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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

FORREST NELSON, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000155

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ALAN WILSON
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ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT DATED APRIL 18, 20161

APPLICATION FOR POST-CONVICTION RELIEF FILED JULY 29, 2016.....16

RETURN.....30

POST-CONVICTION RELIEF HEARING TRANSCRIPT
DATED SEPTEMBER 20, 201737

ORDER OF DISMISSAL FILED JANUARY 12, 2018.....70

INDICTMENT AND SENTENCING SHEET79

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry) 2015-GS-26-4618

STATE OF SOUTH CAROLINA,)

Plaintiff,) Transcript of Record

vs.)

April 18, 2016

FORREST NELSON, JR.,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Thomas G. Terrell, III, Esquire
Attorney for Plaintiff

J. Eric Fox, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

<u>APRIL 18, 2016</u>	<u>Pg.</u>
By the Court	3
Sentence of the Court	13
Certificate of Court Reporter	15

E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>
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(No exhibits were marked or admitted.)

State v. Nelson - 2015-GS-26-4618
BY THE COURT

3

1 (APRIL 18, 2016)

2 THE COURT: Yes, Solicitor?

3 MR. TERRELL: Your Honor, this is State of South Carolina
4 versus Forrest Nelson, Jr. He's before Your Honor to plead
5 guilty on warrant or on indictment 2015-GS-26-04618, that
6 being for armed robbery. He comes before the Court without
7 negotiation or recommendation.

8 THE COURT: All right. Very good.

9 FORREST NELSON, JR., HAVING BEEN DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 THE COURT: All right. Mr. Nelson, give me your
12 attention, sir. You are coming before the Court and you're
13 pleading guilty to armed robbery; is that correct?

14 MR. NELSON: Yes, sir.

15 THE COURT: All right, sir. Now, you know the potential
16 sentence goes from a minimum of ten years up to thirty years.
17 You understand that's the sentence range, you understand that?

18 MR. NELSON: Yes, sir.

19 THE COURT: And you understand that armed robbery is
20 classified as a violent and most serious offense by the State
21 of South Carolina; do you understand that?

22 MR. NELSON: Yes, sir.

23 THE COURT: All right, sir. And you also understand that
24 regarding it being classified as violent that affects the
25 length of time that you'll be spending in the Department of

State v. Nelson - 2015-GS-26-4618
BY THE COURT

4

1 Corrections, you understand that?

2 MR. NELSON: Yes, sir.

3 THE COURT: And you've talked about that with your
4 attorney, Mr. Fox, correct?

5 MR. NELSON: Yes, sir.

6 THE COURT: All right, sir. And then most serious, you
7 understand that gives you one strike under the State's two-
8 strike law; do you understand that?

9 MR. NELSON: Yes, sir.

10 THE COURT: And just as an example, this is -- if this
11 was your second most serious offense, I know it's not but if
12 it was your second most serious offense, and the sentence
13 range for armed robbery is ten to thirty, the State could be
14 asking for life in prison without the possibility of parole if
15 it was your second most serious offense; you understand that?

16 MR. NELSON: Yes, sir.

17 THE COURT: All right, sir. Very good. Now, you also
18 understand the matter comes before the Court without
19 negotiations or recommendations as to the sentence; you
20 understand that?

21 MR. NELSON: Yes, sir.

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

24 MR. NELSON: Yes, sir.

25 THE COURT: Are you currently under the influence of any

State v. Nelson - 2015-GS-26-4618
BY THE COURT

5

1 drugs or intoxicants of any kind or currently have them in
2 your system?

3 MR. NELSON: No, sir.

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

7 MR. NELSON: No, sir.

8 THE COURT: Now, when you plead guilty, you give up
9 constitutional rights. Among those is your right to remain
10 silent, so you're speaking to me, you're giving that right up;
11 do you understand that?

12 MR. NELSON: Yes, sir.

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

18 MR. NELSON: Yes, sir.

19 THE COURT: You're entitled to a jury trial, twelve men
20 and women would be sitting in that box over there listening to
21 the facts and evidence presented by the State to see if there
22 are indeed enough facts and evidence to prove you guilty
23 beyond a reasonable doubt. If you plead guilty, you're giving
24 up your jury trial; do you understand that?

25 MR. NELSON: Yes, sir.

State v. Nelson - 2015-GS-26-4618
BY THE COURT

6

1 THE COURT: Now, in that jury trial, with your attorney,
2 you could question the witnesses and the evidence presented by
3 the State. If you wanted to, you could present a defense,
4 testify, call witnesses on your behalf. If you plead guilty,
5 you give up all those rights; do you understand that?

6 MR. NELSON: Yes, sir.

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

10 MR. NELSON: Yes, sir.

11 THE COURT: Of your own freewill and accord?

12 MR. NELSON: Yes, sir.

13 THE COURT: Pleading guilty because you are guilty of
14 that crime?

15 MR. NELSON: Yes, sir.

16 THE COURT: Did anybody promise you anything or threaten
17 you or force you in any way to get you to plead guilty?

18 MR. NELSON: No, sir.

19 THE COURT: You're here today with your attorney, Mr.
20 Fox; is that correct?

21 MR. NELSON: Yes, sir.

22 THE COURT: Did you tell him everything you wanted to
23 tell him about this case?

24 MR. NELSON: Yes, sir

25 THE COURT: Have you had enough time to talk to him?

State v. Nelson - 2015-GS-26-4618
BY THE COURT

7

1 MR. NELSON: Yes, sir.

2 THE COURT: Do you need any more time to talk to him?

3 MR. NELSON: No, sir.

4 THE COURT: You satisfied with his help and
5 representation?

6 MR. NELSON: Yes, sir.

7 THE COURT: Any complaints about his help or
8 representation?

9 MR. NELSON: No, sir.

10 THE COURT: Very good. All right, Mr. Fox, you represent
11 the interest of your client Mr. Nelson in this matter?

12 MR. FOX: Yes, Your Honor.

13 THE COURT: And he comes before the Court tendering his
14 plea of guilty to the offense named. Do you concur?

15 MR. FOX: I do, Your Honor.

16 THE COURT: And you believe he's coming before the Court
17 of his own freewill and accord?

18 MR. FOX: Yes, sir.

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

23 MR. FOX: I have, Your Honor.

24 THE COURT: Thank you very much.

25 All right, Solicitor, the facts of the case, please, sir.

State v. Nelson - 2015-GS-26-4618
BY THE COURT

8

1 MR. TERRELL: Yes, sir, Your Honor. This occurred
2 December 11th, 2014 down in the Myrtle Beach section of Horry
3 County. This Defendant and two other men walked into the
4 Circle K convenience store. One stood by the door while two
5 others went back to the beer cooler. They came back to the
6 front, placed the beer on the counter. Then one of them
7 pointed -- this Defendant pointed what the clerk believed to
8 be a gun at him while reaching around the beer cooler or the
9 beer case and said, give me the money. One of them -- one of
10 the Codefendants jumped the counter and assaulted the --
11 assaulted the clerk who opened the cash register. They stood
12 back -- the wound up getting away with a little over \$200,
13 some tobacco products and the case of beer they brought up to
14 the front, Your Honor. Through the surveillance video,
15 detectives were able to put out a be-on-the-look-out flyer up.
16 They got some results from that that came back that this
17 Defendant was one of the men who was pictured in that be-on-
18 the-look-out flyer from the surveillance video. They went up
19 to North Carolina where this Defendant was found and
20 detectives interviewed him and he gave a confession to that
21 being him, Your Honor.

22 THE COURT: All right. Mr. Nelson?

23 MR. NELSON: Yes, sir.

24 THE COURT: You just heard the Solicitor give the basic
25 facts of the case and a brief summary of those same facts are

State v. Nelson - 2015-GS-26-4618
BY THE COURT

9

1 in your indictment. My question to you is, are those facts
2 true and correct?

3 MR. NELSON: Some of them, sir.

4 THE COURT: All right, sir. So, in what respect would,
5 would -- what would you need to tell me about it?

6 MR. NELSON: Actually, I didn't present no handgun, sir.

7 THE COURT: All right, sir. The indictment -- let's read
8 the indictment. First, was one of your other Codefendants
9 armed in any way?

10 MR. NELSON: No, sir.

11 THE COURT: All right, sir. Now, the armed robbery
12 charge says that you and a Codefendant in Horry County on or
13 about December 11, 2014, while you were armed with a deadly
14 weapon or while you or the Codefendant alleged either by how
15 it appeared to the clerk or by words, there was an indication
16 to the clerk that you were armed. Okay? It doesn't
17 necessarily mean you had to have a gun but by your actions you
18 indicated or your Codefendant indicated to the clerk that
19 there was a weapon which a person of reasonable -- ordinary,
20 reasonable person would believe to be a deadly weapon. All
21 right. And then thereafter y'all took and carried away
22 property from the Circle K with the intent to deprive the
23 Circle K of that property whether it was beer, cigarettes,
24 cash, whatever it was. All right?

25 MR. NELSON: Yes, sir.

State v. Nelson - 2015-GS-26-4618
BY THE COURT

10

1 THE COURT: All right. Are those facts true and correct?

2 MR. NELSON: Yes, sir.

3 THE COURT: All right, sir. And you understand by that
4 you were committing a crime, you were committing a crime of
5 armed robbery; do you understand that?

