

VOLUME II OF II

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
The Honorable Gary E. Clary, Trial Judge
The Honorable Brian M. Gibbons, Post-Conviction Relief Judge

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S.C. SUPREME COURT

Appellate Case No: 2016-000885

WILLIE J. RICHARDSON,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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1 DIDN'T HAVE TO.

2 WHO ELSE TESTIFIED? JOHN BOOKMAN. HE DIDN'T KNOW THE
3 VICTIM ALFRED JONES. HE DOESN'T KNOW THE DEFENDANT WILLIE
4 JAMES RICHARDSON. NOTHING TO GAIN, NOTHING TO LOSE. WHY
5 COME TO THIS COURTROOM AND TESTIFY? BUT HE DID. THE ONE
6 THING THAT HE TOLD YOU IS THAT THE FACE OF THAT MAN WILL
7 FOREVER BE EMBLAZED IN MY MIND. HE DIDN'T HAVE TO SAY THAT,
8 BUT HE DID BECAUSE IT'S TRUE. WHAT DID HE HAVE TO GAIN OR
9 LOSE?

10 THOMAS COUNTS, RONALD BOYD -- THE DESCRIPTIONS THEY GAVE
11 OF THE PERSON THEY SAW THAT NIGHT, DID THEY DIFFER AT ALL
12 FROM THIS MAN? THEY TOLD YOU THE ONLY DIFFERENCE BETWEEN
13 THIS MAN AND THE MAN THEY SAW WAS HAIR AND WEIGHT. THAT WAS
14 THE ONLY THING KEEPING THEM FROM SAYING THAT'S HIM. THEY
15 DIDN'T SAY THE GUY WAS SIX-TWO. THEY DIDN'T SAY HE WAS 150
16 POUNDS. THEY DIDN'T SAY HE WAS BUILT LIKE SCHWARZENEGGER OR
17 SMALL LIKE BARNEY FIFE. THEY SAID HE LOOKED LIKE THIS MAN.

18 AND RONALD BOYD -- HE IS THE ONE THAT GOT THOSE TAGS.
19 THAT IS BETTER THAN ACTUALLY PICKING THIS MAN OUT OF THE
20 PHOTO LINEUP. HE GOT THE TAG. HE GOT THE TAG TO THE WHITE
21 VEHICLE, AND HE GAVE THE OTHER TAG NUMBER BOOKMAN AND SAID,
22 REMEMBER THAT. REMEMBER THAT. THAT'S HOW THIS CASE WAS MADE.
23 YOU THINK HE JUST LUCKED OUT AND HE JUST HAPPENED TO PICK OUT
24 A TAG -- JUST HAPPENED TO PICK OUT A TAG NUMBER THAT CAME
25 BACK TO WILLIE JAMES RICHARDSON? IT'S PRETTY BAD LUCK FOR

1 MR. RICHARDSON, ISN'T IT? THAT'S A SHAME.

2 WHO ELSE DID YOU HEAR? MS. SHEPPARD? SHE DIDN'T SEE THE
3 FACE OF THIS MAN, BUT EVERYTHING THAT SHE SAID CORROBORATES
4 AND CONFORMS WHAT MR. BOYD SAID, WHAT MR. BOOKMAN SAID, WHAT
5 MR. COUNTS SAID, WHAT KIRBY BLOCKER SAID THE WAY THIS MAN WAS
6 BEHAVING -- DROVE UP WITH AN ATTITUDE, CAME INTO THAT PLACE
7 THROWING MONEY AROUND, WENT OUT TO GET A GUN DURING THE
8 FIGHT, CAME IN, AND, BOY, SHE HIT THE ROAD WHEN THAT SHOT
9 STARTED FIRING. SHE CONFIRMED WHAT THEY SAID.

10 WHO ELSE DID YOU HEAR? YOU HEARD FROM REGINALD LUCAS.
11 WHAT DOES HE HAVE TO GAIN? WHAT DOES HE HAVE TO GAIN? YOU
12 KNOW WHAT HE GETS FROM US? DID YOU HEAR WHAT HE IS GOING TO
13 GET FROM US FOR TESTIFYING? HE IS GOING TO GET AN EXCUSE
14 FROM SCHOOL. HE WOULDN'T NEED THE EXCUSE FROM SCHOOL IF HE
15 DIDN'T COME DOWN HERE TO TESTIFY. WHAT KIND OF BENEFIT IS
16 THAT? HE HAS ALREADY BEEN SENTENCED IN A FEDERAL SYSTEM WE
17 HAVE NOTHING TO DO WITH. WE HAVE NO CONTROL OVER THAT.

18 I ASKED THE F.B.I. AGENT, DID Y'ALL MAKE A DEAL WITH HIM
19 BEFORE HE WAS EVEN SENTENCED? NO. NO. WHAT, IF ANY, DEALS
20 WERE CUT WITH HIM? NONE. BUT, YOU KNOW WHAT HE DID? IN THE
21 FEDERAL SYSTEM IF YOU PLEAD GUILTY THEY WILL CONSIDER THAT TO BE
22 AND FACTOR THAT IN WHEN THEY SENTENCE YOU. DID YOU HEAR WHAT
23 MR. LUCAS SAID? HE SAID, "I PLED GUILTY." HE SAID, "I TOOK
24 RESPONSIBILITY FOR WHAT I DID." THAT'S WHAT MR. LUCAS SAID.

25 WHO ELSE DID YOU HEAR FROM? DR. CARTER. LET ME TELL YOU

1 SOMETHING. DR. CARTER WASN'T THERE, BUT BY TALKING ABOUT THE
2 WOUNDS TO ALFRED JONES, HE BROUGHT THAT CRIME BACK TO INTO
3 THE AUTOPSY ROOM BECAUSE EVERYTHING HE SAW WHEN HE LOOKED AT
4 THAT BODY -- THAT MANGLED BODY OF ALFRED JONES CONFIRMED
5 WHAT OUR WITNESSES HAD SAID, INCLUDING KIRBY BLOCKER --
6 ESPECIALLY KIRBY BLOCKER. WHAT DOES DR. CARTER HAVE TO GAIN?
7 NOTHING. HE IS A PROFESSIONAL. HE WILL CALL IT THE WAY HE
8 SEES IT. WHAT DID HE SAY? THERE ARE SIGNS. THE PHYSICAL
9 EVIDENCE SHOWS THAT THIS MAN ALFRED JONES WAS BRUTALLY BEATEN
10 BY MULTIPLE ASSAILANTS -- BY THIS (INDICATING) -- WITH SUCH
11 FORCE THAT IT WAS ABLE TO BREAK THIS CHAIR AND LEAVE
12 PERMANENT MARKS ON THIS MAN, BRUISES AS THICK AS THE WOOD YOU
13 SEE IN MY HAND. THAT GOUGE ON HIS BACK CAME FROM SOME OBJECT
14 JUST LIKE THIS. THAT'S WHAT HE SAID.

15 WHO TESTIFIED ABOUT SEEING THAT FIGHT -- SEEING THE
16 BARSTOOLS BROKEN OVER ALFRED? KIRBY BLOCKER -- THE MAN THE
17 DEFENSE JUST DOESN'T WANT YOU TO BELIEVE. YOU KNOW WHAT ELSE
18 HE DID? HE CONFIRMED HOW HE WAS SHOT. JUST LIKE KIRBY SAID
19 -- SHOT DOWN ON THE GROUND. THE WOUND WAS CONSISTENT WITH
20 HIM BEING DOWN ON THE GROUND JUST LIKE KIRBY SAID. THE ONE
21 WAS CONSISTENT IN THE LEG JUST LIKE KIRBY SAID. HE WAS
22 RUNNING AWAY TRYING TO GET AWAY FROM THE MAN WITH THE GUN.
23 THE FINAL WOUND WAS CONSISTENT JUST LIKE KIRBY SAID. HE WAS
24 SHOT IN THE BACK. HE WAS EXECUTED. HE WAS NO LONGER A THREAT
25 TO ANYONE. THE MAN WHO PULLED THAT TRIGGER THE FIRST TIME

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1 JUST WANTED TO HURT SOMEBODY. HE SUCCEEDED. IF HE WANTED TO
2 IMMOBILIZE HIM BY PULLING THE TRIGGER THE SECOND TIME, HE
3 SUCCEEDED. BUT, LADIES AND GENTLEMEN, HE WANTED TO KILL
4 HIM.

5 WHAT DR. CARTER HAS TESTIFIED TO IS THAT PHYSICAL EVIDENCE
6 PROVES MALICE. THAT'S CRITICAL BECAUSE YOU ARE GOING THE
7 HEAR JUDGE CLARY TALK ABOUT MALICE. WHEN WE TALK ABOUT
8 MURDER, MURDER IS THE INTENTIONAL KILLING OF ANOTHER HUMAN
9 BEING WITH MALICE AFORETHOUGHT. MALICE IS A WICKED, DEPRAVED
10 HEART -- A HEART BENT ON EVIL, A HEART DEVOID OF JUSTICE AND
11 SOCIAL DUTY. AFORETHOUGHT MEANS THAT THAT WICKEDNESS IN HIS
12 HEART WAS THERE AT THE MOMENT OF THE CRIME. RIGHT ABOUT THAT
13 TIME WHEN HE HAD THAT WICKEDNESS, HE COULD HAVE BACKED OFF
14 THAT TRIGGER, BUT HE STOOD OVER A HELPLESS MAN AND SQUEEZED
15 IT BACK ONE MORE TIME. HIS FAMILY WOULD HAVE ALFRED JONES,
16 BUT FOR MALICE -- THE MALICE OF WILLIE JAMES RICHARDSON.

17 WHAT DOES MR. RICHARDSON WANT YOU TO BELIEVE? HE DOESN'T
18 JUST WANT YOU TO BELIEVE HE WAS AT A BIRTHDAY PARTY. HE WANTS
19 YOU TO BELIEVE THAT SOMEBODY JUST HAPPENED TO GO THAT BAR AND
20 JUST HAPPENED TO LOOK LIKE HIM, TO BE ABOUT FIVE-TEN, JUST
21 HAPPENED TO WEIGH ABOUT WHAT HE WEIGHS, ABOUT 200 POUNDS,
22 JUST HAPPENED TO BE A BLACK MALE, LIGHT-SKINNED, JUST
23 HAPPENED TO HAVE A TATTOO OF SOME SORT, JUST HAPPENED TO GO
24 BY THE NAME WILLIE, RAH, JUST HAPPENED TO HAVE A WHITE
25 LANDCRUISER THAT JUST HAPPENED TO BE REGISTERED TO THE

1 RICHARDSON FAMILY, THAT JUST HAPPENED TO BE AT THIS
2 MAN'S HOME THE VERY NEXT DAY OF THE CRIME, AND THE KEYS TO
3 THAT VEHICLE JUST HAPPENED TO BE IN THE HOUSE WHICH ALSO
4 INCLUDED ANGELA COLE WHO JUST HAPPENED TO BE THERE -- THE
5 SAME ANGELA COLE WHO THE OTHER VEHICLE JUST HAPPENS TO BE
6 REGISTERED TO.

7 ISN'T THAT AMAZING? IF PEOPLE AT THE SCENE JUST HAPPENED
8 TO HEAR, WILLIE, RAH, YOU ARE HERE BECAUSE OF A COINCIDENCE.
9 YOU ARE HERE BECAUSE THIS MAN IS ALWAYS FALSELY ACCUSED. YOU
10 HEARD WHAT HE SAID ABOUT OTHER TIMES HE HAS BEEN IN TROUBLE.
11 SOMEBODY IS ALWAYS TRYING TO LAY SOMETHING ON HIM. MAN, WHAT
12 HORRIBLE LUCK. WHAT BAD LUCK.

13 THERE IS SOMETHING ELSE HE WANTS YOU TO DO. HE WANTS TO
14 DIVIDE THIS JURY. HE SAID A BLACK MAN CAN'T GET A FAIR TRIAL
15 IN LEXINGTON COUNTY. HE WANTS TO DIVIDE YOU. HE WANTS THOSE
16 OF YOU WHO ARE WHITE TO FEEL GUILTY AND IGNORE THE FACTS --
17 FOR THOSE OF YOU WHO ARE BLACK, TO IGNORE THE FACTS AND VOTE
18 HIM NOT GUILTY. IS THAT JUSTICE? HE WANTS TO MANIPULATE
19 YOU. HE COMES IN HERE AND CRIES. OH, MY FRIEND, OR, OH, MY
20 DAD. PLEASE FEEL SORRY FOR ME. I'M A HUMAN BEING. YES, HE
21 IS, AND THAT'S WHY HE OUGHT TO BE HELD RESPONSIBLE.

22 LADIES AND GENTLEMEN, WE ARE NOT ASKING FOR ANYTHING THAT
23 ISN'T DESERVED. WE ARE NOT ASKING YOU TO DO SOMETHING YOU
24 SHOULDN'T DO BY YOUR OWN DUTY -- THE OATH YOU TOOK. WE ARE
25 ASKING FOR ONE THING. WE ARE ASKING FOR WHAT THIS FAMILY IS

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1 ASKING FOR. WE ARE ASKING FOR WHAT MR. YOUNG STOOD UP AND
2 ASKED FOR. WE ARE ASKING FOR JUSTICE. WE'RE ASKING FOR
3 JUSTICE.

4 LADIES AND GENTLEMEN, GIVE JUSTICE.

5 (WHEREUPON THE COURT CHARGED THE JURY AS FOLLOWS.)

6 THE COURT: MADAME FOREPERSON AND LADIES AND GENTLEMEN OF
7 JURY, THE STATE OF SOUTH CAROLINA CHARGES THE DEFENDANT ONE
8 WILLIE JAMES RICHARDSON WITH THE OFFENSES OF MURDER AND
9 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
10 CRIME. THE INDICTMENTS HAVE BEEN READ TO YOU. SO I WILL NOT
11 REPEAT THE ALLEGATIONS CONTAINED IN THEM. YOU WILL HAVE THEM
12 IN YOUR JURY ROOM DURING YOUR DELIBERATIONS.

13 TO THESE INDICTMENTS THE DEFENDANT HAS ENTERED PLEAS OF NOT
14 GUILTY WHICH PLACES UPON THE STATE THE BURDEN OF PROVING THE
15 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL
16 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
17 INNOCENT. I CHARGE YOU THAT IT IS A VITAL AND IMPORTANT RULE
18 OF THE LAW OF EVIDENCE THAT THE DEFENDANT IN A CRIMINAL TRIAL
19 NO MATTER HOW GREAT OR SERIOUS MAY BEAT THE OFFENSE WITH
20 WHICH HE IS CHARGED MUST ALWAYS BE PRESUMED INNOCENT UNTIL
21 HIS GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. THIS
22 PRESUMPTION OF INNOCENCE REMAINS WITH THE DEFENDANT AT ALL
23 TIMES FROM THE MOMENT OF HIS APPEARANCE IN THIS COURT,
24 THROUGHOUT THE TRIAL, AND UNTIL THE JURY HAS UPON THE
25 TESTIMONY AND EVIDENCE PRESENTED REACHED A VERDICT OF GUILTY

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1 BEYOND A REASONABLE DOUBT FOR IT IS THE SOLEMN DUTY OF, YOU,
2 THE JURY IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND A
3 REASONABLE DOUBT TO THE CONTRARY TO ACQUIT THE DEFENDANT. SO
4 THE BURDEN OF PROOF IS UPON THE STATE TO ESTABLISH BY
5 EVIDENCE TO YOUR SATISFACTION THE GUILT BEYOND A REASONABLE
6 DOUBT OF THIS DEFENDANT HERE ON TRIAL FOR THE CRIMES OF
7 MURDER AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A
8 VIOLENT CRIME.

9 NOW WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT IS THE
10 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
11 HESITATE TO ACT. NOW, THE STATE HAS THE BURDEN OF PROVING
12 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU
13 MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE TOLD
14 THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY
15 TRUE THAN NOT TRUE. IN CRIMINAL CASES THE STATE'S PROOF MUST
16 BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE
17 DOUBT. NOW, PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
18 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE
19 ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
20 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE
21 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

22 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
23 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF CRIME
24 CHARGED YOU MUST FIND HIM GUILTY. IF, ON THE OTHER HAND, YOU
25 THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU

1 MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT
2 GUILTY.

3 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY
4 PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
5 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF
6 A PERSON WHO ASSERTS OR CLAIMS TO HAVE THE ACTUAL KNOWLEDGE
7 OF A FACT SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS
8 PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
9 EXISTENCE OF FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION
10 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
11 CIRCUMSTANTIAL EVIDENCE; NOR IS A GREATER DEGREE OF CERTAINTY
12 REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN THAT OF DIRECT
13 EVIDENCE.

14 YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE AND AFTER
15 WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED OF THE
16 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST
17 FIND THE DEFENDANT NOT GUILTY. CONVERSELY, IF YOU ARE
18 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
19 DOUBT, THEN YOU MUST FIND HIM GUILTY.

20 NOW, MADAME FOREPERSON AND MEMBERS OF THE JURY, UNDER THE
21 CONSTITUTION AND LAWS OF THE STATE OF SOUTH CAROLINA, YOU ARE
22 THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAVE THE
23 RIGHT TO PASS UPON THE FACTS OR EVEN TO EXPRESS ANY OPINION I
24 MIGHT HAVE AS TO THEM; NOR MAY I INTIMATE IN ANY WAY WHAT I
25 MAY THINK ABOUT THE GUILT OR INNOCENCE OF THE DEFENDANT. YOU

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1 ARE ALSO THE JUDGES -- THE SOLE JUDGES OF THE CREDIBILITY,
2 THE BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS
3 CASE. IN PASSINGS UPON THEIR CREDIBILITY YOU MAY TAKE INTO
4 CONSIDERATION MANY THINGS SUCH AS THE FOLLOWING: THE
5 Demeanor OR Manner OF TESTIFYING, WHETHER THE WITNESS HAD
6 REASON TO BE BIASED OR PREJUDICED, WHETHER A WITNESS'
7 TESTIMONY WAS CONTRADICTED ON THE ONE HAND OR SUPPORTED AND
8 CORROBORATED ON THE OTHER HAND. NOW, YOU CERTAINLY DO NOT
9 DETERMINE THIS CREDIBILITY OR BELIEVABILITY BY COUNTING THE
10 NUMBER OF WITNESSES FOR EITHER SIDE. YOU MAY BELIEVE A SMALL
11 PORTION OF A WITNESS' TESTIMONY AND DISREGARD THE LARGER OR
12 VICE-VERSA. YOU MAY BELIEVE ONE WITNESS AGAINST MANY OR MANY
13 AGAINST ONE. ALL THIS THINGS YOU WILL CONSIDER BEARING IN
14 MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF A
15 REASONABLE DOUBT.

16 NOW THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT
17 WITNESSES TO TESTIFY AS TO THEIR OPINIONS OR CONCLUSIONS. AN
18 EXCEPTION, HOWEVER, TO THIS RULE DOES EXIST AS TO THOSE WHOM
19 WE CALL EXPERT WITNESSES. EXPERT WITNESSES ARE WITNESSES WHO
20 BY EDUCATION AND EXPERIENCE HAVE BECOME EXPERT IN SOME ART,
21 SCIENCE, PROFESSION, OR CALLING. THESE WITNESSES MAY STATE
22 THEIR OPINIONS AS TO RELEVANT AND MATERIAL MATTER IN WHICH
23 THEY PROFESS TO BE AN EXPERT AND MAY ALSO STATE THEIR REASONS
24 FOR THE OPINION. YOU SHOULD CONSIDER EXPERT OPINION RECEIVED
25 IN THIS CASE -- RECEIVED IN EVIDENCE IN THIS CASE AND GIVE

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1 IT SUCH WEIGHT AS YOU MAY THINK IT DESERVES. IF YOU SHOULD
2 DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED
3 UPON SUFFICIENT EDUCATION AND EXPERIENCE OR IF YOU SHOULD
4 CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE
5 NOT SOUND OR IF YOU FEEL THAT IT IS OUTWEIGHED BY OTHER
6 EVIDENCE YOU MAY DISREGARD THE OPINION ENTIRELY.

7 NOW BY THE SAME CONSTITUTION AND LAW WHICH MAKES YOU THE
8 FINDERS OF THE FACTS AND THE EVIDENCE AS I HAVE DISCUSSED
9 WITH YOU, I AM AS THE JUDGE MADE THE SOLE AND ONLY INSTRUCTOR
10 IN THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I CHARGE
11 AND APPLY IT TO THE EVIDENCE AS YOU FIND IT AND REACH YOUR
12 VERDICT. AND, FINALLY, I CHARGE OR INSTRUCT YOU IN THIS
13 REGARD --- THAT YOU SHOULD NOT BE CONCERNED ABOUT WHAT YOU
14 THINK THE LAW SHOULD OR OUGHT TO BE, BUT RATHER WHAT I CHARGE
15 THE LAW TO BE.

16 NOW, IF YOU SHOULD DETERMINE THAT IDENTIFICATION OF THE
17 DEFENDANT IN THIS CASE IS AN ISSUE, THEN I CHARGE YOU AS
18 FOLLOWS: THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF
19 PROVING IDENTITY BEYOND A REASONABLE DOUBT. YOU THE JURY
20 MUST BE SATISFIED BEYOND A REASONABLE DOUBT OF THE ACCURACY
21 OF THE IDENTIFICATION OF THE DEFENDANT BEFORE YOU MAY CONVICT
22 HIM. IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR
23 IMPRESSION BY A WITNESS. YOU MAY CONSIDER THE OPPORTUNITY A
24 WITNESS HAD TO OBSERVE THE ALLEGED OFFENDER AT THE TIME OF
25 THE OFFENSE AND TO THEREAFTER MAKE AN IDENTIFICATION. IT IS

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1 FOR YOU THE JURY TO DETERMINE THE ACCURACY OF THE
2 IDENTIFICATION OF THE DEFENDANT.

3 YOU MUST CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION
4 WITNESS IN THE SAME WAY AS ANY OTHER WITNESS. YOU MAY
5 CONSIDER HIS TRUTHFULNESS AS WELL AS THE CAPACITY,
6 OPPORTUNITY, AND CIRCUMSTANCES TO MAKE A RELIABLE OBSERVATION
7 OF THE MATTERS ABOUT WHICH HE TESTIFIED. YOU MAY CONSIDER
8 WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE
9 THE OFFENDER AT THE TIME OF THE OFFENSE WOULD BE AFFECTED BY
10 SUCH MATTERS AS HOW LONG OR SHORT A TIME WAS AVAILABLE, HOW
11 FAR OR CLOSE THE WITNESS WAS, THE LIGHTING CONDITIONS,
12 WHETHER THE WITNESS HAD OCCASION TO SEE OR KNOW THE PERSON IN
13 THE PAST.

14 ONCE AGAIN, I INSTRUCT YOU THAT THE BURDEN OF PROOF IS ON
15 THE STATE --- EXCUSE ME. ONCE AGAIN, I INSTRUCT YOU THE
16 BURDEN OF PROOF ON THE STATE EXTENDS TO EVERY ELEMENT OF THE
17 CRIME CHARGED. THIS SPECIFICALLY INCLUDES THE BURDEN OF
18 PROVING BEYOND A REASONABLE DOUBT THE IDENTITY OF THE
19 DEFENDANT AS THE PERPETRATOR OF THE CRIME WITH WHICH HE
20 STANDS CHARGES. IF AFTER EXAMINING THE TESTIMONY YOU HAVE A
21 REASONABLE DOUBT AS TO ACCURACY OF THE IDENTIFICATION YOU
22 MUST FIND THE DEFENDANT NOT GUILTY.

23 NOW, AS I HAVE INDICATED TO YOU AND YOU ARE WELL AWARE THE
24 STATE HAS CHARGED IN ITS INDICTMENT THAT THE DEFENDANT IS
25 GUILTY OF THE CRIME OF MURDER. SO, IT BECOMES NECESSARY FOR

1 TO ME TO INSTRUCT YOU AS TO LAW OF THAT CRIME IN THIS STATE.
2 NOW, WHAT IS MURDER BY DEFINITION? WELL, MURDER MAY BE
3 DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY
4 A HUMAN BEING WITH MALICE AFORETHOUGHT -- THAT MALICE BEING
5 EITHER EXPRESSED MALICE OR IMPLIED OR INFERRED MALICE.

6 WHAT IS MALICE? MALICE IS DEFINED IN THE LAW OF HOMICIDE
7 AS A TERM OF ART. THIS IS A TECHNICAL TERM IMPORTING
8 WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL EXCUSE. IT IS
9 SOMETHING WHICH SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM
10 A DEPRAVED SPIRIT, FROM A HEART DEVOID OF SOCIAL DUTY AND
11 FATALLY BENT ON MISCHIEF. THE WORDS EXPRESSED OR IMPLIED OR
12 INFERRED MALICE DO NOT MEAN DIFFERENT KINDS OF MALICE BUT
13 MERELY THE MANNER IN WHICH THE ONLY KIND OF MALICE KNOWN TO
14 THE LAW MAY BE SHOWN TO EXIST -- THAT IS TO SAY, EITHER BY
15 DIRECT EVIDENCE OR BY INFERENCE. MALICE MAY BE EXPRESSED AS
16 WHERE PREVIOUS THREATS OF VENGEANCE OR LYING IN WAIT OR OTHER
17 CIRCUMSTANCES SHOW DIRECTLY THAT AN INTENT TO KILL WAS
18 ENTERTAINED.

19 THE JURY MAY ALSO CONCLUDE BY DEDUCTIVE REASONING THAT
20 UNDER CERTAIN CIRCUMSTANCES MALICE MAY ARISE EVEN THOUGH
21 THERE IS NO EXPRESS OR DIRECT EVIDENCE OF AN INTENT TO KILL.
22 MALICE MAY BE INFERRED WHERE THOUGH NO EXPRESSED INTENT TO
23 KILL IS PROVED BY DIRECT EVIDENCE IT MAY BE INFERRED FROM THE
24 FACTS AND CIRCUMSTANCES WHICH ARE PROVED. MALICE MAY BE
25 INFERRED FROM THE WILLFUL, DELIBERATE, AND INTENTIONAL DOING

1 OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR LEGAL EXCUSE.

2 IN OTHER WORDS, IN ITS GENERAL SIGNIFICATION, MALICE MEANS
3 THE DOING OF A WRONGFUL ACT INTENTIONALLY WITHOUT
4 JUSTIFICATION OR LEGAL EXCUSE. BUT EVEN IF THE FACTS PROVED
5 ARE SUFFICIENT TO RAISE AN INFERENCE OF MALICE, THIS
6 INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
7 INTO CONSIDERATION BY YOU THE JURY ALONG WITH ALL THE OTHER
8 EVIDENCE IN THIS CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS YOU
9 DETERMINE IT SHOULD RECEIVE AS TO WHETHER OR NOT MALICE HAS
10 BEEN PROVED BEYOND A REASONABLE DOUBT.

11 FURTHERMORE, EVEN WHERE THERE IS AN ABSENCE OF A SPECIFIC,
12 FIXED, AND DELIBERATE INTENT TO TAKE A LIFE OF A PARTICULAR
13 PERSON OR THAT OF ANY PERSON, THE LAW SAYS IF IT IS PROVED
14 BEYOND A REASONABLE DOUBT THAT ONE INTENTIONALLY KILLED
15 ANOTHER WITH A DEADLY WEAPON OR WITH A DANGEROUS
16 INSTRUMENTALITY SUCH AS A GUN, AN IMPLICATION OF MALICE MAY
17 ARISE. THE USE OF A DEADLY WEAPON PERMITS YOU TO INFER
18 MALICE, BUT IT DOES NOT REQUIRE YOU TO INFER MALICE.

19 NOW, IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT
20 SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
21 SATISFACTION, THIS WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE
22 CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER EVIDENCE IN
23 THIS CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS YOU FIND IT
24 SHOULD RECEIVE. YOU AS JURORS ARE FREE TO ACCEPT OR REJECT
25 THIS PERMISSIVE INFERENCE DEPENDING UPON YOUR VIEW OF THE

1 FACTS.

2 NOW, IN OTHER WORDS, IF SUCH CONDUCT RESULTS DIRECTLY IN
3 THE DEATH OF ANOTHER AND IF SUCH CONDUCT WAS SO CULPABLE AND
4 INEXCUSABLE, SO AGGRAVATED AND GROSSLY RECKLESS AS TO SHOW AN
5 ACTIVE INTENTIONAL DISREGARD OF THE CONSEQUENCES OF HUMAN
6 LIFE, THUS DENOTING A MALIGNANT SPIRIT, A HEART DEVOID OF
7 SOCIAL DUTY AND FATALLY BENT ON MISCHIEF, AN IMPLICATION OF
8 MALICE MAY ARISE. FURTHERMORE, IT IS NOT JUST CARELESS, NOT
9 MERE RECKLESSNESS OR A PASSIVE INDIFFERENCE TO THE SAFETY OF
10 OTHERS. THIS CONDUCT WHEN IT SHOWS A DELIBERATE AND
11 INTENTIONAL DESIGN TO SO USE OR EMPLOY OR HANDLE A DEADLY
12 WEAPON OR DANGEROUS INSTRUMENTALITY SO AS TO ENDANGER THE
13 LIFE OF OTHER OR OF OTHERS WITHOUT JUST CAUSE OR EXCUSE, IT
14 MAY BE SUFFICIENT TO RAISE THIS IMPLICATION.

15 ONCE AGAIN, HOWEVER, IT IS FOR YOU, THE JURY, TO DECIDE
16 BEYOND A REASONABLE DOUBT WHETHER UPON ALL THE FACTS AND
17 CIRCUMSTANCES OF THIS CASE THE DEFENDANT'S ALLEGED USE OF A
18 DEADLY WEAPON DEMONSTRATED SUCH AN INTENTIONAL DISREGARD FOR
19 HUMAN LIFE THAT MALICE MAY BE IMPLIED OR INFERRED FROM THE
20 USE OF A DEADLY WEAPON AND IT IS FOR YOU, THE JURY, TO DECIDE
21 WHAT WEIGHT, IF ANY, SHOULD BE GIVEN THIS FACT.

22 AND IT WILL BE OBSERVED, LADIES AND GENTLEMEN, THAT THERE
23 MUST BE MALICE AFORETHOUGHT. WHILE THE LAW DOES NOT REQUIRE
24 THAT MALICE SHALL EXIST FOR ANY PARTICULAR LENGTH OF TIME
25 BEFORE THE COMMISSION OF THE ACT, IT MUST BE AFORETHOUGHT.

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1 THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND
2 THE ACT PRODUCING THE FATAL RESULT. MALICE IS A WORD
3 SUGGESTING WICKEDNESS, HATRED, AND A DETERMINATION TO DO WHAT
4 ONE KNOWS TO BE WRONG WITHOUT JUST CAUSE OR EXCUSE OR LEGAL
5 PROVOCATION.

6 MALICE NEED NOT BE IN THE MIND OF THE ONE DOING THE KILLING
7 ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT OF THE KILLING
8 IN ORDER TO RENDER THE KILLING MURDER. IF IT IS PRESENT IN
9 THE MIND OF THE ONE DOING THE KILLING ANY LENGTH OF TIME
10 BEFORE THE ACT, THEN ITS PRESENCE WOULD BE SUFFICIENT TO
11 RENDER THE KILLING MURDER. MALICE IS SAID TO BE EXPRESSED
12 WHERE IS MANIFESTED A VIOLENT, DELIBERATE INTENTION
13 UNLAWFULLY TO TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING.
14 MALICE IS IMPLIED OR INFERRED WHEN ONE INTENTIONALLY AND
15 DELIBERATELY DOES AN UNLAWFUL ACT WHICH HE THEN KNOWS TO BE
16 WRONG AND IN VIOLATION OF HIS DUTY TO ANOTHER AND WHERE NO
17 EXCUSE OR LEGAL PROVOCATION APPEARS AND WHEN THE
18 CIRCUMSTANCES ATTENDING A KILLING SHOW AN ABANDONED HEART, A
19 MALIGNANT HEART FATALLY BENT ON MISCHIEF. IF THE EVIDENCE
20 SHOULD SHOW UNDER WHAT CIRCUMSTANCES A SHOT WAS FIRED WHICH
21 TOOK THE LIFE OF ANOTHER, THEN YOU, THE JURY, WOULD HAVE TO
22 DETERMINE WHETHER UNDER SUCH CIRCUMSTANCES THE ACT WAS
23 MALICIOUS.

24 NOW, I FURTHER CHARGE YOU THAT CRIMINAL INTENT IS A
25 NECESSARY ELEMENT OF EACH CRIME THAT MUST BE PROVEN BY THE

1 STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A
2 MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE
3 CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO
4 PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY
5 MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE
6 WHAT HE HAD IN MIND. SO, THE LAW SAYS THAT CRIMINAL INTENT
7 MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.
8 THIS IS HOW THE JURY MAKES A DETERMINATION WHETHER OR NOT THE
9 ELEMENT REQUIRING INTENT WAS PRESENT.

10 CRIMINAL INTENT IS A STATE OF MIND WHICH OPERATES JOINTLY
11 WITH AN ACT IN THE COMMISSION OF A CRIME. CRIMINAL INTENT IS
12 A MENTAL STATE, A CONSCIOUS WRONGDOING. SO, IT IS UP TO YOU,
13 THE JURY, TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO
14 BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. I TELL YOU
15 THAT THE STATE MUST PROVE CRIMINAL INTENT BEYOND A REASONABLE
16 DOUBT JUST AS THE STATE MUST PROVE EVERY ELEMENT BEYOND A
17 REASONABLE DOUBT AS I HAVE PREVIOUSLY EXPLAINED TO YOU.

