

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County

Alison Renee Lee, Circuit Court Judge

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S.C. Supreme Court

PHILLIP SIMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212295

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
08-GS-29-976 to 980

STATE OF SOUTH CAROLINA
VS.
PHILLIP KEITH SIMS

LANCASTER, SOUTH CAROLINA
FEBRUARY 27, 2009
BEFORE THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES
FOR THE STATE: DOUG BARFIELD
FOR THE DEFENDANT: DAVE COOK
REPORTED BY: MICHAEL C. WATKINS
OFFICIAL COURT REPORTER

1	PLEA OF GUILT:	3
2	SENTENCING:	31
3	CERTIFICATE:	33

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NO EXHIBITS

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1 MR. BARFIELD: This is Phillip Keith Sims represented
2 by Dave Cook, several indictments, 2008-GS-29-976 is car
3 jacking pleading -- all of them are indicted -- pleading
4 guilty. 977 is kidnapping, as is 978, pleading guilty.
5 979, possession of a knife during the commission of a
6 violent crime, he's pleading guilty. And finally 980 is
7 resisting arrest, the subsection A of the statute, pleading
8 guilty. He is apparently on probation. Mr. Cook has
9 informed me that his client desires to plead guilty. This
10 is a straight-up plea in all respects. The victim -- three
11 victims is essentially mom and her two small children. Mom
12 and her husband are here and I think she perhaps even will
13 speak at the appropriate time. The victim -- I'll give you
14 names, the victim is April Deese and her two sons who were
15 with her are Minor 2 and Minor 1 who at the time were two
16 and four respectfully.

17 THE COURT: All right. Thank you, Solicitor.
18 Mr. Cook, you represent Mr. Sims?

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

20 THE COURT: Have you explained to your client the
21 charges contained in these various indictments, the
22 possible punishment and explained to him his constitutional
23 rights?

24 MR. COOK: Several times, Your Honor.

25 THE COURT: Do you believe that Mr. Sims has

1 understood the discussions you've had with him?

2 MR. COOK: Yes, sir, Your Honor, I do.

3 THE COURT: Do you agree with his decision to plead
4 guilty to each of these charges?

5 MR. COOK: Yes, sir, Your Honor.

6 THE COURT: Based on your investigation of the facts
7 and circumstances of these cases, do you believe it is
8 likely the State could convince a jury of his guilt beyond
9 a reasonable doubt?

10 MR. COOK: Yes, sir, Your Honor.

11 THE COURT: Mr. Sims, how old are you, sir?

12 THE DEFENDANT: Thirty-one.

13 THE COURT: Are you married?

14 THE DEFENDANT: No, sir.

15 THE COURT: What kind of work do you normally do?

16 THE DEFENDANT: I do electrical by trade, Your Honor,
17 and I was working at CTR in Rock Hill.

18 THE COURT: Have you ever been in criminal court
19 before?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: The last time would have been
22 approximately how long ago, approximately?

23 THE DEFENDANT: January of '06.

24 THE COURT: All right. And as a result of you being
25 in court in January of '06, what happened to you?

1 THE DEFENDANT: I received a sentence of four years, I
2 done two and a half years.

3 THE COURT: No probation in that?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you ever been treated for the abuse
6 of alcohol, abuse of drugs or treated for any mental
7 illness?

8 THE DEFENDANT: I've been treated two times, in and
9 out of rehab for drugs. I ain't never been treated for
10 mental illness, that's where I messed up, I believe.

11 THE COURT: And the last time you were treated for
12 drugs was when and where approximately?

13 THE DEFENDANT: 2003, First Step Behavior Center in
14 Monroe.

15 THE COURT: How did that go?

16 THE DEFENDANT: I completed the program.

17 THE COURT: Are you aware of any physical, nervous or
18 emotional problems that you might have today that would
19 interfere with your ability to understand these proceedings
20 or what's happening today?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: In the past 24 hours have you taken any
23 medication, any drugs or consumed any alcohol?

24 THE DEFENDANT: No, sir.

25 THE COURT: Mr. Sims, your attorney and the solicitor

1 both tell me they believe you wish to plead guilty to these
2 charges that were described a minute ago. If I have it
3 written down correctly it was a car jacking charge, two
4 kidnappings, possession of a knife and resisting arrest.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you do wish to plead guilty to each of
7 those charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I'm going to ask the solicitor to give me
10 some of the facts about each of your cases, or each of
11 these charges, please listen to what he says.

12 MR. BARFIELD: Your Honor, I'm going to tell you about
13 his record first. '95 petty larceny, '97 possession of
14 marijuana, both of those magistrates court. 2003 petty
15 larceny in magistrates court, 2003 violation of the ABC law
16 in magistrates court. Started getting into general
17 sessions business, in 2003 also had a grand larceny, got a
18 probationary sentence for that. 2004 had a third or
19 subsequent property crime, got eight years suspended to
20 four months followed by probation on that. At the same
21 time he apparently pled to it looks like about five
22 forgeries -- actually about nine forgeries. 2004 he had a
23 purse snatching, got a year suspended on four months and
24 four years probation, that was at the same time with all of
25 those other charges. Then in 2005, Your Honor, he had a

1 petty larceny and an escape. And then in 2006 he had a
2 common law robbery, he got eight years suspended to four
3 with four years of probation. And if I am wrong, Mr. Cook,
4 you tell me, but it looks like two more purse snatchings at
5 the same time, plus a forgery, plus another third offense
6 property crime. So that is what his last convictions were.
7 He told you he did an active sentence and my
8 recollection -- we talked to law enforcement -- is he had
9 not been out but just a handful of months before this
10 offense occurred. Your Honor, current offenses, or current
11 crimes, the solution to them are a classic example of a
12 very alert victim, participation by good samaritan citizens
13 and good quick work by law enforcement. This case occurred
14 on May 29th of 2008 about a little after 7:30 in the
15 evening. The victims in the case are April Deese, who is
16 seated at my table over here with her husband Ryan, and her
17 two young sons who are Minor 2 who at the time was two,
18 and Minor 1 who at the time was four. I will tell you what
19 Ms. Deese reported to law enforcement in her statement and
20 then we can go from there. She had been in K-Mart shopping
21 with her sons, parked her Honda Odyssey van in the parking
22 lot. Of course, she went out to the van to load her
23 children up, get in, she indicated that she placed her two
24 year old and her purchased items into the driver's side
25 sliding door on the side of the van, her four year old got

1 in by himself and slid over to get into his car seat. She
2 was not able to buckle either child in before these events
3 began unfolding. She said that a young white male walked
4 up to her, she was able to record a good description of his
5 clothing which was fairly distinctive. She said he smelled
6 like alcohol, said he needed a dollar because he had run
7 out of gas. Of course she didn't say this in her statement
8 but I think she was trying to do all she could do to just
9 get away from him, get in and get out of there. She said
10 that she closed the passenger's sliding door without her
11 child being buckled in because she was nervous. She told
12 him she would look to see if she had a dollar to give him,
13 walked around to the other side on the driver's side and he
14 pulled out a knife. He told her that he had a knife, she
15 said, "Well, I might have something." And she was actually
16 going to look and did, she looked in her purse, she pulled
17 out a few ones. He said, "This is nothing." She said
18 that's all that she had. He said he had a problem, she
19 told him that she would give him anything, just leave my
20 children alone. She offered him her debit card and her pin
21 number. He said that -- he suggested that they ride to the
22 bank and she could make the withdrawal and give him the
23 money. She said, again, that she would give him the pin
24 number, she begged with him that her children were in the
25 car and he told her not to make a scene. Again, he

1 reiterated that he had a knife. He said to do what he told
2 her to do. She told him she had just spent all of her
3 money in K-Mart. She said, "I will give you the stuff I
4 just bought in K-Mart with the receipt, you can go in and
5 get refunds." That wasn't good enough. He told her that
6 he would take the kids and then he pulled on her car keys,
7 told her to get in the van, she did not. He got in --
8 after he got the keys out of her hand he got in the van.
9 She was trying to pull the boys out, he cranked it up, the
10 sliding side door was still open as I understand, he
11 started moving and she didn't let go. She was dragged for
12 a short distance in the parking lot, fell from the van when
13 she held on as long as she could, was partially run over by
14 the van, and I'll let her describe her injuries in a little
15 bit. She did get, I think, carried by ambulance to the
16 hospital and treated, I think treated and released but she
17 had injuries which were photographed and documented. He
18 drove out of the parking lot with her boys in the van, door
19 open, unbuckled and she just simply had to stand there and
20 watch. There were folks in the area who saw what was going
21 on, and at one point I believe she made eye contact with
22 the husband of that couple and mouthed to him, "Help me."
23 That was the somebody else who apparently didn't help you.
24 She made it clear that something was going on, Mr.
25 McFarland, the good samaritan, came over and actually tried

1 to get the van stopped, get the keys out but was simply
2 unable to stop what was going on. But he did physically
3 intervene unsuccessfully. Your Honor, at that point the
4 van drives out of the parking lot, of course, police are
5 called and lots of police officers converged onto the
6 scene. The van was located just minutes later in the area
7 of Franks Street and Rose Lane. The children were in the
8 van and thank God the children were not hurt. They were in
9 the van, citizens came to the aide of the children and got
10 them out and kind of kept up with them while the police
11 started doing their work. Eventually I think Mr. Deese was
12 summoned to the scene where the children were and took
13 them. The police got information from other citizens who
14 were in the area where the van was ditched. A description
15 was given of the person who had ditched the van which was
16 consistent with what Ms. Deese had reported to police.
17 They began searching the area. One of the citizens said
18 that Mr. Sims got out of the van, he pulled off a shirt
19 that was consistent with Ms. Deese's description and threw
20 it down and had on another white T-shirt under it.
21 Eventually the search was narrowed down to a house at 401
22 Heath Circle, police went there -- police went there,
23 knocked on the door, didn't immediately get a response,
24 eventually a female came to the door, she said, "He's in
25 the attic." Police went through a little hatch in the

1 kitchen that leads up to the attic and were trying to find
2 out if they could get in the attic or get Mr. Sims out of
3 the attic. They heard running on the upper part of the
4 house and I think Mr. Sims busted out of probably a vent or
5 something on the eaves of the house, jumped off of the
6 house, jumped out of the house and ran. Officers were in
7 the area obviously around the house and chased him down,
8 caught him, he resisted their efforts to get him cuffed, he
9 eventually had to be tased. He was finally cuffed and
10 taken into custody and placed into a police car. He
11 continued to resist their efforts to get him into the
12 police car. After he was taken into custody the house was
13 searched with consent and found inside of the house under
14 the couch was a white wash cloth which contained
15 Ms. Deese's keys -- under the wash cloth or wrapped up in
16 the wash cloth were Ms. Deese's keys, we know that because
17 the key chain had pictures of her boys on it. They also
18 found a knife under a mattress in the bedroom. They also
19 found on the roadway in the area that Mr. Sims had run a
20 black T-shirt and a glove. He was also described by one or
21 more witnesses as wearing gloves when this occurred. Your
22 Honor, I think that is a fairly thorough summary of the
23 facts and when Ms. Deese speaks later if there's something
24 I left out she will tell it herself. Clearly a very
25 terrifying event for her and her boys.

1 THE COURT: All right. Thank you, Solicitor.

2 Mr. Sims, you heard the solicitor recite the facts of this
3 case, let me ask you this -- of these cases, let me ask you
4 this, do you agree with his statement of the facts?

5 THE DEFENDANT: Yes, sir, Your Honor. More or less,
6 yes, sir.

7 THE COURT: More or less?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is there anything significant about the
10 statement made by the solicitor that you disagree with?

11 MR. COOK: May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 MR. COOK: In talking with my client on numerous
14 occasions at the jail he maintains to me that he had been
15 on a drug induced binge for several days, and that's
16 obvious, and that he was out of his right mind, and that's
17 obvious nor is it an excuse or justification, that's not
18 why he's offering that. There's testimony and I'm sure
19 that the victim will mention that he knew that the kids
20 were in the van. He maintains to me that he had didn't
21 have that knowledge when he took the van, that when he got
22 to the -- when he was pulling out of the parking lot at
23 K-Mart he saw the kids for the first time then once he had
24 turned and turned onto Main Street. At this point I
25 believe the reality of the crime started setting in and he

1 made a decision to drive to a place where -- the next place
2 he saw some people and abandoned the car. He didn't want
3 to abandon it in a place where there were no people because
4 the children were in there. So that's what he means when
5 he says more or less of his version.

6 THE COURT: Let me ask you, Mr. Sims, do you agree
7 with the statement just made by your attorney?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Solicitor, do you have any problem with
10 that?

11 MR. BARFIELD: I don't have any problem with you
12 having that information, I don't know that I will concede
13 that he didn't have knowledge. I think perhaps a more
14 accurate assessment from my standpoint is that in whatever
15 condition he was in from whatever substances he had
16 ingested he might not have known the full impart of what
17 was going on or what the true facts were. But I don't have
18 any problem with you considering what Mr. Cook said his
19 version about knowledge of the children is.

20 THE COURT: Mr. Sims, the statement made by your
21 attorney that modifies, so to speak, the statement of the
22 solicitor, you said you agree with it. Does that mean you
23 also agree with everything else said by the solicitor
24 except what your attorney said?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Okay. Are you, in fact, guilty of the
2 charge of car jacking, kidnapping, and possession of a
3 knife in commission of a violent crime and resisting
4 arrest?

5 THE DEFENDANT: Yes, sir, Your Honor. The resisting I
6 didn't -- I landed on my hands like this so I couldn't put
7 my hands behind my back when they tased me because there
8 was like five of them on me.

9 THE COURT: I'm not sure I truly understood that
10 portion of what you said. You're saying you are not guilty
11 of resisting arrest?

12 THE DEFENDANT: I did run from them but when they got
13 me I didn't resist the handcuffs, I couldn't because my
14 arms was up under me and they said, "Put your arm behind
15 your back," and I couldn't because they was on top of me.

16 THE COURT: All right.

17 MR. BARFIELD: And I will amplify my factual
18 presentation just a little bit. Part of the resisting is
19 the running. He jumped off of the roof or out into the
20 house and whatever and hurt himself, got up, ran, had to be
21 chased down.

22 THE DEFENDANT: Yeah.

23 THE COURT: You agree with that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. So you are -- you say you are

1 guilty of each of those five charges?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: Mr. Sims, has your attorney explained to
4 you your right to have a trial by jury on each of these
5 charges?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: Have you ever had a jury trial?

8 THE DEFENDANT: No, sir.

9 THE COURT: Bear with me just one moment. If you were
10 to have a trial as opposed to pleading guilty, among other
11 things the Court would instruct the jury that you're
12 presumed innocent and that the burden would be upon the
13 State to prove to that jury your guilt beyond a reasonable
14 doubt. You would have the right to cross examine any
15 witnesses that the State might call against you. You would
16 have the right yourself to present your own witnesses to
17 testify for you. You could testify or not testify as you
18 chose, and if you decided not to testify the Court would
19 instruct the jury that they could not hold that against you
20 because you have a constitutional right not to testify. If
21 you would have made any incriminating statements,
22 confessions, things such as that you would have the right
23 to challenge the State's right to even use that evidence
24 against you. But, of course, you would have the right to
25 challenge the State's right to use any evidence against

1 you. I tell you all of those things because I just want to
2 make sure you do understand you have all of those rights
3 but by pleading guilty you will be giving up those rights
4 as to these charges. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you still have that right even as you
7 stand there at this moment. But it's my understanding you
8 wish to plead guilty to each of those charges; is that
9 correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you had enough time to discuss your
12 cases with your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And are you satisfied with his services?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Any complaints of any kind against
17 Mr. Cook?

