-American jurors.

21. In *Batson v. Kentucky*, 476 U.S. 79, 89 (1986), the Supreme Court of the United States held the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States forbids a prosecutor from challenging potential jurors solely on account of their race or on the assumption that African American jurors as a group will be unable to impartially consider the State's case against an African American defendant.

22. The African-American jurors consisted of a retired former employee of BellSouth, an auto technician, and a school bus driver.

23. Upon information and belief, the State struck the first two potential African-American jurors.

24. The government only used one peremptory strike on a white juror, a graduate student.

25. The state struck a retired African-American, but the state did not strike a retired white female.

26. Cornelius is an African-American and thus a member of a cognizable group.

27. The jury pool constituted 36% potential African-American jurors.
28. The prosecution used 75% of its peremptory challenges on African-Americans.
29. Trial counsel failed to raise a *Batson* challenge.
30. The trial court did not raise a *Batson* challenge *sua sponte*.
31. Eight white jurors sat on the jury in Cornelius's case, but only four African-American jurors sat on the jury.
32. The jury returned a verdict of guilty.

#### PRAYER FOR RELIEF

33. Applicant should prevail on this application for Post-Conviction relief because Applicant was denied the right to effective assistance of counsel in violation of the Sixth Amendment of the U.S. Constitution because trial counsel failed to raise a timely *Batson* challenge in the face of the prosecutor's racially-motivated use of peremptory strikes, and therefore this Court should grant this PCR application and remand this case to the Circuit for a new trial.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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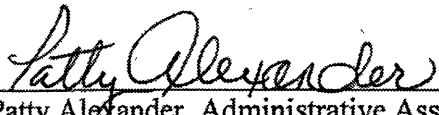
July 15, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
MICHAEL P. CORNELIUS, #210317	)	Civil Action No. 2012-CP-40-7573
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Plaintiff Michael P. Cornelius, do hereby certify that I have served all counsel and/or parties in this action with a copy of the pleading(s) hereinbelow specified via U.S. Mail, postage prepaid, to the following addresses:

**PLEADINGS:                      FIRST AMENDED PCR APPLICATION**

**SERVED:**                      Jessica Kinard  
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South Carolina Attorney General's Office  
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\_\_\_\_\_  
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PO Box 11070  
Columbia, SC 29211

July 15, 2016

State of South Carolina	)	In the Court of General Sessions
	)	Fifth Judicial Circuit
County of Richland	)	2012-CP-40-07573

Michael P. Cornelius,	)
	)
Plaintiff,	)
	)
vs.	)
	)
State of South Carolina,	)
	)
Defendant,	)
	)
	)
	)

---

August 29, 2016  
Columbia, South Carolina

B e f o r e :

The Honorable Jocelyn Newman, Judge

A p p e a r a n c e s :

Adam Hegler, Esquire  
Attorney for the Applicant

Jessica Kinard, Esquire  
Attorney for the Defendant

Bonnie H. Kelly, CVR  
Circuit Court Reporter

I N D E X

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1 THE COURT: All right. Good morning, y'all.

2 MS. KINARD: Good morning, Your Honor.

3 THE COURT: I am ready to roll whenever y'all are.

4 MS. KINARD: All right. This morning we only have one  
5 matter before you.

6 It's the matter of Michael P. Cornelius and if you're  
7 ready, I'll call the case.

8 THE COURT: Yes, ma'am.

9 MS. KINARD: It's the matter of *Michael P. Cornelius*  
10 *vs. the State of South Carolina*. This is case No. 2012-CP-  
11 40-7573.

12 Mr. Cornelius is presently confined in the South  
13 Carolina Department of Corrections pursuant to orders of  
14 commitment by the Richland County Clerk of Court.

15 He was true-bill indicted on the April 2009 term for  
16 armed robbery. He was represented by Tivis Sutherland IV  
17 on these charges. He proceeded to trial before the  
18 Honorable G. Thomas Cooper Jr., and on June 9, 2010, was  
19 found guilty as indicted. He was sentenced to life  
20 imprisonment without the possibility of parole.

21 A direct appeal was filed and an *Anders* brief was  
22 submitted on Mr. Cornelius's behalf by Wanda Carter of the  
23 South Carolina Office of Appellate Defense.

24 The Court of Appeals, via an order dated March 7,  
25 2012, granted appellate counsel's motion to be relieved,

1 and the appeal was dismissed. Remittitur was returned  
2 March 26, 2012.

3 This application for post conviction relief was filed  
4 November 9, 2012, and the State filed it's return on  
5 January 25, 2013.

6 There have also been -- excuse me -- there is an  
7 amendment that's been filed and should be in the judge's  
8 packet.

9 The State is present and ready to proceed. Mr.  
10 Cornelius is present and represented by Adam Hegler.

11 THE COURT: Yes, sir.

12 MR. HEGLER: Thank you. My name's Adam Hegler. I  
13 represent Mr. Cornelius. This is additionally an appointed  
14 case. Mr. James Rogers from our office of Nelson Mullins  
15 was also appointed.

16 THE COURT REPORTER: I'm sorry. Mr. Who? James?

17 MR. HEGLER: James Rogers.

18 And just a brief background is that after trial, Mr.  
19 Cornelius entered into an agreement with the State to  
20 provide substantial assistance in exchange for a  
21 potentially reduced sentence. And Mr. Cornelius has  
22 provided that testimony and provided that information to  
23 the State, and the State has not yet moved forward with  
24 that motion.

25 And at one -- one point we were waiting to go forward

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 6

1 with this PCR until that was resolved, and in fact, had a  
2 hearing earlier this year on the substantial assistance  
3 motion, but the State did not want to go forward at that  
4 time.

5 So that's when the PCR came back on the docket, and  
6 we're ready to move forward today.

7 THE COURT: All right. Call your first witness.

8 MR. HEGLER: Call Michael P. Cornelius.

9 MICHAEL P. CORNELIUS, having  
10 been first duly sworn, testifies as follows:

11 THE COURT: All right, Mr. Cornelius, if you'll come  
12 over here to the stand, please.

13 (The witness complies.)

14 THE BAILIFF: State your full name for the record,  
15 please.

16 THE WITNESS: Michael Paul Cornelius.

17 THE COURT: All right, Mr. Hegler. Your witness.

18 DIRECT EXAMINATION

19 BY MR. HEGLER:

20 Q Mr. Cornelius, where are you currently held?

21 A Broad River Correctional Institution.

22 Q And how long is your sentence?

23 A Natural life.

24 Q And how old are you currently?

25 A Forty-one.

1 Q Do you have any jobs at the prison?

2 A Dorm helper.

3 THE COURT REPORTER: I'm sorry?

4 A Dorm helper.

5 Q And just briefly, can you explain how you're -- why  
6 you're in prison today?

7 A For a charge of armed robbery.

8 Q And what did -- what did you file to bring us -- bring  
9 us all here today?

10 A *Batson* law. PCR.

11 Q Yes. The PCR application. And what grounds did you  
12 file the PCR application on? We'll get into these, but  
13 just generally.

14 A Insignificant counsel.

15 Q And do the grounds have to do with representation  
16 you received of counsel? Did I hear you correctly?

17 A Yes.

18 Q Okay. And who was your attorney?

19 A Mr. Sutherland.

20 Q Yes. And we'll - we'll speak with him today as well.

21 So let's turn back briefly to the events that lead to  
22 the trial. Do you remember approximately when you were  
23 arrested?

24 A February 19, 2009.

25 Q Okay. And how were you arrested?

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 8

1 A Turned myself in.

2 Q And what were the charges that were brought against  
3 you?

4 A Armed robbery.

5 Q And what county was that?

6 A Richland.

7 Q And were you ultimately indicted on those charges?

8 A Yes.

9 Q And do you remember if the State served you -- served  
10 notice on you at that time concerning their intent to seek  
11 life without parole?

12 A No, it wasn't at that very moment. It was, like, 14  
13 months later.

14 Q Okay. Can you explain how that developed?

15 A I think it -- it naturally developed after I put in  
16 for a bond reduction and that's when notice was served on  
17 me.

18 Q And who was your attorney for purposes of that  
19 bond reduction?

20 A Mr. Sutherland.

21 Q Are you sure it was Mr. Sutherland?

22 A Oh yeah, it --

23 Q Prior -- it was a bond reduction.

24 A Yeah. Rhodes did that.

25 THE COURT REPORTER: I'm sorry. Who was it?

1 A Mr. Rhodes.

2 Q Bailey.

3 A Bailey, right.

4 Q And Mr. Bailey represented you at the bond hearing and  
5 -- and for ---

6 A I -- I never went through him for the bond  
7 application.

8 Q And what was the result of the bond application?

9 A I never went through 'cause they told me if I went  
10 through with it, I was going to get life sentence papers  
11 served on me. So I backed out of it; and a week later they  
12 called me and served the papers, the notice.

13 Q Were you happy with Mr. Rhodes's representation  
14 of you?

15 A Yeah. I mean, I would feel comfortable for him  
16 versus Mr. Sutherland being that my trial was coming up in  
17 a short notice.

18 Q And how long had Mr. Bailey been representing you?

19 A He was on my case 14 months.

20 Q Do you know if anybody else represented you between  
21 Mr. Bailey and Mr. Sutherland?

22 A No.

23 Q And then -- and then how did Mr. Sutherland come  
24 to represent you?

25 A He just showed up and said he was my attorney

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 10

1 basically.

2 Q Do you know any more details on that, whether it was  
3 a court order involved?

4 A No.

5 Q And what happened to Mr. Bailey? Did you have any  
6 further communications with him?

7 A Never saw him again.

8 Q So did you request that change in attorneys?

9 A No, I didn't.

10 Q And did you agree with it?

11 A No, I didn't.

12 Q And was Mr. Bailey familiar with your case at that  
13 time?

14 A Yeah. We had talked -- we had did [sic] a lot of  
15 talking, you know, over the period of 14 months I was in  
16 the county.

17 Q But nonetheless, Mr. Sutherland was appointed as your  
18 attorney.

19 A Yes, at the end.

20 Q And can you describe your interactions with Mr.  
21 Sutherland?

22 A I mean, we really didn't talk. I seen him maybe  
23 once or twice before going to trial.

24 Q Do you remember how many times he visited you?

25 A Again, once or twice.

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 11

1 Q Did you have any phone calls with him?

2 A No, sir.

3 Q Okay. Let's -- let's -- let's walk through those  
4 visits in a little bit more in detail. I think you said  
5 once or twice. Do you remember when the first visit took  
6 place?

7 A Yeah. He showed up to the County and told me he was  
8 representing -- that my lawyer was off my case and he was  
9 representing me.

10 Q Do you remember how long that was before trial was  
11 going to take place?

12 A Less than a month or right at a month.

13 Q And do you remember how long you met with Mr.  
14 Sutherland during that visit?

15 A It was very short, about 10 to 15 minutes.

16 Q Do you remember what you discussed at that visit?

17 A Basically, it was like personal -- more or less,  
18 personal information just versus the charges that I was in.

19 Q Did you discuss the specifics of the case, witnesses,  
20 that kind of thing, evidence, any kind of details such as  
21 that?

22 A We discussed a little bit of evidence, but I've never  
23 received the evidence that I wanted from him as far as  
24 discovery and stuff that I could help myself with.

25 Q Did you discuss anything about preparing for trial,

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 12

1 any kind of steps necessary to prepare for trial in that  
2 first meeting?

