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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

J. Mark Hayes, II, PCR Judge

Case No. 2017-CP-23-2653

Oshaun J. Robinson,

Respondent,

v.

State of South Carolina,

Petitioner.

NOTICE OF APPEAL

The State appeals the order granting post-conviction relief and the order denying the Rule 59(e), SCRCP, motion to alter or amend of the Honorable J. Mark Hayes, Jr., dated May 14, 2020, and filed May 19, 2020. The State received written notice of entry of this order granting post-conviction relief on May 22, 2020. The State submitted a motion to alter or amend pursuant to Rule 59(e), SCRCP, on June 1, 2020, and filed on June 3, 2020. Judge Hayes denied the State's motion to alter or amend in a Form 4 order signed July 23, 2020, and filed July 28, 2020. Thereafter, Judge Hayes issued a formal order denying the State's motion on September 1, 2020, and filed September 9, 2020. The State received the final order denying the motion on September 14, 2020.

October 14, 2020

s/Samuel L. Key

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2017CP2302653

Oshaun Joseph Robinson *vs.* South Carolina State Of

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

ATTACHED IS AN ORDER FILED IN THIS CASE.

Dated at Greenville, South Carolina, this .

Court Reporter:

_____

PRESIDING JUDGE -

Tara Dawn Shurling 3614 Landmark Drive Suite A
Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan Harrigan Jameson PO Box 11549
Columbia, SC 29211
SOLICITORS OFFICE GREENVILLE COUNTY

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2017-CP-23-2653
OSHAUN JOSEPH ROBINSON, #327798,	)	
	)	
Applicant,	)	
v.	)	**Order**
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

I.
PROCEDURAL HISTORY

Applicant was convicted of charges of Simple Assault (08-GS-23-5384), Criminal Conspiracy (08-GS-23-5383), Possession of a Weapon (08-GS-23-5382), Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime. (08-GS-23-5382) on January 15, 2009, following a jury trial. He received an aggregate sentence of twenty-five (25) years on those judgments. Shortly thereafter, on March 4, 2009, Applicant, acting on the advice of Defense Counsel, entered the guilty pleas addressed in this Application for PCR. Those pleas were entered before the Honorable Edward W. Miller, presiding circuit court judge. Pursuant to those pleas, judgments were entered against Applicant for criminal conspiracy (2008-GS-23-5385), assault and battery with intent to kill (2008-GS-23-5386), armed robbery, and possession of a weapon during the commission of a violent crime (2008-GS-23-5387). He was represented in the Court of General Sessions on those charges by Andrew Burke Moorman, Esquire. Attorney Moorman also represented Applicant at his earlier jury trial on the other charges discussed *supra.* Assistant Solicitor Lucas Marchant, Esquire, represented the State in the prosecution of these charges. Judge Miller sentenced Applicant to imprisonment in the custody of the South Carolina Department of Corrections for concurrent terms of five (5) years for

criminal conspiracy, twenty (20) years for assault and battery with intent to kill, twenty-five (25) years for armed robbery, and five (5) years for possession of a weapon during the commission of a violent crime. Said sentences were ordered to run concurrently with each other and concurrent to the sentences imposed at his earlier jury trial. The result was Applicant having an aggregate sentence of twenty-five (25) years. Applicant did not pursue a direct appeal from the judgments and sentences entered pursuant to his guilty pleas.

Applicant did pursue a direct appeal from the judgments and sentences entered at his ***jury trial.*** The public Records of the South Carolina court of Appeals verify that this direct appeal was filed by Trial and Plea Counsel, Andrew Moorman, on January 23, 2009. In an unpublished opinion, the South Carolina Court of Appeals affirmed those convictions and sentences. *See, State v. Robinson*, Unpublished Op. No. 2012-UP-042, decided January 25, 2012. Those judgments and sentences were, however, overturned in a subsequent PCR appeal. *Oshaun J. Robinson, v. State*, Op. No. 2015-MO-018 (Sup.Ct. dated April 15, 2015). The reversal in Applicant's PCR Appeal was based upon the same issue and analysis found in the Supreme Court's decision in the companion case of *Kenneth W Workmen v. State*, Op. No. 27514 (S.Ct. April 15, 2015).

