

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Jocelyn J. Newman, Circuit Court Judge

ALBERT L. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000014

APPENDIX

JOANNA K. DELANY
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

RECEIVED

Oct 06 2020

S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3 2014-GS-40-1751
4 2014-GS-40-8317

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Albert L. Johnson,)
8 Defendant.)

9 November 13, 2015
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
15

16
17 A P P E A R A N C E S:

18 SOUTH CAROLINA DEPARTMENT OF
19 PROBATION, PAROLE AND PARDON SERVICES
20 AMY K. WEST-WILLIS, ASSISTANT SOLICITOR
Appearing for the Plaintiff

21 JESSAMINE L. GRICE, ASSISTANT PUBLIC DEFENDER
22 Attorney for the Defendant
23

24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 NOVEMBER 13, 2015

2 THE PROBATION AGENT: Number 4, Albert
3 Johnson.

4 THE CLERK: Raise your right hand, please.
5 (Defendant complies.)

6 THE CLERK: Do you swear or affirm to tell the
7 truth, the whole truth, and nothing but the truth,
8 so help you God?

9 THE DEFENDANT: Yes.

10 THE CLERK: Thank you.

11 THE PROBATION AGENT: If it may please the
12 Court? Mr. Albert Johnson, he was sentenced on
13 probation. He was sentenced to five years
14 suspended upon one year of time served and three
15 years probation back in June of 2013.

16 During his period of probation -- or he was
17 also sentenced to no contact with the victim,
18 random alcohol and drug testing, and substance
19 abuse counseling.

20 He reported to live at [REDACTED] Dorichlee Lane --
21 and that is Columbia, South Carolina, 29223 --
22 which I conducted a home visit back in September of
23 this year because he was -- at this point he was
24 suspected to be absconded. He claims to still have
25 lived there even after we spoke, but the house was

1 abandoned. Me, myself, and Agent Allen with the
2 Department went there and there was no electricity
3 running to the house based on the SCE&G meter.
4 There was no property inside the house. The house
5 looked as though it was abandoned for quite some
6 time, no furniture, no cars, et cetera.

7 He failed to report on October 9th, 2014.
8 After multiple attempts to gain compliance, he
9 still failed to report. And then he finally
10 reported on September 21st, 2015, after that said
11 home visit that I just spoke of.

12 Mr. Johnson has reported to have employment
13 throughout his probation, and yet he is grossly in
14 arrears on all his accounts, financial accounts.

15 Mr. Johnson has had multiple prior violations.
16 Back in 2013 he tested positive for cocaine, which
17 he was referred to substance abuse counseling for,
18 and we have no documentation of him having ever
19 completed that.

20 Once again, in 2013 he failed to pay his fees
21 and fines where an 1182 or notice of violation was
22 issued for zero tolerance of any sort of a failed
23 drug test, and he had to pay his drug test fee
24 current within 30 days, and that still has not been
25 paid.

1 In May of 2014 he failed to refrain from
2 violating state and local law having been arrested
3 for trespassing on 4/3/14 and 4/23/14. And again
4 he tested positive for cocaine, which he was again
5 referred to New Beginnings, with no documentation
6 of him ever even going. And any further arrests
7 would be forwarded to General Sessions.

8 Here we stand today with Mr. Johnson. He has
9 violated the majority of his conditions. He failed
10 to follow the advice and instruction, so he failed
11 to report on 10/9/14 or any time thereafter, only
12 having reported after that home visit was left, and
13 I believe he was notified by his neighbor about us,
14 or a friend, that we came by.

15 When he reported that following -- that day as
16 well, we used a Alco Saliva Screen Test, which
17 resulted that his blood alcohol level was above a
18 .30 percent.

19 He has had multiple new charges. He has had
20 multiple new charges in the period of time with him
21 being absconded for the last 11 months, including a
22 loitering, which -- or actually it was considered a
23 miscellaneous offense, for which he was convicted
24 for on February 25th, 2014; a trespass after
25 notice, which he was convicted for in May of 2015;

1 a petit larceny, which is pending, I believe; and
2 then now another trespass after notice on
3 June 2015.

4 And then, additionally, just the fact that
5 he's been terminated from -- or the substance abuse
6 counseling multiple times and his continued use of
7 cocaine, which he tested positive for on that one
8 home -- or the one time he reported back in
9 September.

10 So he failed to comply with pretty much every
11 condition that was set forth.

12 THE COURT: All right. Yes, ma'am?

13 MS. GRICE: Thank you, Your Honor. May it
14 please the Court?

15 Your Honor, Mr. Johnson is 56 years old. He
16 does admit he did have a period of not reporting,
17 but we do wish to contest a few things, Your Honor.

18 Your Honor, the original sentence was five
19 years suspended on the service of one. I think it
20 was written that way, because he was in custody for
21 11 and a half months at the time he pled, and so he
22 was in custody 344 days leading up to that. It was
23 three years probation. And it appears he reported
24 for about a year and a half without his violations
25 reaching the level of coming to court. It appears

1 that the agent was not his original agent, and it
2 appears that to somebody he was reporting
3 consistent with over a year and a half.

4 Your Honor, Mr. Johnson has now been in
5 custody for 52 days. He tells me that this
6 address, [REDACTED] Dorichlee, is a valid address. It has
7 never been abandoned. He lives there with his
8 aging mother. He was not there at the time that
9 probation arrived. They left a note on his door.
10 But clearly this must be his address or an address
11 he comes back to frequently enough if he got the
12 message later that same day to come to probation.

13 He did come down to probation. And he did --
14 he tells me that he was drug tested. And he was
15 told to leave and come back the next day. He left
16 and he came back the next day and was taken into
17 custody.

18 I believe the period of lapsed reporting
19 coincides with his agents being switched. I don't
20 know if he kind of fell off track or if he was
21 waiting to hear from them rather than being the one
22 taking the initiative to say, Hey, who is my agent?
23 What should I be doing? But I don't believe he was
24 intentionally trying to avoid any reporting
25 obligations, considering he was doing it

1 consistently for over a year and a half.

2 Mr. Johnson does work. He works for a
3 landscaper by the name Joseph Bracey. I contacted
4 this man a few weeks ago by phone. He expected he
5 could be here this morning, but when I spoke to him
6 this morning he said with the weather finally
7 clearing up he needed to take this opportunity to
8 actually get some work and earn some income. But
9 he told me that he would hire him back. That he is
10 a good consistent worker. I think Mr. Johnson's
11 biggest vice is alcohol. I think that is something
12 we see in the violation. And he said that --
13 Mr. Bracey told me that he doesn't tolerate it if
14 it becomes a problem at some point with Mr. Johnson
15 showing up under the influence, but it may be
16 something he is able to control for purposes of
17 work.

18 Your Honor, we are respectfully asking you to
19 consider a 90 day revocation. He would have to
20 serve a little more time at Alvin S. Glenn, but I
21 don't think keeping him on probation any longer
22 beyond now, that it serves any purpose. This is
23 the only thing holding him in custody.

24 THE COURT: Yes, sir?

25 THE PROBATION AGENT: I also have Ms. Amy

1 West-Willis, Solicitor. She has some pending
2 charges that have not been addressed just yet that
3 coincide with his failure to comply with Condition
4 Number 6.

5 MS. WEST-WILLIS: He was arrested, Your Honor,
6 on June 13th, 2015, for possession of cocaine with
7 a Co-Defendant. It was outside of a business owned
8 by the Co-Defendant. And there was crack cocaine
9 found on the sidewalk, as well as in the
10 Defendant's pocket. And this is captured on video
11 as well.

12 MS. GRICE: And, Your Honor, he has a
13 trespassing charge the agent mentioned. From that
14 he tells me he was not trespassing, he was outside
15 a closed barbershop. It was still daylight hours.

16 We usually have the benefit of the video with
17 the cop's cruiser they are filming, so I'm a little
18 baffled because the video shows -- it was after the
19 police arrived -- it shows Mr. Johnson standing
20 there being detained while his Co-Defendant and a
21 couple of others are there. Mr. Johnson stayed
22 there for about 75 minutes. The last thing you see
23 on the video is the deputy saying, Thank you for
24 your cooperation and it really means a lot, we are
25 going to get you out of here.

1 And so it is not clear to me at what point
2 they searched him. I don't know of anything that
3 was on the ground that was seized. I don't think
4 they field tested the ground. But if that is still
5 a pending charge, and not one to hold him in
6 custody.

7 MS. WEST-WILLIS: The crack cocaine was found
8 in the Defendant's pocket, which was on video. The
9 Defendant is standing at the edge of the video.
10 However, all of this was captured on video. And it
11 was at night, I believe around 11:00 o'clock at
12 night. And I'm not sure about the trespassing
13 charges, but I don't have that in my office.

14 THE COURT: Maybe you need to send Ms. Grice
15 the video you are looking at.

16 MS. GRICE: I have the video.

17 MS. WEST-WILLIS: It is the same video, Your
18 Honor.

19 MS. GRICE: Your Honor, I think Mr. Johnson
20 would like to address you to explain his reporting
21 history.

22 THE DEFENDANT: Good morning, Your Honor.

23 THE COURT: Good morning.

24 THE DEFENDANT: My name is Albert Johnson.
25 And I understand that there is some times where I

1 didn't meet my probation officer the way I should
2 have, but I have been in the hospital a few times.
3 And I could have brought paperwork to show that.
4 And at the time -- and I am also dealing with the
5 fact that my wife has Alzheimer's, and I have been
6 dealing with that. And she is in Massachusetts.
7 And that has been bothering me a lot. And I had to
8 check on her social security.

9 But at this time I did have a change in
10 probation officers. And I was meeting with them at
11 different times. I should have come to the office.
12 And that it is probably why I missed a few times.

13 But as far as going to the drug program, I did
14 go and call them, as they told me, and then turned
15 around and told me to wait until the following week
16 when I wanted to go right then and there.

17 And then when I did call them the following
18 week, they say, Hold up, and I never went there.
19 Never got any consistency.

20 And I was working with Mr. Joe Bracey doing
21 landscaping work. And trying to help my mother out
22 at home, which we do live there, and it is
23 occupied. We close the shades sometime in the
24 summertime, but we do live there. And we have a
25 dog there. And if they had come to the house and

1 observed the house, the house is totally full of
2 furniture. It is six bedrooms, five bathrooms.
3 And I go there and live there and sleep there every
4 night.

5 And also the prior agent had asked about my
6 phone number, and I gave him two phone numbers.
7 And turned around -- and he asked a second time, I
8 came another time and gave him my phone and said he
9 could call me at any point at any time. And when
10 they did leave the note there, I did show up in the
11 office as they wanted me to. And then also when I
12 was supposed to come back the next day by the
13 supervisor, which he said, Be there at 8:30, I was
14 there at 8:30, and he said he told me to come in,
15 and I came in. Thank you.

16 THE COURT: Anything else?

17 THE PROBATION AGENT: Just to kind of
18 reiterate the fact that he was given the benefit of
19 the doubt at the house, you know, didn't appear
20 that way when we did the home visit to the agents
21 that went there. You know, he still has a pending
22 charge, two new convictions. Positive both times
23 we have seen him in 11 months of absconding, he was
24 positive on the front end and positive on the --
25 after reporting for cocaine. He has failed

1 multiple times to do substance abuse counseling.
2 He has failed to pay on his fees, even though he
3 reports, you know, living in a six bedroom house.
4 So we are just respectfully asking just a full
5 revocation and terminate this case.

6 THE COURT: I am going to revoke 30 months,
7 terminate, convert fees and fines to a civil
8 judgment, put ATU on here, 52 days credit for the
9 time that he has served.