18 NOW, LADIES AND GENTLEMEN, THE DEFENDANT IS ALSO CHARGED
19 WITH A POSSESSION OF A FIREARM DURING THE COMMISSION OF A
20 VIOLENT CRIME. SECTION 16-3-490 OF THE CODE OF LAWS OF THE
21 STATE OF SOUTH CAROLINA, 1976 AS AMENDED, MAKES IT ILLEGAL TO
22 POSSESS A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.
23 I FURTHER CHARGE THAT SECTION 16-1-60 OF THE CODE PROVIDES
24 THAT A VIOLENT CRIME INCLUDES THE OFFENSE OF MURDER. FOR YOU
25 TO FIND THE DEFENDANT GUILTY OF THIS SEPARATE STATUTORY

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1 OFFENSE OF POSSESSING A FIREARM DURING A VIOLENT CRIME, YOU
2 MUST FIRST FIND THE DEFENDANT GUILTY OF MURDER WHICH, ONCE
3 AGAIN, IS CLASSIFIED AS A VIOLENT CRIME.

4 IF YOU FIND THE DEFENDANT GUILTY OF MURDER, THEN YOU MUST
5 DETERMINE WHETHER THE STATE HAS PROVED BEYOND A REASONABLE
6 DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM
7 DURING THE COMMISSION OF THE MURDER. AS USED IN SECTION
8 16-23-490 OF THE CODE OF LAWS FOR THE STATE OF SOUTH
9 CAROLINA, 1976 AS AMENDED, A FIREARM IS DEFINED AS ANY
10 MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, OR ANY WEAPON
11 WHICH WILL OR IS DESIGNED TO OR MAY BE READILY CONVERTED TO
12 EXPEL A PROJECTILE.

13 NOW, MADAME FOREPERSON AND LADIES AND GENTLEMEN OF THE
14 JURY, THE DEFENDANT HAS PLED AS A DEFENSE IN THIS CASE WHAT
15 WE CALL A DEFENSE OF ALIBI. IN OTHER WORDS, THE DEFENDANT
16 CLAIMS THAT HE WAS NOT AT THE SCENE OF THE CRIME AT THE TIME
17 IT WAS COMMITTED, BUT THAT HE WAS ELSEWHERE AND HAD NOTHING
18 TO DO WITH IT. THERE IS NO BURDEN UPON THE DEFENDANT TO PROVE
19 HIS ALIBI. THE BURDEN IS UPON THE STATE TO PROVE THAT HE WAS
20 ACTUALLY PRESENT AT THE SCENE OF THE CRIME AND THAT HE
21 ACTUALLY PARTICIPATED IN IT AND THAT HE WAS NOT ELSEWHERE.
22 AND THE STATE MUST PROVE THIS ALLEGATION AS ALL OTHER
23 ALLEGATIONS ARE REQUIRED TO BE PROVEN BY EVIDENCE BEYOND A
24 REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT AS TO
25 WHETHER THE DEFENDANT WAS PRESENT, YOU MUST RESOLVE THIS

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1 DOUBT IN FAVOR OF THE DEFENDANT AND FIND HIM NOT GUILTY.

2 NOW, LADIES AND GENTLEMEN OF THE JURY, YOU HAVE BEEN
3 SELECTED AS FAIR AND IMPARTIAL JURORS SWORN TO IMPARTIALLY
4 TRY AND DETERMINE THE FACTS OF THIS CASE AND WHEN YOU COMPLY
5 WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO
6 CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY DISCHARGED
7 YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS CASE ACCORDING TO
8 THE TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN
9 WITNESSES ALONG WITH ALL THE OTHER EVIDENCE WHICH HAS BEEN
10 INTRODUCED. I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE
11 ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT PREJUDICE
12 TO ANY PARTY.

13 BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT
14 THAT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL
15 OF THE EVIDENCE IN THIS CASE AND THAT YOU WILL FOLLOW THE LAW
16 AS I HAVE EXPLAINED IT TO YOU. ONCE AGAIN, YOU CANNOT ALLOW
17 YOURSELVES TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY
18 PASSION, BY PUBLIC OPINION, OR ANY OTHER ARBITRARY FACTOR.

19 LADIES AND GENTLEMEN OF THE JURY, I THANK YOU FOR THE
20 ATTENTION YOU'VE PAID THROUGHOUT THE COURSE OF THIS TRIAL,
21 AND I WANT YOU TO CONTINUE TO PAY VERY CLOSE ATTENTION TO ME
22 AS I DISCUSS THE VERDICTS IN THIS CASE. MADAME FOREPERSON,
23 IT IS GOING TO BE YOUR RESPONSIBILITY TO ACTUALLY PRESIDE IN
24 THE JURY ROOM AND TO WRITE THE VERDICT IN THIS CASE. SO I
25 WANT YOU TO PAY PARTICULAR ATTENTION TO ME AS WELL AS ALL

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1 MEMBERS OF JURY.

2 I HOLD IN MY HAND THE INDICTMENT 98-32-1242, COUNT ONE,
3 WHICH IS THE CHARGE OF MURDER AGAINST THE DEFENDANT WILLIE
4 JAMES RICHARDSON. LADIES AND GENTLEMEN OF THE JURY, AS TO
5 THIS CHARGE OF MURDER, COUNT ONE OF THE INDICTMENT, THERE ARE
6 TWO POSSIBLE VERDICTS. PLEASE ATTACH NO SIGNIFICANCE TO THE
7 FACT THAT I LIST ONE BEFORE THE OTHER. IT IS SIMPLY THAT ONE
8 MUST BE LISTED FIRST. ON THE BACK OF THE INDICTMENT IN THE
9 LOWER LEFT-HAND CORNER, MADAME FOREPERSON AND LADIES AND
10 GENTLEMEN, THERE IS A SPACE ENTITLED VERDICT WITH SOME LINES
11 AND UNDER THERE YOU ARE -- AND THERE ARE TWO POSSIBLE
12 VERDICTS IN THIS CASE. THE VERDICTS ARE GUILTY OR NOT
13 GUILTY. ONCE YOU HAVE REACHED A VERDICT, MADAME FOREPERSON,
14 LADIES AND GENTLEMEN, TO WHICH YOU ALL TWELVE AGREE, MADAME
15 FOREPERSON, YOU WILL EITHER WRITE THE WORD GUILTY OR THE
16 WORDS NOT GUILTY IN THE SPACE PROVIDED, SIGN YOUR NAME AS THE
17 FOREPERSON OF THE PETIT JURY, AND DATE IT TODAY WHICH IS
18 APRIL 13, 2000.

19 THEN, AS TO COUNT TWO OF 98-1242, THAT IS POSSESSION OF A
20 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, ONCE AGAIN,
21 ON THE BACK LOWER LEFT-HAND CORNER IS THE SPACE FOR THE
22 VERDICT TO BE WRITTEN. ONCE AGAIN, THERE ARE TWO POSSIBLE
23 VERDICTS IN THIS CASE. BUT LET ME REMIND YOU THAT IN
24 ACCORDANCE WITH THE LAW THAT I HAVE CHARGED YOU, THIS COUNT
25 OF THE INDICTMENT COULD NOT BE CONSIDERED UNLESS YOU FOUND

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1 THE DEFENDANT GUILTY OF MURDER AS TO COUNT ONE. PLEASE
2 UNDERSTAND THAT I DO NOT MAKE ANY INFERENCE OR RECOMMENDATION
3 IN ANY WAY, BUT IT IS SIMPLY A MATTER OF EXPLAINING THE
4 VERDICT. IF YOU FIND THE DEFENDANT NOT GUILTY AS TO THE
5 CRIME OF MURDER, THEN YOU WOULD NOT CONSIDER THIS COUNT OF
6 THE INDICTMENT. BUT IF YOU DO FIND THE DEFENDANT GUILTY OF
7 MURDER AND CONSIDER THE INDICTMENT OR COUNT TWO OF THE
8 INDICTMENT, THERE'S TWO POSSIBLE VERDICTS, AND ONCE AGAIN,
9 PLEASE ATTACH NO CONSIDERATION THAT I LIST ONE BEFORE THE
10 OTHER. IT IS SIMPLY THAT ONE MUST BE LISTED FIRST. THE TWO
11 POSSIBLE VERDICTS ARE GUILTY OR NOT GUILTY.

12 AND, ONCE AGAIN, MADAME FOREPERSON AND LADIES AND
13 GENTLEMEN, ONCE YOU HAVE REACHED A VERDICT TO WHICH YOU ALL
14 TWELVE AGREE, SIMPLY WRITE THE WORD GUILTY OR THE WORDS NOT
15 GUILTY IN THE SPACE PROVIDED, SIGN YOUR NAME AS THE
16 FOREPERSON, AND DATE IT TODAY, AND YOUR DELIBERATIONS WOULD
17 BE CONCLUDED, LADIES AND GENTLEMEN.

18 NOW, MADAME FOREPERSON AND LADIES AND GENTLEMEN OF THE
19 JURY, AS YOU HAVE HEARD ME SAY THROUGHOUT THE COURSE OF MY
20 EXPLANATION TO YOU OF THE FORMS OF VERDICT, YOUR VERDICT MUST
21 BE UNANIMOUS. IT MUST BE THE VERDICT OF ALL TWELVE OF YOU.
22 THE WORD VERDICT COMES FROM THE LATIN WORD VEREDICTUM WHICH
23 MEANS TO SPEAK THE TRUTH. ONCE YOU HAVE REACHED A VERDICT IN
24 WHICH YOU ALL TWELVE AGREE, THEN IT WILL SPEAK THE TRUTH OF
25 YOU COLLECTIVELY AS THE JURY AS WELL AS INDIVIDUALLY.

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1 I AM GOING TO BE SENDING TO YOU THE JURY ROOM IN JUST A
2 MOMENT WITH THE INSTRUCTIONS THAT YOU ARE NOT TO BEGIN YOUR
3 DELIBERATIONS UNTIL I INSTRUCT YOU TO DO SO. I AM GOING TO
4 SEE IF IT NECESSARY FOR ME TO GIVE YOU ANY FURTHER
5 INSTRUCTIONS. IF IT IS NECESSARY FOR ME TO GIVE YOU FURTHER
6 INSTRUCTIONS, I WILL BRING YOU BACK INTO THE COURTROOM VERY
7 QUICKLY AND FURTHER INSTRUCT YOU. IF IT IS NOT NECESSARY FOR
8 TO ME TO GIVE YOU FURTHER INSTRUCTIONS CONCERNING THIS
9 MATTER, I AM GOING TO SEND THE INDICTMENT BACK TO THE JURY
10 ROOM WHICH CONSISTS OF TWO PAGES -- A COUNT FOR MURDER AND
11 A COUNT FOR POSSESSION OF A FIREARM DURING THE COMMISSION OF
12 A VIOLENT CRIME -- AND YOU WILL THEN BE INSTRUCTED TO BEGIN
13 YOUR DELIBERATIONS.

14 ONCE YOU HAVE REACHED A VERDICT WHICH YOU ALL TWELVE AGREE
15 IN THIS MATTER AND FILLED OUT THE VERDICT FORMS AS I HAVE
16 INSTRUCTED YOU, SIMPLY KNOCK ON DOOR AND TELL THE BAILIFF
17 THAT YOU HAVE REACHED A VERDICT IN THIS CASE AND WE'LL
18 RECEIVE YOU BACK INTO THE COURTROOM TO PUBLISH THE VERDICT.
19 IF YOU HAVE HAPPEN TO HAVE A QUESTION DURING THE COURSE OF
20 YOUR DELIBERATIONS, MADAME FOREPERSON, WRITE THAT OUT ON
21 PIECE OF PAPER. SIGN YOUR NAME AS FOREPERSON. KNOCK ON THE
22 DOOR. GIVE IT TO BAILIFF, AND THE BAILIFF WILL SEE THAT IT'S
23 DELIVERED TO ME, AND I'LL ADDRESSES IT AS I AM PERMITTED
24 UNDER THE LAW OF THE STATE OF SOUTH CAROLINA.

25 ONCE AGAIN, PLEASE KEEP IN MIND THAT YOUR VERDICT MUST BE

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1 UNANIMOUS AND DO NOT BEGIN YOUR DELIBERATIONS UNTIL I
2 INSTRUCT YOU DO SO. THE JURY MAY RETIRE. MR. BAILIFF,
3 PLEASE HOLD THE ALTERNATE JUST OUTSIDE THE COURTROOM.

4 (WHEREUPON, THE JURY RETIRES TO THE JURY ROOM.)

5 THE COURT: EXCEPTIONS OR ADDITIONS FROM THE STATE?

6 MR. HUBBARD: NO, SIR, YOUR HONOR.

7 THE COURT: FROM THE DEFENDANT?

8 MR. YOUNG: NONE FROM THE DEFENSE, YOUR HONOR.

9 THE COURT: ALL RIGHT. I WANT YOU TO CHECK ALL YOUR
10 EXHIBITS, GENTLEMEN, AND MAKE SURE THEY ARE PROPERLY BEFORE
11 THE COURT. THERE WERE SOME MARKED FOR I.D. THAT ARE NOT TO GO
12 TO BACK TO THE JURY AS WELL AS COURT'S EXHIBITS. IF YOU
13 WOULD CHECK WITH THE COURT REPORTER AND MAKE SURE ALL OF THEM
14 ARE PROPERLY BEFORE THE COURT AND WE'LL PUT THAT ON THE
15 RECORD BEFORE WE SEND EVERYTHING BACK TO THEM TO BEGIN THEIR
16 DELIBERATIONS.

17 (PAUSE.)

18 THE COURT: INSOFAR AS AS THE EXHIBITS ARE CONCERNED, IS
19 THE STATE IN AGREEMENT?

20 MR. HUBBARD: YES, SIR, YOUR HONOR.

21 THE COURT: AND THE DEFENDANT?

22 MR. YOUNG: YES, SIR, YOUR HONOR.

23 THE COURT: AND I NEGLECTED TO GIVE THE INSTRUCTION ON THE
24 PRIOR RECORD OF THE DEFENDANT FOR THE LIMITED PURPOSE FOR
25 WHICH IT IS TO BE CONSIDERED.

1 MR. YOUNG: YES, SIR.

2 THE COURT: SO I WILL BRING THE JURY BACK AND CHARGE THEM
3 AS TO THAT.

4 MR. YOUNG: YES, SIR, YOUR HONOR.

5 THE COURT: OKAY. LET'S BRING THE JURY BACK INCLUDING THE
6 ALTERNATE.

7 (THE JURY RETURNS TO THE COURTROOM.)

8 THE COURT: MADAME FOREPERSON AND LADIES AND GENTLEMEN OF
9 THE JURY, I INSTRUCT YOU NOW WITH REFERENCE TO EVIDENCE OF AN
10 ALLEGED PRIOR RECORD OF THE DEFENDANT OF ANOTHER CRIME THAT
11 THIS EVIDENCE WAS ADMITTED FOR A LIMITED PURPOSE. I INSTRUCT
12 YOU NOW THAT YOU MUST NOT CONSIDER SUCH EVIDENCE FOR ANY
13 PURPOSE EXCEPT THE PURPOSE FOR WHICH IT WAS ADMITTED. THIS
14 EVIDENCE WAS ADMITTED AND MAY BE CONSIDERED BY YOU, THE JURY,
15 IF YOU CONCLUDE IT TRUE ONLY FOR THE PURPOSE OF EVALUATING
16 THE CREDIBILITY OR BELIEVABILITY OF THE TESTIMONY PRESENTED
17 BY THE DEFENDANT HIMSELF AND FOR NO OTHER PURPOSE. YOU
18 CANNOT AND YOU MUST NOT CONSIDER A PRIOR RECORD OF A
19 DEFENDANT AS ANY EVIDENCE OF HIS GUILT OF THE CHARGE FOR
20 WHICH HE BEING NOW TRIED. YOU MAY GIVE TO THIS EVIDENCE SUCH
21 WEIGHT AND VALUE, IF ANY, TO WHICH YOU FIND IT IS ENTITLED ON
22 THE SOLE ISSUE OF THE CREDIBILITY OR BELIEVABILITY OF THE
23 TESTIMONY OFFERED BY THE DEFENDANT HIMSELF BUT NOT AS ANY
24 EVIDENCE OF GUILT OF THE CRIME FOR WHICH HE IS NOW BEING
25 TRIED.

1 YOU MAY RETIRE TO THE JURY ROOM. ONCE AGAIN, PLEASE DO NOT
2 BEGIN YOUR DELIBERATIONS UNTIL YOU ARE INSTRUCTED TO DO.
3 PLEASE HOLD THE ALTERNATE JUST OUTSIDE THE DOOR, MR. BAILIFF.

4 THE BAILIFF: YES, SIR.

5 (THE JURY RETIRES TO THE JURY ROOM.)

6 THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM THE STATE?

7 MR. HUBBARD: NO, SIR, YOUR HONOR.

8 THE COURT: DEFENSE?

9 MR. YOUNG: YOUR HONOR, IT WAS MY UNDERSTANDING THAT YOU
10 WERE ALSO GOING TO CHARGE PRIOR INCONSISTENT STATEMENTS. WAS
11 THAT WHAT YOU SAID?

12 THE COURT: NO, SIR. I SAID PRIOR RECORD.

13 MR. YOUNG: OKAY. THAT'S THE ONLY---

14 THE COURT: ALL RIGHT. ALL RIGHT. YOU ARE IN AGREEMENT WITH
15 THE EXHIBITS; CORRECT?

16 MR. HUBBARD: YES, SIR, YOUR HONOR.

17 MR. YOUNG: YES, SIR, YOUR HONOR.

18 THE COURT: MR. BAILIFF, YOU MAY TAKE THE INDICTMENTS
19 TOGETHER WITH THE EXHIBITS BACK AND TELL THEM THEY MAY BEGIN
20 THEIR DELIBERATIONS, AND LET'S SEND THE ALTERNATE IN.

21 (THE ALTERNATE RETURNS TO THE COURTROOM.)

22 (THE ALTERNATE IS EXCUSED.)

23 (THE JURY COMMENCES ITS DELIBERATION AT 10:36 A.M.)

24 THE COURT: ALL RIGHT. BEFORE WE MOVE ON INTO ANY OTHER
25 BUSINESS THAT WE HAVE COME BEFORE THE COURT, LET ME INSTRUCT

1 EVERYONE THAT'S IN THE COURTROOM THAT ONCE A VERDICT IS
2 REACHED IN THIS CASE IF YOU DO NOT FEEL THAT YOU CAN ACCEPT
3 WHATEVER VERDICT IS RENDERED WITHOUT DISPLAYING SOME TYPE OF
4 AN EMOTIONAL OUTBURST, THEN I AM GOING TO INSTRUCT YOU THAT
5 YOU NEED TO NOT BE IN HERE. YOU NEED TO REMOVE YOURSELF FROM
6 THE COURTROOM BECAUSE ONCE THAT VERDICT IS RENDERED, IF THERE
7 ARE ANY OUTBURSTS WHATSOEVER, I WILL DIRECT THE DEPUTIES TO
8 TAKE THE OFFENDING PARTY OR PARTIES INTO CUSTODY. I WILL
9 HOLD YOU IN COURT, AND YOU WOULD BE SUBJECT TO UP TO SIX
10 MONTHS INCARCERATION AT THAT POINT IN TIME. SO, PLEASE
11 UNDERSTAND THAT, REGARDLESS OF WHAT THE VERDICT IS.

12 ALL RIGHT. WE WILL STAND AT EASE FOR JUST A FEW MINUTES
13 WHILE THE SOLICITOR'S OFFICE OR PROBATION OR WHOMEVER GETS
14 SOMETHING ELSE FOR US TO DO.

15 (WHEREUPON THERE WAS A RECESS.)

16 THE COURT: IT HAS BEEN BROUGHT TO MY ATTENTION THAT THREE
17 EXHIBITS IN THE FORM OF STATE'S EXHIBIT NUMBERS 34, 35, AND
18 37 FOR IDENTIFICATION HAVE GONE BACK TO THE JURY ROOM. THOSE
19 WERE THREE PHOTOGRAPHS OF THE BAR AREA. YOU KNOW, THE
20 PURPOSE IN ME ASKING THE LAWYERS TO GO THROUGH THE EXHIBITS
21 AND TO AGREE TO THEM ON THE RECORD THAT THEY ARE TO GO BACK
22 TO THE JURY IS IN THE EVENT THAT SOMETHING LIKE THIS
23 HAPPENS. YOU KNOW, IT HAS BEEN -- EVERYTHING HAS BEEN
24 LOOKED AT. AND WHEN -- I THINK I ASKED AFTER YOU WENT
25 THROUGH THEM I ASKED IF EVERYONE WAS IN AGREEMENT ON THE

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1 EXHIBITS, AND I RECEIVED AN AFFIRMATIVE FROM BOTH THE STATE
2 AND THE DEFENDANT. THEN AFTER I CHARGED THE JURY ON THE
3 PRIOR RECORD, I ASKED, ONCE AGAIN, ANY EXCEPTIONS OR
4 ADDITIONS AND THEN ALSO ASKED ABOUT THE EVIDENCE.

5 ANYTHING YOU WANT TO PUT ON THE RECORD, MR. YOUNG?

6 MR. YOUNG: YOUR HONOR, IF I RECALL CORRECTLY, FROM LOOKING
7 AT THE ONE PICTURE THAT THE COURT REPORTER STILL HAD IN HER
8 POSSESSION, THE PICTURES THAT DID GO BACK WERE NOT ADMITTED
9 INTO EVIDENCE BECAUSE THEY WERE DUPLICATES OF OTHER
10 PICTURES.

11 THE COURT: UH-HUH.

12 MR. YOUNG: HOWEVER, I AM NOT SURE AS WE NEVER KNOW WHAT IS
13 GOING ON IN THE MINDS OF THE JURORS AS TO WHAT EFFECT THOSE
14 PICTURES HAVE HAD -- WHETHER THEY LOOKED AT THEM OR NOT. I
15 WOULD AT THIS TIME, YOUR HONOR, ASK FOR A MISTRIAL IN THIS
16 CASE.

17 THE COURT: I THINK WHEN I RULED ON THOSE EXHIBITS THAT MY
18 RULING WAS THEY WERE DUPLICITOUS, NUMBER ONE. I THINK THERE
19 WAS ONE OBJECTION -- THE OBJECTION THAT YOU HAD TO NO. 34
20 WAS THAT IT SHOWED A DIFFERENT ANGLE OF THE DECEASED IN THE
21 -- BEHIND THE BAR, BEHIND THE SWINGING GATE. AND I WOULD
22 NOTE THAT EXHIBIT NO. 13 SHOWS A DIFFERENT ANGLE FOR THAT.
23 GIVEN THE CARE THAT THE COURT ATTEMPTED TO TAKE IN THIS
24 MATTER, I AM GOING TO DENY YOUR MOTION FOR A MISTRIAL, NUMBER
25 ONE.

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1 NUMBER TWO, I THINK THAT IT NEEDS TO BE CLEAR ON THE RECORD
2 THAT THE PHOTOGRAPH MARKED FOR I.D. THAT WAS OF THE VICTIM'S
3 BODY --- AND WHAT IS THAT NUMBER 21, MADAME COURT REPORTER?

4 THE COURT REPORTER: NUMBER 21.

5 THE COURT: NUMBER 21 DID NOT GO BACK TO THE JURY. THAT IS
6 ONE THAT THE COURT REPORTER HAD IN HER POSSESSION THE ENTIRE
7 TIME. WHILE I DID NOT ADMIT THESE PHOTOGRAPHS, I DO NOT FIND
8 THAT THE DEFENDANT HAS BEEN PREJUDICED BY THEM BECAUSE THEY
9 ARE SIMPLY OTHER SHOTS, OTHER ANGLES OF PICTURES THAT ARE
10 ALREADY INTO EVIDENCE.

11 NOW, I AM NOT GOING TO SEND THEM BACK TO THE JURY ROOM AT
12 THIS TIME, BUT NOTING THAT EVERYONE AGREED ON THE RECORD, AND
13 I DO NOT KNOW HOW THEY GOT BACK TO THE JURY ROOM WITH THAT
14 CARE, BUT I DO KNOW THAT WHEN I INSTRUCTED THE BAILIFF TO
15 TAKE EVERYTHING BACK TO THE JURY ROOM THAT IT WAS IN A STACK
16 THAT HAD BEEN SITTING THERE FROM THE TIME THAT THE PARTIES
17 HAD AGREED UPON THE EVIDENCE. AS SUCH, I AM DENYING YOUR
18 MOTION FOR A MISTRIAL. I AM GOING TO HOLD 37 -- EXCUSE ME;
19 34, 35, AND 37 FOR I.D. OUT NOW, MADAME REPORTER, AND, OF
20 COURSE, THEY ARE PART OF THE RECORD.

21 MADAME CLERK, YOU MAY TAKE THESE BACK TO THE JURY ROOM AND
22 TELL THEM THEY MAY CONTINUE THEIR DELIBERATIONS.

23 THE CLERK: YES, SIR.

24 THE COURT: ALL RIGHT. WE'LL STAND AT EASE UNTIL WE GET A
25 VERDICT OR A QUESTION.

1 (WHEREUPON, THERE WAS A RECESS.)

2 (THE JURY RETURNS TO THE COURTROOM AT 11:49 A.M.)

3 THE COURT: MADAME FOREPERSON, I RECEIVED YOUR NOTE WHICH
4 STATES, "ARE THERE OTHER STATEMENTS FROM WITNESSES WE CAN
5 SEE," AND THAT'S SIGNED BY THE FOREPERSON-- MARY MCILWAIN.
6 LADIES AND GENTLEMEN OF THE JURY, ALL OF THE EVIDENCE THAT
7 WAS ADMITTED IN THIS CASE HAS BEEN SENT BACK TO THE JURY
8 ROOM, AND THAT IS THE EXTENT OF THE DOCUMENTARY EVIDENCE THAT
9 YOU ARE PERMITTED TO USE -- THAT WHICH WAS PROPERLY
10 INTRODUCED INTO EVIDENCE. HOWEVER, IF YOU ARE IN NEED OF
11 HAVING ANY TYPE OF -- FOR THE TESTIMONY REPLAYED, IF YOU
12 COULD TELL ME SPECIFICALLY WHAT YOU WOULD LIKE TO HEAR, I'LL
13 BE GLAD FOR THE COURT REPORTER TO ATTEMPT TO LOCATE THAT
14 BECAUSE WHAT SHE WOULD HAVE TO DO IS PLAY IT BACK FROM HER
15 TAPE RECORDER, AND WE CAN HAVE THAT MADE AVAILABLE TO YOU. IF
16 THAT IS WHAT YOU DESIRE, SIMPLY WRITE ME A NOTE AND TELL ME
17 WITH SPECIFICITY OF WHAT YOU WOULD LIKE TO HEAR BECAUSE IT
18 WILL TAKE US A LITTLE WHILE TO ARRANGE FOR THAT TO BE PLAYED.

19 HOWEVER, THE INFORMATION THAT YOU HAVE IN THE FORM OF
20 DOCUMENTARY EVIDENCE IS IN THE JURY ROOM AND ANYTHING ELSE
21 WOULD HAVE TO BE DERIVED FROM WHAT YOU RECALL OF THE
22 TESTIMONY OR IF YOU ARE IN NEED OF HAVING A PARTICULAR
23 WITNESS OR WITNESSES TESTIMONY REPLAYED.

24 WITH THAT, I WILL SEND YOU BACK TO THE JURY ROOM TO
25 CONTINUE YOUR DELIBERATIONS AND IF YOU NEED TO SEND ME

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1 ANOTHER NOTE, I'LL BE GLAD TO RECEIVE IT.

2 (THE JURY RETIRES TO THE JURY ROOM.)

3 THE COURT: ANYTHING ELSE FROM THE STATE?

4 MR. HUBBARD: NO, SIR, YOUR HONOR.

5 THE COURT: THE DEFENDANT?

6 MR. YOUNG: NO, SIR, YOUR HONOR.

7 THE COURT: ALL RIGHT. Y'ALL STAND AT EASE FOR A LITTLE
8 WHILE.

9 (WHEREUPON, THERE WAS A RECESS.)

10 THE COURT: I HAVE RECEIVED A NOTE FROM THE FOREPERSON THAT
11 SAYS, "WHAT DO WE DO IF WE CANNOT ARRIVE AT A UNANIMOUS
12 DECISION," AND I AM GOING TO BRING THEM OUT AND GIVE THEM THE
13 ALLEN CHARGE. ALL RIGHT. BRING THE JURY OUT, PLEASE.

14 (THE JURY RETURNS TO THE COURTROOM.)

15 THE COURT: MADAME FOREPERSON, I HAVE RECEIVED YOUR NOTE
16 THAT ASKS WHAT DO YOU DO IF YOU CANNOT REACH A UNANIMOUS
17 VERDICT. IN THAT REGARD, LET ME CHARGE YOU THAT, LADIES AND
18 GENTLEMEN OF THE JURY, WHEN ANY MATTER IS IN DISPUTE IT'S NOT
19 ALWAYS EASY FOR EVEN TWO INDIVIDUALS TO AGREE; THEREFORE, I
20 UNDERSTAND THAT WHEN TWELVE INDIVIDUALS MUST AGREE IT BECOMES
21 MUCH MORE DIFFICULT, BUT IT IS IMPORTANT THAT THIS CASE MUST
22 BE ENDED IF IT CAN BE ENDED WITHOUT A SINGLE ONE OF YOU DOING
23 VIOLENCE TO YOUR CONSCIENCE. IT IS YOUR DUTY AS JURORS TO
24 CONSULT WITH ONE ANOTHER AND TO DELIBERATE WITH A VIEW
25 TOWARDS REACHING AN AGREEMENT IF YOU CAN DO SO WITHOUT

1 VIOLENCE TO YOUR INDIVIDUAL JUDGMENT. EACH OF YOU MUST
2 DECIDE THE CASE FOR HIMSELF OR HERSELF, BUT DO SO ONLY AFTER
3 AN IMPARTIAL CONSIDERATION OF THE EVIDENCE IN THE CASE WITH
4 YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS DO
5 NOT HESTITATE TO EXAMINE YOUR OWN VIEWS AND CHANGE YOUR
6 OPINION IF CONVINCED YOUR OPINION IS ERRONEOUS. NO JUROR IS
7 EXPECTED TO GIVE UP HIS OR HER OPINION BASED ON REASONING
8 SATISFACTORY TO YOURSELF MERELY FOR THE PURPOSE OF BEING IN
9 AGREEMENT. I WANT YOU TO UNDERSTAND THAT FACT AND DO NOT
10 SURRENDER YOUR HONEST CONVICTIONS AS TO THE WEIGHT OR THE
11 EFFECT OF THE EVIDENCE SOLELY BECAUSE OF OPINION OF YOUR
12 FELLOWS JURORS IS CONTRARY TO YOUR OPINION OR FOR THE MERE
13 PURPOSE OF RETURNING A VERDICT.

14 NOW, YOU ARE NOT OFTEN CALLED UPON TO TRY CASES. AS ONE OF
15 46 CIRCUIT JUDGES WHOSE WORK IT IS TO TRY CASES FROM DAY TO
16 DAY THROUGHOUT THE YEAR, IT IS VERY UNUSUAL -- ALMOST
17 UNHEARD OF FOR A JURY TO GO OUT AND PROMPTLY RETURN WITH A
18 VERDICT. HOWEVER, AT THE SAME TIME, WE USUALLY DO GET A
19 VERDICT. WHAT THAT MEANS IS THAT IT IS NORMAL FOR JURORS TO
20 DISAGREE AT FIRST, BUT THE FACT THAT WE NORMALLY GET A
21 VERDICT ALSO MEANS THAT AFTER REASONABLE PERSONS LAY ASIDE
22 ALL EXTRANNEOUS MATTER AND DETERMINE TO DECIDE THE CASE ON
23 THE BASIS OF THE LAW AND THE EVIDENCE THEN THEY DO COME TO A
24 COMMON UNDERSTANDING AND WRITE A VERDICT.

25 NOW, IT HAS NEVER BEEN INTENDED THAT THE VERDICT OF A JURY

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CERTIFIED COURT REPORTER
POST OFFICE BOX 165
AIKEN, SC 29802

1 SHOULD BE THE VERDICT OF ANY ONE PERSON. ON THE OTHER HAND,
2 THE VERDICT OF THE JURY IS THE COLLECTIVE REASONING OF ALL
3 PERSONS PUT TOGETHER. THE REASON THAT WE HAVE A JURY IS SO
4 THAT WE MIGHT HAVE THE BENEFIT OF COLLECTIVE THOUGHT AND
5 COLLECTIVE REASONING OF THE ENTIRE JURY. IT MAY HELP TO TELL
6 THE OTHER JURORS HOW YOU FEEL ABOUT THE CASE AND WHY YOU
7 THINK AS YOU DO, AND I AM SURE THAT YOU HAVE BEEN DOING THAT.
8 ON THE OTHER HAND, IT MAY HELP IF THE OTHER JURORS EXCHANGED
9 VIEWS WITH YOU AND I ASK THAT EACH OF YOU LISTEN TO THE OTHER
10 AND GIVE THE OTHERS' THOUGHTS SUCH MEANINGS AS YOU THINK THEY
11 SHOULD HAVE.

12 NOW, A MISTRIAL OF A CASE IS A VERY UNFORTUNATE THING. IF
13 YOU AS A JUROR DO NOT AGREE ON A VERDICT, IT DOES NOT MEAN
14 THAT THIS CASE IS OVER. IT JUST MEANS THAT AT SOME FUTURE
15 TIME AND AT ANOTHER TERM OF COURT BEFORE ME OR SOME OTHER
16 JUDGE THAT SOME OTHER JURY WILL SIT WHERE YOU ARE. NOW, IN
17 THE TRIAL OF THAT CASE THE SAME PARTICIPANTS WILL COME. THE
18 SAME LAWYERS WILL PROBABLY COME, AND THEY WILL BASICALLY ASK
19 THE SAME QUESTIONS AND WILL PRESUMABLY GET THE SAME ANSWERS.
20 WE WILL GO THROUGH THE ENTIRE PROCESS AGAIN.

