**VOLUME II OF II**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT



---

Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

---

CALVIN TERRELL WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001839

---

# APPENDIX

---

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

**PAGES 501-550**

# INDEX

due process violation in this man getting sentenced to life without parole when we'd submit that he didn't qualify for it under the statute.

THE COURT: Thank you.

Yes, ma'am.

MS. JAMESON: May it please the Court.

As to the first allegation, ineffective assistance of counsel for failing to object to the life without parole under 17-25-45, the State submits that these federal armed bank robberies, and armed is the important word here, meet the qualifications for 17-25-45. It's one of the enumerated offenses. It's, it's most similar -- it is similar when you look at the elements test, which is what Solicitor Barnette was required to do when, when deciding to serve the LWOP notice, and in the Court in determining whether the LWOP notice was proper. Armed robbery is one of those enumerated offenses.

So, it's, it's sort of a red herring arguing that. In the federal system, it's only up to 25 years. Not 30. Well, the State didn't proceed forward under the catchall. They proceeded forward under armed robbery being an enumerated offense pursuant to 17-25-45.

The indictments, which were introduced at trial, and are part of Your Honor's packet here today that -- in the clerk's records have the indictments for both of those

federal armed bank robberies, and they both explicitly list explosives as the dangerous weapon. And I believe all the witnesses, at least Solicitor Barnette and Mr. Shealy testified, that an explosive is a deadly weapon.

So, he was properly -- Mr. Williams was properly noticed, served, and sentenced to life without parole based on 17-25-45, and the State would ask this Court to deny that allegation.

Regarding the second allegation, failing to contemporaneously, contemporaneously object to Judge Couch admitting that the element of entry did not exist, that's a misrepresentation of the record. The State's theory was never that Mr. Williams entered the bank. The theory was always that he aided and abetted, and was constructively present. Never that he was not -- entered the bank or did not enter the bank.

So, again, that's something that Mr. Shealy, the record reveals, argued extensively about, moved for a directed verdict on that ground, and, ultimately, that was denied by Judge Couch. So, there is no ineffective assistance of counsel, and he could not establish any prejudice regarding that second allegation.

The third allegation that he was indicted essentially for both accessory before the fact of bank robbery and bank robbery, the State submits that the status of our law in

South Carolina is very clear that a prosecutor has discretion in what he indicts for and proceeds forward to trial. I want to pass up a case to the Court, State v. Stephanie Irene Greene, which Solicitor Barnette testified regarding. That's a case here out of Spartanburg County that Solicitor Barnette prosecuted himself. It is a published opinion. However, Petition for Rehearing has been filed.

But may I approach, Your Honor?

THE COURT: Yes, ma'am.

MS. JAMESON: But that case makes very clear, and I want to, I want to direct the -- Your Honor, Your Honor's attention to, in Section 4, Part A, which is on Page 9, multiple offenses, including multiple homicide offenses, may be prosecuted in a single trial, but principals inherent in double jeopardy and due process preclude multiple punishments for the same offense.

So, that is not the situation we have here today. Judge Couch made very clear that he could be convicted of accessory before the fact, bank robbery, or nothing, but he could not be convicted of both. And so that is the status of the law in South Carolina. This recent case confirms that.

And 16-1-50, that's been cited by Applicant, it's important to know it -- the word and is in there, and that's

one of the things that's being glossed over by Applicant. It says a person who counsels, hires, or otherwise procures a felony to be committed may be indicted and convicted. And that's not the situation we have here today.

So, the State would submit that 16-1-50 is not applicable to the case, and counsel wasn't ineffective in regards to these dueling indictments. Additionally, Counsel Shealy vigorously objected to this. This was the whole basis of his directed verdict motion that the State was at, one, in one breath saying he wasn't present, and that's why it was accessory before the fact. But, at the same time, he was saying he was constructively present for bank robbery. All of that was fleshed out on the record before Judge Couch, and was ultimately denied by Judge Couch.

So, the State submits Mr. Williams was properly indicted for both of these offenses, and Mr. Shealy vigorously argued against these, but they were ultimately denied by Judge Couch.

I do want to respond to the two last minute objections without withdrawing objections to these late amendments. I want to preserve that for the record, but the failure to reveal the deal, failure to file a motion to reveal the deal, the unconverted testimony we have here today is that there was no deal.

Solicitor Barnette testified there was no deal. He was

allowed to plead straight up. Counsel Shealy testified that he asked the solicitor multiple times before the trial. There was no deal. And Applicant hasn't presented any testimony or evidence to show that there was a deal.

It's -- his son just ended up getting a better offer when he or a better deal when -- a sentence when he pled guilty, but there was no deal here. And so counsel can't be ineffective for failing to file a motion to reveal the deal if there simply wasn't a deal for.

And the other last minute objection was failure to adequately cross-examine his codefendant's son regarding his inconsistent testimony to law enforcement. The State would rely on the record for that. He's adequately cross-examined by Mr. Shealy about the fact that he, 19 times, told law enforcement my father wasn't involved. Counsel Shealy even had him admit that he didn't know his father.

All of that was fleshed out on the record. He adequately cross-examined him on that, and so counsel hadn't shown any deficiency, and certainly hasn't shown any prejudice because the jury did hear that 19 times he consistently said his father was involved. And then, on the twentieth time, he flipped.

So, without preserving our objections to those last amendments, we'd ask the Court to deny those as well, and deny the Application in full that Mr. Williams hasn't shown

any deficiency of counsel nor any prejudice, and the Application should be denied.

THE COURT: Anything else?

MS. ROSS: No, Your Honor.

MS. JAMESON: No, Your Honor.

THE COURT: Okay. Thank you.

All right. I am going to take this under advisement, and I have a lot to review.

And, Mr. Williams, sir, just so you understand, this information, generally, it is routine that I don't get any of this information prior to your hearing because they put all of this together, and we get the transcripts. And so I need to review all of this before I make a decision.

Do you understand?

THE APPLICANT: Yes, ma'am.

THE COURT: All right. And, counsel, do -- I think both of you had stated that you might want to submit additional information to me prior to my making a decision. And, if you would like to submit any additional information, I will give you ten days to do that. I'm not saying that you have to.

Okay. But, out of fairness to each of you, if you would like to, I, I am happy to review it. And I'm assuming that that would be case law or arguments, but not affidavits of witnesses.

MS. JAMESON: Yes, Your Honor. I, I believe, based on the testimony we have here today, that we would withdraw our request to submit any affidavits.

THE COURT: Okay. All right. So, with that, unless there are questions with regard to that statement, this matter will be adjourned.