10 Thank you.

11 MS. GRICE: Thank you, Your Honor.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE PROBATION AGENT: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were concluded.)
15
16
17
18
19
20
21
22
23
24
25

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for
the Fifth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Richland County, South Carolina, on
the 13th day of November, 2015.

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

July 26, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of RichlandALBERT L. Johnson 355871*
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.2016 CP 400 3040
In the Court of Common PleasJUN 13 PM 1:55
FILED
RICHLAND COUNTY
CLERK OF COURTAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Corr. Inst. 990 W. Sackety Hwy
Bishopville SC 29010
2. Name and location of Court which imposed sentence Richland County General
Sessions Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 12-GS-40-05356
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) November 13th 2015 30 months
(b) _____
(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. N/A
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. N/A
 ii. _____
 iii. _____

(c) the date of each such result:

- i. N/A
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Revocation Counselor Abandoned issue
 (b) _____
 (c) _____

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

- (a) See: Attachment
 (b) See: Attachment
 (c) See: Attachment

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See: Attachment
 (b) See: Attachment
 (c) See: Attachment

Attachment -1

9(A) Whether Applicant was denied due process during probation Revocation hearing, while Represented by Jessamine Grime because trial Court Lacked Jurisdiction to Revoke Applicants probation Although a warrant had been served the issuing Judge never signed probation Arrest warrant # W-40-15-0432

9(B) Whether Applicant was deprived of his conditional Freedom, without the Finding of A Judge unsigned probation Arrest Warrant and Affidavit Violated his Fourteenth Amendment due process Requirement.?

Attachment - 2

10(A) Violation of S.C. Code 24-21-450

State v. Richburg 403 S.E. 2d 315 (1991)

State v. Gray 281 S.E. 2d 226

State v. Loftin 275 S.E. 2d 575 (1981)

10(B)

Exhibit: 1 Copy of Arrest Warrant and Affidavit,

W-40-15-0432 ← same

W-40-15-0432 ← same

Denial of 14 Amendment and S.C.
Constitutional Art. 183

[Constitutional Violation] - Fourth Amendment
Violation illegal seizure

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) 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) First time filing PER Application

(b) ↓

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Jessamine Grice public defender

Richland County po Box 192 Columbia SC 29201

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Revocation hearing

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Vacate Sentence and Conviction

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

NO

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, ALBERT L. JOHNSON Sr., 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.

Albert L. Johnson Sr.

2016 JUN 13 PM 1:55
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

SWORN to and subscribed before me this 2

day of June, 2016

Debra Eastledge (L.S.)
Notary Public

My Commission Expires: 3/3/2020

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

I, ALBERT L. JOHNSON Sr., 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 therefor.

Albert L. Johnson Sr.
Applicant

SWORN or affirmed to and subscribed before me this

2 day of June, 2016

Debra Eastledge
Notary Public

My Commission Expires 3/3/2020



ALAN WILSON
ATTORNEY GENERAL

June 29, 2017

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
P. O. Box 192
Columbia, SC 29202

Re: Albert Johnson, #355871, v. State of South Carolina
2016-CP-40-03440

Dear Ms. McBride:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/fvh
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Albert L. Johnson, #355871,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-03440

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on June 13, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted by the November 2012 term of the Grand Jury for Richland County for common law robbery (2012-GS-40-05356). Jessamine L. Grice, Esquire represented Applicant. Assistant Solicitor Johanna McDuffie, Esquire prosecuted the case. On June 19, 2013, Applicant waived presentment to the grand jury and pleaded guilty to common law robbery. The Honorable Robert Hood sentenced Applicant to five years' imprisonment provided that, upon service of one year, the balance was suspended with probation for three years. At Applicant's probation revocation hearing on November 13, 2015, the Honorable Deandrea G. Benjamin revoked Applicant's sentence and sentenced Applicant to 30 months' imprisonment with 52 days' credit for time served.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the transcript from Applicant's

probation revocation hearing, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Whether Applicant was denied due process during probation revocation hearing while represented by Jessamine Grime because trial court lacked jurisdiction to revoke applicants probation although a warrant had been served the issuing judge never signed probation arrest warrant"
 - b. "Whether Applicant was deprived of his conditional freedom, without the finding of a judge unsigned probation arrest warrant and affidavit violated his Fourteenth Amendment due process requirement"
 - c. "Constitutional Violation- Fourth Amendment"

III.

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

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant's alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

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

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

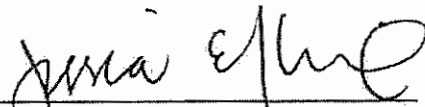
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA KINARD
Assistant Attorney General

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

By: 

ATTORNEYS FOR RESPONDENT

June 29, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2016-CP-40-03440

ALBERT JOHNSON, #355871,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

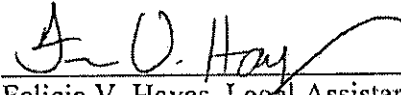
STATE OF SOUTH CAROLINA,

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:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 29th day of June, 2017.


Felicia V. Hayes, Legal Assistant
For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	2016-CP-40-03440

Albert L. Johnson	)
	)
Plaintiff,	)
	)
vs.	)
	)
State of South Carolina,	)
	)
Defendant.	)
	)
	)

January 24, 2018

Columbia, South Carolina

B e f o r e:

The Honorable Jocelyn Newman, Judge

A p p e a r a n c e s:

Jonathan Waller, Esquire
Attorney for the Applicant

Jessica Kinard, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV</u>
A-1	Arrest Warrant	12	

1 (On the record at 9:34 a.m.)

2 MR. WALLER: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. KINARD: Your Honor, we have one guest here, but
5 not all the ones we need; however, we do have a case that
6 is -- involves a gentleman who is no longer incarcerated.
7 So we can go ahead and take care of that one.

8 THE COURT: Okay. Let's start there.

9 MS. KINARD: All right. May it please the Court?

10 THE COURT: Yes, ma'am.

11 MS. KINARD: This is the matter of *Albert L. Johnson*
12 *vs. the State of South Carolina*. It's case No. 2016-CP-40-
13 03440. We're before the Court on an application for post
14 conviction relief that was filed June 13, 2016.

15 At the time of the application, Mr. Johnson was
16 confined in the South Carolina Department of Corrections
17 pursuant to orders of commitment of the Richland County
18 Clerk of Court. He was indicted in the November 2012 term
19 of the Richland County Grand Jury for common law robbery.
20 He was represented by Jessamine Grice, and Assistant
21 Solicitor Joanna McDuffy prosecuted the case.

22 On June 19, 2013, he waived presentment to the grand
23 jury and pleaded guilty to common law robbery. The
24 Honorable Robert E. Hood sentenced him to five years
25 imprisonment, provided that upon service of one year, the

1 balance was suspended with three years probation.

2 At his probation revocation hearing on November 13,
3 2015, the Honorable DeAndrea Benjamin revoked his sentence
4 -- revoked his probation and sentenced him to 30 months
5 imprisonment, with 52 days credit for time served.

6 The State is present and ready to proceed. Mr.
7 Johnson is represented by Mr. Waller. At this time Mr.
8 Johnson is not present in the courtroom, so I would defer
9 to Mr. Waller to the status of his client.

10 THE COURT: Mr. Waller.

11 MR. WALLER: Your Honor, I was appointed to represent
12 Mr. Johnson. I wrote him a letter initially in November of
13 2016. I received a letter back from him. I believe his --
14 he was scheduled to be released in December of 2016. I
15 spoke with him shortly after he was released. He provided
16 me with contact information, telephone number, and address.

17 One of the things in my initial letter to him was to -
18 - if anything changes with your contact information, please
19 let me know.

20 When this roster came out, I sent a letter to the
21 address that I had for him; I called the phone as well. I
22 received no response. At this point I have not heard from
23 Mr. Johnson. I would ask that his name be called three
24 times just to ensure he's not kinda wandering outside
25 somewhere.

1 THE COURT: Yes, sir. Albert Johnson is the name.

2 (Brief pause.)

3 THE BAILIFF: No contact, Your Honor.

4 THE COURT: All right.

5 MR. WALLER: Your Honor, I have no other information.

6 THE COURT: Okay. When is the last time you said you
7 had contact with him?

8 MR. WALLER: It probably would've been January of
9 2017, Your Honor.

10 THE COURT: Okay. All right. Mr. Johnson's PCR
11 application is dismissed for failure to prosecute. If he
12 wants reconsideration of that, you know, 10 days.

13 MR. WALLER: Thank you, Your Honor.

14 (On the record at 9:39 a.m.)

15 (On the record at 1:04 p.m.)

16 MS. KINARD: Your Honor, we've had a development.

17 THE COURT: Okay.

18 MS. KINARD: Mr. Johnson is on the way.

19 THE COURT: Okay.

20 MS. KINARD: He just called Mr. Waller and said he was
21 right down the street. So ...

22 MR. WALLER: He -- he went to Decker Boulevard, Your
23 Honor. So ...

24 THE COURT: Okay. Good enough.

25 MR. WALLER: Your Honor, I apologize. Mr. -- Mr.

1 Johnson is coming in right now.

2 THE COURT: All right.

3 MR. WALLER: Here he is.

4 THE COURT: I'll begin. This is the case of *Albert L.*
5 *Johnson v. State of South Carolina*, 2016-CP-40-03440,
6 application for post conviction relief.

7 This case was initially called this morning, scheduled
8 for 9:30. Mr. Johnson was not here at that time. The
9 Court therefore dismissed his application for failure to
10 prosecute.

11 It's come to the Court's attention that Mr. Johnson
12 simply went to the wrong location. He is here now along
13 with counsel, and I understand everybody's ready to
14 proceed. So that nullifies the dismissal of the case, and
15 we will proceed at this time.

16 Ms. Kinard.

17 MS. KINARD: Thank you, Your Honor. I can recall the
18 case if you'd like, or if -- if not, for the sake of the
19 record, if I can make one correction.

20 THE COURT: Yes.

21 MS. KINARD: I stated earlier that Jessamine Grice
22 represented him at his guilty plea. In fact, that was Mark
23 Sawyer. Mrs. Grice represented him on his probation
24 revocation which is what we're going forward on today.

25 THE COURT: Okay. Oh. And you gave a introduction

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 8

1 earlier. Yes.

2 MS. KINARD: Okay. Would you like me to repeat that?

3 THE COURT: No. Not necessary. Okay.

4 Mr. Waller.

5 MR. WALLER: Thank you, Your Honor. I would call
6 Albert Johnson.

7 **ALBERT LEE JOHNSON**, having been
8 first duly sworn, testifies as follows:

9 THE BAILIFF: State your full name for the record and
10 spell your name for me, please.

11 THE PETITIONER: Albert Lee Johnson. A-l-b-e-r-t, Lee
12 L-e-e, Johnson J-o-h-n-s-o-n.

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

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. WALLER:

18 Q Good afternoon, Mr. Johnson. How are you today?

19 A How you doing, Mr. Waller?

20 Q Mr. Johnson, we had a little confusion this morning.
21 I think it was my fault, not giving you instructions on how
22 to get there ---

23 A Yes, sir.

24 Q --- or get here. I'm glad we're here now.

25 Mr. Johnson, you were -- I'm gonna take you back a

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON

9

1 couple of years ago to when you were first convicted, not
2 the probation that we're talking about here today. Do you
3 remember when you were first convicted, though?

