

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JAN 13 2015

S.C. Supreme Court

JOHN WILLIAM DIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002193

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (June 20, 2008)	1
APPLICATION FOR POST-CONVICTION RELIEF (Filed December 12, 2012).....	21
RETURN (Filed March 21, 2013)	28
POST-CONVICTION RELIEF HEARING TRANSCRIPT (August 12, 2013)	35
ORDER OF DISMISSAL (Filed September 10, 2013).....	66
CLERK OF COURT RECORDS	76
PLAINTIFF'S EXHIBIT 1 (Indictment).....	80
PLAINTIFF'S EXHIBIT 2 (Warrant).....	83
PLAINTIFF'S EXHIBIT 3 (Plea Agreement)	85

State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No.: 2007-GS-46-04372
)
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 John William Dixon.,)
)
 Defendant.)
)

June 20, 2008
 York, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

Ms. Rebecca Taylor
 Assistant Solicitor
 Sixteenth Judicial Circuit
 Solicitor's Office
 York and Union Counties
 For the Plaintiff

Mr. Gary Lemel
 Sixteenth Judicial Circuit
 Public Defender's Office
 York and Union Counties
 York, South Carolina
 For the Defendant

ORIGINAL

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 Union and York Counties
 To the Honorable John C. Hayes, III

I N D E XE X A M I N A T I O NWITNESSBY:PAGE NO.

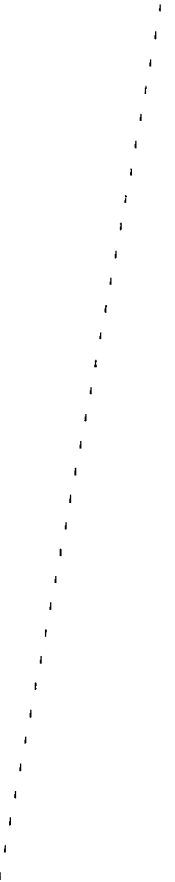
No witnesses' were called.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X-CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits were received into the record.



1 SOLICITOR TAYLOR: John Dixon.

2 SOLICITOR LIPINSKI: Your Honor, this is the last plea
3 for the day.

4 MADAME CLERK: Mr. Dixon, please raise your right hand
5 and place your left on the Bible.

6 (WHEREUPON: JOHN DIXON,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 SOLICITOR TAYLOR: May it please the court, Your
9 Honor.

10 THE COURT: Yes, ma'am.

11 SOLICITOR TAYLOR: Your Honor, this is John Dixon he's
12 represented by Gary Lemel of the Public Defender's Office.
13 He is before you on two charges. The first is threatening
14 the life of a public official and the second is making bomb
15 threats or giving false information about a bomb. He is
16 entering a plea of guilty to the first charge and
17 threatening the life of a public official, that is True
18 Bill Indictment 2007-GS-46-0-4-3-7-2.

19 The plea negotiations between the state and Mr. Dixon
20 are that if he agreed to plead guilty to the threat charge
21 with a recommendation of five years probation we would
22 dismiss the accompanying bomb charge.

23 I have behind me Officer Gilbert of the Fort Mill
24 Police Department who would like to address the Court.

25 No?

1 He just informed me he does not wish to address the
2 Court but he is here in support of this plea, Your Honor.

3 THE COURT: All right. Officer Gilbert would be the
4 victim of the threat?

5 SOLICITOR TAYLOR: Well, Your Honor, this situation
6 involved several police officers from several agencies and
7 it involved many officers of the entire swat team. Officer
8 Gilbert is here I believe on behalf of all those officers.
9 And he was the main negotiator with Mr. Dixon.

10 THE COURT: But my main question I guess is that
11 Officer Gilbert's presence complied with the victim's bill
12 of rights. That's my question.

13 SOLICITOR TAYLOR: Yes, Your Honor. It's my belief
14 that it does. I also talked to Officer Captain Zachary of
15 the Fort Mill Police Department and ask him if any other
16 officers would like to be here and he said no.

17 THE COURT: All right. Thank you, Solicitor
18 Mr. Lemel, you represent John Dixon?

19 MR. LEMEL: Yes, sir, Your Honor.

20 THE COURT: Have you explained to him the charge in
21 the indictment and the possible punishment and his rights
22 including his right to a jury trial?

23 MR. LEMEL: I have, Your Honor.

24 THE COURT: In your opinion does he understand these
25 rights?

1 MR. LEMEL: Yes, sir, Your Honor.

2 THE COURT: How does he indicate he wishes to plead?

3 MR. LEMEL: Your Honor, he wishes to plead guilty
4 under the Alford Doctrine. At the time of the incident Mr.
5 Dixon was highly intoxicated and therefore did not have a
6 clear recollection to exactly what he may have said to the
7 officer. Therefore I believe a plea under that doctrine is
8 appropriate.

9 THE COURT: All right. Is that your understanding
10 also, Solicitor, the plea under Alford?

11 SOLICITOR TAYLOR: Yes, sir, Your Honor. I should
12 have stated that in the beginning.

13 THE COURT: Are you John Dixon?

14 MR. DIXON: Yes, sir.

15 THE COURT: Before I can accept a plea of guilty under
16 North Carolina versus Alford it is necessary for me to make
17 sure that your plea is being given freely and voluntarily
18 therefore I need to ask you some questions. If you do not
19 understand my questions please let me know and I will try
20 to explain them to you. If at any time you wish to talk
21 with your attorney you may do so. Do you understand?

22 MR. DIXON: Yes, sir.

23 THE COURT: How old are you, sir?

24 MR. DIXON: Forty-six.

25 THE COURT: How much education do you have?

1 MR. DIXON: I graduated from high school with one year
2 of college.

3 THE COURT: What type of work do you do?

4 MR. DIXON: I'm an insulator. I insulate homes.

5 THE COURT: Today are you under the influence of any
6 medications, drugs, or alcohol?

7 MR. DIXON: No, sir.

8 THE COURT: Are you aware of any physical, emotional
9 or nervous problems that keeps you from understanding what
10 you're doing today? S

11 MR. DIXON: No, sir.

12 THE COURT: You've heard your attorney tell me he's
13 explained to you the charge and the possible punishment and
14 your rights and that you understand those things; is that
15 correct?

16 MR. DIXON: Yes, sir.

17 THE COURT: I've been handed up Indictment 07-GS-46-4-
18 3-7-2. It appears you're gonna enter a plea of guilty
19 under the principle of North Carolina versus Alford. This
20 indictment basically reads that John W. Dixon did on or
21 about September 17th of '07 willingly and knowingly convey
22 threats of bodily harm to law enforcement officers of the
23 Fort Mill Police Department and the York County Sheriff's
24 Department while at the incident location of [REDACTED]
25 [REDACTED], Fort Mill, South Carolina all in violation of 16-

1 310-40 the code of laws of South Carolina. That's a charge
2 of threatening the life/person of a public official ---

3 What's the potential punishment on that, Solicitor?

4 SOLICITOR TAYLOR: Your Honor, it carries up to Five
5 Thousand Dollars and or up to five years.

6 THE COURT: --- for which you could receive a sentence
7 of up to five years and a fine of up to Five Thousand
8 Dollars. Do you understand the charge and the potential
9 punishment?

10 MR. DIXON: Yes, sir.

11 THE COURT: Now basically an Alford Plea means that
12 you have reviewed the evidence for which your attorney has
13 been over with you, and your attorney has indicated to me
14 that you may not have recollection of it because of your
15 degree of intoxication at the time; that you think that
16 after reviewing that evidence that a jury would most likely
17 find you guilty beyond a reasonable doubt and you want the
18 benefit of the plea bargain in return for that plea; is
19 that correct?

20 MR. DIXON: Yes, sir.

21 THE COURT: So you still wish to enter that plea of
22 guilty under North Carolina versus Alford. Correct?

23 MR. DIXON: Yes, sir.

24 THE COURT: When you plead in that manner you give up
25 certain afforded constitutional rights. First you give up

1 your right to remain silent. Second you give up your right
2 to have a jury trial and third you give up your right to
3 confront and be confronted by the witnesses. Do you
4 understand these rights?

5 MR. DIXON: Yes, sir.

6 THE COURT: Do you understand that when you plead
7 guilty under North Carolina versus Alford you give up these
8 important constitutional rights?

9 MR. DIXON: Yes, sir.

10 THE COURT: Is that what you want to do?

11 MR. DIXON: Yes, sir.

12 THE COURT: Do you understand that by pleading you
13 will not get a jury trial?

14 MR. DIXON: Yes, sir.

15 THE COURT: Understanding then the nature of the
16 charge and the possible punishment, how do you wish to
17 plead guilty under North Carolina versus Alford or not
18 guilty?

19 MR. DIXON: No contest.

20 THE COURT: Well the way it's explained to me is
21 you're either pleading guilty under North Carolina versus
22 Alford or you're not guilty.

23 MR. DIXON: Guilty, Your Honor, under Alford.

24 THE COURT: And the plea negotiations are a
25 recommendation of five years probation; is that correct,

1 Solicitor?

2 SOLICITOR TAYLOR: Yes, Your Honor.

3 THE COURT: And you're dismissing the companion
4 charge?

5 SOLICITOR TAYLOR: That's correct.

6 THE COURT: Is that correct, Mr. Lemel?

7 MR. LEMEL: Yes, sir.

8 THE COURT: Is that your understanding, Mr. Dixon?

9 MR. DIXON: Yes, sir.

10 THE COURT: You still wish to enter this plea?

11 MR. DIXON: I'm sorry, sir.

12 THE COURT: Do you still wish to enter this plea?

13 MR. DIXON: Yes, sir.

14 THE COURT: Is that plea of your own free will and
15 accord?

16 MR. DIXON: Yes, sir.

17 THE COURT: Are you satisfied with the manner in which
18 your lawyer has advised you and represented you?

19 MR. DIXON: Yes, sir.

20 THE COURT: Do you have any complaints you want to
21 make about your lawyer, the solicitor, or any officer
22 involved in this case?