Mr. Williams, I wish you the best of luck, sir.

THE APPLICANT: All right. Appreciate it.

MS. JAMESON: Thank you, Your Honor.

MS. ROSS: Thank you, Your Honor.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

# CERTIFICATE

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 18th day of June, 2018.

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

November 30th, 2018

Pamela E. Green

PAMELA E. GREEN, Court Reporter

| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| | CASE NO. 2018-CP-42-0057 |
| COUNTY OF SPARTANBURG | |
| CALVIN TERREL WILLIAMS, APPLICANT, | |
| | POST HEARING MEMORANDUM |
| VS. | |
| STATE OF SOUTH CAROLINA, | |
| RESPONDENT. | |

On June 18, 2018, a hearing was held in this matter in which parties were given ten days to supplement the record. We submit argument regarding two issues which were highlighted by the testimony of the State's witnesses Matthew Shealy and Barry Barnette.

Both witnesses stated that Mr. Williams' 2003 guilty plea in District Court to an indictment for two counts of bank robbery would be classified as the most serious offenses of armed robbery under Sec. 17-25-45. This is an improper assumption which was not supported in the record of the case. The notice of intent to seek life without parole references prior convictions of Armed Bank Robbery yet the Federal Bank Robbery and Incidental Crimes statute 18 U.S.C. Sec. 2113 does not require that a defendant actually be armed. South Carolina's armed robbery statute does require a person to be armed or allege to be armed by action or words while using a representation of a deadly weapon.



Trial counsel's failure to challenge the notice of life without parole changed the outcome of the case. No proof or argument as to whether the factual basis of the prior offenses would support their classification as a serious or most serious offense under Sec. 17-25-45 was presented at trial. The record of the case contains pretrial testimony and

the State's memorandum of law regarding prior bad acts that set out the State's understanding of allegations behind Mr. Williams guilty plea in Federal Court. The reason for the State's efforts to bring out the facts of the prior bank robberies was that they were so similar to the present facts that the Solicitor wanted to present them to the jury under SCRE 404(b), because the prior crime also involved presenting a demand note to a youth and instructing them to use it to rob a bank.

Case law is clear that presenting a demand note referencing a deadly weapon and threatening violence is not enough to support an armed robbery conviction. State v. Muldrow, 348 S.C. 264, 559 S.E. 2d 847 (SC 2002), Van Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (S.C., 2016). Furthermore, State v. Muldrow advises that the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Id. It would require just such subtle and forced construction for the State to argue that the Federal indictment for two counts of Bank Robbery under 18 U.S.C. Sec. 2113, which carries a twenty-five year maximum sentence, be classified as two serious offenses because of its similarity to the State charge of bank robbery which carries up to thirty years in the State system. The record in this case contains no evidence of the factual basis of Mr. Williams' 2003 plea in Federal Court and without such the life sentence pursuant to Sec. 17-25-45 is not supported.



Secondly, the State argued that State v. Green explains the validity of proceeding with two indictments against Mr. Williams for both bank robbery and accessory before the fact to a bank robbery. That case is distinguishable because the facts involve one principal, the mother, and whether her action in breast feeding her newborn after having

ingesting morphine supported indictments and convictions for both homicide by child abuse and involuntary manslaughter. The court noted that involuntary was not a lesser included offense so both indictments could be presented to the jury but fundamental fairness prevented a finding of guilt on both. Here, there was no evidence presented that Mr. Williams was present at the scene of the crime.

The plain meaning of Sec. 16-1-50 stands for the proposition that an accessory can be indicted and convicted as an accessory before the fact or as a principal. State v. Blakely gives a thorough history explaining:

> The common law traditionally categorized the participants in a felony as accessory before the fact, principal first, principal second, and accessory after the fact." William Shepard McAninch, W. Gaston Fairey, and Lesley M. Coggiola, The Criminal Law of South Carolina 410 (5th ed.2007). Generally, under the common law, liability as an accessory essentially "shadowed" that of the principal. *See* State v. Massey, 267 S.C. 432, 443, 229 S.E.2d 332, 338 (1976) ("At common law an accessory could not be convicted unless his principal had been convicted."). In modern jurisprudence, principals and accessories have generally merged, with an exception for an accessory after the fact. *See*S.C.Code Ann. § 16–1–40 (2003) ("A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony ... is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon."). This means that, upon proper notice and proof, an accessory

who provides any assistance may be treated the same as if he was the principal of the crime, but the accessory may not be convicted as both. *See State v. Sheriff*, 118 S.C. 327, 328, 110 S.E. 807, 807 (1922) (noting the common law and the criminal code recognize the "distinction between principals and accessories before the fact and, while the punishment is the same for each, that does not change the essential distinction or relieve the necessity of the appropriate allegations in an indictment"). Today, the accessory's culpability no longer shadows that of the principal. Accordingly, an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted. *See Massey*, 267 S.C. at 444, 229 S.E.2d at 338 (noting "the conviction of [402 S.C. 657] the principal is no longer a condition precedent to the conviction of an accessory"). State v. Blakely, 402 S.C. 650, 652, 742 S.E.2d 29, 32 (S.C. App., 2013)

Given that there was no allegation or argument that Mr. Williams was present in the bank, there can be basis to submit the two indictments to the jury other than a prejudicial one.



Respectfully submitted,

Susannah Ross
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 22 day of June, 2018.

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF SPARTANBURG | IN THE COURT OF COMMON PLEAS<br>FOR THE SEVENTH JUDICIAL CIRCUIT |
| Calvin Terrell Williams, #218862<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | Case No.: 2018-CP-42-0057<br><br>**RESPONDENT'S POST-HEARING MEMORANDUM** |

This matter comes before this Court by way of an application for post-conviction relief filed on January 8, 2018, by Calvin Terrell Williams (Applicant). Respondent made its return on April 18, 2018, requesting an evidentiary hearing. An evidentiary hearing was held on June 18, 2018, in the Spartanburg County Court of General Sessions before the Honorable Grace Gilchrist Knie, circuit court judge. Applicant was present and was represented by counsel Susannah Ross, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the hearing, testimony was taken from trial counsel Matthew Shealy, Seventh Circuit Solicitor Barry Barnette, and Applicant's co-defendant Shyquone Williams. At the conclusion of the hearing, the Court left the record open to allow both parties to submit post-hearing memorandums.

## Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015 the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette

prosecuted the case.

On June 6, 2016, Applicant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch, circuit court judge. On June 8, 2016, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery.

Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18. 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

**Allegations Raised in the Application and at the Evidentiary Hearing**

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

1. Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery

2. Ineffective Assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery

3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50

At the evidentiary hearing, Applicant also proceeded forward on two additional grounds over Respondent's objections:

1. Ineffective assistance of counsel for failing to require the State to reveal the co-defendant's plea offer

2. Ineffective Assistance of counsel for failing to properly cross-examine the co-defendant regarding his prior inconsistent statements to law enforcement.

**Applicant Failed to Establish that Counsel was Constitutionally Ineffective**

Applicant has alleged five instances of ineffective assistance of counsel. Respondent submits these claims are clearly refuted by the record and testimony presented at the evidentiary hearing and asks this Court to dismiss all five allegations with prejudice.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Challenge his Sentence Pursuant to S.C. Code Ann. § 17-25-45***

Applicant alleges trial counsel should have objected to the State's notice of its intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 and to the trial court's imposition of this sentence. Specifically, Applicant alleges his two prior convictions for federal armed bank robbery (18 U.S.C. § 2113 (a) and (d)) do not meet the statutory requirements for enhancement pursuant to S.C. Code Ann. § 17-25-45 and counsel was ineffective for failing to object to his sentence of life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. This argument is without merit, as Applicant's two prior convictions for armed bank robbery pursuant to 18 U.S.C. § 2113 (a) and (d) were the legal equivalent of the statutory offense of armed robbery in South Carolina (S.C. Code Ann. §16-11-330(A)), which is a "most serious" offense as enumerated in subsection (C)(1) of S.C. Code Ann. § 17-25-45.

At the evidentiary hearing, both trial counsel and Solicitor Barnette testified that they investigated and compared the elements and factual background of both of Applicant's prior federal armed bank robbery convictions when determining whether Applicant was eligible for an enhanced sentence as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45. Both testified that after their investigations, they both believed Applicant was properly sentenced pursuant to S.C. Code Ann. § 17-25-45 because his federal convictions for armed bank robbery were the legal equivalent of armed robbery, an enumerated "most serious" offense under S.C. Code Ann. § 17-25-45(c)(1).

Pursuant to S.C. Code Ann. § 17-25-45(A), a trial judge has no sentencing discretion and must sentence a defendant to a term of imprisonment of life without the possibility of parole where the defendant was convicted of a "most serious" or "serious" offense and has either one or more prior convictions for a "most serious" offense or two or more prior convictions for a "serious" offense. When determining whether a defendant has a prior "most serious" conviction for sentencing enhancement purposes, a defendant's prior criminal record expressly includes "a **federal** or out-of-state conviction for **an offense that would be classified as a most serious offense under this section**[.]" S.C. Code Ann. § 17-25-45(A)(1)(b) (emphasis added). Therefore, if a defendant was convicted of a prior federal offense that would have constituted a "most serious" offense in South Carolina, that earlier conviction can be used to enhance the defendant's sentence under our recidivist offender statute. Id.

In the present case, Applicant previously pled guilty on October 31, 2003, before the Honorable Henry M. Herlong, Jr, United States District Judge, to two counts of armed bank robbery pursuant to 18 U.S.C. § 2113 (a) and (d). These charges stemmed from two instances that occurred on August 7, 2003 and August 12, 2003, wherein Applicant and co-defendants did rob two separate banks with the use of a dangerous weapon or device (an explosive). When comparing the element, it is clear that Applicant's federal armed bank robbery convictions pursuant to 18 U.S.C. § 2113 (a) and (d)) equate to the "most serious" offense of armed robbery in South Carolina. (S.C. Code Ann. §16-11-330(A)). Therefore, the State properly sought to enhance Applicant's sentence as armed robbery is classified as a "most serious" offense under the statute. S.C. Code Ann. § 17-25-45(C)(1). See, e.g., State v. Washington, 338 S.C. 392, 397-398, 526 S.E.2d 709, 711 (2000) (finding Washington was properly sentenced under the recidivist offender statute where the elements of his prior offense of common law burglary now constituted the offense of first-degree burglary, meaning his prior conviction was the legal

equivalent of a "most serious" offense and would have constituted a "most serious" offense pursuant to the statute); Hinton v. S.C. Dept of Prob., Parole, and Pardon Servs., 357 S.C. 327, 339, 592 S.E.2d 335, 342 (Ct. App. 2004) (noting under the "same-elements" test, when comparing the elements of the offenses, a court "looks to whether the particular actions taken by the defendant which satisfy the elements of the crime in the other state would satisfy the elements of one of the enumerated crimes").

In support of his assertions that his sentence was improperly enhanced, Applicant contends his federal armed bank robbery convictions should not have been used for enhancement purposes because armed bank robbery only carries a maximum possible punishment of a twenty-five-year sentence in the federal system. However, when determining whether a defendant is subject to sentencing enhancement based on an earlier federal or out-of-state conviction, the relevant inquiry is not how the federal or out-of-state jurisdiction chooses to classify the federal or out-of-state offense or what the potential punishment for that offense is in another jurisdiction. Instead, pursuant to S.C. Code Ann. § 17-25-45, the relevant inquiry is whether or not the federal or out-of-state offense would be classified as a "most serious" offense in South Carolina. See S.C. Code Ann. § 17-25-45(A)(1)(b) (requiring a sentence of life imprisonment following conviction for a "most serious" offense if the defendant has a prior "out-of-state conviction for an offense that would be classified as a most serious offense **under this section**[.]" (emphasis added)); see, e.g., Daniels v. State, 621 So. 2d 335, 342 (Ala. Crim. App. 1992) ("In determining whether an out-of-state conviction will be used to enhance punishment pursuant to the [Habitual Felony Offender Act], the conduct upon which the foreign conviction is based must be considered and not the foreign jurisdiction's treatment of that conduct.").

Therefore, the fact the sentencing range for armed bank robbery in the federal system is up to twenty-five years imprisonment has no bearing on whether or not federal armed bank

robbery convictions can be used for sentencing enhancement purposes in South Carolina. Because the federal offense of armed bank robbery would constitute the offense of armed robbery in South Carolina, Applicant's prior federal convictions for armed bank robbery would be classified as the "most serious" offense of armed robbery in our state. Thus, the State properly served Applicant with notice of intent to seek life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 and counsel was not constitutionally ineffective for failing to challenge both the notice or imposition of a life without the possibility of parole sentence pursuant to S.C. Code Ann. § 17-25-45.

Additionally, Applicant asserts that the State cannot establish his prior federal convictions for armed bank robbery met the legal elements of armed robbery in South Carolina because he and his-co-defendants merely presented a demand note and the State failed to establish that there was any physical representation of a weapon as required under State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) and Van Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016). However, this argument is without merit, as Applicant knowingly and voluntarily entered guilty pleas to both of these offenses, thereby admitting to all the essential elements contained in the indictments, including that he and his co-defendant were armed with explosives. See State v. Allen, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973) ("A plea of guilty is an admission or a confession of guilt, and is as conclusive as the verdict of a jury; **it admits all matter of fact averments of the accusation.**" (emphasis added)); Shelnut v. State, 247 S.C. 41, 45-46, 145 S.E.2d 420, 422 (1965) ("By their voluntary submission to a verdict of guilty, the defendants **admitted all material allegations of the indictment, including those relating to the situs of the crime,** thus waiving a trial and the presentation of evidence. These admissions are as conclusive upon them as the verdict of a jury would be." (emphasis added)).

As Applicant was properly noticed, served, and sentenced to life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45, trial counsel cannot be deemed constitutionally ineffective for failing to challenge his sentence. This Court should deny and dismiss this argument.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Argue Applicant did not enter the bank***

Applicant alleges trial counsel was constitutionally ineffective for failing to argue that he did not enter the bank. This argument is without merit, as the record is brimming with numerous arguments by trial counsel through the trial that Applicant not only did not enter the bank, but was not present at the scene. Trial counsel's thorough directed verdict motion was based on this very argument. Moreover, the record and testimony from all witnesses at the evidentiary hearing, including Applicant's own testimony, is that the State never alleged that Applicant personally entered the bank, but rather, had indicted Applicant with bank robbery based on a theory of aiding and abetting and his constructive presence at the scene. This argument with without merit and should be denied by this Court.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Challenge the State's decision to proceed forward on Both Indictments***

Applicant alleges trial counsel was constitutionally ineffective for failing to challenge the State's decision to proceed to trial on both indictments for bank robbery and accessory before the fact to bank robbery. In support of this argument, Applicant cites to S.C. Code Ann. § 16-1-50, which he asserts "stands for the proposition that an accessory can be indicted and convicted as an accessory before the fact or as a principal." (Applicant's Post Hearing Memorandum 3). Respondent agrees with Applicant's interpretation of S.C. Code Ann. § 16-1-50, as an accessory clearly cannot be indicted **and** convicted as both an accessory and a principal under the plain meaning of the statute. However, Applicant's reliance on S.C. Code Ann. § 16-1-50 is misguided

in the present case, as Applicant was not convicted as an accessory to bank robbery, but rather, was convicted of bank robbery and bank robbery alone. Applicant appears to be ignoring a crucial word of S.C. Code Ann. § 16-1-50—"**and**"—which requires not only indictment as both the accessory and principal but also conviction as both the accessory and principal to run afoul of S.C. Code Ann. § 16-1-50.

It is clear that the State could proceed forward on two theories at Applicant's trial—first, as an accessory to bank robbery who aided in the planning of the bank robbery before the crime occurred, and second, as a principal who was constructively present at the scene as he arranged the ride to the bank, instructed his co-defendant as to how to rob the bank, remained in the getaway car that was parked in close proximity to the bank, and assisted in fleeing following the robbery. "Multiple offenses, including multiple homicide offenses, may be prosecuted in a single trial[.]" State v. Greene, ___ S.C. ___, ___S.E.2d ___ (S.C. May 23, 2018), reh'g denied (June 26, 2018); See, e.g., State v. Cavers, 236 S.C. 305, 311–12, 114 S.E.2d 401, 404 (1960) ("It was within the province of the jury to find whether appellant's conduct was negligent or reckless, or neither; if negligent, it would have supported a verdict of guilty of manslaughter, the court having eliminated murder and voluntary manslaughter; if reckless, it sustains the verdict of guilty of reckless homicide, and that finding by the jury is implicit in the verdict. The jury were instructed that they could not find appellant guilty on both counts. To sustain this point of appellant would require the court, instead of the jury, to determine whether his conduct was negligent or reckless, if either, which, under the evidence in this case, would be an invasion by the court of the province of the jury. The State cannot be required to elect between counts in an indictment when they charge offenses of the same character and refer to the same transaction, whether or not one charges a common law offense and another a statutory offense." (citations omitted) ); see also Ball v. United States, 470 U.S. 856, 859, 861 (1985) ("It is clear that a

convicted felon may be prosecuted simultaneously for violations of §§ 922(h) and 1202(a) involving the same firearm. This Court has long acknowledged the Government's broad discretion to conduct criminal prosecutions, including its power to select the charges to be brought in a particular case. ... To say that a convicted felon may be prosecuted simultaneously for violation of §§ 922(h) and 1202(a), however, is not to say that he may be convicted and punished for two offenses. Congress can be read as allowing charges under two different statutes with conviction and sentence confined to one."). There was nothing improper as to the State proceeding forward under both indictments, as the trial court made it abundantly clear to the jury that it could only convict Applicant of one offense but not both, or find Applicant not guilty of both offenses. Therefore, trial counsel's performance was not constitutionally ineffective and this Court should deny this allegations

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Require the State to Reveal any Plea Offer with his co-defendant***

At the evidentiary hearing, Applicant alleged trial counsel was constitutionally ineffective for failing to require the State to "reveal the deal" that induced his co-defendant Shyquone Williams to testify against him. This allegation is without merit and is conclusively refuted by the record and testimony presented at the evidentiary hearing. Trial counsel and Solicitor Barnette credibility testified that there was no plea agreement in place between the State and the co-defendant, and therefore, there simply was no deal to reveal. Applicant failed to establish the existence of any plea agreement other than his bare assertions that his co-defendant received a more lenient sentence. Therefore, trial counsel's performance was not constitutionally ineffective and this Court should deny this allegation.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Properly Cross-Examine his Co-Defendant***

At the evidentiary hearing, Applicant alleged trial counsel was constitutionally ineffective for failing to properly cross-examine his co-defendant Shyquone Williams. Specifically, Applicant alleged trial counsel did not properly elicit testimony that Applicant gave numerous prior inconsistent statements to law enforcement, including that Applicant was not involved in the bank robbery, before he eventually said Applicant was the mastermind of the crime. This allegation is conclusively refuted by the record, which reveals that trial counsel thoroughly cross-examined his co-defendant about his inconsistent statements to law enforcement, including prior denials of knowing Applicant, denials that Applicant was involved, and lies that he had not seen Applicant (his father) for more than a decade when he had recently stayed at his home for six days. Trial counsel's cross-examination of Applicant was well within the standards of competent counsel and does not amount to constitutionally deficient performance. This Court should deny this allegation.

