

Record on Appeal
~~Appendix~~

Volume one

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SC Court of Appeals

1-500

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Motion to Vacate Conviction and Sentence

1 STATE OF SOUTH CAROLINA

2 COUNTY OF YORK

COURT OF GENERAL SESSIONS

3

App 1.

4 STATE OF)
SOUTH CAROLINA)

5)

6 -V-)

TRANSCRIPT OF RECORD

7)

8 ANTONIO GORDON,)

98-GS-46-2847

9 MONTA GORDON, AND)

98-GS-46-2853

10 TERRANCE MCCREARY,)

98-GS-46-2860

11 DEFENDANTS)

12

JULY 12, 14, & 16, 1999
YORK, SOUTH CAROLINA

13

14

B E F O R E:

15

THE HONORABLE JOHN C. HAYES, III

16

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

17

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App. 2

I N D E X

1

2

IN CAMERA TESTIMONY:

3

CHRISTOPHER WELLBORN

4

DIRECT EXAMINATION 5

5

CROSS EXAMINATION 13

6

REDIRECT EXAMINATION 22

7

RECROSS EXAMINATION 22

8

JERRY WALDROP

9

DIRECT EXAMINATION 24

10

CROSS EXAMINATION 35

11

REDIRECT EXAMINATION 44

12

JOHN THICKENS

13

DIRECT EXAMINATION 45

14

CROSS EXAMINATION 58

15

REDIRECT EXAMINATION 91

16

KENYATTA TRIPP

17

DIRECT EXAMINATION 92

18

CROSS EXAMINATION 94

19

REDIRECT EXAMINATION 98

20

JOHN THICKENS

21

REDIRECT EXAMINATION 100

22

DR. JONATHAN VENN

23

DIRECT EXAMINATION 103

24

CROSS EXAMINATION 116

25

App. 5

1 (COURT RESUMES.)

2 MR. ANTHONY: YOUR HONOR, AS MR. GORDON HAS
3 ENTERED PLEAS NOW THE STATE WOULD EXCUSE
4 LIEUTENANT HERRING AND DETECTIVE JETER. WE
5 APPRECIATE Y'ALL COMING. THEY WERE WITNESSES IN
6 THE HEARING CONCERNING MONTA GORDON. THAT WILL
7 NOT BE NECESSARY GIVEN THE PLEA.

8 MR. ANTHONY: YOUR HONOR, THE NEXT MATTER WE
9 WOULD TAKE UP THIS AFTERNOON IS THE JACKSON
10 VERSUS DENNO HEARING AS THE STATEMENT MADE BY
11 ANTONIO GORDON. I UNDERSTAND MR. D'AGOSTINO IS
12 WANTING TO CALL A WITNESS FIRST IN THIS HEARING
13 BEFORE THE STATE PRESENTED ANY EVIDENCE.

14 MR. D'AGOSTINO: YOUR HONOR, WE HAVE CHRIS
15 WELLBORN BUT HE HAS A CONFLICT LATER ON THIS
16 AFTERNOON.

17 THE COURT: I'VE GOT NO PROBLEM WITH THAT.
18 WE'LL ACCOMMODATE THAT IN ANY WAY WE CAN. GET
19 MR. GORDON ON OUT HERE THOUGH.

20 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

21 (MR. GORDON ENTERS THE COURTROOM.)

22 (MR. TERRANCE MCCREARY IS PRESENT WITH HIS
23 ATTORNEY MR. GILLEN.)

24 THE COURT: MR. WELLBORN, YOU WANT TO COME UP
25 AND BE SWORN. THIS IS UNDER JACKSON VERSUS

App. 6

1 DENNO I UNDERSTAND REGARDING ANTONIO GORDON.

2 MR. D'AGOSTINO: YES, SIR.

3 CHRISTOPHER WELLBORN, BEING

4 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: THE COURT WILL TAKE JUDICIAL NOTICE
6 THAT MR. WELLBORN IS A MEMBER OF THE SOUTH
7 CAROLINA BAR AND YORK COUNTY BAR AND PROBABLY
8 SEVERAL OTHER BARS, BUT HE IS IN FACT AN
9 ATTORNEY LICENSED TO PRACTICE IN THE STATE OF
10 SOUTH CAROLINA AND YOU MAY ASK HIM ANY QUESTIONS
11 YOU WANT ABOUT THAT BUT I TAKE JUDICIAL NOTICE.

12 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION BY MR. D'AGOSTINO:

14 Q MR. WELLBORN, JUST FOR THE RECORD GIVE US YOUR
15 NAME AND WHAT AREA OF PRACTICE YOU SPECIALIZE
16 IN?

17 A MY NAME IS CHRISTOPHER WELLBORN, LAST NAME
18 W-E-L-L-B-O-R-N, AND SOUTH CAROLINA DOES NOT
19 RECOGNIZE A SPECIALTY IN CRIMINAL DEFENSE BUT
20 THAT'S, MY PRACTICE IS COMPLETELY DEVOTED TO
21 CRIMINAL DEFENSE WORK.

22 Q NOW DID YOU HAVE AN OCCASION, AND I KNOW YOU'RE
23 HERE AS A WITNESS OF THE STATE VERSUS ANTONIO
24 GORDON, DID YOU HAVE OCCASION ON JULY 23, 1998,
25 TO COME IN CONTACT AND/OR BE RETAINED TO

App. 7

1 REPRESENT ANTONIO GORDON?

2 A YES. I WAS ASKED TO REPRESENT HIM THAT DAY BY
3 HIS PARENTS. I GOT FIRST PHONE CALLS THEN
4 SUBSEQUENTLY MEET WITH HIS MOTHER AND I BELIEVE

5 HIS STEPFATHER AS I RECALL TO REPRESENT MR.
6 GORDON.

7 Q WHAT DID YOU DO AFTER YOU WERE CONTACTED?

8 A WELL MY, I WAS TOLD THAT HE WAS AT THE ROCK HILL
9 POLICE DEPARTMENT OR BEING DETAINED AT THE ROCK
10 HILL POLICE DEPARTMENT SO I IMMEDIATELY WENT TO
11 THE ROCK HILL POLICE DEPARTMENT TO MEET WITH MY
12 CLIENT.

13 Q WHAT HAPPENED WHEN YOU GOT THERE?

14 A WELL, I GOT THERE APPROXIMATELY 11:30 IN THE
15 MORNING. I WENT UP TO THE DISPATCHER, PERSON AT
16 THE FRONT DESK WHO I WAS, TO MY RECOLLECTION WAS
17 A WOMAN NAMED CHARLENE. I MADE A REQUEST TO SEE
18 MY CLIENT AND I ASSUMED THAT HE WAS IN THE BACK
19 IN THE HOLDING AREA AND MADE BASICALLY A REQUEST
20 TO SEE MY CLIENT.

21 Q WHAT HAPPENED AS A RESULT OF YOUR REQUEST OF
22 CHARLENE TO SEE YOUR CLIENT?

23 A WELL, SOME TIME PAST AND NOTHING WAS HAPPENING
24 SO I MADE A SUBSEQUENT REQUEST TO SEE MY CLIENT,
25 ACTUALLY SEVERAL SUBSEQUENT REQUESTS AND WAS

App. 8

1 TOLD THAT MY CLIENT WAS IN THE BACK IN THE
2 DETECTIVE AREA, WAS BEING INTERVIEWED BY
3 OFFICERS WHO WERE NOT IDENTIFIED AT THAT TIME,
4 I AGAIN ASSERTED THAT I WAS HIS ATTORNEY HAVING

5 BEEN HIRED BY HIS PARENTS TO REPRESENT HIM,
6 THAT I WISHED TO SEE HIM, AND, YOU KNOW, THAT I
7 WISHED TO SEE HIM, ALL QUESTIONING TO CEASE
8 UNTIL I HAD A CHANCE TO TALK TO MY CLIENT.

9 Q WHO WERE YOU TALKING TO AT THAT TIME?

10 A WELL, I STARTED, INITIALLY IT WAS CHARLENE.
11 ULTIMATELY OTHER PERSON BECAME INVOLVED. AT ONE
12 POINT DURING THIS PROCESS, APPROXIMATELY, I WANT
13 TO SAY ABOUT 11:40 DETECTIVE CABINESS OR CAPTAIN
14 CABINESS CAME OUT INTO THE LOBBY. HE CONFIRMED
15 TO ME THAT MR. GORDON WAS IN THE BACK, THAT HE
16 WAS BEING INTERVIEWED BY ROCK HILL POLICE
17 DEPARTMENT PERSONNEL, AND I ASSERTED MY REQUEST
18 AGAIN DIRECTLY TO HIM THIS TIME, LOOK, I'VE BEEN
19 HIRED TO BE HIS LAWYER. I WOULD LIKE TO TALK TO
20 MY CLIENT AND I'D LIKE QUESTIONING TO CEASE
21 UNTIL I'VE HAD A CHANCE TO TALK TO MY CLIENT.
22 ULTIMATELY MR. CABINESS WENT BACK INTO THE BACK
23 ROOM. HE THEN CAME BACK OUT, THIS TIME
24 ACCOMPANIED BY DETECTIVE BLACKWELDER OF THE ROCK
25 HILL POLICE DEPARTMENT. ONCE AGAIN I ASSERTED

App. 9

1 THE SAME REQUEST, NOTHING WAS HAPPENING.
2 APPROXIMATELY 11:51 I AT THIS POINT REALIZED
3 THAT SOMETHING WAS SERIOUSLY WRONG IF I MADE
4 MULTIPLE REQUESTS TO SEE A CLIENT AND THEY WERE
5 CONTINUING TO DENY MY REQUEST TO MY CLIENT EVEN
6 THOUGH THEY KNEW I HAD BEEN RETAINED TO
7 REPRESENT HIM. OF COURSE, THIS IS A JUVENILE SO
8 THE ISSUE OF THE FACT THAT THE PARENTS HAD HIRED
9 ME WAS TO MY MIND A SERIOUS ISSUE, SO AT
10 APPROXIMATELY 11:51 I MADE ANOTHER REQUEST.
11 THIS TIME IT WAS TO A DISPATCHER WHOSE LAST NAME
12 WAS COLLINS. I DON'T KNOW WHAT THE DISPATCHER'S
13 FIRST NAME WAS. ONCE AGAIN NOTHING WAS
14 HAPPENING. THEN AT APPROXIMATELY 11:56 THE
15 DISPATCHER COLLINS RELAYED TO ME THAT MY CLIENT
16 WAS STILL IN THE DETECTIVE DIVISION PRESUMABLY
17 STILL BEING INTERVIEWED AND THAT QUOTE I COULD
18 SEE HIM WHEN THEY WERE DONE WITH HIM.

19 AT 12:05 I WENT, AFTER MAKING A REQUEST, I
20 TALKED TO CHIEF FORTSON. AFFIRMED MY
21 REPRESENTATION, REAFFIRMED MY REPRESENTATION,
22 COMPLAINED ABOUT THE FACT THAT I HAD MADE
23 NUMEROUS REQUESTS TO SEE MY CLIENT AND I'VE BEEN
24 GIVEN THIS RESPONSE, WELL, WHEN WE'RE DONE
25 QUESTIONING HIM YOU CAN SEE YOUR CLIENT. ONCE

App. 10

1 AGAIN REAFFIRMED TO CHIEF FORTSON, PRESUMABLY A
2 MAJOR SUPERVISOR OF THE WHOLE EVENT, THAT ALL
3 QUESTIONING WAS TO CEASE UNTIL I HAD AN
4 OPPORTUNITY TO TALK TO MY CLIENT. HE SAID THAT

5 HE WOULD BE BACK WITH ME. I WENT BACK IN THE
6 MAIN LOBBY. AT APPROXIMATELY 12:18 DETECTIVE
7 CABINESS CAME OUT AGAIN, TOLD ME THAT MY CLIENT
8 HAD BEEN CHARGED WITH MURDER, THAT HE WAS BEING
9 BOOKED, AND I QUOTE, I COULD SEE HIM AFTER
10 THAT. HE THEN ALSO MENTIONED QUOTE THE
11 CO-DEFENDANT SAYS HE'S THE TRIGGER MAN, SO I,
12 WHATEVER.

13 APPROXIMATELY 3:07 P.M. I WAS BACK AT THE ROCK
14 HILL POLICE DEPARTMENT. THIS TIME I TALKED TO A
15 DISPATCHER WHOSE LAST NAME WAS MERCHANT, A
16 GENTLEMAN WHO WORKS AT THE ROCK HILL POLICE
17 DEPARTMENT, AND MADE A REQUEST TO SEE MY
18 CLIENT. I ASSUMED THAT BETWEEN 12:18 AND 3:07
19 THEY WOULD HAVE HAD TIME TO BOOK MY CLIENT. I
20 WAS TOLD THAT THEY WOULD HAVE TO QUOTE NOTIFY
21 THE ARRESTING OFFICER BEFORE I WOULD BE ALLOWED
22 TO SEE MY CLIENT AND THEN I WAS TOLD BY
23 DISPATCHER MERCHANT QUOTE THEY ARE TALKING ABOUT
24 IT AND THEY WILL LET YOU KNOW.

25 AT 3:18 ONCE AGAIN I ASKED TO SPEAK TO CHIEF

App. 11

1 FORTSON. I WAS TOLD HE WAS ON THE PHONE THAT
2 THEY'D LET ME KNOW AFTER HE WAS OFF THE PHONE.
3 ULTIMATELY I WAS NOT ALLOWED TO SEE MY CLIENT
4 THROUGHOUT THAT WHOLE DAY. I THEN MADE A

5 DECISION BASICALLY BY THE END OF THE DAY THAT I
6 COULD NOT REPRESENT MR. GORDON SIMPLY BECAUSE I
7 REALIZED I WOULD BE A WITNESS ULTIMATELY IN THE
8 CASE.

9 Q ALL RIGHT. NOW LET ME BACK UP FOR ONE SECOND
10 HERE. WHEN YOU FIRST GOT TO THE POLICE STATION
11 WERE THERE OTHER INDIVIDUALS IN THE LOBBY AND
12 MORE SPECIFICALLY CHYENCA DIXON?

13 A YES, SHE WAS THERE. CHYENCA DIXON WAS THERE,
14 MR. GORDON'S, MR. ANTONIO GORDON'S MOTHER WAS
15 THERE. I BELIEVE HIS STEPFATHER WAS THERE AT
16 SOME POINT. WHETHER HE WAS THERE INITIALLY OR
17 WHETHER HE CAME IN SHORTLY AFTER I ARRIVED I
18 HAVE NO SPECIFIC RECOLLECTION, BUT THERE WERE
19 OTHER INDIVIDUALS THERE.

20 Q WAS THERE AN OCCASION WHEN CAPTAIN CABINESS CAME
21 OUT TO THE LOBBY AND ASKED TO SPEAK WITH CHYENCA
22 DIXON?

23 A YES, THERE WAS. AND AT THAT POINT MS. DIXON
24 INDICATED TO ME THAT SHE DID NOT WANT TO SPEAK
25 TO CAPTAIN CABINESS BY HERSELF, THAT SHE WANTED

App. 12

1 TO HAVE ME WITH HER. I ASKED HER IF SHE WAS
2 ASKING ME TO REPRESENT HER. SHE AFFIRMED THAT
3 SHE WAS THAT SHE WANTED ME TO REPRESENT HER AT
4 LEAST FOR PURPOSES OF BEING QUESTIONED. I

5 VOLUNTEERED TO DO THAT WHICH I TOLD CAPTAIN
6 CABINESS. I SAID, YOU KNOW, LOOK SHE'S ASKED ME
7 AND SHE AFFIRMED THAT IN FRONT OF CAPTAIN
8 CABINESS AND IN FRONT OF ME TOLD HIM THAT SHE
9 WANTED ME PRESENT AS HER LAWYER.

10 Q WHAT HAPPENED NEXT?

11 A CAPTAIN CABINESS WENT BACK INSIDE THE BACK ROOM
12 THEN WHEN HE CAME OUT THE SECOND TIME WITH MS.
13 BLACKWELDER THEY TOLD MS. DIXON SHE WAS UNDER
14 ARREST AS QUOTE AN ACCESSORY AFTER THE FACT TO
15 MURDER. THEY TOOK HER IN THE BACK ROOM AND
16 QUESTIONED HER. I WAS NOT PRESENT.

17 Q DID SHE EVENTUALLY COME OUT AGAIN?

18 A SHE DID. SHE EVENTUALLY CAME BACK. SHE
19 ULTIMATELY WAS NOT BOOKED. SHE ULTIMATELY, TO
20 MY KNOWLEDGE, WAS NEVER CHARGED WITH ACCESSORY
21 AFTER THE FACT AT LEAST WASN'T THAT DAY UNLESS
22 THEY DID IT AT SOME POINT LATER, BUT THEY HAD
23 THE OPPORTUNITY I ASSUME TO QUESTION HER BY
24 CLAIMING THEY WERE CHARGING HER WITH THIS
25 OFFENSE.

App. 13

1 Q HAVE YOU HAD ANY OTHER INVOLVEMENT WITH THIS
2 CASE OTHER THAN WHAT YOU TOLD US?

3 A OTHER THAN BEING QUESTIONED BY VARIOUS PEOPLE
4 WHO WANTED TO KNOW WHAT HAPPENED AND MY
5 EXPERIENCES IN THE POLICE DEPARTMENT THAT DAY,
6 NO.

7 AGAIN I HAVING BASICALLY BEEN PUT INTO THE
8 POSITION OF BEING A WITNESS AS TO WHAT HAPPENED,
9 I COULD NOT BE COUNSEL FOR ANYBODY INVOLVED. IN
10 FACT, LATER I WAS CONTACTED BY FAMILY MEMBERS OF
11 MR. GORDON'S CO-DEFENDANT ABOUT REPRESENTING
12 THEM AND I EXPLAINED THE SAME THING THAT I WOULD
13 HAVE A CLEAR CONFLICT AND ON TOP OF THAT I WAS
14 ALSO A WITNESS TO WHAT HAPPENED THAT DAY.

15 Q THANK YOU. ANSWER ANY QUESTIONS THAT EITHER ONE
16 OF THE SOLICITORS MIGHT HAVE.

17 A SURE.

18 CROSS EXAMINATION BY MR. ANTHONY:

19 Q MR. WELLBORN, YOU SAID YOU WERE ASKED TO
20 REPRESENT MR. GORDON BY HIS PARENTS?

21 A THAT'S CORRECT.

22 Q AND DID, HOW DID THEY MAKE CONTACT WITH YOU?

23 A INITIALLY BY TELEPHONE.

24 Q TELEPHONE?

25 A UH-HUH.

App. 14

1 Q AND DID THEY WIND UP COMING TO YOUR OFFICE?

2 A I WOUND UP MEETING THEM AT THE ROCK HILL POLICE
3 DEPARTMENT.

4 Q OKAY. YOU MET THEM AT THE POLICE DEPARTMENT.

5 YOU SAID WHEN YOU TESTIFIED YOU ARRIVED AT ABOUT
6 11:30?

7 A I WAS ON OR ABOUT 11:30 IS WHEN I WAS AT THE
8 POLICE DEPARTMENT. I WASN'T MAKING NOTE OF THE
9 EXACT TIME THAT I ARRIVED BECAUSE I DIDN'T
10 REALIZE UNTIL THEY REFUSED ME THE OPPORTUNITY TO
11 TALK TO MY CLIENT THAT MAKING NOTES OF TIMES
12 WOULD BE IMPORTANT.

13 Q OKAY. AND WHEN YOU MET MR. GORDON'S PARENTS
14 THERE, DID YOU MAKE ARRANGEMENTS AT THAT TIME TO
15 REPRESENT ANTONIO?

16 A I TOLD THEM THAT I WOULD REPRESENT HIM, THAT'S
17 CORRECT.

18 Q DID YOU SECURE A RETAINER FROM THEM AT THAT
19 TIME?

20 MR. D'AGOSTINO: YOUR HONOR, I'M GOING TO OBJECT
21 AS TO RELEVANCY TO THE RETAINER CONTRACT.

22 THE COURT: IT'S CROSS EXAMINATION. I'M GOING
23 TO ALLOW IT.

24 A WELL, FOR PURPOSES UNLESS I'M DIRECTED BY THE
25 COURT AS I KNOW WHATEVER THE RETAINER WOULD BE

App. 15

1 WOULD BE A MATTER OF ATTORNEY/CLIENT PRIVILEGE.

2 Q I'M NOT ASKING YOU TO TELL HOW MUCH. I'M JUST
3 ASKING DID YOU SECURE A RETAINER THAT DAY?

4 A I WAS RETAINED AT THAT TIME.

5 Q YOU WERE RETAINED, THEY ACTUALLY PAID YOU --

6 A ---I WAS RETAINED AT THAT TIME. THE ACTUAL
7 SUBSTANCE OF THE RETAINER IS ATTORNEY/CLIENT
8 PRIVILEGE AND UNLESS DIRECTED BY THE COURT I
9 CANNOT DISCLOSE THAT ETHICALLY AS YOU WELL KNOW.

10 Q WELL, THE QUESTION IS DID THEY PAY YOU A FEE
11 WITHOUT SAYING WHAT THE FEE WAS?

12 A AND MY RESPONSE IS I WAS RETAINED THAT DAY. I
13 UNDERTOOK REPRESENTATION AT THAT TIME.

14 Q AND YOU NEVER SPOKE TO ANTONIO GORDON THAT DAY?

15 A I WAS NEVER ALLOWED AN OPPORTUNITY TO SPEAK TO
16 ANTONIO GORDON, THAT IS CORRECT.

17 Q AND AT WHAT POINT DID YOU START MAKING THE
18 NOTATIONS OF THE TIMES?

19 A AT THE POINT THAT I HAD MADE REQUESTS AND WAS
20 TOLD THAT MY CLIENT WAS BACK BEING INTERVIEWED
21 BY THE POLICE AND THAT THE INTERVIEWING WAS
22 GOING ON EVEN THOUGH I HAD MADE REQUEST TO SEE
23 MY CLIENT AND REQUESTING THAT THE QUESTIONING
24 CEASE.

25 Q OKAY. AND SO SHORTLY AFTER THE TIME YOU ARRIVED

App. 16

1 YOU STARTED TAKING THOSE NOTES?

2 A AS TO EXACTLY HOW LONG, I CAN'T TELL YOU. I
3 WOULD BE SURPRISED IF IT TOOK MORE THAN ABOUT 20
4 MINUTES TO HALF AN HOUR AFTER I ARRIVED THAT I

5 BEGAN TAKING NOTES OF TIMES.

6 Q AND YOU'VE USED THOSE NOTES AS PART OF YOUR
7 TESTIMONY TO REFRESH YOUR RECOLLECTION OF YOUR,
8 WHEN YOU TESTIFIED TODAY?

9 A THAT'S WHY I MADE THE NOTES BECAUSE I
10 ANTICIPATED BEING CALLED TO TESTIFY AT SOME
11 POINT.

12 Q OKAY. MAY I SEE THOSE PLEASE?

13 A SURE. IF YOU HAVE TROUBLE WITH MY HANDWRITING
14 PLEASE FEEL FREE TO ASK ME.

15 MR. ANTHONY: IF I COULD JUST HAVE A MOMENT
16 PLEASE, YOUR HONOR.

17 Q AND MR. WELLBORN, WHEN MS. DIXON TOLD YOU THAT
18 SHE WANTED YOU TO REPRESENT HER WHEN CAPTAIN
19 CABINESS ASKED HER TO COME BACK AND QUESTION
20 HER, IS THAT CORRECT?

21 A I'M SORRY. YOUR QUESTION WAS WHEN SHE TOLD ME?

22 Q NO, SHE JUST TOLD YOU THAT SHE WANTED YOU TO
23 HELP HER, IS THAT CORRECT?

24 A THAT IS WHAT SHE TOLD ME, YES.

25 Q AND YOU SAID THAT YOU VOLUNTEERED TO REPRESENT

App. 19

1 MRS. BLACKWELDER, AND TOLD HER SHE WAS BEING
2 CHARGED WITH ACCESSORY AFTER THE FACT TO
3 MURDER.

4 Q WELL, MY QUESTION IS, YOU KNEW THAT SHE WAS
5 WANTED FOR QUESTIONING IN REGARDS TO THE
6 INCIDENT THAT ANTONIO GORDON HAD BEEN INVOLVED
7 IN?

8 A I KNEW THEY WANTED TO QUESTION HER ABOUT THE
9 INCIDENT, THAT'S CORRECT.

10 Q THAT'S RIGHT. AND YOU HAD AN ATTORNEY/CLIENT
11 RELATIONSHIP WITH ANTONIO GORDON AT THAT TIME
12 THAT YOU JUST TESTIFIED?

13 A THAT'S CORRECT.

14 Q AND YOU KNEW THAT HER STATEMENT COULD QUITE
15 POSSIBLY BE DAMAGING TO ANTONIO GORDON WHO YOU
16 ALREADY ESTABLISHED AN ATTORNEY/CLIENT
17 RELATIONSHIP WITH?

18 A I HAD NO SPECIFIC KNOWLEDGE AS TO WHAT HER
19 STATEMENT WOULD BE.

20 Q WELL, I'M NOT ASKING ABOUT SPECIFIC KNOWLEDGE.
21 DIDN'T YOU KNOW THERE WAS A SIGNIFICANT
22 POSSIBILITY THAT THAT STATEMENT COULD BE
23 DAMAGING TO ANTONIO GORDON?

24 A I HAD NO KNOWLEDGE AS TO WHAT HER STATEMENT
25 WOULD BE, SO I CAN'T ANSWER THAT QUESTION.

214

App. 20

1 WELL, ACTUALLY THE ANSWER TO YOUR QUESTION IS,
2 NO, I DIDN'T KNOW THAT BECAUSE I DIDN'T KNOW
3 WHAT HER STATEMENT WOULD BE.

4 Q BUT YOU KNEW THE POLICE WANTED TO QUESTION HER

5 ABOUT --

6 A ---I KNEW THE POLICE WANTED TO QUESTION HER AND
7 I KNEW THAT SHE WANTED SOMEBODY SHE TOLD THE
8 POLICE WAS HER LAWYER PRESENT WHEN SHE WAS BEING
9 QUESTIONED.

10 Q THAT'S RIGHT. AND YOU KNEW THAT THEY INTENDED
11 TO QUESTION HER ABOUT WHAT SHE KNEW ABOUT WHAT
12 ANTONIO GORDON HAD DONE OR HAD ALLEGEDLY DONE?

13 A I KNEW THEY WERE GOING TO QUESTION HER
14 SUPPOSEDLY SOMETHING RELATED TO THIS INCIDENT
15 WHETHER IT WAS SPECIFICALLY ABOUT ANTONIO GORDON
16 OR WHETHER IT WAS ABOUT MR. MCCREARY OR MR.
17 MONTA GORDON WHOSE NAMES I DIDN'T EVEN KNOW AT
18 THAT TIME, OR WHETHER IT WAS ABOUT SOMETHING
19 THAT SHE SUPPOSEDLY HAD DONE, I HAD NO IDEA.

20 Q AND YOU DID NOT WANT HER SPEAKING TO THE POLICE,
21 IS THAT CORRECT?

22 A SHE WANTED ME PRESENT IF SHE WAS GOING TO SPEAK
23 TO THE POLICE. IT'S NOT, WHAT I WANT REALLY IS
24 IRRELEVANT. IT'S WHAT THE CLIENT WANTS BECAUSE
25 THE CLIENT'S THE ONE WHO ASSERTS AND WHO GOVERNS

App. 21

1 THE ATTORNEY/CLIENT RELATIONSHIP.

2 Q AND YOU SAID WHEN YOU WERE GIVING YOUR
3 DEFINITION OF ATTORNEY/CLIENT RELATIONSHIP THAT
4 YOU FELT LIKE AN ATTORNEY/CLIENT RELATIONSHIP,
5 UNDER YOUR UNDERSTANDING OF THE RULES, THAT IT
6 STAYED IN EFFECT UNTIL THERE WAS SOMETHING THAT
7 FORMALLY RELINQUISHED THAT RELATIONSHIP, IS THAT
8 CORRECT?

9 A UNTIL THE CLIENT, IF A CLIENT ESTABLISHES A
10 RELATIONSHIP WITH ME AS THEIR LAWYER, UNTIL THAT
11 CLIENT TELLS ME THEY DON'T WANT ME AS THEIR
12 LAWYER, IN SOME WAY INDICATES TO ME THEY DON'T
13 WANT ME AS THEIR LAWYER OR IN SOME WAY I TELL
14 THEM I CAN'T BE THEIR LAWYER, WE HAVE THAT
15 RELATIONSHIP.

16 Q OKAY. AND DID YOU FORMALLY RELINQUISH YOUR
17 ATTORNEY/CLIENT RELATIONSHIP WITH ANTONIO
18 GORDON?

19 A DID I FORMALLY, YES, I TALKED TO HIS PARENTS WHO
20 WERE THE ONES WHO RETAINED ME, AND LATER I
21 TALKED TO ANTONIO AND TOLD HIM WHY I COULD NOT
22 REPRESENT HIM BECAUSE I WOULD BE A WITNESS.

23 Q IS THERE ANYTHING DOCUMENTED IN YOUR FILE WHERE
24 YOU RELINQUISHED YOUR RELATIONSHIP WITH ANTONIO
25 GORDON?

App. 22

1 A THERE IS MY MEMORY. AS FAR AS DOCUMENTING IN MY
2 FILE IN TERMS OF A LETTER, NO, I DID NOT WRITE A
3 LETTER.

4 Q SO YOUR RELATIONSHIP WITH ANTONIO GORDON, IT WAS
5 VERBALLY ESTABLISHED AND VERBALLY RELINQUISHED?

6 A THAT'S CORRECT. THAT'S CORRECT.

7 Q OKAY.

8 MR. ANTHONY: IF I COULD HAVE ONE MOMENT. I
9 WANT TO RETURN MR. WELLBORN'S NOTES TO HIM.
10 APPRECIATE HIM PROVIDING THOSE AND THAT'S ALL
11 THE QUESTIONS THE STATE HAS.

12 THE COURT: ANYTHING ELSE?

13 MR. D'AGOSTINO: BRIEFLY, YOUR HONOR.

14 REDIRECT EXAMINATION BY MR. D'AGOSTINO:

15 Q AT THE TAIL END OF YOUR, THAT AFTERNOON AT THE
16 POLICE STATION, WERE YOU EVER EVENTUALLY TOLD
17 THAT YOU WOULD HAVE TO HAVE SOMETHING IN WRITING
18 ESTABLISHING YOU AS THE ATTORNEY FOR ANTONIO?

19 A NO ONE EVER TOLD ME THAT AT THE POLICE STATION.
20 IN FACT, I HAD NEVER HEARD OF THAT UNTIL
21 SOMETIME LATER AND THAT WAS STRICTLY, THAT WAS
22 THROUGH A THIRD PARTY. NO ONE'S EVER DIRECTLY
23 TOLD ME THAT I HAVE TO HAVE SOMETHING IN WRITING
24 FROM MY CLIENTS SAYING THAT I'M THEIR LAWYER
25 BEFORE I CAN TALK TO THE CLIENT.

1 MR. D'AGOSTINO :
2 HAVE. THANK YOU.

THOSE ARE ALL THE QUESTIO

3 MR. ANTHONY : JUST BRIEFLY, YOUR HONOR.
4 THE COURT : GO AHEAD.

5 MR. ANTHONY : THANK YOU. MAY I ASK HIM ANOTI
6 QUESTION?
7 THE COURT : YES .

8 RE CROSS EXAMINATION BY MR. ANTHONY :

9 Q DID YOU ALSO CLAIM TO REPRESENT SOMEBODY ELSE
10 THAT MORNING OTHER THAN MS. DIXON?

11 A DID I CLAIM TO REPRESENT SOMEBODY ELSE?

12 Q YEAH.

13 A WELL, I HAVE APPROXIMATELY 300-SOMETHING
14 CLIENTS.

15 Q I'M SORRY. I WILL REPHRASE THAT QUESTION. WAS
16 THERE SOMEONE ELSE WHO WAS ASKED TO COME BACK
17 FOR QUESTIONING THAT YOU SAID YOU REPRESENTED
18 THEM THAT MORNING OTHER THAN MS. DIXON AND MR.
19 GORDON?

20 A I HAVE NO SPECIFIC RECOLLECTION OF THAT.
21 Q OKAY. THANK YOU.

22 THE COURT : MR. GILLEN, I KNOW THIS ISSUE
23 DOESN'T PERTAIN TO YOUR CLIENT BUT JUST OUT OF
24 AN ABUNDANCE OF CAUTION WHILE YOU ARE HERE AND
25 HE'S HERE, ANY QUESTIONS?

JERRY WALDROP --- DIRECT

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24

App. 24

MR. GILLEN: NO, YOUR HONOR. THANK YOU.

THE COURT: YOU CAN BE EXCUSED. WE APPRECIATE YOUR TIME.

MR. WELLBORN: THANK YOU.

THE COURT: CALL YOUR NEXT WITNESS. WELL, CALL YOUR FIRST WITNESS FOR THE STATE. ACTUALLY I GUESS YOUR FIRST WITNESS HAS BEEN CALLED CAPTAIN

CABINESS.

MR. ANTHONY: THE STATE WOULD CALL AS ITS FIRST WITNESS IN THE DENNO HEARING LIEUTENANT WALDROP.

JERRY WALDROP, BEING FIRST

DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. ANTHONY:

Q WOULD YOU STATE YOUR NAME PLEASE?

A JERRY W. WALDROP.

Q AND MR. WALDROP, WHERE DO YOU WORK AT?

A ROCK HILL POLICE DEPARTMENT.

Q WHAT IS YOUR POSITION AT THE ROCK HILL POLICE DEPARTMENT?

A AT THE PRESENT TIME I'M LIEUTENANT IN CHARGE OF PROPERTY CRIME SECTION.

Q GOING BACK TO JULY 23 OF LAST YEAR WHAT WAS YOUR POSITION AT THE POLICE DEPARTMENT ON THAT DAY?

A DETECTIVE ASSIGNED IN THE DETECTIVE DIVISION.

App. 25

1 Q AND WERE YOU WORKING ON JULY 23 OF LAST YEAR?

2 A I CAME ON DUTY THAT MORNING ABOUT 8 A.M.

3 Q AND WHEN YOU CAME ON DUTY THAT MORNING DID YOU
4 BECOME AWARE OF THE INVESTIGATION OF THE

5 SHOOTING INCIDENT EARLIER THAT MORNING?

6 A THAT'S CORRECT.

7 Q AND DURING THE COURSE OF THAT INVESTIGATION DID
8 YOU HAVE OCCASION TO SPEAK TO ANTONIO GORDON?

9 A THAT'S CORRECT.

10 Q AND WHERE DID YOU SPEAK TO MR. GORDON AT?

11 A IN THE BACK HALL OF THE POLICE STATION, THERE IS
12 AN AREA THAT WAS AT ONE TIME THAT WAS USED AS A
13 LARGE CONFERENCE ROOM, I MEET WITH HIM THERE,
14 AND WE CARRIED ON A CONVERSATION IN THE
15 CONFERENCE ROOM.

16 Q AND WHERE WAS HE AT WHEN YOU INITIALLY, WELL,
17 WAS THAT WHERE HE WAS AT WHEN YOU INITIALLY WENT
18 TO SPEAK TO HIM AND TALK TO HIM?

19 A THAT'S CORRECT.

20 Q TO YOUR KNOWLEDGE HAD ANYONE TAKEN ANY
21 STATEMENTS FROM HIM BEFORE THIS TIME?

22 A NO, SIR, NOT TO MY KNOWLEDGE.

23 Q OKAY. AND WHEN YOU WENT TO SPEAK TO MR. GORDON
24 WHO WAS THERE WHEN YOU WENT TO TALK TO HIM?

25 A HE WAS SITTING IN THE ROOM BY HIMSELF. THERE

Apr 26

1 WAS A UNIFORM OFFICER THAT WAS WATCHING THE
2 ROOM, BUT I DON'T REMEMBER WHO THE UNIFORM
3 OFFICER WAS. THEY WERE JUST WATCHING THE DOOR.
4 HE WAS IN THE ROOM BY HIMSELF.

5 Q AND WHEN YOU WENT IN THE ROOM WITH MR. GORDON
6 THERE, WHAT DID YOU DO?

7 A I WENT IN. HE WAS SEATED ON THE LEFT HAND SIDE
8 OF THE TABLE. I SAT DOWN ON THE RIGHT HAND SIDE
9 OF THE TABLE. I INTRODUCED MYSELF, TOLD HIM WHO
10 I WAS, AND WHY I WAS THERE.

11 Q AND WHY DID YOU TELL HIM YOU WERE THERE?

12 A I TOLD HIM I WAS THERE TO TALK TO HIM IN
13 REFERENCE TO THE INCIDENT THAT HAD HAPPENED
14 EARLIER IN THE NIGHT.

15 Q AND BEFORE YOU BEGAN TO SPEAK TO HIM ABOUT THE
16 INCIDENT, DID YOU ADVISE HIM OF ANY RIGHTS?

17 A THAT'S CORRECT. AFTER INTRODUCING MYSELF AND
18 ASKING HIM HIS FULL NAME, I IN TURN TOOK THE
19 STATEMENT FORM THAT WE USE WHICH HAS THE RIGHTS
20 STATEMENT AT THE TOP OF IT AND READ HIM HIS
21 RIGHTS AS WRITTEN ON THE STATEMENT FORM.

22 MR. ANTHONY: YOUR HONOR, I AM HANDING UP
23 DETECTIVE WALDROP'S STATEMENT AND ASK IT BE
24 MARKED STATE'S EXHIBIT NUMBER THREE FOR PURPOSES
25 OF THE HEARING.

App. 27

1 (STATE'S EXHIBIT THREE ANTONIO GORDON'S
2 STATEMENT MARKED FOR IDENTIFICATION.)

3 Q CAN YOU IDENTIFY THE DOCUMENT I'M HANDING TO YOU
4 STATE'S EXHIBIT NUMBER THREE FOR PURPOSES OF THE
5 HEARING, DETECTIVE?

6 A THAT'S CORRECT. THAT'S THE STATEMENT TAKEN BY
7 ME FROM ANTONIO GORDON ON THE 23.

8 Q AND YOU REFERENCED CERTAIN RIGHTS BEING PRINTED
9 AT THE TOP OF THAT FORM?

10 A THAT'S CORRECT.

11 Q WOULD YOU READ WHAT THOSE RIGHTS ARE PLEASE?

12 A IT SAYS BEFORE WE ASK YOU ANY QUESTIONS YOU MUST
13 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO
14 REMAIN SILENT. ANYTHING YOU SAY CAN BE USED
15 AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO
16 TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
17 ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING
18 QUESTIONING. YOU HAVE THIS RIGHT TO THE ADVICE
19 AND PRESENCE OF A LAWYER EVEN IF YOU CANNOT
20 AFFORD TO HIRE ONE. WE HAVE NO WAY OF
21 APPOINTING YOU A LAWYER, BUT ONE WILL BE
22 APPOINTED TO YOU BY THE COURT FOR YOU IF YOU
23 WISH. IF YOU WISH YOU MAY ANSWER QUESTIONS
24 WITHOUT THE PRESENCE OF A LAWYER AND YOU MAY
25 STOP ANSWERING QUESTIONS AT ANY TIME YOU SO

App. 28

1 DESIRE UNTIL A LAWYER IS PRESENT.

2 Q AND DID YOU ASK MR. GORDON TO DO ANYTHING TO
3 INDICATE THAT HE UNDERSTOOD THESE RIGHTS THAT
4 YOU JUST READ?

5 A FIRST I ASKED HIM IF HE UNDERSTOOD THEM AND HE
6 INDICATED HE DID. AND I ASKED HIM TO SIGN ON
7 THE LINE UNDER THE STATEMENT FORM.

8 Q OKAY. AFTER HE SIGNED IT, DID YOU DO ANYTHING?

9 A I SIGNED IT ALSO.

10 Q OKAY. THEN AFTER YOU ASKED HIM TO SIGN THE
11 ACKNOWLEDGMENT OF HIS RIGHTS, WHAT DID YOU DO
12 NEXT?

13 A AS AN ADDITIONAL PARAGRAPH UNDER THERE WHICH I
14 READ TO HIM AT THAT TIME, IT SAYS I HAVE READ OR
15 HAD READ TO ME THE STATEMENT OF MY RIGHTS SHOWN
16 ABOVE. I UNDERSTAND WHAT MY RIGHTS ARE AND I'M
17 WILLING TO MAKE A STATEMENT. I DO NOT WANT A
18 LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT
19 I AM DOING. I KNOW THE PERSON TALKING WITH ME
20 IS A POLICE OFFICER AND I UNDERSTAND WHAT HE IS
21 TALKING ABOUT.

22 Q AND DID YOU ASK MR. GORDON TO DO ANYTHING TO
23 INDICATE THAT HE UNDERSTOOD THAT SECTION OF THE
24 FORM?

25 A THAT'S CORRECT. I ASKED HIM TO SIGN IT WHICH HE

App. 29

1 DID.

2 Q AND DID YOU DO ANYTHING AFTER HE SIGNED IT?

3 A I DID. I SIGNED IT AS A WITNESS.

4 Q NOW AT THIS POINT IN TIME AFTER YOU READ HIM

5 THESE RIGHTS AND HE SIGNED THE FORM, DID HE AT

6 ANY TIME TELL YOU EITHER HE WANTED TO REMAIN

7 SILENT OR HE WANTED AN ATTORNEY?

8 A NO, HE DID NOT.

9 Q OKAY. AND AFTER HE INDICATED THAT HE WOULD
10 SPEAK TO YOU, WHAT HAPPENED NEXT?

11 A AFTER THOSE TWO STATEMENTS WERE SIGNED BY HIM,
12 WE CARRIED ON CONVERSATION ABOUT THE EVENTS AS
13 HE WANTED TO RELATE WHAT HAD HAPPENED. AT FIRST
14 IT STARTED OUT THAT HE REALLY DON'T KNOW WHAT
15 HAD HAPPENED, DIDN'T KNOW A LOT ABOUT IT, AND
16 THEN AS WE TALKED IT BECAME APPARENT THAT HE
17 KNEW MORE AND WAS WILLING TO TELL ME MORE.

18 SUBSEQUENTLY HIS FINAL VERSION OF WHAT HAPPENED
19 I TOOK A STATEMENT AS HE TOLD ME. I TYPED WHAT
20 HE SAID. I EVEN HAD HIM SLOW DOWN AND REPEAT
21 IT. AS HE SAID IT I TRIED TO TYPE HIS WORDS.

22 Q OKAY. AND DID YOU TYPE ANY INFORMATION ABOUT
23 MR. GORDON ON THE FORM BEFORE YOU BEGAN TO TYPE
24 OUT HIS STATEMENT?

25 A THAT'S CORRECT.

App. 30

1 Q AND WHAT INFORMATION DID YOU TYPE OUT ON THE
2 FORM?

3 A I TYPED OUT HIS NAME, HIS DATE OF BIRTH, SOCIAL
4 SECURITY NUMBER, HIS ADDRESS, HIS PLACE OF
5 EMPLOYMENT AS BEING UNEMPLOYED, HIS HOME PHONE
6 NUMBER. THE FACT THAT HE COMPLETED THE NINTH
7 GRADE IN SCHOOL AND HE COULD READ AND WRITE.

8 Q THESE ARE THINGS THAT HE TOLD YOU?

9 A THAT'S CORRECT.

10 Q OKAY. AND DURING THE COURSE AND TIME THAT YOU
11 WERE TALKING TO HIM, DID HE APPEAR TO UNDERSTAND
12 THINGS THAT YOU ARE SPEAKING TO HIM ABOUT?

13 A THAT'S CORRECT.

14 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY
15 SUBSTANCE IN ANY WAY TO YOU?

16 A NO, SIR.

17 Q OKAY. AND WOULD YOU GO AHEAD AND TELL THE JUDGE
18 WHAT MR. GORDON TOLD YOU WHEN HE FINALLY GAVE
19 YOU THE FINAL STATEMENT DURING YOUR INTERVIEW
20 WITH HIM.

21 A LAST NIGHT THE 22 ABOUT 7 OR 8 P.M. I CALLED
22 JUNE BUG AND HE REFERENCED THAT TO TERRANCE
23 MCCREARY. I PAGED HIM AND ASKED HIM TO COME TO
24 MY HOUSE. I NEEDED MY AMP AND SPEAKERS AND
25 STEREO HOOKED UP IN MY CAR. MY AUNT GLORIA

APP. 31

1 WATSON, CHYENCA DIXON, FONTELLA FEELY, WILLIE
2 GORDON, AND TWO OTHER GUYS I DID NOT KNOW CAME
3 WITH JUNE BUG. THEY DID NOT STAY BUT ABOUT 30
4 MINUTES. JUNE BUG STAYED AND STARTING HOOKING
5 THE STEREO AND WE RAN OUT OF SPEAKER WIRE. ME
6 AND MY BROTHER MONTA GORDON, GARY MOFFAT, AND
7 JUNE BUG, TERRANCE MCCREARY AND ME ALL GOT INTO
8 MY CAR AND WE WENT TO TOWN. WE WENT TO
9 SOUTHLAND FIRST AND I ASKED JUNE BUG WHERE WE
10 WERE GOING TO GET THE WIRE. HE TOLD ME HIS AUNT
11 WAS NOT HOME. WE RODE AROUND IN THE MARSHALL
12 STREET AREA AS JUNE BUG SAW A BMW WITH NO LIGHTS
13 ON. HE SAID SOMETHING ABOUT THE CAR. I DID NOT
14 SEE IT AT FIRST. I WAS SITTING IN THE BACK SEAT
15 DRIVER'S SIDE. JUNE BUG WAS DRIVING. MONTA WAS
16 IN THE FRONT PASSENGER SIDE FRONT AND GARY WAS
17 IN THE BACK WITH ME. JUNE BUG SAID SOMETHING
18 LIKE, GOD DAMN, DID YOU SEE THAT BEEMER THERE.
19 I DID NOT SEE IT, BUT GARY SAID HE DID. THE
20 BEEMER PULLED INTO A DRIVEWAY. JUNE BUG PULLED
21 UP AND BLOCKED THE CAR IN. HE GOT OUT AND I GOT
22 OUT AND MY BROTHER GOT OUT. I WALKED OVER AND
23 LOOKED INTO THE BMW TO SEE WHO WAS IN IT. JUNE
24 BUG WAS ASKING THEM IF THEY HAD ANY MONEY. ALL
25 I HEARD, NO MAN, I DON'T HAVE ANY MONEY. I HAD

App. 32

1 STARTED AROUND THE BACK OF THE BMW AND THEY
2 STARTED BACKING UP AND JUNE BUG WAS STANDING
3 THERE WITH THE GUN IN HIS HAND. WHEN THEY
4 STARTED BACKING UP JUNE BUG KEPT SAYING, GET OUT

5 OF THE CAR AND HE SAID THIS A BUNCH OF TIMES.
6 THEY KEPT BACKING UP JUST ENOUGH TO WHEEL AROUND
7 TO LEAVE AND THAT WAS WHEN JUNE BUG SHOT AT THE
8 DRIVER. THEY DROVE ON OFF AND I GOT BACK IN MY
9 CAR AND JUNE BUG WAS STILL DRIVING. WE LEFT AND
10 WENT TO MY HOUSE. ASKED JUNE BUG IF HE SHOT
11 THAT GUY. HE SAID, NO, I SHOT INTO THE AIR.
12 THE GUYS IN THE BMW KEPT ON DRIVING AND WE DID
13 NOT SEE WHERE THEY WENT BEFORE WE LEFT.

14 AFTER WE GOT BACK TO MY HOUSE, WENT INSIDE AND
15 THEY HUNG AROUND FOR ABOUT TWO TO THREE HOURS.
16 AND JUNE BUG GOT READY TO LEAVE. JUNE BUG ASKED
17 ME IF MONTA COULD DRIVE MY CAR TO TAKE HIM HOME
18 TO BOYD HILL. I TOLD HIM THAT THEY COULD TAKE
19 MY CAR BUT TO COME RIGHT BACK. THAT WAS WHEN
20 MONTA, JUNE BUG, AND GARY GOT IN MY CAR AND LEFT
21 MY HOUSE.

22 ABOUT 30 MINUTES AFTER THEY LEFT MY HOUSE JUNE
23 BUG CALLED ME AND SAID THE POLICE WAS CHASING
24 YOUR BROTHER INSIDE OF YOUR CAR. ABOUT FIVE
25 MINUTES LATER MONTA CAME FLYING DOWN THE ROAD,

App. 33

1 JUMPED OUT OF THE CAR, AND STARTED RUNNING. THE
2 POLICE WERE BEHIND HIM AND HE RAN ACROSS THE
3 YARD AND INTO SOME BUSHES. AFTER THAT ONE OF
4 THE OFFICERS ASKED ME WHO WAS DRIVING MY CAR
5 DURING THE SHOOTING. I TOLD HIM NOBODY. LATER
6 I TOLD THEM THAT JUNE BUG HAD BEEN DRIVING IT
7 ALL DAY. HE TOLD ME TO GO BACK INTO THE HOUSE
8 AND THEY WOULD BE BACK TO TALK TO ME LATER.
9 WHEN JUNE BUG CAME TO MY HOUSE HE WAS THERE
10 ABOUT AN HOUR BEFORE, JUNE BUG SHOWED ME A GUN
11 THAT HE HAD. IT WAS A CHROME .357 CALIBER.
12 JUNE BUG GOT OUT OF THE CAR AND AFTER WE BLOCKED
13 THE BMW AND SAYING THAT HE WAS GOING TO GO TAKE
14 THE CAR AND THEIR MONEY, I GOT OUT OF THE CAR TO
15 SEE IF I KNEW THE BOYS AND I WAS JUST LOOKING
16 INSIDE THE CAR AND WHICH HE INITIALED AT THE END
17 AND SIGNED IT AT THE BOTTOM.
18 Q AND DETECTIVE WALDROP, AFTER YOU TOOK THIS
19 STATEMENT FROM MR. GORDON WHAT DID YOU DO NEXT?
20 A THERE IS A FORM WE CALL THE NOTARY PAGE THAT
21 STATES PERSONALLY APPEARS BEFORE ME ANTONIO
22 GORDON WHO DEPOSES AND SAYS THAT I MAKE THIS
23 STATEMENT OF MY OWN FREE WILL AND ACCORD,
24 WITHOUT A REWARD OR A HOPE OF A REWARD. I'VE
25 NOT BEEN MISTREATED OR THREATENED IN ANY WAY.