3 A No.

4 Q Did you -- did he ask you about what, maybe, potential  
5 witnesses you think should be called or interviewed?

6 A No.

7 Q Did he ask you about whether you thought any evidence  
8 had been improperly obtained by the police in the course of  
9 their investigation?

10 A You said did he ask me about it?

11 Q Yeah. Did he ask you whether there was any evidence  
12 you think shouldn't be introduced against you?

13 A Not before. Afterwards.

14 Q After the trial?

15 A Yes.

16 Q And did he ask you whether he thought the State --  
17 your statement had been -- had any issues with it, any way  
18 to keep that statement from being entered into evidence?

19 A Yes. He asked me was -- I think I was under the  
20 influence during the time when the statement was given.

21 Q Okay. Do you remember anything else which was  
22 discussed at that meeting?

23 A No. Just -- as far as he was just trying, I think, to  
24 get me to plead out, to get something to plead out, but I  
25 guess the State wasn't willing to give me a plea.

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 13

1 Q Understood. We're going to look at the plea. I'll --  
2 I'll ask you some more questions about that in just a  
3 minute.

4 So how did that first meeting conclude?

5 A As he was saying he represented me.

6 Q Did he leave you a phone number or anything to contact  
7 him?

8 A No, sir.

9 Q Did he leave any contact information -- do you know if  
10 he provided any contact information to your -- members of  
11 your family?

12 A No, sir.

13 Q Did you have any contact with Mr. Sutherland  
14 between that first visit and a subsequent visit?

15 A No, sir, besides where I came to court when we started  
16 trial. I seen him in the office downstairs.

17 Q Right. We'll get to that. But wasn't there -- do  
18 you remember a second visit with Mr. Sutherland as well?

19 A No, sir.

20 Q You don't remember any ---

21 A No.

22 Q --- subsequent second visit?

23 A No. I mean, just saying that we was -- he had met  
24 with my mother and that the trial was about to start and  
25 was going forward with the trial.

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 14

1 Q And did you think he spent enough time talking with  
2 you to understand the facts of the case?

3 A No, sir.

4 Q Did you ever have a chance to review any of the  
5 evidence?

6 A No, sir.

7 Q Okay. Let's talk a little bit more about the plea  
8 deal or attempts to get a plea deal. What did he tell you  
9 about his attempts to work with the State to negotiate a  
10 plea?

11 A He said he tried to -- to -- to talk to Mrs. Campbell  
12 as far as getting me a plea, but she wasn't -- she wasn't  
13 for it. She -- after she served the life-sentence papers,  
14 she didn't really want to hear it.

15 Q And just so the Court knows, who is Ms. Campbell?

16 A The Solicitor.

17 Q So Mr. Sutherland was not able to obtain a plea deal?

18 A No, sir.

19 Q Do you feel that he adequately pursued a plea deal  
20 with the State?

21 A I mean, just going by his word, I mean, that's for --  
22 that's all I had. I mean, as far as what he was telling me  
23 and what he was doing, as far as trying to get it, I -- I  
24 don't know.

25 Q Okay. Do you feel he adequately prepared for the

1 trial?

2 A I don't really think he had enough time to really. In  
3 the three -- three to four weeks, I don't believe that's  
4 enough time.

5 Q Did you get any chance to tell him any of the issues  
6 you thought were critical for your trial?

7 A No. He never gave me the chance to talk to him about  
8 that.

9 Q Any kind of trial themes or anything like that?

10 A No.

11 Q So generally, can you just describe your access to Mr.  
12 Sutherland for that lead-up to trial? Was there anything  
13 besides those two meetings?

14 A There really wasn't -- wasn't much more than those.

15 Q Did you attempt to -- did you try to reach out to him  
16 any -- in any way ---

17 A There was no way I could. I mean, I couldn't call  
18 him. There was no way I could call him or -- I believe I  
19 sent him a letter, but it -- I was in trial before any  
20 response.

21 Q And do you remember approximately how long that was  
22 one more time, just how long it was from the time he was  
23 appointed 'til the time you went to trial?

24 A Three to four weeks.

25 Q And you said you also met with him the day of the

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 16

1 trial; is that correct?

2 A Yeah.

3 Q And can you briefly go over what you discussed that  
4 day?

5 A Just that the trial -- he said he put forth the  
6 -- to get a plea deal. It's -- it was none, and the trial  
7 was going to begin on the date that I was there.

8 Q And do you remember what day the trial began?

9 A It was June 7, 2010.

10 Q What do you remember about the trial?

11 A It was very quick. I mean, they -- they found me  
12 guilty very fast, I mean, with the evidence, I guess.

13 Q Did you testify at trial?

14 A No.

15 Q Did you make that decision?

16 A Yes.

17 Q Do you know if Mr. Sutherland was continuing to pursue  
18 a plea agreement while trial was going on, before trial or  
19 during trial?

20 A Yes.

21 Q Did you know what the State's response was?

22 A No.

23 Q Did you participate or provide any information to Mr.  
24 Sutherland during the jury selection process? Let me back  
25 up. Do you remember the jury selection process on the

1 trial?

2 A Yes.

3 Q Did Mr. Sutherland seek any input from you for how to  
4 conduct the jury selection?

5 A No.

6 Q Did he communicate any kind of a plan for you on how  
7 he hoped to seat certain -- how he hoped to seat the jury?

8 A I think -- I believe he wanted a young jury. Said  
9 something about some younger jurors, but that's about all I  
10 can remember.

11 Q Do you know what a -- do you recall the State using  
12 any strikes where the State struck a witness?

13 A Yes.

14 Q Do you remember if they were used against African-  
15 Americans as opposed to white potential jurors?

16 A Yes.

17 Q Do you know if Mr. Sutherland -- do you recall if Mr.  
18 Sutherland made what's called a "Batson motion"?

19 A No, sir.

20 Q Did you know what a *Batson* motion is?

21 A Yes. It's like, discrimination picking a jury?

22 Q And did you know at the time what a *Batson* Motion  
23 was?

24 A I didn't know at the time.

25 Q But were you relying on Mr. Sutherland to make those

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 18

1 decisions?

2 A Yes.

3 Q And what did you think when you -- did you have any  
4 thoughts when you saw how the State used it's strikes  
5 against African-American jurors?

6 A Yes. I mean, I -- yes. I seen it was -- I seen what  
7 was happening, I mean, as far as how they was striking more  
8 African-Americans than -- once I got to studying and  
9 reading up on it.

10 Q But no motion was made?

11 A No motion, no.

12 Q All right. Well, let's talk just briefly about the  
13 trial. You think Mr. Sutherland did a thorough cross-  
14 examination of the witnesses?

15 A I think he could have did [sic] better.

16 Q Do you think that Mr. Sutherland did a thorough job of  
17 contesting the admission of your statement into evidence?

18 A We really didn't talk that much about -- about that.  
19 I mean, it was -- it was a lot that I'm learning now that -  
20 - versus that I didn't know when I first started or went  
21 through with it. So I would say no.

22 Q And do you remember the -- there was a sweatshirt. Do  
23 you remember whether that was entered into evidence?

24 A Yes.

25 Q And do you remember -- do you think Mr. Sutherland did

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 19

1 a good job of trying to keep that piece of evidence from  
2 being entered into evidence?

3 A No. Due to the fact ---

4 Q Why not?

5 A Due to the fact he didn't call my father to the stand.  
6 And at the time, I was renting the property from my father,  
7 and he gave consent to -- to search my place of residence.  
8 And that's where this jacket was found, and he never called  
9 my father to the stand to testify I was paying rent for his  
10 property.

11 Q And was that jacket entered into evidence?

12 A Yes, sir.

13 Q And do you think it was a significant piece of  
14 evidence?

15 A It was.

16 Q And why?

17 A Because I had numbers of witnesses verify me as to  
18 this jacket that was placed at the -- that was seen at the  
19 place of the crime.

20 Q Okay. And was there anything else that occurred  
21 during trial that made you question Mr. Sutherland's  
22 representation of you?

23 A It was -- just other than the -- the fact that -- to  
24 get me a plea. I just -- I didn't see why it was such a  
25 hard -- to get me a plea on the charges, I mean, being that

DIRECT EXAMINATION BY MR. HEGLER - MICHAEL P. CORNELIUS 20

1 it was one charge. It wasn't nobody hurt, nobody -- no --  
2 it was just one charge. I mean, I figured it could have  
3 been a charge where it could be plead out instead of  
4 getting natural life.

5 Q And what was the result of the trial?

6 A Guilty.

7 Q And did you file an appeal?

8 A Yes.

9 Q Were you successful in that appeal?

10 A They turned it down. Dismissed.

11 Q Okay. Did you also provide assistance to the State  
12 with your testimony related to other matters?

13 A Yes.

14 Q And was that in an attempt to get a renegotiated  
15 sentence?

16 A Lesser sentence, yes.

17 Q Yeah. And so what was the State going to do in  
18 response?

19 A They said they would look into it, but there's nothing  
20 been done as far as ...

21 Q So what is the current status of that?

22 A Nothing, as far as I know.

23 Q Have you -- have you done what you agreed to do?

24 A Yes, sir.

25 Q Do you have any further obligations to fulfill your

1 end of that deal?

2 A No, sir.

3 Q And so just briefly, to summarize, why did you file  
4 this PCR?

5 A For relief.

6 Q Okay. And I know I moved through that fairly quickly,  
7 but is there anything else that you'd like to tell the  
8 Court today to help -- to help it understand the grounds  
9 for your PCR?

10 A It's -- no. Just -- well, far as the *Batson*, I mean,  
11 you know, we gonna -- that's already been stated. You  
12 turned in the motions for that?

13 Q Yes. We'll -- we'll certainly -- I'm going to ask Mr.  
14 Sutherland about it.

15 A Oh, okay.

16 Q We're going to continue to explore that ground. But  
17 from your perspective --

18 A No, sir, that's --

19 Q -- as to -- I've asked you about it. We have your  
20 testimony there.

21 You have anything else you'd like to tell the Court  
22 today?

23 A No, sir.

24 THE COURT: All right. Any questions from the State?

25 MS. KINARD: Thank you, Your Honor.

CROSS-EXAMINATION BY MS. KINARD - MICHAEL P. CORNELIUS 22

CROSS-EXAMINATION

1  
2 BY MS. KINARD:

3 Q Good Morning, Mr. Cornelius.

4 A How you doing?

5 Q Just a couple of questions. Were you aware that Mr.  
6 Sutherland was also employed by the Public Defender's  
7 Office?

8 A Yes.

9 Q And wasn't Mr. Bailey employed by the Public  
10 Defender's Office?

11 A Yes, ma'am.

12 Q So essentially the same office was still representing  
13 you?

14 A I believe so.

15 Q And do you know if Mr. Sutherland had access to Mr.  
16 Bailey's notes and preparation from your conversations?

17 A No, sir -- no, ma'am.

18 Q You don't know?

19 A No.

20 Q Okay. Do you -- going quickly back to the *Batson*  
21 issue, do you recall how many African-American jurors were  
22 struck?

23 A Three, I believe.

24 Q And then moving on to the issue of the sweatshirt and  
25 whether your father gave consent, do you remember Mr.

1 Sutherland presenting argument about whether your father  
2 could give consent?

3 A No, ma'am. I remember nothing about it.

4 Q Okay. And then briefly touching on the issue of your  
5 plea, were you aware of your strike status before going to  
6 trial?