21 NOW, I HAVE NO REASON TO BELIEVE THAT ANY OTHER TWELVE
22 JURORS FROM LEXINGTON COUNTY WILL REPRESENT A MORE CROSS
23 SECTION OF THE COUNTY, WILL BE MORE INTELLIGENT, OR WILL BE
24 MORE CAPABLE OF DECIDING THIS MATTER THAN YOU ARE, AND ONE
25 DAY THIS MATTER WILL HAVE TO BE DECIDED. NOW, I AM GOING TO

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1 ASK THAT YOU AGAIN RETIRE TO THE JURY ROOM FOR FURTHER
2 DELIBERATIONS AND SEE IF YOU CAN REACH A VERDICT IN THIS
3 CASE.

4 LET ME CLOSE BY REMINDING YOU ONCE AGAIN THAT WHILE IT IS
5 IMPORTANT THAT THIS CASE BE ENDED, IT SHOULD BE ENDED IN THE
6 FORM OF A VERDICT WITHOUT ANY JUROR DOING VIOLENCE TO HIS OR
7 HER OWN CONSCIENCE. NO JUROR IS EXPECTED TO GIVE UP AN
8 OPINION BASED ON REASONING SATISFACTORY TO HIMSELF OR HERSELF
9 MERELY FOR THE PURPOSE OF BEING IN AGREEMENT. NOW, WITH
10 THESE ADDED INSTRUCTIONS I'M GOING TO ASK THAT YOU RETIRE TO
11 THE JURY ROOM AND CONTINUE YOUR DELIBERATIONS. THE JURY MAY
12 RETIRE TO THE JURY ROOM.

13 (THE JURY RETIRES TO THE JURY ROOM.)

14 THE COURT: ANYTHING FURTHER FROM THE STATE?

15 MR. HUBBARD: NO, SIR, YOUR HONOR.

16 THE COURT: THE DEFENDANT?

17 MR. YOUNG: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT, GENTLEMEN. WE'LL STAND AT EASE IN
19 THIS MATTER A LITTLE WHILE LONGER.

20 (WHEREUPON, THERE WAS A RECESS.)

21 THE COURT: IT IS MY UNDERSTANDING WE HAVE A VERDICT IN THE
22 CASE. ALL RIGHT. LET ME REMIND EVERYONE IF THERE'S SOMEONE
23 WHO WAS NOT HERE AT THE CONCLUSION OF THE TRIAL EARLIER TODAY
24 IF YOU DO NOT THINK THAT YOU CAN CONTROL YOUR EMOTIONS WHEN
25 THIS VERDICT IS RENDERED REGARDLESS OF WHAT IT IS, YOU NEED

1 TO REMOVE YOURSELF FROM THE COURTROOM AT THIS TIME BECAUSE IF
2 THERE ARE ANY OUTBURSTS WHATSOEVER I WILL HOLD YOU IN
3 CONTEMPT OF COURT AND THE POSSIBLE PUNISHMENT YOU WILL FACE
4 IS UP TO SIX MONTHS. SO, PLEASE UNDERSTAND THAT. ALL RIGHT.
5 LET'S BRING OUR JURY BACK.

6 (THE JURY RETURNS TO THE COURTROOM AT 4:14 P.M.)

7 THE COURT: MADAME FOREPERSON, IT IS MY UNDERSTANDING THAT
8 YOU HAVE REACHED A VERDICT IN WHICH YOU ALL TWELVE AGREE; IS
9 THAT CORRECT?

10 THE JURY FOREPERSON: YES, SIR.

11 THE COURT: AND YOU HAVE FILLED OUT THE VERDICT FORM AS I
12 INSTRUCTED?

13 THE JURY FOREPERSON: YES, SIR.

14 THE COURT: PLEASE HAND IT TO THE BAILIFF. ALL RIGHT, MADAME
15 CLERK, YOU MAY PUBLISH THE VERDICTS.

16 THE CLERK: INDICTMENT 98-GS-32-1242, THE STATE VERSUS
17 WILLIE JAMES RICHARDSON INDICTED WITH COUNT ONE MURDER,
18 VERDICT GUILTY; INDICTMENT 98-GS-32-1242, THE STATE VERSUS
19 WILLIE JAMES RICHARDSON INDICTED FOR COUNT TWO POSSESSION OF
20 A FIREARM OR A KNIFE DURING THE COMMISSION OF A VIOLENT
21 CRIME, VERDICT GUILTY.

22 MADAME FORELADY AND LADIES AND GENTLEMEN OF THE JURY, IF
23 THIS SO BE YOUR VERDICTS PLEASE INDICATE EACH OF YOU BY
24 RAISING YOUR RIGHT HAND.

25 ALL HANDS ARE RAISED, YOUR HONOR.

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1 THE COURT: LET THE RECORD REFLECT THAT EACH AND EVERY JUROR
2 HAS RAISED THEIR HAND IN RESPONSE TO THE COURT'S QUESTION.
3 ANYTHING FROM THE STATE BEFORE THE JURY IS EXCUSED?

4 MR. HUBBARD: NO, SIR, YOUR HONOR.

5 THE COURT: FROM THE DEFENDANT?

6 MR. YOUNG: NOTHING FURTHER FROM THE DEFENDANT.

7 THE COURT: MADAME FOREPERSON AND LADIES AND GENTLEMEN OF
8 THE JURY, I WANT TO THANK YOU VERY MUCH FOR YOUR
9 PARTICIPATION IN THIS CASE THIS WEEK. YOU HAVE WORKED VERY
10 HARD AND PAID CLOSE ATTENTION TO ALL THE TESTIMONY IN
11 EVIDENCE, AND ON BEHALF OF THE STATE OF SOUTH CAROLINA, MOST
12 PARTICULARLY LEXINGTON COUNTY, I THANK YOU VERY MUCH FOR YOUR
13 SERVICE HERE THIS WEEK AS JURORS AND BEING READY, WILLING,
14 AND ABLE TO TRY THE CASES THAT COME BEFORE YOU. THIS IS GOING
15 TO CONCLUDE YOUR SERVICE FOR THIS WEEK. I AM GOING TO BE
16 SENDING YOU BACK TO THE JURY ROOM, AND YOU WILL BE DISMISSED
17 FROM THERE IN JUST A SHORT WHILE.

18 LET ME TELL YOU THAT WHEN THE TERM OF COURT IS OVER IF YOU
19 DESIRE TO DISCUSS THIS CASE WITH ANYONE, YOU MAY FEEL FREE TO
20 DO SO. HOWEVER, IF YOU DO NOT WISH TO DISCUSS THE CASE WITH
21 ANYONE AND SOMEONE SHOULD CONTACT YOU SIMPLY TELL THEM THAT
22 YOU DO NOT WISH TO DISCUSS THE CASE. IF THAT PERSON OR
23 PERSONS PERSISTS IN ATTEMPTING TO DISCUSS THE CASE WITH YOU
24 AND YOU DO NOT WISH TO DISCUSS IT, SIMPLY, ONCE AGAIN, INFORM
25 THEM OF YOUR DESIRE NOT TO DISCUSS IT, AND THEN I WANT YOU TO

1 CONTACT THE COURTHOUSE HERE AND DIRECT YOUR CALL TO THE CLERK
2 OF COURT, AND THEY WILL SEE THAT I'M PROMPTLY CONTACTED, AND
3 I WILL TAKE CARE OF THAT MATTER FOR YOU. THANK YOU VERY MUCH.
4 YOU MAY RETIRE TO THE JURY ROOM FOR FURTHER INSTRUCTION.

5 (WHEREUPON, THE JURY RETIRES TO THE JURY ROOM.)

6 THE COURT: ALL RIGHT. ANY MOTIONS PRIOR TO SENTENCING, MR.
7 YOUNG?

8 MR. YOUNG: YES, SIR, YOUR HONOR. I WOULD RENEW MY MOTIONS
9 MADE EARLIER IN THE TRIAL. I WOULD MAKE A MOTION FOR A
10 MISTRIAL AND WOULD RENEW THOSE MOTIONS AT THIS POINT IN TIME
11 BASED ON THE PREJUDICE THAT WAS CAUSED TO MR. RICHARDSON.

12 THE COURT: WELL, YOUR MOTIONS WERE SO NOTED AT THAT TIME
13 AND RULED UPON, AND I NOTE THEM ONCE AGAIN AT THIS TIME, AND,
14 OF COURSE, MY DECISION AT THIS TIME IS CONSISTENT WITH MY
15 PRIOR RULING. I DENIED THE MOTION FOR A MISTRIAL ON BOTH
16 OCCASIONS AND THE REASONS THAT WERE GIVEN FULLY STATED IN THE
17 RECORD, AND, AS SUCH, THE MOTION IS DENIED AT THIS TIME.

18 MR. YOUNG: YOUR HONOR, I WOULD ALSO MOVE FOR A NEW TRIAL IN
19 THE MATTER BASED ON THE RULING OF THE COURT AND THE PREJUDICE
20 THAT MR. RICHARDSON SUFFERED DURING THE COURSE OF THE TRIAL,
21 AND I WOULD ASK THAT THE COURT GRANT A NEW TRIAL.

22 THE COURT: I THINK, MR. YOUNG, THAT THE DECISIONS THAT I'VE
23 MADE THROUGHOUT THE COURSE OF THE TRIAL, ONCE AGAIN, ARE WELL
24 DOCUMENTED IN THE RECORD, AND UNDERSTANDING THE MOTION THAT
25 YOU HAVE MADE I SEE NO REASON WHY I WOULD DEVIATE FROM ANY OF

1 MY PRIOR RULINGS, AND, AS SUCH, I AM DENYING YOUR MOTION FOR
2 A NEW TRIAL.

3 MR. YOUNG: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. BRING THE DEFENDANT AROUND FOR
5 SENTENCING, PLEASE.

6 ANYTHING FROM THE STATE, MR. HUBBARD?

7 MR. HUBBARD: YOUR HONOR, THERE IS A SPOKESMAN FOR THE
8 FAMILY THAT WOULD LIKE TO READ A SHORT MESSAGE TO THE COURT
9 IF THAT WOULD BE OKAY WITH THE COURT. THIS IS SANDRA JONES.
10 SHE'S THE SISTER-IN-LAW OF THE VICTIM ALFRED JONES.

11 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR FROM HER.

12 MRS. SANDRA JONES: THIS IS ON BEHALF OF THE FAMILY OF
13 ALFRED F. JONES. NO MOTHER SHOULD HAVE TO BURY HER SON, BUT
14 ONE DID, AND SHE LIVES WITH THE LOSS FOR THE REST OF HER OWN
15 ALL TOO FEW DAYS. NO SISTER SHOULD HAVE TO SUBTRACT ONE WHEN
16 SHE TELLS OTHERS HOW MANY BROTHERS AND SISTERS SHE HAS BUT
17 ONE DOES, AND SHE FEELS THE LOSS ALL OVER AGAIN EACH TIME SHE
18 MAKES THE GRIM CALCULATION. NO COUSIN SHOULD HAVE TO SUMMON
19 THE PAST TENSE TO TALK ABOUT SOMEONE WHO LIVED SO FULLY IN
20 THE PRESENT BUT ONE DOES BECAUSE THAT PERSON IS FOREVER
21 FROZEN IN ONE HORRIBLE MOMENT IN THE PAST. FOR A FAMILY THAT
22 SEES NO NEED TO DISTINGUISH BETWEEN SIBLING AND COUSIN,
23 MOTHER AND AUNT, THE LOSS OF ONE IS THE LOSS OF MANY.

24 ALFRED WAS A SON, A BROTHER, AN UNCLE, A MAN. HIS ABSENCE
25 LEAVES A GAPING HOLE IN OUR SEEMLESS RELATIONS. IT IS FAR

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POST OFFICE BOX 165
AIKEN, SC 29802

1 EASIER TO EXPLAIN OUR INCOMPLETENESS THAN TO LIVE IN THE
2 EMPTY SPACE EVERYDAY. HE WAS NOT JUST ONE OF US. HE WAS US.

3 MR. HUBBARD: THANK YOU, YOUR HONOR.

4 THE COURT: THANK YOU VERY MUCH. ANYTHING FURTHER FROM THE
5 STATE?

6 MR. HUBBARD: NO, SIR, YOUR HONOR.

7 THE COURT: MR. YOUNG?

8 MR. YOUNG: MAY IT PLEASE THE COURT, YOUR HONOR, YOUR HONOR
9 HAS HEARD IN THE PAST TWO DAYS -- TWO DAYS AND A HALF --
10 DAYS TESTIMONY REGARDING THIS INCIDENT. MR. RICHARDSON STANDS
11 BEFORE YOUR HONOR TODAY MAINTAINING HIS INNOCENCE IN THIS
12 CASE. HE IS PRESENT TODAY AS HE HAS BEEN ALL WEEK WITH FAMILY
13 MEMBERS-- HIS MOTHER, HIS GRANDMOTHER, HIS COUSIN, AS WELL AS
14 HIS BROTHER.

15 YOUR HONOR, UNDERSTANDING THE SENTENCE THAT THE COURT IS
16 REQUIRED TO HAND DOWN WE WOULD JUST ASK THE COURT TO BE AS
17 MERCIFUL AND LENIENT AS POSSIBLE.

18 THE COURT: CAN I SEE THE INDICTMENTS, PLEASE, MA'AM?

19 THE CLERK: I SENT THEM DOWN FOR CERTIFICATION.

20 THE COURT: OKAY.

21 THE CLERK: IS HE BACK? HE'S JUST ENTERED BACK, YOUR
22 HONOR.

23 THE COURT: ANYTHING FROM YOU, MR. RICHARDSON?

24 THE DEFENDANT: YEAH, I AM NOT THE ONE THAT KILLED MR.
25 JONES. WHOEVER KILLED HIM KILLED BOTH OF US, YOUR HONOR.

1 THAT'S THE WAY I SEE IT. I DON'T KNOW THAT MAN. I NEVER SEEN
2 HIM BEFORE IN MY LIFE. I DON'T EVEN KNOW HOW I EVEN GOT
3 INVOLVED IN THIS, BUT IT IS NOTHING NEW TO ME GOING THROUGH
4 THE TRIBULATIONS I'VE OCCURRED IN MY LIFETIME. I'VE BEEN
5 THROUGH THIS PLENTY OF TIMES.

6 I'M SORRY FOR HIS FAMILY GOING THAT TRIBULATION. MY FAMILY
7 GOING THROUGH THE SAME THING THEY GOING THROUGH. THAT'S THE
8 WAY I SEE IT. BOTH OF OUR PARENTS LOST A SON, BUT IN
9 DIFFERENT WAYS. MAYBE ONE DAY I CAN GET A SHOT AND MAYBE OUT
10 OF 15 PEOPLE WHO COMMITTED THIS CRIME OR WHATEVER SOMEBODY
11 WOULD HAVE TOLD SOMEBODY THAT TOLD SOMEBODY AND BEING THE
12 KNOWN PERSON I AM IN COLUMBIA IT WOULD'VE GOT BACK WHERE
13 SOMEBODY GOT IN TROUBLE THAT I'D HAVE BEEN THE PERSON.
14 SOMEBODY WOULD'VE FOUND OUT SOMETHING IF THE INVESTIGATORS
15 WOULD'VE (SIC) DID THEY JOB INSTEAD OF JUST FOCUSING ON ME.
16 SOMEBODY WOULD HAVE FOUND OUT SOMETHING. THAT'S THE WAY I SEE
17 IT.

18 NOW I'M STUCK HERE WITH THE BURDEN OF A PERSON THAT KILLED
19 MR. JONES. I DON'T KNOW THAT MAN. I AIN'T NEVER HAD NO
20 GRIEVANCE WITH HIM. I BOXED FOR NINE YEARS OF MY LIFE. IF I
21 HAD A CONFLICT WITH SOMEBODY I FEEL I COULD HANDLE THAT WITH
22 MY SKILLS OF BOXING OR WHATEVER. I BEEN IN JAIL FIGHTING
23 PEOPLE 320 POUNDS AND HANDLING MY OWN. I BEEN IN THE STREET
24 HANDLING MY OWN WITH MY HANDS. I DON'T FEEL I NEED NO GUN OR
25 NOTHING LIKE THAT TO HURT SOMEBODY. I AIN'T NEVER DID IT

1 BEFORE.

2 YOU KNOW, MY FAMILY TRAINED ME WHEN I WAS YOUNG. MY LITTLE
3 BROTHER IS A SECOND DEGREE BLACKBELT SINCE HE'S BEEN NINE
4 YEARS OLD. HE WELDS WITH HANDS THAT'S REGISTERED. IN 1990 HE
5 FOUGHT ALL OVER THE WORLD. WE DON'T NEED NO GUNS. WE CAN
6 HANDLE OURSELF MAN TO MAN OR WHATEVER. I DON'T NEED NO GUN. I
7 CAN HANDLE MYSELF. THAT'S ALL I GOT TO SAY. I DON'T KNOW WHO
8 KILLED HIM BUT I AM RESPONSIBLE I GUESS RIGHT NOW UNTIL THEY
9 FIND OUT.

10 THE COURT: THE SENTENCE OF THE COURT IN 98-GS-32-1242,
11 COUNT ONE, MURDER, THE DEFENDANT WILLIE JAMES RICHARDSON IS
12 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM
13 OF HIS NATURAL LIFE, AND THEN COUNT TWO, POSSESSION OF A
14 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, THE
15 DEFENDANT WILLIE JAMES RICHARDSON IS COMMITTED TO THE STATE
16 DEPARTMENT OF CORRECTIONS FOR A DETERMINANT TERM OF FIVE
17 YEARS THAT IS CONSECUTIVE TO COUNT ONE.

18 (END OF TRANSCRIPT OF RECORD.)

19

20

21

22

23

24

25

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CERTIFIED COURT REPORTER
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C E R T I F I C A T E

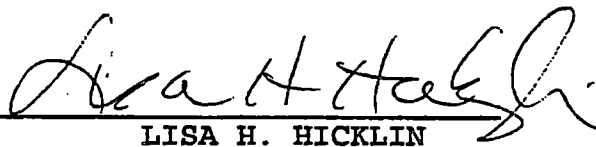
STATE OF SOUTH CAROLINA)

)

COUNTY OF AIKEN)

I, THE UNDERSIGNED LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 10TH, 11TH, & 12TH DAY OF APRIL, 2000.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.


LISA H. HICKLIN

MY COMMISSION EXPIRES: 7/12/06

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CERTIFIED COURT REPORTER
POST OFFICE BOX 165
AIKEN, SC 29802

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED

2002 JUL 10 A 10:57

THOMAS H. COMERFORD
CLERK OF COURT
LEXINGTON, SC

The State,

Respondent,

v.

Willie James Richardson,

Appellant.

Appeal From Lexington County
Gary E. Clary, Circuit Court Judge

Unpublished Opinion No. 2002-UP-377
Submitted March 25, 2002 - Filed May 29, 2002

APPEAL DISMISSED

Deputy Chief Attorney Joseph L. Savitz, III, of S.C.
Office of Appellate Defense, of Columbia, for
appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Donald J. Zelenka, all of
Columbia; and Solicitor Donald V. Myers, of
Lexington, for respondent.

PER CURIAM: Willie James Richardson (Appellant) was convicted of murder and possession of a firearm during the commission of a violent offense. On appeal, counsel for Appellant has filed a final brief along with a petition to be relieved as counsel. Appellant has filed a pro se response.

After review of the record pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.¹

APPEAL DISMISSED.

GOOLSBY, CONNOR, and ANDERSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



FILED

2002 JUL 10 A 10:57

The South Carolina Court of Appeals

THOMAS H. COMERFORD

CLERK OF COURT

LEXINGTON, SC
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1890

KENNETH A. RICHSTAD
CLERK

July 9, 2002

REMITTITURThe Honorable Thomas H. Comerford
139 E. Main Street, Rm 107
Lexington, SC 29072-3456Re: The State v. Richardson, Willie J.
1998-GS-32-01242

Dear Mr. Comerford:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "T.G. Baskin", is written over a horizontal line.

T.G. Baskin
Administrative AssistantHandwritten initials "KAR" in dark ink, written above the typed name "KAR/pb".
KAR/pbcc: Deputy Chief Attorney Joseph L. Savitz, III
Willie J. Richardson # 265 703
Assistant Deputy Attorney General Donald J. Zelenka
Donald V. Myers, Esquire

2003-CP32-0927

STATE OF SOUTH CAROLINA

County of Lexington

FILED SYP

In the Court of Common Pleas

2003 MAR 17 P 3:52

THOMAS H. COMERFORD
CLERK OF COURT
LEXINGTON SCWillie Richardson 265703
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Correctional Institute.
2. Name and location of Court which imposed sentence Lexington County Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 98-GS-32-1242
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence: April 14th 2000 Life Plus 5 years consecutive.

A TRUE COPY

Thomas H. Comerford
Lex. Co. C.C.C.P., G.S. F.C.

5. 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 _____

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

Yes

7. If you answered "yes" to (6), list

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

i. S.C. Court of Appeals

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Filed May 29th, 2002

ii. _____

iii. _____

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

i. 2002-UP-377

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N-A

(b) N-A

(c) N-A

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

(a) See Supporting Memorandum attached herewith (27 Pages)

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Supporting Memorandum attached herewith (27 Pages)

(b) _____

(c) _____

A TRUE COPY
James J. [Signature]
 Legal Co. G.C.C.2-1 G.S. F.C.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

A TRUE COPY

Let. Co. C.C.C.P., G.S. F.C.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N-A

ii. N-A

iii. N-A

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

i. N-A

ii. N-A

iii. N-A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) your arraignment and plea? N-A

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N-A

17. If you answered "yes" to one or more parts of (16), list:

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

→ i. Hervey B. O. Young, Lexington County P.D., 206 E. Main Str.
Lexington S.C. 29072

→ ii. Joseph L. Squitiz, III
S.C. Office of Appellate Defense, 1122 Lady Str. Columbia S.C. 29201

iii. _____

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

i. Trial & Sentencing

ii. Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

I want to be [DISCHARGED] From prison in conformity with the
S.C. Code Ann. 317-27-80, OR A NEW TRIAL.

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

TRUE COPY
J. L. SQUITIZ, III
S.C. Office of Appellate Defense
1122 Lady Str. Columbia S.C. 29201

STATE OF SOUTH CAROLINA

County of LexingtonORIGINAL
VERIFICATION

I, Willie Richardson, 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.

* Willie Richardson

SWORN to and subscribed before me this _____

day of _____, 19 ____.

Notary Public

(L.S.)

My Commission Expires: _____

2003-CP32-0927

 2003 MAR - 7 P 3:52
 THOMAS H. COMBERFORD
 CLERK OF COURT
 LEXINGTON SC

FILED

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

I, Willie Richardson, 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 therefor.

* Willie Richardson
Applicant

SWORN or affirmed to and subscribed before me this

4 day of March, 19 2003_____
Notary Public
 A TRUE COPY
Thomas H. Comberford
 Lex. Co. C.C.C.P., G.S. & F.C.
My Commission Expires 3-30-2007

State of South Carolina
County of Lexington

FILED

In The Court OF
Common Pleas
11th Judicial Circuit

549

Mr. Willie James Richardson, # 2003-CP32-0927

THOMAS H. COMERTON
APPROVING CLERK OF COURT
LEXINGTON SC

ORIGINAL

"VS."

C/R. No: _____

State of South Carolina

2003-CP32-0927

Respondent

Memorandum To Support
PCR Application

Henceforth Comes Now, Mr. Willie James Richardson, and I would
Show unto This Court of Common Pleas respectfully The Following:

[PREAMBLE]

This is a memorandum To Support my PCR Application Submitted To
This Court pursuant To The S.C. Code Ann. § 17-27-10, For
Consideration on The merits do To The [L]imited Space
provided on The PCR Application...

A TRUE COPY
Thomas H. Comerton
Lex. Co. C.C.C.P., C.S. F.C.

To Support Section [9] of my PCR Application I would forthwith This Language,

[9](a). I would aver That The S.C. Court of Appeals, and [T]his Court Lacks Subject matter Jurisdiction To entertain my Case's, Thus violating my rights under The S.C. Const. Art. I § 3, and under The 14th Amendment To The U.S. Constitution . . .

[9](b). I would aver That The Circuit Court of Lexington County Lacks Subject matter Jurisdiction to entertain my case, and sentence me, Thus violating my rights under The S.C. Const. Art. I § 3, and under The 14th Amendment to The U.S. Constitution . . .

[9](c). I would aver That The Circuit Court of Lexington County Lacked Jurisdiction to entertain my case, and sentence me, Thus violating my rights under The S.C. Const. Art. I § 3, and under The 14th Amendment To The U.S. Constitution . . .

[9](d). I would aver That I received ineffective assistance of Trial Counsel, Thus violating my rights under The S.C. Const. Art. I § 3 and 14, and under The 6th, and 14th Amendments To The U.S. Constitution . . .

[9](e). I would aver That I received ineffective assistance of Appellate Court Counsel, Thus violating my rights under The S.C. Const. Art. I § 3, and 14, and under The 6th, and 14th Amendments To The United States Constitution . . .

To Support Section [10] of my PCR Application, I would Forthwith The Following Language :

[Lack OF Subject Matter Jurisdiction]

[10](a)(1).

I would aver That The S.C. Court of Appeals, and [T]his Court Lacks Subject matter Jurisdiction to entertain my case...

The Ratio Legis for This premise is There is No [W]ritten "Order" granting or denying my Post Trial motions made at Trial...

Inasmuch for the proposition That The S.C. Court OF Appeals Lacked Subject Matter Jurisdiction to entertain my case on Appeal, and [This] Court Lacks Subject Matter Jurisdiction to entertain my PCR Application, I would evoke [Rule 29 SCR Crimp], which States in Relevant In Haec Verba;

"The Time for Appeal for all parties shall be stayed by a timely Post-Trial motion, and shall run from the receipt of "written notice" of entry of The "order," granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a Term of Court or departure of The judge from The Circuit, and The Circuit Judge shall RETAIN JURISDICTION of The action for The purpose of hearing, and disposing of The motion if not heard, and disposed of during The Term..."

A TRUE COPY

Thomas H. Granger
Lex. Co. C.C.G.P., G.S., F.C.

Likewise with That Language fresh in mind, [T]his Court must Take Judicial Notice that it is a undeniable Fact of Court Record in This Case Sub Judice That Post Trial motions were Conveyed To The Trial Court, (Tr. P. 525 L. 9-11 & L. 18-21), However There is No [W]ritten, [O]rder disposing of The motions by Rule, and on That IPSC FACTS The S.C. Court OF Appeals Lacked Subject Matter Jurisdiction to entertain my appeal, and [T]his Court Lacks Subject Matter Jurisdiction to entertain This PCR Application IPSC JURE..

It must be amplified That Subject Matter Jurisdiction is a "requisite" OF The United States Constitution in [all] Cases in [L]aw, and in equity, (U.S. Const. Art. III § 2, cl. 1) and it can be waived at Anytime, and its "Never" waived, because if The Court Lacks Subject Matter Jurisdiction, it does "not" have power to hear The Case,

United States v. Abdesidam, 129 F.3d. 846 (6th Cir. 1997), moreover The acts of a Court without Jurisdiction are "VOID"! (Actus Judicarius Coram Non Judice Irritus Habetur)...

Brown v. State, 343 S.C. 342, 540 S.E. 2d. 846 (S.C. 2001), Citing State v. Funderburk, 259 S.C. 256, 191 S.E. 2d. 520 (1972)

A TRUE COPY
Sherran H. Springfield
 Lex. CO. C.C.C.P., G.S. F.C.

[10](b)

Lack of Subject Matter Jurisdiction by The
Circuit Court

[10](b)(1).

I would aver That The Circuit Court of Lexington County Lacked Subject Matter Jurisdiction to entertain my Criminal Case, and sentence me..

The Ratio Legis for This premise is my indictment was returned by a Grand Jury That was Selected in a racially discriminatory manner. Inasmuch for The proposition That a Court Lacks Subject matter Jurisdiction if The Grand Jury was Selected in a racially discriminatory manner, I would evoke The doctrine of Stare Decisis Et Non Quietas Movere, when it was Written.

"If The indictment is returned by a Grand Jury which was Selected in a racially discriminatory manner, The indictment itself is

VOID !!

A TRUE COPY
 Lex. Co. C.R.C.P. & G.S.

Colson vs. Smith, 315 F. Supp. at 182

Insofar it is a bedrock, axiomatic, universally recognized Concept, precept, and principle of Law in The State of South Carolina, That a Circuit Court acquires Subject Matter Jurisdiction, by way of a [V]alid indictment, or a valid waiver thereof,

State vs. Johnston 333 S.C. 459, 510 S.E. 2d. 423 (S.C. 1999)
 Logic, and all Legal reasoning dictates That a indictment
 Cannot be [V]alid if it is Void...
 It must be amplified That it is incumbent on The
 [R]espondent to rebut This allegation with documentary
 [E]vidence, Colson Supra ...

A TRUE COPY
Thomas H. Gromey
 Lex. Co. C.C.C.P., G.S. F.C.

[10](b)(2).

I would further aver That The Circuit Court of Lexington County Lacked Subject Matter Jurisdiction to entertain my Case, and Sentence me.

The Ratio Legis for This premise is my indictment is Void, because there was No person who testified under oath at The Grand Jury proceeding, who had personal Knowledge of The Facts in this Case..

It is universally recognized That under The American Jurisprudence "Every oath ought to be founded on 'certain' Knowledge" !!
(Omne Sacramentum Debet Esse De Certa Scientia)

Logic moreover Common Sense dictates That if Nobody at The Grand Jury proceeding had "certain" Knowledge of The Facts in this Case, then The indictment is Void, and under The Corpus Juris The Circuit Court [C]annot acquire Subject Matter Jurisdiction with a void indictment.

A TRUE COPY
Thomas H. [Signature]
 Lex. Co. C.G.C.P., G.S.

Lack of Jurisdiction

[10]CC[11].

I would aver That The Circuit Court of Lexington County Lacked [J]urisdiction to entertain my Criminal Case, and Sentence me.. The Ratio Legis for This premise, is my indictment is [N]ot "FILED" with The Clerk of Court, which is Contrary, and repugnant to Rule 3CCD SCRCrimP., which mandates That The indictment be "Filed" with The Clerk of Court [B]efore the indictment is taken to grand Jury...

There has been intence Litigation into This matter with NO case Law.. The [R]espondents position in this matter is a indictment [N]ot being Filed is Not Jurisdictional, and it is my position That [N]ot Filing an indictment with The Clerk of Court is Jurisdictional...

Likewise For The proposition That not Filing an indictment is Jurisdictional, I would evoke The Language Therein The precedent United States vs. Hill, 210 F. 3d. 881 (8th Cir. 2000), citing State ex. rel. Morton vs. Anderson, 84 S.W. 2d. 25, 27 (Mo. 1991) (En Banc) when The Court was [U]nequivocal when it Stated Verbatim..

"The Filing of a valid Indictment is a prerequisite to The Courts [JURISDICTION]

Id. at 884

A TRUE COPY
Thomas H. Gentry
 Lex. Co. C.C.C.P., G.S. F.G.

There is no Case Law That Can be Found in our Jurisdiction That is on point with This issue, but it is well recognized in The State, and Federal Judiciaries That "The best mode of interpreting Laws is to make Laws agree with Laws" (Optimus Interpretandi Modus Est Sic Leges Interpretare Ut Leges Legibus Accordant). It is clear That not Filing an indictment is Jurisdictional and as stated my indictment is not Filed, and on That IPSO FACTO it is perspicuous That The prerequisite For The Court To acquire Jurisdiction was not executed in This case at bar, and The Circuit Court Never obtained Jurisdiction to hear my case.

A TRUE COPY
 [Signature]
 Sec. CO. C.C.P.R. U.S. F.C.

[10]CC(2).

I would further aver That The Circuit Court of Lexington County
 Locked Jurisdiction to entertain my case, and Sentence me,
 because there is No written order to Continue my Case
 beyond 180 days From The date of my arrest. . .
 Likewise For the proposition That a written Court order
 is required to Continue a Criminal Case beyond 180 days
 From The date of arrest, it must be amplified That it
 is The [C]onstitutional Law in The State of South Carolina
 That all provisions of The S.C. Const. are [M]andatory, and
 [P]rohibitory, (S.C. Const. Art. I § 23), and pursuant
 To The provisions of S.C. Const. Art. V § 4, a "written"
 Court order is required to Continue a Criminal Case
 beyond 180 days, as ordered by The S.C. Supreme Court. .
 So The Law is written, (Ita Lex Scripta Est)
 There must be a written Court order to Continue a
 Criminal Case beyond 180 days, and There is No
 Such order in this case, and on That **IPSO FACTO**
 The Circuit Court had No Jurisdiction to entertain
 my case **IPSO JURE**. . .

See The order on Page [11] herewith attached. . .

A TRUE COPY
 W. C. [illegible]
 [illegible]

The Supreme Court of South Carolina

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution,

IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 180 days by written order if the court determines that exceptional circumstances exist in the case. This order does not create or define a right of a defendant to a speedy trial.

IT IS FURTHER ORDERED that the orders of Chief Justice Lewis dated August 17, 1983, and January 13, 1984, which appear at pages CC-ADMIN 12 and 13 of the South Carolina Court Register, are hereby rescinded.