App. 34

1 ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH,
2 AND NOTHING BUT THE TRUTH SO HELP ME GOD. AT
3 THAT TIME I ASKED MR. ANTONIO GORDON, AS A
4 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA,
5 TO RAISE HIS RIGHT HAND AND I ASKED HIM IF IT'S
6 THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
7 TRUTH THAT THE STATEMENT HE JUST GAVE ME AND HE
8 INDICATED IT WAS. HE SIGNED THE NOTARY PAGE AND
9 I SIGNED IT AND ALSO NOTORIZED IT AS A NOTORIZED
10 STATEMENT.

11 Q AND DETECTIVE WALDROP, WHAT TIME DID YOU START
12 TALKING TO ANTONIO GORDON, IS THAT INDICATED ON
13 THE FORM AS WELL?

14 A I ACTUALLY STARTED TAKING THE WRITTEN STATEMENT
15 AT ABOUT I'D SAY 10:55 ACCORDING TO THE THING,
16 BUT WHAT TIME I ACTUALLY WENT AND STARTED
17 TALKING TO HIM, I'M NOT SURE. SOMETIME BETWEEN
18 10:15 AND 10:30.

19 Q AND IS THE STATEMENT THAT YOU HAVE WITH YOU ON
20 THE STAND UP THERE STATE'S EXHIBIT THREE FOR
21 IDENTIFICATION IS THAT THE STATEMENT YOU TOOK
22 FROM ANTONIO GORDON?

23 A THAT IS CORRECT.

24 Q DOES IT APPEAR THE SAME AS IT DID THE MORNING
25 YOU TOOK IT ON JULY 23 OF LAST YEAR?

App. 85

1 DIFFERENT SECTIONS BECAUSE SHE LIED TO YOU
2 THROUGH THE FIRST PART OF IT THEN YOU'RE SAYING
3 SHE WENT BACK IN AS I REMEMBER THE STATEMENT AND
4 CHANGED SOME THINGS.

5 A THE FIRST OR SECOND STATEMENT?

6 Q IN THE SECOND STATEMENT.

7 A I HAVE TO LOOK AT IT AND SEE IT TO SEE WHAT YOU
8 ARE TALKING ABOUT.

9 Q I'M GOING TO GIVE IT TO YOU.

10 A OKAY.

11 Q I DON'T WANT YOU TO GO WITHOUT LOOKING AT IT.

12 A THANK YOU.

13 Q NOW DIDN'T SHE GIVE YOU A SUMMARY AND IT DOESN'T
14 IMPLICATE ANTONIO GORDON. IT IMPLICATES ANTONIO
15 COUSAR OR SOMETHING LIKE THAT?

16 A COUSAR.

17 Q IS THAT HOW THEY SAY THAT, WHATEVER.

18 A THIS IS HER SECOND STATEMENT.

19 Q THIS IS HER SECOND STATEMENT I BELIEVE. IS THAT
20 HER SECOND STATEMENT? I DON'T KNOW.

21 A THIS IS HER SECOND STATEMENT.

22 Q THAT'S WHAT I UNDERSTAND IT TO BE. THEN SHE'S
23 GOES BACK IN AND SAYS IN THE PARAGRAPH I LIED
24 IN MY FIRST STATEMENT BECAUSE I KNEW TERRANCE
25 SHOT THE BOY AND I DIDN'T WANT TO SEE HIM GO TO

App. 86

1 JAIL AND ALSO BECAUSE THE CAR BELONGS TO MY
2 BOYFRIEND AND I DIDN'T WANT HIM TO GET IN ANY
3 TROUBLE.

4 A RIGHT.

5 Q TERRANCE SOMETHING JUST GOT A GOLD SOMETHING OR
6 OTHER?

7 A A RACK.

8 Q RACK. AND THEN SHE WENT BACK IN AND CHANGED AND
9 ADDED ANOTHER PARAGRAPH, RIGHT?

10 A THAT'S RIGHT.

11 Q DID SHE SIGN EACH ONE OF THOSE PARAGRAPHS?

12 A YES.

13 Q OR DID SHE JUST SIGN?

14 A SHE INITIALED HERE.

15 Q ALL RIGHT.

16 A OKAY. AND THEN SHE SIGNED THERE. OBVIOUSLY SHE
17 SIGNED THERE.

18 Q ALL RIGHT. SO ACTUALLY I WAS WRONG. SHE
19 ACTUALLY CHANGED IT, YEAH, SHE DID CHANGE IT TWO
20 TIMES AFTER THE INITIAL PARAGRAPH.

21 A AND I THINK I CAN ANSWER TWO OF YOUR QUESTIONS
22 AT THE SAME TIME BUT GO AHEAD.

23 Q GO AHEAD AND ANSWER THE QUESTIONS.

24 A WHAT YOU'RE ASKING IS WHY SHE WAS BELIEVABLE
25 WHEN OBVIOUSLY IN HER STATEMENT THERE WOULD BE

App. 87

1 WHAT WOULD APPEAR TO YOU TO BE INCONSISTENCIES.
2 ONE BEING THAT I CAN POINT OUT COUSAR, ANTONIO
3 COUSAR. FIRST NAME ANTONIO AND THE SECOND NAME
4 COUSAR, OKAY. AND WE ALREADY KNEW ABOUT ANTONIO
5 GORDON. ALL RIGHT.

6 Q WHAT DID YOU KNOW ANTONIO GORDON?

7 A WELL, GO BACK TO THE FIRST STATEMENT. WHAT'S
8 HER FIRST STATEMENT?

9 Q HER FIRST STATEMENT?

10 A YEAH.

11 Q SURE.

12 A LOOK IN THIS STATEMENT HERE SHE MENTIONS MY
13 BOYFRIEND IS ANTONIO GORDON.

14 Q RIGHT.

15 A OKAY. SO I KNOW THAT WHEN I'M INTERVIEWING HER,
16 ALL RIGHT. I ALSO KNOW SHE'S LYING THROUGH THIS
17 STATEMENT HERE.

18 Q HOW DO YOU KNOW THAT?

19 A THAT'S WHY I INTERVIEWED HER A SECOND TIME, SIR.

20 Q HOW DID YOU KNOW SHE WAS LYING TO CAUSE YOU TO
21 INTERVIEW HER A SECOND TIME?

22 A BECAUSE ALL I CAN TELL YOU IS I DIDN'T BELIEVE
23 HER BASED ON MY EXPERIENCE. AND SHE GAVE A VERY
24 SHORT STATEMENT WHEN A LOT MORE WENT ON BUT
25 OBVIOUSLY BY HER FIRST STATEMENT SHE KNEW QUITE

App. 88

1 A BIT ABOUT THIS. THERE IS TELLTALE SIGNS
2 THERE.

3 Q BUT SHE DIDN'T HAVE ANY DIRECT INFORMATION THAT
4 SHE KNEW?

5 A KNEW WHAT?

6 Q KNEW ANYTHING ELSE JUST IT WAS YOUR HUNCH?

7 A WELL, I THINK WHEN I TOOK THIS STATEMENT FROM
8 HER, I KNEW SHE KNEW.

9 Q AND THEN YOU GOT INTO THE SECOND STATEMENT AND
10 SHE LIED IN THE FIRST PART OF THE SECOND
11 STATEMENT AND THEN STARTED MAKING CHANGES AT THE
12 BOTTOM HALF?

13 A BUT YOU ASKED ME HOW I WOULD HAVE KNOWN ANYTHING
14 ABOUT ANTONIO GORDON AND THAT'S WHY WE BROUGHT
15 OUT THIS FIRST STATEMENT HERE AND THAT'S BECAUSE
16 SHE TOLD ME HER BOYFRIEND WAS ANTONIO GORDON AND
17 THEN IN HER SECOND STATEMENT SHE MENTIONED
18 ANTONIO GORDON AGAIN AND THEN WENT ON TO TRY TO
19 BLAME IT ON ANTONIO COUSAR AND DOWN HERE
20 TERRANCE MCCREARY. EVERYBODY EXCEPT ANTONIO
21 GORDON, OKAY, AND THAT'S HER BOYFRIEND. SO IT
22 WOULD OCCUR TO ME AS AN INVESTIGATOR, COULD SHE
23 TRY TO PROTECT HER BOYFRIEND.

24 Q WHY DIDN'T YOU GO GET AN ARREST WARRANT AS
25 OPPOSED TO IMMEDIATELY GOING OUT THERE AND

Apr. 89

1 ARRESTING HIM WITHOUT A WARRANT?

2 A WELL, FIRST OF ALL, SIR, I DIDN'T GO OUT AND
3 ARREST THEM. AS I STATED BEFORE THAT WAS
4 HANDLED BY CAPTAIN CABINESS. SECOND OF ALL, ON

5 A CASE SUCH AS THIS WITH THE SERIOUSNESS OF IT
6 AND SO ON I WOULD SAY TIME IS OF THE ESSENCE.

7 ONCE YOU HAVE PROBABLE CAUSE TO GO TRY AND

8 ARREST THESE PEOPLE AND PUT THEM IN JAIL, THAT'S

9 WHY HE DIDN'T WAIT AROUND FOR AN ARREST WARRANT

10 AND HE DIDN'T HAVE TO LEGALLY EITHER SO.

11 Q I'LL LEAVE THAT FOR THE COURT TO DECIDE.

12 A OKAY.

13 Q NOW ANTONIO HAD A BOND HEARING THAT DAY, DID HE
14 NOT ON THE 23?

15 A NOW WE HAVE TO REFER TO THE PAPERWORK.

16 MR. D'AGOSTINO: I'D LIKE TO HAVE THIS MARKED
17 FOR IDENTIFICATION.

18 (DEFENDANT'S EXHIBIT ONE BOND PAPERS MARKED FOR
19 IDENTIFICATION.)

20 Q I HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S
21 ONE FOR IDENTIFICATION. THAT'S A COPY OF HIS
22 BOND PAPERS WAIVING HIM ON UP TO GENERAL
23 SESSIONS AND HAVE TO SET HIS BOND, RIGHT?

24 A RIGHT.

25 Q IS THAT RIGHT?

App. 28

1 A DO THEY HAVE TO SET THE BOND, RIGHT.

2 Q THOSE ARE THE PAPERS RELATING TO BOND JULY 23,
3 1998.

4 A NOTICE OF INITIAL APPEARANCE DIRECTING HIM TO
5 APPEAR ON AUGUST 28.

6 Q RIGHT. AND THAT WAS SIGNED ON JULY 23, 1998,
7 CORRECT?

8 A THAT'S RIGHT.

9 Q AND THIS WOULD HAVE BEEN GIVEN TO HIM AT THE
10 TIME HE HAD HIS BOND HEARING?

11 A BY JUDGE LONG ON JULY 23, 1998.

12 Q RIGHT.

13 MR. D'AGOSTINO: I'D LIKE TO MAKE THIS PART OF
14 THE RECORD, BUT I DON'T WANT TO WAIVE ANY RIGHTS
15 FOR MOTIONS AT THE CLOSE OF THE STATE'S CASE BUT
16 SINCE IT'S JUST A PRE-TRIAL MATTER I SUBMIT I
17 CAN DO THAT WITHOUT.

18 THE COURT: BE ADMITTED. ANY OBJECTION.

19 MR. ANTHONY: NO, THERE IS NO OBJECTION.

20 Q DO YOU KNOW THE WHOLE TIME THAT ANTONIO WAS
21 THERE FROM THE TIME OFFICER WALDROP FINISHED TO
22 THE TIME YOU STARTED WITH HIM, WAS HE GIVEN
23 LUNCH OR WAS HE GIVEN THE OPPORTUNITY TO GO TO
24 THE RESTROOM OR ANYTHING OF THAT NATURE?

25 A I CAN'T ANSWER THAT.

App. 91

1 Q WHEN YOU WERE TAKING ANTONIO'S STATEMENT, DID
2 YOU HAVE YOUR WEAPON WITH YOU, ON YOU?

3 A I WOULD HAVE, YES, SIR.

4 Q YOU WOULD HAVE?

5 A YUP.

6 Q AND THE ROOM WHERE OFFICER WALDROP TOOK THIS
7 STATEMENT, THAT CONFERENCE ROOM, IS THAT THE
8 SHIFT CHANGE ROOM AS WELL?

9 A NO, SIR.

10 Q IT'S NOT?

11 MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I
12 HAVE. THANK YOU VERY MUCH, OFFICER THICKENS.

13 MR. ANTHONY: JUST BRIEFLY.

14 REDIRECT EXAMINATION BY MR. ANTHONY:

15 Q OFFICER THICKENS, AFTER YOU FINISHED TAKING YOUR
16 STATEMENT FROM MR. GORDON, WHERE DID YOU TAKE
17 HIM?

18 A I BELIEVE HE WAS ESCORTED OUT OF THE DETECTIVE
19 DIVISION, BUT I DIDN'T TAKE HIM ANYWHERE MYSELF.

20 Q WHERE WOULD HE HAVE BEEN TAKEN EVENTUALLY?

21 A HE WOULD HAVE MOST LIKELY BE ESCORTED PROBABLY
22 BACK TO THE HOLDING FACILITY AT THAT POINT.

23 Q AND THAT'S ALL THE QUESTIONS I HAVE. I WOULD
24 MOVE THE STATEMENT INTO EVIDENCE AS STATE'S
25 EXHIBIT NUMBER FOUR FOR THE HEARING. I BELIEVE

App. 92

1 I NEGLECTED TO DO THAT.

2 THE COURT: ANY OBJECTION?

3 MR. D'AGOSTINO: WITH THE SAME LIMITATION FOR
4 THIS HEARING ONLY.

5 THE COURT: BE RECEIVED. ALL RIGHT. YOU CAN
6 STEP DOWN. THANK YOU FOR YOUR TIME. YOU CAN BE
7 EXCUSED. CALL YOUR NEXT WITNESS.

8 MR. ANTHONY: WE CALL OFFICER TRIPP.

9 THE COURT: LET'S TAKE A BREAK.

10 (THE COURT'S IN RECESS AT 3:42.)

11 (COURT RESUMES AT 3:50.)

12 THE COURT: LET THE RECORD REFLECT MR.
13 D'AGOSTINO AND MR. GILLEN AND THEIR CLIENTS MR.
14 GORDON AND MR. MCCREARY ARE PRESENT.

15 MR. ANTHONY: WE'RE READY TO CALL OUR NEXT
16 HEARING OFFICER TRIPP.

17 KENYATTA TRIPP, BEING
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. ANTHONY:

20 Q COULD YOU STATE YOUR FULL NAME?

21 A KENYATTA TRIPP.

22 Q AND MR. TRIPP, HOW ARE YOU EMPLOYED?

23 A ROCK HILL CITY STREET POLICE OFFICER.

24 Q HOW LONG HAVE YOU WORKED AT THE POLICE
25 DEPARTMENT IN THAT ROLE?

App. 93

1 A JUST A LITTLE OVER FIVE YEARS.

2 Q AND WERE YOU WORKING BACK ON JULY 24 OF LAST
3 YEAR?

4 A YES, SIR, I WAS.

5 Q AND TELL THE COURT WHAT YOU HEARD AROUND 4:30 IN
6 THE AFTERNOON OF JULY 24 OF LAST YEAR?

7 A IT WAS ABOUT 4:30 THAT I WAS AT THE POLICE
8 DEPARTMENT TAKING A REPORT FOR SOMEONE IN THE
9 LOBBY IN REFERENCE TO SOMETHING, DIFFERENT THAN
10 THIS CASE HERE, AND I WAS WRITING A REPORT UP
11 AND I HAD OVERHEARD A SMALL PORTION OF A
12 CONVERSATION WHEN LIEUTENANT THICKENS WAS
13 PRESENT AS WELL AS A YOUNG GUY, I DIDN'T KNOW
14 WHO HE WAS AT THAT TIME, WAS TALKING WITH SOME,
15 I DON'T KNOW IF IT WAS FAMILY MEMBERS OR FRIENDS
16 OR EXACTLY WHO ANYBODY WAS THERE. A WOMAN HAD
17 ASKED THE YOUNG MAN, WHY DID YOU SHOOT THAT BOY,
18 PRETTY MUCH IN THOSE SAME WORDS, AND HE HAD
19 RESPONDED BY SAYING THAT HE DIDN'T HAVE THE GUN
20 AT FIRST, BUT THAT IT WAS GIVEN TO HIM AND HE
21 DID IT BECAUSE HE FELT IF HE DIDN'T AND THE
22 PEOPLE, HIS FRIENDS THAT WERE WITH HIM, WERE
23 GOING TO SHOOT HIM IF HE DIDN'T DO WHAT THEY
24 TOLD HIM TO DO WITH IT.

25 Q AND DID YOU COME TO FIND OUT WHO THE YOUNG MAN

App. 94

1 WHO MADE THE STATEMENT WAS?

2 A YES, SIR, I DID.

3 Q AND WHO MADE THE STATEMENT?

4 A ANTONIO GORDON.

5 Q THIS STATEMENT THAT YOU HEARD WAS IT, DID IT
6 INVOLVE ANY QUESTIONS AT ALL BY YOURSELF?

7 A NO, IT DIDN'T.

8 Q DID IT ANY INVOLVE ANY QUESTIONING BY ANYBODY
9 ELSE AT THE ROCK HILL POLICE DEPARTMENT OR ANY
10 OTHER EMPLOYEES AT THE ROCK HILL POLICE
11 DEPARTMENT?

12 A NOT THAT I'M AWARE OF.

13 Q AND DID YOU DO ANYTHING TO FOLLOW UP WITH THEM?

14 A NO.

15 Q OR SPEAK TO HIM AFTER HE SAID THIS?

16 A NO, SIR, I DIDN'T. AS A MATTER OF FACT, I THINK
17 I LEFT AFTER THAT, WAS TIED UP ON WHAT I WAS
18 THERE FOR.

19 Q OKAY. THANK YOU. THAT'S ALL OF MY QUESTIONS OF
20 OFFICER TRIPP.

21 CROSS EXAMINATION BY MR. D'AGOSTINO:

22 Q OFFICER TRIPP, WHERE WERE YOU WHEN THIS
23 STATEMENT OCCURRED?

24 A THIS WAS IN THE REPORT WRITING AREA RIGHT WHERE
25 WE DO OUR REPORTS WHEN WE LIKE BRING A JUVENILE

App. 95

1 IN, THIS IS WHERE WE DO OUR JUVENILE PAPERWORK.

2 Q IS THAT BACK HALL BEHIND THE DISPATCHER ROOM?

3 A YES.

4 Q AND HOW DO YOU KNOW IT WAS ANTONIO GORDON WHO
5 SAID THIS?

6 A WELL, I DIDN'T KNOW WHO HE WAS AT THE TIME.

7 Q WELL --

8 A --BUT NOW THAT I SEE, I DID SEE HIM WHEN I WAS
9 THERE.

10 Q ALL RIGHT.

11 A AND NOW THAT I SEE HIM TODAY AND KNOW WHO HE IS
12 I REMEMBERED THAT THAT WAS HIM SITTING UP BEHIND
13 ME.

14 Q WELL, YOU KNEW IT WAS HIM BEFORE YOU SAW HIM
15 TODAY?

16 A SIR?

17 Q YOU KNEW IT WAS HIM BEFORE YOU SAW HIM TODAY.
18 HOW DID YOU KNOW AT THE TIME YOU WROTE UP THE
19 SUMMARY OF WHAT YOU SAY YOU SAW OR HEARD, HOW
20 DID YOU KNOW IT WAS ANTONIO GORDON? HOW DID YOU
21 KNOW HIS NAME?

22 A I DIDN'T KNOW WHO HE WAS AT ALL. I JUST SIMPLY
23 SAID THAT IT WAS A YOUNG MAN THAT WAS BEHIND
24 ME. AT THAT TIME I HAD NEVER SEEN HIM BEFORE
25 THAT I REMEMBERED ANYWAY, DIDN'T KNOW WHAT HIS

Apr. 96

1 NAME WAS.

2 Q WHEN DID YOU FIND OUT HIS NAME?

3 A MAYBE LATER ON IN THAT DAY. I'M NOT REALLY
4 SURE.

5 Q WHO TOLD YOU HIS NAME?

6 A I CAN'T RECALL THAT EITHER. JUST HEARING ABOUT
7 THE CASE OVER AND OVER THROUGH THE NEWSPAPERS
8 AND EVERYTHING LIKE EVERYBODY ELSE HAS HEARD
9 ABOUT IT IS HOW I LEARNED ABOUT HIS NAME.

10 Q YOU SUBSEQUENTLY WROTE UP A SHORT PARAGRAPH
11 ABOUT IT, RIGHT?

12 A YES.

13 Q AND IS THAT PARAGRAPH ACCURATE?

14 A YES, IT IS.

15 Q OKAY. LET ME HAND THAT TO YOU. IS THAT WHAT
16 YOU WROTE UP?

17 A YES, SIR, IT IS.

18 Q NOW WHEN YOU DID WRITE THAT UP?

19 A IT MUST HAVE BEEN MAYBE SHORTLY AFTER 5 OR 5:30.
20 IT WAS BEFORE I WENT HOME THAT DAY AND WE WOULD
21 HAVE GONE HOME AT 6 OR 6:15.

22 Q YOU SIGNED IT ON THE 28 THOUGH?

23 A UH-HUH.

24 Q RIGHT?

25 A YES, SIR. THAT'S WHAT IT SAYS HERE.

App. 97

1 Q YOU WROTE THAT UP AS IF IT OCCURRED ON THE 24?

2 A THE 24 IS WHEN I WAS THERE.

3 Q SO THE 24 IS WHEN YOU WERE THERE?

4 A YES, SIR.

5 Q DID YOU KNOW THAT ANTONIO GORDON WAS OVER HERE
6 AT THE MOSS JUSTICE CENTER ON THE 24? WAS
7 TRANSPORTED ON THE NIGHT OF THE 23 AND WAS NEVER
8 AT THE ROCK HILL CITY DEPARTMENT?

9 A ALL I KNOW IS I HEARD A YOUNG MAN, JUST LIKE I
10 WROTE IN THE STATEMENT, WHO I LATER FOUND OUT TO
11 BE HIM MAKE THIS STATEMENT. I DIDN'T KNOW WHO
12 ANYBODY WAS AT THAT TIME.

13 Q WHAT I'M TRYING TO FIND OUT IS HOW YOU FOUND OUT
14 OR HOW YOU KNOW IT WAS THAT YOUNG MAN AND NOT
15 SOME OTHER YOUNG MAN?

16 A JUST BECAUSE HE WAS THE ONE THAT WAS SAID TO BE
17 THE SHOOTER ANYWAY FROM WHAT I UNDERSTAND.

18 Q WELL, THERE --

19 A SO THIS IS JUST BY HEARING ABOUT IT.

20 Q WELL, THERE WERE THREE OTHER BOYS INVOLVED IN
21 THIS?

22 A YES, SIR.

23 Q THEY DIDN'T COME OVER HERE UNTIL THE 24, THE
24 EVENING OF THE 24?

25 A OKAY.

App. 98

1 Q COULD IT HAVE BEEN ONE OF THEM?

2 A IF THEY WERE THE SHOOTER. I MEAN, WHAT I'M
3 TELLING, I DON'T KNOW IF I MISUNDERSTAND YOUR
4 QUESTION, I'M JUST SAYING THAT AT THE TIME I SAW

5 A YOUNG MAN THERE, HE MADE THE STATEMENT WHEN HE
6 WAS ASKED BY A FAMILY MEMBER OR A FRIEND WHY DID
7 YOU SHOOT THAT BOY, WHO I LATER ON WAS SAID TO
8 ME THAT THAT WAS THE GUY WHO HAD PULLED THE
9 TRIGGER. I DON'T KNOW WHO I FOUND OUT THAT FROM
10 OR WHEN I FOUND IT OUT OR IF IT WAS JUST MEDIA
11 OR JUST HEARING ABOUT IT OVER AND OVER AGAIN
12 BUT.

13 Q THERE IS NO DOUBT IN YOUR MIND THAT WAS ON THE
14 24?

15 A IT WAS ON THE 24 THAT I WAS AT THE LAW CENTER
16 WRITING A REPORT AND I HEARD A YOUNG PERSON BE
17 QUESTIONED BY ANOTHER PERSON WHY DID YOU SHOOT
18 THAT BOY, YES, SIR.

19 Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.
20 THANK YOU VERY MUCH, OFFICER.

21 REDIRECT EXAMINATION BY MR. ANTHONY:

22 Q AND YOU'VE LOOKED AT ANTONIO GORDON IN COURT
23 TODAY, IS THAT CORRECT?

24 A YES, SIR.

25 Q DO YOU RECOGNIZE HIM AS BEING THE PERSON WHO

App. 99

1 SAID THAT, IS THAT RIGHT?

2 A YES, SIR.

3 Q AND WHICH PERSON, DO YOU, CAN YOU POINT OUT
4 ANTONIO GORDON HERE?

5 A TO THE BEST OF MY KNOWLEDGE HE'S WEARING THE
6 BLUE SHIRT SITTING CATTY-CORNER TO ME.

7 Q AND WHEN DID YOU WRITE THIS STATEMENT UP?

8 A I THINK I WROTE IT THE DAY, ACTUALLY, I'M NOT
9 SURE IF I WROTE IT THE DAY THAT THIS HAPPENED OR
10 IF I WAS APPROACHED BY LIEUTENANT THICKENS LATER
11 WHO ASKED ME TO WRITE THIS STATEMENT. I KNOW I
12 WAS THERE THE 24, I WAS SITTING AT 4:30 AT THE
13 LAW CENTER DOING THE REPORT LIKE I HAD STATED
14 THE 24. I HAVE IT SIGNED THE 28 SO IT IS VERY
15 MUCH POSSIBLE THAT A FEW DAYS LATER I WAS ASKED
16 TO WRITE A STATEMENT IN REFERENCE TO WHAT I
17 HEARD.

18 Q AND YOU DON'T THINK IT WAS POSSIBLE YOU MIGHT BE
19 MISTAKEN ABOUT THE DATE YOU HEARD THIS ON THE
20 23?

21 MR. D'AGOSTINO: OBJECTION TO THE LEADING, YOUR
22 HONOR.

23 THE COURT: I SUSTAIN THE OBJECTION.

24 Q ARE YOU SURE ABOUT THAT DATE?

25 A I'M SURE ABOUT THE DATE THAT I WAS AT THE LAW

App. 100

1 CENTER, YES, I AM.

2 Q THANK YOU. THAT'S ALL MY QUESTIONS.

3 MR. D'AGOSTINO: YOUR HONOR, I WOULD JUST MOVE
4 FOR PURPOSES OF THIS HEARING ALONE, I'D LIKE TO
5 HAVE THIS INTRODUCED AND ENTERED INTO EVIDENCE.

6 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED. WE
7 APPRECIATE YOUR TIME ALSO. CALL YOUR NEXT
8 WITNESS.

9 MR. ANTHONY: YOUR HONOR, THE STATE WOULD OFFER
10 NO OTHER WITNESSES EXCEPT WE WOULD ASK
11 PERMISSION TO RECALL LIEUTENANT THICKENS FOR
12 JUST ONE OR TWO BRIEF QUESTIONS.

13 (DEFENDANT'S EXHIBIT NUMBER TWO FOR
14 IDENTIFICATION, STATEMENT.)

15 THE COURT: ALL RIGHT. YOU ARE STILL UNDER
16 OATH.

17 REDIRECT EXAMINATION BY MR. ANTHONY:

18 Q DETECTIVE THICKENS, WHEN YOU WERE SHOWN THE
19 INITIAL APPEARANCE AND BOND HEARING PAPERWORK
20 DURING THE CROSS EXAMINATION, DO YOU RECALL
21 THAT?

22 A I RECALL SEEING THE BOND PAPERWORK AS PART, I
23 THINK IT'S IN THE CASE FOLDER.

24 Q AND YOU WERE ALSO SHOWN BY MR. D'AGOSTINO?

25 A THE INITIAL APPEARANCE PAPER, YES, SIR, RIGHT.

App. 101

1 Q AND WHEN, IF YOU KNOW, WHEN WOULD ANTONIO
2 GORDON'S BOND HEARING HAVE BEEN HELD ON JULY 23?
3 WHAT PART OF THE DAY WOULD IT HAVE BEEN HELD?

4 A IT WOULD HAVE BEEN IN THE EVENING. AT THE EXACT
5 TIME, I DON'T KNOW, BUT IF YOU WANT ME TO
6 ESTIMATE, I WOULD ESTIMATE --

7 MR. D'AGOSTINO: YOUR HONOR, I --

8 THE COURT: I SUSTAIN THE OBJECTION.

9 MR. D'AGOSTINO: I WAS GOING TO OBJECT TO THIS
10 LINE OF QUESTIONING BECAUSE IT IS SOMETHING
11 CLEARLY HE COULD HAVE GONE INTO WHEN HE WAS UP
12 HERE EARLIER.

13 THE COURT: I'M GOING TO LET HIM BUT I SUSTAIN
14 THE OBJECTION ON THAT POINT.

15 Q YOU KNOW IT WOULD HAVE BEEN HELD IN THE EVENING?

16 MR. D'AGOSTINO: YOUR HONOR---

17 THE COURT: I SUSTAIN THE OBJECTION, THAT'S A
18 LEADING QUESTION. DON'T ANSWER THAT QUESTION.

19 Q DO YOU KNOW WHAT TIME IT WOULD HAVE BEEN HELD,
20 WITHOUT GIVING AN EXACT TIME, DO YOU KNOW WHAT
21 TIME OF DAY IT WOULD HAVE BEEN HELD?

22 MR. D'AGOSTINO: YOUR HONOR, I OBJECT.

23 THE COURT: I OVERRULE THAT OBJECTION.

24 A I WOULD ESTIMATE THAT IT WAS HELD AROUND 5:30 IN
25 THE LATE AFTERNOON.

App. 102

1 THE COURT: YOU CAN'T GIVE AN ESTIMATED VALUE,
2 I JUST GOT THROUGH SAYING YOU COULDN'T.

3 Q YOU DON'T HAVE TO, WITHOUT GIVING AN EXACT TIME,
4 JUST WOULD YOU PLEASE TELL WHAT PART OF THE DAY
5 IT WOULD HAVE BEEN HELD?

6 A IT WOULD HAVE BEEN HELD IN THE LATE AFTERNOON.

7 Q ALL RIGHT. THANK YOU. THAT'S ALL MY QUESTIONS.

8 THE COURT: DO YOU HAVE ANY QUESTIONS, MR.
9 D'AGOSTINO?

10 MR. D'AGOSTINO: NO, SIR, YOUR HONOR.

11 THE COURT: YOU CAN STEP DOWN. THANK YOU.

12 MR. ANTHONY: YOUR HONOR, THAT'S ALL THE
13 EVIDENCE THE STATE WOULD OFFER. WE WILL ASK THE
14 COURT TO TAKE NOTICE OF THE TESTIMONY THAT WAS
15 GIVEN BY CAPTAIN CABINESS ON WEDNESDAY AS PART
16 OF OUR EVIDENCE IN THE DENNO HEARING THIS
17 AFTERNOON.

18 MR. D'AGOSTINO: MAY WE APPROACH THE BENCH, YOUR
19 HONOR.

20 THE COURT: CERTAINLY.

21 (BENCH CONFERENCE.)

22 MR. D'AGOSTINO: YOUR HONOR, AS I HAD SUBPOENAED
23 TO TESTIFY TODAY SEVERAL OFFICERS FROM THE ROCK
24 HILL LAW ENFORCEMENT CENTER, AND BASICALLY THOSE
25 OFFICERS WOULD HAVE, WERE SUBPOENAED TO TESTIFY

App. 103

1 AS TO WHAT MR. WELLBORN TESTIFIED TO THAT HE DID
2 SPEAK WITH THEM, AND IT'S MY, THE STATE IS GOING
3 TO STIPULATE THAT THE OFFICER OR THAT CHRIS
4 WELLBORN DID SPEAK WITH THE DISPATCHERS AS WAS
5 TESTIFIED BY HIM, CAPTAIN CABINESS, AND CHIEF
6 FORTSON, THEREFORE, ANY CALLING OF THOSE
7 WITNESSES WOULD BE MERELY CUMULATIVE AND IT'S
8 UNNECESSARY SINCE THE STATE IS GOING TO
9 STIPULATE THAT MR. WELLBORN DID SPEAK WITH THEM
10 AND THE CONVERSATION AS HE RELATED TO THE COURT
11 DID IN FACT TAKE PLACE.

12 THE COURT: YOU AGREE WITH THAT?

13 MR. ANTHONY: THAT IS CORRECT. WE'RE NOT GOING
14 TO ARGUE THAT MR. WELLBORN DID COME TO THE LAW
15 CENTER AND DID ASK TO SPEAK TO MR. GORDON.

16 THE COURT: OKAY. I THINK THOSE WITNESSES OUGHT
17 TO BE ABLE TO BE EXCUSED.

18 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. IF WE
19 CAN GO AHEAD AND LET THEM GO. YOUR HONOR, WE
20 WOULD CALL DR. JONATHAN VENN TO THE STAND.

21 JONATHAN VENN, BEING
22 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. D'AGOSTINO:

24 Q PLEASE TELL THE COURT YOUR NAME?

25 A MY NAME IS JONATHAN VENN.

App. 104

1 Q AND WHAT DO YOU DO FOR A LIVING?

2 A I'M A PSYCHOLOGIST.

3 Q WHERE IS YOUR OFFICE?

4 A MY OFFICE IS IN COLUMBIA, SOUTH CAROLINA.

5 Q AND WHAT ARE YOUR FIELDS OF SPECIALIZATION?

6 A I SPECIALIZE IN CLINICAL PSYCHOLOGY AND FORENSIC
7 PSYCHOLOGY.

8 Q DO YOU ALSO TREAT ADULTS AND JUVENILE OFFENDERS?

9 A I EVALUATE THEM. I DON'T THINK I'M INVOLVED IN
10 ANY TREATMENT AT THIS TIME.

11 Q DO YOU HOLD ANY LICENSES?

12 A YES, I DO. I'M LICENSED IN THE STATE OF SOUTH
13 CAROLINA AND I'M ALSO LICENSED IN THE STATE OF
14 MARYLAND.

15 Q AND ARE YOU BOARD CERTIFIED? DO YOU HOLD ANY
16 BOARD CERTIFICATIONS?

17 A YES, I'M CERTIFIED BY THE AMERICAN BOARD OF
18 PROFESSIONAL PSYCHOLOGY AND CLINICAL PSYCHOLOGY
19 AND IN FORENSIC PSYCHOLOGY.

20 Q AND ARE YOU ALSO A DIPLOMAT IN NEUROPSYCHOLOGY
21 AND AMERICAN BOARD OF PSYCHOLOGICAL SPECIALTIES,
22 DID YOU RECEIVE THAT IN 1998?

23 A YES, I DID.

24 Q WHAT OTHER LICENSES OR?

25 A I'M ALSO CERTIFIED BY THAT BOARD IN CHILD

App. 125

1 PSYCHOLOGY, DISABILITY EVALUATION, TRAUMA, AND
2 POST TRAUMATIC STRESS DISORDER.

3 Q TELL THE COURT A LITTLE BIT ABOUT YOUR EDUCATION
4 AND YOUR TRAINING?

5 A I HAVE A PH.D IN CLINICAL PSYCHOLOGY FROM
6 NORTHWESTERN UNIVERSITY IN CHICAGO, ILLINOIS. I
7 COMPLETED THREE YEARS OF TRAININGSHIPS IN
8 VETERAN HOSPITALS INCLUDING AN INTERNSHIP IN
9 CLINICAL PSYCHOLOGY.

10 Q AND DID YOU, TELL US ABOUT YOUR EMPLOYMENT
11 HISTORY?

12 A WELL, AFTER LEAVING SCHOOL I WAS COMMISSIONED AS
13 AN OFFICER IN THE UNITED STATES NAVAL RESERVE
14 AND I WAS ON ACTIVE DUTY FOR THE NEXT FOUR
15 YEARS. I SPENT MOST OF THAT TIME ON OKINAWA AT
16 A NAVAL HOSPITAL AND THEN AT A MARINE CORPS
17 BASE. UPON RETURNING TO THE STATES, WELL, THEN
18 I TAUGHT FOR THE UNIVERSITY OF MARYLAND FOR A
19 YEAR IN GERMANY. UPON RETURNING TO THE STATES,
20 I TOOK A POSITION WITH THE BALTIMORE GAS AND
21 ELECTRIC COMPANY. I WORKED FOR THEM FOR FOUR
22 YEARS. THEN WE RELOCATED TO SOUTH CAROLINA. I
23 WAS A FORENSIC PSYCHOLOGIST AT THE WILLIAM S.
24 HALL PSYCHIATRIC INSTITUTE FOR A YEAR AND THEN I
25 TRANSFERRED TO THE DEPARTMENT OF JUVENILE

App. 106

1 JUSTICE WHERE I WORKED FOR THE NEXT EIGHT YEARS.

2 I'VE BEEN IN FULL TIME PRIVATE PRACTICE SINCE
3 1997.

4 Q ARE YOU AN ADJUNCT PROFESSOR ANYWHERE?

5 A YES, I AM. I AM AN ADJUNCT PROFESSOR AT THE
6 UNIVERSITY OF SOUTH CAROLINA.

7 Q AND DO YOU ALSO WORK WITH THE CHRISTIAN
8 COUNSELING OF COLUMBIA, IS THAT WHERE YOU WORK
9 NOW?

10 A YES. I'M THE PRESIDENT OF CHRISTIAN COUNSELING
11 OF COLUMBIA.

12 Q AND HAVE YOU BEEN CERTIFIED AS AN EXPERT OR
13 GIVEN EXPERT TESTIMONY IN OTHER CASES?

14 A YES, I HAVE.

15 Q ALL RIGHT. IN GENERAL SESSIONS HAVE YOU BEEN
16 CERTIFIED AS AN EXPERT IN ADULT CRIMINAL CASES?

17 A YES, I HAVE.

18 Q AND FAMILY COURT, HAVE YOU ALSO BEEN QUALIFIED
19 AS AN EXPERT?

20 A YES, I HAVE.

21 Q IN UNITED STATES FEDERAL COURT IN CIVIL CASES?

22 A YES, I HAVE.

23 Q AND HOW ABOUT COURT OF COMMON PLEAS IN SOUTH
24 CAROLINA?

25 A YES, I'VE ALSO BEEN QUALIFIED AS AN EXPERT IN

App. 107

1 THE COURT OF COMMON PLEAS.

2 Q YOU ALSO, HAVE YOU ALSO PUBLISHED IN YOUR
3 CAREER, DURING YOUR CAREER?

4 A YES, I HAVE.

5 Q LET ME HAND YOU SO THAT WE DON'T GO THROUGH ALL
6 OF THESE. IS THAT A COPY, CURRENT COPY OF YOUR
7 C.V. RESUME?

8 A THIS IS THE JUNE COPY.

9 Q ALL RIGHT. HAVE THERE BEEN ANY ADDITIONS?

10 A I THINK I'VE TESTIFIED A COUPLE MORE TIMES IN
11 THE PAST MONTH.

12 Q OKAY. AND DO YOU HAVE ANY PUBLICATIONS THAT
13 WOULD STAND OUT OR ANYTHING THAT WOULD BE ON THE
14 ISSUES OF CHILD PSYCHOLOGY, PSYCHOLOGICAL
15 EVALUATION OF JUVENILE OFFENDERS, HAVE YOU DONE
16 ANY WORK IN THAT AREA?

17 A I DON'T THINK I'VE PUBLISHED IN THAT AREA.

18 Q ALL RIGHT. LET ME HAVE THIS MARKED AS
19 DEFENDANT'S NUMBER THREE.

20 (DEFENDANT'S EXHIBIT NUMBER THREE, C.V., MARKED
21 FOR IDENTIFICATION.)

22 MR. D'AGOSTINO: FOR THIS HEARING SO I DON'T
23 HAVE TO GO THROUGH ALL YOUR PUBLICATIONS AND ALL
24 THE OTHER QUALIFICATIONS, I MOVE TO INTRODUCE
25 DEFENDANT'S EXHIBIT NUMBER THREE, YOUR HONOR.

App. 108

1 THE COURT: OKAY. ANY OBJECTION?

2 MR. THOMPSON: NO, YOUR HONOR.

3 THE COURT: BE RECEIVED.

4 MR. D'AGOSTINO: AT THIS TIME I ASK THE COURT TO

5 QUALIFY DR. VENN AS AN EXPERT IN CLINICAL AND
6 FORENSIC PSYCHOLOGY.

7 THE COURT: ANY VOIR DIRE BY THE STATE?

8 MR. THOMPSON: YES, YOUR HONOR, IF I COULD. I
9 BELIEVE I DON'T HAVE ANY QUESTIONS.

10 THE COURT: I FIND HE'S QUALIFIED IN BOTH
11 FORENSIC AND CLINICAL PSYCHOLOGY.

12 Q DID YOU HAVE OCCASION TO EVALUATE ANTONIO
13 GORDON?

14 A YES, I DID.

15 Q AND WAS THAT IN COLUMBIA AND WAS THAT RECENTLY?

16 A THAT WAS ON JULY 6 AT MY OFFICE IN COLUMBIA.

17 Q WHAT DID YOU DO DURING YOUR EVALUATION? WHAT
18 DID IT CONSIST OF?

19 A I TALKED TO MR. GORDON, I REVIEWED HIS
20 UNDERSTANDING OF MIRANDA RIGHTS. I REVIEWED
21 ISSUES RELEVANT TO HIS COMPETENCY TO STAND
22 TRIAL. I GAVE HIM A IQ TEST AND A MEMORY TEST
23 AND A TEST OF SUGGESTIBILITY.

24 Q NOW WHAT IQ TEST DID YOU USE?

25 A I USED THE WECHSLER ADULT INTELLIGENCE SCALE

Exhibit 1 App. 109

1 THIRD EDITION.

2 Q AND WOULD YOU BRIEFLY EXPLAIN OR JUST EXPLAIN
3 WHAT THAT TEST CONSISTS OF FOR THE COURT?
4 EXPLAIN WHAT IT IS AND WHAT IT MEASURES?

5 A THE WECHSLER ADULT INTELLIGENCE SCALE IS THE
6 MOST COMPREHENSIVE TEST OF INDIVIDUAL
7 INTELLIGENCE AVAILABLE. IT'S A BROAD BASED
8 TEST. IT CONSISTS OF 11 SEPARATE TESTS, SOME OF
9 WHICH INVOLVE THE INDIVIDUAL'S ABILITY TO SPEAK
10 WORDS AND SOME OF HIS ABILITY TO USE HIS HANDS
11 AND EYES TO SOLVE VISUAL PROBLEMS AND MOTOR
12 PROBLEMS, SO IT'S A VERY BROAD BASE TEST OF
13 INTELLIGENCE.

14 Q DID YOU GIVE THE, I BELIEVE WE HEARD SOME
15 TESTIMONY THAT THERE IS WECHSLER'S TEST FOR
16 CHILDREN AND ONE FOR THE ADULTS AS WELL, DID YOU
17 GIVE THE ONE FOR CHILDREN OR ADULTS?

18 A I GAVE THE ONE FOR ADULTS. I ALSO GIVE HIM A
19 READING TEST, EXCUSE ME. I ALSO TESTED HIS
20 READING ABILITY.

21 Q NOW AT THE TIME YOU EXAMINED ANTONIO GORDON DID
22 YOU HAVE OR DO YOU HAVE OR HAVE YOU REVIEWED ANY
23 OF THE PSYCHOLOGICAL EVALUATIONS BY THE
24 DEPARTMENT OF JUVENILE JUSTICE.

25 A NO, I HAVE NOT.

Exhibit 1

App. 110

1 Q AND YOU WEREN'T PROVIDED WITH ANY OF THOSE SO
2 YOU WERE DOING YOUR TESTS ALL ON YOUR OWN?

3 A YES, SIR, THAT'S CORRECT.

4 Q WHAT DID HE SCORE ON THE IQ TEST?

5 A HE SCORED AN IQ OF 68.

6 Q NOW YOU ALSO PERFORMED A MEMORY TEST, DESCRIBE
7 THAT FOR THE COURT?

8 A I GAVE ANTONIO THE LOGICAL MEMORY SUBTEST OF THE
9 WECHSLER MEMORY SCALE THIRD EDITION. IT
10 INVOLVES READING A COUPLE OF PARAGRAPHS TO THE
11 INDIVIDUAL THEN HAVING HIM RECITE FROM MEMORY
12 WHAT I READ TO HIM. ONE OF THE PARAGRAPHS IS
13 REPEATED ONCE SO IT GIVES TWO EXPOSURES TO THE
14 SAME MATERIAL TO SEE IF MORE WILL BE REMEMBERED
15 AFTER THE SECOND READING, AND THEN AFTER
16 APPROXIMATELY 25 MINUTE DELAY YOU ASK THE PERSON
17 AGAIN WHAT WERE THE STORY I READ TO YOU 25
18 MINUTES AGO, SO THERE IS AN IMMEDIATE MEMORY
19 SCORE AND A DELAYED MEMORY SCORE.

20 Q WHAT WAS HIS SCORE ON THAT?

21 A HIS MEMORY SCORES WERE VERY LOW. HE'S AT THE
22 SECOND PERCENTILE.

23 Q ABOUT HOW ABOUT HIS READING SCORES? I THINK YOU
24 TESTIFIED, I DON'T MEAN TO JUMP BACK BUT YOU
25 TESTIFIED YOU ALSO GAVE HIM A READING SCORE, THE

Exhibit 1

App. 111

1 IQ?

2 A YES, I GAVE HIM A READING TEST.

3 Q WHAT DOES IT SHOW AS FAR AS HIS READING LEVEL?

4 A HIS READING LEVEL IS AT THE THIRD GRADE LEVEL.

5 Q NOW GOING BACK TO THE MEMORY TEST, WAS THERE
6 ANYTHING ELSE, WHAT IS THE SIGNIFICANCE OF THE
7 MEMORY TEST?

8 A IT'S A TEST OF A PERSON'S ABILITY TO REMEMBER
9 THINGS THAT ARE SAID TO THEM. IT INDICATES THAT
10 ANTONIO'S ABILITY TO REMEMBER THINGS THAT HE
11 HEARS IS VERY LOW.

12 Q AND YOU ALSO GAVE HIM A SUGGESTIBILITY TEST, I
13 BELIEVE?

14 A YES, I DID.

15 Q WHAT IS THAT FOR AND WHAT DOES IT TELL YOU?

16 A THE SUGGESTIBILITY TEST IS INTENDED TO REFLECT
17 HOW EASILY A PERSON CAN BE SUGGESTED OR
18 MANIPULATED INTO SAYING SOMETHING THAT THEY HAVE
19 NO BASIS FOR SAYING.

20 Q WHAT DID YOU FIND WITH REGARD TO THAT TEST WITH
21 ANTONIO?

22 A HE'S VERY SUGGESTIBLE. HE OBTAINED A VERY HIGH
23 SCORE.

24 Q NOW WITH REGARD TO THE TESTS, ARE THERE ALSO
25 FLAGS OR INDICATORS TO TELL YOU WHETHER ANTONIO

*Exhibit 1**App. 112*

1 IS MALINGERING OR IS TRYING TO INCREASE HIS,
2 MAKING HIM LOOK WORSE OR SOMETHING LIKE THAT?
3 DID YOU SEE ANY OF THAT?

4 A NO, I DID NOT. I THINK I DID GIVE A MALINGERING
5 TEST. IF I CAN BEG THE COURT'S INDULGENCE.
6 YES, I ALSO GAVE A MALINGERING TEST.

7 Q WHAT DID THAT DEMONSTRATE?

8 A HE PASSED IT. HE DID FINE. THERE IS NO
9 INDICATION HE WAS TRYING TO PRETEND TO HAVE
10 MEMORY PROBLEMS.

11 Q COULD YOU DESCRIBE FOR THE COURT ANTONIO'S
12 INTELLECTUAL ABILITIES AS FAR AS, YOU KNOW,
13 OPPOSED TO AN AVERAGE CITIZEN OR AVERAGE
14 INDIVIDUAL IN SOCIETY. WHERE WOULD HE FIT IN?

15 A WELL, HIS INTELLECTUAL ABILITY IS VERY LOW. HIS
16 IQ SCORE IS AT THE SECOND PERCENTILE, SO IF YOU
17 TOOK CROSS SECTION OF 100 CITIZENS HE'D BE THE
18 THIRD FROM THE BOTTOM.

