

STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

MAR 25 2013

Appeal from Spartanburg County **S.C. Supreme Court**

J. Derham Cole, Circuit Court Judge

KENNETH RAY RICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212674

APPENDIX

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)	
The State,)	
)	TRANSCRIPT OF RECORD
-vs-)	2009-GS-42-2218, -2220
)	
Kenneth Ray Rice,)	
)	April 28, 2010
Defendant.)	Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE

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

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Attorney for the State

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Attorney for the Defendant

ORIGINAL

Margaret A. Woods
Circuit Court Reporter

	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1	Voluntary statement of Kenneth Rice	7	13
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1 THE COURT: Alright, gentlemen, I have been informed that
2 each one of you has a -- one or more matters presently pending
3 in the court of general sessions. I've also been told that
4 each one of you has expressed a desire or an intent to wanna
5 enter a plea to those matters. I need to let you know that as
6 part of every plea that is presented in front of me we make a
7 recording. This lady that's sitting right here (indicating)
8 is a court reporter. She's taking down everything that's said
9 so if ever you need to speak to me either now or later, I need
10 you to speak up loud enough so that both she and I can hear
11 you because if we can't hear you, we cannot take your plea.
12 Now in just a moment I'm gonna ask you a series of questions
13 and I'm gonna ask you these questions as a group but simply
14 because I'm asking you these questions as a group I do not
15 want you to think nor do I want you to conclude that these
16 questions are not important because these questions are very
17 important. The questions that I ask you and the answers that
18 you give me help me decide whether or not I can in fact accept
19 your plea so I need you to you listen to the questions. If
20 you need to respond to the questions, I'm gonna ask that you
21 stand up, just don't speak out but stand up and let me call on
22 you individually. Now if ever during this process now or
23 later today you need to speak to your lawyer, you let me know
24 and I'll allow you to talk to your lawyer in private.

25 Alright, now I'm gonna call your names one more time.

1 When I call your name this time, I want you to stand up and
2 remain standing because the court reporter's gonna write down
3 your name. After everybody's name has been called, the court
4 reporter has -- this lady on this side (indicating) of the
5 room, the court reporter's [sic] gonna swear you in so I need
6 you to listen to her and respond out loud when she asks you to
7 do so. Alright, we have Joshua Ray Ashley, we have Robert
8 Houston Hamilton, we have Carlos Mcjimpsey, Kenneth Ray Rice,
9 Johnnie Goode. Alright, gentlemen, if you would, please raise
10 your right hand and listen to the clerk of court.

11 (Whereupon, the defendants were sworn.)

12 THE COURT: Thank you very much, you may be seated. Now
13 these are the questions that I need for you to please listen
14 to. During the last twenty-four hours, have you, any of you,
15 consumed any type of substance that is adversely or negatively
16 affecting your ability to understand what we're doing today?
17 If you have, then I need for you to please stand at this time.

18 (No response.)

19 THE COURT: If you have ever been treated for any type of
20 drug or alcohol abuse, if you've ever had any type of drug or
21 substance abuse issue that you received treatment for, I need
22 for you to please stand at this time. Any substance abuse.
23 Have you ever been treated for any type of substance abuse?

24 DEFENDANT GOODE: No, sir. You mean like SADAC?

25 THE COURT: Yes. Alright, you are Mr. ---

1 DEFENDANT GOODE: Goode.

2 THE COURT: Mr. Goode, were you treated for drugs,
3 alcohol or both?

4 DEFENDANT GOODE: Drugs.

5 THE COURT: And about how long ago was that
6 approximately?

7 DEFENDANT GOODE: Three years.

8 THE COURT: You say it was at SADAC?

9 DEFENDANT GOODE: Yes.

10 THE COURT: Was it successful at the time?

11 DEFENDANT GOODE: Yes.

12 THE COURT: Thank you, sir, you may be seated. If you
13 are satisfied with the work that your lawyer has done for you,
14 then I need for you to please stand at this time if you are
15 satisfied with the work that your lawyer has done. Let the
16 record reflect that everyone stood. Thank you very much, you
17 may be seated.

18 If you have been threatened in any way or if you have
19 been made any promises in order to get you to make the
20 decision to enter the plea, then I need for you to please
21 stand at this time if you have been threatened or promised
22 anything.

23 (No response.)

24 THE COURT: If the decision by you to enter the plea has
25 been made freely and voluntarily, then I need for you to

1 please stand at this time if the decision has been made freely
2 and voluntarily. Let the record reflect that everyone stood.
3 Thank you very much.

4 I need for you to understand that under the law you are
5 presumed innocent of every charge that's presently against you
6 and you have a right to have a jury trial on any or all of the
7 charges that are against you. At any jury trial that would
8 take place, it would be the State that has the burden of proof
9 and the State would have to convince all twelve members of a
10 jury that you are in fact guilty beyond a reasonable doubt.
11 Now in order to enter a plea however you have to give up your
12 right to that jury trial but if you wish to have a jury trial
13 on any of the charges against you that is fine, we will simply
14 schedule a trial for you. Now if you wish to have a jury
15 trial on any of the charges against you then I need for you to
16 please stand at this time.

17 (No response.)

18 THE COURT: In addition to giving up your right to a jury
19 trial, there are other very important constitutional rights
20 that you have to give up in order to enter a plea. You have
21 to give up your right to confront and cross-examine the
22 State's witnesses, you also have to give up your right to
23 present evidence which you or your lawyer might feel will
24 establish some type of defense to the charges or charges
25 against you and you have to give up your right of subpoena and

1 you have to give up your right to remain silent. Now if you
2 understand all of your constitutional rights and you wish to
3 give up your constitutional rights and proceed with entering
4 the plea, then I need for you to please stand at this time.
5 Let the record reflect that everyone stood. Thank you very
6 much, you may be seated.

7 Again, if ever during this process, you know, today you
8 wish to speak to your lawyer, you just let me know and I'll
9 allow you to talk to your lawyer in private.

10 MR. BARNETTE: May we approach for one second, Your
11 Honor?

12 OFFICER SMITH: Step back.

13 THE COURT: Mr. Poole?

14 (Whereupon, a bench conference was held off the record.)

15 THE COURT: Your Honor, I have four exhibits I'd like to
16 mark -- premark too.

17 (Voluntary statement marked State's Exhibit No. 1,
18 voluntary statement marked State's Exhibit No. 2, voluntary
19 statement marked State's Exhibit No. 3, voluntary statement
20 marked State's Exhibit No. 4, incident report marked State's
21 Exhibit No. 5, incident report marked State's Exhibit No. 6,
22 incident report marked State's Exhibit No. 7, incident report
23 marked State's Exhibit No. 8 for identification.)

24 THE COURT: May it please the Court, Your Honor. These
25 cases are State vs. Kenneth Ray Rice; he's pleading guilty to

1 the following indictments: 09-GS-42-2218 he's pleading to
2 count one, Your Honor, which is for armed robbery, count two
3 possession of firearm during the commission of a violent crime
4 is gonna be dismissed after this plea, so he's just pleading
5 on count one which is armed robbery, 09-GS-42-2219 armed
6 robbery, 09-GS-42-2220 which is for armed robbery, then
7 09-GS-42-2222 which is for assault and battery of high and
8 aggravated nature, then 09-GS-42-2221 which is also for armed
9 robbery, Your Honor. On that one, Your Honor, we're makin' a
10 motion to amend part of the victim in that case. It is Li'l
11 Cricket, Your Honor, that was the victim in that case but
12 Sandra Watson was actually the clerk on that one instead of
13 Roger -- Craig Koenig, he was actually the clerk on another
14 armed robbery. We're asking to amend that one, Your Honor.
15 All these have been true billed with the grand jury, Your
16 Honor, he is represented by Mr. Roger Poole. The only
17 recommendation, Your Honor, these are straight up pleas except
18 to recommend they all run concurrent, Your Honor, in this
19 case. There is a kidnapping warrant Indictment 09-GS-42-2223
20 which is gonna be dismissed after this plea, Your Honor.

21 MR. POOLE: Your Honor, may I confer with the State's
22 prosecutor for just a moment?

23 THE COURT: Yes, sir.

24 (Whereupon, a discussion was held off the record.)

25 THE COURT: You are ---

1 MR. POOLE: Your Honor, may it please the Court.

2 (Attorney/client discussion held off the record.)

3 EXAMINATION BY THE COURT:

4 Q. You are, Mr. Rice?

5 A. Yes, sir.

6 Q. Alright, sir, I remind you that you remain under oath.

7 Do you understand that?

8 A. Yes, sir.

9 THE COURT: Mr. Poole, do you have any objection to the
10 amendment to the indictment?

11 MR. POOLE: No, sir, I do not.

12 THE COURT: Thank you, sir.

13 EXAMINATION BY THE COURT:

14 Q. Now, Mr. Rice, were you able to hear the solicitor when
15 he announced the charges that are against you that he has
16 presented to me?

17 A. Yes, sir.

18 Q. The manner in which he announced those charges is that
19 consistent and the same as what you understand you'll be
20 pleading to today?

21 A. Yes, sir.

22 Q. How old are you?

23 A. Thirty-two, sir.

24 Q. How far did you go in school?

25 A. Got my GED.

1 Q. How far did you go before you dropped out?

2 A. Tenth.

3 Q. Where were you in school?

4 A. Woodruff High.

5 Q. Are you married, single, divorced, widowed?

6 A. Married.

7 Q. Do you have children?

8 A. Yes, sir.

9 Q. How many?

10 A. Five.

11 Q. And how old is the oldest and how young is the youngest?

12 A. Fourteen and five.

13 Q. Prior to your arrest on these charges, did you have a
14 job?

15 A. Yes, sir.

16 Q. What were you doing?

17 A. I was working at Sterilite in Clinton.

18 MR. BARNETTE: Your Honor, may I approach the bench for
19 one more second?

20 (Whereupon, a bench conference was held off the record.)

21 THE COURT: Alright, Mr. Rice, if you will, please listen
22 to the solicitor, he has an announcement to make.

23 MR. BARNETTE: Your Honor, after reviewing the incident
24 report in this case 09-GS-42-2220 was indicted for armed
25 robbery and a warrant was done for armed robbery; it shoulda

1 been attempted armed robbery so what we've done is we've asked
2 to amend that indictment, he is -- defendant has indicated by
3 the signature he's waiving his right to the grand jury, I've
4 given that to Mr. Poole and it's gonna be zero (0) to twenty
5 (20) instead of the armed robbery charge before Your Honor,
6 the same recommendation that it run concurrent with the other
7 sentence that's been straight up but by itself.

8 EXAMINATION BY THE COURT:

9 Q. Mr. Rice, were you able to hear the solicitor when he
10 announced that change in that particular indictment?

11 A. Yes, sir, Your Honor.

12 Q. And do you understand that you are no longer pleading to
13 armed robbery but rather you'll be pleading to attempted armed
14 robbery?