ERNEST A. FINNEY, JR.
CHIEF JUSTICE

Columbia, South Carolina

March 5, 1999

A TRUE COPY
[Signature]
Let. Co. C.C.C.P., G.S. F.C.

Ineffective Trial Counsel

(10)(d)(1).

I would aver that my Trial Counsel was inept, and Constitutionally ineffective for failing to investigate, research, and prepare me a defense for a violation of The S.C. Code Ann. § 17-11-10..

The Ratio Legis for this premise is I was housed in The Lexington County Detention Center on or about August 2nd, 1997, and taken to Virginia to stand Trial, Likewise my indictment, and or charge for murder was still pending in This State.

I was brought back to S.C. on or about Feb. 23rd, 1998, and did [N]ot go to trial until April 10th, 2000..

The prosecution [did not obtain a continuance] to continue my case beyond 180 days which is required under The S.C. Code Ann. § 17-11-10 (Art. III), I was prejudiced at Trial by my Counsels ineptitude and ineffectiveness of failing to investigate, research, and preparing me a defense for Trial on This matter, because There is a reasonable probability That my Case would have been dismissed if my Counsel would have investigated, researched, and prepared me a defense in This matter, State vs. Holbrook, 274 S.C. 4, 260 S.E. 2d. 181 (S.C. 1979)

Likewise a reasonable probability is a probability [S]ufficient to undermine Confidence in the outcome,

Strickland vs. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)

(10)(d)(2).

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective for Failing to investigate, research, and preparing me a defense For my warrant being issued without probable Cause, Contra, and repugnant To The 4th Amendment Jurisprudence . . . , The Ratio Legis for This premise is The Judicial officer Could [N]ot make an independent assessment of probable Cause with The information provided on The warrant, To wit ;

- [A] The affiant on The warrant made [N]o affirmative allegation that he spoke with personal knowledge of The Facts in this Case..
- [B] There is [N]o Language on the warrant to inform the Judicial officer that There was "oath" or "affirmation" From anyone who had Certain knowledge of The Facts in this Case..
- [C] There is [N]o Language on The warrant to inform the Judicial officer of [W]ho picked The Culprit out of a photo Line-up.

Likewise under The 4th Amendment Jurisprudence, and [F]ederal Law as determined by The U.S. Supreme Court, There was no probable Cause For The warrant to be issued For my arrest,

Giordano v. United States, 357 U.S. 480 (1958) **TRUE COPY**
Nathanson v. U.S. 290 U.S. 41, (1933) *James H. [Signature]*
 Lex. CO. C.C.C.P., G.S. F.C.

I was prejudiced at Trial by my Counsel's ineptitude, and ineffectiveness at Trial by Failing to investigate, research, and preparing me a defense in this matter, because There is a reasonable probability That if my Trial would have investigated, researched, and

prepared me a defense in This matter, The outcome of my case could be different, and a reasonable probability is a probability [S]ufficient to undermine Confidence in the outcome,
Strickland Supra

A TRUE COPY
Thomas H. Granger
 Lex. CO. C.C.C.P., G.S. P.C.

[10](d)(3).

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective For Failing to investigate, research, and preparing me a defense For No witness testifying at The Grand Jury proceeding with certain Knowledge of The facts in This case...

In State vs. Anderson, 439 S.E. 2d. 835 (S.C. 1993), The S.C. Supreme Court was unequivocal when it [H]eld That a prosecutor [C]annot be the Sole witness appearing at The Grand Jury, Inasmuch The prosecutor is [N]ot at Liberty to "Circumvent" this Language in State vs. Anderson, by having a witness testifying under oath at The Grand Jury proceeding who has [N]o certain Knowledge of anything in The case. Logic dictates That This is tantamount to the prosecutor appearing as The Sole witness, and it must be amplified That The testimony of the witness at The Grand Jury proceeding is "VOID", because every oath ought to be Founded on certain Knowledge under The American Jurisprudence, (Omne Sacramentum Debet Esse De Certa Scientia)

I was prejudiced at Trial by my Counsels ineptitude, and ineffectiveness of not investigating, researching, preparing me a defense into This matter, because there is a reasonable probability that the outcome could have been

(10)(d)(4).

I would further aver that my Trial Counsel was inept, and Constitutionally ineffective for failing to communicate with my investigator to prepare my defense..

The Ratio Legis for this premise is my investigator had obtained information that would have alerted the jury that [S]everal of the States witnesses was giving false information to the Court, under oath. I was unequivocal in informing my Trial Counsel that my investigator had this information in his custody and control, and I wanted him to communicate with my investigator pertaining to this information, to prepare my defense to attack the believability, and credibility of the States witness, so it could be brought into controversy for a meaningful adversarial challenge.. I was prejudiced at trial by my Trial Counsel failing to communicate with my investigator to prepare my defense, because the exculpatory information my investigator had, was [N]ot adduced at trial, and there is a reasonable probability that if the information was adduced at trial, the jury would have had cognition that the States witnesses testimony was untruthful, and the outcome could have been different, and a reasonable probability is a probability [S]ufficient to undermine confidence in the outcome,

Strickland v. Supra

A TRUE COPY

Thomas H. Gromfield
Lex. Co. C.C.C.P., G.S. F.C.

A TRUE COPY
Thomas H. Gromford
 Lex. Co. C.C.C.P., G.S., F.C.

(10)(d)(5).

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective For Failing to investigate, research, and preparing me a defense for my indictment not being "Filed" with the Clerk of Court.

The Ratio Legis For This premise is Rule 3(c) SCR Crim mandates That Indictments in the State of South Carolina must be "Filed" with The Clerk [B]efore the indictment is taken to The Grand Jury. My indictment was [N]ot Filed with The Clerk of Court, and on That IP SO FACTO it is axiomatic That Rule 3(c) SCR Crim was Violated.

The Rationale to This argument is my Counsel owes me duty to investigate my Case both Factually & Legally, Sneed vs. Smith, 670 F.2d. 1348 (4th Cir. 1982) and at The heart of effective representation is the independent duty to investigate, and prepare for trial, Goodwin vs. Baulkum, 684 F.2d. 794 (5th Cir. 1982) Logic dictates that IF one of The [B]asic Rules of Criminal procedure is [V]iolated. That pertains to The [C]harging instrument, Then Surely my Counsel owed me duty to investigate this matter, and he did [N]ot. I was prejudiced at Trial by my Trial Counsel [Failing] to investigate, research, and preparing me a defense For a Rule 3(c) Violation, and Stare Decisis dictates That The Failure to investigate, research, and prepare is equivalent to [N]o representation at [A]ll!! Wallace vs. Kern, 392 F. Supp. at 846, Citing Brubaker vs. Dickson, 310 F.2d 30; Williams vs. Betz, 354 F.2d. 698; and Brooks vs. Texas, 381 F.2d. 619 : It must be amplified That under The American Jurisprudence "To investigate is the way to know

A TRUE COPY
Thomas H. Ginn
 Lex. Co. C.C.C.P., G.S. F.S.

What Things are truly Lawful"

(Quaerere Dnt Sapere Quae Sunt Legitimavere)...

Inasmuch The U.S. Supreme Court has [H]eld That Trial Counse.
 Counsel has a [d]uty to make reasonable investigations [OR] to
 make a reasonable decision that makes particular investigations
 Unnecessary, Strickland v. Washington, 468 U.S. at 691, 104 S.Ct. at 2066 (1984)
 Logic moreover Common sense dictates That it was [N]ot a
 reasonable decision, if any decision was made at all, Not
 To investigate The Charging instrument [N]ot being Filed with
 the Clerk of Court, in violation of The rules of Criminal procedure,
 which is "improper," and [N]othing that is improper is Lawful
 (Nihil Quod Est Inconveniens Est Licitum)

There is a reasonable probability That if my Trial Counsel would
 have investigated, researched, and prepared me a defense For my
 indictment [N]ot being Filed with The Clerk of Court the
 outcome of my case could be different, U.S. v. Hill, Supra
 and a reasonable probability is a probability [S]ufficient to
 undermine Confidence in The outcome, Strickland Supra.
 The Novelty in This Claim is the U.S. Supreme Court, The U.S. Court of Appeals,
 The U.S. District Courts, and moreover This Court will [N]ot
 entertain a case, unless it is Filed with The Clerk of Court,
 and it must be amplified that [T]his Court would not even
 entertain my PCR Application if it was not Filed with the Clerk
 of [This] Court, and it is well recognized That when The reason is The Same,
 The Law is The [S]ame, (Eadem Est Ratio, Eadem Est Lex)....

[10](d)(6).

I would further AVER That my Trial Counsel was inept, and Constitutionally ineffective for failing to investigate, research, and prepare me a defense For a violation of the 180 day Rule which is in effect in The State of South Carolina...

The Law arises From Facts (Ex Facto Jus Oritur), and The Facts in This argument is Undisputed..

I was in jail For over 180 days From The date of my arrest, and I was [N]ot taken to trial in This time span, and on That IPSO FACTO my Case could have been dismissed "with prejudice" if my Counsel would have investigated, researched and prepared me a defense for a violation of the 180 day Rule, (Black's Law Dictionary P. 1116 7th Ed. / See Next Page !!

There is Certainly a reasonable probability that if my Counsel would have Investigated, researched, and prepared me a defense For a violation of The 180 day rule, and Conveyed it to the Court, The outcome of my Case could have been different, and a reasonable probability is a probability [S]ufficient to undermine Confidence in The outcome, Strickland Supra

[SEE NEXT PAGE]

A TRUE COPY
 [Signature]
 [Date]

omission

omission, *n.* 1. A failure to do something; esp., a neglect of duty <the complaint alleged that the driver had committed various negligent acts and omissions>. 2. The act of leaving something out <the contractor's omission of the sales price rendered the contract void>. 3. The state of having been left out or of not having been done <his omission from the roster caused no harm>. 4. Something that is left out, left undone, or otherwise neglected <the many omissions from the list were unintentional>. — Formerly also termed *omittance*. — **omit**, *vb.* — **omissive**, **omissible**, *adj.*

omittance. *Archaic.* OMISSION.

omnibus (om-ni-bes), *adj.* Relating to or dealing with numerous objects or items at once; including many things or having various purposes.

omnibus bill. See BILL (3).

omnibus clause. 1. A provision in an automobile-insurance policy that extends coverage to all drivers operating the insured vehicle with the owner's permission. 2. RESIDUARY CLAUSE.

omnibus count. See COUNT.

omnibus hearing. See HEARING.

omnibus motion. See MOTION.

omnium (om-nee-am). The total amount or value of the items in a combined fund or stock. • The term is used primarily in mercantile law and in Great Britain.

OMVI. *abbr.* Operating a motor vehicle while intoxicated. See DRIVING UNDER THE INFLUENCE.

OMVUI. *abbr.* Operating a motor vehicle under the influence. See DRIVING UNDER THE INFLUENCE.

on all fours. (Of a law case) squarely on point (with a precedent) on both facts and law; nearly identical in all material ways <our client's case is on all fours with the Supreme Court's most recent opinion>. Cf. WHITEHORSE CASE.

"The courts, nowadays, are governed largely by precedent, and this imposes on the advocate the necessity of supporting his client's cause by concrete authorities — cases 'on all fours' with, or at least analogous to, the case at bar." William M. Lile et al., *Brief Making and the Use of Law Books* 98 (3d ed. 1914).

O.N.B. *abbr.* OLD NATURA BREVIVM.

on board bill of lading. See BILL OF LADING.

on demand. When presented or upon request for payment <this note is payable on demand>. — Also termed *on call*. See PAYABLE.

one-action rule. In debtor-creditor law, the principle that when a debt is secured by real property, the creditor must foreclose on the collateral before proceeding against the debtor's unsecured assets.

one-court-of-justice doctrine. A principle in some states holding that there is but a single court in the state and that this court is composed of several divisions, such as the supreme court, the courts of appeals, and district courts, probate courts, and any other legislatively created courts. • Michigan, for example, has embodied this doctrine in its constitution (art. VI, § 1). — Also termed *one court of justice*.

one-day, one-trial method. A system of summoning and using jurors whereby a person answers a jury summons and participates in the venire for one day only, unless the person is actually impaneled for a trial, in which event the juror's service lasts for the entire length of the trial. • This system, which is used in several states, reduces the average term of service and expands the number of individual jurors called.

180-day rule. 1. A rule that, in some jurisdictions, allows a person charged with a felony to be released on personal recognizance if the person has been in jail for 180 days without being brought to trial, and if the delay has not resulted from the defendant's own actions. 2. A rule requiring all pending charges against a prison inmate to be brought to trial in 180 days or to be dismissed with prejudice.

one-month liquidation. See LIQUIDATION.

one-person, one-vote rule. *Constitutional law.* The principle that the Equal Protection Clause requires legislative voting districts to have about the same population. *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964). — Also termed *one-man, one-vote rule*. See APPORTIONMENT.

onerando pro rata portione. See DE ONERANDO PRO RATA PORTIONE.

onerare (on-ə-rair-ee), *vb.* [Latin] *Hist.* To burden or load.

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[10](d)(7).

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective for failing to investigate, research, and preparing me a defense For There being [N]o written Court order to Continue my Case beyond 180 days, pursuant To The provisions of The S.C. Const. Art. V § 4..

There is a reasonable probability that if my Counsel would have investigated, researched, and prepared me a defense For There [N]ot being a written Court order to Continue my case beyond 180 days, The outcome of my Case Could be different, and a reasonable probability is a probability [S]ufficient to undermine confidence in The outcome,
Strickland Supra.

[10](d)(8).

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective for failing to investigate, research, and prepare me a defense For The Grand Jury being Selected in a racially discriminatory manner, Likewise on That IPSO FACTO State Decisis dictates That this is ineffective assistance of Trial Counsel point blank,
 Colson vs. Smith, 315 F. Supp. 179 ;
 Henderson vs. Tollett, 459 F. 2d. 237;

A TRUE COPY
 [Signature]
 Lex. CO. C.C.C.P., G.S. F.C.

[10](d)(9).

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective for Failing to move The Court For a Continuance.

The Ratio Legis for This premise is I was misinformed of The trial date, and informed my alibi witnesses to be at Trial on April 17th, 2000

However my trial was held on April 10th, 2000

I informed my Trial Counsel of This matter, and That my investigator was not present, and my Counsel did [N]ot move the Court For a Continuance, when it was perspicuous That we were [N]ot prepared For Trial.

There is a reasonable probability That if my Trial Counsel would have moved The Court for a Continuance For The reasons Stated and we went to Trial with my alibi witnesses, and investigator, The outcome of my Case could be different, and a reasonable probability is a probability [S]ufficient to undermine Confidence in the outcome, Strickland Supra.

A TRUE COPY
Thomas H. Gentry
 Lex. Co. C.C.C.P., G.S. F.C.

[10] (d) (11).

I would further aver that my Trial Counsel was inept, and Constitutional^{ly} ineffective for failing to object to an erroneous jury instruction on [malice].

There is a reasonable probability ~~that~~ if Counsel ~~would~~ have objected to the jury instruction, the outcome of this case could be different, and a reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland Supra.

$$[10](d)(12).$$

I would further aver That my Trial Counsel was inept, and Constitutionally ineffective for Failing to request a Jury instruction on a witness who Knowingly uses False testimony in a part, is not to be believed in the whole testimony, (Falsus In Uno, Falsus In Omnibus).

Do To The States witnesses changing there testimony at trial, From There Statments, There is a reasonable probability That The outcome OF my Case Could have been different if my Counsel would have requested a Jury instruction on The above mentioned, and a reasonable probability is a probability [S]ufficient To undermine Confidence in The outcome, Strickland Supra

A TRUE COPY
 of the
 Report of the
 Board of Directors
 of the
 United States
 Steel Corporation
 for the year
 1934

[10](d)(13).

I would further aver that my Trial Counsel was inept, and Constitutional ineffective, for failing to inform The Court of Government Subordination of perjury, To wit, The officer stating he found a bill with the name Willie Richardson on it in my drawer and my bills don't even come in that name.

The U.S. Supreme Court made it clear that a defendant cannot be convicted on [False Evidence],

Miller vs. Pate, 386 U.S. 1 (1967)

There is a reasonable probability that if my Counsel would have alerted The Court of this matter, The Jury would have drawn the inference that the State witnesses were [N]ot being truthful under oath, and the outcome of this case would be different, and a reasonable probability is a probability sufficient to undermine confidence in the outcome, Strickland Supra

A TRUE COPY
Thomas H. Brinkley
 Lex. Co. C.C.C.P., G.S. F.G.

Ineffective Appellate Counsel

[10]cerca.

I would aver That my Appellate Court Counsel was inept, and Constitutionally ineffective for failing to investigate, research, and prepare a defense For The S.C. Court of Appeals Looking Subject Matter jurisdiction To entertain my appeal.

There is [N]o written order From The Court of General Sessions granting or denying my [Post Trial] motion to Comport with rule 29 SCR Crim, and on That IPSS FACTO the S.C. Court of Appeals [N]ever had Subject Matter Jurisdiction to entertain my Appeal..

It must be amplified That The U.S. Supreme Court [H]as [H]eld The Same Standard enunciated in Strickland vs. Washington, is The proper Standard to judge a ineffective Assistance of Appellate Court Counsel Claim, Smith vs. Robbins, 120 S.Ct. 746 (2000), Likewise in Orazio vs. Dugger, 876 F.2d. 1508 (11th Cir. 1989), The Court reasoned That Counsels Failure to adequately investigate "all" grounds For appeal is deficient performance. There is No matter on appeal more important Than [S]ubject matter Jurisdiction, and it Should have been investigated, There is a reasonable probability That if my Counsel would have investigated Subject matter Jurisdiction, The outcome of my appeal would be different, and a reasonable probability is a probability sufficient to undermine Confidence in The outcome.

Strickland Supra

[10](c)(2).

I would further aver That my Appellate Court Counsel was inept, and Constitutionally ineffective For Filing me a Anders brief on appeal. The Ratio Legis For This premise is a anders brief is For a defendant who has nothing preserved For The record For appeal, with No meritorious issues.

It is an undeniable Fact of Court Record that my trial Counsel preserved issues in the Record For Appeal, and I was prejudiced on appeal by my Counsels ineptitude, and ineffectiveness because There is a reasonable probability That if my Appellate Court Counsel would have raised the issues protected in the record, or my Subject Matter jurisdiction issues, The outcome of my Case Could be different, and a reasonable probability is a probability Sufficient to undermine Confidence in The outcome, Strickland Supra.

Stare Decisis dictates That This is ineffective assistance of Appellate Court Counsel, Johns vs. Goughlin, 750 F. Supp. 76 (1990)

A TRUE COPY
Thomas H. Goughlin
 Lex. Co. C.C.C.P., G.S. F.G.

A TRUE COPY
Thomas H. Gormick
 Lex. Co. C.C.C.P., G.S., F.C.

[10]ce(3).

I would further aver That my Appellate Court Counsel was inept, and Constitutionally Ineffective For Failing to come and visit me at The prison To have a meaningful discussion with me about The realities of my Case, and a informed evaluation with me about my potential defenses on Appeal.

The Ratio Begis for This premise is a informed evaluation of potential defenses, and a meaningful discussion with a client of The realities of his case are [Corner Stones] of effective assistance of Counsel, Stevens vs. Johnson, 575 F. Supp. at 885; It must be amplified That under The Strickland doctrine, Counsel [C]annot be effective under The 6th Amendment Jurisprudence if Counsel [N]ever visits The Client, and The [S]ame Standard applies to Appellate Court Counsel, Smith vs. Robbins, Supra, and when the reason is The Same, The Law is The Same (Eadem Est Ratio, Eadem Est Lex)

It is axiomatic under The Corpus Juris, That Counsel is ineffective if Counsel [N]ever visits The Client under Strickland vs. Washington. It must be amplified That The Identity of my tattoo was obtained in violation of The 4th Amendment, and my Counsel Should have raised this issue

March 4th 2003

Date

Willie Richardson
 Mr. Willie James Richardson, #265703
 McCormick C.I., Rt. 2, Box 100
 McCormick S.C. 29899

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2003-CP-32-0927
	)	
Willie Richardson, 265703,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 7, 2003, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of a firearm or knife during commission of a violent crime (98-GS-32-1242). He was represented by Herverly B.O. Young, Esquire. The Applicant proceeded to trial on April 10, 2000, at the conclusion of which he was found guilty as indicted. The Honorable Gary E. Clary sentenced the Applicant to confinement for a period of life for murder and a period of five (5) years for possession of a firearm or knife during commission of a violent crime, with all sentences consecutive.

The Applicant appealed. The South Carolina Court of Appeals dismissed the appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Richardson, Op. No. 2002-UP-377 (filed May 29, 2002). The Remittitur was issued on July 9, 2002.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Anders brief, and the appellate court opinion, the appellate court letter remitting the case.

II.

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

1. Lack of subject matter jurisdiction in that (1) racial discrimination occurred in the selection of the grand jury that true-billed the Applicant's indictment; (2) the Applicant's post-trial motions were never resolved; (3) no person with knowledge of the facts testified before the grand jury; (4) the clerk failed to file the indictment in compliance with Rule 3, SCRCrimP; and (5) the case was continued beyond 180 days after the Applicant's arrest.
2. Ineffective assistance of trial counsel in that trial counsel failed to investigate, research, and prepare for State's witnesses, failed to request a continuance to secure the presence of an alibi witness and failed to raise the issues listed above respecting subject matter jurisdiction; and
3. Ineffective assistance of appellate counsel in that appellate counsel failed to investigate, research, prepare defenses, raise the pending Rule 29 motion, or file a merit brief rather than an Anders brief.

III.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects or discrimination in the indictment process. Defects in the indictment or indictment process do not affect subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625 (2002). The indictment is a notice document, and any challenges to its

sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry*, 363 S.C. 93, 610 S.E.2d 494 ; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act—notably the statute of limitations and successiveness. *See* S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry*, 610 S.E.2d at 499. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

The Applicant also alleges that the court lacked subject matter jurisdiction for failure to dispose of his case within 180 days and that the clerk of court did not file the indictment in accordance with Rule 3, SCRCrimP. . However, the failure to comply with the rule relied upon by the Applicant does not render the indictments void for lack of subject matter jurisdiction and does not prevent the State from prosecuting such cases. *See State v. Culbreath*, 282 S.C. 38, 316 S.E.2d

681 (1984). Moreover and as to the jurisdiction of the appellate court, Respondent submits that the copy of the file received from the Lexington County Clerk of Court does not contain a Rule 29 motion. The record directly refutes the Applicant's allegation in this regard. Accordingly, the subject matter jurisdiction claims are without merit and must be summarily denied and dismissed.

IV.

Further, the Applicant's allegations that he received ineffective assistance of trial counsel are without merit. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813 .

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland, 466 U.S. at 668. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the 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).

V.

Respondent further asserts that the allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant’s appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel’s performance was (1) deficient; and (2) that there was prejudice from the appellate counsel’s deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such

quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed to present significant and obvious issues on appeal.” Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

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

VII.

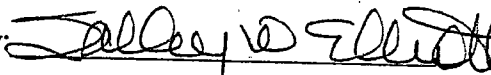
WHEREFORE, having made its Return, the State requests that a hearing be held solely for the purposes of determining whether the Applicant was rendered effective assistance of trial counsel and appellate counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

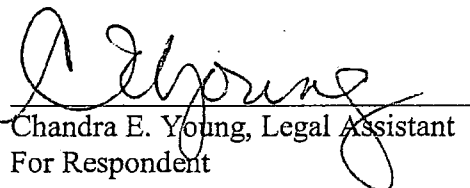
Myk, 2005.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	03-CP-32-0927
	)	
WILLIE RICHARDSON,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Donald R. McCabe, Jr., Esquire
 700 Gervais St., Suite 100
 Columbia SC 29201

DATED this 16th day of May, 2005.


 Chandra E. Young, Legal Assistant
 For Respondent

ORIGINAL
FILED

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

2006 MAR -3 P 1:57

2003-CP-32-0927

Willie Richardson,)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Applicant,)

vs.)

ORDER DENYING
POST-CONVICTION RELIEF

State of South Carolina.)

Respondent.)

PROCEDURAL HISTORY

This is an action for post-conviction relief commenced by an application filed on March 7, 2003. Respondent made its return on May 16, 2005. Applicant amended his application on December 2, 2005. An evidentiary hearing was held on December 12, 2005. Applicant was present and represented by retained counsel, George McElveen, Esquire. Assistant Attorney General Sabrina C. Todd represented Respondent.

In addition to the pleadings, before the Court were the records of the Lexington County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript; and the Applicant's final brief the appellate court opinion, and letter of remittitur from Applicant's direct appeal. Applicant testified on his own behalf at the hearing. Also testifying were Applicant's mother, Sallie Richardson; Herverly B. O. Young, Esquire; and David MacDougall, a private investigator hired to assist in Applicant's defense against the charges.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to

CND

orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of a firearm or knife during commission of a violent crime (98-GS-32-1242). He was represented by Herverly B.O. Young, Esquire. Applicant proceeded to trial on April 10, 2000, at the conclusion of which he was found guilty as indicted. The Honorable Gary E. Clary sentenced Applicant to confinement to life imprisonment for murder and a and a consecutive period of five (5) years for possession of a firearm or knife during commission of a violent crime.

The Applicant appealed. The South Carolina Court of Appeals dismissed the appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Richardson, Op. No. 2002-UP-377 (filed May 29, 2002). The remittitur was issued on July 9, 2002.

In his original application, Applicant alleged his confinement is unlawful for the following reasons:

1. Lack of subject matter jurisdiction in that (1) racial discrimination occurred in the selection of the grand jury that true-billed the Applicant's indictment; (2) the Applicant's post-trial motions were never resolved; (3) no person with knowledge of the facts testified before the grand jury; (4) the clerk failed to file the indictment in compliance with Rule 3, SCRCrimP; and (5) the case was continued beyond 180 days after the Applicant's arrest.
2. Ineffective assistance of trial counsel in that trial counsel failed to investigate, research, and prepare for State's witnesses, failed to request a continuance to secure the presence of an alibi witness and failed to raise the issues listed above respecting subject matter jurisdiction; and
3. Ineffective assistance of appellate counsel in that appellate counsel failed to investigate, research, prepare defenses, raise the pending Rule 29 motion, or file a merit brief rather than an Anders brief.

In his amended application, Applicant additionally alleged:

1. Trial counsel was materially ineffective in failing to call Aleta Gaymon, an alibi witness, whose identity was made known to trial counsel, and

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2. Trial counsel was materially ineffective in failing to challenge the constitutionality of the extradition procedure by which he was returned to South Carolina from New York and which, if shown, would have deprived the trial court of personal jurisdiction over Applicant.

At the hearing it became clear the second amended allegation was intended to be that counsel was ineffective in failing to challenge Applicant's removal from South Carolina Custody to face federal charges.

DISCUSSION OF EVIDENCE

This case arises from a nightclub shooting that took place in the early morning hours of April 13, 1995. (Tr. 96-103, 140.) Applicant testified he learned of the crime and that he was a suspect while in New York visiting family. He testified he gave trial counsel names of several persons, mostly relatives, who could verify that he was in New York at the time of the crime. Applicant further testified he was advised the trial would begin on April 17, 2000 but then learned on April 3 that it would begin on April 10. He said by this time his family members' schedules were already set. When asked whether he requested a continuance to ensure the presence of alibi witnesses, he said he could not see trial counsel because counsel could not get into jail.

Applicant testified although he initially fought extradition to South Carolina, but he eventually consented in order to resolve the charges against him. However, he asserts that approximately four to five weeks after he was taken into custody by South Carolina authorities, he was taken to Virginia to face federal charges without explanation and without notice to his attorneys. He asserts no attorney appeared to consent to or contest his removal from South Carolina. Applicant contended he was brought to South Carolina pursuant to executive jurisdiction and thus could not be taken from the jurisdiction before trial. Applicant contends through counsel that this transfer of custody deprived the trial court of personal jurisdiction over Applicant and counsel was ineffective

CHD

for failing to challenge the propriety of the transfer. Additionally, Applicant testified the he believed the information gained while he was in federal custody was illegitimate¹ and that he missed a preliminary hearing while he was in Virginia.

Applicant also testified the prosecution waited eight months to turn over discovery and that to date not all discovery had been produced. He testified the defense did not receive all statements, including the statement of John Williams, and did not receive information that the shooter was described to police as having brown hair as indicated on page 122 of the trial transcript.

Finally, Applicant testified his prior counsel, Johnny Watson, Esquire, should have moved to quash his indictment because it was not timely sought and because signatures of the grand jury foreman on the two pages of his indictment appear to be different.

Applicant's mother testified some alibi witnesses were not able to attend the trial because of the change in the trial date. She testified, as she did at trial (Tr. 469-70), that Applicant was in New York at the time of the crime. She also recalled telling trial counsel about Aleta Gaymon, who could serve as an alibi.

Trial counsel testified he became Applicant's attorney in the fall of 1999 and that he first met with him on October 15, 1999. Counsel moved for and received discovery and does not believe the prosecution withheld discovery. He met with Applicant at least six times and his last visit would have been no more than a week before trial. Regarding the description of the shooter as having brown hair, counsel believes that was consistent with discovery he received. He testified he moved
 consistent

¹ Reginald Lucas, who was incarcerated with Applicant in Virginia, testified for the State at Applicant's trial. (Trial transcript 355.) He recalled that Applicant admitted to committing the crime and recounted Applicant's plan to assert an alibi defense. (Tr. 356-58.) He also testified Applicant's nickname was Raheem, or Rah, and that he had "Raheem" tattooed on his arm. (Tr.361.) A witness from the crime scene testified the shooter was called "Rah" by his companions, and an officer testified that at least one witness said the shooter had a tattoo. (Tr.140-41, 305.)
 CND

to quash the indictment under Rule 3 of the South Carolina Rules of Criminal Procedure. That motion was denied. (Tr. 30-33.)

Regarding Applicant's alibi, counsel testified Applicant only provided contact information for his mother and she was to provide contact information for other witnesses. Applicant's mother provided contact information for Applicant's sister. Applicant's sister was asked about Gaymon but had no information about how to reach her. A skip trace was performed to try to find Gaymon, but was unsuccessful. Although Applicant's mother and sister verified there was a party on the evening before the early morning shooting, they were unable to serve as alibi witnesses during the time of the crime itself. Counsel attempted to verify that Applicant was on the flight he said he took to New York, but the airline was unable to verify the information. Counsel stated the case was set for a couple of different trial dates but that he did not see the need for a continuance because he did not have any alibi witnesses with the exception of Applicant's mother. He testified he did not believe any were coming voluntarily. Applicant's sister adamantly refused to come, giving different reasons for her refusal to appear. He explained he subpoenaed her, but did not serve her because she was not coming. He did not personally go to New York or send anyone to New York because the witnesses were otherwise generally cooperative. Counsel and the investigator were never able to locate Gaymon or Applicant's brother, who were also purported to be alibi witnesses.

Private investigator David MacDougall testified he was first contacted by Applicant's mother. He first met with the Applicant in June of 1999 and Applicant—who was at the time representing himself—had a court order authorizing payment for MacDougall's services. Regarding alibi, Applicant initially instructed MacDougall to find Angela Cole to serve as an alibi. He said she had taken him to the airport July 20, 1995. Applicant did not provide contact information for her. MacDougall began looking for her, but Applicant later said she would come to court on her own and

there was no need to contact her or subpoena her. MacDougall testified Applicant never mentioned any alibi witnesses other than Cole to him. Instead, Applicant instructed MacDougall to focus on the crime scene and witnesses to the crime. MacDougall testified he would have certainly pushed Applicant to investigate alibi witnesses had he mentioned them because an alibi defense was much better than the defense Applicant was having him work on.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon each witness' credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668 (1984); Sanchez v. State, 351 S.C. 270, 274-75, 569 S.E.2d 363, 365 (2002). There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. 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).

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This Court finds Applicant was not credible while also finding that trial counsel and Mr. MacDougall were credible.

The two primary allegations concern trial counsel's failure to present alibi witnesses at trial and failure to challenge Applicant's transfer to Virginia by federal authorities.

The Court finds and concludes the allegation of ineffective assistance of counsel for failure to have alibi witnesses at the trial was not established by Applicant. Trial counsel made diligent effort to contact the witnesses and he either was unable to locate them or they were uncooperative. Moreover, even if the Court were to find counsel deficient regarding this issue, Applicant did not provide testimony of any alibi witnesses who did not testify at trial. Although he did offer to submit the affidavit of Aleta Gaymon at some point after the hearing, the Court declined to hold the record open for that purpose, particularly in light of the fact this case has been continued in the past so Applicant could secure the presence of alibi witnesses and because Respondent would not be able to cross-examine or otherwise challenge Ms. Gaymon's credibility. Therefore, because ^{he} failed to produce the favorable testimony he alleges counsel failed to present at trial, Applicant has not ^{met} his burden of establishing prejudice. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

As to Applicant's transfer to Virginia, this Court finds and concludes the transfer did not deprive the State of South Carolina of the jurisdiction to try him on State charges once he was returned to South Carolina. Nor does the Court believe counsel was ineffective for failing to challenge the transfer for that purpose or because evidence used against Applicant at trial was obtained through Applicant's incarceration on those federal charges.

Regarding the question of indictments, this Court concludes no motion by prior counsel to quash the indictments for the reasons stated at the hearing would have been successful. Applicant has not established the failure of the solicitor to indict Applicant within 90 days of his arrest

CND

prejudiced him and the South Carolina Supreme Court has specifically held failure to comply with the 90-day rule does not invalidate a subsequent prosecution. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). As to the allegation regarding the signatures of the grand jury foreman, this Court does not believe enough disparity exists between the two signatures for counsel to even entertain a motion to quash, let alone to support the quashing of the indictment.