7 A I mean, once -- once it was served on me, I mean, but  
8 before that, no. I mean, I knew about it, but I didn't  
9 know that it was going -- I didn't know she was going seek  
10 those papers on me.

11 Q So you weren't aware that due to your earlier  
12 convictions, you could be served those papers?

13 A Yes, I was aware of it.

14 Q You were aware. And you knew that one more charge of  
15 that nature could get them to seek life?

16 A I didn't know the statute and all that, I mean, as far  
17 as the time frame. I didn't know they had a statute as far  
18 as they can go back 30 or 40 years versus 5 or 10.

19 Q Okay. And you stated it was your decision not to  
20 testify at trial?

21 A Yes.

22 Q And you made that decision with input from Mr.  
23 Sutherland?

24 A Yes, ma'am.

25 Q And did you review any discovery at all whether ---

CROSS-EXAMINATION BY MS. KINARD - MICHAEL P. CORNELIUS 24

1 A No.

2 Q --- with Mr. Bailey or with Mr. Sutherland?

3 A I never seen the discovery. I put in for one and I --  
4 I just never received it to ---

5 Q Okay. Did -- I'm sorry.

6 A I was just saying I never received one to this day, my  
7 motion. I never seen the evidence they had against me.

8 Q So regardless of whether you received a copy or not,  
9 did you ever look at anything with them?

10 A No.

11 Q Did they tell you what they had received against you?

12 A No.

13 Q All right. I have no further questions. Thank you  
14 very much.

15 THE COURT: All right, anything else from Mr.  
16 Cornelius?

17 MR. HEGLER: No further questions.

18 THE COURT: All right. You can go back and sit next  
19 to your lawyer.

20 (The witness complies.)

21 THE COURT: Any other witnesses on behalf of Mr.  
22 Cornelius?

23 MR. HEGLER: I understand the State's going to call  
24 Mr. Sutherland. I'll -- I'm fine with just asking  
25 questions if the State calls him. I'll reserve the right

DIRECT EXAMINATION BY MR. HEGLER - TIVIS SUTHERLAND IV 25

1 to do so, if the State -- (to Ms. Kinard) y'all are going  
2 to call him, I guess?

3 (Courtroom laughter.)

4 TIVIS SUTHERLAND, having been  
5 first duly sworn, testifies as follows:

6 THE COURT: All right. Have a seat.

7 THE WITNESS: And the name is Tivis Sutherland.

8 That's tango, indigo, victor, indigo, sierra for the first  
9 name. And the last name is like the guy from 24.

10 THE COURT: Before we get -- before Mr. Hegler gets  
11 started, I thought someone said you're the fourth; is that  
12 correct?

13 THE WITNESS: That is correct.

14 THE COURT: Okay.

15 THE WITNESS: And Tivi the IV is running around and  
16 he's bigger than his dad already.

17 THE COURT: Well, I've see him on Facebook. That's  
18 right. All right. I didn't know he was a IV. All right.  
19 You may proceed, Mr. Hegler.

20 DIRECT EXAMINATION

21 BY MR. HEGLER:

22 Q Mr. Sutherland, thank you for your time today.

23 A Hey, no worries.

24 Q Briefly, I'd like to go back through that substantial  
25 assistance issue again just to kind of help set the pace

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1 for why we're here today.

2 A Sure.

3 Q And then we'll go back and we'll hit some of the  
4 other issues.

5 A Yeah, 'cause I -- I remember tons about it. It -- it  
6 -- we s talked about it many, many times.

7 MS. KINARD: Your Honor, before we go into this, I do  
8 want to object. I almost did on the prior witness, but  
9 this has not been alleged anywhere in the application, and  
10 I don't really believe it's properly before the Court.

11 THE COURT: I'm sorry. I missed the question. What  
12 specifically are we talking about?

13 MR. HEGLER: The substantial assistance motion that  
14 was filed after the trial.

15 THE COURT: Right. I'm sorry. That's not before -- I  
16 did hear you say that. That's not before me at this point  
17 and it's not alleged in the PCR application or the  
18 amendment. So I -- I would sustain that objection.

19 MS. KINARD: Thank you, Your Honor.

20 THE COURT: No need to go down that road.

21 BY MR. HEGLER:

22 Q We'll go back to trial. Do you -- briefly, on  
23 your background, how long have you been practicing?

24 A It's about half my adult life. I think back to '04  
25 maybe. That's in the Army and did a bunch of stuff before.

1 Q And what types of cases do you handle?

2 A It is pretty much exclusively criminal cases. I mean,  
3 I have -- you know, I had a client with COP up in jail, and  
4 I got my buddies on the civil side to handle it, but I  
5 participated in it with them.

6 But I would say 99 percent criminal. Probably 60 to  
7 70 percent of that is indigent defense, and you know, then  
8 the other maybe 30 to 40 percent that hire me, you know,  
9 keep the lights on and propel me forward. So ...

10 Q And do you know approximately -- do you know  
11 approximately how many trials you've handled?

12 A Oh, 25 or 30 maybe? That -- no, that's circuit  
13 -- circuit court and federal. As far as summary court, I  
14 -- I'm not sure. In -- I mean, I try to stay out of  
15 summary court frankly, though.

16 Q So you said you practice in state court and federal  
17 court primarily.

18 A I -- I do. I do. I'm hustling back over there  
19 once we're done here.

20 Q Understood. Well, we appreciate you getting over here  
21 today. Just in South Carolina?

22 A Only in South Carolina.

23 Q Okay. And is there anybody else you practice with,  
24 another attorney or are you solo practitioner?

25 A The set up that we have, there's actually five of us

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1 in there. Chris and Josh are partners. They share.  
2 Myself, Micah Leddy, and Mark Whitlark, we are independent.  
3 We don't believe in sharing, unless it's by agreement. But  
4 we're sort of all -- I mean, it's five of us in there. You  
5 know, we together -- do cases together, all that kind of  
6 stuff. Just don't share the money, unless we actually  
7 agree to it, unlike Chris and Josh who must split it.

8 Q Understood. And you were substituted to represent Mr.  
9 Cornelius on April 15, 2010?

10 A I was, and back at that time, I had actually come out  
11 into private practice, but this was not unusual for -- to  
12 get a case like Mike's at that time the way that the -- the  
13 appointment system worked.

14 Because I will try a case. I'll try anything if we  
15 don't -- you know, if we don't make a deal. And typically,  
16 when they would get down to something that was to the edge,  
17 the Clerk of Court would send it to me. I'd say five, six  
18 weeks maybe I was representing Mike, even though I'd met  
19 him about a year before, but that was just, you know, in  
20 the jail, just talking to him.

21 Q And who were you employed by at that time?

22 A I was actually employed by myself ---

23 Q Okay.

24 A --- at that time.

25 Q And so how did you come to be appointed? Can you walk

1 us through when you ---

2 A Basically, I got a letter and a little packet of  
3 materials. But that letter, that -- again, it's -- it was  
4 not unusual for me to get a case that was up for trial  
5 within a very short period of time at that time.

6 Q And so when did you first speak with Michael?

7 A Leaving aside, you know, just sort of knowing him,  
8 because he had actually worked for a college buddy of mine  
9 at Jersey Mike's. Actually, let me see if I've got this on  
10 here. I think it was April sometime and maybe end of  
11 April, early May, but hold on a second.

12 Okay. I have May the 4 at the Alvin S. Glenn  
13 Detention Center. Now, this Indigent Defense time sheet is  
14 100 percent accurate, because if I can't -- if I dip in and  
15 see somebody and I can't remember when it is, I do not bill  
16 for the hours. But that sounds about right.

17 Q Okay.

18 A You know, however long it was after getting appointed  
19 on there.

20 Q And did you speak with him on the phone?

21 A I can't say. I mean, if -- if he doesn't remember  
22 talking to me on the phone, it's -- you know, it's one way  
23 or the other. I mean, go ahead and take his -- his word  
24 for it for sure.

25 Q And so that first meeting you said was at Alvin S.

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1 Glenn Detention Center?

2 A It was, and I have it as May the 4. Or no, no, no.  
3 Yeah, May the 4. May the 4. Then I have I talked to his  
4 mom that day also.

5 Q And do you remember about how long that meeting  
6 lasted?

7 A I've got an hour, so ...

8 Q And do you remember what you discussed with Michael at  
9 that meeting?

10 A It would probably -- and I can't say specifically,  
11 but having met Mike and talked to him before, I'm sure I  
12 just told him, I said, "Look, you know I -- I've gotten  
13 appointed to you, you know. I'm aware of what your  
14 circumstances are."

15 Maybe -- I might not been aware that they had served  
16 him with LWOP at that point. Back then you would just get  
17 a letter and a couple of copies and like an order with all  
18 of the indigent defense cases that were assigned to private  
19 attorneys on back of it, and some little information sheet  
20 from the Public Defender's Office. But I do remember that  
21 I had spoken with him at that time.

22 Oh, wait a minute. I've got "review Rule 5 materials"  
23 on May 3rd, so I did know at that time. But again, I --  
24 you know, I don't remember, but I'm sure my conversations  
25 with Mike were like, "Look, you know you got a -- this is

1 LWOP and they're coming at you," something along those  
2 lines. I'm not very direct with my guys.

3 Q Do you remember talking about trying to get a plea?

4 A I'm sure, just as Mike testified, during every break  
5 in the trial, I went. But I never advised him to enter a  
6 guilty plea because I would not on a life without parole  
7 case because you're foreclosing all of your options at that  
8 point.

9 But during every single break during the trial and  
10 before the trial, about every hour or something, you know,  
11 I'd go run smoke one and pester Ms. Campbell and ask her to  
12 pull the LWOP papers, "Can we plead now? Can we plead  
13 now?" And she would be saying, "He can plead to life. He  
14 can plead to life."

15 Then, towards the end, she said, "Well, if" -- because  
16 I wouldn't say merciless but relentless. I wasn't going to  
17 stop asking, sorry, until it was done. She said, "Well, if  
18 you can go talk to Barney and he'll agree to pull them,  
19 then I'll pull the papers."

20 And, you know, I knew at the time that she could pull  
21 the papers if she wanted to pull the papers despite what  
22 everyone says. Like, oh, once you serve papers -- frankly,  
23 I'm under oath, but that's nonsense. They can pull them at  
24 any time, but she wasn't going to.

25 But towards the end, she said, "If you can talk to

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1 Barney and Barney will pull -- will say that he's okay with  
2 pulling the papers, I will pull the papers."

3 And so I'm sitting out there waiting for Barney, and  
4 then somebody comes in going, "Judge Cooper's wondering  
5 where you're at and you need to get over to the courtroom."  
6 And I got over there and we were done probably that --  
7 probably that day.

8 Because I remember I ran into Jim May out in the  
9 waiting room and I told him what was going on. And he was  
10 like, "Well, I want to talk to Barney about my LWOP  
11 papers." I was like, "Dude, get out of here. I'm in trial  
12 over here."

13 But I do remember that and remember it just ending  
14 unhappily, certainly so.

15 Q Okay. I'm going to back up a little bit, back to some  
16 of your earlier meetings with Mr. Cornelius. Did he  
17 express any concern about you being appointed to the case  
18 with the trial coming up in a short period of time?

