

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

JEFFREY ALLAN GRAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001779

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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| State of South Carolina |) | Court of General Sessions |
| |) | Twelfth Judicial Circuit |
| County of Florence |) | Case No. 2014-GS-21-00994 |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| -vs- |) | Transcript of Record |
| |) | |
| Jeffery Allan Gray, |) | |
| |) | |
| Defendant. |) | |
| |) | |

September 9, 2015
Florence, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

John Holt, Esquire
Attorney for the Plaintiff

Emily Crayton, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter



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| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EV.</u> |
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(No Exhibits Presented)

1 SEPTEMBER 9, 2015

2 (WHEREAS this matter was scheduled for a term of General
3 Sessions court, the defendant appeared along with his
4 counsel of record. The proceedings began at 10:33 a.m.)

5 THE COURT: Go ahead, Solicitor.

6 MR. HOLT: Thank you very much, Judge. May it please the
7 Court. The following is Docket Number 2014-GS-21-00994, the
8 State of South Carolina v. Jeffery Allan Gray.

9 He's indicted for armed robbery, Judge. He'll be
10 pleading such today, and he is represented by Ms. Emily
11 Crayton.

12 THE COURT: All right. Thank you.

13 THE CLERK: Sir, will you please raise your right hand?
14 Do you swear to tell the truth, the whole truth, and nothing
15 but the truth, so help you God?

16 THE DEFENDANT: I do.

17 THE COURT: All right. Mr. Gray, give me your attention,
18 sir. You come before the Court pleading guilty to the crime
19 of armed robbery; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand that the potential
22 sentence here goes from a minimum of ten up to thirty years?
23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You also understand that this crime has been

1 listed as a violent and most serious offense by the state of
2 South Carolina? Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you've talked about both those things
5 with your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand that it being classified as
8 violent that it impacts the amount of time that you will be
9 spending in the Department of Corrections? Do you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And when you're eligible for parole. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you've discussed that fully with your
16 attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: It's also classified as most serious. That
19 means, if the Court accepts the guilty plea, you will have at
20 least -- I don't know what your prior record is, but this will
21 give you at least one strike under the state's most serious or
22 two-strike law. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And it could be combined with another most
25 serious offense or it could be combined with two serious

1 offenses and, if you come back before the Court, the State
2 could be asking and more likely than not would be asking for
3 life in prison without the possibility of parole. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And just as an example, another armed
7 robbery, understand the sentence is ten to thirty, but it
8 being the second most serious, ten to thirty goes out the
9 window and the State says we want Mr. Gray to be exposed to
10 the sentence of life in prison without the possibility of
11 parole. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. The recommendation by the State
14 is for the ten-year minimum. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You also understand I don't have to follow
17 that recommendation. I don't have to give you that sentence.
18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Understanding all these things, do you want
21 to go forward now with your guilty plea?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you currently under the influence of any
24 drugs or intoxicants of any kind or currently have them in
25 your system?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you suffering from any kind of physical,
3 mental or emotional problem that would keep you from
4 understanding what you're doing here today?

5 THE DEFENDANT: No, sir.

6 THE COURT: And you understand this was the crime for
7 which you were indicted by the Florence Grand Jury on July 10th
8 of this -- I'm sorry -- of 2014? Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: When you plead guilty, you give up
11 constitutional rights. Among those, the right to remain
12 silent. If you speak to me, you're giving that right up. Do
13 you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Other rights are the presumption of
16 innocence, the right against self-incrimination at a trial.
17 The State has to prove you are guilty beyond a reasonable
18 doubt. If you plead guilty, you're giving up those rights.
19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You are entitled to a jury trial. Twelve men
22 and women look at the facts presented by the State to see if
23 there are indeed enough facts in evidence to prove you're
24 guilty beyond a reasonable doubt. If you plead guilty, you
25 give up those rights. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: In that jury trial, with your attorney you
3 could question the witnesses and the evidence presented by the
4 State. If you wanted to, you could present a defense,
5 testify, call witnesses, present evidence. If you plead
6 guilty, you give up all of those rights. Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You come before the Court and you're pleading
10 guilty to armed robbery. Are you pleading guilty to that
11 crime freely and voluntarily?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Of your own free will and accord?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you pleading guilty because you are
16 indeed guilty of this crime?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, did anybody promise you anything or
19 threaten you or force you in any way to get you to plead
20 guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Now, you're here today with your attorney,
23 Ms. Crayton; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did you tell her everything you need to tell

1 her about this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you had enough time to talk to her?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you need any more time to talk to her?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you satisfied with her help and
8 representation?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Any complaints about her help and
11 representation?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Ma'am, you represent the interest
14 of your client, Mr. Gray, in this matter?

15 MS. CRAYTON: Yes, Your Honor.

16 THE COURT: And he comes before the Court and tenders a
17 plea of guilty to the offense named. Do you concur?

18 MS. CRAYTON: Yes, Your Honor.

19 THE COURT: And do you believe he's coming before the
20 Court of his own free will and accord?

21 MS. CRAYTON: Yes, Your Honor.

22 THE COURT: And have you explained to him his
23 constitutional rights, any defenses he might have, as well as
24 the information and the evidence in the possession of the
25 State?

1 MS. CRAYTON: Yes, Your Honor.

2 THE COURT: Thank you very much. All right. Solicitor,
3 the facts of the case, please?

4 MR. HOLT: Thank you very much, Judge. On March 13th,
5 2014, the owner of Charli Grocery located at the corner of 52
6 and Bozy Road in the city of Scranton in the county of
7 Florence, Mr. Abdullah Mused, closed his business down, Judge,
8 and then proceeded to go home. And like a lot of small
9 business owners, he had a pistol on him for protection and he
10 also had the day's take from his grocery store on him.

11 When he pulled into the parking lot of [REDACTED] Church Street
12 in the same city of Scranton, Judge, a small town at the lower
13 end of the county, he was accosted by Mr. Gray's codefendant,
14 grabbed about the neck. Mr. Gray at that time pistol whipped
15 him in the face. They threw him on the ground. They
16 repeatedly stomped him. They took his money.

17 Judge, Mr. Mused then called law enforcement. They
18 arrived on the scene. He informed them that he knew who they
19 were because they shopped in the store. And I think the
20 investigation lasted maybe 48 hours before both of the
21 defendants were in jail.

22 Judge, I think that about sums up the facts. Would you
23 like to know his record?

24 THE COURT: Prior record, please.

25 MR. HOLT: Okay. It looks like in 2004 he pled under the

1 old ABHAN law, Judge, and received seven years suspended on
2 five years' probation. Then it looks like a few months later
3 he pled to an attempted burglary and they upped his probation
4 to assault and battery of a high and aggravated nature is how
5 I'm reading this. I believe this is what happened. This all
6 took place in a couple of months.