This Court finds and concludes Applicant has failed to meet his burden of establishing a discovery violation by the prosecution. Trial counsel testified he did not believe the State withheld anything. As to the information regarding the suspect's hair color, counsel believed he had that information. Additionally, the Court notes counsel cross-examined an officer on that very point, capitalizing on the fact Applicant's hair color did not match the description of the suspect given to the police. (Tr. 122.) As to Applicant's claim that John Williams' statement was not produced by the State, the Court has reviewed the record and notes no witness by that name testified at Applicant's trial. Applicant has failed to establish who John Williams is, what statement he may have made, and the significance of the same.

As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the current application be denied and dismissed with prejudice;
and
2. That Applicant be remanded to the South Carolina Department of Corrections for the completion of his sentence.

CMD

AND IT IS SO ORDERED this 23rd day of February, 2006.



Clyde N. Davis, Jr.
Presiding Judge
Eleventh Judicial Circuit

Wilmington, South Carolina.

3-22-06

Appel 11

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Judge Clyde N. DAVIS

Case # 2003-CP32-0927

STATE OF South Carolina respondent

v.s

Willie James Richardson Petitioner

Willie James Richardson Appeals the order of the Honorable Judge Clyde N Davis for Denial of Post Conviction relief. Dated March 3rd 2006. Received by Ups mail on March 21st 2006 From Attorney George McElveen. Also would like to be appointed New Counsel for appeal

x Willie Richardson

I hereby certify under the
Penalty of perjury this notice
was sent to the court of appeals
on the date hereunder (29 U.S.C
§ 1746) with sufficient postage
attached.

3-22-06

RECEIVED
MAR 27 2006
Referred to: J. Judd
Answered: J. Judd

Notice of Appeal. Certificate of service
All necessary parties will be forwarded copies.

- 1) Hon Henry MC Masters. Attorney General
- 2) Hon. Beth Carrigg Clerk of Court Lexington County.
- 3) Hon. Kenneth A Richstad Clerk S.C. Court of appeals.

x Willie Beelen
Respectfully Submitted

The Supreme Court of South Carolina

Willie Richardson,

Petitioner,

v.

State of South Carolina,

Respondent,

The Honorable Clyde N. Davis, Jr.
Lexington County
Trial Court Case No. 2003-CP-32-0927

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of petitioner to order the transcript in the above matter, as provided for in Rule 207(a) of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Lexington County after fifteen (15) days, exclusive of the date of filing this Order.

JEAN H. TOAL, CHIEF JUSTICE

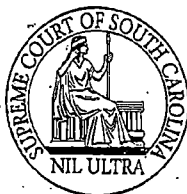
BY

Brenda L. Healy
CLERK
Chief Deputy

Columbia, South Carolina

June 1, 2006

cc: G. Raymond McElveen, Esquire
Office of Appellate Defense
Willie Richardson
Office of Attorney General



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 29, 2006

REMITTITUR

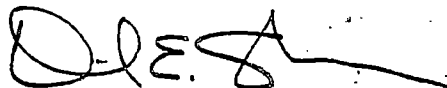
The Honorable Beth Carrigg
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: Richardson, Willie v. State
2003-CP-32-927

Dear Ms. Carrigg:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,



CLERK

DES/klb

Enclosure

cc: G. Raymond McElveen, III
Office of Appellate Defense
Willie Richardson
Office of Attorney General

2006-CP32-2572

ORIGINAL
FILED

FORM 5

AM

STATE OF SOUTH CAROLINA)

County of LEXINGTON)

IN THE COURT OF COMMON PLEAS

2006 JUL 20 P 3:40

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SCWILLIE RICHARDSON, #265703)

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

v.)

APPLICATION FOR

State of South Carolina)

HENRY D. McMASTER, ATTORNEY GENERAL)

RESPONDENT.)

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention MCCORMICK CORRECTIONAL INSTITUTION, MCCORMICK, S.C.
F-1-278-A
2. Name and location of Court which imposed sentence LEXINGTON COUNTY COURT OF
GENERAL SESSION, LEXINGTON, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 98-GS-32-1242-MURDER/POSSESSION OF A FIREARM

ALLOBREA GENERAL CLERK

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) PCR IS THE AVENUE TO RAISE THIS ISSUE
- (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? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered Ayes to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. HERVEY B.O. YOUNG, ESQ. LEXINGTON COUNTY PUBLIC DEFENDER OFFICE
LEXINGTON, SOUTH CAROLINA
- ii. OFFICE OF APPELLATE DEFENSE, COLUMBIA, S.C.
- iii. GEORGE McELVEEN, ESQ.,
2229 BULL STREET, COLUMBIA, SOUTH CAROLINA 29201-1901
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
APPEAL
- ii. POST-CONVICTION RELIEF
- iii. _____

- (b) LIFE SENTENCE FOR MURDER
- (c) FIVE YEARS FOR POSSESSION OF FIREARM

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

4-10-2000/ SEE ABOVE (B)AND(C)

- (a) _____
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty NOT 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?

YES

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

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

SOUTH CAROLINA COURT OF APPEALS

- i. _____
- ii. _____
- iii. _____

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

DISMISSED AFTER ANDERS REVIEW

- i. _____
- ii. _____
- iii. _____

- (c) the date of each such result:

5-29-2002

- i. _____
- ii. _____
- iii. _____

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

STATE V. RICHARD, OP. NO. 2002-UP-377

REMITTITUR ISSUED 7-9-2002

- i. _____
- ii. _____
- iii. _____

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

N/A

- (a) _____

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL (PCR)(b) SEE ATTACHED

(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 FILE THE DENIAL OF APPLICANT PCR APPLICATION(b) APPLICANT ASKED COUNSEL TO FILE HIS APPEAL BUT COUNSEL TOLD HIM(c) HE HAD TO FILE SAME IN VIOLATION OF APPELLATE COURT RULES(602)

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

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

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

(a) the specific nature thereof:

i. NOTICE OF APPEAL (PRO-SE)

ii. _____

iii. _____

iv. _____

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

i. SOUTH CAROLINA SUPREME COURT

ii. _____

iii. _____

iv.

(c) the disposition thereof:

i.

DISMISSED

ii.

iii.

iv.

(d) the date of each such disposition:

JUNE 1, 2000

i.

ii.

iii.

iv.

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

i.

PURSUANT TO RULE 221 (B)

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.

NONE

ii.

iii.

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

i.

NONE

ii.

iii.

SCL

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

BELATED APPEAL

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

NO

2006-CP32-2572

Revised 1/2003
ORIGINAL

STATE OF SOUTH CAROLINA)

County of LEXINGTON)

VERIFICATION

I, **WILLIE RICHARDSON**

_____, 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.

Willie Richardson

SWORN to and subscribed before me this 13
day of July, 2006

Joyce L. Young (L.S.)
Notary Public

My Commission Expires: 8 28 20 11

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2006 JUL 20 P 3:40

AM
FILED



Exhibit - 1

SHIPMENT FROM
 UPS ACCOUNT NO. **FA6519**
 REFERENCE NUMBER

Willie Richardson
 Danielle
 TELEPHONE
803-799-9581

MCELVEEN & MCELVEEN

2229 BULL ST

COLUMBIA

SC 29201-1901

DELIVERY TO

Willie Richardson #265703
 McCormick Correctional Institution
 386 Washington St, F-14-278
 Columbia, SC 29201-1901

0101911202609 1/05 S

United Parcel Service, Louisville, KY

WEIGHT LTR	DIMENSIONAL WEIGHT	LARGE AIR PACKAGE	SHIPPER RELEASE
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☐ DOCUMENTS ONLY

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TRACKING NUMBER

DATE OF SHIPMENT

SHIPMENT ID NUMBER **FA65 1979 YPS**

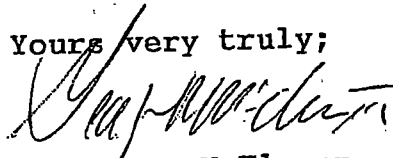
1/21/06

DELIVERY

Exhibit 2

I have copied the rule relating to the notice for your convenience. I have also copied the appropriate form from the appendix. You should carefully read the rules of appellate practice in the South Carolina Rules of Civil Procedure before filing the notice. The information I am enclosing is solely to get you started, and as a courtesy.. Please be aware that I am not filing a notice for you, or taking any further action in this matter..

Yours very truly;



George R. McElveen, III

GRMcE/

The Supreme Court of South Carolina

Willie Richardson,

Petitioner,

v.

State of South Carolina,

Respondent,

The Honorable Clyde N. Davis, Jr.
Lexington County
Trial Court Case No. 2003-CP-32-0927

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of petitioner to order the transcript in the above matter, as provided for in Rule 207(a) of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Lexington County after fifteen (15) days, exclusive of the date of filing this Order.

JEAN H. TOAL, CHIEF JUSTICE

BY

Brenda L. Healy
CLERK
Chief Deputy

Columbia, South Carolina

June 1, 2006

cc: G. Raymond McElveen, Esquire
Office of Appellate Defense
Willie Richardson
Office of Attorney General

ORIGINAL

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

SCL

I, **WILLIE RICHARDSON**

, 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.

Willie Richardson
Applicant

SWORN or affirmed to and subscribed before me this
13 day of July, 2006

Joye D. Young
Notary Public

My Commission Expires: 8 28 2011

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2006 JUL 20 2 34 PM

FILED

AM

2006-CP32-2572

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS

2006-CP-32-2572

Willie Richardson, # 265703,)
Applicant,)
v.) RETURN
State of South Carolina,)
Respondent.)

Respondent, making its Return to the application for post conviction relief (PCR) filed July 20, 2006, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of firearm or knife during commission of violent crime (98-GS-32-1242). George McElveen, Esquire and Hervery Young, Esquire, represented him. On April 13, 2000, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced to life for murder and five (5) years for possession of weapon to run consecutively.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Richardson, Op. No. 2002-UP-377 (S.C. Ct. App. filed July 9, 2002).

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the order dismissing Applicant's appeal. Any of the above not so attached will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel- Counsel failed to file appeal after Applicant requested he do so.

III.

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

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, Id. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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, 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.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL E. GRIGG
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

April 4, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 11TH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2006-CP-32-2572
Willie Richardson, #265703,	)	
	)	
Applicant,	)	
	)	
vs.	)	AMENDED RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the merged applications for post conviction relief (PCR) filed on July 20, 2006 (06-CP-32-2572) and another filed on March 13, 2007 (07-CP-32-0838), incorporates by reference the previous Return and Motion for Merger filed by the Respondent on or about April 4, 2007, and adds the following:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of firearm or knife during commission of violent crime (98-GS-32-1242). George McElveen, Esquire and Hervery Young, Esquire, represented him. On April 13, 2000, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced consecutively to life for murder and five (5) years for possession of weapon.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Richardson, Op. No. 2002-UP-377 (filed May 29, 2002). The Remittitur was issued on July 9, 2002.

Subsequently, the Applicant filed an application for post-conviction relief (PCR) on March 7, 2003. The Respondent made its return on May 16, 2005. The Applicant amended his application on December 2, 2005. An evidentiary hearing was held on December 12, 2005. The Applicant was present and represented by George McElveen, Esquire. Sabrina C. Todd, Esquire, represented the Respondent. By Order filed March 3, 2006, the Honorable Clyde N. Davis, Jr., denied and dismissed the application with prejudice.

On or about March 28, 2006, the Applicant filed a pro se Notice of Appeal. By Order of Dismissal dated June 1, 2006, the Supreme Court of South Carolina dismissed the Applicant's appeal due to failure of the Applicant to order the transcript. The Remittitur was issued on June 29, 2006.

II.

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

1. Ineffective assistance of counsel in that counsel failed to investigate,
2. Prosecutorial Misconduct in that the prosecutor "committed perjury by misleading the judge and jury."
3. Violation of the 4th, 6th, 8th, and 14th amendments,
4. Violation of due process of law,

5. Lack of jurisdiction to impose sentence due to a "violation of interstate Agreement Detainers Act" and "indictment was illegally obtained."
6. Ineffective assistance of PCR counsel-Counsel failed to file an appeal of the dismissal of his first PCR application after the Applicant requested he do so.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Applicant's appellate records, the Applicant's prior PCR application, and the Order dismissing the prior PCR application.

III.

The Court should summarily dismiss the first, second, third, fourth, and fifth grounds because they are successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C.

448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant has raised several of these allegations in his previous application, and he could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised these current allegations in his previous post-conviction relief application. Accordingly, Respondent moves for a summary dismissal of grounds one to five in this application because the claims are successive.

IV.

The Respondent submits that grounds one, two, three, and four for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469

S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on April 13, 2000. The Remittitur from the Applicant's unsuccessful appeal was issued on July 9, 2002. This Application was filed on July 20, 2006 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss grounds one, two, three, and four for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

In ground five, the Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. §17-19-90 (2003). See also S.C. Code §17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, *supra*; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective

is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. **The Respondent requests an evidentiary hearing on only this ground for relief.** Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VIII.

WHEREFORE, having made its Amended Return, the Respondent moves to summarily dismiss grounds one, two, three, four, and five because they are successive to the Applicant's prior PCR action and they were filed after the statute of limitations had expired.

The Respondents requests an evidentiary hearing on the sole issue of whether PCR counsel failed to file an appeal after the Applicant requested he do so.

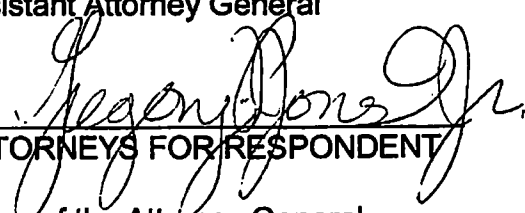
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

GREGORY P. JONES, JR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 20, 2008.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
Case No.: 2006-CP-32-2572

Willie Richardson, #265703,)
Applicant,)

vs.)

**AMENDED RETURN AND CONSENT
TO AUSTIN REVIEW ONLY**

State of South Carolina,)
Respondent.)

The Respondent, making its Return to the merged applications for post conviction relief (PCR) filed on July 20, 2006 (06-CP-32-2572) and another filed on March 13, 2007 (07-CP-32-0838), incorporates by reference the previous Return and Motion for Merger filed by the Respondent on or about April 4, 2007, and adds the following:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of firearm or knife during commission of violent crime (98-GS-32-1242). George McElveen, Esquire and Herverly Young, Esquire, represented him. On April 13, 2000, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced consecutively to life for murder and five (5) years for possession of weapon.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Richardson, Op. No. 2002-UP-377 (filed May 29, 2002). The Remittitur was issued on July 9, 2002.

Subsequently, the Applicant filed an application for post-conviction relief (PCR) on March 7, 2003. The Respondent made its return on May 16, 2005. The Applicant amended his application on December 2, 2005. An evidentiary hearing was held on December 12, 2005. The Applicant was present and represented by George McElveen, Esquire. Sabrina C. Todd, Esquire, represented the Respondent. By Order filed March 3, 2006, the Honorable Clyde N. Davis, Jr., denied and dismissed the application with prejudice.

On or about March 28, 2006, the Applicant filed a pro se Notice of Appeal. By Order of Dismissal dated June 1, 2006, the Supreme Court of South Carolina dismissed the Applicant's appeal due to failure of the Applicant to order the transcript. The Remittitur was issued on June 29, 2006.

II.

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

1. Ineffective assistance of counsel in that counsel failed to investigate,
2. Prosecutorial Misconduct in that the prosecutor "committed perjury by misleading the judge and jury."
3. Violation of the 4th, 6th, 8th, and 14th amendments,
4. Violation of due process of law,

5. Lack of jurisdiction to impose sentence due to a "violation of interstate Agreement Detainers Act" and "indictment was illegally obtained."
6. Ineffective assistance of PCR counsel-Counsel failed to file an appeal of the dismissal of his first PCR application after the Applicant requested he do so.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Applicant's appellate records, the Applicant's prior PCR application, and the Order dismissing the prior PCR application.

III.

The Court should summarily dismiss the first, second, third, fourth, and fifth grounds because they are successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C.

448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant has raised several of these allegations in his previous application, and he could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised these current allegations in his previous post-conviction relief application. Accordingly, Respondent moves for a summary dismissal of grounds one to five in this application because the claims are successive.

IV.

The Respondent submits that grounds one, two, three, and four for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469

S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on April 13, 2000. The Remittitur from the Applicant's unsuccessful appeal was issued on July 9, 2002. This Application was filed on July 20, 2006 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss grounds one, two, three, and four for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

In ground five, the Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. §17-19-90 (2003). See also S.C. Code §17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, supra; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

The Applicant’s contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective

is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Upon information and belief and based on communications with Applicant's counsel, **the Respondent does not request an evidentiary hearing on the matter of the Applicant's entitlement to an Austin Review.** Austin, 305 S.C. 453, 409 S.E.2d 395.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VIII.

WHEREFORE, having made its Amended Return, the Respondent moves to summarily dismiss grounds one, two, three, four, and five because they are successive to the Applicant's prior PCR action and they were filed after the statute of limitations had expired.

The Respondent moves to consent to an Austin Review.

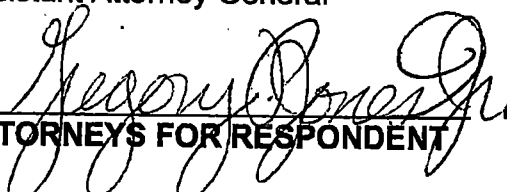
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

GREGORY P. JONES, JR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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November 12, 2008.

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 FOR THE 11TH JUDICIAL CIRCUIT
 Case No.: 2006-CP-32-2572

Willie Richardson,
 S.C.D.C. No. 265703,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
 WITH PREJUDICE**

Beth A. Carrig
 Clerk of Court
 Lexington, SC

2006 DEC -9 PM 12:39

Filed

This matter comes before the Court by way of Application for Post-Conviction Relief filed on July 20, 2006. An evidentiary hearing was held on November 20, 2008 at the Lexington County Courthouse. The Applicant was present and proceeded *pro se*. The Respondent was represented by Gregory P. Jones, Jr. of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of firearm or knife during commission of violent crime (98-GS-32-1242). Herverly Young, Esquire, represented him. On April 13, 2000, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced consecutively to life for murder and five (5) years for possession of weapon.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and

sentence. State v. Richardson, Op. No. 2002-UP-377 (filed May 29, 2002). The Remittitur was issued on July 9, 2002.

First PCR Application

Subsequently, the Applicant filed an application for post-conviction relief (PCR) on March 7, 2003. The Respondent made its return on May 16, 2005. The Applicant amended his application on December 2, 2005. An evidentiary hearing was held on December 12, 2005. The Applicant was present and represented by George McElveen, Esquire. Sabrina C. Todd, Esquire, represented the Respondent. By Order filed March 3, 2006, the Honorable Clyde N. Davis, Jr., denied and dismissed the application with prejudice.

On or about March 28, 2006, the Applicant filed a pro se Notice of Appeal. By Order of Dismissal dated June 1, 2006, the Supreme Court of South Carolina dismissed the Applicant's appeal due to failure of the Applicant to comply with the filing procedures. The Remittitur was issued on June 29, 2006.

Current PCR Application

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

1. Ineffective assistance of counsel in that counsel failed to investigate,
2. Prosecutorial Misconduct in that the prosecutor "committed perjury by misleading the judge and jury."
3. Violation of the 4th, 6th, 8th, and 14th amendments,
4. Violation of due process of law,

5. Lack of jurisdiction to impose sentence due to a "violation of Interstate Agreement Detainers Act" and "indictment was illegally obtained."
6. Ineffective assistance of PCR counsel-Counsel failed to file an appeal of the dismissal of his first PCR application after the Applicant requested that he do so.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Non-Appeal Issues

At the hearing, the State moved to dismiss all non-appeal allegations as being barred by the Statute of Limitations, and that they are successive to his prior PCR.

A. Statute of Limitations

This Court finds, further, that all allegations except the Austin claim should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense(s) he challenges in this Application on April 13, 2000. The Remittitur from an unsuccessful direct appeal was issued on July 9, 2002. This Application was filed on July 20, 2006, after the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, except as to the Austin claim, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

B. Successive

In addition, this Court finds that all allegations except for the belated Austin claim must be summarily dismissed because they are successive to the Applicant's prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for

sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post conviction relief and, thus, the current application is successive and barred under S.C. Code §17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post conviction relief. Therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State/Plath v. State, *supra*.

Appeal Issue

The State agrees that the Applicant is entitled to a belated Austin appeal. State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for

review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

The Court concludes that the Applicant is entitled to a belated review of the denial of his first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, Id. This court notes that the Applicant will be treated as indigent for purposes of filing an Austin review. The South Carolina Office of Appellate Defense is directed to file the notice of appeal and represent the Applicant on appeal.

III. CONCLUSION

Based on the specific findings above, this Court concludes that all the Applicant's allegations be denied and dismissed, with the exception of his belated appeal, for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq., and because they are successive to his prior application.

This Court finds that the Applicant is entitled to a belated Austin review of his prior PCR.

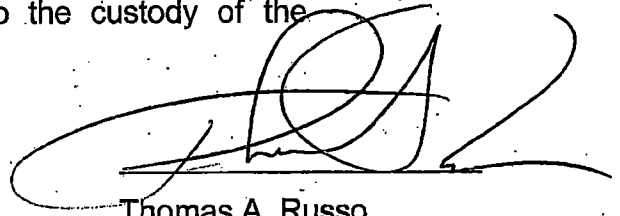
As to any and all allegations which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for... review** (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

(Signature on next page)

IT IS THEREFORE ORDERED:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. Within thirty (30) days of service of this Order, the South Carolina Office of Appellate Defense must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action. The Applicant is directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 227 for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the Respondent.



Thomas A. Russo
Presiding Judge
Eleventh Judicial Circuit

Florence, South Carolina

12-5, 2008.

STATE OF SOUTH CAROLINA)

County of Lexington)Willie Richardson #265703)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2007-CP32-0838

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 Mccormick correctional Institution
2. Name and location of Court which imposed sentence Lexington county court.
3. Name(s) of co-defendant(s) (if any) none.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 98-GS-32-1242 Life & (5) five
 - (b) _____

RECEIVED

MAR 27 2007

Referred to Brygg Jr.

Answered _____

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Lex. Co. C.C.P. GS. & EC.

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(c)

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

(a) April 14th 2000 Life plus Five years consecutive

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Filed May 24th 2002 South Carolina Court of Appeal

ii. March 13th 2006 PCR

iii. _____

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

i. 2002-UP-377

ii. _____

iii. _____

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

(a) NA

(b) NA

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1st. Co. C.C.P., G.S. & F.C.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENT
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes state appeal PCR
- (c) any petition ^E 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? PCR
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. Direct appeal
- ii. post conviction relief
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Lexington Court of appeals Columbia South Carolina
- ii. Court of Common pleas Lexington South Carolina
- iii. _____
- iv. _____

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 Lex. Co. U.S.C.P. G.S. & F.C.

(c) the disposition thereof:

- i. affirmed
- ii. NA
- iii. NA
- iv. NA

(d) the date of each such disposition:

- i. PCR March 13 - 2006
- ii. NA
- iii. NA
- iv. NA

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

- i. Direct appeal affirmed
- ii. PCR Denied
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. Ineffective assistance of counsel
- ii. _____
- iii. _____

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

- i. PCR
- 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) See Attachment
 (b) N/A
 (c) N/A

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

(a) your arraignment and plea? N/A
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Hervary B.O. Young Lexington public defender
205 E main st Lexington SC 29072 Joseph D. Switz III
- ii. SC office of appellate defense 1122 Lady st.
Columbia S.C. 29201
- iii. George McElveen 2298 Bull st Columbia S.C.
29203

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

- i. Trial Appeal Court PCR
- ii. _____
- iii. _____

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ORIGINAL

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

I want to be [Discharged] from prison in conformity
with the S.C. Code Ann § 17-27-80 or a new trial

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

SCL

STATE OF SOUTH CAROLINA)

2007-CP32-0838

VERIFICATION

County of Lexington)

I, Waddie Richardson, 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.

Waddie Richardson 265703

SWORN to and subscribed before me this 8
 day of March, 2007.

J. Smith (L.S.)
 Notary Public

My Commission Expires: 3-30-2009

FILED
 2007 MAR 13 A 10:20
 BETTIE A. CARRIG
 CLERK OF COURT
 LEXINGTON SC

A TRUE COPY
 Lex. Co. J.C.P., G.S. & T.O.

Revised 3/2003

ORIGINAL
639
SCL

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

I, Willie Richardson, 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.

Willie Richardson 285703
Applicant

SWORN or affirmed to and subscribed before me this

8 day of March, 2007

2007-CP32-0838

D.A. Smith
Notary Public

My Commission Expires: 3-30-2009

BETH A. CARRIEG
CLERK OF COURT
LEXINGTON SC

2007 MAR 13 A 10:20

FILED

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Tex. Co. C.C.P., G.S. & F.C.

Revised 3/2003

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Willie Richardson, #265703

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE 11th JUDICIAL CIRCUIT
) Case No.: 2007-CP-32-0838

**ORDER OF DISMISSAL AND
 GRANT OF BELATED APPEAL**

RECEIVED
 CLERK OF COURT
 LEXINGTON, SC

FILED
 2010 APR 28 P 1:07

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 13, 2007. The Respondent made its Return on or about April 4, 2007. An evidentiary hearing was held on December 2, 2009, at the Lexington County Courthouse. The Applicant was present at the hearing and represented himself, *pro se*. A. West Lee of the South Carolina Attorney General's Office represented the Respondent.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the March 1998 term of the Lexington County Grand Jury for murder and possession of firearm or knife during commission of violent crime (98-GS-32-1242). Herverly Young, Esquire, represented him. On April 13, 2000, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced consecutively to life for murder and five (5) years for possession of weapon.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Richardson, Op. No. 2002-UP-377 (filed May 29, 2002). The Remittitur was issued on July 9, 2002.

First PCR Application

Subsequently, the Applicant filed an application for post-conviction relief (PCR) on March 7, 2003. The Respondent made its return on May 16, 2005. The Applicant amended his application on December 2, 2005. An evidentiary hearing was held on December 12, 2005. The Applicant was present and represented by George McElveen, Esquire. Sabrina C. Todd, Esquire, represented the Respondent. By Order filed March 3, 2006, the Honorable Clyde N. Davis, Jr., denied and dismissed the application with prejudice.

On or about March 28, 2006, the Applicant filed a pro se Notice of Appeal. By Order of Dismissal dated June 1, 2006, the Supreme Court of South Carolina dismissed the Applicant's appeal due to failure of the Applicant to comply with the filing procedures. The Remittitur was issued on June 29, 2006.

Second PCR Application

Applicant subsequently filed a second PCR application on July 20, 2006. In it the Applicant made several claims of ineffective assistance of counsel and one claim of ineffective assistance of PCR Counsel for failure to file an appeal as requested. The State made its Partial Return and Motion to Dismiss on or about April 4, 2007. An evidentiary hearing was convened on November 20, 2008 on the sole issue of whether or not PCR Counsel failed to file an appeal as requested. The Applicant was present at

the hearing and represented by Jennifer Locklier, Esquire. Gregory Jones, Esquire, represented the Respondent. By order dated on or about December 5, 2008, the Honorable Thomas Russo denied the PCR Application but granted the Applicant a belated PCR Appeal. However, a belated PCR Appeal was never filed on the Applicant's behalf.

Current PCR Application

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

1. Ineffective assistance of counsel,
 - a. Failure to investigate
2. Violation of the interstate agreement on detainers act and extradition treaty.
3. Prosecutorial Misconduct
4. Conviction and sentence in violation of the federal and state constitution, 4th, 6th, 8th, 14th.
5. The trial court lack subject matter jurisdiction to try, or impose sentence.
6. Ineffective Assistance of Appellate Counsel
7. Ineffective Assistance of PCR Counsel
 - a. PCR Counsel failed to file appeal.

At the outset of the PCR Hearing, Respondent moved to summarily dismiss all the grounds in the PCR Application except the ground related to ineffective assistance of PCR Counsel for failure to file an appeal on the basis that the application was successive to prior applications and was filed outside the statute of limitations. This Court granted the Respondent's motion and heard testimony only on the issue of the belated PCR Appeal.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the

application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Appeal Issue

Applicant testified that after his first PCR Hearing, he requested that his PCR Counsel file a notice of appeal on his behalf. He asserted that this was not done, so he filed a pro se notice of appeal. He testified that he did not know the procedure, however, so his appeal was subsequently dismissed.

Applicant testified that this issue was addressed at his second PCR Hearing, where he was granted a belated PCR Appeal. Yet again, however, he testified that no one ever filed a notice of appeal on his behalf.

The State agrees that the Applicant is entitled to a belated Austin appeal. State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for... review** (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

The Court concludes that the Applicant is entitled to a belated review of the denial of his first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, Id. This Court notes that the Applicant will be treated as indigent for purposes of filing an Austin review. The South Carolina Office of Appellate Defense is directed to file the notice of appeal and represent the Applicant on appeal.

III. CONCLUSION

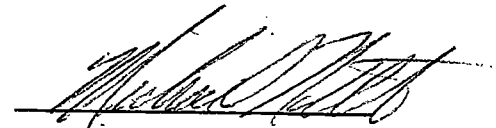
Based on the specific findings above, this Court concludes that all the Applicant's allegations be denied and dismissed, with the exception of his belated appeal, for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq., and because they are successive to his prior application.

This Court finds that the Applicant is entitled to a belated Austin review of his prior PCR.

As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE, EXCEPT THAT APPLICANT IS ENTITLED TO A BELATED DIRECT APPEAL.**
2. The Lexington County Public Defender's Office is to file the Notice of Appeal on the Applicant's behalf within thirty (30) days of service of this Order. Thereafter, the case is to be turned over to the South Carolina Office of Appellate Defense. The Applicant is directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 227 for the appropriate procedure for a belated appeal.
3. Applicant is to be given a copy of all relevant documents and transcripts.
4. The Applicant is remanded to the custody of the Respondent.



Michael G. Nettles
Presiding Judge
Eleventh Judicial Circuit

FLORENCE, South Carolina

APRIL 26, 2010.

1

V.

26, 2010, Judge Nettles issued an order denying the application but granting petitioner a belated review of the denial of his first PCR application pursuant to Austin. On May 12, 2010, petitioner filed a “Motion to Comply With Established Law and Civil Rules of Procedures Concerning Order Denying or Granting Applicant’s Motion to Alter or Amend Pursuant to Rule 59(e),” which was denied by order dated June 2, 2010. However, petitioner did not receive written notice of the denial of the motion until September 15, 2010. Thereafter, petitioner filed a pro se notice of appeal and the Commission on Indigent Defense, Division of Appellate Defense began representing him.

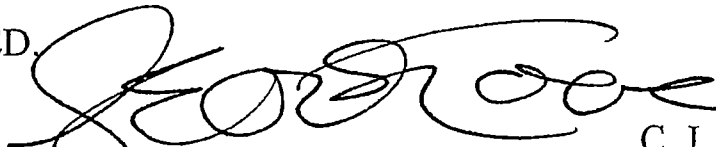
LaNelle Durant, petitioner’s counsel, has now informed the Court that the tapes from the hearing on petitioner’s first PCR application are no longer available and, therefore, a transcript cannot be prepared. Accordingly, Ms. Durant seeks a remand for reconstruction of the record. In the alternative, she requests a new hearing on his first PCR application.

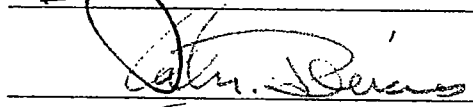
The State agrees that reconstruction of the record of the December 12, 2005 hearing on petitioner’s first PCR application is warranted in order for petitioner to receive an Austin review of the denial of that application. The State opposes Ms. Durant’s alternative request for a new PCR hearing as premature. The State also notes Judge Davis, who presided

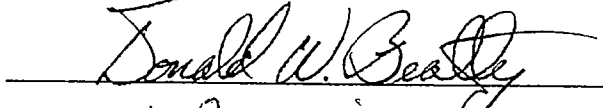
over the hearing on petitioner's first PCR application, has retired.

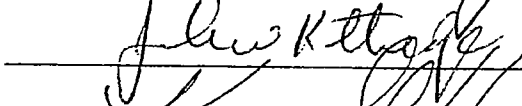
We find a remand for reconstruction of the record of the hearing on petitioner's first PCR application would be futile under the circumstances of this case. Accordingly, we hereby vacate the order of dismissal issued by Judge Davis, as well as the subsequent orders issued by Judge Russo and Judge Nettles, and remand for a new hearing on petitioner's first PCR application.

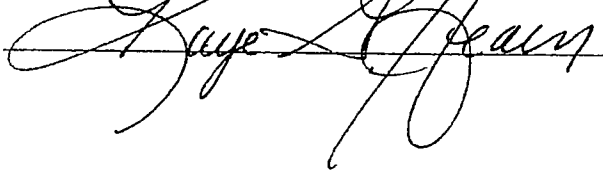
IT IS SO ORDERED.


C. J.


J.

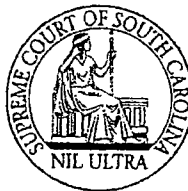

J.


J.


J.