19 A I don't remember that. I mean, you know, we certainly  
20 have to rely on his testimony. But again, you know, I had  
21 known him, not in a substantial way, but I knew him. I met  
22 him a year before and had actually talked to him a little  
23 bit about his case and he was friends with one of my guys  
24 in there and about him maybe trying to get me on there.

25 But it's just he's sat there all this time and really

1 I got appointed to his case and it was like, "Well, look at  
2 this. I actually got appointed to this thing."

3 But I'm sure he was very concerned. I was very  
4 concerned and really there was -- I think I ended up  
5 arguing, you know, that the knife handle looked like a  
6 potato to the jury.

7 It was very limited opportunities as far as the  
8 defense went. But you know, the video and with the  
9 statement and everything. But I did -- I did everything I  
10 could for him, and I wasn't going to advise him to plead  
11 guilty.

12 And I even remember Judge Cooper remarking his  
13 distaste for sentencing people to life without parole,  
14 particularly over something like this where, if I'm not  
15 mistaken, half of the jurors, after it was done, told me  
16 that if they had known he was going to get sentenced to  
17 life, they would not have convicted him. And all I could  
18 do was hint ethically, you know, they're taking a sledge-  
19 hammer going after a fly.

20 And of course, Mrs. Campbell made fun of that. But,  
21 you know, I couldn't tell them or it's a mistrial or I'd  
22 get in trouble or something.

23 But I tried to do everything, but -- and I'm sure it  
24 didn't make any sense to the jury coming from where they  
25 were, you know.

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1 Q Understood. Do you remember how many times you met  
2 with Mr. Cornelius prior to trial?

3 A I have -- I think it's three meetings on here. And so  
4 I've got -- you know, I've got to rely on that. And -- but  
5 again -- now, it's three meetings, we're talking five or  
6 six weeks or whatever. But I mean, it's not a ton of time.  
7 I mean, maybe -- I think the total had to be a few hours  
8 though. But --

9 Q Did you review any evidence with Mr. Cornelius?

10 A I -- I don't remember that, but I -- I mean, you  
11 know, I would think that ultimately we would have to be  
12 talking about something, you know, during this time. And  
13 it wouldn't make any sense to me to not have gone over this  
14 because, you know, we got a trial coming up and under these  
15 circumstances and in looking at it, it -- it was going to  
16 be tough if not impossible.

17 Q Did you talk ---

18 A Well, nothing's impossible.

19 Q And did you talk to Mr. Cornelius about what kind of  
20 arguments you thought you should make at trial?

21 A I can't -- I mean, I can't say. We'll have to rely  
22 on -- on his testimony because really I don't remember. I  
23 just remember, you know, finding out -- I don't -- I can't  
24 remember if I put him up in pre-trial or not, which I do  
25 sometimes on a statement.

1           But a lot of times I'll put my guy up at pre-trial  
2 because I know the jury's never going to see it. So if  
3 they sort of slip off the edge there, it doesn't really  
4 impact the case.

5           But maybe I just relied on cross-examining Matt  
6 Douglas. I don't recall. But I mean, I had to speak with  
7 him about this stuff, I mean, there was only so many -- it  
8 was the spring, so it wouldn't have been football.  
9 Whatever kind of conversations, you know, you can have  
10 during, you know, a few hours. And particularly with the  
11 urge to see -- even though I knew and my buddy was willing  
12 to come to court for him if there was an opportunity.

13           I have to say this. I mean, I can't imagine not?  
14 saying that this is what I'm worried about. This is  
15 difficult. We need to do something. Asking how -- how did  
16 we get to this point? How did we get to this point? You  
17 know, with this life without parole thing popped on you,  
18 had to be, but --

19           Q     But all total, you spent, you said, a few hours with  
20 him?

21           A     Yeah. I didn't look at the -- I've got one hour on  
22 May the 4. I've got two hours on May the 30. I've got one  
23 and a half hours -- it looks like -- wait a minute. Sorry.  
24 Looks like June 5th and that would have been just a couple  
25 of days before the trial. So about five hours, five, six

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1 hours. Something like that.

2 Q Did you consider moving to continue the trial?

3 A I did not because they were really -- frankly wasn't  
4 much to -- there wasn't much to it. You know, your  
5 confession is -- you have the video. There just wasn't a  
6 lot of discovery, and ultimately I'm not -- and I don't to  
7 this day, and I really never have, if -- you know, if -- if  
8 the Court appoints me to represent somebody that -- to do  
9 something in -- you know, in a case like this where you  
10 know full well knowing that there's, you know, five/six  
11 weeks down the road, I'm going to be ready is -- is what  
12 I'm going to do.

13 If I got to a place where, you know, I wasn't, but  
14 then you got -- if you're talking about murder or something  
15 -- like this thing, the trafficking that I'm doing now with  
16 like 23,000 pages of discovery or something. But then this  
17 was pretty straight forward, pretty simple going in. Lady  
18 backs off like this, grabbing the stuff, walking out,  
19 driving away. There's a video, there's a statement, and  
20 the cops milling about on the property over there and  
21 that's pretty much it.

22 Q I'd like to talk a little bit more about your trial  
23 preparation outside of what you did. You mentioned a  
24 couple of witnesses. Did you interview or talk to any of  
25 the witnesses or do any investigation on your -- otherwise?

1 A I don't believe other than -- I can look and see if  
2 there was an investigative bill because this was Indigent  
3 Defense. But I do not believe so.

4 (Brief pause.)

5 A Well, at least on -- on that time sheet it doesn't say  
6 that I met with -- I think I was using Frank Heming at that  
7 time. And it doesn't say that there were any meetings with  
8 him.

9 Q So you did not use a personal investigator.

10 A I don't believe so.

11 Q Okay. And did you have a motion for discovery from  
12 the State?

13 A Oh, yeah. Sure.

14 Q And did you plan to call any witnesses in the defense  
15 case?

16 A No.

17 Q Did you assess whether a defense case was necessary?

18 A Well, you know, I -- I mean, I assessed everything is  
19 ultimately, I think, the answer is I do I want to put Mike  
20 up. I really -- I mean, I -- there wasn't any discussion  
21 about it. Let's say in an imaginary sense if there was, I  
22 mean, it's all on video, you know. So, I mean, you  
23 couldn't really put something up to that effect. Really,  
24 it's just a matter of arguing what -- what's ultimately  
25 admissible and doing the best that you can do with that.

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1 Q Were you successful on any pre-trial motions to keep  
2 any evidence out?

3 A I do not remember. No, because I remember I was going  
4 off because Matt was on the stand. I was sitting over on  
5 the jury thing and just about -- something about crack and  
6 just really sort of pestering him about it. So -- and you  
7 can't really argue intoxication in these situations but you  
8 can sort of try to link it up with other things.

9 And I think I remember -- I remember one cop  
10 testifying about being able to look in -- in open -- or  
11 maybe there was a case -- maybe it was *State vs. Asbury* or  
12 something.

13 I do -- I don't recall excluding anything. I do ---

14 Q Pre-trial?

15 A No. I do -- I mean, I do remember trying naturally to  
16 do whatever I could, but I don't remember being successful  
17 in excluding anything.

18 Q Did you speak with Michael's father about that, about  
19 his consent?

20 A I do not recall.

21 Q Do you think that testimony could have potentially  
22 been helpful to your arguments?

23 A I think it could have, but it seems like -- I  
24 remembering him spinning some sort of alternative argument  
25 to whatever argument I was making by saying that they could

1 look inside and they're saying that it's a shed or  
2 something. You know, this is going way, way -- what is  
3 this? Six, seven years ago or something.

4 But I -- you know, I just did my best. I argued  
5 whatever I could. So ...

6 Q I'd like to move a little bit more into the *Batson*  
7 issue. Are you familiar with what a *Batson* motion is?

8 A Yes.

9 Q Have you made them before?

10 A Yes.

11 Q Can you define briefly what it is?

12 A Well, if -- naturally, it's not many times -- might  
13 not even have made it since I was with the PD's office.  
14 But if you think somebody's using a discriminatory strike  
15 pattern, then you bring it up. And then, you know, the  
16 alternative is -- now, I've been *Batsoned* [sic] by  
17 Cathcart. I've been *Batsoned* a few times. And the answer  
18 to the judge, at least my answer is it can be anything as  
19 long as it's race neutral, you know.

20 I remember saying one thing to the judge, the guy is a  
21 dentist and -- and Cathcart says it just looks like --  
22 look, it doesn't have to be reasonable. It can be stupid.  
23 It just has to be race neutral.

24 Q But you agree the racial makeup of the jury is  
25 important.

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1 A Sure.

2 Q Have you ever been successful in a *Batson* motion?

3 A I don't believe so.

4 Q Do you know what the result is if you are successful  
5 in a *Batson* motion?

6 A Well, it'd be -- have to go back again.

7 Q And you recall jury selection in this matter.

8 A I looked at my jury strike sheet. I'm -- right now,  
9 I'm not really picking any pictures of it up in my head  
10 though.

11 A Well, it's -- here, in state court -- you know, in  
12 federal court, you get 183 questions on a questionnaire.  
13 You know what bumper stickers the people have, you know  
14 everything, I mean, certainly relatively speaking. You  
15 have a ton of information on people.

16 Here you go and you look through, you know. They go  
17 up there, "Hi. I'm Fred. I work at Wal-Mart." You know  
18 if somebody's wife, you know, is a cop or if somebody's a  
19 victim of crime or you know if they can be favorable to the  
20 defense. But you really don't know anything, relatively  
21 speaking, about anyone other than where they work and if  
22 they're married to a cop or something along those lines.

23 Q I'm going to show you an exhibit here.

24 MR. HEGLER: Permission to approach the witness?

25 THE COURT: Yes, sir.

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1 Q You recognize your strike sheet. Do you recognize  
2 this?

3 A Yes.

4 Q And what's that?

5 A That is a strike sheet.

6 THE COURT REPORTER: Are you introducing this?

7 MR. HEGLER: Yes. I'd like to move it in as  
8 Applicant's Exhibit No. 1.

9 THE COURT: Any objection?

10 MS. KINARD: No objection.

11 THE COURT: All right. It's admitted.

12 (Applicant's Exhibit No. 1, strike sheet, in  
13 evidence.)

14 Q And do you recognize this as the strike sheet from  
15 this matter? And take a minute to look ---

16 A If I may.

17 (Brief pause.)

18 A It is. It's the same one that I had.

19 Q And the State gets four peremptory strikes total. Do  
20 you recall that?

21 A That's what I have here, yes.

22 Q And the State used three of it's peremptory strikes in  
23 this matter; is that correct?

24 A That is correct.

25 Q And African-Americans are colonized as a group for

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1 purposes of *Batson* motion; is that correct?

2 A Sure. Discreet and -- yes.

3 Q But you did not make a *Batson* motion, did you?

4 A I did not.

5 Q And a *Batson* motion would have forced the Court to  
6 determine if it thought that using three out of four  
7 strikes on African-Americans demonstrated a discriminatory  
8 purpose.

9 A Sure.

10 Q And would you agree with me that using three out of  
11 four strikes on African-Americans constitutes *prima facie*  
12 showing of discrimination?

13 A I can't -- here's where I can't say that under these  
14 circumstances. I know one of the -- I know one of the  
15 people -- and this is just from my notes -- was a church  
16 member. I think he was either -- and had heard about --  
17 heard about the case. Now, I don't have whether it was,  
18 you know, a church member of Mike or Mike's family or --  
19 that's what I've got.