7 He was revoked in 2008. He was revoked in 2010. Revoked
8 on his YOA and ended up serving time on both of those
9 incidents. And I don't think he has anything else until 2014,
10 but after his revocation in 2010, he wouldn't have been out
11 that long before he was charged with this crime.

12 THE COURT: All right, sir. All right. Mr. Gray,
13 regarding the facts of this particular case -- you just heard
14 the solicitor talk about the facts of this case and a brief
15 summary of those same facts are in your indictment. My
16 question to you is are those facts true and correct?

17 THE DEFENDANT: They are, Your Honor.

18 THE COURT: And you understand when you engage in that
19 kind of activity, you're committing a crime? You understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you understood my questions here today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have all your answers to me been the truth?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did anybody tell you how to answer my
2 questions?

3 THE DEFENDANT: No, sir.

4 THE COURT: And you understand you have the right to
5 appeal your guilty plea within ten days?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I find there's been a substantial factual
8 basis for the plea. I find the defendant's decision to plead
9 guilty has been done freely, voluntarily, knowingly, and
10 intelligently made. He's had the advice of competent counsel
11 with whom he's satisfied. Therefore, Mr. Gray's decision to
12 plead guilty to the armed robbery is accepted.

13 Yes, ma'am, Ms. Crayton?

14 MS. CRAYTON: Thank you, Your Honor. And in terms of his
15 prior record, I do not see a conviction for a burglary. It
16 looks like he -- he was convicted of the assault and battery
17 high and aggravated nature and did receive some sort of
18 sentence that was revoked. It looks like maybe a Y that was
19 revoked several times. I don't see that -- the other -- any
20 other convictions besides that 2004 assault and battery high
21 and aggravated nature, Your Honor.

22 THE COURT: All right.

23 MS. CRAYTON: Mr. Gray is 30 years old. He received his
24 GED in 2007. And he normally does construction work, but
25 prior to being arrested, he was working in auto sales.

1 He does have four children, a three-year-old, a five-
2 year-old, a seven-year-old, and a nine-year-old, that he
3 shares custody with. And he does have one sister who lives in
4 Greenville.

5 He has been in jail for -- since this incident occurred.
6 536 days, Your Honor, is how many days he has spent in jail,
7 quite a considerable amount of time, Your Honor, and we would
8 ask if you would please go along with the State's
9 recommendation of the ten years, Your Honor.

10 Mr. Gray understands that he is going to end up serving
11 most of that given the classification, if not all of it, and
12 he is completely aware of that. And he is here taking
13 responsibility and we would ask that you go along with that
14 ten-year sentence, Your Honor.

15 THE COURT: All right. Thank you, ma'am. And you said
16 536 days?

17 MS. CRAYTON: 536 days. Yes, Your Honor.

18 THE COURT: Thank you, ma'am.

19 MR. HOLT: Judge?

20 THE COURT: Yes, sir.

21 MR. HOLT: Whenever you think it's appropriate, I think
22 the victim would like to speak to you about --

23 THE COURT: Certainly.

24 MR. HOLT: -- exactly what happened.

25 THE COURT: Absolutely.

1 MR. HOLT: He's right here.

2 THE COURT: Yes, sir?

3 MR. HOLT: If you would, just give the Court your name
4 for --

5 THE VICTIM: My name is --

6 THE COURT: Just state your name first and then I'll be
7 glad to hear from you.

8 THE VICTIM: My name is Abdullah Mused. I finished
9 closing up the store. I was going back home, and I tried to
10 open the door. They was behind the little room, the storage
11 room. The black boy -- he grabbed me from my neck and then
12 take me to behind the little storage. That one here hit me in
13 the gun in my head. The other guy -- he grabbed me like that.
14 That one take the wallet from my back and I hollered and then
15 I quiet. He dragged me on the ground. He think I'm dead.
16 Both of them run away.

17 Next day, I went to the parking lot. He seen me.
18 Anything Charli store, I think he did. I didn't know he still
19 alive. This guy.

20 THE COURT: All right, sir.

21 THE VICTIM: He take my wallet and the money and the
22 credit card, debit card, draft, license, and now I owe the
23 Hudson \$2,000. They got \$10,975. I cannot pay this much.

24 THE COURT: All right, sir. Thank you very much. I
25 appreciate it. Thank you.

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THE COURT: 2014-GS-21-994, State of South Carolina,
County of Florence v. Jeffery Allan Gray regarding armed
robbery.

Sir, I've heard what you've said regarding the monetary
amounts. Obviously, they're -- I'll tell you there's not much
the Court can do to help you with that due to the sentence the
Court is going to impose on Mr. Gray.

Regarding this matter, the defendant is committed to the
Department -- State Department of Corrections for a
determinate term of ten years. He is given credit for the 536
days of service.

Mr. Gray, looking at your record, even if it's just the
assault and battery of a high and aggravated nature, that's a
serious offense. This one is a most serious offense. You
come back to court and you can rest assured the State of South
Carolina is going to be asking to put you in jail for the rest
of your natural life.

Thank you very much.

MR. HOLT: Thank you, Judge.

THE VICTIM: Thank you.

(WHEREUPON, the proceedings ended at 10:45 a.m.)

--- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 15 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 9th day of September, 2015.

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

Krystal J. Smith
Court Reporter

Florence, South Carolina
March 7, 2016

FORM 5

STATE OF SOUTH CAROLINA 2016 FEB -4 12:19 IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE BONNIE REE CCCP FLORENCE C

2016 CP 21 2168

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

Jerry Allan Gray #31734

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

- 1. Place of detention RCI/CB 22 P.O. Box 2039 Ridgeland SC 29936
2. Name and location of Court which imposed sentence General Sessions Court Florence Cty
3. Name(s) of co-defendant(s) (if any) Ferrol Tavares Carter Wingfield JR
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2014-615-21-00994
(b) 9-9-2015 P.24
(c)
5. The date upon which sentence was imposed and the terms of the sentence:
(a) 9-9-2015 (10 years)
(b)

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Told Public Defender To File for appeal, Was not Filed.
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance Counsel



- (a) denied Right to Criminal direct Appeal
- (b) _____
- (c) _____

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

- (a) Counsel Failed to investigate Facts, Failed to Intervene
- (b) and subpoena witness.
- (c) Joseph A. Cobbs V State of South Carolina

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

iv. N/A
(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

- (a) First Filing
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Emily Crayton Florence S.C.
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Mrs Crayton Represented me during Criminal Proceedings
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
New trial
20. Are you now under sentence from any other court that you have not challenged?
No

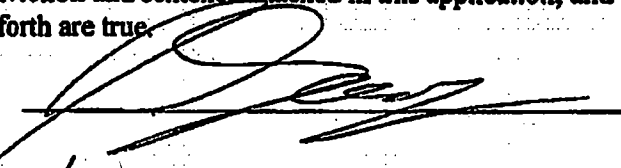
STATE OF SOUTH CAROLINA)

County of Jasper)

Seltzer/Caray

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

VERIFICATION



SWORN to and subscribed before me this 1st day of February, 2016.