Columbia, South Carolina

January 13, 2012



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

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January 30, 2012

REMITTITUR

The Honorable Beth Carrigg
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: Richardson, Willie v. The State – 2007-CP-32-00838

Dear Ms. Carrigg:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Daniel E. Shearouse
BS

CLERK

DES/jj

cc: Appellate Defender LaNelle C. DuRant
Assistant Attorney General Kaelon E. May

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS
3) No. 2003 CP 32 0927
4 WILLIE J. RICHARDSON.)
5 Applicant)
6 versus) TRANSCRIPT OF RECORD
7)
8 STATE OF SOUTH CAROLINA)
9 Lexington, South Carolina
10 January 22, 2014
11 BEFORE:
12 HONORABLE BRIAN M. GIBBONS, Judge
13
14 APPEARANCES:
15 For the Applicant: C. RAUCH WISE, Esq.
16
17 For the State: MARY S. WILLIAMS, Esq.
Asst. Attorney General
18 Reporter Present: CAROL M. THUEME
19
20 HARRIET P. BENNETT
21 Reporter, S. C. Court Administration
22 46 Regency Oaks Drive
Summerville, S. C. 29485
23
24
25

I N D E X

1

2

3

Direct-Redirect Cross-Recross

4

HERVERY YOUNG

5

By Ms. Williams

4-29

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By Mr. Rauch

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EXHIBITS

1

2

3 1 Funeral documents

4 2/7 Photographs

5

6

7 (TRANSCRIPTION NOTE: These Exhibits were set out on an
8 Exhibit sheet but were not formally introduced)

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1 (The within matter came before the Court for hearing
2 on January 22, 2014)

3 THE COURT: Okay, now on the record is the Willie
4 Richardson case.

5 MS. WILLIAMS: Yes, sir. The State would call Mr.
6 Hervery Young.

7 THE COURT: Come up and be sworn, sir.

8 HERVERY YOUNG,
9 being duly sworn, testified as follows:

10 CLERK: Please state your name for the record.

11 WITNESS: Hervery Young.

12 DIRECT EXAMINATION

13 BY MS. WILLIAMS:

14 Q: Mr. Young, how did you come to represent Mr. Young
15 in Court?

16 A. I was working at the Public Defender's Office in
17 Lexington. It was assigned to me.

18 Q. And was that in 1999, if you recall?

19 A. Yes.

20 Q. Okay, and are you still engaged in the practice of
21 law?

22 A. I am.

23 Q. And how long have you been practicing, sir?

24 A. At that time I had only been practicing for about
25 five years.

1 Q. And was Mr. Richardson also represented by another
2 attorney before that?

3 A. I don't recall but I think he may have had another
4 attorney prior to the Public Defender's Office getting
5 this case.

6 Q. Okay.

7 A. But as far as the Public Defender's Office, it was
8 initially assigned to me.

9 Q. Have you been called to testify before in this case?

10 A. Yes.

11 Q. You have testified before about this matter?

12 A. That's correct, yes.

13 Q. And at that hearing was there an investigator, a Mr.
14 McDougal?

15 A. . .

16 Q. Do you recall that?

17 A. Yes.

18 Q. Did you work with him on this case?

19 A. Yes. I worked with him on a number of cases as well
20 as this.

21 Q. Let me go straight to the point in this matter.

22 Mr. Richardson in his case presented alibi witnesses.

23 Tell me about the alibi witnesses in his case.

24 A. Pretty much from day one when I first met with Mr.
25 Richardson, he shared with me that he was not even in

1 South Carolina at that time when this murder had supposedly
2 taken place.

3 If my recollection is correct, I believe he was in
4 New York. I think he was originally from the New York
5 area.

6 He had went up to a funeral -- I think it was his
7 best friend's funeral who had passed away and, if I remem-
8 ber correctly, his best friend's birthday was a few days
9 before.

10 He had passed away and they had his funeral. Mr.
11 Richardson went up for the funeral. He flew -- it was
12 either Delta or (inaudible) Airways.

13 He was up there for a while and stayed up there for
14 a while because of a family party which occurred sometime
15 later, if I remember correctly.

16 I think either his sister and girlfriend -- there
17 were like two family members who had birthdays right there
18 together and they were celebrated at the same time, and
19 he stayed up there for that birthday party.

20 Q. I know it's been a while but do you still remember the
21 case?

22 A. Yes.

23 Q. And do you still have that file?

24 A. It should be in the possession of the Public Defender's
25 Office.

1 Q. Have they been able to locate it, to your knowledge,
2 at this point?

3 A. When I requested it about two years ago, they had
4 some chaos in their filing system and they were not able
5 to find that file and a number of other files.

6 Q. Okay. So you are going from your memory?

7 A. Yes.

8 Q. Did you present testimony from Mr. Richardson at the
9 trial?

10 A. On his behalf or from him?

11 Q. From him? Did he testify?

12 A. Yes, he testified.

13 Q. Anyone else testify?

14 A. His mother testified and there were one or two wit-
15 nesses who were up in the New York area. One was, I think,
16 a girlfriend, and the other one was, I think, his sister,
17 who basically -- she wasn't able to come, if I remember
18 correctly. I think she was having some financial problems
19 or just wasn't able to afford it.

20 So we were trying to get funds available to fly her
21 down and there was an issue as it relates to child case, I
22 think it was.

23 Q. Were they coming voluntarily or were they cooperative
24 with you?

25 A. They were cooperative as far as talking to us. The

H. YOUNG ON DIRECT

1 girlfriend -- I can't remember her name. I want to say
2 Graylyn or Gray.

3 Q. Gaylynn.

4 A. We were never able to actually locate her because Mr.
5 Richardson didn't have a lot of the contact information
6 personally.

7 So we relied on his mom who directed us to different
8 people. She gave us the address to the sister in New York
9 and the sister tried to locate the girlfriend.

10 The sister was the one who -- I wouldn't say she was
11 not cooperative but she was just adamant that she wasn't
12 able to come.

13 No one that was talked to in New York was coming vol-
14 untarily.

15 Q. Did you let the family know when the trial date was
16 set for April 10th or 17th?

17 A. . .

18 Q. Did you let them know?

19 A. The two people I was in contact with the most for
20 Mr. Richardson were his mother and his sister, and the
21 reason we were in contact with her was because we were
22 trying to arrange for her transportation. His mother we
23 spoke to frequently, and his mother spoke with the sister.

24 Q. Did you have any photographs or were they able to pro-
25 duce any photographs of this party?

1 A. I don't recall specifically whether we had any photos
2 or not. There was mention that there were some photos but
3 whether they were in our possession or not I don't know. I
4 believe he probably did mention some photos.

5 Q. Mr. Richardson also testified that he had prior to
6 this -- where he had presented some -- or was this a prior
7 crime where he had . .

8 A. Not that I recall. The only other crime that I re-
9 member us actively having to deal with was a federal
10 charge because he came down to South Carolina when he was
11 sent back to Virginia to deal with a charge. He came back
12 to South Carolina.

13 Q. Do you recall speaking to his younger brother about
14 being a witness at his trial?

15 A. I did not talk to him personally. There was a list
16 of people that we might have had to help with the alibi or
17 to establish he was at this birthday party I would have
18 given Dave McDougal. His sister was the one giving us
19 information on how we could contact a number of people that
20 I recall was supposed to be at this party. We were try-
21 ing to locate as many of them as possible.

22 Q. Do you recall having discussions with Mr. McDougal
23 about his progress in doing that?

24 A. Yeah, we had our . .

25 MR. RAUCH: I'm going to object to that, Your Honor.

1 THE COURT: I'm going to allow it.

2 A. We talked about the case on a regular basis in pre-
3 paring the case. The gist of the information that was re-
4 covered -- I don't recall who he talked to and things of
5 that nature, but the gist of it was that a number of peo-
6 ple were able to establish that Mr. Richardson was in New
7 York.

8 I think we had a few people from the funeral and I
9 think we had an obituary from the funeral. We had a few
10 people who could establish he was at the funeral and a few
11 people who could establish he was at the actual party.

12 The problem that we had was that we were not able to
13 establish that at the time of the actual incident whether
14 he was at the party or still at the party or whether he had
15 left at some point in time prior to -- I vaguely remember
16 that we went after the airline. We tried to subpoena re-
17 cords from the airline and try to establish he was on a
18 particular flight or that he was not on a particular flight.

19 Q. The airline did not cooperate with you?

20 A. No, they did not return anything to us.

21 Q. And did the alibi offer any explanation or information
22 about the vehicle used in South Carolina?

23 A. . .

24 Q. If you recall?

25 A. I don't recall as far as the alibi related to the

1 vehicle at all, no, sir. If I remember correctly, I think
2 that the vehicle was his father's vehicle and was supposed
3 to be parked at the -- at his grandmother's house, I be-
4 lieve, in Columbia.

5 While he was in New York he learned that the vehicle
6 was in a different location, I think in Prosperity -- I
7 think it was in Prosperity. Keys were found in that location.

8 That relates to that conversation while in that loca-
9 tion.

10 MS. WILLIAMS: If I may have a moment, Your Honor?

11 (Brief pause in the proceeding)

12 MS. WILLIAMS: I don't have any further questions.

13 THE COURT: All right.

14 CROSS EXAMINATION

15 BY MR. RAUCH .

16 Q. Mr. Young, this whole case consisted of one witness
17 who claimed to be a pretty good eye-witness, and two peo-
18 ple who were eye-witnesses whose testimony was bombarded
19 with problems?

20 A. Correct.

21 Q. And I believe you had Mr. McDougal interview the
22 strong eye-witness?

23 A. Correct.

24 Q. And as a result of that interview you learned to your
25 surprise, I guess, that Mr. Blocker now claimed to have

1 known Mr. Richardson? The eye-witness . .

2 A. That's correct, yes.

3 Q. And you remember that Mr. Richardson denied that and
4 denied it at trial?

5 A. Yes.

6 Q. And that eye-witness was used at trial sparingly?

7 A. Yes.

8 Q. And the description of the person who did the shoot-
9 ing was originally somewhat vague?

10 A. I thought it was inconsistent with the way Mr.

11 Richardson looked because he didn't look the way he looks
12 now at the time.

13 Q. Right, and the description was somewhat vague, gener-
14 ally a light-skin black male. Is that right?

15 A. I believe so.

16 Q. And there was no mention of his gold teeth?

17 A. Not that I remember. I brought it out.

18 Q. Which is very prominent on him?

19 A. Yes.

20 Q. All right, and you brought out that the police never
21 tested the DNA on the (inaudible)?

22 A. Right.

23 Q. And you brought out that with one change after the
24 other that one of the items given to the police that night
25 actually belonged to Ms. (Inaudible) of the five or six?

R. YOUNG ON DIRECT

1 A. I believe that's correct.

2 Q. And you asked where she was? You wanted to interview her?

3 A. Correct. The woman who was in the house.

4 Q. That was another thing you brought out?

5 A. Yes.

6 Q. And as a result of this, the things you brought out,
7 this jury stayed out for a while?

8 A. I believe so.

9 Q. In fact, they sent out a note that they were deadlocked?

10 A. I believe so.

11 Q. And the Judge gave them an Allen Charge?

12 A. I believe so.

13 Q. And they were out from like ten thirty in the morning
14 until four or so in the afternoon?

15 A. I believe that's correct.

16 Q. So it was a pretty close case?

17 A. Yes.

18 Q. And you talked to his mother about her testimony?

19 A. Yes.

20 Q. When did you talk to her?

21 A. The exact date I don't recall. It would have been
22 shortly before the trial.

23 Q. Okay.

24 A. Probably in the week or so before.

25 Q. And did she testify differently in the trial than she

R. YOUNG ON CROSS

1 told you in your interviews?

2 A. No, I think what she told me in our discussions was
3 pretty consistent.

4 Q. In her testimony, she testified that he was in New
5 York during the time this occurred?

6 A. I think so. I know there were two family members who
7 testified to that.

8 Q. That they were having a party in New York for those
9 two people?

10 A. Correct.

11 Q. And the party was the Monday or Tuesday, the week af-
12 ter this incident?

13 A. I'd have to rely on you . .

14 Q. But shortly after this incident?

15 A. Around the date of the incident, yes.

16 Q. And did you ever ask her where her other son is?

17 A. I don't recall if I would have asked her because I
18 was given a list of people who appeared at the party and
19 gave it to Dave McDougal and asked him to get the contact
20 information; talk to the mom and get contact information.

21 Q. The time of the trial was to be the 17th of April and
22 then they bumped it up a week?

23 A. I don't recall. It probably was.

24 Q. Okay.

25 A. I think it was because that was one of the issues with

1 the sister in New York; that she was available one time and
2 then there was a change in the schedule and she didn't have
3 funds to come this second time it was rescheduled or she
4 didn't have child-care.

5 Q. So she wasn't able to make it?

6 A. That's correct.

7 Q. Did you speak to the Judge about this and ask for some
8 assistance?

9 A. I don't recall but I don't think I did.

10 Q. Did you ever get any pictures of this party that they
11 had?

12 A. I don't recall if I had pictures or not.

13 Q. I show you Exhibits 2 through 6. Do you recognize Mr.
14 Richardson in those pictures?

15 A. He is in picture number three, picture number 6, pic-
16 ture number 4.

17 Q. Now, if you were told that those pictures were taken
18 at the party the weekend of this incident in South Carolina,
19 would it have been helpful in your defense?

20 A. Yeah, they would have been but -- excuse me. Did
21 you say the party in Columbia?

22 Q. No, that weekend that the incident occurred in South
23 Carolina.

24 A. Yeah, they would have been.

25 Q. And someone in New York could have gotten them to

R. YOUNG ON CROSS

1 you with information on when they were taken in New York.

2 Is that right?

3 A. That's correct.

4 Q. And someone could have gotten them here on a jet so
5 you could have used them in the trial, but that didn't hap-
6 pen, did it?

7 A. That's correct.

8 Q. The State led the jury to believe that he had got on
9 a plane and come back here earlier?

10 A. That's correct.

11 Q. That he was in town?

12 A. Correct.

13 Q. And did you have a conversation with a brother of Mr.
14 Richardson who lived at the time in California?

15 A. I think that is a brother who changed his name or . .

16 Q. That's correct.

17 A. I believe I did.

18 Q. Did you ever see him?

19 A. No, I never talked to him in person.

20 Q. Do you recall the name of the person beside the girl-
21 friend who was the reason for the party?

22 A. I don't recall which family member it was.

23 Q. Do you recall his mother testifying at the trial that
24 it was a sister?

25 A. I recall she testified it was a family member but I

1 can't recall who it was.

2 Q. Now, did you ever meet with Bernice Richardson?

3 A. I did not.

4 Q. When Ms. Richardson came to see you, was she by her-
5 self or with somebody?

6 A. When she came to Court?

7 Q. Then and any time?

8 A. I don't recall.

9 Q. Did you talk to her during the trial?

10 A. I did.

11 Q. Do you remember if she was with somebody?

12 A. No, not specifically.

13 Q. So you basically relied on someone else to sort of get
14 the names to you?

15 A. Well, Mr. Richardson gave me the name of people and he
16 then shared with me that he didn't know how to reach these
17 people, and I needed to contact his mother to get us the
18 contact information.

19 Q. You never got contact information from his mother
20 about Graylynn?

21 A. I'm not sure because Dave would have been the one to
22 get that information.

23 Q. But you understand that someone had taken pictures at
24 the party?

25 A. Yes.

R. YOUNG ON CROSS

1 Q. And like most birthday parties they took a lot of pic-
2 tures?

3 A. I guess, yes.

4 Q. Did you ever have a discussion with Mr. Richardson
5 about getting pictures?

6 A. I don't recall a conversation with Mr. Richardson
7 about pictures.

8 Q. Do you recall asking him about pictures?

9 A. No, I don't recall.

10 Q. You don't recall asking?

11 A. No.

12 Q. And you don't recall talking with Mr. Richardson about
13 contacting Graylynn?

14 A. Every time I talked with Mr. Richardson about getting
15 in touch with these people he told me to get in contact
16 with his mother to find out how to contact them.

17 Q. Okay.

18 A. He didn't have that information.

19 Q. Did you have conversations with his mother?

20 A. Yes, I had conversations with her, a few conversations
21 with his mother.

22 Q. Did you hear her testify she never had a conversation
23 with you?

24 A. I don't recall that.

25 Q. How long before the trial did you have a conversation

1 with her about her testimony?

2 A. At least a week or two before the trial we had a
3 conversation personally.

4 Q. His trial started April 17.

5 A. Yes.

6 Q. And the first time you met Mr. Richardson he ex-
7 plained to you that he was in New York?

8 A. Oh, yes, he maintained that.

9 Q. And he said it was a family get-together?

10 A. Yes, a funeral and a party.

11 Q. The party was soon after the funeral?

12 A. Yeah, I believe in a couple of weeks after the fun-
13 eral.

14 Q. So when you first met with him you knew about the
15 birthday party and about him being in New York?

16 A. Yes.

17 Q. Did you get a phone number for him or her mother?

18 A. Yes, he was the one who told us how to reach his
19 mother; that she had contact information.

20 Q. And then you got in touch with her in the next week
21 to ten days?

22 A. Me personally, I didn't then. Dave McDougal would
23 have been the one to reach and interview her.

24 Q. Okay.

25 A. To get from her what happened and contact information.

R. YOUNG ON CROSS

1 Q. And do you have his notes about all of that?

2 A. Yes, it's in the case file.

3 Q. All right.

4 A. The case file -- I believe it's missing now but pretty
5 much every single witness that he interviewed he did a writ-
6 ten report of that interview to me.

7 Q. We have some of them that he sent to Mr. Richardson,
8 but I don't think the reports are here of the witnesses in
9 New York. These are some of his reports, is that correct?

10 A. This one here -- this investigative report -- this is
11 my first time seeing this one from Dave. Of all the reports
12 he would have provided me, one would be this one here.

13 Q. But it appears as if the witnesses cooperated with him?

14 A. Yes, and most of his interviews with people out of
15 State would be by telephone. We had no funds for him to . .

16 Q. I figured that, but you say the file with the reports
17 from him would be in a file that's missing?

18 A. That's correct.

19 Q. Nothing further. Thank you.

20 THE COURT: Any Redirect?

21 MS. WILLIAMS: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MS. WILLIAMS:

24 Q. You said you had something you wanted to add.

25 A. I really don't know what I was going to say, but I

1 did want to mention that one of the questions that was raised
2 by Mr. Wise -- again, this thing was about twelve years ago,
3 and I remember that Mr. Richardson had dreds. In these pic-
4 tures he's not wearing dreds, and that may be just a faulty
5 recollection on my part.

6 But I remember about the time I was representing him, he
7 had dreds. So I just wanted to bring that out because I don't
8 know when these pictures would have been taken or anything.

9 Q. And you said you had asked for this file some two years
10 ago, your file from the case?

11 A. Yes. They couldn't locate it. They had the file --
12 they had an off-site storage facility where they maintained
13 all of their old files.

14 It is my recollection that they had some damage to the
15 storage unit or storage building or something and some files
16 were lost from what I understand.

17 MS. WILLIAMS: Nothing further.

18 MR. RAUCH: I have nothing further.

19 THE COURT: All right. You can step down.

20 (Witness excused from stand)

21 THE COURT: We're going to break for lunch at this
22 point in time.

23 MS. WILLIAMS: The State has nothing further.

24 THE COURT: Then you rest?

25 MS. WILLIAMS: We rest.

1 THE COURT: All right, do you have anything else?

2 MR. RAUCH: No, sir.

3 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing transcript was prepared from the records of Carol M. Thueme to the best of my ability, having been heard in the Court of Common Pleas for Lexington County on January 22, 2014.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the same.

June 23, 2016



1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS NONJURY

3
4 WILLIE J. RICHARDSON,)
5 APPLICANT,)
6 VS.)
7 STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)

TRANSCRIPT
OF
RECORD
2003-CP-32-0927

9
10 January 22nd, 2014
11 Lexington, South Carolina

12 B E F O R E:

13 THE HONORABLE BRIAN M. GIBBONS, Judge.
14

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

16 C. RAUCH WISE
17 ESQ.
18 Attorney for the Applicant

19 MARY WILLIAMS
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22 CAROL M. THEUME
23 Circuit Court Reporter

24
25 Transcribed by Pamela E. Green, Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	Applicant's Exhibits		
A-1	Documents		12
A-2	Photograph		14
A-3	Photograph		14
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1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>State's Exhibits</u>		
3				
4	S-1	Letter		30
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P R O C E E D I N G S

MS. WILLIAMS: Well, Your Honor, my name is Mary Williams. I'm representing the State in this matter and, as you see, this case is got a little, got a lot of paperwork with it. It's got quite a procedural history. If, if you don't mind, I'm gonna try to fill you in on that a little bit.

THE COURT: Now, is this part of this, what you just handed up?

MS. WILLIAMS: Willie Richardson's---

THE COURT: Okay.

MS. WILLIAMS: ---case.

THE COURT: I mean -- but none of -- this right up -- this is from yesterday.

MS. WILLIAMS: Okay. Then that---

THE COURT: That's the thing I took under advisement. That's from yesterday. Y'all can have those back. I've made decisions on those.

All right. I got it. Go ahead.

MS. WILLIAMS: This matter, this was -- this arises from a, a murder that occurred back in 1995, August 12th of -- 13th, night, of 1995. Mr. Richardson was not arrested for several years after that later in New York and he was not tried until 2000. He had some federal charges

1 prior to that murder trial being brought.

2 He had a direct appeal and that was dismissed in 2002.
3 This PCR, the 2003-CP-32-0927, actually was filed in March
4 of 2003 and there was a hearing on that in 2005 and an order
5 was issued dismissing that matter.

6 During that PCR hearing he had alleged ineffective
7 assistance of counsel in failing to call another witness for
8 alibi named Aletha Gaymon, some jurisdictional issues,
9 things of that nature. Unfortunately, there was not an
10 appeal filed on his behalf following the dismissal of that
11 PCR and he filed a second application in order to get his
12 belated direct, belated appeal.

13 Again, he was granted, he was granted the belated
14 appeal but that attorney also failed to file the appeal for
15 him. So, he had to file another application. By the time
16 that rolled around, the transcript of that first hearing
17 from 2005 was no longer available.

18 So, in January of 2012, the Supreme Court ordered us to
19 go ahead and have a new hearing on this matter so that there
20 would be a record from which they could review any decision
21 of the Court. They actually withdrew any of the prior
22 orders of dismissal even though I've included all of those
23 in your packet for your review in this matter.

24 This case was a jury trial. He was represented by
25 Hervery Young and presented an alibi defense. This was a --

1 arose from a shooting that was alleged to have occurred in
2 a, in a nightclub and there -- it was alleged that several
3 people arrived at the scene in a group of cars and that Mr.
4 Richardson was identified by, by some of those people as the
5 shooter in that matter and he presented an alibi defense at
6 his trial.

7 MR. WISE: I did not get involved until 2013. I'll put
8 that on the record quickly.

9 THE COURT: All right.

10 MS. WILLIAMS: Yeah, this, this thing has had a series
11 of continuances, new attorneys, delays to get witnesses.
12 I've got a detailed list of all those but I, I don't think
13 you need that in this case for it to be heard.

14 THE COURT: But what you're telling me, Ms. Williams,
15 is everybody's ready to go today?

16 MS. WILLIAMS: Yes, sir.

17 MR. WISE: That's---

18 THE COURT: Mr. Wise, everybody's ready to go today?

19 MR. WISE: That's what---

20 MS. WILLIAMS: For the most part. I'll throw one kink
21 in there.

22 I'll go ahead and let him know about Mr. McDougal.

23 MR. WISE: That's true. We have one -- as if there
24 could not be any more kinks in this case, one did arise.

25 THE COURT: Okay. What's that?

1 MS. WILLIAMS: The, the investigator, David McDougal,
2 was subpoenaed by me to come and testify today. He had
3 testified in the original PCR hearing back in 2005 and he
4 passed away last week.

5 THE COURT: Oh, goodness.

6 MS. WILLIAMS: Late last week, my understanding. So,
7 we are gonna make some efforts to get his file from this,
8 and we'll just see if there's anything that is admissible
9 and relevant.

10 I have a term of Court with you coming up in Lancaster.
11 We're gonna try to make that, if there's anything in that
12 file to add in there, given the late hour of when we learned
13 that Mr. McDougal had passed away. Mr. Wise has been very
14 kind to work with me on that in order to make -- to try to
15 get that rectified by the end of the term.

16 THE COURT: Okay.

17 MR. WISE: Mr. McDougal primarily interviewed local
18 witnesses and there may be we can just, you know, we can get
19 a synopsis of his file or get his file or whatever. I mean
20 the -- I haven't seen it either. Just -- I've seen portions
21 of it but not the whole thing.

22 MS. WILLIAMS: Yeah.

23 MR. WISE: So, we're gonna sit down and look through
24 the file and see what we can agree on.

25 THE COURT: I got it. In, in the transcripts I have up

1 here -- okay. Good. We actually have the transcript of the
2 trial.

3 MR. WISE: That's right.

4 THE COURT: Cause I was looking at the remand order and
5 it said we can't reconstruct the record. So, I'm doing the
6 initial -- I'm, I'm as if I'm in 2005.

7 MS. WILLIAMS: Yes, sir.

8 THE COURT: This is the initial PCR hearing.

9 MS. WILLIAMS: Yes, sir, that's correct.

10 THE COURT: Okay. Got it.

11 All right. Give me just a moment before we get
12 started.

13 (Pause.)

14 THE COURT: All right. I believe I'm ready.

15 Mr. Wise.

16 MR. WISE: I need to put one thing on the record.

17 They're -- in his original application for PCR, there's a
18 lot of allegations about jurisdictional issues like that.

19 In discussing this with Mr. Richardson, we -- we're
20 down to the issue of failure to investigate the case and
21 bring proper alibi witnesses to Court here in Lexington when
22 it was originally tried.

23 THE COURT: So, that's what we're---

24 MR. WISE: Yes, sir.

25 THE COURT: Failure to investigate, failure to alibi?

Willie Richardson - Direct examination
by Mr. Wise

1 MR. WISE: That's it in a nutshell.

2 THE COURT: All right. You may---

3 MR. WISE: All right.

4 THE COURT: You may proceed.

5 MR. WISE: All right. Call Mr. Richardson.

6 THE COURT: All right.

7 WILLIE RICHARDSON, being first duly
8 sworn, testified as follows:

9 THE CLERK: If you'll have a seat.

10 (Witness complies.)

11 THE CLERK: State your name for the record.

12 THE WITNESS: Willie Richardson.

13 DIRECT EXAMINATION

14 BY MR. WISE:

15 Q All right. Please give us your full name.

16 A Willie James Richardson.

17 Q All right. Let me see. If you can lean up and let
18 me---

19 A Okay.

20 Q There we go.

21 A Yeah.

22 Q There, there we go.

23 All right. Where are you from originally, Mr.
24 Richardson?

25 A Originally from Brooklyn.

Willie Richardson - Direct examination
by Mr. Wise

- 1 Q Brooklyn?
- 2 A New York, yes, sir.
- 3 Q All right. You've been charged with a murder that
- 4 occurred back on, I believe, August the 13th of 1995?
- 5 A Yes, sir.
- 6 Q All right. And who was your lawyer in that case?
- 7 A Hervery Young.
- 8 Q All right. I believe you originally had another lawyer
- 9 and then Mr. Young was your lawyer you actually went to
- 10 trial with?
- 11 A Yeah, I had Johnny Watson.
- 12 Q All right. And was Debra Chapman with you for a while?
- 13 A Yes, she's affiliated too --
- 14 Q All right.
- 15 A -- in this situation.
- 16 Q Okay. But the trial lawyer was Mr. Young?
- 17 A Yes, sir.
- 18 Q All right. Did you -- first of all, at the trial, what
- 19 was your, what was your defense at trial?
- 20 A Well, I was at a party the night the incident occurred.
- 21 Q And where was this party?
- 22 A In New York.
- 23 Q And what part of New York?
- 24 A In Brooklyn.
- 25 Q All right. Did you discuss this with Mr. Young or his

Willie Richardson - Direct examination
by Mr. Wise

1 investigator?

2 A Yes, sir.

3 Q All right. And did -- and then did you give him any
4 names of any family members that were there?

5 A Yes.

6 Q All right. Let's go back a little bit first and what
7 were you doing in New York originally at this time?

8 A I went to my friend's funeral.

9 Q You went to your friend's funeral.

10 I want to show you this and ask you if you recognize
11 these documents.

12 A Yes, sir.

13 Q And what are they?

14 A This is Bishop Moore (phonetic).

15 Q Okay. Is this the -- all right. All right. I'd like
16 to move to introduce these, Your Honor.

17 THE COURT: Any objections?

18 MS. WILLIAMS: No, Your Honor.

19 THE COURT: Without objection, introduced as
20 Applicant's 1.

21 MR. WISE: All right. Let's staple them together.

22 (WHEREUPON, the documents were marked as Applicant's
23 Exhibit No. 1 and received into evidence at this time.)

24 Q Do you know when he died?

25 A Yeah, around July 31st -- 21st in a car accident on

Willie Richardson - Direct examination
by Mr. Wise

1 the Brooklyn Bridge.

2 Q All right. Was he a close personal friend of yours?

3 A Yes, sir.

4 Q And how long had he been a close personal friend of
5 yours?

6 A A while. My whole life. Yeah, my life.

7 Q All right.

8 A For a long time.

9 Q All right. Did you go to New York for that funeral?

10 A Yeah.

11 Q All right. After that funeral, did you ever come back
12 to South Carolina?

13 A No, I only had a one way ticket.

14 Q All right. Now, did you discuss with Mr. Young why you
15 were in New York?

16 A Yeah.

17 Q All right. Now, on the night this event occurred,
18 where -- you testified in the trial.

19 where were -- where did you testify you were at in the
20 trial?

21 A Yeah, I was at a birthday party for my brother and my
22 sister and my nephew.

23 Q All right. And do you remember the date of that party?

24 A Yeah, it was the night of the 12th --

25 Q All right.

Willie Richardson - Direct examination
by Mr. Wise

1 A -- going into the 13th.

2 Q All right. I hand you these pictures and ask you if
3 you recognize those.

4 Have you seen them before, haven't you?

5 A Yes.

6 Q All right. What are those?

7 A Those pictures of my nephew, Kindell. That's my mother
8 right there.

9 Q All right. Where were those pictures taken?

10 A They was at my sister house.

11 Q In where?

12 A In Brooklyn.

13 Q All right. And what party were they taken at?

14 A That was taken at they party the night of the 12th.

15 MR. WISE: All right. Like to introduce these
16 pictures, Your Honor. I've shown the State copies of them.

17 MS. WILLIAMS: Yes, Your Honor. Without objection.

18 THE COURT: All right. Without objection, introduced.

19 MR. WISE: And these would have to be individual.

20 THE COURT: Okay. Y'all give her some time to mark
21 them. Introduced as Applicant's next in order.

22 THE COURT REPORTER: Two through six, judge.

23 THE COURT: Two through six.

24 (WHEREUPON, the photographs were marked as Applicant's
25 Exhibit Nos. 2 through 6 and received into evidence at this

Willie Richardson - Direct examination
by Mr. Wise

1 time.)

2 Q I want to show you two through six, Exhibits 2 through
3 6.

4 A Okay.

5 Q All right. How did you get those pictures?

6 A How?

7 Q Well, let me -- first of all, when did you get them?

8 A Well, are you, are you questioning me about---

9 Q You need to move forward a little bit.

10 A You questioning me and it says it has to be some
11 pictures.

12 Q Uh-huh. (Affirmative).

13 A I remember it and I was trying to block myself from my
14 picture when I walked in the door. Somebody was taking a
15 picture of me --

16 Q All right.

17 A -- and I raised my arm.

18 Q All right. And I show you Applicant's Exhibit, Exhibit
19 4.

20 Is -- who's in that picture?

21 A That's me.

22 Q All right. Is that the picture you were just referring
23 to?

24 A Yes, sir.

25 Q Were those pictures available in the Year 2000?

Willie Richardson - Direct examination
by Mr. Wise

1 A It could of been. They ain't no, ain't no -- it wasn't
2 whereas he, he, he even questioned me pertaining to nothing.

3 Q All right.

4 A I only seen him one time.

5 Q All right. You saw his investigator a couple of times?

6 A Yeah, I seen her three times.

7 Q All right.

8 A She came. She seen me about -- asking me for
9 discovery.

10 Q Uh-huh. (Affirmative).

11 A And then I gave her what I had and then she said that
12 wasn't all the discovery. Then she said she came back and
13 said they got the discovery and that was about it.

14 Q All right. But in your discussions with Mr. Young and
15 his investigator, what did you told (sic) them about where
16 you were?

17 A I told them I was at the party.

18 Q All right. Did they ever get an address from you for
19 any of your relatives?

20 A Well, he ain't believe -- he ain't -- he came to see me
21 like right before but I know he sent me a letter telling me
22 the trial was on the---

23 Q We're gonna get to that in a second.

24 A All right.

25 Q But did, did you -- did he ever get any information

Willie Richardson - Direct examination
by Mr. Wise

- 1 from you about an address for your relatives?
- 2 A No.
- 3 Q All right.
- 4 A It wasn't --.
- 5 Q Now, originally, this trial was to be tried when?
- 6 A On April 17th.
- 7 Q All right. Had you contacted some of your family
- 8 members about coming down?
- 9 A Yeah, when I got the letter, I informed my family that
- 10 the trial was on the 17th.
- 11 Q All right. And what happened to the 17th trial date?
- 12 A The 17th, when I -- when I had called home, they was
- 13 telling me that he had a call and that the trial was on the
- 14 10th.
- 15 Q Uh-huh. (Affirmative).
- 16 A And I was like, hu huh. I said y'all got it wrong. He
- 17 must don't know what he's talking about.
- 18 Q Uh-huh. (Affirmative).
- 19 A I got the letter right here.
- 20 Q All right. So, what happened -- when was the trial
- 21 actually held?
- 22 A Held on the 10th.
- 23 Q All right. Were all your witnesses able to get down
- 24 here on the 10th?
- 25 A No.