4 A Yes, sir.

5 Q Okay. Do you remember what your sentence was?

6 A I'm not sure.

7 Q Okay. Does five years suspended to the -- the service
8 of one year with probation after that sound about right?

9 A Yes, sir.

10 Q Okay.

11 A That sounds about right.

12 Q At some point after that, you were arrested by
13 Probation; is that right?

14 A Yes, definitely.

15 Q Okay. Tell me how you were arrested by Probation.

16 A I was called into the office and turn around, and
17 promptly and they gave me a urine. I think my urine came
18 back dirty at the time, but they had proceeded to let me go
19 home and told me to come back within 24 hours and I did.

20 I went home and I came back the next day, and then the
21 probation officer and his supervisor decided to arrest me
22 that day and I was incarcerated ever since.

23 Q Okay. After you were arrested, you ended up going in
24 front of a judge on alleged violations of probation; is
25 that right?

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 10

1 A Absolutely, Mr. Waller.

2 Q Okay. Before that happened, when you were first
3 arrested, did you have an attorney on these probation
4 violations?

5 A I believe I did.

6 Q Okay. And do you recall who that was?

7 A Not exactly by name.

8 Q Okay. Was it Ms. Grice, Jessamine Grice?

9 A That sounds about right.

10 Q Okay. Ms. Grice did not represent you initially on --
11 on your first charge, did she?

12 A No, I believe someone else did.

13 Q Okay.

14 A They did.

15 Q Was it Mr. Sawyer?

16 A Yeah. The Public Defender's Office. Yes.

17 Q All right. Now, I know it's been a couple of years,
18 but if you can, do you remember anything you and Ms. Grice
19 would've talked about after you got arrested?

20 A Well, we talked about the issues in the case at the
21 time.

22 Q Okay. And what did she tell you about the issues in
23 the case?

24 A I'm trying to recall to -- to the point -- to try to
25 be punctual because I don't wanna say nothing that I

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 11

1 shouldn't say 'cause I'm -- I'm under oath.

2 Q Yes, sir.

3 A And so we just basically discussed the case and kind
4 of know we had to move forward. And I think the prosecutor
5 came with a deal.

6 Q Okay.

7 THE COURT REPORTER: I'm sorry. Move forward with
8 what?

9 A The case.

10 THE COURT: Is the microphone on?

11 MR. WALLER: I don't know.

12 (Brief pause.)

13 MR. WALLER: Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 (Mr. Waller approaches the witness stand.)

16 Q Mr. Johnson, I want to hand you what's been marked for
17 identification purposes as Petitioner's Exhibit No. 1 and
18 ask if you recognize that document.

19 A Yeah. I -- I definitely received this the second day
20 after they let me go home, and then they told me to come
21 back the next day. And turn around I subsequently was
22 arrested by my probation officer, which I never met. And
23 he was about my third probation officer at the time, but he
24 was kind of rambunctious and wanted to move forward with
25 kind of litigating -- arresting me that day.

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 12

1 Q Okay.

2 A But yes, I'm familiar with this.

3 Q Is that the warrant that -- that they gave you when
4 they arrested you?

5 A This is the warrant they gave me when I was arrested,
6 and I ended up keeping the green one with the stamp and
7 seal on it. But the judge never signed it to legally
8 arrest me at the time, so they improperly, I believe,
9 arrested me with the law that I was looking at when I was
10 at prison and went to the legal counsels to the Court -- I
11 mean, the law -- law library.

12 Q Right.

13 MR. WALLER: Your Honor, at this time I move to -- to
14 admit Applicant's No 1. It's -- it's already in the
15 record, but just for identification purposes, it's a little
16 easier if I can identify it that way.

17 MS. KINARD: Yes, Your Honor. It should be in his
18 clerk's records contained as part of your packet.

19 MR. WALLER: And I believe the ---

20 THE COURT: I see it, but we'll admit it just for ---

21 MS. WALLER: Yes, the State has no objection.

22 THE COURT: Okay.

23 (Applicant's Exhibit No. 1 for identification, arrest
24 warrant document.)

25 Q Did -- when you were arrested, did you have a copy of

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 13

1 that with you when you were in Alvin S. Glenn?

2 A Actually I had this original piece right here in my
3 possession.

4 Q Okay.

5 A When they sent me copies later on, it did not have the
6 seal such as I have the seal on this one, which is the
7 original first one that the judge would have issued. And
8 like I said, he moved forward to do things on his own --
9 George Jimenez, which was the probation officer -- but the
10 judge never signed it period.

11 Q Okay. Did you and Ms. Grice ever talk about that?

12 A At the time -- I didn't find out this information 'til
13 later on. I might have disseminated it to her at another
14 time when I came to court, but right then and there, no,
15 sir.

16 Q Okay. So you were -- you were in the detention center
17 for how many days? 57 days?

18 A 'Bout 57, 55 days, something like that.

19 Q Okay.

20 A It's easy to add up.

21 Q Okay.

22 A Before I went before the other judge.

23 Q How many times do you think you and Ms. Grice met?

24 A Approximately -- probably twice.

25 Q Okay. Do you remember what y'all talked about when

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 14

1 you did meet?

2 A Moving forward with the case. The fact that there
3 might been another lawyer coming with her at the time to
4 probably help me in the courtroom.

5 Q Okay. Did you and Ms. Grice ever discuss this arrest
6 warrant in particular, or did you just talk about the
7 actual case itself?

8 A I think we just talked about the actual case. I don't
9 think we had discussed this until maybe much later.

10 Q Okay. When y'all were talking about the actual case,
11 what did y'all talk about?

12 A Well, how Mr. George Jimenez was so anxious to
13 incarcerate me and the way he was going about -- they way
14 he said to allude to the time to incarcerate me.

15 Q Okay. The -- you -- you testified earlier he was, I
16 think, your third probation agent?

17 A He definitely was my third because I went to two
18 others and sometimes I don't see them. And then I was
19 trying to report and see them, but they was inconsistent
20 also.

21 Q Okay. Mr. Johnson, when you went in front of the
22 judge, do you remember what arguments that you and Ms.
23 Grice made that you should not be revoked -- your probation
24 should not be revoked?

25 A I don't remember the exact arguments, sir. But I'm

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 15

1 sure Ms. Grice can probably --

2 Q Do you ---

3 A -- stipulate [sic] that.

4 Q Okay. Do you remember if the arguments that were made
5 were -- were the same ones y'all talked about?

6 A Pretty much, yes, 'cause she would not just spur
7 [phonetic] off anything that's different.

8 Q Okay. Do you recall at all if it was ever raised to
9 Judge Benjamin about this arrest warrant?

10 A If it was, it was after the fact because once I
11 started kind of going through some of my paperwork and
12 really -- and analyzing it and going to the law -- law
13 library, I came up with -- and then I just -- I filed my
14 post conviction -- my PVC -- PRC -- PCR.

15 Q PCR.

16 A PCR. Excuse me.

17 Q Mr. Johnson, I've just got a couple more questions for
18 you. What are you alleging that Ms. Grice did wrong for
19 you?

20 A Ms. Grice?

21 Q Ms. Grice, yes, sir.

22 A Representing -- she didn't really do anything wrong,
23 but try to defend me in a proper way. But then I think
24 maybe we both might've overlooked the fact of the first
25 warrant here to even arrest me, and that's maybe what only

DIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 16

1 mistake was made. But that's not her mistake because she
2 couldn't have seen it if she didn't have it in her hands.

3 Q Okay. Do you know if she had a copy of the warrant?

4 A That I'm not -- do not know.

5 Q Okay.

6 A But I know that I have the original and the ones that
7 I do have extra copies of, they do not have nothing on it
8 either, but I don't have both sides of it then.

9 Q Okay.

10 A On ---

11 Q Was -- she was the one appointed to represent you; is
12 that right?

13 A True.

14 Q You weren't representing yourself.

15 A Absolutely not.

16 Q Okay. Mr. Johnson, I've asked all the questions that
17 I have for you. Is there anything else that you think the
18 judge needs to be aware of the situation or Ms. Grice's
19 representation of you?

20 A Ms. Grice's representation of me was done well. But
21 like I said, sometimes things do get overlooked and this
22 was one, but I just kind of found out about it later on.

23 And what I would propose to the judge is that when I
24 originally got arrested, Your Honor, is that I feel like I
25 shouldn't have and -- because the judge never signed the

CROSS-EXAMINATION BY MS. KINARD - ALBERT LEE JOHNSON 17

1 warrant to arrest me and I found the law that backs up what
2 I'm saying under 24-21-40 and 50, and everything I found
3 makes it nullable [sic] and it shouldn't stand.

4 Q All right. Anything else, Mr. Johnson?

5 A At this point in time, no. I'd just like some type of
6 relief on it.

7 Q Mr. Johnson, please answer any questions Ms. Kinard
8 has.

9 CROSS-EXAMINATION

10 BY MS. KINARD:

11 Q Good afternoon, Mr. Johnson.

12 A Good -- good afternoon How you doing?

13 Q Fine, thank you. Thank you for being here.

14 Before we get too far, I'm curious if your attorney
15 has spoken with you about the consequences of your being
16 successful in your PCR today?

17 A We had a brief conversation just now and, yes, I have
18 some -- I've been abreast to some point -- some
19 consequences that can come out of this.

20 Q In that there's a chance that you could end up serving
21 additional time, that your charges could be revived, so
22 forth?

23 A And that was brought to my attention, but then I also
24 realize that I did serve some time, but that's something
25 that I shouldn't have served already that was illegal and

1 that's just a fact of law. And I wouldn't figure the law
2 would've wanted me to be re-incarcerated behind something
3 that I already served before.

4 Q Okay. Thank you, sir. So your main contention is
5 that this probation arrest is improper because the judge
6 didn't sign the warrant; is that correct?

7 A That's definitely -- I -- and that's the law. I'm
8 just following the law.

9 Q Okay. Was your warrant signed by anyone?

10 A If you wanna say my probation officer, he signed it.
11 And if you wanna say the constable of law enforcement, Mr.
12 Moore, he signed it on September 23, 2015. But as far as
13 where the judge signature supposed to be, it's not signed,
14 and everything I note in the law says that the judge has to
15 sign the warrants.

16 Q Now, on this warrant, I believe I have an accurate
17 copy of it after looking at the one marked, I -- the
18 signature line does state (as read): "Signature of
19 probation and parole agent"; is that correct, where that
20 signature is provided?

21 A I'm trying to see where you say -- "Signature of
22 probation officer," yeah, "agent." That -- that's
23 definitely signed right there.

24 Q So your allegation is that there should be an
25 additional signature line for a judge?

CROSS-EXAMINATION BY MS. KINARD - ALBERT LEE JOHNSON 19

1 A Yeah, because it's -- that's the law. It says that --
2 in other words, when does a probation officer becomes above
3 the law to totally arrest someone and incarcerate them in
4 prison? I believe that the judge does that. I mean, maybe
5 if I'm wrong, then maybe all the law that's in the book's
6 wrong. If you check up some of the case law. If you do
7 your homework.

8 Q Yes, sir. I'm looking at the two statutes that you
9 just gave us, and that's ---

10 A I gave more than two.

11 Q I heard 24-21-40 and 21 -- 24-21-50. Those two
12 sections.

13 A 24-21-450, that's the section he used to arrest me.
14 That's the section I looked up under, and I find law --
15 case law saying that's nullified, that it can't be done.
16 And I stated several cases in my PCR that nullifies the
17 whole situation.

18 MS. KINARD: Beg the Court's indulgence.

19 (Brief pause.)

20 Q Thank you, sir. I have looked up 24-21-450, and I --
21 I think our interpretation would disagree. As it -- it
22 states (as read): "Any police officer or other agent with
23 power of arrest, upon the request of the probation agent,
24 may arrest a probationer."