Dorothy Ferguson (L.S.)
Notary Public

My Commission Expires: 10-1-25

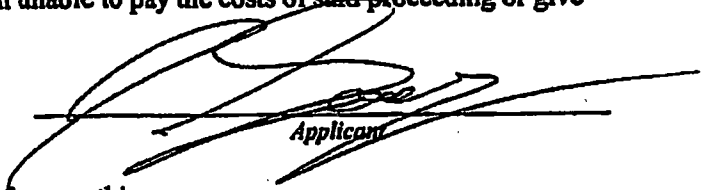
2016 FEB -4 PM 12:19
CONNIE NEELE-SHEARIN
CCCP & CS
FLORENCE COUNTY, SC

FILED

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

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

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



 Applicant

SWORN or affirmed to and subscribed before me this 1st day of February, 2016.



 Notary Public

My Commission Expires: 10-1-25

2016 FEB -4 PM 12: 19
 CONNIE REE SHEARIN
 CCCP & BS
 FLORENCE COUNTY, SC

FILED

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record, SCRCP Rule 11. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only person authorized to file amendments. SCRCP Rule 11.

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

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Id., 286 S.C. at 442, 334 S.E.2d at 814. Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

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Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

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Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

LM

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Jan 17. 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
 JEFFREY A. GRAY, #311734)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent,)
)
 _____)

IN THE COURT OF COMMON PLEAS

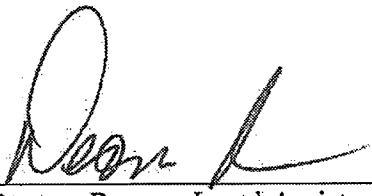
2016-CP-21-268

AFFIDAVIT OF SERVICE BY MAIL

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

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 17th day of January, 2016.



 Deonna Rogers, Legal Assistant
 For Respondent

| | | |
|--------------------------|---|---------------------------|
| State of South Carolina |) | Court of Common Pleas |
| |) | Twelfth Judicial Circuit |
| County of Florence |) | Case No. 2016-CP-21-00268 |
| |) | |
| |) | |
| Jeffery Allan Gray, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| -vs- |) | Transcript of Record |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Defendant. |) | |
| |) | |

November 16, 2017
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McCallister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

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1 NOVEMBER 16, 2018

2 (WHEREUPON, the proceedings began at 9:54 a.m.)

3 THE COURT: Yes, ma'am. If you could, put the -- the
4 case name on the record and the procedural history, and then
5 we'll recognize Mr. Waller.

6 MS. MCCALLISTER: Sure.

7 Your Honor, this is Jeffery Allan Gray versus the State
8 of South Carolina, 2016-CP-21-0268. Your Honor, Mr. Gray was
9 indicted in July of 2014 for one count of armed robbery. He
10 was represented on that charge by Emily Crayton.

11 On September 9th of 2015, he pleaded guilty as indicted.
12 Judge John sentenced him to a term of imprisonment of 10
13 years pursuant to the State's recommendation. He did not
14 appeal his conviction or his sentence.

15 He filed this application for post-conviction relief on
16 February 4th, 2016. He is represented by Mr. Waller, and Mr.
17 Waller is here and Mr. Gray is here, and I believe the
18 deputies are bringing him in, Your Honor.

19 THE COURT: All right. Mr. Waller, you're recognized.
20 If you could, stand and sort of summarize the grounds of the
21 application.

22 MR. WALLER: Yes, Your Honor.

23 Your Honor, Mr. Gray was convicted and has filed an
24 application for post-conviction relief based on counsel's
25 failure to properly investigate his case and he alleged

1 subpoena witnesses, but he pled guilty. But we will contend
2 that there was an alibi witness that would have provided Mr.
3 Gray with the defense who was -- that wasn't developed, Your
4 Honor.

5 THE COURT: Okay. All right. All right. You may call
6 your first witness.

7 MR. WALLER: Your Honor, my first witness is going to be
8 Jeffery Gray. I believe they're bringing him right now.

9 THE COURT: Okay.

10 (WHEREUPON, there was a pause in the proceedings until
11 the applicant entered the courtroom, after which the
12 proceedings resumed as follows.)

13 MR. WALLER: Your Honor, I spoke with Mr. Gray in the
14 holding cell earlier this morning. The -- the alibi witness
15 is his sister, Your Honor. I have attempted to make contact
16 with her and have not been able to reach her.

17 After speaking with Mr. Gray this morning, he has
18 indicated that he wishes me to request a continuance to be
19 able to locate that witness. So I would make that motion for
20 a continuance at this time.

21 THE COURT: All right. What does the State have to say
22 about that?

23 MS. MCCALLISTER: Your Honor, the State is opposed to
24 the continuance. We are here. I have my witness here and
25 we're ready to go. This case has been set on this roster for

1 some weeks now, and he had plenty of notice that this hearing
2 was coming up in order to continue.

3 THE COURT: Okay. Very good. Well, I am going to allow
4 -- we are going to -- I am going to deny the motion for a
5 continuance. However, I am going to allow wide latitude for
6 your client to testify as to what -- as to what her [sic]
7 sister would say.

8 MR. WALLER: Thank you, Your Honor.

9 THE COURT: Very good.

10 MR. WALLER: All right. Your Honor, we would call
11 Jeffery Allan Gray.

12 THE COURT: All right. Mr. Gray, please come forward
13 and place your left hand on the Bible and raise your right
14 hand as the clerk administers the oath.

15 THE CLERK: Do you swear or affirm that the testimony
16 you give will be the truth, the whole truth, and nothing but
17 the truth, so help you God?

18 THE APPLICANT: I solemnly swear.

19 THE CLERK: Thank you. Have a seat and state your name
20 for the record.

21 THE COURT: Yes, sir. Have a seat in that witness
22 chair. Watch your step. Pull up real close to that
23 microphone and speak loudly, clearly, and slowly in order
24 that we can hear everything that you have to say, and let's
25 start with your full name.

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 THE APPLICANT: Jeffery Allan Gray.

2 THE COURT: All right. Thank you, Mr. Gray.

3 Mr. Waller?

4 MR. WALLER: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Very good.

7 JEFFERY GRAY, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WALLER:

11 Q: Good morning, Mr. Gray. How are you today?

12 A: I'm fine.

13 Q: Mr. Gray, you were arrested and indicted for armed
14 robbery; is that correct?

15 A: Correct.

16 Q: Okay. And who was your attorney?

17 A: My attorney was Emily Crayton.

18 Q: Okay. Was Ms. Crayton appointed to represent you?

19 A: Yes, sir, she was.

20 Q: Through the Public Defender's Office?

21 A: Yes, sir.

22 Q: Was she your only attorney?

23 A: Yes, sir, she was.

24 Q: So you didn't have anybody before her?

25 A: No, sir.

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 Q: Okay. About how long after you were arrested did Ms.
2 Crayton get appointed to represent you?