Willie Richardson - Direct examination
by Mr. Wise

- 1 Q All right. Who testified at -- on your behalf at the
2 trial in -- that started April the 10th?
- 3 A My mother.
- 4 Q Your mother?
- 5 A Yeah.
- 6 Q All right.
- 7 A She was the only one could make it.
- 8 Q Was anybody else down here that night?
- 9 Well, tell -- was anybody else down here that -- is
10 your mother in the courtroom?
- 11 A Yes, she right back there.
- 12 Q All right. Was anybody else sitting next to your
13 brother?
- 14 A Yeah, my brother was here. He was young.
- 15 Q All right.
- 16 A He was younger. He was here too.
- 17 Q He was in Lexington?
- 18 A Yes, sir.
- 19 Q He came down with, with your mother?
- 20 A Yes, sir.
- 21 Q Was your brother -- is your brother in any of these
22 pictures?
- 23 A Yes, sir.
- 24 Q Are they -- well, let me get the ones I dropped.
- 25 A All right.

Willie Richardson - Direct examination
by Mr. Wise

- 1 Q All right. where is your brother in this?
- 2 A He dancing with my son.
- 3 Q All right.
- 4 A That's my son.
- 5 Q So, I'm showing you Applicant's Exhibit 2 and that's
- 6 your brother in that picture?
- 7 A Yes.
- 8 Q All right. And your brother's out here in, in the
- 9 brown sweater?
- 10 A Yes, sir.
- 11 Q All right. was your brother ever called as a witness?
- 12 A No.
- 13 Q Do you know why he wasn't called as a witness?
- 14 A well, he ain't never get to talk pertaining to
- 15 preparing the, the defense.
- 16 Q Uh-huh. (Affirmative).
- 17 A All he know about -- he gave me our date that -- he was
- 18 ready for the 17th. Everybody was ready.
- 19 Q Uh-huh. (Affirmative).
- 20 A From me talking to them, I had the letter already
- 21 informing my family. I had the letter way before the, the
- 22 trial date. About like eight to ten days before the trial I
- 23 called home. He talking about the trial is on the 10th.
- 24 Q Was there any, was there any motion made by, by
- 25 Mr. Young to continue the case to get your witnesses here?

Willie Richardson - Direct examination
by Mr. Wise

1 A No.

2 Q All right. And do you think he should of made a motion
3 to continue?

4 A Yes.

5 Q All right. This jury stayed out, you know, about how
6 long?

7 A Yeah, they was, they was taking they time. They wanted
8 more information or whatever, you know. It seemed like it
9 was -- they was skeptical of what was presented to them.

10 Q All right.

11 A But they needed -- my people would of been there, I
12 felt they would of seen the reality of the situation. It
13 would of been a thorough investigation pertaining to my
14 case.

15 Q All right. Did the jury ever say anything about not
16 being able to reach a verdict?

17 A Yeah, they, they came -- I think they went out like and
18 called them back about two times or something.

19 Q All right. Do you think that, if your family members
20 had been here and these pictures had been introduced and the
21 information about why you were in New York had been
22 introduced, it would of had an impact on the jury's
23 decision?

24 A Yeah.

25 Q And why is that?

Willie Richardson - Direct examination
by Mr. Wise

1 A Cause they would of seen the truth and reality of where
2 I was at.

3 Q All right. Now, the original description of you by the
4 people involved or the original description of the person
5 that did the shooting by the people involved, how specific
6 was it?

7 A They say that the person had brown hair. In the
8 description, the guy had tattoos. I don't got none of that.

9 Q All right. But you have tattoo?

10 A I got one.

11 Q All right. Can you see your tattoo when you're wearing
12 a short sleeve shirt?

13 A You can't even see it when I lift my arm up on the
14 picture.

15 Q All right. Let's look back at that picture again on
16 State's (sic) Exhibit 4.

17 All right. The tattoo is on which arm?

18 A Right here on my left arm.

19 Q Your left arm?

20 A Yes, sir.

21 Q All right. Can that tattoo be seen with that t-shirt
22 on?

23 A No.

24 Q All right. Did the person, one of the witnesses, say
25 that whoever did the shooting had a tattoo?

Willie Richardson - Direct examination
by Mr. Wise

- 1 A He said the man had tattoos.
- 2 Q Tattoos, pleural?
- 3 A Yeah, the only way they got my tattoo, they had stun
- 4 gunned me, stripped my clothes off, to see the tattoo on my
- 5 arm.
- 6 Q All right. Now, do you have any other attribute that's
- 7 kind of noticeable for people right away?
- 8 A Yes, Raheem.
- 9 Q All right. Do you have any other features about your
- 10 person that is noticeable right away to someone who sees,
- 11 sees you?
- 12 A Yeah.
- 13 Q What is that?
- 14 A My gold teeth.
- 15 Q And how long have you had those?
- 16 A Since 1979.
- 17 Q All right. I hand you this old picture and I'm sorry.
- 18 I don't have a copy of this for you.
- 19 MS. WILLIAMS: That's okay.
- 20 MR. WISE: But it is---
- 21 MS. WILLIAMS: All right.
- 22 MR. WISE: I got it to show the gold teeth.
- 23 When was this picture taken?
- 24 A 19 -- 1990.
- 25 Q All right. And does it show your gold tooth?

Willie Richardson - Direct examination
by Mr. Wise

1 A Yeah.

2 Q All right.

3 A And that's my friend next to me that passed away.

4 Q All right. Which one?

5 A With the---

6 Q In the yellow?

7 A Yes, sir.

8 Q Okay.

9 THE COURT: Any objection to that photograph?

10 MS. WILLIAMS: No, Your Honor.

11 THE COURT: All right. Without objection, introduced
12 as next in order.

13 (WHEREUPON, the photograph was marked as Applicant's
14 Exhibit No. 7 and received into evidence at this time.)

15 Q Did anybody ever describe the person that did the
16 shooting as having gold teeth?

17 A No, sir.

18 Q From the testimony at the trial and that the people who
19 worked at the club that testified, did they have an
20 opportunity to be close to the person who did the shooting?

21 A They said they was three feet away from him.

22 Q All right. And did they said (sic) they talked to him?

23 A Yeah.

24 Q All right. But no one said anything about the gold
25 teeth?

Willie Richardson - Direct examination
by Mr. Wise

- 1 A Nope.
- 2 Q Also, in the trial, when they described you in 2000 at
- 3 the trial, how did they describe your weight at that point?
- 4 A They said I gained weight.
- 5 Q You gained weight?
- 6 A Yeah.
- 7 Q And had you, in fact, gained weight?
- 8 A No, I lost.
- 9 Q You lost.
- 10 A About 30 pounds.
- 11 Q All right. Now, during your meetings with Mr. Young --
- 12 I mean he obviously put your mother on the stand?
- 13 A Yes.
- 14 Q And she testified about the party?
- 15 A Yes.
- 16 Q All right. He never asked you about finding any
- 17 pictures or anything?
- 18 A No.
- 19 Q Is it something that you thought about?
- 20 A My head was messed up the way that that Virginia case
- 21 situation---
- 22 Q Right.
- 23 A ---happened after they extradited me all the way to
- 24 South Carolina---
- 25 Q Right.

Willie Richardson - Direct examination
by Mr. Wise

1 A ---and took me to Virginia five weeks later and, and
2 my, my, my mentality was---

3 Q All right. When was the first time you thought about
4 getting the pictures that may of been taken that night?

5 A If you wouldn't of never said nothing, I wouldn't of
6 never thought about it.

7 Q All right. And that was sometime last year---

8 A Yes.

9 Q ---when we met?

10 A Yes, sir.

11 Q Isn't that correct?

12 All right. Thank you. Answer any questions the State
13 may have.

14 THE COURT: Ms. Williams.

15 CROSS-EXAMINATION

16 BY MS. WILLIAMS:

17 Q Mr. Richardson, you represented yourself for a time in
18 this, in this experience.

19 Is that correct?

20 A You talking about as far as in the, in the, in the
21 county?

22 Q Yes, sir.

23 A Yes.

24 Q And you submitted a list of alibi witnesses during that
25 time.

Willie Richardson - Cross-examination
by Ms. Williams

1 Is that correct?

2 A Yeah, I just put a bunch of names down there. I
3 just -- I was just putting names down there.

4 Q Was it three names?

5 A It was---

6 Q Your mother, Ms. Richardson.

7 A It was a bunch of names.

8 Q Okay.

9 A I just putting names down there. I tell you, I ain't
10 even in the right state of mind when I was doing that.

11 Q I'm gonna show you a piece of paper. This is with the
12 General Sessions paperwork.

13 May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 A Yeah.

16 Q And can you tell me, is that -- does that look like
17 something you might of filed while you're representing
18 yourself?

19 A Yeah.

20 Q Yeah. You listed---

21 A This looks like something---

22 Q ---three, three individuals there?

23 Your mother?

24 A Yeah.

25 Q And then probably, I believe, Aletha, A-L-E-T-H-A,

Willie Richardson - Cross-examination
by Ms. Williams

- 1 Gaymon, G-A-Y-M-O-N.
- 2 Is that correct?
- 3 A Yeah.
- 4 Q And then Mrs. Coles, C-O-L-E-S?
- 5 A Yeah.
- 6 Q Okay.
- 7 A It's another this too with a bunch of names on it too.
- 8 Q Okay. But those names weren't given to the Court?
- 9 You didn't give any additional names of your other
- 10 family members?
- 11 A And then -- I mean you tell by the way my handwriting
- 12 and all that, that ain't even my handwriting, ma'am. I was
- 13 dodging at the time. I mean what I already go through, I
- 14 went through this federal situation when I'm expecting to go
- 15 through this situation. My mind, it gave me a life
- 16 sentence. They ain't -- my brain been going.
- 17 Q Okay. And you found out about your trial being on the
- 18 10th from your family members?
- 19 A Yeah.
- 20 Q Did they find out from your attorney?
- 21 Do you have any idea?
- 22 A Yeah, when I called them they say he called --
- 23 Q Okay.
- 24 A -- and told me it's gonna be on the 10th, it's like
- 25 eight to ten days to the 10th.

Willie Richardson - Cross-examination
by Ms. Williams

1 Q Okay.

2 A And I'm like -- I'm telling nah, I got the letter. The
3 trial's on the 17th. It's not on the 10th. He don't --
4 he must be busy. He got it mixed up.

5 Q Okay. Back in 2005, when you had a PCR hearing, did
6 you talk then about additional alibi witnesses?

7 A With that -- for that, I ain't even talk to the lawyer
8 but one time. I told him the same situation. He telling me
9 a whole 'nother situation. That's why the situation
10 occurred at the thing. We didn't -- it wasn't even
11 preparations for that PCR then. We ain't even talk one time
12 and then I found out that he actually use to be a prosecutor
13 that I had prior endeavor with me and he shouldn't of never
14 had no busy endeavors period.

15 Q You had that case continued several times though
16 notifying witnesses.

17 Is that correct?

18 A I had continuance?

19 What case?

20 Q The PCR case, in 2005, when you had the hearing.

21 A I had PCR case was when, one time, when he came on
22 board and the next time they did the hearing. We ain't have
23 nothing -- well, that -- the continuance, because they was
24 taking the appointed attorney or the attorney that was hired
25 to go over and the next time to him was called. It wasn't

Willie Richardson - Cross-examination
by Ms. Williams

1 no other continuances. It wasn't a bunch of continuances.
2 It wasn't even time to prepare. He just took me to Court
3 the next time right after that.

4 Q Were you in touch with, with David McDougal?
5 Was he your investigator?

6 A McDougal?

7 Q Uh-huh. (Affirmative).

8 A Yeah.

9 Q I'm gonna show you a letter from Mr. McDougal dated in
10 November of 2005 with some attachments. I want to see if
11 you remember receiving this from him.

12 A I---

13 Q And please take your time to look through that. I'm---

14 A Yeah, I remember this.

15 Q Those were all items that you received from him?

16 A Yeah.

17 MS. WILLIAMS: Your Honor, I would move that into
18 evidence as State's Exhibit No. 1 for---

19 THE COURT: All right. Any objection?

20 MR. WISE: No objection, Your Honor.

21 THE COURT: Without objection.

22 MS. WILLIAMS: If I could---

23 THE COURT: State's 1.

24 MS. WILLIAMS: Thank you, Your Honor.

25 Now, you testified at trial---

Willie Richardson - Cross-examination
by Ms. Williams

1 THE COURT REPORTER: Just a minute. Please just a
2 minute.

3 MS. WILLIAMS: Oh, I apologize.

4 (WHEREUPON, the letter was marked as State's Exhibit
5 No. 1 and received into evidence at this time.)

6 THE COURT REPORTER: Okay.

7 A Did I testify at trial?

8 Q I'm just making---

9 A Yes. Yes.

10 Q I'm sorry.

11 A Sorry.

12 Q No, you're fine.

13 A I thought you was continuing.

14 Q Yeah, I was waiting on the court reporter and I
15 apologize.

16 You, you told the jury about your teeth?

17 A Yes.

18 Q And you told the jury about the tattoo on your arm?

19 A Yes.

20 Q Okay. You told the jury about when you went to New
21 York.

22 Is that correct?

23 A Yes.

24 Q You told the jury about Mr. Lucas and how he couldn't
25 really know about your case?

Willie Richardson - Cross-examination
by Ms. Williams

1 A Yes, and he -- it's, it's evident that he saying
2 that -- if you saying that I suppose to had went and the
3 case suppose to happened in the same day that the funeral
4 was, just picking conversation when I'm on the phone telling
5 my family that I flew to New York for a funeral but true. I
6 mean, you know, of your own story beyond that and they ain't
7 even in the same date. It ain't even the same thing.

8 It was just you, you made up a whole new story and I --
9 and my cousin signed a book for me and all that.

10 why you lying?

11 And this happened in July 24th and the, and the
12 situation, we talked on August 12th but you saying
13 something about I suppose to had somebody sign a book and I
14 went back to South Carolina and all that, and then that
15 situation suppose to happen that night. I mean he got time
16 cuts for it. So --.

17 Q Now, did you ever ask Mr. McDougal to contact any of
18 your alibi witnesses?

19 A Mr. McDougal, I was asking McDougal to thoroughly
20 investigate the case and to talk to these people or whatever
21 but I really was, like I say, I was in a methodic state. It
22 was like listen, you don't know what you doing. He say you
23 might as well just have somebody represent you and I said
24 all right and that's what I did. I took his advice.

25 Q Okay. So, was there another investigator involved in

Willie Richardson - Cross-examination
by Ms. Williams

1 this case other than him?

2 There was -- you had -- Mr. Young was your attorney?

3 A Yeah.

4 Q And Mr. McDougal that helped you. You mentioned a she
5 who brought some papers to you.

6 Was there someone else?

7 A Lisa Williams.

8 Q Lisa Williams?

9 A Yes.

10 Q All right. Were you surprised that Mr. McDougal denied
11 that you'd asked him to look into the alibi before?

12 A Well, Mr. McDougal, he ain't -- I don't, I don't even
13 really vaguely remember. I know he, he went and questioning
14 Currie Blocker. Currie Blocker told him a whole different
15 story that he knowed me, was out with me, partied with me,
16 and all that but it's a whole different story then what you
17 telling the jury.

18 I mean these people got criminal situations going on
19 and now they testifying against me. They got a purpose.
20 They got burglary, you got crack charges, and, and two of
21 them got two other sentences and he going home and before
22 three. Come on. That don't make sense. That's to put me
23 back in for something I ain't do.

24 Q You had -- were -- these photographs that you have
25 today, were they available in 2005?

Willie Richardson - Cross-examination
by Ms. Williams

1 A In 2005?

2 Ain't no attorney never, ever asked me about no
3 pictures or nothing. They only when, when, when Mr. Wise
4 asked me about it, and I don't normally take pictures, but I
5 say I remember a picture when I walk through the door. And
6 I raise my arm and the other pictures I'm in, I really
7 didn't even remember them. I remember that one cause I try
8 to put my arm up and that's when I remember when I walked
9 through the door at that point and I told him.

10 Q And, and you knew who the people at the party were all
11 along though, right?

12 A Yeah, of course. I'm spending my time. I just lost
13 one of the closest friends in my life, and that let me know
14 that that's something valuable that I got to cherish with my
15 family and stay closer with my family. And they had they
16 party going on and I'm gonna make sure I was gonna be there
17 for that.

18 MS. WILLIAMS: Beg the Court's indulgence for just a
19 moment, Your Honor.

20 THE COURT: Okay.

21 (Pause.)

22 MS. WILLIAMS: I think that's all I have, Your Honor.

23 MR. WISE: Just a couple questions---

24 THE COURT: Yes, sir.

25 MR. WISE: ---on redirect.

Willie Richardson - Redirect examination
by Mr. Wise

1 REDIRECT EXAMINATION

2 BY MR. WISE:

3 Q The, the PCR attorney you've had in 2005---

4 A Yeah.

5 Q ---do you know if he read the transcript?

6 A Did he read it?

7 Q Right.

8 Do you know if he read it?

9 A I don't think so.

10 Q Okay. If, if the transcript were available to him,
11 would he know where you were that night?

12 A Yes.

13 Q All right. Did he ever ask you who else was there, how
14 to get in touch with anybody, anything like that?

15 A No.

16 Q Did he ever ask you at all about what other alibi
17 witnesses were available?

18 A No.

19 Q Okay. Thank you.

20 Oh, and Mr. McDougal, the exhibit with Mr. McDougal---

21 A Right here.

22 Q Yeah. Right here.

23 A Yes, sir.

24 Q He's got some statements in there I believe from some
25 witnesses?

Willie Richardson - Redirect examination
by Mr. Wise

1 A Yes.

2 Q Were all those witnesses in the Columbia area,
3 Lexington area?

4 A Yes, I guess so.

5 Q Okay. As far as you know, he didn't interview any
6 witnesses outside of the Columbia area?

7 A No.

8 Q Okay. Thank you.

9 THE COURT: All right. Thank you, sir. You can step
10 down.

11 THE WITNESS: Okay.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. WISE: Call Ernest Richardson.

14 THE COURT: Hand, hand me all that evidence.

15 ERNEST RICHARDSON, being first duly
16 sworn, testified as follows:

17 THE CLERK: If you'll have a seat.

18 (Witness complies.)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Yes, ma'am, my name is Ernest Calhoun
21 Richardson.

22 DIRECT EXAMINATION

23 BY MR. WISE:

24 Q Okay. Mr. Richardson, where do you live?

25 A Brooklyn, New York.

Ernest Richardson - Direct examination
by Mr. Wise

- 1 Q And what kin are you to Willie James Richardson?
- 2 A That's my brother.
- 3 Q All right. Older brother, younger brother, what?
- 4 A Older than me. Seventeen years older than me.
- 5 Q Seventeen years older than you are.
- 6 All right. Let me ask you a question real quick then.
- 7 How long has he had gold teeth?
- 8 A Before I was born.
- 9 Q Okay. Were you in Lexington in 2000 for this trial?
- 10 A Yes.
- 11 Q How did you come down?
- 12 A With my parents. With my mom.
- 13 Q Your mother?
- 14 A Yeah.
- 15 Q All right. And were you there for the whole trial?
- 16 A Yeah.
- 17 Q All right. Did you, did you watch your mother testify?
- 18 A Yes.
- 19 Q Did you ever talk to the lawyer involved?
- 20 A No.
- 21 Q Mr. Young?
- 22 A Yeah, I think that's his name, yeah.
- 23 Q All right. You never talked to him?
- 24 A No, not really.
- 25 Q And do you remember, summary wise, as far as the night

Ernest Richardson - Direct examination
by Mr. Wise

1 of August the 12th into the 13th, do you remember your
2 mother testifying where your brother was?

3 A Yeah.

4 Q And where was that?

5 A At the, at the birthday party in Brooklyn.

6 Q All right. And did she mention any relatives that were
7 there?

8 A Yeah, my sister, me.

9 Q Okay. Now, did you subsequently get a call, I can't
10 remember whether I called you or Mr. Richardson called you,
11 about finding any pictures?

12 A Yeah.

13 Q And did -- were you able to find any pictures of that
14 party?

15 A Yes.

16 MR. WISE: All right. Where are the pictures?

17 THE COURT: I'm up here looking at them.

18 MR. WISE: Okay.

19 THE COURT: Here you go. They're all there.

20 Q All right. I'm gonna show you Applicant's Exhibits 2
21 through 6.

22 All right. If you'd look at those.

23 Where were those pictures taken?

24 A This is my sister's house.

25 Q All right. And when were they taken?

Ernest Richardson - Direct examination
by Mr. Wise

- 1 A Back in August.
- 2 Q Of what year?
- 3 A I think '95 or something like that.
- 4 Q Okay. Is that the party that your mother was referring
- 5 to---
- 6 A Yes.
- 7 Q ---in her testimony?
- 8 A Yes, this is it.
- 9 Q Are you in those pictures?
- 10 A Yeah, I am.
- 11 Q All right. Which one?
- 12 A That's where I am.
- 13 Q All right. And that's referring to Applicant's 2.
- 14 Is that correct?
- 15 A Yeah, that's me.
- 16 Q All right. Is your mother in one of those pictures?
- 17 A Yes, she's here---
- 18 Q All right.
- 19 A ---in the red shirt.
- 20 Q And that is?
- 21 A This picture right here.
- 22 Q All right. And show the Court where your mother is in
- 23 that picture if you could.
- 24 A Right here in the red shirt.
- 25 Q All right. In the red shirt?

Ernest Richardson - Direct examination
by Mr. Wise

1 A Yeah.

2 Q And that's Applicant's 5.

3 Is that correct?

4 A Yes, sir.

5 Q Is there any doubt in your mind that -- and I believe
6 your brother's in those pictures too?

7 A Yes.

8 Q Okay. And this was a birthday party for whom?

9 A For Kindell. Well, for really all of them, but Kindell
10 was the, the baby.

11 Q All right. And what about your other brother?

12 A Yeah, Greg. They all born around the same time, the
13 14th, the 15th, and the 16th.

14 Q All right. Was he there at that party also?

15 A I don't think so. I can't remember.

16 Q Okay. He's not in the pictures?

17 A No.

18 Q Okay.

19 A He never been though. Not just---

20 Q Huh. We'll let him testify.

21 A Okay.

22 Q All right. So, you were in Lexington, correct?

23 A Yes, sir.

24 Q If someone had asked you to bring those pictures to
25 Lexington in 2000, could you have done it?

Ernest Richardson - Direct examination
by Mr. Wise

1 A Probably so, yeah.

2 Q All right. If you'd find them in 2013, you think you
3 could of found them in 2000?

4 A Yeah.

5 Q All right. When did you -- did you subsequently learn
6 that your brother had been accused of a murder in, in South
7 Carolina?

8 A Yeah.

9 Q All right. Do you know why he came to, to New York at
10 that period of time?

11 A Saquan had had an accident on the bridge and died.

12 Q Who was that?

13 A That's like his best friend.

14 Q All right. Mr. Moore?

15 A Yeah.

16 Q All right. Called Little Greg?

17 A Yeah, Little Greg.

18 Q Okay. From the time he got there for that funeral, do
19 you know if he left New York?

20 A No, he didn't, he didn't leave.

21 Q I mean did you see him everyday?

22 A Not really everyday but he came, you know, he came
23 around.

24 Q Okay.

25 A He was -- he wasn't -- it was, it was hurtful for him,

Ernest Richardson - Direct examination
by Mr. Wise

1 you know. So, he stayed with the family and---

2 Q Okay.

3 A ---stuff like that.

4 Q All right. And you got to spend some time with him?

5 A Yeah.

6 Q All right. I didn't ask you this originally but how
7 far did you go in school?

8 A A year and a half in college in computer applications.

9 Q Uh-huh. (Affirmative).

10 All right. And where are you employed?

11 A Right now, I'm ten years. I'm salary manager,
12 assistant store manager, for Home Depot.

13 Q For Home Depot?

14 A Yeah.

15 Q In Brooklyn?

16 A Yeah.

17 Q All right. And how long you been doing that?

18 A Ten years now.

19 Q All right. Is there any doubt in your mind that --
20 where your brother was on that night of the 12th, 13th?

21 A No, there's no doubt.

22 Q All right. After looking at those pictures, do they --
23 what do they do as far as refreshing your memory or
24 confirming?

25 A Refreshing, confirm it, everything. Just, just a good

Ernest Richardson - Direct examination
by Mr. Wise

1 time that we had. You know, just a family -- the family
2 birthday.

3 Q Okay. All right. Thank you. Answer any questions the
4 State may have.

5 THE COURT: All right. Ms. Williams.

6 CROSS-EXAMINATION

7 BY MS. WILLIAMS:

8 Q Mr. Richardson, can you tell me how -- are you sure
9 that the party was the night of the 12th---

10 A Yes.

11 Q ---to the 13th?

12 Okay. Why are you sure about the date?

13 A Because it was -- I believe it was a Saturday and their
14 birthdays are 14, 15, 16. So, you generally celebrate it
15 before. We didn't, you know, want to wait until that next
16 weekend.

17 Q And you mentioned that your brother was visiting in New
18 York.

19 Was he staying with you or --?

20 A No, he was -- I don't know where he was staying but---

21 Q All right.

22 A Yeah, he was there. I just don't know where he was
23 staying.

24 Q Okay. So, you didn't see him every day?

25 You just kind of---

Ernest Richardson - Cross-examination
by Ms. Williams

1 A Periodically.

2 Q He, he visited regularly?

3 A Periodically he came around from time to time.

4 Q Do you know who took the photographs of the party?

5 A No, not really, no.

6 Q Did he have a car, your brother, when he was in New
7 York, any kind of vehicle to get around?

8 A I don't remember. He, he might.

9 Q That's okay if you don't know.

10 A Yeah, I don't remember.

11 Q Okay. Do you know how he got to New York or when he
12 got there?

13 A No, really I just was just happy to see my brother.
14 That's about it and just enjoy our family.

15 Q Okay. You said you found these photos.

16 Were they at your house?

17 A No, actually they were at, at someone else's home in a
18 scrapbook, which is, you know, dug it up or whatever.

19 Q Okay. Would that be a family member or --?

20 A Yeah.

21 Q Okay. What time of day was the party?

22 Do you remember?

23 A No, not really. It had to be like midday. It's a lot
24 of kids. So, we usually -- sometimes parties can start at
25 two o'clock in the afternoon and go to twelve o'clock, one

Ernest Richardson - Cross-examination
by Ms. Williams

1 o'clock in the morning, sometimes longer --

2 Q Okay.

3 A -- if you put the kids to bed to know what's going on.

4 Q All right. Thank you, Mr. Richardson.

5 A No problem.

6 MR. WISE: You may come down --

7 THE WITNESS: All right.

8 MR. WISE: -- if the Court please.

9 THE COURT: All right. Thank you, sir.

10 You can call your next witness.

11 MR. WISE: Greg Huge.

12 GREG HUGE, being first duly

13 sworn, testified as follows:

14 THE CLERK: If you'll have a seat.

15 (Witness complies.)

16 THE CLERK: State your name for the record.

17 THE WITNESS: Greg Huge.

18 DIRECT EXAMINATION

19 BY MR. WISE:

20 Q All right. Mr. Huge, where do you live?

21 A Connecticut. Between Connecticut and L.A.

22 Q All right. And what do you do for a living?

23 A I'm in the film industry.

24 Q And how long have you been doing that?

25 A Twenty something years now.

Greg Huge - Direct examination
by Mr. Wise

- 1 Q All right.
- 2 A All total, I began as an actor and then I move into
- 3 producing.
- 4 Q Moved -- you're gonna need to lean forward a little
- 5 bit. Yeah, pull that mic towards you.
- 6 A I began as an actor and then moved into producing.
- 7 Q Into producing?
- 8 A Yes, sir.
- 9 Q Have you done any productions of any notable things
- 10 that we may be familiar with?
- 11 A Completed one feature film. It's called Three Play.
- 12 Q Uh-huh. (Affirmative).
- 13 A And I'm working on developing and working on the next
- 14 feature with Academy Award Winner, Marlee Matlin, Michael
- 15 Beach, and also Vondie Curtis-Hall.
- 16 Q Okay. You're kin to Willie James Richardson?
- 17 A Yes, he's my brother.
- 18 Q He's your brother?
- 19 A Uh-huh. (Affirmative).
- 20 Q Older, younger, what?
- 21 A He's younger.
- 22 Q And you're the oldest?
- 23 A As far as I know, yeah.
- 24 Q Excuse me?
- 25 A As far as I know, yes.

Greg Huge - Direct examination
by Mr. Wise

1 Q As far as you know you're the oldest.

2 All right. Were you in New York the weekend of
3 August 12th, 13th of 1995?

4 A Yes.

5 Q And what, what were you there for?

6 A I was just there and then I was gonna leave to go to
7 L.A.

8 Q Uh-huh. (Affirmative).

9 A So, usually visiting my parents and stuff.

10 Q All right. And your parents lived in New York at that
11 time?

12 A Yeah, Brooklyn.

13 Q Brooklyn.

14 And they still live there?

15 A Yes, they do.

16 Q All right. Do you recall seeing your brother there
17 that weekend?

18 A Yes.

19 Q All right. Do you recall a party?

20 A Yes.

21 Q All right. Tell us about the party.

22 A Well, it was over to Michelle's house. It was for me,
23 her, and her son, Kindell.

24 Q Okay.

25 A Our birthdays are the 14th, 15th, and 16th.

Greg Huge - Direct examination
by Mr. Wise

- 1 Q Uh-huh. (Affirmative).
- 2 A So, it's kind of easy to remember.
- 3 Q Yeah.
- 4 Was your brother there, Willie James Richardson?
- 5 A Yes, he was.
- 6 Q All right. I show you these pictures, Exhibits 2
- 7 through 6.
- 8 Do you recognize those pictures?
- 9 A Yes, I do.
- 10 Q All right. Are you in any of them?
- 11 A No, I'm not.
- 12 Q All right. Where were those pictures taken?
- 13 A At my sister's house.
- 14 Q All right. At that party?
- 15 A Yes, sir.
- 16 Q All right. And is your brother in those pictures?
- 17 A Yes, he is.
- 18 Q All right.
- 19 A Well, except for one.
- 20 Q Right after that---
- 21 A Well, two.
- 22 Q Right after that party, when did you go back to---
- 23 A I left---
- 24 Q ---L.A.?
- 25 A I left like that Sunday and Monday, and I'm not too

Greg Huge - Direct examination
by Mr. Wise

1 sure. That's a long time ago. So, that's---

2 Q And these---

3 A Cause I had to be back in L.A. for some stuff.

4 Q All right. On your way back to L.A. or when you got
5 back to L.A., do you recall learning that your brother had
6 been accused of a crime in South Carolina?

7 A Yeah, it was either -- either I was like in-between
8 flights --

9 Q Uh-huh. (Affirmative).

10 A -- or I was in L.A. but I do remember that I was
11 talking to either my mother or my father, and they had
12 mentioned about it, and I was like well, are you talking
13 about this past Saturday? He was at the party. So, that
14 couldn't be happening.

15 Q All right. Did that kind of fix that weekend in your
16 mind?

17 A Yeah, yeah, because yes, it's a birthday party and they
18 said they accused him of something.

19 Q Uh-huh. (Affirmative).

20 A Yeah, it's been a long time but I do remember that.

21 Q But you remember where he was?

22 A Yeah, he was at the party.

23 Q And no doubt in your mind about that?

24 A Correct.

25 Q All right. Were you available to come down to, to

Greg Huge - Direct examination
by Mr. Wise

1 South Carolina in 2000 --

2 A Yes.

3 Q -- if someone had notified you?

4 A Yes.

5 Q Did you ever talk to any lawyer about this case?

6 A No.

7 Q Did any, any investigator or anybody ever call you?

8 A No.

9 Q All right. Were you ever notified of a trial on the
10 17th of April?

11 A No.

12 Q All right. Or the 10th of April?

13 A No.

14 Q All right. Is there any doubt in your mind where your
15 brother was on the night of the 12th or 13th, the night
16 of the 12th or the day of the 12th of August into the
17 morning, early morning hours of the 13th?

18 A If that's the day the party was, there's no doubt in my
19 mind.

20 Q No doubt in your mind.

21 You remember him being there?

22 A Yes.

23 Q All right. Thank you. Answer any questions the State
24 may have.

25 THE COURT: Ms. Williams.

Greg Huge - Cross-examination
by Ms. Williams

1 CROSS-EXAMINATION

2 BY MS. WILLIAMS:

3 Q Are you sure that the party was the 12th or the 13th,
4 a Friday or Saturday?

5 A It's probably that Saturday cause we don't usually do a
6 party on Sunday.

7 Q All right. So, it was Friday or Saturday?

8 A Yeah, Friday. It was the, the -- that Saturday. It
9 started like in the afternoon like for the kids and went on
10 through the night.

11 Q Okay. When did you get to the party?

12 A I got there about 3:30, four o'clock.

13 Q Okay. What about your brother?

14 Do you know when he came?

15 A I don't remember if he's there or not before I got
16 there. I'm not sure.

17 Q Okay. Do you know when your mother arrived there?

18 A I think she was there when I got there.

19 Q Okay. Can you tell me when you left from the party?
20 Any idea?

21 A I probably left about that night cause I had to make
22 sure I got my stuff together. Probably about 10:30.

23 Q Okay. Did you know that the trial was going on when
24 it -- when his murder trial happened?

25 Were you aware of that happening?

Greg Huge - Cross-examination
by Ms. Williams

1 A Not, not to the -- well, I knew that he had been
2 brought up on charges. I didn't know exactly when and like
3 I talk to my family a lot, but we don't, we -- I'm the one
4 that's always traveling and stuff.

5 Q Uh-huh. (Affirmative).

6 A So, it's not like we talk every week or something like
7 that. It might be two or three weeks at a time before I
8 talk to her, my mother sometimes.