19 Q WITH REGARD TO, DID YOU ALSO LOOK TO SEE, TRY TO
20 ASCERTAIN WHETHER ANTONIO WAS MENTALLY OR IS
21 MENTALLY RETARDED?

22 A I TRIED TO GET SOME INFORMATION ABOUT THAT.

23 Q WHAT VARIOUS FACTORS DO YOU HAVE TO LOOK AT TO
24 ASCERTAIN WHETHER SOMEONE IS MENTALLY RETARDED?

25 A WELL, THE DIAGNOSIS OF MENTAL RETARDATION IN AN

App. 113

1 INDIVIDUAL HIS AGE IS BASED UPON THE IQ SCORE
2 AND ADAPTIVE BEHAVIOR. THAT IS, HOW ARE THEY
3 FUNCTIONING IN THE WORLD.

4 Q AND DID YOU TRY TO FIND OUT HOW HE FUNCTIONS IN
5 THE WORLD?

6 A YES, I TRIED TO.

7 Q DID YOU TRY TO TALK TO FAMILY MEMBERS ABOUT
8 THAT?

9 A YES, I TALKED TO HIS GRANDFATHER THIS MORNING TO
10 TRY TO GET SOME INFORMATION ABOUT THAT.

11 Q WERE YOU ABLE TO GET ENOUGH INFORMATION TO COME
12 TO AN OPINION AS TO WHETHER HE WAS MENTALLY
13 RETARDED OR NOT.

14 A NO, I WAS NOT ABLE TO COME TO AN OPINION.

15 Q AS FAR AS THERE ARE TWO FACTORS YOU SAID BECAUSE
16 ANTONIO IS UNDER THE AGE OF 18, AS FAR AS THE
17 FIRST FACTOR, DOES HE FALL WITHIN THE
18 CHARACTERIZATION OF MENTALLY RETARDED HIS IQ
19 BEING LOW?

20 A YES, HE DOES.

21 Q NOW YOU SAT THROUGH THE TESTIMONY AND YOU HEARD
22 THE OFFICERS TESTIFY ABOUT HOW THEY READ ANTONIO
23 HIS RIGHTS, DID YOU NOT?

24 A I CAME IN DURING ONE OFFICER'S TESTIMONY, BUT
25 YES, I HEARD THAT HE HAD BEEN READ HIS RIGHTS.

App. 1/4

1 Q DO YOU HAVE AN OPINION WITHIN A REASONABLE
2 DEGREE OF CERTAINTY AS TO WHETHER ANTONIO WOULD
3 UNDERSTAND HIS MIRANDA RIGHTS?

4 A YES, I DO.

5 Q WHAT IS YOUR OPINION?

6 A I DO NOT BELIEVE HE UNDERSTANDS HIS MIRANDA
7 RIGHTS.

8 Q IF YOU CAN EXPLAIN THAT FOR THE COURT?

9 A I ASKED ANTONIO A SERIES OF QUESTIONS TO SEE IF
10 HE UNDERSTOOD HIS MIRANDA RIGHTS, AND I WAS NOT
11 SATISFIED THAT DID HE IN FACT UNDERSTAND THEM
12 PARTICULARLY HIS RIGHT TO HAVE AN ATTORNEY. HE
13 DID NOT UNDERSTAND HOW AN ATTORNEY CAN BE
14 HELPFUL TO HIM IN A PRE-INTERROGATION SITUATION.

15 Q AND WITH REGARD TO, YOU SPENT SOME TIME TALKING
16 TO ANTONIO THAT DAY HE CAME DOWN THERE, DID YOU
17 NOT?

18 A YES, I DID.

19 Q WHAT WERE SOME OF THE LARGEST OR MOST COMPLEX
20 WORDS THAT HE USED?

21 A WELL, HE USED THE WORD CONFLICT. HE USED THE
22 WORD DEFEND. HE KNEW THAT THE PUBLIC DEFENDER
23 WAS NOT DEFENDING HIM BECAUSE OF A CONFLICT,
24 AND HE USED THOSE WORDS BUT HE COULD NOT EXPLAIN
25 THEM.

App. 121

1 A CONSISTS OF ASKING INDIVIDUALS A SERIES OF
2 QUESTIONS.

3 Q LIKE WHAT?

4 A LIKE DO YOU KNOW WHAT IT MEANS WHEN THE POLICE
5 SAYS YOU HAVE THE RIGHT TO REMAIN SILENT.

6 Q AND WHAT WAS HIS ANSWER TO THAT?

7 A EXCUSE ME, LET ME GET OUT. I ASKED HIM, WHAT
8 DOES IT MEAN WHEN WE SAY YOU HAVE THE RIGHT TO
9 REMAIN SILENT. AND HE SAID, BE QUIET AND DON'T
10 TALK TO NOBODY BUT ME. I WOULD CONSIDER THAT A
11 FAILURE, THAT HE FAILED THAT ITEM.

12 Q YOU WOULD CONSIDER IT A FAILURE FOR HIM TO SAY
13 THAT HIS RIGHT TO REMAIN SILENT TO BE QUIET AND
14 NOT TALK TO ANYBODY?

15 A YES, BE QUIET IS ONE OF THE COMMON FAILURES OF
16 THAT ITEM.

17 Q AND WHAT WOULD THE APPROPRIATE ANSWER BE?

18 A IT MEANS THAT I DON'T HAVE TO GIVE A STATEMENT
19 IF I DON'T WANT TO.

20 Q WHAT WERE THE OTHER QUESTIONS YOU ASKED?

21 A I ASKED A NUMBER OF QUESTIONS.

22 Q GO AHEAD PLEASE AND TELL ME HIS ANSWERS.

23 A I ASKED HIM IF THE POLICE ASK YOU A QUESTION
24 THAT YOU DO NOT WANT TO ANSWER, DO YOU HAVE TO
25 ANSWER IT. AND HE SAID NO. I ASKED --

App. 122

1 Q IS THAT FAILING THAT QUESTION?

2 A NO, THAT'S A PASS. HE PASSED SOME AND FAILED
3 SOME. I ASKED HIM WHAT IS A RIGHT. AND HE SAID
4 I ONLY KNOW RIGHT HAND AND RIGHT. I ASKED HIM,
5 WHAT DOES IT MEAN WHEN WE SAY ANYTHING YOU CAN
6 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT
7 OF LAW. HE SAID THAT MEANS THE COURT'S GOING TO
8 FIND OUT ABOUT IT.

9 I ASKED HIM, THE THINGS YOU TELL THE POLICE,
10 ARE THEY GOING TO KEEP THEM SECRET AND HE SAID
11 YES. I ASKED HIM WHAT DOES THE WORD SECRET
12 MEAN. HE SAID DON'T TELL ME OR DON'T TELL
13 NOBODY. I ASKED HIM WHOM ARE THEY GOING TO
14 TELL. HE SAID EVERYBODY. I ASKED HIM ARE THE
15 THINGS THAT YOU TELL THE POLICE GOING TO BE USED
16 AGAINST YOU AND HE SAID I DON'T KNOW.
17 Q WELL, ISN'T THAT TRUE? THINGS THAT HE TELLS THE
18 POLICE BEING USED AGAINST HIM, AT THIS POINT HE
19 DOESN'T KNOW, DOES HE?

20 A WELL, WE WOULD CONSIDER THAT A FAILURE.

21 Q BECAUSE HE DIDN'T KNOW THAT THOSE WILL BE USED
22 AGAINST HIM?

23 A HE DOESN'T KNOW WHETHER OR NOT THEY ARE GOING TO
24 BE USED AGAINST HIM.

25 Q BUT COULDN'T THAT ALSO RELATE TO THE FACT THAT

App. 123

1 HE MAY HAVE SPOKEN WITH HIS ATTORNEY AND
2 UNDERSTANDS THERE HAS TO BE A HEARING ON HIS
3 STATEMENT AND SO HE WOULDN'T KNOW UNTIL THE
4 JUDGE RULED WHETHER THOSE STATEMENTS WOULD BE

5 USED AGAINST HIM?

6 A I'M NOT SURE IF IT COULD BE INTERPRETED THAT
7 WAY.

8 Q NOW THE TEST YOU PERFORMED YOU SAID YOU ADAPTED
9 THAT TEST?

10 A YES, I DID.

11 Q SO IN ACTUALITY IT'S NOT THE TEST THAT WAS
12 ACTUALLY PRINTED?

13 A THAT'S CORRECT.

14 Q SO THIS TEST HAS NOT BEEN ONE THAT HAS BEEN
15 ITSELF TESTED FOR ITS ACCURACY, HAS IT?

16 A THAT'S CORRECT.

17 Q SO THIS IS SOMETHING THAT YOU DID FOR YOUR OWN
18 SELF, CORRECT?

19 A WELL, YES, A TEST HAS TO BE MODIFIED TO THE
20 POPULATION YOU ARE WORKING WITH. THE TEST IN
21 PRINT WAS DEVELOPED FOR A POPULATION IN BOSTON
22 WHICH MAY WORK FINE IN BOSTON, BUT I FOUND I'VE
23 HAD TO ADAPT IT TO THIS POPULATION I WORK WITH
24 HERE.

25 Q I WAS INTERESTED TO HEAR, DOCTOR, THAT YOU

App. 124

1 DIDN'T USE ANYTHING ELSE IN YOUR EVALUATION OF
2 HIM. YOU BASICALLY EVALUATED HIM FROM SCRATCH.
3 ISN'T IT TRUE THAT THINGS SUCH AS THE PRIOR
4 EVALUATION FROM THE DEPARTMENT OF JUVENILE

5 JUSTICE WOULD BE HELPFUL IN YOUR EVALUATION OF
6 THE DEFENDANT?

7 A I HAVE NO OPINION ON THAT.

8 Q DON'T YOU NORMALLY, IN THE COURSE OF EVALUATING
9 SOMEONE, USE THINGS OF PRIOR EVALUATIONS, THINGS
10 LIKE SCHOOL RECORDS OR THINGS LIKE THAT TO
11 DETERMINE IF THEY ARE COMPETENT AND IF THEY CAN
12 DO SOMETHING AS YOU SAY TO WAIVE OR PROPERLY
13 WAIVE THE MIRANDA RIGHTS?

14 A ONLY IF THEY ARE MADE AVAILABLE TO ME. COULD I
15 HAVE SOME MORE WATER PLEASE.

16 Q WERE THEY NOT MADE AVAILABLE TO YOU? WERE
17 THOSE REPORTS MADE AVAILABLE TO YOU, DOCTOR?

18 A WHICH ITEMS ARE YOU REFERRING TO?

19 Q ANY PRIOR REPORTS? DJJ REPORTS, PRIOR SCHOOL
20 RECORDS, ANYTHING OF THAT NATURE?

21 A I DID RECEIVE SCHOOL RECORDS.

22 Q AND WHAT WAS INCLUDED IN YOUR RECORDS?

23 A I HAVE AN IQ SCORE THAT IS A SCHOOL ABILITY
24 INDEX SCORE AND I THINK I HAVE SOME ACADEMIC
25 ACHIEVEMENT SCORES.

App. 126

1 GRANDFATHER TODAY CONCERNING THAT?

2 A YES, I DID.

3 Q DID THEY TELL YOU ANYTHING ABOUT THE PARTICULAR
4 FACTS OF THIS CASE OR ANYTHING ABOUT HOW ANTONIO
5 LIVES HIS LIFE?

6 A THEY TOLD ME A LITTLE ABOUT HIM, NOTHING ABOUT
7 THIS CASE.

8 Q AND WHAT DID THEY TELL YOU ABOUT HIM THAT HELPED
9 YOU BASE YOUR OPINION ON?

10 A NOT THEY BUT HE, HIS GRANDFATHER. HIS
11 GRANDFATHER TOLD ME NOTHING TO HELP ME FORM MY
12 OPINION.

13 Q WOULD IT HAVE HELPED YOU TO FORM YOUR OPINION IF
14 YOU HAVE HAD SUCH INFORMATION AS THE FACT THAT
15 ANTONIO WAS ABLE ON HIS OWN TO GO OUT AND
16 PURCHASE A CAR?

17 MR. D'AGOSTINO: YOUR HONOR, I OBJECT. HE
18 HASN'T EXPRESSED AN OPINION AS TO MENTAL
19 RETARDATION.

20 THE COURT: WELL, HE'S TALKING ABOUT HIS ABILITY
21 TO UNDERSTAND MIRANDA RIGHTS. I THINK HE'S GOT
22 A RIGHT. I OVERRULE.

23 Q WOULD IT BE HELPFUL TO KNOW --

24 THE COURT: WELL, ASK YOUR QUESTION.

25 Q WOULDN'T IT BE HELPFUL TO KNOW HE WAS ABLE TO GO

App. 125

1 Q DID YOU CONSIDER THOSE IN YOUR EVALUATION?

2 A YES, I DID.

3 Q DID YOU CONSIDER ANY OTHER PRIOR REPORTS THAT
4 YOU HAD HANDED TO YOU IN YOUR EVALUATION?

5 A I DON'T THINK I HAD ANY OTHER PRIOR REPORTS.

6 Q WOULDN'T IT HAVE BEEN HELPFUL TO HAVE HAD PRIOR
7 REPORTS, PRIOR DJJ REPORTS?

8 A NOT NECESSARILY.

9 Q BUT ISN'T IT TRUE THAT PART OF DETERMINING
10 SOMEONE AS FAR AS THEIR ABILITY TO COMPREHEND
11 THINGS YOU HAVE TO LOOK AT THEIR PAST FORENSIC
12 HISTORY?

13 A NO, PAST FORENSIC HISTORY DOES NOT NECESSARILY
14 CONTRIBUTE TO SAY ABILITY TO UNDERSTAND MIRANDA
15 RIGHTS AND THAT'S BEEN DEMONSTRATED IN THE
16 RESEARCH.

17 Q BUT IT DOES THE COMPETENCE, DOESN'T IT?

18 A I DON'T KNOW.

19 Q YOU DON'T KNOW BUT YOU TEST FOR COMPETENCE ALL
20 THE TIME?

21 A I TEST FOR COMPETENCE. I CAN'T REMEMBER THAT
22 PARTICULAR PIECE OF RESEARCH.

23 Q YOU SAID AS PART OF YOUR REPORTS YOU WERE
24 CONSIDERING SOME OF HIS, I GUESS, SOME OF HIS
25 FUNCTIONING AND YOU SPOKE WITH I BELIEVE HIS

App. 127

1	OUT ON HIS OWN AND PURCHASE A CAR?
2	A I WOULD WANT TO KNOW MORE DETAILS ABOUT THAT.
3	Q I UNDERSTAND BUT WOULDN'T IT HELP YOU IF YOU
4	KNOW THE DETAILS ABOUT THAT AS TO DETERMINE
5	WHETHER HE'S ABLE TO WAIVE HIS MIRANDA RIGHTS
6	AND DETERMINE HIS COMPETENCY?
7	A NOT NECESSARILY. I CAN'T TELL IF SOMETHING IS
8	GOING TO HELP ME WITH AN OPINION OR NOT UNTIL I
9	KNOW THE INFORMATION.
10	Q DOESN'T THAT GO ALONG WITH HIS ABILITY TO
11	FUNCTION?
12	A I WOULD NEED TO KNOW MORE INFORMATION ABOUT IT.
13	Q HOW ABOUT THE FACT THAT HE IS ABLE TO INSTALL
14	STEREO EQUIPMENT IN THAT CAR, WOULD THAT HELP
15	YOU IN BEING ABLE TO LOOK AND DETERMINE HIS
16	ABILITY TO FUNCTION?
17	A I WOULD NEED TO KNOW MORE ABOUT THAT.
18	Q DID YOU ASK HIM ABOUT THE CHILD HE HAS?
19	A NO, I DID NOT.
20	Q BUT WOULDN'T THAT HELP IN DETERMINING HOW HE
21	FUNCTIONS?
22	A NOT NECESSARILY.
23	Q IF YOU ASK HIM ABOUT THE CARE OF THE CHILD, ARE
24	YOU SAYING IF HE IS ABLE TO CHANGE A DIAPER AND
25	BABYSIT AND DO THINGS LIKE THAT THAT THAT

App. 128

1 WOULDNT HELP IN DETERMINATION OF HOW HE
2 FUNCTIONS?

3 A NO, THAT WOULD NOT NECESSARILY HELP. PEOPLE
4 WITH MENTAL RETARDATION ARE DOING THOSE THINGS

5 ALL THE TIME.

6 Q AND PEOPLE WITH, BUT HE'S NOT SOMEONE WITH
7 MENTAL RETARDATION, IS HE?

8 A I HAVE NO OPINION ON THAT.

9 Q SO YOU CANT SAY THAT HE IS THOUGH?

10 A THAT IS CORRECT.

11 Q SO YOU CANT LUMP HIM IN A GROUP OF PEOPLE WITH
12 MENTAL RETARDATION ARE DOING STUFF LIKE THAT ALL
13 THE TIME?

14 A THAT IS CORRECT.

15 Q AND PART OF FUNCTIONING YOU WOULD WANT TO
16 CONSIDER OTHER THINGS HE CAN DO, CORRECT?

17 A I DONT KNOW WHAT YOU ARE HEADING FOR.

18 Q AS A PART OF FUNCTIONING SEE, DOCTOR, YOU'RE
19 CONFUSING ME BECAUSE YOU'RE TELLING ME HE'S NOT
20 ABLE TO WAIVE HIS MIRANDA RIGHTS BUT AT THE SAME
21 TIME YOU'RE TELLING ME THAT SUCH THINGS AS BEING
22 ABLE TO DO AND LIVE IN A BASIC DAY-TO-DAY LIFE
23 AND DO VARIOUS CHORES AND THINGS THAT SEEM
24 FAIRLY COMPLICATED TO ME, WOULDNT IT HELP YOU
25 IN YOUR EVALUATION?

App. 129

1 A CHANGING A DIAPER DOES NOT MEAN HE HAS THE
2 VERBAL SKILLS TO COMPREHEND MIRANDA RIGHTS.

3 Q BUT WOULDN'T SOME OF HIS LIFE EXPERIENCES HELP
4 IN DETERMINING WHAT HE WAS REALLY ABLE TO

5 UNDERSTAND AND WHAT REALLY HE WAS NOT ABLE TO
6 UNDERSTAND?

7 A THEY MIGHT.

8 Q NOW LET'S GO BACK, YOU SAID THAT YOU WERE
9 TALKING ABOUT SOME PEOPLE WHO WERE MENTALLY
10 RETARDED, PEOPLE WHO ARE MENTALLY RETARDED WELL,
11 LET'S PUT IT THE LOWEST I GUESS, DON'T WANT TO
12 BE CALLED THE LOWEST OR HIGHEST RANGE, BUT THE
13 MILD RANGE OF MENTAL RETARDATION, PEOPLE IN THE
14 MILD RANGE OF MENTAL RETARDATION YOU CANNOT SAY
15 THAT ALL OF THEM CANNOT UNDERSTAND AND WAIVE
16 MIRANDA RIGHTS, CORRECT?

17 A I DON'T KNOW.

18 Q WELL, LET ME PUT IT THIS WAY, THERE ARE SOME
19 PEOPLE WHO YOU WOULD CONSIDER MILD MENTALLY
20 RETARDED THAT YOU EVALUATED IN THE PAST THAT YOU
21 WOULD CONSIDER TO BE ABLE TO WAIVE MIRANDA
22 RIGHTS, IS THAT NOT CORRECT?

23 A THAT'S PROBABLY TRUE.

24 Q AND --

25 A I CAN'T RECALL ANY PARTICULAR CASES TODAY, BUT

App. 130

1 THAT'S PROBABLY A FAIR STATEMENT.

2 Q AND THAT'S NOT THAT UNUSUAL, IS IT?

3 A I HAVE NO OPINION ON THAT.

4 Q ISN'T IT TRUE THAT LOOKING INTO HIS

5 INTERPERSONAL SKILLS WITH OTHER PEOPLE WOULD

6 HELP IN DETERMINING THE ABILITY HE HAD TO

7 UNDERSTAND HIS MIRANDA RIGHTS?

8 A NOT NECESSARILY.

9 Q BUT THAT WOULD INCLUDE VERBAL SKILLS, WOULDN'T
10 IT?

11 A IT MIGHT, YES.

12 Q BUT YOU DIDN'T GO OVER ANY OF THOSE THINGS WITH
13 ANTONIO, DID YOU?

14 A I DIDN'T SAY THAT.

15 Q WELL, DID YOU GO INTO ANY OF HIS INTERPERSONAL
16 SKILLS TO TRY AND HELP YOUR EVALUATION?

17 A I DON'T REMEMBER EVERYTHING I ASKED HIM.

18 Q NOW DID YOU EVER HAVE EITHER OF THE STATEMENTS
19 THAT HE GAVE TO THE POLICE TO LOOK AT, EITHER OF
20 THOSE STATEMENTS, DID YOU HAVE THOSE AT YOUR
21 DISPOSAL?

22 A YES, I DID.

23 Q DID YOU NOTICE IN THOSE TWO STATEMENTS THAT IN
24 THE INITIAL STATEMENT HE DID SOMETHING THAT WAS
25 BASICALLY IT WOULD BE SELF-PRESERVATION. HE DID

App. 131

1 NOT SAY HE WAS THE SHOOTER IN THIS STATEMENT,
2 DID HE?

3 A I BELIEVE THAT'S TRUE.

4 Q AND SELF-PRESERVATION IS SOMETHING THAT SHOWS
5 THAT HE UNDERSTANDS WHAT HE'S DOING, DOESN'T IT?

6 A WELL, IT COULD BE SELF-PRESERVATION. IT COULD
7 BE THE TRUTH. I DON'T KNOW WHICH IT IS.

8 Q ARE YOU SUGGESTING, DOCTOR, THAT ANTONIO IS SO
9 SUGGESTIBLE THAT SOMEHOW HE IS NOW AGREEING TO
10 BEING THE SHOOTER WHEN HE IS NOT?

11 A I HAVEN'T SAID THAT.

12 Q BUT DOESN'T IT INDICATE THAT BY GIVING A
13 STATEMENT ON SELF-PRESERVATION THAT THAT SHOWS
14 AT LEAST SOME HIGHER LEVEL OF FUNCTIONING?

15 A WELL, YOU CHARACTERIZE IT AS SELF-PRESERVATION.
16 I DON'T KNOW IF IT'S SELF-PRESERVATION OR IF
17 IT'S JUST A STATEMENT OF THE TRUTH.

18 Q IF IT WAS SELF-PRESERVATION WOULD THAT BE
19 SOMETHING THAT YOU COULD CHARACTERIZE HAS HAVING
20 SOMEONE, THAT SOMEONE HAD TO HAVE A LITTLE BIT
21 OF A HIGHER KNOWLEDGE TO BE ABLE TO DO?

22 A NO, SIR. I'VE SEEN SOME VERY RETARDED PEOPLE
23 MAKE STATEMENTS THAT WERE SELF-PRESERVING.

24 Q YOU WEREN'T THERE AT THE TIME HIS MIRANDA RIGHTS
25 WERE READ AT THE POLICE DEPARTMENT, WERE YOU?

App. 138

1 A THAT IS CORRECT.

2 Q SO YOU REALLY DON'T KNOW AT THAT TIME WHETHER HE
3 WAS ABLE TO UNDERSTAND AND COMPREHEND WHAT HIS
4 MIRANDA RIGHTS WERE, DO YOU?

5 A ALL I KNOW IS THE TESTIMONY I'VE HEARD ABOUT
6 THAT.

7 Q SO THE ANSWER WOULD BE YES OR NO?

8 A I HAVE AN OPINION THAT HE WAS NOT ABLE TO
9 UNDERSTAND HIS MIRANDA RIGHTS AT THE TIME THAT
10 THEY WERE READ TO HIM.

11 Q AT THE TIME THE POLICE READ THEM TO HIM?

12 A YES, SIR. IF HE DOES NOT UNDERSTAND THEM LATER
13 IN MY OFFICE IT'S NOT LIKELY THAT HE UNDERSTOOD
14 THEM AT THE TIME THEY WERE READ TO HIM.

15 Q WHEN HE WAS IN YOUR OFFICE, WHEN HE HAD
16 QUESTIONS HE WOULD ASK YOU, WOULDN'T HE?

17 A I'M SORRY?

18 Q WHEN HE WAS IN YOUR OFFICE, WHEN HE WOULD HAVE
19 QUESTIONS HE WOULD ASK YOU, WOULDN'T HE? IF HE
20 HAD A QUESTION AS TO WHAT YOU ASKED OR EXPLAIN
21 SOMETHING, HE WOULD ASK?

22 A I DON'T REMEMBER HIM DOING THAT. I REMEMBER HE
23 ASKED ABOUT A TOY THAT I HAD IN THE OFFICE. I
24 REMEMBER HE ASKED ABOUT THAT. I DON'T REMEMBER
25 HIM ASKING ME ABOUT ANY OF MY QUESTIONS.

App. 133

1 Q BUT YOU BELIEVE THAT IF HE DIDN'T UNDERSTAND
2 SOMETHING THAT HE WOULD HAVE ASKED YOU?

3 A NO. NO. PEOPLE WHO FUNCTION AT A LOW LEVEL OF
4 INTELLIGENCE TYPICALLY DO NOT ASK QUESTIONS.

5 Q ARE YOU AWARE OF HIS PRIOR RUN-IN WITH THE LAW?

6 A JUST, NOT IN ANY SPECIFICS, JUST VAGUELY.

7 Q BUT YOU ARE AWARE THAT HE HAS AT LEAST A NUMBER
8 OF PAST RUN-INS WITH THE LAW, IS THAT CORRECT?

9 AND THERE HE WAS AT LEAST COMMITTED TO DJJ
10 TWICE?

11 A YES.

12 Q AND DID YOU GO INTO ANY OF THAT AS FAR AS THE
13 POLICE WORK OR ANYTHING ON THAT?

14 A NO, I DID NOT.

15 Q WOULDN'T IT BE HELPFUL TO, IN DETERMINING
16 WHETHER HE CAN WAIVE HIS MIRANDA RIGHTS, TO TALK
17 TO HIM ABOUT PRIOR CONTACT WITH THE POLICE AND
18 WHETHER HE'S EVER HAD TO DO THAT BEFORE?

19 A IT MAY BE BUT NOT NECESSARILY.

20 Q BUT YOU'LL NEVER KNOW WITHOUT GOING INTO IT,
21 WILL YOU?

22 A WELL, PREVIOUS EXPOSURE TO THE POLICE DOES NOT
23 CONTRIBUTE TO UNDERSTANDING OF MIRANDA RIGHTS.

24 Q BEING STREET SMART DOES, DOESN'T IT?

25 A NO, SIR, I DON'T BELIEVE IT DOES.

APP. 134

1 Q DID YOU INQUIRE OF HIM WHETHER HE'S EVEN SEEN ON
2 TV WHEN SOMEONE WAS GIVEN THE MIRANDA RIGHTS OR
3 HIS UNDERSTANDING OF WHAT THAT'S DOING?

4 A NO, SIR, I DID NOT.

5 Q THANK YOU. NO FURTHER QUESTIONS.

6 MR. D'AGOSTINO: NO FURTHER QUESTIONS. MAY
7 THIS WITNESS BE EXCUSED?

8 THE COURT: YOU CAN STEP DOWN. YOU ARE
9 EXCUSED. WE APPRECIATE YOUR TIME.

10 MR. D'AGOSTINO: JUST ONE OTHER WITNESS BRIEFLY,
11 YOUR HONOR.

12 THE COURT: ALL RIGHT FINE. CALL YOUR NEXT
13 WITNESS.

14 MR. D'AGOSTINO: OFFICER CORN.

15 SALLY CORN, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. D'AGOSTINO:

18 Q OFFICER CORN, WHERE DO YOU WORK?

19 A YORK COUNTY DETENTION CENTER.

20 Q DO YOU HAVE ACCESS TO THE COMPUTERS DOWN THERE?

21 A YES, SIR, I DO.

22 Q LET ME HAND YOU A PRINTOUT WHICH IS MARKED
23 DEFENDANT'S EXHIBIT FOUR FOR ID, IS THAT A
24 PRINTOUT ON ANTONIO GORDON AS TO WHEN HE CAME TO
25 THE MOSS JUSTICE CENTER?

App. 135

1 A YES, IT IS.

2 Q AND WHEN DID HE COME THERE?

3 A HIS BOOKING DATE WAS 7, LET ME PUT ON MY
4 GLASSES. EXCUSE ME A MOMENT. 7-23-98 AT 19:42

5 HOURS.

6 Q ALL RIGHT. THAT'S WHEN HE ACTUALLY GOT DOWN TO
7 THE MOSS JUSTICE CENTER DOWNSTAIRS?

8 A YES, SIR.

9 Q IS THIS ONE, LET ME HAND YOU WHAT'S BEEN MARKED
10 DEFENDANT'S EXHIBIT NUMBER FIVE, WHO IS THAT ONE
11 OF?

12 A THIS IS MONTA GORDON.

13 Q WHEN DID HE GET DOWN THERE?

14 A HIS ENTER DATE 7-24-98 AT 20 HUNDRED HOURS.

15 Q 8 O'CLOCK IN THE EVENING?

16 A YES, SIR.

17 MR. D'AGOSTINO: YOUR HONOR, I MOVE TO INTRODUCE
18 EXHIBIT NUMBER FOUR AND FIVE.

19 THE COURT: ANY OBJECTION.

20 MR. ANTHONY: NO OBJECTION.

21 (DEFENDANT'S EXHIBITS 4 & 5 PRINTOUTS MARKED FOR
22 IDENTIFICATION.)

23 Q AND DO YOU KNOW IF ANTONIO WOULD HAVE BEEN
24 TAKEN BACK OVER TO THE ROCK HILL POLICE
25 DEPARTMENT THAT DAY OR THE NEXT DAY. WOULD IT

App. 136

1 BE INDICATED ON THAT REPORT IF HE HAD BEEN TAKEN
2 OUT AND BOOKED BACK IN?

3 A IF HE WOULD HAVE BEEN TAKEN OUT AND BOOKED BACK
4 IN, IT WOULD HAVE BEEN INTO THE COMPUTER.

5 Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.
6 MR. ANTHONY: NO CROSS EXAMINATION. THANK YOU.

7 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED.

8 A THANK YOU, JUDGE.

9 THE COURT: CALL YOUR NEXT WITNESS.

10 MR. D'AGOSTINO: THOSE ARE ALL THE WITNESSES,
11 YOUR HONOR.

12 THE COURT: ANYTHING ELSE FROM THE STATE?

13 MR. THOMPSON: NO, YOUR HONOR. NOTHING ON
14 BEHALF OF THE STATE.

15 THE COURT: MR. D'AGOSTINO, YOU WANT TO ARGUE
16 YOUR POSITION NOW AS TO WHY THE STATEMENT IS NOT
17 ADMISSIBLE.

18 MR. D'AGOSTINO: YES, SIR, YOUR HONOR. LET ME
19 GET MY NOTES ON THAT. LET ME JUST TAKE THESE,
20 EVERYTHING IN ORDER AS BEST I CAN. YOUR HONOR,
21 FIRST WE MOVE TO SUPPRESS THE STATEMENTS AS THE
22 STATE HAS NO PROBABLE CAUSE TO ARREST ANTONIO
23 GORDON WITHOUT A WARRANT. THE ONLY INFORMATION
24 THEY HAD AT THE TIME THEY ARRESTED HIM WAS A
25 STATEMENT FROM CHYENCA DIXON, TOWANDA BURRIS,

331

App. 137

1 WHOEVER YOU WANT TO, WHATEVER YOU WANT TO CALL
2 HER, THE SAME PERSON HAD TWO STATEMENTS BE
3 ENTIRETY INCONSISTENT. ONE HAD INCONSISTENCIES
4 IN ITSELF. NOW THEY SAY THAT THEY SUBSEQUENTLY
5 LET HER GO AND THEN LETTING HER GO CREATED THE
6 EXIGENT CIRCUMSTANCES THEY SAY NECESSITATING HIS
7 ARREST. YOUR HONOR, I WOULD SUBMIT THAT THEY
8 CANNOT --

9 THE COURT: DO THEY HAVE TO HAVE EXIGENT
10 CIRCUMSTANCES? DON'T THEY JUST HAVE TO HAVE
11 PROBABLE CAUSE?

12 MR. D'AGOSTINO: TO ARREST SOMEONE I THINK
13 PROBABLE CAUSE TO BELIEVE, I THINK WHAT YOU NEED
14 IS A CRIME HAS TO BE COMMITTED IN THEIR
15 PRESENCE.

16 THE COURT: NOT FOR A FELONY.

17 MR. D'AGOSTINO: THEY NEED AN ARREST WARRANT TO
18 ARREST SOMEONE.

19 THE COURT: NOT FOR A FELONY, MAYBE, LET ME HEAR
20 FROM THE STATE ON THAT.

21 MR. ANTHONY: I THINK IT'S PRETTY WELL SETTLED
22 LAW THAT YOU CAN ARREST FOR A FELONY WITHOUT A
23 WARRANT.

24 THE COURT: THAT'S BASED ON PROBABLE CAUSE.

25 MR. ANTHONY: IF YOU HAVE PROBABLE CAUSE. YOU

App. 138

1 OBVIOUSLY CAN'T ARREST ANYONE IF YOU DON'T HAVE
2 PROBABLE CAUSE, BUT YOU CAN ARREST FOR A FELONY
3 WITHOUT A WARRANT.

4 THE COURT: THAT'S MY UNDERSTANDING. YOU CAN
5 ARREST FOR A MISDEMEANOR WITHOUT A WARRANT ONLY
6 IF IT HAPPENS IN YOUR PRESENCE OR IT'S SO FRESH
7 AND SOME OTHER STUFF LIKE THAT BUT NOT FOR A
8 FELONY.

9 MR. D'AGOSTINO: I UNDERSTAND THE COURT'S
10 RULING, YOUR HONOR.

11 THE COURT: I MEAN, I'LL BE GLAD TO HEAR FROM
12 YOU FURTHER, BUT I THINK IT WAS PROBABLE CAUSE
13 AND I, WITHOUT HEARING FROM THE STATE, I
14 LISTENED BECAUSE I KNEW THAT WAS ONE OF THE
15 ISSUES AND VERY INTENT ON THAT, BUT IN FACT I
16 EVEN LOOKED UP A LITTLE LAW, ONE OF MY LITTLE
17 SUMMARY SHEETS TO SEE IF WHAT I REMEMBER WAS
18 CORRECT AND I BELIEVE THAT BASED ON THE
19 INFORMATION THAT THEY HAD AT THAT TIME THEY HAD
20 PROBABLE CAUSE TO ARREST.

21 MR. D'AGOSTINO: THAT'S WHAT I WAS GETTING AT.
22 I DIDN'T BELIEVE THEY HAD PROBABLE CAUSE BASED
23 UPON THE INFORMATION THEY HAD AT THE TIME, YOUR
24 HONOR.

25 THE COURT: WELL, I DENY THAT MOTION TO SUPPRESS

App. 139

1 ON THAT GROUND.

2 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. THE
3 NEXT GROUNDS AND THEY KIND OF ALL RUN TOGETHER,
4 I MOVE TO SUPPRESS ANTONIO GORDON'S STATEMENTS
5 ON BOTH THE FIFTH AND SIXTH AMENDMENTS, RIGHTS
6 TO COUNSEL, BOTH STATE AND FEDERAL, BOTH THE
7 FEDERAL FIFTH AND SIXTH AMENDMENTS OF RIGHT TO
8 COUNSEL, AND IN SOUTH CAROLINA CONSTITUTION
9 ARTICLE ONE SECTION 11, ARTICLE ONE SECTION 14,
10 AND ALSO I WOULD RELY UPON SOUTH CAROLINA STATE
11 LAW RELATING TO AN ARREST.

12 LET ME GO THROUGH EACH ONE OF THOSE IN MY
13 POSITION WITH REGARD TO THE STATEMENTS. YOUR
14 HONOR, FIRST OF ALL WE HAVE ANTONIO GORDON,
15 HE'S 16 YEARS OF AGE, HE'S TAKEN INTO THE POLICE
16 STATION. AS SOON AFTER, WHILE HE'S GIVING HIS
17 FIRST STATEMENT AN ATTORNEY WHO IS HIRED FOR HIM
18 COMES TO THE POLICE STATION, WHOSE BEEN HIRED BY
19 HIS FAMILY TO REPRESENT HIM. THE STATE
20 CONTINUES TO INTERROGATE HIM, DOES NOT INFORM
21 HIM OF HIS RIGHT TO COUNSEL, OF COUNSEL BEING
22 PRESENT. THERE IS AN ATTORNEY OUTSIDE ASKING TO
23 SEE HIM. YOUR HONOR, I SUBMIT THAT HE SHOULD
24 HAVE BEEN TOLD THAT THE ATTORNEY WAS THERE.

25 THE COURT: ALL RIGHT. YOU NEED TO SHOW SOME

App. 146

1 CASE LAW ON THAT BECAUSE THAT'S A VERY
2 INTERESTING ISSUE. I HAVE NEVER HAD IT. I
3 DON'T HAVE ANY LAW THAT, THE RIGHT TO COUNSEL
4 LIES WITH THE ONE WHO IS ARRESTED AND.

5 MR. D'AGOSTINO: YES, SIR.

6 THE COURT: SO YOU'VE GOT TO SHOW ME SOME LAW ON
7 A THIRD PARTY, EVEN IF IT'S A JUVENILE, ENGAGES
8 COUNSEL THAT THE POLICE MUST ALLOW THAT PERSON
9 TO SEE THE ACCUSED EVEN IF THE ACCUSED DOES NOT
10 ASK FOR AN ATTORNEY.

11 MR. D'AGOSTINO: YOUR HONOR, THE UNITED STATES
12 SUPREME COURT HAS RULED, I WAS GOING TO GET TO
13 THAT, UNDER THE FEDERAL CONSTITUTION THAT IT'S
14 THE INDIVIDUAL'S RIGHT. HOWEVER, THERE ARE
15 OTHER STATES OR THERE ARE FEDERAL COURTS
16 DECISIONS BEFORE, I MEAN STATE COURT DECISIONS
17 BEFORE THAT CASE WENT UP THAT HELD THAT IT WAS
18 THE INDIVIDUAL'S, I MEAN THAT A STATEMENT TAKEN
19 WHEN THERE IS AN ATTORNEY OUTSIDE ASKING TO SEE
20 THE CLIENT EVEN IF IT CLIENT DOES NOT KNOW, THE
21 POLICE DO NOT INFORM THE CLIENT OF THE PRESENCE
22 OF THAT ATTORNEY, THEN THOSE STATEMENTS TAKEN
23 SHOULD BE SUPPRESSED AS BEING VIOLATIVE OF THOSE
24 STATE'S CONSTITUTIONS AND PRIOR TO THE U.S.
25 SUPREME COURT CASE, THE FEDERAL CONSTITUTIONAL

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1 RIGHTS. HOWEVER, SINCE THE SUPREME COURT HAS
2 ADDRESSED THAT WITH REGARD TO THE FEDERAL FIFTH
3 AMENDMENT RIGHT TO COUNSEL AND BEING INFORMED OF
4 IT AND SAID THAT THE POLICE DO NOT HAVE TO
5 INFORM, I WOULD SUBMIT THAT OUR SOUTH CAROLINA
6 STATE CONSTITUTION, OUR SOUTH CAROLINA SUPREME
7 COURT HAS NOT RULED ON THAT RELATING TO OUR
8 STATE CONSTITUTIONAL RIGHT TO COUNSEL AND TO BE
9 INFORMED OF COUNSEL, AND YOUR HONOR, I WOULD
10 SUBMIT THAT ON THAT PARTICULAR ISSUE.

11 THE COURT: LET ME GET OUR CONSTITUTION.

12 MR. D'AGOSTINO: THAT WOULD BE ARTICLE 1
13 SECTION 11, YOUR HONOR, AND I COULD NOT FIND A
14 CASE WHERE OUR SUPREME COURT HAS RULED ON THAT
15 ISSUE AS IT RELATES TO OUR CONSTITUTION.

16 THE COURT: ARTICLE ONE.

17 MR. D'AGOSTINO: ARTICLE ONE SECTION 11 AS I
18 BELIEVE OUR STATE CONSTITUTION THEN CORRELATES
19 TO THE FIFTH AMENDMENT RIGHT TO COUNSEL.

20 THE COURT: AND WHEREIN DOES IT GIVE, I'M SORRY,
21 ARTICLE ONE SECTION WHAT?

22 MR. D'AGOSTINO: SECTION 11, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. D'AGOSTINO: EXCUSE ME, I MIGHT BE---

25 THE COURT: I THINK YOU MIGHT BE WRONG. THIS IS

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1 PRESENTATION ON INDICTMENTS.

2 MR. D'AGOSTINO: I APOLOGIZE FOR HAVING THE
3 WRONG SECTION. ARTICLE ONE SECTION 12 IS VERY
4 SIMILAR TO THE VERY CONSTITUTION, NOR SHALL ANY
5 PERSON BE COMPELLED IN ANY CRIMINAL CASE BE
6 COMPELLED TO WITNESS AGAINST THEMSELF, THAT'S
7 THE UNITED STATES CONSTITUTION ARTICLE.

8 THE COURT: WELL, WE'RE TALKING ABOUT A RIGHT TO
9 COUNSEL. NOT WITNESS AGAINST HIMSELF. YOU
10 STILL HADN'T HONED INTO WHAT WE ARE LOOKING
11 FOR. WE HAVE A WHOLE GROUP OF LAWYERS, WE OUGHT
12 TO KNOW THE SOUTH CAROLINA CONSTITUTION BETTER,
13 SHOULDN'T WE?

14 I BELIEVE IT'S 14. THERE IS NO, UNLESS THIS HAS
15 BEEN CHANGED, THERE IS NO CONSTITUTIONAL
16 STATUTORY REQUIREMENTS FOR SILENT COUNSEL EXCEPT
17 IN A CAPITAL CASE. WE'VE HAD A CHANGE TO THE
18 CONSTITUTION SINCE THEN OBVIOUSLY.

19 THERE IS NO QUESTION HE HAS A RIGHT TO COUNSEL.
20 MY CONCERN IS WHETHER OR NOT, YOU ALLEGE THAT,
21 IN ESSENCE YOU'RE ALLEGING THAT THE SOUTH
22 CAROLINA STANDARD WOULD BE HIGHER THAN THE
23 UNITED STATES CONSTITUTIONAL STANDARD OR
24 OTHERWISE I'D BE BOUND BY THE UNITED STATES
25 SUPREME COURT STANDARD WHICH HAS BEEN SET WHICH

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1 WEIGHS AGAINST YOUR CLIENT, SO I WAS REALLY
2 LOOKING FOR ANY ADDITIONAL LANGUAGE IN THE SOUTH
3 CAROLINA CONSTITUTION THAT WOULD GIVE HIM A
4 GREATER RIGHT UNDER THE STATE CONSTITUTION THAN
5 IT HAS ON THE FEDERAL CONSTITUTION WHICH THE
6 UNITED STATES SUPREME COURT HAS ALREADY
7 ADDRESSED HIS RIGHT UNDER THE FEDERAL
8 CONSTITUTION.

9 MR. D'AGOSTINO: WHAT I WAS LOOKING AT, YOUR
10 HONOR, AS I UNDERSTAND THE LAW, YOU HAVE THE
11 FIFTH AMENDMENT RIGHT TO COUNSEL. MIRANDA WAS
12 DESIGNED TO INFORM YOU OF YOUR RIGHT TO, AGAINST
13 SELF INCRIMINATION AND MIRANDA IS BASED UPON THE
14 FIFTH AMENDMENT.

15 THE COURT: RIGHT.

16 MR. D'AGOSTINO: AND THE SUPREME COURT HAS SAID
17 THAT UNDER MIRANDA AND UNDER THE FIFTH AMENDMENT
18 IF AN ATTORNEY IS THERE IT IS THE CLIENT'S RIGHT
19 AND NOT THE ATTORNEY'S ABILITY TO ASSERT THAT
20 RIGHT OR FAMILY MEMBERS ABILITY TO ASSERT THAT
21 RIGHT, I UNDERSTAND THAT, AND I HAVE A DUTY TO
22 INFORM THE COURT OF THE SUPREME COURT FEDERAL
23 LAW AND THAT'S WHAT I WAS DOING. BUT MIRANDA
24 WAS BASED UPON THE FIFTH AMENDMENT AND I BELIEVE
25 THE LANGUAGE IN THE FIFTH AMENDMENT TO THE

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1 CONSTITUTION, UNITED STATES CONSTITUTION,
2 SPECIFICALLY SAYS NOR SHALL, AND THIS IS WHERE
3 THEY GET MIRANDA, NOR SHALL BE COMPELLED IN ANY
4 CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF
5 NOR TO BE DEPRIVED OF LIFE, LIBERTY, PROPERTY
6 WITHOUT DUE PROCESS OF LAW; AND THAT'S WHY I
7 REFER BACK TO ARTICLE 1 SECTION 12, NO PERSON
8 SHALL BE SUBJECT TO SAME OFFENSE TO BE TWICE PUT
9 IN JEOPARDY OF LIFE OR LIBERTY NOR SHALL ANY
10 PERSON BE COMPELLED IN ANY CRIMINAL CASE TO BE A
11 WITNESS AGAINST HIMSELF. THAT'S WHY I
12 ORIGINALLY SAID ARTICLE 1 SECTION 12 BECAUSE I
13 WAS COMPARING THE LANGUAGE OF BOTH FEDERAL AND
14 STATE, THEY ARE VERY SIMILAR LANGUAGE, BUT I
15 WOULD SUBMIT, YOUR HONOR, THAT IN A CASE AND
16 THIS IS WHERE I'M GOING TO MOVE INTO THE STATE
17 LAW AS WELL WHERE YOU'RE DEALING WITH A 16
18 YEAR-OLD YOUNG BOY, THAT WE HAVE STATUTES THAT
19 SPECIFICALLY ALSO PROTECT THE INTERESTS AND THE
20 RIGHTS OF JUVENILES AS WELL. AND 16, I MEAN,
21 20-7-7205 DEALS WITH --

22 THE COURT: 20-7.

23 MR. D'AGOSTINO: 20-7-7205, YOUR HONOR. THAT'S
24 CUSTODY AND DETENTION AND IT'S UNDER THE
25 JUVENILE SECTION.

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1 THE COURT: I GOT IT.

2 MR. D'AGOSTINO: WHEN A CHILD FOUND VIOLATING
3 CRIMINAL LAW OR ORDINANCE IS TAKEN INTO CUSTODY,
4 THE CUSTODY IS NOT AN ARREST. JURISDICTION OF
5 THE COURT ATTACHES FROM THE TIME OF THE TAKING
6 INTO CUSTODY. WELL, YOUR HONOR, I WOULD, THEN
7 IT GOES ON TO SAY WHEN A CHILD IS TAKEN INTO
8 CUSTODY, THE OFFICER TAKING THE CHILD INTO
9 CUSTODY SHALL NOTIFY THE PARENT, GUARDIAN, OR
10 CUSTODIAN OF THE CHILD AS SOON AS POSSIBLE.
11 YOUR HONOR, I WOULD SUBMIT THAT IN A SITUATION
12 WHERE YOU'RE DEALING WITH A JUVENILE, WHERE YOU
13 HAVE THE PARENTS WHO ARE LEGALLY CHARGED WITH
14 THE RESPONSIBILITY FOR THE CHILD HAS TO BE
15 PROSECUTED FOR TRUANCY FOR THEIR CHILDREN AND
16 THINGS OF THAT NATURE, WHERE YOU HAVE A JUVENILE
17 AND WHERE THE PARENTS HAVE ASSERTED THAT RIGHT
18 ON BEHALF OF THE JUVENILE, I WOULD SUBMIT THAT
19 EVEN THOUGH THERE IS THAT FEDERAL CASE OUT
20 THERE, THAT WE HAVE A VERY LIMITED SPECIAL
21 CIRCUMSTANCE HERE THAT WITH A JUVENILE, A
22 PARENT, A THIRD PARTY, SHOULD BE ALLOWED TO AND
23 THE COURT SHOULD RECOGNIZE THE ASSERTION OF BOTH
24 THE FEDERAL AND THE STATE CONSTITUTIONAL RIGHT
25 TO COUNSEL AS ASSERTED BY A PARENT OF THE

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1 JUVENILE. IT'S CLEAR HE'S 16 YEARS OF AGE.

2 THERE IS NO QUESTION ABOUT THAT.

3 SO, YOUR HONOR, I WOULD SUBMIT THAT ON THAT
4 BASIS THE COURT, SINCE MR. WELLBORN ASSERTED THE
5 RIGHT TO COUNSEL AND STATEMENTS CONTINUING TO BE
6 TAKEN BOTH THE FIRST AND THE SECOND STATEMENT
7 TAKEN WITHOUT AFFORDING ANTONIO GORDON HIS
8 ATTORNEY, THAT THE COURT SHOULD SUPPRESS THOSE
9 STATEMENTS AS VIOLATIVE OF BOTH THE STATE AND
10 THE FEDERAL CONSTITUTION.