3 A: Approximately four months.

4 Q: Okay. Was that the first time you met with her, about
5 four months after you were arrested?

6 A: Correct.

7 Q: Did you ever make bond or were you locked up the whole
8 time?

9 A: I was incarcerated the whole time.

10 Q: Okay. How many times do you think you met with Ms.
11 Crayton?

12 A: Approximately five or six.

13 Q: Okay. And if you can recall, what did y'all talk about?

14 A: We talked about the specifics about the case. I tried
15 to point out things that I saw that I thought was wrong, but
16 the warrant and the indictment and the summary pointed to how
17 allegations didn't match facts from the warrant, and she
18 spoke to me and said it was a harmless error and it really
19 didn't matter.

20 I tried to point -- I tried to get her to get my
21 witnesses and --

22 Q: Okay. I'm going stop you right there because I want to
23 make sure we're all clear here.

24 The -- the allegations were that you and another
25 individual had arm-robbed a man that owned a store of some

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 kind; is that right?

2 A: Correct.

3 Q: Okay. And so what you're saying is y'all met and
4 discussed discrepancies between the incident report and
5 statements and what the warrant or indictment alleged that
6 you did?

7 A: Correct.

8 Q: Okay. What did y'all talk about about the
9 discrepancies, you and Ms. Crayton?

10 A: I spoke to her about how the warrant was saying that we
11 -- we held the victim at gunpoint, struck him several times,
12 causing several lacerations, took cash, credit cards from
13 him, but the victim's statement to the officer of the scene
14 said nothing about us holding him at gunpoint. It did say we
15 took the gun from him and said that we took cash, credit
16 cards, driver's license, and said we pistol whipped him one
17 time, causing a large laceration to the right side of his
18 head, not several times and not several lacerations.

19 Q: Okay.

20 A: And not being held at gunpoint.

21 Q: Okay. So did you and Ms. Crayton have a chance to
22 discuss how that -- those discrepancies might be a defense
23 for you?

24 A: I spoke to Ms. Crayton about that and she said there's
25 -- there's really not nothing that can be done about it.

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 It's a -- it's a harmless error. It's really -- it really
2 don't make no difference in the case.

3 Q: Okay. When you spoke with Ms. Crayton, did you give her
4 any information or any witnesses that she would need to
5 follow up on, any investigation for her to do?

6 A: I did.

7 Q: Okay. What did you tell her?

8 A: I gave her my sister's address, which is Nicky Freeman.
9 She lives in Greenville, South Carolina; her husband,
10 Frederick Poole, who also lives in Greenville, South
11 Carolina; and I gave her my adopted mother's address, which
12 stays in Scranton, South Carolina.

13 Q: Okay. And what were those witnesses -- how were they
14 witnesses to help you?

15 A: My sister, Nicky, and her husband would be able to both
16 verify that I was at their house in Greenville, South
17 Carolina, at the time and date of this crime it was
18 supposedly to have occurred.

19 Q: Okay. And this supposedly occurred over here in the Pee
20 Dee region; is that right?

21 A: Yes, sir. It was supposed to happen in Scranton, South
22 Carolina.

23 Q: Okay. That's a good ways from Greenville, obviously?

24 A: Five and a half hours.

25 Q: Okay. Five and a half hours?

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

- 1 A: Five and a half hours.
- 2 Q: Okay. Was there -- was there some construction going on
3 on --
- 4 A: Yes.
- 5 Q: -- I-20?
- 6 A: Yes.
- 7 Q: That would have slowed everything down?
- 8 A: Uh-huh.
- 9 Q: Okay. Do you -- to your knowledge, did Ms. Crayton
10 contact any of the witnesses you asked her to contact?
- 11 A: To my knowledge, she did not, but the investigators for
12 the Public Defender's Office contacted my sister and
13 requested an alibi statement from her for the wrong time. He
14 asked her where I was at at 2:30 in the afternoon, when the
15 crime was supposedly happened at 11:43 in the middle of the
16 night.
- 17 Q: Okay. And so that's within five and a half hours?
- 18 A: Yes.
- 19 Q: Okay. Do you know what your sister told that
20 investigator?
- 21 A: He told her that she didn't see me. I left that morning
22 and she didn't see me until later on that night, which was
23 true. I was gone job hunting that day and I didn't come home
24 until later on that night, and I came home with a job.
- 25 Q: Okay. How about your brother-in-law?

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

- 1 A: He -- he can verify because we stayed up well past 1
2 o'clock playing video games and -- and just talking about old
3 times.
- 4 Q: This was the same night?
- 5 A: Same night.
- 6 Q: Okay. And what -- you said you stayed up with him until
7 1 o'clock?
- 8 A: Until about one -- 12:30 -- 1 o'clock.
- 9 Q: Okay. And this was alleged to have taken place --
- 10 A: At 11:43.
- 11 Q: -- just before midnight? Okay.
- 12 A: Exactly.
- 13 Q: So again, it wouldn't have been possible for you to get
14 from Scranton to Greenville by 1 o'clock?
- 15 A: Correct.
- 16 Q: Okay. Was he ever contacted by Ms. Crayton or an
17 investigator or anyone on your behalf?
- 18 A: To my knowledge, I do not know.
- 19 Q: Okay. What about the other witnesses you said? Was it
20 your mother?
- 21 A: My mother. She -- she can only testify to the fact that
22 she knew I was going to Greenville. I left to go from
23 Florence to Greenville on the 7th of March.
- 24 Q: Okay.
- 25 A: That was a Friday, and she knew I was going to

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 Greenville at that time.

2 Q: Okay. And let me clarify one thing. When you say your
3 mother, is it your biological mother?

4 A: My adopted mother.

5 Q: Your adopted mother?

6 A: Right.

7 Q: That's who you know as your mother?

8 A: Yes.

9 Q: Okay. I just wanted to clarify that.

10 Did you ever have a chance to contact your sister while
11 these charges were pending possibly after Ms. Crayton or the
12 investigator contacted your sister?

13 A: I did not.

14 Q: Okay. Do you have any indication that your sister tried
15 to contact Ms. Crayton?

16 A: I do not.

17 Q: Okay. What were you -- what was your understanding of
18 what your sister had told the investigator?

19 A: My understanding from what the investigator told me is
20 that when he asked her about where I was at the wrong time
21 and she had no idea because I wasn't around her at that time
22 that he asked her about.

23 Q: Okay. Let me ask you this, Mr. Gray. When Ms. Crayton
24 informed you that your sister wasn't an alibi witness for you
25 or said she wouldn't be an alibi witness for you because she

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 misunderstood the time or it was misrepresented to her what
2 time it was supposed to have taken place, what did you tell
3 Ms. Crayton in response to that?