25 So I -- I understand that's different. I just wanted

CROSS-EXAMINATION BY MS. KINARD - ALBERT LEE JOHNSON 20

1 to read that into the record since you've sited to it. It
2 is a longer section than that, so I'd -- I ask the Court to
3 look at that if -- if possible.

4 A It's definitely a longer section.

5 Q Yes, sir.

6 A And if you further look into it, it will oversee that
7 what you just said -- stated. And we have judges to back
8 that up.

9 Q Now let's talk a little bit about the facts presented
10 at you probation revocation. You were there when -- excuse
11 me. Ms. Grice was there with you at that hearing; is that
12 correct?

13 A I believe probably the first time. So yeah.

14 Q The first time?

15 A Yeah. Are you saying when I was at the revocation?

16 Q Yes, sir.

17 A At the -- I had no lawyer at that time. I was just
18 sitting with my probation officer. If -- if I'm -- if I'm
19 thinking about the correct time.

20 Q The revocation hearing on November 13, 2015.

21 A I -- I think two lawyers came from the appoint [sic]
22 system, and then later on I think I dealt with her.

23 Q Ms. Grice was there?

24 A I'm not sure. She probably was, but I'm not sure. I
25 know -- I know I -- I dealt with two attorneys that day

CROSS-EXAMINATION BY MS. KINARD - ALBERT LEE JOHNSON 21

1 'cause they stated to me somebody couldn't show up.

2 Q Okay. Do you recall being sworn in and put under oath
3 that day?

4 A Definitely if I had to make a statement, but then I
5 didn't believe -- I didn't have to talk that day. They
6 spoke for me.

7 MS. KINARD: Your Honor, may I approach the witness?

8 THE COURT: Yes.

9 (Ms. Kinard approaches the witness stand.)

10 Q Mr. Johnson I'm showing you a transcript of the
11 probation revocation hearing that we're referring to in
12 court today.

13 A Okay.

14 Q And if you see there on the front, there are two
15 agents from the State, a probation agent and an assistant
16 solicitor, as well as your attorney Ms. Grice; is that
17 correct?

18 A Okay. Yeah.

19 Q And if you'd glance through just to see if this
20 refreshes your recollection as to what happened that day.

21 A (The witness complies.)

22 Q Let me know if any of this looks familiar so we're all
23 on the same page.

24 A I just wasn't sure that Ms. Grice was there, but I can
25 see that she was. I know it was two attorneys, and I agree

1 with that.

2 Q Okay. So we're -- we're -- we're on the same page,
3 talking about the same day.

4 A Okay. Yeah.

5 Q Okay. Now, during this you -- or excuse me -- the
6 probation agent spelled out what they thought was -- were
7 the terms of the probation that you violated; is that
8 correct?

9 A Yes, he did. He spelled out his portion of it. Yes,
10 he did.

11 Q And that included he alleged that you had absconded
12 and were not reporting for over a year; is that correct?

13 A That's what he said, but ---

14 Q Right. That's what he said.

15 A But I was also dealing with other probation officers
16 and I did show up at times --

17 Q Yes.

18 A -- that he didn't know because I never met him before
19 --

20 Q Okay.

21 A -- 'til that day.

22 Q I believe that's reflected in the record if you'd like
23 to keep looking at that.

24 However, were there other charges that you had drawn
25 while you were on probation?

CROSS-EXAMINATION BY MS. KINARD - ALBERT LEE JOHNSON 23

1 A I believe that I might have gotten caught up in
2 something else, but then I got it relinquished [sic]. It
3 was out of the way, but I never was detained about it.

4 Q But do you think it was still pending during that? I
5 believe it was a trespassing charge.

6 A I think I -- like I said, I -- I -- I dealt with it
7 and I got it out the way.

8 Q Okay. And you're -- you're free to keep looking at
9 that.

10 (Brief pause.)

11 Q Mr. Johnson, in addition to that trespassing charge
12 that's mentioned in the transcript, was there a pending
13 possession of cocaine charge that you were dealing with?

14 A Yes. I got -- and I got that out of the way. It was
15 somebody else's stuff, but then I just got caught up in and
16 mixed up with it.

17 Q Okay. The other terms of your probation that you're
18 alleged to have violated --

19 A Oh. And by the way, that cocaine that they did find,
20 it was never on me. It could be in the corner back there
21 that -- it was away from me and it wasn't mine, period.

22 Q Thank you, sir. The other conditions that they allege
23 that you violated were failure to refrain from using
24 controlled substances, which you just testified you gave a
25 positive urinalysis test.

1 A I believe I did, yes.

2 Q Okay. Refrain from possessing a dangerous weapon
3 because you reported with a knife in your pocket.

4 A If you wanna call a can opener -- a can opener with a
5 small little knife about this long (indicates) a dangerous
6 weapon, that's what they used. And then that's all I used
7 it for was can opening. It was on a key chain --

8 Q Okay.

9 A -- and that was it.

10 Q I'm sorry. You were in arrears on some of your
11 financial accounts; is that correct?

12 A Say that again.

13 Q You were behind on some payments you needed to make
14 for various things?

15 A Oh, definitely. I was running behind on payments
16 because I wasn't able to work. Like right now I haven't
17 been working, and I've been out a year and a month because I
18 had a mild stroke.

19 Q And you were also unable to successfully complete
20 substance abuse counseling; is that correct?

21 A Yeah. But I actually tried to go to the place, and
22 the place -- the -- told me don't go -- come back another
23 day and the turn around so when I did try to go, I got hit
24 by him by saying that I didn't try to go. But I did. And
25 it was up the street from the Probation Office.

REDIRECT EXAMINATION BY MR. WALLER - ALBERT LEE JOHNSON 25

1 I try to be somewhat punctual. At least try to -- try
2 to go to do the right thing. It's not like I was trying to
3 do a negative thing.

4 Q Thank you, sir. So you stated earlier that you were
5 happy with Ms. Grice's services, but you believe she may not
6 have been aware of the arrest warrant issue.

7 A And just like I wasn't until I looked into it later.
8 Otherwise, she was a perfect attorney. I'm not gonna sit
9 here -- that she did anything wrong.

10 Q Okay. I have no further questions. Thank you.

11 THE COURT: Anything else, Mr. Waller?

12 MR. WALLER: Just very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. WALLER:

15 Q Mr. Johnson, were you -- were you served with the
16 warrant the day you were arrested or when you were arrested?

17 A The day they arrested me that's how I -- I kind of
18 ended up with this here, and fortunately I got it because
19 otherwise it would've never been in my hand. I would've
20 just had a xerox copy, but I have the original ---

21 Q When did you get that?

22 A I got that I believe the day I was arrested later on.
23 It just happen to got left in my hand by other constituents
24 was -- which was arresting me when the probation officer
25 dropped me off at the Alvin S. Glenn at the time before I

1 end up going to the prison system.

2 Q Okay. Nothing further. Thank you.

3 THE COURT: Okay. You can step down and sit ---

4 THE PETITIONER: Okay. Thank you, Your Honor.

5 THE COURT: --- back next to your lawyer.

6 THE PETITIONER: Appreciate it, ma'am.

7 THE BAILIFF: Just leave that right there. That --
8 you can take this with you right there.

9 THE PETITIONER: Okay.

10 THE BAILIFF: But leave -- leave this right here.

11 THE PETITIONER: This is my original.

12 THE BAILIFF: No, no, no, no. That's in the evidence
13 now.

14 THE COURT REPORTER: That's evidence now.

15 THE BAILIFF: That's in evidence now.

16 (The witness exits the stand.)

17 THE COURT: Mr. Waller.

18 MR. WALLER: I would call Jessamine Grice.

19 JESSAMINE GRICE, having been first
20 duly sworn, testifies as follows:

21 THE WITNESS: My full name is Jessamine, J-e-s-s-a-m-
22 i-n-e, last name Grice, G-r-i-c-e.

23 MR. WALLER: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes.

DIRECT EXAMINATION

1

2 Q Good afternoon, Ms. Grice.

3 A Good afternoon.

4 Q How did you come to represent Mr. Johnson?

5 A I represented Mr. Johnson around this time on two
6 separate matters, and so let me kind of clarify 'cause I
7 think he might -- he might have been misunderstood a couple
8 of times.

9 He had the pending misdemeanor possession charge that
10 he was arrested for in June of 2015. I filed a motion and
11 he got out -- out on a lower bond about a month later. And
12 then was -- and he was on probation at that time and we
13 talked about that. And then he was arrested in his
14 probation agent's office sometime in September, but I didn't
15 learn that he was back in jail until early November I want
16 to say, not long before his hearing.

17 Q Okay. Did you have a chance to meet with him on the --
18 -- the probation issue prior to going back into court?

19 A Yes, sir. I met with him one time at the jail. It
20 looks like about a week before his probation hearing.

21 Q Okay. Did you have a copy of his arrest warrant,
22 probation arrest warrant?

23 A No. Typically with probation cases, the Probation
24 Department puts together the violation report, but our
25 office does not usually receive that until couple of days

1 before the hearing. But sometimes my clients have a copy at
2 the jail with them. I don't recall if he had that, though.

3 Q Okay. Did you -- you said a couple days before. Did
4 you have a chance to view the probation packet prior to
5 getting to court that day?

6 A Yes.

7 Q Okay. Do you remember reviewing the -- the warrant
8 that was used to arrest him?

9 A No. I -- I do have a -- what I have in front of me is
10 what I had that day. It's a copy of the violation report,
11 it's front and back, one page. And then there's a copy of
12 the arrest warrant attached, but I -- I know that I -- I
13 didn't scrutinize it. I don't normally scrutinize that.

14 Q Okay. Would you have gone over it with Mr. Johnson?

15 A I -- I went over the violations that were alleged with
16 him. Yeah.

17 Q Okay. Would you have gone over the procedure of how
18 he was arrested and how he was brought back into court?

19 A I remember talking to him, and my notes reflect that
20 he -- the same as he testified to today. He had gone to see
21 his agent one day, failed the drug test, was told to come
22 back the next day. He was taken into custody, but at that --
23 -- we didn't talk about the statutes or the authority to do
24 that or anything like that that I recall.

25 Q Okay. During the -- the hearing, there was some

DIRECT EXAMINATION BY MR. WALLER - JESSAMINE GRICE 29

1 discussion that he had several different probation agents,
2 and that that might've led to some of his lack of reporting,
3 being confused on he was contacting one agent on this number
4 and now I've got a new agent and how does he contact them?

5 Do you recall if those were contained in the -- the
6 violation report that were then signed as an affiant by the
7 agent arresting him?

8 A There's nothing in the report that has the history of
9 who was doing the supervision, but considering he had been
10 on probation for a year and half at that point, maybe two
11 years, I'm not surprised that he had three agents or that it
12 was very possible that he would have, yeah.

13 Q Good.

14 MR. WALLER: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 Q Show you what's entered as Petitioner's Exhibit 1.

17 A Okay.

18 Q In the -- the paragraph, kind of at the bottom of the
19 box, is any of the information contained in there, to the
20 best of your knowledge, something that a separate agent, not
21 the agent issuing the warrant, would have been supervising?

22 A Give me a second to look.

23 Q Sure.

24 A I can't tell from this. And frequently, even though
25 the affiant on here, George Jimenez, who was the agent who

DIRECT EXAMINATION BY MR. WALLER - JESSAMINE GRICE 30

1 was in court with us that day, he's the one who signed this,
2 but a lot of times it could be a supervisor or somebody
3 else. There's really -- there's nothing I can look at from
4 here that would tell me who listed these violations. Does
5 that answer the question?

