

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Barnwell County

Paul M. Burch, Circuit Court Judge

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S.C. Supreme Court

FRANKIE WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212823

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APPENDIX

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State of South Carolina	)	} Court of General Sessions 09-GS-06-0078,0079
County of Barnwell	)	

The State of South Carolina	)	} Transcript of Record
Plaintiff	)	
vs.	)	
Frankie Williams	)	
Defendant	)	

February 23, 2009  
Barnwell, South Carolina

**B E F O R E:**

The Honorable Doyet A. Early, III, Judge.

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

Lauren Maurice, Assistant Solicitor  
Attorney for the Plaintiff

De Grant Gibbons, Esq.  
Attorney for the Defendant

Lisa H. Davenport  
Official Court Reporter

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I N D E X   O F   W I T N E S S E S

Frankie Williams,

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(none offered)

1 (Whereupon, on February 23, 2009 the following  
2 proceedings were held:)

3 FRANKIE WILLIAMS, after being duly sworn,  
4 testified as follows:

5 MS. MAURICE: Your Honor, this is Mr. Frankie  
6 Williams. The state -- He is represented by Mr. Grant  
7 Gibbons. The state had planned to call this case for  
8 trial this week. Our victim is here today but is leaving  
9 on a longstanding vacation trip Wednesday morning and with  
10 the jury just coming in tomorrow morning I was concerned I  
11 wouldn't be able to complete it within one day. We did  
12 offer the Defendant a concurrent sentence.

13 THE COURT: What is he charged with?

14 MS. MAURICE: Assault and battery with intent to kill  
15 and armed robbery and possession of a weapon during a  
16 violent crime. I offered for the armed robbery and ABWIK  
17 to run concurrent and to dismiss the possession of the  
18 weapon. I just want to make sure that Mr. Williams  
19 understands that that offer is not good after this week.  
20 I start preparing it for trial detail and there will be no  
21 offer.

22 THE COURT: Is that your understanding, Mr. Gibbons?

23 MR. GIBBONS: That is, Your Honor, and I have  
24 discussed it with my client as well as his mother.

25 THE COURT: Where is his mom?

1 MR. GIBBONS: She's right here on the front row.

2 THE COURT: All right. Come up here, ma'am. All  
3 right.

4 Mr. Williams, how are you today?

5 THE DEFENDANT: Fine.

6 THE COURT: You understand what they're saying?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: They're saying in all of these cases --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: -- that come in here the state will make  
11 an offer in return for admission of guilt -- guilty  
12 plea -- and as I understand the state is willing to drop  
13 one charge and allowing the other two to run concurrent.  
14 Is that what you said?

15 MS. MAURICE: Yes, Your Honor.

16 THE COURT: He is charged with armed robbery?

17 MS. MAURICE: Assault and battery with intent to  
18 kill.

19 THE COURT: Assault and battery with intent to kill  
20 carries up to 20 years in the Department of Corrections.  
21 Armed robbery carries --

22 MS. MAURICE: Ten to thirty, Your Honor.

23 THE COURT: Minimum 10 to 30. What they're saying is  
24 that they'll drop the weapons charge and let you plead to  
25 those two and whatever I sentence you you'll do them at

1 the same time. Certainly you don't have to do that.  
2 That's up to you, but they're telling you if you don't do  
3 it, then they're going to withdraw that offer and you'll  
4 go to trial on all three cases.

5 The jury may cut you loose and you'll go home. They  
6 could find you guilty on one, two or three or none. I  
7 don't know. And then the sentencing is up to whatever  
8 judge is here. We can run them concurrent on top of each  
9 other. We can run them consecutive one after the other.  
10 I just want to make sure that you understand that.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Do you have any questions you  
13 want to ask me?

14 THE DEFENDANT: No, sir.

15 THE COURT: And you understand that after this week  
16 the offer -- the concurrent sentences and dropping one is  
17 off the table. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Any questions you want to ask me?

20 THE DEFENDANT: No, sir.

21 THE COURT: And you're his mom, ma'am?

22 MS. TONYA WILLIAMS: Yes, sir.

23 THE COURT: And your name?

24 MS. TONYA WILLIAMS: Tonya Williams.

25 THE COURT: How are you doing today?

1 MS. TONYA WILLIAMS: I'm fine.

2 THE COURT: Do you understand the offer and we just  
3 want to make sure he knows what is going on?

4 MS. TONYA WILLIAMS: Yes, sir.

5 THE COURT: Do you have any questions?

6 MS. TONYA WILLIAMS: No, sir.

7 THE COURT: Good luck to you.

8 (Whereupon, a break was taken and other cases were  
9 heard.)

10 MS. MAURICE: Your Honor, this is Mr. Frankie  
11 Williams. He is represented by Mr. Grant Gibbons. He is  
12 before Your Honor to plea to armed robbery and assault and  
13 battery with intent to kill. Your Honor, we are not  
14 proosing the weapons charge and the recommendation is for  
15 it to run concurrent. At the appropriate time the victim  
16 would like to address the court.

17 THE COURT: Seventeen years old, son?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. You were just in here before  
20 me.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I explained to you about the plea --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- that they had offered you under Alford  
25 which was to run these two cases concurrent so you do the

1 time at the same time.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You left out of the courtroom and I think  
4 you went back -- I assume that you went back in the back  
5 and I see that your mom went with you. Is that your dad?

6 MR. GIBBONS: His uncle, Your Honor.

7 THE COURT: Uncle. Have you had a chance to talk  
8 with your mom and your uncle?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And tell me what you want to do.

13 THE DEFENDANT: Plead guilty, Your Honor.

14 THE COURT: All right. Mr. Gibbons, you represent  
15 Frankie K. Williams; is that correct?

16 MR. GIBBONS: I do, Your Honor.

17 THE COURT: He was indicted on three indictments:  
18 Armed robbery, assault and battery with intent to kill,  
19 and possession of a weapon during the commission of a  
20 violent crime which the state is now prosecuting. Is that  
21 your understanding?

22 MR. GIBBONS: That's correct, Your Honor.

23 THE COURT: Now --

24 MR. GIBBONS: There is also a recommendation of  
25 concurrent.

1 THE COURT: Very well. Mr. Gibbons, let me ask you a  
2 few questions. Have you advised him on the armed robbery  
3 that that carries a minimum of 10 years up to 30 years in  
4 the State Department of Corrections?

5 MR. GIBBONS: I have, Your Honor, as well as it being  
6 a strike under most serious offense and a violent charge.

7 THE COURT: That's a no-parole sentence?

8 MR. GIBBONS: That's correct.

9 THE COURT: 85 percent?

10 MR. GIBBONS: Yes, sir.

11 THE COURT: And also on the assault and battery with  
12 intent to kill have you advised him that that is a most  
13 serious up to 20 years?

14 MR. GIBBONS: Yes, sir. And it has the same  
15 ramifications as far as violent, most serious.

16 THE COURT: Have you discussed that with his parent?  
17 His mom and his uncle?

18 MR. GIBBONS: Yes, sir. I met with his mom a couple  
19 of times now. I met with her over the weekend again. She  
20 also understands the charges.

21 THE COURT: Have you also explained to him his right  
22 to trial by jury?

23 MR. GIBBONS: I have.

24 THE COURT: How does he indicate he wishes to plead  
25 as to both indictments?

1 MR. GIBBONS: Your Honor, he's indicated now that he  
2 wishes to plead guilty to these two indictments.

3 THE COURT: Mr. Williams, I am going to ask you a lot  
4 of questions.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay? If I should ask you something  
7 that you do not understand, please stop me and I'll repeat  
8 it. If you answer my question I'll assume that you  
9 understood it. Is that fair?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You seem to be an articulate young man.  
12 How far did you go in school?

13 THE DEFENDANT: Tenth grade, sir.

14 THE COURT: You dropped out?

15 THE DEFENDANT: Got kicked out.

16 THE COURT: Got kicked out. Have any education  
17 beyond the tenth grade?

18 THE DEFENDANT: No, sir.

19 THE COURT: Mr. Williams, you stand before me on two  
20 very serious indictments.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: One of them is an indictment for armed  
23 robbery. That carries a minimum of 10 years in the State  
24 Department of Corrections up to 30 years.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The other indictment is assault and  
4 battery with intent to kill. That carries a minimum --  
5 Strike that. That carries up to 20 years in the State  
6 Department of Corrections.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Also, both of these are classified as  
9 violent and most serious. The most serious means that  
10 that is a strike -- what we call a strike against you.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If and when you are released from  
13 incarceration and you become involved in breaking the law  
14 and it's a crime that's classified as most serious that  
15 would be your second most serious strike and you would be  
16 subjecting yourself to being put in jail for the balance  
17 of your life without the possibility of parole. Do you  
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you get out and become involved in  
21 criminal activity that's classified as serious and you get  
22 a most serious or two serious, that's three of those and  
23 that would be the same possibility of life in prison  
24 without the possibility of parole. Do you understand  
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: These are what are called no-parole  
3 offenses. Whatever time I give you you will do at least  
4 85 percent of it. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So if I give you 10 years, you'll do  
7 eight and a half. If I give you 20, you'll do 85 percent  
8 of that, whatever it may be.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Once you are released from incarceration  
11 you'll be released through a community supervision  
12 program. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, there's been no guarantee of  
15 anything. There's only a recommendation by the state that  
16 I will run these sentences concurrent as opposed to  
17 consecutive. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: That's simply a recommendation. I do not  
20 have to follow that.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding what you're charged with,  
23 possible punishment, classification of most serious and  
24 strikes and what that means, the fact it is a no-parole  
25 sentence and you'll do 85 percent under our current

1 statutory scheme, when you are released you'll be released  
2 to community supervision program -- understanding all of  
3 that, how do you wish to plead? Not guilty or guilty?

4 THE DEFENDANT: Guilty, Your Honor.

5 THE COURT: Mr. Williams, when you plead guilty you  
6 give up your right to remain silent. You have to admit to  
7 me your involvement of your guilt. Do you understand  
8 that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You also give up your right to a jury  
11 trial. If you plead not guilty and asked for a jury trial  
12 we would, obviously -- we, the state -- would give you  
13 one. At a jury trial we would choose 12 jurors to sit  
14 over there in that jury box to determine what the true  
15 facts are in the case and you through our lawyer would  
16 have the right to confront and cross examine all of the  
17 witnesses who testified against you. You would have the  
18 right to present your side of the story, your defense,  
19 call witnesses on your behalf and introduce relevant  
20 exhibits and testify in your own defense if you chose to  
21 do so.

22 If you exercised your constitutional right to remain  
23 silent, then I would tell the jury they could not hold  
24 your failure to testify against you in any manner  
25 whatsoever and, in fact, I would instruct them that they

1 could not even consider the fact that you didn't testify  
2 when they deliberated your guilt or innocence. You would  
3 be presumed to be innocent throughout the trial and the  
4 State of South Carolina would have the burden of proving  
5 you guilty beyond a reasonable doubt as to both charges  
6 before a jury, and in order for that jury to convict you  
7 all 12 jurors would have to unanimously agree that you  
8 were, in fact, guilty, and even if you were convicted you  
9 would still have the right to an appeal.

10 Now, do you understand your rights to trial by jury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Understanding those rights, sir, do you  
13 still wish to plead guilty or do you want me to bring in a  
14 jury?

15 THE DEFENDANT: I'd like to plead guilty.

16 THE COURT: Now, Mr. Williams, has anybody promised  
17 you anything, held out any hope of reward, or threatened  
18 you in any manner in order to make you plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: That's your own decision; is that  
21 correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: There is a recommendation, but other than  
24 that has there been any representations made to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: Mr. Grant Gibbons is your lawyer. Are  
2 you satisfied with his legal services?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In your opinion has Mr. Gibbons had  
5 enough time to spend with you and your mom, enough time to  
6 research the law, enough time to investigate the facts so  
7 that he can properly defend you here today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is there anything else you want him to do  
10 for you today before we move forward other than speak up  
11 on your behalf?

12 THE DEFENDANT: No, sir.

13 THE COURT: I ask you again, sir, are you totally and  
14 completely satisfied with his representation?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Williams, are you today, sir, under  
17 the influence of any alcoholic beverages, drugs, or  
18 prescription medication?

19 THE DEFENDANT: No, sir.

20 THE COURT: Mr. Williams, are you today aware of any  
21 mental, nervous, or physical conditions which would keep  
22 you from understanding my questions?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you understood everything I've asked  
25 you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Williams, are you today entering this  
3 plea of guilty as to both charges and is this of your own  
4 free will and accord? Nobody is making you do it?

5 THE DEFENDANT: No, sir.

6 THE COURT: I know you've had a chance to talk to  
7 your mom, your uncle, and your lawyer, but is this your  
8 sole decision?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Williams, are you pleading guilty  
11 because you, in fact, did what's alleged in these  
12 indictments?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And it is alleged or it says in the  
15 indictments as to the assault and battery with intent to  
16 kill that you did along with other people in Barnwell  
17 County on or about July 15 of 2008 did shoot one Kenneth  
18 Owens with malice aforethought and that's committing the  
19 crime of assault and battery. Did you do that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you pleading guilty because you are  
22 guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Pleading guilty because you did, in fact,  
25 shoot Mr. Kenneth Owens?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Pleading guilty because you broke the  
3 law?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: As to the other indictment, indictment  
6 078, the armed robbery, did you also in Barnwell County on  
7 that same date, July 15, 2008, take from Mr. Owens by  
8 means of force or intimidation monies or goods while armed  
9 with a deadly weapon?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you pleading guilty to that because  
12 you are guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you pleading guilty to that because  
15 you, in fact, did take from Mr. Owens monies while armed?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Pleading guilty to that because you did,  
18 in fact, break the law?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Mr. Williams, I find your  
21 decision to plead guilty to assault and battery of a high  
22 and aggravated -- Strike that -- to assault and battery  
23 with intent to kill and armed robbery to be freely,  
24 voluntarily, and intelligently made. You've had the  
25 representation of a very competent lawyer Mr. Grant

1 Gibbons with whom you tell me you're well satisfied.  
2 You've had an opportunity to talk with your mom and your  
3 uncle and I will accept your guilty plea. If you disagree  
4 with my sentence or these proceedings you have 10 days  
5 from today's date to file a notice of intent to appeal.  
6 Do you understand your rights to an appeal?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Ma'am?

9 MS. MAURICE: Thank you, Your Honor. Back July 15 of  
10 2008 Mr. Owens came from Allendale into Barnwell to go to  
11 the credit union and he just missed it and they closed  
12 right before he had gotten there. So he decided he'd go  
13 visit a friend and he drove out 278 and he saw a Tahoe  
14 come up real fast behind him. He saw it in the rearview  
15 mirror. He thought it unusual, but they passed him and  
16 kept going.

17 THE WITNESS: At that time Mr. Owens pulled off the  
18 road to make a phonecall on his cellphone and the next  
19 thing he knew the Tahoe had turned around, Your Honor, and  
20 come back and was right next to him. There were four  
21 young black men in the vehicle. Two -- the two on the  
22 passenger side -- the passenger front and the passenger  
23 back got out of the vehicle and --

24 THE COURT: Wait of a minute. Two of them got out?

25 MS. MAURICE: Yes, Your Honor.

1 THE COURT: Four in the car?

2 MS. MAURICE: Correct.

3 THE COURT: Hold on a second. Is this the case I've  
4 heard bond hearings and you've been to Bamberg and you've  
5 been most patient? How are you doing? I am speaking now  
6 on the record to the victim.

7 MS. MAURICE: Mr. Owens.

8 THE COURT: Are you still working out at the plant?

9 THE VICTIM: Yes, sir. First --

10 THE COURT: Well, I just want to know how you're  
11 doing. Then I am going to give you a chance to speak.

12 THE VICTIM: Well, I'm doing on a day-to-day basis it  
13 is weather induced.

14 THE COURT: Where did you get shot?

15 THE VICTIM: In the thigh.

16 THE COURT: And is this the young man that shot you?

17 THE VICTIM: Yes, sir.

18 THE COURT: Let me hear the facts and I'll -- Just  
19 stand right there and I'll talk to you.

20 MS. MAURICE: Your Honor, the front passenger seat  
21 and the back passenger seat defendants got out of the  
22 vehicle with weapons pulled, ordered Mr. Owens out of the  
23 vehicle, started searching through the vehicle. One of  
24 them walked him to the back of the vehicle, Your Honor, as  
25 they were searching. They did take his wallet and then

1 made him go back to the front of the vehicle, I believe,  
2 Your Honor, and were talking about shooting him and then  
3 got nervous because a car passed by or he believes they  
4 got nervous because someone passed by and he could hear  
5 the other two in the car, "Come on, man, come on, let's  
6 get going," and these two got back in the car --  
7 Mr. Williams and the other one that got out of the car  
8 that we believe to be Mr. Payne, and for whatever reason  
9 Mr. Williams at that time he shot the rear tire of  
10 Mr. Owens' car but then he shot Mr. Owens.

11 THE COURT: From within the car or he got back out?

12 MS. MAURICE: I believe he was sitting in the car.  
13 Or was he outside of the car?

14 THE VICTIM: He shot the rear tire outside the  
15 vehicle. He got in the vehicle and shot me from inside of  
16 the vehicle.

17 MS. MAURICE: Yes, Your Honor. They had already  
18 robbed him. They were leaving him. They had shot the  
19 vehicle. It wasn't going anywhere.

20 The officers got a description and I believe picked  
21 them up within 30 minutes or 40. It was --

22 THE POLICE OFFICER: A BOLO of the vehicle was put  
23 out and Allendale Sheriff's Department observed the  
24 vehicle go by and got behind them and stopped them at the  
25 gas station. The wallet and all the guns were in the

1 vehicle.

2 MS. MAURICE: The wallet, his ID. There were guns,  
3 Your Honor. There was ammunition. There were bandannas  
4 and pretty much they were caught red-handed.

5 THE COURT: Well, obviously, I've heard a lot -- I've  
6 heard two or three bond hearings, perhaps. I can't  
7 remember. Mr. Owens has been at every one of them, bless  
8 his heart.

9 Mr. Gibbons, 17 years old.

10 Does he have a record?

11 MS. MAURICE: Your Honor, he has a burglary, a  
12 non-violent second degree in May of 2008.

13 THE COURT: Was he on probation then?

14 MS. MAURICE: Yes, Your Honor.

15 THE COURT: Now is he off of probation?

16 MR. GIBBONS: No, sir. It'll be a violation.

17 THE COURT: Sir?

18 MR. GIBBONS: It will be a violation. He is being  
19 supervised in Bamberg on an Orangeburg plea, I think.

20 THE COURT: Do you live in Bamberg, son?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Where is Pentecostal Road?

23 THE DEFENDANT: Like over there by Rockline.

24 THE COURT: Do you live with your mama?

25 THE DEFENDANT: No, sir.

1 THE COURT: Who do you live with?

2 THE DEFENDANT: My aunt.

3 THE COURT: Who is your aunt?

4 THE DEFENDANT: Sandra Williams.

5 THE COURT: All right.

6 MR. GIBBONS: Judge, we're here today and this case  
7 is, obviously, a pretty serious case.

8 THE COURT: About as serious as you can get.

9 MR. GIBBONS: He jumped in about as deep as he can  
10 get. He was originally from the Bamberg area. He moved  
11 around a couple of times, but he, basically, calls Bamberg  
12 home. He went through the tenth grade. He got expelled  
13 for fussing with a teacher, never went back.

14 THE COURT: Bamberg Ehrhardt High School?

15 THE DEFENDANT: Yes, sir.

16 MR. GIBBONS: He really hadn't had a whole lot of  
17 time to build up a work record or anything like that  
18 before this happened. He is still a very young man. He  
19 tells me that he had aspirations to get into the food  
20 preparation industry at some point in his life. I told  
21 him there is still time for that. He is a very young man.

22 He started living with his aunt when he was 15 or 16  
23 years of age. I guess he wanted to make his own choices,  
24 wanted to do his own thing, and his mom had a bunch of  
25 other kids and she let him move in with -- move out of her

1 house with some other relatives and he tells me that he  
2 just started hanging in the streets and wanted to fit in  
3 with the guys he was hanging around with.

4 When I look at the facts of this it doesn't make any  
5 sense. Why shoot the man after you already have what you  
6 came after? Just in my dealings with him he's not a dumb  
7 person. He seems pretty smart.

8 THE COURT: Very articulate.

9 MR. GIBBONS: Pretty articulate. I think what  
10 happened is these other three guys -- one of them was 16  
11 and went to DJJ after this happened -- the other kid that  
12 got out and went up to the car with him. The two that  
13 stayed in the car were a little bit older than him, a  
14 little more sophisticated than him, and the only thing I  
15 can think is that he was trying to get in with the older  
16 guys and was taking orders from the older guys. It  
17 doesn't make any sense any other way.

18 I kind of seen that behavior with him. He listens to  
19 a lot of talk that maybe sometimes he shouldn't listen to.  
20 He at one point thought that he couldn't be charged with  
21 ABWIK because he shot the man below his waist and it would  
22 have to be reduced. We talked that through and he's very  
23 very anxious about his case and very worried and asked  
24 some good questions, but he did a very -- was involved in  
25 a very bad crime. He got caught real quick and there is

1 not a whole lot that he can do about his situation, but we  
2 would ask you to remember that he is is a very young man.

3 He does have a lot of life ahead of him and hopefully  
4 he can take this and turn it around and at some point  
5 become a productive citizen and get out there and still  
6 have a lot of life left. He was telling me, you know,  
7 whether it's 30 years or 50 years it doesn't make any  
8 difference. Well, I guess that's a 17-year-old point of  
9 view, but we would ask the court to fashion a sentence so  
10 he can get out someday and still have some life left and  
11 hopefully make a go of it.

12 His mom and his uncle have been very supportive.  
13 They would like to speak to the court at the appropriate  
14 time.

15 THE COURT: Mom, I'll be glad to hear from you.  
16 Ma'am, anything you want to say?

17 MR. GIBBONS: Say your name for the record.

18 MS. TONYA WILLIAMS: Tonya Williams.

19 THE COURT: Do you live in Bamberg, Ms. Williams?

20 MS. TONYA WILLIAMS: I live in Denmark. I would like  
21 to state for the record my son -- due to my son going to  
22 my sister's house it was a family court situation and  
23 prior before that he had not had a record at all. He was  
24 living at home and there was some incident. I tried to  
25 talk to him about following the rules. I've always -- I

1 have not had a very tight hold on him, but I always kept  
2 him in reach of where he was going, what he was doing.

3 This incident actually happened the day before I  
4 regained custody of Frankie back again. I gained custody  
5 of Frankie back on July 16. I found out about the  
6 incident on July 17 that he had been incarcerated due to  
7 the situation. So, he have seven other siblings which is  
8 all boys and one girl. I am just asking the court to be  
9 lenient on my son and hopefully he'll understand from his  
10 mistake and learn to obey by the rules and learn to  
11 respect what's not his.

12 MR. GIBBONS: Your Honor, he has expressed to me that  
13 he is willing to cooperate with the state in any way as  
14 needed as far as the other co-defendants go. Should they  
15 need his testimony he has agreed to testify truthfully and  
16 appear and do the right thing in that situation.

17 THE COURT: Well, with all of the bond hearings I've  
18 had I don't think there is any disagreement on the facts,  
19 who did the shooting, who got out of the car.

20 MR. GIBBONS: Yes, sir.

21 THE COURT: Sir, anything you want to tell me?

22 THE DEFENDANT: No, sir.

23 THE COURT: You might want to apologize maybe.

24 THE DEFENDANT: I'm sorry for what I did. I  
25 apologize to the victim.

1 THE COURT: Where did you get your gun?

2 THE DEFENDANT: It wasn't mine, Your Honor.

3 THE COURT: Mr. Owens, tell me what you want to tell  
4 me. You have told me a lot before. I mean, you're a  
5 hardworking man. You work everyday. You make your  
6 dollars honestly and you were riding down the road minding  
7 your own business and you ended up getting shot and  
8 robbed.

9 THE VICTIM: Yes, sir.

10 THE COURT: It is a heck of a deal.

11 THE VICTIM: Yes, sir. Also, for the record, Your  
12 Honor, I have a 20-year-old daughter in which I had just  
13 got back in town from taking her for orientation at  
14 Coastal Carolina and I also have a 14-year-old son and it  
15 would have been pretty hard being that I got shot less  
16 than a half an inch from a main artery.

17 THE COURT: You're lucky to be with us.

18 THE VICTIM: That's right.

19 THE COURT: We just tried a murder case in here not  
20 long ago. I mean, this young man -- all of them are lucky  
21 that -- they're lucky that they aren't on trial being in  
22 jail the rest of their life. You're most fortunate you're  
23 not a dead man.

24 THE VICTIM: That's correct. And I keep thinking  
25 about not only that I wouldn't have been here to support

1 them but they would have lost me as a father. So, the  
2 only thing I have to do now -- This is an ongoing process.  
3 So, it will be with me until I guess the end of time.

4 THE COURT: It will be. Being violated like that is  
5 something you'll never get over. Obviously, you  
6 understand what, I guess, the hardest part about my job  
7 is -- You've been sitting in here all day. You've seen me  
8 how I handled drug cases, how I handle people who steal,  
9 people who do this and that, but the hardest part is when  
10 I have a 17-year-old -- He's not a man. He is a boy.  
11 What to do with someone who makes this kind of mistake  
12 this early in life? But for the grace of God you'd be  
13 dead.

14 He's got to be punished. I can put him in jail for  
15 30 years, 20 years, 10 years, 15 years. I don't know what  
16 the answer is. What is your feeling? Anything? Or you  
17 want to leave that up to me?

18 THE VICTIM: I'll leave that up to you.

19 THE COURT: I'm glad that you're still with us and  
20 and you've been to every term of court and I admire you  
21 and I'm glad that your daughter got to Coastal Carolina.  
22 You got two children?

23 THE VICTIM: Yes, sir.

24 THE COURT: Please remain highly involved in their  
25 lives. If we had more fathers like you, we wouldn't have

1 people standing in front of me like this young man.

2 MR. GIBBONS: Your Honor, his time is 225.

3 THE COURT: Huh?

4 MR. GIBBONS: His time in is 225 days.

5 THE COURT: Thank you.

6 Mr. Owens, you understand that under these types of  
7 crimes -- You are sitting here today and you watch me give  
8 people eight years on some things. Those people normally  
9 on those types of crimes -- We gave eight years on what?  
10 A drug case a while ago?

11 MS. MAURICE: And a strong armed robbery.

12 THE COURT: They normally are eligible for parole  
13 after doing about 25 percent of it. So, 25 percent of  
14 eight is just two years. Under these types of crimes that  
15 are classified most serious, these two particular ones he  
16 will not be eligible for parole. He'll have to do  
17 85 percent of whatever I give him. Once that 85 percent  
18 is up, then he is released into the community into what's  
19 called community supervision program which if he doesn't  
20 do that correctly he goes back in and it sort of  
21 continues. So, I want to make sure you understand that.

22 Anything else you want to tell me, Mr. Williams?

23 THE DEFENDANT: No, sir.

24 THE COURT: What would possess you to shoot this man?  
25 Were you on drugs?

1 THE DEFENDANT: No, sir.

2 THE COURT: Drunk?

3 THE DEFENDANT: No, sir.

4 THE COURT: You're not mean, are you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Member of a gang?

7 THE DEFENDANT: No, sir.

8 THE COURT: How much money did you get?

9 THE DEFENDANT: I didn't get it, Your Honor.

10 THE COURT: You don't want somebody robbing you and  
11 shooting you, do you?

12 THE DEFENDANT: No, sir.

13 THE COURT: You understand that I have to protect  
14 other citizens from people like you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I should give you the maximum for what  
17 you did to this man. I should give you 30 years. I've  
18 got two children. Two boys. I am going to take into  
19 consideration your young age. I am going to give you a  
20 break. Not much of a break.

21 All right, sir. Armed robbery, the sentence of this  
22 court is that you be committed to the State Department of  
23 Corrections for 15 years. On assault and battery with  
24 intent to kill, 15 years run concurrent. Good luck to  
25 you.

1 MS. MAURICE: Thank you, Your Honor.

2 THE COURT: No matter what I give him it's not going  
3 to undo what you went through. He is a young man. He'll  
4 be up there, I don't know, 12 or 13 years. Maybe he'll  
5 grow up. He may come back worse than he is now. I don't  
6 know. You got a young boy -- fourteen. I hope you  
7 understand what I was struggling with.

8 THE VICTIM: Yes, sir.

9 THE COURT: I'm glad you're alive. Thank you. I  
10 guess I'll see you three more times.

11 THE VICTIM: Yes, sir, unfortunately. Thank you.

12 (End of Transcript of Record.)

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CERTIFICATE OF REPORTER

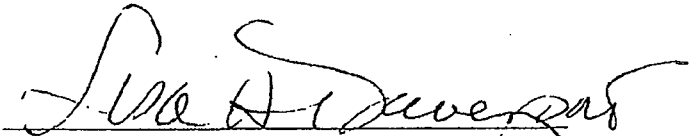
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State of South Carolina,        )  
  )  
County of Aiken                    )

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Barnwell County, South Carolina, on the 23rd day of February, 2009.

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

April 20, 2010



Lisa H. Davenport, Court Reporter

nic-  
MIC-AG  
on 2/12/10

FORM 5

STATE OF SOUTH CAROLINA )  
County of Barnwell )  
Frankie Williams 332373 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

2010 - CP - 06 - 028

v.

State of South Carolina )  
)  
)  
)  
)  
)

APPLICATION FOR  
POST-CONVICTION RELIEF

2010 FEB 10 PM 2:01  
PHOTOGRAPHED  
INDEXED  
SERIALIZED  
CLERK OF COURT S.C.

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 Lee Correctional Institution in Bishopville, SC ; Lee County
2. Name and location of Court which imposed sentence Genl Court of General Sessions Barnwell SC. Jack Early
3. Name(s) of co-defendant(s) (if any) Eugene Hightower JR, Terry Close, Robert pain
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) ARREST Warrant # H-861685 ARREST Warrant # 861686
  - (b) indictment # 2009-GS-06-078 Armed Robbery

(c) 2009 GS 06079 Assault & Battery with Intent to Kill

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 23 February 2009

(b) 15 years

(c) Custody of S.C.D.C

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Dismiss per plea

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I felt I would have a better chance in P.C.R

(b) \_\_\_\_\_

(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of counsel
- (b) Inappropriate sentence
- (c) \_\_\_\_\_

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

- (a) Attorney did not Investigate/Represent
- (b) Making guilty plea involuntarily, and
- (c) knowingly

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

No

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) Waited for P.C.R.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No

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. DeGrant Gibbons  
P.O. Box 2247 Aiken, SC 29802
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Guilty plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Guilty plea vacated

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

No

STATE OF SOUTH CAROLINA )  
County of Barnwell )

VERIFICATION

I, Frankie Williams, 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.

frankie Williams

SWORN to and subscribed before me this 9 day of Feb, 2010.

Debra Smith (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

FILED FOR RECORD  
2010 FEB 10 PM 2:01  
RHONDA D. BREWER  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

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

I, Frankie Williams, 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:

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

Frankie Williams  
Applicant

SWORN or affirmed to and subscribed before me this  
9 day of Feb, 2010.

[Signature]  
Notary Public

My Commission Expires: 11-4-2015

FILED FOR RECORD  
2010 FEB 10 PM 2:01  
RHONDA D. McELVEEN  
CLERK OF COURT  
GARRETT COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	
	)	
	)	2010-CP-06-0028
	)	
Frankie Williams, #333373,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 10, 2010, 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 Orangeburg County Clerk of Court. The Applicant was indicted for Armed Robbery (2009-GS-06-0078) and Assault and Battery with Intent to Kill ("ABWIK") (2009-GS-06-0079). Applicant was represented by DeGrant Gibbons, Esquire. On February 23, 2009, the Applicant pled guilty before the Honorable Doyet A. Early, III. He was sentenced to concurrent terms of fifteen (15) years on each charge. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject conviction, 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.
  - a. "Attorney did not investigate / represent making plea involuntarily, and knowingly."
2. "Inappropriate sentence."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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.

In Ground \_\_\_\_, the Applicant alleges that his sentence is too harsh. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that [his/her] sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). The Court should summarily dismiss this ground for relief.

V.

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

VI.

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

Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Oct. 12, 2010.

STATE OF SOUTH CAROLINA )  
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 COUNTY OF BARNWELL )  
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 FRANKIE WILLIAMS, 333373 )  
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 Applicant, )  
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 vs )  
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 STATE OF SOUTH CAROLINA, )  
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 Respondent. )

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IN THE COURT OF COMMON PLEAS

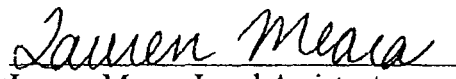
2010-CP-06-0028

AFFIDAVIT OF SERVICE BY MAIL

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

**H. Marie V. Young, Esquire**  
**1524 Craig Street**  
**Augusta, GA 30904**

DATED this 12th day of October, 2010.

  
 Lauren Meara, Legal Assistant  
 For Respondent

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Bamberg	)	
3			
4			
5			
6	Frankie Williams,	)	
	Applicant,	)	
7		)	
		)	
8	vs.	)	Transcript of Record
9		)	
10	State of South Carolina,	)	
	Respondent	)	
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July 11, 2012  
Aiken, South Carolina

B E F O R E:

The Honorable Paul M. Burch, Judge.

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

Marie V. Young, Esquire  
Attorney for the Applicant

Megan E. Harrigan, Assistant Attorney General  
Attorney for the Respondent

Brenda J. Sigwald, Circuit Court  
P.O. Box 206, Jackson, South Carolina 29831

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I N D E X

Page

Post Conviction Relief Hearing

Frankie Williams

Direct Examination by Ms. Young..... 5

Cross-Examination by Ms. Harrigan..... 9

Grant Gibbons

Direct Examination by Ms. Harrigan..... 13

Cross-Examination by Ms. Young..... 20

Certificate of Reporter..... 21

E X H I B I T S

NO.

DESCRIPTION

PAGE

(There were no exhibits entered  
during this hearing.)



**Frankie Williams - Direct Examination by Ms. Young**

1 a competency evaluation of the applicant pursuant to State  
2 v Blair. An evaluation conducted by the South Carolina  
3 Department of Mental Health on January 26, 2012, the  
4 applicant was found competent to stand trial as of the  
5 evaluation date and competent to stand trial during his  
6 plea on February 23rd 2009. It's the State's understanding  
7 the applicant is going forward today solely on the grounds  
8 of ineffective assistance of counsel.

9 THE COURT: Okay.

10 MS. YOUNG: Your Honor, I'm Marie Young. The  
11 applicant, Mr. Williams, is here today to assert that his  
12 plea counsel did not provide effective service due to not  
13 properly investigating the circumstances surrounding his  
14 indictments. He also asserts that had counsel further  
15 investigated and taken additional evidence into  
16 consideration, he would not have agreed to a negotiated  
17 plea and would not have plead guilty.

18 I would call Mr. Frankie Williams:

19 THE COURT: All right.

20 THEREUPON,

21 FRANKIE WILLIAMS,

22 after being duly sworn, testified as follows:

23 THE CLERK: Please have a seat in the witness box.

24 ///

25 ///

## Frankie Williams - Direct Examination by Ms. Young

## 1 DIRECT EXAMINATION

2 By Ms. Young:

3 Q Mr. Williams, could you please state your full name  
4 for the record.

5 A Frankie Cordell Williams.

6 Q And could you please talk very clearly and loudly  
7 so that I and the court reporter and the rest of the -- and  
8 the judge can hear you?

9 A Frankie --

10 Q We've had some issue with that in the past.

11 A Frankie Cordell Williams.

12 Q Okay. Thank you.

13 And where are you currently incarcerated?

14 A Lee County.

15 Q And who was your attorney during your trial and  
16 plea?

17 A Mr. Grant Gibbons.

18 Q Okay. How many times before your hearing did you  
19 meet with Mr. Gibbons?

20 A Three to four.

21 Q Did you say four?

22 A Three to four times.

23 Q Three to four. So you don't remember whether it  
24 was three or four?

25 A Yes, ma'am.

## Frankie Williams - Direct Examination by Ms. Young

1 Q How many times -- how much time did he spend with  
2 you?

3 A About five minutes.

4 Q Each time?

5 A Yes, ma'am.

6 Q Okay. And what did -- what did you discuss with  
7 Mr. Gibbons during those meetings?

8 A He wanted me to -- he wanted to ask me did I want  
9 to testify against my codefendants or not. He really  
10 didn't did nothing on my case. He just was asking me to  
11 testify on my codefendants.

12 Q Okay. Anything else? Did y'all discuss anything  
13 about the trial, about going to trial, not going to trial,  
14 the facts, the evidence?

15 A When we got in court, I told him that I wanted to  
16 proceed with trial and he told -- he talked to my mama and  
17 my uncle and got them to come back there and persuade me to  
18 plead after I turned the plea down. That's it.

19 Q Okay. Were there any facts about your case that  
20 you wanted him to investigate that you -- can you tell us  
21 about that?

22 A About the --

23 Q Why you're saying he was ineffective?

24 A About the forensic service test. He ain't put in a  
25 motion for dismissal on the forensic service test and I

## Frankie Williams - Direct Examination by Ms. Young

1 tried to fight him in Bamberg County at the bond hearing to  
2 try to get me to plead. I tried to fight him and the judge  
3 wouldn't, you know what I'm saying, let me fight him when  
4 he violated my 6th Amendment.

5 Q And what do you mean by that, you wanted to fire  
6 him?

7 A I tried to relieve him as counsel because he told  
8 me he would get paid whether -- if I go the trial or plead.  
9 So I tried to relieve him as counsel in Bamberg County and  
10 the judge wouldn't let me.

11 Q Okay. So how many times did you actually discuss  
12 the facts of your case with Mr. Gibbons?

13 A Really none. Every time he came to talk to me, he  
14 just been telling me that I ain't got no wins or whatnot  
15 and I just been telling him I wasn't going to testify. I  
16 go to trial and he talked to my mama after I turned the  
17 plea down and tried to get me to plead.

18 Q And what were the circumstances surrounding your  
19 codefendants? Why did you have codefendants? What  
20 happened -- what other evidence was there that you wanted  
21 to go forward onto trial?

22 A I wanted him to investigate one of my codefendants,  
23 but he didn't. One of my codefendants, Eugene Hightower,  
24 he didn't -- and he ain't -- he never did no investigation  
25 on him or whatnot. I tried to get him to come and he came.

## Frankie Williams - Direct Examination by Ms. Young

1 Q And was there some issue with your codefendants and  
2 a gunshot residue test that you had to submit?

3 A Yes, ma'am. I ain't had no gunshot residue on my  
4 hands and one of my codefendants did and Mr. Grant Gibbons,  
5 I told him to move for a motion for dismissal, but he  
6 didn't.

7 Q And did you communicate with Mr. Gibbons all of  
8 that and -- in any other form? Did you write him any  
9 letters or anything like that?

10 A Yes, ma'am. Me and him -- I wrote him a couple of  
11 letters.

12 Q Okay.

13 A And he never did nothing about it. He just --  
14 every time he come to the courthouse or jailhouse he wanted  
15 to argue, whatnot, with me, about what we should do and  
16 whatnot. And he told me he get paid if I plead or go to  
17 trial. So I tried to fire him and the Courts wouldn't let  
18 me.

19 Q Okay. If Mr. Gibbons had further investigated your  
20 case and some of the situations surrounding your  
21 indictments, do you -- what do you think he would have  
22 done? You think things would have gone differently? How  
23 would things have gone differently?

24 A If he would have investigated my case, I wouldn't  
25 have had an assault and battery with intent to kill charge

Frankie Williams - Cross-Examination by Ms. Harrigan

1 against me and I think I would have got lesser time than.

2 This is only the second time that I ever been in trouble or  
3 whatnot.

4 Q And why do you think you wouldn't have had the  
5 charge that you did, the assault and battery with intent to  
6 kill?

7 A Because I didn't have no gunshot residue on my  
8 hands or nothing.

9 Q Okay. And are you asking the Court at this time to  
10 find that Mr. Gibbons was not effective as counsel and  
11 you're asking the Court to grant you a new trial --

12 A Yes, ma'am.

13 Q -- based on that?

14 A Yes, ma'am.

15 MS. YOUNG: Your Honor, I have no further  
16 questions.

17 THE COURT: Your witness.

18 CROSS-EXAMINATION

19 By Ms. Harrigan:

20 Q Mr. Williams, this plea was without any  
21 negotiations between you and the State, correct?

22 A Yes, ma'am.

23 A Meaning you could have been sentenced anywhere from  
24 ten to fifty-five years, correct?

25 A No, ma'am.

## Frankie Williams - Cross-Examination by Ms. Harrigan

1 Q Okay. And you understood that there were no  
2 recommendations when you pled guilty, correct?

3 A Nothing but concurrent sentence, but it was zero to  
4 thirty.

5 Q On one of your charges?

6 A On the -- the whole plea was zero to thirty. It  
7 was not ten to fifty-five.

8 Q The armed robbery charge carries ten to thirty, is  
9 that what you're thinking about?

10 A No, my plea -- no the plea agreement was zero to  
11 thirty, ran concurrent with both my charges.

12 MS. HARRIGAN: The record speaks to that record,  
13 Your Honor. It was an open plea within a range of ten to  
14 fifty-five years.

15 By Ms. Harrigan:

16 Q And you told the Court that you were satisfied with  
17 your attorney, correct?

18 A Yes, after he -- the same judge that I pled in  
19 front of told me that I couldn't fire him.

20 Q And you told the Court that you didn't need anymore  
21 time with your attorney, Mr. Gibbons?

22 A No, ma'am.

23 Q You did tell the Court that?

24 A I told him I wanted to relieve him in Bamberg  
25 County. The same judge came back, so I just went on

## Frankie Williams - Cross-Examination by Ms. Harrigan

1 through because I thought he wouldn't let me fire him  
2 again.

3 Q But during your plea where you pled guilty to these  
4 two charges, you told the Court that you were satisfied  
5 with your attorney and you didn't need anymore time with  
6 him, correct?

7 A Yes, ma'am.

8 Q And you told the Court that you understood  
9 everything you discussed with your lawyer and you discussed  
10 all the charges with him fully, correct?

11 A Yes, ma'am.

12 Q But your claims today are that you were not  
13 satisfied with him and that he never discussed your case  
14 with you at all?

15 A That's all. He did come in and want to argue with  
16 me about what I'm doing, what I'm sending him letters when  
17 I try to tell him to move for motions or whatnot, he just  
18 want to argue with me and try to get me to testify against  
19 my codefendants. So I tried to fire him and Judge Jack  
20 Early wouldn't let me; and that was the judge I was back in  
21 front of on my plea so I didn't try to fire him again  
22 because he already had turned me down.

23 Q And you were under oath during your plea, correct?

24 A Yes, ma'am.

25 Q And during your plea you said you were satisfied

## Frankie Williams - Cross-Examination by Ms. Harrigan

1 with him but today you're saying that you were not  
2 satisfied with anything he did on your case?

3 A Yes, ma'am.

4 Q So were you telling the truth then or now? Because  
5 you're under oath now, too?

6 A I was telling the truth both times. He ain't did  
7 nothing for me on my case. I could have got a transcript  
8 from Bamberg where you could see that I tried to fire him  
9 and the judge wouldn't let me. She told me no, so I had no  
10 choice but to go forward with it.

11 Q But you told the judge under oath, truthfully, that  
12 you were satisfied with everything your attorney had done  
13 for you, correct?

14 A Yes, ma'am. I -- the man told me I couldn't fire  
15 him.

16 Q And today, under oath you're saying you were not  
17 satisfied with him, that he didn't investigate, and he  
18 never discussed your case with you?

19 A Yes, ma'am.

20 Q Okay. And you apologized to the victim who was  
21 present during the plea, correct?

22 A Yes, ma'am.

23 Q Did you want a trial on these charges?

24 A Yes, ma'am.

25 Q Did you plead guilty because you were afraid of

Grant Gibbons - Direct Examination by Ms. Harrigan

1 getting fifty-five years?

2 A No, ma'am.

3 MS. HARRIGAN: No further questions, Your Honor.

4 MS. YOUNG: Your Honor, I have no further  
5 questions.

6 THE COURT: Thank you, sir, you may step down.

7 (WHEREUPON there was discussion between attorneys.)

8 MS. HARRIGAN: At this time the State would call  
9 Mr. Grant Gibbons to the stand.

10 THEREUPON,

11 GRANT GIBBONS,

12 after being duly sworn, testified as follows:

13 THE CLERK: Please have a seat in the witness box.

14 **DIRECT EXAMINATION**

15 By Ms. Harrigan:

16 Q Good morning, again, Mr. Gibbons.

17 A Good morning.

18 Q Do you recall when you became involved with  
19 Mr. Williams case?

20 A Augusta 2008 was my first appearance on the case,  
21 so probably about a week before that.

22 Q And you had an opportunity to review your file of  
23 that representation prior to coming to court today?

24 A Yes.

25 Q Do you recall the number of times you met with

## Grant Gibbons - Direct Examination by Ms. Harrigan

1 Mr. Williams to go over his case?

2 A My records indicate eight times and twice with his  
3 mother.

4 Q And where did you meet with him during these eight  
5 meetings?

6 A At the Bamberg Detention Center.

7 Q Do you have any recollection how long these  
8 meetings were for?

9 A They were probably at least half an hour to 45  
10 minutes each. Because he had a lot of things to talk about  
11 and he had a lot of things we had to clear up.

12 Q When you say things to clear up, can you elaborate  
13 for the Court?

14 A For at least two visits he was hung up telling me  
15 that he knew the law and that he knew they couldn't charge  
16 him with intent to kill because he shot the man below the  
17 waist. And we argued about that for quite a while. We  
18 talked about there were four people in the car that robbed  
19 the victim. The allegation was that my client was the one  
20 that shot him. The other people in the car all had  
21 attorneys. I told him, look, you know, they're all going  
22 to say you did it. The victim saw you, the victim is going  
23 to identify you. If you can help them out, I know some of  
24 the other guys are going to say they weren't involved. If  
25 you can help them out by providing testimony, it might be

## Grant Gibbons - Direct Examination by Ms. Harrigan

1 in your best interest because you've got a tough set of  
2 facts going against you on this case.

3 Q Do you feel you that in any way tried to pressure  
4 him into testifying against his codefendants?

5 A No, I just told him that based on what I knew about  
6 the case, what the evidence was against him, he didn't have  
7 a lot of options. That was one we did discuss. I couldn't  
8 pressure him to testify against somebody. I just through  
9 that out as an option because he didn't have many options  
10 at that point. And he did -- he did get upset. We had to  
11 terminate one or two of our meetings because he was upset.

12 He did make a motion to have me relieved. We did  
13 have that heard in front of Judge Early. Judge Early did  
14 tell him that he wasn't going to relieve me at that time.  
15 On another discussion we had on February 6th, he ended our  
16 conversation by telling me that his mother will have him a  
17 paid lawyer before court so he didn't need my services  
18 anymore. I told him before I left, don't wait until the  
19 last minute, that's not going to help you any. That's  
20 going to be the worst thing that can happen to you. I'm  
21 not -- and then he said that I was working for State,  
22 working for the solicitor's office. I told him, I said,  
23 look, I get paid the same whether I try your case or plead  
24 your case, I'm trying to do what's best for you.

25 And we'd have long discussions about that as well.

## Grant Gibbons - Direct Examination by Ms. Harrigan

1 I told him to notify me as as soon as he had a lawyer if he  
2 was going to get a lawyer that I would share what I had and  
3 pass on what I knew. That didn't end up happening.

4 Q You never received notification that he had hired  
5 private counsel?

6 A I did not.

7 Q And did you visit with him prior to this February  
8 6th meeting that ended abruptly?

9 A Yes.

10 Q Do you recall when the dates were and what occurred  
11 during those meetings?

12 A August 28th, December 16th, then as I said February  
13 6th.

14 Q And I think you testified before during your  
15 meetings with him, did you discuss versions, his version of  
16 the facts in the case and any possible defenses he might  
17 have?

18 A Well, the biggest defense he thought he had was he  
19 shot the guy below the waist. And that was something that  
20 took us a long time to get past. He talked -- we talked  
21 about the gunshot residue, the fact that there were three  
22 people and the victim going to identify him as the shooter.  
23 That wasn't really going to help us a lot. That wasn't a  
24 get out of jail free fact that would help his case. We  
25 talked a lot about who would believe -- what they would

## Grant Gibbons - Direct Examination by Ms. Harrigan

1 believe, who was going to tell the truth.

2 Q Okay. Do you recall receiving his discovery from  
3 the State?

4 A Yes, I did.

5 Q And did you review the contents of that file  
6 yourself thoroughly?

7 A I did. And I talked about it with him because I  
8 wanted to find out how everybody fit in, what the  
9 relationships were.

10 Q What was the extent of the evidence against him?

11 A As I said, there were four people in the car that  
12 he was in. Two of them stayed in the car. He and another  
13 one allegedly got out and went up to the car, robbed the  
14 guy. He allegedly shot the tire out of the car and shot  
15 the man after they had robbed him. It all looked pretty  
16 bad. The victim was, you know, very credible in my view  
17 when he had testified at the bond hearings on the  
18 codefendants and on Mr. -- my client's bond hearing. He  
19 would make a great witness. He was just pulling over to  
20 the side of the road to make a phone call and was robbed  
21 and shot.

22 Q And did you discuss with your client the  
23 credibility of the victim, that he would likely testify  
24 against him if the case went to trial?

25 A Yeah, we talked about it. He was there for the

## Grant Gibbons - Direct Examination by Ms. Harrigan

1 bond hearing. I mean, he recalled the same thing I heard.

2 Q Do you recall entering into plea negotiations on  
3 behalf of your client with the State?

4 A There really wasn't a whole lot of negotiation. It  
5 was such a bad case and they had defendants and victims.  
6 They more or less just gave me, this is the offer, there's  
7 not going to be another one, take it or leave it. I talked  
8 to my client about it. He was inclined not to take it. I  
9 thought that was a mistake given what the evidence appeared  
10 to be. I asked for his permission to talk to his mom. He  
11 didn't care. I talked to his mom. She agreed with me and  
12 thought it was in his best interest not to take it to  
13 trial.

14 We had a hearing the morning before the plea where  
15 the solicitor put on the record that the, basically this  
16 deal is gone in the middle of the day. You take it, if  
17 not, we're going to trial, there won't be anymore deals.  
18 He was brought into the courtroom. That was put on the  
19 record. He left the courtroom later on that day, he sent  
20 me word that he wanted to take the deal and we did the  
21 plea.

22 Q And would you tell the Court what that deal was.  
23 What this offer was.

24 A It was basically that they would throw out one  
25 charge, he would plead guilty to armed robbery and assault

## Grant Gibbons - Direct Examination by Ms. Harrigan

1 and battery with intent to kill.

2 Q And --

3 A And they would be concurrent.

4 Q So it was your understanding based on the State's  
5 offer that he could have faced anything from ten to thirty  
6 years?

7 A Yeah. I mean armed robbery carries ten to thirty.  
8 And that was put on the record that morning too, by the  
9 judge.

10 Q And did you feel a plea was in his best interest?

11 A I did. Still do.

12 Q Do you think you gave him adequate advice and  
13 information to make an informed and intelligent decision  
14 whether to plea?

15 A I gave him as much as he would take.

16 Q Do you feel you spent sufficient time preparing  
17 this case in your investigation?

18 A I do. It's not a big complicated case. There were  
19 five witnesses -- well, four witnesses against him and that  
20 was basically it.

21 Q And would you have been prepared to take this case  
22 to trial if you needed to?

23 A Yes, I was.

24 Q And ultimately whose decision was it for  
25 Mr. Williams to plead guilty?

## Grant Gibbons - Cross-Examination by Ms. Young

1 A Mr. Williams.

2 Q Thank you.

3 MS. HARRIGAN: Nothing more, Your Honor.

4 MS. YOUNG: I just have a question, Your Honor.

5 **CROSS-EXAMINATION**

6 By Ms. Young:

7 Q Did you personally meet with any of those witnesses  
8 you just mentioned?

9 A They were represented, so I did not.

10 Q Okay. Thank you.

11 MS. YOUNG: No further questions, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, Your Honor.

14 MS. HARRIGAN: The State has no additional  
15 witnesses to call.

16 THE COURT: All right. Give me a chance to read  
17 the transcript and I'll get an order out as as soon as  
18 possible.

19 MS. HARRIGAN: Thank you, Your Honor.

20 MS. YOUNG: Thank you.

21

22

23 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

24

25

1 State of South Carolina )  
 2 County of Aiken ) **Certificate of Reporter**

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I, THE UNDERSIGNED, Brenda J. Sigwald,  
 Official Court Reporter for the Fifth Judicial Circuit of  
 the State of South Carolina, do hereby certify that I  
 reported the proceedings in the captioned case in the Court  
 of Common Pleas in and for the State of South Carolina on  
 the 11th day of July 2012.

I FURTHER CERTIFY that the foregoing pages,  
 numbered 1 through 20 constitute a true, accurate and  
 complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel,  
 nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and  
 seal at Aiken County, this 22nd day of October, 2012.

*Brenda J. Sigwald*  
 \_\_\_\_\_  
 Brenda J. Sigwald,  
 Court Reporter and Notary Public  
 For the State of South Carolina  
 My commission expires  
 January 14, 2020

STATE OF SOUTH CAROLINA )  
 COUNTY OF BARNWELL )  
 )  
 )  
 Frankie Williams, #333373, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-06-0028

ORDER OF DISMISSAL

2012 JUL 25 PM 3:05  
 RHONDA D. HELLVIG  
 CLERK OF COURT  
 BARNWELL COUNTY, S.C.

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 10, 2010. The Respondent made its Return on October 12, 2010. An evidentiary hearing into the matter was convened on July 11, 2012, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Marie V. Young, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was indicted for Armed Robbery (2009-GS-06-0078) and Assault and Battery with Intent to Kill (2009-GS-06-0079). Applicant was represented by DeGrant Gibbons, Esquire. On February 23, 2009, the Applicant pled guilty before the Honorable Doyet A. Early, III, and was sentenced fifteen years of imprisonment on each charge, with the sentences to run concurrently, as per recommendation of the State. Applicant did not appeal his conviction and sentence.

In his current application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
  - a. "Attorney did not investigate/represent making plea involuntarily, and knowingly."
2. "Inappropriate sentence."

In its Return, Respondent interpreted Applicant's grounds as ineffective assistance of counsel; Applicant's claims were framed at the evidentiary hearing as ineffective assistance of counsel.

On the Applicant's Motion, the Honorable James R. Barber III ordered a competency evaluation of the Applicant pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976). An evaluation conducted by the South Carolina Department of Mental Health on January 26, 2012 determined that the Applicant was competent to stand trial as of evaluation date and competent to stand trial during his plea on February 23, 2009.

At the evidentiary hearing, the Applicant testified on his own behalf. Applicant also presented testimony from plea counsel, DeGrant Gibbons, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Barnwell County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he met with Counsel three or four times, but that each meeting lasted approximately five minutes. He elaborated that Counsel never reviewed any discovery materials with him or discussed the case at all, and only tried to persuade him to testify against his three co-defendants. Additionally, Applicant did admit that while under oath during his guilty plea, he stated he was guilty and was satisfied with his attorney; however, Applicant stated that this was only because he had previously had his motion

to relieve Counsel denied by Judge Early. Applicant acknowledged that he had admitted his guilt and apologized to the victim during his plea.

Following Applicant's testimony, Counsel testified that he met with Applicant at least eight times according to records in Applicant's file, and that he met with Applicant's mother twice. He estimated that each meeting lasted more than thirty minutes. Counsel stated that during his numerous meetings with the Applicant, he thoroughly discussed all elements of the crimes in which Applicant was charged and what the State was required to prove for each crime. Counsel testified that he discussed the Applicant's version of the facts numerous times and that Applicant's main contention that he should not be charged with Assault and Battery with Intent to Kill, as he shot the victim below the waist and did not have gunshot residue on his hand. Counsel testified that he explained to Applicant at numerous times that all three co-defendants (who did not get out of the car) would testify that he was the shooter, as would the victim. He elaborated that the victim would have been a compelling witness at trial and had testified that the bond hearings of Applicant and his co-defendants. Counsel characterized the evidence against the Applicant as "overwhelming." Counsel stated that he did not pressure his client to testify against his co-defendants, but merely suggested it as an option for him to consider.

Counsel acknowledged that Applicant did get upset with him numerous times and told him that his mother would get him private counsel. Counsel stated that he told Applicant to inform him if he did hire private counsel so that he could send his entire file to the new counsel, but such new counsel was never retained.

Additionally, Counsel testified that Applicant told him he was interested in a plea, so he negotiated with the State on his behalf to secure him a plea deal. Counsel elaborated that he did not have much success in these negotiations "because it was such a bad case," but was able to

persuade the State to make a recommendation of concurrent sentences. Based on all of the above, Counsel indicated that in his professional opinion a plea was in the best interest of his client, and that it was Applicant's decision alone to plead guilty.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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. 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).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant. Plea counsel met with his client on at least eight separate occasions and twice with his mother, and he fully discussed the charges against the Applicant, the State's evidence, and Applicant's version of the facts. Based on these consultations, Counsel performed a thorough investigation and at the request of his client, entered into negotiations with the State to secure a favorable plea deal for her client. This Court finds that plea counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from plea counsel's alleged ineffective assistance of counsel, as the Applicant was sentenced according to the recommendation between himself and State. Additionally, Applicant

indicated to plea counsel that he wished to pursue a plea in lieu of a trial on these charges. Therefore, this Court finds that the application must be denied and dismissed.

### CONCLUSION

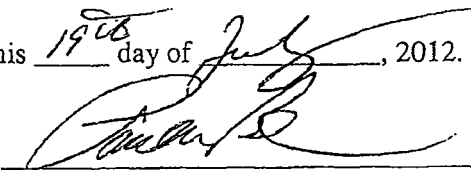
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

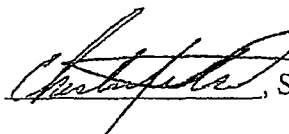
This Court advises Applicant that he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

#### IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19<sup>th</sup> day of July, 2012.

  
 \_\_\_\_\_  
 PAUL M. BURCH  
 Presiding Judge  
 Second Judicial Circuit

  
 \_\_\_\_\_, South Carolina.

**WITNESSES**

Johnson - B.C.S.O.

DOCKET NO. 2009-GS-06-079

**The State of South Carolina**

**County of Barnwell**

**COURT OF GENERAL SESSIONS**

**FEBRUARY 23, TERM 2009**

**ARREST WARRANT NUMBER**

H861686

**THE STATE**

**vs.**

**FRANKIE K. WILLIAMS**

**ACTION OF GRAND JURY**

*True Bill*

*Bredley All*

Foreperson of Grand Jury

Date: February 23, 2009

**VERDICT**

**Indictment for**

**ASSAULT AND BATTERY WITH  
INTENT TO KILL**

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BARNWELL )

INDICTMENT

At a Court of General Sessions, convened on February 23, 2009 the Grand Jurors of Barnwell County present upon their oath:

**ASSAULT AND BATTERY WITH INTENT TO KILL**

That FRANKIE K. WILLIAMS did, with others, in Barnwell County on or about July 15, 2008, with malice aforethought commit an assault and battery upon one Kenneth Owens with intent to kill the said victim, to wit: Defendant did shoot the victim. All in violation of §16-03-620 of the *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.

  
 J. STROM THURMOND, SOLICITOR

**WITNESSES**

Johnson - B.C.S.O.

DOCKET NO. 2009-GS-06-078

**The State of South Carolina**

**County of Barnwell**

**COURT OF GENERAL SESSIONS**

**FEBRUARY 23, TERM 2009**

**ARREST WARRANT NUMBER**

H861685

**THE STATE**

**vs.**

**FRANKIE K. WILLIAMS**

**ACTION OF GRAND JURY**

*True Bill*

*Bradley All*

Foreperson of Grand Jury  
Date: February 23, 2009

**VERDICT**

**Indictment for**

**ARMED ROBBERY**

SC Code: 16-11-0330(A)

CDR Code: 0139

Class FEL-A(V)

Foreperson of Petit Jury

Date:

