

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

FEB 03 2020

S.C. SUPREME COURT

TARRANCE L. JORDAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001341

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 concurrent on all sentences imposed on this indictment,
2 credit for 375 days already served.

3 Armed robbery, 08-GS-21-1920, the defendant is
4 committed to the State Department of Corrections for a
5 term of 30 years. This sentence is concurrent to all
6 sentences imposed on indictment 08-GS-21-1919 and
7 indictment 08-GS-21-1921 and concurrent to all sentences
8 imposed on this indictment. Credit for 375 days already
9 served. Armed robbery, 08-GS-21-1920 – and for the
10 record there were three armed robbery convictions on this
11 indictment so it's not duplicative or replicating in any
12 sense. The defendant is committed to the State Department
13 of Corrections for a term of 30 years. This sentence is
14 concurrent with all sentences imposed on indictment
15 08-GS-21-1919 and indictment 08-GS-21-1921 and concurrent
16 with all sentences imposed on this indictment. Credit for
17 375 days already served. 08-GS-21-1920, burglary first
18 degree, the defendant is committed to the State Department
19 of Corrections for a term of 30 years. This sentence is
20 concurrent to all sentences imposed on indictment
21 08-GS-21-1919 and indictment 08-GS-21-1921 and concurrent
22 to all sentences imposed on this indictment and credit for
23 375 days already served. Possession of a weapon during
24 the commission of a violent crime, five years, State
25 Department of Corrections. This sentence is concurrent

1 with all sentences imposed on indictment 08-GS-21-1919 and
2 indictment 08-GS-211921 and concurrent to all sentences
3 imposed on this indictment and credit for 375 days already
4 served. Thank you very much.

5 (WHEREUPON, the proceedings were adjourned at 3:24
6 p.m.)

7

8 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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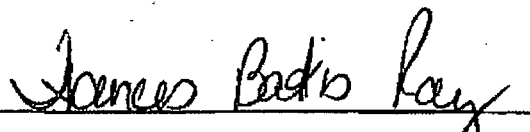
CERTIFICATE OF REPORTER

**STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }**

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 20th day of August, 2010.



**FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014**

FORM 5

CERTIFIED: A TRUE COPY
Cristie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF Florence)
)
Tarrence Laron Jordan 340469)
Full name and prison number (if any) of Applicant.)
)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2013-CP-21-1950

APPLICATION
POST-CONVICTION

FILED
2013 JUL 24 PM 2:13
COURT CLERK
FLORENCE COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Lee County institution 990 wisacky Hwy Bishopville, SC 29010
2. Name and location of Court which imposed sentence Florence County
3. Name(s) of co-defendant(s) (if any) Shakim Williams, Lewis Williams, Johnny Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-21-1919
 - (b) 2008-GS-21-1920
 - (c) 2008-GS-21-1921
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 22nd, 2010 30 years
 - (b) _____

- (b) _____
- 6. Check whether a finding of guilty was made: N/A
 - (a) after a plea of guilty N/A
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A

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

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. State of South Carolina Court of appeals
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. Conviction was Affirmed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. October 3, 2012
 - ii. _____
 - iii. _____

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

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/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) violations of my 6th Amendment rights
- (c) _____

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

- (a) Attorney did not Attack prosecutors Case fully
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction: **NO**

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

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

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

NO

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) My Attorney failed the 6th U.S CA obligations
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Patrick J. McLaughlin
- (c) your sentencing? Patrick J. McLaughlin
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Lanelle Cantey Durant
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Patrick J. McLaughlin / wukela law firm 403 second loop Rd.
 - ii. Florence, SC 29504
 - iii. Lanelle Cantey durant P.O. Box 11589, Columbia, SC 29211
- (b) the proceedings at which each such attorney represented you:
 - i. Patrick J. McLaughlin / Trial Lawyer
 - ii. Lanelle Cantey Durant / Appeal Attorney
 - iii. _____

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

All Charges vacated

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

NO

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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.

James Jones

SWORN to and subscribed before me this 23
day of July, 2013.

Diana Jones (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2013 JUL 24 PM 2:13
CONNIE REEL-SHEARIN
CCLP & GS
FLORENCE COUNTY, SC

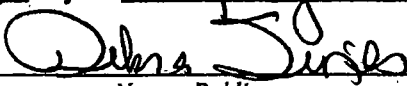
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

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.



 Applicant

SWORN or affirmed to and subscribed before me this
23 day of July, 2013.


 Notary Public

My Commission Expires: 11-4-2015

2013 JUL 24 PM 2:13
 CONNIE REEL-SHEARIN
 CSCP & GS
 FLORENCE COUNTY, SC
FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Tarrance L. Jordan, #340469,	)	Case No. 2013-CP-21-1950
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 24, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In December 2008, the Florence County Grand Jury issued three indictments against Applicant. The first charged Applicant with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1919). The second charged Applicant with three (3) counts of armed robbery and one (1) count each of kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1920). The third indictment charged Applicant with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1921). Patrick J. McLaughlin, Esquire, represented Applicant. On April 19, 2010, Applicant proceeded to trial before the Honorable Ralph K. Anderson, Jr., and a jury. The jury found Applicant guilty as indicted on April 22, 2010. Judge Anderson sentenced Applicant to concurrent terms of thirty (30) years for each armed robbery

conviction, thirty (30) years for each kidnapping conviction, thirty (30) years for each first degree burglary conviction, and five (5) years for each possession of a weapon during the commission of a violent crime conviction. Applicant filed a motion to reconsider his sentence on April 29, 2010, which Judge Anderson denied without argument on April 30, 2010.

Applicant filed a timely notice of appeal and LaNelle C. Durant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 3, 2012. State v. Jordan, Op. No. 2012-UP-537 (S.C. Ct. App. filed October 3, 2012). The remittitur was returned to the circuit court on October 19, 2012.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Attorney did not attack prosecutor's case fully"
2. "Violations of my 6th Amendment rights"

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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." Id. at 117-18, 386 S.E.2d at 625.

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

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 2, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2013-CP-21-1950

TARRANCE L. JORDAN, #340469)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL


STATE OF SOUTH CAROLINA,)

Respondent.)

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

Tristan M. Shaffer, Esquire
120 Gantt St.
Lexington, SC 29072

DATED this 2ND day of May, 2014.


 Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-CP-21-01950
)	
Tarrence L. Jordan,)	
)	
Plaintiff,)	
)	
- vs -	)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

August 8, 2016
 Florence, South Carolina

B E F O R E:

The Honorable William H. Seals Jr., Judge

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

Tristan Shaffer, Esquire
 Attorney for the Plaintiff

Jessica Kinard, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Transcript Excerpt		7
A-2	Opinion		7

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses	trailing off
[ph]	phonetically written
[sic]	written as said

1 AUGUST 8, 2016

2 (WHEREUPON, the proceedings began at 9:46 a.m.)

3 THE COURT: All right. Anything you want to put on the
4 record before we begin?

5 MS. KINARD: No, sir. We're ready to call the case when
6 you are.

7 THE COURT: All right. I am ready. Go ahead and call
8 the case.

9 MS. KINARD: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Sure.

12 MS. KINARD: This is the matter of Tarrence L. Jordan
13 versus the State of South Carolina. It's Case Number 2013-CP-
14 21-1950. We're before the Court on an application for post-
15 conviction relief that was filed July 24th of 2013.

16 The applicant is presently confined pursuant to orders of
17 the Florence County Clerk of Court. In December 2008,
18 Florence County Grand Jury issued three indictments against
19 Mr. Jordan.

20 The first charged him with armed robbery, kidnapping,
21 first-degree burglary, and possession of a weapon during the
22 commission of a violent crime. The second charged him with
23 three counts of armed robbery and one count each of
24 kidnapping, first-degree burglary, and possession of a weapon
25 during the commission of a violent crime. And the third

1 indictment charged him with armed robbery, kidnapping, first-
2 degree burglary, and possession of a weapon during the
3 commission of a violent crime. Patrick McLaughlin represented
4 him.

5 On April 19th, 2010, they proceeded to trial before the
6 Honorable Ralph King Anderson Jr. and a jury. The jury found
7 him guilty as indicted on April 22nd, 2010. Judge Anderson
8 sentenced him to concurrent terms of 30 years for each armed
9 robbery, 30 years for each kidnapping, 30 years for each
10 first-degree burglary, and five years for each possession of a
11 weapon during the commission of a violent crime.

12 A motion to reconsider his sentence was filed on April
13 29th, 2010, which Judge Anderson denied without argument on
14 April 30th, 2010. Mr. Jordan filed a timely notice of appeal
15 and LaNelle Durant of the Office of Appellate Defense
16 perfected his appeal.

17 The Court of Appeals affirmed his conviction on October
18 3rd of 2012. A remittitur was returned on October 19th, 2012.
19 Before the Court, the allegations filed by Mr. Jordan were
20 ineffective assistance of counsel and that his attorney did
21 not attack the prosecutor's case fully, as well as violations
22 of his Sixth Amendment rights.

23 The State is present and ready to proceed. Mr. Jordan is
24 present and represented by Tristan Shaffer.

25 THE COURT: All right. Yes, sir?

1 MR. SHAFFER: Your Honor, during the last term of court I
2 think, we sort of distilled this down between me and the
3 former Attorney General who was handling the cases.
4 Essentially, the primary focus of what I'm going to be arguing
5 relates to a sentencing issue at the end of the case.

6 And essentially, this is what happened. At the end of
7 the case, he ended up getting 30 years. His co-defendants did
8 not get that much time. Subsequent to that, Mr. McLaughlin
9 had received an affidavit from one of the victims in the case
10 saying that he thought he got too much time and that Mr.
11 McLaughlin then moved for a reconsideration. The Court ended
12 up denying that and the -- the method of denial was
13 essentially the Court had written denied without argument and
14 signed the motion.

15 That was appealed. The Court of Appeals ended up finding
16 that it was not preserved because Mr. McLaughlin had not
17 objected to the sentence at the time it was actually issued
18 and there's a case saying essentially that you can't raise a
19 new issue in a motion to reconsider and this would be a new
20 issue.

21 I was going to hand up two things that I'd like to make
22 part of the record and I think that the State is probably not
23 going to oppose them. This is an excerpt and then an opinion.

24 I'm handing up an excerpt from the transcript. Actually,
25 this is an excerpt from the record on appeal, Your Honor, and

1 a copy of the opinion from this case from the Court of
2 Appeals.

3 THE COURT: All right.

4 MR. SHAFFER: And I'd like these marked as Applicant's 1
5 and 2, and I think the State stipulates to their
6 admissibility.

7 MS. KINARD: No objection.

8 THE COURT: All right. Applicant's 1 and 2 into evidence
9 without objection.

10 (WHEREUPON, Applicant's Exhibit Number 1, transcript
11 excerpt, and Applicant's Exhibit Number 2, opinion, were
12 admitted into evidence.)

13 MR. SHAFFER: Thank you, Your Honor. And, Your Honor, I
14 just realized this is that, whenever I actually printed these,
15 the first section of the transcript would be the sentencing
16 hearing or the first section of that. The sentencing hearing
17 -- I actually put that at the rear. So what you have is the
18 motion to reconsider and then the sentencing hearing in that
19 exhibit, Your Honor.

20 THE COURT: All right.

21 MR. SHAFFER: That's the way it's stapled and I apologize
22 for that. The applicant would go ahead and call Patrick
23 McLaughlin.

24 MS. KINARD: Just for the sake of the record, Your Honor.
25 There wasn't a separate sentencing hearing. It was just the

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 sentencing phase of the trial.

2 THE COURT: I'm sure.

3 THE COURT: All right. If you'll go ahead and swear the
4 witness.

5 THE CLERK: Do you swear or affirm that the testimony you
6 give will be the truth, the whole truth, and nothing but the
7 truth?

8 THE WITNESS: I do.

9 PATRICK MCLAUGHLIN, being first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SHAFFER:

13 Q: Mr. McLaughlin, you were the trial attorney for Tarrence
14 Jordan; correct?

15 A: I was.

16 Q: Okay. Tell us a little bit about the allegations against
17 him?

18 A: Tarrence, along with a couple other co-defendants, was
19 accused of allegedly going into -- I think it was three
20 different hotel rooms, basically kind of laying in wait until
21 people went to check into their hotel rooms and then kind of
22 bum rushing them, shoving them in the rooms, holding them at
23 gunpoint, asking them to disrobe. Once they disrobe, putting
24 them in the bathrooms, going through their stuff, their
25 belongings and stuff, basically stealing things from them and

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 then leaving.

2 Q: Okay. And were you appointed or retained in this case?

3 A: I was appointed. I found out that I was appointed before
4 I got the order. Hank Anderson had a relationship with
5 Tarrence's family I believe. I think he knew his -- his
6 stepfather or something, and they had originally been in talks
7 with Hank about representing him. Looking through my notes
8 and stuff, it looks like late June of 2009 I found out from
9 Hank that I was being appointed. Hank went ahead and sent
10 over what little file he had. It took about two -- two weeks
11 or so before I got the order of appointment, which my file
12 reflects July 16th, 2009, is when I got that.

13 Q: Okay. And preparing for this case -- well, once you
14 received the file, did you meet with Mr. Jordan?

15 A: Yeah. I'd been trying to get in touch with him and
16 couldn't. And then eventually what happened was he got picked
17 up on a warrant or something and he was over in Darlington
18 County. And so I eventually was able to get up with him once
19 he was over in Darlington. It looks like it was August 12th,
20 2009, before I got a chance to meet with him.

21 Q: Okay. Now, did you -- at that point, had there already
22 been plea negotiations between either you and the Solicitor's
23 Office or the solicitor and the other co-defendants to your
24 knowledge?

25 A: I don't know if we had talked about any deals. I think

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 we had -- if so, I would have -- my response -- it was Pat
2 Parr and David Richardson who tried this for the Solicitor's
3 Office, and Pat was the lead solicitor.

4 Q: Uh-huh.

5 A: If so, I'm sure I would have said, well, Pat, I haven't
6 even had a chance to meet with my client yet. I knew that
7 they were saying they wanted to try him, like, right away. My
8 notes show that they were talking about trying to put him on
9 the August 2009 roster when I -- when I first I guess spoke
10 with Pat in July of 2009 and, of course, I was, like, well, I
11 don't even -- I haven't even had a chance to meet with him
12 yet. I don't think I'm going to be ready for trial.

13 I'm pretty sure once I met with Tarrence, we had an idea
14 of what the offers were, which I think they were the -- I was
15 told that they were the same offers that were being offered to
16 the other co-defendants. At some point in time, I guess we
17 wanted to make sure that was the case because I know at some
18 point in time I did file a motion to reveal the deal --

19 Q: Yes.

20 A: -- for the other co-defendants to find out if he was
21 getting the same offer that the other co-defendants were.

22 Q: And the deal was -- the deal as stated was what? Fifteen
23 years?

24 A: That sounds about right. I know that -- give me one
25 second. Yeah, they were offering -- they were offering a

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 plea. I sent a letter to him I know in November of 2009,
2 basically kind of a letter memorializing I guess the last
3 meeting that we had had, and I talked about the fact that they
4 were saying they were going to try to try him. There was a
5 two-week term in December and that the State was offering a
6 recommendation of 15 years and it was the same deal the co-
7 defendants got.

8 Q: Okay. What was your strategy? Obviously, you rejected
9 that deal; correct?

10 A: Yes.

11 Q: Okay. What was your strategy preparing this case for
12 trial?

13 A: Well, Tarrence had -- if memory serves me correctly, I
14 don't think he had a criminal record. If he did, it was
15 pretty minor. It -- the -- from my memory, his history
16 certainly looked better than the co-defendants.

17 Q: Okay.

18 A: He had -- I want to say he had done pretty well in school
19 and I think he was trying -- there was some talk about maybe
20 him wanting to go into some branch of the Armed Forces or
21 something like that.

22 The -- one of the -- the major issues I had with their
23 case was I felt that the original identification --
24 identification of Tarrence had been very suggestive. It had
25 been a rollup ID.

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 Q: Uh-huh.

2 A: And so I focused a lot of energy on that and did up a
3 brief on it. We -- we had an argument in front of Judge
4 Anderson about that, trying to suppress it, which we weren't
5 successful. I thought we did a pretty good job of at least
6 making -- preserving that issue on appeal.

7 Q: Okay. And that issue was argued on appeal to your
8 knowledge; correct?

9 A: Yeah. I think so. I want to say I may have actually
10 been at the Court of Appeals the day it was argued. I know
11 that I had -- LaNelle did his appeal.

12 Q: Uh-huh.

13 A: And I know that I had one appeal or hearing, an oral
14 argument, up there one day and I happened to look and one of
15 my cases was on the other side, and I think it was this one
16 because I find -- I thought -- I thought it was a pretty good
17 argument and I thought we had preserved that issue pretty
18 well. And my personal opinion is that the Biggers factors are
19 -- the science has proven that they're not good anymore.

20 Q: Right.

21 A: And I think I sat in on that oral argument with LaNelle
22 just because I was interested in seeing what kind of questions
23 she got from the Court.

24 Q: Okay. Now, as part of your trial preparation, did you
25 have a chance to speak with any of the witnesses in the case?

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 A: I want to say there was a -- there was a teacher of some
2 type maybe, maybe a Susan Abraham I think that I spoke with.
3 I think the mother had a relationship with Representative
4 Williams from over in Darlington and he had contacted me about
5 the case and, you know, I spoke with him.

6 The real problem I saw with the case was that, you know,
7 at the end of the day he's picked up along with the other co-
8 defendants at IHOP and -- the night of, in the car that was
9 described having left the scene and he gets fingered by one of
10 the victims there. And that was going to be a tough row to
11 hoe with a Florence County jury I felt like.

12 Q: Okay. Now, did you have a chance to speak with Mr. Meyer
13 prior to the trial, the victim?

14 A: No. I don't know that I did or did not. I'm not sure
15 that I -- I'm not sure that I did.

16 Q: Okay.

17 A: He was a very nice gentleman. I mean he was -- it takes
18 an incredible lot to reach out to a defendant's attorney after
19 trial and say I think your guy got a raw deal. He was a
20 really nice guy. I know that I had had -- he was represented
21 at the time because he was bringing a civil suit.

22 Q: Okay.

23 A: I think it was him and I know I had discussions with his
24 attorney representing him civilly, who was Ed Love from here
25 in Florence, because that's how I found out about the fact

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 that there was a civil suit, which we tried to use some in the
2 defense to, you know, maybe make a jury question his
3 credibility some.

4 Q: Now, tell us a little bit about the sentencing of this
5 case. You -- obviously, once the jury came back, they went
6 ahead and had a sentencing hearing; correct?

7 A: That's correct.

8 Q: Okay. And what did -- you presented Ms. Abraham's
9 statement to the Court; correct?

10 A: I think so. If that's what the record reflects, sure.

11 Q: Do you recall if the victims were there at the time?

12 A: Yeah. The sentencing happened -- well, you know, I don't
13 know because it may be that they had -- both of those guys --
14 well, there were three victims. One was local. The other two
15 were from up north. They had been traveling on 95.

16 I -- I don't know, to be honest with you, whether or not
17 they were still there or not. I know that obviously Mr. Meyer
18 found out about what the sentence was fairly quickly. So
19 either he was there or somebody from the Solicitor's Office
20 reported back to him.

21 Q: The other two defendants -- they testified at the case;
22 correct?

23 A: If that's what the record shows, sure.

24 Q: Did they end up -- well, they ended up getting 15 years
25 or one of them got 15?

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 A: At least one -- at least one of them had that deal.

2 Q: Okay. It was 15. One of them got 15, another one got
3 eight, different deal.

4 A: Okay. All right.

5 Q: If that would -- would you disagree with that?

6 A: No, I won't argue with that at all.

7 Q: Okay.

8 A: One of them was represented by Jack Lawson because I
9 remember Jack -- I want to say Jack sat in. I remember Jack
10 being in the courtroom during his guy's testimony. I think
11 that's right. I could be wrong.

12 Q: Okay. So Jack Lawson was present in the courtroom during
13 this?

14 A: I think so. I think so. If Jack was one of those guy's
15 attorney, I think that was the one.

16 Q: Now, did you -- at that time the sentencing -- the
17 sentence was handed down, did you make any sort of objection
18 to it?

19 A: Nothing stands out in my mind. If the record doesn't
20 show that I did, then --

21 Q: Okay.

22 A: Then the answer would be no. I'll say this. I certainly
23 -- I didn't know about Mr. Meyer's feelings about the sentence
24 until after he had been sentenced. So I feel almost positive
25 there was no objection made based off of Mr. Meyer's feelings

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 at the time he was sentenced. Legally speaking, nothing -- I
2 can't remember hearing anything from the sentence of the judge
3 that I thought was error to object to.

4 Q: Okay. Mr. Meyer's sentiment was essentially that the --
5 that it was disproportionate to the co-defendants; right?

6 A: When he -- when he spoke with me, he -- listen, Tarrence
7 -- Tarrence is a nice kid. In my -- my dealings with him, he
8 was nice and he was thoughtful. He was sharp. And Mr. Meyer
9 expressed to me basically having watched Tarrence all through
10 trial and feeling like he was a smart kid and that what he
11 expressed to me was I hate to see him get punished more just
12 for being hard -- too hard headed to take the deal that was
13 offered. And that's what he expressed to me and that's what I
14 asked him to do an affidavit for me for.

15 Q: And at the time the sentence was handed down, did you
16 ever think to make an objection based off of essentially those
17 grounds, that it was disproportionate?

18 A: No.

19 Q: Or that he was somehow being punished because he went to
20 trial?

21 A: No, I did not.

22 Q: Were you familiar that -- or were you aware that -- of
23 the case law that essentially said that you couldn't raise any
24 objection to the sentencing of the defendant after it was
25 handed down?

PATRICK MCLAUGHLIN - DIRECT BY MR. SHAFFER

1 A: Well, you know, I knew that it would be difficult for
2 that affidavit to be considered, but I mean -- well, at that
3 point, I'd just found out about it. I'm going to do
4 something. My --

5 Q: You did the best you could?

6 A: My thoughts were I'm going to do everything I can to at
7 least put this before the Court and try to preserve it for
8 him. I felt like -- you know, I do some appellate work. I
9 felt like he had decent issues on appeal between the
10 identification issue. There was a thing about testimony that
11 came out on the stand from one of the witnesses that a credit
12 card had been used while he was in jail and we had not been
13 disclosed that information. I think they wound up holding up
14 the victim's advocate -- the victim's impact statement or
15 something as proof to the Court that, well, we have it here
16 and I was, like, well, I've never gotten that before. And
17 then I think they admitted, well, we don't give that to the
18 defendants. I felt like those were two decent issues on
19 appeal for him.

20 Q: Okay.

21 A: And then, you know, I knew that trying to get in an
22 affidavit after the fact would be difficult, but I wanted to
23 do what I could to preserve that issue for him.

24 Q: Okay.

25 MR. SHAFFER: No further questions.

PATRICK MCLAUGHLIN - CROSS BY MS. KINARD

1 THE COURT: All right. Thank you. Yes, ma'am?

2 MS. KINARD: Thank you.

3 CROSS-EXAMINATION

4 BY MS. KINARD:

5 Q: Mr. McLaughlin, I want to step back a little bit and talk
6 about your general practice experience.

7 A: Sure.

8 Q: How long have you been practicing law?

9 A: Over 10 years, going on -- I think I'm on my 11th.

10 Q: And what portion of that has been criminal law?

11 A: When I first started out, probably about half of what I
12 did was criminal. It's probably gone down to about 25 percent
13 maybe.

14 Q: But regardless, when you were representing Mr. Jordan,
15 you felt very comfortable in the criminal --

16 A: Yeah.

17 Q: -- law arena?

18 A: Yes, ma'am.

19 Q: Okay. Now, you stated before you met with him several
20 times?

21 A: That's correct.

22 Q: Do you recall on average -- excuse me -- about how many
23 times you met with him?

24 A: Looking at the timeline that I think I had originally
25 prepared for OID on it, I met November 23rd, 2009. There was a

PATRICK MCLAUGHLIN - CROSS BY MS. KINARD

1 November 20th -- well, it looks like the first meeting was
2 August 12th, 2009, was the first time. I met with him again on
3 November 23rd. I met with him again on April 14th, 2010. So I
4 met with him at least three times. I know that I also met
5 with his mother and brother came in to see me. So three or
6 four times I met with him personally, and then I met with the
7 family at least once.

8 Q: Did you feel prepared to try this case?

9 A: Yes, ma'am.

10 Q: Did you have conversations with Mr. Jordan obviously in
11 preparation for this case?

12 A: Sure.

13 Q: And did you feel that he understood what was going on in
14 his case?

15 A: I felt so, yes.

16 Q: So you never had any problems communicating with him?

17 A: No. Tarrence is a bright, bright kid.

18 Q: Did you file a Rule 5 or Brady motion in this matter?

19 A: Yes, ma'am.

20 Q: Did you receive everything you expected to receive?

21 A: I did. I had an issue with the fact that we never got
22 that victim's impact statement. I think that's something that
23 should have been turned over. I felt it was exculpatory and
24 -- and I believe the record will reflect that I tried to make
25 an issue out of that.

PATRICK MCLAUGHLIN - CROSS BY MS. KINARD

1 It came up at the very end of trial it seems like, if
2 memory serves me correctly, and Judge Anderson denied it. I
3 think he denied it saying that'll be a good issue for appeal,
4 but other than that, I felt -- it did take a little bit of --
5 I had to shake the trees a couple times because I felt like
6 they hadn't responded promptly to my stuff, but eventually I
7 felt I got everything that I was asking for, except for that.

8 Q: Did you go over everything with Mr. Jordan?

9 A: Yes.

10 Q: And you felt he understood all of that?

11 A: Yeah. Absolutely.

12 Q: We discussed earlier a plea offer that was made to him
13 that was for 15 years?

14 A: Yes, ma'am.

15 Q: And you sent a letter memorializing that?

16 A: Yes.

17 Q: And he denied that offer?

18 A: Yes.

19 Q: Did you speak to him about whether that offer would be a
20 good idea?

21 A: You know, I can't sit here and tell you I remember
22 exactly what I told Tarrence. I'm sure that I told Tarrence
23 what I normally try to tell any criminal defendant. That it's
24 -- it's their decision to make. I'm not going to force them
25 to go to trial.

PATRICK MCLAUGHLIN - CROSS BY MS. KINARD

1 That if they want to go to trial, I'm going to do the
2 best job I can for them. That it's easy for me to sit there
3 and tell them to turn down a deal because I'm going to go home
4 at the end of the night, but they're the ones that are going
5 to have to face ultimately what the maximum exposure is and I
6 always make sure that my clients know what the maximum
7 exposure is. Even if I don't think they would get the max, I
8 let them know that so they know what's hanging over their
9 head.

10 So I can't tell you I sit here and remember exactly what
11 I told Tarrence, but I'm sure I would have gone over those
12 things with Tarrence.

13 Q: It's your practice to go over those things?

14 A: Yes, ma'am.

15 Q: So he knew the maximum exposure?

16 A: Yes, ma'am.

17 Q: He knew any collateral -- excuse me -- collateral
18 consequences, such as classification or --

19 A: Yes, ma'am.

20 Q: -- parole? Okay. He knew the elements of the crimes
21 that he faced or the charges he faced?

22 A: Yeah, sure. We discussed what the defense would be,
23 where we felt that their case would be weak, that we could try
24 to attack, their burden of proof on individual elements and
25 stuff like that. Sure.

PATRICK MCLAUGHLIN - CROSS BY MS. KINARD

1 Q: Okay. Did he understand all of his constitutional rights
2 as they pertain to a trial versus a plea?

3 A: Yes.

4 Q: You discussed all that with him?

5 A: Yes.

6 Q: Okay. To your knowledge, at the time, was there any case
7 law regarding an error in sentence disparity, meaning if co-
8 defendants received disparate sentences, did you have any
9 knowledge of whether that's a good, bad, indifferent thing?

10 A: No. I can't sit here and say that I do. You know, I --
11 now hearing what the -- what the issue is that Mr. Shaffer is
12 trying to argue, I can understand, you know, the -- I can
13 understand the legal argument for trying to make an objection
14 based off of, like, a trial tax type of situation. I'm not
15 going to sit here and say under oath that it's something that
16 I considered at the time.

17 Q: Okay. And you stated before that after Mr. Meyer reached
18 out to you, you were the one that asked him to prepare that
19 affidavit?

20 A: Yes. That's correct.

21 Q: And you did that in order to present as much evidence to
22 the Court as possible regarding a reconsideration of the
23 sentence?

24 A: That's correct. And, in fact, when we first came up on
25 this PCR, I guess he got some type of notification via the

PATRICK MCLAUGHLIN - CROSS BY MS. KINARD

1 victim's notification and he called me because he thought I
2 was still Tarrence's attorney, and I explained I'm not. I
3 think I got in touch with Tristan and relayed his telephone
4 number so that Mr. Shaffer could talk to him. Incredibly nice
5 guy.

6 Q: Is there anything else you'd like the Court to know about
7 your representation of Mr. Jordan?

8 A: No, ma'am.

9 MS. KINARD: No further questions, Your Honor.

10 THE COURT: All right. Redirect?

11 MR. SHAFFER: Nothing, Your Honor.

12 THE COURT: All right. You may step down.

13 THE WITNESS: Thank you, Judge.

14 THE COURT: Thank you. Any other witnesses?

15 MR. SHAFFER: Yes, Your Honor. I would call the
16 applicant. The applicant calls Tarrence Jordan.

17 THE CLERK: Mr. Jordan, if you'll stand and raise your
18 right hand as much as you can? Do you swear or affirm that
19 the testimony you give will be the truth, the whole truth, and
20 nothing but the truth?

21 THE APPLICANT: Yes, ma'am.

22 THE CLERK: Thank you.

23 TARRENCE JORDAN, being first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

TARRENCE JORDAN - DIRECT BY MR. SHAFFER

1 BY MR. SHAFFER:

2 Q: Mr. Jordan, I'm going to take you back just real briefly.
3 What exactly were you doing prior to this -- prior to being
4 arrested for his incident?

5 A: Prior to being arrested in July of '08, I just had
6 graduated high school a month prior. I was employed at
7 Zaxby's in Florence and I also was in the military prior to
8 that for two years.

9 Q: Okay. So you were in the military? How were you in the
10 military? What were you doing?

11 A: In the National Guard.

12 Q: Okay. Did you do -- had you gone through basic training
13 and --

14 A: Yes, sir.

15 Q: Okay. Did you do that prior to actually graduating high
16 school?

17 A: Yes, sir. I -- the summer after my junior year in high
18 school, I went to Fort Leonard Wood and did my basic there.

19 Q: Okay. Now, when you were arrested for this, you
20 eventually got to see Mr. McLaughlin when you were in
21 Darlington; correct?

22 A: Yes, sir.

23 Q: What did y'all discuss on trial strategy for the case?

24 A: His main strategy that he proposed that he wanted to get
25 across would be to attack the co-defendants' statements.

TARRENCE JORDAN - DIRECT BY MR. SHAFFER

1 Q: Okay.

2 A: And as well as the -- the show-up identification.

3 Q: Okay. And you had actually asked me to raise the show-up
4 identification here today; right?

5 A: Yes, sir.

6 Q: And I -- I told you that I didn't think that we could
7 probably do that because it was appealed; right?

8 A: Yes, sir.

9 Q: Okay.

10 MR. SHAFFER: No further questions.

11 THE COURT: All right. Cross?

12 MS. KINARD: No cross.

13 THE COURT: Thank you. You may step down. Thank you.
14 Anything else?

15 MR. SHAFFER: Applicant rests.

16 THE COURT: All right. Does the State have any
17 witnesses?

18 MS. KINARD: Your Honor, the State -- the State has no
19 witnesses.

20 THE COURT: All right. Thank you very much. I'll take
21 the matter under advisement and let you both know by the end
22 of the week.

23 MR. SHAFFER: Thank you, Your Honor.

24 MS. KINARD: Thank you, Your Honor.

25 MR. MCLAUGHLIN: Thank you, Your Honor.

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THE COURT: Thank you. Have a good day.

(WHEREUPON, the proceedings ended at 10:17 a.m.)

--- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 26, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 8th day of August, 2016.

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

Krystal J. Smith
Court Reporter

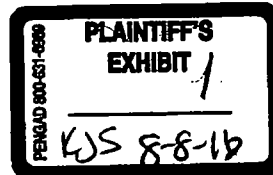
Florence, South Carolina
August 31, 2017

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Ralph King Anderson, Jr., Special Circuit Court Judge



THE STATE,

RESPONDENT,

V.

TARRENCE JORDAN,

APPELLANT

RECORD ON APPEAL

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Attorneys for Respondent

Re-Received
2010 APR 30 PM 12:55

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

) IN THE COURT OF GENERAL SESSIONS
) CASE NO. 2008-GS-1919, 1920 & 1921

State of South Carolina,)

PLAINTIFF,)

vs.)

Tarrence Jordan,)

DEFENDANT.)

MOTION TO RECONSIDER

Motion is denied without oral argument, April 30, 2010. Court Judge [Signature]

FILED
2010 APR 29 PM 4:30
CORRECTIONAL & GS
FLORENCE COUNTY, S.C.

This matter comes before the Court on Defendant's Motion to Reconsider

pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. The Defendant was originally tried by jury, said trial beginning on April 19, 2010. That trial lasted until April 22, 2010 at which time the jury returned a verdict finding the Defendant guilty on multiple counts of armed robbery, kidnapping, burglary 1st, and possession of a weapon during the commission of a violent crime. Subsequent to the jurors verdict and prior to sentencing, counsel for the defense presented oral argument to the Court in support of a Motion for a New Trial. The Court entertained that argument, preserving the issues of the Defendant on the record, and then denied the Defendants Motion for a New Trial. The Court proceeded to the sentencing phase of the trial and imposed sentence. The Court imposed sentencing on the Defendant as follows:

- On the five counts of Armed Robbery, the Court imposed sentence of 30 years on each count;
- On the three counts of Kidnapping, the Court imposed sentence of 30 years on each count;
- On the three counts of Burglary 1st, the Court imposed sentence of 30 yearson each count;

CERTIFIED: A TRUE COPY

[Signature]
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

On the three counts of Possession of a Weapon during the Commission of a Violent crime, the Court imposed sentence of 5 years on each count;

The Court specified that all sentences were to run concurrent.

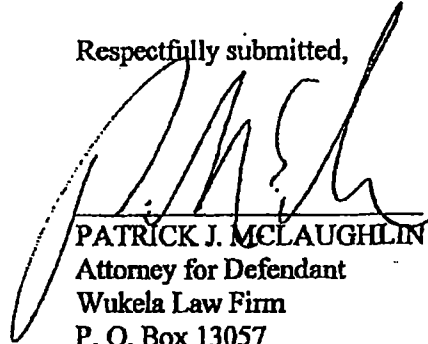
Subsequent to the events described above, defense counsel was contacted by one of the victims who had testified on the State's behalf at trial, Mr. Albert J. Meyer. Mr. Meyer and his son, Evan Meyer, had been victims of the incident that was the basis for Indictment 2008-GS-1919, the Holiday Inn incident. Mr. Meyer contacted defense counsel on April 23, 2010 to discuss the case. The purpose of the telephone call was that Mr. Meyer informed defense counsel that while he was very satisfied with the overall result of the trial, he did not feel the sentence the Defendant had received was just. Specifically, Mr. Meyer informed defense counsel that he did not think the Defendant should have received such a longer sentence than his co-defendants.

Mr. Meyer graciously offered whatever assistance he could to assist the Defendant in asking the Court to reconsider and potentially lower the sentence. As the result of that conversation with Mr. Meyer on April 23, 2010 and other subsequent conversation in the following days, an Affidavit was prepared for Mr. Meyer, (which is attached to this Motion as Exhibit "A"). The Defendant would note that the exhibit attached to this Motion is a facsimile copy of the original Affidavit, which was transmitted to defense counsel on April 29, 2010 at approximately 10:33 a.m. Defense counsel has sent a self-addressed stamped return envelope to Mr. Meyer to obtain the original Affidavit, but given the time restraints in filing post-trial motions, the Defendant respectfully submits the facsimile copy as Exhibit "A" with this Motion.

CONCLUSION

Based on the above, the Defendant respectfully requests that the Court reconsider the sentence imposed in this matter, especially in light of the compassionate beliefs expressed by Mr. Meyer via his affidavit.

Respectfully submitted,



PATRICK J. MCLAUGHLIN

Attorney for Defendant

Wukela Law Firm

P. O. Box 13057

Florence, SC 29504-3057

Telephone: (843) 669-5634

April 21, 2010

Facsimile: (843) 669-5150

EXHIBIT A

STATE OF SOUTH CAROLINA) TWELFTH JUDICIAL CIRCUIT
) IN THE GENERAL SESSIONS COURT
 COUNTY OF FLORENCE) Indictment No. 2008-GS-1919,1920,1921

)
 State of South Carolina,)

)
 Plaintiff,)

)
 Vs.) AFFIDAVIT)

Tarrence L. Jordan,)

)
 Defendant.)
)

Personally appeared before me, Albert J. Myer, a victim/witness in the foregoing action who, being duly sworn, says:

1. That I am a citizen and resident of the County of Alachua, State of Florida.
2. That on or about Monday, July 2, 2008, my son, Evan Myer, and I were robbed at what was then the Holiday Inn in Florence, South Carolina. That as a result of that robbery, several individuals were charged were crimes, including the Defendant, Tarrence Jordan.
3. That on or about April 19, 2010, I returned to Florence, South Carolina to be a witness in the criminal jury trial against the Defendant, Tarrence Jordan. As part of that participation, I testified as to what had happened to me and my son that night and I identified Defendant Tarrence Jordan as one of the two young men who entered our hotel room and robbed us that evening.
4. That while I was able to stay for the entire presentation of the case to the jury, I was unable to stay through the jury's entire deliberations and through the sentencing procedure.
5. That I subsequently learned that the court imposed several sentences on Defendant Tarrence Jordan, which resulted in him receiving, in essence, a thirty (30) year sentence.
6. After learning of the sentence, I contacted Mr. Jordan's attorney, Patrick J. McLaughlin. Upon contacting Mr. McLaughlin, we discussed the case and I informed Mr. McLaughlin that while I fully supported the jury's verdict and thought that his client deserved significant jail time, I did not think it

was fair that Mr. Jordan receive so much more jail time than his co-defendants, whom I understand have or will receive approximately 15-year sentences. I informed Mr. McLaughlin that if there was a way to assist him in possibly lowering Mr. Jordan's sentence, I would like to assist. Mr. McLaughlin explained the procedure for a motion to reconsider and asked if I would be willing to execute an affidavit to express my support for reconsideration of Mr. Jordan's sentence. This affidavit follows.

7. In making this request to the court, I would point out that I had the opportunity to observe Mr. Jordan for three (3) days during trial. I observed him interacting with his attorney, paying attention to the proceedings, writing notes and, in general, participating with his defense. Mr. McLaughlin shared with me the general ideas relayed to the court by one of Mr. Jordan's former teachers, Mrs. Sharon Abraham. The thoughts expressed by Mrs. Abraham, along with my observations of Mr. Jordan lead me to think that it may be possible for Mr. Jordan to learn from this experience. If that is possible, I would like to believe that Mr. Jordan could serve his time and leave incarceration a better person than the one who entered.

8. I believe that Mr. Jordan has, in essence, received a longer sentence than his co-defendants because he made a stubborn and poor choice to go trial. I would like to believe that this is a product of the same immaturity that led him put himself in this situation to begin with. While I believe Mr. Jordan should be held responsible for the acts his immaturity brought on, I personally don't feel that justice is served by allowing that immaturity to result in his receiving significantly more jail time than his co-defendants.

9. Even though his actions were traumatic for both myself and my son, it is my hope that the court would reconsider Mr. Jordan's sentence and reduce that sentence to a sentence more in line with his co-defendants. I make this request in the hopes that Mr. Jordan is able to overcome his immaturity, take the good character someone like Mrs. Abraham saw in him during his scholastic career, stay out of trouble while incarcerated and return to society at a young enough age to reclaim the life he wasted by participating in these heinous acts.

FURTHER AFFIANT SAITH NOT.

Albert J. Myer *ajm*
Albert J. Myer

SWORN to before me this 29th day of April, 2010

(L.S.)

Notary Public for and in Florida.

My Commission Expires: AUGUST 26, 2012

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 29 day of April, 2012 by ALBERT J. MYER

Personally Known or produced
Identification type FLORIDA DRIVER LICENSE

Albert J. Myer
Signature of Notary

Seal



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(Pause.)

THE COURT: All right, what does the State say about sentencing?

MS. PARR: Your Honor, the State has no recommendation for sentence. I would tell the Court as far as a prior record it appears to be lower court charges or lower court convictions. November 10th, 2007, a conviction for simple possession of marijuana; and March 14th, 2008, a conviction for simple assault and battery. He does have a charge of armed robbery pending in Darlington County and two more pending here. The one in Darlington county occurred last summer after he made bond on this one.

THE COURT: There was some reference to two of these individuals allegedly constituting the group of four.

MS. PARR: That's correct.

THE COURT: And two had been sentenced.

MS. PARR: Yes.

THE COURT: What kind of sentence did they get?

MS. PARR: One got ten years; the other one got 15 years.

THE COURT: All right, Counsel.

MS. PARR: Well, when I — that's correct, Judge. On the one that got 10 years he was already doing 20. He had a 20 year sentence too for an amend robbery as well.

1 **MR. MCLAUGHLIN:** Your Honor, may I approach.

2 **THE COURT:** Yes.

3 **MR. MCLAUGHLIN:** I'm passing up to the Court, Judge,
4 a letter that Susan Abraham has written on behalf of
5 Mr. Jordan. Ms. Abraham was one of our witnesses that we
6 identified as a character witness. She is a schoolteacher
7 and asked that if she can do a letter and instead having
8 to kind of be by the phone and interrupt class to come and
9 I told her I would present that to the Court on behalf of
10 Mr. Jordan. Our other, both of other character witnesses,
11 Sergeant Peterkin with the National Guard as well as
12 representative Robert Williams, I believe Your Honor may
13 recall, that when the jury panel was asked about those
14 witnesses Representative Williams was in attendance.
15 Obviously his schedule keeps him in Columbia. I was
16 hoping that he was -- both of those individuals were gonna
17 try to get me letters in time to have them to present to
18 the Court. Unfortunately, they have not. They have both
19 expressed, I believe, sentiment similar to the sentiments
20 that Ms. Abraham expresses.

21 And Your Honor, that the -- the one thing I would
22 say on behalf of Tarrence is that I would ask the Court to
23 consider this young man's conduct and demeanor during the
24 trial. He has -- he's been about very conscientious about
25 his own case. He has been nothing but very attentive and

1 really been involved with me. Judge, this is a young man
2 who has some opportunity. He graduated from Darlington
3 High School in 2008. He had already gotten into the
4 National Guard. As the letter from Ms. Abraham talks
5 about she can remember how proud she was of him and how
6 proud he was. He had been accepted to Benedict, South
7 Carolina State, and Claflin. And Sergeant Peterkin, you
8 know, expressed to me shock and dismay when this happened.
9 Representative Williams is more of a family friend who has
10 known the entire family for a long time. And his mother,
11 his sister, and one of his brothers is out there in the
12 audience, Your Honor. And what he did was terrible, and
13 he — and Tarrence was very well aware of going forward
14 trial that whatever sentence he received was going to be
15 significant. But we would —

16 THE COURT: Wait one second. The letter is marked
17 into evidence.

18 (Court's Exhibit Number 6, letter, was marked
19 and made a part of the record.)

20 MR. MCLAUGHLIN: And I would simply ask the Court to
21 have as much leniency as you can understanding the
22 testimony Your Honor heard and of the impact that this
23 obviously had on the victims and in the case.

24 THE COURT: Mr. Jordan, you want to say anything to
25 me?

1 **THE DEFENDANT:** Yes, Your Honor, I just ask that you
2 have leniency on me after all these circumstances. That's
3 all I have.

4 **MS. PARR:** Your Honor, I do have the victims'
5 impact statement.

6 **THE COURT:** Well, I heard the victims and so I think
7 that's sufficient in a case like this where they have
8 actually testified and been presented under oath. There
9 is some marking in regard to possession of weapon during
10 commission of a violent crime. Somebody's put a paren
11 here, "No longer used." What — who did that? What's "no
12 longer used?"

13 **MS. PARR:** I didn't know that that... It says —

14 **THE COURT:** I'm talking about three words.

15 **MS. PARR:** I don't know why that came on there. Let
16 me check on that. It printed out. I didn't pick that up.
17 Let me — Your Honor, may I look at it?

18 **THE COURT:** Yes.

19 (Pause while Ms. Parr and Mr. Richardson confer.)

20 **THE COURT:** Well, the statute says if a life
21 sentence is imposed.

22 **MR. RICHARDSON:** Right. But I think it — when we
23 got this new computer system that prints type for our
24 charges, sometimes it prints screwy.

25 **THE COURT:** Yeah.

1 MS. PARR: Your Honor, and it will be on the other
2 two as well.

3 THE COURT: That's correct.

4 MS. PARR: So I need to check those out.

5 THE COURT: Well, I think that's a plausible
6 explanation as to how it occurred. That if you -- the
7 statute says if you impose a life sentence.

8 MS. PARR: Right.

9 THE COURT: It doesn't say if the conviction
10 actually carried that in my discretion which it does in
11 regard to one of these offenses. But anyway, that's fine,
12 just pass it back and I'll do my thing with it.

13 MS. PARR: Okay, 'cause I did white-out "no longer
14 used" on that one, but I didn't do it on the other one.

15 THE COURT: Well, here, you can...

16 MS. PARR: I'm sorry about that; I didn't catch it.

17 (Pause.)

18 THE COURT: All right. How long has he been in
19 jail, Counsel?

20 (Attorney confers with defendant.)

21 MR. MCLAUGHLIN: The total of 11 months. Of course,
22 Ms. Pat reminded the Court he was out on bond for a little
23 while. Believe he was out on bond --

24 THE COURT: I need to know exactly how many days he
25 has served. Can we find that out so I can be specific.

1 MS. PARR: Your Honor, yeah, we need to find out --
2 this is when his bond was revoked here. He was out on
3 bond then.

4 MR. RICHARDSON: Your Honor, he was arrested on
5 July 7th, 2008.

6 MR. MCLAUGHLIN: Pat, he turned himself in to
7 Darlington before you revoked his bond over here in
8 Florence.

9 MS. PARR: Well, that's because that -- but he was
10 still out on bond. He won't get credit for that for these
11 charges. He turned himself in because he had Darlington
12 charges. It wasn't on this one.

13 THE COURT: Let's count up how many days he's
14 entitled to this.

15 MS. PARR: But if I can have one minute to call.

16 THE COURT: All right, just work on that.

17 MS. PARR: I got 141 days since the bond was
18 served.

19 (Pause.)

20 MS. PARR: 378 days. May it please the Court.

21 THE COURT: Let me finish this please.

22 MS. PARR: Okay.

23 THE COURT: Yes.

24 MS. PARR: The Code Section is 549. I mean, for
25 the possession of weapon during commission of crime of

1 violence.

2 THE COURT: 16-23-490.

3 MS. PARR: Yes, that's for the possession of a
4 weapon during the commission of crime of violence.

5 THE COURT: Yes.

6 MS. PARR: Yes, but the CDR code is 549.

7 THE COURT: I don't mess with the CDR codes. Y'all
8 have to get that right yourself.

9 MS. PARR: Okay, but may I change it on the plea
10 sheet when you...

11 (Pause.)

12 MR. MCLAUGHLIN: Judge, for the purpose of the
13 record I would like to -- I understand what Your Honor was
14 saying about he had heard the testimony, he didn't need to
15 hear the victim impact statement, but that was one of the
16 things brought up by Ms. Parr about the credit card
17 charges. And I understand your ruling; I'm not trying to
18 rehash that. But I would like for the record to point out
19 that the victims impact statement shows American Express
20 charges on Mr. Shappell's card of 284. 57 cents and that
21 this is dated August 26th, 2008.

22 THE COURT: All right, let that show to the record.

23 MR. MCLAUGHLIN: Thank you, Your Honor.

24 THE COURT: Did we get a number of days agreed upon?

25 MS. PARR: I have 375 days. 234 from the time he

1 was served to went out on bond and then 141 days since
2 he...

3 (Mr. McLaughlin confers with defendant.)

4 MS. PARR: Your Honor, there is one more possession
5 of a weapon that I need to change, the CDR code.

6 THE COURT: All right. Once again, we're back.
7 What number of days please, folk?

8 MS. PARR: 375 days.

9 THE COURT: All right. Is that correct, Counsel?

10 MR. MCLAUGHLIN: I just asked Mr. Jordan. He said
11 that sounds right, Your Honor.

12 THE COURT: 375 days. It takes a while to write up
13 14 sentences.

14 (Pause.)

15 THE COURT: 08-GS-21-1921, armed robbery, the
16 defendant is committed to the State Department of
17 Corrections for a term of 30 years. This sentence is
18 concurrent to all sentences imposed on indictment
19 08-GS-21-1919 and indictment 08-GS-21-1920 and concurrent
20 with all sentences imposed on this indictment. Credit for
21 jail time, 375 days already served. 08-GS-21-1921, the
22 defendant is committed to the State Department of
23 Corrections for kidnapping for a term of 30 years. This
24 sentence is concurrent to all sentences imposed on
25 indictment 08-GS-21-1919 and 08-GS-21-1920 and concurrent

1 to all sentences imposed on this indictment. Credit for
2 375 days already served. Burglary 08-GS-21-1921, the
3 defendant is committed to the State Department of
4 Corrections for a term of 30 years. This sentence is
5 concurrent to all sentences imposed on indictment
6 08-GS-21-1919 and indictment 08-GS-21-1920 and concurrent
7 to all sentences imposed on this indictment. Credit for
8 375 days already served.

9 Possession of a weapon during commission of a
10 violent crime, 08-GS-21-1921, the defendant is committed
11 to the State Department of Corrections for a term of five
12 years. This sentence is concurrent to all sentences
13 imposed on indictment 08-GS-21-1919 and indictment
14 08-GS-21-1920 and concurrent to all sentences imposed on
15 this indictment. Credit for 375 days already served.
16 08-GS-21-1919, kidnapping, the defendant is committed to
17 the State Department of Corrections for a term of 30
18 years. This sentence is concurrent to all sentences
19 imposed on indictment 08-GS-21-1920 and indictment
20 08-GS-21-1921 and concurrent to all sentences imposed on
21 this indictment and credit for 375 days already served.
22 08-GS-21-1919, burglary, the defendant is committed to the
23 State Department of Corrections for a term of 30 years.
24 This sentence is concurrent to all sentences imposed on
25 indictment 08-GS-21-1920 and indictment 08-GS-21-1921 and

1 on — concurrent on all sentences imposed on this
2 indictment. Credit for 375 days already served.
3 08-GS-21-1919, armed robbery, the defendant is committed
4 to the State Department of Corrections for a term of 30
5 years. This sentence is concurrent to all sentences on
6 indictment 08-GS-21-1920 and indictment 08-GS-21-1921 and
7 concurrent to all sentences imposed on this indictment.
8 Credit for 375 days already served.

9 Possession of weapon during commission of a violent
10 crime, the defendant is committed to the State Department
11 of Corrections for a term of five years. This sentence is
12 concurrent with all sentences imposed on indictment
13 08-GS-21-1920 and indictment 08-GS-21-1921 and concurrent
14 to all sentences imposed on this indictment. Credit for
15 375 days already served. 08-GS-21-1920, kidnapping, the
16 defendant is committed to the State Department of
17 Corrections for a term of 30 years. This sentence is
18 concurrent to all sentences imposed on indictment
19 08-GS-21-1919 and indictment 08-GS-21-1921 and concurrent
20 on all sentences imposed on this indictment. He's given
21 credit for 375 days already served. 08-GS-21-1920, armed
22 robbery, the defendant is committed to the State
23 Department of Corrections for a term of 30 years. This
24 sentence is concurrent with all sentences imposed on
25 indictment 08-GS-21-1919 and indictment 08-GS-21-1921 and

1 concurrent on all sentences imposed on this indictment,
2 credit for 375 days already served.

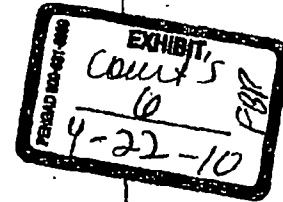
3 Armed robbery, 08-GS-21-1920, the defendant is
4 committed to the State Department of Corrections for a
5 term of 30 years. This sentence is concurrent to all
6 sentences imposed on indictment 08-GS-21-1919 and
7 indictment 08-GS-21-1921 and concurrent to all sentences
8 imposed on this indictment. Credit for 375 days already
9 served. Armed robbery, 08-GS-21-1920 -- and for the
10 record there were three armed robbery convictions on this
11 indictment so it's not duplicative or replicating in any
12 sense. The defendant is committed to the State Department
13 of Corrections for a term of 30 years. This sentence is
14 concurrent with all sentences imposed on indictment
15 08-GS-21-1919 and indictment 08-GS-21-1921 and concurrent
16 with all sentences imposed on this indictment. Credit for
17 375 days already served. 08-GS-21-1920, burglary first
18 degree, the defendant is committed to the State Department
19 of Corrections for a term of 30 years. This sentence is
20 concurrent to all sentences imposed on indictment
21 08-GS-21-1919 and indictment 08-GS-21-1921 and concurrent
22 to all sentences imposed on this indictment and credit for
23 375 days already served. Possession of a weapon during
24 the commission of a violent crime, five years, State
25 Department of Corrections. This sentence is concurrent

1 with all sentences imposed on indictment 08-GS-21-1919 and
2 indictment 08-GS-211921 and concurrent to all sentences
3 imposed on this indictment and credit for 375 days already
4 served. Thank you very much.

5 (WHEREUPON, the proceedings were adjourned at 3:24
6 p.m.)

7
8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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April 21, 2010

To Whom It May Concern:

I have taught Tarrence Jordan twice in his high school English classes. I have come to know him as a nice respectable young man. Academically he has excelled and surpassed many of his classmates. He worked very diligently and was conscientious about his work. If I remember correctly Tarrence's grades in both classes was a B.

I also know Tarrence's family and they are wonderful people. I know his grandmother professionally as well as socially. Not only did I teach Tarrence, but I have taught his aunts Stephanie and Sharon, his mother Tanya, his sister Tiffany and his brother TaQuan. I know that Tarrence's misdeed is a result of his street acquaintance and not his upbringing.

I believe Tarrence is a good person who got caught in a bad situation resulting from "peer pressure." Even though this is not to excuse his poor choice, it is my belief that in the proper setting, Tarrence can be rehabilitated and again become a responsible and productive member of society. I remember when he became a member of the National Guard. I remember how proud I was of him and how proud he was of himself. I know that is the Tarrence that needs to be rehabilitated with counseling and some program other than prison. We all know that prisons only detain and release criminals with little and no rehabilitation.

Like I said, Tarrence needs to accept his responsibility for his poor choices, but to compound his mistake by making another one will help no one. If anyone from this whole ordeal can be saved, that would be great and if Tarrence is that one who can be saved would be even more wonderful.

I believe in this young man and was more than glad to express that trust in this letter.

Sincerely,

Susan B. Abraham

Susan B. Abraham

No Shepard's Signal™
As of: August 8, 2016 6:42 AM EDT



State v. Jordan

Court of Appeals of South Carolina

September 12, 2012, Heard; October 3, 2012, Filed

Memorandum Opinion No. 2012-UP-537

Reporter

2012 S.C. App. Unpub. LEXIS 670

The State, Respondent, v. Tarrence Jordan, Appellant.

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

Prior History: [*1] Appeal From Florence County. Appellate Case No. 2010-159986. Ralph King Anderson, Jr., Special Circuit Court Judge.

Disposition: AFFIRMED.

Core Terms

identification, witness[*s*], sentence, reconsideration motion, trial court, eyewitness, identification procedure, exclude evidence, appellate court, confrontation, irreparable, admitting, show-up, counts

Counsel: LaNelle Cantey DuRant, of Columbia, for Appellant Tarrence Jordan.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, Assistant Deputy Attorney General David A. Spencer, and Assistant Attorney General Mark Reynolds Farthing, all of Columbia, for Respondent State of South Carolina.

Judges: HUFF and THOMAS, JJ., and CURETON, A.J., concur.

Opinion

PER CURIAM: Tarrence Jordan appeals his convictions and sentences for five counts of armed robbery and three counts each of kidnapping, first-degree burglary, and the possession of a weapon during the commission of a violent crime. He argues the trial court erred in (1) admitting an eyewitness's

identifications of him and (2) denying his motion to reconsider his sentences. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the eyewitness identifications: State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (recognizing in criminal cases, the appellate court sits to review errors of law only and is bound by the [*2] factual findings of the trial court unless clearly erroneous); State v. Gillian, 373 S.C. 601, 613, 646 S.E.2d 872, 878 (2007) (holding the admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may disturb a ruling admitting or excluding evidence only upon a showing of a manifest abuse of discretion accompanied by probable prejudice); State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (stating an identification procedure arranged by police "which is unnecessarily suggestive and conducive to irreparable mistaken identification" may deprive a criminal defendant of due process of law; therefore, "[a]n in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification"); Neil v. Biggers, 409 U.S. 188, 199, 93 S. Ct. 375, 382, 34 L. Ed. 2d 401 (1972)¹ (holding whether a witness's identification of an accused was so suggestive as to be unreliable requires the court to examine the totality of the circumstances, including "the opportunity of the witness to view the criminal at the time of the crime, the witness[*s*] degree of attention, [*3] the accuracy of the witness[*s*] prior description of

¹ We decline Jordan's invitation to discard the Biggers test, noting both the United States Supreme Court and the South Carolina Supreme Court recently issued opinions reinforcing the validity and usefulness of that test. See Perry v. New Hampshire, 132 S. Ct. 716, 730, 181 L. Ed. 2d 694 (2012) (holding the trial court's failure to conduct a complete Biggers hearing "did not render . . . trial fundamentally [*4] unfair"); State v. Liverman, 398 S.C. 130, 138-39, 727 S.E.2d 422, 426 (2012) (requiring Biggers hearing even when eyewitness knows defendant very well).

the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation"); State v. Govan, 372 S.C. 552, 558-59, 643 S.E.2d 92, 95 (Ct. App. 2007) (upholding show-up identifications that occur "shortly after the alleged crime, near the scene of the crime, as the witness's memory is still fresh, where the suspect has not had time to alter his looks or dispose of evidence, and [when] the show-up may expedite the release of innocent suspects and enable the police to determine whether to continue searching"); State v. Simmons, 384 S.C. 145, 172, 682 S.E.2d 19, 33 (Ct. App. 2009) (noting identification evidence may be harmless when it is cumulative to overwhelming evidence of guilt).

2. As to Jordan's motion to reconsider: State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) (recognizing when an appellant fails to object to his sentence at the time of its imposition, he waives the issue on appeal); Rule 29, SCRCrimP (providing parties to criminal actions may file post-trial motions within ten days after the trial court imposes a sentence); State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999) ("[i]t is improper to argue new matter in a motion for reconsideration.").

AFFIRMED.

HUFF and THOMAS, JJ., and CURETON, A.J., concur.

End of Document

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
)	
Tarrance L. Jordan, #340469,	)	Case No. 2013-CP-21-1950
)	
Applicant,)	
)	
v.	)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter comes before the Court by way of an application for post-conviction relief filed by Tarrance Jordan on July 24, 2013. The State of South Carolina (Respondent) filed a Return on May 2, 2014. The Court convened an evidentiary hearing into the matter on August 8, 2016, at the Florence County Courthouse. Applicant was present at the hearing and represented by Tristan Shaffer, Esquire. Jessica Kinard, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Patrick J. McLaughlin, Esquire (Counsel) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses the application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In December 2008, the Florence County Grand Jury issued three indictments against Applicant. The first charged Applicant with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1919). The second charged Applicant with three counts of armed robbery and one count each of kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1920). The third indictment charged Applicant with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1921). On April 19, 2010, Applicant proceeded to trial before the Honorable Ralph K. Anderson, Jr., and a jury. Patrick J. McLaughlin, Esquire, represented Applicant at trial. The jury found Applicant guilty as indicted on April 22, 2010. Judge Anderson sentenced Applicant to concurrent terms of thirty years for each armed robbery conviction, thirty years for each kidnapping conviction, thirty years for each first degree burglary conviction, and five years for each possession of a weapon during the commission of a violent crime conviction. Applicant filed a motion to reconsider his sentence on April 29, 2010, which Judge Anderson denied without argument on April 30, 2010.

Applicant filed a timely notice of appeal and LaNelle C. Durant, Esquire, of the Office of Appellate Defense perfected the appeal. The court of appeals affirmed Applicant's convictions on October 3, 2012. State v. Jordan, Op. No. 2012-UP-537 (S.C. Ct. App. filed October 3, 2012). The circuit court received the remittitur on October 19, 2012.

II. CURRENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
 - a. "Attorney did not attack prosecutor's case fully"
2. "Violations of my 6th Amendment rights"

At the hearing, Applicant raised a new allegation for ineffective assistance of counsel based upon the failure to object during sentence imposition.

III. SUMMARY OF FACTS ADDUCED AT TRIAL

Applicant organized a crime spree of armed robberies at three separate hotels that occurred from July 2, 2008 through July 4, 2008. Applicant's accomplices consisted of Johnny Johnson, Shakeem Williams, and Louis Williams.

Holiday Inn Robbery

Johnny Johnson testified at trial. Johnson testified he knew Applicant for seven years. Johnson stated that Applicant called him to "go hit a lick." A "lick" is a robbery or larceny. Johnson drove his distinctive red Toyota Camry that had a dent in the hood and missing driver-side window to pick up Applicant, and brothers Shakeem and Louis Williams. (Tr. 270-4)

Johnson explained he drove the group from their native Darlington to Florence and to Road 52, then stopped at the Holiday Inn. Louis and Johnson stayed in the car. Shakeem and Applicant exited. Johnson knew the plan was for Shakeem and Applicant to either rob someone or break into a hotel room. (Tr. 324-26).

Dr. Meyer testified at trial. Dr. Meyer stated he and his son arrived at the Holiday Inn around 12:35 a.m. on July 2, 2018. He went into the hotel office for about ten minutes to book a room and then he and his son carried their bags to the room. Dr. Meyer recalled noticing two men in the parking lot while he walked to the room. He stated that once they got into the room, they had trouble finding the light switch. Once they turned the light on, the two men from the parking lot rushed into the room, knocking Dr. Meyer down. Dr. Meyer was ordered to stand up, but his son was ordered to kneel on the ground. The larger of the two men had a gun. He took the Doctor's cell phone. Dr. Meyer complied with their demand for his wallet and offered his car. This led to a discussion of what was in the car (gifts, but mostly University of Florida gear and baby-gifts; and no lap-top computer to the robbers' apparent disappointment). The smaller man paced back and forth. The smaller man's nervousness made Dr. Meyer nervous, especially since he did not know whether that man was also armed. They ordered the doctor and his son into the bathroom. His son asked the two men if they were going to kill them. The record fails to reflect their answer. The men already left by the time Dr. Meyer came out of the bathroom and called the front desk to report the robbery. (Tr. 73-75, 79-83).

Johnson stated that Shakeem and Applicant returned after about five to ten minutes and told Johnson to pull off and so he drove away. They stopped at the Hudson gas station in Darlington and used one of the stolen credit cards for gas. Johnson's payment was the tank of gas. They called it a night and Johnson dropped everyone off. (Tr. 274-77).

Dr. Meyer made an in court identification of Applicant as the man pacing back and forth. He saw Applicant in the parking lot and he saw Applicant during the whole extended confrontation. Dr.

Meyer described the lighting as adequate. Shakeem and Applicant took about \$400 in cash, credit cards, and even a Best Buy card. (Tr. 84–87).

Johnson testified that on the next day, July 3, at Applicant's behest, the four co-defendants met up again. Johnson picked up Applicant first and they went to Syracuse until about nine, then left to get Shakeem and Louis. They went to Florence, on 52 again, and Johnson was told to go to America's Best Value on TV Road. Again, Applicant and Shakeem left while Louis and Johnson sat in the car. Five minutes later, Applicant and Shakeem returned, but told Johnson to wait. Applicant and Shakeem left again for about five to ten minutes, then came running back. (Tr. 278–80).

America's Best Value Robbery

Johnson testified about Applicant's description of what occurred at America's Best Value as follows: "They robbed a man, put him in the bathroom, and took his clothes, searched the room for what they wanted, and left." (Tr. 281).

Richard Ward testified at trial. (Tr. 111–14). Ward stated he was staying at America's Best Value on TV Road. He testified he stayed there for about two weeks while his house was being fixed. He was with Uncle Gilbert and Louis Oberfrank. Oberfrank and Ward walked to the hotel bar and saw two guys suspiciously walking up and down the aisles. They returned to their room and then there was a knock on the door. Two guys pushed their way in as Oberfrank opened the door. The big guy pulled out a gun and they were ordered to get undressed and go in the bathroom. The smaller skinny guy went back and forth asking where their money was, and, if they did not give him the money, he was going to kill them or shoot them. They found \$500 in Uncle Gilbert's wallet and the skinny guy went crazy and thought they had more money. The skinny guy kept running back and forth, searching the room, looking at them, plundering through the suitcases and moving the beds.

Then after about five to ten minutes, the robbers said do not come out the door or the robbers would kill them. Ward thought he heard them go out the door.

Ward waited a few minutes, put on his pants, and ran out the room in time to see an older red car with front-end damage, "kind of a foreign car," drive away. They called the police; they were missing a bunch of items: "money, credit cards, cell phones." (Tr. 114-5)

Ward restated that the first time he saw the two men was on the walkway. He then identified Applicant as one of the defendants. (Tr. 117). He stated the lighting in the room was great. The defendants were there for about ten minutes with ample time for Ward to observe both of them. (Tr. 123, 144). Ward gave a description to law enforcement. The big guy was wearing regular jeans and a white T-shirt with some writing on it, while the skinny guy was wearing baggy pants and a white T-shirt. Ward identified the clothes the big guy was wearing and the T-shirt and jeans the skinny guy, Applicant, was wearing. (Tr. 119-21). Ward identified his cell phone that was stolen. (Tr. 121-22). Ward also identified a picture of the red car. (Tr. 123).

Deputy Jay McLaurin responded to America's Best Value and interviewed the three victims. He stated the victims were able to describe the robbers to him: one was about 6'3" and 250 pounds, wearing a white T-shirt with black writing on the front and blue jeans; and the other was about 5'8" and 180 pounds, wearing a white T-shirt and jeans. The victims told Dep. McLaurin the robbers were in a red vehicle with front-end damage. A city officer called and said there was a car fitting this description at IHOP. (Tr. 158-159, 161).

Super 8 Motel Robbery

Johnson also testified about the third robbery. Johnson stated that after the America's Best Value robbery, the group went to two different gas stations. Johnson stated that after leaving the

second gas station, he was instructed to drive to the Super 8 Motel. Once they arrived at the motel, just as before, Applicant and Shakeem left the car and came back five or ten minutes later. Johnson saw the two return with a cell phone and camera, and he saw Shakeem put the gun in the trunk of the car. After they left the motel, they stopped at a gas station in Darlington and Shakeem used a credit card to fill the gas tank. After filling the tank, they went to IHOP. (Tr. 281–85).

As mentioned above, a city police officer spotted Johnson's car in the IHOP parking lot. The four were arrested after a failed attempt to escape. At trial, Johnson identified the cell phone and camera stolen from the Super 8 Motel. Officer Brandon Hale was the police officer who discovered the defendants at IHOP. His testimony corroborated the events described by Johnson. (Tr. 235–38).

IV. SUMMARY OF EVIDENTIARY HEARING TESTIMONY

Counsel

Counsel testified he had been practicing law for over 10 years. Counsel further testified about half of his work came through criminal until it steadily decline to a quarter.

Counsel testified he was originally appointed on July 16, 2009. Counsel testified Applicant had been accused of waiting for people to check into hotel rooms, pushing them inside, holding them at gunpoint, asking them to disrobe, forcing them in the bathtub, and then stealing their stuff.

Counsel was aware the Solicitor's Office wanted to take Applicant to trial. According to Counsel, Applicant was scheduled for trial in August 2009. However, Counsel notified the Solicitor's Office he had not yet met with Applicant. Therefore, Counsel was not ready for trial so it was delayed. Furthermore, Counsel testified there would have been no plea negotiations in these communications with the Solicitor's Office before meeting with Applicant.

Counsel testified he tried to get in touch with Applicant initially but got no response. Counsel further explained Applicant was arrested on a warrant and held in Darlington County. Counsel testified he met with Applicant in Darlington County on August 12, 2009.

Counsel testified the Solicitor's Office told him Applicant would receive the same plea offer as his co-defendants. At some point, Counsel filed a motion to reveal the plea deals that Applicant's co-defendants received.

In November 2009, Counsel sent Applicant a letter memorializing their meeting conversations. In December 2009, Counsel received notification Applicant had two weeks to decide whether he wanted to accept an offer of fifteen years. Counsel further testified this was the same deal co-defendants received. Counsel testified he went over the plea offer with Applicant who understood everything. Counsel testified he customarily notified clients that a plea offer is their decision, and he is not going to force someone to go to trial. Furthermore, Counsel testified he customarily notified clients if they want to go to trial he will do the best job. Counsel testified he customarily told clients they must decide between a plea and trial because of the maximum exposure risk. Counsel testified he customarily explains maximum exposure risk for charges upfront so client know what is potentially hanging over their head. Counsel testified to his certainty he would have had this customary conversation with Applicant. Ultimately, Counsel testified Applicant rejected the plea offer. Thereafter, Counsel recalled rejecting the plea offer.

Counsel testified he remembered Applicant having a minor criminal record, good grades in school, and wanting to join the military. Counsel testified Applicant's record looked a lot better than his co-defendants.

In preparation for trial, Counsel testified to focusing on a major issue he had with the original identification. Counsel testified his belief in preparation was the identification appeared to be very suggestive based upon doing it through a rollup. Counsel further testified he focused a lot of energy on this issue, wrote a brief on it, and did an oral argument for suppression. Counsel testified he was ultimately unsuccessful in attempting to suppress identification.

In witness preparation, Counsel testified to interviewing Susan Abraham who was a teacher. Counsel further testified to talking with Representative Williams from Darlington because Applicant's mother had a previous relationship with him. Counsel testified he did not speak with the victims prior to trial. However, Counsel testified the victim was bringing a civil suit so he spoke to his lawyer, Ed Love. Furthermore, Counsel testified to using the civil suit in Applicant's defense to raise credibility concerns about the victim in front of the jury.

Counsel recalled spotting a major issue with Applicant's case. Specifically, Counsel testified Applicant was picked up with the other co-defendants the same night of the crime, in the same car described as leaving the scene, and identified by one of the victims. Counsel testified he believed this would be tough to deal with in front of a jury. According to Counsel, the co-defendants testified at Applicant's trial with their representation present.

Counsel testified nothing stood out at sentencing to object in regards to legal errors. He further testified to having no knowledge of case law at the time regarding disproportionate sentences between co-defendants. Counsel testified he had no knowledge of the victim's feelings before Applicant was sentenced. Counsel testified he did not believe the sentence was disproportionate when it was announced. Furthermore, Counsel testified he did not believe the sentence punished

Applicant for going to trial. Additionally, Counsel testified he had no knowledge of the victim's feelings before Applicant was sentenced.

Thereafter, Counsel testified the victim wrote him a letter after sentencing to express Applicant received a raw deal. Counsel further testified the victim felt bad that co-defendant got less time because Applicant was too hard headed to accept a plea offer. Subsequently, Counsel testified he asked the victim to fill out an affidavit on this matter. Thereafter, Counsel testified he presented the victim's statement to the court. Counsel testified he understood the difficulty in getting this statement reconsidered. However, Counsel testified he wanted to do everything he could for preservation on appeal.

Ultimately, Counsel testified he met with Applicant several times throughout the duration of this case. Counsel testified they met personally at least four times. Furthermore, Counsel met with Applicant's mother and brother personally at least once. Counsel testified he felt prepared for trial, and Applicant understood everything as the case progressed.

Counsel recalled filing a Brady motion, and received everything he expected to receive. Counsel further testified to making an issue out of the victim's impact statement not being included because he felt it was exculpatory. However, the court eventually denied his motion to retrieve this statement at trial. Counsel testified he went over collateral consequences with Applicant such as parole and classification. Counsel testified he went over the elements with Applicant to prepare their defense for trial. Counsel testified he went over where the other side's case would be weak and their burden of proof for each element with Applicant. Counsel testified Applicant understood his constitutional rights after they had a discussion about it.

Applicant

Applicant testified Counsel's main trial strategy was to attack the co-defendant's statements and the identification issue. Applicant further testified the identification issue was raised on appeal.

Additionally, Applicant testified he was employed at Zaxby's and in the National Guard prior to being arrested. Applicant testified he had already been through basic training prior to arrest. Applicant testified to completing basic training before graduating high school.

V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

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

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before

examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to sufficiently attack the case presented against Applicant

Applicant alleges Counsel failed to thoroughly attack the case presented against him at trial. “[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.’” *Abney v. State*, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (citing *Sexton v. French*, 163 F.3d 874, 885 (4th Cir.1998)) (emphasis added). When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect. *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1, 5, 157 L. Ed. 2d 1 (2003).

a) Identification

Here, Applicant credibly testified Counsel planned to attack the identification issue at trial. Counsel also credibly recalled attacking the identification issue at trial. Furthermore, Counsel credibly assessed the identification issue was his major focus in trial preparation. Specifically, Counsel credibly recalled writing a brief, filing a motion to suppress identification, and being denied after oral arguments. At trial, during closing statements, Counsel identified an issue with the Assistant Solicitor offering three “immediate’ eyewitness for identification. (Tr. 424, L. 4).

The first witness was Ward. Counsel argued neither of the two original descriptions Ward gave to police matched Applicant's height or weight. (Tr. 424, L. 15-25). Counsel then argued Ward could not have chased them down for a good view because testified to being naked in the bathtub when they left and required a cane for his disability. (Tr. 452, L. 13-25). Furthermore, Counsel argued his eyesight disability potentially prevented him from identifying the vehicle accurately. (Tr. 426, L. 16-25).

The second witness was Meyer. Thereafter, Counsel argued Meyer's description of a black male, white shirt, and thin build at a height of six foot one inch was too generic. (Tr. 428, L. 12-25). Counsel further pointed out Meyer is still having problems with his head from getting hit. (Tr. 430, L. 1-3).

The third witness was Chappell. Finally, Counsel argued Meyers never identified Applicant until he was on the witness stand a year and a half later. (Tr. 430, L. 7-8). Thereafter, Counsel argued Shappell's admission about a lighting problem in his room indicated identification problems. (Tr. 431, L. 7-8). Furthermore, Counsel argued Shappell's testimony about Shakeem having total control over him for the five to ten minute incident prevented identifying others accurately. (Tr. 431, L. 14-22). Additionally, Counsel argued Deputy Worsley improperly suggestive to Chappell his belief they caught the individuals before identification. (Tr. 433, L. 15-6). Finally, Counsel further argued identification was further improperly suggestive when Chappell identified Applicant who was wearing handcuffs surrounded by police officers. (Tr. 435, L. 1-7).

Accordingly, Applicant has not overcome the burden to prove Counsel's tactics in addressing the identification issue were deficient.

b) Co-Defendant Statements

Additionally, Applicant testified Counsel strategized attacking the statements of his co-defendants. Counsel also credibly recalled wanting to show the jury Applicant had a good record compared to his co-defendants. In fact, Counsel pointed out Applicant was the only co-defendant with a job. (Tr. 440, L. 11-2). Specifically, Counsel added Applicant was working at Zaxby's and doing National Guard duty. (Tr. 440, L. 13). Applicant did not specify the specific co-defendant or statement Counsel failed to rebut from the prosecution. However, the Assistant Solicitor argued the following during her closing statement:

And [Johnson] who had known this defendant for years, high school, work, neighbor, who is involved in the whole thing the whole time and says Mr. Jordan not only was there the whole time but called him about doing it and was one of the ones who went in each of the hotel rooms. (Tr. 419, L. 20-5).

Previously, Counsel elicited testimony Johnson had been fired from the Zaxby's Applicant continued to work at. (Tr. 343). Furthermore, Counsel elicited testimony from Johnson about his intention to plead guilty in exchange for fifteen years where the original charges were seven counts of kidnapping, seven counts of armed robbery, five counts of possession of a weapon in the commission of a violent crime, one count of conspiracy, and one count of grand larceny less than five thousand. (Tr. 361, 364). Johnson also testified he would take the offer "if it's still going to be on the table." (Tr. 364, L. 5). Johnson further admitted to previously giving false statements to the police about picking Applicant up on a night in question. (Tr. 356, L. 23). Therefore, during closing statements, Counsel encouraged the jury to question Johnson because he had not been allowed to plead guilty before testifying even though he accepted the offer. (Tr. 422, L. 4-16). Thereafter,

Counsel fully argued the jury to question Applicant's credibility because he wanted the favorable plea deal and admitted to lying to police. (Tr. 441, L. 9-16). In review, it appears Counsel did attack Johnson's false statements. Accordingly, Applicant has not overcome the burden to prove Counsel's tactic in addressing the co-defendant statements was deficient.

c) Prejudice

Applicant contends Counsel's tactical decisions resulted in a guilty verdict. To establish counsel failed to adequately prepare for trial, Petitioner must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Applicant did not testify about any specific prejudice suffered based upon Counsel's tactical decisions. Furthermore, Applicant did not present any evidence to establish Counsel could have used to improve tactical decisions. Accordingly, this Court finds Applicant is merely speculating without offering specific contents that would have assisted Counsel's tactical strategy. Therefore, this Court

finds Applicant has failed to overcome the burden to prove prejudice based upon any alleged deficiencies in implementing his trial strategy.

2. Unconstitutional Identification

Applicant contends his identification was unconstitutional based upon a violation of his right to counsel. Appellate issues are not appropriate for PCR unless they are considered as ineffective assistance of counsel claims. Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (holding issues that could have been raised at trial or in direct appeal cannot be asserted in PCR application absent a claim of ineffective assistance of counsel).

Here, Counsel credibly testified towards filing a motion to suppress identification before trial. Furthermore, Counsel credibly recalled losing the motion after an oral argument. Additionally, Applicant credibly testified this issue was taken up on direct appeal. Finally, the record reflects this issue was considered on direct appeal. Accordingly, this Court finds the identification issue was appropriate for direct appeal. Therefore, this Court finds Applicant has not proven Counsel was deficient for failing to challenge his identification issue.

3. Failure to Object to Sentencing

Counsel proffered his belief there was no reason to object to the sentence Applicant received. Judges have discretion in sentencing within the statutory limits. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974). Counsel can be ineffective where they fail to object when a judge considers the fact that a defendant exercised the right to a jury trial. Davis v. State, 336 S.C. 329, 332, 520 S.E.2d 801, 802 (1999) (Finding counsel ineffective where the judge considered the co-defendant's pled guilty on the record during a motion for sentence reduction hearing).

Here, Applicant was given concurrent sentences on fourteen counts totaling at thirty years. Pursuant to South Carolina law, a kidnapping conviction alone carries thirty years. S.C. Code Ann. § 16-3-910. Therefore, this Court finds Applicant was sentenced within statutory limits.

Additionally, Judge Anderson never took Applicant's decision to go to trial in consideration when imposing the sentence. (Tr. 498-502). Counsel credibly testified he filed a motion for reconsideration with the affidavit from the victim attached. However, the court denied this motion without holding oral arguments. Counsel credibly testified knowing the difficulty in getting sentence reconsideration based upon the affidavit. Furthermore, Counsel credibly testified a reconsideration motion was mainly a source to put the affidavit on the record for preservation. Finally, Counsel credibly testified feeling there was never indication Applicant was punished for going to trial. Therefore, this Court finds Counsel was not ineffective for any alleged failure to object to the sentence imposed upon Applicant.

VI. CONCLUSION

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

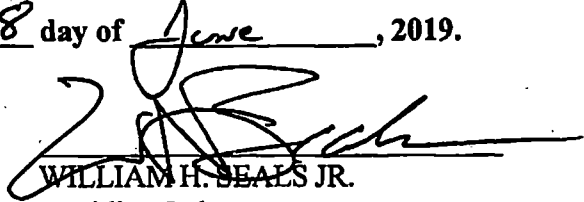
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR


counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures on appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18 day of June, 2019.


WILLIAM H. SEALS JR.
Presiding Judge
Twelfth Judicial Circuit

, South Carolina

RECEIVED
CLERK OF DISTRICT COURT
FLORENCE COUNTY, SC
NOV 20 2008

WITNESSES
LT. BRETT CAMP FCSO

Cox

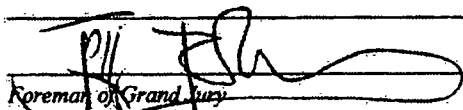
PROS: PSP

D/O: 07-02-2008

ARREST WARRANT NO.
K366015 (1), K366016 (1), K366017 (1);
K330956 (2), K366018 (2), K366019 (2);
K366015 (3), K366016 (3), K366017 (3);
K366015 (4), K366016 (4), K366017 (4).

ACTION OF GRAND JURY

TRUE BILL


Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2008 - GS - 21 - 01919
The State of South Carolina,

County of FLORENCE
PSP

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs.

JOHNNY JOHNSON, JR.

TARRENCE LARON JORDAN

SHAKIM KEITH WILLIAMS

Indictment for

ARMED ROBBERY,
KIDNAPPING,
BURGLARY (FIRST DEGREE),
AND
POSSESSION OF WEAPON
DURING COMMISSION OF VIOLENT CRIME

2008 NOV 20 PM 1:38
CORRECTOR REEL-SHEARER
SOP & GS
FLORENCE COUNTY, SC

FILED

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)

ARMED ROBBERY, KIDNAPPING, BURGLARY (FIRST DEGREE), AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on NOVEMBER 20, 2008, the Grand Jurors of FLORENCE

County present upon their oath:

✓ COUNT ONE - ARMED ROBBERY

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 02, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, did feloniously rob Albert Myers, by means of force or intimidation, goods or monies of the said Albert Myers, to-wit: his wallet, \$400.00 in U.S. currency, and two credit cards.

COUNT TWO - KIDNAPPING

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 02, 2008, violate Sections 16-03-0910 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Albert Myers, by any means whatsoever, without authority of law and by the use of force.

COUNT THREE - BURGLARY FIRST DEGREE

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 02, 2008, violate Sections 16-11-0311 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did enter the dwelling of Albert Myers, without consent and with the intent to commit a crime therein; and/or said defendant entered or remained in said dwelling in the nighttime; and/or when effecting entry or while in the dwelling or in immediate flight therefrom, they or another participant in the crime were armed with a deadly weapon or explosive; and/or caused physical injury to a person who is not a participant in the crime; and/or used or threatened the use of a dangerous instrument; and/or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the said JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN AND SHAKIM KEITH WILLIAMS, has two or more prior convictions for Burglary or Housebreaking or a combination of both.

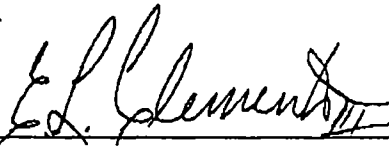
ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, KIDNAPPING, BURGLARY (FIRST DEGREE), AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME WITH THE AFORESAID NAME(S) OF JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN AND SHAKIM KEITH WILLIAMS SHOWN THEREON:

COUNT FOUR - POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 02, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that they were in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Armed Robbery, Kidnapping and Burglary First Degree.

CONFIRMED: A TRUE COPY
Cassia M. Spivey, Clerk
CLERK OF COURT - P. & G.S.
FLORENCE COUNTY, S.C.

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



SOLICITOR

WITNESSES
F. BRETT CAMP FCSO

OX

OS: PSP

D: 07-04-2008

ARREST WARRANT NO.

- 30957 (1), K330960 (1), K330963 (1);
- 30958 (2), K330962 (2), K330965 (2);
- 30959 (3), K330961 (3), K330964 (3);
- 30959 (4), K330961 (4), K330964 (4);
- 30959 (5), K330961 (5), K330964 (5);
- 30959 (6), K330961 (6), K330964 (6).

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2008 - GS - 21 - 01920

The State of South Carolina,

County of FLORENCE
PSP

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs.

- JOHNNY JOHNSON, JR.
- TARRANCE JORDAN
- SHAKIM KEITH WILLIAMS

Indictment for

ARMED ROBBERY,
KIDNAPPING,
POSSESSION OF WEAPON
DURING COMMISSION OF VIOLENT CRIME,
AND
BURGLARY FIRST DEGREE,

CERTIFIED: A TRUE COPY
Christie Spivey
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2008 NOV 20 PM 1:38
CLERK OF COURT
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA	)	ARMED ROBBERY, KIDNAPPING, POSSESSION OF
	)	WEAPON DURING COMMISSION OF VIOLENT CRIME,
COUNTY OF FLORENCE	)	AND BURGLARY FIRST DEGREE,

At a Court of General Sessions, convened on NOVEMBER 20, 2008, the Grand Jurors of FLORENCE

County present upon their oath:

✓ COUNT ONE - ARMED ROBBERY

That JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, did feloniously rob Lewis Oberfrank, by means of force or intimidation, goods or monies of the said Lewis Oberfrank, to-wit: a credit card and \$20.00 in U.S. currency.

COUNT TWO - ARMED ROBBERY

That JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, did feloniously rob Richard Ward, by means of force or intimidation, goods or monies of the said Richard Ward, to-wit: cellphone.

COUNT THREE - ARMED ROBBERY

That JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, did feloniously rob Gilbert Cameron, by means of force or intimidation, goods or monies of the said Gilbert Cameron, to-wit: \$500.00 in U.S. currency and a cellphone.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, KIDNAPPING, POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME, AND BURGLARY FIRST DEGREE, WITH THE AFORESAID NAME(S) OF JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS SHOWN THEREON:

COUNT FOUR - KIDNAPPING

That JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-03-0910 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Lewis Oberfrank, Richard Ward and Gilbert Cameron, by any means whatsoever, without authority of law and by the use of force.

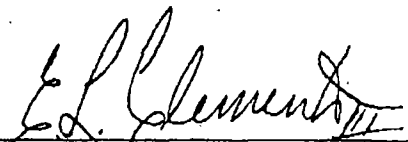
**COUNT FIVE - POSSESSION OF WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that they were in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: handgun, during the commission of a violent crime, to wit: Armed Robbery, Kidnapping, and Burglary First Degree.

COUNT SIX - BURGLARY FIRST DEGREE

That JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-11-0311 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did enter the dwelling of Lewis Oberfrank, Gilbert Cameron, and Richard Ward, without consent and with the intent to commit a crime therein; and/or said defendant entered or remained in said dwelling in the nighttime; and/or when effecting entry or while in the dwelling or in immediate flight therefrom, they or another participant in the crime were armed with a deadly weapon or explosive; and/or caused physical injury to a person who is not a participant in the crime; and/or used or threatened the use of a dangerous instrument; and/or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the said JOHNNY JOHNSON, JR., TARRANCE JORDAN AND SHAKIM KEITH WILLIAMS, has two or more prior convictions for Burglary or Housebreaking or a combination of both.

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



SOLICITOR

RECORDED
INDEXED
NOV 20 2008

WITNESSES
BRET CAMP FCSO

X

JS: PSP

: 07-04-2008

ARREST WARRANT NO.

0966 (1), K366054 (1), K366055 (1),

5056 (1); K330966 (2), K366012 (2),

5013 (2), K366014 (2); K330966 (3),

5012 (3), K366013 (3), K366014 (3);

0966 (4), K366012 (4), K366013 (4),

5014 (4).

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2008 - GS - 21 - 01921

The State of South Carolina,

County of FLORENCE

PSP

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE

vs.

JOHNNY JOHNSON, JR.

TARENCE LARON JORDAN

LOUIS WILLIAMS

SHAKIM KEITH WILLIAMS

Indictment for

ARMED ROBBERY,

KIDNAPPING,

BURGLARY (FIRST DEGREE),

AND

POSSESSION OF WEAPON

DURING COMMISSION OF VIOLENT CRIME

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

ARMED ROBBERY, KIDNAPPING, BURGLARY (FIRST
 DEGREE), AND POSSESSION OF WEAPON DURING
 COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on NOVEMBER 20, 2008, the Grand Jurors of FLORENCE
 County present upon their oath:

COUNT ONE - ARMED ROBBERY

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN, LOUIS WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, did feloniously rob Dean Shappell, by means of force or intimidation, goods or monies of the said Dean Shappell, to-wit: his wallet, credit cards, digital camera, cellphone, watch, and \$180.00 in U.S. currency.

COUNT TWO - KIDNAPPING

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN, LOUIS WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-03-0910 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Dean Shapelle, by any means whatsoever, without authority of law and by the use of force.

COUNT THREE - BURGLARY FIRST DEGREE


That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN, LOUIS WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Sections 16-11-0311 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did enter the dwelling of Dean Shappell, without consent and with the intent to commit a crime therein; and/or said defendant entered or remained in said dwelling in the nighttime; and/or when effecting entry or while in the dwelling or in immediate flight therefrom, they or another participant in the crime were armed with a deadly weapon or explosive; and/or caused physical injury to a person who is not a participant in the crime; and/or used or threatened the use of a dangerous instrument; and/or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the said JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN, LOUIS WILLIAMS AND SHAKIM KEITH WILLIAMS, has two or more prior convictions for Burglary or Housebreaking or a combination of both.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, KIDNAPPING, BURGLARY (FIRST DEGREE), AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME WITH THE AFORESAID ~~JOHNNY JOHNSON, JR.,~~ TARRENCE LARON JORDAN, LOUIS WILLIAMS AND SHAKIM KEITH WILLIAMS SHOWN THEREON:

COUNT FOUR - POSSESSION OF WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

That JOHNNY JOHNSON, JR., TARRENCE LARON JORDAN, LOUIS WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about July 04, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that they were in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: handgun, during the commission of a violent crime, to wit: Armed Robbery, Kidnapping, and Burglary First Degree.

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



SOLICITOR