Applicant subsequently entered pleas of guilty on May 16, 2016, to the charges he was originally convicted of at his jury trial. This time, Applicant received an aggregate sentence of fifteen (15) years of those judgments. Said sentences were run concurrent to each other and concurrent to the sentences he received pursuant to his guilty pleas on March 4, 2009, following his earlier jury trial. As a result, Applicant was left with an aggregate term of twenty-five (25) years.

In this Application for PCR Applicant alleges generally that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteen Amendments to the United States Constitution, as well as Article I, §14 of the South Carolina Constitution, were violated prior to and during his guilty plea

proceeding. He submits that his pleas were not knowingly and entered inasmuch as they were the product of deficient representation by Plea Counsel in that Pleas Counsel failed to give him sufficient advice concerning the potential impact of a successful appeal from the judgments and sentences entered at his jury trial.

This Application for Post-Conviction Relief (hereafter PCR) was filed on April 25, 2017 and docketed at 2017-CP-23-02653. Respondent served its Return and Motion to Dismiss on November 2, 2018. A Conditional Order of Dismissal was entered on that PCR action on November 9, 2018. Applicant filed a timely Response to said Conditional Order of Dismissal on December 12, 2018. By way of a Form 4 Order issued by the Court on December 27, 2018, Applicant was granted a hearing. Said Order did not specify whether the matter was to be set for an evidentiary hearing on the merits of Applicant's claims, or, whether the sole issue before the Court was to be whether Applicant should be allowed to proceed with a full PCR action at some point in the future. *See*, Form 4 Order dated December 27, 2018, entered by the Honorable Perry H. Gravely, Chief Administrative Judge.

A hearing was convened before the Honorable Alex Kinlaw, presiding circuit court judge, on this matter on April 15 and 17, 2019. Applicant was present at these proceedings and was represented by Tara Dawn Shurling, of the Richland County Bar. Respondent was represented by Samuel L. Key, Assistant Attorney General. Applicant testified on his own behalf at this hearing and additionally presented testimony from Plea Counsel Andrew Burke Moorman. Attorney Moorman had also represented Applicant at his jury trial approximately seven (7) weeks prior to the guilty pleas at issue in this PCR action. In addition to that testimony, Judge Kinlaw had before him a copy of the records of the Greenville County Clerk of Court regarding the subjection convictions and sentences, a copy of Applicant's records from the South Carolina Department of Corrections and the pleadings in this matter and the orders previously filed in connection with this PCR action.

Judge Kinlaw also had before him copies of the exhibits introduced by Applicant during the April, 2019, proceedings held on Respondent's Motion to Dismiss. The records of the Greenville County Clerk of Court indicate that the exhibits introduced during the April, 2019, proceedings were filed on April 17, 2019. By Order filed August 22, 2019, the Conditional Order of Dismissal in this matter was vacated. Respondent's Motion to Dismiss was denied.

An evidentiary hearing was convened before this Court on January 22, 2020. Applicant was present for this proceeding and was once again represented by Tara Dawn Shurling, Esquire. Respondent was again represented by Samuel L. Key, Assistant Attorney General. At the outset of this proceeding, the parties requested that this Court incorporate by reference the testimony heard at the previous hearing before Judge Kinlaw. The parties further agreed that, with certain minor exceptions, that testimony would be accepted by this Court in lieu of testimony from Applicant and Plea Counsel, Andrew Morton. Exhibits introduced during that proceeding were filed on January 22, 2020 and included a transcript of the April, 2019, proceedings. On February 6, 2020, a Form 4 Order was entered directing both sides to file Proposed Orders in this matter. In said Order, this Court expressly found that the testimony of both Applicant and Plea Counsel appeared believable and was consistent with the transcript of the testimony heard at the April, 2019 proceedings.

Applicant's current Application for PCR addresses his claim that he received ineffective assistance of counsel prior to and during his guilty pleas approximately seven weeks after his jury trial. He asserts that he was advised by Defense Counsel to plead guilty to the charges addressed in this Application, but that he was given very limited advice concerning the terms of his pleas, and the potential consequences of his pleas in relation to the judgments and sentences entered at his jury trial. He seeks a reversal of the judgments and sentences entered pursuant to his pleas of guilty, entered March 9, 2009, on Indictments No. 2008-GS-23-5385 (assault and

battery with intent to kill); 2008-GS-23-5386 (armed robbery) and 2008-GS-23-5387,(possession of a weapon during the commission of a violent crime).