23 MR. DIXON: I'm sorry, I'm hard of hearing, sir

24 THE COURT: Do you have any complaints you want to
25 make about your lawyer, the solicitor, or any police

1 officer involved in this case?

2 MR. DIXON: No, sir.

3 THE COURT: Have you understood my questions?

4 MR. DIXON: Yes, sir.

5 THE COURT: Is there anything you would like to ask me
6 about what we've just been over?

7 MR. DIXON: No, sir.

8 THE COURT: Do you understand you have the right to
9 appeal your plea and sentence of the court and that you or
10 your lawyer must do this within ten days?

11 MR. DIXON: Yes, sir.

12 THE COURT: All right. Solicitor.

13 SOLICITOR TAYLOR: Your Honor, this incident happened
14 on September 17th last year 2007 in Fort Mill, South
15 Carolina at the home of Mr. Dixon.

16 Officers were dispatched out to Mr. Dixon's residence
17 in regard to some shots being fired around his residence.
18 When they arrived they saw Mr. Dixon running into his
19 house. They knock on his door and ask him to come outside
20 and speak with him about the possible shots that somebody
21 had called in. Mr. Dixon began yelling at the officers and
22 told them that if they tried to come into his house he
23 would blow them up because he had the entire house rigged
24 with explosives. The officers had to end up calling the
25 SWAT Team out to his residence. They had to evacuate

1 several surrounding residences because they didn't know
2 whether Mr. Dixon had his house wired with explosives or
3 whether he had the ability to really blow up his house.

4 Throughout the hours of negotiations between officers
5 and Mr. Dixon he kept coming to the window yelling
6 obscenities and threatening officers. At one point, Your
7 Honor, he had an empty dark colored wine bottle and he came
8 to the front door and held it behind his back and then made
9 a swift motion to his side trying to act like it was a
10 firearm, that he was gonna shoot one of the officers with.

11 At several points he came to the door with other
12 weapons such as knives or a sword at one point threatening
13 the lives of officers. After several hours of negotiations
14 with primarily Officer Gilbert standing behind me Mr. Dixon
15 did come out on the front porch and was at that point
16 subdued and taken into custody.

17 THE COURT: Prior record?

18 SOLICITOR TAYLOR: A few things from the '80s. He has
19 an aggravated robbery with a shotgun. Trafficking drugs
20 and resisting law enforcement officers. His only recent
21 charge, Your Honor, he has is a public disorderly conduct
22 in 2006.

23 THE COURT: All right. Does Officer Gilbert want to
24 be heard? Anything you would like to say, Officer?

25 OFFICER GILBERT: Nothing major, Your Honor. The day

1 after the incident Mr. Dixon did call the police department
2 and ask for me and another officer to come out but he did
3 apologize. I have no doubt that he was intoxicated that
4 night. He seemed pretty pleasant the next day. That's all.

5 THE COURT: All right. Thank you. Thank you very
6 much.

7 OFFICER GILBERT: Yes, sir.

8 THE COURT: Is that your accurate prior criminal
9 record the solicitor stated to me?

10 MR. DIXON: Excuse me, sir.

11 THE COURT: Is that your accurate prior criminal
12 record?

13 MR. DIXON: Yes, sir. Yes, sir.

14 THE COURT: I find there is a substantial factual
15 basis for the plea and the defendant's decision to plead
16 guilty is freely voluntarily knowingly and intelligently
17 made. He's had the advice of counsel, a very competent
18 attorney, with whom he says he is well and totally
19 satisfied the plea is accepted.

20 Mr. Lemel.

21 MR. LEMEL: Thank you, Your Honor, may it please the
22 court.

23 Your Honor, as John told you he is forty-six years
24 old. He is originally from Ohio where he grew up and went
25 to school and graduated from high school, attended

1 technical school for two years and got an associates
2 degree. And then in one year at the University of
3 Cincinnati. He is married and has been separated for
4 roughly two years. He has three children who are all grown.
5 Two girls twenty-eight to twenty-one and a son who is also
6 twenty-one. From them he has four grandchildren.

7 Your Honor, he has worked as an insulator for the last
8 twenty-five years for eighteen of those with the same
9 company that being Element Associates. He started off
10 basically as a laborer for them and worked his way all the
11 way up where he was a general manager. Actually he was
12 transferred to South Carolina as part of those job duties
13 in 2005. He was at that point in time making Ninety-two
14 Thousand Dollars a year and doing very well. Unfortunately
15 October 2006 he lost that job; had some disputes with some
16 employee, the company basically mistrusted how he handled
17 that and because of that I think, Your Honor, put a lot of
18 stress on him and that he separated from his wife.

19 And I think basically on this particular day as a
20 result of that he got drunk. Some people from my office
21 did also talk with the officers and basically what they had
22 related was that the wine bottle of question was not full
23 as they arrived and as the negotiations went on they
24 noticed that wine bottle got lower and lower and lower.
25 And so unfortunately he was drinking before they got there

1 and continued to drink through this process..

2 I think that Officer Gilbert's assessment of Mr. Dixon
3 when he's not drinking is a very nice man and it somewhat
4 surprised me to hear this afterward. I think this is a
5 situation of just basically public disorderly conduct that
6 spun out of control, but for out of control due to Mr.
7 Dixon's intoxication. I just told the court he himself
8 can't exactly remember what he was saying since he was
9 rattling off a lot of stuff that day and he does not
10 remember exactly what he did or what he said. He does
11 apologize for that. I would ask the court to consider
12 putting a some small amount of time over his head, perhaps
13 two years over his head during that probationary period.
14 He indicates he thinks he can handle that probationary
15 period. I think a little bit of time over his head would
16 be a good incentive for him to behave while he is on
17 probation. We just ask the court to go along with the
18 recommendation beyond that.

19 THE COURT: Thank you.

20 Anything you'd like to say, Mr. Dixon?

21 MR. DIXON: No, sir.

22 THE COURT: Let me make sure I checked that right.
23 Was there or were there not any weapons?

24 SOLICITOR TAYLOR: On the part of Mr. Dixon? Well
25 there were, I think, I believe knives that he showed to the

1 officers at the door, but I don't think he ever - He did
2 not harm any officers and he did not make any - as far as
3 I'm concerned make any threatening lunges or anything at an
4 officer while he had a weapon in his hand.

5 THE COURT: Did you all recover, Officer Gilbert, any
6 firearms?

7 OFFICER GILBERT: Yes, sir. There were some shotguns
8 recovered from inside the house. Those were not shown
9 during the whole incident however.

10 THE COURT: How about any materials that would be a -
11 with which one could make a bomb?

12 OFFICER GILBERT: Not to my knowledge, Your Honor.

13 THE COURT: Why can he possess a firearm if he has a
14 aggravated firearm conviction, Solicitor?

15 SOLICITOR TAYLOR: I would imagine that he cannot
16 possess a firearm under federal law.

17 THE COURT: Well I would even imagine --

18 SOLICITOR TAYLOR: Or I guess --

19 THE COURT: That's what I was looking at under 16-23-
20 30 (a) "any person who has been convicted of a crime of
21 violence in any part of the United States or several
22 states." I thought when you ran a person's criminal
23 history and they could not possess a firearm it would pop
24 up on the record.

25 SOLICITOR TAYLOR: Your Honor, in my review of the

1 record I didn't see anything that stated he was not allowed
2 to possess a firearm. I would agree with you that based on
3 his prior conviction he should not have possessed a firearm
4 and there were firearms found at the scene but they were
5 not exposed during the negotiations or anything.

6 THE COURT: I understand that. I understand that.

7 MR. LEMEL: And, Your Honor, just for clarification,
8 the incident report that is prepared said guns were found
9 in bushes outside the residence.

10 THE COURT: The only reason I'm considering is whether
11 or not as a condition of the probation he should or should
12 not have firearms. We all know that firearms and alcohol
13 don't mix. That's the only thing I'm saying. He shouldn't
14 have had them to start with. I don't think I've got a
15 misunderstanding from the officer or the solicitor that he
16 presented them or anything of that matter. I'm just trying
17 to determine in my mind if he could even possess firearms or
18 not. I don't know the answer to that question.

19 MR. LEMEL: I don't know either, Your Honor, but I did
20 discuss it with my client. If the Court is concerned with
21 that, we certainly consent as a term of probation to agree
22 not to possess any firearms.

23 THE COURT: All right. 07-GS-46-4372 State versus
24 John Dixon threatening the life of a public official, the
25 defendant is committed to the State Department of

1 Corrections for a determinative term of five years provided
2 upon - provided that is suspended to probation for five
3 years. Special conditions of probation substance abuse
4 counseling, random drug and alcohol testing, substance
5 abuse treatment deemed appropriate by the Probation Agent.
6 The Defendant is not to possess any firearms during the
7 course of probation. Thank you.

8 And good luck to you, Mr. Dixon.

9 MR. LEMEL: Thank you, Your Honor.

10 THE COURT: And thank you, Solicitor.

11 Officer.

12 (END OF TRANSCRIPT OF RECORD.)
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th day of June, 2008.

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

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 12-23 / 2013

FORM 5

STATE OF SOUTH CAROLINA)

County of York)

IN THE COURT OF COMMON PLEAS

John William Dixon 350805)

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

v.)

State of South Carolina)

2012 CP 46-4257

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kershaw Correctional Facility
2. Name and location of Court which imposed sentence General Sessions,
York County - Moss Justice Center, York
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Indictment # 07-05-46-4372 - 5 years

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 7, 2012, Five (5) years non-violent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (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 Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to object to trial procedure.
- (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? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

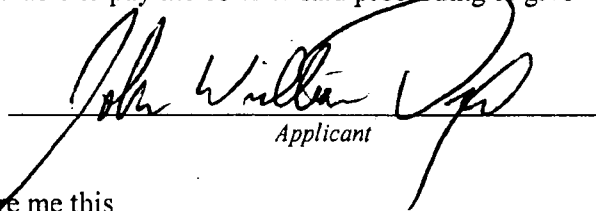
iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (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? _____
- (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. _____
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

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

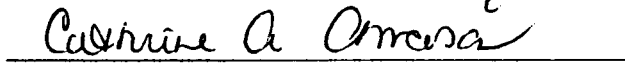
I, John William Dixon, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

7 day of December, 2012.


Notary Public

My Commission Expires: My Commission Expires December 22, 2018

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

Vacation of sentence -

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, John William Dixon, 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.

John William Dixon

SWORN to and subscribed before me this 7 day of December, 2012.

Carlene A. Amosa (L.S.)
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

28
STATE OF SOUTH CAROLINA

COUNTY OF YORK

John W. Dixon #350805

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-46-4257

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Elizabeth Rainey, Bar No.
Address:
Post Office Box 12026 Rock Hill, SC 29731
phone: fax:
e-mail: other:

Defendant's Attorney:
J. Rutledge Johnson, Bar No. 78871
Address:
PO Box 11549 Columbia, SC 29211-1549
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

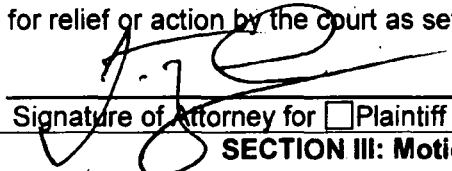
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 18, 2013

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the
attached order.

☐ Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

John William Dixon, #350805,

2012-CP-46-4257

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2013 MAR 21 PM 3:08

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 12, 2012, 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 York County Clerk of Court. The Applicant was indicted at the December 2007 term of the York County Grand Jury for Threatening the life, person or family of a public employee (2007-GS-46-4372). The Applicant was represented by Gary Lemel, Esquire. On June 20, 2008, the Applicant pled no contest before the Honorable R. Knox McMahon. Judge McMahon sentenced the Applicant to confinement period for five (5) years suspended for five (5) years' probation.

On March 8, 2010, the Applicant appeared before the Honorable John C. Hayes, III for a probation revocation hearing. The Applicant's probation was revoked for ninety (90) days and

then continued after the Applicant was released from custody. The Applicant did not appeal his sentence.

On May 7, 2012, the Applicant appeared again before the Honorable John C. Hayes, III for a probation revocation hearing. The Applicant was represented by Mark McKinnon, Esquire. The Applicant's probation was revoked in full. The Applicant did not appeal his sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) the Applicant's records from the South Carolina Department of Corrections and the probation revocation transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully pursuant to a revocation of his probation for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failure to object to trial procedure"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

A probationer has a right to counsel, though not a Sixth Amendment one. Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009). Nonetheless, "the same analysis for ineffectiveness that

applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel." Id. at 455, 682 S.E.2d 794.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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, 334 S.E.2d 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, 466 U.S. 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. 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.

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).

IV.

The Applicant also alleges abuse of discretion on the part of the sentencing judge. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

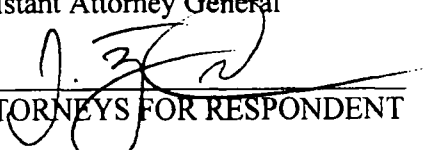
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

March 18, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2012-CP-46-4257

JOHN W. DIXON, 350805

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

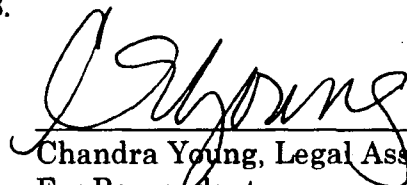
Respondent.

FILED-RECEIVED
2013 MAR 21 PM 3:08
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

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:

Elizabeth Rainey, Esquire
Post Office Box 12026
Rock Hill, SC 29731

DATED this 18th day of March, 2013.


Chandra Young, Legal Assistant
For Respondent

State of South Carolina)	In the Court of Common Pleas
County of York)	Sixteenth Judicial Circuit
	2012-CP-46-4257

John William Dixon,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent,	)	
	)	
	)	

August 12, 2013
York, South Carolina

B E F O R E:

The Honorable G. Edward Welmaker, Judge

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

Nathan Sheldon, Esquire
Attorney for Applicant

Joshua L. Thomas, Esquire
J. Rutledge Johnson, Esquire
Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

Proceedings 4

TESTIMONY - WITNESS

John Dixon,

Direct Examination by Mr. Sheldon 5

Cross-Examination by Mr. Thomas 16

Mark McKinnon, Esq.,

Direct Examination by Mr. Thomas 21

Cross-Examination by Mr. Sheldon 25

Certificate Page 31

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
P-1	Indictment	8
P-2	Warrant	10
P-3	Plea Agreement	12

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:59 a.m.)

THE COURT: All right. You may call the next case.

MR. THOMAS: May it please the Court: The next case is *John W. Dixon v. the State of South Carolina*. It's Case No. 2012-CP-46-4257. Mr. Dixon was indicted in December of 2007 for threatening a public employee. He pled June 20th, 2008. He entered an *Alford* plea as indicted to threatening a public employee.

The Honorable Judge Knox McMahon sentenced him to a recommended five years, suspended to five years' probation. Subsequently, on May 7th, 2012, he was before the Court for a probation revocation. The Honorable John Hayes sentenced him to five years, the remainder of his sentence, and terminated his probation.

He timely filed a PCR on December 12th, 2012. He is present in the courtroom, represented by his attorney, Nathan Sheldon. The state's ready to proceed.

THE COURT: Mr. Sheldon?

MR. SHELTON: Thank you, Your Honor. May it please the Court: Prior to calling my first witness, I would just like the Court to know that my client has a bit of a hearing problem. So if it sounds like I'm screaming, that's just so he can hear me.

THE COURT: All right. I'll try to speak up as well.

DIRECT EXAMINATION BY MR. SHELDON - JOHN DIXON

5

1 MR. SHELDON: Thank you, Your Honor. We would call
2 John Dixon to the stand.

3 (Whereupon, the witness came forward.)

4 JOHN DIXON, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHELDON:

8 Q All right. Thank you. Mr. Dixon, please state your
9 name for the record.

10 A John William Dixon.

11 Q And, Mr. Dixon, are you currently incarcerated in the
12 South Carolina Department of Corrections?

13 A Yes, sir.

14 Q And what are you incarcerated there for?

15 A Well -- pardon me, sir? Where?

16 Q What -- what for?

17 A Probation violation.

18 Q And is that a probation violation stemming from a
19 guilty plea on June 20th of 2008 for threatening the life
20 of a public employee?

21 A Yes, sir.

22 Q At the time of your original plea, did you receive --
23 you actually received probation, didn't you?

24 A Yes, sir.

25 Q How did it come to be that you were violated for your

1 probation on -- on -- in May of 2012?

2 A I -- my father had a massive heart attack. We was
3 spending most of our time at the hospital in Dothan,
4 Alabama. An ex-family member was in my home. I approached
5 the ex-family member and told them that if anything was
6 missing, I was going to have them arrested. Well, in turn,
7 they went and pressed charges against me, which the charges
8 that wasn't true. And at that time ---

9 Q What ---

10 A --- when the charges were filed against me, South
11 Carolina put a hold on me. And ---

12 Q Well, let me -- let me stop you there. So
13 essentially, you pick up more charges; is that right?

14 A Yes, sir.

15 Q And did you actually pick up those charges in the
16 state of Florida?

17 A Yes, sir.

18 Q And is that where you were living at the time?

19 A Yes, sir.

20 Q Is that where your probation was at the time?

21 A Yes, sir.

22 Q Okay. So were you essentially arrested sometime
23 around June 8th of 2011 on these other charges in Florida?

24 A Yes, sir. Sometime in June.

25 Q When you were arrested June 8th of 2011, was -- did --

DIRECT EXAMINATION BY MR. SHELDON - JOHN DIXON

7

1 to -- do you know if -- was a warrant placed -- what -- you
2 were being held in Florida on these warrants; is that
3 correct? The -- the -- the ---

4 A Yes.

5 Q --- warrants for the crimes committed in Florida?

6 A The -- the warrants at there for the crime they said I
7 committed. Yes.

8 Q Okay. Sometime shortly after you were arrested, did
9 you receive information that South Carolina had placed a
10 hold on you for violating your probation?

11 A Yes, sir.

12 Q Do you know, off the top of your head, when South
13 Carolina placed a hold on you for violating your probation?

14 A It was at the end of June or sometime in July, they
15 put a hold on me. And I was served a warrant down there
16 via fax through the county from South Carolina. Probation,
17 Parole, and Pardons served me with that.

18 Q What -- we'll -- we'll get to that in a minute. But I
19 want to backtrack just for a minute. Sometime prior to
20 being revoked in full, were you revoked for 90 days of your
21 probation?

22 A Yes.

23 MR. SHELDON: Your Honor, can I approach ---

24 THE COURT: Yes, sir.

25 MR. SHELDON: --- the witness?

1 Q I'm going to show you this probation violation. And
2 this, I -- do you -- do you recognize that?

3 A Yes. Yes.

4 Q And that is actually the probation-violation
5 sentencing sheet, revoking 90 days; is that right?

6 A Yes, sir.

7 Q But that -- now, that was sometime prior to this -- to
8 what you are currently incarcerated -- or I -- that 90-day
9 revocation was prior to June of 2011; is ---

10 A Yes, sir.

11 Q --- that right?

12 MR. SHELDON: Your Honor, we'd ask that this just be
13 marked as -- I -- I -- I think it's already in evidence,
14 but we'd ask that it be marked as Defendant's -- or
15 Petitioner's Exhibit 1.

16 THE COURT: Any objection?

17 MR. THOMAS: No objection, Your Honor.

18 THE COURT: Okay.

19 MR. THOMAS: I don't know that a copy of the prior
20 revocation warrants are in your file, though, but I have an
21 extra copy here. So if you want to just provide that with
22 the judge.

23 (Whereupon, Plaintiff's Exhibit 1 was marked and
24 entered into evidence.)

25 Q Now, getting back to the -- to the current case, did

DIRECT EXAMINATION BY MR. SHELDON - JOHN DIXON

9

1 -- so South Carolina issued the -- issued the warrant for
2 your violation here based off of these charges that you
3 picked up in Florida; is that correct?

4 A Yes.

5 MR. SHELDON: Your Honor, can I approach the witness?

6 THE COURT: You may.

7 Q I'm going to show you this document. Do you recognize
8 that document?

9 A Yes.

10 Q And what -- what is that? What -- what are you
11 looking at there?

12 A This was a -- the reason that they -- the warrant --
13 the reason they served it -- the charges they charged me
14 with in Florida. This is from South Carolina violation.

15 Q So that is a South Carolina arrest warrant for a
16 violation of ---

17 A Yes.

18 Q --- probation?

19 And is that -- does that warrant have a -- have a date
20 on the bottom of it?

21 A Yeah. It's -- yes. I'm sorry. July 22nd, 2012.

22 Q And then, right -- something right here.

23 A I'm sorry. July 6th, 2011.

24 Q So that warrant was actually notarized and issued on
25 July 6th of 2011?

1 A Yes.

2 MR. SHELDON: Your Honor, at this time we'd like to
3 mark this as Defense Exhibit 2.

4 MR. THOMAS: No objection.

5 THE COURT: Without objection, marked as Exhibit 2.

6 (Whereupon, Mr. Sheldon, Mr. Thomas, and Mr. Johnson
7 conferred.)

8 MR. SHELDON: Oh, I'm sorry. Yeah. Petitioner's
9 Exhibit 2, Your Honor.

10 (Whereupon, Plaintiff's Exhibit 2 was marked and
11 entered into evidence.)

12 Q So South Carolina issues the arrest warrant for the
13 violation of probation on July 6th, 2011. And what time --
14 at any time between July 6th -- well, let me ask you this
15 first: When do you plead guilty to the charges in -- to
16 some charges in Florida?

17 A I pled no contest in March of 2012.

18 Q And was that on March 15th, 2012?

19 A Yes, sir, March 15th. I pled no contest to
20 misdemeanors.

21 Q And what sentence did you receive from the state of
22 Florida on those charges?

23 A Time served: 11/29, which in the state of Florida is
24 eight months.

25 Q Okay. So you were sentenced to 11 months and 29 days;

DIRECT EXAMINATION BY MR. SHELDON - JOHN DIXON

11

1 is ---

2 A Yes.

3 Q --- that correct?

4 And, in essence, did that result in a time-served
5 sentence?

6 A Yes, sir. It's eight months in the state of Florida.

7 Q All right.

8 MR. SHELDON: Your Honor, can I approach the witness?

9 THE COURT: You may.

10 Q I'm going to show you this document. Do you recognize
11 that -- that document?

12 A Yes, sir.

13 Q And -- and what are you looking at there?

14 A It was sent to me from Florida. It's a -- the plea --
15 a plea agreement that I signed in -- in Florida on March --
16 on the 15th of March last year.

17 Q And that was actually filed in the state of Florida on
18 March 15, 2012 ---

19 A Yes, sir.

20 Q --- correct?

21 And in that plea agreement, it indicates the 11-month,
22 29-day sentence with credit for all ---

23 A Yes.

24 Q --- that time served?

25 A And it -- yes, sir.

DIRECT EXAMINATION BY MR. SHELDON - JOHN DIXON

12

1 MR. SHELDON: Your Honor, we'd mark -- we'd move to
2 mark this as Petitioner's Exhibit 3.

3 THE COURT: Without objection?

4 MR. THOMAS: No objection, Your Honor.

5 Q So on March ---

6 THE COURT REPORTER: Mr. Sheldon ---

7 Q --- 15th ---

8 THE COURT: All right. Hang on just a minute. Let's
9 give her a minute to ---

10 THE COURT REPORTER: Just a moment, please.

11 MR. SHELDON: I apologize.

12 THE COURT: --- mark it.

13 (Whereupon, Plaintiff's Exhibit 3 was marked and
14 entered into evidence.)

15 Q So on March 15th, 2012, you are sentenced in the state
16 of Florida to essentially a time-served sentence?

17 A (Nodded head up and down.)

18 Q At -- at -- at that point are you able to just walk
19 out of the Florida jail?

20 A No, sir.

21 Q And -- and why not?

22 A Because there was a hold on me from here.

23 Q So there is still a hold on you for this ---

24 A Yes, sir.

25 Q --- probation violation in South Carolina?

1 A Yes.

2 Q So on March 15th of 2012, do you stay in Florida?

3 A I stayed there until prisoner-transport system came to
4 pick me up.

5 Q And when was -- approximately when was that?

6 A April 14th, if I'm -- took me seven or eight days to
7 get here. I'm not sure.

8 Q So actually, you -- or you leave Florida and you
9 arrive in South Carolina; is that right?

10 A April 20th. Yes, sir.

11 Q And in between the time that you are sentenced in
12 Florida to the time that you are brought to South Carolina,
13 are you free to go at ---

14 A To South Carolina. Yes. I couldn't leave the jail.
15 I had a hold on me.

16 Q And so when you were -- you were transported by
17 Florida Department of Corrections. You didn't -- didn't
18 get a ride from your dad up here?

19 A No. It's a transport-systems company that moves
20 people around the country that are wanted in other states.
21 They're the ones that brought me.

22 Q Okay. But you were incarcerated ---

23 A Incarcerated in ---

24 Q Okay.

25 A --- Florida. Yes.

1 Q And so you arrived in South Carolina on April 20th,
2 2012; is that ---

3 A Yes.

4 Q --- correct?

5 And for this probation violation, you are represented
6 by Mr. McKinnon; is that right?

7 A I don't know his name. I -- I -- I seen him on Friday
8 and came to court Monday.

9 Q You had a lawyer for the ---

10 A Yes.

11 Q --- probation violation?

12 A Yes.

13 Q And did you discuss with your lawyer the procedural
14 history of how you arrived in South Carolina?

15 A Yes.

16 Q You are eventually, on May 7th, 2012, revoked in full
17 -- the full five years; is that correct?

18 A Yes.

19 Q By the Honorable Judge Hayes?

20 A Yes.

21 Q At the time you were revoked in full, did -- were you
22 given some credit for time served?

23 A Seventeen days ---

24 Q So ---

25 A --- from the time I got to South Carolina.

DIRECT EXAMINATION BY MR. SHELDON - JOHN DIXON

15

1 Q So you're given credit for seven -- from April 20th,
2 essentially, to May ---

3 A Yes.

4 Q --- 7th ---

5 A Yes.

6 Q --- when you actually do the -- the ---

7 A Yes.

8 Q --- violation of probation?

9 A Yes.

10 Q And you were also given a 90-day credit for that
11 previous revocation ---

12 A Yes.

13 Q --- correct?

14 A Yes.

15 Q Did your attorney ever discuss with you the
16 possibility of appealing the decision of the time-served --
17 of the credit for time served?

18 A No, sir.

19 Q Were you at any point made aware that you can appeal
20 the decision for the amount of time served?

21 A No, sir.

22 Q is there anything to your recollection that was put on
23 the record the day of the probation violation that would
24 indicate you had the right to appeal the amount of credit
25 that you received for time served?

CROSS-EXAMINATION BY MR. THOMAS - JOHN DIXON

16

1 A No, sir.

2 Q Had your attorney advised you that you could appeal
3 the credit for time served, would that -- that -- would
4 that have been an avenue that you would've pursued?

5 A Yes, sir.

6 Q But your attorney did discuss with you the nature of a
7 -- what a probation violation is, correct?

8 A No, sir.

9 Q How -- how many times did you have an opportunity to
10 meet with your attorney?

11 A Once. The Friday before I came to court.

12 MR. SHELDON: Thank you, Your Honor. I don't have any
13 more questions.

14 THE COURT: You may cross-examine the witness.

15 MR. THOMAS: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. THOMAS:

19 Q Good morning, Mr. Dixon.

20 A Morning.

21 Q So you agree that you had a prior revocation ---

22 A Yes, sir.

23 Q --- earlier?

24 I believe that was Judge Newman?

25 A (No audible response.)

1 Q And so you understood the -- the process of probation
2 revocation and what would happen?

3 A Yes.

4 Q Okay. And you said you did meet with your attorney
5 the Friday before?

6 A Yes, sir.

7 Q Okay. And did he go back over with you the process
8 for probation revocation, sort of what was going to happen
9 on Monday?

10 A He told me I'd -- I'd get partial revocation and
11 termination of probation.

12 Q Did he tell you, you would get a partial revocation or
13 did ---

14 A He said ---

15 Q --- he tell you ---

16 A --- that ---

17 Q --- that was ---

18 A --- that would ---

19 Q ---- a possibility?

20 A --- be the recommendation.

21 Q Recommendation? Okay.

22 And you explained to him sort of the circumstances and
23 the situation, what happened in Florida, that led ---

24 A Yes, sir ---

25 Q --- to you ---

1 A --- I did.

2 Q --- picking up those charges?

3 Okay. But you agree that you did plead and you were
4 sentenced to those charges in Florida, correct?

5 A Yes, sir. I pled no contest.

6 Q You pled no contest. But if you will -- if you -- do
7 you still have a copy of the -- the ---

8 A Pardon me?

9 Q --- sentencing sheet from Florida in front of you
10 there?

11 A I'm sorry, sir?

12 Q Do you still have a copy of the sentencing sheet from
13 Florida?

14 MR. THOMAS: I -- may I approach, Your Honor?

15 THE COURT: You may.

16 Q Let me show you. This is the sentencing sheet ---

17 A Yes, sir ---

18 Q --- for Florida?

19 A --- it is.

20 Q You'll agree with me that it says "adjudicated
21 guilty"; there's a check by that box right there?

22 A Yes, sir.

23 Q Okay. And you -- you did enter that freely and
24 voluntarily in Florida, correct?

25 A Yes. I -- no contest. Yes, sir.

1 Q Okay. And do you remember, at the probation-
2 revocation hearing, when Judge Hayes sort of talked to you
3 about what happened in Florida and you admitted to him then
4 that you had picked up those charges and pled ---

5 A He'd ---

6 Q --- to them?

7 A Not that I recall. I -- like I said, sir, I'm hard of
8 hearing. And I think he just -- all I remember him asking
9 me was if I had anything to say.

10 MR. THOMAS: Beg the Court's indulgence.

11 Q And you remember discussing with your attorney before
12 the probation revocation that you wanted credit for the
13 time you spent in jail in Florida; isn't that correct?

14 A Yes.

15 Q Okay. And he told you he would ask for it?

16 A I don't recall what he said, sir.

17 Q But he did ask for it when he got in front of Judge
18 Hayes, didn't he? He asked for credit you'd spent in the
19 Georgia ---

20 A I'm not ---

21 Q --- or ---

22 A --- sure, sir.

23 Q Okay.

24 A I don't recall if he did or not. I didn't think he
25 did, but I was advised he did.

1 Q Okay. Well, would -- if I told you that it was -- it
2 reflects in the transcript that he asked for -- I believe
3 ---

4 A Yes, sir.

5 Q --- you asked for it as well.

6 A Yes, sir.

7 MR. THOMAS: Okay. I have nothing further. Thank
8 you.

9 THE COURT: Any redirect?

10 MR. SHELDON: No, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 THE WITNESS: All right. Thank you.

13 (Whereupon, the witness exited the witness stand.)

14 MR. SHELDON: Your Honor, that's the petitioner's case

15 ---

16 THE COURT: All right.

17 MR. SHELDON: --- to you.

18 THE COURT: Anything from the state?

19 MR. THOMAS: Your Honor, I would call Mark McKinnon to
20 the stand.

21 THE COURT: Sir, if you'd come around to be sworn.

22 (Whereupon, the witness came forward.)

23 MARK MCKINNON, having been first duly sworn,
24 testified as follows:

25 MR. THOMAS: May it please the Court.

DIRECT EXAMINATION

1
2 BY MR. THOMAS:

3 Q Good morning, Mr. McKinnon.

4 A Morning.

5 Q How long have you been practicing law?

6 A Oh, I'll say seven/eight years.

7 Q Okay. And you represented Mr. Dixon on his probation
8 revocation in front of Judge Hayes?

9 A I did.

10 Q Had you ever -- and I don't know. I don't know that
11 the record's clear. You hadn't represented him on anything
12 before that, had ---

13 A No, I ---

14 Q --- you?

15 A --- had not.

16 Q Okay. How many times did you meet with him before the
17 hearing?

18 A We typically get a -- the file for Monday's probation
19 violations Thursday evening or -- or late Thursday. So I'm
20 sure I just met with him on that Friday before.

21 Q And when you met with him, did he explain to you what
22 happened in Florida?

23 A He did.

24 Q And did he -- did you call his probation agent in
25 Florida, or did you do any sort of research on that end?

1 A I did not recall this. But I -- looking back through
2 my notes, I could not get in touch with his probation
3 agent. I tried to call him and could not. However, I did
4 get in touch with his defense attorney in Florida.

5 Q What did his defense attorney in Florida tell you
6 about the charges?

7 A He told me that he had pled no contest, I believe, in
8 March and received time served. The weapons charge was
9 dismissed, and he pled no contest to lesser-included
10 offenses, I think all misdemeanors.

11 Q Okay. And when you met with him on that Friday, did
12 you discuss the charges against him, the probation charges?

13 A Yes.

14 Q And did you explain the process to him?

15 A Yes.

16 Q Did you talk to his probation agent here?

17 A I do not recall. Usually, I do that morning in court.
18 But I do not recall that, and I don't have any notes about
19 that.

20 Q And sort of from what you gathered in talking to Mr.
21 Dixon's attorney and to Mr. Dixon himself, did you think he
22 had any defense to the charge of the -- the revocation
23 charges?

24 A Not really. I did point out to the Court that the
25 weapons charge was dismissed, as that was named as -- as a

1 violation in the report. But other than that, pleading no
2 contest to multiple charges was going to be difficult to
3 defend.

4 Q When you actually got to the hearing, what kind of
5 defense did you put up? What kind of mitigation did you
6 put in front of Judge Hayes?

7 A Mainly, that he had spent a good chunk of time in
8 jail, I remember. And I think he had actually done fairly
9 well on probation before that. And I think I -- I did tell
10 the judge that he did not have any issues in Florida that I
11 could recall before the new charges.

12 Q Were you aware -- did he make you aware of the prior
13 revocation, the 90-day revocation?

14 A Yes. Yes.

15 Q Did he -- did you talk to him about the recommendation
16 you were going to make in terms of partial revocation,
17 stuff like that?

18 A I don't have a note on that. But I -- I'm sure I did.
19 Well, actually, let's see. I think I did write that down.
20 Yeah. I think I -- I did -- yes. That was actually -- the
21 probation agent's recommendation was for a partial
22 revocation and terminate.

23 Q Okay.

24 A Yes.

25 Q And when you talked about sort of credit for time

1 served, did you talk to him about that at your meeting with
2 him before the hearing? Did you talk to him about ---

3 A Yes.

4 Q --- the time he would get?

5 A Yes.

6 Q And what'd you tell him there?

7 A I told him that the judge could give him credit either
8 -- basically, there could be two different dates: the date
9 he had the warrant served on him, which, I believe, was in
10 April of 2012; or the date that the hold was put on him;
11 and that I would ask the judge for the latter, but he could
12 give him the former.

13 Q Okay. And did you ask the judge for ---

14 A I did. And I had calculated up that if he gave him
15 that, then he'd be entitled to 300 days' time-served
16 credit.

17 MR. THOMAS: Beg the Court's indulgence.

18 (Whereupon, Mr. Thomas and Mr. Johnson conferred.)

19 Q Did you discuss with Mr. Dixon the prospects of an
20 appeal? Did he ask you about it?

21 A I do not recall discussing anything about an appeal.
22 Sometimes we discuss that, and sometimes we don't. I don't
23 have any notes about discussing an appeal.

24 Q Would there -- in your mind, would there have been any
25 reason to appeal from the judge's decision?

CROSS-EXAMINATION BY MR. SHELDON - MARK MCKINNON

25

1 A In my opinion, no. Merely -- well, it's a legal
2 issue. But I think that since the warrant was not served
3 on him, he was not formally charged and arraigned on that
4 -- on the probation violation until 2012, that the judge
5 did not have to give him that credit. Now, sometimes
6 judges will be nice and do that. But that's my
7 understanding of the law.

8 Q Thank you, Mr. McKinnon. No further questions.

9 THE COURT: You may cross-examine.

10 MR. SHELDON: Thank you, Your Honor. May it -- may it
11 please the Court.

12 CROSS-EXAMINATION

13 BY MR. SHELDON:

14 Q Good morning, Mr. McKinnon.

15 A Morning.

16 Q So there's nothing in your file that would indicate
17 that you discussed appealing any of the issues in the
18 violation of probation with Mr. Dixon; is ---

19 A That's correct.

20 Q --- that correct?

21 Did -- you said you've been -- you've indicated to the
22 Court that you've been practicing about seven years. Is --
23 and is the majority of that doing criminal law?

24 A Yes.

25 Q Have you had an opportunity to -- it's been part of

1 the practice in criminal law and being a lawyer, do you --
2 is -- is legal research part of your, essentially, job
3 description?

4 A Yes.

5 Q Have you had an opportunity to research the issue over
6 whether the issue for time served on something like this
7 is, in fact, in the judge's discretion and -- are you aware
8 of any case law that would suggest otherwise?

9 A I did not research this issue for this case. But I
10 have from time to time when it comes up. And my
11 understanding is that if -- the -- for the judge to be --
12 to necessitate the judge giving him credit, that it cannot
13 be a prior conviction that he was serving the time on and
14 he had to be formally charged on the current offense. So
15 what I -- what I said before about being the judge's
16 discretion, I think legally they don't have to give credit.

17 But if they're in a good mood or just wanting to cut
18 the -- the defendant a break, that they will just go ahead
19 and say, "I will give you that credit." And I have seen
20 that happen before.

21 Q Would you agree that he wasn't serving time on any
22 conviction at -- at the point -- at -- at -- and -- and
23 really, throughout the entire process; is ---

24 A Right.

25 Q --- that correct?

CROSS-EXAMINATION BY MR. SHELDON - MARK MCKINNON

27

1 A Right. He -- he was in detainment.

2 Q So he was being detained on charges in Florida, and
3 essentially, a hold was placed on him for a -- what amounts
4 to a violation-of-probation charge in South Carolina?

5 A Yes.

6 Q So -- but there's no convictions in that point; is
7 that right?

8 A Correct. That's my recollection.

9 MR. SHELDON: Your Honor, I don't have any more
10 questions.

11 THE COURT: Any redirect?

12 MR. THOMAS: No redirect, Your Honor. The state would
13 rest right now.

14 THE COURT: Thank you. You can step ---

15 THE WITNESS: Thank you.

16 THE COURT: --- down, Mr. McKinnon.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: You have any case law?

19 MR. SHELDON: I do, Your Honor. And I would -- if I
20 may approach, I have one case on the issue that the
21 attorney general has as well.

22 THE COURT: All right.

23 MR. SHELDON: And that would be *Blakeney v. the State*
24 *of South Carolina*. Your Honor, in that case, essentially,
25 the -- and -- and I would like to point out for the Court

1 that in that state -- in -- in that case, that is stemming
2 from a PCR action. It's unclear what was actually in the
3 PCR petition. But it -- it does stem from a PCR action.

4 And in that case, essentially, the Court said that --
5 and -- and it's essentially county -- the county instead of
6 state -- the state. But the Court did, in fact -- the PCR
7 judge gave him the credit for the time served on --
8 essentially, on the detainer, but prior to it being served
9 on him. And as a result it -- the -- the PCR was affirmed;
10 the trial judge was affirmed.

11 We would argue that the fact scenario in that -- in
12 that case before the Court is the exact same fact scenario
13 as it is in this case, Your Honor. And he should've been
14 given credit since the warrant was issued on July 6th of
15 2011.

16 MR. THOMAS: Your Honor, our position would be that --
17 that this is actually a direct-appeal issue. I know this
18 case that we've presented is fairly on point in the PCR
19 context. But this is also a pre-Al -- it's about the same
20 time Al-Shabazz was coming down.

21 And the state's position is this is a -- it's an issue
22 either for direct appeal, as in, you know, the trial judge
23 erred in not giving me the credit for the time served; or
24 it's an issue for SCDC in their calculation of his time
25 served. And that would be our position: It's not a PCR

1 issue.

2 THE COURT: Would you disagree with that?

3 MR. SHELDON: Your Honor, I -- I would to the extent
4 that if it were a direct-appeal issue, I -- the -- the --
5 certainly, the four corners of the PCR petition that my
6 client filed prior to me representing, represents
7 ineffective assistance, Your Honor. But I think the
8 failure to notify him of a direct appeal or his right to
9 direct appeal on that issue -- it was certainly asked for
10 at the hearing. So it's not necessarily ineffective for
11 the asking of it.

12 But the failure to file the appeal on that issue or be
13 familiar with what could be prevailing case law on the
14 issue -- I -- I don't -- I -- I think his direct appeal now
15 would be untimely and he -- he's essentially stuck. And I
16 think that's where the ineffective assistance would kind of
17 -- would come into play. Because I think that -- it ---

18 THE COURT: If the case is still good law on, you
19 know, the -- Chavez. What -- what's your max-out date?

20 THE APPLICANT: September 2014.

21 THE COURT: Okay. All right. I -- I agree that this
22 was the transition time and perhaps, with the
23 administrative procedures, I -- I think, in this case, I'm
24 going to grant him a belated appeal, deny his PCR. That
25 way you can notify them, if he wants to appeal that issue,

1 he'll have a right to appeal it. If you'll prepare me an
2 order, okay?

3 MR. THOMAS: Yes, sir. Thank you.

4 THE COURT: All right.

5 MR. SHELDON: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (Whereupon, the proceeding was concluded at 11:30 a.m.)

8 --- END OF TRANSCRIPT OF RECORD ---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
THE 12TH DAY OF AUGUST, 2013.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 15, 2014

RECEIVED

OCT 10 2013

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT**S.C. SUPREME COURT**

John William Dixon, #350805,)

Case No. 2012-CP-46-4257

Applicant,)

v.)

State of South Carolina,)

Respondent.)

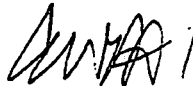
**ORDER OF DISMISSAL
GRANTING WHITE V. STATE
APPEAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 12, 2012. Respondent made its Return on March 18, 2013. The Court convened an evidentiary hearing into the matter on August 12, 2013, at the York County Courthouse. Applicant was present at the hearing and represented by Nathan J. Sheldon, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's probation revocation counsel, Mark McKinnon, Esquire, also testified. The Court had before it a copy of the revocation hearing transcript, the records of the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced by Applicant at the hearing.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. In December 2007, the York County Grand Jury indicted Applicant for threatening the life of a public employee (2007-GS-



46-4372). He was represented by Gary Lemel, Esquire. On June 20, 2008, Applicant pled no contest to the charge as indicted. The Honorable R. Knox McMahon sentenced Applicant to confinement for a period of five (5) years, suspended upon the service of five (5) years of probation. Applicant did not appeal his plea or sentence.

On March 8, 2010, Applicant appeared before the Honorable John C. Hayes, III, for a probation revocation hearing. Upon information and belief, the Sixteenth Circuit Public Defender's Office represented Applicant at this hearing. Judge Hayes revoked Applicant's probation for ninety (90) days and continued Applicant on probation after service of the revoked time. Applicant did not appeal this revocation or sentence.

On May 7, 2012, Applicant again appeared before Judge Hayes for a probation revocation. Mark McKinnon, Esquire, represented Applicant at this revocation hearing. Judge Hayes revoked Applicant's probation in full and terminated him from probation. Applicant did not appeal this revocation or sentence.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. Failure to object to trial procedure

At the PCR hearing, the Applicant proceeded on the allegation of ineffective assistance of probation revocation counsel and an allegation he was denied a direct appeal from his probation revocation hearing.

III. SUMMARY OF TESTIMONY

Applicant testified he was arrested in Florida on June 8, 2011, on charges of aggravated assault with a firearm, assault, and battery. Applicant testified that while in jail Florida on these charges, he learned that the South Carolina Department of Probation, Parole, and Pardon Services placed a hold on him for violating the terms of his probation. According to Applicant, he learned of the hold sometime in mid-July when the Florida jail received a faxed copy of the violation warrant. Applicant testified he pled no contest to the Florida charges in March 2012. According to the Florida sentencing sheet entered into evidence, Applicant pled to three charges of battery and two charges of assault; the firearms charge was *nolle prossed*. In exchange for the plea, Applicant received a time-served sentence. Applicant testified he was not released from jail immediately. Instead, he said he remained in the Florida jail until April 2012, when a prisoner transport van took him back to South Carolina. He testified that when he arrived back in South Carolina, he was incarcerated in the York County detention center. Applicant testified he met with his revocation counsel before the hearing. In that meeting, Applicant says he discussed the procedural history of the Florida charges. Applicant testified he never discussed an appeal from the revocation sentence. Applicant testified he asked the judge for credit for time-served while in jail in Florida. He further testified he would have pursued an appeal if he had known about it. On cross-examination, Applicant admitted he was familiar with the probation revocation process from the prior ninety day revocation. He further admitted the Florida plea was a violation of the terms of his probation. He explained he knew revocation counsel would argue for a partial revocation.

Revocation counsel testified he received notice of Applicant's Monday morning

probation revocation hearing on the Thursday before. He testified he met with Applicant on Friday to discuss the case. Counsel testified he discussed the revocation procedure and any possible defenses Applicant may have to the charge. He testified he believed the Applicant had no viable defense to the violation. Instead, he hoped to impress upon the revocation judge that Applicant had done well on probation prior to the incident in Florida, and that a partial revocation was a more appropriate sentence. Counsel also testified that he spoke with Applicant's plea counsel on the Florida charges and attempted to speak to Applicant's Florida probation agent. Counsel recalled asking the judge for a partial revocation and for credit for time-served from the date the hold was put on Applicant in Florida. Counsel testified that he thought the judge had the discretion to give credit for time-served either from the date the warrant was served or from the date the hold was placed on Applicant. He further testified he did not think Applicant had a viable appeal because there was no abuse of discretion in the revocation judge's decision to only award credit for time-served from the date the warrant was served. On cross examination, counsel admitted that he did not do any research on whether Applicant was entitled to credit for time-served from the date the warrant was issued. However, he did state that he researched the issue in the past and interpreted the law as giving the judge wide discretion in determining credit for time-served. He further admitted that he did not discuss an appeal with Applicant because he did not think there was a viable appellate issue.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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 their 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):

A. Ineffective Assistance of Probation Revocation Counsel

Applicant alleges he received ineffective assistance of probation revocation 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. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694). Where counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (citations omitted); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992).

With respect to probation revocation counsel, the Strickland standard applies. A probationer has a right to counsel, though not a Sixth Amendment one. Turner v. State, 384 S.C. 451, 455, 682 S.E.2d 792, 794 (2009); see also Gagnon v. Scarpelli, 411 U.S. 778 (1973). Rather, Rule 602(a), SCACR, requires the appointment of counsel for indigent defendants in probation revocation proceedings. Nonetheless, "the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel." Turner, 384 S.C. at 455, 682 S.E.2d at 794; see e.g., United States v. Wren, 682 F.Supp. 1237 (S.D.Ga. 1988). However, since a probation revocation hearing is not a formal adversarial proceeding, "the Court must review counsel's performance in light of the particular type of proceeding involved." Wren, 682 F.Supp. at 1242.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony is not credible, while also finding revocation counsel's testimony is credible. This Court further finds revocation counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has also failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving probation revocation counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.



682 S.E.2d at 795. Therefore, the Court affirmatively finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his probation revocation hearing. Applicant's lack of an appeal can be remedied pursuant to White v. State.

C. All Other Allegations

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

V. CONCLUSION

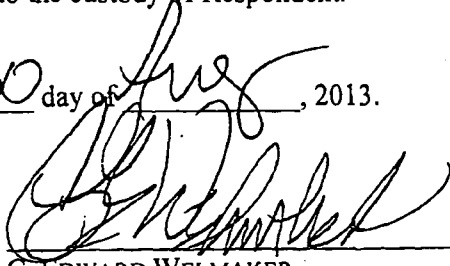
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his probation revocation proceedings. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice. This Court, however, concludes Applicant is entitled to review of direct appeal issues from the probation revocation hearing pursuant to White v. State.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's probation revocation hearing. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), SCACR, for the appropriate procedure for securing appellate review; and

3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 30 day of July, 2013.


G. EDWARD WELMAKER
Presiding Circuit Judge
Sixteenth Judicial Circuit

Pickens, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4604257

John William Dixon

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

ORDER OF DISMISSAL GRANTING WHITE V. STATE APPEAL

RECEIVED

OCT 10 2013

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

S.C. SUPREME COURT

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ G. Edward Welmaker
Circuit Court Judge

2137
Judge Code

08/30/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on **September 10, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **September 10, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Nathan James Sheldon PO Box 36250 Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

✓ James Rutledge Johnson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

76

York

VS.

John Dixon

AKA:

Race: W

Sex: M

DOB:

SS#

Address

(STAT)

2012 DEC 13 PM 4:51

DL#:

SID#:

DAVID HAMILTON

CLERK OF COURT

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS *no contest*
 TO: Threat / Threatening life, person or family of public official, teacher, princi

in violation of § 16-03-1040 of the S.C. Code of Laws, bearing CDR Code # 0541

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 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 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(!) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$ 135

David Hamilton

Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

INDICTMENT/CASE#: 2007GS4604372

A/W#: J215448

Date of Offense: 9/17/2007

S.C. Code § : 16-03-1040

CDR Code #: 0541

SENTENCE SHEET

PTUP

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

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:

Substance Abuse Treatment

He Declined Apprehension by

Probation AL-445

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

Receivable not to receive any fine

PRESIDING JUDGE

Judge Code: 211 1415

Sentence Date: 6-20-08

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2012 DEC 13 PM 1:52

At a Court of General Sessions, convened on December 6, 2007, the Grand Jurors of York County present upon their oath

THREATENING LIFE, PERSON OR FAMILY OF A PUBLIC EMPLOYEE

The Defendant, John W. Dixon, did on or about September 17, 2007, knowingly and wilfully deliver or convey to a public employee a letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contained a threat to take the life of or to inflict bodily harm on the public employee or members of his/her immediate family with the threat being directly related to the public employees official responsibilities, to wit: the Defendant did Willingly and knowingly convey threats of bodily harm to law enforcement officers of the Fort Mill Police Department and the York County Sheriffs department. Said incident occurred on [REDACTED] Fort Mill, South Carolina and the facts established by accounts provided by officers present at the scene. All in violation of Section 16-3-1040, of the Code of Laws of South Carolina, (1976, as amended).

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


 ASSISTANT SOLICITOR

ARREST WARRANT

J-215448

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Fort Mill

THE STATE
against

200709065

John W Dixon

Address:

 Phone: _____ SSN: _____
 Sex: M Race: W Height: 5 4 Weight: 190

 DL State: _____ DL #: _____
 DOB: _____ Agency ORI #: SC0460200
Prosecuting Agency: Fort Mill Police DepartmentProsecuting Officer: B Zachary - 243
 Offense: Threat / Threatening life, person or family of
public official, teacher, principal
Offense Code: 0541Code/Ordinance Sec: 16-03-1040This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused

 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant John W Dixon
 on 9-17-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 York County General Sessions
 1675 York Hwy
 York, SC 29745

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Fort Mill

Personally appeared before me the affiant B Zacharybeing duly sworn deposes and says that defendant John W Dixondid violate the criminal laws of the State of South Carolina (or ordinance of Fort Mill)
☐ County/ ☒ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Threat / Threatening life, person or family of public official, teacher, principal
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 That on September 17, 2007, one John W. Dixon did knowingly and willfully convey verbal threats of bodily harm to law
 enforcement officers of the Fort Mill Police Department and the York County Sheriff's Office, while in the course of performing
 their official duty. This incident occurring at Fort Mill, South Carolina, and the facts established by accounts
 provided by officers present at the scene.
 #200709065

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Fort Mill

 Affiant's Address 111 Academy St
Fort Mill, SC 29715
Affiant's Telephone (803)547-2022

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/17/2007 defendant John W Dixon

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Fort Mill as set forth below:
DESCRIPTION OF OFFENSE: Threat / Threatening life, person or family of public official, teacher, principal
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable
 Sworn to and subscribed before me
on 09/19/2007
 Signature of Issuing Judge
Peter Joseph Lenzi Jr.
 Judge Code: 6621

 Judge's Address 111 Academy Street
Fort Mill, SC 29715-
Judge's Telephone (803)547-2022
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

AFFIDAVIT

ORIGINAL

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

Who

78

violate the criminal laws of the

0541

 CERTIFIED TRUE COPY
 012 DEC 18 PM 1:52
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, S.C.

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

County of

York

STATE

VS.

ED-RECEIVED

Probation C/W#s:

Indictment Number:

07

GS-

46

4372

W-47-11-0082

John William Dix 2012 MAY 24 AM 9:42

AKA:

Race:

W

Sex:

M

DOB:

SSN:

SID#:

1690319

Name of Original Offense: Threat Life of Public Officer

Original A/W#:

J 215448

Date of Original Offense:

9-17-07

Conviction S.C. Code §:

16-03-1040

Conviction CDR Code #:

0151411

Original Sentence:

5 yrs 55 5 y 15 Prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/20/08 in the Court of General Sessions of York County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 3-8-10, as set forth in the attached warrant(s) or citation(s) dated 7-6-11. After hearing the evidence and being duly advised, in the presence/absence of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

6, 10

Therefore, IT IS ORDERED that:

☒ the suspended sentence be revoked and the above named defendant be required to serve 5 months/years, the remainder of the original sentence, and/or pay \$_____.

☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Financial Obligations: Order satisfies: ☒ Department fees (arrearage) Civil judgment: ☐ Department fees
☒ Fines and other fees (arrearage/balance) ☐ Fines and other fees
☐ Restitution (and 20%) (arrearage/balance) ☐ Restitution (and 20%)

☒ Additional Conditions ordered by the Court: CFTS since warrant was served here on 4-20-12

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 10 days on this sentence.
 (split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This

7 day of

May

2012

Presiding Judge

16th

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this order and all attachments.

Offender's Signature

Witnessed by

Signed this

7

day of

May

2012

at

York

City

SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of York
STATE VS. **FILED-RECEI**

INDICTMENT#

07 -GS- 46 - 04372
Probation CMV#s: W-46-08-2094AKA: Tech D. 2010 MAR 11 PM 3:30
Race: W Sex: MA **DAVID HAMILTON**
DOB: [REDACTED] **C.C.P. & G.S.**
SSN: [REDACTED] **YORK COUNTY, SC**
SID#: 01690314Name of Original Offense: Threatening, Harassment, Stalking
Original AWW#: 521548
Date of Original Offense: 9-17-07
Conviction S.C. Code §: 16-03-1010
Conviction CDR Code #: 0 / 3 / 4 / 1
Original Sentence: 5 yrs, but soon 5 yrs prob.**ORDER**

The above named defendant has been charged with violating the conditions of probation ordered on 6/23/08 in the Court of General Sessions of York County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 12-1-08, as set forth in the attached warrant(s) or citation(s) dated 12-1-08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$_____.
- ☒ the suspended sentence be revoked and the above named defendant be required to serve 90 days months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

Revoke 90 days and continue on probation. Transfer probation case to Florida
CREDIT for time served since 12-29-09

This order satisfies all violations on warrant # W-46-08-2094

- ☒
- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections: (since 12-29-09)

- ☐
- The defendant has previously served _____ months/years on this sentence.
-
- (split sentence time and/or prior partial revocation time)

- ☐
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

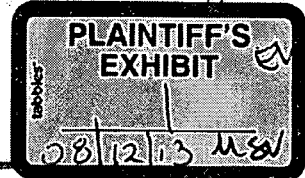
This 8th day of March, 2010
York **DAVID HAMILTON** Presiding Judge
CLERK OF COURT
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein, I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this 8th day of March, 2010 at York SC
Day Month Year City

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Probation

ARREST WARRANT

Indictment Number 07-GS-46-04372

Warrant Number W-46-08-2094

State Identification No. (SID) 01690314

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF ROCK HILL, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JOHN WILLIAM DIXON, did on the 1 day of October, 2008 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Probation violation concurrent to Section 24-21-430/450 in that the Defendant violated the conditions of his probation sentence as imposed by R. McMahon in the 06/20/2008 term of General Sessions Court holden in York County, York South Carolina.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JOHN WILLIAM DIXON before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at ROCK HILL, S. C. this 1 day of October, 2008.



Signature of Probation and Parole Agent (L.S.)

County of YORK

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Aaron Wesley Adams, who, first being duly sworn, deposes and says that JOHN WILLIAM DIXON did within this County and State on the 1 day of October, 2008, violate the criminal laws of the State of South Carolina in the following particulars:

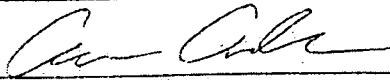
DESCRIPTION OF OFFENSE:

Probation violation concurrent to Section 24-21-430/450 in that the Defendant violated the conditions of his probation sentence as imposed by R. McMahon in the 06/20/2008 term of General Sessions Court holden in York County, York South Carolina.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Failed to follow advice and instructions of agent; failed to report to the Rock Hill Probation Office on 6/25/08 after being instructed to report from court on 06/20/08; failed to make whereabouts known to agent therefore being absconded from supervision; failed to pay supervision fee being \$120 in arrears at issuance; failed to pay surcharge being \$75 in arrears at issuance. Such actions constitute in willfull violations of sections 1, 2, 7, 9, 10 of the original probationary agreement.

Sworn to and Subscribed before me
this 1 day of October, 2008.



Affiant



Signature of Notary Public

Sept 25, 2017
My Commission Expires

YORK COUNTY, SC
CLERK OF COURT
DAVID HANSTON
1070 HECKLE BLVD.
SUITE 201, BOX 14
ROCK HILL, SC 29732
YORK
(803) 939-7262

CERTIFIED TRUE COPY

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

YORK

THE STATE

against

JOHN WILLIAM DIXON

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section:

Date: 10/1/2008

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Aaron Wesley Adams

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name JOHN WILLIAM DIXON

Address

Phone (000) 000-0000

Sex Male Race White Height 510

Weight 180 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

Amount

Surety

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

John W Dixon

on the 29 day of December, 2009

Larry Adams
Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

(L.S.)

Signature of Judge

Form 16-1-Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Probation

ARREST WARRANT

Indictment Number 07-GS-46-04372

Warrant Number W-47-11-0082

State Identification No. (SID) 01690314

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF COLUMBIA, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JOHN WILLIAM DIXON, did on the 6 day of July, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

JOHN DIXON WILLFULLY VIOLATED CONDITIONS OF PROBATION NUMBER(S) 4, 6, 9 AND 10 IN CAUSE NUMBER(S) 2007-GS-46-4372 AS ORDERED BY THE YORK COUNTY COURT OF GENERAL SESSIONS ON 06/20/2008.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JOHN WILLIAM DIXON before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at COLUMBIA, S. C. this 6 day of July, 2011.

Kirk V. Dudley
Signature of Probation and Parole Agent (L.S.)

County of YORK

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Kirk V. Dudley, who, first being duly sworn, deposes and says that JOHN WILLIAM DIXON did within this County and State on the 6 day of July, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

JOHN DIXON WILLFULLY VIOLATED CONDITIONS OF PROBATION NUMBER(S) 4, 6, 9 AND 10 IN CAUSE NUMBER(S) 2007-GS-46-4372 AS ORDERED BY THE YORK COUNTY COURT OF GENERAL SESSIONS ON 06/20/2008.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

AS EVIDENCED BY A VIOLATION REPORT DATED 06/22/11 PREPARED BY THE STATE OF FLORIDA AND WARRANTS/AFFIDAVITS DATED 06/08/11 PREPARED BY OFFICER SCOTT THOMPSON WITH THE CHIPLEY POLICE DEPARTMENT IN WASHINGTON COUNTY, FLORIDA: THERE IS PROBABLE CAUSE TO BELIEVE THAT JOHN DIXON WAS UNLAWFULLY IN POSSESSION OF A FIREARM ON OR ABOUT 06/05/11 IN WASHINGTON CO., FLORIDA. THERE IS ALSO PROBABLE CAUSE TO BELIEVE THAT MR. DIXON DID COMMIT THE CRIMINAL OFFENSES OF AGGRAVATED ASSAULT WITH DEADLY WEAPON WITHOUT INTENT TO KILL (2 COUNTS), KIDNAP-FALSE IMPRISONMENT (2 COUNTS), AGGRAVATED BATTERY CAUSE BODILY HARM AND POSSESSION OF WEAPON OR AMMO BY CONVICTED UNITED STATES FELON ON OR ABOUT 06/05/11 IN WASHINGTON CO., FLORIDA. MR. DIXON FAILED TO OBEY ALL CONDITIONS OF SUPERVISION SET FORTH IN ORDER INCLUDING THE PAYMENT OF FINES BY HAVING AN ARREARAGE AND UNPAID BALANCE OF \$129.75. THESE VIOLATIONS CONSTITUTE A WILLFUL FAILURE TO FOLLOW THE ADVICE AND INSTRUCTIONS OF HIS AGENT AND A WILLFUL FAILURE TO ABIDE BY THE CONDITIONS IN THE APPLICATION FOR INTERSTATE COMPACT TRANSFER DATED 3/25/10.

Sworn to and Subscribed before me
this 6 day of July, 2011.

[Signature]

Signature of Notary Public

My Commission Expires

DAVID A. MILLON
CLERK OF COURT
YORK COUNTY, SC

Address: P.O. Box 50666
2221 Devine Street
COLUMBIA, SC 29256
RICHLAND
USA
(803) 734-9013

2012 DEC 13 PM 1:52
CERTIFIED TRUE COPY

Kirk V. Dudley
Affiant



RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

YORK

THE STATE

against

JOHN WILLIAM DIXON

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

[Signature]

on the 20 day of April, 2012

Balena J. Clark
Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

Signature of Judge

(L.S.)

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 7/6/2011

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Kirk V. Dudley

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name JOHN WILLIAM DIXON

Address

Phone

Sex Male Race White Height 510

Weight 180 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

Amount

Surety

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR
WASHINGTON COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

JOHN WILLIAM DIXON,
Defendant.

CASE NO. 11-00181CF

FILED
CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY, FLORIDA

MAR 15 2012

PLEA, WAIVER AND CONSENT

I, JOHN WILLIAM DIXON, the undersigned defendant hereby acknowledge that I have been fully informed in open court this date of certain legal rights and other information at this proceedings, namely:

1. I hereby enter my plea of X no contest guilty to the crimes of:

- 1) ~~AGGRAVATED ASSAULT WITH A FIREARM 784.021 (2) (F)~~ Nolle Pross
2) ~~FALSE IMPRISONMENT 787.022 (2) (F)~~ Battery
3) Assault 4) Battery 5) Assault 6) Battery

*The Florida Criminal Punishment Code may supersede the Statutory Maximum as therein provided and the plea agreement as to my sentence on the listed charge(s) is as follows:

☒ Adjudicated guilty ☐ Adjudication is withheld
☐ Adjudication up to Judge ☐ No objection to adjudication being withheld

 months years Prison(DOC) County Jail
 months years Community Control
 months years Probation

Sentences(s) shall be: ☒ concurrent consecutive with one another

 Court costs, fines, and community service hours will be imposed:

Other assessments may include a Public Defender lien of \$340, Crime Stopper's Trust Fund \$20, Court Construction Improvement Account \$60, and others as announced.

Early Termination of supervision, possible after mths yrs provided all conditions of supervision have been met and there are no violations.

Restitution shall be assessed for \$ or a hearing will be conducted. 263 days(s) jail time for credit will be awarded.

Other:

11/29 county jail with jail credit



I feel my plea is in my best interest.

2. I have been advised of the nature of the charge(s) against me, and have had sufficient time to discuss them with my attorney who is present with me in Court, and who has explained to me every accusation therein. I am satisfied with the services and advice of my attorney.

3. I further acknowledge that I have been advised that probation may or may not be granted, and that no person, officer, agent or any branch of government, nor my attorney, has made any promises or suggestions of any kind to me or to anyone else within my knowledge that if I would plead to these charges I would receive a light sentence, probation or other form of leniency, except as embodied in this plea agreement on this form. I understand the complete terms of the plea agreement, including my obligations under such agreement and if the Court does not concur in such agreement, my plea may be withdrawn.

*4. I understand that I have the right to plead not guilty, to be tried by a trial jury who would determine my guilt or innocence; to have the assistance of counsel at trial and all other stages of the proceedings against me; to compel the attendance of witnesses in my behalf; to confront and cross-examine witnesses against me; to remain silent at all times and not be compelled to give evidence against myself; I understand that upon my plea that there will be no further trial of any type. I knowingly give up and waive each of these rights.

5. This plea is made without reservation of the right to appeal the judgement of the Court, including guilt or innocence. I understand that I will not be entitled to the services of a public defender for any appeal other than an appeal based upon illegal sentence and I must file any notice of appeal within thirty (30) days of sentencing.

6. My plea is entered here today freely and voluntarily, of my own free will and accord, and no one has forced, threatened, persuaded, promised, induced or otherwise influenced me to enter my plea to these charges except as set forth in this plea agreement.

7. I am in full command of my normal faculties and I am not under the influence of any sedatives, drugs, narcotics, or intoxicating beverages which would render me incapable of knowingly, intelligently or voluntarily entering this plea today. I am not now suffering from mental illness. I have clear understanding of the proceedings today.

8. I agree that the State of Florida can prove a prima facie case.

9. I have had the advice of counsel on all of the above matters, including answers to questions asked of me by the Court, and I fully understand the same and legal implications and further say that all statements made by me are true, accurate and correct. I understand that if any statements or answers to questions made by me are false that they may be use against me in later prosecution for perjury.

10. I understand that at sentencing the State, County and various agencies may seek assessment of costs against me pursuant to various statutes and ordinances and that I will have the opportunity to object to the assessment of these costs if I am unable to pay.

11. I understand that if I am not a United States citizen that I may be deported by the United States Naturalization and Immigration Services as a result of my plea.

12. If I am adjudicated guilty of a drug-related offense, I understand that my driver's license is subject to suspension pursuant to 322.055(1), Florida Statutes.

13. I understand that if I enter a plea to a sexual offense, I may be subject to civil commitment following the expiration of my sentence, pursuant to the terms of the Jimmy Ryce Act.

14. I have reviewed the nature of the evidence against me and I am not aware of any physical evidence Containing DNA which could prove my innocence.

WITNESS my hand this the 15 day of March, 2011.

ATTEST:

Floyd A. Griffith
Floyd A. Griffith
Attorney for the Defendant

Erin E. Oliver
Erin E. Oliver
Assistant State Attorney

JOHN WILLIAM DIXON
Defendant
Age:
Education:

I find that this plea has been freely and voluntarily made and same was sworn to and subscribed before me this the 15 day of March, 2011, and Approved and Accepted.

Christopher N. Patterson
Christopher N. Patterson