18 THE DEFENDANT: No, sir.

19 THE COURT: Now, has anyone threatened you or coerced
20 you in any way to make you plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you doing this freely and voluntarily?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Let me make sure I understand the possible
25 sentences you could receive on these charges, and I'm going

1 to ask the solicitor and Mr. Cook to tell me if they
2 disagree. The kidnappings carry, is it up to 30 years,
3 gentlemen?

4 MR. BARFIELD: Yes, sir.

5 THE COURT: And the car jacking up to 20 years?

6 MR. BARFIELD: Yes, sir.

7 THE COURT: Use of a knife during the commission of a
8 violent crime, five years?

9 MR. BARFIELD: Yes, sir.

10 THE COURT: And then resisting one year?

11 MR. COOK: Yes, sir, Your Honor.

12 THE COURT: Eighty-six years or so is what you're
13 facing, is that your understanding of it also, Mr. Sims?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has anybody promised you anything or held
16 out any hope of reward as an inducement to get you to do
17 this?

18 THE DEFENDANT: No, sir.

19 THE COURT: Let me ask you one other thing. Do you
20 also understand, Mr. Sims, that you have the right to
21 appeal your guilty pleas as well as any sentence handed
22 down by the Court, but if you're going to appeal it you
23 must do it within ten days from today's date and if you
24 couldn't afford an attorney to help you do that the Court
25 would appoint an attorney at no cost to you, do you

1 understand that also?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. The Court finds there is a
4 substantial factual basis for each of these pleas and the
5 decision to enter these pleas has been made freely and
6 voluntarily with the advice of an attorney with whom the
7 defendant states he is satisfied and the Court accepts the
8 pleas. Mr. Cook?

9 THE DEFENDANT: Thank you, Your Honor. If it please
10 the Court? Just for the record I have explained that
11 colloquy to him several times at the jail as well, Your
12 Honor, and he understands and I've read the statutes to him
13 and he's pleading guilty today because he is guilty, Your
14 Honor. My client has intimated to me on several times at
15 the jail that he realizes the heinous nature of this crime
16 especially since it's perpetrated against children whether
17 it was knowing or not. The mother still had to watch her
18 kids drive off with this gentleman and he realizes the
19 severity of that, Your Honor. He realizes the amount of
20 time that he's facing and he has no defense. I explained
21 an Alford plea to him regarding his intoxication and that
22 the penalties would be the same, Your Honor, he just wishes
23 to proceed as is this morning. Your Honor, this defendant
24 has talked with me a lot at the jail about his drug
25 addictions. And he respectfully requests the Court to

1 consider the fact that he has been through treatment twice
2 and he has a severe addiction with hard drugs, alcoholism
3 as well as powder and crack cocaine, everything, Your
4 Honor. I'm not going to go into any detail about the hard
5 life he's had because he realizes that a lot of Americans
6 have hard lives and it is not an excuse to turn to drugs.
7 For whatever reason he got addicted, he's addicted, Your
8 Honor. I do have -- and he realizes that he's facing a
9 stretch. I do have papers which I'll present to the Court
10 in a moment from First Step and from -- we've subpoenaed
11 the records from Rebound to try to look at the type of
12 treatment that he has already gone through to see if
13 there's any chance whatsoever that if he receives some
14 treatment in -- while he's incarcerated that he could
15 successfully kick his habit. And Your Honor is fully aware
16 of the statistics which I won't go into that the third time
17 that he has a successful treatment, that's an 85 percent
18 success rate that he might actually kick his habit
19 especially with five months of a half-way house. I say all
20 of this because I just want Your Honor to consider
21 potentially fashioning a sentence that will make him aware
22 of the repercussions of his crimes but perhaps let him see
23 the light of day at an age where he might could still enter
24 First Step, and I've got a letter here from their director
25 that they will accept him back. I realize this may seem a

1 bit ridiculous for lack of a better word to say all of
2 this, but we talked in the jail about how much time he
3 could get. I think if he received some type of sentence in
4 the range of 30 years my discussion right now would be
5 somewhat irrelevant. I'm not sure how much time the victim
6 wants out of him and she's going to have her right to
7 speak, Your Honor. I know at one point she was interested
8 in contacting my client and I just want to intimate to her
9 that it wasn't his decision not to meet with her, it
10 actually wasn't mine. I wasn't aware that she was
11 trying -- attempting to meet with him until I think she had
12 already changed her mind again and decided not to -- her
13 wishes to meet with my client to discuss the situation. I
14 know that it shook her and it changed her life forever and
15 she'll have nightmares forever. And I only wish that I
16 would have known that she wanted to meet with him so that I
17 could arrange it so that perhaps she could see that when my
18 client is sober, and he's been sober for about a half a
19 year now, he's an entirely different person. Again, that
20 doesn't excuse or justify anything that he did. The reason
21 I'm saying all of this is because he looked at me and he
22 said, "Yes, I was on probation and when I walked out of
23 jail for my last time the first thing I did was go find my
24 drug dealer". So I notice that he said he completed a
25 program but he didn't successfully complete a program.

1 He's proven that he can be in jail for two and a half years
2 and leave and still go to find his drug dealer. He told me
3 that if for whatever reason he receives a sentence that
4 would get him out of jail at an age where he could still
5 try to change his life, he has seen what happens at this
6 point when he goes straight to his drug dealer when he
7 leaves the penitentiary. For what it's worth, Your Honor,
8 he has intimated to me that this time whatever sentence he
9 gets, and he deserves every second of that, tells me that
10 and he's definitely accepted his responsibility at least to
11 me in the jail, Your Honor, and he realizes what he's about
12 to face. But he says that if he could get a chance to be
13 released at an age -- he's 31 now -- to where he could
14 maybe have a chance to make something of his life before he
15 died, maybe get a wife and a family with kids, maybe find a
16 job, I don't know if that is his late forties, I don't know
17 what age that is, Your Honor. But I do think that this
18 time if he were afforded that opportunity he would follow
19 through with it and go and talk with his old counselor at
20 First Steps, I spoke at length with the administrator
21 there, they assure me he would still have to go through a
22 screening process but they thought that he would be
23 accepted. And I said what if it were a long way away and
24 he said it doesn't matter, they take people of all ages,
25 and that is all of the mitigation that one could have for

1 this case, Your Honor. The crimes were committed. It was
2 a kind of a Dr. Jekyll and Mr. Hyde scenario with Mr. Sims
3 and I have spoken with his family who is here, they don't
4 wish to address the Court per se but they do want you to
5 know -- his mother is present, she's had several meetings
6 with me at my office. The boy has had a rough life. He's
7 been in families that's been torn apart. Regardless he
8 stands before Your Honor guilty of the crime he's charged
9 and I have no mitigation other than, like I say, when he's
10 sober he's an entirely different person. He's a pleasure
11 to be around, he's the most humble person. He has really
12 spent a lot of time sobering up and thinking what he did to
13 this lady and his children. He's asked me if I could
14 contact her and I did speak with the victim's rights
15 advocate for the city, Your Honor, and she intimated to me
16 that at one point the victim was willing to speak with
17 Mr. Sims but that she had changed her mind and at this
18 point she's not and she's ready to address the Court. In
19 conclusion, Your Honor, he just asks me to ask the Court to
20 fashion a sentence that might show him the light of day at
21 an age where he could still probably turn things around,
22 one last chance of his life. His record dates back
23 decades, he's completely familiar with the system, but he's
24 been through two times and if he could get through -- the
25 statistics say the first time very low success rate, the

1 third time in the eighties and he feels like he wants to
2 change, he's willing to go through a half-way house
3 whenever he gets out of jail. And he just wished Your
4 Honor to consider that when you fashion a sentence. Thank
5 you, Your Honor.

6 THE COURT: Thank you, Mr. Cook. Mr. Sims, do you
7 wish to say anything?

8 THE DEFENDANT: Yes, sir, Your Honor. I wrote it down
9 because I won't be able to remember. First I would like to
10 apologize to Ms. Deese and her family, I'm very, very sorry
11 for what I did. There ain't a way I can take back what I
12 done, but I'm very sorry for what I done. Second, Your
13 Honor, I want you and the Court to know what happened that
14 day. I had been awake for several days on a drug binge, I
15 approached Ms. Deese and asked for some money. She gave me
16 a couple of dollars, I was drunk and high on cocaine at the
17 time, I know that ain't no excuse, I pulled out a letter
18 opener when she gave me the money I had in my pocket and I
19 demanded more money. She said she didn't have anymore
20 money and screamed for help. A man came running up so I
21 panicked and jumped in her van and left. I did not know
22 the kids were in the van at the time. When I got to the
23 stop light the side door came open and I realized the kids
24 were in there, I shut the door and went two blocks where I
25 could ditch the van and where I knew the kids would be

1 safe. Before I left I called two guys I know, Joe Boyd and
2 Randolph Gainey, to the van to watch the kids and then I
3 left on foot. I take full responsibility for my actions.
4 Just please consider the circumstances of my case. I know
5 I am facing a lot of time and I have prepared myself for
6 that. I have spent my entire adult life addicted to drugs
7 and it has ruined my life. When I drove that van off I
8 looked at Ms. Deese and said, "I need help." I have been
9 helped through two treatment programs and I am no stranger
10 to rehab. I wanted to kick my habit and I think the next
11 time I go through a good program I can be done with drugs.
12 I am still young and I have a chance to have a life free of
13 drugs and crime. I want to have a job and a family. I
14 know that taking the kids was a terrible thing but I
15 promise I didn't know they were in the van when I took it.
16 I immediately got out, left them alone just as soon as I
17 knew there was someone to look after them. I hope this
18 dumb mistake does not cost me the rest of my adult life. I
19 just hope I can get out of prison with enough time to still
20 get rehabilitated and do something else with my life.

21 THE COURT: Thank you, Mr. Sims. Let me hear from
22 probation as to the status of his probation case?

23 PROBATION AGENT: Your Honor, and I have run into
24 difficulties with the victim notification. There were some
25 letters sent out in July when they had previously scheduled

1 the probation violation, there was no response. I tried to
2 locate some of the victims today and one of them is a
3 business that we're not sure is in business any longer,
4 however there's an individual that would have been a victim
5 in it because it was an armed robbery and I would like time
6 to locate that victim. The other was sold to the Travel
7 Lodge but there was an individual there who was a victim of
8 the armed robbery that I feel would be appropriate to
9 attempt to locate. I did speak to one other victim today,
10 a Ms. Stradford who was the victim of a purse snatching and
11 upon realizing that there had been other crimes committed
12 by him of a similar nature she was okay with us going
13 forward if I could locate the other victims and really
14 feels that because of the nature of offense that it is
15 something she would rather put behind her at this time in
16 her life knowing that he was still committing the same type
17 of offenses, only knowing it felt like a slap in the face
18 to her that he had committed a new offense similar in
19 nature. The current cases are a strong armed robbery,
20 purse snatching and another strong armed robbery, which
21 began March of 2008, it was not scheduled to end until
22 February of 2011. He was sentenced to that in January of
23 2006. And I only give you this information because I
24 cannot ask you to do the violation hearing, it was my
25 understanding that Mr. Cook was going to represent him on

1 these cases as well.

2 MR. COOK: That's right.

3 PROBATION AGENT: But those sentence were eight years
4 suspended on four years and three years of probation, two
5 years suspended on one year and two years probation, and
6 another eight years suspended on four years and three years
7 probation, which would be the four years that Mr. Sims had
8 told you about previously when he said he was sentenced to
9 four years before. But I would have to ask that the Court
10 allow us to bring him back at a later date and go forth
11 with the completion of a violation hearing.

12 THE COURT: All right. Thank you, ma'am. Solicitor?

13 MR. BARFIELD: Your Honor, again, April Deese and her
14 husband, Ryan, are here. I'm going to ask them to step up
15 here, I think she wants to speak, he might or might not.
16 She had a whole bunch of folks that were close to her that
17 showed up today before she did and they are sitting back
18 here. So she has some folks who are here on her behalf if
19 y'all would step up.

20 MS. DEESE: Your Honor, when I left K-Mart that night
21 it was just my boys and I, we have done this many times.
22 My husband was at a church event and we had a great night.
23 We got in the van and like he said neither of them had been
24 buckled in and when I was approached I felt immediately
25 uncomfortable. I have been approached by people before at

1 Food Lion parking lot and other parking lots, you know, for
2 money. But I could smell him and I immediately shut the
3 door and I was trying to push my key pad to get my other
4 child's door shut so I could lock them in the van and I had
5 in my head if I could just throw my keys. When he pulled
6 that knife, letter opener, whatever he said it was, he knew
7 my children were in the van. The sliding door was open, we
8 were in front of there and I begged him, I said, "Please
9 leave my children alone. I'll do whatever you want me to
10 do." And I told him -- it was just like the police report
11 said, I offered to lock the children in the van, go back in
12 and buy a drink, you know how you can get money back, that
13 was not good enough. I offered to give him my debit card,
14 I offered to shut the kids in and I would go with him. He
15 knew my children were there and I begged him and I would
16 have died for my children that night and I would now. The
17 door was open. As the gentleman saw us and I was able to
18 communicate with him that something was wrong, when he
19 tried to help that's when he pushed me and got in the van.
20 I had my children at the door, if I would have had ten more
21 seconds they would have been in at my arms but I didn't
22 have time. So I laid my body in the van from the waist up
23 and held on to my captains chairs. When we got to the
24 Arby's parking lot I screamed, "I'm not in van, let me get
25 in the van." I just didn't want him to have my kids. And

1 he went away and that's when I fell out and was run over by
2 my van. All I could do was sit there while my van went
3 away with my children. I didn't know who he was. My
4 children weren't buckled up and the van door was open at
5 that time. So the fact that he says he didn't know my
6 children were in there, he knew, I gave him outs to leave
7 my children alone. He could have had me but that wasn't
8 good enough and he told me point blank, "I will take your
9 children," and that's in the report. I made sure that was
10 in the report, so he knew they were there. And he didn't
11 have mercy on a mama begging for her children, I don't have
12 much have mercy on how much time he gets in court. I am
13 sorry about that but that's how I feel. Of course, they
14 were returned to us and they are okay. Physically they
15 were okay. My leg, I still have not gotten all of the
16 feeling in my leg and the doctor has told me that may or
17 may not ever come back, we don't know. But mentally this
18 is not something that lasted that day or that week. We
19 have spent so much time teaching our children, especially
20 our four year old because our two year old is still small,
21 you treat others the way you want to be treated. We take
22 care of each other and we help others who are in need, and
23 to have him come back to me and say, "He did something bad
24 to you, why did he run over you? Why did he hurt you? Why
25 did he take us away?" That's hard to explain to your four

1 year old. And even now it still comes up, "Why did he do
2 that? Are we supposed to be nice?" And it's hard now
3 because that trust and innocence is gone. For the longest
4 time he thought K-Mart was just bad people, we didn't go
5 there because there were bad people there. I've had to
6 explain to him that it happened and we still have to trust
7 people and that's hard and it hurts, that little bit of
8 trust is gone now. And for our two year old until July we
9 woke up almost every night with him crying for me and he
10 never had done that before. And I don't want another mama
11 or another family to ever have to be in our shoes and try
12 to explain. And what if next time it's worse, what if the
13 next time the children don't come back, and even if it's
14 not children involved next time I am still somebody's
15 daughter, I'm still somebody's grandchild, I'm somebody's
16 wife. And, you know, all of these people back here are my
17 family and my friends and that's exactly what those are,
18 those boys -- I am speaking on their behalf too and that's
19 their grandchildren and that's their family as well. So it
20 didn't just happen to me, it happened to a community and I
21 just worry about another mom having to face what I faced.
22 So all I can do is pray that you will just see fit to put
23 him behind bars for a long time because I'm just scared of
24 what might happen next time. And I did -- shortly after
25 this happened Detective Grant, I did ask her if I would

1 have the opportunity to speak with Mr. Sims and she did
2 inform me that after the trial or whatever as far as all of
3 that goes and she may have even checked to see if he would
4 be willing to talk to me, I can't remember that part of it.
5 But I do know that she said after the trial after
6 everything was handled and settled there may be a point at
7 that time. I never spoke with the victim's advocate, I've
8 never changed my mind as far as that goes. And I've never
9 been contacted by anyone and I've never contacted them, I
10 just asked Ms. Grant if that would be a possibility at some
11 point and it has never been addressed since.

12 THE COURT: Thank you.

13 MR. DEESE: I don't have a lot to add. It all goes
14 back to being intoxicated or drugged up or whatever and
15 there is no excuse for that. I don't see any excuse for
16 it. A lot of people do without drugs everyday and I know
17 it's addictive, but still, it could have been worse. Those
18 kids could have fell out so -- and he would have never --
19 what's the difference then? It's the same crime, he just
20 got lucky they didn't fall out. So I don't see what drugs
21 has to do with it. It is tough to get a call from somebody
22 in the parking saying your wife has been carjacked and she
23 has been run over and your boys are gone. So I just wish
24 you would take that into consideration.

25 THE COURT: Thank you, sir.

1 MR. BARFIELD: That's all.

2 THE COURT: Mr. Sims, I understand your argument that
3 you were intoxicated of some substance when this occurs,
4 but it does appear to the Court that it is not just
5 something that occurred on the spur of the moment. It does
6 appear to the Court that it was to some extent premeditated
7 and thought through, done with a deadly weapon or at least
8 thought of a deadly weapon and it involved the injury to
9 the mother and the taking of her property and children.
10 Having said of all of this it also appears to the Court
11 that it was for the most part one event and the Court is
12 going to treat it for sentencing purposes as one continuous
13 event as opposed to separate incidents, therefore the
14 sentences of the Court will be concurrent. I'm also going
15 to over the objection of the department of probation and
16 parole, am going to revoke your probation and terminate --
17 in full and terminate it, and I will do that concurrently,
18 also. On the resisting arrest I will sentence you to one
19 year, of course you would also get credit for time served
20 against all of the sentences. On the use of a knife during
21 the commission of a violent crime I sentence you to five
22 years. On the carjacking I sentence you to 20 years. On
23 the kidnapping charges I sentence you to 27 years. Again,
24 all of that is -- all of that is concurrent with your
25 probation violation. And I am going to recommend ATU.

1 PROBATION AGENT: Your Honor, can we ask for a civil
2 judgment on the restitution case?

3 THE COURT: Civil judgment on any monies owed.

4 (END OF THE HEARING.)

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1 I, the undersigned Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Lancaster County, South Carolina, on
8 the 27th day of February, 2009.

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

11

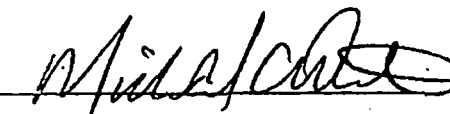
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September 28, 2009.

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Michael C. Watkins
Court Reporter

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Filed 6-11-09 6M

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of LancasterPhillip Sims #391566

2009 CP-29-859

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Perry Corectional Institution 430 Oaklawn
Pelzer South Carolina 29669
2. Name and location of Court which imposed sentence Court of General
Sessions / Lancaster SC.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed

~~2) xxx xxn 2008-GS-29-997, 978, 979, 980, 976~~

- (b) _____
- (c) _____
- 5 The date upon which sentence was imposed and the terms of the sentence:
 (a) 5-29-2008
 (b) _____
 (c) _____
- 6 Check whether a finding of guilty was made:
 (a) after a plea of guilty Guilty Plea
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
- 7 Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Affirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. 4-24-2009
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results.
None
 i. _____
 ii. _____
 iii. _____
- 9 If you answered Anog@ to (7), state your reasons for not so appealing:
 (a) _____

(b) _____
 (c) _____

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

(a) Ineffective Assistance of Counsel

 (b) Ineffective Assistance of Counsel

 (c) Ineffective Assistance of Counsel

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

(a) Counsel Misinformed applicant as to his sentence

 (b) Counsel failed to call witnesses on his behalf

 (c) Counsel failed to present mitigating facts as to the circumstances as to the kidnaping charge

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

(a) any petition in a State Court under South Carolina Law? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? none
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? none
 (d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:
n/a
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. n/a
 ii. _____
 iii. _____

iv.

(c) the disposition thereof.

n/a

i.

ii.

iii.

iv.

(d) the date of each such disposition:

n/a

i.

ii.

iii.

iv.

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

n/a

i.

ii.

iii.

iv.

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

n/a

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

(a) which grounds have been presented:

i.

n/a

ii.

iii.

(b) the proceedings in which each ground was raised

n/a

i.

ii.

iii.

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

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

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

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

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

(a) the name and address of each attorney who represented you:
 i. David Cook Esquire 300 North White Street P.O. Box
1449 Lancaster SC, 29721
 ii. Joseph L. Savitz, III, Office of the appellant defense
1015 Sumter St. Columbia SC 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. guilty plea
 ii. appeal from guilty plea
 iii. _____

- 19 State clearly the relief you seek in filing this application:
New Trial / Renegotiate plea

- 20 Are you now under sentence from any other court that you have not challenged?
no

Revised 3 2003

STATE OF SOUTH CAROLINA)
)
 County of Greenville)

VERIFICATION

Phillip Keith Sims #301566

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

Phillip Sims

SWORN to and subscribed before me this 1st
 day of June, 2005.

[Signature] (L.S.)
 Notary Public
 My Commission Expires May 12th 2014

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

Phillip Keith Sims # 301566

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

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

Phillip Sims

Applicant

SWORN or affirmed to and subscribed before me this
15th day of June, 2009.

[Signature]

Notary Public

My Commission Expires: May 12th 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
	)	2009-CP-29-0859
	)	
Philip Sims, #301566,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 11, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the August 2008 term of the Lancaster County Grand Jury for one (1) count of Carjacking (08-GS-29-0976), two (2) counts of kidnapping (08-GS-29-0977, -0978), one (1) count of Possession or Display of Firearm or Knife During Commission of a Violent Crime (08-GS-29-0979), and one (1) count of Resisting Arrest (08-GS-29-0980). David C. Cook, Esquire, represented the Applicant. On February 27, 2009, the Applicant pled guilty to each charge as indicted. The Honorable Brooks P. Goldsmith sentenced him to confinement for a period of twenty (20) years for Carjacking (08-GS-29-0976), twenty seven (27) years for each count of Kidnapping (08-GS-29-0977, -0978), five (5) years for Possession or Display of a Firearm or Knife During Commission of a Violent Crime (08-

GS-29-0979), and one (1) year for Resisting Arrest (08-GS-29-0980). The charges were set to be served concurrently. The Applicant then filed a timely notice of appeal.

The Applicant's Direct Appeal was dismissed by written order dated April 29, 2009, and returned to the lower court by Remittitur dated May 26, 2009.

Attached herewith and incorporated herein are the records of the Lancaster County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the pertinent records from the Applicant's direct appeal. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reason(s):

1. Ineffective assistance of counsel;
 - a. "Counsel Misinformed applicant as to his sentence";
 - b. "Counsel failed to call witnesses on his behalf";
and
 - c. "Counsel failed to present mitigating facts as to the circumstances as to the kidnapping charge".

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE PARSONS KELLEY
Assistant Attorney General

By: Michelle Parsons Kelley
ATTORNEYS FOR RESPONDENT

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

October 21, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT

Phillip Sims,

2009-CP-29-0859

)
) Applicant,
)

) vs.
)

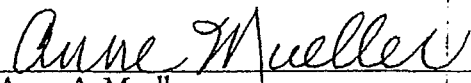
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

)
) Respondent.
)

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

Carrie H. Tanner, Esquire
Speedy, Tanner & Atkinson
P.O. Drawer 100
Camden, South Carolina 29020



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 21st day of October, 2009.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	09-CP-29-0859
	)	
Phillip Sims,	)	
	)	
Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

February 28th, 2012
Lancaster, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

M. RITA METTS, ESQ.
Attorney for the Applicant

SUZANNE WHITE, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, RPR
Official Court Reporter

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Douglas Barfield

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EXHIBITS

No.	Description	Page
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(No exhibits were marked.)

P R O C E E D I N G S

THE COURT: This is docket number 2009-CP-29-0859, Phillip Sims versus the State of South Carolina. The applicant is represented by Rita Metts. The State is represented by Suzanne White. We're here on postconviction relief application. I'll turn it over to Ms. White to give us the background information, and we'll hear from Ms. Metts.

MS. WHITE: Thank you, Your Honor. Mr. Sims was indicted in August of '08 for a carjacking, two counts of kidnapping, possession of a weapon during the commission of a violent crime, and a charge of resisting arrest. He went before Judge Goldsmith of February 27th of 2009 and pled guilty to all charges as indicted. Received concurrent sentences of 20 years on the carjacking, 27 on each count of kidnapping, five years on the possession of a weapon, and one on the resisting arrest for a total sentence of 27 years. Judge Goldsmith also revoked a probation that was pending at that time in full and ran that concurrent.

At the time he had -- I believe an appeal was filed and dismissed based on there being no appealable issues. Remittitur was sent down and his application was filed June 11, 2009, raising allegation of ineffective assistance of counsel based on the fact that counsel

1 misinformed applicant regarding the sentence, counsel
2 failed to call witnesses, and counsel failed to present
3 facts as to the kidnapping, and I'll turn it over to
4 Ms. Metts at the time.

5 MS. METTS: May it please the Court, Your Honor. I
6 spoke with Mr. Sims in reference to his PCR application,
7 and I do agree with opposing counsel as to the PCR issues
8 he has. And Mr. Sims is ready to testify as to the
9 allegations in the PCR application.

10 THE COURT: You may call your first witness.

11 PHILLIP KEITH SIMS, after being duly sworn,
12 testified as follows:

13 THE COURT: State your full name.

14 THE WITNESS: Phillip Keith Sims.

15 THE COURT: Ms. Metts.

16 DIRECT EXAMINATION

17 BY MS. METTS

18 Q. Mr. Sims, you heard the assistant attorney general
19 state the charges that you pled guilty to. Were you
20 listening when she stated the charges?

21 A. Yes, ma'am.

22 Q. And do you agree with the charges that she stated?

23 A. Yes, ma'am.

24 Q. And the sentences that you received?

25 A. Yes, ma'am.

PHILLIP KEITH SIMS - DIRECT EXAMINATION BY MS. METTS

1 Q. You filed this application for postconviction relief,
2 and shortly before coming in here, I discussed with you
3 the nature of the PCR application.

4 A. Yes, ma'am.

5 Q. And do you understand the relief you're seeking
6 through the PCR application?

7 A. Yes, ma'am.

8 Q. Now, you've alleged complaints about your attorney's
9 representation which you feel had an impact on the
10 sentence you received; is that correct?

11 A. Yes, ma'am.

12 Q. Now, would you tell the judge, starting with the
13 first complaint that you had with your attorney as to the
14 reason you filed this PCR application?

15 A. Yes, ma'am. First of all, the witnesses' statement.
16 He didn't bring up the witness statement that Randolph
17 Gainey stated, and he's the one that pointed me out. And
18 the witnesses' statement, it states that I stopped, called
19 him to the van, and then left on foot. And my point
20 being -- yeah, I kidnapped those kids and I'm sorry for
21 that, but if I voluntarily kidnapped the kids, why did I
22 go a block and stop and call somebody to -- he didn't
23 bring that up. And --

24 Q. Just so the judge is clear, because I know you're
25 nervous.

PHILLIP KEITH SIMS - DIRECT EXAMINATION BY MS. METTS

1 A. Yeah.

2 Q. You indicated that to me when we talked that you were
3 high on drugs at the time and it was your intent to steal
4 to make some money.

5 A. Yes, ma'am.

6 Q. And you indicated this was a van you stole.

7 A. Yes, ma'am.

8 Q. And in the back of the van -- which you didn't see
9 when you stole it -- there were children.

10 A. Yes, ma'am.

11 Q. Now, as you were driving, when you realized there
12 were children in the car, you indicated to me you
13 stopped --

14 A. Yes, ma'am.

15 Q. -- the car instead of continuing to drive. And part
16 of the reason you were caught is because you stopped when
17 you realized there were children in the car instead of
18 continuing to drive to get away.

19 A. Yes, I stopped and called somebody to the van.

20 Q. And you called someone for the children and you
21 abandoned the van and just ran away on foot.

22 A. Yes, ma'am.

23 Q. And as far as the mitigating circumstances, this is
24 the information you wanted to be communicated to the judge
25 because you felt that without an explanation, it seemed as

PHILLIP KEITH SIMS - DIRECT EXAMINATION BY MS. METTS

1 if your whole purpose was to kidnap children?

2 A. Yes, ma'am.

3 Q. Okay. And is this something you had discussed with
4 your attorney prior to your plea?

5 A. Uh-huh. Yes, ma'am.

6 Q. And is that the only thing you want to say about that
7 issue as far as that mitigating fact?

8 A. Yes, ma'am.

9 Q. And what was the next complaint you had about your
10 attorney's representation?

11 A. He had -- also he had come -- he at first he kept
12 telling me I wasn't going to get more than 20, 15, 20
13 years, that way I should plea. You know, everything --
14 let him handle everything. And that's what I went on his
15 understanding that he's a paid lawyer, that he knew what
16 we was doing, so I let him handle everything.

17 Q. And Mr. Sims, when did -- do you remember
18 approximately when you were arrested?

19 A. I was arrested May 30th, '08.

20 Q. And were you ever able to make bond?

21 A. No, ma'am.

22 Q. And how long were you incarcerated at the detention
23 center before you came to court for your plea?

24 A. I was arrested -- I take that back. I was arrested
25 May -- yeah, May '08 and I got sentenced to

PHILLIP KEITH SIMS - DIRECT EXAMINATION BY MS. METTS

1 February 27th, '09.

2 Q. Okay. And when you came to court for your
3 sentencing, was that your first time ever coming to
4 general session courts about these charges?

5 A. Yes, ma'am.

6 Q. And when you came to -- you were transported to
7 general sessions, was it your understanding you were
8 coming to plead guilty?

9 A. Yes, sir.

10 Q. And what was your understanding of that guilty plea?

11 A. That I wouldn't receive over 20.

12 Q. And did you ever have conversations with Mr. Cook
13 about possible sentence?

14 A. Yeah. He said he don't see me getting no more than
15 15 to 20 years.

16 Q. And did your decision to plead guilty come from your
17 belief you wouldn't get more than the attorney had
18 suggested?

19 A. Yes, ma'am.

20 Q. And did you ever ask or inquire as to why he thought
21 it wouldn't be more than 15 or 20 years?

22 A. No, I didn't question him, because he seemed to know
23 what he was doing.

24 Q. And had you been in constant communication with your
25 attorney since the date you were arrested?

PHILLIP KEITH SIMS - DIRECT EXAMINATION BY MS. METTS

1 A. Yeah, he visited the county at least three or four
2 times.

3 Q. And did your family retain this attorney shortly
4 after you were arrested?

5 A. Yes, ma'am.

6 Q. And you had a pretty good relationship with this
7 attorney in his communication with you?

8 A. Yes, ma'am.

9 Q. And what was your other complaint about the
10 representation?

11 A. He didn't let my family speak in my part, which I
12 don't think -- I think that was irrelevant, but there's
13 some stuff wrote down. I believe that was the two main --
14 the two main arguments.

15 Q. Now at some point, did you receive information about
16 a possible plea negotiation between the Solicitor's Office
17 and your attorney you were unaware of when you pled
18 guilty?

19 A. That's what I thought. I thought, you know, I was
20 going to get no more than a 20-year cap or something.
21 That's what I thought.

22 Q. Now, since you filed this PCR application and you and
23 I have spoken, at some point you learned that your
24 previous attorney -- that a plea offer had been
25 communicated to your previous attorney that you were not

PHILLIP KEITH SIMS - DIRECT EXAMINATION BY MS. METTS

1 told about?

2 A. I heard that, but I don't know for sure.

3 Q. Okay. But that was one of the reasons you also filed
4 this application?

5 A. Yes, ma'am.

6 Q. And at the time when you appealed, you didn't know
7 about the possibility of any plea offer that wasn't
8 communicated to you?

9 A. No, ma'am.

10 Q. So that issue was not addressed in your appeal?

11 A. No, ma'am.

12 Q. Is there anything else that you want to say about
13 your PCR application or the attorney that represented you?

14 A. No, ma'am.

15 Q. Okay. I have no further questions. Mr. Sims, please
16 answer any questions that Ms. --

17 THE COURT: Ms. White.

18 MS. WHITE: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. WHITE

21 Q. Mr. Sims, just to go back initially to what you
22 started off with. Now, you said that your counsel didn't
23 share with the court the witness statement of Mr. Gainey?

24 A. Yes, ma'am.

25 Q. Now, your counsel did speak on your behalf pretty --

PHILLIP KEITH SIMS - CROSS-EXAMINATION BY MS. WHITE

1 several times, didn't he --

2 A. Yes, ma'am.

3 Q. -- at the court? And, in fact, page 12 of the
4 transcript, he said that he talked about the fact you had
5 been on a drug binge for several days and that you were
6 going to say that you didn't have knowledge that the kids
7 were in the van?

8 A. Yes, ma'am.

9 Q. And that you -- the first time you saw them was when
10 you turned on to Main Street; is that right?

11 A. Yes, ma'am.

12 Q. And it also continued to say that you drove to a
13 place where you saw people you knew, abandoned the car
14 where there were some people?

15 A. Yes, ma'am.

16 Q. All right. And then he also, page 24, brought up the
17 fact and you actually said that you actually called the
18 two guys you knew, Joe Boyd and Randolph Gainey, and asked
19 them to come to the van to watch the kids before you took
20 off on foot; is that right?

21 A. Yes, ma'am.

22 Q. So that information was presented to the Court that
23 day; was it not?

24 A. Yes, ma'am.

25 Q. Okay. Now, in regards to your attorney telling you

PHILLIP KEITH SIMS - CROSS-EXAMINATION BY MS. WHITE

1 you wouldn't get any more than 15 to 20 years, did he
2 promise you that you were not going to get 20 years, or
3 did he say that's what he hoped you would get?

4 A. As far as I thought, I wasn't going to get no more
5 than 20 years.

6 Q. Now, the judge went over you with the potential
7 sentence you could get; is that right?

8 A. He did.

9 Q. All right. And do you recall the judge telling you
10 that the kidnapping carried up to 30 years?

11 A. He did.

12 Q. And the carjacking carried up to 20 years?

13 A. Yes, ma'am.

14 Q. And then they said that 86 years is what you're
15 facing, and they asked you if you understood that?

16 A. He did.

17 Q. And you said you had?

18 A. Yes, ma'am.

19 Q. And then he also asked if anyone had promised you
20 anything to get you to plead guilty, and you said, "No,
21 sir."

22 A. Yes. Yes, ma'am.

23 Q. So at this time you didn't indicate that you thought
24 you were promised or guaranteed a 20-year sentence?

25 A. I believed I looked at my lawyer at that time and

PHILLIP KEITH SIMS - CROSS-EXAMINATION BY MS. WHITE

1 it's probably in the transcript I didn't bring with me,
2 but I looked at him and he said like that. He nodded to
3 the Court then at that time.

4 Q. So he shook his head but you still -- you didn't
5 speak up and say that anybody had promised you anything,
6 right?

7 A. No, I didn't.

8 Q. And the judge asked you if you still wanted to plead
9 knowing --

10 A. Yeah.

11 Q. -- what you essentially face?

12 A. Yes, I did.

13 Q. The judge also asked you if you were guilty, and you
14 acknowledged you were guilty of this, right?

15 A. Yes, ma'am.

16 Q. Now, at the time you went before Judge Goldsmith,
17 they also went over your prior record with him; is that
18 correct?

19 A. Yes, ma'am.

20 Q. And you had several prior records that involved some
21 purse snatching, petit larcenies and escape, a common law
22 robbery. Another -- two more purse snatchings and other
23 thing, and you were on probation at that time?

24 A. I was.

25 Q. And your probation was revoked?

PHILLIP KEITH SIMS - CROSS-EXAMINATION BY MS. WHITE

1 A. It was.

2 Q. Okay. And it was revoked in full by Judge Goldsmith?

3 A. Yes, ma'am.

4 Q. All right. And did Judge Goldsmith talk about that
5 and the fact that -- or did the State talk about the fact
6 that you had committed these crimes while you were out on
7 probation as well?

8 A. I believe they said -- they -- he talked about me
9 committing these crimes while I was on probation. I think
10 the solicitor did, but I don't think the judge did.

11 Q. And that's what I meant. I'm sorry. The solicitor.

12 A. Yeah, yeah, yeah.

13 Q. Spoke about the fact --

14 A. Yes, ma'am he did.

15 Q. -- these crimes --

16 A. He pointed it out pretty clearly.

17 Q. Now, you did testify that counsel had come to meet
18 with you several times and you felt comfortable with him.
19 You mentioned something about a 20-year cap or a plea
20 offer. The first time you heard about that was after you
21 filed your PCR application, wasn't it?

22 A. Yes, ma'am.

23 MS. WHITE: Your Honor, that's all I have for this
24 witness at this time.

25 MS. METTS: I do have a couple questions, Your Honor.

PHILLIP KEITH SIMS - REDIRECT EXAMINATION BY MS. METTS

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MS. METTS

4 Q. Mr. Sims, despite hearing about the possibility of a
5 plea negotiation between your attorney and the Solicitor's
6 Office, when you were speaking with your attorney about
7 what you thought your sentence was going to be, what did
8 you base that on? Why did you think your attorney told
9 you or led you to believe or you believe there would be a
10 cap on your sentence?

11 A. Because he never did say no more than 20 years, and I
12 ain't sure but he -- I think he did say "cap" one time.
13 I'm not going to put that in writing because I'm not sure.

14 Q. What I'm asking you is: Did you believe your
15 attorney had been talking with the Solicitor's Office
16 during the time he was representing you?

17 A. Yes. He said he spoke to -- talked to Mr. Barfield
18 several times.

19 Q. And you believed that he had a good faith basis for
20 believing any sentence he discussed with you?

21 A. Yes, ma'am.

22 MS. METTS: I have no further questions. And Your
23 Honor, I have no further questions for Mr. Sims. I guess
24 the next witness would be David Cook.

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

DAVID COOK - DIRECT EXAMINATION BY MS. METTS

1 DAVID COOK, after being duly sworn, testified as
2 follows:

3 THE COURT: State your full name.

4 THE WITNESS: David Clayton Cook.

5 DIRECT EXAMINATION

6 BY MS. METTS

7 Q. Mr. Cook, we appreciate you being here this morning.
8 Do you recall representing Phillip Keith Sims?

9 A. Yes, ma'am.

10 Q. Do you recall approximately when you were retained
11 and who retained you?

12 A. I was retained by his mother. As to when, I'm not
13 certain of the exact date. It was well in advance of the
14 plea. Maybe a half year or so.

15 Q. According to the sentencing sheet, he committed the
16 offense on May the 29th of 2008, so it would have been
17 after that period of time?

18 A. Yeah.

19 Q. And how many times did you speak with Mr. Sims?

20 A. As he said, probably -- I went to the jail probably
21 three or four times.

22 Q. And did Mr. Sims -- did you and Mr. Sims discuss any
23 defenses he may have?

24 A. I'm sure we did. I have -- nothing comes to mind. I
25 met with his mom a lot more than him, and she would come

DAVID COOK - DIRECT EXAMINATION BY MS. METTS

1 to my office and I would talk about the case with his
2 permission with her. I don't have any direct recollection
3 of talking defenses per se, but it's common practice I
4 would assess that and discuss any potential defenses. I
5 didn't really see any in this case. Possible
6 identification issue, but...

7 Q. But this was going to be a guilty plea as far as you
8 knew?

9 A. Uh-huh. I thought he would be convicted by a jury.

10 Q. And at some point, did you talk the Solicitor's
11 Office about negotiating a plea for Mr. Sims?

12 A. You know, that's -- no. I wouldn't say that
13 Solicitor Barfield and I ever had any -- we had a lot of
14 discussions about the case, but we never actually got down
15 to talking numbers. During the course of the negotiations
16 or the time before the trial, my -- it's my assertion that
17 just immediately before I did the plea that I was talking
18 with Solicitor Barfield and he mentioned, "Are you sure
19 you don't want a cap of 20 on this case?" And I told him
20 no, and I was -- I didn't have time to convey that offer
21 to my client -- well, I did have time, I just neglected to
22 convey that offer to my client. And as soon as Doug said
23 that to me, Doug Barfield says that to me -- you know, I
24 said no, I started walking over to my client to kind of
25 get ready. Judge Goldsmith called the case, and I was

DAVID COOK - DIRECT EXAMINATION BY MS. METTS

1 already standing. I had to grab my file and walk up to
2 the booth immediately, so I never conveyed that offer to
3 my client that there was a recommendation for a cap of 20.

4 And I'm glad that he -- just to speak quite frankly,
5 that weighed heavily on my conscious after he got the
6 sentence of 27 years, which I believe surprised me and him
7 and certainly his mom. And I felt terrible that I never
8 got a chance to convey that cap of 20 to him to the extent
9 to where I was going to write him a letter telling him he
10 should PCR me, and I was in the process of getting that
11 ready when I got this application that he did PCR.

12 Q. And Mr. Cook, how long have you been doing criminal
13 defense work?

14 A. Five years now. At that point, 2009, probably about
15 three.

16 Q. And is it a common practice to discuss plea
17 negotiations if you know a case is likely to end in the
18 plea?

19 A. It's the only time I haven't done it. It's
20 mandatory. It's ethically mandatory to discuss plea
21 offers with your client to give them the opportunity to
22 accept it, and I didn't do that. He did not have the
23 opportunity to accept or deny or decline that offer. And
24 the second I heard the judge say 27 years, it's been
25 weighing heavily on my heart since then.

DAVID COOK - DIRECT EXAMINATION BY MS. METTS

1 Q. And how sure are you that this occurred the way you
2 remember it?

3 A. I'm 100 percent positive. There -- my daughter was
4 there, shadowing me for career day that day. His
5 mother -- as soon as the sentence came down, basically
6 fell out and had what I think was a stroke. EMS had to be
7 called to the courtroom. It's indelibly carved in stone
8 in my memory.

9 I understand that if I -- you know, nobody asked me
10 this question, but I understand that Solicitor Barfield
11 perhaps doesn't have a recollection, and I'll let him
12 address that, but and -- you know. I know Doug Barfield
13 is one of the most honorable men I know. I mean, if he
14 says he doesn't have a recollection, I think he just
15 doesn't have a recollection. But I'm also sitting here
16 saying -- because that happened very quickly, and I can
17 imagine he was wondering why we hadn't discussed numbers.
18 And when he gave me that offer, and I didn't extend it to
19 my client, it happened so fast and it was so long ago I
20 can remember he might not have a recollection. But I'm
21 maintaining it definitely did happen. 100 percent
22 positive.

23 Q. And can you recall maybe the reason why you didn't
24 take the time to let Mr. Sims know?

25 A. I've obviously thought about that since that day also

DAVID COOK - DIRECT EXAMINATION BY MS. METTS

1 a lot too, and I think that I don't have a good reason. I
2 think that it just happened so quickly that I just didn't
3 mention it to him and -- I know in my mind from a -- from
4 my representation standpoint, I wasn't wanting to discuss
5 numbers because I thought that, you know, Judge Goldsmith
6 might go a lot lower than what we were talking. I was
7 wrong about that. But I still maintain that, you know,
8 that doesn't mean that I shouldn't have told Phil what the
9 offer was because he might very well in his gut thought,
10 you know, I'm not going to take that 20, that cap.

11 Q. I'm sorry.

12 A. That's all. If you didn't hear what I said, I can
13 repeat, but I'm done with my sentence.

14 Q. And Mr. Cook, do you have any reason to misinform the
15 court or give this testimony on Mr. Sims behalf?

16 A. I would never misinform any court. I'm an attorney.

17 MS. METTS: I have no further questions. Answer any
18 questions Ms. White has.

19 THE COURT: Any cross?

20 CROSS-EXAMINATION

21 BY MS. WHITE

22 Q. Mr. Cook, you -- in regards to meeting with your
23 client, he testified earlier that you talked to him during
24 your conversations about a 15-to-20-year sentence and
25 about the fact he would be getting a maximum of 20 years

DAVID COOK - CROSS-EXAMINATION BY MS. WHITE

1 and maybe a 20-year cap. Did you talk with him prior to
2 the plea about him receiving any kind of 20-year deal or
3 the fact that he would only receive 20 years?

4 A. No, I want -- definitely never relayed to him he was
5 only looking at 20 years or that's all he would receive.
6 I can imagine that I had my discussions with him like I
7 have with every criminal defense client, standard
8 operating procedure when I explain the different types of
9 plea. He might have heard me say "cap" when I saying,
10 "There's a cap, there's a recommendation, there's a
11 negotiated or straight-up plea," and explain what those
12 are.

13 I did -- and I have a vivid memory of telling him
14 several times we were trying for 15, you know, that's the
15 number we were trying to put out there in our heads and
16 the judges, through my mitigation, I had done a lot of
17 research about recidivism and drug rehabilitation, and I
18 was thinking I could get some kind of reduced sentence in
19 the hopes that he could get out in time to get some rehab
20 through a halfway house and have a meaningful life as a
21 adult. But never told him he was going to get 20 for
22 sure.

23 Q. And you testified that you actually never did any
24 plea negotiations ahead of time, and explain a little bit
25 about that. You said that obviously you said you had a

DAVID COOK - CROSS-EXAMINATION BY MS. WHITE

1 reason you didn't want to go in before the judge with a
2 particular number.

3 A. Yeah, well, you know, I realize having done PCR work
4 that, you know, the fact that if it were a strategy of
5 mine, that would have a bearing in the outcome of the
6 judge's decision, perhaps. I'm not maintaining I was
7 following any certain strategy. I think I was asked what
8 I was thinking, and I thought in retrospect, this is what
9 I might have been thinking. It would make sense that I
10 didn't discuss the negotiation or any type of
11 recommendation.

12 This was me -- maybe my second year in practice in
13 Lancaster and just to be candid, you know, I had practiced
14 a lot in York County, and I was hoping that Judge
15 Goldsmith had perhaps a reputation amongst the defense
16 community as being more lenient as opposed to the other
17 judges on the circuit, and I was hoping I could convince
18 him to go low, and I didn't want to put any numbers out
19 there in anybody's heads. But that's what I would say I
20 thought if you asked, "What were you thinking?" And I
21 again I would be looking back. That's -- that's what I
22 must have been thinking.

23 But I wasn't pursuing any particular strategy, and
24 also, regardless of what my strategy was, I should have
25 relayed the plea offer to my client and given him a

DAVID COOK - CROSS-EXAMINATION BY MS. WHITE

1 chance. He's the one that's going to be serving the time
2 not me, to either thumbs up or thumb down on it.

3 Q. Okay. Now, when you said that Mr. Barfield offered a
4 cap of 20, was that a negotiated plea or was that a
5 recommendation?

6 A. It was -- Doug and I have pretty good relationship
7 and he looked at me, and he said, "Are you sure you don't
8 want a cap of 20 on this?" and I said "nah" and they
9 called the case. We didn't discuss whether it was
10 negotiated. I assume it was recommended.

11 Q. Nothing in writing?

12 A. Nothing in writing. I can imagine if I would have --
13 since I'm speculating, I could imagine that if I would
14 have looked for that, I could have probably talked him
15 into a negotiated plea. But, again, I didn't.

16 Q. In your experience is it normal for the State to come
17 forward with a plea offer when a defendant is willing to
18 plead straight up?

19 A. Well, I mean, we were discussing earlier, it's
20 different in different counties. And really hadn't had a
21 lot of experience pleading with Solicitor Barfield at that
22 point. It was maybe my second, third big plea with him
23 for big time. But I -- I would say that if you ask me the
24 kind of course of business in Lancaster County is they'll
25 send you a packet and they'll -- with all the discovery

DAVID COOK - CROSS-EXAMINATION BY MS. WHITE

1 and they'll write a recommendation down there, on the
2 packet. Just now had that thought. I'm not sure if Doug
3 gave me that certain type of packet for this case. I'm
4 looking through my file and I don't see it readily
5 available, but that doesn't mean he didn't give it because
6 he does that most of the time. Sometimes he'll write
7 straight up. Sometimes he'll write recommended or
8 negotiated. I don't have a recollection of what that
9 cover page for the discovery said on this case. But I
10 guess to answer your question, it's kind of that's
11 standard operating procedure in Lancaster.

12 Q. And I guess maybe my question wasn't clear, but your
13 experience from now, is it standard for -- if you're going
14 in with a straight-up plea, would it be normal for the
15 State to come in as you're going in with a straight-up
16 plea and come and make a deal with you --

17 A. No, it's not.

18 Q. -- as you're walking in the courtroom.

19 A. No, it was not typical what Doug did. He doesn't
20 usually whisper an offer to be me right before we go up,
21 but then again, in most cases we have it worked out well
22 in advance.

23 Q. Okay. Now, you mentioned that you didn't convey the
24 offer to your client and you felt bad about that. Did you
25 file a motion for reconsideration after the verdict for 27

DAVID COOK - CROSS-EXAMINATION BY MS. WHITE

1 years?

2 A. No.

3 Q. Okay.

4 A. I --

5 Q. But you filed an appeal.

6 A. At the request of my client. I mean, I didn't
7 think -- I knew that was a collateral issue. I didn't
8 think there were any appellate issue that were, you know,
9 valid, so I filed some type of an ex-parte Cauthen
10 affidavit with that appeal and indigent defense handled
11 it. Procedurally, I didn't see anything wrong. But a
12 motion to reconsider, I don't know if what -- I think the
13 PCR would be the proper avenue for what I did. I couldn't
14 say to Judge Goldsmith, you know, I should have given an
15 offer to my client. Will you reconsider your sentence? I
16 didn't think that through in that matter.

17 Q. You said you were going to do a letter to your client
18 about filing a PCR when you got the PCR, and he pled
19 guilty on July 31st, 2008; is that right?

20 A. That's --

21 Q. I'm sorry. I'm looking at the wrong -- I'm sorry.
22 February 27th, 2009?

23 A. I think that's right.

24 Q. Okay. All right. And is it accurate that you got
25 the first letter from us probably January 31st, 2011, as

DAVID COOK - CROSS-EXAMINATION BY MS. WHITE

1 a witness packet and letter letting you know he had filed
2 the PCR and that we would need -- you probably heard from
3 me?

4 A. Probably be about right.

5 Q. Around that time.

6 A. Yeah.

7 Q. So is that the time that you -- around the time that
8 you were considering doing a letter to him?

9 A. There's two clients -- well, I guess I'm trying to
10 answer your question like this: There's only two clients
11 I ever had I thought should have PCR'd me, so I don't have
12 a standard operating procedure about how I go about
13 informing them they need to PCR me. But just to answer
14 your question, I know they have a year to file that
15 appeal. So with this second one, I tickled the calendar
16 and set up a jail visit to go see him about a month before
17 their year is up. Just to be -- to answer your question.

18 Q. Okay.

19 A. I did have every intention and had several thoughts
20 of writing him a letter and telling him to PCR me and was
21 definitely going to do that before the expiration period,
22 you know, before the statute tolled.

23 MS. WHITE: I think that's all I have at this time,
24 Your Honor.

25 MS. METTS: I have no further questions of Mr. Cook,

DOUGLAS BARFIELD - DIRECT EXAMINATION BY MS. WHITE

1 Your Honor.

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

3 THE WITNESS: Thank you, Your Honor.

4 MS. METTS: That's the Petitioner's case, Your Honor.

5 THE COURT: Anything from the State?

6 MS. WHITE: Yes, Your Honor. We call Doug Barfield
7 to the stand.

8 DOUGLAS BARFIELD, after having first being duly
9 sworn, testified under oath as follows:

10 THE COURT: State your name, please.

11 THE WITNESS: Doug Barfield.

12 DIRECT EXAMINATION

13 BY MS. WHITE

14 Q. Give us a little background. How long have you been
15 practicing law in South Carolina?

16 A. 1984.

17 Q. All right. And what's your history been in regards
18 to criminal versus civil or...

19 A. From '84 through about 2000, I was a part-time
20 assistant solicitor and in private practice. And in 2000
21 I went full time with the Solicitor's Office, and in the
22 fall of 2006, I became solicitor.

23 Q. Okay. And so in this case that we've talked about
24 you were working with this case, you were working in your
25 capacity as solicitor?

DOUGLAS BARFIELD - DIRECT EXAMINATION BY MS. WHITE

1 A. Yes.

2 Q. All right. Now, do you recall this case?

3 A. I do.

4 Q. And in regards to this situation, do you recall if
5 you had any kind of plea offer or discussions with
6 Mr. Cook about any plea offers?

7 A. It is my belief that there was never a plea offered
8 extended in this case. And to explain that, my office
9 gets files from law enforcement. When we know who an
10 attorney is, we provide a copy of the file to the
11 attorney. If there is going to be a plea offer, we
12 include with the discovery a form that we have called plea
13 offer. On that form we list all the charges, the
14 indictment numbers and warrant numbers if we already have
15 indictment numbers, indicate on that form what we want the
16 defendant to plea to, what our recommendation or
17 negotiation might be as the what the charge will be, what
18 the sentences will be, whether it will be concurrent or
19 consecutive.

20 In this case I have in my file -- first of all, my
21 office was torched in August of 2008. I have a file in my
22 hand which is actually copied from the charge file that
23 was in my office. So I had to recreate a file. But I
24 have two plea offer sheets, the same thing. One is an
25 original; one is a copy. It indicates Mr. Sims' name, his

DOUGLAS BARFIELD - DIRECT EXAMINATION BY MS. WHITE

1 attorney's name, and it indicates his charges. There's a
2 blank at the top of it for the date. And to me, when the
3 date is filled in, that means it's gone across the table
4 to the defense lawyer. I worked up a plea offer. Never
5 sent it to Mr. Cook. There was no date on it. My copy --
6 my original and his copy are still in my file. So prior
7 to the plea, I did not ever extend to Mr. Cook a plea
8 offer on Mr. Sims' case.

9 I do not know when, but sometime after Mr. Cook
10 became Mr. Sims' lawyer, I feel sure he told me this is
11 going to be a plea. This is going to be a plea. There
12 was never any discussion prior to his court date about how
13 it was going to be a plea. I just presumed it was
14 straight up and intended for it to be straight up, and
15 carried that belief into the courtroom on the date of the
16 plea. I do not challenge Mr. Cook's recollection. I
17 simply have no recollection of discussions with him about
18 a sentence. I'm not saying we didn't have discussions
19 about a sentence. I just have no recollection about
20 discussions concerning a sentence on the day of plea.

21 It makes no sense for me going in with a straight-up
22 plea, which is not real common, with a cap of 86 years,
23 would all of a sudden before we stand Mr. Sims up there
24 lower my cap to 20. That just kind of defies logic to me.
25 I had what a considered a bird in the hand, a straight-up

DOUGLAS BARFIELD - DIRECT EXAMINATION BY MS. WHITE

1 plea which is, in a perfect world, the way it's supposed
2 to work. We prosecute it, the judge sentences it, and
3 this was one of those ones where the judge would hear from
4 everybody and impose a sentence. So it just makes no
5 sense to me that I would have said going in with the
6 prospect of an 86-year sentence, Hey, you want to plead
7 for 20. So I just don't recall that than that happened.

8 Q. Do y'all generally work with the victims in the cases
9 as to plea offers? Obviously, I know it's not their
10 decisions, but do y'all generally discuss things like that
11 with them before you --

12 A. Very much so and did in the case. And I don't
13 remember the specifics, but I think I do recall telling
14 the victim and her family in this case that this is a
15 straight-up plea.

16 Q. Okay.

17 A. And everybody in my office knew it was a straight-up
18 plea. This was a fairly high profile case. Everyone knew
19 about it and got a little bit of attention when it
20 happened and it was -- going to be a straight-up plea.

21 Q. Okay. And I guess your experience too just in making
22 plea offers or recommendations here in Lancaster County,
23 when you have everything from recommendations to
24 negotiated pleas, when you go before the judge, do they --
25 you -- I guess Judge Goldsmith is often the sentencing

DOUGLAS BARFIELD - DIRECT EXAMINATION BY MS. WHITE

1 judge. Is it often that they consider him a lenient judge
2 and maybe, you know, like to offer mitigating
3 circumstances, or how does that generally work in
4 Lancaster County?

5 A. Mr. Cook hit on it pretty accurately. They get
6 busted in York County. They don't get busted quite so bad
7 over here in Lancaster County. And I mean nothing
8 negative by that concerning Judge Goldsmith, but people
9 fare pretty well with Judge Goldsmith, who is a very fair
10 judge. And Mr. Cook is also right in that sometimes when
11 we make an offer and it's got a cap, or it's got a
12 negotiated number -- well, a cap in particular. If we put
13 a number as a cap, then we're giving Judge Goldsmith
14 ideas. And some defense lawyers don't like that and I
15 encourage them sometimes when they're pleading over here
16 in Lancaster County to just do it straight up, because if
17 I throw a number out there on the cap, we're telling the
18 judge what we want.

19 Q. Okay. So just to be clear, from your recollection
20 you never made an offer of a cap of 20 in any form or
21 fashion?

22 A. I do not recall doing that, and it does not make
23 sense to me that I would have done it if it was a
24 straight-up plea when he was looking at 86.

25 Q. Okay. Thank you.

DOUG BARFIELD - CROSS-EXAMINATION BY MS. METTS

1 MS. WHITE: That's all the question I have for this
2 witness, Your Honor.

3 THE COURT: Any cross?

4 MS. METTS: Yes.

5 CROSS-EXAMINATION

6 BY MS. METTS

7 Q. You indicated that -- just so I'm clear, is this an
8 independent recollection of Mr. Sims' case?

9 A. Yes, ma'am. I remember the case. I'm not saying I
10 remember every word I spoke with anybody about it. Yes, I
11 remember Mr. Sims' case.

12 Q. That's where I was going with it. As far as the file
13 you recreated, were you able to determine if anything,
14 notes or whatnot, may have been left out that file?

15 A. I have everything that I was able to reproduce, which
16 appears to be a complete copy of my file. It -- it
17 appears to be complete.

18 Q. And I guess I'm trying to determine if you can tell
19 us whether there are any discrepancies in your file from
20 the original.

21 A. Well, the original technically would be maintained by
22 the Lancaster Police Department. I did not, for purposes
23 of this PCR, go back and get their file. I copied -- my
24 practice was I had tons of files that got -- some got
25 actually burned. Some got water damaged. Some got

DOUG BARFIELD - CROSS-EXAMINATION BY MS. METTS

1 charred and smoked up. But my practice when I had to
2 recreate one of my files was to copy everything that was
3 copyable from that file, and I just presume I did this in
4 Mr. Sims' case. And you can see the smoke -- black
5 smudges on this file is where smoke got on it.

6 Q. And you indicated that -- what your typical practice
7 was as far as extended a plea offer. If Mr. Cook had come
8 to you and wanted to negotiate a plea, would you have had
9 a conversation with him about it?

10 A. Certainly we would have talked about.

11 Q. So even if you didn't put a plea offer in writing,
12 you still would have discussed it with the defense
13 attorney if they wanted to, whether you agreed or not?

14 A. Certainly would have discussed it. Of course, I
15 think the law is that there's no entitlement to a plea
16 offer. We generally extend plea offers, but sometimes we
17 don't.

18 Q. And do you have any independent recollection as to
19 conversation that Mr. Cook testified to?

20 A. I absolutely do not. And, again, I'm not trying to
21 put words in his mouth. It would make more sense to me if
22 he had whispered to me, "How about a cap of 20?" instead
23 of me saying, "Do you want a cap of 20?" That just defies
24 logic from my perspective, but I don't know.

25 Q. Okay. And other than the testimony you've given, do

DOUGLAS BARFIELD - DIRECT EXAMINATION BY THE COURT

1 you remember anything specifically about the sentencing
2 for Mr. Sims?

3 A. No, ma'am.

4 MS. METTS: I have nothing further.

5 MS. WHITE: Nothing from the State, Your Honor.

6 THE COURT: Do you have any objection if I ask a
7 couple questions?

8 MS. WHITE: No, ma'am.

9 MS. METTS: No, ma'am.

10 EXAMINATION BY THE COURT

11 Q. Mr. Barfield, do you recall having any discussions
12 with the victims about their position as it related to the
13 plea at all?

14 A. Again, I'm not going to be able to recall specifics
15 of discussions, but I did talk with the victim and her
16 family on more than one occasion, I'm sure, and I'm kind
17 of getting into the defense lawyer mode. My general
18 practice is to explain what all the charges are, what the
19 potential sentences are. This was not a case that was
20 going to be a lowball plea from her perspective and we
21 never viewed it that way.

22 Q. The transcript makes reference to perhaps -- and you
23 asked this of Mr. Cook -- makes reference to the idea that
24 at one time the victim's mother wanted to meet with the
25 defendant. Do you have any --

DOUGLAS BARFIELD - DIRECT EXAMINATION BY THE COURT

1 A. When I read the transcript the other day, I do
2 remember something about that, but I did not talk to the
3 victim yesterday or today and can't answer that.

4 Q. And you don't have any -- do you have any
5 recollection of a discussion at the time that all these
6 events unfolded?

7 A. About the victim having conversation with Mr. Sims?

8 Q. Or wanting to have a conversation with Mr. Sims.

9 A. We talked about that. But I can't remember whether
10 the transcript accurately reflects what was going on with
11 that or not. I remember having some limited discussions
12 with the victim about that issue but don't know the
13 details. And I do not believe from my discussions with
14 the victim that she was ever coming to me saying, "This
15 was all a big mistake. Let's be easy on him." That never
16 was her stance.

17 THE COURT: That's all I have. If there's any
18 further questions, Ms. Metts or Ms. White?

19 MS. METTS: Nothing, Your Honor.

20 MS. WHITE: Nothing, Your Honor.

21 THE COURT: Thank you. You may step down. Anything
22 further?

23 MS. WHITE: No further witnesses from the State, Your
24 Honor.

25 MS. METTS: No further witnesses, but I would like to

1 make a brief statement to the Court if the Court would
2 allow me.

3 THE COURT: Yes, ma'am.

4 MS. METTS: Your Honor, the first time I spoke with
5 Mr. Cook about the situation was actually more than a year
6 ago. And I had also spoken with Mr. Cook when I was first
7 appointed to represent Mr. Sims in reference to this
8 matter, and his testimony did not change. Your Honor, in
9 reviewing Mr. Sims' application, I would like for the
10 Court to take into consideration that the PCR, the plea,
11 should really focus on his impression of the situation.
12 And by Mr. Cook's own testimony, as far as what he
13 anticipated as far as his sentencing with Judge Goldsmith,
14 I don't think it's unreasonable that Mr. Sims would pick
15 up on that and have confidence on that if his attorney
16 believed there's a more favorable result that's what he's
17 going to have.

18 His mother retained Mr. Cook shortly after he was
19 incarcerated. He maintained a really good relationship
20 with Mr. Cook, and even today he has no specific criticism
21 of Mr. Cook as an attorney because he believes Mr. Cook
22 did try to represent him to the best of his ability, and
23 he thinks that was Mr. Cook's goal was to get him the best
24 possible sentence he could.

25 His reason for filing the PCR is he thinks there's

1 things the judge should have known that may have affected
2 the outcome of his case, and it made him appear as if he
3 was -- as if he set out to kidnap children, and that was
4 never his intention. He never denied the fact he stole
5 things. He never denied the fact he had a serious drug
6 problem, and even in his delirium of being high, extremely
7 high on drugs, he still had the forethought to realize
8 that, you know, there are children in the car. I can't do
9 that.

10 THE COURT: I'm not sure Ms. Metts, then, that I
11 understand exactly what the specific allegations are as it
12 relates to ineffective assistance of counsel.

13 MS. METTS: Based on his conduct or the relationship
14 that he had with Mr. Cook, he remembers clearly the
15 conversation he had with Mr. Cook and because Mr. Cook was
16 surprised about the sentence Mr. Sims got, it stuck in
17 Mr. Sims' mind. And I think there's a lot of weight to
18 the fact that Mr. Sims and Mr. Cook would have more reason
19 to remember these specifics of the case because they were
20 surprised by the case than the prosecutor's recollection,
21 Your Honor.

22 And there's nothing that contradicts the testimony
23 that Mr. Sims gave nor Mr. Cook gave. The prosecutor felt
24 it was out of character for him to do it, but there's
25 nothing to contradict the testimony. And I'm thinking

1 that if all things are equal, we'd ask the Court give
2 more -- err on the side of Mr. Sims, for lack of better
3 phrasing.

4 THE COURT: And so I want to be clear. What your
5 theory of that evidence is that --

6 MS. METTS: Had Mr. Sims known that there was a
7 possible cap, it may have changed the way that he pled
8 guilty. But when Mr. Sims came to plead, this was his
9 first time in general sessions about this case, and he
10 came over there to plead guilty. So it's not as if there
11 was any time for him to have any conversations with
12 someone about a cap on this sentence. And when he had an
13 appeal filed on his behalf, that issue was not known at
14 the time, so it wasn't something that could have been
15 addressed on appeal whether he should have had a right to
16 make that determination.

17 And in his mind, he thought that the 15 to 20 years
18 he would have gotten was based on his attorney
19 conversations with the prosecutor. He finds out after the
20 fact when he got 27 years, that that was not the case.
21 His trial attorney has acknowledged to the Court there was
22 a possibility that could have been the case, and it was
23 Mr. Sims' right to make that decision.

24 I don't think he would have pled guilty or at least
25 he indicated to me he wouldn't have pled guilty if he

1 thought there was the possibility that the sentence was
2 going to be 15 to 20 years. And he based that decision on
3 conversation and trust that he had with his attorney, and
4 his conversations with his attorney, and maybe his
5 attorney's impressions of the sentencing judge were wrong,
6 but that influenced my client to plead guilty because he
7 thought he would get no more than 20 years, and that's not
8 what happened.

9 And the whole point of the PCR hearing is if there's
10 some action that the attorney took, whether on purpose or
11 not, that the attorney failed to do or did do that
12 affected the outcome of my client's decision, then my
13 client shouldn't be held accountable for it. He pled
14 guilty because he thought for some reason he wouldn't get
15 any more than 15 to 20 years, and this was communicated to
16 him, whether intentionally or not, from his attorney. And
17 had he known that, he may not have pled guilty. If he had
18 known he was looking at more than 20 years, he wouldn't
19 have pled guilty. He would asked his attorney to talk to
20 prosecutors is what he's indicating to me, Your Honor.
21 And that's all I have to say.

22 THE COURT: Ms. White?

23 MS. WHITE: Thank you, Your Honor. In regards to the
24 weight of the testimony, to begin with, obviously the
25 testimony is -- kind of contradict themselves because the

1 applicant is saying he was told there was a 20-year cap or
2 20-year deal before they went in to plead guilty, whereas
3 Mr. Cook is saying he never negotiated or had any issue or
4 discussion with him until the moment they walked in. So
5 whether or not that that recollection should add more
6 weight to the applicant's case I think is a contradictory
7 statement and argument because, you know, Mr. Cook himself
8 stated that there was no negotiation, no discussion of any
9 kind of deal prior to going in there, that he obviously
10 was hoping there was no -- there was no issue with the
11 crime itself, this was also going to be a plea, and that
12 they were hoping that with the mitigating factors -- and I
13 think the record reflects they presented a strong case in
14 mitigation. They presented the strong research into, you
15 know, rehab facilities, research into asking the court to
16 consider the fact that he had obviously been struggling
17 with drug and alcohol issues, and they were hoping that
18 this was going to offer some kind of reduced sentence in
19 that.

20 And in doing that, he was preparing for a plea the
21 entire time. There was no question about that. Obviously
22 they were hoping for 15 to 20 years. Based on -- from
23 what I could see and I read his experience in general
24 sessions began in about 2003 and had at least 11 prior
25 convictions until this time in 2009. I think that

1 combined with all the other time in general sessions on
2 this particular charge, obviously he had experience in
3 general sessions prior to this. He had received numerous
4 sentences before this.

5 He was not contesting his guilt in any form or
6 fashion. It was well presented. His testimony was he
7 didn't know the kids were in the car. Obviously it was
8 also well presented that the victim heard him and
9 specifically said, "My kids are in the car" and he said
10 you know, something about the kids. So it was definitely
11 presented both side to the Court for the judge to make his
12 decisions.

13 In regards to the alleged plea offer, the State would
14 contest that there was no actually plea offer made, even
15 if there was a discussion before the they entered court
16 about a 20-year cap, even as Mr. Cook states. 20-year
17 cap, no discussion if it was a recommendation. No
18 discussion if it was negotiated. At this point, you know,
19 there's nothing to go on. There's nothing really to
20 share. I mean, you know, there's nothing that you can
21 actually put before a judge without knowing if it's
22 recommendation or negotiated.

23 You know, even if was a recommendation, Judge
24 Goldsmith obviously had the discretion to go far beyond.
25 And I think that based on his sentence, he felt pretty

1 strongly about the facts of the case. But in -- other
2 than that, you know, I think that in the case Mr. Sims was
3 willing to plead straight up. He went there, he was
4 informed about the charges, informed about the potential
5 sentence, and it was clear on the record he was willing to
6 face up to 86 years and take the risk that with the
7 presentation of the mitigation that he might get less.
8 And so the State would ask that you deny his application.

9 MS. METTS: Your Honor, is that the end of the
10 argument, or could I respond to that?

11 THE COURT: I'll let you respond, yes, ma'am.

12 MS. METTS: I'll be brief. My client never said that
13 there was a cap, Your Honor. My client said based on his
14 conversations with his attorney, he believe he was walking
15 into a plea where there was a cap of -- where there was no
16 more than 15 to 20 years. He said he didn't say that he
17 saw anything in writing or his attorney told him that
18 specifically. And, Your Honor, from his attorney's
19 testimony that's what his attorney believed, and I believe
20 that was communicated to Mr. Sims. And I'm looking at his
21 sentencing sheet and unless this is incomplete, I don't
22 see the long list of convictions that counsel referred to,
23 unless this is an incomplete list. I didn't see -- the
24 most serious thing that Mr. Sims ever did was the charge
25 that he's in prison for now. I didn't see significant

1 criminal history on the.--

2 MS. WHITE: I'm referring to the transcript, pages 6
3 to 8, when they recount his record.

4 MS. METTS: And I'm looking at the printout from the
5 Department of Corrections about SCDC.

6 MS. WHITE: He got probation on most of those.

7 MS. METTS: And I guess, Your Honor, my point is if
8 there's an requirement that an attorney keep clients
9 informed and allow clients to make the decision on all the
10 information, then granting my client's PCR is the right
11 thing to do. Co-counsel implied that he was walking in
12 front of the judge knowing he would get 86 years. My
13 client never thought he was going to get 86 years. My
14 client walked into that plea thinking it was going to be
15 15 to 20 years. If he was looking at a maximum of 86
16 years, which presumably he died in jail, I don't think he
17 would have been quick to stand in front of the judge and
18 accept it because he couldn't have done worse in a trial
19 to take 86 years.

20 And the whole point of the application is it was
21 still his right to make that determination. And had he
22 known this conversation took place, the plea may have been
23 halted or there may have been other conversations. But he
24 believed his attorney that he believed he couldn't do
25 worse than 15 to 20 by going in front of a judge, Your

1 Honor. And to have somebody pleading guilty because you
2 think you're going getting no more than 15 to 20 years is
3 not fair to the person pleading guilty. And that has
4 nothing to do with what sentence he should have gotten.

5 THE COURT: But Ms. Metts, your client's testimony is
6 not that he was promised 20 years or that there was no
7 possibility he would get more than 20, is there? I mean,
8 what I hear from him is he thought it would be more likely
9 15 to 20 years and that's what they were -- shouldn't be
10 any more than 15 to 20, but it wasn't a negotiated
11 sentence in which, you know, there would be 20 and that
12 means definitely no more than 20 or a cap, negotiated cap
13 where we know there would be no more than 20. Based upon
14 what was stated at the plea and the discussions with the
15 judge, your client at least was aware of the fact he could
16 get more than 20 years.

17 MS. METTS: Yes, but his trial counsel is saying he
18 could have guaranteed -- well, not guaranteed. But if
19 there was really was a conversation where he was offered a
20 cap of 20 years, his attorney could have assured he
21 wouldn't have gotten more than 20 years. That's Mr. Sims'
22 point is that if there was that conversation that happened
23 with his attorney where his attorney had an opportunity to
24 make sure he got no more than 20 years, then he wouldn't
25 have gotten 27 because the judge either would have let him

1 step down from his plea if the judge wasn't going to
2 accept the recommendation.

3 THE COURT: And who was the conversation with
4 about --

5 MS. METTS: Mr. Cook is saying he had a conversation
6 with the Solicitor's Office, but it was never communicated
7 to Mr. Sims.

8 THE COURT: So who is Mr. Sims saying he thought he
9 was only going to get 20 years? Where'd that come from?
10 His conversation with Mr. Cook?

11 MS. METTS: I guess based on his sentencing
12 experience with Judge Goldsmith that he didn't want to put
13 a cap on because he felt he could get a better deal with
14 Judge Goldsmith because while I haven't had any experience
15 with Judge Goldsmith as a trial judge, apparently the
16 defense bar felt that Judge Goldsmith was a -- I guess a
17 fair or -- a fair sentencing judge if you were putting a
18 person up for a criminal offense. And if that clouded his
19 judgment as Mr. Cook said, my client is the one that has
20 to serve the time.

21 THE COURT: What I would like for the attorneys to do
22 is prepare proposed orders, specifically on the issue
23 about the sentence itself as it relates to the other
24 claims that Mr. Sims has raised. I think that the
25 transcript of the plea very clearly discusses the

1 mitigating factors. Certainly at the beginning of the
2 plea, Mr. Barfield indicates that -- it says on page 3
3 it's a straight-up plea in all respects. They talk about
4 Mr. Sims's background, and he admitted he had been treated
5 several times. He had been in and out of rehab for drugs,
6 and that the first treatment began in 2003.

7 On page 6, they talk about the previous criminal
8 history and the rap sheet Mr. Sims has and the fact he was
9 on probation at the time this particular offense occurred.
10 And the next several pages, pages 7 through 12, go into
11 great detail with Mr. Barfield relaying the events of this
12 particular offense in which the kidnapping basically was a
13 carjacking from the Wal-Mart parking lot. The victim was
14 the mother and the two young children. Talks very
15 specifically about the events that occurred before
16 Mr. Sims took the car, the fact that the victims the
17 mother was holding onto the van at the time, that he
18 pulled off, that she had let go, the kids were in the car,
19 that she was run over, that she was injured.

20 Then there were discussions about the penalty, and
21 Mr. Sims was very clearly aware of what the minimum was on
22 each one of these charges, that he understood his rights,
23 he understood what he was giving up. Beginning on page 18
24 and 19, the transcript says that Mr. Sims addressed the
25 Court, and it I think it may have been his attorney

1 instead, but it goes very clearly through all the events
2 and then talks about Mr. Sims. Indicated that once he was
3 released, he had to serve a period of time and before he
4 was released on probation, and as soon as he was released
5 he went on a drug binge.

6 And beginning on page 23, it appears that Mr. Sims
7 specifically addressed the Court about -- his addiction to
8 drugs. He clearly tells the Court that he did not realize
9 the children were in the car at the time he took the car,
10 and that after driving off, then he realized that the
11 children were there, and the steps that he took to make
12 sure that the children -- that he didn't take them any
13 further, that they would be left in the safety of somebody
14 so he didn't just abandon them on the side of the road
15 without anyone around, and he went through great pains to
16 discuss that.

17 The Court also heard from the mother, and very
18 clearly heard her reiterate the fact that she pleaded with
19 Mr. Sims, that the children were in the car, that she
20 didn't want them harmed, and offered to give him money,
21 offered everything possible to have him avoid taking the
22 car. That -- in addition also for her to talk about the
23 effects and the fact that she received treatment from a
24 hospital and still had some problems with her leg as a
25 result of the incident, I think that -- and I think very

1 clearly all of that factored into the sentence that the
2 judge ultimately imposed in this particular case. And I
3 understand while there may have been expectations under
4 most normal circumstances or perhaps under similar
5 circumstances, the judge's sentencing may not have leaned
6 toward the maximum, but given the facts of this particular
7 case and what was described and the discussions that took
8 place about the sentence, it doesn't appear that the
9 sentence itself would have been outside of what would be
10 reasonable under the circumstances.

11 I am very interested in hearing -- in reading orders
12 or arguments in greater details about the testimony that
13 we've heard today, because obviously if I choose to
14 believe Mr. Cook, then the failure to communicate an offer
15 would basically be an automatic reason for him to have --
16 to have the application granted. And so I really do want
17 to hear from the attorneys in terms of what specifically
18 your view of the testimony is.

19 If simply Mr. Sims's testimony is "I thought that
20 based on conversations with my attorney that it would be
21 most likely that I would get only 15 to 20 years but I
22 understood, you know, that it was not a promise, it was
23 not a written offer, it was not a" -- then that's a little
24 bit different from there was, in fact, an offer
25 communicated to Mr. Cook and Mr. Cook failed to relay that

1 information to his client. And so I just want to make --
2 and right now, my view of the arguments is that all that's
3 kind of fuzzy. I hear Mr. -- my impression of Mr. Sims's
4 testimony was that, "Yeah, I learned about that after I
5 filed my PCR application and that's not what I'm
6 addressing. I'm really addressing my thought that I pled
7 guilty because we had these previous discussions and I was
8 only going to get 15 to 20 years." So there's a big
9 difference in the testimony and there's a big difference
10 in how it's treated and how it's considered. And so I
11 would ask that you all address specifically that issue.

12 I think his application allegations that his trial
13 counsel failed to properly present any mitigating evidence
14 particularly about the kidnapping factors is without merit
15 in light of the information that's contained in the
16 transcript. I think that was clearly related to the
17 Court. And I think in reading those pages I outlined,
18 pages 23 to 26 and the previous pages, 13 to 15, I think
19 it is, or in that range. Those mitigating factors were
20 clearly brought to the Court's attention, so I find that
21 part of his application to be without merit. But I am
22 interested in the conversations about the sentence that
23 would be imposed and whether or not there was an offer,
24 and what your view is of the evidence as to whether or not
25 there was an offer made. I understand it's conflicting

1 and I heard some argument about the weight, but I'd like
2 to give you you an opportunity to flesh that out.

3 Today is the 28th. Is 15 days enough time? And if
4 you just send -- you can e-mail it to me, and if you need
5 to respond to each other's orders, I'll give you a few
6 days to do that. Just give me your own particular
7 position, and like I said primarily on that issue. I
8 think the other issues are fairly clear, and I'm ruling
9 against Mr. Sims on that particular issue related to the
10 mitigating factors.

11 MS. WHITE: Thank you, Your Honor.

12 MS. METTS: Thank you, Your Honor.

13 THE COURT: And I believe you both have my e-mail
14 address. Thank you.

15 (Whereupon, the proceedings were concluded.)
16
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25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
Common Pleas for Lancaster County, South Carolina, on the
28th day of February, 2012.

September 14th, 2012

Aminah R. Hardy

Aminah R. Hardy, RPR

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Phillip Sims, #301566,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

DOCKET NO. 2009-CP-29-0859

ORDER OF DISMISSAL

FILED
CLERK OF COURT
LANCASTER, SC
2012 MAR -3 PM 3:30

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 11, 2009. The Respondent made its Return on or about October 21, 2009. An evidentiary hearing into the matter was convened on February 28, 2012, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by M. Rita Metts, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was David C. Cook, Esquire, and Douglas A. Barfield, Jr., Esquire. This Court also had before it a copy of the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the August 2008 term of the Lancaster County Grand Jury for one (1) count of Carjacking (08-GS-29-0976), two (2) counts of kidnapping (08-GS-29-0977, -0978), one (1) count of Possession or Display of Firearm or Knife During Commission of a Violent Crime (08-GS-29-0979), and one (1) count of Resisting Arrest (08-GS-29-0980). David C. Cook, Esquire, represented the Applicant. On February 27, 2009, the Applicant pled guilty to each charge as indicted. The Honorable Brooks P. Goldsmith sentenced him to confinement for a period of twenty (20) years for Carjacking (08-GS-29-0976), twenty seven (27) years for each count of Kidnapping (08-GS-29-0977, -0978), five (5) years for Possession or Display of a Firearm or

Knife During Commission of a Violent Crime (08-GS-29-0979), and one (1) year for Resisting Arrest (08-GS-29-0980). The charges were set to be served concurrently.

The Applicant then filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal by written order dated April 29, 2009, and it was returned to the lower court by Remittitur dated May 26, 2009.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. "Counsel misinformed applicant as to his sentence,"
 - b. "Counsel failed to call witnesses on his behalf,"
 - c. "Counsel failed to present mitigating facts as to the circumstances as to the kidnapping charge."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Applicant claimed that plea counsel was ineffective for failing to present mitigating facts as to the kidnapping charges at the plea. The Applicant testified that he wanted Counsel to introduce the witness statement of Randolph Gainey, which would have indicated that the Applicant stopped the van and called Mr. Gainey to the van to watch over the children when Applicant realized the children were in the van. However, Applicant testified that Counsel did not introduce that statement at his plea. This Court finds that this claim lacks merit. Counsel spoke at the plea of the fact that the Applicant maintained that he did not know that the children were in the van and that when he saw people he knew, he stopped the van so that he would not abandon the children. (Tr. p. 12-13). Additionally, the Applicant had the opportunity to speak at his plea and informed the court of his contacting Mr. Gainey and another gentleman to watch the children in the van when he left after realizing what he had done. (Tr. p. 23-34). This Court finds that there was no deficient performance for Counsel's failure to introduce the actual witness statement of Mr. Gainey at the plea because the information was presented to the court and considered in conjunction with the victim's statement at the plea that he was aware that her children were in the car, even though the actual statement was not provided. This Court finds that the Applicant has failed to meet his burden of proof as to this claim, so it is denied and dismissed.

The Applicant also alleged that Counsel was ineffective for failing to call witnesses on his behalf. The only testimony or evidence provided in support of this allegation was Applicant's testimony that his family did not speak on his behalf at his guilty plea. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993);

Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant failed to offer any evidence to testimony as to what they would have testified to had they spoken and none of the alleged witnesses that Counsel failed to produce at his plea testified at the PCR hearing. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

The Applicant also alleged that Counsel misinformed him regarding his sentence, testifying at the hearing that Counsel told Applicant that he would not receive more than fifteen to twenty years. Applicant testified that he knew he was going to plead guilty, but believed that he would get no more than twenty years. Counsel testified that he never told the Applicant that he was going to receive a fifteen to twenty year sentence, but only told him that he would ask the court to consider sentencing Applicant to fifteen years. Counsel testified that he had not engaged in any plea negotiations with the Solicitor's office and he believes that it was probably because he did not want to go before Judge Goldsmith with a particular number, but rather wanted to present the mitigating information and research on rehabilitation facilities in an effort to obtain a lesser sentence. Although the Applicant testified he thought he was receiving between fifteen and twenty years, it is clear from the record that he was aware that he faced up to a total of eighty-six years and that the maximum he faced on each of the kidnapping charges was thirty years. (Tr. p. 16-17).

Counsel testified that as he was entering the courtroom for Applicant's plea, Solicitor Barfield approached him and asked, "what about a cap of twenty?" Counsel testified that he did not inform the Applicant of that conversation or file a motion for reconsideration when the Applicant was sentenced to twenty-seven years. Counsel testified that he felt very bad about it and had started a letter to the Applicant to encourage him to file a post-conviction relief application when he was contacted by the Attorney General's office informing him that one had been filed. Counsel acknowledged that he probably learned of the application around January 31, 2011, when he was first contacted in regards to testifying about the case, which was close to one year past the filing deadline for the Applicant to have filed his application. Counsel acknowledged that it would be atypical for the Solicitor to offer a plea as he was entering the

and #4

courtroom when a defendant was willing to plead straight up.

On the other hand, Doug Barfield, the Solicitor for the Sixth Judicial Circuit, who also handled the Applicant's plea, testified that there was never a plea offer in this case. Barfield testified that his standard practice is to provide a plea offer with discovery and that both plea offer sheets for the Applicant's case are in the file with no date, which indicates that they were never extended or provided to Applicant or Counsel. Barfield testified that he has no recollection of any conversation with Counsel about a twenty year cap and it makes no sense that he would suddenly offer a cap of twenty years when the Applicant was willing to plead straight up with no recommendations.

In reviewing the testimony presented to this Court by the Applicant and both attorneys, and the record, in which the Solicitor introduces the case and informs the court that the Applicant is before the court pleading guilty to "a straight-up plea in all respects," (Tr. p. 3), this Court finds that as a matter of fact, there was no plea offer made by the Solicitor directly prior to the guilty plea hearing. This Court finds Mr. Barfield's testimony credible that he did not discuss any plea offers with Counsel prior to the date of the guilty plea and would not and does not recall making any last minute offer of a twenty year cap before walking in to what he understood to be a straight-up plea by the Applicant. Furthermore, had a plea offer been made prior to the plea hearing, after the Applicant receiving a sentence of twenty-seven years, this Court finds it likely that Counsel would have moved to withdraw the plea or made a motion for reconsideration based on the testimony of how strong his recollection of the offer was and how strong his feelings were.

However, even if this Court had determined that a plea offer had been made to Counsel, which was not conveyed to the Applicant for consideration, this Court finds that the Applicant still would not have met his burden of proving that he suffered prejudice as a result of Counsel's deficient performance. The South Carolina Supreme Court has held that their preferred method for determining whether, but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer is to look at those cases on a case-by-case approach. However, a defendant must show actual prejudice to prevail in these cases. Davie v. State, 381 S.C. 601, 613, 675 S.E.2d 416, 422 (2009). In Davie, the Court based their decision on four specific facts: 1) the fact that both plea counsel and the Solicitor testified that the State had originally offered a plea offer of fifteen years

and
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for the charges; 2) counsel's acknowledgement that he failed to communicate the plea offer to his client; 3) the Applicant's testimony that he would have definitely taken the offer had it been presented to him; and 4) the substantial difference in the amount of time received (twenty-seven years) and the fifteen year offer.

This case is clearly distinguishable from the factual scenario in Davie; in that the only similar fact is that plea counsel testified that he failed to communicate a plea offer. The Applicant never once presented to this Court testimony that he was even alleging that counsel was ineffective for failing to convey the plea offer and this Court has found that there was not a plea offer. Furthermore, even if a discussion had been held regarding a twenty year cap, there was no indication that it was anything less than a recommendation by the Solicitor, not a specific offer of a negotiated sentence that a judge would either have to accept or decline to accept. This Court finds that based on the Applicant's previous record (Tr. p. 6-7), the facts of the case (Tr. p. 7-12), and the victim and her husband's statements (Tr. p. 26-30), it is likely that the judge would still have given the Applicant a sentence which exceeded twenty years.

This Court also notes that the Applicant never alleged in any amended allegations or at the hearing that Counsel was ineffective for failing to convey the alleged plea offer or that had he known of the alleged twenty year cap, that he would have agreed to that. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). The Applicant has never raised the failure to communicate a plea offer as an actual allegation. This Court cannot find that Counsel was ineffective for failing to convey a plea offer when the allegation was never made in the first place, the facts do not support a plea offer being made, and even if a plea offer was made, the Applicant would have failed to demonstrate prejudice. Therefore, in addition to making the factual finding that a plea offer was never made in this matter prior to the hearing, this Court finds that the Applicant failed to plead this allegation and present sufficient testimony or evidence to prove prejudice. This claim is denied and dismissed.

CONCLUSION

This Court finds counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test -- that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland -- that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

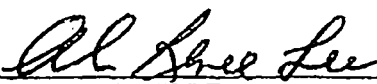
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

ad #1

April 2, 2012
Columbia, South Carolina.

Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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

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

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ALISON RENEE LEE
Presiding Judge

ad
#1

April 2, 2012
Columbia, South Carolina.

WITNESSES

K. Grant - LPD #08-9188

DOCKET NO. 2008-GS-29-976

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

ARREST WARRANT NUMBER/DOA

K276796 (DOA-5-30-08)

ACTION OF GRAND JURY

TRUE BILL

THE STATE

vs.

Phillip Keith Sims

Foreperson of Grand Jury
Date: AUG 31 2008

VERDICT

Indictment for

Carjacking

SC Code: § 16-3-1075
CDR Code: 2599
Class: Felony, C

Foreperson of Petit Jury
Date:

FILED
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OF COURT
2008 JUL 31 P 3:16
LANCASTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

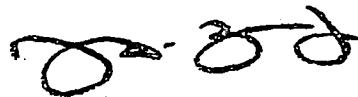
INDICTMENT

At a Court of General Sessions, convened on July 31, 2008, the Grand Jurors of Lancaster County present upon their oath:

CARJACKING

That Phillip Keith Sims did in Lancaster County on or about May 29, 2008, take or attempt to take a motor vehicle from another person by force and violence or by intimidation while the person was operating the vehicle or while the person was in the vehicle, to wit: while April Ellis Deese was in her Honda Odyssey, in violation of § 16-3-1075, *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Grant - LPD #08-9188

ARREST WARRANT NUMBER/DOA

(276797 (DOA-5-30-08)

ACTION OF GRAND JURY

TRUE BILL

T.D. Hammond

Foreperson of Grand Jury

Date:

AUG 31 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-29-977

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

Phillip Keith Sims

Indictment for

Kidnapping

SC Code: § 16-3-910

CDR Code: 0095

Class: Felony, A

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OF COURT
2008 JUL 31 P 3 16
LANCASTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

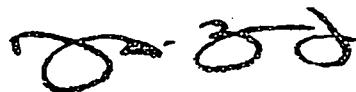
INDICTMENT

At a Court of General Sessions, convened on July 31, 2008, the Grand Jurors of Lancaster County present upon their oath:

KIDNAPPING

That Phillip Keith Sims did in Lancaster County on or about May 29, 2008, by any means whatsoever unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away another person, the victim, Minor 2 age 2, without authority of law in violation of § 16-3-910, *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

K. Grant - LPD #08-9188

DOCKET NO. 2008-GS-29-978

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

ARREST WARRANT NUMBER/DOA

K276798 (DOA-5-30-08)

ACTION OF GRAND JURY

TRUE BILL

THE STATE

vs.