I.

STANDARD OF REVIEW

The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rule 71.1(e), SCRCP.* In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Defense Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). In other words, the Applicant must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Ard v. Catoe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007). Under the *Strickland Standard,* it is not necessary that an Applicant prove that counsel's deficient performance more than likely altered the outcome of his trial, but rather he is required to establish a probability sufficient to undermine confidence in that outcome. *Strickland, supra*, 466 U.S. at 697.

Where Defense Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. Defense Counsel may not, however, explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. *Roseboro v. State,*

317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992).

DISCUSSION

Applicant argues that Defense Counsel neglected to discuss the potential consequences of these guilty pleas with him and that he specifically failed to address how the possible outcome of a direct appeal, and/ or Post-Conviction Relief case arising from his judgments and sentences from his jury trial, might impact the judgments and sentences entered as a result of his guilty pleas. He further asserted that Plea Counsel never advised him that the State had not obtained indictments of the other charges they were proposing to dismiss as a term of his guilty plea agreement. Applicant argues that, as a consequence of Counsel's inadequate advice concerning the relationship between these two sets of judgments and sentences, he was left with the understanding that the two sets of charges, and the sentences he received, were effectively *merged* by his entry of pleas pursuant to the terms of his negotiated plea deal with the State. Applicant's testimony during the hearings held in this matter[1] clearly asserted that it was his understanding that any changes to the judgments and sentences imposed at his jury trial would have the same impact upon the judgments and concurrent sentences entered on the charges addressed in this application. Applicant's testimony asserts that it was his express understanding that his pleas on these charges would never impact his criminal record and would not result in a longer term of incarceration. Applicant's testimony clearly submitted that he was not worried about being convicted on the other charges which were being dismissed as a consequence of his guilty pleas because it was obvious to him that law enforcement was just trying to "*clear their books*" on those charges and had no evidence that he was guilty of the charges to which he had pleaded or the charges that were dropped as part of his plea deal. It was his position, however,

[1] Judge Kinlaw; April 15 and 17, 2019 and Judge Hayes; January 22, 2020.

that he pleaded guilty to these charges because he was assured that his pleas would never result in him getting more time for them than he received for the charges he had been found guilty of at his jury trial and it would eliminate the potential risk that the State might succeed in getting a life without parole sentence against him at some time in the future. PCR II, Tr. p. 14, line 13 – p. 15, line 18.

Prior to the March 4, 2009, guilty plea, Counsel advised Applicant the State would recommend for Applicant to receive no more time than he received from his jury convictions and for the guilty plea sentences to run concurrent to his jury convictions. Applicant testified he pleaded guilty because he already had a twenty-five year sentence from the jury conviction, and if he did not plead guilty to these charges, the State was going to serve him LWOP notice. Applicant testified he took the twenty-five year offer because it "ran in with the [twenty-five] years [he] was already serving." (Motion Tr. 14). Applicant explained that he understood concurrent meant that his sentences from his two sets of charges would be run together. Specifically, Applicant stated, "Just the sentencing. That's all I'm --." (Motion Tr. 14). Applicant testified he pleaded guilty with the understanding that he was not ever going to have to worry about getting more time for those charges than he had already gotten.

Applicant testified that Plea Counsel never explained to him that the only sense in which the judgments and sentences he received as a result of his March 4, 2009, guilty please would be connected to the judgments and sentences he received at his earlier jury trial was the fact that his sentences from the pleas would be ordered to be served concurrent to the sentences from his jury trial. He was not advised that the two sets of charges would remain separate legally and that if he appealed the judgments and sentences from the jury he would need to appeal the judgments and sentences from the pleas separately. PCR II, Tr. p. 15, lines 20 – 24. Applicant testified

that he never would have taken the plea deal if he had understood that fact. . PCR II, Tr. p. 15, line 25 – p. 16, line1. Applicant clearly stated that if he had known he would have to file a separate Post-Conviction Relief action to challenge the judgments and sentences from the guilty pleas he would have done so, but that he never understood that the judgments and sentences from the guilty please were legally separate and not impacted by the reversal of the judgments and sentences from his jury trial until just days before his pleas on the charges that were originally the disposed of through the jury trial. At that point, Applicant discovered it was too late to file a PCR action pursuant to §17-27-45(A). He then hired Counsel and filed a second PCR action pursuant to §17-27-45 (C). PCR II., Tr. p. 16, Line 2 – p. 17, line 17,