6 MR. NELSON: Yes, sir.

7 THE COURT: All right, sir. Have you understood my
8 questions here today?

9 MR. NELSON: Yes, sir.

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

11 MR. NELSON: Yes, sir.

12 THE COURT: Anybody tell you how to answer my questions?

13 MR. NELSON: No, sir.

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

16 MR. NELSON: Yes, sir.

17 THE COURT: I find there's been a substantial factual
18 basis for the plea. I find the Defendant's decision to plead
19 guilty has been done freely, voluntarily, knowingly and
20 intelligently made. He's had the advice of competent counsel
21 with whom he's satisfied. Therefore, Mr. Nelson's decision to
22 plead guilty to armed robbery is accepted. Before I hear from
23 you, Mr. Fox, prior record if any of Mr. Nelson?

24 MR. TERRELL: Yes, sir, Your Honor. His NCIC shows a
25 2008 manufacturing of a Schedule VI drug, felony violation of

State v. Nelson - 2015-GS-26-4618
BY THE COURT

11

1 parole and drunk and disorderly; 2010, assault to inflict
2 serious injury; and 2011, inciting riot.

3 THE COURT: Very good. All right, Mr. Fox. Let me hear
4 from you, please, sir.

5 MR. FOX: Thank you, Your Honor. Judge, Forrest is
6 thirty-six years old. He's from North Carolina, North
7 Wilkesboro. Your Honor has heard his record. It's primarily
8 drug-related. The assault charge was -- that you heard
9 towards the end is actually a misdemeanor. I'm not sure
10 exactly what that is in North Carolina but it was a
11 misdemeanor. He received time-served and a probationary
12 sentence for that. He doesn't have any history or indication
13 of behavior for this kind of charge. Probably no surprise
14 that this was drug-related, although absolutely no excuse.

15 Judge, the reason he hesitated in answering your
16 questions is Mr. Nelson has maintained from the very beginning
17 as he did with law enforcement, he has with me, that there was
18 no weapon, he had no weapon. It is not a defense, but he was
19 sure in carrying out this robbery that he was not committing
20 an armed robbery, he was intentionally trying to avoid that,
21 not just because that's a bigger crime but because he did not
22 wish to place anybody in harm's way. That's no comfort, I
23 realize to Mr. Bradley, who was the clerk there, who does not
24 know whether there is a weapon or not. But that's the reason
25 Mr. Nelson was somewhat hesitant in answering those questions.

State v. Nelson - 2015-GS-26-4618
BY THE COURT

12

1 The police did -- were led to him through this be-on-the-
2 look-out, someone identified him. They came and found him in
3 North Carolina. He told them very quickly what had happened
4 and what his involvement was. He did not hide that. I think,
5 Judge, this delay has mostly been about hoping against hope
6 that he could get the very best he could get. This trial, if
7 it had gone forward would only have been on the issue of
8 whether it was an armed robbery or strong-armed robbery. He's
9 never denied his involvement or that he committed a robbery.
10 So, we'd ask Your Honor to take all of those things into
11 account.

12 I'll tell Your Honor, although Mr. Nelson has been
13 arraigned back in December, did not accept any plea offers.
14 The plea offer from the State in this case was for a ten-year
15 minimum on armed robbery. In light of their review of the
16 case, all the facts involved, and everything that they knew
17 about it, in light of Mr. Nelson's prior record, they were
18 comfortable with a ten-year offer. We understand at some
19 point that goes away and they're not allowed to bring it back
20 but I'd like to make Your Honor aware of that.

21 And, finally, Your Honor, we'd like Mr. Nelson -- he
22 spent some time in North Carolina before he was brought back.
23 He's been back here for a period of time. We simply ask for
24 credit, whatever appropriate -- whatever it turns out to be
25 for credits for time served, Your Honor.

State v. Nelson - 2015-GS-26-4618
SENTENCE OF THE COURT

13

1 THE COURT: Okay. And in regards to my questions of Mr.
2 Nelson and your representation to the Court, there's no
3 question whether or not he was armed or not, that there were
4 sufficient facts in evidence to indicate a representation to
5 the clerk to lead the clerk to believe that they were armed
6 with a deadly weapon?

7 MR. FOX: No question, Your Honor. The clerk would
8 testify, told law enforcement he believed there was a weapon.
9 You can see on the video, that would be for a jury to
10 determine, but they can see what's, what's going on there.
11 And then Mr. Nelson, in fact, under police questioning said,
12 denied having a weapon but said, yes, I acted like I had one.
13 So, there's no question there's evidence to support that, Your
14 Honor.

15 THE COURT: All right, sir. Very good. Thank you.
16 Anything else, Solicitor?

17 MR. TERRELL: No, sir, Your Honor. The victim is here.
18 I do not believe he would wish to say anything.

19 THE COURT: Will you check and make sure?

20 MR. TERRELL: He does not wish to say anything, Your
21 Honor.

22 THE COURT: All right, sir. Thank you very much.

23 SENTENCE OF THE COURT:

24 THE COURT: All right. 2015-GS-26-4618, State of South
25 Carolina, County of Horry versus Forrest Nelson, Jr. regarding

State v. Nelson - 2015-GS-26-4618
SENTENCE OF THE COURT

14

1 armed robbery. The sentence of the Court is Defendant is
2 committed to the State Department of Corrections for a
3 determinative term of ten years. The Defendant is given credit
4 for the time he has already served.

5 Thank you very much.

6 (ADJOURNED.)

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ORIGINAL

State v. Nelson - 2015-GS-26-4618
CERTIFICATE OF COURT REPORTER


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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Forrest Nelson, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on April 18, 2016, taken by Dixie C. Eubank.

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



Kay H. Richardson
Official Court Reporter

November 3, 2016.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

Forrest Malone, Jr. #367870
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 16 CP26 04891

APPLICATION FOR

POST-CONVICTION RELIEF

RECORDED
INDEXED
2016 JUL 29 AM 9:53
Horry County

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 McDougall Corr. Inst. 1516 Old Gilliard Rd, Ridgville-
SC. 29472
2. Name and location of Court which imposed sentence Horry County Court of Gener-
al Session
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014A2620602645 - Armed Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty x _____
 - (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. N/A _____
 - ii. N/A _____
 - iii. N/A _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A _____
 - ii. N/A _____
 - iii. N/A _____
 - (c) the date of each such result:
 - i. N/A _____
 - ii. N/A _____
 - iii. N/A _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A _____
 - ii. N/A _____
 - iii. N/A _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Attorney failed to file timely requested Notice of Appeal _____
 - (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) See Attached Memorandum of Law

(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? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) Allegation of ineffective assistance can only be raised in PCR

(b) _____

(c) _____

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

- (a) your arraignment and plea? X
- (b) your trial, if any? _____
- (c) your sentencing? X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

- (a) the name and address of each attorney who represented you:
- i. Eric Fox
- ii. 203 Laurel Street, P.O. Box 1666
- iii. Conway, S.C. 29526
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment and Plea
- ii. Sentencing
- iii. _____

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

Sentence and Conviction Vacated

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

No.

STATE OF SOUTH CAROLINA)
)
County of Bamberg)

VERIFICATION
20 16 CP26 04891

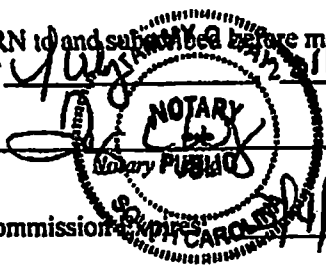
I, Forrest Nelson, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and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

x Forrest Nelson

SWORN to and subscribed before me this 20th
day of July 2016

[Signature] (L.S.)

My Commission Expires 4/2024



CLERK OF COURT
2016 JUL 29 AM 9:54
BAMBERG COUNTY

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

10 16 CP26 4891

I, Forrest Nelson, Jr., 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:

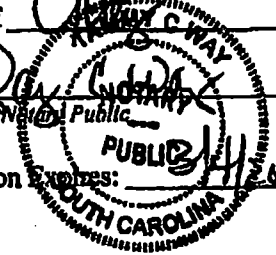
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

X Forrest Nelson
Applicant

SWORN or affirmed to and subscribed before me this
20th day of July, 2016

[Signature]
Notary Public

My Commission Expires: 11/26/24



SPRING COURT
2016 JUL 29 AM 9:54
MELBA J. CLARK
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

16 CF26 04891

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Forrest Nelson, Jr., #367870,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

MEMORANDUM OF LAW IN SUPPORT
OF PCR APPLICATION, PURSUANT
TO S.C. CODE ANN. § 17-27-10,-
160.

REL. APPL. CLERK
2016 JUL 29
HORRY COUNTY

Now comes the applicant, Forrest Nelson, Jr., #367870, an inmate confined in the S.C. Dept. of Corrections pursuant to commitment orders of the clerk of court for Horry County, respectfully submit for filing a Memorandum of Law in support of his PCR application pursuant to S.C. Code Ann. § 17-27-10,-160.

Respectfully submitted,

Forrest Nelson
Forrest Nelson, Jr.
SCDC # 367870

STANDARD OF REVIEW

In an application for post-conviction review, the applicant bears the burden of proving his allegations. Butler, Id. Where ineffective assistance of counsel is alleged 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, Id.

The proper measure of performances 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 exercise of reasonable professional judgement. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-prong test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry, 300 S.C. at 117, 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.

A two-prong test is also used in evaluating allegations of ineffective assistance of counsel involving guilty pleas. First, Applicant must prove that counsel's performance was deficient. Second, he must prove that counsel's performance fell below an objective standard of reasonableness, and that absent counsel's erroneous advice, the defendant would not have pled guilty, but insisted on going to trial. Hill v. Lockhart, 894 F.2d 1009 (8th Cir. 1990).

ALLEGATION

I

Trial Counsel was ineffective by failing to properly investigate and prepare for trial.

Trial was not prepared to go to trial and had done no investigation in Applicant's case. Had counsel done so, he would have realized that Applicant did not possess any weapon nor gave any impression or indication that he had a weapon, either through words or action. Applicant felt that he was overcharged as the offense of which he was charged. Applicant's offense offense at most constituted strong arm robbery or grand larceny. See statement of victim taken by Officer M. East, # 14-626799, on 12-11-14. Applicant's Exhibit A. " 3 Blacks guys came in one stood by the door, one was walking around. This one went got some beer. The one got beer down, this one leaned over the counter or beside the beer and said give me the money. The one without the gun jumped over counter. they took money & beer & cigarettes. After they got what they wanted they left. they went out the door & to the left toward 17 South.

Applicant did not possess any type of weapon and had counsel investigated, he would have known that Applicant was being overcharged for the offense that was committed and therefore could have move to have the charge reduced to the lesser offense of robbery or grand larceny. Although Applicant was charged as Hands of one Hands of all doctrine, Counsel was still ineffective by failing to submit the prosecution's case to a meaningful and thorough adversarial testing. Therefore his conduct or performance fell below an object standard of professional norm as required of counsel. Sixth Amendment U.S. Const. Amend. 6 Strickland v. Washington, 466 U.S. 669, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Hill v. Lockhart, 894 F.2d 1009 (8th Cir. 1990).

ALLEGATION

II.

Trial counsel was ineffective by failing to explain the nature of the offense and the consequences of Applicant's plea, thereby making Applicant's plea not knowingly and voluntarily entered.

Applicant was not advised of the nature and consequences of his plea to the offense for which he was charged and convicted, thus making his plea unintelligently entered. Had Applicant known that he was pleading to the offense of armed robbery instead of strong arm robbery or grand larceny, he would have insisted on going to trial based on the lack of evidence and victim's statement that he, victim did not witness or see Applicant in possession of a weapon. A guilty plea in any criminal case is a serious event. The possibility or likelihood of a lengthy prison term doesn't change the requirement that such pleas be voluntary, intelligently and knowingly made to be constitutionally valid. Boykin v. Alabama, 395 U.S. 238, 69 S.Ct. 1709, 23 L.Ed.2d 774 (1969).

For a guilty plea, like Mr. Nelson's to be valid, important aspects of the plea must be understood. For a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391. See also U.S. v. Hall, 917 F. Supp. 681, 684 (1996), which held: "A plea cannot be truly voluntary unless the defendant possess an understanding of the law in relation to the facts." Both Hall and his counsel misunderstood the law such that they believed the facts of this case constituted a crime under 924(c). [In Baily v. U.S., 116 S.Ct. 501 (1995) the U.S. Supreme Court held that "Use of a firearm did not include concealing a firearm "nearby to be at the ready for an imminent confrontation." Id. at 508.] Indeed, the government and the Court labor under the same misconception regarding the scope of the statute. The involuntary nature of Hall's plea "constitutes a "fundamental defect" in his conviction which in-

herently results in a complete miscarriage of justice." Abreu v. U.S., 911 F.Supp. 293, 298 (quoting Hill v. U.S., 52 S.Ct. 468, 471 (1962)).

To succeed under Strickland, Hill need not show prejudice in the same sense that he probably would have been acquitted or given a shorter sentence at trial but for his attorney's error. All he must prove is a reasonable probability that the results of the plea process would have been different—that he would not pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 877 F.2d 698 (8th Cir. 1989).

Applicant is entitled to a new trial based on counsel's failure to advise and inform him of the nature of the offense and the consequences of his plea.

ALLEGATION

III

Trial counsel was ineffective by failing to advise Applicant of his right to appeal from his guilty plea.

Trial counsel was ineffective by failing to file timely requested notice of appeal from Applicant's guilty plea, thereby waiving Applicant's right to appellate review.

To waive a direct appeal, a defendant must make a knowing and intelligent decision to not pursue the appeal. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986). White v. State, 263 S.C. 110, 288 S.E.2d 35 (1974).

After the client is convicted and sentenced, that counsel has in all cases has a duty to make certain that the client is fully aware of his right to appeal, and if the client is indigent, assist in filing an appeal. In re Anonymous Members of the Bar, 303 S.C. 306, 307, 400 S.E. 2d 483 (1991); See Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed 2d 493 (1967).

White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Appellate Court Rules 497, Rules of Professional Conduct, Rule 1.3 comment:

If the client wishes to appeal and is indigent, or claims to be indigent, trial counsel (whether appointed or retained), must serve and file a notice of appeal as required by Rule 82c 203, SCOR, and request a determination of indigent status by the Office of Appellate Defense.

Applicant made a timely request for an appeal. Trial counsel had a duty to protect and an obligation to protect applicant's right by perfecting and filing the appeal. Trial counsel was ineffective by failing to protect Applicant's right, and Applicant did not knowingly and intelligently waive his right to direct appeal.

CONCLUSION

Based on the following facts and law presented, the Applicant moves this Court for a new trial.

Respectfully submitted,

Forrest Nelson, Jr.
Forrest Nelson, Jr. 367678

Ms. Malanie Higgins-Ward
Clerk of Court of Horry County
P.O. Box 677
Conway, S.C. 29528-0677

#367878
Mr. Forrest Nelson, Jr.
MacDougall Correctional Ins
1516 Old Gilliard Rd
Ridgeville, S.C. 29472

July 19, 2016 2016 16 CP26 4891

Dear His: Clerk;
Enclosed for filing, please find one original Application for Post-Conviction Relief. Please clock-stamp and file assigning case number and return true copy to me at the address listed above for my records.

Thanking you in
Advance,

XSL *Forrest Nelson*

JERRY COUNTY
2016 JUL 29 AM 9:54
MELANIE HIGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Forrest Nelson, Jr., #367870,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

2016-CP-26-4891

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on July 29, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Horry County. Applicant was indicted by the November 2015 term of the Grand Jury for Horry County for armed robbery (2015-GS-26-4618). Applicant was represented by J. Eric Fox, Esquire. On April 18, 2016, Applicant pled guilty as indicted and was sentenced by the Honorable Steven H. John to ten (10) years' imprisonment for armed robbery. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel was ineffective for failing to properly investigate and prepare for trial."
 - b. "Trial counsel was ineffective by failing to advise Applicant of his right to appeal from his guilty plea."

2. Involuntary Guilty Plea
 - a. "Trial counsel was ineffective for failing to explain the nature of the offense and the consequence of Applicant's plea, thereby making Applicant's plea not knowingly and voluntarily entered."

III.

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

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). Respondent submits that Applicant cannot satisfy these requirements. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

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

IV.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be

considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

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

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

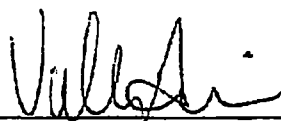
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
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By: 

ATTORNEYS FOR RESPONDENT

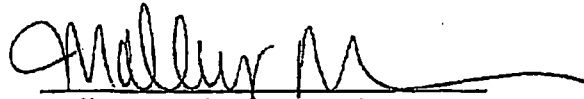
February 21 2017

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	
)	
	)	2016-CP-26-4891
FORREST NELSON, JR., 367870,)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Mr. Daniel A. Selwa, II, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

DATED this 21st day of February, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2016-CP-26-04891
FORREST NELSON, JR.,)	
Applicant,	)	Transcript of Record
vs.	)	(Post-Conviction Relief)
STATE OF SOUTH CAROLINA,	)	September 20, 2017
Defendant.)	

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

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

Daniel A. Selwa, II, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

1	<u>I N D E X</u>		
2	<u>SEPTEMBER 20, 2017</u>		<u>Pg.</u>
3			
4	By the Court		3
5	Forrest Nelson, Jr.		
6	Direct by Selwa		4
7	Cross by James		18
8	Eric Fox		
9	Direct by Selwa		19
10	Cross by James		30
11	By the Court		32
12	Certificate of Court Reporter		33

13			
14	<u>E X H I B I T S</u>		
15	<u>No.</u>	<u>ID</u>	<u>EV</u>

16

17 (No exhibits were marked or admitted.)

18

19

20

21

22

23

24

25

Nelson v. State - 2016-CP-26-04891
BY THE COURT

3

1 (SEPTEMBER 20, 2017 - 11:27 A.M.)

2 THE COURT: All right. I'm ready when you are.

3 MR. JAMES: Thank you, Your Honor. May it please the
4 Court, the state would call the Court's attention to the
5 matter of Forest Nelson, Jr. versus State of South Carolina.
6 That is docket number 2016-CP-26-4891. Mr. Nelson is present
7 here today in the courtroom and is represented by Mr. Daniel
8 Selwa. Mr. Nelson pled guilty on April 18th, 2016 to the
9 crime of armed robbery and was sentenced by The Honorable
10 Steven H. John to 10 years' incarceration and I'll cede the
11 floor to Mr. Selwa.

12 THE COURT: All right. Mr. Selwa?

13 MR. SELWA: Thank you, Your Honor. May it please the
14 Court?

15 THE COURT: Sure.

16 MR. SELWA: Your Honor, I would call Forest Nelson to the
17 stand.

18 THE COURT: All right. Come around, Mr. Nelson.

19 CLERK: Please put your left hand on the Bible and raise
20 your right hand.

21 FOREST NELSON, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Please go to the chair in the witness box and
24 have a seat. Just state your name for the Court.

25 MR. JAMES: Forest Nelson James, Jr.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

4

1 MR. SELWA: Thank you, Your Honor.

2 DIRECT EXAMINATION OF FOREST NELSON BY MR. SELWA:

3 Q: Mr. Nelson, you are here today for a petition for post-
4 conviction relief; is that right?

5 A: Yes, sir.

6 Q: And you are claiming that your counsel was ineffective;
7 is that right?

8 A: Yes, sir.

9 Q: And tell us about what happened, did you plead guilty to
10 a charge?

11 A: Yes, sir; I did.

12 Q: All right. What was charge was that?

13 A: Armed robbery.

14 Q: And what were you -- what were you originally charged
15 with?

16 A: Armed robbery.

17 Q: Okay. And can you tell us about the allegations of what
18 the state said that you did?

19 A: The state said that I had a gun, robbed a clerk, jumped
20 the counter, presented this gun at the clerk, and took money
21 and cigarettes and beer away from them.

22 Q: Okay. And who represented you on that charge?

23 A: Mr. Fox.

24 Q: All right. And how many times did you meet Mr. Fox?

25 A: About three or four.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

5

- 1 Q: And during those visits, about how much time did you
2 spend with him?
- 3 A: About 10 to five minutes at the most.
- 4 Q: Okay. Where were those meetings at?
- 5 A: In, in Horry County right here in the county jail.
- 6 Q: In the jail?
- 7 A: Basically, in a visiting room with the lawyers.
- 8 Q: Okay. During your time with him, did he go over the case
9 with you?
- 10 A: He went over my plea, basically, telling me that they
11 offered me 10 years for the armed robbery.
- 12 Q: Okay. Did he discuss the charge at all ---
- 13 A: No.
- 14 Q: --- in specifics to anything?
- 15 A: Not really, no.
- 16 Q: Did he go over and explain the elements of armed robbery?
- 17 A: No, sir.
- 18 Q: Did he explain to you any lesser included offenses of
19 armed robbery?
- 20 A: No, sir.
- 21 Q: Did he explain to you what strong-armed robbery was?
- 22 A: No.
- 23 Q: At any point, did he go over the elements of strong-armed
24 robbery?
- 25 A: No, sir.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

6

1 Q: Did he distinguish what the difference was between
2 strong-armed and armed robbery was?

3 A: Yes, sir; I think he did that.

4 Q: Okay. In what way did he do that?

5 A: When he told me that -- because I told him that I didn't
6 have a gun, he was like -- he was like, well, that's strong
7 armed robbery, he said but you got an armed robbery because
8 they say you had a gun.

9 Q: Okay. And have you ever maintained that you were not
10 guilty of not actually robbing this place?

11 A: Excuse me?

12 Q: You've always maintained that you were guilty of robbing
13 the place ---

14 A: Yes, sir.

15 Q: Correct?

16 A: Yes, sir.

17 Q: Okay. You've never denied that?

18 A: No, sir.

19 Q: All right. Did Mr. Fox explain to you what the issue
20 would have been at trial?

21 A: Yes, he told me that if I insist on going to trial, that
22 I was gonna get not 30 years, but 25 years.

23 Q: Okay. Did he tell you what the state had to prove in
24 order to get you convicted?

25 A: Not really, no.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

7

1 Q: Did Mr. Fox go over any case law regarding elements of
2 either strong-armed or armed robbery?

3 A: No, sir. No, sir.

4 Q: Did he discuss any cases in South Carolina or throughout
5 the country ---

6 A: No, sir.

7 Q: --- regarding that stuff? When you maintained to Mr. Fox
8 that you did not have a weapon, what was Mr. Fox's response to
9 you?

10 A: It was like the state -- the state said they got a little
11 bit of evidence of your armed robbery. He said that that's
12 what you're being charged with and that's what -- that's all
13 he can do, if I take the plea or not.

14 Q: All right. Did he go over -- sit you down and go over
15 the discovery that he received from the state?

16 A: What you mean by the discovery?

17 Q: Did he go over any paper work that the state had that
18 they were gonna use at trial?

19 A: Yeah, he went over the victim's statement by saying the
20 victim said that three black guys come in the store; one
21 leaned over the counter and said give me the money and he said
22 the one without the gun jumped the counter and assaulted him.

23 Q: Okay. What, to your knowledge, what kind of evidence was
24 involved in this case?

25 A: Strong-armed robbery?

- 1 Q: I mean, what did the state have against you?
- 2 A: The clerk's word.
- 3 Q: Was there any video or audio recording?
- 4 A: Yes, video.
- 5 Q: Were you able to view the video?
- 6 A: Yes, I seen the video.
- 7 Q: Okay. And when you watched the video, what did you see?
- 8 A: I seen me tell him to give me the money. My co-defendant
- 9 assaulted him and then I went down -- went around the counter
- 10 and hit him, hit the victim.
- 11 Q: Does the video, at any point, show any weapon?
- 12 A: No, sir.
- 13 Q: Did it show any of the co-defendants having any weapon?
- 14 A: No, sir.
- 15 Q: Did it make any indication that you or your co-defendants
- 16 represented that you had a weapon?
- 17 A: No, sir,
- 18 Q: Any physical representation ---
- 19 A: No, sir.
- 20 Q: --- whether by hand gesture ---
- 21 A: No, sir.
- 22 Q: --- hand in the pocket---
- 23 A: No, sir.
- 24 Q: --- hand in the pants?
- 25 A: No, sir.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

9

1 Q: Any indication that there was a physical manifestation?

2 A: No, sir, besides of me hitting him.

3 Q: No sign of any weapon?

4 A: No, sir.

5 Q: Okay. When you were arrested, were your co-defendants
6 arrested as well?

7 A: No, sir.

8 Q: All right. And what was the outcome of their case?

9 A: They never been detained.

10 Q: They haven't been caught yet?

11 A: No, sir, and I was -- if I would've so-called gave them
12 up I would have so-called got the strong-armed robbery, but
13 that was risking my family's life and my life.

14 Q: Okay. And when you say that they would've given you
15 strong-armed robbery, what are you talking about?

16 A: Like they would make -- they made an agreement to give me
17 a strong-armed robbery if I would've gave up some names.

18 Q: Okay. And that was for the prosecutor?

19 A: Yes, sir.

20 Q: And how did you learn about that?

21 A: Through Mr. Fox.

22 Q: All right. Did you see any paperwork on that?

23 A: No, sir, he came in and told me before we was supposed to
24 go to trial.

25 Q: Okay. And you have a family?

1 A: Yes, sir.

2 Q: And are you married?

3 A: Yes, sir.

4 Q: All right. Do you have any kids?

5 A: Yes, sir; I have two.

6 Q: How old are they?

7 A: Five and 10.

8 Q: All right. Were you concerned about the safety of your
9 kids?

10 A: Yes, sir.

11 Q: Concerned about your wife?

12 A: Yes, sir.

13 Q: And your own personal safety?

14 A: Yes, sir.

15 Q: During your interviews with the police, did you ever
16 admit to having a gun or representing to the state that you
17 represented to the clerk that you had a gun?

18 A: Yes, sir, he kind of twisted my story up because the
19 simple fact, I was kind of nervous at the time and I had been
20 drinking that night and he asked me like, you know, basically,
21 you had the hand gesture like you had a gun. He said you know
22 that's the element of an armed robbery and I agreed with that.

23 Q: And who are you saying when you say he?

24 A: The detective. I agreed with that so he put it on record
25 and I stated that I acted like I had a gun, basically.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

11

- 1 Q: Okay. But you never actively said I represented I had a
2 gun?
- 3 A: In the way he recorded it, yes.
- 4 Q: And what do you mean, recorded it?
- 5 A: Because some of the video like it's been edited. When I
6 was like, all I heard was like yeah, I acted like I had a gun
7 and it clicked off.
- 8 Q: Okay. Did you bring that concern up with Mr. Fox?
- 9 A: Yes, I told him somewhat similar to it.
- 10 Q: On the day that you pled guilty, were you scheduled to go
11 to trial that day?
- 12 A: Yes, sir.
- 13 Q: All right. And had you met with Mr. Fox to go to trial?
- 14 A: Yes, sir.
- 15 Q: Or prepare for trial?
- 16 A: Well, it really wasn't no preparing. It was basically
17 when I came in there to talk to Mr. Fox, he was like, well
18 this is what it is, either you gone take this 10-year plea or
19 we gonna go in here, I'm gonna guarantee you, you're gonna get
20 not 30 but 25 years. So, I had not defense and I was scared,
21 so I just did what he said.
- 22 Q: When he was telling you that and, obviously, he told you
23 somewhat of, of what the range was for strong robbery?
- 24 A: Yes, sir.
- 25 Q: Did he explain to you parole eligibility?

- 1 A: No, sir.
- 2 Q: Did he explain the classifications?
- 3 A: No, sir.
- 4 Q: When did you learn about that?
- 5 A: When the Judge -- when the Judge said all that what he
- 6 said in the transcript.
- 7 Q: Okay. And what, what kind of education do you have; what
- 8 educational level do you have?
- 9 A: I only finished 8th grade.
- 10 Q: Is some of this stuff hard for you to understand?
- 11 A: Yes.
- 12 Q: Now, the Judge went through a series of questions with
- 13 you on the day of the plea; do you recall that?
- 14 A: Yes, sir.
- 15 Q: Okay. You indicated a number of things to the Judge,
- 16 some of which you stated that you understood what he was
- 17 saying, correct?
- 18 A: Yes, sir.
- 19 Q: Okay. And at some point, the prosecutor read or recited
- 20 the facts as they had them to the Judge; is that correct?
- 21 A: Yes.
- 22 Q: And when the Judge asked you if that was in fact true, do
- 23 you recall what your statement was?
- 24 A: Yes, I recall it, it was just -- I just had so much going
- 25 through my mind and I was just ready to get it over with. I

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

13

1 just agreed to whatever he say.

2 Q: But when he said -- when he asked you if those facts were
3 true and accurate, what was your response to him?

4 A: Some of them.

5 Q: Okay. And do you recall what you said in the transcript
6 about what issues you were having with those facts?

7 A: Yes, I said it wasn't nobody armed, me or my co-
8 defendant. We didn't act like we had a gun or anything.

9 Q: Okay. And at that point, did the Court go over what the
10 elements of armed robbery was?

11 A: Yes, sir.

12 Q: Okay. And did the Court explain to you that representing
13 that you had a gun satisfies that element?

14 A: Yes, sir.

15 Q: Even if you didn't have a gun, representing to the victim
16 that you had a gun during that situation, creates a -- an
17 armed-robbery situation?

18 A: Yes, sir.

19 Q: After having explained that to you, do you remember what
20 you indicated to the Judge at that point?

21 A: Not really, no, sir.

22 Q: All I know when he said that, I just agreed. Did you
23 understand from his statements that the state would need to
24 prove beyond a reasonable doubt that there was a
25 representation of a weapon made by you or the co-defendants?

1 A: What do you mean by that?

2 Q: Did he explain that to you and did you understand that at
3 that point, that in order for them to find you guilty, they
4 would have to prove that there was a representation of the gun
5 that was made by you or a co-defendant? The Judge explained
6 that element to you, correct?

7 A: Yes, sir.

8 Q: And did you understand it at that point?

9 A: No.

10 Q: But you told the Judge that you did, correct?

11 A: Yes, sir.

12 Q: All right. And you went ahead with the plea?

13 A: Yes, sir.

14 Q: All right. And then Mr. Fox actually made a statement on
15 your behalf to the Court; is that correct?

16 A: Yes, sir.

17 Q: And Mr. Fox represented that you indicated to the police
18 that you had a weapon?

19 A: Yes, sir.

20 Q: Or made a representation to the clerk that you had a
21 weapon?

22 A: Yes, sir.

23 Q: But also maintained that you have stated from the very
24 beginning that you never had a weapon?

25 A: Yes, sir.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

15

1 Q: And indicated also that there -- that the video showed
2 that you may have had a weapon?

3 A: Yes, sir.

4 Q: But that wasn't entirely true, was it?

5 A: No, sir.

6 Q: But you didn't speak up at that point, right?

7 A: No, sir.

8 Q: Is there a reason you didn't?

9 A: Yes, sir, I was scared, frustrated, didn't know what to
10 do.

11 Q: And what -- and this may be a silly question, but why
12 were you scared at that point?

13 A: Because I was -- I already figured, since Mr. Fox told me
14 that I was gonna get the 25 years or take the 10, I didn't
15 have -- I didn't have no defense. I didn't know what to do at
16 that point. I didn't -- I don't know, I was overwhelmed kind
17 of, I don't know.

18 Q: At what point did you understand that the state would
19 have to prove that there was a weapon involved or
20 representation of such?

21 A: After it was all over and done.

22 Q: Okay. Had you known that and after your review of the
23 evidence in the case with Mr. Fox, would you have gone forward
24 with trial?

25 A: Yes, sir.

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

16

1 Q: All right. And because of your unawareness of that
2 element, is that why you pled guilty?

3 A: Yes, sir.

4 Q: Are you asking the Court to depart from your admission?

5 A: Yes, sir.

6 Q: And you understand at some point, either today or during
7 that plea, you were inaccurately representing to the Court
8 truthful statements?

9 A: Yes, sir.

10 Q: And -- and so which -- which time is the truth?

11 A: Now.

12 Q: Have you had time to reflect on this?

13 A: Yes, sir.

14 Q: You didn't appeal this, did you?

15 A: No, sir.

16 Q: At what point did you understand or find out about the
17 parole eligibility?

18 A: After I got sentenced.

19 Q: Okay. And what did you understand about the eligibility?

20 A: That I'm not eligible for parole.

21 Q: Do you understand now that you are not eligible for
22 parole?

23 A: Yes, sir.

24 Q: In fact, do you understand that you would be required to
25 serve seven years before you would be eligible for parole?

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - DIRECT BY SELWA

17

1 MR. JAMES: Your Honor, I must object at this point. The
2 applicant has already testified that Mr. Fox didn't talk to
3 him about parole eligibility and parole eligibility is a
4 collateral consequence of sentencing, so it's not really a
5 valid allegation to bring up on post-conviction relief.

6 THE COURT: What's your response?

7 MR. SELWA: Your Honor, I do have a case on point, it's
8 *Pittman vs. State*. It's a South Carolina Supreme Court case
9 where they affirmed a PCR. The Courts grant of post-
10 conviction relief based on the fact that the applicant was not
11 provided, among other things, the crucial elements of the
12 crime, but also specifically points out that the parole
13 eligibility was not clarified by either the Court or
14 Applicant's trial attorney, notwithstanding the fact that the
15 solicitor had brought it up and they still affirmed that PCR
16 grant. I think it's very relevant, the case law in that case,
17 and I have a copy.

18 THE COURT: Go ahead. I'll let you -- I'll let him
19 testify and we'll see where it goes.

20 BY MR. SELWA:

21 Q: So, actually at this point right now, you don't
22 understand or have no understanding that you're eligible for
23 parole after seven years, correct?

24 A: True.

25 Q: Had you known that and had you known all of this stuff

Nelson v. State - 2016-CP-26-04891
FORREST NELSON, JR. - CROSS BY JAMES

18

1 that you know about the elements of armed robbery and strong-
2 armed robbery, would you have pled guilty?
3 A: No, sir.
4 Q: All right. And had he adequately gone over the discovery
5 and gone over the elements of the crime, would your decision
6 to plead guilty have changed?
7 A: Yes, sir.
8 Q: Are you asking the Court to grant you a new trial?
9 A: Yes, sir.
10 Q: And you understand that you could be exposed to 30 years?
11 A: Yes, sir.
12 Q: And you're willing to take that risk?
13 A: Yes, sir.
14 Q: Okay. No further questions, Your Honor.
15 THE COURT: All right. State?
16 CROSS EXAMINATION OF FORREST NELSON, JR. BY MR. JAMES:
17 Q: Mr. Nelson, you indicated that you did not appeal from
18 your plea, correct?
19 A: Yes, sir.
20 Q: Did Mr. Fox ever tell you about your rights to appeal?
21 A: Yes, sir.
22 Q: He did?
23 A: I don't know. I don't remember, sir.
24 MR. SELWA: Your Honor, we -- I'm sorry to interrupt. We
25 can concede that and drop that, that issue.

Nelson v. State - 2016-CP-26-04891
ERIC FOX - DIRECT BY SELWA

19

1 MR. JAMES: Okay.

2 THE COURT: All right.

3 MR. JAMES: Then I have no further questions.

4 THE COURT: All right. You may step down. Thank you.

5 You can call your next witness.

6 MR. SELWA: Your Honor, excuse me. Your Honor, I would
7 call Eric Fox to the stand.

8 CLERK: Place your left hand on the Bible.

9 ERIC FOX, HAVING BEEN DULY SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: You may have a seat. State your name, please.

12 MR. FOX: Eric Fox.

13 MR. SELWA: Thank you, Your Honor.

14 DIRECT EXAMINATION OF ERIC FOX BY MR. SELWA:

15 Q: Mr. Fox, you represented Mr. Nelson in trial for the
16 charge of armed robbery, correct?

17 A: I did.

18 Q: And that's the, the case that we're here for today; is
19 that right?

20 A: Yes, sir.

21 Q: Okay. And do you recall that -- that case?

22 A: I do, very well.

23 Q: And that ended up being a plea; is that correct?

24 A: In the end, it did. We literally had the jury waiting
25 and he was lined up to start the trial that morning but, yes,

1 it ended up a plea.

2 Q: Okay. How much time did you spend with Mr. Nelson?

3 A: I don't do it by actual minutes, but my notes reflect
4 that starting in September of 2015 -- and he was incarcerated
5 at the time, so all of these visits were at J. Reuben Long. I
6 saw him in September, again in November, there was an
7 arraignment here at the courthouse in December, we had an
8 opportunity to speak then. I saw him two different times in
9 January, again in March, and then as it narrowed down and it
10 looked as if we'd go to trial, then back-to-back days just
11 before trial in April. So, about a half a dozen times at the
12 jail and in one of the lockup rooms here at the courthouse at
13 his arraignment. And then again, my notes show that on the
14 morning of trial, we spent a great deal of time discussing
15 options and consequences and so forth. So, probably about
16 eight to 10 times total.

17 Q: During your visits with him, did you go over the elements
18 of the crime of armed robbery?

19 A: Repeatedly, because that really was, in his situation,
20 the crux of it, he didn't deny being there. It was all about
21 whether it was armed robbery and could they prove armed --
22 could the state prove armed robbery or strong-armed robbery
23 and so that was, I would say, 75 or 80 percent of the
24 discussions, the distinctions and the elements of what would
25 make it armed robbery versus strong-armed robbery.

Nelson v. State - 2016-CP-26-04891
ERIC FOX - DIRECT BY SELWA

21

1 Q: Okay. And did -- was there significant plea negotiations
2 in this?

3 A: There was a lot of discussion; there wasn't a lot of
4 movement. The offer, if I recollect the one and only was for
5 the minimum on armed robbery, which was 10 years. A lot of
6 discussion and effort to try to move the state to strong-armed
7 robbery because number one, it carried a maximum of 15 and
8 it's not a no-parole offense. You would do much less time
9 typically on that so, there was a strong effort on our part
10 and Mr. Nelson always indicated if he could get that offer,
11 get the charge reduced, that he was hoping to plea and even a
12 plea that would send him to prison for a period of time. He
13 obviously wanted as little time as possible, but he was
14 willing to plead and he was willing to go to prison, but the
15 solicitor, for their own reason, was never willing to reduce
16 it from strong -- from armed robbery.

17 Q: Okay. Was there any offer from the state regarding
18 cooperating and turning over the other co-defendants?

19 A: Not in terms of a specific number. And typically, what
20 they'll do around here is, you know, we'll take that into
21 consideration. They absolutely wanted the name of the co-
22 defendant. He was -- I think he was seen as more -- they were
23 both responsible, but I think he was seen as maybe a little
24 bit more of the driver in this thing, perhaps the instigator,
25 and they were very, very interested in getting him even to the

1 point after the plea, that we discussed a potential downward
2 departure for Mr. Nelson on the sentence he did get, if he
3 would be willing to cooperate even at that point.

4 Q: All right. And to this day and to your knowledge, they
5 have not been caught or arrested?

6 A: No, I believe he's still, still free.

7 Q: And was there one or two other co-defendants?

8 A: My recollection was that there was a third person that
9 kind of -- there were two that came in with Mr. Nelson and
10 another individual came in the store, went to the back and got
11 the case or a 12-pack of beer, brought the beer forward. My
12 recollection is there may've been a third person that stood
13 near the door. He was seen briefly and did not participate in
14 terms of going to the counter and engaging with the clerk.

15 Q: Okay.

16 A: And they frankly didn't seem to -- the state didn't seem
17 too concerned with him.

18 Q: In regards to the -- the evidence that the state had, did
19 you go over that with Mr. Nelson?

20 A: I did.

21 Q: And did you review the video with him?

22 A: We did. I know at one point, we went and we had some
23 issues getting it to play on the computer I had, so we back
24 another time. I was able to tell him what I had seen, but
25 then we were able -- I just took another piece of equipment --

Nelson v. State - 2016-CP-26-04891
ERIC FOX - DIRECT BY SELWA

23

1 we were able to show that; this was at the convenience store.
2 They had two camera angles; it was in color; it was, you know,
3 really good quality, you know, these days; there was none of
4 that grainy black-and-white. You could certainly identify Mr.
5 Nelson. And you could see them from one angle when they
6 entered the store and see them in the back and see them come
7 to the front. Very shortly, after the beer is laid on the
8 counter, and I believe it was the co-defendant, they're
9 clearly yelling, gesturing, you know, although there's no
10 audio, it's clear what's going on. The clerk, you can see,
11 gets rattled and starts messing with the cash register there.
12 Mr. Nelson very soon after, leaps over the counter, and I
13 would describe he kind of manhandles the clerk. I don't
14 recall him throwing any punches or kicking, but he's got a
15 hold of him. He's kinda shaken, rattling, you can tell that
16 there's yelling going on and eventually, money is turned over
17 and they -- they all run out.

18 Q: At any point in that video, was there a, a representation
19 of a weapon made by Mr. Nelson or any of the co-defendants?

20 A: I don't recall one from Mr. Nelson. Again, there's lots
21 of gesturing the hands around, but there certainly is nothing
22 obvious where you would say he's got his hand extended
23 representing he had a weapon or had his finger in a, you know,
24 in a coat, that you sometimes have. And I don't -- I'll put
25 it this way, there's certainly no object visible evidence from

1 either of these guys. The co-defendant is a little bit more
2 menacing, but I don't recall that there was, again, that
3 specific extended gesture or, again, even a hand in the coat
4 type of thing. What you had though was two things on that
5 point. The video on that score clearly showed strong-armed
6 robbery, no doubt about it; debatable whether it showed an
7 armed robbery.

8 The two things that I worried about in terms of proof at
9 trial were the clerk very specifically and very definitely
10 said they represented that there was a gun. I thought they
11 had a gun; that's what their gestures were. And then, Mr.
12 Nelson, when he spoke to the police said, yeah, I acted like I
13 had a gun. My opinion is, he was kinda currying favor and not
14 realizes -- not realizing he was admitting an armed robbery at
15 that point. Because the elements here in this state, you
16 know, if the intended victim believes there's a weapon or if
17 you say you represented you have a weapon, that could be armed
18 robbery, even if there is no weapon.

19 Q: Were there any inconsistent statements made by the victim
20 regarding what he saw and specifically in regards to a weapon?

21 A: I think he may have at one point not -- I know it was
22 mentioned in one. There may've been a later statement that
23 did specifically mention, but I have little doubt. And, you
24 know, that would be an issue, any inconsistency at any point
25 in court where the witness gives previously I'm gonna call

Nelson v. State - 2016-CP-26-04891
ERIC FOX - DIRECT BY SELWA

25

1 them on, but I certainly expected him to come to court and say
2 yeah, they acted there was a weapon.

3 Q: Court's indulgence please.

4 So, the main evidence that you had to support the armed
5 robbery would've been the clerk's statement?

6 A: Yeah, and a little more particular, what the clerk had
7 said initially was that he could see the outline of a gun
8 barrel under -- I'm almost sure that was the co-defendants
9 clothes that he could -- now, you know, I would have certainly
10 cross examined pretty strong on that, what did you really see,
11 did you really see a gun in there, but that was his statement
12 to the police that I could see the outline of a barrel
13 including like the, you know, the knots, the site, under the
14 co-defendant's clothes. And then again, Mr. Nelson stating
15 that he himself had represented that he had a gun.

16 Q: Did you feel that his representation was cut short on the
17 audio?

18 A: I did not recall him bringing that to my attention. Not
19 to the point that I thought it needed further investigation,
20 I'll put it that way.

21 Q: At any point, with -- when you were meeting with Mr.
22 Nelson, did you go over -- and I may have asked you this and I
23 apologize if I do -- but at any point, did you go over the
24 parole eligibility with him?

25 A: I did explain because, again, one of the very key things,

1 again, Mr. Nelson, I don't think this really was ever gonna go
2 to a trial and Mr. Nelson indicated, look, I know what I did,
3 I intended, and I think I did a strong armed robbery. And we
4 talked about that distinction in terms of me letting him know
5 I thought that it would be, that they could prove armed
6 robbery and what those consequences would be, including the
7 minimum sentence and the parole eligibility and the strike, in
8 other words, it being a most serious offense that could in the
9 future potentially lead to a life without parole sentence.

10 It was all tied in, so, I just had no doubt in my mind.
11 We discussed all those things.

12 Q: Okay. And when you -- during the plea, when you were
13 making your statement to the Court regarding the case, you
14 indicated in that -- in the transcript, that Mr. Nelson has
15 always maintained to you and to the police, that he never had
16 a weapon?

17 A: Yes.

18 Q: Okay. And you went on and explained that, in fact, he
19 did so because he didn't want to harm anybody; is that right?

20 A: Yes, I have zero doubt about that.

21 Q: Okay. And there was no negotiation in this, this plea,
22 was there?

23 A: Well, no, at that point, by the time he pled, his plea
24 offer had been the 10-year minimum on armed robbery, he had
25 been arraigned in December and had rejected that offer. So,

Nelson v. State - 2016-CP-26-04891
ERIC FOX - DIRECT BY SELWA

27

1 at that point, he was pleading without recommendation or
2 negotiation. And despite all those things and despite a jury
3 waiting in the wings, he was able to get the exact same offer
4 that he had been -- you know, that had been on the table
5 before.

6 Q: However, he was exposed to the maximum though, wasn't he?
7 A: He was; he was.

8 Q: There was no guarantee that you were gonna get 10,
9 correct?

10 A: No, and I didn't tell him we'd get 10. I know I told him
11 I still felt because that was, I believe, Judge John. I felt
12 from experience, Judge John would be better in that scenario.
13 I mean, we had no choice, but I felt that he would be open to
14 listening to all the circumstances, rather than focusing on
15 the fact that we were about to try the case and, in fact, he
16 did give the minimum.

17 Q: What was the advantage of having Mr. Nelson plea?
18 A: Well, I did not have any doubt that he would be found
19 guilty and, in part, and Mr. Nelson and I discussed this,
20 because again, as he said here, focused very much on the fact
21 that he did not actually have a gun. About a year before this
22 case, Mr. Nelson's case, I had virtually the exact same
23 situation with a man who intentionally did not take a weapon
24 so that it wouldn't, in his mind, wouldn't be armed robbery.
25 He did the classic finger in the coat, but he very

1 intentionally did not take a weapon. There was no weapon. He
2 went to trial and he lost and now he was in life without
3 parole scenario. He ended up with life. But, and I told Mr.
4 Nelson, look, glad you didn't have a gun and glad you weren't
5 trying to hurt anybody, but I've tried your case almost
6 exactly before and if you go to trial, it's my opinion, based
7 on my experience of 20 some years and that case that I just
8 did, that you would be found guilty and the sentence is likely
9 to be 25 to 30 years. Obviously, I didn't know what the Judge
10 would do, but I did tell him I thought it would be 25 or 30
11 years if he lost at trial.

12 Q: During the plea as well, Mr. Nelson actually stopped the
13 Judge and said the facts that were resuscitated were not
14 accurate; is that correct, to your knowledge?

15 A: Let's see here. At some point, I'm looking back to see
16 where he did that. If you could point -- but I recall there
17 was a hesitation or halt at one point.

18 Q: Are you talking about where he says, are these facts true
19 and he said some of them?

20 A: Yes. Again, and that was over the issue of he said I
21 didn't indicate he had any handgun or I didn't present any
22 handgun. You still have the clerk who maintained that there
23 was and that would be an element to satisfy.

24 Q: Did you have any concern about Mr. Nelson's understanding
25 of the elements and of the -- why he was actually stating that

Nelson v. State - 2016-CP-26-04891
ERIC FOX - DIRECT BY SELWA

29

1 to the Judge at that point?

2 A: No, it was -- it didn't surprise me. As I said, 75 or 80
3 percent of the conversations that we had with Mr. Nelson were
4 on that distinction, whether it could in fact be armed
5 robbery. And you know, we went through that many, many, many
6 times, and I'm not sure he ever believed it in his mind, but,
7 you know, I didn't -- all I could say was, look, this is how
8 it is in South Carolina. The jury can -- they would not have
9 to but the jury could, based on those facts, find you guilty
10 of armed robbery. So, it didn't surprise me, because he
11 definitely had struggled with that concept all along.

12 Q: And towards the end of the plea, right before Judge John
13 sentenced Mr. Nelson ---

14 A: Uh-huh, (affirmative response).

15 Q: He asked one last time regarding your confidence in the
16 evidence, do you recall that on Page 13?

17 A: I do, but what my response was, the clerk would testify
18 that he believed there was a weapon and then specifically it
19 would be I saw the outline of a gun under the co-defendant's
20 weapon -- clothes. So, then under the hand of one is the hand
21 -- and clearly these two were working together -- but under
22 the theory of the hand of one is the hand of all, and then I
23 also pointed that Mr. Nelson, although he did not have a
24 weapon, had admitted that he acted like he had a weapon, so...

25 Q: Court's indulgence, please?

Nelson v. State - 2016-CP-26-04891
ERIC FOX - CROSS BY JAMES

30

1 Mr. Fox, one last question, did Mr. Nelson, at any point,
2 indicate that he had attention problems, learning
3 disabilities, anything like that, to you?

4 A: I do not recall that he did. I'm looking at my notes.
5 That would certainly be something that would get my attention.
6 I don't see that. In my conversations with him, he did ask
7 relevant and appropriate questions. He seemed more to
8 disagree with that designation, that distinction between
9 common law robbery and strong-armed robbery rather than not
10 understand it, if that makes sense. I think he understood the
11 distinction, he just disagreed in its application in his case.
12 But I didn't see any issues that made me think he was not
13 competent.

14 MR. SELWA: No further questions, Your Honor.

15 THE COURT: All right. Anything from the state?

16 MR. JAMES: Very briefly, Your Honor.

17 CROSS EXAMINATION OF ERIC FOX BY MR. JAMES:

18 Q: You indicated earlier that there was a vague proposition
19 from the state that Mr. Nelson could receive perhaps some
20 benefit from cooperating and giving the names of the co-
21 defendants?

22 A: Yes.

23 Q: But Mr. Nelson did not wish to cooperate?

24 A: He did not.

25 Q: And what all did you do to investigate and prepare for

Nelson v. State - 2016-CP-26-04891
BY THE COURT

31

1 trial?

2 A: Most was the review of the evidence that we had from the
3 state. Those were the witness statements, the videos, the key
4 piece of evidence. We had and I listened to Mr. Nelson's
5 interviews with the -- with law enforcement in North Carolina
6 where he was apprehended. At one point, I did go down, as
7 trial approached, I did go down and visit the, the store and
8 just sort of had my eyeball on the -- on the scene itself. I
9 know we reached out, through my investigator, to attempt to
10 speak with the clerk before trial, but had no success, which
11 isn't uncommon, but we made an effort to try to speak to the
12 clerk beforehand, him being a very critical witness as well.
13 But basically, it was reviewing and familiarizing myself with
14 the discovery we had and, of course, meeting and discussing
15 that with Mr. Nelson.

16 Q: And did you feel adequately prepared to proceed to trial?

17 A: Definitely.

18 Q: Whose decision was it to plead guilty?

19 A: Mr. Nelson's, and that was my advice as well.

20 Q: And would you give that same advice today?

21 A: Absolutely.

22 Q: And normally I start off with this question, but I
23 supposed it will be my last one. How long have you been doing
24 this, Mr. Fox?

25 A: Admitted to the bar in 1990 and been doing criminal work

1 exclusively since 1994.

2 Q: All right.

3 No further questions, Your Honor.

4 THE COURT: All right. Anything else, Mr. Selwa?

5 MR. SELWA: Nothing further, Your Honor. If I may, I'd
6 like to argue that case a little bit in closing.

7 THE COURT: All right. You may step down. I'm familiar
8 with it; I don't need it. I've got all the evidence that's
9 gonna be submitted anyway and I'll take it under advisement.

10 MR. SELWA: Do I need to hand counsel or you a copy of
11 the case?

12 THE COURT: You can give it to him, but I don't need it.

13 MR. JAMES: I'll take it just to make sure that I know he
14 cited to it, but I think I remember getting it.

15 THE COURT: Thank you very much.

16 MR. SELWA: Thank you, Your Honor.

17 THE COURT: Y'all have a good day and let's start back at
18 1 o'clock.

19 MR. SELWA: And, Your Honor, just so my client heard you
20 correctly. You said you'd take it under advisement?

21 THE COURT: I am. I'm gonna study it, look at it, think
22 about it a little bit and I'll let you know something in the
23 next day or two.

24 MR. SELWA: Thank you, Your Honor.

25 (ADJOURNED - 12:11 P.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Forrest Nelson, Jr. v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on April 30, 2018.

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



Kay H. Richardson
Official Court Reporter

April 30, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Forrest Nelson, Jr.,	)	Case No.: 2016-CP-26-04891
S.C.D.C. No. 367870,)	
)	
Applicant,	)	ORDER OF DISMISSAL
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
 HORRY COUNTY
 2018 JAN 12 PM 2:40
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Forrest Nelson, Jr. ("Applicant") on July 29, 2016. Respondent made its return on or about February 21, 2017. The Court convened an evidentiary hearing into the matter on Wednesday, September 20, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, J. Eric Fox, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the November 2015 term of the Horry County Grand Jury for armed robbery (2015-GS-26-04618). J. Eric Fox,

Esq. represented Applicant, and Thomas G. Terrell, III, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 18, 2016, Applicant pled guilty as indicted. The Honorable Steven H. John sentenced Applicant to imprisonment for a term of 10 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel, in that:
 - a. "Trial counsel was ineffective for failing to properly investigate and prepare for trial."
 - b. "Trial counsel was ineffective by failing to advise Applicant of his right to appeal from his guilty plea."
 - c. "Trial counsel was ineffective for failing to explain the nature of the offense and the consequence of Applicant's plea, thereby making Applicant's plea not knowingly and voluntarily entered."

At the evidentiary hearing, Applicant proceeded forward on the first and third allegations set forth above, conceding the second allegation entitled him to no relief. See Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) ("[T]here is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

IAC Allegation #1 – Failure to Investigate and Prepare

Applicant alleges Counsel was ineffective by failing to adequately investigate his case and prepare for trial. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). More speculation as

to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing, Applicant testified that he met with Counsel three to four times, with each meeting lasting just a few minutes each. Applicant testified that he reviewed the victim's statement with Counsel, but asserted that the video from the convenience store shows he never pantomimed possessing a weapon. Applicant alternately suggested the video seemed edited. Applicant readily admitted to robbing the store, but asserted he had no weapon. Applicant told the plea court he had no gun, but went ahead with the plea after the judge explained the representation of a weapon was enough, as Applicant was afraid of getting 25 years.

Counsel testified he met with Applicant eight to ten times. Counsel tried to arrange a plea to strong-arm robbery, but Applicant was unwilling to cooperate. Counsel recalled the video from the Circle K clearly showed at least a strong-arm robbery, as Applicant "manhandled" the victim. Counsel also noted the video did not show any obvious gesture on the part of Applicant that would indicate he possessed a weapon, nor was any object visible. However, the victim clerk told law enforcement that Applicant represented possessing a weapon. Counsel testified that he reviewed the evidence provided by the State and visited the store where the robbery took place. Counsel admitted his investigator was unable to speak to the victim clerk. Counsel had no doubt Applicant would be convicted if he went to trial.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel's credible testimony demonstrated then-existing thorough familiarity with the facts of the case and the key evidence of the robbery—namely the Circle K video and statements from the victim.

Additionally, Applicant presented no evidence as to what, if anything, Counsel would have discovered had he spent more time investigating or preparing the case. Accordingly, Applicant's request for relief by way of this allegation is DENIED.

IAC Allegation #2 – Failure to Explain Offense and Consequences

Applicant also alleges Counsel was ineffective by failing to explain to him the nature of the offense of armed robbery and the potential consequences he faced, thereby rendering his guilty plea involuntarily entered. At the plea proceeding, the plea court told Applicant his range potential sentencing and that armed robbery is a violent and most serious offense; Applicant affirmed that he understood. Tr. 3-4. When asked by the Court if he had discussed with Counsel the impact of the violent classification, Applicant affirmed that he had. *Id.* Applicant denied needing any additional time with Counsel. Tr. 6-7. Applicant did not dispute Counsel's representation that they had discussed Applicant's constitutional rights, defenses available, and the information and evidence in the possession of the State. Tr. 7, ll. 19-24. After the State's brief recitation of facts, Applicant informed the court that he presented no handgun. Tr. 8-9. At that time, the court reviewed the indictment against Applicant and explained "[i]t doesn't necessarily mean you had to have a gun but by your actions you indicated or your Codefendant indicated to the clerk that there was a weapon which a person of reasonable – ordinary, reasonable person would believe to be a deadly weapon." Tr. 9, ll. 7-25. Applicant indicated that he understood the explanation and agreed to the facts as presented by the State. Tr. 9-10.

At the evidentiary hearing, testified that Counsel did not explain the elements of armed robbery, but then testified that Counsel did explain the difference between strong-arm robbery and armed robbery. Applicant testified Counsel showed him no caselaw. Applicant claimed he did not learn about parole eligibility until the judge talked about it with him at the plea.

Applicant claimed that he still did not understand the elements of armed robbery after the judge's explanation at the plea, but proceeded anyway because he was afraid of receiving 25 years. Applicant testified did not learn of his parole ineligibility until after he was sentenced.

Counsel testified 75-80% of his conversations with Applicant were about the elements of armed robbery. Counsel further testified that he explained parole eligibility to Applicant, the minimum and maximum possible sentences, and idea of a "strike." Counsel testified that Applicant indicated to him no learning disabilities and appeared to be competent throughout his representation; Applicant asked him thoughtful questions.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court finds Applicant's testimony as to this allegation inconsistent and entirely not credible. Counsel's credible testimony shows that he repeatedly and thoroughly explained the elements, details, and consequences of armed robbery to Applicant, including the classifications of the crime and the impact they would have on potential parole eligibility. Furthermore, the Court additionally explained those same matters during the plea hearing. Accordingly, Applicant's request for relief by way of this allegation is DENIED.

[Conclusion and signature on following page]

III. CONCLUSION


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

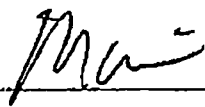
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 2 day of Jan, 2018


 WILLIAM F. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit


 _____, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15th JUDICIAL CIRCUIT
Forrest Nelson Jr.	)	CASE NO.: 2016CP2604891
Plaintiff(s).	)	APPOINTMENT OF COUNSEL OR GAL.
-vs-	)	(Select one.)
South Carolina State of,)	<input checked="" type="checkbox"/> ORDER
Defendant(s).)	<input type="checkbox"/> AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: Post Convict Rel 500 | |

It appears Forrest Nelson Jr, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

Therefore, it is ordered that DANIEL A SELWA, II hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
September 19, 2016

Melanie Huggins-Ward

Circuit Judge Clerk of Court

Plaintiff Attorney:

DANIEL A SELWA, II	
1053 LONDON STREET, STE-A	
MYRTLE BEACH, SC 29582	

Defendant Attorney:

Alan McCrory Wilson	
PO Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

2016 SEP 19 AM 10:36
 CLERK OF COURT

WITNESSES

M Quinn
Myrtle Beach Police Department

ARREST WARRANT NUMBER

2014A2820802845
CDR: 0139 16-11-0330(A)
DOA: 8/20/2015

ACTION OF GRAND JURY

TRUE BILL

Bob Harris
Foreperson of Grand Jury
Date: NOV 12 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-28-04618

The State of South Carolina

County of Horry

Thomas Groom Terrell, III 15H04003

COURT OF GENERAL SESSIONS

NOVEMBER, 2015 TERM

THE STATE

vs.

Forrest Nelson Jr
B/M
[REDACTED]
[REDACTED]
SSN:

ATTORNEY: J. Eric Fox

Indictment for

ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

CRIMINAL

FILED
HORRY COUNTY

2015 NOV 17 PM 2:57

MELANIE HUNTER WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Forrest Nelson Jr and/or a codefendant did in Horry County on or about December 11, 2014, while he and/or a codefendant was armed with a deadly weapon, or while he and/or a codefendant was alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, take and carry away personal property of Circle K from or in the immediate presence of Circle K with intent to deprive Circle K of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



JIMMY RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2016 APR 18 PM 3:14

ME
CLERK OF COURT
COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.

INDICTMENT/CASE#: 2015GS2604618

AKA: Forrest Nelson Jr

A/W#: 2014A2620602645

Race: BLACK Sex: M Age: 36

Date of Offense: 12/11/2014

DOB: SS#:

S.C. Code §: 16-11-0330(A)

Address:

CDR Code #: 0139

City, State, Zip: North Wilkesboro, NC 28659

SENTENCE SHEET

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Armed Robbery (10-30)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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's: initials)

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

ATTEST: SC100776 Defendant Attorney for Defendant SC Bar# 15123

Tarell, III, Thomas Groom SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 10 years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-25 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Set by SCDPPPS Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Recipient: Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 5/18/2026 \$ paid to Public Defender Fund Other:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2993 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.96, TOTAL \$133.90 + \$40.00 pd opp = \$173.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins- Ward Court Reporter Dixie Eubank SCCA/217 (03/2011)

Presiding Judge Judge Code: Sentence Date: 4/18/16

ARREST WARRANT

2014A2620602645

STATE OF SOUTH CAROLINA

County/ Municipality of

Myrtle Beach

2015 SEP -8

THE STATE against

14-026789

Forrest Nelson, Jr

Address:

North Wilkesboro, NC 28659-

Phone:

SSN:

Sex: M Race: B Height: 5 9 Weight: 145

DL State:

DL #:

DOB:

Agency ORI #: SC0260600

Prosecuting Agency:

Myrtle Beach Police Department

Prosecuting Officer:

M Quinn - 7471

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code:

0139

Code/Ordinance Sec:

16-11-0330(A)

This 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 on

Forrest Nelson 8/20/15

Signature of Probation/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions PO Box 677 1301 2nd Avenue Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Myrtle Beach

Personally appeared before me the affiant M Quinn who

being duly sworn deposes and says that defendant Forrest Nelson, Jr

PH 12-30 this county and state on or about 12/11/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Myrtle Beach)

In the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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:

On Thursday, December 11, 2014 at approximately 2100 hours officers responded to the Circle K convenience store at 1611 S. Ocean Blvd. which is located within the city limits of Myrtle Beach, SC for a report of an armed robbery. The victim stated that three black males entered the store and selected beer from the cooler and brought it to the counter. The defendant jumped the counter, presented a handgun and punched the clerk. Video and picture surveillance was released by law enforcement to the public. There were two separate positive identifications made by individuals who are the defendants former employer and worked with him for several months and stated they know him to live in the area. Further investigation revealed the defendant has been in the Myrtle Beach within the past several months. Based on the above facts it is reasonable to believe the defendant did commit the offense of Armed Robbery SC Code 16-11-330(a)

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Myrtle Beach

Affiant's Address 1101 Oak Street

Myrtle Beach, SC 29577-

Affiant's Telephone

ARREST WARRANT

75,000 Sworn M

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 12/11/2014 defendant Forrest Nelson, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Myrtle Beach) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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 12/16/2014

Signature of Judge (L.S.)

Christy Schlegel Anderson Judge Code: 8065

Judge's Address 1101 Oak Street

Myrtle Beach, SC 29577-

Judge's Telephone (843)918-1356

Issuing Court: Magistrate

Municipal

Circuit

ORIGINAL

ORIGINAL

ORIGINAL