6 Q I -- somewhat, and I'll ask a follow-up question to
7 it.

8 A Okay.

9 Q Do you have any concern if an agent, who has the
10 authority to issue an arrest warrant, is signing as an
11 affiant to something he didn't personally witness?

12 A Well, a lot of what's included in this box are
13 convictions that any supervising agent could look up.
14 They're privy to running SLED reports. So that's what a lot
15 of this is.

16 I don't know what's allowed, honestly, but I know the
17 custom is frequently for one agent to rely on the notes and
18 -- the notes of another.

19 Q And again, that's not something you would've gone over
20 with Mr. Johnson.

21 A I'm sure I would have. I did have this with me that
22 day. That's included in the -- the report that I was given
23 by Probation the week of his violation hearing. And I --
24 it's possible that because I was representing him on another
25 case that I would have had a copy of his record that I

DIRECT EXAMINATION BY MR. WALLER - JESSAMINE GRICE

31

1 would've seen these things as well. The charge that I did
2 represent him on is not listed in here.

3 Q Okay. Some of it -- the things that were not
4 convictions or are able to be looked up on a SLED background
5 report or an actual arrest or things like that. Specific
6 probation issues, failure to report, failure to pass a drug
7 test, things like that, the showing up with a knife in his
8 possession, do you have any concern if the agent issuing the
9 arrest warrant was not actually present for any of those
10 things or had first-hand knowledge of any of them?

11 A I don't remember specifically what came up about those
12 during the hearing. I know it was mentioned that he had
13 more -- I want to say that Agent Jimenez was relying more on
14 someone else's notes, but I can't recall specifically whose
15 in terms of when he failed drug tests.

16 Frequently probation agents are relying on someone
17 else's notes. I think it would be unfair to them to say,
18 "Well, if you no longer work, here we can't use anything you
19 wrote down against the person you supervise."

20 But you know, I have seen errors in my experience, so
21 -- like something I would've gone over with Mr. Johnson, I
22 just don't remember the details of that.

23 Q Okay. The failed drug test the day before Mr. Johnson
24 was arrested, that would've been enough to arrest him as a
25 violation of probation; is that right?

1 A I don't know for certain, but I suspect it would be.

2 Q Okay.

3 A It's a -- it's a violation of the contract.

4 Q Okay.

5 A Probation contract.

6 Q So he could've been arrested -- that arrest warrant
7 could've been issued based on just that violation that Agent
8 Jimenez or Geminez [phonetic] was present for?

9 A I believe so, but I know that there's other ways
10 probation could've addressed that, too.

11 Q Okay. I -- I understand what you're saying. There
12 are other ways and they have, in the past, referred him to
13 drug counseling and things like that; is that correct?

14 A Yes. Or -- or they could've given a citation to him
15 to appear in court for a hearing.

16 Q Okay.

17 A Yeah.

18 Q If they wanted to go full speed ahead, I guess that --
19 that would've been enough to issue an arrest warrant and
20 arrest him.

21 A I believe so.

22 Q Okay.

23 MR. WALLER: Beg the Court's indulgence?

24 THE COURT: Yes, sir.

25 Q Thank you, Ms. Grice. Please answer any questions Ms.

1 Kinard has.

2 CROSS-EXAMINATION

3 BY MS. KINARD:

4 Q Thank you for being here and for your patience today,
5 Ms. Grice. Was this your first probation revocation case?

6 A No.

7 Q And so therefore, you were familiar with the process.
8 Like you said you get a packet, you realized you didn't have
9 a whole lot of time to meet your client, so forth -- so on
10 and so forth; is that fair to say?

11 A Yes.

12 Q So when you got this packet, you glanced over it in
13 your usual practice to look for the highlights, things that
14 change from person to person.

15 A Yes. And I -- I'd talked to Mr. Johnson before the
16 day of the hearing and before I had the packet, so I knew
17 from him some of what was being alleged.

18 Q And what did he tell you about those allegations? Did
19 he admit to them? Did he say you could prepare a defense?

20 A Yes. He asked me to call his employer, who I did and
21 I spoke with.

22 He told me that the address that was listed for him
23 was a good address, and that seems confirmed by the fact
24 that his agent testified they left a note at the door of
25 that house -- that seemed abandoned -- for him to report and

1 within a couple of days he showed up at Probation. So --
2 then he mentioned the failed drug test. And I -- I was
3 aware of their arrest as well, the new arrest.

4 Q Now, you testified on direct that it's not your
5 typical practice to scrutinize the arrest warrant.

6 A That's true.

7 Q Do most arrest warrants -- are they proforma and you --
8 -- they just kind of fill in the blanks and -- and sign them?

9 A Yes. And -- and frequently -- I mean, I've had a
10 number of clients taken into custody by a probation agent at
11 the courthouse or at their office. So I -- I -- honestly, I
12 accept that that's allowed and I believe it is.

13 Q Based on your review of the warrant, would you agree
14 that the signature block is for the Probation and Parole
15 agent, for them to issue the warrant?

16 A Where are we looking? On the ...

17 Q The -- you can look at -- on the other side.

18 A On the -- okay.

19 Q Where there those signatures are. That --

20 A Yes.

21 Q The line under the signature says (as read):
22 "Probation" -- "Signature of probation and Parole Agent."

23 A Yes.

24 Q And -- and "Affiant" on the bottom line. Have you
25 ever seen one of these that's signed by a judge?

1 A No, but honestly, I've -- I've never looked for that
2 because it says "Signature of Probation and Parole Agent."

3 Q Do you think that this is deficient because it is not
4 signed by a judge?

5 A No.

6 Q So in the history of your practice, it's normally
7 signed by the arresting agent.

8 A Yes.

9 Q So you had no reason to question the validity of this
10 warrant or the validity of the arrest.

11 A I didn't. I -- I -- I think it was appropriate.

12 Q Has anything been presented to change your mind at
13 this point?

14 A No. I -- I would mention I -- I was looking at this
15 when Mr. Johnson was testifying, and I almost wonder if he
16 is looking at the back of there, where there's the line that
17 says "Signature of Judge." That's not filled in, but I
18 don't think it needs to be.

19 Q And it -- I'm sorry. I don't see that. Oh, there it
20 is. Okay.

21 So based on the -- the face of the document and the
22 applicable code section such as he said, 24-21-450, under
23 which this arrest was made, you believe this was proper?

24 A I -- I do and the -- I haven't looked it up in the
25 context of a probation warrant, but I have in the context

1 for a regular arrest warrant. There are similar lines on
2 the side, and I think because Mr. Johnson was taken into
3 custody by his probation agent, they didn't need a judge's
4 signature ahead of time.

5 If he had not shown up to probation and they wanted to
6 take him into custody, I -- it's my understanding that's
7 when a judge's signature would come into play. They'd have
8 to have someone authorizing, you know, go out and get him.
9 I would assume the same applies on this warrant as it would
10 on a regular arrest warrant for a pending criminal charge.
11 So ...

12 Q Is it fair to say at the time -- (clears throat)
13 excuse me -- you went to court on this revocation, it seemed
14 like a standard run-of-the-mill, nothing out of the ordinary
15 expected?

16 A Well, I -- I should say this, I remember this hearing
17 well, even though it's been a long time ago. And I share
18 Mr. Johnson's frustration over something that hasn't come up
19 today, and I'm -- I'm assuming that's -- maybe that's why he
20 has filed this.

21 This was unusual in the sense that the assistant
22 solicitor on his pending charge showed up. I have never had
23 that happen in my 11 years. Honestly, I don't think that
24 was appropriate, but it's -- it's the kind of thing where --
25 obviously the cat was out of the bag that he had a pending

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1 charge, and it would've sounded like sour grapes for me to
2 say, "Why is she here? It wouldn't change anything."

3 I was troubled by the fact that the probation agent,
4 George Jimenez, and the assistant solicitor had had at least
5 one conversation -- I don't know if it was by phone or email
6 or in person that day -- talking about the violations of
7 probation. Under the probation code, there's -- probation
8 agents aren't allowed to disclose information to just
9 anyone. And so I was troubled by that, but there was really
10 no recourse for me at the time of the probation hearing.

11 But I was frustrated because I felt like the assistant
12 solicitor's presence kind of gave an unfair weight to this
13 pending misdemeanor possession charge. But I -- I don't
14 know that there's anything I could've done differently.

15 Q Did -- do you recall if the assistant solicitor spoke
16 at the hearing?

17 A I believe she did.

18 Q I believe she did as well, on page 9 and 10.

19 MS. KINARD: I believe also that you spoke in defense
20 of what she said and just ask the Court to take notice of
21 that.

22 Q So other than Mrs. West-Willis being there, do you
23 believe this was -- I hate to diminish it -- but an average
24 probation revocation hearing?

25 A Yes, yes.

1 Q Is there anything else that you would like the Court
2 to know about your representation of Mr. Johnson in terms of
3 the probation revocation?

4 A Nothing that I can think of.

5 Q Thank you very much. I ask you to answer anymore
6 questions Mr. Waller may have.

7 MR. WALLER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WALLER:

10 Q Ms. Grice, do you have any record or anything in your
11 file about the warrant being returned to the judge?

12 A Which warrant?

13 Q The probation arrest warrant. You just mentioned that
14 it was not signed by the judge.

15 A Well, while I'm looking to see what I have in my file,
16 normally I don't get any paperwork after a probation
17 hearing. I know that Probation does, I think, what they
18 call a "Form 9" that has the results of that hearing, and at
19 some point Mr. Johnson had written me from the Department of
20 Corrections and asked for a copy of that which I sent him.

21 Yeah. And I don't know that a judge ever signed that
22 part.

23 Q Okay.

24 A Or if they needed to. I don't know.

25 Q Okay. Do you know if Mr. Johnson ever had a bond

REDIRECT EXAMINATION BY MR. WALLER - JESSAMINE GRICE 39

1 hearing on the probation violations?

2 A He would've gone to bond court. I wouldn't have been
3 present for that. Our office typically is not. And it
4 looks like he got a \$15,000 surety bond set at some point.

5 Q Okay.

6 MR. WALLER: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Brief pause.)

9 Q Nothing further. Thank you, Ms. Grice.

10 A Thank you.

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

12 (The witness exits the stand.)

13 MR. WALLER: No further witnesses, Your Honor.

14 THE COURT: Any witnesses from the State?

15 MS. KINARD: No witnesses, Your Honor.

16 THE COURT: Let me hear from you, Mr. Waller.

17 MR. WALLER: Your Honor, briefly, and actually the --
18 the application cites most of the things I'm about to argue
19 to Your Honor. Code section 24-21-450 controls the issuing
20 of arrests warrants for violation of probation. It -- it
21 clearly says that a probation agent can issue an arrest
22 warrant. However, Your Honor, I think that the -- the --
23 the ability to issue an arrest warrant does not mean that
24 they can issue an arrest warrant for things that they didn't
25 actually view on their supervision.

1 The -- the arrest warrant goes back to early -- not
2 early, excuse me, to October of 2014, and Mr. Johnson
3 testified that this agent that arrested him, the first time
4 he'd met him was the day before he was arrested.

5 So it was -- he was a new agent. Certainly he could
6 have issued the warrant for the violation of the condition,
7 but he chose to add a bunch of additional things in there.
8 I think that makes the warrant itself defective for not
9 complying with -- with the statute.