The testimony taken at the hearings on this application reflect Applicant's belief that all the charges disposed of at his jury trial, and those to which he pleaded, were effectively merged. He testified that at the time of the opinion in his PCR Appeal from his jury trial, he did not understand that the reversal of the judgments and sentences from his jury trial did not similarly impact the judgments and sentences from his guilty plea. According to his PCR testimony, Applicant did not become aware that his judgments and sentences from his guilty plea proceeding were not also effectively reversed by the decision from the Supreme Court on his PCR appeal until the final stages of his plea negotiations on the charges which were remanded to the Court of General Sessions as a result of that appeal. Applicant testified that within a few days after this discovery, on May 16, 2016, he entered pleas on the charges which had originally been disposed of at the jury trial addressed in his PCR appeal. . PCR II, Tr. p.52, line 15 – p. 55, line 22.

Following these new pleas, Applicant began the task of raising the funds necessary to hire a lawyer in an attempt to secure a collateral review of his guilty pleas addressed in his

current PCR Application. On April 25, 2017, less than 365 days after he discovered that his judgments and sentences on these charges had not been overturned along with those arising from his jury trial, Applicant filed his current Application for Post-Conviction Relief. Based upon that chronology, he submitted that this application was timely filed pursuant to S.C.Code Ann §17-27-45(C). By previous Order, Judge Kinlaw found this filing to be timely. This Court is bound by that ruling and notes that it concurs in that finding.

Applicant was granted the right to proceed on the merits of his PCR Application by Order of the Honorable Alex Kinlaw, filed August 22, 2019. Judge Kinlaw found that the hearing held on April 15 and 17, 2019, was for the purpose of determining whether Applicant should be allowed to move forward with his current PCR Application and be granted an evidentiary hearing on the merits of his underlying claims. Judge Kinlaw then found that Applicant should be granted leave to proceed with this collateral action. In so ruling the Court took into account the Applicant's own PCR testimony, the testimony of his defense counsel, Andrew Burke Moorman, Esquire, the exhibits introduced by Applicant and the arguments advanced by his PCR Counsel, Tara Dawn Shurling.

Judge Kinlaw noted in his Order that Defense Counsel recalled in his PCR testimony, advising Applicant of what the term concurrent meant and the fact that the concurrent sentences he would receive, if he accepted the plea deal being offered, would not result in him serving a longer sentence than that which he had already received at his jury trial. As argued by Applicant, the Court noted that this same Defense Attorney represented Applicant at that jury trial and therefore, would have been very familiar with that case and the sentences imposed at its conclusion.

In the testimony had in this PCR action, Defense Counsel admitted that he had no recollection of ever advising Applicant of the consequences that would follow if his judgments and

sentences from the jury trial were to be overturned on direct appeal, or in a PCR action, at a later date. Defense Counsel acknowledged that he did not admonish his client concerning the fact that the two cases were only concurrent as to sentence. He admitted that he *did not qualify* his advice that the entry of the pleas would not result in him receiving any more time for these pleas than he got for the jury trial charges. Judge Kinlaw found that, on those facts, it was not difficult to see how a defendant might reach the same understanding that Applicant expressed to the Court. Judge Kinlaw's Order assigned no fault to Applicant for failing to find out the reality of what impact a reversal of the judgments and sentences he received at his jury trial would have on the judgments and sentences received pursuant to his subsequent guilty pleas. As far as his SCDC records would have revealed, the sentences on both sets of charges were in fact the same and they were run concurrent. Therefore, Applicant had no notice of what the result of a reversal on the jury trial judgments and sentences might ultimately be. Judge Kinlaw found that, based on his attorney's advice, Applicant had no way of knowing that he might in fact ultimately end up getting more time on the guilty plea charges than he received on the charges originally disposed of by jury trial. Judge Kinlaw found Applicant's testimony credible on this point particularly in light of Defense Counsel's own testimony. As for the timeliness of this current application, Judge Kinlaw's Order found that Applicant had no reason to question the soundness Defense Counsel's advice until he learned, during the plea negotiation process when the jury trial charges were remanded for a new trial, that whatever sentence he received on remand of those charges would not change the sentence he received on the charges currently before the Court. This Court agrees.

In addition to the findings made by Judge Kinlaw, this Court is constrained to note several additional facts which persuade this Court of the credibility of Applicant's testimony and the merit of his PCR claims. Applicant was represented at trial by the same lawyer that represented him at

the pleas now before this Court for review. The public Records of the South Carolina Court of Appeals show that the Notice of Appeal on those charges was filed by Applicant's lawyer at both his trial and his guilty pleas, Andrew Moorman, on January 23, 2009. Thus, at the time Applicant was advised by Counsel that his pleas would not result in him getting more time on the charges he was pleading to than he received for the charges he had gone to trial on, he knew there was going to be a direct appeal. Although that direct appeal did not result in the reversal of the judgments and sentence entered at Applicant's trial, it could have and Counsel did not explain how such a reversal might impact Appellant's ultimate aggregate sentence. Furthermore, as a criminal defense lawyer, it is reasonable to infer that he would have know that even if the direct appeal were not successful, Applicant would have a right to a PCR action which might also impact his ultimate aggregate sentence on these two sets of charges.

This Court finds that the degree to which Applicant could reasonably have believed that these two sets of charges were "***merged***", as opposed to simply having concurrent sentences, is further supported by other facts in this case. The twenty-three (23) charges that were dismissed following these pleas were all made brought by way of arrest warrants with supporting made by ***Officer C.W. Hanning*** of the Greenville County Sherriff's Office. Each of the warrants that were dismissed on March 9, 2009, purport to be signed off on by ***Magistrate Judge James E. Hudson***, Judges Code No. 5031. All but *three* of these warrants were dated as signed on December 27, 2007. All twenty-three dismissed charges were *nol prossed* on March 9, 2009. All of Applicant's charges from his trial, his guilty pleas and the warrants that were dismissed following his pleas, were served on him on December 28, 2007. A single warrant on one of the charges that went to trial was dated December 27, 2009, and three that were dismissed, were likewise dated December 27, 2009. The signatures on those three arrest warrants are not even similar to the signatures on the other twenty

charges that were dismissed. Furthermore, the Court observes that one of the arrest warrants on a charge to which Applicant pleaded on March 4, 2009, originally showed an offense date of December 18, 2007. The portion of that warrant signed by Magistrate Hudson was likewise originally dated December 18, 2007. Both those dates were changed to December 14, 2007 by hand. The Affidavit portion of that Warrant, again signed by Officer C. W. Hanning, remained dated December 18, 2007. *See, Warrant No. I-474445.* The changes on these dates are not initialed or dated. On two other of the charges Applicant pleaded to on that date, the offense date was obviously originally December 18, 2007 and the date of the affidavit was also December 18, 2007. Both those dates were changed to December 14, 2007, by hand. The date Magistrate Hudson signed these two warrants was listed as December 18, 2007, but that was not changed on these two warrants unlike I-474445. See, Warrants No. I-474444 and I-474443. None of the changes on these two warrants are initialed or dated. According to the twenty-three (23) warrants for the charges that were dropped, these offenses all occurred between November 21, 2007 and December 14, 2007. Despite the fact that all these offenses took place within the same time period as those for which Applicant went to trial, and those to which he pleaded, it is worthy of note that the State had not obtained true billed indictments on any of charges dismissed in exchange for Applicant's guilty pleas. Applicant has alleged, and Plea Counsel did not disputed, that he was not made aware of this fact prior to his guilty pleas.

This Court finds Plea Counsel's representation was deficient in that he failed to fully advise Applicant concerning how a reversal on the judgments and sentences entered at his earlier jury trial might change the sentence for those offenses and thereby change the impact of the pleas he was considering entering. This Court finds his testimony to be credible and not inconsistent with Plea Counsel's own testimony concerning what advise he gave Applicant. For that reason, this Court

finds that reversal of the judgments and sentences entered against Applicant on March 4, 2007 is necessary and appropriate.

Applicant has been represented throughout this PCR action by Counsel with extensive experience in the field of Post-Conviction Relief. He was questioned at length at the proceeding held on the State's Motion to Dismiss, concerning his understanding of the potential consequences of a reversal of the judgments and sentences involved in this application. He was further questioned concerning the twenty-three (23) other charges against him which were dismissed on March 9, 2009, following his pleas on March 4, 2009. As noted in Judge Kinlaw's Order, Applicant indicated that he had been advised by his current PCR Counsel that the State might pursue prosecution of some, or all, of those charges if he ultimately succeeded in having his guilty pleas overturned. During that proceeding, Applicant testified that at the time of his pleas he did not know that the State had not even obtained indictments in any of those charges despite the fact that they stemmed from incidents which took place during the same approximate time period as his other charges. Applicant testified that he was not worried about being prosecuted on any of the twenty-three (23) charges that were dismissed, because he was not guilty of those crimes. PCR II, Tr. p. 20, line 11 – p. 21, l. 19; PCR II, Tr. p. 24, line 16 – p. 25, line 9.

Elsewhere in his PCR testimony Applicant testified that he was ***"falsely accused"*** of the crimes the State took him to trial on and noted that his first trial on those charges ended in a hung jury. PCR II, Tr. p. 26, lines 21 – 24. He further indicated that the only reason he pleaded to the charges before the Court not because he was guilty, but because he was getting threatened with LOP if he did not plead. PCR II, Tr. p. 26, lines 7 – 24. Counsel provided this Court with documentation that supported that assertion. Applicant further testified that he understood that just because the State had not previously sought indictments from the grand jury on these warrants, there

was nothing to stop them from attempting to do so in the future should he succeed in getting these pleas overturned. PCR Counsel also questioned Applicant on the record concerning the fact that armed robbery and assault and battery with Intent to Kill are both most serious crimes pursuant to S.C. Code Ann. §17-25-45 and therefore, the possibility existed that he would get a life without parole sentence if the State ever successfully prosecuted him for even one more count of Armed Robbery, Assault with Intent to Kill or any other *most serious* or *serious* offense where the crime occurred more than twenty-four (24) hours before or after the Armed Robbery Count to which he pleaded on May 16, 2017. Applicant testified that the only reason he pleaded guilty to these charges was his belief that those pleas could not ever result in him getting a longer sentence than he received for the charges originally prosecuted at his jury trial. It is believable to this Court that the insufficient advice of Plea Counsel created Applicant's misunderstanding by not making it clear that the if the jury trial judgments were overturned in any subsequent appeal, the guilty plea judgments and sentences would not be. Counsel's failure to explain that the net result could be that Applicant might ultimately get less time on remand for the charges on which he had gone to trial, or even no time if he were acquitted on retrial. Furthermore, Applicant firmly asserted that he understood the risks of going forward with this PCR, but was not deterred from going forward because he was confident the State did not and could not have any evidence to convict him on any of these charges.

Applicant asserted that in his opinion, the State was simply trying to "*clear their books*" on him by charging him in a bunch of unsolved cases. He explained that he felt the state wanted him to plead to at least one set of these crimes in exchange for them "*dismissing*" the other pending charges as part of a plea agreement; a process which would enable them to record that all twenty-seven (27) charges (the four pleas involved in the application currently before the Court and the 23 counts dismissed following his pleas on March 4, 2009). Applicant asserted that the fact that the State did

not get indictments on twenty-three (23) of the dismissed charges was at least some evidence of that intent by the State. Applicant testified that the State did not have a case against him on these charges or any of the twenty-three (23) other charges that were dismissed after his pleas. He unambiguously testified that the only reason he pleaded to these charges was the fact that he believed his charges his pleas were being completely merged with the charges a jury had found him guilty of and, therefore, stood no chance of hurting him in any way. It is therefore clear to this Court that Applicant decided to move forward with collateral review of his pleas with full knowledge of the risks involved.