20 Q You said one -- can you clarify when you say -- when  
21 you refer -- was that one of the people that was struck or  
22 ---

23 A This is Leon D. Hillian and he's No. 124.

24 Q And just as a point of clarification, do you know, do  
25 you recall if the first juror was white or an African-

1 American juror?

2 A The first one that was sworn?

3 Q The first one that was sworn, yes.

4 A It looks like Billy Jones.

5 Q And what does the strike sheet indicate is the race of  
6 Mr. Jones?

7 A Has him as white. Also No. 2 --

8 MR. HEGLER: Permission to approach the witness, Your  
9 Honor?

10 THE COURT: Yes, sir.

11 Q I'm going to show you the transcript, page 32 here.

12 (Brief pause.)

13 Q Page 32, line 7.

14 A Well, okay. So it's got the race wrong on the strike  
15 sheet. That wasn't my recollection. That was what I was  
16 reading from the jury strike sheet. It says 152 is a black  
17 male. On the strike sheet it says that 152 is white.

18 Q Do you know if the strike sheet would have been  
19 conducted using Department of Motor Vehicle records?

20 A It's just -- I think they started computer generating  
21 these things around that time. So that's the Clerk of  
22 Court.

23 Q You think the strike sheet would be more accurate than  
24 the transcript?

25 A I wouldn't -- I wouldn't think so. The court

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1 reporter's sitting there looking, you know.

2 Q Do you have any recollection of the race of the -- the  
3 first juror?

4 A No, I don't. All that I can remember is from a strike  
5 sheet. So when -- you know, when I tell you that I've got  
6 here that somebody's a church member, I mean, that's what's  
7 written on my strike sheet. I'm not sitting here  
8 teleporting back. I have a really good memory, but not --  
9 not that good. That's my mom's kind of memory.

10 Q Do you recall any examples of the State's striking a  
11 black juror and seating a white juror that was similarly  
12 situated?

13 A I -- I can't recall that.

14 Q Can you look briefly at the transcript again at page  
15 33, lines 1 to 5.

16 A Okay. So that's 124. Oh, that's the church member,  
17 right? And I've got Juror 124, that's the person. I've  
18 got "heard," h-e-a-r-d, and then dash "church member."  
19 That's the notation that I have there. But again, that's  
20 just me writing this stuff down.

21 Then, like, the next guy --

22 Q What -- what does the transcript indicate as  
23 occupation of ---

24 A I've got Bell South retired.

25 Q So the juror was retired.

1 A Yes.

2 Q Then let's look at -- can you look at the transcript,  
3 page 38, lines 11 to 15.

4 A I see --

5 Q The State did not strike that retired white juror, did  
6 it?

7 A No. Oh, I did, though. Well, anyway. So ...

8 Q But you can observe this pattern of misuse by Ms.  
9 Campbell you did not raise as a *Batson* issue, did you?

10 A It did not occur to me. Again, full disclosure here.  
11 I think I struck -- everybody that I struck was -- was like  
12 a white juror, I think. So -- and really, that's not what  
13 I'm considering. But with the limited information that you  
14 have when you're sitting there, you know, like, oh, this  
15 person's, like, old or somebody's retired or they're at  
16 home or their cousin -- it's -- information is so limited.  
17 Sometimes it's looking at somebody and they're, like,  
18 glowering at you or something, at the defense table.  
19 You're like, out. So ...

20 Q But because you didn't make a motion, the Court didn't  
21 get a chance to evaluate the State's use ---

22 A That's correct.

23 Q Okay.

24 A That is correct.

25 Q The State didn't have to justify or provide any

DIRECT EXAMINATION BY MR. HEGLER - TIVIS SUTHERLAND IV 46

1 explanation for why it struck three out of four African-  
2 American jurors, did it?

3 A That is true.

4 Q And the case proceeded to trial with the jury selected  
5 according to that pattern by the State.

6 A Certainly.

7 Q Okay. Let's briefly discuss the trial. And how long  
8 did it take?

9 A Three days maybe? Three, three and a half? Okay. I  
10 have -- one second. Sorry.

11 (Brief pause.)

12 A Okay. So seven, eight, nine. So the 7th, the 8th,  
13 and the 9th. Looks like -- I'd say maybe two and a half  
14 and then -- then jury out. Looks like four hours of court  
15 time on the 9th.

16 Q And did you have any kind of a theme or key -- key  
17 themes for your presentation, cross-examination?

18 A Well, the themes were you -- you must be mistaken  
19 about that being a knife, lady. I mean, that's what the --  
20 you know, the theme is that, you know, you're wrong.

21 And again, I go back to the potato because I remember,  
22 you know, arguing that to the jury, trying to get that from  
23 her that, you know, that this was a circumstance where you  
24 didn't -- you didn't -- no disrespect to the Solicitor's  
25 Office, but my four-year-old, Baby Angus, could press play

1 and prosecute a case that's on video for the most part.

2 You know, it's not rocket science.

3 Q And what did you argue in your closing? You talked --  
4 you --

5 A It's dancing around, swatting a fly with a sledge  
6 hammer, maybe the potato thing. I'm -- I'm sure just  
7 anything I could think of to try to get them to think and  
8 please don't -- you know, somebody, one person, please,  
9 don't do this.

10 Q And what did the jury find?

11 A Well, they found him guilty.

12 Q And how long did they deliberate, if you remember  
13 that?

14 A I don't know, but again -- it was like four hours of  
15 out of court time. But at the same time, I could have been  
16 getting there a half hour early or -- or something. So I  
17 mean, not a tremendous amount of time.

18 Q And what sentence did Michael get sentenced to?

19 A He got life.

20 Q Did you assist in the appeal?

21 A I did not. It went to Indigent Defense ---

22 Q And what ---

23 A --- or Appellate Defense.

24 Q And what has been your involvement since the  
25 conclusion of the trial?

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1 A Since the conclusion of trial, I got Ms. Campbell, on  
2 Day 364 of the eligibility period for the substantial  
3 assistance motion, to -- I did not drag her into court.  
4 But I pestered her into a courtroom. Literally, we had one  
5 day left, by my calculations, to make the motion.

6 And she made it and she filed something which later  
7 on, I think, Joanna argued. It was like, "Well, this is  
8 reserving the right to maybe ..." when we had that hearing  
9 on that.

10 Q Understood.

11 A But my understanding at that point -- and I believe  
12 that my understanding was we were going in there to do  
13 that. He had yet to testify in one or two cases. And  
14 frankly, I still would be incredibly disappointed if they  
15 did not do that. I will -- I will -- if -- if that, you  
16 know, seems to be the case.

17 But it doesn't seem to be the case. I can't say why  
18 they didn't want to go forward that day that we were there  
19 unless maybe Joanna wasn't -- I'm not gonna put any reasons  
20 for people. But seemed like they picked a couple of words  
21 out of there, said, "No, no, no. This motion that we filed  
22 and typed up is a 'perhaps we may.' We reserve the right."  
23 It's a couple of tunnels in the language in front of Judge  
24 -- oh, Judge Newman. But Judge --

25 THE COURT: The other.

1 THE WITNESS: That's correct.

2 Q Thank you for your time. I don't have anything  
3 further.

4 A You're welcome.

5 THE COURT: All right. Yes, ma'am.

6 MS. KINARD: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. KINARD:

9 Q I'm gonna start back at the beginning just a little  
10 bit. Maybe recover a couple of questions.

11 But you received discovery you said prior to the first  
12 day that you met with Mr. Cornelius; is that correct?

13 A Yeah. I -- it's -- I looked at it -- I went through  
14 it the day before and I heard a little bit about it. But  
15 what you hear from people about a case is almost nothing  
16 compared to the -- what the evidence is. That's universal  
17 to the case, really.

18 Q When you met Mr. Cornelius, did you discuss the  
19 possible punishments that he was facing?

20 A I -- I mean, I don't -- I don't really recall the  
21 conversation whether -- again, I can't imagine not doing  
22 so.

23 Q Is your recollection that he knew he was facing life  
24 without parole at that point?

25 A Oh, I'm sure. But again, you know, I don't remember a

CROSS-EXAMINATION BY MS. KINARD - TIVIS SUTHERLAND IV 50

1 specific thing saying, "Hey, Mike, you know you got your  
2 LWOP papers."

3 My thinking would be how did this happen, you know,  
4 where -- how did this thing fall apart, you know, a year  
5 and something in. Then all of a sudden, boom, you're  
6 getting hit with life papers. It seems like someone being  
7 agitated or irritable about something, but I don't know  
8 that so ...

9 Q Regardless, it would be your practice to have  
10 conversations like that to make sure that your clients knew  
11 what they're facing.

12 A Sure. Yeah. We have to. So ...

13 Q And it's also your practice to inform people of their  
14 constitutional rights, such as right to remain silent,  
15 right to confront witnesses; and right to testify in his  
16 own defense, as well as right to a jury trial.

17 A Oh, sure. If you're gonna talk about -- if you're  
18 gonna talk about a trial, I mean, that's one of the things  
19 that --

20 Q Okay. So he understood the State had the burden of  
21 proving guilty beyond a reasonable doubt.

22 A Sure. And you know, I remember from Mike's testimony,  
23 he's like -- he kept saying he was trying to get a plea.  
24 I'm sure I was like, "Man, I'm trying to get her to pull  
25 these LWOP papers is what I am trying to do," because we

1 are going to face-plant if we go in there under these  
2 circumstances. But --

3 Q Did you discuss his version of the facts of the case?

4 A I did talk -- I remember talking to Mike about that.

5 Q Did those differ at all from the evidence that you had  
6 been presented with?

7 A No.

8 Q Did he ever ---

9 A Well, he was just -- I mean, he was just on dope. I  
10 mean, that's -- that's what it was. That was not him.

11 Q Otherwise he couldn't deny what you'd been -- what  
12 you're facing.

13 A Well, I mean, it's just like 90 percent of things. I  
14 mean, it pretty much is what it is when you're looking at  
15 it. So ...

16 Q Did you ever have a problem talking with Mr.  
17 Cornelius?

18 A No. I knew Mike, like I said, for a while before, and  
19 I do remember -- I remember talking, you know, to his mom.  
20 I don't think I talked to his dad. He'd passed away  
21 unhappily -- but there's open communications to this day  
22 with -- you know, Mike's mom was texting me, trying to  
23 figure out how she'd get here this morning. So ...

24 Q Did Mr. Cornelius provide you with any fact witnesses  
25 that might have benefitted him?

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1 A If -- if -- if he's gonna testify to that, I mean, you  
2 know, I'm not gonna argue with him. I've known him. And  
3 you know, if there are things that I don't remember, I  
4 mean, he can certainly help you with that.

5 But you know, I've never known him to be dishonest.  
6 So even though this is a crime of dishonesty under some  
7 *State vs. Bryant* circumstances. But no, never known him --  
8 he's never mislead me or been dishonest with me ever. So  
9 ...

10 Q I think we -- it's been discussed pretty thoroughly  
11 that there weren't as many possible defenses. It's more  
12 you were attacking admissibility of certain evidence that  
13 was found.

14 A Well, and I don't know any other way to say it than  
15 "don't believe your lying eyes." Please believe me. So  
16 ...