10 Your honor, in addition, the statute says that a --
11 that -- sorry, Your Honor, I lost my place. (As read):
12 "That a report of such arrest and detention brought to the
13 judge -- made to the judge of the court..." Again, I don't
14 think that was complied with here. Ms. Grice testified that
15 he had a bond hearing, but that she didn't believe that any
16 return had been made, that the warrant certainly does not
17 have a signature of a judge.

18 Your Honor, I ask you to take a look at *State v.*
19 *Richburg*. The citation is 403 SE 2d 315. It's a 1991 case
20 and it's citing *Gray v. State*. And Your Honor, the cite for
21 that case is 281 SE 2d 226, and those cites are also in --
22 in Mr. Johnson's -- Mr. Johnson's application.

23 One thing that *Richburg* says is that (as read):
24 "Failure to comply with the warrant procedures set forth in
25 section 24-21-450 deprives the Court of subject matter

1 jurisdiction to revoke probation."

2 So Your Honor, while I -- I don't think that the agent
3 was without the authority to issue an arrest warrant, I
4 don't believe that this warrant was a valid arrest warrant
5 for those reasons.

6 So I would -- I would argue that the warrant was
7 invalid, and so the Court did not have the jurisdiction to -
8 - did not have the jurisdiction to revoke Mr. Johnson's
9 probation. Certainly the Court of General Sessions has
10 subject matter jurisdiction over criminal matters, including
11 probation; however, I don't think he can come into court
12 without a valid arrest warrant.

13 THE COURT: Okay. Ms. Kinard.

14 MS. KINARD: Thank you, Your Honor. To start with the
15 last comment made, certainly the Court of General Sessions
16 has jurisdiction over probation and parole issues; and while
17 a valid arrest warrant may be needed to initially bring
18 someone to court, we argue that would be more of a notice
19 document, such as an indictment notice document.

20 He -- he knew why he was there, he knew why he'd been
21 arrested, and he agreed both today and earlier that he had
22 violated his probation in -- in several ways.

23 I want to echo what -- what Ms. Grice said, which is
24 that it's unreasonable to say that an officer or a member of
25 any state office cannot rely on the work of their peers. In

1 this case, she also justified that she thought it would be
2 normal for Mr. Johnson to have had three different probation
3 officers during his little over a year on probation, and for
4 them to be unable to rely on the work of their predecessor
5 is simply unreasonable.

6 Certainly notes were kept, documents were kept, and
7 records of earlier violations were kept on Mr. Johnson. If
8 nothing else, what Mr. Waller referred to in that the
9 violations went back to October of 2014 and he was not
10 arrested until September of 2015, part of the issue is that
11 that's the last time they heard from him was in October of
12 2014. So there would be no record really in between by the
13 way that I read the record.

14 So anything that Officer Jimenez would've been relying
15 on would essentially been in lack of communication by Mr.
16 Johnson with probation officer or any officer. Surely he
17 made -- made the allegation he was speaking with other
18 probation officers, but that's not reflected in any of the
19 information that we have and that was presented before him -
20 - or excuse me -- before the Court that day.

21 On a separate note, I certainly don't think that Ms.
22 Grice can be seen to have been ineffective in any manner.
23 She used all the information she had before her. She used
24 the practice that her -- typical practices, excuse me, of
25 dealing in defending these probation revocation cases, and

1 the warrant that was presented to her is just like any other
2 warrant that she had reviewed.

3 So for -- for these reasons, the State does not
4 believe that the warrant was defective by the language of
5 24-21-450. We don't think there is any failure to comply
6 with what has been provided.

7 Furthermore, if you look at the face of the warrant,
8 it cites to section 17-13-160, which states the Office of
9 the Attorney General has the authority to propound documents
10 such as this one allowing arrests and other things to take
11 place, and if this is the format that was presented and was
12 in use at the time, then it is the appropriate format by
13 which to make an arrest.

14 For all of these reasons, we believe that the arrest
15 warrant was valid, that Ms. Grice was neither deficient nor
16 prejudicial in her representation of Mr. Johnson, and that
17 his application should be denied and dismissed with
18 prejudice.

19 THE COURT: Okay. It certainly can't be said that Ms.
20 Grice's performance fell below professional norms,
21 particularly in this matter when we're discussing a
22 probation arrest warrant, particularly because, as we sit
23 here, nobody seems to really know the answer as to whether
24 there should be a signature on the back, and so that puts
25 her performance and knowledge on par with any other

1 attorney's, frankly. And just by routine practice, this is
2 not a document that is commonly analyzed in a probation
3 case. Maybe it should be, but it's not common practice to
4 do that.

5 But as to the document itself, I do find it to be a
6 valid arrest warrant. Agent Jimenez, being the affiant on
7 the warrant, cites several alleged violations of Mr.
8 Henderson's [sic] probation, many of those being public
9 record. I wouldn't say that it's based on hearsay, so to
10 speak, but several of the violations include criminal
11 convictions. There are also failure to pay fees that Agent
12 Jimenez could have learned from a computer system at the
13 Department as any other agent does. I mean, this isn't an
14 issue of him personally paying a debt or -- or handing the
15 agent cash. This is a governmental entity that has certain
16 record keeping departments. And so even if you exclude the
17 portions that discuss, you know, failure to report because
18 perhaps it wouldn't have been Agent Jimenez who would have -
19 - or Mr. -- did I call Mr. Henderson Mr. Johnson -- Mr.
20 Johnson reported to.

21 Even if you exclude those things, there's still
22 sufficient facts in the warrant, even if the arrest warrant
23 itself is invalid. State law also provides for agents to
24 issue citations and notice of what the alleged violations
25 are.

1 Now, had Mr. Johnson not ultimately been revoked, or
2 had a portion of his sentence not been revoked, then he may
3 have some separate claim for an improper seizure of his
4 person. Maybe not a successful one, but theoretically could
5 have.

6 But in this case, even without a judge's signature to
7 the extent that the form of the warrant would be deficient,
8 it is the functional equivalent of a citation and a
9 subsequent hearing, and so there is no detriment to Mr.
10 Johnson in this case because he was ultimately imprisoned
11 and was given credit for the time that he was detained prior
12 to the revocation hearing.

13 As to the issue of return of a warrant to the judge of
14 the court, that is what happens at bond court essentially.
15 I mean, the judges sit with the warrants and have a pile of
16 warrants and hear the charges and read the charges from the
17 warrants, and that is how they make a determination of what
18 a bond should be, what bond is appropriate.

19 So for all of those reasons -- and I'm trying to make
20 sure I'm not leaving anything out -- for all of those
21 reasons, the application for post conviction relief is
22 denied.

23 MS. KINARD: Thank you, Your Honor.

24 MR. WALLER: Thank you, Your Honor.

25 THE COURT: Get me a proposed order, please.

1 MS. KINARD: Yes, ma'am.

2 (Off the record at 2:00 p.m.)

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court, for Richland County, South Carolina, on the 24th day of January, 2018.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

May 30, 2018

Form 10.1-Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-180
March 16, 1978

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Probation

ARREST WARRANT

Indictment Number 12-GS-40-05356

Warrant Number W-40-15-0432

State Identification No. (SID) 00260837

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

It appearing from the attached affidavit that there are reasonable grounds to believe that ALBERT LEE JOHNSON, did on the 23 day of September, 2015 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Albert Lee Johnson violated conditions 1, 3, 4, 6, 7, 9, 10 and special conditions of his Probation as ordered in Cause Number 14-GS-40-05356 in the Richland County Court of General Sessions on 6/19/13 by the Honorable Judge Hood and Notice of Violation and Response on 11/7/13.

Now, therefore, you are empowered and directed to arrest the said defendant and bring ALBERT LEE JOHNSON before me forthwith or as soon thereafter as is practicable with according law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at COLUMBIA, South Carolina, this 23 day of September, 2015.

County of **RICHLAND**

STATE OF SOUTH CAROLINA

Signature of Probation and Parole Agent

AFFIDAVIT

Personally appeared before me, one George Jimenez, who, first being duly sworn, deposes and says that ALBERT LEE JOHNSON did within this County and State on the 23 day of September, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Albert Lee Johnson violated conditions 1, 3, 4, 6, 7, 9, 10 and special conditions of his Probation as ordered in Cause Number 14-GS-40-05356 in the Richland County Court of General Sessions on 6/19/13 by the Honorable Judge Hood and Notice of Violation and Response on 11/7/13.

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

Albert Lee Johnson failed to follow the advice and instructions of his Agent in that he: Failed to report as instructed on 10/09/14 or anytime thereafter until 9/22/2015; failed to refrain from using controlled substances testing positive for cocaine on 9/30/14 and 9/22/15; failed to refrain from possessing a dangerous weapon, reporting to the Richland County Probation Office on 09/22/15 with a knife in his possession; failed to refrain from violating State Law being convicted of Loitering on 2/25/14, Trespass after Notice on 5/19/14, Petty Larceny <\$2,000 on 8/6/14 and Trespass after Notice on 6/8/15; failed to pay Supervision Fee being in arrears \$1,350.00 with an unpaid balance of \$1,800.00; failed to pay Surcharge having an unpaid balance of \$133.90; failed to pay Drug Test Fee having an unpaid balance of \$20.00; failed to successful complete Court Ordered Substance Abuse Counseling being terminated from New Beginning on 5/14/14 for failure to report.

Sworn to and Subscribed before me
this 23 day of September, 2015.

Signature of Notary Public

(L.S.)

5/19/25
My Commission Expires

Address: 1221 GREGG STREET
COLUMBIA, SC 29201
RICHLAND
USA

(803) 734-6320

RETURN

Constable or Law Enforcement Officer

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

Albert Johnson
on the 25 day of Sept 15
[Signature]
Constable or Law Enforcement Officer

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

(L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

COUNTY OF

RICHLAND

THE STATE
against

ALBERT LEE JOHNSON

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 9/23/2015

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

George Jimenez

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name ALBERT LEE JOHNSON
Address DORICHLA LANE
COLUMBIA, SC 29223
Phone (470) 768-7568 ext. 3
Sex Male Race Black Height 509
Weight 180 Birth date [REDACTED]
Social Security Number [REDACTED]

INFORMATION ON WITNESSES

Name _____
Address _____
Phone _____
Name _____
Address _____
Phone _____
Name _____
Address _____
Phone _____
Name _____
Address _____
Phone _____

PRELIMINARY HEARING held by

Magistrate _____
on _____
with _____

Attorney for the Defendant.

Decision

BAIL

Date Set _____
Magistrate _____
Amount _____
Surety _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Albert L. Johnson,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-40-³⁶⁴⁰~~03440~~

ORDER OF DISMISSAL

2018 MAY 25 AM 11:01

RICHLAND COUNTY

This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed by Applicant Albert L. Johnson ("Applicant") on June 13, 2016. Respondent filed its Return on June 29, 2017. On January 24, 2018, a hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Jessica Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

Applicant is no longer confined in the South Carolina Department of Corrections. Applicant was indicted at the November 2012 term of the Richland County Grand Jury in indictment 2012-GS-40-05356 for Common Law Robbery. Applicant was represented on this charge by Jessamine L. Grice, Esquire ("probation revocation counsel").

On June 19, 2013, Applicant pled guilty to Common Law Robbery. The Honorable Robert Hood, imposed a sentence of five years suspended upon the service of one year of incarceration and probation for three years.



Page 1 of 7

Order of Dismissal

Albert L. Johnson v. State, 2016-CP-40-03440

Upon the completion of one year imprisonment, Applicant began his three-year probation period. During this probation period, Applicant failed to follow certain conditions of his probation.¹ On September 23, 2015, a probation officer issued an arrest warrant pursuant to S.C. CODE ANN. §24-21-450 (1976), charging Applicant with various violations of his probation conditions.

On November 13, 2015, the Honorable Deandrea G. Benjamin revoked Applicant's probation and sentenced him to 30 months' incarceration.

Applicant filed an application for PCR on June 13, 2016, in which he alleged he was being held in custody unlawfully due to ineffective assistance of counsel stating the following reasons: (1) "Whether Applicant was denied due process during probation revocation hearing while represented by Jessamine Grice because trial court lacked jurisdiction to revoke applicants probation although warrant had been served the issuing judge never signed probation arrest warrant;" (2) "Whether Applicant was deprived of his conditional freedom, without the finding of a judge unsigned probation arrest warrant and affidavit violated his Fourteenth Amendment due process requirement;" and (3) "Constitutional violation-Fourth Amendment."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

¹ See Arrest Warrant dated September 23, 2015.



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Order of Dismissal

Albert L. Johnson v. State, 2016-CP-40-03440

I. TESTIMONY OF APPLICANT: INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleged he received ineffective assistance of counsel due to a deficiency by probation revocation counsel which is laid out in Applicant's PCR Application and discussed further below. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have 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 to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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." Id. at 117-18, 386 S.E.2d at 625; see Strickland, 466 U.S. at 688, 692, 104 S. Ct. at 2065, 2067 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); see also Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel

failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

During the evidentiary hearing, Applicant testified he was appointed Jessamine L. Grice, Esquire ("probation revocation counsel"), of the Richland County Public Defender's Office as counsel. Applicant stated he reported to his assigned probation office and was told to come back the next day. Upon returning to the probation office the following day, Applicant testified that he was arrested pursuant to a probation arrest warrant not issued by a magistrate judge. Applicant further testified, he had been assigned three probation agents through his period of probation, and that Applicant's current agent, George Jimenez, was anxious to arrest him. Applicant stated, probation revocation counsel never discussed the arrest warrant with him.

Applicant testified he was in jail for approximately fifty-five (55) days and met with probation


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Order of Dismissal

Albert L. Johnson v. State, 2016-CP-40-03440

revocation counsel on two occasions. Applicant stated he could not recall which arguments probation revocation counsel made on his behalf at the probation revocation hearing. Applicant further testified that he and probation revocation counsel might have overlooked the probation arrest warrant not being issued by a magistrate judge. Applicant stated probation revocation counsel did nothing wrong and her representation was done well. Applicant contended his arrest was improper because a magistrate judge did not issue the probation arrest warrant.

II. TESTIMONY OF PLEA COUNSEL

Probation revocation counsel also testified at the evidentiary hearing and corroborated many of Applicant's allegations. Specifically, probation revocation counsel admitted that she did not discuss with Applicant statutes involving arrest for violation of terms of probation or probation agents' authority to arrest. Probation revocation counsel also agreed that she overlooked the probation arrest warrant not being issued by a magistrate judge.

Finally, probation revocation counsel testified she did discuss with Applicant his alleged violations and the circumstances surrounding his arrest.

CONCLUSIONS OF LAW

Applicant alleges his Fourteenth Amendment due process rights were violated when a probation officer issued an arrest warrant pursuant to S.C. Code Ann. § 24-21-450, charging Applicant with various violations of his probation conditions. These allegations are without merit.

Section 24-21-450 clearly provides for the issuance of an arrest warrant by a probation officer when, in his judgment, a violation of probation conditions has occurred. Specifically, the statute provides:

"At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer or other officer with power


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Order of Dismissal

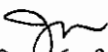
Albert L. Johnson v. State, 2016-CP-40-03440

of arrest, upon the request of the probation officer, may arrest a probationer. ” (Emphasis added.)

In State v. Franks, 276 S.C. 636, 638, 281 S.E.2d 227, 228 (1981), the South Carolina Supreme Court determined “probation is an act of grace extended to one already convicted of a crime ... providing the full protection of due process of law. A proceeding for the revocation of this privilege of probation is more in the nature of an extension of the original proceedings than it is a separate criminal prosecution.” Id. Further, the Court contended “while the underlying violations may themselves be criminal offenses, the probation revocation proceeding is not a criminal trial of those charges.” Id. The Court reasoned that a probation hearing is more of an informal proceeding with respect to notice and proof of the alleged violations but not a hearing imposing additional punishment. Id. Therefore, “the penalty imposed upon a finding of violation of probation conditions is a forfeiture of the act of grace extended and reimposition of the unserved portion of the original sentence.” Id.

Because the rights of an offender are different in a probation revocation hearing than in the trial of the original offense, the Supreme Court determined that those rights extended in the trial of the original offense are not extended to the offender by the United States Constitution in a probation revocation hearing. Id. at 639. Thus, a person convicted of a crime and subject to various probation conditions “does not enjoy the same unfettered constitutional privileges available to those not so confined.” Id.

Therefore, this Court agrees with the rationale utilized by the Supreme Court in Franks that a probation officer is authorized by law to issue an arrest warrant for a probation violation, and it is not necessary that such a warrant be issued by a magistrate judge. Further, Applicant has not suffered constitutional deprivation with respect to his probation revocation and the arrest preceding his probation revocation. In considering the statutory powers given to probation officers, as well as the fact that a probation revocation hearing is an extension of the original proceedings, this Court


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Order of Dismissal

Albert L. Johnson v. State, 2016-CP-40-03440

concludes that the Fourth Amendment's requirement that a magistrate issue an arrest warrant does not apply to a warrant for violation of probation conditions.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, this Court cannot find that probation revocation counsel was not "a reasonably competent attorney" or that her advice was not "within the range of competence demanded of attorneys in criminal cases." Similarly, Applicant has failed to offer evidence of his claims of ineffective assistance of counsel. The Court finds no professional errors on the part of probation revocation counsel; therefore, no prejudice could have resulted from her representation.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

AND IT IS SO ORDERED.

May 24, 2018
Columbia, South Carolina.


Jocelyn Newman
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Albert L. Johnson,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUITMOTION PURSUANT TO RULE 59(e)
SCRCP, TO AMEND

Case No. 2016-CP-403640

FILED
2018 JUN -7 PM 1:10
JEROME MCBRIDE
J.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that the Applicant, Albert L. Johnson, by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(e), SCRCP, for an Order of the Court to alter or amend its prior Order filed May 25, 2018.

The Applicant filed a timely application for post-conviction relief (PCR) on June 13, 2016. In his application, Applicant challenged the validity of the probation violation warrant issued to arrest him for alleged violations of his probation. Applicant contends that there were arguments made by he and counsel that were not included in the Order of Dismissal issued by the Court.

Applicant contends that he presented evidence and made arguments that the complete provisions of §24-21-450 were not followed and therefore the court was deprived of jurisdiction to hear the probation revocation. §24-21-450 also states in part:

...In case of an arrest, the arresting officer or other agent must have a written warrant from the probation agent setting forth that the probationer has, in his judgment, violated the conditions of probation, and such statement shall be warrant for the detention of such probationer in the county jail or other appropriate place of detention, until such probationer can be brought before the judge of the court or of the court within the venue of which the violation

occurs. Such probation agent must forthwith report such arrest and detention to the judge of the court, or of the court within the venue of which the violation occurs, and submit in writing a report showing in what manner the probationer has violated his probation...

Applicant argued at the evidentiary hearing that the arresting agent did not comply with these provisions and as such the warrant so defective to the point of denying the Court of its jurisdiction to hear the matter. Applicant cited State v. Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991)(citing Gray v. State, 276 S.C. 634, 281 S.E.2d 226 (1981)) in support of this position. Applicant argued that not only did the arresting agent have the warrant prior to placing Applicant under arrest, but also that the Agent did not have firsthand knowledge of the alleged violations as he was Applicant's new probation agent and had only met him the day prior to his arrest. Further, Applicant argues that the probation agent failed to provide a return to the court following the arrest as required by §24-21-450.

For the foregoing reasons, Applicant requests that the Court withdraw its previous Order and issue a new Order with full legal and factual findings on the above-referenced arguments and granting Applicant the Post Conviction Relief he seeks.

Respectfully submitted,

By: 

Jonathan D. Waller
SC Bar No.: 76298
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
Telephone: 803-520-7278

E-mail: jonathan@wallergroupsc.com

ATTORNEY FOR THE APPLICANT

June 5, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Albert L. Johnson,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-40-03640

AMENDED ORDER OF DISMISSAL

2019 DEC 17 PM 1:56
RICHLAND COUNTY
FILED
CLARENCE W. ALLEN
C.C.P.S. & F.C.

This matter came before the Court upon Application for Post-Conviction Relief ("PCR") filed by Applicant Albert L. Johnson ("Applicant") on June 13, 2016. Respondent filed its Return on June 29, 2017. On January 24, 2018, a hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Jessica Kinard, Esquire.

This Court issued its Order of Dismissal on May 25, 2018, denying the Application for Post-Conviction Relief and dismissing this matter with prejudice. On June 7, 2018, Applicant filed a "Motion Pursuant to Rule 59(e), SCRCP, to Amend" in which he contends that the Order of Dismissal failed to address certain arguments.

In GRANTING Applicant's motion, in part, the Court AMENDS its Order of Dismissal as follows:

FACTUAL AND PROCEDURAL HISTORY

Applicant is no longer confined in the South Carolina Department of Corrections. He was indicted at the November 2012 term of the Richland County Grand Jury for Common Law Robbery


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Amended Order of Dismissal
Albert L. Johnson v. State, 2016-CP-40-03640

(indictment 2012-GS-40-05356). Pursuant to Applicant's guilty plea to the charge on June 19, 2013, he was placed on probation.¹

Upon the completion of one year imprisonment, Applicant began his three-year probation period. During this probation period, Applicant failed to follow certain conditions of his probation.² On September 23, 2015, a probation officer issued an arrest warrant pursuant to S.C. CODE ANN. §24-21-450 (1991), charging Applicant with various violations of his probation conditions. On November 13, 2015, the Honorable DeAndrea G. Benjamin revoked Applicant's probation and sentenced him to thirty months' incarceration. Applicant was represented at this hearing by Jessamine L. Grice, Esquire ("Probation Revocation Counsel").

Applicant filed an application for PCR on June 13, 2016, in which he alleged he was being held in custody unlawfully due to ineffective assistance of counsel stating the following reasons: (1) "Whether Applicant was denied due process during probation revocation hearing while represented by Jessamine Grice because trial court lacked jurisdiction to revoke applicants probation although warrant had been served the issuing judge never signed probation arrest warrant;" (2) "Whether Applicant was deprived of his conditional freedom, without the finding of a judge unsigned probation arrest warrant and affidavit violated his Fourteenth Amendment due process requirement;" and (3) "Constitutional violation-Fourth Amendment."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This

¹ He was sentenced to five years' imprisonment provided that, upon the service of one year, the balance was suspended with probation for three years.

² See Arrest Warrant dated September 23, 2015. 

Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. §17-27-80 (2003).

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have 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 to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

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." *Id.* at 117-18, 386 S.E.2d at 625; *see Strickland*, 466 U.S. at 688, 692 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); *see also Porter*

v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. U.S.*, 564 F.2d 1071 (4th Cir. 1977)).

I. Applicant's Testimony

During the evidentiary hearing, Applicant testified that Probation Revocation Counsel was appointed to represent him. Applicant stated he reported to his assigned probation office and was told to come back the next day. Upon returning to the probation office the following day, Applicant testified that he was arrested pursuant to a probation arrest warrant; however, he contends that the arrest warrant was not signed by a magistrate judge. Applicant further testified that he had been assigned three different probation agents through his period of probation and that George Jimenez, Applicant's assigned agent at the time of the arrest, was anxious to arrest him. According to Applicant, Probation Revocation Counsel never discussed the arrest warrant with

him.