CONCLUSION

In light of the above, it is the finding of this Court that Plea Counsel provided Applicant ineffective assistance of counsel prior to and during his guilty plea proceeding on March 4, 2009. On the facts of this case, Plea Counsel should have recognized that his advice to Applicant concerning the fact that his guilty pleas would not result in him serving more time than he would have to serve on the charges from his jury trial, was very much contingent upon the outcome of any appeal Applicant might win in the future. At the time of this advice, he knew Applicant already had a direct appeal pending from his jury trial. He knew this because he had represented Applicant at that trial and, according to the public records of the South Carolina Court of Appeals; he had filed that appeal himself. While it was a later appeal from a PCR action which resulted in the reversal of those judgments and sentences, the fact that Applicant wanted to appeal his convictions and sentences from his jury trial should have prompted this advice from Plea Counsel. This Court further finds that Applicant's pleas of guilty were not knowingly and voluntarily entered inasmuch as they were the product of Plea Counsel deficient representation. This Court also finds that the Applicant is aware of the negative consequences to him that may result from the granting of this

PCR. Wherefore, this Court finds that Applicant has meet his burden of proof on these Sixth Amendment claims and finds that the appropriate remedy is for the judgments and sentences entered against Applicant pursuant to his guilty pleas entered on March 4, 2009, to be vacated and these charges be remanded to the Greenville County Court of General Sessions for a new trial.

IT IS SO ORDERED.

J. Mark Hayes, II
Presiding Circuit Judge
Thirteenth Judicial Circuit

This 14th day of May, 2020.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-23-2653

Oshaun Joseph Robinson, #327798	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED-CLERK OF COURT PAUL P. WHITE 2020 JUL 28 AM 11:26

DISPOSITION TYPE (CHECK ONE)

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☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date
	352	5.14.23 2020

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of July, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of July, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
Tara D. Shurling	Taylor Smith
	Paul B. Wickensimer
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This matter came before the Court as a SCRCP Rule 59(e) Motion to Alter or Amend this Court's prior order granting the application for post-conviction relief. After considering the present Motion, the applicant's Reply and Supplemental Reply, and the record before this Court, this Court exercises its discretion to decide the Motion without oral arguments as allowed by subsection (f) of Rule 59. Based on this Court's review, this Court declines to alter or amend its prior Order. The Court is of the opinion that its prior decision is correct and its analysis is proper. Also, this Court agrees with the assertion in Applicant's Supplemental Reply Memorandum that the "collateral matter" theory was not previously before this Court. Nevertheless, to the extent an analysis of that theory is needed, this Court's opinion is that the theory is inapplicable to the facts presented in the present case. Therefore the Motion is denied.

Applicant's attorney is asked to propose a formal order, consistent with the above, denying the present motion. The formal order, once reviewed, edited, signed, and filed with the Clerk of Court, will be the final Order of this Court on this matter.

This Court appreciates everyone's efforts and cooperation.

Mark Hayes

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2017-CP-23-2653

OSHAUN JOSEPH ROBINSON, #327798,)
)
Applicant,)
)
v.)
)
)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
)

ORDER DENYING MOTION TO ALTER OF AMEND PURSUANT TO RULE 59(e), SCRCP.

This matter came before the Court by way of a Motion to Alter or Amend this Court's previously filed Order granting relief in the above captioned Post-Conviction Relief action. After considering the present Motion, the Applicant's Reply and Supplemental Reply, as well as the records and exhibits before this Court, this Court exercises its discretion to decide the Motion without oral arguments as allowed by Subsection (f) of Rule 59, SCRCP. Based on this Court's review, this Court declines to alter or amend its prior Order granting relief in this matter.

The Court is of the opinion that its prior decision is correct and its analysis is proper. Also, this Court agrees with the assertion in Applicant's Supplemental Reply Memorandum that the "collateral matter" theory advanced by Respondent in its Motion to Alter of Amend was not previously argued before this Court at any stage of this collateral action. Nevertheless, to the extent an analysis of that theory is needed, this Court's finding that the theory is inapplicable to the facts presented in the present case. Therefore the Motion is denied.

IT IS SO ORDERED.

J. Mark Hayes, II
Presiding Circuit Court Judge

This 1st day of September, 2020