4 A: I really can't remember, but my response to it was,
5 like, is there -- is there any way that you can try to
6 recontact them. And the Public Defender's Office
7 investigator tried to recontact her, but there was no answer.

8 Q: Okay. You knew you had an alibi; is that correct?

9 A: Correct.

10 Q: What changed in your mind? Why did you end up pleading
11 guilty?

12 A: I had no alibi, as no alibi. I was in fear of my so-
13 called co-defendant testifying against me in order to take a
14 plea deal or get a bargain deal. I just had a lot of
15 possibilities is why I took a plea instead of going to trial
16 because I felt like going into trial without a -- with a
17 public defender and without a paid lawyer, my chances were
18 next to none.

19 Q: Okay. When you say you had no alibi, did you -- you
20 just testified that you did have an alibi?

21 A: I did have an alibi, but I didn't have an alibi that
22 they can bring up. There was no contact.

23 Q: Okay. Were you told you didn't have an alibi defense
24 because of that?

25 A: Not to my knowledge.

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 Q: Okay. Were you told that your sister wasn't an alibi
2 witness for you?

3 A: Not to my knowledge.

4 Q: Okay. If you had an alibi witness, would you still have
5 pled guilty?

6 A: No.

7 MS. MCCALLISTER: Objection to the leading, Your Honor.

8 THE COURT: I'll allow him to -- you can ask the
9 question.

10 BY MR. WALLER:

11 A: No, I would have not.

12 Q: And why did you -- I believe you just testified to it,
13 but why did you ultimately make the decision to plead guilty?

14 A: The ultimate decision was no alibi, no -- no strong
15 defense, and the chance of getting 30 years of imprisonment
16 from losing the trial.

17 Q: Did you ask Ms. Crayton or the investigator to follow up
18 with your brother-in-law or your mother?

19 A: I did.

20 Q: Okay. Do you know if that was ever done?

21 A: I do not know.

22 Q: Okay. How close were you to going to trial when you
23 pled guilty, if you know?

24 A: I had the trial date set for, I believe, the next month.

25 Q: Okay.

JEFFERY ALLAN GRAY - DIRECT BY MR. WALLER

1 A: And I had already had in my mind that I was going to
2 back out of the trial and take the plea.

3 Q: Okay. Because of the lack of alibi?

4 A: Correct.

5 Q: Okay. Mr. Gray, I've asked all the questions that I
6 have of you. Is there anything you think I've left out that
7 the judge needs to be aware of Ms. Crayton's representation
8 of you?

9 A: Only the fact that I requested for my sentence to be
10 reduced to take a plea for strong-arm robbery, but it got
11 shot down by the solicitor.

12 Q: Okay.

13 MR. WALLER: Please answer any questions Ms. McCallister
14 has for you.

15 THE APPLICANT: Okay.

16 THE COURT: Ms. McCallister, you're recognized.

17 MS. MCCALLISTER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. MCCALLISTER:

20 Q: Mr. Gray, you recall -- do you recall the day of the
21 plea being in a courtroom and talking back and forth with the
22 judge?

23 A: September 9th of 2015.

24 Q: Okay. I'm asking do you remember actually talking back
25 and forth with the judge? Do you remember doing that and

JEFFERY ALLAN GRAY - CROSS BY MS. MCCALLISTER

1 having that discussion --

2 A: Yes, ma'am.

3 Q: -- with the judge? Okay. Do you remember the judge
4 asking you about Ms. Crayton's representation and whether you
5 were satisfied with -- with how she had represented you on
6 this charge?

7 A: Yes, I do, ma'am.

8 Q: Okay. Do you remember the judge asking if you had any
9 complaints about Ms. Crayton and if she had done everything
10 you had asked of her?

11 A: Yes, ma'am, I do.

12 Q: Do you remember what you told the judge?

13 A: I remember telling the judge I was satisfied.

14 Q: Okay. So you had a chance to tell the judge, hey, I
15 didn't get -- they didn't contact my sister, they didn't
16 contact my mom, they didn't contact my brother-in-law, they
17 didn't do what I asked them to, but you told the judge that
18 you actually were satisfied?

19 A: I was incarcerated for 536 days in the county and I was
20 tired of it. The treatment in the county pushed me to go
21 ahead and take a plea deal, but beyond the facts of what I
22 spoke to previously to my attorney.

23 Q: Okay. But at the time you told the judge that, you --
24 you knew that your -- you knew about this issue that you're
25 saying with your sister that maybe she had been asked about

JEFFERY ALLAN GRAY - REDIRECT BY MR. WALLER

1 the wrong time?

2 A: Correct.

3 Q: Okay.

4 MS. MCCALLISTER: Thank you.

5 MR. WALLER: Just very briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WALLER:

8 Q: Mr. Gray, I'm a little confused with that last part.

9 Did you testify that you knew at the time about that your
10 sister had been told the wrong time when asked?

11 A: I was never asked that question.

12 Q: Okay. So you didn't know what time was told to your
13 sister?

14 A: Inconsistently, no.

15 Q: Okay. Have you since found out what time they told your
16 sister?

17 A: Yes, I have.

18 Q: Okay. You didn't know at the time you pled?

19 A: No.

20 MR. WALLER: Nothing further.

21 THE COURT: All right. You may step down. Thank you.
22 You may call your next witness.

23 MR. WALLER: Nothing further from the applicant, Your
24 Honor.

25 THE COURT: All right. Yes, ma'am?

EMILY CRAYTON - DIRECT BY MS. MCCALLISTER

1 MS. MCCALLISTER: Your Honor, the State would call Emily
2 Crayton.

3 THE COURT: Ms. Crayton, please come forward. I'm going
4 to ask, if you could, to put your paperwork down and place
5 your left hand on the Bible and raise your right hand as the
6 clerk administers the oath.

7 THE CLERK: Do you swear or affirm that the testimony
8 you give will be the truth, the whole truth, and nothing but
9 the truth, so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you.

12 THE COURT: Have a seat in the witness chair. Pull up
13 real close to the microphone and speak loudly, clearly, and
14 slowly in order that we can hear everything that you have to
15 say, and let's start with your full name, Ms. Crayton.

16 THE WITNESS: Emily Merrill Crayton.

17 THE COURT: Very good.

18 MS. MCCALLISTER: Thank you.

19 EMILY CRAYTON, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. MCCALLISTER:

23 Q: Ms. Crayton, do you recall your representation of Mr.
24 Gray on these charges?

25 A: Yes, sir. Yes, I do.

EMILY CRAYTON - DIRECT BY MS. MCCALLISTER

1 Q: And do you have a file --

2 A: I --

3 Q: -- in this matter?

4 A: I do.

5 Q: And have you reviewed that file in preparation for
6 today?

7 A: Yes, ma'am.

8 Q: Okay. Can you tell me a little bit, just briefly, about
9 the facts and how Mr. Gray came to be charged?

10 A: Okay. He was charged with armed robbery of a local
11 store. Well, actually, it wasn't at the store. It was a
12 store that Mr. Gray frequented, and the owner was robbed
13 later after closing his store, I believe, at his home. He
14 picked Mr. Gray out of a lineup, but he -- I believe he told
15 law enforcement that he knew Mr. Gray from him just coming in
16 the store.

17 Q: Okay. And you've heard the testimony here today about
18 this issue with an alibi witness or an alibi defense. Is
19 that something that your office investigated?

20 A: Yes, ma'am. I first met with -- I received the file and
21 reviewed it May 14th, and I met with Mr. Gray for the first
22 time May 23rd, 2014, and spoke with him. He said he was not
23 in town when the offense occurred. That his adopted mother
24 -- and he gave me her name, Ms. Brown -- can testify that he
25 packed his car and had moved to Greenville and that he was

EMILY CRAYTON - DIRECT BY MS. MCCALLISTER

1 staying in Greenville with Nicole Freeman and Frederick Poole
2 is I believe what -- what was said. He referred to Nicole
3 Freeman as his sister, but I -- I believe she's just a good
4 friend. I don't believe there's actually any relation. And
5 Mr. Poole is Ms. Freeman's husband.

6 He also gave me the name of an auto sales store that he
7 said he had an interview on. We spoke with everybody we
8 could, and no one could verify he was there anywhere close to
9 the dates. They could verify that he was in Greenville, I
10 think, three days before the incident, but nobody could
11 verify he was there anywhere close to the time of -- of the
12 armed robbery.

13 Q: Okay. So you did actually make contact or your office
14 made contact with Nicky Freeman?

15 A: I personally did not speak with -- with her. Mr.
16 McKenzie, who is our investigator in our office -- I gave him
17 the information of all of the individuals. He spoke to all
18 of them and, like I said, no one -- my note says in June,
19 June 18th, that he has spoken to all of the alibi witnesses.
20 No one can verify that Mr. Gray was there the day of the
21 armed robbery. They can verify a couple days before, but not
22 the day of the crime.

23 Q: Okay. Did he ever raise an issue with you about
24 thinking that maybe his sister had been asked the wrong day
25 or the wrong time?

EMILY CRAYTON - DIRECT BY MS. MCCALLISTER

1 A: No. I met with him in July, July 1st, and explained that
2 -- you know, what Thomas had found, Mr. McKenzie had found,
3 and then in August we spoke again about his alibi, and I
4 again explained it to him what Thomas had verified with his
5 alibi and that it wasn't -- it wasn't helping his -- you
6 know, nobody was holding up.

7 And we spoke -- I can tell you we spoke a lot and I also
8 met with him during the course of our representation. I
9 think I met with him 13 times per my notes and I spoke with
10 him a separate eight times over the phone that I have a note
11 on. So I know I did those times, but I don't know how many
12 other times I may have spoke with him that I didn't put a
13 note in the system.

14 Q: Okay.

15 THE COURT: How many times did you say?

16 THE WITNESS: I said I met with him 13 times at least
17 and I spoke with him over the telephone at least eight times.
18 Those are the times I actually put a note in the system. I
19 may have spoke with him at the jail and not put a note in or
20 spoke with him over the phone and not put a note in, but I
21 know those times.

22 MS. MCCALLISTER: Okay.

23 BY MS. MCCALLISTER:

24 Q: And the three people that he gave you were Nicky
25 Freeman, Frederick Poole -- I guess it's four people -- his

EMILY CRAYTON - DIRECT BY MS. MCCALLISTER

1 adopted mother, Ms. Brown, and the car --

2 A: Yes.

3 Q: Car sales?

4 A: Yes. There were four -- there were four -- well, three
5 people and one ABU Auto Sales, which is, you know, a company,
6 and I think we spoke to the manager who said Mr. Gray was
7 there days prior and had a first interview. He was supposed
8 to show up very close to the date of the crime. I can't
9 remember if it was the same day or the day before or the day
10 after, but he never showed up and that he wouldn't be very
11 happy to see him because the first time he was there, he
12 stole some stuff when he was there.

13 Q: Okay.

14 A: So --

15 Q: So none of these witnesses you felt were helpful
16 witnesses or established an alibi defense to this charge?

17 A: No, I did not.

18 Q: Okay.

19 A: And that was conveyed to him.

20 Q: If you had gone to trial, would you have subpoenaed any
21 of these witnesses?

22 A: Probably not, given the fact that they weren't helpful.
23 I definitely wouldn't have subpoenaed the individual who said
24 that Mr. Gray had stole from him. Obviously, that would have
25 been harmful for him.

EMILY CRAYTON - DIRECT BY MS. MCCALLISTER

- 1 Q: Okay. Did you talk to Mr. Gray about pleading guilty?
- 2 A: Yes. Originally, I think I just conveyed his offer,
3 which I actually have a note in my file. And I don't
4 remember what his original offer was, but I have a note that
5 I conveyed that to him. At first, he wasn't interested in
6 pleading. Let's see. But I know I saw a note the other day
7 about him eventually just deciding he wanted to plea.
- 8 Q: Okay. Do you -- do you have any reason to believe that
9 he did not plead guilty freely and voluntarily?
- 10 A: No.
- 11 Q: Okay. Do you feel that you and he had enough time to
12 discuss all of the issues in order for him to make an
13 informed decision?
- 14 A: Yes.
- 15 Q: And at the time that he pleaded guilty, was he aware of
16 the problems with the alibi witnesses?
- 17 A: Yes.
- 18 Q: Okay.
- 19 MS. MCCALLISTER: Thank you. That's all of the
20 questions I have.
- 21 CROSS-EXAMINATION
- 22 BY MR. WALLER:
- 23 Q: Ms. Crayton, you testified that you didn't speak
24 directly with any of these individuals; is that right?
- 25 A: No, I did not. Our investigator did that.

EMILY CRAYTON - CROSS BY MR. WALLER

- 1 Q: Do you have any notes regarding the dates or times that
2 was presented to them, asking if he was around? Do you know
3 what information was conveyed to the alibi witnesses?
- 4 A: Oh, it was the -- we were looking for the entire day,
5 any time that day that they would have seen him, but they
6 could only verify days earlier.
- 7 Q: Okay. You testified you discussed that with him, the
8 findings of the investigator?
- 9 A: We did.
- 10 Q: Okay. What was his response to that?
- 11 A: What was his response? Truthfully, I can't remember his
12 response. I know he told me that he was told by some guy in
13 his pod the people who had actually committed the robbery,
14 and he gave me names at that time. That one of the guys in
15 the pod had been talking to him and had told him these are
16 the people that actually committed this crime.
- 17 Q: Okay.
- 18 A: But I think he didn't have a real response about his
19 alibi.
- 20 Q: Okay. Well, then y'all -- you testified y'all discussed
21 it again the next month?
- 22 A: We did. I can -- hold on. If you'll give me a second,
23 I'll find that note.
- 24 We did -- we did speak again, and then he called me just
25 a few days after and told me that he wanted to go ahead with

EMILY CRAYTON - CROSS BY MR. WALLER

1 a plea.