11 THE COURT: WELL, THIS IS A NOTICE, A
12 NOTIFICATION STATUTE AND THEY OBVIOUSLY WERE
13 NOTIFIED BY SOMEONE. I DON'T KNOW THAT LAW
14 ENFORCEMENT DID IT, BUT THEY WERE PRESENT
15 APPARENTLY, ACCORDING TO MR. WELLBORN, THEY WERE
16 ON THE PHONE TO HIM AND PRESENT, SO I DON'T
17 THINK THE FACT THAT THEY MAY NOT HAVE NOTIFIED
18 THE PARENTS IS MOOT BECAUSE THE PARENTS WERE
19 THERE.

20 MR. D'AGOSTINO: I DIDN'T SAY THEY DIDN'T NOTIFY
21 THE PARENTS. WHAT I SAID WAS THEY HAVE THE DUTY
22 TO NOTIFY THE PARENTS, READING THAT STATUTE,
23 TAKING INTO CONSIDERATION THAT PARENTS HAVE
24 CERTAIN RIGHTS, DUTIES, AND RESPONSIBILITIES
25 UNDER OUR STATUTES, OF COURSE, THEY ARE

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1 CHILDREN. WHAT I'M SAYING IS THAT READING THE
2 STATE STATUTES IN CONJUNCTION WITH THE RIGHTS
3 AND RESPONSIBILITIES OF PARENTS THAT WITH A
4 JUVENILE, A PARENT'S ASSERTION OF THAT
5 JUVENILE'S FIFTH AMENDMENT RIGHT AND OUR
6 CONSTITUTIONAL RIGHT TO COUNSEL AFTER HE'S
7 ADVISED OF MIRANDA, THAT THE PARENTS ASSERTION
8 OF THAT RIGHT TO COUNSEL SHOULD SUFFICE FOR THEM
9 TO AFFORD MR. WELLBORN THE OPPORTUNITY TO
10 CONTACT HIS CLIENT, DISCUSS THE CASE WITH HIS
11 CLIENT, AND IMMEDIATELY CEASE INTERVIEWING HIS
12 CLIENT AT THE TIME HE REQUESTED THEM TO DO SO.

13 THE COURT: WELL, THAT IS AN INTERESTING
14 ARGUMENT, BUT DO YOU HAVE ANY CASE LAW?

15 MR. D'AGOSTINO: I COULD NOT FIND ANY CASE LAW
16 DIRECTLY ON POINT.

17 THE COURT: THANK YOU.

18 MR. D'AGOSTINO: DO YOU WANT ME TO GO INTO MY
19 OTHER ARGUMENTS AND OTHER REASONS WHY?

20 THE COURT: YES, AND I'VE THOUGHT THROUGH A LOT
21 OF THIS. I'M NOT TRYING TO USURP THE STATE'S
22 RIGHT TO BUT I KNEW WHAT THESE ISSUES WERE GOING
23 TO BE, I'VE BEEN THINKING ABOUT THEM, AND I'VE
24 DONE A LITTLE RESEARCH MYSELF AND LISTENING TO
25 THE TESTIMONY ALONG THE LINES OF WHAT WE'RE

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1 GOING ON OVER, SO I DON'T WANT YOU OR MR. GORDON
2 TO THINK I'VE TAKEN THE STATE'S SIDE IN MAKING
3 THE ARGUMENTS. I'VE THOUGHT THROUGH THESE AND
4 I'M LOOKING, I'VE LOOKED AT THE RETARDATION
5 ISSUE, I'VE LOOKED AT THE AGE ISSUE. LIKE YOU I
6 COULDN'T FIND ANYTHING THAT REALLY ADDRESSED THE
7 PARENTAL OR THE THIRD PARTY ATTORNEY POSITION,
8 BUT GO AHEAD.

9 MR. D'AGOSTINO: WELL, I'VE GOT CASES FROM OTHER
10 JURISDICTIONS THAT DEAL WITH THIRD PARTY, NOT
11 WITH JUVENILES, I'LL BE GLAD TO HAND THEM UP FOR
12 THE COURT'S CONSIDERATION.

13 MR. ANTHONY: HAVE YOU GOT COPIES OF THOSE.

14 MR. D'AGOSTINO: NO. YOUR HONOR, WITH REGARD TO
15 THE SIXTH AMENDMENT RIGHT TO COUNSEL, IT'S
16 OBVIOUS THAT THERE WAS A BOND HEARING THAT DAY,
17 I WOULD SUBMIT THAT AT THAT POINT JUDICIAL
18 PROCEEDINGS BEGAN AND MR. WELLBORN'S ATTEMPTS TO
19 GET IN TO SEE HIS CLIENT WOULD INCLUDE
20 PREPARATION FOR BOND HEARINGS, AND AS SUCH THE
21 SIXTH AMENDMENT RIGHT TO COUNSEL WAS ALSO
22 PRESENT THAT DAY FOR MR. GORDON AND AS SUCH --

23 THE COURT: WAIT, I'M GETTING A LITTLE CONFUSED.
24 THE THING THAT, OKAY, IS THERE ANY TIME ON IT?

25 MR. D'AGOSTINO: THERE IS NO TIME ON IT AND IT

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1 DID OCCUR THAT DAY AND OFFICER THICKENS SAID IT
2 HAPPENED THAT AFTERNOON.

3 THE COURT: WHICH WOULD BE AFTER THE TAKING OF
4 THE STATEMENT.

5 MR. D'AGOSTINO: THE STATEMENT WAS TAKEN IN THE
6 AFTERNOON AS WELL. I COULD NOT PIN DOWN A TIME
7 ON THE STATEMENT WHEN THE BOND HEARING WAS HELD.
8 I'VE CHECKED WITH THE MAGISTRATE.

9 THE COURT: HE SAID LATE AFTERNOON, THE BOND IN
10 THE STATEMENT WAS AROUND FOUR.

11 MR. D'AGOSTINO: THE LAST TIME WAS SOMETIME
12 AROUND FOUR, YES, SIR, YOUR HONOR. I COULD NOT
13 PIN DOWN CHECKING WITH JUDGE LONG'S OFFICE AS TO
14 WHETHER THEY KEEP RECORDS AS TO SPECIFIC TIMES
15 THAT BOND HEARINGS ARE HELD. I WAS INFORMED BY
16 THE SECRETARY THEY DO NOT, SO I COULD NOT
17 PRESENT ANY EVIDENCE AS TO WHAT TIME FROM THE
18 COURT AS TO WHAT TIME THAT BOND HEARING WAS
19 HELD, YOUR HONOR, BUT IN ANY EVENT WITH REGARD
20 TO THAT, THE BOND, IT IS CLEAR THAT ONE OF THE
21 FUNCTIONS OF AN ATTORNEY WOULD BE TO ASSIST HIS
22 CLIENT IN PREPARATION OF A BOND HEARING. I
23 WOULD SUBMIT THAT JUDICIAL PROCEEDINGS HAD BEGUN
24 OR WERE IN THE PROCESS AND AS SUCH MR. GORDON'S
25 RIGHT TO SEE HIS ATTORNEY ATTACHED UNDER THE

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1 SIXTH AMENDMENT AS WELL IN WHICH CASE THE STATE
2 WOULD NOT EVEN BE ENTITLED TO INITIATE
3 CONVERSATIONS AND INTERROGATIONS OF MY CLIENT.
4 YOUR HONOR, I WOULD ALSO SUBMIT THAT JUST ON THE
5 FACTS OF THIS CASE ALONE, THE ISSUE OF THE
6 VOLUNTARINESS, THE VOLUNTARINESS WAIVER OF THE
7 STATEMENTS, ALL THE EVIDENCE DEMONSTRATES, I
8 WILL SUBMIT, THAT ANTONIO GORDON COULD NOT
9 VOLUNTARILY WAIVE HIS RIGHTS AND THAT IT WAS A
10 FREELY AND VOLUNTARY WAIVER OF HIS RIGHTS. I
11 WOULD SUBMIT THAT ALTHOUGH HE'S BEEN FOUND
12 COMPETENT TO STAND TRIAL, THE COURT SHOULD TAKE
13 NOTICE AND CAN TAKE INTO CONSIDERATION OF HIS
14 LIMITED MENTAL ABILITY AS WAS TESTIFIED TO
15 TODAY, THE FACT OF HOW THE MIRANDA STATEMENTS
16 WERE GIVEN TO HIM, IN A VERY, YOU KNOW, JUST
17 READ DIRECTLY TO HIM. THERE WASN'T THIS
18 SCENARIO OR THIS SETTING WHERE HE WAS ASKED A
19 QUESTION, ASKED IF HE UNDERSTOOD IT, THINGS OF
20 THAT NATURE, SO I WOULD SUBMIT THAT HIS
21 STATEMENTS SUBSEQUENT TO HIS INTERROGATION COULD
22 NOT BE FREELY AND VOLUNTARILY GIVEN BECAUSE HE
23 COULD NOT FREELY AND VOLUNTARILY WAIVE HIS
24 MIRANDA RIGHTS.

25 YOUR HONOR, I THINK THE COURT SHOULD ALSO

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1 THE COURT: AND THIS IS A NO PAROLE OFFENSE. DO
2 YOU UNDERSTAND THAT?

3 MR. MCCREARY: YES, SIR.

4 THE COURT: ALL RIGHT. KNOWING THAT, HOW DO YOU
5 PLEAD TO ACCESSORY BEFORE THE FACT?

6 MR. MCCREARY: GUILTY.

7 THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER
8 THE FACT?

9 MR. MCCREARY: GUILTY.

10 THE COURT: OTHER THAN THE AGREEMENT THAT YOU
11 ARE ENTERING THESE PLEAS AS OPPOSED TO THOSE
12 WITH WHICH YOU WERE ORIGINALLY CHARGED AND THAT
13 YOU HAVE BEEN PROMISED TO RECEIVE A SENTENCE OF
14 NO MORE THAN 30 YEARS AND TO TESTIFY IF ANY OF
15 THE OTHER CO-DEFENDANTS GO TO TRIAL, OTHER THAN
16 THESE PROMISES, HAS ANYONE MADE ANY PROMISE OR
17 GIVEN YOU ANYTHING OR TOLD YOU YOU'D BE REWARDED
18 IN ANY WAY FOR ENTERING YOUR PLEA OF GUILT?

19 MR. MCCREARY: NO, SIR.

20 THE COURT: HAS ANYONE THREATENED YOU, HAS
21 ANYBODY COERCED YOU, OR USED ANY FORCE
22 WHATSOEVER TO CAUSE YOU TO ENTER PLEAS OF GUILT
23 TO THESE TWO CHARGES?

24 MR. MCCREARY: NO, SIR.

25 THE COURT: ARE YOU ENTERING YOUR PLEAS FREELY

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1 AND VOLUNTARILY?

2 MR. MCCREARY: YES, SIR.

3 THE COURT: AND ARE YOU UNDER THE INFLUENCE OF
4 ANYTHING AT THIS TIME?

5 MR. MCCREARY: NO, SIR.

6 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
7 JURY ON EACH OF THESE CHARGES, MR. MCCREARY.
8 THEY CAN BE TRIED TOGETHER SINCE THEY ARISE OUT
9 OF A CONTINUING INCIDENT. YOU UNDERSTAND THAT?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: YOU HAVE A RIGHT TO, WELL, YOU ARE
12 PRESUMED INNOCENT OF THESE CHARGES AGAINST YOU
13 AND ARE SO PRESUMED UNTIL SUCH TIME AS THE STATE
14 WOULD BE ABLE TO PROVE TO THAT JURY YOUR GUILT
15 BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?

16 MR. MCCREARY: YES, SIR.

17 THE COURT: YOU HAVE THE RIGHT TO REMAIN
18 SILENT. THAT IS, NO ONE CAN MAKE YOU TESTIFY OR
19 GIVE ANY STATEMENT TO ANYONE CONCERNING THIS.
20 DO YOU UNDERSTAND THAT?

21 MR. MCCREARY: YES, SIR.

22 THE COURT: YOU HAVE THE RIGHT TO HAVE YOUR
23 WITNESSES MADE TO COME TO COURT BY SUBPOENA IF
24 YOU GO TO TRIAL. DO YOU UNDERSTAND THAT?

25 MR. MCCREARY: YES, SIR.

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1 THE COURT: YOU HAVE THE RIGHT TO CONFRONT THE
2 WITNESSES AGAINST YOU. THAT IS, YOU AND YOUR
3 ATTORNEY HAVE THE RIGHT TO SEE, HEAR, QUESTION,
4 AND CROSS EXAMINE WITNESSES WHO WOULD TESTIFY
5 FOR THE STATE AGAINST YOU. DO YOU UNDERSTAND
6 THAT?

7 MR. MCCREARY: YES, SIR.

8 THE COURT: AND YOU'VE GIVEN A STATEMENT IN THIS
9 CASE AND IT WOULD BE A QUESTION FOR THE COURT
10 AND FOR THE JURY WHETHER OR NOT THAT STATEMENT
11 WAS, YOU ARE GIVING UP ANY RIGHT TO HAVE THAT
12 STATEMENT REVIEWED ANY FURTHER REGARDING WHETHER
13 OR NOT IT WAS VOLUNTARILY GIVEN OR NOT. DO YOU
14 UNDERSTAND THAT?

15 MR. MCCREARY: YES, SIR.

16 THE COURT: YOU ALSO GIVE UP ANY DEFENSE THAT
17 YOU MAY HAVE TO THESE OFFENSES WHEN YOU ENTER A
18 PLEA OF GUILT. YOU UNDERSTAND THAT?

19 MR. MCCREARY: YES, SIR.

20 THE COURT: KNOWING ALL THOSE THINGS I ASK YOU
21 AGAIN, HOW DO YOU PLEAD TO ACCESSORY BEFORE THE
22 FACT?

23 MR. MCCREARY: GUILTY.

24 THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER
25 THE FACT?

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1 MR. MCCREARY: GUILTY.

2 THE COURT: ALL RIGHT. I WILL NOW ASK THE
3 SOLICITOR TO, FIRST I UNDERSTAND MR. KRENN IS
4 HERE, THE FATHER, AND IF HE WISHES TO COME
5 FORWARD AND MAKE ANY STATEMENT. THE VICTIM'S
6 RIGHTS ACT HAS BEEN COMPLIED WITH.

7 MR. THOMPSON: IT HAS BEEN COMPLIED WITH. MR.
8 KRENN WOULD LIKE TO ADDRESS THE COURT ON MONDAY
9 WHEN SENTENCING OCCURS, YOUR HONOR.

10 THE COURT: OKAY, THAT'S FINE.

11 MR. THOMPSON: AS FAR AS THE FACTS GO, DO WANT
12 ME TO PRESENT THOSE?

13 THE COURT: I'VE HEARD THE FACTS REPEATEDLY THIS
14 WEEK. I REVIEWED THE STATEMENTS, AND I THINK
15 THOUGH JUST FOR PURPOSES OF GETTING THE
16 AGREEMENT BY THE DEFENDANT AS TO THE FACTS, I
17 THINK YOU NEED TO JUST GO OVER THEM VERY BRIEFLY
18 BECAUSE I NEED TO HAVE CONFIRMATION FROM HIM.

19 MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR
20 HONOR, IT OCCURRED ON JULY 23, 1998, HERE IN
21 YORK COUNTY ON SOUTH JONES STREET. THE
22 DEFENDANT WAS THE DRIVER OF THE CAR THE FOUR
23 DEFENDANTS WERE IN. AT THAT POINT TIME HE WAS
24 THE ONE WHO OBTAINED THE PISTOL THAT WAS USED.
25 HE OBTAINED THE BULLETS THEN FOLLOWING AND

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1 LOADED THE GUN. HE WAS THE ONE WHO THEN AT SOME
2 POINT TRANSFERRED THE GUN TO WHERE IT ULTIMATELY
3 ENDED UP IN ANTONIO GORDON HANDS. HIS
4 STATEMENTS, AS WELL AS THE STATEMENTS OF HIS
5 CO-DEFENDANTS, POINTED TO THE FACT THAT HE RAN
6 UP UPON MR. KRENN, THAT HE WAS ONE THAT
7 SUGGESTED AT LEAST AT SOME POINT THAT THEY ROB
8 HIM. HE EVEN IN HIS OWN STATEMENT SUGGESTED
9 THAT THEY ROB HIM, IF HE HAD THE GUN HE WOULD
10 ROB THEM OF MARIJUANA. THE OTHERS SUGGESTED HE
11 PRODDED THEM TO GO AHEAD AND ROB THEM. OF
12 COURSE, AT THAT POINT THE ROBBERY DID OCCUR AND
13 THE KILLING OCCURRED WHEN ANTONIO GORDON SHOT
14 THE VICTIM IN THE CASE. AT THAT POINT HE IS THE
15 DRIVER OF THE CAR WHO THEN DROVE OFF, AND OF
16 COURSE WE WOULD HAVE PRESENTED STATEMENTS FROM
17 OTHER WITNESSES WHO SAID THAT HE HAD BRAGGED
18 ABOUT WHAT THEY HAD DONE AND EVEN AT SOME POINT
19 BRAGGED ABOUT BEING THE SHOOTER HIMSELF ALTHOUGH
20 HE WAS NOT. OF COURSE, HE WAS INVOLVED IN THE
21 CASE AND RAN FROM THE POLICE WHEN IT OCCURRED
22 AND SO THAT WOULD FIT ACCESSORY BEFORE AS WELL
23 AS ACCESSORY AFTER THE FACT.

24 THE COURT: YOU AGREE WITH THOSE FACTS, MR.
25 MCCREARY.

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1 MR. MCCREARY: YES, SIR.

2 THE COURT: MR. MCCREARY, I ACCEPT YOUR PLEAS OF
3 GUILT. I FIND THEY ARE FREELY, VOLUNTARILY,
4 KNOWINGLY, AND INTELLIGENTLY ENTERED. THEY ARE
5 ENTERED WITH THE ADVICE OF COMPETENT COUNSEL
6 WITH WHOM YOU ARE SATISFIED. I FIND THAT YOU
7 ARE ENTERING IT FREELY AND VOLUNTARILY AND YOU
8 HAVE SIGNED A PLEA OF GUILT AND THE FACTS
9 SUPPORT YOUR PLEA.

10 NOW I'LL BE GLAD TO HEAR FROM YOU AND YOUR
11 ATTORNEY NOW OR WE CAN WAIT AND DO IT MONDAY
12 WHEN THE SENTENCING PHASE OF THIS PROCESS
13 OCCURS.

14 MR. GILLEN: WE WILL OPT FOR MONDAY AND PRESENT
15 MITIGATION BEFORE THE COURT AT THAT TIME.
16 HOWEVER, I WOULD LIKE TO ADDRESS ONE ISSUE. IT
17 WAS MY UNDERSTANDING IT WAS A NEGOTIATED PLEA.
18 MR. THOMPSON AND I NEVER DISCUSSED THE ACTUAL
19 WORD OR USE OF WORDS, BUT SINCE WE HAD GONE BACK
20 AND FORTH SO MANY TIMES AND, YOU KNOW, WORKED
21 THIS OUT, IT WAS AT LEAST MY UNDERSTANDING IT
22 WAS A NEGOTIATED PLEA. I DON'T KNOW IF THAT HAS
23 ANY DIFFERENCE IN YOUR HONOR'S DEALINGS WITH THE
24 CASE BUT.

25 THE COURT: WELL, I UNDERSTOOD THAT AND I

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1 THE COURT: YOU'RE REPRESENTED BY MR.
2 D'AGOSTINO?

3 MR. GORDON: YES, SIR.

4 THE COURT: YOU SATISFIED WITH HIS SERVICES?

5 MR. GORDON: YES, SIR.

6 THE COURT: NOW HE IS YOUR ATTORNEY, SO WHILE I
7 GO THROUGH THESE QUESTIONS IF YOU AT ANY TIME,
8 JUST LIKE MR. MCCREARY DID BEFORE YOU, IF YOU
9 NEED TO DISCUSS ANYTHING WITH YOUR LAWYER JUST
10 TELL ME. I WON'T BE OFFENDED AND IT WON'T HURT
11 YOUR CASE AT ALL. HE'S HERE TO HELP YOU AND IF
12 YOU DON'T UNDERSTAND SOMETHING, ASK ME TO REPEAT
13 IT AND IF YOU STILL NEED SOMETHING EXPLAINED TO
14 YOU, STOP AT ANY TIME AND TALK TO MR.
15 D'AGOSTINO. WOULD YOU PROMISE ME YOU'LL DO
16 THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: ALL RIGHT. YOU ARE CHARGED IN
19 SEVERAL INDICTMENTS. THE FIRST IS THAT OF
20 MURDER. THESE ARE ALLEGED TO HAVE OCCURRED IN
21 YORK COUNTY ON JULY 23 OF 1998. IT'S ALLEGED IN
22 THAT INDICTMENT THAT ON THAT DATE WITH MALICE OF
23 AFORETHOUGHT YOU DID KILL ONE ERIC PETER KRENN
24 BY MEANS OF SHOOTING HIM WITH A FIREARM AND THAT
25 HE DIED AS A RESULT THEREOF.

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1 THIS MURDER CARRIES 30 YEARS TO LIFE. IT IS
2 WHAT'S CALLED A VIOLENT OFFENSE AND A MOST
3 SERIOUS OFFENSE AND IT DOES NOT ALLOW FOR ANY
4 PAROLE. THE MOST SERIOUS OFFENSE MEANS THAT
5 SOMEONE, INCLUDING YOU, IF DURING YOUR LIFETIME
6 YOU RECEIVE TWO SERIOUS OFFENSES OR A
7 COMBINATION OF THREE SERIOUS AND MOST SERIOUS
8 OFFENSES, YOU COULD BE IMPRISONED FOR LIFE
9 WITHOUT ANY PAROLE. THE VIOLENT OFFENSE IS ONE
10 THAT RESTRICTS CERTAIN ACTIVITIES THAT OTHER
11 INMATES MIGHT BE ALLOWED WHILE THEY ARE
12 INCARCERATED. YOU UNDERSTAND ALL THAT?

13 MR. GORDON: YES, SIR.

14 THE COURT: HOW DO YOU PLEAD TO THE MURDER
15 CHARGE?

16 MR. GORDON: GUILTY.

17 THE COURT: YOU ARE CHARGED WITH POSSESSION OF A
18 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
19 IN THREE SEPARATE INDICTMENTS. IT'S ALLEGED
20 THAT YOU POSSESSED A FIREARM AT THE TIME OF THE
21 COMMISSION OF THE MURDER AND AT THE TIME OF THE
22 COMMISSION OF THE TWO ARMED ROBBERIES. THESE
23 EACH WILL CARRY AN ADDITIONAL 30 YEARS IN JAIL.
24 YOU UNDERSTAND THAT?

25 MR. GORDON: YES, SIR.

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1 THE COURT: AS TO THE MURDER CHARGE AND THE
2 POSSESSION OF THE FIREARM DURING A VIOLENT
3 CRIME, HOW DO YOU PLEAD?

4 MR. GORDON: GUILTY, SIR.

5 THE COURT: ALL RIGHT. IT'S ALLEGED IN ANOTHER
6 INDICTMENT THAT BEING UNDER 21 YEARS OF AGE AT
7 THAT TIME YOU WERE IN POSSESSION OF A PISTOL AND
8 THAT'S IN VIOLATION OF STATE LAW AND THAT
9 CARRIES UP TO FIVE YEARS AND A FINE. YOU
10 UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 MR. THOMPSON: YOUR HONOR, I DON'T MEAN TO
13 INTERRUPT BUT ON THE ATTEMPTED ROBBERY YOU SAID
14 CARRIES UP TO 30 YEARS. THEY ACTUALLY CARRY UP
15 TO 20.

16 THE COURT: I HADN'T EVEN GOT TO THEM.

17 MR. THOMPSON: I'M SORRY. THERE WAS ONE THAT
18 I---

19 THE COURT: I WENT FROM THE MURDER, THEN I
20 EXPLAINED THE THREE FIREARMS. I HAVEN'T GOTTEN
21 TO THE ATTEMPTED ARMED ROBBERY YET.

22 MR. THOMPSON: OKAY. IT MUST HAVE BEEN THE
23 FIREARM YOU SAID CARRIED UP TO 30.

24 THE COURT: I JUST DIDN'T WANT TO HAVE TO REPEAT
25 IT.

App. 1179

1 MR. THOMPSON: THEY CARRY UP TO FIVE ON THE
2 FIREARMS.

3 THE COURT: THAT'S WHAT I SAID, ISN'T IT?

4 MR. D'AGOSTINO: NO, YOU SAID UP TO 30 ON THE
5 FIREARMS. THEY CARRY UP TO FIVE YEARS ON THE
6 FIREARMS.

7 THE COURT: OKAY. LET ME REPEAT IT. I DID MAKE
8 A GRIEVOUS ERROR. GOING BACK TO THE MURDER
9 CHARGE, IN CONJUNCTION WITH THAT YOU ARE CHARGED
10 WITH A SECOND OFFENSE THAT BEING POSSESSION OF A
11 FIREARM DURING THE COMMISSION OF A VIOLENT
12 CRIME. YOU UNDERSTAND THAT?

*Error
not corrected*

13 MR. GORDON: YES, SIR.

14 THE COURT: YOU ARE ALSO CHARGED WITH THAT SAME
15 OFFENSE IN REGARD TO BOTH ATTEMPTED ARMED
16 ROBBERIES. YOU UNDERSTAND THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: EACH OF THOSE WOULD CARRY AN
19 ADDITIONAL FIVE YEARS. THE FIREARM POSSESSION
20 DURING A VIOLENT CRIME ON THOSE THREE COUNTS.
21 DO YOU UNDERSTAND THAT?

22 MR. GORDON: YES, SIR.

23 THE COURT: HOW DO YOU PLEAD THEN GOING BACK ON
24 THE MURDER INDICTMENT AS TO POSSESSION OF A
25 FIREARM DURING THE COMMISSION OF THE MURDER?

App. 180

1 MR. GORDON: PLEAD GUILTY, SIR.

2 THE COURT: ALL RIGHT. POSSESSION OF A PISTOL
3 BY A PERSON UNDER 21 ALLEGES THAT YOU AT THAT
4 TIME POSSESSED A PISTOL, THAT YOU WERE UNDER 21,

5 AND THAT THIS WAS IN VIOLATION OF STATE LAW AND
6 THIS WOULD CARRY UP TO FIVE YEARS AND A
7 POSSIBILITY OF A FINE. DO YOU UNDERSTAND
8 THAT --

9 MR. GORDON: YES, SIR.

10 THE COURT: ---CHARGE AND THAT PENALTY?

11 MR. GORDON: YES, SIR.

12 THE COURT: HOW DO YOU PLEAD TO THAT?

13 MR. GORDON: GUILTY, SIR.

14 THE COURT: YOU ARE CHARGED WITH CRIMINAL
15 CONSPIRACY, ALLEGED THAT AT THAT TIME JULY 23,
16 1998, THAT YOU ALONG WITH OTHERS AND TERRANCE
17 MCCREARY, GARY MOFFAT, AND MONTA GORDON DID
18 COMBINE AND CONFEDERATE AND AGREE AND HAVE AN
19 UNDERSTANDING WITH ONE AND THE OTHER TO ENTER
20 INTO THE OFFENSE OF MURDER AND ARMED ROBBERY
21 AND/OR CARJACKING.

22 CRIMINAL CONSPIRACY CARRIES UP TO FIVE YEARS AND
23 \$5,000 FINE. YOU UNDERSTAND THAT?

24 MR. GORDON: YES, SIR.

25 THE COURT: HOW DO YOU PLEAD TO THAT?

Mandingo
Minimum
Unexplained

App. 181

1 MR. GORDON: GUILTY, SIR.

2 THE COURT: YOU ARE CHARGED WITH TWO COUNTS OF
3 ATTEMPTED ARMED ROBBERY. IT'S ALLEGED THAT AT
4 THAT TIME ON JULY 23, 1998, WHILE ARMED WITH A
5 DEADLY WEAPON YOU DID ATTEMPT TO TAKE FROM ERIC
6 KRENN AND CHRISTOPHER DIAZ, FROM MR. KRENN A BMW
7 1985, AND CURRENCY FROM MR. DIAZ IN VIOLATION OF
8 STATE LAW.

9 ATTEMPTED ARMED ROBBERY WOULD CARRY UP TO 20
10 YEARS. YOU UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 THE COURT: IT'S ALSO WHAT'S CALLED A MOST
13 SERIOUS OFFENSE. YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: AND IT'S WHAT'S CALLED A PAROLE
16 INELIGIBLE OFFENSE. THAT MEANS AS TO THE
17 ATTEMPTED ARMED ROBBERY CHARGE YOU HAVE TO SERVE
18 UP TO, AT LEAST 85 PERCENT OF THAT CHARGE. YOU
19 UNDERSTAND THAT?

20 MR. GORDON: YES, SIR.

21 THE COURT: ON EACH OF THESE YOU ARE CHARGED
22 WITH POSSESSION OF A WEAPON DURING THE
23 COMMISSION OF A VIOLENT CRIME. HOW DO YOU PLEAD
24 TO ATTEMPTED ARMED ROBBERY INVOLVING CHRISTOPHER
25 DIAZ?

App. 182

1 MR. GORDON: GUILTY, SIR.

2 THE COURT: AND TO POSSESSION OF A WEAPON AT
3 THAT TIME?

4 MR. GORDON: GUILTY.

5 THE COURT: AND HOW DO YOU PLEAD TO ATTEMPTED
6 ARMED ROBBERY INVOLVING ERIC KRENN ON JULY 23,
7 1998?

8 MR. GORDON: GUILTY.

9 THE COURT: AND TO POSSESSION OF A FIREARM AT
10 THAT TIME?

11 MR. GORDON: GUILTY.

12 THE COURT: NOW I DON'T KNOW THAT YOU'VE EVER
13 BEEN TREATED FOR ANY MENTAL OR EMOTIONAL
14 DISABILITY, THAT IS, TREATED, BUT YOU HAVE BEEN
15 EXAMINED AND EVALUATED AT AN EARLIER TIME
16 THROUGH THE DEPARTMENT OF JUVENILE JUSTICE AND
17 BY TWO PARTICULAR SETS OF PSYCHOLOGISTS, NOT
18 MEDICAL DOCTORS, BUT PSYCHOLOGISTS IN REGARD TO
19 THIS MATTER. IS THAT CORRECT?

20 MR. GORDON: YES, SIR.

21 THE COURT: OTHER THAN THAT, HAVE YOU BEEN
22 TREATED OR RECEIVED ANY KIND OF PSYCHOLOGICAL
23 EVALUATIONS TO YOUR KNOWLEDGE? MR. D'AGOSTINO
24 IS NODDING IN THE AFFIRMATIVE. YOU WANT TO TELL
25 ME ABOUT THAT NOW?

App. 183

1 MR. D'AGOSTINO: YES, YOUR HONOR. IN
2 CONJUNCTION WITH HIS DJJ SENTENCES HE DID ATTEND
3 AND RECEIVE COUNSELING FROM MENTAL HEALTH,
4 CATAWBA MENTAL HEALTH THAT WAS IN 1997, '98,
5 '97. IT MIGHT HAVE BEEN THE FIRST PART OF '98
6 AS WELL. IN ADDITION TO HAVING HIM EXAMINED BY
7 DR. VENN FOR AN EVALUATION, HE HAS ALSO BEEN
8 EXAMINED BY A PSYCHIATRIST, A DR. ELLEN BERG, A
9 DOCTOR WITH DR. HAROLD MORGAN'S OUTFIT, AND THAT
10 EXAMINATION WAS FOR SEVERAL PURPOSES, MENTAL
11 DEFECT, ISSUES RELATING TO MCNAUGHTON. I WAS
12 CONVINCED THERE WERE NO ISSUES AS FAR AS MENTAL
13 DEFECT AND NO ISSUES ASSOCIATED WITH MCNAUGHTON,
14 NOT GUILTY BY REASON OF INSANITY, SO THERE IS NO
15 MENTAL ILLNESS PROBLEMS. THERE WERE ISSUES AND
16 THAT'S WHY I GOT DR. VENN TO EXAMINE HIM BECAUSE
17 HE DEALT MORE WITH CHILDREN, ISSUES DEALING WITH
18 COMPETENCY, BUT THE COURT HAS ALREADY ADDRESSED
19 THE ISSUE OF COMPETENCY AND I THINK WE'VE HAD
20 TWO PSYCHOLOGISTS DISCUSS THAT, SO THAT'S THE
21 EXTENT OF HIS MENTAL HEALTH EVALUATION AND THE
22 TREATMENT THAT I'M AWARE OF, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU. MR. GORDON,
24 OTHER THAN THE FACT THAT THEY ARE RECOMMENDING
25 THAT I GIVE YOU A SENTENCE THAT COMBINES TO A

App. 184

1 TOTAL OF 40 YEARS, HAS ANYONE MADE ANY PROMISE,
2 USED ANY THREATS, OR TOLD YOU YOU'D RECEIVE ANY
3 REWARD OR ANY SPECIAL CONSIDERATION OR HAS
4 ANYBODY USED ANY FORCE OR COERCION TO CAUSE YOU
5 TO ENTER YOUR PLEAS OF GUILT TO THESE OFFENSES?

6 MR. GORDON: NO, SIR.

7 THE COURT: ARE YOU ENTERING THESE PLEAS FREELY
8 AND VOLUNTARILY?

9 MR. GORDON: YES, SIR.

10 THE COURT: ARE YOU AT THIS TIME UNDER THE
11 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
12 INTOXICATED?

13 MR. GORDON: NO, SIR.

14 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
15 JURY ON THESE CHARGES. THEY COULD BE TRIED
16 TOGETHER SINCE THEY OCCUR FROM ONE EVENT. YOU'D
17 BE TRIED BY A JURY OF 12 INDIVIDUALS, AND YOU
18 HAVE A RIGHT TO THAT TRIAL. AT THAT TRIAL THE
19 STATE WOULD BE REQUIRED TO PROVE YOUR GUILT
20 BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE
21 CONVICTED OF OFFENSES. YOU DON'T HAVE TO PROVE
22 YOUR INNOCENCE. THE LAW PRESUMES YOU ARE
23 INNOCENT. THE STATE WOULD HAVE TO PROVE YOUR
24 GUILT BEYOND A REASONABLE DOUBT. DO YOU
25 UNDERSTAND THAT?

App. 185

1 MR. GORDON: YES, SIR.

2 THE COURT: NOW YOU HAVE A RIGHT TO REMAIN
3 SILENT. THAT IS, YOU DO NOT HAVE TO TESTIFY.
4 YOU DO NOT HAVE TO GIVE ANY STATEMENTS. YOU DO
5 NOT HAVE TO SAY ANYTHING ABOUT THIS CASE
6 WHATSOEVER. DO YOU UNDERSTAND THAT?

7 MR. GORDON: YES, SIR.

8 THE COURT: YOU HAVE THE RIGHT TO SEE THE
9 WITNESSES, TO HEAR THE WITNESSES, TO HAVE YOUR
10 ATTORNEY CROSS EXAMINE AND YOU CROSS EXAMINE THE
11 WITNESSES WHO THE STATE WOULD CALL TO TESTIFY
12 AGAINST YOU AT THAT TRIAL IF YOU HAD A TRIAL.
13 DO YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: YOU ALSO HAVE A RIGHT TO HAVE ANY
16 WITNESSES THAT YOU THINK WOULD TESTIFY WITH
17 INFORMATION THAT WOULD BE HELPFUL TO YOU, YOU
18 HAVE THE RIGHT TO HAVE THE STATE MAKE THOSE
19 WITNESSES OR ISSUE SUBPOENAS FOR THOSE WITNESSES
20 TO MAKE THOSE WITNESSES COME TO COURT TO TESTIFY
21 FOR YOU. YOU UNDERSTAND THAT?

22 MR. GORDON: YES, SIR.

23 THE COURT: NOW YOU'VE ALREADY, YOU MADE A
24 CONFESSION OR A STATEMENT IN THIS CASE AND I
25 HAVE ALREADY RULED THAT THEY WERE ADMISSIBLE AT

App. 186

1 THE TRIAL, BUT IF YOU WENT TO TRIAL THE JURY
2 WOULD HAVE TO DETERMINE WHETHER OR NOT YOU HAD
3 MADE THOSE FREELY AND VOLUNTARILY AND
4 UNDERSTANDING YOUR RIGHTS. YOU UNDERSTAND THAT?

5 MR. GORDON: YES, SIR.

6 THE COURT: NOW BY ENTERING PLEAS OF GUILT TO
7 EACH OF THESE, AS TO EACH OF THOSE OFFENSES, TO
8 EACH AND EVERY ONE OF THEM, YOU ARE GIVING UP
9 THOSE RIGHTS THAT I HAVE JUST GONE OVER. DO YOU
10 UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 THE COURT: KNOWING ALL THESE THINGS THEN I ASK
13 AS TO THE EVENTS ON JULY 23, 1998, HOW DO YOU
14 PLEAD REGARDING THE CHARGE OF MURDER OF ERIC
15 PETER KRENN?

16 MR. GORDON: GUILTY, SIR.

17 THE COURT: AND TO POSSESSION OF A FIREARM AT
18 THAT TIME?

19 MR. GORDON: GUILTY.

20 THE COURT: HOW DO YOU PLEAD TO POSSESSION OF A
21 PISTOL BY A PERSON UNDER 21 AT THAT TIME?

22 MR. GORDON: GUILTY.

23 THE COURT: HOW DO YOU PLEAD TO CRIMINAL
24 CONSPIRACY AT THAT TIME?

25 MR. GORDON: GUILTY.

1 THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED
 2 ROBBERY INVOLVING ERIC KRENN AND ONE BMW AT THAT
 3 TIME?
 4 MR. GORDON: GUILTY.
 5 THE COURT: AND TO POSSESSION OF A WEAPON DURING
 6 THE COMMISSION OF THAT EVENT.
 7 MR. GORDON: GUILTY.
 8 THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED
 9 ROBBERY REGARDING CHRISTOPHER DIAZ IN CURRENCY
 10 OR MONEY AT THAT TIME?
 11 MR. GORDON: GUILTY.
 12 THE COURT: AND HOW DO YOU PLEAD TO POSSESSION
 13 OF A WEAPON DURING THAT?
 14 MR. GORDON: GUILTY.
 15 THE COURT: ALL RIGHT. NOW I'VE HEARD THE
 16 FACTS, I HAVE READ YOUR STATEMENTS, BUT I'M
 17 GOING TO ASK JUST FOR THE PURPOSES OF THIS
 18 HEARING THAT THE SOLICITOR TO GO OVER AGAIN
 19 BRIEFLY THE FACTS.
 20 MR. THOMPSON: IF IT PLEASE THE COURT, THIS
 21 OCCURRED JULY 23, 1998, HERE IN YORK COUNTY IN
 22 ROCK HILL AT SOUTH JONES STREET. THE DEFENDANT
 23 IN THIS CASE WAS INVOLVED, AND OF COURSE,
 24 SITTING IN THE COURT ARE THE OTHER DEFENDANTS.
 25 I HAD DISCUSSED WITH TERRANCE MCCREARY BEFORE

187
 381
 187

Aop. 188

1 GETTING OUT OF THE CAR THAT THEY WOULD ROB MR.
2 KRENN AND TRY TO TAKE THE CAR. AS WELL AS WHEN
3 HE GOT OUT HE TOOK THE PISTOL WITH HIM. HE
4 WITNESSED MR. DIAZ PUTTING HIM AND MONTA GORDON

5 AT THE WINDOW OF THE VICTIM'S CAR TRYING TO
6 STEAL IT. AS A MATTER OF FACT, MR. DIAZ WOULD
7 HAVE TESTIFIED THAT THIS DEFENDANT HAD OR THAT
8 THE DEFENDANT AT THE WINDOW HAD PUT HIS HAND ON
9 THE CAR DOOR TRYING TO OPEN IT WHILE POINTING
10 THE GUN AT MR. KRENN. THE WINDOW OF THE CAR
11 BEING DOWN AT THAT TIME. THIS DEFENDANT'S PALM
12 PRINT WAS LIFTED OFF OF THE DOOR EXACTLY WHERE
13 THE WITNESS STATED HE WOULD HAVE BEEN TOUCHING
14 IT TRYING TO OPEN IT AND IT WAS MATCHED AND WE
15 WOULD HAVE HAD TESTIMONY TO THAT AFFECT.

16 THE SHOT WAS FIRED BY THIS DEFENDANT. HE TOOK
17 THE GUN BACK IN THE CAR AND RAN OFF AT THAT
18 POINT IN TIME. HE'S UNDER 21 YEARS OF AGE. AND
19 EVEN HIS GIRLFRIEND CHYENCA DIXON DID ADMIT TO
20 ME WHEN I INTERVIEWED HER TO PREPARE FOR THIS
21 TRIAL THAT MR. GORDON HAD ADMITTED TO HER THAT
22 NIGHT HE WAS THE ONE WHO FIRED THE SHOT AND SHE
23 SAID IF SHE WAS CALLED WOULD HAVE TESTIFIED TO
24 THAT.

25 THE STATE WOULD HAVE PRODUCED THOSE THINGS AT

App. 189

1 TRIAL AND THAT IS THE BASIS FOR HIS GUILTY PLEA
2 AT THIS TIME, YOUR HONOR.

3 THE COURT: ALL RIGHT. YOU AGREE WITH THOSE
4 FACTS, MR. GORDON?

5 MR. GORDON: YES, SIR.

6 THE COURT: MR. GORDON, I ACCEPT YOUR PLEAS OF
7 GUILT. I FIND THEY ARE FREELY, VOLUNTARILY,
8 KNOWINGLY, AND INTELLIGENTLY ENTERED AND THEY
9 ARE ENTERED WITH THE ADVICE OF A COMPETENT
10 COUNSEL WITH WHOM YOU TELL ME YOU ARE SATISFIED.
11 I FIND THEY ARE FREELY AND VOLUNTARILY ENTERED.
12 YOU HAVE SIGNED PLEAS OF GUILT ON EACH
13 INDICTMENT AND THE FACTS SUPPORT YOUR PLEA.

14 NOW ANYTHING YOU WANT TO ASK ME AT THIS TIME?

15 MR. GORDON: NO, SIR.

16 THE COURT: ALL RIGHT. YOU HAVE A RIGHT NOW,
17 YOU AND YOUR ATTORNEY, TO MAKE A STATEMENT OR
18 YOU CAN WAIT AND DO THAT MONDAY WHEN WE ENTER
19 SENTENCE.

20 MR. D'AGOSTINO: WE'LL WAIT UNTIL MONDAY UNTIL,
21 DO YOU HAVE ANYTHING YOU WANT TO SAY?

22 MR. GORDON: (NODS HEAD.)

23 THE COURT: NOW AS FAR AS THE VICTIM'S RIGHTS
24 ACT I UNDERSTAND MR. KRENN IS PRESENT ALSO FOR
25 THIS.

App. 190

1 MR. THOMPSON: YES, SIR.

2 THE COURT: DOES HE WISH TO STATE ANYTHING AT
3 THIS TIME?

4 MR. THOMPSON: HE WILL ADDRESS THE COURT MONDAY.

5 THE COURT: ALL RIGHT. THANK YOU. WE'LL SEE
6 YOU MONDAY.

7 THE COURT: THAT CONCLUDES THE COURT FOR THIS
8 WEEK.

9 (COURT'S IN RECESS AT 6:40 P.M.)

10 (COURT RESUMES ON MONDAY, JULY 19, 1999.)

11 MR. THOMPSON: ANTONIO GORDON, MONTA GORDON, AND
12 TERRANCE MCCREARY. PLEASE THE COURT, YOUR
13 HONOR.

14 MR. GILLEN: YOUR HONOR, MAY WE APPROACH
15 BRIEFLY.

16 THE COURT: YES.

17 (BENCH CONFERENCE.)

18 MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR
19 HONOR.

20 THE COURT: YES, SIR.

21 MR. THOMPSON: WE'RE HERE AT THIS POINT WITH THE
22 STATE OF SOUTH CAROLINA VERSUS ANTONIO
23 GORDON, MONTA GORDON, AND TERRANCE MCCREARY ALL
24 WHICH ENTERED GUILTY PLEAS FRIDAY LAST WEEK.
25 THEY ARE HERE NOW FOR SENTENCING. THE VICTIM

App. P. 191

1 MR. KRENN IS PRESENT AS WELL AS WITH CHRIS DIAZ.
2 MR. KRENN WISHES TO ADDRESS THE COURT AT THE
3 APPROPRIATE TIME. THERE ARE REMAINING TWO
4 VICTIM IMPACT STATEMENTS WHICH I PASS UP TO THE
5 COURT. I BELIEVE THEY ARE BASICALLY COPIES OF
6 THE FIRST ONE THAT WAS HANDED UP.

7 TO REMIND THE COURT AS TO ANTONIO GORDON, HE
8 PLEAD GUILTY TO MURDER, ATTEMPTED ARMED ROBBERY
9 TWO COUNTS, CONSPIRACY, AND THREE COUNTS OF
10 POSSESSION OF A FIREARM DURING THE COMMISSION OF
11 A VIOLENT CRIME. AS PART OF THE NEGOTIATIONS ON
12 HIM, WE HAVE NEGOTIATED 40 YEARS AS THE SENTENCE
13 THAT WE ARE REQUESTING. WE WOULD ASK FOR 30
14 YEARS ON THE MURDER CHARGE, THAT EVERYTHING ELSE
15 RUN CONCURRENT WITH THAT CHARGE EXCEPT FOR ONE
16 OF THE ATTEMPTED ARMED ROBBERIES WHICH IS TO RUN
17 TEN YEARS CONSECUTIVE.

18 AS TO MONTA GORDON, HE PLEAD GUILTY TO MURDER,
19 TWO COUNTS OF ATTEMPTED ARMED ROBBERY,
20 CONSPIRACY, AND FAILURE TO STOP FOR A BLUE
21 LIGHT. WE'RE ASKING, YOUR HONOR, FOR A
22 CONCURRENT SENTENCE ON THOSE AND A 30 YEAR
23 SENTENCE.

24 AS TO TERRANCE MCCREARY, HE PLEAD GUILTY TO
25 ACCESSORY BEFORE THE FACT TO MURDER AND

1999 Guilty Plea of Antonio Gordon
Exhibit 4

App. P. 192

1 ACCESSORY AFTER THE FACT TO MURDER, AND
2 REQUESTING 30 YEARS SENTENCE ON HIM AS WELL.

3 THE STATE DOES HAVE THE RECORDS OF THE
4 DEFENDANTS YOUR HONOR, AT THE APPROPRIATE TIME.

5 THE COURT: ALL RIGHT. LET'S DO MR. ANTONIO
6 GORDON. TELL ME HIS RECORD.

7 MR. THOMPSON: MR. ANTONIO GORDON IS ALL A
8 JUVENILE RECORD. IN 1993 HE WAS CONVICTED OF AN
9 ATTEMPT CHARGE. WE TRIED TO FIND OUT EXACTLY
10 WHAT THAT IS BUT THE RECORDS WEREN'T QUITE
11 CERTAIN. IN 1995 THREE CONVICTIONS OF BURGLARY
12 SECOND AND MALICIOUS INJURY TO PROPERTY AND
13 THREE COUNTS OF PETITE LARCENY AND HE WENT TO R
14 AND E ON THOSE CHARGES.

15 IN 1997 ASSAULT AND BATTERY AND PETITE LARCENY
16 TO WHICH HE WENT TO R AND E AS WELL. AND IT'S
17 MY UNDERSTANDING THAT HE WAS RELEASED FROM R AND
18 E IN JANUARY OF 1998 AND ABOUT THREE OR FOUR
19 MONTHS LATER WAS RELEASED FROM PAROLE OR

20 PROBATION FROM THAT PARTICULAR CHARGE AT THAT
21 TIME.

22 THE COURT: MR. D'AGOSTINO, BE GLAD TO HEAR FROM
23 YOU AND THEN FROM MR. GORDON.

24 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. YOUR
25 HONOR, AS YOU KNOW ANTONIO GORDON, HE WAS 16

wrong
only
①
Burglary

1999 Guilty plea of Antonio Gorden
Exhibit 4

App.P. 193

1 YEARS OF AGE AT THE TIME THIS OCCURRED. HE'S 17
2 YEARS OLD NOW. TODAY IN THE COURTROOM WITH HIM
3 IS HIS MOTHER LORETTA BROOKS AND HIS STEPFATHER
4 RANDY BROOKS.

5 HE DROPPED OUT OF SCHOOL IN THE 9TH GRADE. HE'S
6 OUT OF SCHOOL. HE DIDN'T EVEN COMPLETE THE 9TH
7 GRADE, YOUR HONOR.

8 THIS WHOLE SITUATION IS A VERY TRAGIC SITUATION.
9 IT'S VERY TRAGIC FOR THE VICTIMS, THE KRENN
10 FAMILY, MR. DIAZ AND HIS FAMILY. IT'S SOMETHING
11 THAT NEVER SHOULD HAVE HAPPENED AND THERE IS
12 ONLY ONE THING THAT I HAVE NOT DONE OR DID NOT
13 DO SINCE MY REPRESENTATION OF ANTONIO BEGAN AND
14 THAT WAS APRIL 21 WHEN I WAS FIRST APPOINTED TO
15 REPRESENT HIM AND SOON AFTER THAT HE ALWAYS, ONE
16 THING HE WANTED TO DO WAS APOLOGIZE TO MR. KRENN
17 AND FOR WHAT HAPPENED, FOR WHAT HE DID, HIS ROLE
18 IN IT AND EVERYTHING THAT WENT ON THAT NIGHT.
19 HE WROTE ME SEVERAL LETTERS AND I, OF COURSE,

20 COULD NOT, FOR OBVIOUS REASONS, COULD NOT ALLOW
21 HIM TO MEET WITH HIM. AND I DIDN'T THINK HE
22 THINK THAT MR. KRENN WOULD WANT TO MEET WITH
23 HIM, BUT ONE THING HE DID SAY AND WANT TO DO IS
24 APOLOGIZE FOR WHAT HE HAD DONE AND HE'S SORRY
25 FOR WHAT HE HAD DONE. AND I WAS ALSO NOTIFIED

1999 Guilty plea of Antonio Gordon
Exhibit 4

APP.P 194

1 BY THE SOLICITOR'S OFFICE THAT SOME OF THE FACTS
2 THAT MIGHT HAVE COME OUT AT TRIAL INDICATES THAT
3 HE WAS, IN ANY EVENT HE WAS SORRY, HE IS SORRY
4 FOR WHAT HE DID. HE KNOWS WHAT HE DID WAS WRONG
5 AND THERE IS NO EXCUSE AND HE'S PLEADING GUILTY.
6 WE JUST ASK THE COURT TO GO ALONG WITH THE
7 NEGOTIATED SENTENCE FOR 40 YEARS. IT'S GOING TO
8 BE A VERY LONG TIME FOR HIM. HOPEFULLY HE CAN
9 GET HIS GED WHILE HE'S DOWN THERE. YOU HEARD
10 ABOUT HIS LIMITED MENTAL CAPACITY. ALTHOUGH
11 HE'S NOT RETARDED BECAUSE NOBODY'S HAD THE
12 OPPORTUNITY TO DO A FULL BACKGROUND. DR. VENN
13 DIDN'T GET TO SPEAK WITH HIS FAMILY MEMBERS,
14 THEY DIDN'T KNOW MUCH ABOUT HIM, BUT THE RECORDS
15 FROM DJJ FROM 1998 AND FROM 1995 ALL INDICATE
16 BORDERLINE FUNCTIONAL IQS. 1995 PSYCHOLOGICAL
17 SHOWS AN IQ 68. DR. VENN'S IQ EXAMINATION SHOWS
18 IQ 68. HE IS AN INDIVIDUAL THAT'S EASILY LEAD
19 AROUND, BUT THAT IS NOT AN EXCUSE.

20 WE JUST ASK THE COURT TO GO ALONG WITH THE
21 RECOMMENDATION.

22 ON BEHALF OF MR. ANTONIO GORDON, HE DOES
23 APOLOGIZE. I KNOW IT DOESN'T CHANGE ANYTHING,
24 BUT HE DOES APOLOGIZE TO MR. KRENN, MR. DIAZ,
25 AND WE ASK THE COURT TO ACCEPT THE NEGOTIATED

App. 198

1 SENTENCE.

2 THE COURT: I THINK WHAT I'M GOING TO DO IS HEAR
3 FROM EACH LAWYER AND THEN FROM ANY OF THE
4 VICTIMS AND THEN FROM THE DEFENDANTS
5 THEMSELVES. ALL RIGHT. MR. MATLOCK, ON BEHALF
6 OF MONTA GORDON.

7 MR. MATLOCK: ON BEHALF OF MONTA GORDON JUST TO
8 ECHO SOME OF THE COMMENTS MR. D'AGOSTINO,
9 CERTAINLY THIS IS A CASE OF HUMAN TRAGEDY OF THE
10 HIGHEST ORDER.

11 I WOULD ALSO LIKE TO POINT OUT THAT MR. MONTA
12 GORDON, ANTONIO'S BROTHER, IS JUST VERY
13 REMORSEFUL AND PRAYS FOR THE FAMILY OF MR. KRENN
14 AND IT JUST ABSOLUTELY AGHAST ABOUT WHAT
15 HAPPENED AND HOW HE GOT INVOLVED IN THE ENTIRE
16 PROCESS. ALTHOUGH WE ARE NOT IN ANY WAY TRYING
17 TO DEFEND AN INDEFENSIBLE CRIME WE WOULD LIKE TO
18 POINT OUT THAT MR. GORDON REALIZES THAT AND
19 UNDERSTANDS THE LEGAL CONCEPTS OF THE HANDS OF
20 ONE IS THE HANDS OF ALL AND IS IN NO WAY TRYING
21 TO MITIGATE OR EXCUSE HIS BEHAVIOR HERE TODAY.
22 BUT HE WAS NEITHER THE ONE WHO ACTUALLY FIRED
23 THE SHOT NOR WAS IT HE WHO ENCOURAGED OR URGED
24 HIS BROTHER TO COMMIT THIS CRIME. HE WAS IN THE
25 BACK SEAT OF THE CAR AND WHEN HE GOT OUT AFTER

App. 196

1 HIS BROTHER, AT THE URGING OF THE DRIVER, GOT
2 OUT WITH THE GUN AND WENT OVER TO THE DRIVER'S
3 SIDE OF THE CAR.

4 YOUR HONOR, AS I KNOW YOU ARE WELL AWARE A
5 GUILTY PLEA IS THE FIRST STEP ON THE ROAD TO
6 REHABILITATION AND AN ACKNOWLEDGEMENT OF
7 CULPABILITY AND REMORSE OF ITSELF. WE WOULD
8 JUST ASK THAT YOUR HONOR CONSIDER THAT AND
9 CONSIDER THE FACT THAT MR. MONTA GORDON HAD
10 AGREED TO WORK WITH THE PROSECUTION IN THIS CASE
11 AND THAT HE WOULD ASK THAT YOUR HONOR SENTENCE
12 HIM TO NO MORE THAN THE RECOMMENDATION OF THE
13 STATE IN THIS CASE.

14 ALSO I'D LIKE TO POINT OUT AT THE TIME OF THE
15 CRIME HE WAS ONLY 17 YEARS OLD. HE HAS AN
16 ELEVENTH GRADE EDUCATION.

17 THE COURT: MR. GILLEN.

18 MR. GILLEN: JUST BRIEFLY, YOUR HONOR, MY CLIENT
19 HAS ASKED ME OUT OF RESPECT FOR MR. KRENN NOT TO
20 PRESENT ANY MITIGATION. WE WOULD JUST
21 RESPECTFULLY ASK THE COURT TO GO ALONG WITH THE
22 NEGOTIATED PLEA.

23 MRS. CLARK: YOUR HONOR, WE'D LIKE TO POINT OUT
24 MR. MONTA GORDON IS CURRENTLY ON PROBATION.
25 WE'D LIKE TO HANDLE THE PROBATION MATTER AT THE

App 195

1 SAME TIME IF THAT WOULD BE OKAY.

2 THE COURT: YOU WANT TO GO AHEAD AND SERVE HIM.

3 MRS. CLARK: YOUR HONOR, HE'S ALREADY BEEN
4 SERVED.

5 THE COURT: ALL RIGHT.

6 MRS. CLARK: THE ONLY THING WE HAVE IS HE IS
7 PLEADING GUILTY TO THIS OFFENSE.

8 THE COURT: YOU GOT THE PAPERWORK TO GIVE ME.

9 MRS. CLARK: YES, SIR.

10 MR. THOMPSON: YOUR HONOR, WE DO HAVE THE RECORD
11 AS TO MONTA GORDON. HE WAS CONVICTED AS A
12 JUVENILE IN 1993 TWO COUNTS OF PETITE LARCENY
13 THEN THE REST OF HIS CONVICTIONS AS A JUVENILE
14 ARE IN 1995 POSSESSION OF CRACK COCAINE,
15 BREAKING AND ENTERING AN AUTOMOBILE, GRAND
16 LARCENY AUTO. POSSESSION OF BURGLARY TOOLS,
17 FAILURE TO STOP FOR A BLUE LIGHT, TWO COUNTS OF
18 SHOPLIFTING. THEN AS AN ADULT HE HAD
19 CONVICTIONS FOR INTIMIDATING A WITNESS. THIS
20 WAS A CONVICTION DATE IN 1998. ACTUALLY IN MAY
21 OF 1998 INTIMIDATING A WITNESS. SIMPLE ASSAULT
22 AND POSSESSION OF CRACK COCAINE, AND THAT'S WHAT
23 I BELIEVE HE WAS ON PROBATION FOR AT THE TIME
24 THIS OCCURRED.

25 AND AS FOR TERRANCE MCCREARY, YOUR HONOR, HIS

1 HOLD-UP, A CARJACKING, OR ROBBERY, WHO CARES. *App. P. 201*

2 IN THE NIGHTMARE THAT THIS IS, AS ONE CAN
3 IMAGINE THE NIGHTMARE OF BEING CALLED TO THE
4 HOSPITAL AT 3 O'CLOCK IN THE MORNING AND YOU'VE
5 SEEN YOUR CHILD ON A STAINLESS STEEL TABLE, EYES
6 STILL HALF-OPEN, BUT NO LIFE COMING FROM THEM.
7 THE HOPE THAT SOMEHOW THEY HAD MADE A MISTAKE
8 AND HE WASN'T DEAD. THE NIGHTMARES AND THE
9 SENSE OF PAIN AND HURT AND LOSS THAT FOLLOWED.
10 ONE HOPES ONE WOULD NEVER HAVE TO HAVE ANOTHER
11 PARENT GO THROUGH A TRAGEDY LIKE THAT. EVEN
12 LIKE THE COLUMBINE HIGH SCHOOL IN COLORADO, MY
13 HEART GOES OUT TO ALL FRIENDS AND THEIR VICTIMS
14 AND AGAIN SOMEHOW YOU LIVE THE HORROR EVERY TIME
15 YOU SEE THIS.

16 AND IN CLOSING I'D LIKE TO THANK THE COURT, THE
17 SOLICITOR'S OFFICE, AND THE ROCK HILL POLICE
18 DEPARTMENT FOR THEIR ACTIONS THAT HAVE BEEN
19 DEPICTED OF JUSTICE. THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, MR. KRENN.

21 MR. THOMPSON: YOUR HONOR, THE STATE WOULD HAVE
22 NOTHING ELSE.

23 THE COURT: MR. DIAZ DID NOT WANT TO.

24 MR. THOMPSON: NO, YOUR HONOR, MR. DIAZ DID NOT
25 WANT TO ADDRESS THE COURT.

1 D'AGOSTINO.

2 MR. D'AGOSTINO: NO. THANK YOU, YOUR HONOR.

3 THE COURT: MR. MATLOCK.

4 MR. MATLOCK: NOTHING.

5 THE COURT: MR. GILLEN.

6 MR. GILLEN: NO, YOUR HONOR.

7 THE COURT: MR. MCCREARY, THE SENTENCE ON
8 ACCESSORY BEFORE THE FACT OF MURDER THE SENTENCE
9 IS 30 YEARS. ACCESSORY AFTER THE FACT OF MURDER
10 THE SENTENCE IS 15 YEARS TO RUN CONCURRENT. YOU
11 UNDERSTAND THAT?

12 MR. MCCREARY: YES, SIR.

13 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
14 ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR
15 PLEA YOU HAVE TEN DAYS TO FILE AN APPEAL. YOU
16 UNDERSTAND THAT?

17 MR. MCCREARY: YES, SIR.

18 THE COURT: MONTA GORDON, ON MURDER YOUR
19 SENTENCE IS FOR 30 YEARS. ON CRIMINAL
20 CONSPIRACY THE SENTENCE IS FIVE YEARS TO RUN
21 CONCURRENT. THE SENTENCE ON ATTEMPTED ARMED
22 ROBBERY IS FOR 20 YEARS TO RUN CONCURRENT. THE
23 SENTENCE ON FAILURE TO STOP FOR A BLUE LIGHT IS
24 ONE YEAR TO RUN CONCURRENT. ON THE OTHER
25 ATTEMPTED ARMED ROBBERY THE SENTENCE IS FOR 20

APP. P. 200

1 THE COURT: ALL RIGHT. ANTONIO GORDON, ANYTHING
2 YOU WANT TO SAY?

3 MR. GORDON: I'M SORRY FOR MY ACTIONS THAT I,
4 TOOK PLACE AND THE CRIME. I'M SORRY FOR HIS
5 FAMILY. AND ALL THE PEOPLE THAT I DONE HURT
6 DURING THIS SITUATION.

7 THE COURT: MONTA GORDON, ANYTHING YOU WANT TO
8 SAY?

9 MR. GORDON: I'M SORRY FOR THE KRENN FAMILY FOR
10 THIS ACCIDENT THAT HAPPENED. WE KNEWED THAT IT
11 WAS A BIG MISTAKE IN OUR LIFE BECAUSE AS
12 TEENAGERS WE HAD A LOT TO LIVE FOR, BUT NOW
13 SINCE THE INDICTMENT WE HAVE NOTHING TO LIVE FOR
14 BUT TO SERVE THE TIME FOR THE CRIME THAT WE
15 DID. I WANT TO SAY I'M SORRY FOR MY FAMILY FOR
16 LETTING THEM GO THROUGH THE SITUATION I'M IN AND
17 ALL THAT. HOPEFULLY MR. KRENN WILL FORGIVE US
18 ONE DAY FOR THE SIN WE DID.

19 THE COURT: ALL RIGHT. MR. MCCREARY.

20 MR. MCCREARY: I'M SORRY FOR HURTING ALL THE
21 PEOPLE AND MR. KRENN AND HIS FAMILY FOR TAKING
22 THE LIFE OF HIS SON, HIS ONLY SON. I WISH WE
23 COULD BRING HIM BACK, BUT WE CAN'T. AND I'M
24 JUST SORRY.

25 THE COURT: THANK YOU. ANYTHING FURTHER, MR.

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I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT
REPORTER FOR THE 16TH 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 TESTIMONY HAD
AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT
OF GENERAL SESSIONS FOR YORK COUNTY, SOUTH
CAROLINA, ON THE 12, 14, & 16 OF JULY, 1999.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 3, 2000

Janet M Rich
JANET M. RICH

1 D'AGOSTINO.

2 MR. D'AGOSTINO: NO. THANK YOU, YOUR HONOR.

3 THE COURT: MR. MATLOCK.

4 MR. MATLOCK: NOTHING.

5 THE COURT: MR. GILLEN.

6 MR. GILLEN: NO, YOUR HONOR.

7 THE COURT: MR. MCCREARY, THE SENTENCE ON
8 ACCESSORY BEFORE THE FACT OF MURDER THE SENTENCE
9 IS 30 YEARS. ACCESSORY AFTER THE FACT OF MURDER
10 THE SENTENCE IS 15 YEARS TO RUN CONCURRENT. YOU
11 UNDERSTAND THAT?

12 MR. MCCREARY: YES, SIR.

13 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
14 ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR
15 PLEA YOU HAVE TEN DAYS TO FILE AN APPEAL. YOU
16 UNDERSTAND THAT?

17 MR. MCCREARY: YES, SIR.

18 THE COURT: MONTA GORDON, ON MURDER YOUR
19 SENTENCE IS FOR 30 YEARS. ON CRIMINAL
20 CONSPIRACY THE SENTENCE IS FIVE YEARS TO RUN
21 CONCURRENT. THE SENTENCE ON ATTEMPTED ARMED
22 ROBBERY IS FOR 20 YEARS TO RUN CONCURRENT. THE
23 SENTENCE ON FAILURE TO STOP FOR A BLUE LIGHT IS
24 ONE YEAR TO RUN CONCURRENT. ON THE OTHER
25 ATTEMPTED ARMED ROBBERY THE SENTENCE IS FOR 20

1 HOLD-UP, A CARJACKING, OR ROBBERY, WHO CARES. *APC/P.201*

2 IN THE NIGHTMARE THAT THIS IS, AS ONE CAN
3 IMAGINE THE NIGHTMARE OF BEING CALLED TO THE
4 HOSPITAL AT 3 O'CLOCK IN THE MORNING AND YOU'VE
5 SEEN YOUR CHILD ON A STAINLESS STEEL TABLE, EYES
6 STILL HALF-OPEN, BUT NO LIFE COMING FROM THEM.
7 THE HOPE THAT SOMEHOW THEY HAD MADE A MISTAKE
8 AND HE WASN'T DEAD. THE NIGHTMARES AND THE
9 SENSE OF PAIN AND HURT AND LOSS THAT FOLLOWED.
10 ONE HOPES ONE WOULD NEVER HAVE TO HAVE ANOTHER
11 PARENT GO THROUGH A TRAGEDY LIKE THAT. EVEN
12 LIKE THE COLUMBINE HIGH SCHOOL IN COLORADO, MY
13 HEART GOES OUT TO ALL FRIENDS AND THEIR VICTIMS
14 AND AGAIN SOMEHOW YOU LIVE THE HORROR EVERY TIME
15 YOU SEE THIS.

16 AND IN CLOSING I'D LIKE TO THANK THE COURT, THE
17 SOLICITOR'S OFFICE, AND THE ROCK HILL POLICE
18 DEPARTMENT FOR THEIR ACTIONS THAT HAVE BEEN
19 DEPICTED OF JUSTICE. THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, MR. KRENN.

21 MR. THOMPSON: YOUR HONOR, THE STATE WOULD HAVE
22 NOTHING ELSE.

23 THE COURT: MR. DIAZ DID NOT WANT TO.

24 MR. THOMPSON: NO, YOUR HONOR, MR. DIAZ DID NOT
25 WANT TO ADDRESS THE COURT.

1 YEARS TO RUN CONCURRENT. YOU UNDERSTAND THAT?

2 MR. GORDON: YES, SIR.

3 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
4 ERROR COMMITTED IN THE WAY YOUR CASE HAS BEEN
5 HANDLED AND THE SENTENCE I'VE IMPOSED YOU HAVE
6 TEN DAYS TO FILE AN APPEAL. YOU UNDERSTAND
7 THAT?

8 MR. GORDON: YES, SIR.

9 THE COURT: MR. ANTONIO GORDON, YOUR SENTENCE ON
10 POSSESSION OF A PISTOL UNDER THE AGE OF 21 IS
11 FOR FIVE YEARS. THAT'S CONCURRENT WITH THE
12 OTHER SENTENCES. YOUR SENTENCE FOR CRIMINAL
13 CONSPIRACY IS FIVE YEARS. THAT'S TO RUN
14 CONCURRENT. YOU HAVE THREE CHARGES OF
15 POSSESSION OF A FIREARM DURING A VIOLENT CRIME.
16 THE SENTENCE ON EACH OF THOSE IS FOR FIVE YEARS
17 AND EACH OF THOSE ARE TO RUN CONCURRENT. ON
18 ATTEMPTED ARMED ROBBERY, ON INDICTMENT
19 98-46-2850 THE SENTENCE IS FOR TEN YEARS, AND
20 THAT'S TO RUN CONCURRENT. THE SENTENCE ON
21 MURDER IS FOR A TERM OF 30 YEARS, AND ON THE
22 OTHER ATTEMPTED ARMED ROBBERY 98-46-2849 THE
23 SENTENCE IS TEN YEARS AND THAT'S CONSECUTIVE TO
24 THE MURDER SENTENCE. YOU UNDERSTAND ALL THAT?

25 MR. GORDON: YES, SIR.

App. P. 207

1 A (NODS HEAD.)

2 Q DID Y'ALL LEAVE WITH MONTA?

3 A NO, SIR.

4 Q YOU DIDN'T FIND MONTA WHEN YOU WERE OUT THERE

5 THE FIRST TIME?

6 A WE TALKED TO MONTA. HE GAVE US A FICTITIOUS

7 NAME AND WE DID NOT KNOW THAT WE WERE LOOKING

8 FOR MONTA GORDON AT THAT TIME. HE HAD NOT BEEN

9 DEVELOPED AS A SUSPECT AT THAT TIME.

10 Q SO WHAT HAPPENED NEXT? DID Y'ALL --

11 A WE LEFT THERE AND WENT BACK TO THE STATION.

12 Q ALL RIGHT.

13 A AT THAT TIME WE DEVELOPED INFORMATION THAT MONTA

14 AND ANTONIO ALONG WITH TWO OTHER INDIVIDUALS

15 WERE THE SUSPECTS THAT WE WERE LOOKING FOR IN

16 THIS MURDER.

17 Q WHERE DID YOU GET THAT INFORMATION FROM?

18 A FROM TALKING WITH MS. DIXON.

19 Q WHAT TIME WAS THAT?

20 A 8:30, 9 O'CLOCK. I'M NOT REAL SURE.

21 Q AND THEN WHO ALL WENT BACK OUT TO THE HOUSE?

22 A MYSELF AND SEVERAL OFFICERS.

23 Q WHICH OFFICERS?

24 A SERGEANT WATTS, STEVE THOMPSON, DON DOLSTER,

25 RODNEY PICKEL, DERRICK WILLIAMS.

* No Probable Cause *

APP.P. 208

1 Q AND WHO WAS AT THE HOUSE THAT TIME?

2 A WE WENT BACK TO BOTH THE MOBILE HOMES, BEFORE WE
3 GOT THERE, THERE AGAIN WE ARE SITTING AT RAMBO
4 AND VERNSDALE, AND THE TWO GIRLS AND ANTONIO

5 CAME UP THE DIRT ROAD AND WE ARRESTED ANTONIO
6 THEN.

7 Q WHICH TWO GIRLS?

8 A MS. DIXON AND I BELIEVE THIS MS. KENNEDY, I'M
9 NOT SURE, BUT I BELIEVE MS. KENNEDY.

10 Q SO YOU HAD TAKEN MS. DIXON TO THE LAW CENTER
11 THEN LET HER GO?

12 A THAT'S CORRECT.

13 Q AND SHE CAME BACK HOME AND YOU GOT HER AGAIN?

14 A THAT'S CORRECT. WE DID NOT GET HER AGAIN. THE
15 SECOND TIME.

16 Q WELL, I UNDERSTAND BUT SINCE SHE WAS COMING BACK
17 OUT WITH ANTONIO?

18 A THAT'S CORRECT.

19 Q AND YOU PLACED ANTONIO UNDER ARREST THEN?

20 A THAT'S CORRECT.

21 Q DID YOU HAVE A WARRANT FOR HIM AT THAT TIME?

22 A NO, SIR.

23 Q HAD Y'ALL BEEN CHASING HIM OR NOT AT THAT TIME?

24 A NO, SIR.

25 Q SO AFTER YOU PLACED HIM UNDER ARREST, WHAT DID

GORDON

ANTONIO

LEAVE BLANK

SIGNATURE OF PERSON FINGER PRINTED

SC 0450300

ROCK HILL POLICE DEPARTMENT

ROCK HILL, S.C. 29731

06980723111

X *Antonio Gordon*

SIGNATURE OF OFFICIAL TAKING PRINTS AND DATE

X *L. Davis* 07/23/98

MULTIPLE TATTOOS BOTH ARMS

M B 5'08"145 BRO BLK MEDIUM NONE YORK COUNTY

SOC SLED - DENVER NATIONAL MUSEUM

SOC SOCIAL SECURITY NUMBER
248-51-0012

LEAVE BLANK

CLASS

REF

THIS DATA MAY BE COMPUTERIZED
IN LOCAL STATE AND NATIONAL FILESNOIC
FPC

2 R INDEX



3 R MIDDLE



4 R RING



5 R LITTLE



7 L INDEX



8 L MIDDLE



9 L RING



10 L LITTLE

PT 50X50G4 LSS2000 # 1403 16:57:30

LXMK-O/R #

19980723-



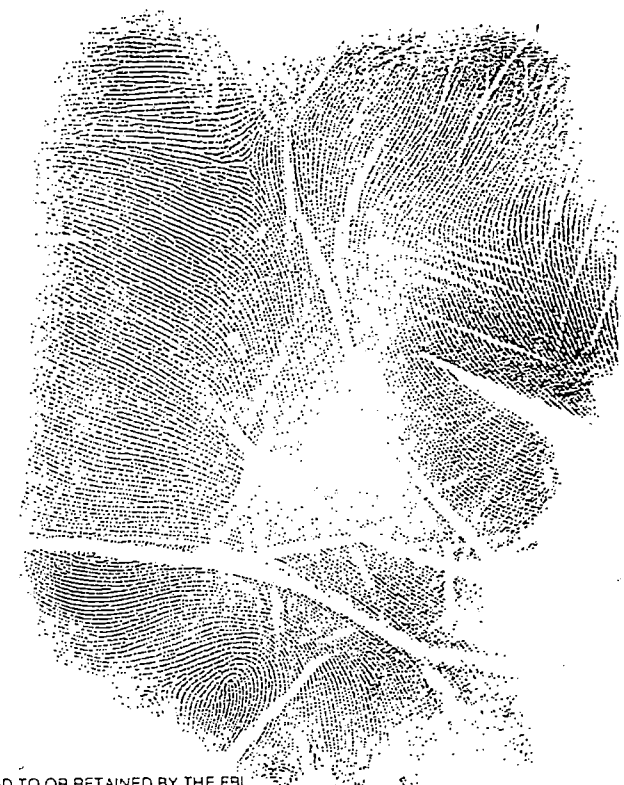
App. P. 211

ROCK HILL POLICE DEPARTMENT - ROCK HILL, S.C. 29731

CHARGES		CITING GENERAL STATUTE	DOA - DATE OF ARREST	DOA - YOU
1. F 763891 MURDER		16 3 10	07/23/98	
2.			INTRA-AGENCY	
3.			OFFICER'S NAME	
4.			NUMBER	
5.			COUNTY	
ARREST DISPOSITION		ADDITIONAL ARREST DATA		DOB DATE
HELD FOR BOND				03/2
RESIDENCE OF FINGERPRINTED PERSON		N/A		
3017 VERNSDALE ROAD RHSC				
NEAREST RELATIVE		EMP. - FBI NAME AND ADDRESS		
WILLIE GORGON SAME AS ABOVE		NA		
INDICATE IF A PHOTOGRAPH OF THE ARRESTED SUBJECT IS CONTAINED IN YOUR FILES ☒ YES ☐ NO				

LEFT PALM PRINT

RIGHT PALM PRINT



THIS CARD IS NOT TO BE SUBMITTED TO OR RETAINED BY THE FBI.

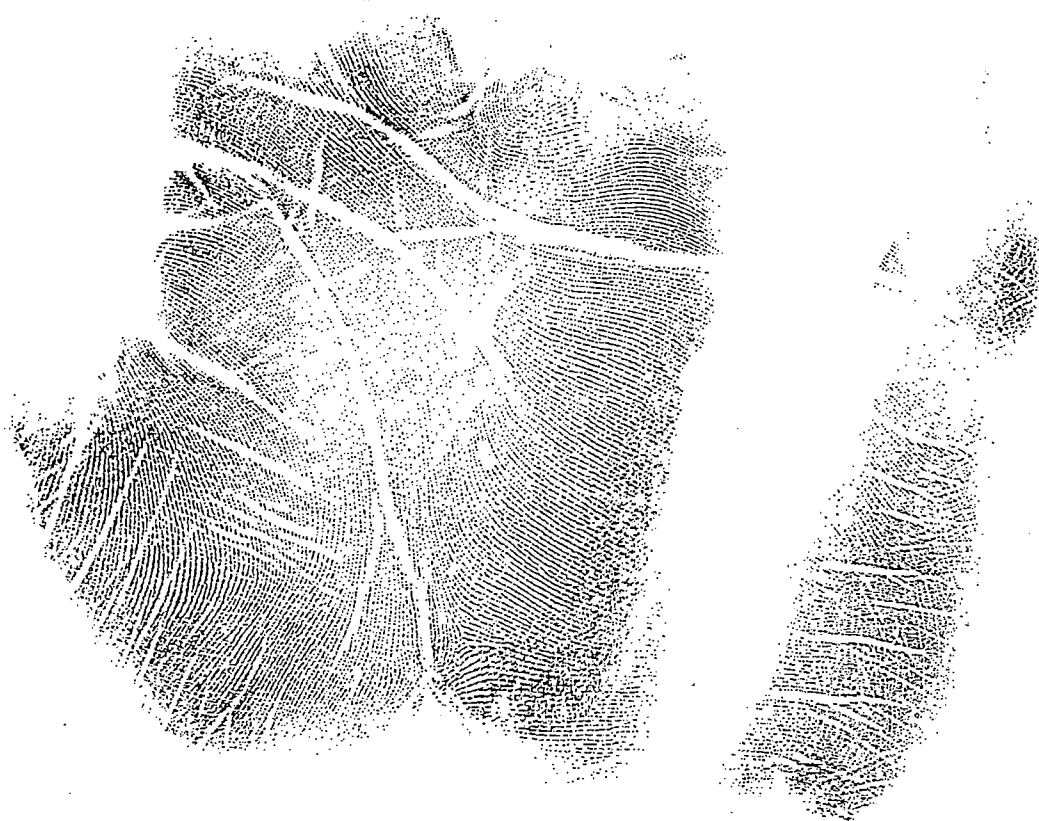
APP. P. 212

App. P. 213

112

L989818

TSQ



P.O. BOX 649
YORK, S.C. 29745

FILED-RECEIVED
BOOK 100-100000
JUL 27 4 55 PM '98



Antonio Gordon

APP. P. 214

CLERK
C.S.C.
JAN 81

Office of Clerk of Court

P.O. DRAWER 11746
ROCK HILL, S.C. 2973

ATTORNEY REPRESENTATION

If you would like an attorney to represent you on your pending charges you should secure such attorney prior to your first court date as listed on your bond. You should be sure to get a letter of representation from your attorney and bring that letter to court with you.

PUBLIC DEFENDER

If you have been appointed a Public Defender you must contact their office to get a letter of representation prior to your first court date. You must bring this letter to court with you! To do so go by the Public Defender's Office at the Moss Justice Center, 1675 York Highway(Hwy 5), York SC or call their office Monday through Friday 8:00 am - 5:00 pm at (803) 628-3031 for an appointment.

PRIVATE COUNSEL

If you do not qualify for a public defender or you wish to retain private counsel, you should do so prior to your first court date. You should be sure to get a letter of representation from your private counsel when you retain them. You must bring this letter to court with you!

COURT ATTENDANCE

August 28, 1998 1:00 P.M.

When you attend roll call on your appointed court date you should bring a letter of representation from your attorney. ~~You will be required to remain in court until your representation can be confirmed or your case is disposed.~~

I have read/had read to me, the above instructions and have been given a copy.

July 23, 1998
Date

Antonio Gordon
Signature of Defendant

Witness

66-1117-1-107-111-1

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

STATE
VS.

App. p. 215
BOND HEARING CERTIFICATE
CITY OF ROCK HILL

Antonio Gordon

General Sessions
Township

IT APPEARS that the defendant named above was arrested on or about the 23rd day of July, 1998 for the specific charges herein named. The defendant now appears before the undersigned RECORDER for ROCK HILL MUNICIPAL COURT on this the 23rd day of July, 1998 for the purpose of a Bond Hearing to determine if the defendant is entitled to such bond.

IT IS HEREBY ORDERED that the Defendant's bond be set for each charge as follows:

WARRANT/ TICKET#	CHARGE	TRIAL DATE/ TIME	BOND TYPE	AMOUNT
F-763891	MURDER	Sgt 8:48 AM		\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$

This Court Can Not Set Bond For This
Charge Bond Will Be Set By General
Sessions Court

(Personal Recognizance, Surety Bond, Cash, Summons, Cash % In Lieu of Bond, Denied)

IT IS FURTHER ORDERED, that the Defendant remain in the custody of the ROCK HILL CITY JAIL until such time sufficient sureties are found and an Order of Discharge is issued.

IT IS SO ORDERED:

Raf Land
JUDGE/ASSOCIATE RECORDER
CITY OF ROCK HILL

App. P. 216

NOTICE OF INITIAL APPEARANCE

State of South Carolina
County of York

vs.

Mr./Ms. Arthur Gordon

you are charged with MURDER

Uniform Warrant Numbers:

1. F-763891
2. _____

3. _____
4. _____

5. _____
6. _____

Your Initial Appearance date is the 28th day of August, 1998, at 1:00 am/pm at the Joseph R. Moss Justice Center located at 1675 (Hwy. 5) York Highway, York, S.C. If you choose to obtain private legal counsel, you are required to have done so by this date. If you desire a preliminary hearing, one will be held on your case at this time. ATTENDANCE ON THIS DATE IS MANDATORY. FAILURE TO APPEAR WILL RESULT IN YOUR BOND BEING REVOKED.

Arthur Gordon
Defendant's Signature

Wayne L...
Judge's Signature

Aug 23, 1998
Date

White-Clerk's Office

Yellow-Arresting Agency

Pink-Defendant's Copy



CLERK OF COURT'S OFFICE

Post Office Box 649; York, South Carolina 29745

App. P. 2107

March 21, 2016

Antonio Gordon #259798
Kershaw Corr Inst
4848 Goldmine Hwy
Kershaw SC 29067

Our records indicate that you were approved for the services of the Public Defender on 07/28/98. Our records indicate that Harry Dest was relieved as counsel on 02/19/99 due to a conflict of interest. Our records indicate that on 02/19/99, Daniel D'Agostino was appointed to represent you (copies enclosed).

General Sessions Division

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE OF SOUTH CAROLINA

-v-

Antonio Gordon

Defendant.

IN THE COURT OF GENERAL SESSIONS

SIXTEENTH JUDICIAL CIRCUIT

Charge:

F-763891

Murder

F-763897

Poss. Weap. Crime Viol.

F-763898

Att. Armed Robbery

F-763902

Criminal Conspiracy

F-763901

Unlaw. Poss. Pistol < 21

REQUEST PURSUANT TO SC RULES
OF CRIMINAL PROCEDURE- RULE 5 & 6

EDWARDS NOTICE

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution Agents.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S.Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

Respectfully Submitted,

Harry A. Dest

Attorney for Defendant

York, South Carolina

Dated: July 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that this Specific Brady Motion was served on the Solicitor for the Sixteenth Judicial Circuit on 7/30, 1998.

Julie Bankhead

App. p. 219

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
STATE OF SOUTH CAROLINA)
VS.)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT
ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

Antonio L. Linder
Defendant

SSN: 348-51-8012 DOB: 3/21/82 Race/Sex: B/M Date of Arrest: 7-23-98

3017 Wendale Rd CoDef (s):

Address
Rock Hill SC 29730

City/State/ZIP

325-1104 Victims (s):

Telephone

Offense: _____

Warrant #: _____

Mag: _____

Murder

F- 763-891

Total Bond: \$ _____ Type (Signature/Recog/Property/Bondsman): _____

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Public Defender, Attorney at Law,
is appointed as counsel for the defendant.

Approved ☒

Rejected _____

This 28 day of July, 19 98
Reggie J. Carroll
Criminal Justice Coordinator

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
STATE OF SOUTH CAROLINA)
-VS-)
Antonio Gordon,)
Defendant.)
_____)

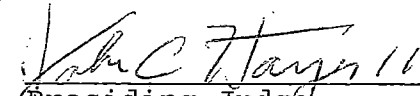
IN THE COURT OF GENERAL SESSIONS

O R D E R

APP. P. 220

It appears to the Court that a Conflict of Interest exists with the Public Defender in the representation of the Defendant, Antonio Gordon.

It is ORDERED that the Public Defender be, and hereby is, relieved as counsel for Antonio Gordon and the Clerk of Court shall appoint the next Attorney on the list.



Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

Date February 19th, 1999

App. P. 221

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF YORK

DOCKET NO. _____

STATE OF SOUTH CAROLINA

VS.

ANTONIO GORDON

DEFENDANT

CONFLICT OF INTEREST

ORDER OF APPOINTMENT OF LEGAL
COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, DANIEL D'AGOSTINO, Attorney-at-Law, is appointed as Counsel for the Defendant.

CONFLICT OF INTEREST

DANIEL D'AGOSTINO
ATTORNEY AT LAW
P.O. BOX 460
YORK, S.C. 29745

TELE: 684- 4807

This 19th day of FEBRUARY,
19 99, at 4:15 P.M.

(A.M./P.M.)

Thomas A. Conroy

App. p. 222

STATE OF SOUTH CAROLINA
COUNTY OF YORK

BOND HEARING CERTIFICATION
CITY OF ROCK HILL

STATE
VS.

Antonio Gordon

General Sessions
Township

IT APPEARS that the defendant named above was arrested on or about the 27th day of July, 1998 for the specific charges herein named. The defendant now appears before the undersigned RECORDER for ROCK HILL MUNICIPAL COURT on this the 27th day of July, 1998 for the purpose of a Bond Hearing to determine if the defendant is entitled to such bond.

IT IS HEREBY ORDERED that the Defendant's bond be set for each charge as follows:

WARRANT/ TICKET#	CHARGE	TRIAL DATE/ TIME	BOND TYPE	AMOUNT
F-763897	Pos. Fire. Comm. Viol. Crimi	Sept 8, 98 8Am	<u>Bond</u>	<u>TS Set</u>
F-763898	<u>Armed Robbery</u>	Sept 8, 98 8Am	<u>By Court</u>	<u>\$</u>
F-763901	Pos. Handgun Under 21	Sept 8, 98 8Am	<u>By Court</u>	<u>\$</u>
F-763902	Criminal Conspiracy	Sept 8, 98 8Am	<u>Court</u>	<u>\$</u>
F-763914	<u>Armed Robbery</u>	Sept 8, 98 8Am	<u>Court</u>	<u>\$</u>
				<u>\$</u>
				<u>\$</u>

* This Court Can't Set ~~the~~ BOND SINCE All Tied in
with previous Charge of Murder
(Personal Recognizance, Surety Bond, Cash, Summons, Cash % In Lieu of Bond, Denied)

IT IS FURTHER ORDERED, that the Defendant remain in the custody of the ROCK HILL CITY JAIL until such time sufficient sureties are found and an Order of Discharge is issued.

IT IS SO ORDERED:

Previous murder warrant served last ~~Friday~~ Thursday,
July 23, '98, 1998

Key In
JUDGE/ASSOCIATE RECORDER
CITY OF ROCK HILL

App. p. 223

FILED-RECEIVED
BOOK

JUL 29 11 46 AM '98

DAVID H.
C.O.C.
YORK

NOTICE OF INITIAL APPEARANCE

State of South Carolina
County of York

vs.

Mr./Ms. Antonio Gordon

you are charged with Poss. Firearm Due. Comm. Viol. Crime, Att. Armed Robbery, Poss. Handgun Under 21, Criminal Conspiracy, Att. Armed Robbery

Uniform Warrant Numbers:

1. F-763897

3. F-763901

5. F-763914

2. F-763898

4. F-763902

6. _____

* Your Initial Appearance date is the 28th day of August, 1998, at 1:00 am/pm at the Joseph R. Moss Justice Center located at 1675 (Hwy. 5) York Highway, York, S.C. If you choose to obtain private legal counsel, you are required to have done so by this date. If you desire a preliminary hearing, one will be held on your case at this time. ATTENDANCE ON THIS DATE IS MANDATORY. FAILURE TO APPEAR WILL RESULT IN YOUR BOND BEING REVOKED.

Antonio Gordon
Defendant's Signature

[Signature]
Judge's Signature

July 27, 1998
Date

White-Clerk's Office

Yellow-Arresting Agency

Pink-Defendant's Copy

* date coincides with previous charge of murder

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

MURDER

That Antonio Gordon did in York County on or about July 23, 1998, with malice aforethought, kill one Eric Peter Krenn by means of shooting with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

**POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 00 AM '00
DAVID R. HILL, JR.
CLERK OF COURT
YORK COUNTY, SC

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


SOLICITOR

225
149 p.p.
511
WITNESSES

Herring/RHPD

ARREST WARRANT NUMBER

Count One: F763891

Count Two: F763897

ACTION OF GRAND JURY

TRUE BILL

Rebecca Freeman
Foreperson of Grand Jury
10/19/98

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 98-GS-46- 2847

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

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

Defendant

Antonio Gordon

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

Antonio Gordon
Defendant

Witness:

Teressa Scoggins Clerk II
C.C.C. PLS. AND G.S.

106
STATE OF SOUTH CAROLINA 512
COUNTY OF York
STATE vs. Antonio Mordon
AKA: _____
Race: B Sex: M
DOB: _____ Age: _____
SSN: _____
DL#: _____
SID#: _____

~~Approved~~ App.p. 226
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 98-GS-46-2847-A
A/W#: F763897
Date of Offense: 7-23-98
S.C. Code §: 16-23-490
CDR Code #: 1121415

SENTENCE
☐ PLEA ☐ TRIAL
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Poss Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1121415
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] Antonio Mordon [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center
for a determinate term of Five (5) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ year
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
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: _____ \$
§ 14-1-206 - Assessments 100% _____ \$
§ 14-1-211 - Surcharge _____ \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) _____ \$
County (3%) _____ \$
TOTAL _____ \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

Plea accepted 2/16/99
Sentenced 7/19/99
PRESIDING JUDGE John C. Hays
Judge Code: 0101419
Sentence Date: _____

RECEIVED
CLERK OF COURT
YORK COUNTY, SC
JUL 21 9 02 AM '99
CERTIFIED TRUE COPY

App. P. 224

ARREST WARRANT

F- 763897

STATE OF SOUTH CAROLINA

County ☒ Municipality of
ROCK HILL

THE STATE

against

ANTONIO GORDON

Address:

Phone: _____ SSN: _____

Sex: M Race: B Height: _____ Weight: 0

Date: _____ DOB: _____ Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: POSS FIREARM DURING COMM/V

IOL. CRIM Offense Code: 16

Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the

☐ County ☒ Municipality of

ROCK HILL The accused

is to be arrested and brought before me to be

dealt with according to law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant ANTONIO GORDON

on 07-28-98

James O. How
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT

120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
ROCK HILL

AFFIDAVIT

J. THICKENS

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on 07/23/98

State of South Carolina (or ordinance of ☐ County ☒ Municipality of

In the following particulars:

DESCRIPTION OF OFFENSE:

POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

X 0549

I further state that there is probable cause to believe that the defendant named above did comm

the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY POSSESS A FIREARM (C.O.P. 4-BARREL

DERRINGER; SILVER IN COLOR) WHILE COMMITTING THE CRIME OF MURDER

AGAINST ONE ERIC KRENN. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF

JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE

INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF.,

CO-DEF., AND WITNESSES

Sworn to and subscribed before me

on 7-24-98

(L.S.)

Signature of Issuing Judge

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THE COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe the

defendant ANTONIO GORDON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

Now, therefore, 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.

(L.S.)

Signature of Issuing Judge

Judge's Address 120 E. BLACK ST.

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

July 26, 1998
SCCA 518

CERTIFIED TRUE COPY
JUN 21 9 02 AM '98
CLERK OF DISTRICT COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE VS.

Antonio Gordon

AKA:

Race: B

Sex: M

DOB:

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-416-2849

A/W#: F763898

Date of Offense: 7-23-98

S.C. Code §: 16-11-330

CDR Code #: 0101216

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Antonio Gordon
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of Two (2) 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 99-GS-46-2847

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Janet Rich

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Plea entered 7/16/99
Sentenced 7/19/99

PRESIDING JUDGE [Signature]

Judge Code: 0101419

Sentence Date: _____

Print - Defendant

App. P. 229

ARREST WARRANT

F- 763898

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
ROCK HILL

THE STATE
against

ANTONIO GORDON

Address:

Pb: SSN:

Race: B Height: Weight: 0

DL State: DL #:

DOB Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: 16

Code/Ordinance Sec. 16-11-330(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County ☒ Municipality of
ROCK HILL

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

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant ANTONIO GORDON
on 07-27-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA)
☐ County ☒ Municipality of)
ROCK HILL)

AFFIDAVIT

Personally appeared before me the affiant J. THICKENS who
being duly sworn deposes and says that defendant ANTONIO GORDON
did within this county and state on 07/23/98 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL)
In the following particulars:
DESCRIPTION OF OFFENSE ATTEMPTED ARMED ROBBERY 16-11-330(2)

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:
DID WILLFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY
AGAINST ONE ERIC KRENN BY POINTING AND FIRING A HANDGUN AT THE VICTIM
IN AN ATTEMPT TO TAKE POSSESSION OF THE VICTIM'S VEHICLE, A 1985 BMW
318. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE
WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION
*RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND
WITNESSES

Sworn to and subscribed before me)
on 7-24-98)

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA)
☐ County ☒ Municipality of)
ROCK HILL)

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 07/23/98 defendant ANTONIO GORDON
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County ☒ Municipality of ROCK HILL) as set forth below:
DESCRIPTION OF OFFENSE ATTEMPTED ARMED ROBBERY 16-11-330(2)

Now, therefore, 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.

Signature of Issuing Judge (L.S.)

Judge Code: 0025

Judge's Address 120 E. BLACK ST.

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

CERTIFIED TRUE COPY
JUN 21 9 04 AM '98
CLERK OF COURT
ROCK HILL, SC

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

Handwritten signature

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID L. HARRIS
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 05 AM '00

CERTIFIED TRUE COPY

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

DePoe
SOLICITOR

APP. P. 231

Admission

517

WITNESSES

Herring/RHPD

ARREST WARRANT NUMBER

Count One: F763898

Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 98-GS-46- 2844

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

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

Defendant

Antonio Gordon

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

Antonio Gordon

Defendant

Witness:

Teresa Higgins Clerk

C.C.C. PLS. AND G.S.

06/00

STATE OF SOUTH CAROLINA,

COUNTY OF York

STATE

VS.

Antonio Gordon

AKA:

Race: BSex: m

DOB: _____

Age: _____

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:98-GS-46-2849-AA/W#: DIDate of Offense: 7-23-98S.C. Code §: 16-23-490CDR Code #: 1121415

SENTENCE

☐ PLEA ☐ TRIAL☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Ass Firearm Comm Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1121415☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center for a determinate term of Five (5) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ year 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 probation, which are incorporated by reference.☐ The Defendant is to be given credit for _____ days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100% _____ \$

§ 14-1-211 - Surcharge _____ \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) _____ \$

County (3%) _____ \$

TOTAL _____ \$ 100.00Clerk of Court/Deputy Clerk David HammettRobert Rich

PTUP _____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE [Signature]Judge Code: 0101419

Sentence Date: _____

CERTIFIED TRUE COPY
JUN 21 9 00 AM '98
CLERK OF COURT
YORK COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 02 AM '00
DEPUTY CLERK OF COURT
YORK COUNTY, SC

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS.

CERTIFIED TRUE COPY

LT

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46 2850

AKA:

Race: P

Sex: M

DOB: 11-11-33

Age: 16

SSN: 1-1-1

DL#:

SID#:

AM# F763914

Date of Offense: 7-23-98

S.C. Code §: 16-11-330

CDR Code #: 0101216

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Attempted armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Antonio Gordon
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$

Clerk of Court/Deputy Clerk David Hamilton

Donnet Rich

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/month
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

Plea entered 7/16/99
Sentenced 7/19/99

PRESIDING JUDGE John C. Hays

Judge Code: 0101419

Sentence Date: _____

App. P. 235
Admitted

ARREST WARRANT

F- 763914

STATE OF SOUTH CAROLINA

County ☒ Municipality of
ROCK HILL

THE STATE
against

ANTONIO GORDON

Address

Phone: 04 SSI: _____
M Race: B Height: 508 Weight: 145

State: _____ DOB: _____ Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: HERRING

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: _____
Code/Ordinance Sec. 16-11-330 (2)

This warrant is CERTIFIED FOR SERVICE in the
☐ County ☒ Municipality of
ROCK HILL

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

Signature of Judge (L.S.)

e:

RETURN

A copy of this arrest warrant was delivered to
defendant ANTONIO GORDON
on 7-28-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

County ☐ Municipality of

ROCK HILL

AFFIDAVIT

Personally appeared before me the affiant L.R. HERRING
being duly sworn deposes and says that defendant ANTONIO GORDON
did within this county and state on 07/23/98 violate the criminal laws of
State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL
in the following particulars:
DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

I further state that there is probable cause to believe that the defendant named above did com-
the crime set forth and that probable cause is based on the following facts:
DID WILFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY
AGAINST ONE CHRISTOPHER DIAZ BY POINTING A FIREARM AT HIM, WHILE
ATTEMPTING TO TAKE VICTIM'S MONEY. THIS INCIDENT OCCURRING IN THE 500
BLOCK OF S. JONES AVE. WITHIN THE CITY LIMITS OF ROCK HILL, S.C. *POLIC
INVESTIGATION. *RECOVERY OF EVIDENCE. *SWORN STATEMENTS.

Sworn to and subscribed before me
on 7/24/98

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address 120 E. BLACK ST. RHSC

Affiant's Telephone 803-329-7200

STATE OF SOUTH CAROLINA

County ☐ Municipality of

ROCK HILL

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 th
on 07/23/98 defendant ANTONIO GORDON
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her bef
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: 8772

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circu

S.C. Attorney General
July 28, 1990
SCCA 518

CERTIFIED TRUE COPY
JUN 21 9 03 AM '00
CLERK OF COURT
ROCK HILL

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

Amended

COUNTY OF YORK)

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DALE GORDON
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 03 AM '00

CERTIFIED TRUE COPY

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

[Signature]
SOLICITOR

App. 237
HARRING

WITNESSES

Harring/RHPD

523

ARREST WARRANT NUMBER

Count One: F763914

Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Robert Freeman
Foreperson of Grand Jury
Date: 10/19/98

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 98-GS-46- 2000

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

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

Defendant

Antonio Gordon

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

Antonio Gordon
Defendant

Witness:

Lessee Higgins Clerk II
C.C.C. PLS. AND G.S.

108

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

vs.

Antonio Gordon

AKA:

Race: B

Sex: m

DOB: _____

Age: _____

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2850-A

A/W#: DI

Date of Offense: 7-23-98

S.C. Code §: 16-23-490

CDR Code #: 112415

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Pass Freeway Comm Violent Crime

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 112415

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John C. Canty
Solicitor

Antonio Gordon
Defendant

De O...
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center for a determinate term of 171.5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ year 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

David Ditch

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Presiding Judge
PRESIDING JUDGE John Hays

Judge Code: 0101419

Sentence Date: 7/19/98

App. p. 524 238

CERTIFIED TRUE COPY
JUL 21 9 02 AM '00
CLERK OF COURT
YORK COUNTY, SC

App. P. 239

525

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

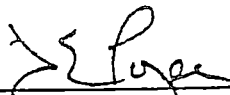
That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

RECEIVED
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 02 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE vs. Antonio Gordon

AKA: _____
Race: B Sex: m
DOB: _____ Age: 1/10/71
SSN: _____
DL#: _____
SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2851

A/W#: F763902

Date of Offense: 7-23-98

S.C. Code §: 16-17-410

CDR Code #: 0101419

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Crim Conspiracy

in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0101419

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Solicitor Antonio Gordon Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: _____
§ 14-1-206 - Assessments 100%.....\$ _____
§ 14-1-211 - Surcharge.....\$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI).....\$ _____
County (3%).....\$ 100.00
TOTAL.....\$ _____

Clerk of Court/Deputy Clerk David Hamilton

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

[Signature] 7/16/98
[Signature]
PRESIDING JUDGE [Signature]
Judge Code: 0101419
Sentence Date: _____

CERTIFIED TRUE COPY
JUN 21 9 04 AM '00
CLERK OF COURT
YORK COUNTY

App. P. 241

527

ARREST WARRANT

F- 763902

STATE OF SOUTH CAROLINA

County ☒ Municipality of
ROCK HILL

THE STATE
against

ANTONIO GORDON

Address:

Phone: SSN:
Sex: M Race: B Height: Weight: 0
State: DL #: Agency ORI #: 04603

DOB: Prosecuting Agency: ROCK HILL POLICE DEPT
Prosecuting Officer: J. THICKENS
Offense: CRIMINAL CONSPIRACY

Offense Code: 16
Code/Ordinance Sec. 16-17-410

This warrant is CERTIFIED FOR SERVICE in the
☐ County ☒ Municipality of
ROCK HILL The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

lg:

RETURN

A copy of this arrest warrant was delivered to
defendant ANTONIO GORDON
on 07-27-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

County ☐ Municipality of
ROCK HILL

AFFIDAVIT

J. THICKENS

Personally appeared before me the affiant J. THICKENS
being duly sworn deposes and says that defendant ANTONIO GORDON
did within this county and state on 07/23/98 violate the criminal laws of
State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL
in the following particulars:

DESCRIPTION OF OFFENSE CRIMINAL CONSPIRACY 16-17-410

I further state that there is probable cause to believe that the defendant named above did cc
the crime set forth and that probable cause is based on the following facts:
DID WILLFULLY AND UNLAWFULLY SCHEME AND CONSPIRE WITH ANOTHER TO
COMMIT THE CRIME OF ARMED ROBBERY OF ONE ERIC KRENN. THIS INCIDENT
OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMIT
OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWC
STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me
on 7-24-98
Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

County ☐ Municipality of
ROCK HILL

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
on 07/23/98 defendant ANTONIO GORDON
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County ☒ Municipality of ROCK HILL) as set forth below:
DESCRIPTION OF OFFENSE CRIMINAL CONSPIRACY 16-17-410

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge Code: 0005

Judge's Address 120 E. BLACK ST.

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ C

ORIGINAL

528

App. P. 242

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

[Signature]

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

That Antonio Gordon did in York County, on or about July 23, 1998, wilfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with one or all of the following: Terrance McCrearey, Gary Moffatt, Monta Gordon and/or others for the purpose of committing the crime(s) of Murder, Armed Robbery and/or Carjacking, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

DEPT. OF PROBATION
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 04 AM '00

CERTIFIED TRUE COPY

LS

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

LS Pope
SOLICITOR

APP. P. 243

[Handwritten signature]

WITNESSES

RHPD/Herring

529

ARREST WARRANT NUMBER

F763902

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date:

10/19/98

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 98-GS-46- 2851

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410

CDR Code: 0049

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

Defendant

Antonio Gordon

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

Antonio Gordon

Defendant

Witness:

Jessie Higgins Clerk II
C.C.C. PLS. AND G.S.

30 00

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE vs.

Antonio Gordon

AKA: _____

Race: B Sex: M

DOB: _____ Age: _____

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2852

A/W#: F7163901

Date of Offense: 7-23-98

S.C. Code §: 16-23-30

CDR Code #: 2131614

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Poss. Pistol Under 21

in violation of § 16-23-30 of the S.C. Code of Laws, bearing CDR Code # 2131614

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Antonio Gordon [Signature]

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center

for a determinate term of Five days/months/years or ☐ under the Youthful Offender Act not to exceed _____ year

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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Ormet Rich

PTUP _____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

Also sentenced 7/16/98 for 1 year
Sentenced 7/16/98 for 1 year
OR charged

PRESIDING JUDGE _____

Judge Code: 0101419

Sentence Date: _____

NOTIFIED TRUE COPY
21 9 03 AM '00
CLERK OF COURT
YORK COUNTY, SC

APP. P. 245

ARREST WARRANT

F- 763901

STATE OF SOUTH CAROLINA

County: ☒ Rock Hill Municipality of

THE STATE
against

ANTONIO GORDON

Address

Phone: _____ SSN: _____
Sex: M Race: B Height: _____ Weight: 0

Date: _____ DL #: _____

DOB: 0 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: POSS. HANDGUN UNDER 21

Offense Code: 16

Code/Ordinance Sec. 16-23-30(C)

This warrant is CERTIFIED FOR SERVICE in the

☒ County ☒ Municipality of

ROCK HILL

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

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant ANTONIO GORDON
on 07-28-98

James O. Givens
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☒ County ☒ Municipality of

ROCK HILL

AFFIDAVIT

J. THICKENS

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on 07/23/98 violate the criminal laws of
State of South Carolina (or ordinance of ☒ County ☒ Municipality of ROCK HILL
in the following particulars:
DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

I further state that there is probable cause to believe that the defendant named above did com
the crime set forth and that probable cause is based on the following facts:
DID WILLFULLY AND UNLAWFULLY POSSESS A G.O.P. 4-BARREL .357 CALIBER
HANDGUN, SILVER IN COLOR, AT SIXTEEN YEARS OF AGE (DOB: 03-21-82).
THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN T
CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF
EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me
on 7-24-98

McNeely (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County ☒ Municipality of

ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THE COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe
on 07/23/98 defendant ANTONIO GORDON
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her be
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.

McNeely (L.S.)
Signature of Issuing Judge
Judge Code: 0005

Judge's Address 120 E. BLACK ST.

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circ

S.C. Attorney General
July 26, 1990
SCCA 518

CERTIFIED TRUE COPY
JUN 21 9 04 AM '98
CLERK OF COURT
YORK COUNTY, SC

ORIGINAL

App. P. 246

532

STATE OF SOUTH CAROLINA)

INDICTMENT

[Handwritten signature]

COUNTY OF YORK)

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

POSSESSION OF A PISTOL BY PERSON UNDER TWENTY-ONE

That Antonio Gordon did in York County on or about July 23, 1998, unlawfully and knowingly have in his possession a pistol, said defendant being under Twenty-One (21) years of age at the time of incident, all in violation of §16-23-30, Code of Laws of South Carolina, (1976, as amended).

PA. 100-1107
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 04 AM '00

CERTIFIED TRUE COPY

[Handwritten initials]

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

[Handwritten signature]

SOLICITOR

App. P. 247

533

WITNESSES

Herring/RHPD

ARREST WARRANT NUMBER

F763901

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 10/19/98

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 98-GS-46-2852

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

POSSESSION OF A PISTOL BY
PERSON UNDER TWENTY-ONE

SC Code: 16-23-30(C)

CDR Code: 2364

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

Defendant

I Antonio Gordon
hereby appear in my own proper person and plead
guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:

Teresa Higgins Clerk
C.C.C. PLS. AND S.S.

APP. P. 248

~~APPROVED~~

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

2000 CP 46-1414

Antonio Condon #254793

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

vs.

Charles Condon, Atty. General
Name of Respondent.State of South CarolinaAPPLICATION FOR
POST-CONVICTION RELIEF

JUN 20 4 50 PM '98

CERTIFIED MAIL

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Kershaw Correctional Institution; Magnolia East 97
4848 Goldmine Hwy; Kershaw S.C. 29067
2. Name and location of Court which imposed sentence York Co Family Court; York S.C. 29730
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Murder, 98-Ju-46-2847, Attempted Armed Robbery, 98-Ju-46-2849, Attempted Armed Robbery 98-Ju-46-2850
 - (b) Poss Firearm comm violent crime, 98-Ju-46-2850-A, Poss Firearm comm violent crime, 98-Ju-46-2847-A
 - (c) Poss Firearm comm violent crime, 98-Ju-46-2847-A, Poss pistol under 21, 98-Ju-46-2852
Criminal Conspiracy, 98-Ju-46-2851
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 23, 1998, Waiver of Jurisdiction
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

App. 249

402

(a) after a plea of guilty Yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) Allegations is being filed on grounds of ineffective Assistance of Counsel

(b) pursuant to Family court matters.

(c) _____

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

(a) _____

(b) _____

(c) _____

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

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

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

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

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

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

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

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

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

- i. Harry Dest P.O. Box 641 1675-1E York Hwy, York S.C. 29745-0691
- ii. Roberts D'Agostino Attorneys at Law, 300 West Liberty Street, P.O. Box 460 York S.C. 29745
- iii. _____

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

- i. _____
- ii. Sentencing Phase & Trial
- iii. _____

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

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of York~~Notary Public~~

I, Antonio Gordon #259798, 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.

Antonio Gordon

SWORN to and subscribed before me this 12
day of June, 192000

John E. [Signature]
Notary Public

(L.S.)

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2002

My Commission Expires: _____

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

I, Antonio Gordon #259798, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Antonio Gordon

Applicant

SWORN or affirmed to and subscribed before me this

12 day of June, 192000John E. [Signature]
Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2002

My Commission Expires: _____

App. P. 254 406

FILED-RECEIVED
AUG 21 2 33 PM '01

CERTIFIED TRUE COPY

AUG 23 10 33 AM '01

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

Antonio Gordon #259798

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

vs.

State of South Carolina

Name of Respondent.

01 CP 46-1866

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

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

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

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

- Place of detention Kershaw Correctional Institution, Sycamore East,
Room #4-B, 4848 Goldmine Highway Kershaw, S.C. 29067
- Name and location of Court which imposed sentence York County General Session Court,
Post Office Box 649, York, South Carolina 29745-0649
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Murder 98-GS-4647, Attempted Armed robbery 98-GS-46-2849, Poss. Fire
 - comm viol crime, 98-GS-46-2847-A, Criminal conspiracy 98-GS-46-2851
 - Firearm comm violent crime 98-GS-46-2849, Poss Firearm Comm violen
- The date upon which sentence was imposed and the terms of the sentence: Robbery 98-GS-46-2850
 - July, 19, 1999, 30 years for Murder, to ten (10) Consecutive year for o
 - Attempted Armed robbery, to ten (10) Concurrent year on the other ar
 - robbery, and to five (5) years concurrent one each of the remaining

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APP. P. 255

Involuntary Guilty Plea (ARGUMENT 1)

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants, Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.E.D. 2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights, he or she is waiving. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a Jury Trial, and the right to confront one's accusers. The S.C. Supreme Court considered the requirements of a ~~voluntary~~ ^{voluntary} and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E2d 602 (1980), and Dover v. State, 304 S.C. 433, 405 S.E2d 391 (1991). In addition to the requirements of Boykin v. Alabama, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the Constitutional Rights being waived.

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the P.C.R. hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E2d 360 (1984). However, in this case, the transcript of Gordon's guilty plea on its face provides enough evidence to hold Gordon's plea was not voluntary or knowing. See Pittman v. State, 524 S.E2d 623. In Gordon's case, the trial Judge did not affirmatively ask him for an admission of guilt.

Furthermore, the applicant's guilty plea was involuntary due to limited comprehension, whereas he responded systematically to the Judge's questioning during the plea proceedings even though there had surfaced much confusion between the Judge and counsel as to the sentencing stipulation and/or guidelines yet applicant still responded as "yes" even though the guidelines mentioned were inaccurate or inaccurately stated. Tr. pg. 178-179

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App. P. 256

5. Check whether a finding of guilty was made

X(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Yes I did appeal.

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

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

i. State of South Carolina Court of Appeals.

ii. _____

iii. _____

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

i. Appeal dismissed.

ii. _____

iii. _____

(c) the date of each such result:

i. December 6, 2000

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

(a) Ineffective assistance of counsel(d)Denial of severance motion(b) Involuntary guilty plea(c) Lack of subject matter jurisdiction

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

(a) see attached memorandum,(b) see attached memorandum,(c) see attached memorandum,

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~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~

Lack of Subject matter Jurisdiction(Argument 2)

When a juvenile is taken into custody he must immediately be taken before a referee, circuit Judge, or magistrate, and if there is a failure to do so, and it appears that primary purpose of delay was to obtain a confession from juvenile, any confession obtained as a result of that delay will be invalid. Code 49-5-8.

Decision to transfer juvenile to adult status is within sound discretion of district Judge, as district Judge considers and makes specific finding as to following six factors: Juvenile's age and social background; nature of alleged offense; prior record of offender; juvenile's intellect intellectual development and psychological maturity; nature of and response to past treatment; and availability of programs designed to treat juvenile's problems. U.S. v. Greald, 900 F2d 189. See U.S. v. CJTG, 913 F.Supp.63 (Juvenile would not be transferred to adult status for prosecution and trial, even though he had been involved in carjacking in which victim was killed by gun shot).

Defendant was charged with Armed robbery and sentenced by the family court, Greenville County, James AK. Roper, 3, as a youthful offender, "After a guilty plea to accessory before and after the fact, and defendant appealed". The Supreme court held that where defendant was sixteen(16) years of age at the time of charge offense of Armed robbery, but turned seventeen(17) years of age prior to final disposition of charge in family court, since Jurisdiction had not been relinquished in favor of another court under applicable statute, charge against defendant should have been handled under statute relating to youthful offenders.

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App. P. 258

~~XXXXXXXXXXXXXXXXXXXX~~

Severance Motion (Argument 3)

The trial Judge must act cautiously in allowing a joint trial; the Judge must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C.313.

Petitioner contends the trial judge, relying in part upon Zafiro v. United States, 506 U.S. 534, 113 S.C.T. 933, 122 L.Ed.2d 317 (1993), erred in denying his pretrial severance motion.

Petitioner's attorney made a motion to sever trial due to the fact that the appellant had, "Been tested on two prior occasions before this crime ever occurred...and he has Consistently tested 68, which as I understand it is in the range of mental retardation". Tr. pg. 8, Lines 18-25; pg. 9, Lines 1-25. Petitioner's attorney informed the court that he would have to explain things to Petitioner and that to introduce two co-defendants, "Would create the definite result that the defendant will surely be lost in the entire trial process. The Court erred in denying this motion.

Ineffective Assistance of Counsel. (Argument 4)

Counsel was ineffective for allowing guilty plea that was not knowingly and intelligently given plea argued in ground (1). Counsel's ineffectiveness was so severe that it prejudiced petitioner's Constitutional Right to a fair trial.

Conclusion

Petition moves to have sentence vacated or in the alternative a new trial. I so move:

SI Antonino Gordon

Antonino Gordon #259798

Kershaw Correctional Institution
Sycamore East, Room #4-B
4848 Goldmine Highway
Kershaw, S.C. 29067

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App. P. 259

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Petitioner's first attempt at relief

(b) _____

(c) _____

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

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

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

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

i. Harry Dest, 1675-3A York Hwy, York S.C. 29745ii. D. Agostino, "address unknown"

iii. _____

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

i. Harry Dest Got off case.ii. D. Agostino Plea and Sentencing,

iii. _____

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

Vacation of sentence

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

No

STATE OF SOUTH CAROLINA

County of York

APP. P. 261
~~Handwritten signature~~
VERIFICATION

I, Antonio Gordon, 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.

Antonio Gordon

SWORN to and subscribed before me this 13th
day of August, 19 2001
Denny F. West (L.S.)
Notary Public

My Commission Expires: 12-27-10

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

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

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

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this

13th day of August, 19 2001
Denny F. West
Notary Public

My Commission Expires 12-27-10

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

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Antonio Gordon
Applicant,

v.

State of South Carolina
Respondent.) *Exhibit 5*
) *APP. P. 262*
) MOTION TO AMEND APPLICATION FOR
) POST-CONVICTION RELIEF

) case# 41-CP-46-1866

Applicant through his undersigned counsel moves the court an order granting him leave to amend his application for post-conviction relief to include the following ground for relief.

1. Should a sixteen year old charged with certain enumerated offences as specified in S.C. Code Ann § 20-7-6605(1) be given a competency hearing to determine whether the sixteen year old is competent to stand trial as an adult before the solicitor is granted with the arbitrary discretion of granting jurisdiction of the offence before making his discretionary decision?

2. Could a juvenile sixteen years of age be rehabilitated in juveniles facilities who commit classes A, B, C, and D felonies?

3. Does the solicitor have to notify the sixteen year old, that he is being charged and tried as a Adult?

4. Under S.C. Ann§ 20-7-7605 (6) Should the applicant be afforded a hearing under that statute?

5. Did trial court lack subject-matter jurisdiction to accept applicants guilty plea to murder, and attempted armed robbery?

Exhibit 5

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APP. P. 263

[1-2] In determining whether a juvenile is to be transferred to

the court of general sessions the following factors must be considered in State v. Avery 509 S.E.2d 476 (S.C.1998), and Kent v. United States. 86 S.Ct.1045 (1966). In determining should a juvenile be transferred to general sessions the testimony from the transfer hearing and Pre-waiver [evaluation] report is considered. State v. Avery 509 S.E.2d 476. A major factor in determining a transfer of a juvenile is whether the juvenile can be rehabilitated.

Being rehabilitated requires that the juvenile be evaluated by the department of juvenile justice. When the solicitor makes his arbitrary determination whether sixteen year olds is going to be tried as adults or juveniles. The solicitor bases his arbitrary determination and discretion on the juveniles age and charge. Never the less, the solicitor investigate and focus on the juveniles mental history, family background, and or whether the juvenile could be rehabilitated at the age of sixteen. The law where pass to give the solicitor the discretion they have to try juveniles sixteen years of age because (16) year olds were committing adult crimes. Moreover when a juvenile sixteen years of age commit class A, B, C, or D felonies does not necessarily mean that a sixteen year

old is capable of understanding the things that adults would.

However, it has not been established that the solicitor should hold an evaluation hearing for individuals juveniles sixteen years of age who commit classes A, B, C, or D. felonies to be competent to stand trial as an adult.

Exhibit 5

~~CONFIDENTIAL~~

APP. P. 264

The court held in *Dusky v. United States* 80 S.Ct 788, that defendants competency to stand trial is whether he has the sufficient present ability to consult with his lawyer with a reasonable degree of rational as well as factual understanding of the proceeding against him. Ofcourse Dusky is an adult and Dusky is a test of standing trial. Thus a juvenile sixteen years of age may not be competentant to stand trial as a adult. The only true way to find out is to hold an evaluation hearing. Applicant contends that the evaluation hearing is not a transfer hearing, but more of a hearing for the solicitor to render his arbitrary determination to determine whether sixteen year olds should be tried as an adult or juvenile. Moreover, S.C. Code Ann § 20-7-6605 is a definition statute and are used to prosecute one group of juveniles, which are sixteen. There are no certain or mandatory factors that the solicitor has to go by, "To determine whether juveniles sixteen years of age are to be tried as adult or juveniles. The only mandatory factors the solicitor has to have to try a juvenile sixteen years of age is, The juveniles age which is (16), and if the juvenile commit a class A, B, C, or D felony. The applicant contends that the solicitor should have held an evaluation hearing to make his determination. However, the common law question in the case at bar is whether the solicitor should hold an evaluation hearing for juveniles sixteen years old.

Exhibit 5

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App. p. 265

[3] The applicant contends that he was never told that he would be tried as a adult. The applicant was a juvenile and unaware of being charged and tried as a adult. Counsel nor the solicitor notified the defendant about being tried as an adult. However, applicant realize the state will argue that the defendants counsel was aware of the defendant being tried as an adult and should have notified the defendant. This is not the case. The courts have held that these rights are personal to the accused. It is the accused not counsel, who must be informed of the nature and cause of the accusation. see State v. Green 239 S.E.2d 487(1977).

[4-5] A statute is the law passed by a legislative body. In determining the scope of a statute the court must first look to language. The words of a statute are to be given their ordinary meaning. Moskal v. United States 111 S.Ct.461(1990), United States v. Stokley 881 F.2d 114(1989). A child in South Carolina who commits a class A,B,C, or D felony one who is sixteen years of age is not considered as a "CHILD". However it is at the discretion of the solicitor to determine if a child sixteen years of age is considered as a child. When reading the United States Constitution under the child provision it does not mention the word child. The United States Constitution uses the word "Juvenile". However when reading state statute 20-7-6605 it uses the word "Child".

Exhibit 5

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APP. P. 266

The constitutional law is the body of law deriving from the, United States Constitution and dealing primarily with governmental powers and civil rights and liberties. Constitutional law originated in Marbury v. Madison 5 U.S.(1. Cranch) 137 (1803). Which declares the judiciary's power to construe the constitution. However, if the constitution of the United States does not use the word child within the constitution, then the state should not use the word child. South Carolina has not defined who is a child. But the constitution has defined the word child as juvenile. In construing S.C. Code Ann § 20-7-6605 there are a conflict of definitions in the law when it relates to who is a child. Intention of the legislature is the first rule of construction of statutes and full effect must be given to each section, and words must be given their plain and ordinary meaning. State v. Sawyer 88 S.E.2d 894. Ashley v. Ware Shoals MFG. Co. 42 S.E.2d 390. The original definition of a child in S.C. Code Ann § 20-7-6605, is defined as a person under the age of seventeen. Applicant contends that the division of governmental are divided into three branches of Government....Legislative...Executive...and Judicial. Applicant submits while passing the law giving the solicitor the authorities to deny the family courts jurisdiction. And that by the legislative branch giving the solicitor the power to try "Juveniles" Without first going through family court, or holding some type of evaluation hearing to determine the child or juveniles mental capacity is unconstitutional and that it encroaches on the family court jurisdiction while family court having exclusive jurisdiction over all juveniles until the juvenile has been transferred to the court of general sessions.

Exhibit 5

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App. P. 267

More-over, the applicant contends that while the state of South Carolina only treating sixteen year olds as adults, that the fourteen and fifteen year olds are committing the same acts, and are being tried in family court, or either waved up to the court of general sessions. Applicant contends that they are no different in age but one year. However, if a juvenile sixteen years of age commit a crime as a juvenile he will only be incarcerated for five years. When the fifteen year olds will be incarcerated for six years. More-over, when the solicitor determines to try the sixteen year old as an adult or not he the solicitor determine who is left in family court. There-fore, all juveniles sixteen years of age are not being treated equally. Since their are individuals juveniles under the age of sixteen committing the same exact offence sixteen year olds are, and are being waived up to the court of general sessions. then sixteen year olds should be afforded the same rights that those individuals have. Wherefore in light of the athrowities and statutes here in before mentioned, and additionally within reasonable reliance upon the constitutional law intent governing inquires of this nature, was denied his Fifth Amendment Right to Due Process of Law, as with his Fourthteenth U.S. Consttutational right to Equal Protection of the law and Due Process.

Finally the general sessions court was with-out Subject-matter Jurisdiction to accept applicants guilty plea to murder and attempted armed robbery, due to the above mentioned matters.

Exhibit 5

~~CONFIDENTIAL~~

App. P. 268

(B)

The trial court lack subject matter jurisdiction to accept applicant guilty plea to murder and attempted armed robbery where family court granting jurisdiction to circuit court was unconstitutional.

To be arbitrarily denied the privilege of juvenile jurisdiction by discriminatory legislative classification is violative of due process and the equal protection of the law. Legislative classification are entitle to a strong presumption of validity and may be set aside only if no grounds can be conceived to justify them, "Bland". It is a salutary principle of judicial decision, long emphasized and followed by this court, that burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless viewed in the light of facts made known originally assumed, it is of such rests upon some rational basis within the knowledge and experience of the legislators. "Bland". However, there is a presumption of reasonableness of classification in state statute, but presumption is only in absence of evidence to the contrary which is clearly admissible. Evidence to the contrary which establishes the unconstitutionality of the statute in question as a denial of the equal protection of the law, lies upon the fact that, S.C. Code Ann § 20-7-6605(1), arbitrarily by age, discriminates against those individuals under the age of

(7)

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APP. P. 269

~~Exhibit 5~~

seventeen (17), sixteen year olds charged with certain enumerated offenses by allowing those individuals to be charged in an adult court, without having to first bring charges in a family court and obtaining transfers, while other individuals under the age of seventeen (17), (14), and (15) year olds charged with the same enumerated offenses, must be charged in the family court first, and then may be transferred under some circumstances. No other age group, other than (16) sixteen year olds are arbitrarily classified as reflected in the fractured nature of statutes and subsections in the family court relating to this particular age group.

To begin S.C. Code Ann § 20-7-6605(1) defines a "child" in it's plain and ordinary meaning. "Child" means a person less than seventeen years of age, S.C. Code Ann § 20-7-6605(1) then proceeds to expand the plain and ordinary meaning of a "child" to arbitrarily exclude only those (16) year olds charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of

fifteen years or more. (Only sixteen year olds are affected because a seventeen year old is never considered a "child" as the statute defines a "child" as a person less than seventeen years of age. However, these same individuals can be proceeded as juveniles or children at the discretion of the solicitor

where the statute states..... However, a person sixteen years of age who is charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of fifteen years or more may be remanded to the family court at

Exhibit 5

App. P. 276

~~XXXXXXXXXXXX~~

for disposition of the charge at the discretion of the solicitor.

S.C. Code Ann § 20-7-7605 then defines a sixteen year old as a child, if charged with an offense which if committed by an adult, would be a misdemeanor, a class E or F felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of ten years or less. S.C. Code ANN § 20-7-7605(5) then defines a "child" as a fourteen or fifteen year old, charged with an offense which would classify as a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. In retrospect S.C. Code Ann § 20-7-7605 stipulates that any individual 14 years or older can be tried as an adult under certain circumstances. Anyone under the age 14, may be tried as an adult, only, if the individual has committed the offense of murder or criminal sexual conduct.

As shown § 20-7-6605(1) and § 20-7-7605 are identical in every aspect except that a 14 and 15 year old is given a chance and a 16 year old is out of sight-out of mind. "This arbitrary age discrimination rests upon the fact that there is no justification over a 14 and 15 year old who is arbitrarily classified as an adult, upon initiation of the charges. Here the original justification, "if there was one, is no longer justifiable where there is no longer any real distinction between 14, 15, and 16 year olds. If there was a disparity between 14, 15, and 16 year olds, there is little evidence that these differences exist today where the recidivist rate of 14 and 15 year old offenders, has equate with that of 16 year olds offenders if not surpassed

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App. P. 271

Exhibit 5

the number.

In Bland, the court held that in it's original justification congress sought to improve the operation of the juvenile justice system by removing from it's jurisdiction, individuals between the ages of 16 and 18, in which congress concluded (1) were beyond rehabilitation in juvenile justice system, and (2) whose presence in that system serve as a negative influence on other juveniles.....see Bland at 472 F.2d 1332, today this reason is also applicable to 14 and 15 yr olds. In revealing it's rationale for excluding such persons from the jurisdiction of the family division, the house committee on the district of Columbia, gave the following as the basis for it's exclusion of those 16 yrs of age or older charged with certain enumerated offenses. Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent Youthful Offenders and recidivist from the rest of the juvenile community, is arbitrarily and discriminatory applied in S.C. Code Ann § 20-7-6605(1). If differentiation of individuals is necessary, as it surely is, it should be made on the basis of facts about the individual, and not on the basis of an

Exhibit 5

APP. P. 272

~~Handwritten signature/initials~~

assumption about a huge and diverse group.

The uncontroverted evidence is that such basis for the exclusion of only sixteen year olds as children when charged with certain enumerated offense is arbitrary and unreasonably discriminatory. This effect is not hypothetical or theoretical, but is quite real. Individuals, under the age of 17, if charged as an adult with a class A, B, C, or D felony..... will be tried as , and if convicted be subject to the penalties of adults. If convicted they will be incarcerated in adult institutions upon ascertaining the age of 17, and largely, if not completely, be deprived of the social psychological and psychiatric services, and educational and vocational opportunities afforded juveniles. Further, if convicted as adults, these individuals may lose the right to vote; serve in the Armed Forces; to secure many types of government and private employment, and will carry forever the stigma of conviction. The only difference as addressed in the dissenting opinion in Bland is that 16 year old individuals, will be sentence (if convicted in an adult court). Moreover, without any meaningful inquiry into the possibility of rehabilitation through human juvenile disposition." see Bland at 1348, 1349.

Thus, it is evident that a statute which provives that a "child" is an individual, less than seventeen years of age, but that a "child" is not an 16 yr old individual charged with certain enumerated offenses, while an individual, 14 or 15 of age

App.

~~Exhibit 5~~

the number.

In Bland, the court held that in its original justification congress sought to improve the operation of the juvenile justice system by removing from its jurisdiction, individuals between the ages of 16 and 18, in which congress concluded (1) were beyond rehabilitation in juvenile justice system, and (2) whose presence in that system serve as a negative influence on other juveniles.....see Bland at 472 F.2d 1332, today this reason is also applicable to 14 and 15 yr olds. In revealing its rationale for excluding such persons from the jurisdiction of the family division, the house committee on the district of Columbia, gave the following as the basis for its exclusion of those 16 yrs of age or older charged with certain enumerated offenses. Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent Youthful Offenders and recidivist from the rest of the juvenile community, is arbitrarily and discriminatory applied in S.C. Code Ann § 20-7-6605(1). If differentiation of individuals is necessary, as it surely is, it should be made on the basis of facts about the individual, and not on the basis of an

Exhibit 5

App. P. 273

charged with the same enumerated offense is a "child" where there is no real distinction (psychological or physical) between 14, 15 and 16 year olds, denies equal protection of law to those 16 year olds who are arbitrarily by age, excluded from juvenile court jurisdiction S.C. Code Ann § 20-7-400(A).

Statutory construction must begin with plain language of statute and court should not look beyond the plain language unless there is ambiguity or unless statute as literally read would contravene ambiguously expressed legislative intent gleaned from statute's legislative history; even if results appears to be anomalous or absurd in particular case, court may not disregard unambiguous language. U.S. v. Sheek, 990 F.2d 150.

The judicial action of constructing statute to eliminate exclusive original juvenile Jurisdiction in S.C. is an unforeseeable action. Because of the unclear, ambiguous nature of § 20-7-6605(1) where it provides that a "child" is an individual less than seventeen of age, a "child" is not a sixteen year old charged with certain enumerated offenses; a "child" maybe a sixteen year old charged with certain enumerated offense when that person is remanded to the family court, these ambiguities must resolve in favor of lenity for the accused. In Graham, the supreme court ruled that a sixteen year old charged with certain enumerated offenses may be charged in circuit court first without bringing charges in family court and obtaining transfer

Exhibit 5

~~Memorandum~~ App. P. 274

based upon S.C. Code Ann § 20-7-6605(1). The court ruled that the family court had no original jurisdiction over the offense of murder. This judicial construction of the statute is an unforeseeable action where S.C. Code Ann § 20-7-400(A)(1)(D) and (3) specifically grants exclusive original jurisdiction of the offense to the jurisdiction of the family court.

S.C. Code Ann § 20-7-400(A) states: Except as otherwise provided herein, the court SHALL have exclusive original jurisdiction and SHALL be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction,

(d) Who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in § 20-7-410

(3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become seventeen years of age and such person SHALL be dealt with under the provision of this chapter relating to children.

The family court is a statutory court created by the legislature and, therefore, its jurisdiction is limited to that expressly or by necessary implication, conferred by statute.

See State v. Graham, supra.

Antonio Gordon #259798
Kershaw.C.I. S.E.#21-B
4848 Goldmine Hwy
Kershaw, SC 29067

App. P. 275

[Handwritten signature]

2 / 4 / 2002.

Dear Counsel,

Enclose is some case notes on the Juvenile Law. Statute 20-7-6605, states that, when used in this article and unless otherwise defined or the specific context indicates otherwise.

(1). Child means a person less than seventeen years of age. "Child?" does not mean a person sixteen years of age or older who is charged with a class A, B, C, or D-felony as maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the Solicitor. An additional or accompanying charge associated with the charge contained in this item must be heard by the court with Jurisdiction over the offenses contained in this item.

Statute 20-7-7605, states that an sixteen year old defendant, sixteen years of age or older is charged with an offense which if committed by an adult, would be a misdemeanor, a class E or F felony as defined in section 1601-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain Jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial Jurisdiction of the offense if committed by an adult.

Statute 20-7-400, states the same as statute 20-7-7605, but the age limit is higher. Those three statutes is conflicting with each other. Here are some of the cases I looked up on statutes conflicting each others.

- (1). Williams v. State 410 SE.2d 563 (SC 1991).
- (2). Stats v. Cutler 274 S.C. 376, 264 SE.2d 420 (1980).
- (3). State v. Life Insurance Company of Gorgia 175 SE.2d 205.
- (4). Scouill v. Johnson 3 SE.2d 543, 545.

Therefore General Sessions lack subject matter jurisdiction for accepting my guilty plea, and attorney D. Agostin is Ineffective Assistance for allowing me to plea to that. I appreciate the time you have put in this matter.

Sincerely Your's,

[Handwritten signature: Antonio Gordon]

Antonio Gordon #259798

Sworn to and Subscribed
before me this 4th day of Feb 2002.
Notary: Dennis F. West
Exp: 12-27-10

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Antonio Gordon,
S.C.D.C. No., 259798

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. NO. 00-CP-46-1414

RETURN

FILED-RECEIVED
BOOK _____ PAGE _____
MAY 7 8 51 AM '01
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

In response to the post-conviction relief application filed June 15, 2000, the Respondent would show this Court:

I.

The Applicant, Antonio Gordon, is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

For the purpose of this Return, the Respondent attaches and incorporates the Clerk of Court's records by reference. The Respondent will furnish and attach a copy of the plea transcript when it becomes available. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel.

III.

In his only allegation the Applicant asserts that he was denied effective assistance of trial counsel. The State submits this allegation has no merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that 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, 99 L.Ed.2d 203 (1985); Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

The State submits that the extensive guilty plea record speaks for itself as to the competency of counsel and shows counsel demonstrated a normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal

law in South Carolina. Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). In addition, the State submits that the Applicant cannot meet the prejudice requirement. Hill, *supra*; Alexander, *supra*. Furthermore, the State submits that, if this Court finds that the Applicant's plea was voluntary and intelligent, said voluntary and intelligent plea of guilty results in a waiver of any non-jurisdictional defects and defenses, including the alleged defect of ineffective assistance of counsel. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Further, should the Applicant make any false claims, commit perjury or abuse the legal

APP. P. 275 (d)

process, the State reserves the right to seek punitive and remedial sanctions. These include, but are not limited to, the forfeiture of all earned work, education and good time credits. See S.C. Code 24-27-200 (Supp. 2000).

VII.

WHEREFORE, having made Return, the Respondent requests that this Court hold an evidentiary hearing.

Respectfully submitted,

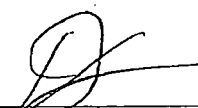
CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

B. ALLEN BULLARD
Assistant Deputy Attorney General

DAVE SPENCER
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211

By: 
Attorneys for the Respondents

May 2, 2001

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James H. Williams
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT

App. p. 276

) 2000-CP-46-1414

Approved

) Antonio Gordon, #259798,

) Applicant,

) vs.

) CONSENT ORDER CHANGING VENUE

) State of South Carolina,

) Respondent.

Attachment

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001.

This matter is presently before the Court to change venue in order to conduct the PCR hearing. The trial judge in this matter was the Honorable John C. Hayes, III. The other judge for the Sixteenth Circuit, the Honorable Lee S. Alford, has recused himself due to a conflict. Judge Alford heard oral arguments and ruled on discovery issues in the Applicant's case before his trial occurred. Because both judges for the Sixteenth Circuit are unable to hear this case, this case should be transferred to Richland County for the PCR hearing in order for the case to be heard in a more timely manner.

It appearing that counsel for both parties as well as the Applicant consent to the change of venue this Application for Post-Conviction Relief is transferred to Richland County for the sole purpose of conducting the PCR hearing. The Applicant further agrees to allow Judge Hayes to sign this Order for Change of Venue in his capacity as Administrative Judge for the Sixteenth Judicial Circuit even though he was the actual trial judge

LS

John C. Hayes, III

03CP403308

5m

STATE OF SOUTH CAROLINA

FILED-RECEIVED

APP. A276(A)

COUNTY OF YORK

BOOK - PAGE
IN THE COURT OF COMMON PLEAS
FEB 12 11 04 AM '02

ANTONIO GORDON, 259798,

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, S.C.

00-CP-46-1414

Applicant,

v.

~~MOTION~~ ORDER FOR CONSOLIDATION

THE STATE,

Respondent.

2003 JUL -2 AM 11:00
BARBARA J. HARRIS
C.C.C. & G.S.

FILED

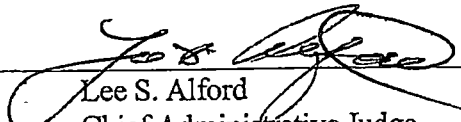
The Applicant in the above-captioned matter is represented by court-appointed counsel, Tara Dawn Shurling. This Court has now been advised that the Applicant has filed a second Application for Post-Conviction Relief addressing the same charges and sentences. The second Application for Post-Conviction Relief was docketed by the York County Clerk of Court's Office as 01-CP-46-1866. Ernest Harr, Esquire, was court-appointed to represent the Applicant in that action. It now appears that both Applications for Post-Conviction Relief address the same convictions and sentences. Accordingly, Attorney Shurling and Attorney Harr come before this Court requesting that these matters be consolidated for purposes of review. Counsel requests that these two Applications for Post-Conviction Relief be consolidated under the original docketing number, 2000-CP-46-1414 and, further, that Mr. Harr, who was court-appointed on the second filing, be relieved as counsel in this matter. Both Attorney Shurling and Attorney Harr have indicated their consent to this request by their signatures below. The two Applications for Post-Conviction Relief docketed at 2000-CP-46-1414 and 2001-CP-46-1866 appear to, in fact, arise from the same convictions and sentences. Accordingly, the request of counsel to consolidate these matters is hereby granted. Ernest Harr is relieved as counsel of

#1
BBA

APP. P. 277

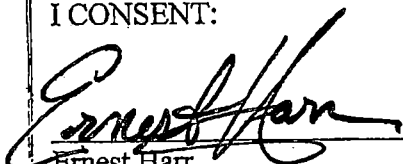
record. Attorney Shurling will remain court-appointed counsel for the Applicant.

IT IS SO ORDERED.


Lee S. Alford
Chief Administrative Judge
Sixteenth Judicial Circuit

#2
b6
b7C
This 8th day of February, 2002.
Yace, South Carolina.

I CONSENT:


Ernest Harr


Tara Dawn Shurling

App. P. 277

IT IS THEREFORE ORDERED:

1. That this case is transferred from York County to Richland County for the sole purposes of conducting the PCR hearing; and
2. That this case will remain as a Sixteenth Circuit PCR for the purposes of filing pleadings and other documents because the county of conviction is York County.

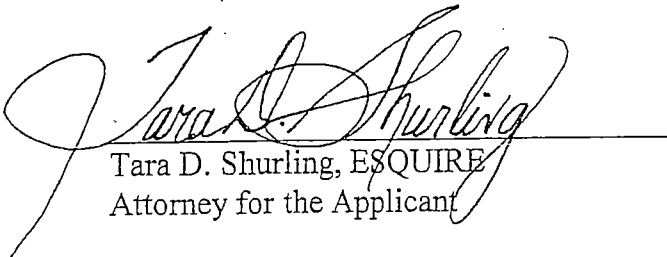
AND IT IS SO ORDERED this 26th day of June, 2003.

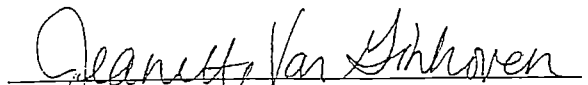

John C. Hayes, III
Administrative Judge
Sixteenth Judicial Circuit

June 26th, South Carolina.

WE CONSENT:


Applicant


Tara D. Shurling, ESQUIRE
Attorney for the Applicant


JEANETTE VAN GINHOVEN, ESQUIRE
Attorney for the Respondent

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App. P. 278

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF COMMON PLEAS
00-CP-46-01414

ANTONIO GORDON,

APPLICANT,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

TRANSCRIPT OF RECORD

Attachment (D)

JULY, 29, 2003
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

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

TARA D. SHURLING, ESQ.
ATTORNEY FOR THE APPLICANT

JEANETTE C. VANGINHOVEN, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

DEBORAH M. MCCURDY
OFFICIAL COURT REPORTER

~~Exhibit 5~~

charged with the same enumerated offense is a "child" where there is no real distinction (psychological or physical) between 14, 15 and 16 year olds, denies equal protection of law to those 16 year olds who are arbitrarily by age, excluded from juvenile court jurisdiction S.C. Code Ann § 20-7-400(A).

Statutory construction must begin with plain language of statute and court should not look beyond the plain language unless there is ambiguity or unless statute as literally read would contravene ambiguously expressed legislative intent gleaned from statute's legislative history; even if results appears to be anomalous or absurd in particular case, court may not disregard unambiguous language. U.S. v. Sheek, 990 F.2d 150.

The judicial action of constructing statute to eliminate exclusive original juvenile Jurisdiction in S.C. is an unforeseeable action. Because of the unclear, ambiguous nature of § 20-7-6605(1) where it provides that a "child" is an individual less than seventeen of age, a "child" is not a sixteen year old charged with certain enumerated offenses; a "child" maybe a sixteen year old charged with certain enumerated offense when that person is remanded to the family court, these ambiguities must resolve in favor of lenity for the accused. In Graham, the supreme court ruled that a sixteen year old charged with certain enumerated offenses may be charged in circuit court first without bringing charges in family court and obtaining transfer

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APP. P. 279

INDEX OF WITNESSES

ANTONIO GORDON

Direct Examination by Ms. Shurling.....	18
Cross Examination by Ms. VanGinhoven.....	23
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RICHARD G. D'AGOSTINO

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Redirect Examination by Ms. VanGinhoven.....	50

EXHIBITS

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

Attachment (D)

439

3

App. P 280

JULY 29, 2003

MS. VANGINHOVEN: This is the case of Antonio Gordon versus State. This is a case that has been transferred from York County. We did an order transferring venue. Judge Hayes was the trial judge, ended up the guilty plea judge, and Judge Alford had recused himself. He had done the pretrial motions in this matter.

The case number is 2000-CP-46-1414. And at this time the State would just ask Ms. Shurling to lay out the allegations for post-conviction relief.

THE COURT: All right, now, even though it was transferred here by order of Judge Hayes, you say?

MS. VANGINHOVEN: I believe it is Judge Hayes. It may have been Judge Alford. Judge Hayes.

THE COURT: It really does not matter, and it will only take two seconds, but I am not a resident judge of that circuit, and while a circuit judge can change venue, he can't vest me with jurisdiction, so I just have to call Court Administration, they will do an order giving me concurrent York County jurisdiction today.

MS. VANGINHOVEN: Okay.

MS. SHURLING: Thank you, Your Honor. I wasn't aware that had to be done.

THE COURT: Well,---

~~RECORDED~~ APP. P.
1 MS. SHURLING: For the record, if it makes any 281
2 difference, I will tell you that we consulted---

3 THE COURT: You can't waive jurisdiction.

4 MS. SHURLING: Exactly. But we did consult with
5 the client about it and we have a signed waiver from him
6 if you need to tell Court Administration that..

7 THE COURT: They don't care. The thing is, it
8 occurs frequently, and I'm correct on it, it doesn't
9 matter about that, but they will bring in a plea from
10 Lexington County, you know, while we are doing some for
11 Richland County; I can't do it. I can do one from Kershaw
12 because I am a resident judge of that circuit.

13 MS. SHURLING: That's scary. We do that all the
14 time.

15 THE COURT: I know, and it is not---

16 MS. SHURLING: Kosher.

17 THE COURT: Well, you can set some of them aside.
18 Of course, usually they get concurrent, so it doesn't
19 matter.

20 MS. SHURLING: I was going to say, Judge, thanks
21 for the tip.

22 (The Court steps off the bench to call Court
23 Administration.)

24 THE COURT: Lots of things get taken care of. It
25 is like when they assign me chief judge of the 14th

1 Circuit, I'm still resident judge of the 5th Circuit, so I
2 can hear anything in the 14th Circuit plus anything in the
3 5th Circuit. And every six months they do an order, and
4 for the next six months, I saw it, they gave me
5 jurisdiction in addition to my home circuit for the 6th
6 Circuit, so I can hear anything from the 6th Circuit come
7 January without getting an order.

8 MS. SHURLING: I understand. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 MS. SHURLING: Your Honor, for the record, my
12 client's original application for post-conviction relief
13 alleged that he received ineffective assistance of counsel
14 at trial, prior to and during trial, that his pleas of
15 guilty were not voluntarily and intelligently entered, and
16 that the Court of General Sessions lacked subject matter
17 jurisdiction over his case for a number of reasons.

18 Subsequent meetings with my client have yielded a
19 further refinement of those general allegations, and I
20 will now list for the court in detail his specific
21 allegations in regards to the Sixth Amendment claim.

22 THE COURT: All right.

23 MS. SHURLING: The client alleges that trial
24 counsel was ineffective in preparing this case for trial
25 pretrial and that it was counsel's lack of preparation and

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~~Admission Argument~~ App. P. 283

1 failure to pursue certain matters which led to his fear to
2 exercise his right to trial by jury and directly affected
3 his ultimately yielding to Defense counsel's desire that
4 he plead guilty and waive his right to trial by jury.

5 There are a number of issues that he feels if
6 trial counsel had adequately explored and prepared prior
7 to the point in time when the decision had to be made
8 about a plea, that he would not have pleaded guilty and
9 would have exercised his right to trial by jury.

10 Among those are: The fact that a palm print,
11 which the State had announced intentions to use as
12 evidence against the client, was on the victim's car.

13 Pardon me one moment.

14 (Pause.)

15 MS. SHURLING: Okay, I apologize, Your Honor, we
16 withdraw that allegation.

17 THE COURT: Okay.

18 MS. SHURLING: So our new first issue would be the
19 lack of subject matter jurisdiction because the indictment
20 was, among other things, not filed with the Clerk of Court
21 within 90 days of his arrest.

22 It is his position, Your Honor, that court rules
23 have long held that the Solicitor is to prepare an
24 indictment and file it with the Clerk of Court and have a
25 criminal number assigned to it and the Clerk of Court is

then to present the indictment to the Grand Jury.

It is the policy in this jurisdiction that someone who is in fact an employee of the Solicitor's Office prepares indictments, assigns a General Sessions indictment number, and they are presented directly to the Grand Jury without having them previously filed with the Clerk of Court's Office, nor is the Clerk of Court responsible for presenting them to the Grand Jury.

I will note for the record that in previous proceedings I have subpoenaed the woman from the Solicitor's Office who has that job and verified and made a proffer as an Officer of the Court under Cabbagestalk that it is the policy of the Solicitor's Office that they prepare the indictments, they assign it the next General Sessions number, and they present the indictment to the Grand Jury.

We have on previous occasions had her come to court and bring with her pages from Court Administration's Policies and Procedure Manual, which include a Policy and Procedure consistent with what the 5th Circuit Solicitor's Office is doing; however, it is the Applicant's position that regardless of whether Court Administration has signed off on that procedure, that it is inconsistent with the South Carolina constitutional requirement that the Clerk of Court present indictments to the Grand Jury.

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Exhibit 6

2003 PCR hearing of Antonio Gordon

App. P. 285
8

1 Additionally, Your Honor, it is his position that
2 counsel should have challenged the indictment in this case
3 because it failed to say that he willfully and feloniously
4 and with malice aforethought killed the victim in this
5 case.

6 I would note that while that was one of the issues
7 that my client wanted me to raise, we have now discussed
8 the fact that in a very recent Supreme Court case from
9 2002, Joseph v. State, the Court held that "willfully"
10 would be encompassed in the term "murder" and
11 "feloniously" would be part and parcel of the allegation
12 of "malice aforethought," and therefore that the omission
13 of the terms "willfully" and "feloniously" would not
14 render an indictment insufficient on its face.

15 Your Honor, my client also alleges that his
16 indictment is faulty in that he was indicted by the Court
17 of General Sessions and tried as an adult without trial
18 counsel having -- and this is actually more of a Sixth

19 Amendment argument, although my client has couched it in
20 terms of subject matter jurisdiction -- that trial counsel
21 never made a concerted effort as an advocate to convince
22 the Solicitor's Office to exercise its discretion under
23 Section 20-7-6605 to have his case remanded to the Family
24 Court.

25 Under the provisions of the Family Court Code, the

Exhibit 6

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APP. P. 286
9

2003 PCR hearing of Antonio Gordon

children's code, an individual charged with a Class A, B or C felony or one which carries a penalty of 15 years or higher, is automatically tried as an adult in the Court of General Sessions; however, 6605 does vest the Solicitor with the discretion to on a case-by-case basis if he deems fit return the case to the protection of the Family Court environment.

It is additionally my client's position that his indictment as an adult is improper in that there is an inherent conflict between Section 20-7-6605 and subsequent provisions of the Code which provide children additional protections when charged with crimes, that being Section 20-7-7605, specifically, Your Honor, again, while couched in the---

THE COURT: 20 what?

MS. SHURLING: 20 -- Pardon me, Your Honor -- 6605 is the provision that gives the Solicitor the discretion to waive it back up.

THE COURT: Okay.

MS. SHURLING: And, pardon, 7605 is the lengthy statutory provision outlining the rights of children charged with crimes in our courts.

And it is his position, Your Honor, although he has once again in his amendments that he has asked me to present, he couches this in terms of subject matter

Exhibit 6

APP. P. 287
10

1 jurisdiction, but it is really a Sixth Amendment argument,
2 that trial counsel should have constitutionally challenged
3 the Children's Code in that it provides very strict
4 guidelines for the protection of children charged with
5 crimes in South Carolina and carves out an exception for
6 someone 16 years of age or older charged with serious
7 crimes without any constitutional basis for depriving
8 those children of the inherent protections afforded by the
9 Family Court Judicial System versus the Courts of General
10 Sessions.

11 Additionally, Your Honor, he alleges that trial
12 counsel failed at an appropriate time to actively pursue a
13 remand of his case back to the Family Court.

14 Under, as I have noted, Section 20-7-6605,
15 Subsection (1), the Solicitor does in fact have that
16 discretion.

17 The records before the Court, and I am assuming
18 Your Honor will have copies of the Clerk of Court's file
19 and copies of all the pretrial motion hearings held in
20 this case in addition to the plea, indicate that after
21 indictment as an adult my client was evaluated both by the
22 State and by a mental health expert hired by Defense
23 counsel; however, there is no evidence in this record from
24 which I can glean any effort by Defense counsel to
25 convince the Solicitor's Office prior to the case being

Exhibit 6

APP.P. 288

11

2003 PCR hearing of Antonio Gordon

1 indicted as an adult crime to have the case remanded to
2 the care and custody of the Family Court.

3 This was a case involving a 16-year-old with no
4 serious criminal background. He had a very limited IQ.
5 There was dispute at trial as to whether or not he in fact
6 met the criterion for retardation. Those factors combined
7 both his age and his mental age and emotional immaturity
8 were factors which if they had been adequately pursued
9 prior to indictment by the Grand Jury may have convinced
10 the Solicitor's Office to have the case remanded to the
11 Family Court, and yet no effort was made. There was no --
12 apparently no cohesive plan to present to the Solicitor's
13 Office a justification for returning the case to the
14 Family Court.

15 As examples we would cite that Defense counsel
16 could have, as I'm aware in other cases Defense attorneys
17 have gotten statements from guidance counselors, teachers,
18 people who know the child from church, certainly getting
19 mental health experts, those ducks in a row, so to speak,
20 prior to the indictment stage, and having all of that
21 material presented to the Solicitor's Office in a cohesive
22 fashion prior to the indictment process would have
23 heightened the probability that this case could have been
24 returned to the Family Court versus proceeding as an adult
25 crime.

Exhibit 6

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12

1 Now, truly under 6605 it has to be recognized that
2 the Solicitor would have had the discretion to return this
3 case to the Family Court or to ask the Family Court judge
4 to accept return of jurisdiction to the Family Court even
5 after the indictment stage; however, it would be our
6 position that once a Solicitor's Office has committed its
7 Office to prosecution of a case as a General Sessions
8 matter and has committed publicly to trying an offender as
9 an adult, that it is inherently more difficult to get them
10 to reverse their position and return that individual to
11 the care of the Family Court.

12 Your Honor, he would allege further that trial
13 counsel was ineffective in failing to adequately pursue
14 the question of his competency to stand trial. The record
15 in this case will indicate that he was evaluated just days
16 before the competency proceeding by Leslie N. Sandler on
17 the question of retardation. Her testimony at Page 104
18 indicates that she had less than a week to get this
19 together and further that she spent, on Page 136, she
20 spent approximately two hours with the Applicant.

21 She further acknowledged that she had not spoken
22 with any background people or anyone such as family
23 members to get any input as to how his adaptive behaviors
24 or coping behaviors might have affected her reading with
25 regard to the allegation that he was retarded.

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Exhibit 6

13

2003 PCR hearing of Antonio Gordon

1 For that reason, Your Honor, we would submit that
2 trial counsel did not make an adequate challenge to the
3 State's assertion that he was not competent to proceed to
4 trial. We are not talking about his sanity, we are
5 talking about competency to assist his attorney in the
6 presentation and defense of his case at trial.

7 Additionally, Your Honor, it would appear that
8 while Defense counsel hired an expert in this case to
9 evaluate both the sanity and mental competency of the
10 client in this case, it was not done until after the
11 indictment stage, once again going to our argument that
12 this case was allowed to get way too far down the line
13 before anyone started talking about this young man's base
14 abilities, his base line IQ, his emotional maturity, and
15 other factors that should have been factored in the
16 decision of whether or not he should be tried as an adult.

17 We are aware, Your Honor, that the Solicitor also
18 has a right to consider the severity of the crime, the
19 circumstances of the crime, and other factors, but along
20 with that decision as a public official the Solicitor's
21 Office would have an inherent responsibility to take into
22 account the other Kent factors regarding whether or not a
23 case is one appropriately handled by the Family Court or
24 the Courts of General Sessions, and in this case that
25 information was not given to the Solicitor's Office until

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1 the post-indictment stage.

2 Your Honor, he further alleges that trial counsel
3 failed to advise him of a double jeopardy argument that
4 could have and should have been made concerning attempted
5 armed robbery and possession of a weapon during the
6 commission of a violent crime.

7 It is his position that on those particular
8 offenses, since armed robbery requires the use of a
9 weapon, that possession of a weapon during the commission
10 of a violent crime would bring into play a double jeopardy
11 claim which could have been made, and further that this is
12 a claim that could have been made in the context of a
13 guilty plea and still argued on direct appeal inasmuch as
14 under Minner v. New York, which was decided in 1973, as
15 Your Honor knows, double jeopardy is the only issue that
16 one can raise and reserve for appellate review even in a
17 guilty plea context, it is his position that the attempted
18 armed robbery indictment in this case does not
19 sufficiently include -- is insufficient because it does
20 not include the element of asportation of the goods which
21 were attempted to be stolen.

22 Your Honor, he argues as well that his indictments
23 are insufficient in that they are violative of the
24 principles announced by the Supreme Court in The State v.
25 Anderson.

1 As Your Honor knows, way back in State v. David
2 Capps, the Supreme Court announced its displeasure with
3 the policy of having a single agent for the State, be it a
4 Prosecutor or some other single individual representing
5 the State, present a mere summary of the evidence at that
6 time. That is probably as close to an advisory opinion as
7 one will ever get from the Supreme Court, but after nearly
8 a decade of the practice continuing after the Capps
9 decision the Court in State v. Anderson finally held that
10 such indictments would not be sufficient.

11 And if Your Honor reviews the indictments in your
12 packet, it will reveal that a member of the Rock Hill
13 Police Department, an Officer Herring, was the only
14 witness before the Grand Jury on each of these
15 indictments, so he therefore alleges that he has a State
16 v. Anderson violation as well.

17 * And lastly, Your Honor, he would allege, well, two
18 more actually, he would allege that his attorney failed to
19 advise him that there would be a supervised release
20 requirement at the end of service of 85 percent of the
21 sentence he received as a result of his plea, that a plea
22 of guilty is not voluntarily and intelligently entered
23 unless it is entered with a full, cognitive understanding
24 of all of the consequences of the plea, and that in this
25 case he was not advised that if released after service of

~~Excluded~~ ~~Proprietary~~ App. P. 293
16

1 85 percent of his sentence he would be on supervised
2 release for the last 15 percent of his sentence. It is
3 his position that that renders his plea involuntary as
4 well.

5 Lastly, Your Honor, and perhaps most important in
6 this case, there was a serious argument about the
7 admissibility of this young man's statement to the police
8 after he was arrested.

9 The statements were challenged on various grounds,
10 including his mental ability to even make a knowing,
11 voluntarily, intelligent waiver of his right to counsel.

12 It was further alleged that his family had hired
13 an attorney, Chris Wellborn, who had gone to the jail
14 during the time when he was being detained and
15 interrogated by detectives, that he had very forcefully
16 and repeatedly insisted that he be taken to his client,
17 and that he was delayed time and time again until after
18 the Applicant had in fact given an incriminating statement
19 to the authorities.

20 It was the position of Defense counsel at trial
21 that this young man was not competent to enter into a
22 knowing, voluntary and intelligent waiver, both because of
23 his age, being 16, and because of his IQ, and a limited
24 intellectual ability and emotional maturity, also that
25 because of his status as a juvenile in the court system,

1 that coupled with the guardian/parent's exercise of his
2 right to counsel, that the interview should have been
3 interrupted and he should have been provided counsel.

4 Additionally, Your Honor, there was a hearing
5 conducted on the question of whether or not he was
6 competent to proceed to trial.

7 It is the Appellant's position, the Applicant's
8 position that his attorney never advised him that if he
9 proceeded to trial by jury and was convicted he would have
10 the right to appeal those issues as well as the question
11 of whether or not a severance should have been granted in
12 this case because of conflicting defenses, that those
13 issues are issues that if he had been tried and convicted
14 he would have had the right to have an appellate court
15 review and that he did not understand, nor was it
16 adequately explained to him, that if he pleaded guilty he
17 would be waiving all but subject matter jurisdictional
18 defects or any double jeopardy grounds that might have
19 been made and reserved at a plea.

20 It is his position that had he understood that, he
21 would not have waived his right to trial by jury and he
22 would have exercised his right to proceed with that trial
23 hoping to be successful in a subsequent appeal of
24 convicted.

25 Your Honor, those are the issues. I would propose

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1 to call the Applicant to the stand. I don't see any need
2 to have him reinvent the wheel and restate everything that
3 I have already said, but I would like to put his testimony
4 on the record to verify that I have accurately and
5 efficiently covered the issues he wanted me to present
6 today.

7 Inasmuch as most of them are legal in nature and
8 supported by the record, I don't believe there will be a
9 need to get into much detail.

10 THE COURT: Okay.

11 (Mr. Gordon approaches the witness stand.)

12 THE COURT: All right, Mr. Gordon?

13 MR. GORDON: Yes, sir.

14 THE COURT: Do you swear or affirm you are about
15 to truthfully testify?

16 MR. GORDON: Yes, sir.

17 THE COURT: Okay.

18 ANTONIO GORDON, after being
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SHURLING:

22 Q Mr. Gordon, state your full name for the record.

23 A Antonio Gordon.

24 Q How old are you now, Antonio?

25 A Twenty-one.

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ANTONIO GORDON--DIRECT BY MS. SHURLING

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Antonio Gordon

1 Q Twenty-one?

2 A Yes, ma'am.

3 Q And how old were you when you were arrested?

4 A Sixteen.

5 Q Okay. You have heard me for about the last 20
6 minutes going over all the legal arguments that you
7 believe should be made in support of your request for a
8 new trial. Have I accurately set forth for Judge Kinard's
9 consideration all the allegations that you wanted me to
10 raise?

11 A Yes, ma'am.

12 Q Are there any issues that you wanted to raise that I
13 have not covered for Judge Kinard?

14 A No, ma'am.

15 Q Are you sure?

16 A Yes, ma'am.

17 Q Okay. You need to understand that this is in all
18 probability the only post-conviction relief hearing you
19 will ever have on these issues, I mean, pardon me, on
20 these charges, these sentences, so if there is anything
21 that I am leaving out, it is your responsibility to bring
22 it to the Judge's attention, so if you can think of any
23 issues that you really wanted me to present that I
24 haven't, please speak up and tell Judge Kinard.

25 A You got them all.

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1 Q I got them all?

2 A Yeah.

3 Q All right. Thank you.

4 One thing that is very important for me to get on the
5 record, Mr. Gordon, is what you would have done if you had
6 had certain advice from your attorney, okay?

7 If you had known -- Let me rephrase that, I'm sorry.
8 Do you remember before your pleas going to court and
9 having these long hearings before the judge on certain
10 pretrial matters?

11 A Uh-huh, yes, ma'am.

12 Q You remember them discussing whether or not you were
13 competent, for example, to proceed to trial?

14 A Yes, ma'am.

15 Q And do you remember them discussing whether or not
16 your statement to the authorities should be admissible?

17 A Yes, ma'am.

18 MS. SHURLING: Your Honor, I just thought of one
19 he may not have, but I thought of another one he raised
20 that I didn't mention.

*21 Additionally, he challenges Defense counsel's
22 failure to challenge his statements on the ground that
23 there was no probable cause for his arrest and that his
24 statements were the fruit of the poisonous tree with
25 regard to an illegal arrest.

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~~APP. P. 298~~

1 A No, he had raised the issue, but I was talking about
2 the judge discretion on the ruling.

3 Q Okay. So your trial attorney did raise the fact that
4 there was no probable cause for your arrest?

5 A Yes, ma'am.

6 Q And raised the fact that your statement was the fruit
7 of the poisonous tree?

8 A He didn't raise that it was the fruit of the
9 poisonous tree.

10 Q Okay. So that is what you are saying trial counsel
11 was ineffective for failing to say that your statement was
12 part and parcel of your unconstitutional arrest without
13 probable cause?

14 A Yes, ma'am.

15 Q Okay. And did trial counsel ever advise you that if
16 you pleaded guilty you would be waiving your right to
17 appeal those issues?

18 A He didn't advise me of the appeal.

19 Q Okay. Did you understand that if you went to trial
20 and if 12 jurors convicted you of these crimes that you
21 would have a right to raise all of those issues in an
22 appeal to the Court of Appeals and then if necessary to
23 the Supreme Court?

24 A I didn't know at the time, but after I got to doing
25 research I found out about it.

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1 Q Okay. And if you had known that if you went to trial
2 by jury and were convicted you could appeal those issues,
3 would you have gone ahead with your jury trial?

4 A Yes, ma'am.

5 Q And you would not have pleaded guilty?

6 A No, ma'am.

7 Q When you were first arrested, did you know anything
8 about the law concerning the differences between Family
9 Court and what we call big court, General Sessions Court?

10 A No, ma'am.

11 Q Did you know anything about the law insofar as that
12 allows for your attorney to try to convince the Solicitor
13 to try you in the Family Court instead of General Sessions
14 Court?

15 A No, ma'am.

16 Q If you had known that the law allowed for the
17 Solicitor to do that if he was given reason to, would you
18 have wanted your attorneys to forcefully seek for the
19 Solicitor to keep you in the Family Court?

20 A Yes, ma'am.

21 MS. SHURLING: A moment's indulgence, Your Honor.

22 THE COURT: Okay.

23 (Pause.)

24 Q When you were discussing the sentence that you would
25 likely receive if you entered these pleas, did your

ANTONIO GORDON--CROSS BY MS. VANGINHOVEN

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1 attorney ever discuss with you the fact that after you had
2 served 85 percent of your sentence you would still be on
3 supervised release?

4 A No, ma'am.

5 Q For another 15 percent?

6 A No, no, ma'am.

7 Q And if you had understood that, would it have made a
8 difference in your accepting the plea bargain?

9 A Yes, ma'am.

10 Q Okay. I have no further questions. Please answer
11 any questions that Ms. VanGinhoven has for you.

12 CROSS-EXAMINATION

13 BY MS. VANGINHOVEN:

14 Q Mr. Gordon, you say you didn't know about that if you
15 pled guilty that you would be waiving any attacks on the
16 issues that have been brought up earlier, is that what you
17 are saying?

18 A No, I said that I wasn't aware that I could appeal
19 those issues if I went to trial and been found guilty.

20 Q Did Mr. D'Agostino ever advise you of your right to
21 appeal?

22 A No, ma'am. As a matter of fact, I had told him that
23 I wanted to appeal, and he advised me that I couldn't
24 appeal, but he would put in an appeal in anyway.

25 Q Okay, now you just said he never told you of your

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1 right to appeal, is that correct? *Antonio Gordon*

2 A He didn't advise me of my right to appeal. I asked
3 him about the appeal and he---

4 Q When did you do that?

5 A That same day I took -- I took the plea.

6 Q As a matter of fact, you did have an appeal from this
7 case?

8 A Yes, ma'am.

9 Q And it was dismissed, is that correct?

10 A Yes, ma'am.

11 Q Do you remember when the judge went over with you
12 that you had a right to a jury trial?

13 A Yes, ma'am.

14 Q Do you remember that?

15 A Yes, ma'am.

16 Q Do you remember when he told you you had a right to
17 remain silent?

18 A Yes, ma'am.

19 Q A right to see the witnesses and hear the witnesses?

20 A Yes, ma'am.

21 Q And do you remember when he -- Do you remember when
22 he explained to you that although you made a statement
23 that he ruled that was admissible, that if you went to
24 trial the jury would have to decide that, do you remember
25 him telling you that?

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1 A Yes, ma'am.

2 Q And do you remember when he told you that entering
3 this plea of guilt that you were giving up all those
4 rights? Do you remember that?

5 A Yes, ma'am.

6 Q And then he said knowing all these things how do you
7 want to plead regarding the murder, and what did you say?

8 A I said guilty.

9 Q To the possession of a fire -- and to all the charges
10 that you pled to you wanted to plead guilty, right?

11 A I didn't want to plead guilty. Mr. D'Agostino was
12 talking to me about pleading guilty and he was explaining
13 to me that he didn't have no defense for me to go to trial
14 and for me to plead guilty.

15 Q Right. And this incident involved three other
16 Co-Defendants, is that correct?

17 A Yes, ma'am.

18 Q Gary Moffitt, Terrance McCrary and Monte Gordon, is
19 that correct?

20 A Yes, ma'am.

21 Q And Gary Moffitt pled guilty, is that correct?

22 A Yes, ma'am.

23 Q He was going to testify against you, is that right?

24 A Yes, ma'am.

25 Q All right. Terrance McCrary and Monte Gordon, they

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1 both pled guilty and were going to testify against you, is
2 that correct?

3 A I wasn't aware that they were going to testify
4 against me. I didn't know that.

5 Q Mr. D'Agostino never told you that they were going to
6 testify against you?

7 A No, he never told me that.

8 Q And you and Monte weren't in the courtroom on the
9 same day or in the courthouse the same day?

10 A We was in the holding cell together, and inside the
11 courtroom together.

12 Q And you knew that he pled guilty that day, right?

13 A Yeah, yes, ma'am.

14 Q You just thought the Solicitor gave him a deal and he
15 wasn't going to testify against you?

16 A I wasn't aware of no deal.

17 Q So you are saying that you would have gone to trial
18 with an eyewitness along with your three Co-Defendants
19 testifying for the State? Is that what you are testifying
20 to today?

21 A Yes, ma'am.

22 Q And you would have---

23 A I wasn't aware of no three witness. The only witness
24 that he advised me was was Gary Moffitt, my Co-Defendant,
25 I wasn't aware of no other witness coming in.

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~~Antonio Gordon~~

1 Q You didn't know about the passenger in the car?

2 A I knew that it was a passenger inside the car, but I
3 didn't know that he would come to court to testify. I
4 wasn't aware of that. I never seen his statement, until I
5 received my motion.

6 Q Until you received what motion?

7 A Of disclosure.

8 Q Your discovery motion?

9 A Yes, ma'am.

10 Q Well, you received that before the trial, didn't you?

11 A No, ma'am. I had asked him to send me a copy of my
12 statements and stuff because I didn't know much of what
13 was going on with my case, and he never gave me a copy of
14 it.

15 Q Mr. D'Agostino never went over with you the statement
16 that you made to the police?

17 A He went over my statement with me.

18 Q He never went over what the other people might
19 testify to?

20 A No, ma'am, no one but Gary Moffitt.

21 Q And that would probably -- that would be because
22 Terrance McCrary and Monte -- Monte pled guilty the same
23 day you did, right?

24 A Monte pled guilty before I did.

25 Q But on the same day?

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1 A Yes, ma'am.

2 Q And Terrance that same week?

3 A Yes, ma'am.

4 Q And you are saying that if you knew about community
5 supervision that you wouldn't have pled guilty, is that
6 what you're saying?

7 A Yes, ma'am.

8 Q And you were there when your attorney made the
9 argument concerning the fact that there was no probable
10 cause to arrest you, weren't you?

11 A Yes, ma'am.

12 Q And you heard the judge rule that there was probable
13 cause?

14 A Yes, ma'am.

15 Q And you were also there when the judge ruled that
16 your statement was voluntary, correct?

17 A Yes, ma'am.

18 Q This was a negotiated sentence, is that correct?

19 A As I understand, yes, ma'am.

20 Q And they dropped the carjacking and pled you to 40
21 years, is that correct?

22 A Yes, ma'am.

23 Q And that's what you ended up getting, right?

24 A Yes, ma'am.

25 Q So you knew before you pled guilty you were going to

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1 get 40 years, and that's what you received?

2 A No. At first Mr. D'Agostino came to me and he said,
3 "Forty years for murder."

4 And at that time I said, "Forty years for murder?
5 You can't get 40 years for murder, you can only get 30 to
6 life for murder."

7 And then at that time he said, "Well, I'll be back."

8 And when he came back he said, "Thirty, consecutive
9 ten."

10 At the time I didn't know what consecutive was. I
11 thought it meant it would run together.

12 Q Well, I guess my question would be when the Solicitor
13 went over what the negotiated sentence was, you understood
14 that, right?

15 A Did I understand it?

16 Q You understood that the Solicitor was saying it was a
17 negotiated sentence, 30 years for murder and 10 years
18 consecutive on attempted armed robbery? Did you
19 understand those words the judge said?

20 A No, ma'am.

21 Q You didn't understand that?

22 A No, ma'am.

23 Q At the guilty plea?

24 A At the time I didn't understand what consecutive and
25 concurrent was.

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1 Q You didn't understand that consecutive meant---

2 A At that time my education was real low.

3 Q But, sir, you got -- you didn't understand that you
4 were having a 40 year negotiated sentence? Did you
5 understand that, 40 years?

6 A I thought he was giving me 30 and everything else ran
7 concurrent.

8 Q Let me just show you, just make it a little bit
9 clearer. This is what I'm going to ask you. On Page 175,
10 Line 16 through 17, it says, this is the Solicitor, "We
11 are asking for a negotiated sentence of 40 years." Did
12 you understand that?

13 A I understand it now, but at the time I didn't.

14 Q And do you remember when the judge asked you on 176
15 that if you had any questions to let him know, if you need
16 to discuss anything with your attorney to please let him
17 know? Do you remember when the judge asked -- told you
18 that?

19 A Yes, ma'am.

20 Q And why didn't you ask him then what 40 years meant,
21 or what consecutive meant?

22 A Because, at that time I was still young and I was
23 shook. I didn't know -- what to do.

24 Q You were 17 when you pled, correct?

25 A Yes, ma'am.

ANTONIO GORDON--REDIRECT BY MS. SHURLING

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[Handwritten signature]

1 Q You were 16 when the murder -- when the murder
2 occurred?

3 A Yes, ma'am.

4 Q Okay. And do you remember the Solicitor went over
5 the facts of the case?

6 A Yes, ma'am.

7 Q During the plea?

8 A Yes, ma'am.

9 Q And do you remember agreeing with the Solicitor's
10 facts?

11 A Yes, ma'am.

12 Q So you don't deny that you committed these crimes?

13 A I -- I didn't -- didn't deny that I did commit the
14 crime or none of that.

15 Q Okay. And do you remember when you apologized to the
16 victim's family at the sentencing? Do you remember that?

17 A Yes, ma'am.

18 Q And do you remember when the -- when the judge gave
19 you your sentence and he said, "Do you understand all
20 that?"; and you said, "Yes"?

21 A Yes, ma'am.

22 Q Okay.

23 MS. VANGINHOVEN: I have no further questions.

24 REDIRECT EXAMINATION

25 BY MS. SHURLING:

ANTONIO GORDON--REDIRECT BY MS. SHURLING

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1 Q During your plea when the judge explained to you that
2 even though he had ruled that your statement was
3 admissible, if you went to trial a jury would have to make
4 a determination about your statement as well, you do
5 remember that part?

6 A Yes, ma'am.

7 Q But he never told you, the judge didn't tell you and
8 neither did your lawyer, that if you went to trial you
9 would also have a right to have an appellate court review
10 that decision, correct?

11 A Yes, ma'am.

12 Q And nobody told you that by entering a plea of guilty
13 you were waiving your right to have an appellate review of
14 that ruling, did they?

15 A Yes, ma'am.

16 Q And so if they had told you -- Wait a minute, let's
17 get this straight, yes, ma'am, they did or they didn't?
18 Did anybody advise you you were waiving your right to an
19 appeal on that issue?

20 A No one did.

21 Q Okay. And if you had known that, you wouldn't have
22 pleaded guilty?

23 A Yes, ma'am, you're right.

24 Q Thank you.

25 MS. SHURLING: No further questions.

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1 MS. SHURLING: No further questions.

2 THE COURT: You can step down, Mr. Gordon.

3 (Mr. Gordon steps down.)

4 MS. SHURLING: Your Honor, I would add to my
5 earlier presentation only by noting that, and I am trying
6 my best to remember the case, I think it is Shirley vs.
7 State, wherein the Supreme Court held that there has been
8 an issue about the admissibility of a statement that
9 someone has a right to know not only that it would be a
10 question for the jury in addition to a question for the
11 judge, but also that they would have a right to appeal
12 that issue if they proceeded to trial.

13 Thank you.

14 THE COURT: Okay.

15 MS. SHURLING: No further witnesses, Your Honor.

16 MS. VANGINHOVEN: The State would call Dan
17 D'Agostino, Daniel D'Agostino.

18 (Mr. D'Agostino approaches the witness stand.)

19 THE COURT: Do you swear or affirm you will
20 truthfully testify?

21 MR. D'AGOSTINO: I do.

22 RICHARD G. D'AGOSTINO, after
23 being duly sworn, testified as follows:

24 THE COURT: All right, I have one question before
25 we go further. I just scanned the transcripts that were

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1 handed to me. I just scanned the transcripts that were
2 handed to me, I made no in-depth study of them. The
3 Solicitor indicated that they were going to nol-pros the
4 possession of a weapon by a person committing a violent
5 crime, stated that on the record.

6 The judge did not go over any penalty for
7 possession of a weapon during commission of a violent
8 crime, but then he sentenced him, but he made it
9 concurrent, so it is going to be moot as far as that goes,
10 but that was not done.

11 MS. SHURLING: Your Honor, I am embarrassed to say
12 that I didn't make that observation, but you're correct.

13 THE COURT: I mean, apparently he just signed
14 everything that was up there, then the deal was made, and
15 the Solicitor said, "We are going to nol-pros them," and
16 after he said that the judge didn't advise him---

17 MS. SHURLING: Nobody went back and checked the
18 indictments.

19 THE COURT: Then the indictments were on the stack
20 and the judge was just signing them and he just makes it
21 concurrent because the deal was he just gets 40 years.

22 MS. SHURLING: Well, and further what complicated
23 matters, Your Honor, is that the possession of a firearm
24 during the commission of a violent offense was on the same
25 indictment as the murder, so by signing the line for a

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1 guilty plea on this indictment it made it appear that he
2 had pleaded to the possession of weapon during the
3 commission of a violent offense.

4 MR. D'AGOSTINO: Your Honor, may I speak, Your
5 Honor?

6 THE COURT: I'm listening.

7 MS. SHURLING: Well,---

8 MR. D'AGOSTINO: On Page 175, the Solicitor says
9 that, "On indictment for murder and possession of a
10 firearm while in the commission of a violent crime the
11 Defendant is pleading guilty as charged."

12 What they were dropping was the carjacking charge.

13 THE COURT: Well,---

14 MR. D'AGOSTINO: But the charge that on the
15 possession of a firearm during the commission of a violent
16 crime, the only one I recall them saying they were going
17 to drop was the carjacking.

18 THE COURT: Well, I mean, I don't know where it
19 was.

20 MR. D'AGOSTINO: Page 175.

21 THE COURT: I understand what it may say on that
22 page, but at some point in here you broke for lunch and
23 when you came back the plea was made.

24 MR. D'AGOSTINO: That was a different Defendant,
25 Your Honor.

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RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN
APP. P 31336

1 MS. VANGINHOVEN: There is three Defendants in
2 this transcript.

3 THE COURT: Okay.

4 MR. D'AGOSTINO: That was probably Terrance --
5 Excuse me, I can tell you who that was. That was---

6 THE COURT: All right.

7 MS. VANGINHOVEN: And I believe as part of their
8 -- Terrance McCrary pled guilty on Page 162, and I believe
9 as part of that they may have dropped that charge because
10 he was going to testify against Antonio Gordon, who ended
11 up then pleading guilty after Terrance McCrary.

12 THE COURT: Okay. All right, well, go ahead with
13 it.

14 DIRECT EXAMINATION

15 BY MS. VANGINHOVEN:

16 Q Mr. D'Agastino, when were you appointed to represent
17 the Applicant?

18 A In March of 1999.

19 Q And by this time an indictment had already been
20 brought by the Solicitor's Office?

21 A Yes. I looked it up while I was sitting back there.
22 I believe the indictments were in October of 1998. I can
23 flip and see. October 19th of 1998.

24 Q Were you concerned about the fact that the Applicant
25 was 16 and was in General Sessions Court?

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN

EXHIBIT 4

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2003 PCR hearing of Antonio Gordon

MAR 14 2015

1 A One of the first things I did, as I recall, and I
2 studied the file last night, was look up the Children's
3 Code as it relates to individuals under the age of 17 --
4 18 years of age. I looked up the statute, and under the
5 statutory scheme, I left my book and Ms. Shurling has my
6 copy of my statute, but under the statutory scheme, under
7 6605, because he was 16 years of age and charged with
8 murder and several other felonies that fall within the A,
9 B, C, D categories, he was not considered a child under
10 the Code, so he was considered an adult and his case
11 automatically went up.

12 I raised this issue as to him being a minor or a
13 child or a young man with the Solicitor's Office, Willie
14 Thompson, I specifically recall speaking with them about
15 it. I did not write them any letters or -- and I did not
16 file any motions. I knew they had -- By the time I got
17 involved in this case it was nine months after it
18 occurred, it was already indicted, it was in General

19 Sessions, but I raised this issue with them, I told them
20 my concerns about it. We had discussions about it because
21 they kept giving intimations that they were going to seek
22 the death penalty. They were saying that they had
23 aggravating circumstances to convert it to a death
24 penalty.

25 Mr. Gordon had a prior juvenile record. I pulled

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN 474
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1 that out last night. They brought that up as well. He
2 had several incidents of burglary seconds on his juvenile
3 record, assault and battery, petit larcenies, he had been
4 in and out of the Department of Juvenile Justice several
5 different times. My file contains numerous records I
6 obtained from the Department of Juvenile Justice.

7 Because of concerns of them converting this to a
8 capital case, I began preparing for it as a capital case.
9 I also obtained and looked at this information because of
10 his mental status. So this was a concern of mine. It is
11 something I brought up with the Solicitor's Office. It is
12 -- I asked them why we weren't in Family Court, if we
13 could not be there, and they did not -- they had made
14 their decision before I had gotten involved in the case,
15 but they weren't going back there from my perspective
16 because of the seriousness of the charges, the fact that
17 they could seek the death penalty, and the fact that Mr.
18 Gordon had a prior record.

19 Q And as to his competency and his mental level, you
20 were concerned about that?

21 A I was very concerned about that. In fact, I tried to
22 be careful any time I spoke with him even during the
23 negotiations, during the long day of pretrial hearings.

24 Q And you hired a psychologist to evaluate him, is that
25 correct?

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN

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~~XXXXXXXXXX~~

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1 A I did. We hired Dr. Jonathan Venn. I first
2 contacted Dr. Harold Morgan. I talked to Dr. Harold
3 Morgan for a while about the case, a short while, to find
4 someone who was more experienced in dealing with
5 juveniles, young adults, and he referred me to Dr.
6 Jonathan Venn.

7 Q And his conclusion was he just couldn't come to an
8 opinion regarding mental retardation?

9 A He scored a 68 on the mental IQ score. There is a
10 deviation of standard of error in there. Dr. Venn
11 testified at length at the competency hearing about Mr.
12 Gordon's ability to comprehend, remember, understand what
13 is going on. I could not substantiate a competency issue
14 for purposes of presenting a competency to say -- that
15 said that he was incompetent to go to trial. I did not
16 have the evidence to do that. Mr. Venn -- Dr. Venn could
17 not support saying that he was incompetent from my
18 perspective. I mean, Mr. Gordon isn't the brightest
19 fellow, I'm not trying to be ugly or anything else, but he
20 is not, and he has some deficits. It was a concern of Dr.
21 Venn, but after discussing it with Dr. Venn, discussing
22 the results of his evaluations, I did not think we could
23 properly pursue a competency issue, so I had to pursue
24 what I could with Dr. Venn, and we presented him because
25 of the issues dealing with his ability to understand

1 Miranda, ability to understand what was happening to him
2 at the time it was happening.

3 Q And he did -- I mean, he was deemed to be competent
4 to assist you?

5 A He was deemed -- right. In fact, I went to the
6 competency evaluation that the State eventually wanted to
7 have, although I had some questions about how they could
8 make some determinations. He certainly was able to answer
9 the questions from their perspective. And I sat through
10 that evaluation here in Columbia. I thought it was
11 incumbent upon me to.

12 Q And to what Ms. Shurling referred to earlier, Leslie
13 Sandler is the expert hired by the State to evaluate the
14 Applicant?

15 A She was. Dr. Sanders, I think it is a he, but Dr.
16 Sanders was the expert hired by the State to evaluate him.
17 I had forgotten that he actually did that evaluation until
18 we were discussing it right before the hearing started
19 today, but I remembered coming down here to Columbia and
20 sitting through that evaluation with several different
21 people in the room.

22 Q His evaluation was that he was not mentally retarded
23 and was competent to stand trial?

24 A Right. Right.

25 Q Did you ever advise him -- Let's go back to the

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN 477

~~XXXXXXXXXX~~ APP. P. 318 41
~~XXXXXXXXXX~~

1 guilty plea. Did you advise him of the effect of the
2 guilty plea concerning any appellate rights that he may
3 have?

4 A Yes, I did advise him of the appellate rights. And
5 if I can -- That was a very long day. One of these
6 Co-Defendants was related to him, one of them had pled out
7 several months earlier, so he knew -- I think it was
8 Moffitt who pled out first. I ordered that transcript of
9 that plea. It is here somewhere in my stuff, my records.
10 I have the first Defendant who pled's records. That day
11 started out with motions. Then the second Defendant went
12 down. Now, mind you, all four boys were together this
13 night. The second one went down and agreed to testify
14 against Mr. Gordon, Antonio Gordon. I told him what was
15 going on. The third one went down, agreed to testify
16 against Mr. Gordon. I told him what was going on. At the
17 end of the day Mr. Gordon was standing there by himself
18 with one of these individuals, Co-Defendants, being his
19 cousin, the other two being friends or relatives somehow
20 distantly, or maybe even close, but friends, people he
21 knew. You got the other victim in the car, and you had
22 his statements.

23 And I explained to him, "We could go to trial and you
24 could challenge all this. You could go to trial. You
25 don't have much of a defense. All these people are going

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN

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Coersion
~~Coercion~~ guilty plea

APP. P 319 42

to testify against you. And even if we win on the issue of the statements being kept out, the fact of the matter is you have got your three Co-Defendants going to testify against you. You can't testify. And you've got this other person out there, the victim." J.

There were questions about the palm prints or
fingerprints. I knew that. But the fact of the matter is
he had those three Defendants, three Co-Defendants, all
testifying against him. And I told him that. X

I told him if he pled out he could not appeal the judge's decisions on these pretrial motions, that if he did not plead and go to trial he could appeal those decisions and take his chance with the Court of Appeals making a determination that the judge's decision as to the admissibility of his statements was wrong, then he could come back for retrial, or the Court might find it was harmless, I don't know what would happen, but there are many possibilities, but if he pled guilty he was not going to be able to challenge that.

I explained to him that it was a negotiated sentence, that everybody else was getting 30 years, but because he was the shooter they wanted 40. Originally they wanted more time. We got them down to 40. I told him that.

I will tell you he pled guilty on Friday, sentencing was withheld until Monday so they could get Mr. Crim

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN

App. P. 320

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1 there, and I guess whoever else they wanted there, but
2 between Friday and Monday I also know that his cousins,
3 everybody who agreed to testify against him told him I
4 sold him out, but they were the ones who were testifying
5 against him. But he didn't change his mind on Monday when
6 sentencing came down.

7 He subsequently wrote me a letter -- I told him he
8 could appeal it. He subsequently wrote me a letter and
9 told me to appeal his decision before the ten days was up.
10 And I believe I filed the appeal in his case.

11 Then he wrote me another letter asking me to file
12 post-conviction relief against myself, and I told him how
13 to do that.

14 So everything was explained to him, except the one
15 thing I did not tell him, that 85 percent, I did not tell
16 him, I do not recall telling him that at the end of
17 serving 85 percent he would have to have supervised
18 release. I do not recall telling him that. I recall
19 telling him he is getting 40 years, he needs to expect 40
20 years. That is what I tell all my clients. If you get
21 40, expect 40. If you get out, it is by the grace of God,
22 or however they do that in Columbia.

23 Q And in fact there was a plea offer from the
24 Solicitor's Office originally, and that was for 45 years,
25 is that correct?

RICHARD G. D'AGOSTINO--DIRECT BY MS. VANGINHOVEN

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App. P 321 44

Handwritten signature

1 A That's correct.

2 Q Now, these issues concerning possession of a weapon
3 during the commission of a violent crime being, and
4 attempted armed robbery, double jeopardy issues, did you
5 see any reason to raise that at the time of the trial?

6 A The issue of -- Did you ask about severance or
7 just---

8 Q Just that---

9 A What was it?

10 Q The double jeopardy issue concerning attempted armed
11 robbery and possession of a weapon during the commission
12 of a violent crime?

13 A I cannot recall raising any issue about the -- I did
14 not make any motion about that, and I off the top of my
15 head, I don't recall making any motions about the double
16 jeopardy issue of attempted armed robbery and possession
17 of a weapon during the commission of a violent crime.

18 Q Okay.

19 A As to the motion to suppress, you will see in the
20 transcript I did make a motion to suppress the statements
21 because the arrest was unlawful. It specifically says
22 that. * And the judge denied the motion to suppress. I
23 didn't use the words "fruit of the poisonous tree," but my
24 motion was to suppress those statements.*

25 Q Okay. And ultimately there was no need for severance

Double Jeopardy

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING.

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APP. P. 322

45

1 because everyone ended up pleading guilty?

2 A At the end of the day everybody else had pled guilty.

3 I had nothing to sever from.

4 Q Okay.

5 A I was the only one going to go to trial. I was the
6 very last one.

7 Q Okay.

8 MS. VANGINHOVEN: I have no further questions.

9 CROSS-EXAMINATION

10 BY MS. SHURLING:

11 Q I understand that you advised Mr. Gordon that he
12 could file an appeal from his plea, correct?

13 A Yes, I did.

14 Q Are you also, if I understood your testimony
15 correctly, are you certain here today, sir, that you
16 advised him that if he pleaded guilty he would not be able
17 to obtain an appellate review of the Court's findings with
18 regard to the admissibility of the statement and other
19 issues that had been argued pretrial?

20 A Yes, I discussed that with him. After his other
21 Co-Defendant pled guilty, we went in that back holding
22 room at the York County -- the Moss Justice Center, and I
23 told him we could proceed on to trial, his three
24 Co-Defendants were going to testify against him, if we
25 proceeded on to trial and he was convicted he could raise

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING' 482
App. P. 323 46
Admission

1 these issues as to the admissibility of these statements.
2 I believe I told him I thought it would be a very
3 interesting decision, but I don't know if I got into that,
4 because I thought it would be a very interesting result.
5 But I also told him that if he pled guilty he could not --
6 the only thing he could appeal was his plea.

7 Q Okay. Did you ever discuss with him the possibility
8 of challenging these indictments based on the nature of
9 the presentation made to the Grand Jury, that being a
10 single witness---

11 A No, I did not.

12 Q Okay. Did you ever ask, specifically ask the
13 Solicitor's Office to reconsider their decision and allow
14 his case to be heard in the Family Court?

15 A I don't think I asked them to reconsider their
16 decision. I addressed it with them when I first got
17 involved in the case. I asked them why it was not there,
18 why we couldn't do it there. I don't think -- I don't
19 recall ever asking them to reconsider. I mean, it was a
20 long time from when it was indicted by the time I got
21 appointed. I got appointed in March. They were
22 originally -- They gave me an offer in May and said if I
23 don't plead in May they are going to trial in June. And I
24 was hustling, but---

25 Q I understand. If I understood your testimony

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING

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App. R 3047

~~Attorney's Work Product~~

1 correctly, what you're saying is that when you first got
2 the case it is in General Sessions Court, and in the early
3 discussions with the Solicitor's Office you basically
4 said, "Why aren't we in Family Court on this?"

5 A Why aren't we in Family Court. I believe I asked
6 them why we couldn't be there. And after my initial
7 discussions with them in the very beginning, I didn't
8 bring up remanding it back to Family Court again with
9 them. I mean, the Solicitor's Office had that discretion,
10 and they kept talking about, you know, they might seek the
11 death penalty, they just had to see what the victim was
12 going to do.

13 I told them I didn't think they could get the death
14 penalty on this case because he was so young and they had
15 problems with their case. Their problems with their case
16 gradually went away as everybody agreed to testify, but---

17 Q At the time of these pleas, were you prepared to go
18 to trial?

19 A I was.

20 Q Had the State served you with a death notice?

21 A No, they had decided at that time they were not going
22 to go forward with it because Mr. Crim did not, I don't
23 want to say not believe in the death penalty, but he was
24 fine with not going forward with the death penalty.

25 Q So the threat of the Solicitor's Office seeking the

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING.

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APP. P. 325

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1 death penalty was not a factor in this decision to plead?

2 A No, it was not because at that time they had not
3 served a death penalty notice, and we were ready to go to
4 trial.

5 Q Okay. And just so the record will be clear, did you
6 ever, once you had your client evaluated and you
7 investigated the case, you never went back to the
8 Solicitor and made any attempt to get them to exercise
9 their discretion and return it to the Family Court?

10 A I did not -- I did not try to get it returned to the
11 Family Court. I tried to get them to come off of what
12 their offers were to be more lenient because of his low IQ
13 and his problems. He had a -- he had a troubled past. I
14 mean, he had been in DJJ for a while.

15 Q And in fact the Solicitor's Office had not allowed
16 any of the Co-Defendants to be handled in Family Court
17 either, had they?

18 A They had not. And, you know, it was all I could do
19 at the day that he pled to get them down to 40 years. I
20 mean, they were up at 45. That is what their letter was.
21 They didn't want to come off that. I mean, they were --
22 they had a tough stance on this case. It was a very
23 tragic set of events.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 A Sure.

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING

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Richard G. D'Agostino

1 (Pause.)

2 Q Just in the interest of the complete record, could
3 you tell us at the time of this trial in 1999 how long you
4 had been practicing law?

5 A I began practicing law in 1992. I began clerking
6 with Melvin Roberts, my partner, in 1989.

7 Q And did you have extensive experience in the area of
8 criminal law at the time you tried this case?

9 A About a third of my practice is devoted to criminal
10 law. I have tried multiple felony cases prior to that
11 time. I had handled another murder case in Family Court
12 with my partner prior to that time. I had handled
13 vehicular homicide, or first they charged him with Felony
14 DWI as a death case. And so I had handled multiple other
15 -- drug cases and violent offenses.

16 Q Had you ever been lead counsel in a murder trial
17 before?

18 A No, I had never been lead counsel in a murder trial.
19 I was co-counsel with Melvin, my partner, in Family Court,
20 and then I handled a good part of the case with the death
21 on that Felony -- I keep saying Felony DWI -- vehicular
22 homicide, whatever they called it. So, no, I have not
23 been lead counsel on a murder case.

24 Q Thank you.

25 MS. SHURLING: One moment, Your Honor.

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING 482

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Attorney's Office

1 these issues as to the admissibility of these statements.

2 I believe I told him I thought it would be a very
3 interesting decision, but I don't know if I got into that,
4 because I thought it would be a very interesting result.

5 But I also told him that if he pled guilty he could not --
6 the only thing he could appeal was his plea.

7 Q Okay. Did you ever discuss with him the possibility
8 of challenging these indictments based on the nature of
9 the presentation made to the Grand Jury, that being a
10 single witness---

11 A No, I did not.

12 Q Okay. Did you ever ask, specifically ask the
13 Solicitor's Office to reconsider their decision and allow
14 his case to be heard in the Family Court?

15 A I don't think I asked them to reconsider their
16 decision. I addressed it with them when I first got
17 involved in the case. I asked them why it was not there,
18 why we couldn't do it there. I don't think -- I don't
19 recall ever asking them to reconsider. I mean, it was a
20 long time from when it was indicted by the time I got
21 appointed. I got appointed in March. They were
22 originally -- They gave me an offer in May and said if I
23 don't plead in May they are going to trial in June. And I
24 was hustling, but---

25 Q I understand. If I understood your testimony

RICHARD G. D'AGOSTINO--CROSS BY MS. SHURLING

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1 correctly, what you're saying is that when you first got
2 the case it is in General Sessions Court, and in the early
3 discussions with the Solicitor's Office you basically
4 said, "Why aren't we in Family Court on this?"

5 A Why aren't we in Family Court. I believe I asked
6 them why we couldn't be there. And after my initial
7 discussions with them in the very beginning, I didn't
8 bring up remanding it back to Family Court again with
9 them. I mean, the Solicitor's Office had that discretion,
10 and they kept talking about, you know, they might seek the
11 death penalty, they just had to see what the victim was
12 going to do.

13 I told them I didn't think they could get the death
14 penalty on this case because he was so young and they had
15 problems with their case. Their problems with their case
16 gradually went away as everybody agreed to testify, but---

17 Q At the time of these pleas, were you prepared to go
18 to trial?

19 A I was.

20 Q Had the State served you with a death notice?

21 A No, they had decided at that time they were not going
22 to go forward with it because Mr. Crim did not, I don't
23 want to say not believe in the death penalty, but he was
24 fine with not going forward with the death penalty.

25 Q So the threat of the Solicitor's Office seeking the

RICHARD G. D'AGOSTINO--REDIRECT BY MS. VANGINHOVEN

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(Pause.)

MS. SHURLING: No further questions, Your Honor.

REDIRECT EXAMINATION

Q You testified you were prepared to go to trial?

A I was.

Q If you felt that you had needed help on this case, would you have consulted one of your partners?

A Oh, yes. In fact, I mean, if I needed help, my partner would have helped me, but I was fine trying it.

Q Okay.

A I tried my first felony case I think in 1993 on an appointed case.

Q Okay.

MS. VANGINHOVEN: I have no further questions.

THE COURT: You can step down.

(Mr. D'Agostino steps down.)

MS. VANGINHOVEN: That's it for the State.

MS. SHURLING: Your Honor, the Applicant would assert that under the standard announced by the Court in Strickland vs. Washington he has laid out for the Court both errors and omissions which he feels combined together to deprive him of a fair trial.

He asserts that he has established that counsel failed to provide him with reasonable professional assistance of counsel, and for that reason, Your Honor, he

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1 would assert that his pleas of guilty were the product of
2 ineffective assistance of counsel;

3 That his Sixth Amendment rights were violated
4 prior to and during his plea of guilty;

5 That but for counsel's errors and omissions he
6 would not have waived his right to trial by jury and would
7 have proceeded to trial.

8 Therefore, under Hill vs. Lockhart he has met the
9 standard for showing that his pleas of guilty were not
10 voluntarily and intelligently entered. He asks that his
11 application be granted, that his judgments and sentences
12 be vacated, and that he be granted a new trial.

13 THE COURT: Okay.

14 MS. VANGINHOVEN: Can I just put on the record a
15 couple of things?

16 THE COURT: Anything you would like, Ms.
17 VanGinhoven.

18 MS. VANGINHOVEN: Okay. I juts want to go back.
19 Ms. Shurling went through all the allegations, and I just
20 wanted to speak to a few of them.

21 The allegation concerning lack of subject matter
22 jurisdiction because the indictment was not filed with the
23 Clerk of Court within 90 days I would submit is an
24 administrative procedure and doesn't affect subject matter
25 jurisdiction.

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~~Amended~~ App. p329 52

1 THE COURT: Hey, that's right. That's the way all
2 the counties do it, to my knowledge. I don't know of any
3 that send the clerk in.

4 MS. VANGINHOVEN: As to the indictment issue with
5 "willfully" and "feloniously" being omitted, we have the
6 case of Joseph vs. State that says that that does not
7 render the indictment insufficient.

8 The allegation that double jeopardy was violated
9 because of the attempted armed robbery and possession of a
10 weapon during the commission of a violent crime we would
11 submit is not correct.

