

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

APR 24 2013

S.C. Supreme Court

JERRY WHITFIELD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212925

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)	10TH JUDICIAL CIRCUIT
THE STATE)	TRANSCRIPT OF RECORD
-VS-)	07-GS-04-00980
JERRY WHITFIELD,)	07-GS-04-00982
<u>DEFENDANT.)</u>	

DECEMBER 15, 2009
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

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

CATHERINE HUEY, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

ANDREW POTTER, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

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DATE 09/02/2010
[Handwritten Signature]
(SIGNATURE)

I N D E X

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NO EXHIBITS WERE INTRODUCED

COURT REPORTER'S NOTE: DUE TO THIS DEFENDANT PLEADING GUILTY IN A GROUP, PORTIONS OF THIS TRANSCRIPT MAY NOT RELATE TO THE REQUESTED DEFENDANT'S CASE.

1 DEFENDANT BELOTE: No, sir.

2 DEFENDANT WILLIAMS: No, sir.

3 DEFENDANT WHITFIELD: No, sir.

4 DEFENDANT WASHINGTON: No, sir.

5 DEFENDANT GILLIAM: No, sir.

6 THE COURT: Any of you been threatened by anyone or
7 promised anything to get you to plead guilty?

8 DEFENDANT BELOTE: No, sir.

9 DEFENDANT WILLIAMS: No, sir.

10 DEFENDANT WHITFIELD: No, sir.

11 DEFENDANT WASHINGTON: No, sir.

12 DEFENDANT GILLIAM: No, sir.

13 THE COURT: Do all of you understand there are
14 recommendations in these cases. I don't have to go along with
15 the recommendation. I could sentence you to the maximum
16 allowable by law; do you understand that?

17 DEFENDANT BELOTE: Yes, sir.

18 DEFENDANT WILLIAMS: Yes, sir.

19 DEFENDANT WHITFIELD: Yes, sir.

20 DEFENDANT WASHINGTON: Yes, sir.

21 DEFENDANT GILLIAM: Yes, sir.

22 THE COURT: Are all of you waiving your
23 constitutional rights, including your right to a jury trial,
24 your right to remain silent, your right to confront the
25 witnesses that would testify against you, and also your right

1 to put up a defense?

2 DEFENDANT BELOTE: Yes, sir.

3 DEFENDANT WILLIAMS: Yes, sir.

4 DEFENDANT WHITFIELD: Yes, sir.

5 DEFENDANT WASHINGTON: Yes, sir.

6 DEFENDANT GILLIAM: Yes, sir.

7 THE COURT: Have all of you had plenty of time to
8 speak with your lawyer, are you satisfied with his services?

9 DEFENDANT BELOTE: Yes, sir.

10 DEFENDANT WILLIAMS: Yes, sir.

11 DEFENDANT WHITFIELD: Yes, sir.

12 DEFENDANT WASHINGTON: Yes, sir.

13 DEFENDANT GILLIAM: Yes, sir.

14 THE COURT: And have you had plenty of time to speak
15 to your clients? Do you think they understand the elements of
16 the crime and their waiver of constitutional rights?

17 MR. POTTER: I've had plenty of time, Your Honor,
18 and I believe they understand the waiver of rights and the
19 elements of the crime.

20 THE COURT: Do all of you want to plead guilty to
21 the charges against you and are you guilty?

22 DEFENDANT BELOTE: Yes, sir.

23 DEFENDANT WILLIAMS: Yes, sir.

24 DEFENDANT WHITFIELD: Yes, sir.

25 DEFENDANT WASHINGTON: Yes, sir.

1 DEFENDANT GILLIAM: Yes, sir.

2 THE COURT: All right.

3 (WHEREUPON, the facts were given for a case from
4 another defendant pleading guilty in this group, not related
5 to Mr. Whitfield's case.)

6 THE COURT: I'm going to accept everybody's plea, as
7 I said. I find it freely and voluntarily made based upon
8 advice of counsel.

9 (WHEREUPON, cases were disposed of relating to other
10 defendants pleading guilty in this group, not related to
11 Mr. Whitfield's case.)

12 MS. HUEY: Your Honor, then as to Mr. Whitfield.
13 This offense occurred on January of 2007. The defendant and a
14 co-defendant conspired together to rob the Fudrucker's on
15 Clemson Boulevard. The defendant actually worked at this
16 location and so he arranged with another defendant for this to
17 happen. He knew the layout of the restaurant and where the
18 money would be, and that sort of thing.

19 The co-defendant actually ended up shooting the
20 manager, and he is doing 15 years now, Judge, but [since this
21 defendant didn't actually commit the crime as far as robbing
22 it, other than conspiring and planning the whole thing, that's
23 why we're recommending 10 years.]

24 THE COURT: You agree with those facts?

25 DEFENDANT WHITFIELD: Yes, sir.

1 MR. POTTER: Judge, he's been locked up 248 days.
2 As indicated, we'd ask you to follow the recommendation and
3 just let the 5 years in the conspiracy run concurrent with the
4 10 years.

5 THE COURT: All right. As I said, I've accepted the
6 pleas. The sentence on the armed robbery is 10 years. On the
7 conspiracy it's 5. Run those concurrent, credit for 248 days.

8 MR. POTTER: Thank you, Judge.

9 (WHEREUPON, the hearing relating to Mr. Whitfield
10 was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter for the 10th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 15th day of August 2009.

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

August 31, 2010

Sharon L. Vizer-Hanks
SHARON L. VIZER-HANKS

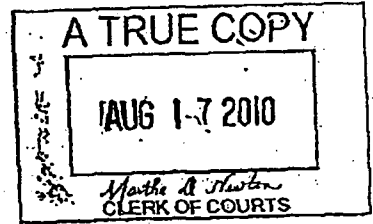
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS



Jerry Whitfield # 338445)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2010 - CP - 04 - 02913

INSTRUCTIONS B 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 Alconick Correctional Inst. P.O. Box 1131
Pinhook St. 29327
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) Derrick Harris, Bicentennial Hill cor.
Dominica Finney
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2004690400950 - Armed robbery

FILED - CLERK'S OFFICE
ANDERSON SC
2010 AUG 17 A 9:5
COMMON PLEAS AND
GENERAL SESSIONS

no previous CA/PUR/SVP file

101.
AWL
ATTORNEY GENERAL'S OFFICE
RECEIVED 08/18/2010

ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ END _____
HAVE _____ COPIES MADE _____
ROUTE TO _____
ORDER: _____ TRANSCRIPT _____
PEN RECORDS _____ CLERK RECORDS _____
OTHER: _____

(b) 2007690400982 - Conspiracy
(c) _____

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

(a) 12-15-09 Conspiracy/Criminal Conspiracy from 5 years non-violent
(b) 12-15-09 Armed Robbery - 10 years violent
(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?

NO _____

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:
i. NSIA
ii. "
iii. "
(b) the result in each such Court to which you appealed:
i. NSIA
ii. "
iii. "
(c) the date of each such result:
i. NSIA
ii. "
iii. "
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. NSIA
ii. "
iii. "

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Early guilty plea _____

- (b) Counsel did not inform me of rights
- (c) _____

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

- (a) Exe attachment was made
- (b) "
- (c) "

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

- (a) Exe attachment was made
- (b) "
- (c) "

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? NO
- (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 Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. NO
 - ii. "
 - iii. "
 - iv. "
- (b) the name and location of the Court in which each was filed:
 - i. NO
 - ii. "
 - iii. "

page 3

10. (a) The plea was not knowingly and voluntarily made by defendant

(b.) Trial counsel was ineffective assistance because he did not provide the defendant with reasonable competent advice.

(c) The defendant admissions to confessions must be free and voluntary and not be extracted by any sort of threat or violence, or obtained by any direct or implied promises, or exercise of any improper influence

11. (a) The plea was not knowingly and voluntarily made by defendant

(b.) Trial counsel was ineffective assistance because he did not provide the defendant with reasonable competent advice.

(c) The defendant admissions to confessions must be free and voluntary and not be extracted by any sort of threat or violence, or obtained by any direct or implied promises, or exercise of any improper influence

iv. _____

(c) the disposition thereof:

i. NS/A

ii. "

iii. "

iv. "

(d) the date of each such disposition:

i. NS/A

ii. "

iii. "

iv. "

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

i. NS/A

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?

NS/A

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

(a) which grounds have been presented:

i. NS/A

ii. "

iii. "

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

i. NS/A

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) NS/O
- (b) "
- (c) "

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mr. Andy Volter Public Defender Office
 - Anderson County Court House P.O. Box 3002 Anderson
 - ii. S.C. 29622
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Re-sentencing plea agreement. Drop the conviction in favor of the initial plea agreement for conviction. Do correct illegal sentence;

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

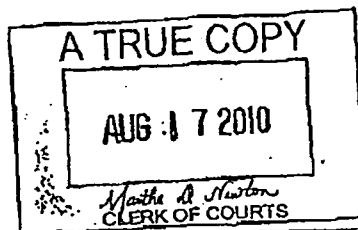
I, Terry Whitfield, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terry Whitfield

SWORN to and subscribed before me this 11 day of August, 2010.

Heidi P. Lema (L.S.)
Notary Public

My Commission Expires: 5/18/14



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

I, Terrell Whitfield, 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:

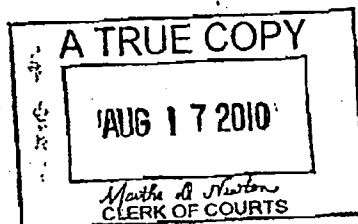
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terrell Whitfield
Applicant

SWORN or affirmed to and subscribed before me this
11 day of August, 2010.

Helen P. Salama
Notary Public

My Commission Expires: 5/18/14



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	2010-CP-04-2913
)	
Jerry Whitfield, #338495,)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 17, 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 Anderson County Clerk of Court. The Applicant was indicted at the March 2007 term of the Anderson County Grand Jury for Armed Robbery (2007-GS-04-0980) and Criminal Conspiracy (2007-GS-04-0982). He was represented by Andrew Potter, Esquire. On December 15, 2009, the Applicant pled guilty as charged. Applicant was sentenced by the Honorable J. Cordell Maddox to confinement for a period of ten (10) years on the armed robbery charge and five (5) years on the conspiracy charge. The sentences were run concurrently. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Anderson 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 and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Involuntary Guilty Plea;
2. Ineffective Assistance of Counsel
 - a. "Trial counsel was ineffective because he did not provide the defendant with reasonable competent advice."
 - b. Counsel should have contested the voluntariness of the Applicant's confession.

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).

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary 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.

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

VI.

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

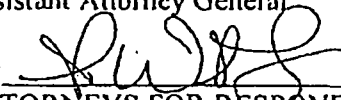
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 18, 2010

1 State of South) In the Court of Common Pleas
 Carolina)
 2) Case No: 2010-CP-04-02913
 County of Anderson)
 3)

4 Jerry Whitfield,)
 5)
 Applicant,)
 6) Transcript of Record
 -vs-) Post-Conviction Relief
 7) Hearing
)
 State of South)
 8 Carolina,)
)
 9 Respondent.)

10 June 5, 2012
 Anderson, South Carolina

11
 12
 13
 14 B E F O R E:

15 The Honorable Alexander S. Macaulay, Judge.
 16
 17
 18

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

20 Teresa Nesbitt Cosby, Esq.
 Attorney for the Applicant
 21
 Kaelon E. May, Esq.
 22 Assistant Attorney General
 Attorney for the Respondent
 23
 24

25 Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

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20	Exhibits		
21	No.	Description	ID/EV
22			
23		No exhibits were introduced.	
24			
25			

1 ** Start of Requested Certified Transcript of Record **

2 THE COURT: All right. The next matter is the case
3 of Jerry Whitfield versus the State of South Carolina,
4 2010-CP-04-2913. Ms. Cosby on behalf of the Applicant
5 and Ms. May on behalf of the State.

6 I notice there is a motion to continue this
7 hearing?

8 MS. COSBY: Yes, Your Honor. We are withdrawing
9 the motion. We're ready to proceed.

10 THE COURT: All right. I understand that there was
11 some confusion as to who was the Plea Judge and I think
12 that was Judge Maddox from looking at the file. So you
13 withdraw that?

14 MS. COSBY: Yes, sir, Your Honor.

15 THE COURT: All right. Is there anything from the
16 State before we proceed?

17 MS. MAY: No, Your Honor.

18 THE COURT: Anything further, more from the
19 Applicant before we proceed?

20 MS. COSBY: No, Your Honor.

21 THE COURT: What are the grounds in the
22 application?

23 MS. COSBY: Your Honor, the grounds are ineffective
24 assistance of counsel and an involuntary guilty plea.

25 Your Honor, the basis of the ineffective assistance

1 of counsel claim is that Counsel did not adequately
2 advise Mr. Whitfield as to the elements of the crime of
3 armed robbery in that the facts of the case don't
4 support an armed robbery conviction, and that had
5 Mr. Whitfield been properly advised, he would not have
6 pled guilty to armed robbery and would have only pled
7 guilty to criminal conspiracy.

8 In addition, Your Honor, when evaluating the guilty
9 plea transcript, that the guilty plea transcript is not
10 sufficient. The colloquy in the plea is insufficient to
11 establish that Mr. Whitfield made a knowing,
12 intelligent, and voluntary plea.

13 THE COURT: As I understand it, the grounds for the
14 application are ineffective assistance of counsel and
15 failure of Counsel to advise the Applicant of elements
16 of armed robbery, which was to the Applicant's prejudice
17 that the facts of the other case do not support armed
18 robbery and would, therefore, be criminal conspiracy?

19 MS. COSBY: Yes, sir.

20 THE COURT: The other grounds are involuntary plea
21 because of the sufficiency of the notice and advice of
22 the plea?

23 MS. COSBY: Yes, sir.

24 THE COURT: All right. Anything from the State?

25 MS. MAY: No, Your Honor.

1 THE COURT: All right. You may call your first
2 witness.

3 MS. COSBY: Your Honor, we would call Catherine
4 Huey.

5 THE CLERK: If you would please step forward to be
6 sworn in. Please raise your right hand.

7 (Whereupon, the Witness, Catherine Huey, was sworn
8 by the Clerk of Court.)

9 THE CLERK: Thank you, ma'am. Have a seat on the
10 witness stand. And once you are seated, please state
11 your full name for the record.

12 THE WITNESS: It's Catherine Huey, H-u-e-y.

13 THE CLERK: Thank you, ma'am.

14 Whereupon,

15 Catherine Huey,

16 Having been first duly sworn, was examined and testified
17 as follows:

18 Direct Examination by Ms. Cosby:

19 Q. Ms. Huey, you work for the Solicitor's Office here
20 in Anderson?

21 A. Yes, ma'am, I do.

22 Q. You prosecuted this case against Jerry Whitfield?

23 A. Ultimately yes, I did, yes.

24 Q. Do you want to tell the Court as to the background
25 of how you got this case?

1 A. Yes, ma'am. Originally Mr. Whitfield's case as
2 well as three Codefendants were assigned to Scott
3 McElhannon in our office. Once he left our office to
4 enter into private practice, I got Mr. Whitfield's case.
5 The other three had been disposed of.

6 Q. Okay. And the other three were disposed of in
7 varying ways?

8 A. Yes, ma'am.

9 Q. Okay. And was one of the Codefendants a Brooklyn
10 Hill?

11 A. Yes, ma'am.

12 Q. And how was her case disposed of?

13 A. Brooklyn Hill's case was dismissed.

14 Q. Okay. And her role in the case was that she worked
15 at the Fuddruckers?

16 A. Yes, ma'am.

17 Q. And there was a Delansia France?

18 A. Yes, ma'am.

19 Q. How was her case disposed of?

20 A. Hers was dismissed as well.

21 Q. What was her role in the criminal conspiracy and
22 armed robbery?

23 A. She was the getaway driver, allegedly.

24 Q. Okay. And then Derrick Harris?

25 A. And he was the shooter.

1 Q. He was the shooter and he ---

2 A. Actually entered Fuddruckers.

3 Q. With a weapon?

4 A. Yes, ma'am.

5 Q. Okay. And how was his case disposed of?

6 A. He pled guilty, and Scott McElhannon handled that
7 , plea.

8 Q. Okay.

9 A. And I believe he was sentenced to 30 suspended to
10 15 years and five years' probation.

11 Q. Okay. And you reviewed the file at my request?

12 A. I tried to, what we can put together, yes, ma'am.

13 Q. Okay. So you are testifying to what you recently
14 reviewed from the Solicitor's Office file?

15 A. Yes, ma'am.

16 Q. Okay. In your review of the file did, was there an
17 indication that there may have been a videotape?

18 A. Yes, ma'am. There is some reference to video in
19 the file and the investigative report. That video, we
20 tried to find whether it was still in evidence. It was
21 not ever placed in evidence, so it may have been sent to
22 our office as part of the file, and then when our file
23 was scanned it must have been misplaced because we can't
24 locate it.

25 Q. So now, the videotape, you just don't know where it

1 , is?

2 A. At least without trying further we can't find it at
3 this moment.

4 MS. COSBY: Okay. All right. Thank you. That's
5 all I have.

6 THE COURT: Cross-exam?

7 MS. MAY: May it please the Court, Your Honor.

8 Cross-Examination by Ms. May:

9 Q. Ms. Huey, do you recall why Ms. Hill and
10 Ms. France's charges were dismissed?

11 A. Yes, ma'am. Like I said, I believe Scott
12 McElhannon actually dismissed those cases, but those two
13 were extremely cooperative with police and actually led
14 to Mr. Whitfield's arrest, and also they were willing to
15 testify against Mr. Whitfield had we gone to trial.

16 They were dismissed because they did cooperate and
17 plus they had minimum involvement and minor prior
18 records as far as I know.

19 MS. MAY: Thank you. Nothing further.

20 THE COURT: Redirect?

21 MS. COSBY: No Redirect, Your Honor.

22 THE COURT: All right. You may step down. Thank
23 you, ma'am.

24 (Witness leaves stand.)

25 THE COURT: You may call your next witness.

1 MS. COSBY: Your Honor, we call Mr. Whitfield.

2 THE CLERK: Mr. Whitfield, would you please raise
3 your hand to the best of your ability, your right hand.

4 (Whereupon, the Witness, Jerry Whitfield, was sworn
5 by the Clerk of Court.)

6 Whereupon,

7 Jerry Whitfield,

8 Having been first duly sworn, was examined and testified
9 as follows:

10 Direct Examination by Ms. Cosby:

11 Q. You are Jerry Whitfield?

12 A. Yes.

13 Q. You are serving a sentence with the South Carolina
14 Department of Corrections at this time?

15 A. Yes.

16 Q. Can you tell the Court what your sentence is?

17 A. Um, I'm serving ten years for armed robbery and
18 five years on conspiracy running concurrent.

19 Q. What is your max-out date?

20 A. My max-out date is 2017, of October.

21 Q. Okay. And these convictions resulted, came about
22 as a result of a robbery at a Fuddruckers?

23 A. Yes.

24 Q. Okay. And did you work at the Fuddruckers?

25 A. Yes.

1 Q. Okay. And the allegation was that you helped plan
2 this robbery?

3 A. Yes.

4 Q. Are you denying that today?

5 A. No.

6 Q. Okay. So you admit that you did help plan this
7 robbery?

8 A. Yes.

9 Q. Okay. And did you participate in the robbery?

10 A. No.

11 Q. Okay. Could you tell me what you were doing at the
12 point in time when the robbery occurred?

13 A. The point in time when I first came in, we was not
14 told that -- we was told to take out the trash that
15 night. So when I came in about a minute or two later
16 the gunman came in and he pointed a gun and said
17 "freeze." So I put my hands up, and then he turned the
18 gun on the manager and from there shots were fired.

19 Q. Okay. And so after this robbery occurred, were you
20 arrested?

21 A. No.

22 Q. Okay. So were you subsequently arrested at any
23 time?

24 A. Like later on down the line.

25 Q. Okay. So before you were arrested, you were

1 interviewed by law enforcement?

2 A. Yes.

3 Q. Okay. And when you were interviewed by law
4 enforcement, did you admit your involvement in the
5 activities?

6 A. No.

7 Q. Okay. But ultimately you were arrested?

8 A. Yes.

9 Q. Did you seek out counsel after you were arrested?

10 A. Yes.

11 Q. Who was that attorney?

12 A. At first it was Mr. Epps, William Epps.

13 Q. Okay. And how long did he represent you?

14 A. From 2007 till like late, I want to say late 2007,
15 2008.

16 Q. Okay. So how did he stop being your attorney?

17 A. Well, he said he needed a certain amount of money
18 before my court date was coming up, and we couldn't come
19 up with the money. So he had me come up here. And to
20 my understanding I thought I was signing release papers
21 for my paperwork, and in actuality I was releasing him
22 as my lawyer.

23 Q. So he was released as your attorney? You signed
24 the papers?

25 A. Yes.

1 Q. Okay. Had you paid him any money before then?

2 A. Yes.

3 Q. How much had you paid him?

4 A. I'm not sure. We got the paperwork at home. It
5 was like a couple thousand.

6 Q. Okay. And so you could not, you no longer could
7 afford to continue with him?

8 A. Yes.

9 Q. And so at that point in time did you get the
10 services of another attorney?

11 A. Yes.

12 Q. Who was that attorney?

13 A. Mr. Andy Potter.

14 Q. Okay. When did he become your attorney?

15 A. It was around 2008 --

16 Q. 2008?

17 A. -- when he was assigned to me.

18 Q. Okay. Did you meet with him?

19 A. No.

20 Q. You never met with him before your guilty plea?

21 A. Only when I was coming to court.

22 Q. So the first time you met him was on the date that
23 you came to court?

24 A. Yes.

25 Q. Okay. Did you have conversations with him at the

1 courthouse?

2 A. In chambers, yes.

3 Q. In chambers?

4 A. Well, when I was in the jury box.

5 Q. In the jury box, okay. And what were your
6 conversations about?

7 A. Um, well, he was telling me that the armed robbery
8 conspiracy was like the same thing because the hand of
9 one is the hand of all, which is if one is guilty then
10 all is guilty.

11 Q. Okay.

12 A. So he told me that since my Codefendants rolled on
13 me, that the armed robbery was gonna stick.

14 Q. Okay. And so the Codefendants rolled on you,
15 meaning that --

16 A. They gave statements and was willing to testify
17 against me.

18 Q. Okay. And so based on that information, one, that
19 the Codefendants were gonna testify against you, and
20 two, that the hand of one is the hand of all, what did
21 you decide?

22 A. I decided to go with the guilty plea because he
23 said it was the best choice I had.

24 Q. Did you have any discussions with Mr. Potter about
25 what the State would have to establish or prove to find

1 you guilty of those two offenses?

2 A. No, ma'am.

3 Q. Okay. Did you have any discussions at all about
4 the facts of what occurred on the night in question?

5 A. No, ma'am.

6 Q. Okay. You never talked to him about what you were
7 doing inside the restaurant at that time?

8 A. Well, I tried to explain it to him, but when I was
9 explaining it to him what was happening with me, he went
10 back over with the same statement, the hand of one is
11 the hand of all, and since they wrote statements on me,
12 you were guilty.

13 Q. How long did this conversation occur?

14 A. It wasn't more than ten minutes.

15 Q. How long between the conversation and the guilty
16 plea in front of the Judge?

17 A. I think we had the conversation around like in, I
18 pled out in December and had a conversation like I want
19 to say a couple months prior to that, he said like in
20 November when I was coming back because they had a
21 12-year sentence on the table and I declined to take
22 that. And then he was like, "We're gonna try to get it
23 to strong-arm robbery." But in December we had the same
24 conversation. "The best I can do for you is ten years."

25 Q. Okay. All right. So, right now, you have a

1 max-out date of October 8, 2017?

2 A. Yes.

3 Q. Okay. And that is what you need to do to serve out
4 the armed robbery?

5 A. Yes.

6 Q. If you hadn't been convicted of the armed robbery,
7 when would you be released?

8 A. I would have been home sometime last year.

9 Q. Last year?

10 A. Uh-huh.

11 Q. And so the armed robbery would run concurrent with
12 your sentence?

13 A. Yeah, that's what Mr. Potter told me.

14 Q. Okay. So let's talk about when you went before the
15 Judge, okay?

16 A. All right.

17 Q. Were you alone or were there a group of people
18 there?

19 A. It was like kangaroo court, I guess they call it.

20 Q. Well, let's not do that.

21 A. Okay.

22 Q. Just tell me the facts.

23 A. Yeah. Most of the people were taking pleas.

24 Q. Okay. So there were a number of Defendants in
25 front of the Judge, and so the Judge is taking a number

1 of pleas at the same time. And so when the Judge talked
2 to you, he talked to you about whether or not you want
3 to do this?

4 A. Yes.

5 Q. Okay. You told the Judge you did?

6 A. Yes.

7 Q. Okay. Why did you tell the Judge you did?

8 A. Because I thought Mr. Potter would, I thought he
9 gave me all the facts on the armed robbery, the armed
10 robbery charge.

11 Q. Okay. And have you read your transcript?

12 A. Yes.

13 Q. Okay. And in the transcript you -- well, on the
14 day of the plea do you recall the Judge telling you what
15 the State would have to prove to find you guilty of
16 armed robbery?

17 A. No, ma'am.

18 Q. What the State would have to prove to find you
19 guilty of criminal conspiracy?

20 A. No, ma'am.

21 Q. Okay. Do you remember ever telling the Judge that
22 you were guilty?

23 A. Yes.

24 Q. Okay. And when you were saying you were guilty,
25 was that guilty to criminal conspiracy or guilty to

1 armed robbery or both?

2 A. It was guilty to the criminal conspiracy as stated
3 in my transcript.

4 Q. Okay. And so had you known that your attorney
5 could contest the armed robbery and potentially you not
6 have that charge against you, would you have pled
7 guilty?

8 A. No, ma'am.

9 Q. Okay.

10 MS. COSBY: Thank you, Mr. Whitfield.

11 THE WITNESS: You're welcome.

12 THE COURT: Cross-exam?

13 Cross-Examination by Ms. May:

14 Q. Mr. Whitfield, just so I'm clear, you stated that
15 you met with Mr. Potter the day of your guilty plea?

16 A. Yes.

17 Q. But then you also stated that you had met with him
18 in November as well?

19 A. Yes.

20 Q. Okay. Did you meet with him any other time?

21 A. No. Only when I was coming to court.

22 Q. So you didn't meet with him other times outside of
23 those two?

24 A. No. Just only twice.

25 Q. Okay. All right. Do you remember at your guilty

1 plea hearing the Judge asking you if anybody had forced
2 or threatened you into pleading?

3 A. Yes.

4 Q. And you answered "no," correct?

5 A. Yes.

6 Q. And that was the truth?

7 A. Yes.

8 Q. Okay. And do you recall at your plea hearing the
9 Judge asking you if you were happy with Mr. Potter's
10 representation?

11 A. Yes.

12 Q. And you answered "yes," correct?

13 A. Yes, ma'am.

14 Q. Was that the truth?

15 A. Yes, ma'am.

16 Q. All right. And you said you did want to plead
17 guilty?

18 A. Yes, ma'am.

19 Q. Okay. And do you recall at the beginning of your
20 plea hearing the Solicitor reading out Indictments for
21 armed robbery and conspiracy?

22 A. Yes, ma'am.

23 Q. So was it your understanding that you were pleading
24 to both of those?

25 A. Yes, ma'am.

1 Q. All right. And you did admit that you were guilty
2 of the charges?

3 A. Yes. And yes, I admitted I was guilty of the
4 conspiracy.

5 Q. Okay. But do you recall in your plea hearing the
6 Solicitor reading out two Indictments?

7 A. Yes.

8 Q. Okay. And I believe you stated earlier that you
9 still maintained that you helped plan the robbery; is
10 that correct?

11 A. Yes.

12 Q. Okay. And do you recall the Solicitor reciting the
13 facts of your case?

14 A. Yes.

15 Q. Okay. Have you had a chance to review those?

16 A. Yes.

17 Q. Okay. Is that what happened?

18 A. Yes. It's on page 6.

19 Q. And you agree with those facts still?

20 A. Yes.

21 Q. Okay.

22 MS. MAY: I have no further questions. Thank you.

23 MS. COSBY: Nothing further.

24 THE COURT: All right. You may step down, sir.

25 THE WITNESS: All right.

1 (Witness leaves stand.)

2 THE COURT: You may call your next witness.

3 MS. COSBY: Your Honor, nothing further from the
4 Applicant.

5 THE COURT: Anything from the State?

6 MS. MAY: May it please the Court, the State would
7 like to call Mr. Potter.

8 THE COURT: Very well.

9 THE CLERK: Would you please raise your right hand.
10 (Whereupon, the witness, Andrew Potter, was sworn
11 by the Clerk of Court.)

12 THE CLERK: And once you are seated, would you
13 please state your full name.

14 THE WITNESS: My name is Andrew Potter,
15 P-o-t-t-e-r.

16 Whereupon,

17 Andrew Potter,

18 Having been first duly sworn, was examined and testified
19 as follows:

20 Direct Examination by Ms. May:

21 Q. Mr. Potter, where are you currently employed?

22 A. The Tenth Judicial Circuit Public Defender's
23 Office.

24 Q. And over your career of practicing law, how much
25 has been criminal law?

1 A. I've been practicing since '93. I'm licensed in
2 Ohio as well as South Carolina. And 90 to 95 percent
3 has been criminal practice since 1993.

4 Q. And I think Mr. Whitfield says you were appointed
5 to represent him after a prior attorney?

6 A. Yes.

7 Q. Do you recall when you were appointed?

8 A. I met with him in my office in May of 2008.

9 Q. And do you recall how many times you were able to
10 meet with Mr. Whitfield?

11 A. I recall I met with him in my office for the
12 initial interview. I picked up the case, discussed with
13 him the facts of the case related to what was going on,
14 his side of the story, what he was charged with,
15 reviewed the warrants.

16 He was out on bond at that point in time. There
17 was a couple phone call conversations dealing with
18 whether he needed to show up for court or not when
19 Mr. McElhannon still had the case. Eventually a bench
20 warrant was issued because he never showed up for court,
21 and he was subsequently picked up on a bench warrant.
22 And during the time when he, when the bench warrant was
23 issued until he was picked up, the file was kind put in
24 an inactive status. When he was picked up on that bench
25 warrant, I picked up the file again and I started

1 working on it again.

2 Q. All right. And during those initial meetings did
3 you discuss the charges of armed robbery and criminal
4 conspiracy with him?

5 A. Yes, ma'am.

6 Q. Okay. Do you recall what you would have told him
7 about the charges?

8 A. I would have advised him as to what he's been
9 charged with, the maximum amount of sentence he would be
10 looking at. Typically at that point in time I'm offered
11 no discovery or anything like that. It would be I don't
12 know exactly what I'm gonna do until I see what the
13 other side of the story was. Based upon his
14 conversations with me, there were some things I needed
15 to see in discovery.

16 Q. Did you discuss the elements of armed robbery as
17 well as conspiracy?

18 A. You know, I may have, I may not have. I don't
19 recall. At the very least I would have advised him of
20 the charge of armed robbery and the maximum sentence at
21 the very least.

22 Q. Okay. And did, in your discussions and
23 Mr. Whitfield's versions of that, do you recall what he
24 told you or what y'all discussed?

25 A. I'm not gonna answer that question, respectfully,

1 unless I have some sort of waiver in regards to
2 attorney-client.

3 MS. MAY: The State's position is that filing of a
4 PCR waives the --

5 THE COURT: That's under the statute, isn't it?

6 THE WITNESS: The issue has come up with other
7 defense lawyers, and we felt that we needed a ruling
8 from Your Honor before I can answer that question.

9 THE COURT: All right. Section 17-27-130
10 (reading):

11 The attorney-client privilege with
12 respect to both oral and written
13 communications between counsel and the
14 Defendant and between -- to the extent prior
15 Counsel to respond to the allegation, the
16 filing of the application is a waiver of
17 the attorney-client and shall be deemed
18 automatic with the filing of the allegation
19 alleging ineffective assistance of counsel,
20 and the Court need not enter an Order
21 waiving the privilege.

22 And I follow the law.

23 I do find there is a waiver of privilege pursuant
24 to Section 17-27-130.

25 A. When I met with him in May, we discussed the facts

1 of the case. At that point he pretty much said, Yeah, I
2 was involved in conspiring in regards to this particular
3 robbery. I asked him specifically whether he gave a
4 statement. No statement. Codefendants, I think, in
5 review of my notes it appears as if he told me the
6 Codefendants were the ones who were snitching, for lack
7 of a better word, on him, and the case is built upon the
8 Codefendants.

9 So that's referencing my previous answer why I
10 needed to see discovery to see what the Codefendants
11 were saying in regards to his involvement before I could
12 decide, advise him where we could go with the case,
13 where we were headed.

14 By Ms. May:

15 Q. Did Mr. Whitfield ever indicate to you that he
16 didn't understand y'all's discussions?

17 A. No. He seemed to understand the nature and the
18 seriousness of the charges that he's been involved with
19 and all that.

20 Q. Okay. And did you file discovery motions?

21 A. Yes.

22 Q. Okay. And do you ever recall the materials that
23 were in the discoveries?

24 A. Yes.

25 Q. Could you just go over that?

1 A. The incident report, a series of search warrants
2 related to phone records, notes from the investigator
3 and the investigating officers, detectives.

4 There were written statements from Codefendants,
5 there were summaries of written sentence secured by
6 investigators, copies of the warrants, copies of the
7 Indictments, the rap sheet of the Defendant.

8 In regards to the physical, there wasn't a weapon
9 or anything like that that indicated there was a weapon
10 recovered. I think there was DJ, the other Codefendant
11 who did the shooting, took the officers around trying to
12 find the weapon, but kind of was not necessarily being
13 truthful with them. There was, a weapon was never
14 recovered.

15 I don't recall seeing any video or any CDs of
16 video. Typically there would also be some indication in
17 regards to a 9-1-1 call, maybe a CD of what that 9-1-1
18 call was. Those types of materials would be in
19 discovery.

20 Q. And were you able to review those materials --

21 A. Yes.

22 Q. -- or explain or discuss the materials with
23 Mr. Whitfield?

24 A. Yes.

25 Q. And did he provide you with the names of any

1 possible witnesses that would be related to the
2 investigation?

3 A. No. When we talked, his case was, as I mentioned,
4 again, it was a snitch case, okay, and it was a case
5 where the whole issue before a jury was who is the jury
6 gonna believe? Is the jury gonna believe the
7 Codefendants regardless of their testimony they offered,
8 or his testimony? He was gonna have to take the stand.
9 It was a situation where that's what the case was about.

10 The fact he was at the Fuddruckers, he was the one
11 involved in opening the door and allowing Derrick to
12 come in, and the fact that he admitted to me with
13 reference to the conspiracy, we talked about what he
14 mentioned, the hand of one.

15 It was a situation where you weren't necessarily
16 holding the gun and taking the money; however, you were
17 actively participating in the robbery. Therefore, under
18 South Carolina law, the hand of one is gonna be
19 instructed to the jury and the jury can infer him as
20 guilty and as culpable as the person who actually did
21 the shooting and got the money.

22 Q. So in discussing possible defenses, it would be a
23 snitch case and it would be credibility?

24 A. Credibility issue. A flat-out credibility issue.
25 And it's gonna be a situation where I stand up in front

1 of a jury, and this was a difficult argument to make to
2 the jury, Ladies and gentlemen, he conspired and decided
3 and planned the robbery, but then while he was there he
4 didn't participate in it. It was gonna be a difficult
5 argument, a difficult sell for the jury to say, Yeah, I
6 conspired it, and even though I was there, I wasn't part
7 of it. So those were the facts and circumstances that
8 we discussed.

9 Q. Okay. And you developed an opinion regarding the
10 State's ability to prove guilt beyond a reasonable
11 doubt?

12 A. I felt if we went to trial, I would have a
13 difficult time making that argument to a jury.
14 Ultimately I advised him as to what his options are. If
15 you go to trial on the case, you run the risk of getting
16 maxed out. If you don't go to trial on the case, and
17 you do a plea to a lesser, then that's what you can do.
18 Ultimately it's his decision to make. I tell him what
19 his options are and it's his call.

20 Q. And did he understand ---

21 MS. COSBY: Objection, Your Honor, as to what the
22 Applicant would have understood.

23 THE COURT: All right. Sustained.

24 By Ms. May:

25 Q. Did he indicate, did he ask you, did he indicate

1 that he did not understand what his options were?

2 A. Yeah, I think he understood his options. That's
3 the reason -- I suspect that's the reason why he chose
4 to enter the guilty plea.

5 Q. Do you believe you had sufficient time to confer
6 with Mr. Whitfield?

7 A. I felt comfortable with the time I had with him.

8 Q. I believe Mr. Whitfield mentioned a few plea
9 offers. Do you recall plea negotiations in this case?

10 A. Again, there was a previous Solicitor who had the
11 case, Scott McElhannon. I don't specifically recall any
12 negotiations with him before he left the Solicitor's
13 Office.

14 When Ms. Huey took over the case, I do remember a
15 12-year offer being made, and going back and forth in
16 regards to a recommendation and eventually getting the
17 ten years. If I remember correctly, we came to an
18 agreement in November.

19 Jerry said he wanted to hang out and do the plea in
20 December. And it may have been to stay closer to the
21 family before the holidays or something like that. I
22 can't remember specifics. But there was an agreement
23 and then we ended up pleading him a little later on.

24 Q. Okay. And you, you discussed the benefits and
25 drawbacks of Mr. Whitfield of pleading guilty versus

1 going to trial?

2 A. I discussed with him if he goes to trial, he does
3 run the risk of being completely maxed out by the Judge.
4 If he goes to a plea, there would be a recommendation,
5 the State would make that recommendation. If you agree
6 to that recommendation, go ahead and enter a guilty
7 plea.

8 And I'm, I don't have any independent recollection
9 of this, but I'm pretty sure, you know, our
10 conversations would have been, you know, based upon the
11 facts of this case it's a tough sell for the jury, the
12 choice is yours to make.

13 So I suspect -- I don't know if I'm answering your
14 question or not -- but I suspect that he understood what
15 to do. It was his decision. It wasn't me telling him,
16 You need to do this plea. You need to take this offer.
17 Otherwise -- Well, actually I probably did say, If you
18 don't take this offer, then we have to go to trial, then
19 you do run the risk. It's your choice.

20 Q. And did you all discuss what the State would have
21 to prove at trial?

22 A. I don't have any independent recollection of
23 sitting there saying, they have to prove that you had a
24 gun or anything like that. I think I probably more
25 likely said, With the hand of one argument, they don't

1 have to prove you had the gun, all they have to prove is
2 you were involved in the actual armed robbery. So I
3 suspect that's what our conversations would lead to.

4 Q. And did you ever put any pressure on Mr. Whitfield
5 to plead guilty or...

6 A. No. It was his choice. Again, it's his decision.
7 Here are your options, you make the call, and...

8 Q. And did he ever indicate to you that he felt
9 threatened or pressured into entering his guilty plea?

10 A. No. No, ma'am.

11 Q. And was there ever an option for Mr. Whitfield to
12 only plead to a conspiracy charge and the armed robbery
13 would be dropped?

14 A. That was never on the table, no. If I remember
15 correctly, he was also charged with ABWIK as well. The
16 ABWIK was dismissed. And there may have been
17 conversations, I think, as he indicated, I was gonna try
18 to get it reduced down to a strong-arm or something of
19 that sort, but the Solicitor wasn't willing to do that.
20 So these were the options that we could enter a plea on;
21 otherwise, we would have to do the trial.

22 MS. MAY: Unless there is anything else you feel
23 the Court needs to hear, I have no further questions.

24 THE COURT: Cross-exam.

25 MS. COSBY: Thank you, Your Honor.

1 Cross-Examination by Ms. Cosby:

2 Q. Mr. Potter, nice to meet you.

3 Your testimony, is it based on notes from your
4 file?

5 A. It's based on my practices on how I handle cases.

6 Q. So it was based on custom and practice?

7 A. Yes.

8 Q. Okay. But not specifically related to
9 Mr. Whitfield's case?

10 A. There are notes related to our first meeting back
11 in May of 2008 --

12 Q. Okay.

13 A. -- and in his discussion with me with regards to
14 what I wrote down.

15 Q. Okay.

16 A. Okay. But in regards to notes related to when I
17 was in the jury box talking to him, no.

18 Q. Okay. And so Mr. Whitfield testifies consistently
19 with you that your advice to him was that the hand of
20 one is the hand of all?

21 A. Yes.

22 Q. And so since he helped plan the robbery, then the
23 hand of one would be the hand of all?

24 A. The, the hand of one would apply in the fact that
25 he was at the Fuddruckers, he was there. The testimony

1 of the Codefendants involved in regards to that, he was
2 there, he opened up the door. I think there was some
3 indication in the statements when he was picked up by
4 his girlfriend, I believe, telling his girlfriend that
5 DJ went crazy or did something wrong and that wasn't
6 part of the plan.

7 I think the thing that I latched on to with regards
8 to hand of one is that he opened up the door to allow
9 Derrick to come in.

10 Q. You had in the Solicitor's file that DJ wouldn't
11 testify to that according to the statements; isn't that
12 correct?

13 A. Well, we couldn't get a statement from DJ because
14 he was represented.

15 Q. Okay. But in the statement he made to law
16 enforcement he said he wasn't gonna snitch on ---

17 A. Right, exactly.

18 Q. And so he wasn't gonna tell them anything?

19 A. Right. Yes.

20 Q. Okay. And so the two relevant Codefendants are the
21 two women?

22 A. Yes.

23 Q. One of which drove the getaway car?

24 A. Yes.

25 Q. Okay. And the other one was also inside the

1 Fuddruckers?

2 A. Yes.

3 Q. So that's testimony that one particular witness may
4 or may not have been able to say he actually opened that
5 door?

6 A. Again, what they say on the stand and all that,
7 that could be true. Again, I would have to review the
8 statement of what the ladies said. Brooklyn -- and one
9 was I think Frances?

10 Q. Delansia. Don't ask me to pronounce it.

11 A. I would have to refresh my recollection with
12 regards to their statements and what their specific
13 testimony would be.

14 Q. Do you recall the notes of the detectives about the
15 surveillance tapes that they reviewed of the Fuddruckers
16 restaurant?

17 A. Yes.

18 Q. Okay. Do you recall that in those notes they
19 advised that Mr. Whitfield was just standing there?

20 A. Yes.

21 Q. And that, you know, he wasn't doing anything there
22 but just standing there, that made him suspicious?

23 A. Yes.

24 Q. Okay. And so the fact that that was his activity
25 is why they started looking at him?

1 A. Yes.

2 Q. Okay. And so there isn't any testimony that he
3 actually participated in the armed robbery?

4 A. Except the opening of the door to allow Derrick to
5 come in.

6 Q. By the Codefendants. But law enforcement don't
7 have him on surveillance doing that?

8 A. No, ma'am, no.

9 Q. Okay.

10 A. As far as I know. Now, I don't recall. I never
11 saw a video, and I don't think a video, when I was
12 looking through his discovery, I don't see a CD or
13 anything.

14 Q. Okay. But they do have a lot of notes indicating
15 that they were looking at a surveillance tape?

16 A. Right.

17 Q. And so they obviously had him on video?

18 A. Right.

19 Q. But you didn't see the video?

20 A. No.

21 Q. Would it have been helpful to see his demeanor
22 inside the restaurant?

23 A. Probably not, okay?

24 Q. You don't think so?

25 A. Here's the thing.

1 Q. Uh-huh.

2 A. When I'm arguing this to a jury, I've got that he's
3 already admitted, he's gonna admit to the conspiracy.
4 That issue would come up anyway. We'd have to try that
5 issue anyway. All right? The fact that all they really
6 need to show, the mere presence argument, would have
7 been the argument. Merely he was there.

8 Q. Right.

9 A. But he knew what was going down, okay? There's
10 gonna be testimony that he opened up the door to allow
11 him to come in. And again, it's a tough sell to tell
12 the jury, Yeah, he planned it -- even if they are able
13 to show that, which I think we had a good argument for
14 that. But he was there that day and it was supposed to
15 happen that day. I didn't necessarily feel comfortable
16 that a jury was gonna buy that argument.

17 Q. Well, the possibility of trial wouldn't be criminal
18 conspiracy, would it? I mean, your defense would have
19 been he was just there. He didn't do nothing.

20 A. Right.

21 Q. So you wouldn't be admitting, yes, he was a
22 conspirator. You would challenge all the evidence.

23 A. Right.

24 Q. And so you've got a videotape of him not
25 participating in the armed robbery?

1 A. Correct. Just the presence of being there.

2 Q. Just mere presence. So the testimony that would
3 support the hand of one, hand of all would be
4 Codefendant testimony --

5 A. Yes.

6 Q. -- one of them driving the getaway car?

7 A. Right. And again, that's what I'm sure we
8 discussed, it was a snitch case. He didn't give a
9 confession, he didn't give a statement. The only
10 statement he gave to the police was "You got nothing on
11 me." And that's the discussions we had. It was three
12 witnesses who were gonna say that you were involved in
13 this and you saying you weren't.

14 Q. Okay.

15 A. Okay. And that was the analysis and the weighing
16 factors regards whether to go to trial, I would think it
17 was whether to go to trial or enter a plea.

18 Q. Okay. Well, one of the -- Do you have a copy of
19 the guilty plea transcript? Did you get a copy of that?

20 A. Yes.

21 Q. Okay. So one of the factors that occurred at the
22 guilty plea, which was interesting, is on Page 6
23 starting on Line 20. And this is the Prosecutor, and
24 she's, basically says (reading): Judge, but since this
25 Defendant didn't actually commit the crime as far as

1 robbing it, other than conspiring and planning the whole
2 scheme, that's why we are recommending ten years.

3 And so the Prosecutor's position at guilty plea was
4 he didn't participate in the armed robbery.

5 A. That may -- you know, my interpretation is this.
6 And again, I don't have any independent recollection of
7 this particular plea. It would be my presumption she
8 was referencing the fact that he didn't actually carry
9 the gun --

10 Q. Right.

11 A. -- and take the money, that Derrick was the one who
12 was carrying the gun and took the money was specifically
13 what she was referring to there.

14 Q. And that can have two impacts. One impact is, you
15 know, what would happen at trial with this? But the
16 other impact would be his understanding of the guilty
17 plea itself.

18 A. He knew what he was doing.

19 Q. Well, you can say that. But you got someone
20 standing up in front of the Judge and saying he didn't
21 do it.

22 A. Well, respectfully, I don't think I agree with you
23 there. He got up there saying, he knew he was entering
24 a guilty plea to armed robbery and he knew he was
25 entering a guilty plea to conspiracy. He understood

1 that.

2 Q. Well, and I don't think he denies that. Not to
3 argue with you. I don't think he denies he knew he was
4 pleading to those. What his allegation is, he really
5 didn't understand the elements of each of the offenses
6 and how they distinguished from each other, and had he
7 known the elements, he possibly would not have pled --
8 he would not have pled guilty. I mean, that's his
9 argument.

10 A. You know, I can't answer what's in his head.

11 Q. Okay.

12 A. I can tell you what our discussions, what I
13 anticipate our discussions were --

14 Q. Okay.

15 A. -- with my practice and all that.

16 He signed up for the guilty plea to the armed
17 robbery and he signed up for the guilty plea to the
18 conspiracy.

19 Q. Yeah.

20 A. He knew that the armed robbery was something that
21 was ultimately non negotiable, we couldn't get it down
22 to a strong-arm.

23 Q. So what would be the risk if you just went ahead
24 and tried him? Why not try the case?

25 A. Then he would be looking at substantial time.

1 Q. But you have a viable defense.

2 A. You know, in my experience, having a viable defense
3 does not necessarily mean you're gonna get a not guilty.

4 Q. And I understand that.

5 A. It's his decision. And he understood the nutshell
6 of the case was this. Three people are gonna say you
7 did it, you're gonna say you're not, and the jury is
8 gonna decide.

9 Q. Three people are gonna say he did it? Who are the
10 three people who are gonna say he did it?

11 A. The two girls and Derrick.

12 Q. The guy called DJ. But DJ wouldn't say it.

13 A. We don't know that.

14 Q. Well --

15 A. Again, that's somebody I couldn't get in touch with
16 because he was represented.

17 Q. So there is no proof that DJ would testify against
18 him.

19 A. I mean, there's no proof he's gonna show up at the
20 trial.

21 MS. MAY: Your Honor, I object. He waived at the
22 guilty plea to sufficiency of the evidence.

23 MS. COSBY: This is the decisions that Counsel made
24 in representing the Applicant.

25 THE COURT: All right. Well, I'm gonna permit the

1 question, but I think once we get an answer, let's move
2 on.

3 All right. Restate the question.

4 And then, Mr. Potter, you answer it, and if you
5 need to explain, you may do so.

6 By Ms. Cosby:

7 Q. You testified that there were gonna be three
8 Codefendants that would testify against him?

9 A. Yes.

10 Q. Okay. And my question is whether or not that is,
11 in fact, true to the best of your knowledge.

12 A. My understanding is this. There would be at least
13 three witnesses that were gonna be testifying against
14 him if the case went to trial. Now, what those
15 witnesses specifically would have said if they sat in
16 the seat and looked at that jury, I can't necessarily
17 say for sure, okay?

18 We've all seen witnesses come up here and do a
19 wonderful job and we've seen witnesses come up here and
20 just collapse, okay? Those are the risks if he goes to
21 trial. There's also risks inherent with regards to
22 trials in that you get a jury who will ignore the law,
23 who will do something completely outrageous and they'll
24 walk your guy. There's always that risk, okay?

25 But there's always that risk the jury will not.

1 There's always that risk the jury will come back with a
2 guilty finding and the Judge will max out --

3 Q. All right.

4 A. -- on a violent offense and he do substantial time.
5 And ultimately I don't make the decision --

6 Q. Right.

7 A. -- on who gets to try the case or not. It has to
8 be the Defendant's decision. And based on our
9 conversations, that's what we did. Jerry took the plea.

10 Q. And I appreciate that. But the file in the
11 Solicitor's Office did indicate that DJ Harris wouldn't
12 testify against him, wouldn't say anything against
13 Mr. Whitfield.

14 A. Okay.

15 Q. Okay. And that's what I was trying to clarify,
16 simply that.

17 And so, and your testimony is that armed robbery is
18 a violent offense?

19 A. Yes.

20 Q. Criminal conspiracy is not a violent offense?

21 A. Yes.

22 Q. Okay. And so the fact that he has both
23 convictions, armed robbery does extend his stay?

24 A. He has to do 85 percent of that time.

25 Q. 85 percent of the time. Okay. Did you ever

1 consider challenging just the sufficiency of the
2 Indictment on armed robbery?

3 A. Okay. It would be a Motion to Quash the
4 Indictment. I've done that one time before dealing with
5 a situation where somebody was charged with a crime that
6 wasn't a crime at the time this allegedly occurred.

7 Indictments are tricky because you just have to
8 give sufficient notice. I would love to have a Bill of
9 Particulars served on me by the Solicitor like they do
10 in Ohio and things of that sort. No, I did not.

11 Q. So the answer is no?

12 A. No.

13 MS. COSBY: Thank you. Thank you for your
14 testimony, Mr. Potter.

15 Thank you, Your Honor.

16 THE COURT: Re-exam?

17 MS. MAY: Nothing further from the State, Your
18 Honor.

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

20 THE WITNESS: May I be released, Your Honor?

21 THE COURT: Any objection?

22 MS. COSBY: No objection, Your Honor.

23 THE COURT: All right. You may be released. Thank
24 you.

25 (Whereupon, the Witness was excused.)

1 THE COURT: You may call your next witness.

2 MS. MAY: That's all for the State, Your Honor.

3 THE COURT: Any Reply?

4 MS. COSBY: No Reply.

5 THE COURT: Argument?

6 MS. COSBY: Yes, Your Honor. Your Honor, if I
7 could talk about the involuntary guilty plea first?

8 THE COURT: Certainly.

9 MS. COSBY: Your Honor, in reviewing the transcript
10 it is clear from the transcript that the Trial Judge did
11 not engage in adequate colloquy to ensure that my client
12 was making a free and voluntarily decision to plead
13 guilty. In the colloquy the Trial Judge did not go over
14 the elements of the offense for criminal conspiracy nor
15 the elements of the offense of armed robbery; and that
16 the Supreme Court has stated that the Trial Judge must
17 engage in this colloquy to ensure that the Defendant is
18 adequately apprised of his Constitutional rights and is
19 making a freely, voluntarily, knowingly and intelligent
20 waiver of rights.

21 And furthermore, there is no colloquy as to whether
22 the Defendant is actually guilty of the offenses. And
23 so, Your Honor, our position on the guilty plea is the
24 colloquy in itself is insufficient to support the plea
25 and therefore his plea was involuntary. And so that

1 would be our argument on the involuntary guilty plea.

2 On the ineffective assistance of counsel claim,
3 Your Honor, the evidence that was contained in the
4 Solicitor's file showed that the Defendant was present.
5 The Defendant does not deny he conspired. But there was
6 no evidence that he actually participated in the armed
7 robbery. There's an allegation he opened the door or
8 did not open the door. That was a question of fact that
9 should have been put to a jury.

10 Absent that testimony, then there is absolutely no
11 testimony that he participated in the armed robbery, and
12 that is further corroborated by the fact that the
13 Solicitor herself in her presentation of facts before
14 the Judge said he did not participate in the armed
15 robbery.

16 So the facts were not there to support those
17 charges, and hence there is a good probability at
18 trial -- they may not have proceeded to trial.

19 **THE COURT:** Well, one thing is the fact, if you
20 will excuse me, it is a very abbreviated transcript.
21 But the colloquy between the Solicitor and the Court
22 that you relied on, Page 6, Line 20 through, 19 through
23 23, is after the Court accepts the plea and finds that
24 it was made freely and voluntarily based upon advice of
25 Counsel.

1 MS. COSBY: Yes.

2 THE COURT: So, I mean, I'm not sure that the
3 Solicitor would have said what she said in the
4 sentencing part if it had gone to trial.

5 MS. COSBY: Well, I'm sure, Your Honor. But it
6 becomes subsequent collateral evidence that perhaps it
7 wasn't there.

8 THE COURT: Well, that goes to sufficiency of the
9 evidence. In other words, I don't think you challenge
10 sufficiency of evidence on a PCR.

11 MS. COSBY: Well, not sufficiency, Your Honor, but
12 just as to what would have been the probability at
13 trial.

14 THE COURT: Under the case of Ramey (phonetic)
15 versus State where he said that the lady voluntarily
16 pled to murder, and she wanted to challenge the
17 sufficiency of the evidence that would establish the
18 degree of the homicide. And they said, no, that it
19 wouldn't be a proper ground.

20 MS. COSBY: I mean, I think it is a fine
21 distinction. We're setting up the facts to say that
22 these facts support our contention that had Counsel
23 acknowledged that there are, investigated this case a
24 little more to see there aren't sufficient facts to
25 support armed robbery, then they could have challenged

1 the Solicitor to drop that Indictment or go to trial and
2 let the jury decide.

3 THE COURT: I understand. All right. That's on
4 the sufficiency of the plea?

5 MS. COSBY: On the ineffective assistance of
6 counsel for his actions, yes, sir.

7 THE COURT: Anything else?

8 MS. COSBY: Nothing else, Your Honor.

9 THE COURT: All right.

10 MS. MAY: Just briefly, Your Honor. With regard to
11 involuntary guilty plea, luckily we do have PCR so when
12 the guilty plea isn't exactly clear we can elicit
13 testimony from Mr. Potter who testified today that he
14 explained the charges, that it seemed that Mr. Whitfield
15 did not indicate he did not understand what armed
16 robbery or conspiracy was, he knew what he was pleading
17 to. So at PCR we are able to use the PCR testimony and
18 the guilty plea transcript to ascertain whether
19 Mr. Whitfield knowingly pled guilty and I would submit
20 he did.

21 And with regard to the fact he didn't say he was
22 guilty. On Page 5, Line 20 to 21, the Judge asked: Do
23 all of you want to plead to the charges against you and
24 are you guilty?

25 Mr. Whitfield answers on Line 24: Yes, sir.

1 And then with regard to ineffective assistance of
2 counsel, we would submit that the Applicant hasn't met
3 his burden of proof. Mr. Whitfield admitted, maintained
4 that he did help plan the robbery and doesn't deny that
5 still.

6 And he was, Mr. Potter reviewed all the evidence
7 with him, there wasn't evidence that he wasn't aware of,
8 and I believe he made an intelligent decision to plead
9 instead of going to trial.

10 **THE COURT:** All right. Anything further?

11 **MS. COSBY:** Nothing further, Your Honor.

12 **The Court's Ruling:**

13 **THE COURT:** I think, as we understand with PCRs
14 that the statute providing for such remedies, Section
15 17-27-28(6) specifically provides that (reading):

16 The section shall not be construed to
17 permit a collateral attack on the ground
18 that the evidence was insufficient to
19 support a conviction.

20 As I say, not only is it Brinkley (phonetic) versus
21 the State but also Lopiano versus the State, which is
22 270 S.C. 563 (SC 1978).

23 More importantly, when we deal with the hand of
24 one, the hand of all, it has been applied in cases where
25 the Codefendants were outside after the robbery when the

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21 the State but also Lopiano versus the State, which is
22 270 S.C. 563 (SC 1978).

23 More importantly, when we deal with the hand of
24 one, the hand of all, it has been applied in cases where
25 the Codefendants were outside after the robbery when the

1 principal went back in and killed the two, and there
2 were two couples, two victims, and also attacked the
3 other two, four people, two couples.

4 The point is that they were all found guilty. The
5 principal -- and this was under the old law -- pled
6 guilty because only the jury can give the death
7 sentence. So by pleading guilty under the old law,
8 *Furman versus Georgia*, this Court could only sentence
9 him to life, the five accessories before the fact were
10 convicted of murder and then the law at that time
11 without a recommendation of mercy. That was my first
12 experience with the hand of one is the hand of all,
13 *Furman versus Georgia*, it can be reduced to life.

14 But the point is that is the rule as far as the
15 hand of one, hand of all is when you do enter into a
16 conspiracy to effect an illegal act, then you become
17 responsible for it, particularly as in this case he did
18 not disassociate himself, at least there's no evidence
19 of it on the results until he was arrested.

20 So anyway, I do find that under the record in this
21 case that there is not sufficient evidence to grant a
22 PCR, there's not sufficient grounds to grant PCR. I
23 find that having the burden of proof, unfortunately, he
24 has that requirement in PCRs, and so I dismiss the
25 application.

1 MS. COSBY: Thank you, Your Honor.

2 THE COURT: Thank you, ma'am.

3 Good luck to you, sir.

4 (Whereupon, the Post-Conviction Relief hearing was
5 concluded at approximately 11:52 a.m.)

6 ** End of Requested Certified Transcript of Record **

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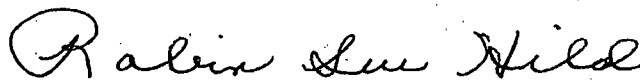
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth 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 the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 5th day of June, 2012.

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

November 26, 2012



Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

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hr

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2010-CP-04-2913

Jerry Whitfield, #338495, COMMON PLEAS AND
GENERAL SESSIONS

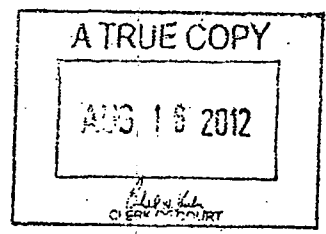
Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)



This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 17, 2010. Respondent made its Return on October 18, 2010. An evidentiary hearing into the matter was convened on June 5, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Teresa Cosby, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the testimony of Catherine Huey, Esquire. The State offered the testimony of Andrew Potter, Esquire (Mr. Potter) Applicant's plea counsel. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the March 2007 term of the Anderson County Grand Jury for Armed Robbery (2007-GS-04-0980) and Criminal Conspiracy (2007-GS-04-0982). He was represented by Andrew Potter,

Esquire. On December 15, 2009, the Applicant pled guilty as charged. Applicant was sentenced by the Honorable J. Cordell Maddox to confinement for a period of ten (10) years on the armed robbery charge and five (5) years on the conspiracy charge. The sentences were run concurrently. The Applicant did not appeal his guilty plea or sentence.

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

1. Involuntary Guilty Plea;
2. Ineffective Assistance of Counsel
 - a. "Trial counsel was ineffective because he did not provide the defendant with reasonable competent advice."
 - b. Counsel should have contested the voluntariness of the Applicant's confession.

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR

EVIDENTIARY HEARING

Ms. Huey's Testimony

At the PCR hearing, Ms. Huey testified that she is an assistant solicitor with the Anderson County Solicitor's Office and was the solicitor assigned to Applicant case. She testified that she inherited Applicant's case and at the time she inherited Applicant's case, the Applicant's three co-defendant's cases had already been disposed of. Ms. Huey testified that co-defendant Brooklyn Hill's and co-defendant D. France's charges were dismissed due to the fact that they were very cooperative, that they were willing to testify against Applicant at trial, that they had minor involvement in the crime, and that they had little or no prior records. Ms. Huey testified that co-defendant Derrick Hanns entered a guilty plea and received a thirty (30) year sentence suspended to fifteen (15) years.



Ms. Huey testified that a video of some sort was mentioned in a document found in the solicitor's file.

Applicant's Testimony

At the PCR hearing, Applicant testified that he worked at the Fuddruckers that was robbed and that Applicant helped plan the robbery but did not participate in the robbery. Applicant testified that he was initially represented by William Epps, Esquire from 2007 until late 2008 and that Applicant relieved Mr. Epps as his attorney. Applicant testified that Mr. Potter was appointed to represent Applicant around 2008. Applicant testified that he never met with counsel except when Applicant went to court for his guilty plea hearing. Applicant testified that counsel informed Applicant that armed robbery and conspiracy were one in the same because of the 'hand of one is the hand of all.' Applicant testified that his co-defendants rolled on Applicant and were going to testify against Applicant. Applicant testified that counsel failed to inform Applicant what the state would have to prove at trial, that counsel failed to discuss the facts of the incident, and that Applicant's conversation with counsel was about twenty (20) minutes long.

Applicant testified that he did have a conversation with counsel in November and that counsel informed Applicant the best Applicant could do was ten (10) years. Applicant testified that at his guilty plea hearing he entered his plea with multiple defendants before the plea judge. Applicant testified that he informed the plea judge that Applicant wanted to plead guilty because Applicant thought counsel provided Applicant all the facts concerning the armed robbery charge. Applicant testified that the plea judge did not inform Applicant what the state would have to prove for the armed robbery and conspiracy charges.



Mr. Potter's Testimony

At the PCR hearing, counsel testified that he met with Applicant in May 2008 at counsel's office because Applicant was out on bond, that counsel and Applicant discussed the facts of the case, Applicant's version of the events, the charges, and the warrants. Counsel testified that he also had a couple of telephone conversations with Applicant. Counsel testified that he discussed the charges of armed robbery and conspiracy, and the possible punishments with Applicant, and that Applicant never indicated that he did not understand the discussions about the charges or about Applicant's constitutional rights. Counsel testified that he filed a discovery motion, received the discovery materials, and reviewed the discovery materials with Applicant. Counsel testified that the discovery materials included: a 911 call, Applicant's rap sheet, incident report, prior records, notes from the police, and written statements from Applicant's co-defendants. Counsel testified that he did not recall there being any video in the discovery materials, but that the police notes indicated that the a video showed Applicant just standing inside the restaurant during the robbery, and that the weapon used in the robbery was never located. Counsel testified that it would not have been helpful or beneficial to see the Applicant's demeanor during the robbery on the video.

Counsel testified that Applicant's case was a 'snitch' case, that at trial the issue before the jury would be the co-defendants' credibility versus Applicant's credibility and that Applicant would have to take the stand at trial. Counsel testified that he and Applicant discussed 'hand of one hand of all' and that at a trial the jury would be instructed on that theory. Counsel testified that 'hand of one hand of all' applied to Applicant's case because Applicant helped plan the robbery and opened the back door to let the gunman inside Fuddruckers. Counsel testified that Applicant did not give a statement or confession. Counsel testified that it was his opinion that Applicant was going to have a

difficult time with the jury at a trial and that Applicant could receive a maximum sentence if found guilty at trial. Counsel testified that he had sufficient time to confer with Applicant.

Counsel testified that he entered into plea negotiations on Applicant's behalf, that Ms. Huey offered a 12 year deal, and that in December counsel reached an agreement with Ms. Huey for a recommendation of 10 years for armed robbery and 5 years for conspiracy. Counsel testified that he discussed all plea negotiations with Applicant as well as the issues involved with pleading guilty versus proceeding to trial. Counsel testified that Applicant made the decision to enter a guilty plea and that counsel never put any pressure on Applicant to plead guilty. Counsel testified that Applicant never indicated to him that Applicant felt threatened or pressured to enter a guilty plea. Counsel testified that there was never an option for Applicant to plead guilty to the conspiracy charge only and have the armed robbery charge dropped. Counsel testified that a charge of assault and battery with intent to kill was dismissed as part of Applicant's plea. Counsel testified that Applicant was fully aware that he was pleading guilty to armed robbery and conspiracy.

III. APPLICABLE LAW

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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Applicant asserts that counsel was ineffective for failing to advise Applicant of the elements of armed robbery and for failing to obtain a copy of the surveillance video mentioned in the police notes in the solicitor's file. This Court finds that Applicant failed to meet his burden of proof in showing counsel was ineffective. The guilty plea transcript reflects that the plea judge asked counsel whether Applicant understood the elements of the crimes he was charged with and Applicant's waiver of constitutional rights. (Tr. p.5, lines14-16). Counsel stated that he believed Applicant understood the waiver of rights and the elements of the crimes he was pleading guilty to. (Tr. p.5, lines17-19). At the PCR hearing counsel testified that he and Applicant discussed the charges of armed robbery and conspiracy, the theory of 'hand of one hand of all', and the state's evidence against Applicant. Counsel testified that Applicant never indicated to counsel that Applicant did not understand their discussions regarding Applicant's case. This Court finds that Applicant was advised of the elements of armed robbery and conspiracy, and was fully aware of the facts constituting armed robbery. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

With regard to Applicant's allegation that counsel failed to obtain the surveillance video mentioned in the police notes in the solicitor's file, counsel testified that he did not recall such a video in the discovery materials. Ms. Huey testified that the solicitor's file did not contain a surveillance video. Counsel testified that the notes indicated that the video showed Applicant standing in the restaurant during the robbery, but that the video would not have been helpful or beneficial to Applicant's defense. To establish counsel was inadequately prepared, an Applicant must



present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). This Court finds that Applicant did not produce the surveillance video complained of at the PCR hearing or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this Court finds this allegation is denied and dismissed.

Involuntary Guilty Plea

Applicant asserts that the plea judge's failure to state the elements of the offenses at Applicant's guilty plea and the absence of a colloquy whether Applicant was guilty rendered Applicant's guilty plea involuntary. Applicant also asserted that he felt pressured to plead guilty. This Court finds that Applicant has failed to meet his burden of proof in showing that his guilty plea was involuntary. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as the evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). This Court has already found that Applicant was advised of and understood the elements of armed robbery and conspiracy; therefore, this Court finds that the plea judge's failure to advise Applicant on the



record of the elements of the offenses did not render Applicant's guilty plea involuntary. The plea transcript reflects that the plea judge asked Applicant, "[d]o all of you want to plead guilty to the charges against you and are you guilty?" (Tr. p.5, lines20-21). The Applicant informed the plea judge that he wanted to plead guilty and was guilty by answering "yes" to the question. (Tr. p.5, line24). Additionally, the plea judge asked Applicant if he had been threatened by anyone or promised anything to get him to plead guilty, and Applicant indicated that he had not been threatened or promised anything to plead guilty. (Tr. p.4, lines6-10). At the guilty plea hearing, Applicant indicated to the court that he had plenty of time to speak with counsel and was satisfied with counsel's services. (Tr. p.5, lines7-11). Furthermore, the Applicant agreed with the facts of his case recited by the solicitor for the plea court. (Tr. p.6, lines12-25). This Court finds the overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these

issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so.

Therefore, any and all remaining allegations are denied and dismissed.

V. CONCLUSION

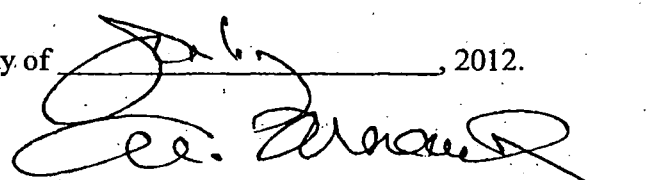
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCPP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27th day of July, 2012.



Alexander S. Macaulay
Presiding Judge

Willie, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2012 AUG 16 A 8:42
COMMON PLEAS AND
GENERAL SESSIONS

ARREST WARRANT

I-180583

STATE OF SOUTH CAROLINA
 County/ Municipality of
ANDERSON

THE STATE 2001 JAN - 8 P
against

WHITFIELD, JERRY

Address: [REDACTED]
ANDERSON, SC 00000-0000

Sex: M Race: B Height: 5 8 Weight: 165
DOB: [REDACTED] Agency OR#: 0400

Prosecuting Agency: SHERIFF DEPT.
Prosecuting Officer: SIOAN, M B

Offense: ARMED ROBBERY WHILE ARMED WITH A DEADLY
Code/Ordinance Sec: 16-11-330

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

is to be arrested and brought before me to be
dealt with according to law. The accused

Signature of Judge _____ (L.S.)

Date: _____ RETURN

A copy of this arrest warrant was delivered to
defendant WHITFIELD, JERRY
on 1-4-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
 County/ Municipality of
ANDERSON

AFFIDAVIT

Personally appeared before me the affiant
DET. M. B. SLOAN/ACSO

and duly sworn deposes and says that defendant
WHITFIELD, JERRY
did within this county and state on or about 1/02/2007

State of South Carolina (or ordinance of
County/ Municipality of

violate the criminal laws of the
State of South Carolina (or ordinance of
County/ Municipality of

DESCRIPTION OF OFFENSE: ARMED ROBBERY WHILE ARMED WITH A DEADLY WEAPON

Number state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
ON 01/02/2007 THE DEFENDANT DID ALONG WITH A CO-DEFENDANT
ACTIVELY PARTICIPATE IN THE ARMED ROBBERY OF FUDDRUCKERS
RESTURARANT. THE DEFENDANT DID FACILITATE THE CO-DEFENDANT BY
PROVIDING THE ENTRANCE TO THE BUILDING AND ASSISTING HIM IN
KNOWING THE LAYOUT OF THE BUILDING AND THE OPERATION OF THE
BUSINESS. THIS INCIDENT DID OCCUR AT [REDACTED] IN
ANDERSON COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
ANDERSON

Affiant's Address: 305 CAMSON RD.
ANDERSON, SC 29622
Affiant's telephone: (854) 260-7400

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
If appearing from the above affidavit that there are reasonable grounds to believe that
on 1/02/2007 defendant WHITFIELD, JERRY
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY WHILE ARMED WITH A DEADLY WEAPON

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Subscribed to and subscribed before me
on 1/04/2007
Signature of Issuing Judge [Signature] (L.S.)
Judge Code: 78D
Judge's Address: POB 8002, 107 S. MAIN ST.
ANDERSON SC 29655-0000
Judge's Telephone: 260-4156
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

1-4-02

MADE BY [Signature] CLERK OF COURTS
JAN 7 2002

ARREST WARRANT

T-180585

STATE OF SOUTH CAROLINA
CLERK'S OFFICE
[X] County/ [] Municipality of SOUTH SC
ANDERSON

THE STATE of South Carolina against

COMMON PLEAS AND
GENERAL SESSIONS
WHITFIELD, JERRY

Address: [REDACTED]
ANDERSON, SC 00000-0000

Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: B Height: 5 8 Weight: 165

DL State: [REDACTED] DL #: [REDACTED] Agency/ORI#: 0400
SHERIFF DEPT.

Prosecuting Agency: SLOAN, M B
Prosecuting Officer: CONSPIRACY TO COMMIT A CR

Offense: CONSPIRACY TO COMMIT A CR
IME Offense Code: 124
Code/Ordinance Sec: 16-17-410

This warrant is CERTIFIED FOR SERVICE in the
[] County/ [] Municipality of _____

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN
A copy of this arrest warrant was delivered to defendant WHITFIELD, JERRY on 1-1-07

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
ANDERSON

Personally appeared before me the affiant DET. M. B. SLOAN/ACSO who being duly sworn deposes and says that defendant WHITFIELD, JERRY did within this county and state on or about 1/02/2007 violate the criminal laws of the State of South Carolina (or ordinance of [] County/ [] Municipality of _____) in the following particulars:
DESCRIPTION OF OFFENSE: CONSPIRACY TO COMMIT A CRIME

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
ON 01/02/2007 THE DEFENDANT DID ALONG WITH CO-DEFENDANTS CONSPIRE TO COMMIT AN ARMED ROBBERY AT FUDDRUCKERS RESTUARANT. THIS INCIDENT DID OCCUR AT [REDACTED] IN ANDERSON COUNTY.

Signature of Affiant _____

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
ANDERSON

Affiant's Address: AN [REDACTED]
Affiant's telephone: _____
ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that on 1/02/2007 defendant WHITFIELD, JERRY did violate the criminal laws of the State of South Carolina (or ordinance of [] County/ [] Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: CONSPIRACY TO COMMIT A CRIME

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 1/04/2007 (L.S.)
Signature of Issuing Judge [REDACTED]
Judge Code: 780
Judge's Address: POB 8002, 107 S. MAIN ST. ANDERSON SC 29655-0000
Judge's Telephone: 260-4156
Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

A TRUE COPY
AUG 17 2010
Marilyn A. Stanton
CLERK OF COURTS

1-4-07

WITNESSES
M. SLOAN - ACCSD

DOCKET NO. 2007-65-01-080

The State of South Carolina,

County of _____

COURT OF GENERAL SESSIONS

MAR 20 2007 TERM

MSM THE STATE

JERRY WHITEFIELD vs.

RTD JOURNAL 08-13-08/emp
Blvd recalled 12.15.09/emp

COMMITMENT

12-15-09/emp

A TRUE COPY
AUG 17 2010
Martha R. Newton
CLERK OF COURTS

ARREST WARRANT NO. 1180583

ACTION OF GRAND JURY

TRUE BILL

MAR 20 2007

Foreman of Grand Jury

Estepson

VERDICT

Indictment for

ARMED ROBBERY
16-11-0330 (A) [0139]

Foreman of Petit Jury

Date:

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
ARMED ROBBERY
16-11-330 (A) [0139]

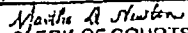
At a Court of General Sessions, convened on MAR 20 2007,
the Grand Jurors of ANDERSON County present upon their oath:

ARMED ROBBERY

That Jerry Whitfield did in Anderson County on or about January 2, 2007 attempt to take and carry away from the person of Todd Ploof, General Manager of Fuddruckers, cash by means of force, threats or intimidation with intent to deprive the owner permanently of such property while armed with a deadly weapon. All 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.


SOLICITOR

A TRUE COPY
AUG 17 2010

CLERK OF COURTS

WITNESSES
M. SLOAN - ACCSD

DOCKET NO. 2007-65-01-082

The State of South Carolina,

County of _____

COURT OF GENERAL SESSIONS

MAR 20 2007 TERM _____

MSM THE STATE

JERRY WHITFIELD

8th Jourd 08-13-08 / emp
Bill Recalled 12-15-09/R

A TRUE COPY
AUG 17 2010
Maisha A. Newton
CLERK OF COURTS

COMMITMENT

12-15-09/R

ARREST WARRANT NO. 1180585

ACTION OF GRAND JURY

TRUE BILL

MAR 20 2007

Foreman of Grand Jury

[Signature]
Foreperson

VERDICT

Indictment for

CRIMINAL CONSPIRACY
16-17-0410 [0049]

Foreman of Petit Jury

Date: _____

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR

CRIMINAL CONSPIRACY
16-17-0410 [0049]


At a Court of General Sessions, convened on MAR 20 2007
the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL CONSPIRACY

THAT THE DEFENDANT, JERRY WHITFIELD, DID IN ANDERSON COUNTY, ON OR ABOUT JANUARY 2, 2007 UNLAWFULLY AND WILFULLY UNITE, COMBINE, CONSPIRE, CONFEDERATE, AGREE AND HAVE TACIT UNDERSTANDING WITH DERRICK HARRIS, BROOKLYN HILL AND DELANSIA FRANCE FOR THE PURPOSE OF COMMITTING THE CRIME OF ARMED ROBBERY AND ASSAULT AND BATTERY WITH INTENT TO KILL. ALL IN VIOLATION OF 16-11-0330 CODE OF LAWS OF SOUTH CAROLINA, (1976).

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


SOLICITOR

A TRUE COPY
AUG 17 2010


STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson VS. State

INDICTMENT/CASE#: 2007GS0400980
AW#: 1180583
Date of Offense: 1/4/2007
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

AKA: Jerry Whitfield
Race: B Sex: M Age: 22
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED] Anderson, SC 29625
DL#: [REDACTED] SID#: SC01651718

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: ROBBERY / ARMED ROBBERY, ROBBERY WHILE (10 to 30) CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, hearing 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, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Catherine J. Huey 68416 Defendant
Huey, Catherine T. SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 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: 12/15/09
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied. 298 days
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 description, amount, and total. Includes items like Assessments 107.5%, Conv. Surchage, DUI Surchage, DUI Assessment, DUI Breath Test, Public Del/Prob, Law Enforce. Funding, Drug Court Surchage, DUI Breath Test Fee, Vehicle Assessment, SCCJA Surchage, and County fee.

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

TRUE COPY
AUG 17 2010
Marianne B. Sturten
CLERK OF COURTS

Clerk of Court/ Deputy Clerk: Cathy B. Phillips
Court Reporter: S. Dixie-Hamels
SCCA/217 (06/2009)

PRESIDING JUDGE: [Signature]
Judge Code: 21 1 1 3 1
Sentence Date: 12/15/09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE VS.

INDICTMENT/CASE#: 2007GS0400982

AKA: Jerry Whitfield

NW#: 1180585

Race: B Sex: M Age: 22

Date of Offense: 1/4/2007

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-17-0410

Address: [REDACTED]

CDR Code #: 0049

DL#: Anderson, SC 29625

SID#: SC01651718

SENTENCE SHEET



In disposition of the said indictment comes now the Defendant who was TO: CONSPIRACY / CRIMINAL CONSPIRACY, COMM (5)

CONVICTED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, hearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST-SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-15

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.

Catherine Huey (68416) N Defendant
Huey, Catherine T. SC Bar# Attorney for Defendant
5 yrs. 15413 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 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: 12/15/09
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-10 to be calculated and applied by the State Department of Corrections. 248 days
 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
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:

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(BU) 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

A TRUE COPY
AUG 17 2010
Marilyn A. Martin
CLERK OF COURTS

Appointed PD or appointed other confers OFFICIALS requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Wixor, Hanke
SCCA/217 (06/2009)

PRESIDING JUDGE
Judge Code: 21611311
Sentence Date: 12/15/09