15 A. Yes.

16 THE COURT: And, Mr. Poole, you have any objections to
17 the amendment?

18 MR. POOLE: No, sir, ---

19 THE COURT: Alright.

20 MR. POOLE: --- I do not.

21 EXAMINATION BY THE COURT:

22 Q. Alright, and, Mr. Rice, it's -- I was -- you agree with
23 your attorney?

24 A. Yes, sir.

25 Q. You wanna go ahead and plead to this one as well?

1 A. Yes, sir.

2 Q. Alright. Even though it has not been presented to the
3 grand jury, you wish to waive your right to have it presented
4 to the ---

5 A. Yes, sir.

6 Q. --- grand jury? Alright. Now you were telling me that
7 you -- prior to your arrest you worked at Sterilite in
8 Clinton?

9 A. Yes, sir.

10 Q. How long had you been there?

11 A. I'd been there almost two years.

12 Q. What did you do there?

13 A. I was a, um, I took stuff back and forth from the
14 machines to the warehouse and log it into inventory.

15 Q. Have you ever served in the military?

16 A. No, sir.

17 Q. How long were you -- how long have you been in jail on
18 these charges?

19 A. Since October the 2nd.

20 Q. 2009?

21 A. Yes, sir.

22 Q. All right, sir, if you would, the gentleman that's
23 standing over to your far right over here (indicating) he
24 is -- standing up right here (indicating), yes, sir, that one,
25 he is a solicitor, he is going to give us the facts that are

1 behind these cases. I need to you to please listen to him,
2 sir, okay?

3 MR. BARNETTE: Thank you, Your Honor. I have eight
4 exhibits, Your Honor, I wanna enter into evidence too that's
5 been shared with defense. State Exhibits 1 and 2 are
6 statements given by the defendant Kenneth Rice admitting his
7 involvement in these crimes; statement [sic] No. 3 is a
8 statement from one of the victims of the last armed robbery
9 occurred on January 17th 2009, Ms. Vernon was the person in
10 charge of that, and then Craig Koening was the victim in the
11 first one on December 30th 2008 in State Exhibit No. 4; State
12 Exhibit No. 5, Your Honor, is the incident report from the
13 armed robbery occurred on January 9th 2008; State Exhibit 6
14 will be the one occurred on December 30th 2008 which was the
15 attempted armed robbery; then State Exhibit 8 is the one that
16 occurred on January 11th 2009 which is armed robbery and then
17 the last one occurred on January 17th 2009, that's gonna be
18 State Exhibit No. 7. I'd like to enter all those in the
19 record and make 'em part part of the facts in this case, Your
20 Honor.

21 MR. POOLE: No objection.

22 THE COURT: Without objection. Thank you, sir.

23 (State's Exhibit Nos. 1 thru 8 admitted into evidence.)

24 MR. BARNETTE: Reading these in order, Your Honor, the
25 first one occurred on December 30th 2008, Your Honor, at the

1 Li'l Cricket store 15831 Highway 221 in Enoree, Your Honor.
2 The clerk in that case was Mr. Koening, Craig Koening.
3 Basically, officer with sheriffs department, Officer
4 Cashere [sic] responded, Your Honor, to alarm. Mr. Koening
5 was the store clerk. The defendant came in wearing a stark
6 blue g -- mask, a gray hooded sweatshirt and jeans, had a
7 met -- a black metal pipe, Your Honor, demanded all the money,
8 said he would cut and hit Mr. Craig, Your Honor. They got in
9 a scuffle and a fight there, Your Honor. He was able to push
10 the defendant out the door, was able to lock it afterwards,
11 Your Honor. Basically he didn't think he removed any
12 merchandise or money in this case, Your Honor. He was charged
13 attempted armed robbery and ABHAN for the altercation that
14 occurred, Your Honor.

15 The next armed robbery occurred on January 9th 2008, Your
16 Honor, this was approximately 12:40 in the morning, it
17 happened at 2 -- 2320 Highway 92 in Enoree, Your Honor. It
18 was also a Li'L Cricket. Sandra Watson was the victim in that
19 case, Your Honor. Basically, he came in wearin' alumin --
20 with aluminum baseball bat demanding money. He went behind
21 the counter, told her, Drop me some twenties, he left on foot.
22 Officer recalled he took a hundred and sixty-six dollars in
23 cash.

24 Next one is January 11th 2009 occurred I believe at the
25 same store at 2 -- 2320 Highway 92 Enoree, South Carolina,

1 Li'l Cricket, Your Honor, went in there, responded to armed
2 robbery there, Your Honor, basically was holding a pipe,
3 demanding money. He took a hundred and thirty-two dollars at
4 that time. The last one occurred on January 17th 2009 at 304
5 North Main Street, a Kangaroo there in Woodruff, South
6 Carolina, Your Honor. Basically officers arrived there.
7 Amanda Vernon was the victim. Basically he wore a black mask,
8 was wielding a knife, went in, he demanded money, took a
9 hundred and forty-three dollars, Your Honor. Basically,
10 Ms. Vernon was in the bathroom cleaning, she heard the front
11 door bell letting her someone came in the store, walked to the
12 fronta the store, she ran into a man wearin' a mask holdin' a
13 big knife, told him get the money. While pointing the knife
14 at Ms. Vernon she began screaming. They both walked to the
15 cash register, he opened and gave him the cash inside. The
16 suspect grabbed the money and ran outta the store, Your Honor.
17 Dana Helms responded to the show for video. After watching
18 the incident unfold on video, just like Ms. Vernon explained,
19 we began watchin' the surveillance earlier in the evening to
20 see if the suspect came in the store prior to committing the
21 robbery. At about 12:30 a.m., a suspect wearing exactly the
22 same clothes came in the store. It was obviously clear this
23 the same person that robbed the store hours later. All the
24 officers recognized the suspect Kenneth Ray Rite [sic], aka
25 Kennin -- Kenny. After learning that, Your Honor, they went

1 over and talked to Ms. Rice.

2 Ms. Rice advised the last time she'd seen Kenny he was wearin'
3 black pants, a red shirt with a blue hoody. Ms. Rice checked
4 the kitchen, advised me a large butcher knife was also
5 missing. Basically, she said she would call 911 if he came
6 back. A couple hours later they received a call from dispatch
7 that Mr. Rice was at front door of his apartment. When they
8 arrived there, Mr. Rice went out and pull, uh, run when they
9 pulled up. Assistant with the sheriff's department they
10 located him hidin' in a dumpster, Your Honor. He was wearin'
11 a red shirt and black pants, tennis shoes, was taken into
12 custody, Your Honor. In that case they did a positive ID,
13 based off that he was arrested for the armed robbery.
14 Sheriff's department went back and talked to him, Your Honor,
15 they, after givin' him his rights and so forth, they received
16 State Exhibits 1 and 2 he admitted to committing the other
17 robberies in this case, Your Honor. May I pass these up, Your
18 Honor?

19 THE COURT: (No verbal response.)

20 (Whereupon, counsel handed the documents to the Court.)

21 EXAMINATION BY THE COURT:

22 Q. Mr. Rice, were you able to hear the solicitor when he
23 gave me the facts behind these cases?

24 A. Yes, sir.

25 Q. Now do you believe that as he stated the facts to me that

1 he is substantially correct?

2 A. Yes, sir.

3 Q. And, sir, do you understand that on the, on the four
4 armed robbery charges under Indictments 2218, 2219, 2222 and
5 2221 that I could impose on each of those cases a sentence of
6 between ten (10) to thirty (30) years at the department of
7 corrections?

8 A. Yes, sir.

9 Q. And, sir, do you understand that each one of those
10 sentences are -- I'm sorry, let me start over again. I asked
11 you the wrong question. Sir, do you understand that on -- in
12 the armed robbery charges under Indictment 2009-2221,
13 2009-2219 and 2009-2218 that on each one of those armed
14 robbery charges that I could sentence you between ten (10) to
15 thirty (30) years at the department of corrections?

16 A. Yes, sir.

17 Q. And, sir, do you understand that on each one of those
18 three charges that each of those charges is classified as a
19 violent offense under the law and is also classified as a most
20 serious offense under the law?

21 A. Yes, sir.

22 Q. And, sir, have you been able to talk to your lawyer as to
23 the consequences and ramifications of those three offenses
24 being classified as both a violent and also as a most serious
25 offense?

1 A. Yes, sir.

2 Q. And, sir, do you understand that even though the State
3 has recommended concurrent sentencing on all of these charges
4 I am not bound by that recommendation of concurrent
5 sentencing?

6 A. Yes, sir.

7 Q. Understanding that I'm not bound by the State's
8 recommendation of concurrent sentencing, also understanding
9 the classification of violent and most serious on the three
10 armed robbery charges as well as the ramifications of those
11 two classifications on those three charges as well as the
12 possible sentence of between ten (10) to thirty (30) years on
13 the armed robbery charges, do you still wish to enter the plea
14 to those charges?

15 A. Yes.

16 Q. Sir, do you understand that on the attempted armed
17 robbery charge that I could sentence you to a sentence of
18 between zero (0) to twenty (20) years at the department of
19 corrections?

20 A. Yes, sir.

21 THE COURT: Is the attempted armed robbery is that
22 classification a violent and most serious?

23 MR. BARNETTE: I think it's violent, Your Honor, but I
24 don't know if it's most serious.

25 THE COURT: Alright. And do you agree with that,

1 Mr. Poole?

2 MR. POOLE: Yes, sir.

3 EXAMINATION BY THE COURT:

4 Q. And, Mr. Rice, do you understand that the attempted armed
5 robbery charge charge is classified as a violent offense?

6 A. Yes, sir.

7 Q. And you understand the ramifications and consequences of
8 that offense being classified as a violent offense?

9 A. Yes, sir.

10 Q. Understanding the possible sentence I could impose as
11 well as the classification of violent and the ramifications of
12 that classification as well as the fact that I am not bound by
13 the State's recommendation of concurrent sentences, you still
14 wish to enter the plea to that charge?

15 A. Yes, sir.

16 Q. And, sir, on the assault and battery of a high and
17 aggravated nature, do you understand that I could sentence you
18 between zero (0) to ten (10) years on that charge?

19 A. Yes, sir.

20 Q. Understanding that I could -- the possible sentence I
21 could impose as well as the fact that I'm not bound by the
22 State's recommendation of concurrent sentences on that charge,
23 do you still wish to enter the plea to that charge?

24 A. Yes, sir.

25 Q. Mr. Rice, are you in fact guilty of the charge of assault

1 and battery of a high and aggravated nature?

2 A. Yes, sir.

3 Q. Are you also guilty of the charge of attempted armed
4 robbery as indicted under 2009-2220?

5 A. Yes, sir.

6 Q. Are you also guilty of the charge of armed robbery as
7 indicted under count one of 2009-2218?

8 A. Yes, sir.

9 Q. Are you also guilty of the charge of armed robbery as
10 indicted under 2009-2219?

11 A. Yes, sir.

12 Q. Are you also guilty of the charge of armed robbery as
13 indicted under 2009-GS-42-2221?

14 A. Yes, sir.

15 Q. Have you been able to hear all of my questions?

16 A. Yes, sir.

17 Q. Have all of your answers been truthful and honest?

18 A. Yes.

19 THE COURT: Has discovery been shared with the defense?

20 MR. BARNETTE: Yes, sir.

21 THE COURT: Alright. Prior record?

22 MR. BARNETTE: Your Honor, he had a fraudulent check in
23 '96, simple possession of marijuana in '96, burglary in the
24 second degree non-violent in 1997, grand larceny between a
25 thousand, five thousand dollars '97, possession of controlled

1 substance 1997, failure to stop in 1998, burglary in the
2 second degree non-violent 1999 and petty larceny in 1999.

3 THE COURT: Alright. Do we have any information or
4 anything that needs to be shared with the Court concerning the
5 victims in the case?

6 MR. BARNETTE: No, sir. They they were notified our
7 victim advocates and they was workin' today, Your Honor.

8 THE COURT: Anything else from the State on Mr. Rice?

9 MR. BARNETTE: No, sir, ---

10 THE COURT: Alright.

11 MR. BARNETTE: --- just just ask for the exhibits they be
12 part of the record and part of the facts in the case.

13 THE COURT: Alright. Give me just one moment, Mr. Poole,
14 let me review the exhibits.

15 (Pause.)

16 THE COURT: Lawyers wanna approach a moment?

17 (Whereupon, a bench conference was held off the record.)

18 MR. BARNETTE: May it please the Court, Your Honor.
19 After our bench conference, Mr. Poole and me whether to your
20 comments or whatever, the ABHAN charge 09-GS-42-2222 we'll
21 remove as part of the plea in this case. I'll be dismissing
22 that based off our conversation at the bench.

23 THE COURT: Mr. Rice, were you able to hear what the
24 solicitor just said?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You don't have any objection to that do
2 you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Alright, I've reviewed Exhibits 1 through 8.
5 Mr. Poole, I -- I'll be more than happy to hear from you.

6 MR. POOLE: Yes, sir, may it please the Court. I believe
7 that maybe one of the exhibits that you read was a statement
8 that was made by him on January 17th 2009 that was after his
9 arrest on the -- pursuant to the last crime. In that
10 statement he cooperated fully with police. He he stated that
11 he was involved in some other instances: armed robberies. He
12 he fully admitted to his involvement and the Court can see in
13 his statement that he attributed his involvement to his use of
14 crack and obtaining money in order to buy crack. He tells me
15 that he -- a so-called friend and he were involved in crack
16 use around this time, all of his existence became to depend
17 upon obtaining money for it and using it and the Court can see
18 that these crimes occurred in the southern part of the county
19 all around Enoree and Woodruff and within a short period of
20 time. His use of the drug was so intense that he did not stop
21 to think about the consequences of when it would catch up to
22 him and he would find himself before a judge like he finds
23 himself today.

24 I've had multiple conversations with him, I've talked to
25 him about the charges'. At no point in time has he ever said

1 or tried to make up an excuse for what he did. He's always
2 said, I I did these crimes, I'm ashamed of it, I regret what I
3 did, I am sorry to those that I've hurt, the people out there
4 that are the victims, and I'm sorry to my family. He's told
5 the Court that he is 31, 32 years-of-age, he's got five
6 children, 5 years of age to 14. In the back is his mother,
7 and I've talked with her on on the telephone, and his family
8 members are are standing behind him but he's facing a serious
9 sentence today, he is pleading guilty to all these charges. I
10 would ask the Court to take in consideration that he has
11 admitted his guilt, he was seriously tied up with a drug
12 addiction, specifically to crack. I would ask the Court to
13 accept the recommendation of the State. I would ask the Court
14 to sentence him to the minimum which would be ten (10) years.
15 He he has a bit of a prior record and I believe the last
16 offense occurred in 1999 which would be 12 years ago and I
17 would simply ask the Court to sentence him to to the very
18 minimum given the circumstances surrounding the nature of
19 these crimes and given the circumstances consider --
20 considering how he readily admitted his participation in them.

21 EXAMINATION BY THE COURT:

22 Q. Mr. Rice, were you able to hear the statements that were
23 just made by your lawyer?

24 A. Yes, sir.

25 Q. Do you agree with those statements?

1 A. Yes, sir.

2 Q. Mr. Rice, is there anything that you would like to say or
3 would like for me to know or consider?

4 A. I just like everybody involved to know that I'm I'm sorry
5 for my actions that I -- that occurred and I'm embarrassed. I
6 embarrassed my family, my kids, myself and I'm not this type
7 person. I just got on drugs real bad for those few months and
8 all this occurred. Ever since I caught these charges and got
9 arrested for 'em in January, I haven't touched any more drugs
10 since then and I'm really sorry for what I done. I know it
11 was wrong and and I accept responsibility for my actions.
12 Whatever sentence you impose, I promise when I -- before I
13 step outta there I'll be a better man about this.

14 THE COURT: Thank you, sir.

15 (Pause.)

16 THE COURT: I'll find that there is a substantial factual
17 basis for the plea. I'll find that the defendant's decision
18 to enter the plea has been made freely, voluntarily, knowingly
19 and intellectually by him. I'll find that he has received the
20 services from a very competent and able legal counsel,
21 services that he has indicated to the Court he is satisfied
22 with and has relied on in reaching the decisions that he's
23 made, therefore I will accept the plea. I have definitely
24 taken into consideration the fact that you were cooperative
25 and the fact that you readily admitted your having committed

1 the offenses after you were arrested. I've also taken into
2 consideration the State's after I'm sure very extensive
3 negotiations between the attorneys and their deciding not to
4 go forward with the kidnapping charge and the dropping of the
5 other charges as well. On the armed robbery charges, these
6 sentences will all be concurrent with each other, they're the
7 same sentence under each indictment, the sentence of the Court
8 is that the defendant will be confined to the state department
9 of corrections for a period of twenty-five (25) years, that'll
10 also run concurrent with the 20-year sentence under the
11 attempted armed robbery. I've indicated on the sentencing
12 sheet my desire is that you receive ATU while you're in the
13 department of corrections, that when there does become a time
14 when there is some type of supervised release there not to be
15 any contact with any of these victims or the locations. Good
16 luck to you, sir.

17 MR. POOLE: Thank you, Your Honor.

18 MR. BARNETTE: Thank you, Your Honor.

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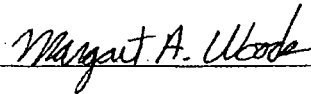
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 28, 2010 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 25, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

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

March 21, 2011



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Full name and prison number (if any) of Applicant.)

KENNETH RAY RILE - 261804)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2011-CP-42-0410

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MCCORMICK CORRECTIONAL INST.
2. Name and location of Court which imposed sentence SPARTANBURG COURT HOUSE
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 25-448
 - (b) ATTEMPTED ARM ROBBERY - 09-65-420-2220
 - (c) ARM ROBBERY - 09-65-420-2218
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-28-2010
 - (b) 25 yrs - 2 1/2 - AND 25-yr CONCURRENT AND 20-yr CONCURRENT

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CLERK OF COURT
SPARTANBURG COUNTY
JUL 11 2011 11:50
J. HOFFBLACKLEY

- (c) _____
- 6. 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 _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. SUPREME COURT, APPELLATE DIVISION
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. DENIED
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. NONE
 - ii. _____
 - iii. NONE
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NONE
 - ii. _____
 - iii. NONE

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 CLERK OF COURT
 SUPERIOR COURT
 M. ROPE BLAOKLEY
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- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) NONE
 - (b) _____
 - (c) NONE

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCES OF COUNSEL. 6TH AMENDMENT CONSTITUTION COURT WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE ON THE DEFECTED INDICTMENTS.

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

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

- (a) COURT WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE.
- (b) INVALID PLEA
- (c) VIOLATION OF STATUTE 17-23-130-140.

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

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 SPARTANBURG COUNTY
 SOUTH CAROLINA
 MICHELE BLANCHET

iv. N/A
(d) the date of each such disposition:

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

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

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

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

N/A

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

(a) which grounds have been presented:

i. N/A
ii. N/A
iii. N/A

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

i. N/A
ii. N/A
iii. N/A

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

(a) N/A
(b) N/A
(c) N/A

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

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SPRINGFIELD COUNTY
M. ROPE SLAUGHTER
011-033-0000

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (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? _____

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

- (a) the name and address of each attorney who represented you:
 - i. ROGER POOLE SPAINMANN & PUBLIC DEFENDERS OFFICE.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. GUILITY PLEA
 - ii. _____
 - iii. _____

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

VACATED SENTENCES) AND CONVICTION.

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

N/A

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 CLERK OF COURT
 SPAINMANN COURT
 PHILIP H. HANLEY

STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of SPARTANBURG

KENNETH RAY RICE

I, KENNETH RAY RICE, 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.

Kenneth R. Rice

SWORN to and subscribed before me this 24
day of Jan, 2011

Joyce L. Young (L.S.)
Notary Public

My Commission Expires: 8 28 2011

FILED
CLERK OF COURT
SPARTANBURG COUNTY
JAN 24 2011
M. ROSE BLACKLEY

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

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

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

Kenneth R. Price
Applicant

SWORN or affirmed to and subscribed before me this
24 day of Jan, 2011

Joyce L Young
Notary Public

My Commission Expires: 8 28 2011

FILED
CLERK OF COURT
SHERIFF'S OFFICE
JAN 24 2011
MAYOR'S OFFICE

KENNETH R. RICE-261804
386-REDEMPTION UNIT
McCormick Co. Inst.
McCormick, South Carolina-29899

JANUARY 2011

RE: P.C.R. Application

DEAR CLERK

Would you PLEASE STAMP CLOCK AND FILE
THIS P.C.R. APPLICATION, AND SERVE A COPY BACK
TO ME FOR MY FEES.

Thanking you IN ADVANCE, for your efforts IN
my BEHALF.

cc: file.

Respectfully,
Kenneth R. Rice
KENNETH R. RICE

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JAN 23 21 38 50
M. W. JACKLEY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Kenneth Ray Rice, #261804,)	2011-CP-42-0410
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 28, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for armed robbery and possession of a firearm during the commission of a violent crime (09-GS-42-2218, counts 1 & 2), three additional counts of armed robbery (09-GS-42-2219, -2220, -2221), assault and battery of a high and aggravated nature (09-GS-42-2222), and kidnapping (09-GS-42-2223). Applicant was represented by J. Roger Poole, Esquire. On April 28, 2010, the Applicant pled guilty to the lesser-included offense of attempted armed robbery (09-2220), the three other counts of armed robbery (09-2218, -2219, -2221)¹. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for a period of twenty-five years on each charge of armed robbery and twenty years for attempted armed robbery, all to run concurrently.

¹ The charge of possession of a weapon during the commission of a violent crime (09-2218) and ABHAN charge (09-2222) were *nolle prossed* prior to the completion of the plea as a result of the Applicant's agreeing to plead guilty. A kidnapping charge was also dismissed following the Applicant's plea as part of the plea negotiations (09-2223).

A timely Notice of Appeal was filed along with an explanation of appeal pursuant to Rule 203(d)(1)(B), SCACR, regarding guilty plea appeals. The South Carolina Court of Appeals dismissed Applicant's appeal by Order on July 19, 2010, for failure to show any issue preserved for appeal. The Remittitur was returned on August 5, 2010.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Sixth Amendment violations;
2. Invalid plea;
3. Lack of subject matter jurisdiction, in that;
 - a. Court was without jurisdiction to impose sentence on the defective indictments;
4. Violation of Statute 17-23-130-140.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

The Applicant alleges an invalid plea, but fails to state with specificity his reasons the plea was invalid. In so much as the Applicant is attempting to claim the plea was involuntary, the

Respondent would submit that the allegation is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Applicant also alleges that the court lacked jurisdiction to accept his plea because of defects in the indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122

S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

The Applicant also alleges a violation of Statute 17-23-130 and 17-23-140, which refers to guilty pleas which are taken following the waiver of presentment of an indictment to a grand jury by a defendant. That statute is not applicable in this matter as each indictment in

Applicant's case was true billed by the grand jury. Therefore, Respondent submits that this allegation has no merit and the Court should summarily dismiss this allegation.

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 14, 2012.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
 3
 4 Kenneth Ray Rice,)
 5 Applicant,) TRANSCRIPT OF RECORD
 6 -vs-) 2011-CP-42-0410
 7 The State,)
 8 Respondent.) April 5, 2012
 9 Spartanburg, South Carolina
 10

11 B E F O R E:
 12 HONORABLE J. DERHAM COLE, JUDGE
 13

14
 15 A P P E A R A N C E S:
 16 ALEXANDRIA M. WOLF, ESQ.
 17 Attorney for the Applicant
 18 SUZANNE H. WHITE, ESQ.
 19 Attorney for the Respondent
 20

21
 22
 23 Margaret A. Woods
 24 Circuit Court Reporter

25 **ORIGINAL**

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Certificate of reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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NO EXHIBITS INTRODUCED

MOTIONS AND MATTERS

1 THE COURT: Alright, this is Kenneth Ray Rice?

2 MS. WHITE: Yes, Your Honor. Kenneth Ray Rice vs. the
3 State, Case No. 2011-CP-42-0410, he's represented today by
4 Alex Wolf. Mr. Rice was indicted May of '09 for four charges
5 of armed, well and I'll take that back, some were indicted,
6 some he waived presentment for, four charges ultimately: armed
7 robbery, possession of a weapon during the commission of a
8 violent crime, ABHAN and kidnapping. The possession of a
9 weapon charge was nol prossed, the ABHAN and the kidnapping
10 were ultimately nol prossed and he pled to an attempted armed
11 robbery and three armed robbery charges, received 25 years
12 concurrent on each of the armed robbery and 20 on the
13 attempted for a sentence of 25 years. He pled guilty on April
14 28th or 25th, 2010 and filed this application alleging
15 ineffective assistance of counsel, invalid plea, lack of
16 subject matter jurisdiction and violation of statute; he was
17 represented at his plea by Mr. Roger Poole and I'll turn it
18 over to Ms. Alex Wolf at this point.

19 THE COURT: Alright, Ms. Wolf.

20 MS. WOLF: Thank you, Your Honor. It pleases the Court I
21 would call my client Mr. Kenneth Ray Rice.

22 THE COURT: Okay.

23 KENNETH RAY RICE, having been
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MS. WOLF:

KENNETH RAY RICE - DIRECT EXAMINATION BY MS. WOLF

1 Q. If it pleases the Court. Mr. Rice, give us your full
2 name, please.

3 A. Kenneth Ray Rice.

4 Q. And how old are you?

5 A. Thirty-four, ma'am.

6 Q. And where are you presently incarcerated?

7 A. At Perry Correctional Institution.

8 Q. And there's some family members that have come for you
9 today, will you just tell me or tell the Court who they are.

10 A. My mom Vickie Lowe (phonetic) and my ant Gail Manley
11 (phonetic).

12 Q. And your ant is the lady on the oxygen and ---

13 A. Yes, ma'am.

14 Q. Good. Now we're before the Court because you did timely
15 file a post-conviction relief application; do you understand
16 what the purpose of PCR relief is?

17 A. Yes, ma'am.

18 Q. In your application you've made several issues part of
19 this record today and we're gonna go through those one at a
20 time and I'd like you to be able to give the Court as much
21 information as to why you think that your plea should be set
22 aside and otherwise allow you to go back and start over again.

23 A. Yes.

24 Q. Alright, and I understand you're probly nervous and it's
25 really cold in here so just take your time and we'll get you

KENNETH RAY RICE - DIRECT EXAMINATION BY MS. WOLF

1 through this, okay? Do you remember at the time that you were
2 charged signing up for the public defender?

3 A. Yes, ma'am.

4 Q. And tell the Court who your public defender was.

5 A. Roger Poole.

6 Q. And this (indicating) is Mr. Poole here today?

7 A. Yes, ma'am.

8 Q. Do you remember how long you were in the detention
9 facility before Mr. Poole first contacted you?

10 A. The investigator came first and then I think Mr. Poole
11 came around November ---

12 Q. Of what year?

13 A. Of 2009.

14 Q. Okay. And tell us your first conversations with
15 Mr. Poole, were you guys talking about trial or talking about
16 plea; do you recall?

17 A. No, ma'am, it was -- I was admittin' guilt to the
18 situation altogether, I never once had talked about takin' it
19 to trial other than I was told if I did take it to trial then
20 they would possibly go for a a life -- charge me separately on
21 the charges and go for a life sentence.

22 Q. Okay, so at the very get-go you and Mr. Poole were on the
23 same sheet of music with that regard.

24 A. Yes, ma'am.

25 Q. And do you understand apparently had you gone to trial

KENNETH RAY RICE - DIRECT EXAMINATION BY MS. WOLF

1 there were six charges placed against you, only four ended up
2 in your plea?

3 A. Yes, ma'am.

4 Q. And that I'm assuming was your agreement that you were
5 hoping that kidnapping and the other ---

6 A. Yes, ma'am.

7 Q. --- assault charge would be ---

8 A. Yes, ma'am.

9 Q. Okay, and in fact that's that's what happened, ---

10 A. Yes ma'am.

11 Q. --- those charges were dismissed?

12 A. Yes, ma'am.

13 Q. Tell us just by way of background the conversations you
14 had with your attorney on the plea; was there any type of
15 negotiation or what did he explain to you when you guys
16 started out?

17 A. Well like I said, I I never denied guilt in the crimes
18 at all. I mean, I was under the influence a drugs when I did
19 it and we had conversated about the what the penalties was of
20 the crime, that it was a maximum of 30 years but most the
21 conversations we had were he told me that I could get 10 to 30
22 but the last ti -- conversation we had about the agreement was
23 that 10 was the best he could do and that was the paper that I
24 had signed the sentencing sheet prior to goin' to court on the
25 28th but I'm I'm not sure what, I'm not very good with the law

1 or anything, I just...

2 Q. Do you have copies of any of those original sentencing
3 sheets by any chance?

4 A. Just what the copies that were supplied to me by the
5 court, clerk of court's office.

6 Q. Alright, those were the ones giving given to you after
7 the hearing, after ---

8 A. Yes, ---

9 Q. --- the Court ---

10 A. --- after the hearing.

11 Q. --- adjudicated you and took your plea.

12 A. Yes, ma'am, that's right.

13 Q. And I ask you that because what I've been trying to find
14 any evidence that there was a written negotiation or written
15 offer from the State of the 10 years.

16 A. Right.

17 Q. Do you believe such a written document exists or ---

18 A. I was just under the impression when I signed those
19 papers in the detention center that I would be goin' to court
20 for a 10-year sentence because that was, like I said, that was
21 what I was told the best he could do. I didn't wanna sign for
22 10 years by no means. I got five kids out there and I I know
23 I -- what I did was wrong but I knew by him tellin' me it was
24 the best he could do I I should go ahead and take this
25 situation because like I said, if they try me separately on

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1 'em then it woulda been way worse.

2 Q. Okay. In your PCR application one of the grounds you
3 state is that the Court was without jurisdiction to impose
4 sentence so we know you've come before the Court, that you did
5 not want to go to trial, ---

6 A. Yes, ma'am.

7 Q. --- that that plea was what you were doing, that
8 statement "court was without jurisdiction to impose sentence,"
9 is that something you really believe or perhaps someone at the
10 jail told you on your PCR go ahead and write that in?

11 A. That was per se you don't have a lot of accessibility in
12 the department of corrections so it's inma -- inmates help
13 inmates far as that goes ---

14 Q. Okay.

15 A. --- and to be honest I'm not even sure what that
16 means.

17 Q. Very good. That's fine but you were a Spartanburg County
18 resident ---

19 A. Yes, I was a Spartanburg County ---

20 Q. --- and ---

21 A. --- resident.

22 Q. --- crimes were all occurring in Spartanburg County.

23 A. Yes, ma'am.

24 Q. Very good. You alleged invalid plea and I guess that's
25 really the heart of the situation this morning. I need you to

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1 explain to the judge why you think it was an invalid plea and
2 understand too this is the only chance you have to make a
3 record of these concerns ---

4 A. Yes.

5 Q. --- whether the judge can set aside your plea or not or
6 or you want to go back for trial but at this point I just want
7 to make sure you express to the Court exactly why you felt
8 that the plea shouldn't have gone forward or should somehow
9 been handled differently.

10 A. When I come in the courtroom that day, I I was under the
11 impression for the whole 7, I think 7 1/2 months I was in
12 Spartanburg County Detention center, that I would be pleadin'
13 to a a 10-year sentence for the charges that I committed and
14 if I, if I hadn't of -- if I had have known per se that I was
15 not gonna get that 10-year sentence, I I wouldn't have went
16 through with the whole plea deal that day anyway, the guilty
17 plea that day anyway. When Mr. Poole and Mr. Barnette went to
18 the side bar and he come back and told me that Barnette was
19 goin' with the concurrent sentence that not to worry, that
20 everything was okay, that they had already discussed the
21 situation, he was never gonna give me but the minimum 10-year
22 sentence ---

23 Q. Alright, let's back ---

24 A. --- but ---

25 Q. --- up a little bit then 'cuz ---

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1 A. Okay.

2 Q. --- talking about a side bar. Since this was not the
3 judge that heard your trial, ---

4 A. Yes ma'am.

5 Q. --- probably couldn't remember even if he was, ---

6 A. Yes.

7 Q. --- tell me, walk us through what happened. You came
8 into the courtroom ---

9 A. Yes, ma'am.

10 Q. --- and they announce that your case was to be called
11 for ---

12 A. Yes, ma'am.

13 Q. --- plea; just go step by step: where were you? where was
14 your attorney? how did the plea take place?

15 A. When we came up to the bench for the trial started?

16 Q. For the plea, ---

17 A. Yes, ma'am.

18 Q. --- correct.

19 A. After the judge did the group question everything ---

20 Q. And tell us what that means a group question thing.

21 A. Asking us if we were we were, uh, we were promised
22 anything or if we were coerced into pleain' guilty on the
23 charges we were accused of that day and all of us answered no
24 and after that he called my case up and that's when we all
25 walked up to the bench and I guess a few minutes into the

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1 hearing that they started readin' the charges off, Barnette
2 did, the solicitor, and he called Mr. Poole over to the side
3 and they talked for a few minutes off the record and then he
4 came back over to me and told me that Barry Barnette di -- was
5 goin' for a concurrent sentence and I asked him, I said, But
6 what we talked about prior to this the Friday before plus the
7 7 months I stayed in the county it -- I was comin' in here for
8 a 10-year deal, if if that's not the case, what what we
9 supposed to do, I'm I'm like I said, I'm not very smart on the
10 law but he he informed me that three times everything was
11 okay, that this already been discussed, that this judge is not
12 gonna give you no more than minimum 10 years because you don't
13 have no serious record and you were under the influence a
14 drugs when you did it and like I said, I asked three times and
15 he told me that everything was fine and ---

16 Q. So those three times that you asked him was that in that
17 period a time after the judge had asked every defendant in
18 that group plea situation and then he specifically started
19 your plea.

20 A. Yes, ma'am, that was after.

21 Q. That was after they specifically started your plea.

22 A. Yes, ma'am.

23 Q. And that's when Mr. Barnette and your attorney went to
24 the side and spoke outside of your and the Court's presence.

25 A. Yes, ma'am.

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1 Q. Mr. Poole came back and addressed you ---

2 A. Yes, ma'am.

3 Q. --- and tell me specifically to the best of your
4 recollection what he told you ---

5 A. He said that ---

6 Q. --- following that side ---

7 A. --- Solicitor Barnette was no longer goin' with the 10
8 years that we had talked about, that he was goin' with a
9 concurrent sentence and that's when I informed him that that
10 we talked about this the Friday before and and I was under the
11 impression that was what I was signin' for, that's why I came
12 here that day and the hearing for the plea, guilty plea and he
13 told me everything was fine, that the judge wouldn't give me
14 no more than the man -- mandatory 10 years.

15 Q. And then what happened next?

16 A. The judge went through all the charges, that he threwed
17 out the ABHAN 'cuz I I didn't, I didn't know where that came
18 from anyway 'cuz I never touched anybody, I never harmed
19 anybody in the incidents and they throwed the kidnappin' out
20 and the possession of a weapon durin' a violent crime and then
21 he asked me how old my kids was and if I had kids, where I
22 worked and everything and I told him that I was sorry for what
23 I did, I deserved to go to prison but the drugs that I was on
24 at the time I was not the normal person I usually am, that was
25 a a 90-day incident that really cost me a lot and well the

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1 next thing I heard was 25 years and the ATU program and ---

2 Q. And what happened next?

3 A. I was standin' there tryin' to figure out what was goin'
4 on and Mr. Poole had informed me prior to the hearing but at
5 the last second before the bailiff come and pull or the
6 officer come and pulled me out he had wrote down on a piece a
7 paper or sumtin' that I would go up for parole in 7 years and
8 that was one a the things that he had told me when we talked
9 about the 10 years that I'd never max the 10 years out anyway
10 'cuz long as I kept my nose clean I would get parole in 7
11 years. I don't, I don't have any parole, I mean, it's --
12 period.

13 Q. But that was Mr. Poole telling you that after the judge
14 had taken your plea and sentenced you.

15 A. Yes, ma'am.

16 Q. You had an opportunity to review the transcript from your
17 plea, have you not?

18 A. Yes, ma'am.

19 Q. And I have too so this is the hardest question to ask you
20 but, Kenneth, when the judge says anyone promised you anything
21 to get you to plead, you didn't throw a paw up and go yes,
22 they promised me 10 years, you said no, they ---

23 A. I was ---

24 Q. --- didn't promise ---

25 A. --- told that, I was told to answer no to that. I mean,

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1 it's, I I like I said, I'm not, I don't know what goes on in
2 courtrooms, I'm not a attorney or sa -- solicitor, I I don't,
3 I couldn't even tell you what halfa these codes mean on these
4 papers and I thought I was doin' as instructed, I thought that
5 was what I was supposed to be doin' and, I mean, I'm -- I I
6 feel like I'm -- this is my attorney, he's supposed to be
7 directin' me in the right directions.

8 Q. This is the second hardest question to ask you: Had the
9 plea been withdrawn and you gone to trial was that what you
10 would have wanted, is that what you want this court to do is
11 to set aside your plea and send you on to trial on all six of
12 those charges?

13 A. I've never denied guilt of what I did. I mean, trial
14 is, it was never a question, it was, it was what we were
15 agreein' to the whole time I was in the county jail that that
16 was presented the problem.

17 Q. And I understand that but you must understand if this
18 court grants your PCR application the only relief this court
19 can give you is to send you back before whatever judge the
20 solicitor chooses and Mr. Barnette and put you on trial or can
21 put you on trial for all six of those charges.

22 A. Yes, ma'am, I understand that.

23 Q. Is that the result you want?

24 A. I mean, if if it comes down to I I get a chance to
25 actually be instructed to what I'm walkin' into ahead a time

1 instead of thinkin' I'm comin' in for one thing instead and
2 gettin' another, it -- I would take that yeah, yes, ma'am.
3 I mean, I even asked after the hearing was over from the
4 detention center by request that the -- could Mr. Poole file a
5 a an appeal because I didn't agree with the the sentence, that
6 that's not what we talked about, I didn't think that was fair
7 to be told you're comin' into a courtroom for one thing and
8 walk out with another.

9 Q. And did he file the appeal for you?

10 A. He filed an appeal; I I'm not sure what it was but they,
11 I was told they deny 95 percent of those appeals anyway.

12 Q. But specifically what you asking him to appeal?

13 A. The sentence. I wasn't contestin' the guilty, it was the
14 sentence that I thought wasn't fair 'cuz I was told I was
15 comin' for another reason, another frame, time frame.

16 Q. Let's go back to what happened after you heard the 25 and
17 the ATU.

18 A. Yes, ma'am.

19 Q. What additional conversations, if any, did you have with
20 Mr. Poole before they took you to DOC?

21 A. None other than a request that I sent asking him to file
22 that motion about the sentencin' and never heard a response
23 back while I was at the detention center. I I sent one from
24 the room over there they take you after you leave the
25 courtroom, I sent officers, other public defenders into the

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1 courtroom to -- for him to please come and explain to me what
2 just happened, never heard not one response whatsoever.

3 The next that I heard was the appeal papers when I was at
4 Kirkland.

5 Q. Okay. And as far as you know, it's a matter of record
6 the appeal was declined or ---

7 A. Yes, ma'am.

8 Q. --- dismissed.

9 A. Yes, ma'am.

10 Q. Prior to going into court for that plea did you have any
11 discussions with your attorney about what could happen if you
12 got more time than you thought you deserved or the judge just
13 threw the book at you and blew you away.

14 A. I mean, he he said it, he told me the statute for the
15 armed robbery was 10 to 30 and the that per se far as the the
16 statute for 10 to 30 I understood that, you can, that's a
17 10 years or 30-year sentence but he he -- the whole time I was
18 bein' told that I didn't have a serious record, that the
19 circumstances mediatin' to my crimes would, it didn't negate
20 that much time, that I would never catch no more than the
21 mandatory 10 years. I di -- like I said, I didn't wanna take
22 the 10 years but I I got, I got five kids, I got family out
23 there, I understand what I did was wrong, I deserve to go to
24 prison but I was told I was gonna get the 10 years.

25 Q. Did you and your attorney ever discuss the terms

1 "negotiated plea"?

2 A. He told me on a couple occasions that was the best he
3 could do, the 10 years was the best he could do, that if I
4 wanted to take it to trial then it would probably go worse.

5 Q. Did he say how worse?

6 A. No, ma'am, he didn't specify other than, uh, uh, one time
7 he told me that if I separated or if I didn't plead guilty
8 that they could separate 'em and try me separately and I might
9 end up with a life sentence that, I mean, just that was never
10 a question, I I I pled, I was guilty of what I did.

11 Q. Okay, and you didn't want a life sentence.

12 A. No, ma'am, not at all.

13 Q. Do you recall you and your attorney ever talking about a
14 motion to reconsider?

15 A. That was what I was told that I should do I only had a
16 few days to do it after I was sentenced, that was what I was
17 tryin' to the appeal I'm -- I was tryin' to get and I guess
18 they turned it down in Columbia, I'm not sure because I'm
19 settin' like in a place that I don't have access to law and at
20 Kirkland here I'm in 24 hours lock down and the only time you
21 leave your room's to go eat so I I'm sittin' here tryin' to
22 figure out what to do, what to write, I don't know what to
23 write, all I know is I was under the impression I was gettin'
24 10-year sentence that day and I walked out with a 25-year
25 sentence.

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1 Q. Okay, and you made an effort to contact Mr. Poole after
2 that sentencing to to try to get him to do something to fix
3 it.

4 A. Yes, ma'am. Yes, ma'am.

5 Q. You sent him written requests?

6 A. Yes, ma'am, from the detention center.

7 Q. Did you ever call him?

8 A. I never called him. My mom called him on numerous
9 occasions and never heard a response back until a week or so
10 later.

11 Q. Did you have access to a telephone?

12 A. Yes, ma'am.

13 Q. Could you have ---

14 A. Far as, ---

15 Q. --- called him?

16 A. --- uh, from the detention center? I don't think they
17 accept collect calls at the public defender's office and if
18 they do, it's new to me, I'm not sure.

19 Q. How long did you remain at the detention center here
20 before they shipped you off to DOC?

21 A. Five days. Think I was transferred that following
22 Monday.

23 Q. And during those five days did Mr. Poole come to see
24 you?

25 A. No, ma'am.

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1 Q. Did you get a response to any of your written requests to
2 him?

3 A. No, ma'am.

4 Q. For the third issue you've raised in your PCR is a
5 violation of Statute 17-23-130 to 140, any idea what that's
6 all about?

7 A. I don't know what it means.

8 Q. Okay, is that something that someone at the jail told you
9 to throw down on there?

10 A. I had help doin' that whole PCR thing. I di -- the only
11 thing that I knowed for a fact was the invalid maybe the
12 invalid plea and the and ineffective assistance of counsel.

13 Q. Okay.

14 A. I don't know what that last one means.

15 Q. Okay, very good. Is there anything else that you feel
16 you can tell us today that would help the Court make a
17 decision on whether or not; one, your attorney failed to
18 perform adequately and; two, again, the only relief this court
19 can give you is to set aside and send you back for trial on
20 all six charges ---

21 A. Yes, ma'am.

22 Q. --- so if there's anything else roaming around in that
23 head of yours I need you to take ---

24 A. I just, uh, ---

25 Q. --- a moment think about.

KENNETH RAY RICE - DIRECT EXAMINATION BY MS. WOLF

1 A. --- I felt like walkin' into the situation if I'da just
2 known.

3 Q. Known what?

4 A. That I would, I would catch that much time. I mean, I
5 was bein' told the entire time, consoled if you could say,
6 'cuz I'm, if I can say flippin' out inside, I don't know, I
7 don't know what what's goin' on per se when they say, when he
8 comes back to me and tells me that Barry Barnette's not goin'
9 with the 10 years anymore, I'm lookin' to him because he knows
10 the law, he knows what direction to take as let me know what
11 to do 'cuz I don't wanna, I don't wanna do this anymore
12 because it's just not what we talked about. I mean, if he'da
13 just looked at me and said, You know, I don't think this this
14 doesn't feel right, this judge might give you the maximum
15 sentence, I would have walked away, I would have went back to
16 the detention center, I would not have went ---

17 Q. But would you ---

18 A. --- through that ---

19 Q. --- have gone to trial?

20 A. If that's what it took yes, ma'am. I mean, I woulda took
21 that chance.

22 Q. Alright. Those are the questions that I have for you,
23 the assistant AG and the Court may have some for you as well.

24 A. Yes, ma'am.

25 CROSS-EXAMINATION BY MS. WHITE:

1 Q. Mr. Rice, you said that Mr. Poole talked with ya about
2 the best he could do was 10 years and at the tri -- I mean, at
3 your guilty plea he asked the Court to give you 10 years,
4 didn't he?

5 A. Yes, ma'am.

6 Q. In fact, he said, you know, ask the Court to sentence him
7 to the minimum which would be 10 years, you know, the last
8 offense you had was 12 years ago, the fact that you had
9 admitted guilt, you know, and and accepted responsibility for
10 it, he was asking him to give you the minimum, right?

11 A. Yes, ma'am.

12 Q. And he presented the fact of that the situation of that
13 you were on the drugs for the short period of time, that you
14 had children to take care of and that this was just kind of a
15 a random period of time in your life, isn't that right?

16 A. Yes, ma'am.

17 Q. Okay, so previously the Court had gone over with you as
18 well the the minimum and maximum charges for each of these
19 sentences and and I know that your attorney said that that,
20 you know, the Court asked you if anybody had promised you
21 anything and you didn't say anything but when the Court said
22 that he could give you up to 30 years on each of the armed
23 robbery charges, do you still wish to enter the plea and you
24 said yes, did you not think that that might have been a time
25 that you could have said no, I don't, knowing that the Court

KENNETH RAY RICE - CROSS-EXAMINATION BY MS. WHITE

1 was telling you that they could give you up to 30 years?

2 A. Yes, ma'am, I understand your point there but when when
3 your attorney's settin' there telling you that that's the best
4 he can do is the 10-year sentence, to someone like me that
5 hasn't been to law school and doesn't know the laws that tells
6 me that ya'll already have this agreement amongst each other,
7 that he told me Barnette wouldn't budge, that that was the
8 best he could do so that tells me that I'm I'm comin' in this
9 courtroom for a 10-year, 10-year sentence.

10 Q. Well what about when Mr. Barnette read to the court the
11 fact that the only recommendation he had was recommendation
12 for concurrent?

13 A. That was after the side bar between Barnette and
14 Mr. Poole and then myself and Mr. Poole and Mr. Poole told me
15 everything was fine, not to worry, this judge was not gonna
16 give me no more than the mandatory 10-year sentence so when my
17 attorney's tellin' me that, I I I I feel like he should be
18 guidin' me in the right direction. I'm not a child by no
19 means, don't get me wrong, I'm not the smartest man in the
20 world but this is a person that's went to college for these
21 things. I don't know these laws and stuff like that, I I felt
22 like he was, he was guidin' me in the right direction in by
23 tellin' me that, that everything was still okay for what we
24 talked about.

25 Q. And isn't it true that he told you he would try to get 10

1 years and that was the best he could do if he could get 10
2 years and he would ask the Court to give you that and he would
3 ask Barry Barnette still to give you that but he could not
4 promise that?

5 A. He never told me he couldn't promise that, he never said
6 that he he would try to get me 10 years; he told me 10 years
7 was the best he could do.

8 Q. And do you recall the judge goin' over with you the fact
9 that when he talks with ya about the sentences too he says
10 that each of 'em carried a sentence that, you know, each of
11 'em was between 10 to 30 and then he even said he wasn't even
12 bound by the State's recommendation that they go concurrent,
13 that he could run 'em consecutive ---

14 A. Yes, ma'am, he ---

15 Q. --- and you still said you still wanted to take the plea?

16 A. Yes, ma'am, I was told by Ro -- Mr. Poole at at the
17 detention center that by pleadin' guilty and acceptin'
18 responsibility for the crimes that I committed the judge ever
19 goes against the solicitor in a recommendation. By takin'
20 responsibility for your actions is what the Court really looks
21 for when they're, when they're acceptin' a guilty plea or
22 hearin' a a case like in that situation.

23 Q. Okay. And ultimately when you spoke to the Court
24 obviously you acknowledged what you had done and accepted
25 responsibility and, you know, understood what your attorney

KENNETH RAY RICE - CROSS-EXAMINATION BY MS. WHITE

1 said when he asked for the 10 years but at the enda that and
2 he gave you 25 years you didn't think, Wait a second, I
3 thought I had a promise of 10 or ---

4 A. Honestly, it -- the best way I can describe that
5 situation was like havin' the worst nightmare dream you could
6 imagine where you wanna scream, you try to scream but nothin'
7 can come out and by the time I looked down at the paper that
8 he was writin' down 7 years parole the officer pulled me outta
9 the courtroom. I'm not the type person to make, I'm not gonna
10 yell, I'm not gonna make a spectacle of the courtroom, I
11 expected him possibly to come back there and talk to me and
12 explain to me the situation and possibly we could have come up
13 and had by him comin' back talkin' to me we could have
14 discussed the proper appeal that was apparently misunderstood
15 when I sent this request askin' him to file an appeal on this
16 sentence because it was not what we talked about, it was
17 not -- I didn't feel like this was fair that I was told I was
18 comin' in for one thing and walked out with another ---

19 Q. Okay.

20 A. --- but instead he he wouldn't even discuss the situation
21 with me at all.

22 Q. Alright.

23 MS. WHITE: Thank you, Your Honor, no further questions
24 for this witness.

25 MS. WOLF: I have no further questions for this witness.

KENNETH RAY RICE - CROSS-EXAMINATION BY MS. WHITE

1 THE COURT: Mr. Rice, let me just ask you one thing. You
2 you understand as your lawyer has told ya if I give you relief
3 what happens is you get a new trial, you come back, you start
4 all over at the beginning just like you were when you entered
5 this plea. Now if I grant you a new trial and you come back,
6 are you gonna have a jury decide whether or not you're guilty
7 or you gonna plead guilty to these charges?

8 THE APPLICANT: I would honestly have to discuss that
9 with whoever that my attorney is at the time far as the best
10 strategy to go with that for, I mean, I'm guilty of the
11 charges, Your Honor. I mean, I'm not, I'm not questionin' the
12 guilt of my situation, I'm questionin' the sentence that was
13 imposed was not what I was told I was walkin' into that
14 situation ---

15 THE COURT: Well ---

16 THE APPLICANT: --- so I guess to answer ---

17 THE COURT: --- you understand ---

18 THE APPLICANT: --- your question ---

19 THE COURT: --- the sentence wasn't what Mr. Poole said
20 but but that your sentence was -- is what the judge said,
21 isn't it? I mean, it's within the range as to what the judge
22 told ya he could give you, is it not?

23 THE APPLICANT: Yes, sir, I understand that but by the
24 same token I was bein' told durin' that entire hearin' that
25 everything was fine, that ---

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1 THE COURT: I understand what your position is on that
2 but now that you know what the situation is my question to you
3 is if you get a new trial, are you gonna have a jury decide
4 that you're guilty or not guilty; are you gonna come into
5 court and plead guilty and admit your guilt?

6 THE APPLICANT: I'm gonna admit my guilt in the
7 situation, sir.

8 THE COURT: You are, okay. Any other question?

9 MS. WHITE: Nothing, Your Honor.

10 THE COURT: Alright, you can have a seat. Thank you.

11 (Whereupon, the applicant left the stand.)

12 (Attorney/client discussion held off the record.)

13 MS. WOLF: Your Honor, we call Mr. Roger Poole.

14 JAMES ROGER POOLE, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. WOLF:

17 Q. Mr. Poole, thank you for coming today, I understand
18 you're on spring break.

19 A. No problem.

20 Q. Could you give us your full name for the record, please.

21 A. James Roger Poole.

22 Q. How long have you been a practicing attorney?

23 A. Thirty-two years.

24 Q. And where do you work now?

25 A. Spartanburg County Public Defender's Office.

1 Q. When did you begin to start that employment?

2 A. In 2009, first of 2009.

3 Q. Prior to that what was your employment?

4 A. I was a private attorney for 29, 30 years.

5 Q. Are you ever gonna retire?

6 A. I can't.

7 Q. Okay. Got little ones, got bigger ones. How many pleas
8 have you brought before the Court do you believe in the
9 entirety of your career?

10 A. I I have no idea.

11 Q. More than a hundred?

12 A. Probably, yes.

13 Q. More than five hundred?

14 A. It may be closer to five ---

15 Q. And ---

16 A. --- but I don't, I don't know if I can say it's over
17 that.

18 Q. Alrighty. At least since your work as a full-time public
19 defender, have you done considerably more pleas than you might
20 otherwise within your private practice?

21 A. Yes.

22 Q. Could you give us the background on your work with my
23 client Mr. Rice really focusing on the decision to plead and
24 what you and he discussed in terms of what he might expect out
25 of a plea.

JAMES ROGER POOLE - DIRECT EXAMINATION BY MS. WOLF

1 A. Mr. Rice was a very good client. I, uh, he -- I didn't
2 talk to him much around the time that our office took him in,
3 he was taken in in March of 2009 and these crimes occurred in
4 January of 2009 and we interviewed him at the jail 2009,
5 March, and he was -- failed to appear for a re-status
6 conference and I -- and he was placed back in jail in July of
7 2009. Subsequent to that was when I went to see him I noticed
8 from the notes prior to seeing him that he, and the discovery
9 material that we had, that he admitted guilt to our
10 interviewer on all of the armed robberies, he acknowledged his
11 involvement, he acknowledged his guilt, he gave statements to
12 law enforcement and there was a video on at least one of them
13 where and he was clearly seen to be the suspect in an armed
14 robbery of a Li'l Cricket and at the Little Crickets there
15 were even personnel who knew him as being the suspect and so
16 at no point in time did he ever make any excuses about what he
17 did so and we talked and I I talked to him about the range on
18 a armed robberies the the 10 to 30 serious, violent, no
19 suspension, no probation, gotta do 7 before you're eligible
20 for parole and I kept saying that and he he seemed to
21 understoo -- stand it. As we got closer to the plea date, we
22 would talk about could I get the State to recommend the
23 bottom, the 10 years; I'll said I'll continue to try, I'll do
24 it up through, you know, to the last minute I'll continue to
25 ask Barry Barnette if he could recommend the minimum for for

1 ya and that's what I did all the way through and and I told
2 him as he has told the Court and as I told the Court back at
3 his sentencing that he he was under the influence of drugs, he
4 cooperated one hundred percent with law enforcement and for
5 that and other reasons I asked the Court to give him the
6 minimum of 10 years but at no point in time did I say do we
7 have an agreement that the 10 years was going to be fixed.

8 Q. Was there any point in time when the solicitor indicated
9 he was going to make a recommendation as to actual
10 sentencing?

11 A. Not really. The best he would ever do was concurrent but
12 I continued to ask him, you know, would he -- could he stretch
13 so far as the minimum of 10.

14 Q. Do you recall the the conference you and the solicitor
15 had that my client recalled after the plea started? Was there
16 a moment in time when you and the solicitor stepped off the
17 record for a moment and discussed something?

18 A. It's in the record we discussed something, it could very
19 well be but I was asking again for him to recommend the
20 minimum, ---

21 Q. And when ---

22 A. --- if that was the case, I just came back, I said no,
23 the on -- the best we can do is concurrent.

24 Q. --- and when you came back to address Mr. Rice to tell
25 him that, was there any further discussion about maybe we

JAMES ROGER POOLE - DIRECT EXAMINATION BY MS. WOLF

1 shouldn't go forward?

2 A. No, that woulda been crazy not to go forward, I mean,
3 otherwise right then we would have had a jury picked and, you
4 you know, there he is, you know, number one, armed robbery
5 conviction.

6 Q. So he was number one on the trial docket.

7 A. Well I don't know if it's number one but I would just say
8 I meant to say it would be a jury conviction. I -- there was
9 no way he could have beaten it, the State had its witnesses
10 ready.

11 Q. Okay. And your work on the case satisfied you that the
12 State did have witnesses and they were ready and they were
13 gonna come and testify that day if necessary.

14 A. I'm not sure if it was that day but it woulda been that
15 week I do believe.

16 Q. When the plea was under way and the judge was questioning
17 Kenneth, did you have any opportunity to speak with him as the
18 judge was asking him about his plea being voluntary and if he
19 understood and things like that?

20 A. Judge Hayes does a panel briefing of constitutional
21 rights and I don't think we talked at that time.

22 Q. Once the panel is completed does he -- how is the process
23 then done, does -- what does Judge Hayes do? Does he still
24 sentence everybody as a group or do they come up one at a
25 time?

1 A. Individually. He dismisses the panel and then takes the
2 individual pleas.

3 Q. So when you and Mr. Rice were standing before the Court
4 for those fated numbers of of years, was he simply standing
5 with you or were there still other defendants around him
6 waiting to be heard?

7 A. We were standing up, that's where we always stand up here
8 and separate from the gallery of course.

9 Q. And did you have any further opportunity to to instruct
10 Mr. Rice or to give him any additional coaching or advice as
11 the judge was finishing his presentation?

12 A. Not that I recall.

13 Q. What happened after the judge levied the 25-year
14 sentence?

15 A. I turned and said well he gave you 25 years and that that
16 was about it, that was all I coulda said.

17 Q. And did you have any further conversation with Mr. Rice
18 after that moment?

19 A. I don't think so. I think I got a communication from him
20 that he wanted to appeal the case and it was made in a timely
21 fashion the appeal was.

22 Q. You have a copy of that communication in your file
23 today?

24 A. I don't know.

25 Q. I believe you do. I think it's second from, second

JAMES ROGER POOLE - DIRECT EXAMINATION BY MS. WOLF

1 document from the back if you don't mind just looking at it
2 for me.

3 A. Is this it (indicating)? Here's another one.

4 Q. Yeah. If you would read for the Court the and I guess
5 introduce to the Court what that document is but it was sent
6 to you by your client asking you to do something following the
7 sentencing.

8 A. "Roger, I need you to file a motion for an appeal, it --
9 I signed a plea deal for 10 years on 4/23/10, I feel like the
10 sentence I received is harsh and unusual for my record. The
11 solicitor went back on everything you told me when I signed
12 the plea deal, just please file an appeal ASAP underlined.
13 Contact my ma -- mom with all info. about this appeal."

14 Q. Alright, and that is the appeal that you subsequently
15 filed for him, is that right?

16 A. That's correct.

17 Q. In reading that request I guess I interpret that as a I'd
18 like the judge to reconsider. Did you interpret that or any
19 other request from Mr. Rice as he was asking you to go back
20 and see if Judge Hayes would do something better for him?

21 A. I took it at its face value, you know, to file an appeal,
22 an appeal being a proper appeal. As far as reconsideration is
23 concerned, that would have been, it wouldn't been a -- in of
24 any use because I think what was was impressing Judge Hayes
25 was the, I mean, we talkin' about four armed robberies, in

JAMES ROGER POOLE - DIRECT EXAMINATION BY MS. WOLF

1 essence four armed robberies, I mean, not one but four,
2 uh, ---

3 Q. What did you ---

4 A. --- and an attempt ---

5 Q. --- think would happen?

6 A. Pardon?

7 Q. What do you think would happen, in your experience, had
8 you gone before Judge Hayes and said, We don't like this ---

9 A. That ---

10 Q. --- 25 years?

11 A. --- nothin's gonna change. He would not, I don't believe
12 he would reconsider it, deny it.

13 Q. Did did you communicate with Mr. Rice at all and discuss
14 with him that that's the only other option you guys might have
15 is ---

16 A. No, I did not. I did not.

17 Q. How come? Do you know why you didn't?

18 A. I have no idea. I don't know if this was at the first of
19 the week and we're, you know, in court or whatever but I did
20 not do that.

21 Q. Okay. Just one moment, please, sir.

22 (Attorney/client discussion held off the record.)

23 Thank you, sir, those are the questions we have.

24 A. Thank you.

25 CROSS-EXAMINATION BY MS. WHITE:

JAMES ROGER POOLE - CROSS-EXAMINATION BY MS. WHITE

1 Q. Just real quickly, Mr. Poole. You testified that you
2 talked with the applicant about the minimum, maximum and the
3 possibility of what he would do if he did parole; did you talk
4 with him about the possibility of the sentences running
5 concurrent or consecutive, do you recall?

6 A. We talked about the fact that the State was offering
7 concurrent sentencing so we certainly talked about concurrent
8 sentencing.

9 Q. And did you explain to him the difference or what that
10 meant I guess since the applicant said, you know, obviously he
11 didn't go to law school and he doesn't know, do you feel like
12 you explained it to him I guess in in a lay person's terms?

13 A. Sure and that the time on all the charges would run
14 together at the same time as opposed to consecutive.

15 Q. Okay, and do you -- are you aware of anything that he
16 signed back in April that was any kind of plea agreement or
17 deal or or sentencing sheet agreeing to a 10-year sentence?

18 A. No, the only thing I could think of is that I I brought
19 to Mr. Rice probably in the jail the sentencing sheets for him
20 to sign.

21 Q. And the sentencing sheets generally have the minimum, a
22 maximum of sentence on them, don't they, next to the
23 charges?

24 A. They they do.

25 Q. And I know this is asking a question that calls for

1 speculation basically but do you think that's where he got the
2 10 years from or do you have any idea where he's gotten that
3 he signed a a plea deal for 10 years?

4 A. I don't know where he got it. I know that I told him
5 that I would certainly ask the judge for the minimum and I
6 would continue to ask the solicitor for the minimum
7 recommendation.

8 Q. And obviously you said that you talked with him there
9 about it and and might have shared with him in some of the
10 status conference the fact that Barry still refused to give a
11 10-year recommendation but you don't recall if that was
12 anything ya'll particularly talked about during those bench
13 conferences or ---

14 A. I think, I think even in the courtroom I went over back
15 to Bar -- Barry Barnette, I said, So are you sure you can't
16 still, you know, recommend the minimum, you know. I mean, I
17 asked him all the time even there in in the courtroom at the
18 plea I think.

19 Q. And ultimately he still only recommended concurrent but
20 then you asked still the Court to consider the minimum of 10,
21 is that right?

22 A. That that's correct.

23 Q. Okay. And and just finally, when you got the the letter
24 from the applicant regarding that he signed anything for
25 10 years, was there anything that stuck out that you had, you

JAMES ROGER POOLE - CROSS-EXAMINATION BY MS. WHITE

1 know, you said you don't recall anything other than the
2 sentencing sheets, at that point do you remember any, thinking
3 anything different that ---

4 A. No, I just thought I, ---

5 Q. --- concerned you about it?

6 A. --- I just thought that he may be thinking that what he
7 signed, that is in section [sic] sheets was some sort of
8 recommendation for a 10-year sentence which in fact of course
9 it was not.

10 Q. And in your conversations with him, did you feel that he,
11 based on what you had talked with him, understood what the
12 minimum and the maximum were and what your role was in asking
13 for a sentence?

14 A. Yes, I felt confident that he understood.

15 Q. Okay. Alright, thank you.

16 MS. WHITE: That's all I have, Your Honor.

17 (Attorney/client discussion held off the record.)

18 MS. WOLF: We have no questions further. Thank you.

19 THE COURT: You may step down.

20 (Whereupon, the witness left the stand.)

21 MS. WHITE: The State has no witnesses, Your Honor.

22 THE COURT: Anything else?

23 MS. WOLF: Nothing further from us, Your Honor.

24 THE COURT: I'll review the record in the case and issue
25 an order.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 5, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 37, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

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

October 28, 2012

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 Kenneth Ray Rice, #261804,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-0410

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 28, 2011. The Respondent made its Return on or about February 15, 2012. An evidentiary hearing into the matter was convened on April 5, 2012, at the Spartanburg County Courthouse. The Applicant was present and represented by Alexandria M. Wolf, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. J. Roger Poole, Esquire, testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the Return, and the guilty plea transcript.

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 SPARTANBURG COUNTY
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 M. HOPE BLACKBERRY

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for armed robbery and possession of a firearm during the commission of a violent crime (09-GS-42-2218, counts 1 & 2), three additional counts of armed robbery (09-GS-42-2219, -2220, -2221), assault and battery

of a high and aggravated nature (09-GS-42-2222), and kidnapping (09-GS-42-2223). Applicant was represented by J. Roger Poole, Esquire. On April 28, 2010, the Applicant pled guilty to the lesser-included offense of attempted armed robbery (09-2220), the three other counts of armed robbery (09-2218, -2219, -2221)¹. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for a period of twenty-five years on each charge of armed robbery and twenty years for attempted armed robbery, all to run concurrently.

A timely Notice of Appeal was filed along with an explanation of appeal pursuant to Rule 203(d)(1)(B), SCACR, regarding guilty plea appeals. The South Carolina Court of Appeals dismissed Applicant's appeal by Order on July 19, 2010, for failure to show any issue preserved for appeal. The Remittitur was returned on August 5, 2010.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

- 1. Ineffective assistance of counsel, in that;
 - a. Sixth Amendment violations;
- 2. Invalid plea;
- 3. Lack of subject matter jurisdiction, in that;
 - a. Court was without jurisdiction to impose sentence on the defective indictments;
- 4. Violation of Statute 17-23-130-140.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard 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

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¹ The charge of possession of a weapon during the commission of a violent crime (09-2218) and ABHAN charge (09-2222) were *nolle prossed* prior to the completion of the plea as a result of the Applicant's agreeing to plead guilty. A kidnapping charge was also dismissed following the Applicant's plea as part of the plea negotiations (09-2223).

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).

Ineffective Assistance of Counsel

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

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

First, the Applicant must prove that counsel's performance was deficient. Under the first prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A. reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186,

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480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant testified that the investigator from the public defender's office came to see him first and then he met with Counsel in November 2009. Applicant acknowledged that he always admitted guilt, but that he committed the crimes while he was under the influence of drugs. Applicant testified that he asked Counsel to file an appeal from the guilty plea, but Applicant did not understand what an appeal was and believed that he was asking Counsel to essentially file a motion for reconsideration because of the harsh sentencing.

Counsel testified that the Applicant came in to meet with him in March 2009, after being arrested January 2009. However, Counsel testified that Applicant was placed back in jail after failing to appear for a status conference in July 2009. Counsel testified that the Applicant admitted guilt to his office's investigator and it was clear that the Applicant was seen on surveillance video and by store personnel who recognized him. Counsel testified that he did receive a letter from the Applicant asking him to appeal the plea and Counsel did so, but it was dismissed because there were no rulings to appeal. Counsel testified that he did not believe that a motion for reconsideration would have been successful based upon the fact that the Applicant was charged with four armed robberies.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. This Court finds that the Applicant was aware of and informed of the charge to which he was pleading guilty. Applicant's testimony was clear

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that he did not want to proceed to trial on these charges and was dissatisfied with the sentence that he received by the court. This Court finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his guilty plea. This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Involuntary Guilty Plea

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Applicant testified that he wanted to plead guilty because he was told that he could be faced with a sentence of life without parole and because he had five children, did not want to risk that sentence. Applicant testified that although Counsel told him that he faced a maximum of thirty years on each charge, Counsel also told him that ten years was the best that Counsel could do. Applicant testified that Counsel continued to tell Applicant during the plea that even though it would be fine. Applicant testified that he never would have proceeded with the plea if he did not think he was receiving a sentence of ten years. Additionally, Applicant testified that he believed he would be eligible for parole in seven years.

Counsel testified that he met with the Applicant and informed Applicant of the minimum and maximum sentences for each charge, including the fact that each charge was a most serious and violent charge. Counsel also testified that they discussed the sentences either being

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that Counsel's testimony is more credible than the Applicant's. This Court finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has established any constitutional violations or deprivations that would require this court to grant application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

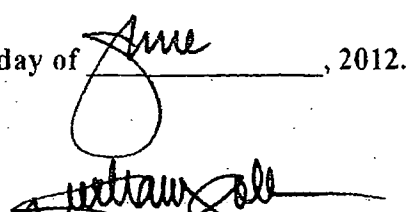
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appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15 day of June, 2012.



 J. Derham Cole
 Presiding Judge

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

WITNESSES

Ronald E. Richards

Woodruff PD

1. SENTENCE MADE

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSED

8. ARREST WARRANT NUMBER

✓ M085786 (Count One)

✓ M085792 (Count Two)

ACTION OF GRAND JURY

True Bill
Dudley

Foreperson of Grand Jury

Date: 5-7-09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **09-GS-42-2218(A)**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE

vs.

Kenneth Ray Rice

COUNT TWO - POSS OF FIREARM DURING COMMISSION OF A VIOLENT
CRIME - NP - Defendant pled to COUNT ONE FOR ARMED ROBBERY
PLUS TWO OTHER COUNTS OF AR ON IND. Nos. 09-GS-42-2219 AND 2221
and ONE COUNT OF ATT. AR ON IND. No.: 09-GS-42-2220 in front
OF JUDGE MARK HAYES ON 4/28/2010 and RECEIVED

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

A 25 YEAR SENTENCE ON EACH
ARMED ROBBERY AND A 20 YEAR
SENTENCE ON THE ATT. ARMED ROBBERY.

Barry Bennett MARG KITCHENS

- 4/28/2010 - 10:41 PM 13 PM 4:01

SC Code: 16-11-330 (A); 16-23-490

CDR CODE: 139; 0549

CLASS: FEL/A; FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 APR 28 PM 5:44

CLERK OF COURT
SPARTANBURG COUNTY

COUNTY OF SPARTANBURG
STATE VS.
Kenneth Ray Rice
AKA:
Race: W Sex: M Age: 32
DOB: 01-15-1978 SS#:
Address:
City, State, Zip: Woodruff, SC 29388
DL#: SID#:

INDICTMENT/CASE#: 2009GS4202218
A/W#: M085786
Date of Offense: 1/17/2009
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Robbery / Armed Robbery, robbery while armed and allegedly armed with a deadly weapon - COUNT ONE

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Barry Barnett 13039 Kenneth Ray Rice 9 Bryan Poole 4499
BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Since 10/2/09
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

Table with columns for Recipient, *Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 56-1-286, § 47.12, § 14-1-212, § 14-1-213, § 50-21-114, § 56-5-2942(J), § 90.7, 3% to County). Total amount: \$133.90

days/hours Public Service Employment
Obtain 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 Fund
Other:
ATU while in the DOC
NO Contact with Victim
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to clerk during probation.

Clerk of Court/ Deputy Clerk: A. Spawey
Court Reporter: Woods
SCCA/217 (11/2009)

Presiding Judge: [Signature]
Judge Code:
Sentence Date: 4-28-10

89
WITNESSES

A. Lewis

Spartanburg County Sherriff's Office

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT

FINE CARD MADE

M085789& TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bell

Slindley

Foreperson of Grand Jury

Date: 5-7-09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

09-GS-42-2219

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE

vs.

Kenneth Ray Rice

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

MARC KITCHENS

MAY 13 PM 4:01

CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT


MAY 07 2009

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Kenneth Ray Rice, did in Spartanburg County, on or about January 11, 2009, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Lil Cricket located at 2320 Hwy 92, Enoree, South Carolina, by means of force or intimidation goods or monies of Lil Cricket located at 2320 Hwy 92, Enoree, South Carolina, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

COUNTY OF SPARTANBURG)
 STATE VS.)
Kenneth Ray Rice)
 AKA: _____)
 Race: W Sex: M Age: 32)
 DOB: 01-15-1978 SS#: _____)
 Address: _____)
 City, State, Zip: Woodruff, SC 29388)
 DL#: _____ SID#: _____)

Computer

INDICTMENT/CASE#: 2009GS4202219
 A/W#: M085789
 Date of Offense: 1/11/2009
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 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. **CONCURRENT**

ATTEST: Barry Barnett 13039 Kenneth Ray Rice 9 Bryan Poole 4499
 BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 10/2/09
 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
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

Obtain 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 Fund

Other: ATV while in the DOC
NO contact with victims

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk A. Seavey
 Court Reporter: Woods
 SCCA/217 (11/2009)

Presiding Judge _____
 Judge Code: _____
 Sentence Date: 4-25-10

WITNESSES

[Signature]
Spartanburg County Sherriff's Office

1. SENTENCE MADE

2. REPORT FILED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

M085787

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 5-7-09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO
09-GS-42-2220

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE

VS.

Kenneth Ray Rice

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

MARC KITCHENS

MAY 13 PM 4:01

CLERK OF COURT

SPARTANBURG COUNTY

05/11/09

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

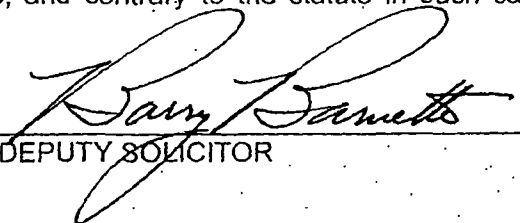
At a Court of General Sessions, convened on MAY 07 2009 the Grand

Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Kenneth Ray Rice, did in Spartanburg County, on or about December 30, 2008, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Craig William Koenig and/or Lil Cricket located at 15831 Hwy 221, Enoree, South Carolina, by means of force or intimidation goods or monies of Craig William Koenig and/or Lil Cricket located at 15831 Hwy 221, Enoree, South Carolina, described as follows: merchandise, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

COUNTY OF SPARTANBURG
 STATE VS.
Kenneth Ray Rice
 AKA: _____
 Race: W Sex: M Age: 32
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Woodruff, SC 29388
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2009GS4202220
 A/W#: M085787
 Date of Offense: 12/30/2008
 S.C. Code § : 16-11-0330(A)(6)
 CDR Code #: ~~0139~~ 0026

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was: CONVICTED OF or PLEADS 0-20 yrs.
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon ATTEMPTED ARMED ROBBERY

in violation of § 16-11-330(B) 16-11-325 of the S.C. Code of Laws, bearing CDR Code # 0139 0026
 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. KPR (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. CONCURRENT

ATTEST: Barnette, Barry 13039 Kenneth Ray Rice J Boyer Poole 4499
 BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Oct 2, 2009
 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: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____

Recipient:	
*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$5.00
3% to County (if paid in installments)	\$3.90
TOTAL	\$133.90

Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: A TO which is the DOC
NO contact with victims
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk A. Sealey
 Court Reporter: Waco
 SCCA/217 (11/2009)

Presiding Judge _____
 Judge Code: _____
 Sentence Date: 4-28-10

WITNESSES

A. Turley

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT ENDED

3. CARFILLED

4. INDEXED

5. CHECKED WARRANTS
ARREST WARRANT NUMBER

6. CHECKED BOOKING

7. ASSESSED FINE CARD MADE

M085790

8. REPORTED VIOLATIONS COPY

ACTION OF GRAND JURY

A. Turley
Foreperson of Grand Jury
Date 5-7-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

09-GS-42-2221

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 13 2009

TERM

THE STATE

VS.

Kenneth Ray Rice

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FELA

MARC KITCHENS

MAY 13 PM 4:01

CLERK OF COURT

COUNTY OF SPARTANBURG

VS

Kenneth Ray Rice

INDICTMENT/CASE# 2009GS4202221

A/W# M085700

Date of Offense 12/2/09

S.C. Code 16-11-0330(A)

CDR Code # 0139

SENTENCE SHEET

AKA

Race W Sex M Age 32

DOB 01-15-1978 SS#

Address

City, State, Zip Woodruff, SC 29388

DL#

*CDI Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [X] PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

[] NON-VIOLENT [X] VIOLENT [] STRIOUS [X] MOST SERIOUS [] Mandatory GPS/CSC [] § 17-25-45

w/minor 1st or Lewd Act)

The charge is [X] As Indicted, [] Lesser Included Offense [] Defendant Waives Presentment to Grand Jury (Defendant's initials)

The plea is [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State. Concurrence

BARNETT, BARRY 13039 SC Bar# Kenneth Ray Rice Defendant Bryan Poole 4499 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, [] County Detention Center, for a determinate term of 25 days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] 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 since 10/2/09

[] 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

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 \$100.00
§ 14-1-211(A)(2) (DUI SurchARGE)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47-12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court SurchARGE)	\$100 \$25.00
§ 50-21-114 (DUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90-7 (SCCA Surecharge)	\$5 \$5.00
3% to County (if paid in installments)	\$
TOTAL:	\$133.00

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (1/1/2009)

PTUP days/hours Public Service Employment

Obtain 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 Fund

Other

ATV while in the SC

NO contact with victims

[] Appointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code

Sentence Date