9 Q So, you don't remember if you knew that your mother had
10 traveled here for the trial or---

11 A No, I wasn't -- I -- if -- I think I heard about it
12 afterwards.

13 Q Okay. Now, your brother was not arrested for quite
14 some time after this.

15 Is that correct?

16 A As far as my understanding, yes.

17 Q Okay. Did you speak to him after the party?

18 Would you, would you have been in contact with him
19 during those years?

20 A What do you mean?

21 No, I just --.

22 Q Did you talk to him just hey, how's it going?

23 Were you in contact with him?

24 A No, I hadn't, I hadn't -- that's funny. After that, I
25 haven't seen -- after all this began, I hadn't really spoken

Greg Huge - Cross-examination
by Ms. Williams

1 to him until -- I think I came to visit him in some place.
2 It wasn't Lee County. It was some place else he was at
3 before that. That's when I got a chance to speak with him.

4 Q Okay. So, that would of been after he was arrested?

5 A Yeah, it was, it was in South Carolina but it wasn't
6 where he's at now.

7 Q All right.

8 Okay. I think that's all the questions I have.

9 THE COURT: Anything further?

10 MR. WISE: No.

11 THE COURT: All right. Thank you, sir.

12 MR. WISE: You can come down.

13 THE COURT: You can step down.

14 MR. WISE: Michelle.

15 MICHELLE RICHARDSON, being first duly
16 sworn, testified as follows:

17 THE CLERK: Have a seat.

18 (Witness complies.)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Michelle Richardson.

21 DIRECT EXAMINATION

22 BY MR. WISE:

23 Q All right. Ms. Richardson, where do you live?

24 A Brooklyn, New York.

25 Q All right. And I understand you're presently on

Michelle Richardson - Direct examination
by Mr. Wise

1 disability?

2 A Yes.

3 Q All right. What kin are you to Willie James
4 Richardson?

5 A My brother.

6 Q And is he younger or older?

7 A Middle.

8 Q Middle.

9 I think -- is he older or younger than you?

10 A Oh, he's younger than me.

11 Q Younger than you?

12 A Yes.

13 Q All right. Do you recall the -- do you recall your
14 brother being charged with murder in this case?

15 A Do I -- excuse me?

16 Q Do you remember your brother being charged with murder
17 in this case?

18 Not necessarily when but you remember, ultimately, he
19 was charged with murder?

20 A Yes.

21 Q All right. Now, were you contacted about coming down
22 to Columbia to testify?

23 A My mom sent for -- my mother or my father told me
24 something about yeah, I had to come down here.

25 Q And what date did you think you had to be here?

Michelle Richardson - Direct examination
by Mr. Wise

1 A The 17th.

2 Q The 17th.

3 All right. Did you receive any notification that the
4 17th date wasn't the correct date to be here?

5 A No.

6 Q All right. Well, did you receive notification that the
7 trial was gonna start on the 10th instead?

8 A No.

9 Q All right. Were you planning to be here on the
10 17th---

11 A Yes.

12 Q ---until you learned differently?

13 A Yes.

14 Q All right. Did any lawyer -- excuse me.

15 Did any lawyer ever contact you about your testimony in
16 this trial?

17 A No.

18 Q Did any investigator ever contact you?

19 A No.

20 Q All right. Do you remember what you would be basically
21 have testified to had you been down here to testify?

22 A That my brother was at the house, my house for the
23 party.

24 Q All right. Look at Exhibits 2 through 6.

25 Do you recognize those, those pictures in front of you?

Michelle Richardson - Direct examination
by Mr. Wise

- 1 A Yes.
- 2 Q All right. And what do those show?
- 3 A Pictures at my house.
- 4 Q All right.
- 5 A The party.
- 6 Q Excuse me?
- 7 A Pictures at my house. Birthday party.
- 8 Q All right. Is your brother, Willie James Richardson,
- 9 in those pictures?
- 10 A Yes.
- 11 Q And is your other brother, Ernest, in there?
- 12 A Yes.
- 13 Q Do you have any other relatives in there?
- 14 A Yes.
- 15 Q Who?
- 16 A My daughter, Dominique, is here, my son, Kindell, my
- 17 nephews. That's it.
- 18 Q All right. Do you recognize---
- 19 A And my mother.
- 20 Q Excuse me.
- 21 And your mother?
- 22 A Uh-huh. (Affirmative).
- 23 Q All right. Do you recognize those pictures being at
- 24 the party that was held at your house in August 12th,
- 25 13th of 2000, excuse me, 1995?

Michelle Richardson - Direct examination
by Mr. Wise

1 A Yes.

2 Q All right. Without even looking at those pictures, do
3 you remember where your brother was that weekend?

4 A He was at my house that day. He came in. He came a
5 couple of days before. Yeah, he was at my house---

6 Q All right.

7 A ---that day.

8 Q Do you remember why he came to New York at that period
9 of time?

10 A Yeah, it was death.

11 Q A death of a friend?

12 A Yeah.

13 Q Did you know Greg Moore?

14 A Yes.

15 Q All right. And did he -- was he and your brother
16 close?

17 A Very.

18 Q Very close?

19 A Yes.

20 Q All right. Did you go to the funeral with Greg Moore?

21 A Yes.

22 Q All right. Did you go---

23 A Not the funeral. The wake.

24 Q The wake?

25 A Yes.

Michelle Richardson - Direct examination
by Mr. Wise

1 Q Did you go with your brother?

2 A No.

3 Q Okay. And you -- y'all went separately?

4 A Yes.

5 Q All right. From the time that your brother got there
6 for the funeral, do you recall his ever leaving New York?

7 A No.

8 Q Did you see him everyday while he was up there?

9 A No.

10 Q All right. But did you see him occasionally?

11 A Yes.

12 Q All right. Did -- was there any ever mention by him of
13 I'm going back to South Carolina?

14 A No, he would of at least called me I assumed --

15 Q Uh-huh. (Affirmative).

16 A -- if he was leaving.

17 Q But you never had any communication like that?

18 A No.

19 Q Okay. Is there any doubt in your mind about where your
20 brother was on that night?

21 A No, he was at my house acting just as goofy as my other
22 brother.

23 Q All right. Just as goofy as who?

24 A My other brother.

25 Q Ernest?

Michelle Richardson - Direct examination
by Mr. Wise

- 1 A Yes, Ernest.
- 2 Q Okay. Did -- when did you learn he had been charged
- 3 with the murder in, in South Carolina that night?
- 4 A I don't remember.
- 5 Q Roughly.
- 6 A Wow. I really can't -- I don't remember.
- 7 Q All right. Did -- do you remember your mother and
- 8 father making a trip down to Columbia shortly after that
- 9 party?
- 10 A Yeah, they said some troubles for Raheem. They said
- 11 Raheem was in some troubles and they had to go down there
- 12 and see what was going on.
- 13 Q Okay. Did they tell you any of the details about it?
- 14 A No.
- 15 Q Not at that time?
- 16 A No, not really.
- 17 Q All right. That party was part of your birthday
- 18 celebration?
- 19 A Yes.
- 20 Q And your birthday is when?
- 21 A The 15th.
- 22 Q Of?
- 23 Okay.
- 24 A August.
- 25 Q All right.

Michelle Richardson - Direct examination
by Mr. Wise

1 A And my son's is the 16th. My brother's the 14th.

2 So, we always -- we have a big family. So, we always get
3 together every couple of years and just---

4 Q All right.

5 A ---have cake and ice cream.

6 Q Was Greg Huge there that night?

7 A Yes.

8 Q You didn't get his picture taken though?

9 A No, he's kind of think he big shot that he don't like
10 his picture showing up. So, we don't really take pictures
11 of him.

12 Q Okay. All right. So, there's no question in your mind
13 about when those pictures were taken?

14 A No.

15 Q And no question in your mind about where your brother
16 was at that night?

17 A No, sir.

18 Q Thank you. Answer any questions the State may have.

19 THE COURT: Ms. Williams.

20 CROSS-EXAMINATION

21 BY MS. WILLIAMS:

22 Q Ms. Richardson, can you tell me what day was this
23 birthday party?

24 A August the 12th.

25 Q Okay. And how, how -- do you remember that date for a

Michelle Richardson - Cross-examination
by Ms. Williams

1 particular reason or just that it was near birthdays?

2 A No, it's just that we had it the 12th to 13th and I
3 mean, the way our birthdays fall and by my brother leaving,
4 and usually you just have a party on Saturday. The kids are
5 in school---

6 Q Uh-huh. (Affirmative).

7 A ---or camp or whatever on Friday. So --.

8 Q Okay. So, that would of been the logical---

9 A Yes.

10 Q Right.

11 A Day to have it.

12 Q Okay. Do y'all do birthday parties often for the
13 family birthdays?

14 A Well, me and my 16 -- me and the son that's on the
15 16th, for my brother, Greg, on the 14th --

16 Q Uh-huh. (Affirmative).

17 A -- if he's in town, if he's in town, we can do that
18 with them but, the other kids, yes. I mean usually twelve
19 o'clock midnight, me and my son.

20 Q Do you know what -- what time would this party have
21 started?

22 A Well, I started cooking like ten o'clock in the
23 morning, 11:00. My mom's came over because she always help
24 with the cakes. So, she came over to help with the cakes a
25 little later. So, the party could get going at least by

Michelle Richardson - Cross-examination
by Ms. Williams

1 two, three o'clock because some kids have to go home and go
2 down, and cut cake by, you know, ten o'clock. At least you
3 want to try to cut your cake by ten o'clock.

4 Q Okay. Did your brother bring anyone with him to the
5 party?

6 Did he come by himself?

7 A Oh, it was a lot of people. I don't, I don't remember
8 that one.

9 Q Oh, okay. When was the last time you spoke to your
10 brother after this party?

11 Do you, did you---

12 A After the party, I really don't remember. Maybe a day
13 or two later.

14 Q All right.

15 A Yeah, maybe a day or two later because Sunday I was
16 tired. I don't -- I was tired. I don't remember.

17 Q Did he stay in New York after the party for some of --
18 period of time to your knowledge?

19 A No, I don't know. I assume he was here. He never came
20 back to say he was leaving or anything, and he don't usually
21 leave without letting us know he's leaving.

22 Q All right. Thank you. I don't have any other
23 questions. Thank you.

24 MR. WISE: Thank you. You may come down.

25 THE COURT: All right. Thank you, ma'am.

1 MR. WISE: That's the Applicant's case, Your Honor.

2 THE COURT: All right.

3 MS. WILLIAMS: Judge Gibbons, Mr. Young was in route
4 this morning. He has told me he is gonna arrive around
5 1:30. I believe that Mr. Whitmire has another case. If we
6 could possibly stand down.

7 THE COURT: All right. Well, we're gonna take a recess
8 now anyway for a break.

9 So, why, why don't we take a break and then we'll,
10 Mr. Wise, you have any opposition to recessing the hearing
11 and then continuing once the---

12 MR. WISE: No.

13 THE COURT: Okay.

14 MR. WISE: No, we've discussed that earlier---

15 THE COURT: Okay.

16 MR. WISE: ---and so --.

17 THE COURT: Scheduling wise then, we'll recess the
18 hearing. Again, I want, I want to run to about 12:30 for
19 lunch.

20 So, just prepare accordingly.

21 MR. WHITMIRE: And, Your Honor, opposing counsel is
22 suppose to be here about this time with her investigator and
23 my witness can be here along with the solicitor.

24 MR. WISE: They've been too cooperative with me for me
25 to raise too much stink.

1 THE COURT: All right. All right. We're in recess.
2
3

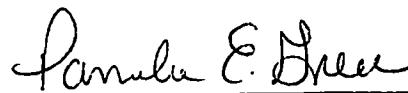
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C E R T I F I C A T E

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 Lexington County, South Carolina, on the 22nd day of January, 2014.

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

February 15th, 2017



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

ORIGINAL
 IN THE COURT OF COMMON PLEAS

Willie J. Richardson, 002655703)

Applicant,)

-vs-)

State of South Carolina,)

Respondent.)

ORDER

2003-CP-32-

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2014 NOV 26 A 11:16

FILED

Q927

This matter comes before me upon the Post Conviction Relief Petition filed by Willie J. Richardson. The procedural history of this case demonstrates numerous errors by previous Post Conviction Relief Counsel. As briefly as possible, the prior history of this Post Conviction Relief case shows that two previous counsel for the applicant failed to file a timely notice of appeal in the case after a PCR hearing. This resulted in the applicant filing two subsequent PCR's alleging his prior PCR counsel failed to a notice of appeal as he had requested. When the third PCR counsel, after a hearing on the sole issue of whether Mr. Richardson was entitled to a belated appeal, timely filed a notice of appeal, the record of the previous hearing had been destroyed and was therefore unable to be transcribed. As a result, the South Carolina Supreme Court on January 13, 2012 ordered that a new Post Conviction Relief hearing be held. This hearing is being held pursuant to that order.

Facts

Mr. Richardson was indicted on March 30, 1998 on for a murder that occurred on August 13, 1995. Due in part to the fact that he was being held on federal charges, Mr.

Richardson was tried and convicted on April 13, 2000. Mr. Richardson appealed his conviction which was affirmed on May 29, 2002. He then filed his original Post Conviction Relief action. While he has alleged numerous grounds for relief, at the hearing the issue was limited to ineffective assistance of counsel due to counsel's failure to interview and call his alibi witnesses.

Mr. Richardson was accused of shooting Alfred F. Jones in a bar in Lexington County near the Newberry County line. He was identified by several people who were in the bar. A tag number taken from an automobile that left the scene was traced by to an automobile that Mr. Richardson drove. The automobile actually belonged to his father. The state also presented testimony from Reginald Lucas who allegedly heard the applicant confess to the crime while they were housed together in jail in Virginia.

At the trial, Mr. Richardson's defense was alibi. He testified that we went to New York on July 20, 1995 for a funeral of a close friend. He stated he never left New York until well after the murder. He and his mother testified that Mr. Richardson was in New York at a birthday party at the time of the murder and could not have been in Lexington County. The only alibi witnesses who testified for Mr. Richardson were his mother. The jury convicted him Richardson of the murder.

At the Post Conviction Relief hearing Mr. Richardson presented several witnesses and documents, including pictures, that proved he was in New York at the time of the murder. Testifying for Mr. Richardson was Ernest J. Richardson, his brother. He testified that he remembered the birthday party in August of 1995. He provided several pictures which showed himself and the applicant at the party. Their mother, who did testify at the trial, is shown in one picture. He further testified that at the time of his brother's trial in April of 2000, he was present

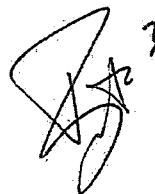


in Lexington and observed the trial. He was not called as a witness. He remembered his mother testifying and wondered why he was not called.

Also testifying for the applicant was Greg Huge, another brother. Mr. Huge testified that he remembered his brother being in New York at the birthday party. He stated that his birthday was August 14th, which would have been on the Monday of the following week. He remembered that the birthday party was to celebrate several birthday's including his. He was leaving New York for Los Angeles before his birthday. He testified he remembered a call to New York saying that his brother had been involved in a shooting in Lexington on the week-end before his birthday. He stated that he remembered thinking that his brother could not have been in Lexington as he had been in New York for some time before the week-end of the birthday party. He further testified that no one contacted him about testifying at the trial in Lexington. Had he been contacted, he would have been willing to come to Lexington to testify.

None of the witnesses for the applicant were impeached by any criminal records. They both held responsible position with Mr. Huge being involved in the movies business in Hollywood. They testified forthrightly. In support of their testimony was the death certificate of the applicant's friend and several pictures taken at the birthday party. Their testimony was such that if the jury believed them, then the applicant would have to be acquitted as their testimony established the impossibility of the applicant being in Lexington County at the time of the shooting.

Hervy Young, the trial attorney for the applicant, testified that he felt the case against Mr. Richardson was not that strong. He stated that he felt the alleged eye witnesses against Mr. Richardson were not strong. He had been told by the applicant that he was in New



York at the time of the murder. Mr. Young explained the failure to call the alibi witnesses was due in part to the scheduled date for the trial being changed at the last minute. He did not, however, ask for a continuance due to the fact that the alibi witnesses could not be present.

The South Carolina Supreme Court in *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007) recently set forth the obligation of defense counsel to investigate the case for his client. The Court said “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case.” *Id.* at 331-332, 642 S.E.2d at 597(emphasis in original). Quoting from the American Bar Association guidelines the *Ard* court held “Counsel at every stage have an obligation to conduct thorough **and independent** investigations relating to the issue of both guilt and penalty.” *Id.* (emphasis in original). Defense counsel cannot presume that a potential witness will not be helpful nor can they presume they will be unavailable when the trial is held.

More recently the South Carolina Supreme Court in *Lounds v. State*, Op. No. 23083 (S.C. Sup. Ct. Filed December 15, 2008) has again held that the failure to properly investigate and interview witnesses is ground for finding trial counsel to be ineffective. The fact that in *Lounds* the trial counsel failed to interview the witnesses does not distinguish that case from the one before the Court. In the present case, trial counsel failed to interview at least two witness, and while he used another witness, he failed to give an adequate explanation as to why he did not call the other two witnesses.

The South Carolina Supreme Court has also held that defense counsel is ineffective when he fails to call a witness who potentially could impeach the testimony of the alleged victim of a sexual assault. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998). In

Pauling, defense counsel failed to call as a witness the triage nurse whose notes reflected that the alleged victim had told her she had not been penetrated. Our Supreme Court has further said "One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable." *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014)

Against these standards the decision of defense counsel not to call two alibi witnesses must be judged. The witnesses were not interviewed but defense counsel knew of their existence. As no strategic reason was given for not interviewing and calling the witnesses available to defense counsel, ^{Bo} the failure to call the witnesses was ineffective as a matter of law. The error in this case is compounded by the fact that Sally Richardson, the mother of the applicant identified several people who were at the birthday party and no explanation was given for their not being present to testify. A reasonable juror would think as Mr. Richardson's mother could testify, so could the other people she named who were at the birthday party if in fact there were a party.

The question raised is whether the advice of counsel not to call two key alibi witness was reasonable under the circumstances. The only logical conclusion is the decision was not reasonable and that the performance of counsel was ineffective.

Our courts have held on numerous occasions that the failure of defense counsel to request an alibi instruction is grounds to grant an applicant a new trial. *Riddle v. State*, 308 S.C. 361, 418 S.E.2d 308 (1992). Thus, the failure to interview and call witnesses that would form a basis for the requested instruction of alibi should also be a ground for granting a new trial. Mr. Richardson presented only one witnesses even though the testimony identified witnesses who

would have been available to Mr. Richardson.

Prejudice

To meet the second prong of ineffective assistance of counsel as set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), Mr. Richardson must show prejudice. Prejudice under *Strickland* means “but for counsel’s errors there is a reasonable probability the result at trial would have been different.” *Pauling v. State*, 331 S.C. 606, 609, 503 S.E.2d 468, 470 (1998). And “reasonable probability” means “a probability sufficient to undermine confidence in the outcome of the trial.” *Id.* The standard does not mean the jury would have been required to reach another result, only that the errors of counsel deprived the defendant of a meaningful opportunity to present evidence to the jury that could result in an acquittal.

The case before this court is substantially the same as *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014). In *Walker* trial counsel failed to interview and present as a defense witness Robina Reed who testified at the PCR hearing that Mr. Walker had, in the months before the incident, spent every week-end with her up until the time of this arrest. The Court held trial counsel was ineffective in failing to call her as a witness. In addition, the Court found that Mr. Walker was prejudiced. As our court has said “To prove prejudice, an applicant must show there is a reasonable probability that but for counsel’s deficient performance, the result of the proceeding would have been different.” *Franklin v. Catoe*, 346 S.C. 563, 571, 552 S.E.2d 718, 723 (2001).

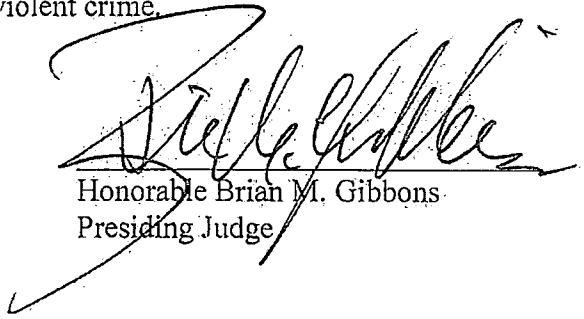
The applicant has proven prejudice in this case. The witnesses for the applicant at the PCR hearing traveled considerable distances to testify on behalf of their brother. As noted above, neither had any record to impeach their credibility. Their testimony was buttressed by

pictures taken at the birthday party and the death certificate of the close friend of the applicant. The court finds they would have credibility before a jury. As noted above, this court is not required to find that a different result would have been obtained if the witnesses had testified, but only that there is a reasonable probability the result would have been different. Based upon the testimony presented at this hearing, the court believes there is a reasonable probability that the result in the murder trial would have been different if the witnesses had testified and the exhibits presented.

WHEREFORE it is hereby Ordered, Adjudged and Decreed that Willie J. Richardson be and he is hereby granted a new trial on the charge of murder and a new trial on the charge of possession of a firearm while engaged in a violent crime.

IT IS SO ORDERED

November 28, 2014


Honorable Brian M. Gibbons
Presiding Judge

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2014 NOV 26 A 11:16

FILED

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Willie J. Richardson, 002655703)
)

Applicant,)
)

-vs-)
)

State of South Carolina,)
)

Respondent.)

Order Denying Rule 59(e) Motion

2003-CP-32-0927

FILED
 2016 APR 11
 10:00 AM
 CLERK OF COURT
 COMMON PLEAS
 JUDGE

This matter comes before me upon the Motion to Alter or Amend the judgement pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The Court has carefully considered the motion and denies the same for the following reasons:

1. The reference to two key alibi witnesses was in reference to the two new witnesses that testified at the Post Conviction Relief hearing.

2. a. The younger brother of the Applicant would obviously have been about 14 at the time of the trial. No credible evidence exists that would establish he would not have been a favorable witness at the time of the trial. His age certainly would not have precluded his testifying. H was in the pictures taken at the birthday party so his actually being at the party would not have been in question. As noted in the Order, this case, through no fault of the Applicant, had a long and tortured history. The long delay in this PCR simply cannot be held against the Applicant.

b. The Court notes that in may, if not most cases, all possible witnesses cannot be expected to testify. In the present case, the witness did travel at expense to themselves to testify

1  1

in this hearing. The fact that one witness was not able to make the trip does not impeach the credibility of the witnesses who did testify and therefore is not a basis for denying the relief to the Applicant.

c. The fact there may have been other witnesses who could have been of assistance to the Applicant does nothing to distract from the credibility of the witnesses who testified. Prior Post Conviction Relief Applications prepared by a pro se applicant, are not persuasive as to what is important or not in an application. Only with the guidance of trained counsel can any applicant fully understand and appreciate what is important to present at a Post Conviction Relief hearing.

d. Whether Michelle is credible or not credible is simply not a factor in the decision of this Court. She did not testify at the Post Conviction Relief hearing in this case.

e. While defense counsel did make some effort to confirm the alibi of the Applicant, he failed to conduct basic interviews with the Applicant's mother and failed to call a witness who was even present at the trial. Further, he failed to ask basic questions as to what evidence other than an airline ticket was available to prove the Applicant was in New York at the time of the shooting. Such investigation is basic. The Motion argues that defense counsel is not required to locate every potential witness. What happened in this case was not the failure to locate a witness, but the failure through basic investigation to identify many witnesses who would verify the alibi as well as other evidence that supported the alibi witnesses.

3. The State is correct that to some extent the evidence present in the Post Conviction Relief hearing was cumulative. But the character and type of evidence present at the hearing not only buttressed the testimony of the mother of the applicant, but gave credibility to her testimony as she is shown in the pictures of the party. Documentation that what one says is true is certainly



more than being merely cumulative. The error here was more than the mere failure to call another family member to testify as to his alibi.

4. The State makes an issue of the time of the party. First, the parties testified many years after the event. At the Post Conviction Relief hearing there were two undisputed facts. First, there was a birthday party which the Applicant attended and the party was in New York. Whether the party was at 2 or 6 pm is of little importance. The witnesses at the hearing testified he was in New York the entire week-end of the party and had been there for a friend's funeral. In fact, Mr. Huge testified that when he was informed the police were looking for his brother, he remembered thinking he could not have been in South Carolina because he had been in New York the entire week-end.

5. If no single witness ever testified they knew exactly where the applicant was at 10:30 pm on August 12, 1995, the Applicant would still be entitled to a new trial. The Applicant simply could not have been at the party on the afternoon of August 12, 1995 in New York and have then made a trip to rural Lexington County that night. The State fails to appreciate the testimony that the witnesses remembered the Applicant being in New York for the entire week-end of the party and for several days before.

6. In order for evidence to be discovered, an attorney must ask for the evidence and ask the right questions to learn the existence of the evidence. The Applicant testified that not until present counsel asked about pictures, did he even think of the existence of the pictures. In addition, trial counsel did not ask about any information concerning the funeral the Applicant attended in New York. The Applicant testified at the trial that on July 20, 1995 he flew to New York to attend the funeral of a friend. A basic question would have been to obtain proof of the

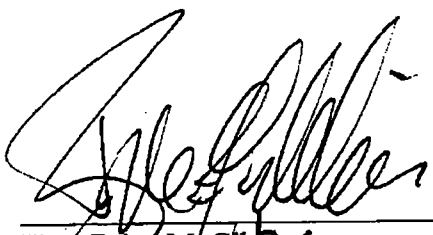


funeral of the friend. Trial counsel also failed to do this basic investigation.

The request of the State to alter or amend the judgement previously entered in this matter is respectfully denied.

IT IS SO ORDERED

4/8
March __, 2016



Hon. Brian M. Gibson
Presiding Judge
Eleventh Judicial Circuit

FILED
2016 APR 11 11:32
CLERK OF COURT
BETH A. COOK
ALEXANDRIA, VA

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
COUNT ONE:

MURDER
§16-3-10

At a Court of General Sessions, convened on MARCH 30, 1998 the Grand Jurors
of LEXINGTON County present upon their oath:

COUNT ONE:

MURDER §16-3-10

That **WILLIE JAMES RICHARDSON** did in Lexington County on or about August 13, 1995, willfully, feloniously, and with malice aforethought kill one Alfred F. Jones by means of multiple gun shot wounds with a pistol, and Alfred F. Jones died in Lexington County on or about August 13, 1995, as a result of exsanguination and/or massive and fatal intra-abdominal hemorrhage due to a fatal gun shot wound to the lower back which ruptured the aorta and liver, in violation of Section 16-3-10 of the South Carolina Code of Laws of (1976), as amended.

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


SOLICITOR
Asst.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
COUNT TWO: POSSESSION OF
FIREARM OR KNIFE DURING
COMMISSION OF A VIOLENT CRIME
§16-23-490

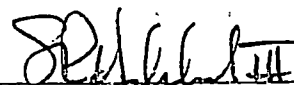
At a Court of General Sessions, convened on MARCH 30, 1998 the Grand Jurors
of LEXINGTON County present upon their oath:

COUNT TWO:

POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF A VIOLENT CRIME §16-23-490

That **WILLIE JAMES RICHARDSON**, did in Lexington County on or about
August 13, 1995, possess a firearm or visibly display what appeared to be a firearm or
visibly display a knife during the commission or attempted commission of a violent
crime, to wit: Murder, in violation of §16-23-490 of the South Carolina Code of Laws of
1976, as amended.

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


SOLICITOR

-Asst.

750

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Willie James Richardson

AKA:

Race: BLACK Sex: MaleDOB: 06/07/65 Age: 35SSN: 080-58-8959

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

98 -GS- 32 - 1242 (d2)A/W#: 0691357Date of Offense: 08/13/95S.C. Code § 16-3-10CDR Code #: 011116

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 011116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

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

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 4/13/00 98-GS-32-1242 Court 2

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ 100.00Clerk of Court/Deputy Clerk Thomas H. ComerfordCourt Reporter: C. Pantari

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

PRESIDING JUDGE Larry E. ClayJudge Code: 0101508Sentence Date: 4/13/00

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Willie James Richardson

AKA:

Race: BlackSex: MaleDOB: 06/02/65Age: 35SSN: 080-58-8959

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:98 -GS- 32 - 1242 (12)A/W#: 8th IndictmentDate of Offense: 08/13/95S.C. Code §: 16-23-490CDR Code #: 051419

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession Firearm During Commission Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 051419☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of five (5) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 4/13/00 98-GS-32-1242 Court

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered:

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ 265.70

County (3%).....\$ _____

TOTAL.....\$ 100.00

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling 11/13/00

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Clerk of Court/Deputy Clerk [Signature]Court Reporter: C. PantariPRESIDING JUDGE [Signature]Judge Code: 0101548Sentence Date: 4/13/00

752

WITNESSES

LCSD

Frier

DOCKET NO.

98-GS-32-1242

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MARCH TERM 1998

THE STATE

vs.

WILLIE JAMES RICHARDSON

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Mary K. McIlwain

Foreperson of Petit Jury

Date: April 13, 2000

CDR# 1245

Indictment for

COUNT TWO: POSSESSION OF
FIREARM OR KNIFE DURING
COMMISSION OF A VIOLENT CRIME

§16-23-490

DONALD V. MYERS, SOLICITOR

A TRUE COPY
Lex. Co. C.C.C.P., G.S. § 16-23-490

Frier

A TRUE COPY
Monroe H. Gifford
 Lex. Co. C.C.G.P., G.S. F.C.

CLASSIFICATION SUMMARY REPORT DATED 08/28/06

C024686

SCDC# 265703

RICHARDSON, WILLIE JAMES

FBI# 523444X6

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... MCCORMICK CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREQ STG-SUSPECT

MED CLASS: 2 MED PROB/NO WORK RESTRICT

MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 42

DORM.....: F10271A

TOBACCO USER.....: Y

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: RECREATION AIDE

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: RECREATION DEPT

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CAT INDICT
FIREARMS PROVISION	5 0 0 LEXINGTON	04/13/2000 N 3 986S32-1242
MURDER	999 99 999 LEXINGTON	04/13/2000 V 5 986S32-1242

PRIOR COMMITMENTS OVER 90 DAYS:

07/26/93	*FUGITIVE FROM JUSTICE	1 YRS 0 MOS 0 DYS
04/13/82	*POSSESS STOLEN PROPERTY	6 YRS 0 MOS 0 DYS
04/05/82	*POSSESSION OF WEAPON	1 YRS 0 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

COCAINE DISTRIBUTION	HOLD	ISRAEL BROOKS, JR.	CATEG: 2
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ESCAPES:

07/26/93	OTHER ESCAPE RELATED CODE NOT IN TABLE
05/29/92	OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

11/09/03 ROBBERY WITH FORCE	DROPPED	CHARG INMATE
-----------------------------	---------	--------------

NON-ASSAULTIVE DISCIPLINARIES:

03/05/06 POSS. DR/ATTEMPT TO POSS	CONVICTED	MAJOR
06/24/04 USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
04/20/04 REFUSING OR FAILING OBEY		OTHER
11/09/01 ANY ACT DEFINED AS MISDE	CONVICTED	MAJOR STAFF
06/18/00 OUT OF PLACE	DROPPED	CHARG
06/18/00 VIOLATIONS WRITE/POST IN	DROPPED	CHARG
06/18/00 REFUSING OR FAILING OBEY	DROPPED	CHARG

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
06/05/06	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/05/06	KIRKLAND	INCARCERATED	MEDICAL
02/28/06	MCCORMICK	INCARCERATED	ADMINISTRATIVE
02/28/06	KIRKLAND	INCARCERATED	MEDICAL
12/12/05	MCCORMICK	INCARCERATED	RETURN FROM COURT
12/12/05	RICHLAND CO	ABSENT WITH LEAVE (A	TO COURT
10/17/05	MCCORMICK	INCARCERATED	RETURN FROM COURT
10/17/05	LEXINGTON CO	ABSENT WITH LEAVE (A	TO COURT
07/01/05	MCCORMICK	INCARCERATED	RETURN FROM COURT
07/01/05	LEXINGTON CO	ABSENT WITH LEAVE (A	TO COURT
09/10/02	MCCORMICK	INCARCERATED	ADMINISTRATIVE
05/05/00	KERSHAW	INCARCERATED	ADMINISTRATIVE
04/17/00	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
RECREATION AIDE	08/11/06	00/00/00		3F5
RECREATION AIDE	07/29/04	03/05/06	PLACED IN ST/SP CUSTODY	3F5
RECREATION AIDE	01/07/04	06/24/04	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	09/18/03	11/09/03	PLACED IN ST/SP CUSTODY	3F5

SCDC# 265703

RICHARDSON, WILLIE JAMES

(CONTINUED)

GENERAL WORKER	09/12/02	09/17/03	INMATE REQUEST	3F5
WARDKEEPER	05/14/02	09/10/02	INSTIT TRANSFER	3F5
WARDKEEPER	12/20/01	05/13/02	CUSTODY REVIEW	5F5
WARDKEEPER ASSISTANT	09/05/01	11/08/01	PLACED IN ST/SP CUSTODY	3F5
FOOD SERVICE AIDE	05/10/00	09/04/01	INMATE REQUEST	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/28/06
OMCOMITA RELEASE DATE SCREEN C024686
SCDC# > 265703 LOC: MCCORMICK
RICHARDSON, WILLIE JAMES SCDC CLASSIFICATION...: VIOLENT
SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
CURRENT SENT START DATE: 04/13/2000
PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999 CURRENT EWC ..
YOA SIX YEAR DATE: CURRENT EEC ..
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000000

PFKEYS: 5:HISTORY OF DATE CHANGES
4-© 1 Sess-1 167.7.50.33 TNET1577 3/11