In conclusion, Applicant has failed to meet his requisite burden of proof of establishing that trial counsel was constitutionally ineffective. This Court should deny and dismiss this application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

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

June 28, 2018

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF SPARTANBURG<br><br><br>CALVIN TERELL WILLIAMS, #218862<br><br>Applicant,<br><br>vs<br><br>STATE OF SOUTH CAROLINA,<br><br>Respondent. | IN THE COURT OF COMMON PLEAS<br><br>2018-CP-42-00057<br><br><br><br><br>AFFIDAVIT OF SERVICE BY MAIL |

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Respondent's Post-Hearing Memorandum** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Susannah C. Ross, Esquire**
**Ross & Enderlin, PA**
**330 East Coffee Street**
**Greenville, South Carolina 29601**

DATED this 28th day of June, 2018.

Lindsey McCoy, Legal Assistant

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF SPARTANBURG | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE SEVENTH JUDICIAL CIRCUIT |
| Calvin Terrell Williams, #218862<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | Case No.: 2018-CP-42-0057<br><br>**ORDER OF DISMISSAL** |



This matter comes before this Court by way of an application for post-conviction relief filed on January 8, 2018, by Calvin Terrell Williams (Applicant). Respondent made its return on April 18, 2018, requesting an evidentiary hearing. An evidentiary hearing was held on June 18, 2018, in the Spartanburg County Court of General Sessions. Applicant was present and was represented by counsel Susannah Ross, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the hearing, testimony was taken from trial counsel Matthew Shealy, Seventh Circuit Solicitor Barry Barnette, and Applicant's co-defendant Shyquone Williams. At the conclusion of the hearing, this Court left the record open to allow both parties to submit post-hearing memorandums. Following the submission of post-trial memorandums by both parties and a review of these memorandum, the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

## PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015, the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County

Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette prosecuted the case.

On June 6, 2016, Applicant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch, circuit court judge. On June 8, 2016, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery.

Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18. 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

**ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING**

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

1. Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery

2. Ineffective Assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery

3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50

At the evidentiary hearing, Applicant also proceeded forward on two additional grounds over Respondent's objections:

1. Ineffective assistance of counsel for failing to require the State to reveal the co-defendant's plea offer

2. Ineffective Assistance of counsel for failing to properly cross-examine the co-defendant regarding his prior inconsistent statements to law enforcement.



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged five instances of ineffective assistance of counsel. This Court finds these claims are clearly refuted by the record and testimony presented at the evidentiary hearing. Therefore, this Court finds Applicant has failed to establish that counsel was constitutionally ineffective as to any of the five specific allegations.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.



***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Challenge his Sentence Pursuant to S.C. Code Ann. § 17-25-45***

Applicant alleges trial counsel should have objected to the State's notice of its intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 and to the trial court's imposition of this sentence. Specifically, Applicant alleges his two prior convictions for federal armed bank robbery (18 U.S.C. § 2113 (a) and (d)) do not meet the statutory requirements for enhancement pursuant to S.C. Code Ann. § 17-25-45 and counsel was ineffective for failing to object to his sentence of life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. This Court finds this argument is without merit, as Applicant's two prior convictions for armed bank robbery pursuant to 18 U.S.C. § 2113 (a) and (d) were the legal equivalent of the

statutory offense of armed robbery in South Carolina (S.C. Code Ann. §16-11-330(A)), which is a "most serious" offense as enumerated in subsection (C)(1) of S.C. Code Ann. § 17-25-45.

At the evidentiary hearing, both trial counsel and Solicitor Barnette testified that they investigated and compared the elements and factual background of both of Applicant's prior federal armed bank robbery convictions when determining whether Applicant was eligible for an enhanced sentence as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45. Both testified that after their investigations, they both believed Applicant was properly sentenced pursuant to S.C. Code Ann. § 17-25-45 because his federal convictions for armed bank robbery were the legal equivalent of armed robbery, an enumerated "most serious" offense under S.C. Code Ann. § 17-25-45(c)(1). This Court finds this testimony credible.



Pursuant to S.C. Code Ann. § 17-25-45(A), a trial judge has no sentencing discretion and must sentence a defendant to a term of imprisonment of life without the possibility of parole where the defendant was convicted of a "most serious" or "serious" offense and has either one or more prior convictions for a "most serious" offense or two or more prior convictions for a "serious" offense. When determining whether a defendant has a prior "most serious" conviction for sentencing enhancement purposes, a defendant's prior criminal record expressly includes "a **federal** or out-of-state conviction for **an offense that would be classified as a most serious offense under this section** [.]" S.C. Code Ann. § 17-25-45(A)(1)(b) (emphasis added). Therefore, if a defendant was convicted of a prior federal offense that would have constituted a "most serious" offense in South Carolina, that earlier conviction can be used to enhance the defendant's sentence under our recidivist offender statute. Id.

In the present case, Applicant previously pled guilty on October 31, 2003, before the Honorable Henry M. Herlong, Jr, United States District Judge, to two counts of armed bank robbery pursuant to 18 U.S.C. § 2113 (a) and (d). These charges stemmed from two instances

that occurred on August 7, 2003 and August 12, 2003, wherein Applicant and co-defendants did rob two separate banks with the use of a dangerous weapon or device (an explosive). When comparing the element, it is clear that Applicant's federal armed bank robbery convictions pursuant to 18 U.S.C. § 2113 (a) and (d)) equate to the "most serious" offense of armed robbery in South Carolina. (S.C. Code Ann. §16-11-330(A)). Therefore, the State properly sought to enhance Applicant's sentence as armed robbery is classified as a "most serious" offense under the statute. S.C. Code Ann. § 17-25-45(C)(1). See, e.g., State v. Washington, 338 S.C. 392, 397-398, 526 S.E.2d 709, 711 (2000) (finding Washington was properly sentenced under the recidivist offender statute where the elements of his prior offense of common law burglary now constituted the offense of first-degree burglary, meaning his prior conviction was the legal equivalent of a "most serious" offense and would have constituted a "most serious" offense pursuant to the statute); Hinton v. S.C. Dept of Prob., Parole, and Pardon Servs., 357 S.C. 327, 339, 592 S.E.2d 335, 342 (Ct. App. 2004) (noting under the "same-elements" test, when comparing the elements of the offenses, a court "looks to whether the particular actions taken by the defendant which satisfy the elements of the crime in the other state would satisfy the elements of one of the enumerated crimes").



In support of his assertions that his sentence was improperly enhanced, Applicant contends his federal armed bank robbery convictions should not have been used for enhancement purposes because armed bank robbery only carries a maximum possible punishment of a twenty-five-year sentence in the federal system. However, when determining whether a defendant is subject to sentencing enhancement based on an earlier federal or out-of-state conviction, the relevant inquiry is not how the federal or out-of-state jurisdiction chooses to classify the federal or out-of-state offense or what the potential punishment for that offense is in another jurisdiction. Instead, pursuant to S.C. Code Ann. § 17-25-45, the relevant inquiry is whether or not the federal

or out-of-state offense would be classified as a "most serious" offense in South Carolina. See S.C. Code Ann. § 17-25-45(A)(1)(b) (requiring a sentence of life imprisonment following conviction for a "most serious" offense if the defendant has a prior "out-of-state conviction for an offense that would be classified as a most serious offense **under this section**[.]" (emphasis added)); see, e.g., Daniels v. State, 621 So. 2d 335, 342 (Ala. Crim. App. 1992) ("In determining whether an out-of-state conviction will be used to enhance punishment pursuant to the [Habitual Felony Offender Act], the conduct upon which the foreign conviction is based must be considered and not the foreign jurisdiction's treatment of that conduct.").

Therefore, this Court finds the fact the sentencing range for armed bank robbery in the federal system is up to twenty-five years imprisonment has no bearing on whether or not federal armed bank robbery convictions can be used for sentencing enhancement purposes in South Carolina. Because the federal offense of armed bank robbery would constitute the offense of armed robbery in South Carolina, Applicant's prior federal convictions for armed bank robbery would be classified as the "most serious" offense of armed robbery in our state. Thus, the State properly served Applicant with notice of intent to seek life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 and counsel was not constitutionally ineffective for failing to challenge both the notice or imposition of a life without the possibility of parole sentence pursuant to S.C. Code Ann. § 17-25-45.

Additionally, Applicant asserts the State cannot establish his prior federal convictions for armed bank robbery met the legal elements of armed robbery in South Carolina because he and his-co-defendants merely presented a demand note and the State failed to establish that there was any physical representation of a weapon as required under State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) and Van Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016). However, this Court finds this argument is without merit, as Applicant knowingly and voluntarily entered guilty

pleas to both of these offenses, thereby admitting to all the essential elements contained in the indictments, including that he and his co-defendant were armed with explosives. See State v. Allen, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973) ("A plea of guilty is an admission or a confession of guilt, and is as conclusive as the verdict of a jury; **it admits all matter of fact averments of the accusation.**" (emphasis added)); Shelnut v. State, 247 S.C. 41, 45-46, 145 S.E.2d 420, 422 (1965) ("By their voluntary submission to a verdict of guilty, the defendants **admitted all material allegations of the indictment, including those relating to the situs of the crime,** thus waiving a trial and the presentation of evidence. These admissions are as conclusive upon them as the verdict of a jury would be." (emphasis added)).

As Applicant was properly noticed, served, and sentenced to life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45, trial counsel cannot be deemed constitutionally ineffective for failing to challenge his sentence. This Court should denes and dismisses this allegation with prejudice.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Argue Applicant did not enter the bank***

Applicant alleges trial counsel was constitutionally ineffective for failing to argue that he did not enter the bank. This Court finds this argument is without merit, as the record is brimming with numerous arguments by trial counsel through the trial that Applicant not only did not enter the bank, but was not present at the scene. Trial counsel's thorough directed verdict motion was based on this very argument. Moreover, the record and testimony from all witnesses at the evidentiary hearing, including Applicant's own testimony, is that the State never alleged that Applicant personally entered the bank, but rather, had indicted Applicant with bank robbery based on a theory of aiding and abetting and his constructive presence at the scene. This Court finds this argument with without merit and must be denied and dismissed.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Challenge the State's decision to proceed forward on Both Indictments***

Applicant alleges trial counsel was constitutionally ineffective for failing to challenge the State's decision to proceed to trial on both indictments for bank robbery and accessory before the fact to bank robbery. In support of this argument, Applicant cites to S.C. Code Ann. § 16-1-50, which he asserts "stands for the proposition that an accessory can be indicted and convicted as an accessory before the fact or as a principal." (Applicant's Post Hearing Memorandum 3). This Court agrees with Applicant's interpretation of S.C. Code Ann. § 16-1-50, as an accessory clearly cannot be indicted **and** convicted as both an accessory and a principal under the plain meaning of the statute. However, this Court finds Applicant's reliance on S.C. Code Ann. § 16-1-50 is misguided in the present case, as Applicant was not convicted as an accessory to bank robbery, but rather, was convicted of bank robbery and bank robbery alone. Applicant overlooks the crucial word of S.C. Code Ann. § 16-1-50—"**and**"—which requires not only indictment as both the accessory and principal but also conviction as both the accessory and principal to run afoul of S.C. Code Ann. § 16-1-50.

It is clear that the State could proceed forward on two theories at Applicant's trial—first, as an accessory to bank robbery who aided in the planning of the bank robbery before the crime occurred, and second, as a principal who was constructively present at the scene as he arranged the ride to the bank, instructed his co-defendant as to how to rob the bank, remained in the getaway car that was parked in close proximity to the bank, and assisted in fleeing following the robbery. "Multiple offenses, including multiple homicide offenses, may be prosecuted in a single trial[.]" State v. Greene, ___ S.C. ___, 814S.E.2d 496 (S.C. May 23, 2018), reh'g denied (June 26, 2018); See, e.g., State v. Cavers, 236 S.C. 305, 311–12, 114 S.E.2d 401, 404 (1960) ("It was within the province of the jury to find whether appellant's conduct was negligent or reckless, or neither; if negligent, it would have supported a verdict of guilty of manslaughter, the court

having eliminated murder and voluntary manslaughter; if reckless, it sustains the verdict of guilty of reckless homicide, and that finding by the jury is implicit in the verdict. The jury were instructed that they could not find appellant guilty on both counts. To sustain this point of appellant would require the court, instead of the jury, to determine whether his conduct was negligent or reckless, if either, which, under the evidence in this case, would be an invasion by the court of the province of the jury. The State cannot be required to elect between counts in an indictment when they charge offenses of the same character and refer to the same transaction, whether or not one charges a common law offense and another a statutory offense." (citations omitted) ); see also Ball v. United States, 470 U.S. 856, 859, 861 (1985) ("It is clear that a convicted felon may be prosecuted simultaneously for violations of §§ 922(h) and 1202(a) involving the same firearm. This Court has long acknowledged the Government's broad discretion to conduct criminal prosecutions, including its power to select the charges to be brought in a particular case. ... To say that a convicted felon may be prosecuted simultaneously for violation of §§ 922(h) and 1202(a), however, is not to say that he may be convicted and punished for two offenses. Congress can be read as allowing charges under two different statutes with conviction and sentence confined to one."). There was nothing improper as to the State proceeding forward under both indictments, as the trial court made it abundantly clear to the jury that it could only convict Applicant of one offense but not both, or find Applicant not guilty of both offenses. Therefore, this Court finds trial counsel's performance was not constitutionally ineffective and denies this allegation.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Require the State to Reveal any Plea Offer with his co-defendant***

At the evidentiary hearing, Applicant raised for the first time an allegation that trial counsel was constitutionally ineffective for failing to require the State to "reveal the deal" that induced his co-defendant Shyquone Williams to testify against him. This Court finds this

allegation is without merit and is conclusively refuted by the record and testimony presented at the evidentiary hearing. Trial counsel and Solicitor Barnette credibility testified that there was no plea agreement in place between the State and the co-defendant, and therefore, there simply was no deal to reveal. Applicant failed to establish the existence of any plea agreement other than his bare assertions that his co-defendant received a more lenient sentence. Therefore, this Court finds trial counsel's performance was not constitutionally ineffective and denies this allegation.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Properly Cross-Examine his Co-Defendant***

At the evidentiary hearing, Applicant raised for the first time an allegation that trial counsel was constitutionally ineffective for failing to properly cross-examine his co-defendant Shyquone Williams. Specifically, Applicant alleged trial counsel did not properly elicit testimony that Applicant gave numerous prior inconsistent statements to law enforcement, including that Applicant was not involved in the bank robbery, before he eventually said Applicant was the mastermind of the crime. This Court finds this allegation is conclusively refuted by the record, which reveals that trial counsel thoroughly cross-examined his co-defendant about his inconsistent statements to law enforcement, including prior denials of knowing Applicant, denials that Applicant was involved, and lies that he had not seen Applicant (his father) for more than a decade when he had recently stayed at his home for six days. This Court finds trial counsel's cross-examination of Applicant was well within the standards of competent counsel and does not amount to constitutionally deficient performance. This Court denies this allegation.



**CONCLUSION**

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this allegation is denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State.

**AND IT IS SO ORDERED** this 6 day of August, 2018.

GRACE GILCHRIST KNIE
Presiding Judge
Seveth Judicial Circuit

Spartanburg, South Carolina

| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| | CASE NO. 2018-CP-42-0057 |
| COUNTY OF SPARTANBURG | |
| CALVIN TERREL WILLIAMS, APPLICANT, | MOTION TO ALTER OR AMEND THE JUDGMENT |
| VS. | |
| STATE OF SOUTH CAROLINA, RESPONDENT. | |



COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRCP, to alter or amend the judgment of this Court filed on August 7, 2018. The Applicant takes issue with the findings of fact and conclusions of law set fourth resulting in the denial of post-conviction relief in his case. He further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

The Order of Dismissal fails to fully address Applicant's arguments of ineffective assistance of trial counsel for failing to challenge his life sentence pursuant to S.C. Code Ann. § 17-25-45. It states that both trial counsel and Solicitor Barnett testified they compared the factual background and elements of Applicant's prior federal bank robbery convictions before using them as enhancing charges. Yet, there was no evidence the transcript of the federal guilty plea was reviewed by either party and Judge Herlong ordered the federal record sealed so no evidence was presented at trial as to the factual

basis for the federal guilty pleas. Thus, had trial counsel challenged the life sentence, there was no factual basis for Mr. Williams' 2003 plea in Federal Court to allow the trial judge to make a determination whether the federal charges could be used under S.C. Code Ann. § 17-25-45. The mere fact that Mr. Williams plead guilty to indictments charging violation of the Federal Bank Robbery and Incidental Crimes statute 18 U.S.C. Sec. 2113 does not amount to admission to armed robbery under S.C. Code Ann. § 16-11-330 (A) because the Federal charge does not require that a defendant actually be armed or allege to be armed by action or words while using a representation of a deadly weapon like the State charge does.

For the foregoing reasons, the Applicant requests the presiding Judge, Grace Gilchrist Knie, alter or amend the Order of Dismissal filed on August 7, 2018.

Respectfully submitted,

Susannah Ross
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 15 day of August, 2018.

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF SPARTANBURG | IN THE COURT OF COMMON PLEAS<br>FOR THE SEVENTH JUDICIAL CIRCUIT |
| Calvin Terrell Williams, #218862<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | Case No.: 2018-CP-42-0057<br><br>**RETURN TO APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT** |

Respondent, by and through undersigned counsel, making its return to Applicant's "Motion to Alter or Amend the Judgement," filed on August 17, 2018, would respectfully show unto this Court:

## I. Procedural History

Calvin Terrell Williams (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015, the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette prosecuted the case.

On June 6, 2016, Applicant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch, circuit court judge. On June 8, 2016, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior

federal convictions for armed bank robbery.

Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18. 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

**II. Current Post-Conviction Relief Action**

On January 8. 2018, Applicant filed an application for post-conviction relief, alleging the following grounds of ineffective assistance of counsel:

1. "Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery

2. Ineffective Assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery

3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50

Respondent made its return on April 18, 2018, requesting an evidentiary hearing. An evidentiary hearing was held on June 18, 2018, in the Spartanburg County Court of Common Pleas. Applicant was present and was represented by counsel Susannah Ross, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the hearing, testimony was taken from trial counsel Matthew Shealy, Seventh Circuit Solicitor Barry Barnette, and Applicant's co-defendant Shyquone Williams. At the

conclusion of the hearing, the Court left the record open to allow both parties to submit post-hearing memorandums. Following the submission of post-trial memorandums by both parties and a review of these memorandum, the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, the Court found Applicant has failed to establish any constitutional violations and denied this application with prejudice by written order filed on August 7, 2018.

On August 17, 2018, Applicant served a copy of his "Motion to Alter or Amend the Judgment" on Respondent. This Return follows.

**III. Response to Applicant's Motion to Alter or Amend**

In his "Motion to Alter or Amend the Judgment," Applicant asserts the Court's order of dismissal failed to sufficiently address his arguments that counsel was ineffective for failing to challenge his life sentence pursuant to S.C. Code Ann. § 17-25-45. This argument is wholly without merit. The Court's order of dismissal contains detailed findings based on the testimony presented from trial counsel and the prosecutor at the evidentiary hearing and is supported by correct statutory and legal authority. Applicant has not alleged any argument was overlooked or misapprehended by the Court, but rather, insists the Court's rulings were erroneous and asks the Court to reconsider to grant post-conviction relief. As Applicant is not requesting an alteration or amendment to the Order, but rather, Applicant is asking the Court to reconsider its ruling and grant Applicant post-conviction relief, such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by

the trial court). Respondent submits that this Court properly ruled on all issues after ample opportunity for Applicant to present all his issues and that this motion should be denied in full.

**IV. Request for Summary Dismissal of the Motion to Alter or Amend**

WHEREFORE, having made its Return to the motion, the State requests the relief requested in the motion be denied and that said motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BY: _____
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

September 21st, 2018

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF SPARTANBURG<br><br>Calvin Williams, #218862<br><br>Applicant,<br><br>vs<br><br>State of South Carolina,<br><br>Respondent, | IN THE COURT OF COMMON PLEAS<br><br>**2018-CP-42-0057**<br><br>AFFIDAVIT OF SERVICE BY MAIL |

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Applicant's Motion to Alter or Amend Judgment** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Susannah Conyers Ross, Esquire**
**Ross & Enderlin, PA**
**330 East Coffee St.**
**Greenville, SC 29601**

DATED this the 21st day of September, 2017.

Jennifer Jennison, Legal Assistant
For Respondent

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF SPARTANBURG | IN THE COURT OF COMMON PLEAS<br>FOR THE SEVENTH JUDICIAL CIRCUIT |
| Calvin Terrell Williams, #218862<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | Case No.: 2018-CP-42-0057<br><br>**ORDER DENYING APPLICANT'S MOTION TO ALTER OR AMEND THE JUDGMENT** |



This matter comes before this Court by way of Applicant's "Motion to Alter or Amend the Judgement," filed on August 17, 2018. Respondent made its Return to this motion requesting it be denied and dismissed.

## I. Procedural History

The records before this Court show Calvin Terrell Williams (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015, the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette prosecuted the case.

On June 6, 2016, Applicant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch, circuit court judge. On June 8, 2016, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery.

Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18. 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

**II. Current Post-Conviction Relief Action**

On January 8. 2018, Applicant filed an application for post-conviction relief, alleging the following grounds of ineffective assistance of counsel:



1. "Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery

2. Ineffective Assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery

3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50

Respondent made its return on April 18, 2018, requesting an evidentiary hearing. An evidentiary hearing was held on June 18, 2018, in the Spartanburg County Court of Common Pleas. Applicant was present and was represented by counsel Susannah Ross, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the hearing, testimony was taken from trial counsel Matthew Shealy, Seventh Circuit Solicitor Barry Barnette, and Applicant's co-defendant Shyquone Williams. At the conclusion of the hearing, this Court left the record open to allow both parties to submit post-hearing memorandums. Following the submission of post-trial memorandums by both parties

and a review of these memorandum, the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court found Applicant has failed to establish any constitutional violations and denied this application with prejudice by written order filed on August 7, 2018.

On August 17, 2018, Applicant served a copy of his "Motion to Alter or Amend the Judgment" on Respondent. Respondent filed a return to this motion, asking that the motion be denied summarily denied and dismissed as this Court's order contained the sufficient legal findings and Applicant's request for reconsideration would more appropriately be addressed on appeal.



**III. Dismissal of Applicant's Motion to Alter or Amend**

In his "Motion to Alter or Amend the Judgment," Applicant asserts this Court's order of dismissal failed to sufficiently address his arguments that counsel was ineffective for failing to challenge his life sentence pursuant to S.C. Code Ann. § 17-25-45. After reviewing Applicant's motion, Respondent's return, and this Court's order of dismissal, this Court finds Applicant's argument is without merit. This Court's order of dismissal contains detailed findings based on the testimony presented from trial counsel and the prosecutor at the evidentiary hearing and is supported by correct statutory and legal authority. Moreover, Applicant has not alleged any argument was overlooked or misapprehended by this Court, but rather, insists this Court's rulings were erroneous and asks this Court to reconsider to grant post-conviction relief. As Applicant is not requesting an alteration or amendment to the Order, but rather, Applicant is asking this Court to reconsider its ruling and grant Applicant post-conviction relief, such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to

preserve issues raised to but not ruled upon by the trial court). This Court fully ruled on all issues after ample opportunity for Applicant to present all his issues and therefore, this Court finds this motion should be denied in full.

**AND IT IS SO ORDERED** this 28 day of Sept., 2018.

GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

**WITNESSES**

Spartanburg City Police Department

1. SENTENCE MADE
2. REPORT ENDED
3. CARD PULLED
4. INDEXED
5. CHECKED WARRANTS
6. CHECKED SIGNATURE
7. ASSESSMENT AND FINE CARD MADE
8. TRAFFIC VIOLATION COPY

ARREST NUMBER

Direct Indictment

**ACTION OF GRAND JURY**

MAY 06 2016

Foreperson of Grand Jury
Date:

True Bill

**VERDICT**

No verdict

6-8-16

Foreperson of Petit Jury
Date:

**16-GS-42-2368**
DOCKET NO. -

**The State of South Carolina**

**County of Spartanburg**

*Barry J. Barnette, Solicitor*

**COURT OF GENERAL SESSIONS**

MAY 09 2016 TERM

SPARTANBURG COUNTY
2016 JUN 10 PM 4:43
M. HOPE BLACKLEY

**THE STATE**
**v.**

**CALVIN TERRELL WILLIAMS**

NP- the jury found the Defendant guilty of Bank Robbery on Ind. No.: 15-GS-42-2312 on 6/8 6/8/2016 and was sentenced to Life without Parole pursuant the 3 strike law. The Jury never reached a verdict on this charge. -
Barry Barnette - 6/10/2016.

Computer

**Indictment for**

**ACCESSORY BEFORE THE FACT TO FELONY- BANK ROBBERY**
SC Code: 16-1-0040, 0050
CDR Code: 002
Class FEL/F

549

SCANNED

STATE OF SOUTH CAROLINA )
)
COUNTY OF SPARTANBURG )

INDICTMENT

At a Court of General Sessions, convened on MAY 0 6 2016, the Grand Jurors of Spartanburg County present upon their oath:

**ACCESSORY BEFORE THE FACT TO FELONY- BANK ROBBERY**

That the Defendant, Calvin Terrell Williams, did in the City of Spartanburg, in Spartanburg County on or about January 22, 2015, aid, abet, counsel, hire or otherwise procure the commission of a felony of, to wit: Bank Robbery, by the principal felon(s): Shyquone Williams, by conspiring with Shyquone Williams, knowing that Shyquone Williams intended to commit a crime, in violation of §16-1-40, 0050, *CODE OF LAWS OF SOUTH CAROLINA*,, (1976, as amended).

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

SOLICITOR

Sp