17 Q And let's talk a little bit about that. Was there a  
18 *Jackson v Denno* hearing?

19 A Oh, sure. That was the thing what I was talking about  
20 where I came and sat right there and Matt Ellis --

21 Q But unfortunately that was not successful.

22 A It was not.

23 Q Do you recall some lengthy discussion about the search  
24 warrant that was provided?

25 A I do. Right now I'm just seeing a checkerboard. So

1 that's gotta be like the shirt or some jacket or something.  
2 But yeah. And -- and again, I think that how I painted  
3 this picture when he was testifying of looking in because I  
4 keep seeing a cop looking into like a shed with like -- not  
5 looking through a door, it was an open door. But again,  
6 that's me visualizing what somebody's testifying to and  
7 trying to argue it.

8 But that -- those are the two pictures I'm getting, it  
9 was like a checkerboard shirt and there's a shed with an  
10 open door. So ...

11 Q And for the Court, pages 175 to 188 of the transcript  
12 is the argument from both parties regarding the search  
13 issues. And it's a diamond-patterned sweatshirt. So this  
14 ---

15 A Okay. I guess you turn it kind a that way  
16 (indicates.)

17 Q I -- I believe I mischaracterized your relationship  
18 with the Public Defender's Office at the time. The -- did  
19 you have any access to Mr. Bailey's notes or trial  
20 preparation?

21 A Sure. You know, he came on at the PD's Office when --  
22 right around when I was leaving, and I go -- you know, if I  
23 need -- I can borrow a clerk from them, you know, if I want  
24 to for Indigent Defense cases. So it's been a long time,  
25 but we're tight to this day. They still have a picture of

CROSS-EXAMINATION BY MS. KINARD - TIVIS SUTHERLAND IV 54

1 me, I think, on the fourth floor, looking stupid. So ...

2 Q There was a discussion of improperly obtained  
3 evidence. Can you enlighten us a little bit about what  
4 that was? Do you recall?

5 A Is there a particular piece or ---

6 Q I don't. There was a question that Mr. Hegler asked  
7 Mr. Cornelius about an issue regarding improperly obtained  
8 evidence, and then not much more was spoken on it. So I  
9 wondered if you had any recollection?

10 A No. I mean, it's just, you know, arguing to anything  
11 that can be kept out is improperly obtained. I just don't  
12 remember keeping anything out or -- and being able to. But  
13 I do remember trying to hammer Matt Ellis on it's about  
14 crack, it's about intoxication, it's about the statement.  
15 And it's just -- frankly, was too tangential to work. So  
16 ...

17 Q And that -- that would be in the *Denno* hearing which  
18 is certainly on the record.

19 Briefly regarding about some issues, you stated you  
20 saw no -- no pattern in the way that the State was striking  
21 jurors; is that correct?

22 A I did not. Now, I mean, if you can sit down -- again,  
23 like I said, you know, you can look at what I did and say,  
24 "Oh. He's, you know, striking old ladies" or -- or  
25 something along those lines. But they did -- I mean, there

1 was the woman with the one note that I had, you know, was -  
2 - there was something behind that was feasible about that.

3 And ultimately, I mean, you gotta kinda be there.  
4 It's -- it's not something that -- that you can really  
5 picture in the abstract because it's so live. Again,  
6 without the witness questionnaire, you are literally laser-  
7 scanning jurors on the spot, and you are finding more  
8 information from them standing there saying, "Hi. I'm Fred  
9 and I work at Wal-Mart" than you really have access to  
10 beforehand.

11 I mean, you -- again, you know, they're scowling at me  
12 or something, I'm (snaps fingers) out you go. And then,  
13 you know, if -- if I would get called up there or something  
14 I'm like, "Judge, you know, they were shooting fire out of  
15 their eyes at me." But that's a reason for that.

16 So it's -- I wish we did the questionnaires down here.  
17 It would be a lot, lot easier. But it's more on the spot  
18 despite -- you can put whatever voir dire you want in, but  
19 it's just standard stuff: Is your husband a cop? Somebody  
20 work in a courthouse somewhere? You know, somebody rob you  
21 20 years ago? You know, just the stuff along those lines.  
22 So ...

23 Q Could I call your attention to page 30, starting at  
24 line 4 through 18. That would just bring up the  
25 conversation regarding Juror No. 124 as a reason. Would

CROSS-EXAMINATION BY MS. KINARD - TIVIS SUTHERLAND IV 56

1 you agree with that?

2 A "Went to class with my wife and is a church member."

3 Yeah, okay. Well, that's a -- that's the thing.

4 Q Right.

5 A But see, I had some -- excuse me -- knew something  
6 about the case or maybe I -- I don't know. I have heard,  
7 but I mean, whatever's in the transcript is obviously gonna  
8 be more accurate than ---

9 Q And -- and one last question. If you'd look at page  
10 476, line 17 and on 477, line 11 about deliberation. Would  
11 you agree with me that line 17 says (as read) "Jury  
12 deliberated at 3:37," and then "Jury in at 4:08." So it'd  
13 be 31 minutes.

14 A Damn. Sorry. Oh, gosh. Sorry to be on the record.  
15 Okay. Well, then there must have been a lot more hanging  
16 around the courthouse that day then. Okay.

17 Q But does that reinforce your -- your testimony that  
18 you did all you could, but there wasn't a whole lot to do.

19 A Well, I guess -- I mean, I did talk to them after, and  
20 you know, what am I gonna say? Because I tried to talk to  
21 jurors after because if you want to do this for a living,  
22 those are the people that you need to pay attention to what  
23 they have to say. It's just what they had to offer would  
24 never be helpful in a situation like this because you had  
25 to tell them. Because they were like, "Wow. He got life

1 for that? We didn't know that. We would never do that."

2 And that's probably why we're not allowed to, even  
3 though I think it would be kinda decent consideration, you  
4 know, something for them to consider under these  
5 circumstances, whether we're waltzing in for 10 seconds and  
6 sticking your hand in the cash register and just maybe  
7 showing a little bit -- the potato of a knife, and then  
8 walking out in 15 seconds that you're going to get life in  
9 the penitentiary for that. But that's getting into  
10 personal opinions about this stuff. So ...

11 MS. KINARD: Those are all the questions I have at  
12 this time. Thank you.

13 THE COURT: Any re-direct?

14 MR. HEGLER: No questions.

15 THE COURT: All right. Thank you, Mr. Sutherland.

16 THE WITNESS: Thank you, Judge. And may it please the  
17 Court, Judge, might I be excused? I've got to run back  
18 over to Federal court.

19 THE COURT: Absolutely. Thank you ---

20 THE WITNESS: Okay. Thank you.

21 THE COURT: --- for coming.

22 THE WITNESS: Yes, ma'am.

23 (The witness exits the stand.)

24 THE COURT: Any other witnesses on behalf of Mr.  
25 Cornelius?

1 MR. HEGLER: No further witnesses.

2 THE COURT: All right.

3 MS. KINARD: The State has no witnesses, Your Honor.

4 THE COURT: All right. Would y'all like to make brief  
5 argument or rest on the testimony?

6 MR. HEGLER: Your Honor, I'd like to make a brief  
7 argument.

8 THE COURT: Yes, sir.

9 MR. HEGLER: As the testimony showed, this trial  
10 occurred in a relatively quick period of time after Mr.  
11 Sutherland was appointed to this -- as his attorney; and  
12 the result was not surprising given how -- how little time  
13 Mr. Sutherland had.

14 So today, Mr. Cornelius asks the Court to take another  
15 look at that trial and examine some of the issues that  
16 occurred as a result of it taking place -- trial taking  
17 place so quickly.

18 And there's several grounds that we submit are  
19 sufficient to sustain the grant of -- to grant his  
20 application -- PCR application for a new trial.

21 The first is the failure of Mr. Sutherland to make a  
22 Batson motion in face of the State's use of three of four  
23 peremptory strikes on African-Americans. That raises the  
24 presumption of discrimination, and even though there was  
25 some testimony about what may or may not have been the

1 State's state of mind there because the motion wasn't made,  
2 the State didn't have to say that. The State didn't even  
3 have to defend it. So we simply don't know what may have -  
4 - may or may not have guided the State in its thought  
5 process of striking three of four African-American jurors.

6 So we'd submit because that motion wasn't made, we  
7 don't know what the State would have done, and that that's  
8 sufficient under the cause and prejudice prongs of  
9 *Strickland* because it was a meritorious -- a meritorious  
10 claim that was not made.

11 And we also heard testimony about failure to obtain a  
12 plea deal. I know it may have been difficult, but Mr.  
13 Cornelius certainly wanted to -- to have a plea, and he  
14 didn't seek some way to gain some bargaining power over the  
15 State.

16 Mr. Cornelius also noted that he wanted Mr. Sutherland  
17 to talk to his father about the -- keeping the particular  
18 sweatshirt out. Again, those are just issues that, in that  
19 short period of time, were not able to be investigated  
20 fully.

21 But based under the cause and prejudice prongs in  
22 *Strickland*, we submit that the failure to make the *Batson*  
23 motion is sufficient and I've got a pre-hearing brief that  
24 I wrote previously and I can hand up a copy to Your Honor,  
25 if you'd like.

1 THE COURT: I have it.

2 MR. HEGLER: Okay. But when presumption is raised  
3 that this is three to four -- four peremptory strikes when  
4 the strike rate is that high, 75 percent against African-  
5 Americans, compared to 36 percent of the composition of the  
6 jury pool, that that was enough to raise the presumption of  
7 discrimination.

8 And in this case, Mr. Sutherland should have made that  
9 motion and forced the State to come forward with some  
10 explanation of why -- why it struck jurors in the pattern  
11 that they did; but because there wasn't a motion, the State  
12 never had to do that and we would submit that that's  
13 sufficient to grant the PCR and give Mr. Cornelius a new  
14 trial. Thank you.

15 THE COURT: Yes, ma'am.

16 MS. KINARD: Thank you, Your Honor. The State argues  
17 that Mr. Hegler's argument regarding time is simply a red  
18 herring here. The evidence that was presented in Mr.  
19 Cornelius's trial could certainly be called "overwhelming."  
20 There was a voluntary statement provided by him that was  
21 significantly considered during *Jackson v. Denno* hearing  
22 and was allowed to remain in. There was also a video that  
23 was clear and showed the crime. As Mr. Sutherland  
24 testified that, you know, basically all he could do was try  
25 and say that, "If you don't believe your eyes, try to

1 believe me." And that there was -- all he could was  
2 challenge admissibility.

3 And if you look at the record, he did that with the  
4 *Jackson* hearing, he did that with the argument regarding  
5 the search warrant. Every chance he got he argued the  
6 sufficiency of the evidence, the admissibility of the  
7 evidence; and simply put, his evidence was overwhelming.  
8 It has nothing to do with the fact that he was -- excuse me  
9 -- appointed approximately six weeks before it.

10 Regarding the *Batson* issue, the State didn't even use  
11 all of their strikes -- all their peremptory strikes. So  
12 to say that 75 percent of the pool was struck is a bit far  
13 reaching.

14 Regarding wanting a plea, of course, everybody wants a  
15 plea. I don't blame him a bit, and I believe Mr.  
16 Sutherland testified credibly that he did his best, he  
17 tried at every break, every possibility to get the LWOP  
18 papers withdrawn and to get a plea offer for Mr. Cornelius.

19 Based on the totality of the circumstances surrounding  
20 Mr. Sutherland's representation of Mr. Cornelius, I think  
21 it's -- it's very clear that he represented Mr. Cornelius  
22 zealously, he did the best he possibly could, and as he  
23 said himself, Mr. Cornelius was in a bad situation where he  
24 faced lifetime in prison for this one, you know, 15-second  
25 mistake. And unfortunately and sometimes we don't want to

1 do what the law says, but that's what it is.

2 I don't believe that in any way Mr. Sutherland was  
3 deficient in his representation of Mr. Cornelius, nor do I  
4 believe that any of his activities could be seen as  
5 prejudicial to Mr. Cornelius, and for those reasons, I  
6 don't believe either of the prongs of *Strickland* can be  
7 met; and therefore, the State requests that his application  
8 for post conviction relief be denied. Thank you.

9 THE COURT: All right. Having heard the arguments,  
10 testimony, I've also reviewed Mr. Cornelius's pre-trial  
11 memorandum. And it appears to me that as to the question  
12 about the evidence speaking to Mr. Cornelius's father or  
13 otherwise, I know there was a pre-trial motion to exclude  
14 that evidence, and the evidence was admitted over Mr.  
15 Sutherland's objection.

16 As the State articulated, there was also a video --  
17 search warrant for, you know -- in which that evidence was  
18 obtained. But there was also video of the crime, and as  
19 the State articulated, it appears that Mr. Sutherland made  
20 numerous motions to have that evidence excluded and it was  
21 all admitted over his objection.

22 As to the *Batson* issue, it -- you know, people often  
23 say the statistics can be misleading and -- and I think  
24 this is one of those cases. It does sound pretty serious  
25 that the State used 75 percent of its strikes on black

1 jurors, but 75 percent of four I don't think is  
2 overwhelming.

3 Beyond that, Mr. Sutherland did articulate some  
4 strategy during his testimony as to why he may not have  
5 made a *Batson* motion. For one, he said that you sort of  
6 have to be there and certainly there are other reasons. I  
7 know that without making the motion the State wasn't  
8 required to give those reasons, but even looking through  
9 the transcript, it's not that the State struck all black  
10 jurors. There were certainly black jurors seated, but Mr.  
11 Sutherland also articulated his strategy, particularly when  
12 he stated, "Well, he struck all white jurors, and they  
13 might have made a *Batson* motion against me." And so to the  
14 extent that it was his trial strategy, then I -- I don't  
15 believe that the argument regarding the failure to make a  
16 *Batson* motion can stand.

17 Finally, as to the plea deal, Mr. Sutherland may have  
18 failed to obtain a plea deal, but it wasn't for lack of  
19 trying. The State is not required to make any plea offer  
20 of any sort, although they did. Ms. Campbell did make the  
21 offer that he could plea to a life sentence. I mean, that  
22 -- that is a plea deal, you know, life versus life without  
23 parole, I suppose. But the State isn't required to do a --  
24 and Mr. Sutherland made the effort on more than one  
25 occasion, both pre-trial and up until the end of the trial.

1 So his failure to obtain a plea deal I don't think is any  
2 grounds to -- to find his representation to have been  
3 ineffective.

4 So for all of those reasons, I'm going to deny Mr.  
5 Cornelius's application for post conviction relief, and ask  
6 that the State submit me a proposed order as to that  
7 ruling.

8 MS. KINARD: Thank you, Your Honor.

9 THE COURT: Thank you.

10  
11 -- END OF TRANSCRIPT RECORD --  
12  
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25

**CERTIFICATE**

1  
2 I, the undersigned Bonnie H. Kelly, Official Court  
3 Reporter for the Fifth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all  
6 the proceedings had and evidence introduced in the hearing  
7 of the captioned cause, relative to appeal, in the Fifth  
8 Circuit Court for Richland County, South Carolina, on the  
9 29th day of August, 2016.

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

12  
13  
14 E/Bonnie H. Kelly

15 Bonnie H. Kelly, CVR

16 Official Court Reporter

17  
18 Columbia, South Carolina

19 January 31, 2018  
20

**Richland County Judicial Center  
RANDOM STRIKE SHEET**

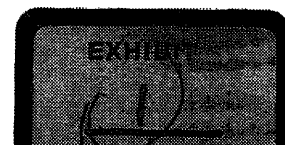
**587**

JUDGE NAME : Cooper, G Thomas Jr  
TRIAL TYPE : Criminal  
PANEL ID : COOPER 6/7/2010  
COURTROOM 3A

Sorted by: Random Nbr  
Trial

DESCRIPTION : COOPER 6/7/2010

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Jones, Billy L	152	W	M	( )	( )	( )	Seated
2 Povey, Sarah I	218	W	F	( )	( )	( )	Seated
3 Hillian, Leon D	124	B	M	✓	( )	( )	
4 Bush, Kevin T	43	W	M	( )	✓	( )	
5 Murrell, Eugenia L	201	W	F	( )	✓	( )	
6 Stuckey, Rae A	267	W	F	( )	( )	( )	Seated
7 Hartley, Bryan F	121	B	M	✓	( )	( )	
8 Kastner, Martha J	155	W	F	( )	✓	( )	
9 Edmondson, Michelle N	81	B	F	( )	( )	( )	Seated
10 White, Trinai D	289	B	F	( )	( )	( )	Seated
11 Hinson, Robert S	125	W	M	✓	( )	( )	
12 Becht, Debra J	21	W	F	( )	( )	( )	Seated
13 Truluck, Katherine T	277	W	F	( )	✓	( )	
14 Elder, Nathan S	84	W	M	( )	( )	( )	Seated
15 Fields, Michael R	89	W	M	( )	( )	( )	Seated
16 Manning, Donna D	179	W	F	( )	✓	( )	
17 Rhodes, Sam L JR	229	B	M	( )	( )	✓	excused
18 Streetman, Joshua D	266	W	M	( )	( )	( )	Seated
19 Riddle, William C	231	W	M	( )	( )	( )	Seated
20 Coppin, Richard R	63	B	M	( )	( )	( )	Seated
21 Daniels, Betty A	67	B	F	✓	( )	( )	
22 Nolting, Darren J	206	W	M	( )	✓	( )	
23 Randall, Jennifer P	224	W	F	( )	✓	( )	
24 Kuder, Wesley R	162	W	M	( )	( )	( )	Seated



588

**Richland County Judicial Center  
RANDOM STRIKE SHEET**

JUDGE NAME : Cooper, G Thomas Jr

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : COOPER 6/7/2010

DESCRIPTION : COOPER 6/7/2010

Trial

COURTROOM 3A

NAME	JUROR NBR	RACE	SEX	ST/PLTF	DEF	GRT	REMARKS
25 Voorhees, Jacqueline M	282	B	F	( )	( )	( )	Seated
26 Tate, Donna C	270	W	F	( )	( )	( )	Seated
27 Leitch, Andrew A	169	W	M	( )	( )	( )	
28 Christian, Eric S SR	54	B	M	( )	( )	( )	
29 Johnson, Alberta D	148	B	F	( )	( )	( )	
30 Moore, Evelyn H	196	B	F	( )	( )	( )	
31 Grewe, Jessica M	109	W	F	( )	( )	( )	
32 Rumph, Carla G	239	B	F	( )	( )	( )	
33 Wright, Phyllis D	297	B	F	( )	( )	( )	
34 Gascon, Deborah J	95	W	F	( )	( )	( )	
35 Johnston, Shanna L	151	W	F	( )	( )	( )	
36 Smentek, Laura B	253	W	F	( )	( )	( )	
37 Griffin, Pamela H	110	W	F	( )	( )	( )	
38 Arnold, Gregg W	11	W	M	( )	( )	( )	
39 Tidd, James F	275	W	M	( )	( )	( )	
40 Horton, Karen N	133	W	F	( )	( )	( )	
41 Windsor, David E	293	W	M	( )	( )	( )	
42 Camp, Virginia	48	B	F	( )	( )	( )	
43 Goodwin, Hope L	103	B	F	( )	( )	( )	
44 Peterson, Aquinas M	213	B	M	( )	( )	( )	
45 Scoggins, Earl C SR	241	W	M	( )	( )	( )	
46 Phillips, Ellcentrell C	214	B	F	( )	( )	( )	
47 Shaw, Brittany M	245	W	F	( )	( )	( )	
48 Morrison, Tara B	199	W	F	( )	( )	( )	

Richland County Judicial Center  
RANDOM STRIKE SHEET

589

JUDGE NAME : Cooper, G Thomas Jr  
TRIAL TYPE : Criminal  
PANEL ID : COOPER 6/7/2010  
COURTROOM 3A

Sorted by: Random Nbr  
Trial

DESCRIPTION : COOPER 6/7/2010

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
49 Gates, Kristen N	96	B	F	( )	( )	( )	
50 Kulac, Mustafa K	163	W	M	( )	( )	( )	

Total Number of Jurors: 50

\*\* END OF REPORT \*\*

#224 OK #239 OK  
#103 OK #297 OK  
#275 OK #214 OK  
#48 OK #155 OK  
#245 OK #289 OK  
#63 OK #229 OK  
#67 OK #275 OK  
#163 OK #179 OK  
#103 OK #124 OK  
#196 OK  
#124 OK  
#199 OK  
#224 OK  
#89 OK  
#148 OK  
#43 OK  
#213 OK

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael P. Cornelius (SCDC #210317),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-7573

ORDER OF DISMISSAL

2018 SEP -6 AM 11:16  
 JEANETTE W. HEBRIDE  
 C.C.P. & G.S.


RICHLAND COUNTY  
 FILED

This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed on November 9, 2012 by Applicant Michael P. Cornelius (Applicant). The State of South Carolina (Respondent) filed a Return on January 25, 2013, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on August 29, 2016, at the Richland County Judicial Center. Applicant was present along with his counsel, Adam J. Hegler, Esquire. Assistant Attorney General Jessica Kinard of the South Carolina Attorney General's Office appeared on behalf of the State.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

**FACTUAL AND PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During the April 2009 term, the Richland County Grand Jury indicted Applicant

  
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 Order of Dismissal

*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

for Armed Robbery (2009-GS-40-1596). Tivis Sutherland, Esquire ("trial counsel") represented Applicant. Assistant Solicitors Kathryn Luck Campbell and Kathryn Ashton, Esquires, of the Fifth Circuit Solicitor's Office prosecuted the case. On June 7-9, 2010, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr.. At the conclusion of the trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to a term of life imprisonment without the possibility of parole.

On April 5, 2011, Applicant filed a timely notice of appeal, and an Anders brief was filed on his behalf by Wanda Carter, Esquire, of the South Carolina Commission on Indigent Defense - Appellate Defense Division. Carter also petitioned to be relieved as counsel on the same day. On March 7, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal and granted Carter's motion to be relieved. State v. Cornelius, 2012-UP-160, filed March 7, 2012. The Remittitur was issued on March 23, 2012.

**SUMMARY OF FACTS ADDUCED AT TRIAL**

Applicant was indicted in April 2009 in Richland County for an armed robbery that occurred on February 16, 2009. The case was called for trial on June 7, 2010. During jury selection, the State used peremptory strikes for four jurors, three of whom were African-American. Four of the jurors ultimately seated on the twelve person panel were African-American. One of the African-American jurors stricken by the State, Juror 124, went to church with one of the State's witnesses, Margaret Jamison. Margaret Jamison is Applicant's aunt. Trial counsel struck seven jurors on Applicant's behalf, all of whom were white. Neither the State nor trial counsel contested the selection of the jury pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) or its progeny.



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Thereafter, pre-trial motions were heard, including Applicant's motion to suppress his identification pursuant to Neil v. Biggers, 409 U.S. 188 (1972), and to suppress Applicant's statement pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Trial counsel argued the photo lineup shown to the State's witnesses was overly suggestive, and Applicant's statement was not voluntary because of Applicant's intoxication. The trial judge denied both motions. Trial counsel moved to suppress the results of a search warrant executed on a property where Applicant's father lived. The trial judge also denied that motion.

Thereafter, the State called fourteen witnesses, and the testimony and evidence presented established the following facts: A black male entered the Sharpe Shoppe convenience store in Blythewood armed with a butcher knife. The black male suspect demanded the cashier hand over all of the money in the register, and he left the store after the cashier complied with his demands. The cashier, Elizabeth Beltrami, identified Applicant as the individual who robbed her. Video surveillance footage of the robbery was also shown to the jury. Ricky Green described the car Applicant was driving and picked Applicant out of a photo lineup. Green also testified the vehicle Applicant was driving had the letters ANE on the license plate. Officer Andrew Caldwell of the Richland County Sheriff's Department searched the residence of Applicant's father and aunt. Officer Caldwell found a distinct checkerboard-patterned hoodie sweatshirt inside the residence that appeared to be what Applicant was wearing in the video surveillance footage of the robbery. Officer Caldwell also located a pickup truck on the property matching Green's description of the vehicle that he saw leave the scene of the robbery. The vehicle had the letters ANE on the license plate. Dr. Gray Amick of the Richland County Sheriff's Department testified that DNA from



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Applicant was present inside the vehicle found at Applicant's aunt's house. Finally, Officer Matthew Ellis of the Richland County Sheriff's Department interviewed Applicant and obtained a written confession of guilt from him.

Following closing arguments and the final jury charge, the jury returned a guilty verdict after thirty-one minutes of deliberations. Based on Applicant's prior record, the trial judge sentenced Applicant to a life sentence without the possibility of parole.

#### **ALLEGATIONS RAISED**

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

1. Ineffective assistance of counsel for failing to properly challenge the jury selection.
2. Ineffective assistance of counsel for failing to properly investigate Applicant's case and failing to properly advise Applicant whether he should proceed to trial in light of Applicant's prior record and his written statement admitting guilt.

#### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified on his own behalf and called trial counsel to testify as well. Applicant testified that J. Rhodes Bailey, Esquire, of the Richland County Public Defender's Office served as counsel for fourteen months before trial counsel became his attorney. Applicant testified he first met trial counsel about a month before trial and only met with him once or twice prior to trial. Applicant stated he discussed some evidence with trial counsel, but he did not receive any discovery from trial counsel. Applicant testified trial counsel tried to negotiate a plea agreement other than a life sentence, but the State would not agree to anything less. Applicant

also testified trial counsel did not call Applicant's father as a witness, and generally alleged trial counsel did not do a good job in his cross examinations of the State's witnesses.

Trial counsel testified he was appointed to represent Applicant shortly after leaving his employment with the Richland County Public Defender's Office and beginning a solo private practice. He testified Applicant was previously represented by Attorney Bailey before he was appointed. Trial counsel further testified he met with Applicant on three occasions totaling around five to six hours over the five-to-six weeks between his appointment and trial. Trial counsel testified his notes indicated he reviewed discovery with Applicant, though trial counsel could not recall any specific topics he discussed with Applicant. Trial counsel testified he and Applicant discussed Applicant's version of the facts, which did not differ significantly from the evidence. Trial counsel also testified he had very limited opportunities in mounting a defense for Applicant because the robbery was caught on video and Applicant had admitted his guilt to law enforcement. Trial counsel testified he focused on excluding the evidence against Applicant, including Applicant's statement to law enforcement and the witnesses' identification of Applicant through a photo lineup. Trial counsel further testified this was a relatively simple case, without much discovery, and he had enough time to prepare the case before trial.

Trial counsel stated the State only offered for Applicant to plead to a life sentence, and therefore, trial counsel advised Applicant not to accept the State's offer. Trial counsel testified he went to speak directly with the elected Solicitor, Barney Giese, about rescinding the State's life sentence without parole notice. Trial counsel further testified he was unsuccessful in securing a meeting with Giese, and thus he tried to get a different plea offer from the Assistant Solicitor

  
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during every break of the trial, however, the State would not agree to withdraw the life sentence without parole.

Regarding jury selection, trial counsel testified he could not say whether the State's striking of three African-American jurors was done with a discriminatory motive, and he did not see a discriminatory pattern at the time. He recalled that at least one of the African-American jurors stricken by the State went to church with Applicant or one of his family members, which would have been a "feasible" reason for striking that juror. Trial counsel also candidly admitted every juror he struck on Applicant's behalf was white. Trial counsel also testified he made the motion in other cases and had never been successful. Accordingly, trial counsel did not make a Batson motion at the conclusion of jury selection.

#### 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 further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has reviewed the trial court record and has heard the testimony of both Applicant and trial counsel. This Court has therefore weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the



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Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573

trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.



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Order of Dismissal

*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

**I. INEFFECTIVE ASSISTANT OF COUNSEL FOR FAILURE TO PROPERLY CHALLENGE THE JURY SELECTION**

Applicant asserts trial counsel was ineffective for failing to properly challenge the jury selection pursuant to Batson. Specifically, Applicant contends trial counsel should have challenged the State's use of three of their four peremptory strikes on African-American jurors.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a juror on the basis of race. Batson, 476 U.S. at 89; State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Cochran, 369 S.C. 308, 313, 631 S.E.2d 294, 297 (Ct. App. 2006). "Once a peremptory challenge is opposed, the trial court must, upon request, conduct a Batson hearing and adhere to the procedures set forth in Purkett v. Elem, 514 U.S. 765, 767 (1995), and adopted by our Supreme Court in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996)." Cochran, 369 S.C. at 314, 631 S.E.2d at 297-98. The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. Inman at 26, 760 S.E.2d at 108; See Purkett, 514 U.S. at 767-68 (1995).

First, the party asserting the Batson challenge must make a prima facie showing that the challenge was based on race. Inman at 26, 760 S.E.2d at 108. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the party opposing the Batson challenge to provide a race-neutral explanation for the challenge. Id. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination. Id.

The ultimate burden always rests with the [party asserting the Batson challenge] to prove purposeful discrimination. Id.

Here, trial counsel did not make a Batson motion; therefore, the aforementioned three-step inquiry cannot be applied to the facts of Applicant's case. Moreover, trial counsel articulated clear strategic reasons why he chose not to make a Batson motion, and even if trial counsel had made an appropriate motion, this Court does not find trial counsel could have made a prima facie showing that the State's challenges were based on race. Additionally, this Court notes that while the State did use three out of their four peremptory strikes on African-American jurors, the State did not strike all African-American jurors. In fact, the State agreed to sit four African-American jurors. Furthermore, trial counsel struck seven white jurors and candidly admitted at the evidentiary hearing that he had done so. Trial counsel appropriately considered that a Batson motion may have been reciprocally made by the State. This Court finds trial counsel made an appropriate strategic decision to not make a Batson motion, and trial counsel was not deficient in his representation of Applicant in this regard. Therefore, Applicant's PCR application is denied as to this allegation.

**II. INEFFECTIVE ASSISTANT OF COUNSEL FOR FAILURE TO PROPERLY INVESTIGATE APPLICANT'S CASE**

Applicant alleges trial counsel was ineffective for failing to fully investigate his case and for failing to properly advise him to plead guilty. This Court finds trial counsel made appropriate motions to exclude all inculpatory evidence against Applicant. Specifically, trial counsel moved to suppress the photo lineups used to identify Applicant, Applicant's confession to law enforcement, and the results of a search warrant executed at the residence of Applicant's father


and aunt. The trial judge denied each of trial counsel's motions. Additionally, trial counsel made multiple attempts before and during trial to obtain Applicant a better plea deal than life without parole. The State was not willing to offer such a plea, nor were they required to do so. This Court finds that trial counsel was not deficient in his defense of Applicant at trial, nor was he deficient in his attempts to obtain a plea deal for Applicant. Therefore, this allegation must be denied under Applicant's PCR application.

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Trial counsel was not deficient, nor was Applicant prejudiced by trial counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Michael P. Cornelius be REMANDED to the custody of the State of South Carolina.

  
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Order of Dismissal

*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

AND IT IS SO ORDERED.



Jocelyn Newman  
Presiding Judge

September 5, 2018  
Columbia, South Carolina.

DOCKET NO. 2009-GS-40-1596

legal rights, I hereby waive present to the Grand Jury.

**WITNESSES**

**The State of South Carolina  
County of Richland**

Defendant

Investigator Matt Ellis, RCSD

**COURT OF GENERAL SESSIONS  
APRIL TERM 2009**

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

42

Defendant

ST WARRANT NUMBER

**THE STATE  
vs.**

Witness:

C.C.C. PLS. AND G.S.

**MICHAEL CORNELIUS**

ION OF GRAND JURY

**RUE BILL**

*Rapier*  
Grand Jury APR 15 2009

**Indictment for**

**ARMED ROBBERY  
SC Code: 16-11-330(A)  
CDR Code: 0139  
Class FEL-A(V)**

VERDICT

-Y

*d. R. Coffin SR.*  
Petit Jury  
1-10

After being fully advised as to my

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

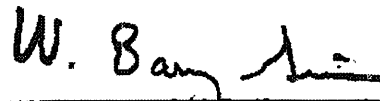
## INDICTMENT

At a Court of General Sessions, convened on April 15, 2009, the Grand Jurors of Richland County present upon their oath:

**ARMED ROBBERY**

That MICHAEL CORNELIUS did in Richland County on or about February 16, 2009, commit robbery by feloniously taking from the person or presence of Ann Beltrami by means of force or intimidation goods or monies of The Sharpe Shoppe, such goods or monies described as U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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



WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE

INDICTMENT/CASE#: 09 -GS- 40-1596

Michael Paul Cornelius vs

AW#: I937544

AKA: \_\_\_\_\_  
Race: B Sex: M Age: \_\_\_\_\_

Date of Offense: February 16, 2009

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

S.C. Code §: 16-11-336(A)

Address: \_\_\_\_\_

CDR Code #: 0139

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As Indicted,  Lesser included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (defendant initial).

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

[Signature]  
Solicitor

17009  
SC Bar #

Michael Cornelius  
Defendant

[Signature]  
Attorney for Defendant

68685  
SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 90 days days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED

set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

\*Fine: \$ \_\_\_\_\_

Random Drug/Alcohol Testing

\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_

prmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

Other: \_\_\_\_\_

\$56-1-289 (DUI Breath Test) \$500 \$ \_\_\_\_\_

25 \$ \_\_\_\_\_

\$35.13 (Public Def/Prob) \$25 \$ \_\_\_\_\_

LIFE WITHOUT PAROLE.

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \_\_\_\_\_

ADDITIONAL TREATMENT UNIT

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

\$90.11 TP (SCCJA Surcharge) \$5 \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Appointed PD or appointed other counsel, §35.13 TP  
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Jeanette W. McBride  
Clerk of Court/ Deputy Clerk

Judge Code: 2126

Court Reporter: J. Williams

Sentence Date: 6-8-10