2 Q: Okay. But after the first time you spoke about what
3 your investigator had uncovered about the potential alibi
4 witnesses, obviously the issue wasn't settled; is that right?
5 Because you spoke about it again?

6 A: We did speak about it again. I'm not sure if Thomas --
7 if Mr. McKenzie had at that point spoken with all of the
8 alibi witnesses or just part of them and we were waiting to
9 speak to all of them. So I'm not sure if that's why we had a
10 separate conversation or if he just wanted to talk more about
11 it. I don't remember, truthfully.

12 MR. WALLER: I beg the Court's indulgence, please.

13 Nothing further. Thank you, Your Honor.

14 THE COURT: Very good. Any redirect?

15 MS. MCCALLISTER: Just -- I just want to clarify one
16 thing.

17 REDIRECT EXAMINATION

18 BY MS. MCCALLISTER:

19 Q: You had -- you said that you had two conversations about
20 the alibi witnesses, one in --

21 A: At least.

22 Q: At least two?

23 A: Yes.

24 Q: Okay. And am -- am I correct that the first one was in
25 July?

EMILY CRAYTON - REDIRECT BY MS. MCCALLISTER

1 A: Hold on. Let me look. I'm sorry.

2 Well, when he first -- are you speaking about when he
3 first gave me the information or when it was -- when I talked
4 to him about what we had found?

5 Q: When you talked about --

6 A: Okay.

7 Q: -- what you had found.

8 A: All right. I think it might've been actually August.

9 Q: Okay. That's fine. So were they both in -- you had two
10 conversations in August about what you had found?

11 A: Yes.

12 Q: Okay.

13 A: I believe so. I might have spoke to him in July as
14 well.

15 Q: Okay. And then he -- he pleaded guilty in September?

16 A: He did, but he started discussing a plea earlier than
17 that. But yes, he eventually pled in September.

18 Q: Okay.

19 MS. MCCALLISTER: Thank you.

20 THE COURT: Anything further from the State?

21 MS. MCCALLISTER: No, Your Honor.

22 THE COURT: You may step down. Thank you.

23 Any additional witnesses?

24 MS. MCCALLISTER: No, Your Honor.

25 THE COURT: All right. I'll be glad to hear from you,

1 Mr. Waller.

2 MR. WALLER: Thank you, Your Honor.

3 Your Honor, Mr. Gray testified that he provided Ms.
4 Crayton and the Public Defender's Office with information
5 regarding some witnesses that would be able to testify to his
6 whereabouts and the fact that it would be physically
7 impossible for him to have committed a crime in Scranton,
8 South Carolina, because he was in Greenville.

9 I believe the testimony from him was that they -- that
10 one of them was contacted. It's his understanding that she
11 was provided the wrong time, albeit on the same day, which
12 would have enabled -- enabled it to not be viewed as an alibi
13 because it would have been -- the time that was provided to
14 the witness would have been able for him to get to Scranton.

15 Your Honor, he was unaware, by his testimony, that any
16 of the other witnesses were contacted. Obviously, Ms.
17 Crayton has testified to the opposite of that.

18 Your Honor, I think the fact that they spoke multiple
19 times about it shows that the issue wasn't settled. Mr. Gray
20 believed that he did, in fact, have an alibi and was intent
21 on pressing the issue, and he testified that he'd been in the
22 detention center for 500 days approximately and that, you
23 know, he was ready to get out of there.

24 I think he -- I don't believe that the plea was
25 voluntary given the -- given the nature of being back there

1 for so long and then being told he did not have an alibi
2 witness or an alibi. Your Honor, it was his testimony that
3 the information was not provided to him about the time
4 differences until after he had already pled guilty.

5 THE COURT: Very good.

6 MR. WALLER: Thank you.

7 THE COURT: Thank you, Mr. Waller.

8 Anything further?

9 MS. MCCALLISTER: Your Honor, may I just --

10 THE COURT: You can, if you'd like.

11 MS. MCCALLISTER: I'll just respond very briefly.

12 Your Honor, I think Ms. Crayton -- I think the key point
13 is that Ms. Crayton was clear that the investigator asked the
14 alibi witnesses about the entire day and they couldn't put
15 him there that day or any day, you know, close by. So I
16 think Mr. Gray believes that he has an alibi, but, you know,
17 Ms. Crayton and her investigator did follow up on that and I
18 think she's been clear about that in testifying, Your Honor.

19 THE COURT: Very good. All right.

20 Ms. McCallister, I'm going to ask that you draft an
21 order, and I want you to address the continuance issue and,
22 to be quite honest with you, even if the sister would have
23 been here and would have testified and would have been able
24 to establish an alibi here today, I think that the colloquy
25 that took place between the defendant and the judge is

1 determinative.

2 Number one, he indicated he was satisfied with his
3 lawyer. I give great weight to the testimony of Ms. Crayton.
4 She clearly did a thorough investigation of the alibi. It's
5 clear that she sent a very seasoned investigator, Thomas
6 McKenzie, who we all know probably spent 25 years in Lake
7 City. If there's anybody to be found in the lower part of
8 Florence County and he wants to find them, he's going to find
9 them.

10 And your notes -- and I do note that -- that Ms. Crayton
11 had meticulous notes as to her preparation, meticulous notes
12 as to conversations that took place between she and the
13 defendant. She has documented 13 individual times that they
14 discussed it in person, eight times on the phone. There
15 could have been more.

16 But it's clear that there was a thorough investigation
17 of this case, and Thomas McKenzie is a seasoned investigator
18 and he, like anyone else -- like anybody, can look at the
19 arrest warrant, determine when the offense took place, and
20 make a determination as to whether or not the witnesses can
21 corroborate any alibi.

22 I do note that on page 7 of the transcript that,
23 regardless of what the sister would've said and even if she
24 was present today and said that, he gave up those rights, and
25 there was a thorough discussion of his jury trial rights. He

1 was the one who gave up his jury trial rights after having
2 been explained it, after his rights were explained to him on
3 the record.

4 Page 8 was discussion about whether anybody pressured
5 him to do it and whether or not it was voluntary. He was
6 clear on that, unequivocal on the record.