Applicant testified that he was in jail for approximately fifty-five days and met with Probation Revocation Counsel on two occasions. He stated that he could not recall which arguments Probation Revocation Counsel made on his behalf at the probation revocation hearing. Applicant further testified that he and Probation Revocation Counsel might have overlooked the deficiency in the probation arrest warrant, but that he believed that Probation Revocation Counsel did nothing wrong and her representation was done well. Applicant contends that his arrest was improper because it was not signed by a magistrate judge, depriving the court of jurisdiction to revoke his probation; therefore, he received ineffective assistance of counsel.

II. Testimony of Probation Revocation Counsel

Probation Revocation Counsel also testified at the evidentiary hearing and corroborated many of Applicant's allegations. Specifically, she admitted that she did not discuss with Applicant statutes involving arrest for violation of terms of probation or probation agents' authority to arrest. While Probation Revocation Counsel testified that she did discuss with Applicant his alleged probation violations and the circumstances surrounding his arrest, she conceded that she overlooked the fact that the probation arrest warrant was not properly signed.

III. Due Process

Applicant alleges that his Fourteenth Amendment due process rights were violated when a probation officer issued an arrest warrant pursuant to S.C. CODE ANN. §24-21-450, charging Applicant with various violations of his probation conditions. These allegations are without merit.

Section 24-21-450 clearly provides for the issuance of an arrest warrant by a probation officer when, in his judgment, a violation of probation conditions has occurred. Specifically, the statute provides:

At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation agent *may issue or cause the issuing of a warrant* and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer.

S.C. CODE ANN. §24-21-450 (1991) (emphasis added).

In *State v. Franks*, 276 S.C. 636, 638, 281 S.E.2d 227, 228 (1981), the South Carolina Supreme Court determined that "probation is an act of grace extended to one already convicted of a crime ... providing the full protection of due process of law. A proceeding for the revocation of this privilege of probation is more in the nature of an extension of the original proceedings than it is a separate criminal prosecution." *Id.* Further, the Court stated that "while the underlying violations may themselves be criminal offenses, the probation revocation proceeding is not a criminal trial of those charges." *Id.* The Court reasoned that a probation hearing is more of an informal proceeding with respect to notice and proof of the alleged violations but not a hearing imposing additional punishment. *Id.* Therefore, "the penalty imposed upon a finding of violation of probation conditions is a forfeiture of the act of grace extended and reimposition of the unserved portion of the original sentence." *Id.*

Because the rights of an offender are different in a probation revocation hearing than in the trial of the original offense, the Supreme Court determined that those rights extended in the trial of the original offense are not extended to the offender by the United States Constitution in a probation revocation hearing. *Id.* at 639. Thus, a person convicted of a crime and subject to various probation conditions "does not enjoy the same unfettered constitutional privileges available to those not so confined." *Id.*

Therefore, this Court agrees with the rationale utilized by the *Franks* Court that a probation officer is authorized by law to issue an arrest warrant for a probation violation, and it is not necessary that such a warrant be issued by a magistrate judge. Further, Applicant has not suffered constitutional deprivation with respect to his probation revocation and the arrest preceding his probation revocation. In considering the statutory powers given to probation officers, as well as the fact that a probation revocation hearing is an extension of the original proceedings, this Court concludes that the Fourth Amendment's requirement that a magistrate issue an arrest warrant does not apply to a warrant for violation of probation conditions.

The Court's conclusion is unchanged by Applicant's complaint that the probation agent lacked firsthand knowledge of the alleged violations. The law allows "the probation agent [to] issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation..." S.C. CODE ANN. §24-21-450 (1991). There is no requirement – in the South Carolina Code or otherwise – that a warrant be issued only upon the firsthand knowledge of the affiant. In fact, the opposite is true; and arrest warrants are issued every day where there is no eyewitness to a criminal act, but the affiant, upon information and belief, attests that probable cause exists to effect the arrest. Thus, this argument is without merit.

IV. Subject Matter Jurisdiction

Applicant also contends that the probation arrest warrant was so defective that the Court was deprived of jurisdiction to revoke his probation. The Court disagrees.

Applicant's reliance on *State v. Richburg*, 304 S.C. 162, 403 S.E.2d 315 (1991) is misplaced, as that case is factually distinctive. It is clear that "[f]ailure to comply with the warrant procedures set forth in Section 24-21-450 deprives the trial court of subject matter jurisdiction to revoke probation." *Id.* at 164, 403 S.E.2d at 317 (citing *Gray v. State*, 672 S.C. 634, 281 S.E.2d

226 (1981)). However, the *Richburg* court discussed the law's requirement that an arrest warrant be issued in order to confer subject matter jurisdiction upon the Circuit Court. *Id.* at 164-65, 403 S.E.2d at 317. *Richburg* did not, however, concern deficiencies of a warrant when one has been issued, as was the case for Applicant. Here, the Court has found the arrest warrant not to be defective; therefore, Applicant's challenge to subject matter jurisdiction must fail as well.

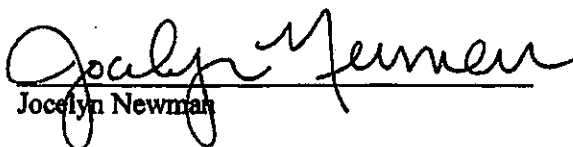
CONCLUSION

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, this Court cannot find that probation revocation counsel was not "a reasonably competent attorney" or that her advice was not "within the range of competence demanded of attorneys in criminal cases." Similarly, Applicant has failed to offer competent or sufficient evidence to support his claims of ineffective assistance of counsel. The Court finds no professional errors on the part of probation revocation counsel; therefore, no prejudice could have resulted from her representation. Finally, the Court finds Applicant's challenge of subject matter jurisdiction to be without merit.

IT IS THEREFORE ORDERED that Applicant's "Motion Pursuant to Rule 59(e), SCRPC, to Amend" is GRANTED to the limited extent that set forth above.

IT IS FURTHER ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

AND IT IS SO ORDERED.


Jocelyn Newman

December 12, 2019
Columbia, South Carolina.

WITNESSES

(S) Brandy Spears-Hunger – Richland
County Sheriff

ARREST WARRANT NUMBER

2012A4010200104

ACTION OF GRAND JURY

TRUE BILL

Joie R. Koenig
Foreperson of Grand Jury

Date: **NOV 08 2012**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4005356

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

154 NOVEMBER TERM 2012

**THE STATE
vs.**

Albert Lee Johnson

**Indictment for
STRONG ARM ROBBERY**

**SC Code: 16-11-0325
CDR Code: 0137**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Albert Johnson
hereby appear in my own proper person and plead
guilty to the within indictment ~~or to~~

Albert Johnson
Defendant

Witness: *[Signature]*
C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

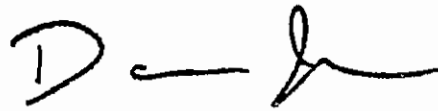
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 7, 2012,
 the Grand Jurors of Richland County present upon their oath:

ROBBERY/STRONG ARM ROBBERY

That Albert Lee Johnson did in Richland County on or about July 12, 2012,
 take personal property from or in the immediate presence of Ogi Mitchell
 with the intent to deprive him/her of possession through the use of force,
 threats of force, or intimidation, and did carry away the property taken, in
 violation of the Common Law crime of Strong Arm Robbery.

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



DAN JOHNSON, SOLICITOR

RECEIVED
 CLERK OF COURT
 RICHLAND COUNTY
 SOUTH CAROLINA
 NOV 14 2012
 11:00 AM

98
STATE OF SOUTH CAROLINACOUNTY OF Richland
STATE VS.
Albert Lee Johnson

AKA:

Race: BLACK Sex: M Age: 54DOB: [REDACTED] SS#: [REDACTED]Address: Dorichlee LaneCity, State, Zip: Columbia, SC 29223DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Common law robbery, strong arm robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4005356 ✓A/W#: 2012A4010200104Date of Offense: 7/12/2012S.C. Code §: 16-11-0325CDR Code #: 0137

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Joanna McDuffie
McDuffie, Joanna77003
SC Bar#Albert Lee Johnson
DefendantMark [Signature]
Attorney for Defendant76140
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 1 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Joanna McDuffie
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINANO CONTACT WITH THE INCIDENT
LOCATION☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Re FordJudge Code: 2164Sentence Date: 6/19/13Clerk of Court/ Deputy Clerk Joanna McDuffieCourt Reporter: Ambrozio

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

ASGDC

IN THE COURT OF GENERAL SESSIONS

County of

Richland

STATE

VS.

Albert Lee Johnson

AKA:

Race:

B

Sex:

M

DOB:

SSN:

SID#:

00260837

Indictment Number:

2012 -GS- 40 - 05356

Probation C/W#s:

W-40-15-0432

Name of Original Offense:

Common / Strong arm Robbery

Original A/W#:

2012A4010250104

Date of Original Offense:

7/12/12

Conviction S.C. Code §:

16-11-0325

Conviction CDR Code #:

6111317

Original Sentence:

540 ss 1 yr + 3 yr prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/19/13 in the Court of General Sessions of Richland County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on N/A, as set forth in the attached warrant(s) or citation(s) dated 9/23/15. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

1, 3, 4, 6, 7, 9 & 10 & Special conditions

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 30 months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence; subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Financial Obligations: Order satisfies: ☒ Department fees (arrearage) Civil judgment: ☐ Department fees
☐ Fines and other fees (arrearage/balance) ☒ Fines and other fees
☐ Restitution (and 20%) (arrearage/balance) ☐ Restitution (and 20%)
- ☒ Additional Conditions ordered by the Court: Revoke 30 months and terminate. BEATU
Civil Judgment for Court fine. CTS of 52 days. NO Administrative Monitoring

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

☒ The defendant has previously served 1 months/years on this sentence.
 (split sentence time and/or prior partial revocation time)

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

This 13th day of Nov., 2015,
Columbia, SC

Presiding Judge Benjamin
Fitz Judicial Circuit

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

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

Offender's Signature

Witnessed by

Signed this 13th day of Nov., 2015, at Columbia SC
 Day Month Year City

60322
60322

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE
V.

DEFENDANT

Albert Lee Johnson

IN THE COURT OF GENERAL SESSIONS

NO.

12-GS-40-05356

CIVIL JUDGMENT

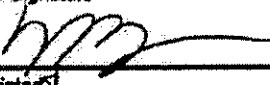
 Dorichea Ln.
Columbia, SC
29223

This matter came before me on the above mentioned date, pursuant to a motion to require the defendant to show cause why the defendant's default in paying fines ~~and restitution~~ (strike inapplicable) should not be treated as a civil judgment and a judgment lien attached. After hearing the evidence, I find that no cause was shown why judgment should not be entered for the unpaid balance of fines ~~and restitution~~ (strike inapplicable). I find the unpaid balance of the fine and ~~restitution~~ (Strike inapplicable) due and the payee to be as stated below.

It is therefore ordered adjudged and decreed that the payee, shall have judgment against the defendant in the sum stated below. It is further ordered that the clerk of court enter this judgment in the civil judgment records of the court. All of which is ordered pursuant to S. C. Code Ann. 17-25-323.

Payee's Name Richland C o C		
Payee's Address P O Box 2766		
Street Columbia SC		
City	State	Zip

The Defendant is ordered to pay to the Payee the sum of
\$ 133.90

Presiding Judge's Signature 	Date 11/13/15
Judge's Name Printed Benjamin	Columbia s.c.