Phillip Keith Sims

Foreperson of Grand Jury **AUG 31 2008**
Date:

VERDICT

Indictment for

Kidnapping

SC Code: § 16-3-910
CDR Code: 0095
Class: Felony, A

Foreperson of Petit Jury
Date:

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LANCASTER COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

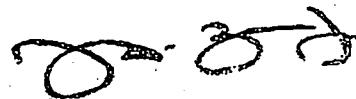
INDICTMENT

At a Court of General Sessions, convened on July 31, 2008, the Grand Jurors of Lancaster County present upon their oath:

KIDNAPPING

That Phillip Keith Sims did in Lancaster County on or about May 29, 2008, by any means whatsoever unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away another person, the victim, Minor 1 age 4, without authority of law in violation of § 16-3-910, *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

K. Grant - LPD #08-9188

DOCKET NO. 2008-GS-29-979

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

ARREST WARRANT NUMBER/DOA

K276799 (DOA-5-30-08)

ACTION OF GRAND JURY

TRUE BILL

THE STATE

vs.

Phillip Keith Sims

J. D. Hammond
Foreperson of Grand Jury
Date: AUG 31 2008

VERDICT

Indictment for

**Possession or Display of Firearm or
Knife During Commission of a Violent
Crime**

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

Foreperson of Petit Jury
Date:

FILED
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OFFICE OF COURT
2008 JUL 31 P 3:16
LANCASTER COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

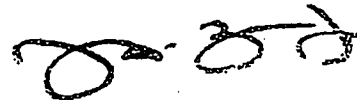
INDICTMENT

At a Court of General Sessions, convened on July 31, 2008, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
 VIOLENT CRIME**

That Phillip Keith Sims did in Lancaster County on or about May 29, 2008, possess or visibly display a firearm or knife, to wit: a knife during his/her commission of a violent crime, to wit: Carjacking of April Ellis Deese and kidnapping of Minor 2 and Minor 1 in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended.*

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



 Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

K. Grant LPD #08-9188

ARREST WARRANT NUMBER/DOA

K276800 (DOA-5-30-08)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: AUG 31 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-29-980

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

Phillip Keith Sims

Indictment for

Resisting Arrest

SC Code: § 16-9-320(A)

CDR Code: 0326

Class: Misdemeanor, C

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2008 JUL 31 P 3:16
LANCASTER COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on July 31, 2008, the Grand Jurors of Lancaster County present upon their oath:

RESISTING ARREST

That Phillip Keith Sims did in Lancaster County on or about May 29, 2008, knowingly and wilfully oppose or resist Officers Craig Greenlee, Terry Cureton, and Dwayne Davis of the Lancaster Police Department, a law enforcement officer, who was serving or executing or attempting to serve or execute a legal writ or process or arresting the defendant, the officer being a person the defendant knew or reasonably should have known is a law enforcement officer, in violation of § 16-9-320(A), *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

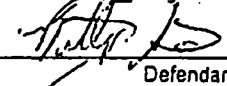
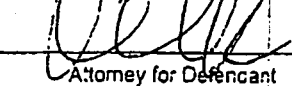
IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER
STATEINDICTMENT CASE#: 2008-GS-29-976VS.
Phillip Keith Sims
AKA:
Race: W Sex: M Age: 31
DOB: 1AW#: K276796
Date of Offense: 5/29/08
S.C. Code #: 16-3-1015(A), (B)(1)
CDR Code #: 2599City, State, Zip: Lancaster, SC 29720
DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant, who was ☐ CONVICTED OF or ☒ PLEADSTO: Carjackingin violation of § 16-3-1015(A), (B)(1) of the S.C. Code of Laws, bearing CDR Code #: 2599☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(OSC w/minor 1st or Lawd Act)The charge is: ☒ As Indicted, ☐ Lesser included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

 Solicitor  Defendant  Attorney for Defendant SC Bar # 75081WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

\$14-1-206 (Assessment: 107.5%) \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ _____ Beginning _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$ _____ paid to Public Defender Fund

\$56-5-2995 (DUI Assessment) \$12 \$ _____

Other: _____

\$35-13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(B) Breath Test Fee; \$50 \$ _____

\$56-5-2942(B) (Vehicle Assessment) \$40/lea \$ _____

3% to County if paid in installments: \$ 3.90\$30-1-1 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code: _____

Sentence Date: February 27, 2009Court Reporter: Mike Watkins

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER
STATE

NO. CIV. EX. CASE# 2008-SS-33-917

Philip Keith Sims

AKA# K276797

AKA

Date of Offense 5/29/08

Race W Sex M Age 31

S.C. Code § 16-3-910

DOB

CDR Code # 0095

City, State, Zip Lancaster, SC 29120

SENTENCE SHEET

DL# SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Kidnapping

In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(OSC with or "or" Lawd Act)

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

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

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature] 75081
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 27 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ set by SCDPPPS _____

Attend Voc Rehab or Job Corp. _____

Recipient: _____

May serve WE beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5% \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv. Surcharge \$100 \$100.00

pmts. of \$ _____ Beginning _____

§14-1-211(A)(2) (DUI Surcharge \$100 \$ _____

\$ _____ paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____

Other: ATU

§35-13 (Public Def/Prob) \$500 \$ _____

§73-3, 18 TP (Law Enforce. Funding) \$25 \$25.00

§33-7, 18 TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(B) (Breath Test Fee) \$50 \$ _____

§56-5-2942(a) (Vehicle Assessment) \$400ea \$ _____

3% to County (if paid in installments) \$ _____

§90-11 TP (SOCA Surcharge) \$5 \$5.00

TOTAL \$133.80

PRESIDING JUDGE

Judge Code

Sentence Date

Court Reporter

February 27, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER
STATENO. OF CASE# 2008-GS-29-978S
Phillip Keith SimsA# K276198

AKA:

Date of Offense 5/29/08Race: W Sex: M Age: 31S.C. Code § 16-3-910

DOB: SSN:

DDR Code # 0095

Address:

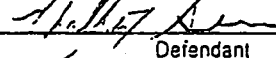
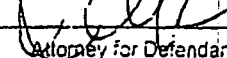
City, State, Zip Lancaster, SC 29720

SENTENCE SHEET

DL# SSN

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing DDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC winner 1st or Lower Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, Defendant Initial:The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

 Solicitor  Defendant  Attorney for Defendant SC Bar # 75081WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 27 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-125.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCOPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve WE beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

§14-1-206 Assessments 107.5%: \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv. Surcharge): \$100 \$ 100.00

cmts. of \$ _____ Beginning _____

§14-1-211(A)(2) (DUI Surcharge): \$100 \$ _____

\$ _____ paid to Public Defender Fund

§56-5-2995 (DUI Assessment): \$12 \$ _____

Other: _____

§35-13 (Public Def./Prob): \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding): \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge): \$100 \$ _____

§50-21-114 (SUI Breath Test Fee): \$50 \$ _____

§56-5-2942(a) (Vehicle Assessment): \$40/ea \$ _____

3% to County (if paid in installments): \$ 3.90§90-11 TP (SCCJA Surcharge): \$5 \$ 5.00TOTAL: \$ 133.90☐ Appointed PD or appointed other counsel, §35-13 TP☐ Requires \$500 be paid to Clerk upon probation

PRESIDING JUDGE

Judge Code

Sentence Date:

February 27, 2009

Court Reporter

Clerk of Court/Deputy Clerk

Mike Watkins

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER
STATEINDICENT CASE# 2008-SS-979S
Phillip Keith SimsAKA# K276799Race W Sex M Age 31Date of Offense 5/29/08DOB SSS.C. Code § 16-23-490

Address

CCR Code # 0549

City/State/Zip

SENTENCE SHEET

DL# SSIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Use of Knife during Commission of Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CCR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(OSC w/minor "1" or Lawd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Defendant Initial,The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

[Signature] [Signature] [Signature] 15061
Solicitor Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5%:	\$	
§14-1-211(A)(1) (Conv. Surcharge	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35-13 (Public Def/Proc)	\$500	\$
§73-2-13 TP (Law Enforce. Funding	\$25	\$ 25.00
§33-7-13 TP (Drug Court Surcharge	\$100	\$
§50-21-114(BU) Breath Test Fee	\$50	\$
§56-5-2942(a) (Vehicle Assessment	\$40.00	\$
3% to County if paid in installments	\$	\$ 3.70
§90-11 TP (SCCJA Surcharge	\$5	\$ 5.00
TOTAL	\$	\$ 133.70

☐ Appointed PD or appointed other counsel, §35-13 TP
☐ Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code

Sentence Date

February 27, 2009

Court Recorder

Clerk of Court Deputy Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER
STATEINDICTMENT CASE# 2008-35-39-980

Phillip Keith Sims
 AKA: _____
 Race: W Sex: M Age: 31
 DOB: 11/1/76 SS#: _____
 Address: _____
 City, State, Zip: Lancaster, SC 29120
 DL# _____ S.# _____

AW# K276800
 Date of Offense 5/29/08
 S.C. Code § 16-9-320
 CDR Code # 0326

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Resisting ArrestIn violation of § 16-9-320 of the S.C. Code of Laws, bearing CDR Code # 0326☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(DSC winner of " or Lawd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-125.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCOPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§35-13 (Public Def/Procr)	\$500	\$ _____
§73-3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§33-7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
§50-21-114(BU) Breath Test Fee	\$50	\$ _____
§56-5-2942 (Juvenile Assessment)	\$400ea	\$ _____
3% to County (if paid in installments)	\$	\$ _____
§90-11 (SCOA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>133.90</u>

Random Drug Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

mts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other course: §35-13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

February 27, 2009

Court Reporter: _____

Clerk of Court, Deputy Clerk

Filed this 27 Day of

IN THE COURT OF GENERAL SESSIONS

County of Lancaster
STATE VS.

Clerk of Court
Lancaster County, S.C.

INDICTMENT# 06 -GS- 29 -106 #16
Probation C#s: W-29-08-1252 served 06/02/08

Phillip Sims

AKA:
Race: Sex: M
DOB: 2/1
SSN: 250-67
SID#: 009730001

Name of Original Offense: Purse Snatching
Original AWW#: 4953967
Date of Original Offense: 12/02/05
Conviction S.C. Code §: 16-13-150
Conviction CDR Code #: 0111219
Original Sentence: 2 yrs ss 1 yr and 2 yrs probatio

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 01/23/06 in the Court of General Sessions of Lancaster County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 09-12-06, as set forth in the attached warrant(s) or citation(s) dated 05/30/08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 2, 4, 5, 6, 7, 9, 10 and 11

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 1 months/years the remainder of the original sentence, and/or pay \$ 10
- ☐ the suspended sentence be revoked and the above named defendant be required to serve months/years of the original sentence and/or pay \$; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court: Violation hearing held over PPP objection in regards to victim notification. Revocation to run concurrent to all sentences received 02/27/09. Civil Judgment For monies owed.

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections. since 05/31/08
- ☒ The defendant has previously served 1 months/years on this sentence. (split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540

This 27th day of February, 2009
Lancaster, SC

Presiding Judge Brooks Goldsmith
Sixth Judicial Circuit

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

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

Offender's Signature

Witnessed by

Signed this Day of Month, Year, at City, SC

County of Lancaster
STATE VS.

Clerk of Court
Lancaster County, SC

INDICTMENT#:
-GS- 29 - 105
Case #s: W-29-08-1251 served 06/02/08

Phillip Sims
AKA:
Race: W Sex: M
DOB: 11-11-1971
SSN: 009-13-061
SID#: 00913061

Name of Original Offense: Common law robbery
Original AWW#: H953947
Date of Original Offense: 12/02/05
Conviction S.C. Code §: 16-11-330(A)
Conviction CDR Code #: 0111317
Original Sentence: 8 yrs ss 4 yrs and 3 yrs probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 01/23/06 in the Court of General Sessions of Lancaster County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 04-12-06-10, as set forth in the attached warrant(s) or citation(s) dated 05/30/08. After hearing the evidence and being duly advised, in the presence (absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)
1, 2, 4, 5, 6, 7, 9, 10 and 11

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 4 months/years, the remainder of the original sentence, and/or pay \$ 20
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the original order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court: Violation hearing held over PPP objection in regards to victim notification. Revocation to run concurrent to all sentences received 02/27/09. Civil Judgment for monies owed.

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections. since 05/31/08
- ☒ The defendant has previously served 4 months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 27th day of February, 2009
Lancaster, SC

Presiding Judge Brooks Goldsmith
Sixth Judicial Circuit

CERTIFIED TO BE A TRUE COPY
BY
CLERK OF COURT
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

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

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

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____, at _____ SC

County of Lancaster
STATE VS.

Phillip Sims
AKA:
Race: W Sex: M
DOB:
SSN:
SID#: 00112000

INDICTMENT#
06 -GS- 29 -107
Probation C#s: W-29-08-1250 served 06/02/06
Name of Original Offense: Common law robbery
Original AWW#: 1953946
Date of Original Offense: 12/01/05
Conviction S.C. Code §: 16-11-330(A)
Conviction CDR Code #: 0 1 1 3 7
Original Sentence: 8 yrs ss 4 yrs and 3 yrs probati

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 01/23/06 in the Court of General Sessions of Lancaster County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 05/30/08, as set forth in the attached (warrant(s) or citation(s) dated 05/30/08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

1, 2, 4, 5, 6, 7, 9, 10 and 11

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 4 months/years, the remainder of the original sentence, and/or pay \$ 10
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court: Violation hearing held over PPP objection in regards to victim notification. Revocation to run concurrent to all sentences received 02/27/09. Civil Judgment for monies owed.

CERTIFIED TO BE A TRUE COPY
JEFF BAMMONE
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections. since 05/31/08
- ☒ The defendant has previously served 4 months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 27th day of February, 2009.
Lancaster, SC

Presiding Judge Brooks Goldsmith
Sixth Judicial Circuit

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

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

Offender's Signature

Witnessed by

Signed this _____ day of _____, at _____ SC

STATE OF SOUTH CAROLINA

County of LANCASTER
STATE VS.

FILED

OFFICE OF CLERK OF COURT
FOR LANCASTER COUNTY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#:

GS- 29 - 00146

CW#: C-29-01-

Name of Original Offense: Grand larceny over \$5

Conviction S.C. Code §: 16-13-30 (B)(2)

Conviction CDR Code #: 0, 4, 7, 9

Date of Original Offense: 11-16-03

Original Sentence: 5 years SS on 2 years Probation

Phillip Keith Sims

AKA: _____

Race: White Sex: male

DOB: 1

SSN: 2

SID#: 00973061

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 1/20/04 in the Court of General Sessions of LANCASTER County as set forth in the attached warrant or Citation dated 4/27/04. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 6, 9, and 10

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$_____.
- ☒ the suspended sentence be revoked and the above named defendant be required to serve 4 months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☒ Additional Conditions ordered by the Court:
- Partial Revocation of 4 months and continue Probation.

CERTIFIED TO BE A TRUE COPY

JEFF HAMMOND

CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY S.C.

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

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

This 27 day of April, 2004

Honorable Judge Burch
Presiding Judge

LANCASTER, SC.

Sixth Judicial Circuit

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

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

Offender's Signature: Phillip Keith Sims

Witnessed by: Liah Bell

Signed this 27 day of April, 2004, at LANCASTER, SC