7 And I'll ask that you prepare an order to that effect
8 denying the post-conviction relief.

9 And, Mr. Gray -- Mr. Gray, good luck to you.

10 MS. MCCALLISTER: Thank you, Your Honor.

11 MR. WALLER: Thank you, Your Honor.

12 (WHEREUPON, the proceedings ended at 10:27 a.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)
4
5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 31, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 16th
13 day of November, 2017.
14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16
17 s/Krystal J. Smith
18 Court Reporter
19
20 Florence, South Carolina
21 December 13, 2018
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Jeffrey Allan Gray, #311734,)
Applicant,)

C.A. No. 2016-CP-21-268

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

DOUGLAS POULOS O'HARA
C.O.C.P. & G.S.
FLORENCE COUNTY, SC

2018 SEP 19 PM 2:21

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by Jeffrey Allan Gray (Applicant) on February 4, 2016. Respondent made its Return on January 17, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Prior to the hearing, Applicant moved this Court for a continuance in order to secure the testimony of his sister, whom he alleges could have provided him with an alibi for this crime. However, Applicant did not attempt to contact his sister prior to this hearing, and Counsel's attempts to contact the sister were unsuccessful. Therefore, this Court denied the continuance request, while allowing Applicant some leeway to testify as to what he believes his sister would say. At the hearing, Applicant testified on his own behalf. Emily Crayton, Applicant's plea counsel, testified on behalf of Respondent. This Court also had before it a copy of the records of

CERTIFIED: A TRUE COPY
Douglas Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the July 2014 term of the Florence County Grand Jury for one count of armed robbery (2014-GS-21-0994). The charges arose from the robbery of a convenience store owner, wherein Applicant and a codefendant followed the store owner home after closing time, hit him with a pistol, and stole money from him. Tr. p. 10. The store owner identified both Applicant and his codefendant because they frequently shopped in the store. Tr. p. 10. Applicant was represented on this charge by Emily Crayton, Esquire. John Holt, Esquire, prosecuted the case on behalf of the State. On September 9, 2015, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Judge John sentenced Applicant to a term of imprisonment of ten years, pursuant to the State's recommendation. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Failed to do the necessary pre-trial investigations that would have provided counsel with information and data to prepare an effective defense for the applicant."
 - b. "Failed to formulate an effective line of defense against the charges."

Applicant did not file any amendments and proceeded at the evidentiary hearing only on the

issue of whether Counsel rendered effective assistance in her investigation and development of an alibi defense.

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 PCR hearing. 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 (2003).

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure

of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Further, "[d]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, *which witnesses should be called on the defendant's behalf*, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.'" Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (quoting Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998)) (emphasis added).

Applicant testified he met with Counsel several times, and they talked in detail about the case and his version of events. According to Applicant, he told Counsel he had an alibi, and his mother, his sister, the sister's husband could verify he was living in Greenville at the time of the robbery. Applicant testified an investigator from Counsel's office interviewed his sister, but the investigator asked her about the incorrect timeframe. Applicant testified he asked Counsel to contact his sister again, but never received an answer as to whether any follow-up was done. Applicant further testified he never attempted to contact his sister himself while the charges were pending. Additionally, Applicant testified he asked Counsel about what he considered to be discrepancies in the factual narrative in the arrest warrant versus statements from witnesses, and she told him it did not matter.

According to Applicant, he decided to plead guilty despite allegedly having an alibi because he was afraid his codefendant would testify against him, and he was concerned about the possibility of receiving a thirty-year sentence if convicted at trial. Applicant testified he would not have pleaded guilty if he could have presented the alibi defense at trial. However, on cross-

examination, Applicant conceded he told the plea judge he was satisfied with Counsel and did not inform the plea court he had a defense to these charges.

Counsel testified she met with Applicant a total of thirteen times in person, plus they had eight phone calls. According to Counsel, she first met with Applicant on May 23, 2015, after receiving discovery from the State and reviewing the file. Counsel testified Applicant told her about his alibi at that meeting and gave her the names of his sister and her husband, whose home he allegedly moved into in Greenville around the time of the robbery. Counsel further testified Applicant gave her the name of an auto supply store where he claimed to have had a job interview on the day in question. Counsel testified she asked an investigator with her office, Mr. McKenzie, to verify Applicant's story, but the investigator was unable to do so. According to Counsel, she could not verify Applicant's presence in Greenville on the date of the robbery; the best she could do was several days before. Further, Counsel testified the man Mr. McKenzie spoke to at the auto store alleged Applicant had stolen items from the store on the day of his first interview there. Therefore, Counsel testified, she would not have subpoenaed any of these witnesses to testify had Applicant elected to proceed to trial because their testimony was not helpful to Applicant and did not establish an alibi.

Counsel testified she met with Applicant on July 1, 2015 to review the investigator's findings. She testified they again in August, and she explained the findings and implications a second time. According to Counsel, Applicant had no real response to her report that his witnesses were unable to verify his alibi. Counsel testified after the meeting in August, Applicant left her a voicemail saying he wanted to plead guilty. Counsel testified he was aware of the problems with

the witnesses and establishing an alibi at the time of the plea, and she had no reason to think his decision was involuntary.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel investigated the existence of an alibi using an experienced investigator. Counsel met with Applicant numerous times, and took detailed notes of their meetings and phone calls. Counsel credibly explained the witnesses did not verify the alibi, and therefore, the witnesses were unhelpful to Applicant. Applicant did not have the witness present who he alleges can verify his alibi, and his speculation as to her testimony is insufficient to meet his burden of proof. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence in order to prove counsel was ineffective for failing to call an alibi witness.).

Further, this Court finds, even if a continuance of the evidentiary hearing had been granted for Applicant to secure his sister's testimony, the plea colloquy is determinative. Applicant was aware Counsel had been unable to verify his alibi prior to the plea, yet he informed the plea court he was satisfied with Counsel's services and was voluntarily giving up his right to a jury trial and present a defense. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is generally foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th

Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). This Court finds Applicant failed to present any such reason in this case. Accordingly, these allegations are denied and dismissed.

CONCLUSION

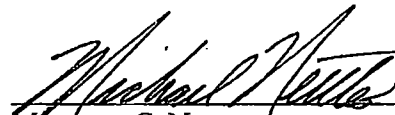
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

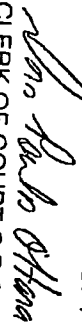


 MICHAEL G. NETTLES
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

9-7, 2018

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 DONIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Tyrone Porter

Florence County Sheriff

DOCKET NO. 2014-GS-21-00994

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JULY TERM 2014

THE STATE

vs.

JEFFERY ALLAN GRAY

JERROLD TAVON CARTER WINGFIELD JR.

Todd Tucker

ARREST WARRANT NUMBER

2014A2110200306

2014A2110200305

ACTION OF GRAND JURY

TRUE BILL

Wendy Sanders

Foreperson of Grand Jury

Date:

7/10/2014

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ARMED ROBBERY

2014 JUL 10 AM 11:41
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ARMED ROBBERY

At a Court of General Sessions, convened on JULY 10, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That JEFFERY ALLAN GRAY and JERROLD TAVON CARTER WINGFIELD, JR. did in Florence County on or about March 13, 2014, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of ABDULLAH MUSED from or in the immediate presence of ABDULLAH MUSED with intent to deprive ABDULLAH MUSED of possession by use of force, threats or intimidation, to wit: \$400.00 in U.S. Currency, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR