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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FAVIAN ALPHONSO HAYES

APPELLANT

APPELLATE CASE NO 2009-129706

RECORD ON APPEAL

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INDEX

INDEX i

GUILTY PLEA TRANSCRIPT DATED JUNE 1, 20091

SENTENCING57

ORDER GRANTING WRIT OF HABEAS CORPUS58

SOUTH CAROLINA SUPREME COURT ORDER DATED SEPTEMBER 3, 201560

SOUTH CAROLINA COURT OF APPEAL’S ORDER DATED SEPTEMBER 23, 201562

APPELLANT’S EXPLANATION FOR BASIS OF APPEAL PURSUANT TO RULE
2013(d)(1)(B)(iv)63

SOUTH CAROLINA COURT OF APPEAL’S ORDER DATED JUNE 16, 201671

INDICTMENT72

CERTIFICATE OF COUNSEL74

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
 Favian Alphonzo Hayes,)
)
 PLAINTIFF,)
)
 v.)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

COURT OF GENERAL SESSIONS

TRANSCRIPT OF RECORD
 C/A #: 2007-CP-43-080
 C/A #: 2008-GS-43-646
 C/A #: 2008-GS-43-647

SUMTER COUNTY COURTHOUSE
 Monday, June 1, 2009

BEFORE:
 HONORABLE HOWARD P. KING, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Catherine Fant
 Attorney for the State of South Carolina

David Sullivan, Esquire
 Public Defender for Sumter County
 Attorney for the Defendant

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

INDEX

PAGE

Case Called	3
Certificate of Service.	58

HEARING

3

1 Ms. Fant: May it please the Court?

2 The Court: Yes ma'am.

3 Ms. Fant: Favian Hayes. Your Honor this is the
4 State of South Carolina versus Favian A Hayes, Indictment
5 number 2008-646 and 647 and 2007-801. He is present today
6 with his counsel, Mr. David Sullivan, and desires to plead
7 guilty to indictment number 2008-646 to Armed Robbery and
8 Criminal Conspiracy, on 2008-647 to one count of Armed
9 Robbery. The conspiracy on 647 is being nolle prosee by
10 the State and on indictment number 2007-801 to Possession
11 of Cocaine Base, second offense as a lessor included
12 offense of PWID, cocaine base and the proximity charge is
13 being nolle prosee by the State on that Indictment.

14 Bailiff: State your name please.

15 WITNESS: Fabian Hayes.

16 Bailiff: Do you solemnly swear your testimony to
17 the Court to be the truth, the whole truth and nothing but
18 the truth, so help you God?

19 WITNESS: Yes.

20 The Court: All right, Mr. Sullivan, you
21 represent the Defendant?

22 Mr. Sullivan: Yes sir.

23 The Court: Have you explained to him the charges
24 contained in these various indictments, the possible
25 punishment, his Constitutional rights, including his right

HEARING

4

1 to a jury trial?

2 Mr. Sullivan: Yes sir.

3 The Court: In your opinion does he understand
4 those thing?

5 Mr. Sullivan: He does.

6 The Court: And how has he indicated to you that
7 he wishes to plea?

8 Mr. Sullivan: Guilty Your Honor.

9 The Court: Do you agree with that decision?

10 Mr. Sullivan: I do.

11 The Court: You are Favian Alphonzo Hayes, is
12 that correct?

13 A: Yes sir.

14 The Court: All right Mr. Hayes, before I can
15 accept a plea of guilty, it is necessary for me to make
16 sure that your plea of guilty is freely and voluntarily
17 given. I therefore need to ask you some questions and if
18 you don't understand the questions or words I use, you tell
19 me and I'll be glad to explain them to you. You may talk
20 with your lawyer anytime as we go through this process, you
21 understand?

22 A: Yes sir.

23 The Court: How old are you?

24 A: Twenty-one

25 The Court: How far did you go in school?

HEARING

5

1 A: Twelfth grade.

2 The Court: Did you graduate?

3 A: No sir, I obtained my GED.

4 The Court: So you have your GED?

5 A: Yes sir.

6 The Court: What kind of work do you normally do?

7 A: Well, hard labor, but I got my certificate in
8 carpentry and plumbing when I was incarcerated at SCDC
9 but due to an injury, a personal injury I had, I got
10 laid off when I came home. I was seeking social
11 security at the time due to nerve damage that I had,
12 so I, but I, I still was in ...

13 The Court: Have you ever been treated for the
14 abuse of alcohol or drugs or for mental illness?

15 A: Sir?

16 The Court: Have you ever been treated for the
17 abuse of alcohol or drugs for mental illness?

18 A: Have I ever like attended mental health?

19 The Court: Have you ever been treated for
20 anything like that?

21 A: No sir.

22 The Court: Sir?

23 A: I attend mental health due to on occasion.

24 The Court: All right, what do you go to mental
25 health for?

HEARING

1 A: Sleeping medicine and depression.

2 The Court: Have you taken any medications, drugs
3 or alcohol in the last twenty-four hours?

4 A: My daily medication.

5 The Court: All right, what kind of medication?

6 A: Flexeril for depression and Trazodone for sleeping.

7 The Court: Okay. Does that effect your ability
8 to know and understand what you're doing here today? Is
9 that a no?

10 A: No, sir. It doesn't.

11 The Court: So other than that prescription
12 medication, are you today under the influence of any kind
13 of medication, drugs or alcohol?

14 A: No sir.

15 The Court: Are you today aware of any physical,
16 emotional or nervous problem that would keep you from
17 understanding what you're doing here today?

18 A: No sir.

19 The Court: You've heard your attorney tell me
20 that he has explained to you the charges contained in these
21 various indictments, the possible punishment, and your
22 Constitutional rights and that you understand these things,
23 is that correct?

24 A: Yes sir.

25 The Court: All right, let's take a look at the

HEARING

1 indictments. First of all, indictment number 08-GS-43-646
 2 has been returned as a true bill by the Grand Jury of
 3 Sumter County and it charges that you did, along with
 4 Brandon McFadden, on or about July the 31st of last year,
 5 violate South Carolina law in that while armed with a
 6 deadly weapon specifically a hand gun, that you did
 7 feloniously take from Latasha Skinner, in the presence of
 8 Latasha Skinner, by means of force or intimidation certain
 9 goods or monies at the Young's store at 96 Oswego Highway.
 10 And the charge is one for armed robbery. Do you understand
 11 that charge?

12 A: Yes sir.

13 The Court: Do you understand that for that
 14 offense you could get ten to thirty years in prison?

15 A: Yes sir.

16 The Court: Do you understand that this is
 17 considered a most serious offense and that under our two
 18 strikes, three strikes law that if you were to have, after
 19 you've served your time for this sentence, if you were to
 20 have another more serious offense, that the State would
 21 have to seek a penalty of mandatory life in prison, you
 22 understand that?

23 A: Yes sir.

24 The Court: You also understand that this is a no
 25 parole offense. That whatever I sentence you, you'll have

HEARING

8

1 to serve eighty-five percent of the sentence, you
2 understand, before you could be released on any kind of
3 community supervision, you understand that?

4 A: Yes sir.

5 The Court: It's also considered a violent
6 offense. Has your lawyer explained to you the difference
7 between a violent and non-violent offenses?

8 A: Yes sir. I believe you do more time than the eighty-
9 five percent and sixty five percent.

10 The Court: That's the no parole, parole defense.
11 Violent has a lot of different phases, but, normally if it
12 was not considered a no parole offense, you could be
13 considered for parole in less time than you can on those
14 that are eighty-five percent or no parole offenses. That
15 no parole offense you have to serve eighty-five percent
16 before you can be released for any kind of community
17 supervision, do you understand that?

18 A: Yes sir.

19 The Court: Okay. And Mr. Sullivan have you
20 explained also what is meant by violent and ...

21 Mr. Sullivan: Yes sir

22 The Court: ... the implications?

23 Mr. Sullivan: Yes sir.

24 The Court: Okay, All right. All right, and also
25 in that same indictment, it charges that you and Mr.

HEARING

9

1 McFadden did conspire to commit this offense and you're
2 also charged with the crime of criminal conspiracy, for
3 which you could also get five years in prison, you
4 understand that?

5 A: Yes sir.

6 The Court: Now under indictment number 647, that
7 indictment has also been returned as a true bill by the
8 grand jury of Sumter County and it charges that you did in
9 Sumter County while armed with a deadly weapon, did take
10 from Anna Hicks, at the Kangaroo Express at 503 Broad
11 Street, currency and lottery tickets and that is another
12 charge of armed robbery, do you understand that charge?

13 A: Yes sir.

14 The Court: Do you understand that for that
15 offense you can get ten to fifteen years in prison, do you
16 understand that?

17 A: Yes sir.

18 The Court: Do you also understand that, the same
19 thing with the other armed robbery, that there's a minimum
20 sentence of ten years and I cannot suspend that minimum
21 sentence, you understand that?

22 A: Yes sir.

23 The Court: And again, this armed robbery, just
24 like the other one, All right, is a more serious offense,
25 it is a violent offense and you would have to serve eighty-

HEARING

10

1 five percent of whatever I sentence you to before you could
2 be released to any kind of community supervision, do you
3 understand that?

4 A: Yes sir.

5 The Court: Okay. Now, the final charge is in
6 indictment number 07-801, which has also been returned as
7 a true bill by the grand jury of Sumter County and it is a
8 drug indictment. It charges you in count one with
9 possession with intent to distribute cocaine base and count
10 two with possession with intent to distribute cocaine base
11 within one half mile of a school or play ground. The State
12 has indicated a willingness to accept a plea to possession
13 of crack or cocaine base second offense, instead of PWID
14 and to nolle prosequere or dismiss the proximity charge. Do
15 you understand the charges that are against you and the
16 charges you would be pleading guilty to as far as that
17 indictment is concerned?

18 A: Yes sir.

19 The Court: And you understand that for the
20 possession of crack second you could get up to five years
21 in prison and fined up to seventy-five hundred dollars, do
22 you understand that?

23 A: Yes sir.

24 The Court: Sir?

25 A: Yes sir.

HEARING

11

1 The Court: Okay. One other thing I forgot to
2 mention to you is on that other indictment for armed
3 robbery, the one at the Kangaroo Express, there's also a
4 charge of criminal conspiracy with Mr. McFadden, but the
5 State is willing to nolle prosequere or dismiss the criminal
6 conspiracy charge, you understand that?

7 A: Yes sir.

8 The Court: So what you would be pleading guilty
9 to would be two armed robbery charges, one criminal
10 conspiracy, one possession of crack second offense, do you
11 understand those charges as the ones that you would plead
12 guilty to?

13 A: Yes sir.

14 The Court: Okay. All right now, Mr. Hayes, when
15 you plead guilty you give up certain important
16 Constitutional rights. First you give up your right to
17 remain silent; that is your right against self
18 incrimination, your right to say nothing at all. You
19 cannot be compelled to testify or provide evidence against
20 yourself. You give up your right to have a jury trial,
21 that is your right to have a jury decide whether you're
22 guilty beyond a reasonable doubt. The jury would base
23 their decision upon evidence which the State presents, and
24 on any evidence that you might wish to introduce. In a
25 trial you would be presumed to be innocent and the State

HEARING

12

1 would have to present evidence that would convince all
2 twelve members of the jury of your guilt beyond a
3 reasonable doubt. And third you give up your right to
4 confront the witnesses against you. That is the right to
5 require the witnesses against you to come into court and
6 testify, have your lawyer cross-examine those witnesses and
7 the right to subpoena and call witnesses on your own
8 behalf. Do you understand those Constitutional rights?

9 A: Yes sir.

10 The Court: Do you understand that when you plead
11 guilty you waive or give up those Constitutional rights and
12 there will not be a jury trial?

13 A: Yes sir.

14 The Court: Understanding then the nature of the
15 charges against you and the consequences of your guilty
16 plea, how do you wish to plead to these charges as I have
17 outlined them to you; that is two counts of armed robbery,
18 one count of criminal conspiracy and one count of
19 possession of crack, second offense, guilty or not guilty?

20 A: Armed Robbery one, I plead guilty and the second
21 possession of crack cocaine, I plead guilty, but I do
22 have something to say, if I, if you do so wish.

23 The Court: Well I'll hear from you. You say you
24 plead guilty to one count armed robbery, which one are you
25 admitting to?

HEARING

13

1 A: To Young's Market.

2 The Court: All right, what about the Kangaroo?
3 That's in indictment number, Indictment number 08-GS-43-647
4 is the Kangaroo Express in the armed robbery of Ms. Anna
5 Hicks. How do you plead to that charge?

6 A: Not guilty.

7 The Court: Sir?

8 A: Not guilty.

9 The Court: All right sir. Ms. Fant, he does not
10 wish to plead guilty to that. Do you want to go ahead and
11 take the pleas on the other two and ...

12 Ms. Fant: Yes we would Your Honor. I think Mr.
13 Sullivan discussed with him the consequences of pleading to
14 the one that the other would still be pending, but we were
15 prepared to call the Young's Market Armed Robbery this
16 morning, so we would like to go forward with that and the
17 drug case.

18 The Court: All right. Do you understand what
19 the State is saying? They are willing to go ahead and
20 accept your plea if you admit and plead guilty to the
21 Young's Market and to the drug charge and that they will
22 stand aside the, for now, as far as the guilty plea is
23 concerned, the armed robbery of the Kangaroo Express, but
24 that they're prepared to go to trial on that. Do you
25 understand that?

HEARING

14

1 A: Yes sir.

2 The Court: All right, do you want this
3 indictment back Ms. Fant, that's the Kangaroo?

4 Ms. Fant: Yes.

5 Mr. Sullivan: Your Honor, could I discuss that
6 with him again?

7 The Court: Yes sir. Stand aside and give them a
8 minute.

9 (Counsel has discussion with client)

10 The Court: All right, is there any change to
11 that situation Mr. Sullivan? Does he still wish to have a
12 trial on the armed robbery of the Kangaroo? No...the
13 Kangaroo is the one that ...

14 Ms. Fant: Correct.

15 Mr. Sullivan: Your Honor, he wishes, he tells me
16 that he wants to plead to the Young's, but not to the
17 Kangaroo. I have explained to him that if Ms. Fant, and I
18 understand that she intends to prosecute him for the
19 Kangaroo, that if he on down the road gets that conviction
20 that he's looking at going to prison for the rest of his
21 life. I have explained that to him, but he tells me that
22 he still wants to plead guilty to the Young's, but not to
23 the Kangaroo.

24 The Court: All right Mr. Hayes, let's make sure
25 that you do understand what the possibilities are here.

HEARING

15

1 You understand that a guilty plea to the armed robbery of
2 the Young's foods stores is a minimum of ten and up to
3 thirty years in prison, do you understand that?

4 A: Yes sir.

5 The Court: All right and you understand that
6 even if the State, I'm not saying that they have any choice
7 about it at this time, I don't know whether they will or
8 not, but if they go forward with the armed robbery of the
9 Kangaroo, you are also facing ten to thirty years in prison
10 and even if the life without parole did not kick in,
11 there's the possibility of a consecutive sentence to
12 whatever I sentence you here to, so that if I were to give
13 you, for example, and I'm not saying this is what I'm going
14 to do, but if I were to give you twenty years on this armed
15 robbery and Ms. Fant prosecutes the other armed robbery and
16 it comes before some other judge and you're convicted on
17 that, and it's not a life without parole situation, you
18 could get thirty to, you could get thirty years consecutive
19 to what you get here, which would be fifty years. Do you
20 understand that?

21 A: Yes sir.

22 The Court: And then there's also, if under the
23 statute, and I'm not making any ruling as to whether this
24 is correct under the statue or not, but if under the statue
25 the State, if this falls under the statute as a second most

HEARING

16

1 serious offense, the State would be required to seek life
2 without parole, do you understand that?

3 A: Yes sir.

4 The Court: Okay. All right.

5 Mr. Hayes: Mr. King I'd like to speak, if you so
6 wish.

7 The Court: I'm going to give you a chance.

8 Mr. Hayes: Okay.

9 The Court: Okay, All right. All right that
10 being the case then, Mr. Fant, I think we can go forward
11 with the armed robbery of the Young's and the drug charge.
12 All right, now to these two charges, that is the armed
13 robbery of the Young's and the criminal conspiracy with Mr.
14 McFadden with regard to the Young's as well as the
15 possession of drugs, second offense, you understand that
16 when you're pleading guilty to those charges, you're
17 admitting the truth of those charges, you understand that?

18 A: Yes sir.

19 The Court: Do you----now you may have defenses
20 to those charges, I don't know whether you do or not, but
21 do you understand that when you plead guilty you waive or
22 give up any defenses that you might have to those charges?

23 A: Yes sir.

24 The Court: You may also may have given an
25 incriminating statement in the case, I don't know whether

HEARING

17

1 you have or not, but you understand that when you plead
2 guilty you waive or give up your right to contest or
3 challenge whether that statement was freely and voluntarily
4 given?

5 A: Yes sir.

6 The Court: Plea negotiations on these two
7 charges Ms. Fant?

8 Ms. Fant: No Your Honor.

9 The Court: All right, has anyone promised you
10 anything to get you to plead guilty?

11 A: Well sir, my lawyer, he explained to me fully the
12 situation and being that, you know, I got a co-
13 defendant in which his plea was Young's Market and
14 they dropped the Kangaroo on him in which was a plea
15 recommendation. And I also understand that he
16 explained to me that, being that he got a minimal
17 required ten years and time served on that and being
18 that most likely, if I plea to it I'll probably get
19 the same thing being he was a co-Defendant and not
20 having a background or a juvenile record of anything
21 of that nature. But other than that ...

22 The Court But that's your lawyer trying to guess
23 what I'm going to do isn't it? I mean, the State hasn't
24 promised you anything and the Court hasn't promised you
25 anything right?

HEARING

18

1 A: No sir.

2 The Court: And, of course, Mr. Sullivan can't
3 promise you anything. He can just tell you what he thinks
4 might happen.

5 A: Yes sir.

6 The Court: So I'll ask you again, has anyone
7 promised you anything or held out any hope of reward to get
8 you to plead guilty?

9 A: No sir.

10 The Court: Has anyone threatened you or used
11 force against you to get you to plead guilty?

12 A: No sir.

13 The Court: Has anyone used any pressure or
14 intimidation to cause you to plead guilty to these charges?

15 A: No sir.

16 The Court: Have you had enough time to make up
17 your mind as to whether or not you want to plead guilty?

18 A: Yes sir.

19 The Court: And are you pleading guilty of your
20 own free will and accord?

21 A: Well, I'd like to speak upon that. Well, solely I'm
22 pleading guilty, not just my guiltiness. I'm pleading
23 guilty because I believe that the representation in my
24 case wasn't to the fullest extent and the best of my
25 client, my lawyer ability and I'm also ...

HEARING

19

1 The Court: We're going to come to that in just a
2 minute.

3 A: Okay.

4 The Court: So, so the next question that I'm
5 going to ask you then is are you satisfied with the manner
6 in which your lawyer has advised and represented you?

7 A: Yes sir, yes sir.

8 The Court: All right, well tell me what you were
9 talking about.

10 A: Well, that's what I want to speak upon. I wasn't
11 really, I'm pleading guilty. I admit that I'm guilty.
12 But in the jury trial, I was willing to take a jury
13 trial, but I also know and understand that I pleading
14 due to I feel like honestly that the odds stacked
15 against me, in which that a lot of things been going
16 on with my case, certain violations and a lot of
17 conflicts of interest was ... In which, I been
18 incarcerated since August of '07 and I just received
19 my Rule 5 Brady Motion disclosing evidence February
20 24th from Catherine Fant, which was given to my
21 attorney and also I wasn't, I wasn't in possession of
22 my motion of discovery until Friday, but a incident
23 took place in which on the 24th, where my attorney
24 received my motion of discovery from the solicitor in
25 which a lot of individuals pertaining to my case was

HEARING

20

1 disclosed in my motion in which I wasn't every ... it
2 wasn't never in my possession.

3 The Court: What motion is that?

4 A: My Rule 5 Brady Motion disclosure and stuff I was
5 supposed to have.

6 The Court: Well, any motions that are made are
7 supposed to be made through your lawyer to the Court.

8 A: That's what I understand sir, but I just want to
9 stress to you is that, you know, it's been a conflict
10 of interest in doing my case because I was called to
11 Court on February 25th, on a Wednesday. My co
12 Defendant was called to Court February 24th on a
13 Tuesday, okay, in which, like I stated that Ms. Fant
14 had gave my lawyer Mr. Sullivan my motion of discovery
15 in the hallway so he said and during that time,
16 another one of his clients he was seeking to speak
17 them and consul with them in a room by court room one,
18 in which the client that he was speaking to pertains
19 to my case, in which documents and photos of that
20 individual pertaining to my case was inside my motion
21 of discovery. So upon the time, upon the time when he
22 was consulting in that meeting, with that selective
23 individual, he, my, I don't know how it came about,
24 but my motion of discover was disclosed to him and
25 this selective individual had took pictures and

HEARING

21

1 documents out of my motion of discovery and exited the
2 room. So I ain't find out about until that next day,
3 until some inmates that was in the holding cell at the
4 time, that they came into jail house and told me, but
5 my co Defendant came back also and that same
6 individual that took the documents and photos out of
7 my motion and showed me to them. I asked him where he
8 get it from, I asked the individual where he gets it
9 from Stacy Rhodes, and he said I took it from my
10 lawyer. I didn't know who his lawyer was, he said, I
11 asked him who your lawyer was and he say David
12 Sullivan, so when I went back to court that next day,
13 that Wednesday, I asked Mr. Sullivan about it. He
14 said Ms. Fant gave it to him in the hallway and he
15 ain't had time to put it in my file and when he was in
16 the room consulting with Mr. Rhodes he happened to
17 see, whatever he said Mr. Rhodes had happened to see
18 the pictures and he took the pictures and walked out
19 the courtroom, and walked out the room. So I asked
20 Mr. Sullivan, well, how did he even see, could
21 identify pictures of him in my motion of discover, I
22 mean, didn't he tell the officer? And he said yeah, he
23 told the officer and he got them back from him. I
24 said no he didn't because that same individual came
25 back to the jailhouse and start showing them around

1. with him on th pictures.

2 The Court: All right, wait just a minute, let me
3 see if I can, what are we talking about here Mr. Sullivan?
4 I'm not sure I'm following him.

5. Mr. Sullivan: I think I can explain it, Your
6 Honor.

7 The Court: Please do.

8 Mr. Sullivan: This past court term Ms. Fant gave
9 me part of Mr. Hayes' discovery. I was talking to another
10 client of mine, named Stacy Rhodes and I had part of Mr.
11 Hayes' discover in my hand and some of the photos that I
12 had were of Mr. Rhodes and they were incriminating pictures
13 of Mr. Rhodes and Mr. Rhodes reached over, who, like I said
14 is my client, or was my client, reached over and grabbed
15 those photos out of my hand and basically told me that I
16 wasn't getting them back and I went and got a CO to get
17 those photos from Mr. Rhodes and Mr. Hayes has told me on
18 numerous occasions how upset he is that Mr. Rhodes was able
19 to get some discovery that was in his file.

20 The Court: From your stand point, how does that,
21 in anyway prejudice Mr. Hayes' case?

22 Mr. Sullivan: It doesn't.

23 The Court: All right, Mr. Hayes, how does the
24 fact that some of the discovery may have inadvertently
25 gotten into the hands of another defendant prejudice your

HEARING

23

1 case here?

2 A: Because, well, speaking that I wanted to select a a
3 jury trial, and those same selective individuals, it
4 was like two or three individuals, and it was ready to
5 testify on the State behalf in which it would
6 incriminate me in the process. So a lot of things
7 that the State have, which I'm entitled to have in my
8 motion of discovery, that I didn't have, so once it
9 seek her hand, she got some things that I didn't have
10 ...

11 The Court: Whoa whoa whoa, but listen to the
12 question ...

13 A: Uh-huh.

14 The Court: What we're talking about now is the
15 things that Mr. Sullivan has explained to me that were
16 given to him by Ms. Fant on your case, they got into the
17 hands of Mr. Rhodes ...

18 Mr. Hayes: Yes sir

19 The Court: How did the fact that Mr. Rhodes got
20 those photographs, how does that prejudice, how does that
21 in any way prejudice your case here? I don't understand
22 what the prejudice is.

23 A: Well, Your Honor, the prejudice is that, that goes
24 back to saying, you know I'm pleading guilty because
25 the odds stacked against me because, in which by him

HEARING

24

1 representing me and by him representing me and letting
2 something like that occur and the lack of interest and
3 ...

4 The Court: Well mistakes happen and I'm sure
5 that he didn't mean for that to happen and the man grabbed
6 it from him, but unless you can demonstrate to me how that
7 works to your detriment as far as this case is concerned,
8 I don't see any prejudice.

9 A: Yes sir.

10 The Court: Now if you can tell me how that
11 prejudices your case I'll be glad to consider it. Mr.
12 Sullivan doesn't see it as prejudice and I don't see any
13 prejudice.

14 A: Well I mean all I'm expressing, Your Honor, is that,
15 you know, due to my Rule 5 and before my even my
16 client, I mean my lawyer had even a chance to go over
17 it and being that he, that incident even occurred, in
18 which he took them back to the jailhouse and showed
19 them around to everybody else and I already know you
20 understand that confidential informants in which
21 individuals write statements and they write letters to
22 the Solicitor involving their own case. So all I'm
23 stating is that I feel like, I truly feel like by the
24 incident occurred and I feel like that's a reason of
25 conflict of interest and I feel like, I also wrote the

HEARING

25

1 Lawyers Conduct Board and I also wrote, I was given
2 two names, Ms. Lauren Stevens and Jack Howle as the
3 Chief Public Defenders. So, I wrote both of them. I
4 ain't never heard nothing back from them explaining to
5 them what happened and explained the incident what
6 happened and the violation and conflicts of interest.
7 You understand that I knew if I had to go to trial all
8 this stacked highly against me, just due to the
9 incident occurred and I feel like he was representing
10 me to the - to his full extent and the best of his
11 ability and I had ask him to be relieved of my case,
12 but I never heard nothing from him. I never heard
13 anything from him which I have, I had copies of the
14 letters that I wrote to Lawyer's Conduct Board, the
15 next day, and copies of the letters that I wrote to
16 Chief Public Defender Jack Howle, in which I never
17 heard nothing from him in which. But the whole sense
18 of reason for me being pleading is that I feel like a
19 lose lose situation it being that, I mean ... The
20 Court: Well, here's the whole thing.

21 This is the question. You still - you've rambled a lot and
22 I've let you talk, but as far as the actual charge that
23 you're pleading guilty to here today, and that is the
24 charge of the armed robbery of Ms. Skinner at the Young's
25 Food store, how did this incident, where the pictures, and

HEARING

26

1 I don't know what the pictures contained, but the pictures
2 got into the hands of somebody unrelated to this crime, but
3 somebody else out at the jail, is that right?

4 A: No, they related to them.

5 The Court: Sir?

6 A: They related to them.

7 The Court: The pictures are related to him,
8 yeah, but the fact that they got into the hands of Mr.
9 Rhodes - Mr. Rhodes doesn't have anything to do with this
10 case did he?

11 A: Yes sir.

12 The Court: What's he got to do with this case?

13 A: His testimony is damaging. As far as him testifying
14 against me on my behalf, on the State behalf in which
15 that, I got pictures in here of him. It's like he
16 took three for four pictures out of it and other
17 documents but I only had like two, three picture, but
18 I know there's way more picture than that, but what
19 I'm saying is it could go on him and got something to
20 do with him because he's the one selective individual
21 in the pictures.

22 The Court: He's what?

23 A: He's the one of the individuals that's in the pictures
24 that took out of my, took the photos out of my motion.

25 The Court: All right. Tell me what the pictures

HEARING

27

1 are

2 Ms. Fant: Your Honor, the pictures were taken in
3 a motel room that Mr. Hayes rented the night of the
4 robbery.

5 The Court: Okay.

6 Ms. Fant: They show four individuals with guns,
7 drugs and money, a lot of money. Those four individuals,
8 including his co-defendant Brandon McFadden, were Anthony
9 Pringle, Stacy Rhodes and Cameron Davis. They all talked
10 to the police that night and including Mr. Hayes said that
11 the five of them were in that motel room together and he
12 doesn't have a job, so obviously the photos were very
13 incriminating and the gun is the one that matches the
14 description of the gun used in the armed robberies. So Mr.
15 Rhodes saw the picture, which has him in it, obviously
16 that's what he grabbed from Mr. Sullivan because he thought
17 it had something to do with him. He's a possible witness
18 in this case, but at no point did anyone have any
19 documents. I haven't even discussed testifying with Mr.
20 Rhodes. I'm bringing him back to testify; I expect he may
21 lie, but I have not discussed that with him.

22 The Court: Are there are any charges against Mr.
23 Rhodes?

24 Ms. Fant: He pled guilty to totally unrelated ...

25 The Court: I understand, but he would too

1 actually, under discovery, would be entitled to the same
2 photographs that this man is entitled to.

3 Ms. Fant: No, well, I mean because he wasn't
4 charged with anything related to that offense, except for
5 interfering with police, so he wasn't charged with the
6 drugs or the guns or anything like that.

7 The Court: All right. All right, now I
8 understand what you're saying as far as prejudice, what you
9 claim to be prejudice for Mr. Rhodes and I can rule on
10 that. Tell me why you think this is a conflict of interest
11 as far as Mr. Sullivan is concerned.

12 A: Well sir, Your Honor, Mr. King. All I was seeking was
13 ...

14 The Court: Don't call me mister, the title is
15 Judge, that's why I wear this black robe.

16 A: Yes sir. Judge King, with all due respect sir, I just
17 feel like by him doing that and I understand accidents
18 happen, I understand that, but it's just that a lack
19 of interest that he had in my case and a lack of
20 interest that he showed to recover the items for my
21 case that was taken out of my motion of discovery.
22 But all I'm seeking is that, like I said, I wrote the
23 Lawyer's Conduct Board and I haven't heard nothing, up
24 to date up to that. I wrote the Chief Public Defender
25 also at the spur of the moment. I haven't heard up to

HEARING

29

1 date from that. As far as speaking upon the topic of
2 the issue that what happened, the incident that
3 happened and things of that nature, but just due to -
4 I mean I feel like that by him. I said okay, I see
5 that happen and a lot of things as far as what going
6 on with my case and I truly felt like that he won't
7 represent me to the best of his ability and I
8 understand and I said well, that's why I entered a
9 plea of guilty because I truly feel that if I had went
10 to trial and judged by twelve I feel like the odds are
11 stacked against me so that's why I entered a plea of
12 guilty, but ...

13 The Court: You know he's your lawyer in the case
14 that you have, that we're not accepting a plea on he's
15 going to be representing you in that case.

16 A: Yes sir, I understand that, you know, I would just -
17 I was, well, I was, similar grounds, I just sent to
18 the Board and his supervisor and also sir you that the
19 grounds, in which it stands is ineffective use of
20 counsel because due to ...

21 The Court: How is he ineffective? Tell me what
22 he's done that's ineffective?

23 A: The lack of interest that he's shown, I mean ...

24 The Court: All right, lack of interest, that's
25 one. What else?

HEARING

30

1 A: I mean, well, I think my whole time speaking to him,
2 I think the PI, when we went to court in February and
3, Judge James ordered, well we'll try the case in June.
4 If ya'll ain't got it ready in June we'll ask for a
5 continuance, but the whole time before that I haven't
6 seen my P.I. I mean, I talked to my P.I. like two
7 weeks before, that was two weeks ago and I spoke to
8 him one time so - and a lot of things that was said,
9 from when he was speaking to my co defendant at the
10 jail house after he had got sentence, speaking to my
11 co defendant about his testimony and things of that
12 nature and a lot of things that he still stated to me
13 in which my co defendant had stated and that in which
14 wasn't really true, but if this, I just feel like my
15 confidence, and this is my life, so I ...

16 The Court: Well you're pleading guilty to the
17 charge so, you know, do you still, do you not want to plead
18 guilty because you think he's ineffective? Tell me what
19 you're talking with kind of a split tongue here Mr. Hayes.
20 You tell me that you're guilty and that you want to plead
21 guilty, but at the same time you're telling me that you
22 want Mr. Sullivan to do some other things, so I don't
23 understand.

24 A: Judge King sir, I would, like I was saying, the only
25 reason why I was ready to, why I'm willing to submit

HEARING

31

1 to the guilty pleas is being that the odds are stacked
2 against me with him representing me going to trial,
3 but I - all I was seeking for is to his Lawyer's
4 conduct and Chief Public Defender is grounds for him
5 to be relieved of my case. Now, but I understand, I
6 understand that I truly feel and believe what the
7 outcome will be with trial with him representing me,
8 as far as this case is concerned and a lot of things
9 that I've asked him upon our meetings at the jailhouse
10 in which don't get straight up answers and I mean ...

11 The Court: Well, this is not the time. The time
12 to tell me right now is whether you're willing to advise me
13 that you're satisfied with his representation of these
14 charges for armed robbery and this charges, and we're
15 talking about the Young's at this time and the charge of
16 the drugs and if you're not, I can tell you this as far as
17 his representation is concerned. He's representing you on
18 these charges and he's also representing you on the
19 Kangaroo. You do not get your choice of public defenders.

20 A: Yes sir.

21 The Court: So, if you wish to withdraw your plea
22 because you're not happy with Mr. Sullivan on this, don't
23 think that's going to get you a new lawyer, because it's
24 not. You don't have your choice of lawyers when it comes
25 time to try the case. I will let you withdraw your plea if

HEARING

32

1 you want to go to trial, but Mr. Sullivan's going to be
2 your lawyer. Is that, that's your call if you don't want
3 to plead guilty, fine. I'm sure the State is ready to go
4 forward. They got the other charges that they are going to
5 call I think shortly and you can go to trial on this
6 charge, this armed robbery, that is the Young's armed
7 robbery, or you can go to trial and go to trial on the drug
8 charges, you can go to trial on both of those and I have
9 not accepted your plea yet and if you are not comfortable
10 pleading guilty to these charges with Mr. Sullivan as your
11 lawyer, now is the time to tell me and he'll stand you
12 aside and Ms. Fant can call the case to trial and it can go
13 before a jury. It's your call, which way you want to go?

14 A: I'll go with the plea sir.

15 The Court: All right, and you understand that
16 when you plead guilty, you are admitting that the charges
17 of the robbery of the Young's food store is true?

18 A: Yes sir.

19 The Court: You understand that?

20 A: Yes sir.

21 The Court: And you understand that the charge of
22 the drugs is true. Do you understand that?

23 A: Yes, sir.

24 The Court: All right and you understand that I
25 will allow you to stand aside if you want to withdraw your

HEARING

33

1 plea now, but Mr. Sullivan is going to be your appointed
2 lawyer in this case, you understand that?

3 A: Yes sir.

4 The Court: All right. Now understanding then the
5 nature of the two charges or three charges: Armed Robbery,
6 Criminal Conspiracy and Possession of Crack, two, no just
7 one Armed Robbery, that's right, you took one of them out,
8 Make sure we understand this is the indictment number 646
9 for Armed Robbery and Criminal Conspiracy of the Young's
10 Foods Stores on July the 31st 2007, how do you wish to plead
11 to that charge, guilty or not guilty?

12 A: Of the Young's Market sir?

13 The Court: The Young's Market

14 A: Guilty.

15 The Court: All right and the drug charge which is
16 now being changed to the lesser included offense of
17 possession of cocaine base, second offense, guilty or not
18 guilty?

19 A: Guilty sir.

20 The Court: All right and I have handed back to
21 the solicitor the indictment on the armed robbery of the
22 Kangaroo and that matter is still pending, you understand
23 that?

24 A: Yes sir.

25 The Court: And as we have explained a while ago,

HEARING

34

1 the State can call that case at any time that they want to
2 and they may even proceed as a second most serious, if it
3 falls within the requirements of the statute, you understand
4 that?

5 A: Yes sir.

6 The Court: Okay and you understand that the
7 Court, whether it be me or some other judge is not locked
8 into any kind of a sentence as far as these charges that
9 are before me today, nor the charges of the Kangaroo if you
10 were to be found guilty of that, that could be the same
11 thing, ten to thirty and it could be consecutive, do you
12 understand that?

13 A: Yes sir.

14 The Court: All right. All right have you
15 understood my questions?

16 A: Yes sir.

17 The Court: Is there anything else that you would
18 like to ask me about what we've been over?

19 A: That's it.

20 The Court: Okay. And you understand that you
21 have the right to appeal the guilty plea and sentence of
22 the court and you must do so within ten days?

23 A: And I will do so at the Department of Corrections?

24 The Court: If you want to appeal my decision
25 within ten days from today, that appeal has to be filed

HEARING

35

1 with the office of the Clerk of Court and with the Supreme
2 Court, you understand that?

3 A: Through my lawyer?

4 The Court: Through your lawyer?

5 A: Yes sir.

6 The Court: Okay, All right, Ms. Fant tell me
7 about the fact background.

8 Ms. Fant: Your Honor, on July 31st of 2007, Ms.
9 Latasha Skinner, who was the assistant manager and clerk at
10 the Young's Market on Oswego road in Sumter County called
11 law enforcement and reported that she had just been robbed
12 by two young, black males. They had come in, one of them
13 had a gun pointed it at her told her to get the money out
14 of the register, as she backed up, the second one came in
15 and told her to open up the safe. She ultimately did open
16 up the safe and gave him the money. She was able to
17 describe the two people. One as being short, about 5'6.
18 One as being taller, about six feet. She said that they
19 were both dark skinned, black males, that they had bandanas
20 or black cloth on their face, but only below the nose. It
21 was covering the mouth area. That they were wearing all
22 black shirts and that the shorter one had on short pants,
23 but she wasn't positive about the pants on the taller one.
24 She indicated that she thought that they had been in the
25 store before and that again, the shorter one had the gun

HEARING

36

1 and it was an old, brown looking pistol and he held it on
2 her the whole time and in fact held it close to her while
3 the taller one was getting the money out of the safe. Law
4 enforcement responded within minutes of this incident, both
5 Mr. Fabian Hayes and his co-defendant Brandon McFadden were
6 spotted coming out of Mr. McFadden's house at [REDACTED] [REDACTED]
7 [REDACTED]. That is exactly three homes away from the Young's
8 Market going back on Bagnal Drive toward Loring. The
9 officer was Detective Curtis Hodge. He got out to question
10 them. Asked them had they seen anybody. They were not
11 wearing the same shirts and so he really had nothing to go
12 on other than the fact that the robbery was so close by, so
13 close in time and that both defendants told him that they
14 had just been dropped off at that location, despite the
15 fact that they were both sweating, which he found to be
16 very suspicious. At that time nothing was done. Law
17 enforcement began investigating the case. The next day
18 Detective Richburg, excuse me, got the surveillance video,
19 he saw who the shorter one, who he believed to be Brandon
20 McFadden, based upon the MO. Mr. McFadden, in fact, had
21 just gotten out of DJJ for a juvenile Armed Robbery about
22 two weeks before this armed robbery occurred. And
23 Detective Richburg was familiar with his history. That
24 combined with the stop of these two shortly after the armed
25 robbery led him to get search warrants for both Fabian

HEARING

37

1 Hayes' house and Brandon McFadden's house. Before those
2 search warrants could be executed on August the 2nd, which
3 was just two days later, Fabian Hayes was traveling with a
4 guy named Terrance Bassknight. Sergeant Calvin Fulmore
5 with the Sumter Police Department noticed that they were
6 not wearing seat belts or at least Mr. Bassknight was not.
7 He was stopped and arrested at that time because he was
8 driving under suspension. Mr. Hayes got out of the
9 vehicle. Sergeant Fulmore noticed in the waistband of his
10 pants an Advil container that Mr. Hayes attempted to hide
11 from the officer or push further into his pants. At that
12 point, the officer had probable cause to search him. He did
13 and found an Advil bottle that contained what was believed
14 to be cocaine base. That is the basis of the crack cocaine
15 possession charge. That was sent to SLED for analysis and
16 it did turn out to be .76 grams of cocaine base. The
17 officer at that time, also seized, as he placed him under
18 arrest, \$382 in currency from Mr. Hayes and a key card, a
19 motel room key that belonged to the Mount Vernon Inn.
20 Officers responded to the Mount Vernon and when they did,
21 it was room 257, the door opened and four black males fled
22 out of the room. Law enforcement went scattered after them
23 chasing them. Those individuals were arrested. Stacy
24 Rhodes being one of them, his brother Anthony Pringle being
25 another. Cameron Davis being a third. All three of them

HEARING

38

1 were detained. They indicated that Brandon and Favian
2 Hayes had let them know about the room and that they had
3 been partying there. That they had both had an excessive
4 amount of money over the past couple of days, that the guns
5 belong to Mr. Hayes, one of which was seized was a brown,
6 very old looking pistol revolver, which was used in the
7 armed robbery, or we believe was used in the armed robbery,
8 the same type as the clerk described. In addition to
9 another hand gun. They were arrested and another search
10 warrant was obtained for the room. In the room was a
11 receipt for the hotel room in Mr. Hayes' name. They talked
12 to the manager. He in fact rented the room at 11:50 pm on
13 July 31, 2007 and paid cash for three days. Several hundred
14 dollars I believe it was. He also had checked in at 11:50,
15 this robbery occurred shortly after 10:00 pm on Oswego.
16 The others indicated that they had gone there after he
17 rented the room. Seized also in the room was a disposable
18 camera. Those were the source, that is the source of the
19 pictures we're talking about. When they were developed
20 they had taken pictures of themselves. Mr. Hayes was not
21 in the pictures, but given that the other four were and
22 they all said there were only five there, it is our
23 contention that he took the pictures. But Mr. McFadden was
24 definitely in there, the others were in there. They had
25 guns, they had drugs and they had money flashing in their

HEARING

39

1 hands. So several pictures that were taken, probably more
2 than a dozen. Law enforcement also executed search
3 warrants at the home of Brandon McFadden and Favian Hayes.
4 At Brandon McFadden's house they found a red Bulls ball
5 cap, which matches the hat in the video that is shown from
6 the armed robbery. They also found an apron which was
7 believed to be tied around one of them's face, a black
8 bandana. In the search of Mr. Hayes' residence also found
9 a bandana and a black do rag. In addition a pair of - a
10 black shirt was found at Mr. McFadden's house. In addition
11 at Mr. Hayes' house a black shirt which matches the one
12 that you can see on the video and a pair of blue jeans or
13 black jeans that are very distinctive because they are
14 faded out on the thighs and legs in back and in front. You
15 can clearly see that on the surveillance video. Mr.
16 McFadden is - they measured him at the police department,
17 between 5'5 and 5'6 inches high. Mr. Hayes is
18 approximately 5'11 or six feet tall. At that night, Mr.
19 Hayes would not admit to the armed robbery, but admitted
20 that he was with Mr. McFadden all night long and that they
21 had gone to the room. Mr. McFadden, however, did admit to
22 the robbery, indicating that it was him and Mr. Hayes. He
23 laid it out exactly as it had happened. That he had gone
24 in first with the gun and that Mr. Hayes had come back
25 later, that they had both participated in it and they had

HEARING

40

1 gotten over \$4,000 which they split up between them. The
2 next day after the robbery, law enforcement was able to
3 find out that Mr. McFadden opened a bank account at SAFE
4 Federal Credit Union in which he deposited a hundred
5 dollars in cash, he was also arrested with one hundred
6 dollars in cash and had no job, no means of support and as
7 I say, had been out of detention, juvenile detention for a
8 mere two weeks at that point. Mr. Hayes had gotten out of
9 the Department of Corrections in March, had worked for
10 approximately eighteen hours at Gold-Kist and had no other
11 means of support, but had deposited one thousand dollars in
12 cash in an account that he had at SAFE on the day after the
13 robbery. Taking all these facts together, they were both
14 arrested. Mr. Hayes, excuse me, Mr. McFadden pled guilty
15 to these charges last Thursday before Judge James. As part
16 of his plea agreement, the Kangaroo armed robbery was
17 dropped and he pled guilty to a forgery at that time as
18 well. Excuse me, there was no agreement, although we did
19 anticipate him possibly testifying at this trial.

20 The Court: Has he been sentenced?

21 Ms. Fant: Yes Your Honor. That was a negotiated
22 sentence for the minimum of ten years.

23 The Court: Tell me about Mr. Hayes' record.

24 Ms. Fant: Your Honor he has an extensive
25 juvenile record beginning with damaging or tampering a

HEARING

41

1 vehicle, possession of an unlawful weapon, trespass after
2 notice, receiving stolen goods, petty larceny, driving
3 without a license, something in the juvenile record that
4 was listed other juvenile charges not defined, a second
5 damaging or tampering with a vehicle, a second petty
6 larceny. Then as an adult beginning in 2002 an
7 interference with police. In 2003, possession of crack
8 cocaine, two separate counts, resisting arrest, pointing
9 and presenting a firearm and possession of a stolen pistol.
10 He was released from custody of the Department of
11 Corrections in March of 07 and again these events occurred
12 in July and early August of 07. And at the appropriate time
13 Your Honor, the officer would like to speak in this case.

14 The Court: All right, I'll be glad to hear from
15 the officer and also of course, I'm going to get the
16 matter of victim notification on the record.

17 Ms. Fant: I can tell you that right now. Is Ms.
18 Skinner in the courtroom? She may be downstairs Your
19 Honor. She was obviously coming in. I told her to be here
20 at 11:00 for the trial. When I tried to phone her earlier
21 this morning to have her come in earlier for the plea, I
22 did not get a hold of her.

23 The Court: Well, before we finish this hearing
24 I'll give you a chance to check because I do want to give
25 her an opportunity to be heard if there's anything she

1 would like to say.

2 Ms. Fant: I'll send an officer down to look for
3 her.

4 The Court: All right. All right.

5 Det. Richburg: Your Honor, I'm Detective Robert
6 Richburg from the Sumter Police Department. I was the lead
7 Detective on the case. As mainly, what I was going to
8 speak on is the victim. If she comes up here it's better
9 in her words. He was only out four months and this
10 started. These two armed robberies were within two weeks
11 of each other. Both of these clerks were held at gun
12 point, while the safe was emptied or the cash register on
13 one was emptied. These ladies work out there at night and
14 they're young and I know for a fact Ms. Skinner hasn't been
15 able to return to work. She quit within the next couple of
16 days of this incident and has not returned to doing that
17 since.

18 The Court: And that is, she is the victim on...

19 Det. Richburg: Yes, the one that he's pleading to
20 today.

21 The Court: Okay

22 Det. Richburg: She has not been able to return to
23 work at that location. She hasn't been able to do that and
24 we take these ladies for granted out there all night long
25 and on patrol we're in there. They're there, that

HEARING

43

1 convenience store is there just out of convenience and
2 she's no longer able to do that. And this store is
3 actually now closing ... If this helped that it closes at
4 like 12:00 now, whereas at one time it was twenty-four
5 hours because of the fact that, you know, the armed robbery
6 ...

7 The Court: What time of day did this take place Ms.
8 Fant?

9 Ms. Fant: It was just after 10 pm.

10 Det. Richburg: And you know, just, she can speak
11 to you and relay that more than me, but you know this ...
12 I have to be the voice of the victim as well. In this
13 whole thing Mr. McFadden cooperated the night that he was
14 arrested. Mr. Hayes has pretty much been fighting it the
15 whole way throughout, no cooperation on his end whatsoever.
16 Not ready to accept responsibility for his actions.

17 The Court: All right.

18 Det. Richburg: He had only been out a mere four
19 months.

20 The Court: I understand. All right, thank you
21 and we'll see if the victim is downstairs, Ms. Fant and if
22 so, we'll give her a chance to speak if she would like to
23 do so before we finish this hearing. In the meantime, Mr.
24 Sullivan, before I make a decision to accept the pleas
25 after having heard the factual basis, I want you to address

HEARING

44

1 the issue regarding Mr. Hayes' alleged conflict and I'm not
2 sure what he's alleging was the conflict, unless it was the
3 representation by you of both Mr. Hayes and of Mr. Rhodes.
4 Do you foresee that as a conflict and if so, if not, why
5 not?

6 Mr. Sullivan: I don't view that as my
7 representation of both of them as a conflict, Your Honor.

8 The Court: Did Mr. Rhodes impart any information
9 to you regarding Mr. Hayes' case? This case?

10 Mr. Sullivan: Not that I can recall Your Honor.

11 The Court: Okay.

12 Mr. Sullivan: I don't recall him saying anything
13 about this case.

14 The Court: And did you ask him anything or have
15 any conversations with him regarding his involvement in
16 this case with Mr. Hayes?

17 Mr. Sullivan: No sir. I didn't ask him anything
18 about this case.

19 The Court: And you don't feel that there was any
20 conflict in an unrelated charge that you represented Mr.
21 Rhodes on and this charge of the armed robbery or the drugs
22 in this case?

23 Mr. Sullivan: No sir. That charge was
24 completely unrelated and I didn't see a conflict.

25 The Court: I'm not talking about the conflict as

HEARING

45

1: far as the conflict Mr. Rhodes might have had. I'm talking
2 about the conflict that Mr. Hayes might have had with you
3 having represented Mr. Rhodes. You don't see a conflict
4 there?

5: Mr. Sullivan: No sir.

6 The Court: All right, Mister ...

7 Ms. Fant: Your Honor can I put one more fact on
8 the record ...

9: The Court: Sure.

10 Ms. Fant: ... that I forgot to mention. The
11 victim did actually pick out Mr. Hayes out of a photo
12 lineup. It was one that was not done initially. They drew
13 up a lineup, there was another detective on the case who
14 has since left the department. Detective Richburg had never
15 showed it to her, when she came in for a pretrial
16 conference with all of us before the last term of court
17 when we were thinking about trying it. She happened to
18 mention that he had been in the store before, that he had
19 been wearing glasses at the time and she thought she could
20 identify him. He then had the photo lineup that had
21 already been prepared by SLED, showed it to her and she
22 immediately picked out Mr. Hayes as the taller guy in the
23 armed robbery.

24 The Court: All right, thank you. All right Mr.
25 Sullivan, let me hear from you with regard to Mr. Hayes'

1 litigation factors.

2 Mr. Sullivan: Thank you Your Honor. Detective
3 Richburg stated that Mr. Hayes, unlike Mr. McFadden, hadn't
4 accepted responsibility, but I do think that he is
5 accepting responsibility right now. I believe that Ms.
6 Fant stated that most of his record, of course he's not
7 that old right now, but was as a juvenile and I believe
8 that arguably Mr. McFadden's record is worse. I definitely
9 agree with his decision to plea to the Young's robbery.
10 The co-defendant, last week, stated on the record in court
11 implicated Mr. Hayes and it's undisputed that the two of
12 them were together right about the time that the armed
13 robbery occurred. The fact that Mr. McFadden, early on
14 implicated him, I agree with his decision to plea guilty.
15 He, in the numerous conversations I've had with him, you
16 know, I think that he probably wants you to know, and I've
17 explained to him that this doesn't make any difference, as
18 far as the law is concerned, but he's told me over and over
19 again that he wasn't the one with the gun. I've told him
20 that he can still be convicted of armed robbery, you know,
21 it's sort of like the get-away driver is just as guilty,
22 but I think he probably would want me to tell you that.
23 His mother, I believe, would like to say a few words.

24 The Court: All right, I'll be glad to hear from
25 her. Before I do that, Mr. Hayes, I want you to

HEARING

47

1 understand, I'm sure Mr. Sullivan's explained to you the
2 principle of the law which we call legally accessory or
3 accomplice liability rather. Accomplice liability is the
4 formal way of saying that the hand of one is the hand of
5 all and that if two people are acting together in the
6 perpetration of a crime, one is just as guilty as the
7 other. And that was the - Mr. Hayes for example - I mean
8 Mr. Sullivan for example alluded to the fact that you could
9 have one person acting as the look out and another person
10 that went into the store and they're both equally guilty.
11 You understand that legal principle?

12 A: Yes sir.

13 The Court: All right, yes ma'am, give me your
14 name and I'll be glad to hear from you.

15 Ms. Tindal: My name is Darlene Hayes Tindal. I'm
16 Favian mother and it's like it was a tragedy back in 1997
17 went on and caused a lot of conflict like ya'll saying and
18 had emotional problems and like, I'm not saying they split
19 up, but my oldest son he had to go to DJJ and just me, my
20 daughter and Favian my youngest grandson back in 1997, we
21 were like a part for years, almost like ten years he never
22 seen his older brother and when he came out, you know it
23 was like a family reunion. We was all back together and
24 like, we didn't really keep exactly what time and what date
25 everybody, you know was there seeing one another, everybody

1. was so glad to see everybody. Him and my oldest son seeing
2. each other. And we was like, every moment of the day was
3. like a family reunion just seeing one another. And I use
4. to take my grandson to school because during that time my
5. husband had passed away in 2006 and I use to take my
6. grandson or granddaughter to school not far from Robney
7. Drive. Where that Young's Market there but going up the
8. road to the other Young's Market, so it was one Tuesday
9. that Favian had wanted to walk my grandson to school and
10. the next day would have been the Wednesday because some 13
11. year old boy had jumped on my grandson which was 11 but he
12. suffer with asthma and so Favian was going to take him to
13. school that morning and I well, I was sort of sad because
14. that was my big day of doing and so well I didn't think
15. nothing of it. One Tuesday they was saying that he was
16. doing all this right here and I know about what happened at
17. the school house and I know he was just took my grandson to
18. school, but they left him, and that's all I can say. I
19. wish at that time that police officer that was asking
20. questions, he would have asked my grandson ...

21. The Court: I'm not sure I understand. You're
22. saying that this situation with Favian taking your grandson
23. to school was at the time that this armed robbery occurred?
24. Allegedly occurred?

25. Ms. Tindal: I'm not sure. I'm not sure.

HEARING

49

1 The Court: Well I mean, this incident took place
2 on July the 31st, that wouldn't have been, school wouldn't
3 have been in session.

4 Ms. Tindal: This right here not --- it was like
5 the program they was in, but, what you call it?

6 The Court: What buildings were you talking
7 about?

8 Ms. Tindal: What news?

9 The Court: What Young's store?

10 Ms. Tindal: Robney Drive. It's like two Robney
11 Drives.

12 The Court: I know where it is.

13 Ms. Tindal: Okay, well Crosswell School got a
14 program going on, you know ...

15 The Court: This robbery took play at the Oswego
16 Highway store, not the one on Robney Drive, up there on ...

17 Ms. Tindal: No I don't know about that. I don't
18 know, I don't know nothing about that. I don't know
19 nothing about nobody had robbed nothing. Like I was saying
20 about, he was taking my son to school one morning on a
21 Wednesday morning ...

22 The Court: What's that got to do with this?

23 Ms. Tindal: Well, I don't really know sir.

24 The Court: Okay.

25 Ms. Tindal: All I know that I'm saying, when

HEARING

50

1 they was saying, all that time we be together we was like,
2 didn't nobody miss nobody or going somewhere robbing no
3 stores, because we don't know nothing about nobody robbing
4 the store.

5 The Court: Okay, thank you ma'am.

6 Ms. Tindal: Okay.

7 The Court: Ms. Fant, I'm going to call on the
8 defendant in just a minute. Did you find out anything in
9 regard to the victim?

10 Ms. Fant: She had not gotten there at that
11 point, Your Honor.

12 The Court: All right Mr. Hayes, I'll be glad to
13 hear from you with regard to matters in mitigation if
14 there's anything you want to tell me.

15 Mr. Hayes: Yes sir. Well as far as Detective
16 Richburg had speak upon, you know, as far as me accepting
17 responsibility and I have accepted responsibility, you
18 know, as a man you know and I wish she was here, you know,
19 and I would sincerely apologize in which, but I never
20 really intended to hurt nobody and in which the whole MO,
21 hiding, like but I understand when you say the hand of one
22 is the hands of all, I know and understand that but how the
23 whole MO started as far as co defendant went in with a gun,
24 and you know, moments later or minutes later then I come in
25 and I grabbed money and run out the store, things of that

HEARING

51

1 nature, but you know, I know and understand you know, like
2 I laid off of work and I do sell drugs and, you know, not
3 even my character as far as me committing an act of that
4 nature and you know I apologize for that and you know, like
5 I said, I never intend to hurt nobody because nobody was
6 hurt. Nobody was physically hurt or physical or sexual
7 abuse or nothing of that nature and you know, I wasn't
8 armed with a deadly weapon and you know, and if it so
9 please the Court, you know, I apologize and it will never
10 happen again I know I understand that. I'm positive of
11 that, And you know, I just wanted to let you know that how
12 this whole thing took place. It wasn't my intentions but,
13 whether it matters now or now, but you know it was never my
14 intentions to like I said, I was never armed and dangerous
15 you know, I never seek to cause any harm or danger upon the
16 victim Ms. Skinner and you know. Well then, I just ask
17 that my co defendant received a maximum of ten, a minimum
18 of ten years, in which with one armed robbery or whatever
19 the forgery charge and things of that nature in which he
20 was armed with the gun. All I'm asking, Your Honor, is,
21 you know, being that I don't have an extensive record of
22 that nature, that charge of that nature, either one of my
23 juvenile or adult records and all I'm asking you is you
24 know, just take in consideration of you know, my sympathy
25 I had for the victim and the court and take into

HEARING

52

1 consideration all the time that I have spent in Sumter
2 County jail house ever since August 07 and you know, I'm
3 asking you can you have a lenient sentence as possible. I
4 learn from my mistakes and you know, I did receive my GED
5 upon, my last grade I attended was twelfth grade, but upon
6 me being at the County jail I have attended to my GED,
7 things of that nature you know, studying, reading and
8 occupy my time so I could prepare myself for the future
9 when I be in society again and you know, I just ask you to
10 give me as lenient sentence as possible in regards to this
11 matter.

12 The Court: Okay. All right, thank you. Mr.
13 Sullivan anything else?

14 Mr. Sullivan: I don't have anything else, Your
15 Honor.

16 The Court: Ms. Fant?

17 Ms. Fant: Your Honor I would just add that on
18 the victim's behalf, she did tell me in discussing this
19 with me that she was terrified during this experience. She
20 actually quit her job the very next day. She now works in
21 Columbia for the Department of Mental Health and thank
22 goodness doesn't have to work there anymore. But just also
23 that Mr. McFadden's statement was that they planned this
24 together and both Stacy Rhodes and Anthony Pringle said
25 that the guns belonged to Mr. Hayes.

HEARING

53

1 The Court: All right, All right. Let me take
2 five minutes, I want to think about all of the things that
3 have been presented.

4 Ms. Fant: I'll check down and see if she's here
5 by any chance.

6 The Court: All right.

7. (Court break taken)

8 The Court: All right be seated. All right. Back
9 on the record. With regard to the matter of the State
10 versus Hayes. Two indictments 08-646 and 07-801. I've
11 heard from everyone I believe, with the exception of the
12 victim in 08-646 and that would be Ms. Latasha Skinner who
13 I believe now is present, is that correct, Ms. Fant?

14 Ms. Fant: Yes Your Honor.

15 The Court: All right. Ms. Skinner, as the
16 victim of this armed robbery, you do have the right to be
17 kept advised of everything's that going on. You have the
18 right to be present in the court when the matter is called
19 for trial and you also have the right to address the Court,
20 so I'll be glad to hear from you if there's anything you'd
21 like to tell me.

22 Ms. Skinner: All I wanted to say was that I was
23 just traumatized by you know, stuff like I saw my life
24 flash before my eyes and I thought I'd probably never see
25 my kids again and it was a scary, scary feeling and since

1 then I've got out the retail business so it's changed my
2 life.

3 The Court: Okay, thank you ma'am. All right the
4 Court does find that there is a substantial factual basis
5 for the plea. I find that the Defendant's decision to
6 plead guilty after going very carefully with him on the
7 record in this matter is freely and voluntarily given.
8 That he has had the advice of counsel, with while he has
9 indicated some complaints about he readily admits to his
10 guilt of this crime and does advise that Mr. Sullivan has
11 represented him and has been in touch with him about this
12 matter. Specifically I want to make the finding that there
13 was no prejudice to the Defendant as a result of the
14 situation where the photographs got into the hands of
15 another individual. If I had thought that there was any
16 prejudice resulted to this Defendant, as a result to that
17 instance, my willingness to take this plea might have been
18 different, but I can perceive of no way that that resulted
19 in any prejudice to him and his counsel does not see any
20 way that that resulted in any interest to him. I also find
21 that there was no conflict of interest. Mr. Rhodes, as far
22 as this matter was concerned, was nothing more than a
23 witness whom Mr. Sullivan would have had the right to talk
24 to, to learn what he knew about this matter and the fact
25 that Mr. Sullivan represented him on a completely unrelated

HEARING

55

1 matter is no conflict of interest whatsoever and I could
2 find that in my view that there was no conflict of
3 interest. And the only complaints that the Defendant in
4 this case, Mr. Hayes, is articulated, as far as Mr.
5 Sullivan is concerned, would be a lack of interest that
6 he's only seen his P.I. one time. I don't know that the
7 Private Investigators are hired for the defendant. The
8 lawyers generally hire the public defenders, I mean the
9 private investigators to investigate the matter as far as
10 the evidence is concerned. I don't see that that in any
11 way affected Mr. Sullivan's representation and also the
12 fact that he complains that he didn't get his Rule 5 in a
13 timely manner, but he doesn't complain that he didn't get
14 it, so I think the State has complied with the terms of
15 Rule 5 and I don't see that as ineffective representation
16 on the part of Mr. Sullivan. Especially in view of the
17 fact that when you look at all the facts in this case and
18 that the Defendant, Mr. Hayes, made two statements during
19 the course of his presentations to me, several
20 presentations to me, one of which was that he admitted that
21 he sells drugs and he does not deny the drug charges at all
22 and has in fact has admitted in his discussions, this armed
23 robbery. Although he contends that he did not go in with a
24 weapon, he does say that he went in and took the money,
25 which would very easily make him guilty of the armed

HEARING

56

1 robbery as well, even by his own admission. There's no
2 question in my mind that the Defendant's decision to enter
3 this plea as we have set forth is freely and voluntarily
4 given. Another factor that convinces me of the fact - of
5 that fact, is the fact that he did not admit to the armed
6 robbery of the Kangaroo store and I have not accepted that
7 plea and have handed that back to the solicitor and that
8 matter will go forward. So there's no question in my mind
9 that after having being fully advised of his rights by me
10 and his lawyer and being well represented by his appointed
11 counsel that the plea in this case is freely and
12 voluntarily given and the Court is going to accept the plea
13 with the stipulations that I have put on the record with
14 regard to or the matters that I have put on the record with
15 regard to the - any prejudice arising out of the matters
16 that he has discussed or any conflict of interest is simply
17 not there.

18 Mr. Hayes: Excuse me.

19 The Court: No sir, I've heard, you've had your
20 opportunity to speak and I've heard from you, sir.

21 Mr. Hayes: Yes sir.

22 The Court: All right, Mr. Hayes, this is going
23 to be a substantial sentence and the only reason that it is
24 not the maximum sentence is because of your age. I think
25 that the crime that you pled guilty to and have admitted to

HEARING

57

1 is a very serious crime. It could have very easily
2 resulted in this young lady being killed or harmed in a
3 serious way. I feel that, I see that armed robbery is one
4 of the most serious crimes in our law and I simply think
5 that the law has to, I mean, that the Court has to send out
6 a message that this kind of conduct will not be permitted
7 in our society. With regard to the Armed Robbery the
8 sentence of the Court is Defendant's committed to the State
9 Department of Corrections for a term of twenty-five years.
10 He will be given credit for time that he has served. On
11 the criminal conspiracy it's five years to run concurrent
12 and the drugs it's five years to run concurrent. All of
13 them, he will be given credit for the time that he has
14 served. Good luck to you.

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Favian A. Hayes,)
)
 Petitioner,)
)
 vs.)
)
 Warden, Lee Correctional Institution,)
)
 Respondent.)
)
)
)


C.A. No. 4:14-3778-RMG

ORDER

RECEIVED
 USDC DISTRICT COURT
 2015 JUN 30 P 3:43

By earlier order (Dkt. No. 35), Respondent was advised that unless Petitioner’s request for the restoration of direct appeal rights and appointment of counsel was voluntarily granted within 10 days of the order, this Court would grant the petition for a writ of habeas corpus and the requested relief. The Respondent timely filed a response indicating that it would be necessary for the Court to grant the requested relief in order to restore Petitioner’s appellate rights. (Dkt. No. 38). Therefore, the Court issues this final order (1) **ADOPTING** the R & R of the Magistrate Judge (Dkt. No. 32) as the order of the Court; (2) **GRANTING** the writ of habeas corpus; and (3) **DIRECTING** the restoration of Petitioner’s direct appeal rights and appointment of counsel. This grant of the writ of habeas corpus does not affect Petitioner’s current incarceration status during the pendency of the appeal.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', written over a horizontal line.

Richard Mark Gergel
United States District Judge

June ~~30~~ 2015
Charleston, South Carolina

The Supreme Court of South Carolina

State of South Carolina, Movants-Respondents,

v.

Favian A. Hayes, Defendant.

In Re: Favian A. Hayes, Petitioner,

v.

Warden, Lee Correctional Institution, Respondent.

Appellate Case No. 2015-001471


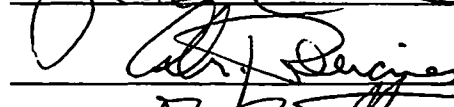
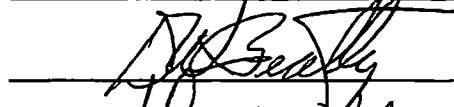

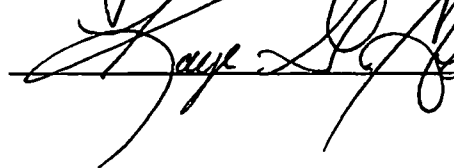
ORDER

In 2009, petitioner pled guilty to armed robbery, criminal conspiracy and possession of cocaine base, second offense. Plea counsel filed a notice of appeal but failed to submit the explanation required by Rule 203(d)(1)(B)(iv), SCACR, even after requests by the Court of Appeals. Accordingly, the appeal was dismissed.

In July, the federal district court issued an order granting petitioner's petition for a writ of habeas corpus and "**DIRECTING** the restoration of Petitioner's direct appeal rights and appointment of counsel." The State now requests this Court advise the parties of the manner in which compliance with the federal court order should be achieved.

We hereby direct the Court of Appeals to recall the remittitur in petitioner's direct Appeal, Appellate Case No. 2009-129706, and reinstate the matter. Because petitioner's "appeal rights" at this point consist of the submission of an explanation by counsel, or a letter from counsel stating no good faith explanation can be offered, with the opportunity for submission of a *pro se* response, we hereby appoint the Commission on Indigent Defense, Division of Appellate Defense, to

represent petitioner, and direct them to file an explanation with the Court of Appeals pursuant to Rule 203(d)(1)(B)(iv), SCACR, or if no good faith explanation can be offered, to provide that court with a letter similar to that described in *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006) stating as much and informing petitioner that he may, within twenty days, submit a *pro se* explanation. Thereafter, the Court of Appeals shall, in accordance with Rule 203(d)(1)(B)(iv), SCACR, determine whether a sufficient explanation has been submitted to allow the appeal to proceed or whether it should be dismissed.


 _____ C.J.

 _____ J.

 _____ J.

 _____ J.

 _____ J.

Columbia, South Carolina

September 3, 2015

cc:

Robert Michael Dudek, Esquire
 Alan McCrory Wilson, Esquire
 John W. McIntosh, Esquire
 Donald J. Zelenka, Esquire
 J. Anthony Mabry, Esquire
 The Honorable Jenny Abbott Kitchings

The South Carolina Court of Appeals

The State, Respondent,

v.

Favian Alphonso Hayes, Appellant.

Appellate Case No. 2009-129706

ORDER

This Court's Remittitur was sent to the Clerk of Sumter County on November 17, 2009. By order of the Supreme Court, it is now necessary for this Court to recall the remittitur. The Clerk of Sumter County is therefore directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten days of the date of this order.

 , C.J.
FOR THE COURT

Columbia, South Carolina

cc:
Robert Michael Dudek, Esquire
David F. Sullivan, Esquire
Salley W. Elliott, Esquire

FILED
9/23/15

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
John M. Milling, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FAVIAN HAYES,

APPELLANT

APPELLATE CASE NO. 2009-129706

Explanation of Appeal Pursuant to Rule 203(d)(1)(B), SCACR

Pursuant to the South Carolina Supreme Court Order dated September 3, 2015 and Rule 203(d)(1)(B)(iv), SCACR, Appellant Favian Hayes, through undersigned counsel, files this explanation of the basis for the appeal of his guilty plea and sentence in this case:

Statement of Appealable Issue

The trial court abused its discretion in finding Hayes freely, voluntarily, and intelligently pled guilty to armed robbery, conspiracy, and possession of cocaine base; where prior to Hayes's decision to plead guilty, the trial judge denied Hayes's motion to relieve counsel without conducting an adequate inquiry into Hayes's complaint that counsel had an actual conflict of interest, due to his simultaneous representation of Stacy Rhodes, that resulted in the total breakdown of the attorney-client relationship and prevented Hayes from receiving a constitutionally adequate defense.

Relevant Facts

In October of 2007, the Sumter County Grand Jury indicted Hayes with possession with intent to distribute (“PWID”) cocaine base and PWID cocaine base within one half mile of a school. In May of 2009, the Sumter County Grand Jury indicted, in an amended indictment, Hayes for armed robbery and criminal conspiracy.

On June 1, 2009, Hayes appeared before the Honorable Howard P. King and pled guilty to one count of armed robbery, conspiracy and the lesser included offense of possession of cocaine base, 2nd offense. Attorney David Sullivan (“plea counsel”) represented Hayes at the guilty plea.

During the plea colloquy, the court questioned the parties on whether Hayes understood that by pleading guilty to only one of the two armed robberies, he was exposing himself to a life sentence should the State decide to try him on the second robbery. Tr. p. 11, ll. 1 - 13, ll. 25. Plea counsel alleged that he had explained this possible outcome to Hayes. Tr. p. 14, ll. 15-23. The State averred that Hayes was pleading guilty to this specific armed robbery because the case had been called for trial that morning. Tr. p. 13, ll. 9-17. The State then added that it fully intended to try Hayes on the second armed robbery indictment in the coming months. *Id.*; Tr. p. 14, ll. 10-14.

Continuing with the plea hearing, the court asked Hayes if he was “pleading guilty of your own free will and accord?” Tr. p. 18, ll. 19-20. Hayes responded that he was not and that he was pleading guilty because he believed his attorney’s conflicted and ineffectual representation rendered a guilty verdict at trial a foregone conclusion. Tr. p. 18, ll. 21 - 19, ll. 3.

Without receiving an affirmative answer, the trial court continued with the plea colloquy asking Hayes if he was satisfied with his lawyer’s representation. Tr. p. 19, ll. 4-9. Hayes stated

that he was not satisfied and moved to relieve counsel. Tr. p. 19, ll. 10 - 22, ll. 1. Hayes said that plea counsel had a conflict of interest arising from his simultaneous representation of an individual named Stacy Rhodes. *Id.*

Hayes explained that Rhodes had been among of group of people he had been with after the two armed robberies he was accused of committing and that Rhodes was preparing to testify against him at trial. Tr. p. 23, ll. 2-10; Tr. p. 26, ll. 13-21. The State confirmed that, following Hayes's arrest, Rhodes was arrested on for interfering with police arising from his conduct during the investigation into the robberies. Tr. p. 28, ll. 3-6. His attorney was appointed to represent Rhodes. The State also admitted that Rhodes had offered to testify in Hayes's case and the State seriously considering having him testify should there be a trial. *Id.* at ll. 6-22.

To complicate matters, during a meeting between plea counsel and Rhodes, Rhodes saw inculpatory photographs of himself and Hayes. Tr. p. 19, ll. 10 - 22, ll. 22. Apparently, plea counsel had inadvertently brought recently received discovery documents from Hayes's case to his meeting with Rhodes. *Id.* Rhodes became upset, took the photographs from plea counsel and refused to return them. *Id.* Hayes stated to the court that when Rhodes returned to pre-trial detention he still possessed some of the documents and was showing them to other inmates. *Id.* Plea counsel disputed this and claimed that he believed all of Hayes' discovery documents were recovered prior to Rhodes being returned to detention. *Id.*

Plea counsel posited that there was no conflict of interest. *Id.* Hayes continued to argue that there was a conflict of interest and noted that he had unsuccessfully contacted the Chief Circuit Public Defender, the Chief County Public Defender, and the "Lawyer Conduct Board" in an effort to have his concerns with plea counsel addressed. Tr. p. 28, ll. 16 - 39, ll. 20.

The court rejected Hayes's efforts to have plea counsel relieved:

Well, this is not the time. The time to tell me right now is whether you're willing to advise me that you're satisfied with his representation of these, charges for armed robbery and this charges, and we're talking about the [first robbery] at this time and the charge of the drugs and if you're not, I can tell you this as far as his representation is concerned. ***He's representing you on these charges and he's also representing you on the [second robbery].*** You do not get your choice of public defenders. . . .

So, if you wish to withdraw your plea because you're not happy with Mr. Sullivan on this, don't think that's going to get you a new lawyer, because it's not. You don't have your choice of lawyers when it comes time to try the case. ***I will let you withdraw your plea if you want to go to trial, but Mr. Sullivan's going to be your lawyer.*** Is that, that's your call if you don't want to plead guilty, fine. I'm sure the State is ready to go forward. They got the other charges that they are going to call I think shortly and you can go to trial on this charge, this armed robbery, that is the [first] armed robbery, or you can go to trial and go to trial on the drug charges, you can go to trial on both of those and I have not accepted your plea yet and if you are not comfortable pleading guilty to these charges with Mr. Sullivan as your lawyer, now is the time to tell me and he'll stand you aside and Ms. Fant can call the case to trial and it can go before a jury. It's your call, which way you want to go?

Tr. p. 30, ll. 16 - 32, ll. 14 (*emphasis added*). Hayes responded that, faced with those options, he would "go with the plea." *Id.* The court reiterated that if Hayes wished to withdraw his plea, plea counsel would remain his lawyer and the trial would begin immediately. Tr. p. 32, ll. 24 - 33, ll. 3.

The court then accepted Hayes's plea and sentenced him to 25 years for armed robbery, 5 years concurrent for conspiracy and 5 years concurrent for possession. A timely notice of intent to appeal was filed. The appeal, however, was dismissed because, pursuant to Rule 203(d)(1)(B), an explanation was not provided showing that there was an issue to be raised in the direct appeal of the guilty plea.

Supporting Authority

The plea court denied Appellant's motion to relieve counsel and this issue is preserved for appellate review by this Court. The United States Supreme Court has held that "[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results." *Brady v. United States*, 397 U.S. 742, 758 (1970). Additionally, the South Carolina Supreme Court has held that the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009).

The plea judge failed to adequately inquire about plea counsel's actual conflict of interest that had resulted in the complete breakdown of the attorney-client relationship and prevented Hayes from receiving an adequate defense. *See State v. Sims*, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991) (providing a three factor test to evaluate when a trial court has abused its discretion in denying a defendant's motion for substitution of counsel).

Therefore, the trial judge abused his discretion in finding Hayes knowingly, voluntarily, and intelligently pled guilty when prior to Hayes's decision to plead guilty, the trial judge denied Hayes's motion to relieve appointed counsel. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (defendant's decision to plead guilty must be knowingly and voluntarily made); *see also State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

"The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge . . . [and] [o]nly in a case of abuse of discretion will this Court interfere." *Sims*, 304 S.C. at 414, 405 S.E.2d at 380. "In evaluating whether the trial judge

abused his discretion in denying [Hayes's] motion for substitution of counsel, the Court may consider several factor: [1] timeliness of the motion; [2] adequacy of the trial judge's inquiry into [Hayes's] complaint; and [3] whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense." *Id.* (citing *United States v. Gallop*, 838 F.2d 105 (4th Cir. 1988)).

In this case, the trial court committed an abuse of discretion by refusing to relieve plea counsel. Tr. p. 30, ll. 16 - 32, ll. 14. Plea counsel's simultaneous representation of Rhodes and Hayes constituted an actual conflict of interest. *Duncan v. State*, 281 S.C. 435, 315 S.E. 2d. 809 (2005) (if defense attorney owes duties to a party whose interests are adverse to the defendant's, then an actual conflict of interest exists).

Rhodes and Hayes faced charges arising out of related offenses. *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008) (vacating petitioner's guilty plea as counsel was ineffective for simultaneously representing petitioner and husband on related charges). Further, the State admitted that they were planning on calling Rhodes as a witness in both of Hayes's potential trials. Tr. p. 28, ll. 3-22; see *Gregory v. State*, 364 S.C. 150, 612 S.E.2d 449 (2005) citing *Zuck v. Alabama*, 588 F.2d 436 (5th Cir. 1979) ("Sixth Amendment requires that a defendant may not be represented by counsel who might be tempted to dampen the ardor of his defense in order to placate his other client . . . [t]his possibility is sufficient to constitute an actual conflict as a matter of law"); see also *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001) (defendant need not demonstrate prejudice if there is an actual conflict of interest).

Therefore, The trial court abused its discretion in finding Hayes freely, voluntarily, and intelligently pled guilty to armed robbery, conspiracy, and possession of cocaine base; where prior to Hayes's decision to plead guilty, the trial judge denied Hayes's motion to relieve counsel without

conducting an adequate inquiry into Hayes's complaint that counsel had an actual conflict of interest, due to his simultaneous representation of Stacy Rhodes, that resulted in the total breakdown of the attorney-client relationship and prevented Hayes from receiving a constitutionally adequate defense.

Conclusion

WHEREFORE, pursuant to Rule 203(d)(1)(B), SCACR, Appellant Favian Hayes, through undersigned counsel, files this explanation of the basis for the appeal of his guilty plea and sentence in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", written over a horizontal line.

John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of December, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
John M. Milling, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

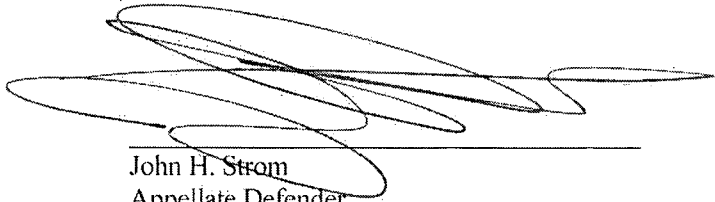
FAVIAN HAYES,

APPELLANT

APPELLATE CASE NO. 2009-129706

CERTIFICATE OF SERVICE

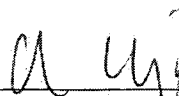
The undersigned attorney hereby certifies that a true copy of the Explanation of Appeal Pursuant to Rule 203(d)(1)(B), SCACR in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of December, 2015.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 16, 2016

Mr. John Harrison Strom, Esquire
1330 Lady Street
Suite 401
Columbia SC 29201

Mr. John Benjamin Aplin, Esquire
PO Box 11549
Columbia SC 29211

Re: The State v. Hayes, Favian Alphonzo
Appellate Case No. 2009-129706

Dear Counsel:

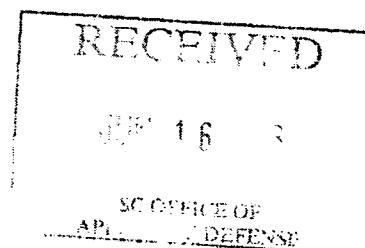
All parties are advised that this appeal is to proceed. The appellant has ten days from the date of this letter to order the transcript.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire



WITNESSES

SPD

Richburg

ARREST WARRANT NUMBER

J302832, J302834; J302836, J302838

D/A: 08/03/07

ACTION OF GRAND JURY

Therese Bice

[Signature]

Foreperson of Grand Jury

Date: *21 MAY 2009*

VERDICT

Foreperson of Petit Jury

Date:

AMENDED

DOCKET NO. 2008-GS-43- 646

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE

vs.

FAVIAN ALPHONZO HAYES

BRANDON McFADDEN

Indictment for

ARMED ROBBERY, CRIMINAL
CONSPIRACY

C. KELLY JACKSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line. The signature is somewhat stylized and loops back.

John H. Strom
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 12th day of May, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John H. Strom
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 12th day of May, 2017.

RECEIVED

MAY 12 2017

SC Court of Appeals