12 That the armed robbery indictment did not -- or
13 attempted armed robbery didn't contain the element of
14 asportation, it does include the words "attempt to
15 feloniously take from the person." We would submit that
16 that is valid.

17 The issue concerning The State v. Anderson case,
18 the police officer was at the Grand Jury hearing, not the
19 Solicitor. It was a Rock Hill Police Department employee.

20 And anything concerning community supervision, we
21 submit community supervision is a collateral consequence
22 of a guilty plea, that he does not -- the Applicant does
23 not have to be advised of that.

24 THE COURT: He may not get out at all.

25 MS. VANGINHOVEN: That's true. And that is all

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~~Handwritten~~ App. P 340

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1 the State would have except the application should be
2 denied.

3 THE COURT: All right. Well, I have read
4 everything now. The first thing I was talking about about
5 the judge not doing that, I am reading "Mr. Gordon," "Mr.
6 Gordon," "Mr. Gordon." Y'all hand me up all this stuff.
7 Monte Gordon's plea didn't have anything to do with this
8 case. Mr. Gordon just loses. I don't keep people in
9 suspense. I mean, I read the two transcripts, being
10 blessed with being a speed reader. The attorney had three
11 people going to testify against you. I'm sorry. Any
12 other thing, it doesn't really matter. I mean, he is up
13 against the wall. Maybe your friends and your relatives
14 shouldn't have testified against you, but they had all
15 pled and said they were going to do it. The attorney
16 doesn't have much choice at that point, you are going to
17 get convicted. He just has to do the best that he could.

18 He indicated he had asked about the Family Court
19 situation early on. The Solicitor took a hard line, in
20 fact a tougher line against you than the rest. He didn't
21 let anybody go into the Family Court situation. And for
22 better or worse, that is a Solicitor's prerogative. The
23 attorney can just ask; the Solicitor holds that power.
24 Just like the Solicitor can dismiss a claim, as he did
25 against Monte, if that is how you pronounce it, he didn't

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~~REDACTED~~ App P 341 54

1 have to do that, but he has that discretion. He can do
2 that.

3 As far as sending the only one officer in front of
4 the Grand Jury, in olden times they just allowed
5 Solicitors to walk in and summarize. Finally, that being
6 a bad practice, the Supreme Court said, "No, the Solicitor
7 can't summarize, you have to have an active investigator
8 at least to testify." And it would have been better to
9 have had more people, but they had enough on you. All
10 they have to tell the Grand Jury is, "We've got so and so
11 that will testify that you are the shooter." It turns out
12 you were the shooter. You don't even deny that at this
13 point. So nothing wrong with that.

14 On the competency situation, you had full hearings
15 on that. I mean, maybe another person could have examined
16 you, and so forth. A competent person did and testified
17 and the judge was satisfied with that.

18 On the double jeopardy situation on armed robbery,
19 actually there is a case that says that is okay, even
20 though that case is wrong. It has to be included in the
21 charge. How are you going to rob somebody armed if you
22 are not armed with a weapon? But judges recognizing that,
23 they always run it concurrent. Well, some might add it,
24 but, I mean, so it wouldn't impact you one way or another,
25 even if you were correct on that. That sentence was given

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~~App. P. 342~~
App. P. 342

1 concurrent to the other time that you had.

2 And as far as having to serve supervised release
3 when you get out, it is almost impossible to get out,
4 unfortunately, Mr. Gordon, even after serving 85 percent
5 because you just have to be a model prisoner the whole
6 time. If you have any violations in there they are not
7 going to let you out after serving 85 percent, and I
8 recognize 40 years is a long time. If you do get out
9 earlier, that is a benefit. It wouldn't have impacted
10 anything. The attorney told you you might have to serve
11 the entire 40. That's true. That's true. You may get
12 out earlier. And of course the legislature can adjust
13 your release time at some point. I wouldn't put any hopes
14 on it, but if prisons get crowded they might back off of
15 some of these.

16 But I don't see anything you have raised that
17 would entitle you to a new trial. Sorry. And I could
18 jerk you around and tell Ms. Shurling to prepare an order
19 and I would study it and read it, which I would have done,
20 but I don't see how you are going to win, so why keep you
21 in suspense?

22 If you would prepare an order, Ms. VanGinhoven, or
23 however you pronounce it.

24 MS. VANGINHOVEN: Yes, sir.

25 THE COURT: VanGinhoven?

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1 MS. VANGINHOVEN: There you go.

2 THE COURT: All right, VanGinhoven. Within 30
3 days.

4 And, of course, Mr. Gordon, you have the right to
5 appeal. And it doesn't start running until I sign that
6 order and you are given a copy of it.

7 Okay.

8 (WHEREUPON, the proceedings were concluded.)
9

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(END OF TRANSCRIPT)

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493
App. P. 344
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CERTIFICATE OF REPORTER

Deborah M. McCurdy

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 29th day of July, 2003.

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

February 13, 2004

Deborah M. McCurdy

Deborah M. McCurdy, Court Reporter

My Commission Expires: 5-24-09

LAW OFFICES OF

App. P. 345

TARA DAWN SHURLING, PA
Attorneys and Counselors at Law



3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

(803) 738-8622
(Fax) (803) 738-1600

E-Mail: tdslaw@bellsouth.net

October 7, 2003

The Honorable David Hamilton
Clerk of Court of York County
Post Office Box 649
York, SC 29745-0649

RE: Antonio Gordon v. State of South Carolina
00-CP-46-1414

Dear Mr. Hamilton:

It has recently come to my attention that when Judge Kinard's Order of Dismissal was filed in the above captioned matter, it was served by your staff upon Laurie Ann Baker, Esquire, this client's former counsel of record. You should have on file an Order substituting me as counsel of record in this matter. In order to protect the client's right to file a timely notice of appeal from Judge Kinard's Order, I need for your office to send me another Form 4 properly serving me as counsel of record in this matter with Judge Order. My time limits for filing a Notice of Appeal from this Order would run from the date the Order is served on me by your Form 4. Your cooperation in this matter is greatly appreciated. For now, I remain

Sincerely yours,



Tara Dawn Shurling
Attorney and Counselor at Law

TDS /st

cc: Jeanette C. VanGinhoven, Assistant Attorney General
Laurie Ann Baker, Esquire
Antonio Gordon, 259798 ✓

LAW OFFICES OF



TARA DAWN SHURLING, PA
Attorneys and Counselors at Law

App. P. 346

E-Mail: tdslaw@bellsouth.net

3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

(803) 738-8622
(Fax) (803) 738-1600

November 24, 2003

Antonio Gordon, 259798
McCormick Correctional Institution
Route 2, Box 100
McCormick, SC 29835-0000

RE: Antonio Gordon, 259798 v. State of South Carolina; 00-CP-46-1414.

Dear Mr. Gordon:

Enclosed please find a copy of the Order of Dismissal signed by the Honorable J. Ernest Kinard in your case. This Order denies your request for Post-Conviction Relief. The original Order has been filed with the York County Clerk of Court. I will serve opposing counsel with Notice of Appeal, unless I hear from you advising me not to do so.

As soon as the original Notice of Appeal is filed with the Supreme Court Clerk, your file will be turned over to the South Carolina Office of Appellate Defense. That state agency will be responsible for representing you on appeal from the denial of your Application for Post-Conviction Relief. My representation of you concludes once the Notice of Appeal is filed.

I will send you a copy of the Notice of Appeal when it is filed in your case. Until then, if you have any questions, please feel free to contact me.

Sincerely,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/cep
Enclosure
cc: Dorothy Wilson

LAW OFFICES OF



App. P 347

TARA DAWN SHURLING, PA
Attorneys and Counselors at Law

3614 Landmark Drive
Suite D
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E-Mail: tdshurling@aol.com

✖ (803) 738-8622
(Fax) (803) 738-1600

November 25, 2003

Antonio Gordon, 259798
McCormick Correctional Institution
Route 2, Box 100
McCormick, SC 29835-0000

RE: Antonio Gordon, 259798 v. State of South Carolina; 00-CP-46-1414.

Dear Mr. Gordon:

Enclosed you will find a copy of the Notice of Appeal I filed on your behalf with the Supreme Court of South Carolina. This Notice advises both the Attorney General's Office and the Supreme Court of your intent to appeal the Order of Dismissal issued in your case by Judge J. Ernest Kinard.

I was court-appointed to represent you in the Circuit Court. Now that the Circuit Court has denied your Application, it will be the responsibility of the South Carolina Office of Appellate Defense to represent you on appeal to the Supreme Court of South Carolina. In the next few days, I will be sending the Office of Appellate Defense a package concerning your case which will include all documents necessary to perfect this appeal on your behalf. Your right to appeal the decisions of Judge Kinard has been preserved. Feel free to write me or call if you have any further questions concerning the status of your case. For now, I remain,

Yours sincerely,

A large, stylized handwritten signature of Tara Dawn Shurling in black ink.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/cep
Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF YORK

2003 AUG 20

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2000-CP-46-1414

Antonio Gordon, #259798,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

Attachment (a)(1)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001. An evidentiary hearing into the matter was convened on July 29, 2003, at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. *IN ADDITION A SPECIAL ORDER WAS EXCUTED* The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Jeanette Van Ginhoven of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Daniel D'Agostino, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the York County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of

[Signature]

[Signature]

GRANTING
THIS

UNDERTAKING

commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Daniel D'Agostino, Esquire, represented the Applicant.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals was dismissed. State v. Antonio Gordon and Monta Gordon Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant claims guilty plea counsel was ineffective for failing to prepare his case for trial by (1) failing to challenge the indictments for lack of subject matter jurisdiction because the indictments were not filed with the Clerk of Court within ninety (90) days after his arrest; (2) failing to challenge the murder indictment for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictment; (3) failing to challenge the attempted armed robbery indictments for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictments; (4) failing to challenge the indictments since an agent of the state was the only witness before the grand jury; (5) failing to make a concerted effort to get the Solicitor to remand the case to the Family Court; (6) failing to adequately pursue the Applicant's competency to stand trial; (7) failing to make a double jeopardy argument since the Applicant was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime; (8) failing to advise the Applicant that if he pled guilty he would waive his right to challenge the admissibility of his statements on direct appeal; and

~~TOP SECRET~~

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(9) failing to advise the Applicant he would be subject to community supervision.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

1. Failure to Challenge Subject Matter Jurisdiction Because Indictment Not Filed with the Clerk of Court Within Ninety Days

The Applicant claims guilty plea counsel was ineffective for failing to challenge subject matter jurisdiction because the Applicant's indictments were not filed with the York Clerk of Court within ninety (90) days after his arrest. This allegation does not warrant relief. Each indictment was marked "True Bill" and signed by foreman of the grand jury. The failure to obtain an indictment within ninety days of arrest does not render it void for lack of jurisdiction. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). This Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had the subject matter jurisdiction to accept the Applicant's guilty pleas since the ninety day rule does not render an indictment void for lack of jurisdiction.



2. Failure to Challenge Subject Matter Jurisdiction Because the Murder Indictment Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the murder indictment because the indictment failed to allege that the Applicant "willfully" and "feloniously" committed the crime. However, in Joseph v. State, the South Carolina Supreme Court held that a murder indictment was sufficient to confer subject matter jurisdiction on the court that accepted the defendant's guilty plea, even though the indictment omitted the words "willfully" and "feloniously," as the term "feloniously" was encompassed in "murder" and the term "willfully" was encompassed in "malice." 351 S.C. 551, 571 S.E.2d 280 (2002).

The Applicant's murder indictment read as follows:

That Antonio Gordon did in York County on or about July 23, 1998, with *malice aforethought*, kill one Eric Peter Krenn by means of shooting him with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws (1976, as amended).

Although the Applicant's murder indictment did not state the words "willfully" or "feloniously", these words were encompassed by the words "kill" and "malice". Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the murder indictment and that the Applicant was not prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty plea to murder

3. Failure to Challenge Subject Matter Jurisdiction Because the Attempted Armed Robbery Indictments Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the attempted armed robbery indictments because the indictments failed to allege the element of asportation.

~~APPROVED~~

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The Applicant's indictments for attempted armed robbery read as follows:

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to *feloniously take from the person or presence* of Eric Krenn, by means of force or intimidation good or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

In Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000), the South Carolina Supreme Court held that the indictment language "taking of good and/or monies from the person or presence of" alleged the substance of asportation, one of the elements of common-law robbery and that this was sufficient because asportation merely meant the taking of an object with felonious intent. Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the attempted armed robbery indictments and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas to attempted armed robbery.

4. Failure to Challenge Subject Matter Jurisdiction Because Only an Agent of the State Was a Witness Before the Grand Jury

The Applicant claims guilty plea counsel was ineffective for failing to challenge the indictments since an agent of the State was the only witness before the grand jury. The Applicant cites the case of State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993), to support this proposition.

In State v. Anderson, the South Carolina Supreme Court held that prosecutors cannot appear as a sole witness before the grand jury. In the Applicant's case, the witness before the grand jury was

Officer Herring from the Rock Hill Police Department, not a prosecutor.

Further, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless:

(1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of

indictment; or (3) the charge is a lesser included offense of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). South Carolina law provides an indictment is sufficient if it "charges the crime substantially in the language ... of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." S.C. Code Ann. §§ 17-19-20 (1985). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). South Carolina courts have held that the sufficiency of an indictment "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

The indictments in this case were marked "True Bill" and signed by the grand jury foreman. The witness before the grand jury was a police officer and not a prosecutor. The elements of the crimes were sufficiently alleged in the indictments. Therefore, this Court finds that guilty plea counsel was not ineffective for failing to challenge the Applicant's indictments and that the Applicant has failed to carry his burden in this action by failing to show prejudice from guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas.

5. Failure to Make Concerted Effort to Get the Solicitor's Office to Remand Case to Family Court

The Applicant claims guilty plea counsel was ineffective for failing to make a concerted effort to get the Solicitor's office to remand the case to Family Court. The Applicant claims guilty

plea counsel never discussed the differences between Family Court and General Sessions Court.

Pursuant to S.C. Code Ann. §20-7-6605, a "person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the *discretion of the solicitor*." The Applicant was sixteen years old when he committed the crime for which he was indicted and the crimes committed were Class A, B, C or D felonies. Therefore, the General Sessions Court had jurisdiction. The decision to remand the case to Family Court was within the Solicitor's discretion.

Guilty plea counsel testified that he was appointed to the case after the Applicant was indicted. He testified that he researched the fact that the Applicant was a child at the time of the commission of the crimes. Guilty plea counsel further testified that he brought this issue to the Solicitor's attention but that the Solicitor's office gave intimations that they wanted to seek the death penalty in this case and that they would not remand this case to the Family Court. Further, the Applicant did not provide testimony from the Solicitor's office stating that they would have used their discretion and remanded the case to the Family Court.

Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not shown that he was prejudiced by guilty plea counsel's performance.

6. Failing to Pursue Applicant's Competency to Stand Trial

The Applicant claims guilty plea counsel was ineffective for failing to pursue the Applicant's competency to stand trial. The Applicant claims that if this avenue had been explored, he would have had a defense to the charges.

Guilty plea counsel testified that he was concerned with the Applicant's mental state. The

State provided the testimony of Dr. Leslie Sandler. Dr. Sandler was qualified as an expert in forensic psychology, clinical psychology and substance abuse. (T. p. 9). Dr. Sandler testified that the Applicant was not mentally retarded. (T. p. 118). The trial court found the Applicant competent to stand trial. (T. p. 147).

Guilty plea counsel also hired a psychologist, Dr. Jonathan Venn. Dr. Venn was qualified as an expert in forensic and clinical psychology. (T. p. 108). Dr. Venn testified during the hearing concerning the admissibility of the Applicant's statements given to law enforcement. However, Dr. Venn was not able to come to an opinion concerning mental retardation. (T. p. 113).

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

The Applicant presented no testimony or evidence regarding the elements of the defense. The Applicant was also examined by two experts, one hired by the State and one by the defense, who either came to the conclusion the Applicant was not mentally retarded or could not reach an opinion. Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not carried his burden in this action by showing he was prejudiced by

APP. P 354 503

guilty plea counsel's performance.

7. Failure to Make Double Jeopardy Claim

The Applicant claims guilty plea counsel was ineffective for failing to make a double jeopardy claim since he was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime.

In State v. Bolden, 303 S.C. 41, 398 S.E. 2d 494 (1990), the South Carolina Supreme Court held that punishment for both armed robbery and possession of a weapon during a violent crime does not violate double jeopardy. The Supreme Court held that the legislature clearly intended to provide additional punishment for possession of a weapon during the commission of a violent crime. Id.

Therefore, this Court finds guilty plea counsel was not ineffective for failing to make a double jeopardy challenge. This Court further finds that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

8. Failure to Advise Applicant Appellate Rights are Waived Upon Entry of Guilty Plea

The Applicant claims guilty plea counsel was ineffective for failing to advise him that if he pled guilty, he would waive his right to appeal the admissibility of his statements to law enforcement officers. The Applicant testified that he would have continued to trial if he knew pleading guilty would waive his right to attack his pre-trial issues.

However, guilty plea counsel testified he advised the Applicant of his appellate rights and that if he pled guilty he could not appeal issues raised prior to the plea. The trial judge also informed the Applicant of his appellate rights during his guilty plea. (T.p. 205). The Applicant subsequently filed an appeal that was later dismissed. Antonio Gordon and Monta Gordon v. State of South Carolina, 2000-UP-747, filed December 6, 2000.

This Court finds the testimony of guilty plea counsel to be more credible than that of the Applicant. This Court finds that guilty plea counsel was not ineffective and that the Applicant has failed to carry his burden in this action by showing he was prejudiced by guilty plea counsel's performance.

9. Failure to Advise of Community Supervision

The Applicant claims guilty plea counsel was ineffective for failing to advise the Applicant he would be subject to community supervision by the South Carolina Department of Corrections. Guilty plea counsel testified that he did not advise the Applicant concerning community supervision.

However, community supervision is a collateral consequence of a guilty plea. As such, guilty plea counsel was not ineffective for failing to advise the Applicant of community supervision. *See Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997), (counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing.) Therefore, this Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

CONCLUSION

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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30)

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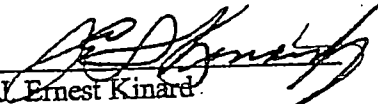
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days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18 day of AUG, 2003.


Ernest Kinard
Presiding Judge
Fifth Judicial Circuit

Comde, South Carolina.

App. P. 361

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 00-CP-46-1414

[Handwritten signature]

ANTONIO GORDON, #259798

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial of hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a) SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____.
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____.

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

ORDER

Dated at YORK, South Carolina, this 12TH of JANUARY, 2004

S/J. ERNEST KINARD
PRESIDING JUDGE

CERTIFIED TRUE COPY
2006 JUL 27 PM 3:36
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

This judgment was entered on the 15TH day of DECEMBER, 2003 and a copy mailed first class this 22ND day of JANUARY, 2004, to attorneys of record or to parties (when appearing pro se) as follows:

LAURIE ANN BANKER
SUITE 100
454 S ANDERSON RD
ROCK HILL SC 29730

JEANNETTE VANGINHOVEN
P O BOX 11549
COLUMBIA SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

DAVID HAMILTON
CLERK OF COURT

SCRPC APP-24

SCRPC FORM 4 (REVISED 5/00)

STATE OF SOUTH CAROLINA FILED - RECEIVED IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK

2003 DEC 15 PM 4:33

Case Number: 2000-CP-46-1414

ANTONIO GORDON, #259798

DAVID HAMILTON
C.C.C.D. & G.S.
YORK COUNTY, SC

ORDER

Applicant,

V.

STATE OF SOUTH CAROLINA,

Respondent.

This matter came before the Court on the Applicants Motion for Rehearing and/or Motion for Reconsideration of Facts relating to a Post-Conviction Relief (“PCR”) hearing on July 29, 2003. This Court dismissed the Applicants PCR application and an Order of Dismissal was signed on August 18, 2003. After careful consideration of the Applicants memorandum, the Motion for Rehearing and/or Motion for Reconsideration of Facts is denied as all issues that were brought before this Court in the PCR application were considered and ruled upon in the initial dismissal. A party may not raise additional issues after the original PCR hearing and seek a rehearing based upon those new issues.

IT IS SO ORDERED

December 9, 2003

Judge J. Ernest Kinard
Circuit Court Judge
Fifth Judicial Circuit

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2005 JUN 27 PM 3:37

CERTIFIED TRUE COPY



App. P. 363

FILED-RECEIVED

2003 DEC 15 PM 4:33

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

State of South Carolina
The Circuit Court of the Fifth Judicial Circuit
J. ERNEST KINARD, JR.
RESIDENT JUDGE
FIFTH JUDICIAL CIRCUIT
POST OFFICE DRAWER 1707
CAMDEN, SOUTH CAROLINA 29020-1707
(803)425-7182
FAX: (803)425-5519

December 10, 2003

[Handwritten signature]

The Honorable David Hamilton
Clerk of Court for York County
P. O. Box 649
York, South Carolina 29745

RE: Antonio Gordon v. State of S.C.
00-CP-46-1414

Dear Mr. Hamilton::

Enclosed for filing is the Order in the above referenced matter. Please forward a copy to the Order to the parties of record.

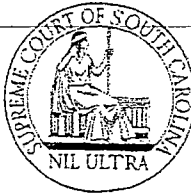
Yours very truly,

[Handwritten signature of Wes Jackson]

Wes Jackson
Law Clerk to The Honorable
J. Ernest Kinard, Jr.

wj/

Enclosure



16
App. P. 364

[Handwritten signature]

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 9, 2005

REMITTITUR

The Honorable David Hamilton
1675 -1G York Highway
PO Box 649
York, SC 29745-0649

Re: Gordon, Antonio v. The State – 2000-CP-46-01414

Dear Mr. Hamilton:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/jj

cc: Antonio Gordon #259798 - F3-B-124
Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Arie D. Bax

The Supreme Court of South Carolina

Antonio Gordon, Petitioner,

5/1/11

v.

11/11/11

State of South Carolina, Respondent.

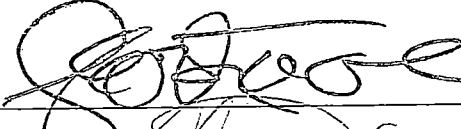
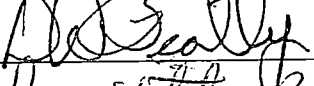
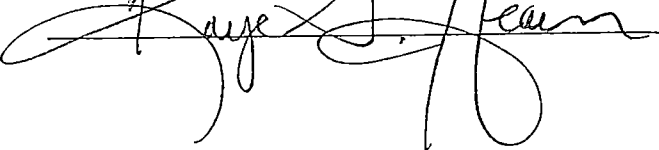
Appellate Case No. 2013-002153

Attachment (1) (A)

ORDER

Petitioner has filed a *pro se* "Belated Notice of Appeal[]" from an order dated December 9, 2003, denying petitioner's *pro se* motion for rehearing or reconsideration in this post-conviction relief matter. Petitioner has also filed a "Motion Requesting Permission to File a Belated PCR Under Austin[] v. State, 409 S.E.2d 395 (1991)" and a motion to relieve Tara Shurling as counsel.

We hereby vacate the order denying the *pro se* motion for rehearing or reconsideration, as the motion was improper since at the time it was filed, petitioner was represented by counsel. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010). Having vacated the order on appeal, we dismiss as moot petitioner's belated notice of appeal and deny as moot the motion to relieve Ms. Shurling as counsel. The "Motion Requesting Permission to File a Belated PCR Under Austin[] v. State, 409 S.E.2d 395 (1991)" is denied.

 C.J.
 J.
 J.
 J.
 J.

App. P. 366
EXhibit
D

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.comChristina Dixon Parnall
Associate Attorney

December 8, 2011

Tiffany N. Richardson, Esquire
Office of Disciplinary Counsel
P. O. Box 12159
Columbia, South Carolina 29211RE: Complaint - Antonio Gordon
Matter Number- 11-DE-L-1149

Dear Ms. Richardson:

My response to this complaint was due yesterday. The Commission was kind enough to give me another 30 day extension. Fortunately, I was able to complete my response today. I have reviewed my closed file in this case. Despite Mr. Gordon's claims to the contrary, much of the file was sent to Appellate Defense once I filed a Post-Conviction Relief appeal for this client after the circuit court denied his Post-Conviction Relief Application. I attach a copy of my transmittal letter to Appellate Defense for your information. In his grievance letter, Mr. Gordon mentions certain documents he supposedly sent me *in a notarized letter dated April 8, 2002*. I enclose a copy of that letter for your convenient reference. As you can see, it says nothing about any enclosures.

The Order of Dismissal was filed in this case on August 20, 2003. That same day, a copy of the Order of Dismissal was mailed to the client. I am attaching a copy of that transmittal letter. In that letter I advised the client that I would be filing a Post-Conviction Relief appeal on his behalf, and would be turning his file over to Appellate Defense. On October 7, 2003 I wrote the Clerk of Court and requested a Form 4 documenting service on me because the Order was served on a previous lawyer and I was never served by the Clerk's Office. I subsequently filed a Notice of Appeal with the Supreme Court and sent the client another copy of the clocked Order of Dismissal along with a copy of the Notice of Appeal. See letter dated November 24, 2003. Apparently, I did receive a letter dated November 19, 2003 from the client asking that I file a Motion for Rehearing and Motion for Reconsideration. I did not file the motions in question because in my judgment the Order made the finding of fact and rulings of law required by statute on all the issues presented in this case. In addition, by the time the client sent the request it had been more than 10 days since I originally received the Order, and therefore it was too late to file a Motion pursuant to Rule 59(e) SCRPC. Actually, I did not see a basis for such a motion anyway. If the Order had not covered all the issues addressed at the evidentiary hearing I would have filed a Rule 59(e) Motion on or before the tenth day following my receipt of the Order on August 20, 2003.

[Handwritten signature]

Mr. Gordon complains that I didn't file a motion pursuant to Rule 60(b). I did not do so because the issues he wanted me to raise were not appropriate for such a motion. As regards the retardation issue, I did not raise that issue in this Post-Conviction Relief action, because despite an early evaluation describing this client as borderline/mildly mentally retarded, my communications with him, both verbally and in writing, had not given me any cause for concern about his competence. To the contrary, I would actually question that assessment based upon my interaction with this client.

I was subsequently advised that the client had hired Trisha Blanchette to file a second Post-Conviction Relief Application based upon a claim of after discovered evidence. Ms. Blanchette did initially call and asked to come and pick up Mr. Gordon's file. Ultimately, she came to my office and reviewed the file here and indicated that she already had everything she needed and didn't need my file. I called Mrs. Blanchette yesterday and discussed this issue with her. She confirmed my recollection that she ultimately only *reviewed* my file instead of *taking it* because prior to our conference here at my firm she had been able to obtain a CD from the Office of the Attorney General with everything she needed on it. I did however make her welcome to anything she wanted from my file. I was also able to confirm that the second Post-Conviction Relief action she pursued on this client's behalf addressed new evidence that had been discovered about a statement taken from a minor witness. That information was not the basis for the client's earlier request that I file a Rule 60(b) Motion on his behalf. To the best of my recollection, I had no knowledge of that information prior to turning this case over to Appellate Defense.

In reviewing this file I see that I did receive a letter from this client on May 14, 2003 requesting copies of some documents. I do not see a return letter from me transmitting the requested documents. Ordinarily, I would send any requested material to a client *or*, in the alternative, write and explain that the documents were not in my file. I honestly do not know why my file fails to reflect such a response to this particular request. The materials may have been sent by someone on my staff without a formal transmittal letter. We used to occasionally use a transmittal form that was filled in by longhand to return copies of documents to inmates. I ceased that practice because staff members sometimes forgot to keep a copy for our file. That could very well be what happened here. The mail system at the SCDC is not terribly reliable at times so Mr. Gordon may not have gotten a packet from us. I have searched my closed file, and I think I have located at least some of what he says he wants. In his letter he specifically references the following: "car towing incident reports, sled latin prints analysis reports, and Police Incident reports from Rock Hill Police Dept" from his letter.

I have located the following documents that I believe may be part, if not all, of what he wants:

1. A four page fax from forensic expert, Don Girndt, which contains a two page list of questions from Mr. Girndt to Daniel D. D'Agostino, Esquire. There are no other reports from Mr. Girndt in my file nor do I see any indication I ever had any.
2. A two page document titled Vehicle Tow Inventory Report and dated July 23, 1998.

[Handwritten signature]

December 8, 2011

Page 3 of 3

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3. Photos of what appears to be the victim's car.

Both of these documents were in this file when Mrs. Blanchette reviewed it back in approximately September of 2009.

I do not have a copy of a SLED latent prints analysis report nor do I have any documents identified as Police Incident Reports from Rock Hill Police. I would imagine these documents should be available from his trial lawyer's file. I do have three witness statements from the Rock Hill Police Department. Perhaps these statements are what Mr. Gordon is referring to. They are as follows:

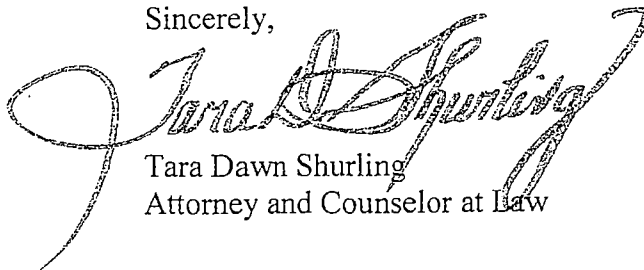
1. A July 23, 1998 statement from Chyneca Davis.
2. An updated two page statement from Tawanda Burris.
3. A three page statement from Antonio Gordon dated July 23, 1998.

In addition to the above, I located another document captioned "Form 5 Client Information." I am not certain what this document is.

I am enclosing copies of each of the documents referenced herein, and I am sending Mr. Gordon copies of the same along with a copy of this letter in response to his grievance. I also enclose my verification.

Once again, all these documents were in my file from this case, when Mrs. Blanchette reviewed the file, and indicated she did not need copies of anything from my file. I hope this addresses all of your concerns, if not, please let me know what further I can do to assist with your inquiry. I am,

Sincerely,

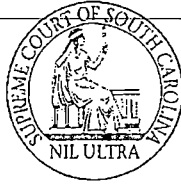


Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Antonio Gordon (w/enclosures) ✓



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Handwritten signature/initials

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

December 10, 2013

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

Exhibit (8) (B)

Re: Antonio Gordon v. State
Appellate Case No. 2013-002153
Lower Court Case No. 2000-CP-46-01414

Dear Counsel:

This Court has received the enclosed *pro se* notice of appeal and Rule 243(c) explanation in this matter. I remind you that under Rule 71.1(g) of the South Carolina Rules of Civil Procedure and Rule 264(a), SCACR, that you remain his counsel of record before this Court.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with

Answer Brief

the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

To determine the timeliness of this appeal, it will be necessary for you to advise this Court of the date on which you received written notice of entry of the order of December 9, 2003.¹ This is an order that denied a *pro se* motion for rehearing or reconsideration that your client filed regarding the order of August 18, 2003. I have enclosed a copy of the order dated August 18, 2003, the motion for rehearing or reconsideration (without attachments) dated November 18, 2003, and the order dated December 9, 2003. I note that the latter two items have been provided to this Court by the clerk of the circuit court.

Further, as you may remember, you served and filed an appeal from the order of August 18, 2003, and the Division of Appellate Defense then represented the petitioner. A copy of this notice of appeal is enclosed. This Court denied the petition for writ of certiorari after conducting a review pursuant to *Johnson v. State*² on July 21, 2005, and the remittitur was sent on August 9, 2005. *Gordon v. State*, Appellate Case No. 2003-028198. I did not see any indication that any request was made to dismiss this appeal due to the pendency of any post-trial motion. See *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986).

It appears that the *pro se* motion for rehearing or reconsideration was filed with the clerk of the circuit court on the same day (November 25, 2003) that you served and filed the notice of appeal from the order of August 18, 2003. Since you represented him at that time, it appears that this *pro se* motion for rehearing or reconsideration was essentially a nullity and should not have been accepted for filing or ruled on by the circuit court. Therefore, I ask you to explain why the December 9, 2003, order should not be vacated and *pro se* notice of appeal should not be dismissed as moot. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010)

¹ In the *pro se* notice of appeal, petitioner indicates that the order denying the motion for rehearing or reconsideration is dated August 25, 2006. Despite a request from this office, petitioner has not provided this Court with a copy of any order dated August 25, 2006. If such an order exists, I ask that you please provide this Court with a copy of it.

² 294 S.C. 310, 364 S.E.2d 201 (1988).

ABANDONED

("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel. [citations omitted]. Because petitioner was represented by counsel, the *pro se* [Rule 59, SCRC] motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity. We therefore vacate the order ruling on the motion and dismiss petitioner's notice of appeal as moot. We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel.").

I ask that you please provide the requested information and explanation within fifteen (15) days of the date of this letter. I thank you in advance for your assistance.

Very truly yours,



CLERK

Enclosures

Notice of Appeal and Rule 243(c) explanation dated October 4, 2013
Order dated August 18, 2003
Motion for Rehearing or Reconsideration (without attachments) dated
November 18, 2003
Order dated December 9, 2003
Notice of Appeal dated November 25, 2003

cc: James Rutledge Johnson, Esquire
Mr. Antonio Gordon, 259798

STATE OF SOUTH CAROLINA

County of York

Antonio Gordon 259798
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

In the Court of Common Pleas

2004 CP46-1700

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention McCormick, S.C. Department of Corrections/FI-A-181
386 Redemption Way, McCormick S.C. 29899
2. Name and location of Court which imposed sentence York County General session Court,
Post office Box 649, York, South Carolina 29745-0649
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Murder 98-65-46-2847, Attempted Armed Robbery 98-65-46-2849, Poss. Firearm during
 - (b) Comm Violent Crime, 98-65-46-2847-A, Criminal Conspiracy 98-65-46-2849, Poss Firearm
 - (c) Comm Violent Crime, 98-65-46-2850-A, Poss of a Handgun under (21) 98-65-46-2850.
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 19, 1999, 30 years for Murder, to ten (10) consecutive year for one Attempted
 - (b) Armed Robbery, to ten (10) concurrent year on the other armed robbery, and to five (5)
 - (c) years concurrent one each of the remaining charge.

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[Handwritten signature]

FILED-RECEIVED
2004 JUL -6 AM 10:48
DAVID HAMILTON
C.C. & GS
YORK COUNTY, SC

CERTIFIED TRUE COPY
2004 JUL -6 PM 3:28
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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[Signature]

5. Check whether a finding of guilty was made
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes I did appeal
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. State of South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 6, 2000
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Violation of Due Process of law 5th Amendment
 - (b) Violation of Equal Protection of the law 14th Amendment
 - (c) Lack of subject matter Jurisdiction
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) See attached memorandum,
 - (b) see attached memorandum,
 - (c) See attached memorandum,

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374
[Signature]

DID THE TRIAL COURT LACK THE SUBJECT MATTER
JURISDICTION? (A)

The jurisdiction of a court over the subject matter jurisdiction proceeding is fundamental. Anderson v. Anderson, 382 S.E.2d 897 (1987). Lack of subject matter jurisdiction may not be waived even by consent of the parties and should be taken notice of by the court. See Brown v. State, 540 S.E.2d 846 (S.C. 2001).

When used in this article and unless otherwise defined or the specific context indicates otherwise.

"Child" means a person less than seventeen years of age. "Child" does not mean a person sixteen years of age or older who is charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a class A, B, C, OR D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charged at the discretion of the solicitor. S.C. Code ANN § 20-7-6605(1).

In construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. The unconstitutionality in South Carolina Code ANN § 20-7-6605(1), it break it's plain and ordinary meaning, it also expand the meaning of a "child". "Child" means a person less than seventeen years of age, is a clear and understandable, and are readable in it's plain and ordinary meaning, without expanding the statute's operation.

Further, penal statute's must be construed "strictly" against the "State" and in favor of the "Defendant". See William v. State, 410

S.E.2d 563, Brown v. State, 540 S.E.2d 846 (S.C. 2001), Which the court held that penal laws are to be "Strictly" is founded.....on the plain principle that the power of punishment is vested in the legislative, not the court, which is to define a crime, and ordain its punishment....
..Id, Quoting United States v. Wiltberger (18 U.S.) 5 Wheaton 75, 95-96, 5 L.Ed.37 42 (1820). The court's primary function in interpreting a statute is to ascertain the intention of the legislature. In Blackmon 403 S.E.2d 660 (1991), the court held, When the term of a statute are clear and unambiguous, the court must apply them according to their literal meaning.

Furthermore, applicant submits that while passing the law giving the solicitor the authority to deny the family court's jurisdiction is unconstitutional and that it encroaches on the family court's jurisdiction while family court is supposed to have "Exclusive Jurisdiction" over all juveniles until the juvenile has been transferred to the court of general session. The solicitor in the present case incorrectly applied S.C. Code ANN § 20-7-6605(1) "Definition" of a "child", and used his discretion to circumvent the family court's jurisdiction in order to try said child as an adult. The solicitor in this case recognized the legislative intent to mean that he could try the child as an adult without family court waiving the "Child" upS See S.C. CODE ANN § 20-7-7805(c).

No adjudication by the court of the state of child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a "child" be charged with a crime or convicted in a court, except as provided in section 20-7-7605(6), (10).

Thus the applicant being a "CHILD" at the time was under the "EXCLUSIVE JURISDICTION" of the family court. Therefore, being the solicitor never "petitioned" the family court to waive it's jurisdiction, the applicant was denied his 5TH, and 14TH Amendment Right to due process of law and equal protection of the law, Applicant further contends that

since the solicitor did not petition the family court to obtain jurisdiction the general session court was without. It may be at the solicitor's discretion to decide what charges are to be brought against a child, but he still must petition the family court in order to charge them and try a child.

Furthermore, to be arbitrarily denied the privilege of juvenile jurisdiction by discriminatory legislative classification is violative of DUE PROCESS and EQUAL PROTECTION of the law. Legislative classification are entitled to a strong presumption of validity and may be set aside only if no grounds can be conceived to justify them. It is a statutory principle of judicial decision, long emphasized and followed by this court, that burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless viewed in the light of facts made known or generally assumed, it is if such rests upon some rational basis within

the knowledge and experience of the legislators. However, there is a presumption of reasonableness of classification in state statute, but presumption is only in absence of evidence to the contrary which is admissible. Evidence to the contrary which establishes the unconstitutionality of the statute as in a question of denial of the EQUAL PROTECTION of the law, lies upon the fact that;

S.C. Code ANN § 20-7-6605(1), arbitrarily by age, discriminates against those individuals under the age of seventeen, sixteen year old charge with certain enumerated offenses, by allowing those individuals to be charged in an adult court without having to first bring charges in family court and obtaining transfers, while other individuals under the age of seventeen (14 and 15 year olds), charged with the same enumerated offenses must be charged in the family court first, and then

MAY be transferred under some circumstances. No other age group other than 16 year olds are arbitrarily classified as reflected in the fragment nature of statutes and subsection in the family court relating to this particular age group. However, S.C. Code ANN § 20-7-6605(1), define a "CHILD" in it's plain and ordinary meaning. "Child" means a person less than seventeen years of age. S.C. Code ANN § 20-7-6605(1), then proceeds to expand the plain and ordinary meaning of a "child" arbitrarily exclude only those 16 year olds who are charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more maybe remanded to the family court for disposition of the charge at the discretion of solicitor. S.C. Code ANN § 20-7-7605(6), (10), then defines that if a "child" fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the "child" previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court acting as committing magistrate "SHALL" bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the second offense occurred subsequent to the imposition of the sentence for the first offense. If a "child" commit murder or criminal sexual conduct will be transferred in some circumstance. S.C. Code ANN § 20-7-7605(6). S.C. Code ANN § 20-7-7605(5), then defines a child as a fourteen or fifteen year old, charged with an offense which would classify as a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum

term of imprisonment of fifteen years or more, will be transferred in the respectful manner. In S.C. Code ANN § 20-7-7605, it stipulates that any individual 14 years or older can be tried as an adult under certain circumstances. Anyone under the age of 14 may be tried as an adult, only if the individual has committed the offense of murder or criminal sexual conduct. As shown § 20-7-6605(1), and § 20-7-7605(6), (10), are identical in every aspect except that a 14 and fifteen year olds is given a chance and 16 year olds is out of sight out of mind.

This arbitrary age discrimination rest upon the fact that there is no justification for exclusive juvenile jurisdiction over a 14 and 15 year old charged with the same enumerated offenses as 16 year old, who is arbitrarily classified as an adult, upon initiation of the charges. Here the original justification, if there was one, is no longer justifiable where there was a disparity between 14, 15, and 16 year olds, there is little evidence that those differences exist today where the rate of 14 and 15 year old offenders, has equaled with that of 16 year old offenders, if not surpassed the number. In Bland, the court held that in its original justification, congress sought to improve the operation of the juvenile justice system by removing from its jurisdiction individuals between the age of 16 and 18, in which congress concluded:

(1) Were beyond rehabilitation in juvenile justice system, and

(2) Who's presence in that system served as a negative influence on other juveniles, see Bland at 472 F.2d 1348, 1349. Today these reason is also applicable to 14 and 15 year olds. In revealing its rational for excluding such persons from the jurisdiction of the family court division, the house committee on the District of Columbia, gave the following as the basis for its exclusion of those 16 years of age or older charged with certain enumerated offenses. Because of the great

increasing in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juveniles offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent youthful offender and recidivist from the rest of the juvenile community, is arbitrarily and discriminatorily applied in S.C. Code ANN § 20-7-6605(1).

Moreover, if differentiation of individuals is necessary, as it surely is, it should be made on the basis of facts about the individual, and not on the basis of an assumption about a huge and diverse group. The uncontroverted evidence is that such basis for the exclusion of only sixteen year olds as children when charged with certain enumerated offenses is arbitrary and unreasonably discriminatory. This effect is not hypothetical or theoretical, but is quite real. Individuals, under the age 17, if charged as an adult with a class A, B, C, or D felony or a felony will be tried as, and if convicted be subject to the penalties of adults. If convicted they will be incarcerated in adult institutions upon ascertaining the age of 17, and largely, if not completely, be deprived of social, psychological and psychiatric services, and educational and vocational opportunities afforded juveniles.

Further, if convicted as adults these individuals may lose the right to vote, serve in the Armed forces, to secure many types of government and private employment, and will carry forever the stigma of conviction. The only difference as addressed in the dissenting opinion in Bland supra, is that 16 year old individuals, 'will be sentence (if conviction in an adult court). Moreover, without any meaningful inquiry into the possibility of rehabilitation through human juvenile disposition see Bland at 472 F.2d 1348. A "child" is not a 16 year old individual charged with certain enumerated offenses.

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While an individual, 14 and 15 years of age, charged with the same enumerated offenses is a child, where there is no real distinction (Psychological or Physical) between a 14, 15, and 16 year olds, whereas denies the applicant equal protection of the law, and along with violative of the due process of law. Violative of the 5th and 14th Amendment right of the applicant.

LACK OF SUBJECT MATTER
JURISDICTION. (B)

SHOULD THE APPLICANT BEEN AFFORDED A COMPETENCY
HEARING BEFORE BEING TRIED AS AN ADULT, VIOLATIVE
OF DUE PROCESS, AND EQUAL PROTECTION OF THE LAW.

In determining whether a child is to be waived up to the court of general session the factors in Kent v. United States, 86 S. CT 1045 (1966), must be considered. However, evaluation of a child must take place in the Department of Juvenile Justice. WHEN the solicitor makes his decision to try a child 16 years of age as an adult, the solicitor basis his determination and discretion on the child age and charged. SEE S.C. Code ANN § 20-7-6605(1). Never, the, less does the solicitor investigate and focus on the child (MENTAL HISTORY, FAMILY BACK GROUND, AND OR WHETHER THE CHILD COULD BE REHABILITATED AT THE AGE OF SIXTEEN). However, all juvenile's has the right to procedure due process of Law, see In re Winship, 397 U.S. 358, 90 S. CT 1068, 25 L. Ed. 2d 368 (1970). The applicant will further point out, that a child sixteen years of age commit a class A, B, C, or D felony does not necessarily means that the sixteen year old is capable of understanding the things that adults could. It has not been establish should the solicitor hold an evaluation hearing for juveniles sixteen years of age before they are tried and considered to be an adult who commit class A, B, C, or D felony's. To be competent to stand trial as an adult, the court held in Dusky v. United States, 30 S. CT 788, that a defendants competency to stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational

as well as factual understanding of the proceeding against him. Of course DUSKY supra, is a competency to stand trial case, Dusky, also was an adult. However, applicant was 16 years of age with a low IQ of 68, which placed the applicant in the (MILDLY, MENTALLY RETARDATION, BORDERLINE OF FUNCTION RANGE) See (S.C. Department of Juvenile Justice Reception and Evaluation center Social work report). Thus a sixteen year old, are more likely to have a low IQ and very limited understanding, and comprehension to things as to criminal nature than adult's would. Although applicant submit that the only true way to find out is a sixteen year old is competent to be tried, as an adult, is to hold an evaluation hearing before the applicant is considered to be an adult. Applicant further contends, that, the evaluation hearing is not a waiver or transfer hearing, but more of a hearing for the solicitor to render his arbitrary determination opinion, as to, rather sixteen year olds is to be tried as a child or an adult. As the statute indicates, a child sixteen years of age commit a class A, B, C or D Felony may be tried in the family court at the discretion of the solicitor S.C. Code ANN § 20-7-6605(1).

However, S.C. Code ANN § 20-7-6605(1), has no stipulation as to the solicitor discretion as trying juvenile's sixteen years of age. Further, before a 12, 13, 14, and 15 year old is charged and tried as an adult they go through evaluation hearing. See State v. Corey D, 529 S.E.2d 20 (2000 S.C.). A waiver hearing that involved Chris, Carlos, and Toby. Dr Charles Sailor, the forensic psychologist who performed the "EVALUATION WAIVER" of Carlos, testified that although Carlos was fifteen year old with an IQ of 70, Dr Sailor characterized Carlos as on the borderline of mildly mentally retarded. The psychologists who performed the waiver evaluations of Chris and Toby, both 14 years old, classified both boys as mildly mentally retarded. However, neither of the defendant's was pass the age of 15, and where afforded there right to determine there abilities

to consult as an.....adult with a reasonable degree of rational as well as factual understanding, before being tried as an adult. Though a sixteen year old charged with few of the same charges are immediately tried and considered as an adult. However, the common law question in the case at bar, is whether the solicitor should hold evaluation hearing for juvenile's sixteen years of age who commit class A, B, C or D felonies, before he makes his determination as rather the child should be tried as an adult or an child. Further, applicant submit that he was denied his 5th and 14th Amendment right to Due Process and Equal protection of the law, whereas, juvenile's from the age of 12-15 are afforded the right to "evaluation hearing" before being tried as an adult. Applicant was denied his 5th and 14 amendment right, constitutional right in nature, And finally, general session court where without the subject matter jurisdiction to accept applicant's guilty plea, where applicant where under the jurisdiction of the family court. S.C. Code ANN § 20-7-400, 20-7-7605.

LACK OF SUBJECT MATTER JURISDICTION (C)

SHOULD THE APPLICANT BEEN AFFORDED A JUVENILE WAIVER HEARING UNDER 20-7-7605(6), (10), IN VIOLATION OF DUE PROCESS, AND EQUAL PROTECTION OF THE LAW.

Applicant contends that he should have been afforded a juvenile waiver hearing before being tried as an adult. THE law states that a "child" is defined under the age of seventeen, 20-7-6605(1). In order to be tried as an adult the factors in Kent v. United States supra, must be considered. Every juvenile have the right to predure due process of law In re Winship supra, under S.C.C Code ANN § 20-7-7605(6), (10), THE APPLICANT should have been transferred to the court of general session within thirty days after the filing of a petition in the family court alleging the child has committed murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferrred to the court of general session with a view to proceeding against the child

as a criminal rather than as a adult coming within the purview of this article. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the general session court for trial of the case, he shall issue an order to that effect, and the family court has no further jurisdiction in the matter.

The applicant in the case at bar where charged with murder, and were immediately tried as an adult according to S.C. Code ANN § 20-7-6605 (1). The solicitor in the case at bar fail to look to subsection (6), (10). Subsection (6), of the transfer statute which specifically deals with when a child has been charged with murder or criminal sexual conduct. Subsection (6) contain no explicit age limitation, and apply to sixteen year old offenders who commit murder. The reason there is no express age designation in section 20-7-7605(6), whereas other subsection expressly contain age restrictions, "The legislature intended these separate subsection, "to cover separate situation. See Shaw 274 S.C. at 539, 265 S.E.2d at 524. THE legislature intended that subsection (6) apply to all juvenile's who commit the offense of murder.

Thus subsection (10) of the transfer statute applies to sixteen year old offenders as well. If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provides for a term of imprisonment of ten years or more, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. "For the purpose of this item, an adjudication

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~~XXXXXXXXXXXX~~ 384

or conviction is considered a second adjudication or conviction only if the date of the commission of the second occurred subsequent to the imposition of the sentence for the first offense.

Thus the said applicant at the time had only one conviction as a child that could carry a imprisonment sentence of ten years or more, which where "BURGLARY 2nd. Penal statutes is to be construed strictly against state and in favor of the defendant. William v. State supra. (20-7-6605(1) and 20-7-7605(6), (10). Applicant submit that an individual sixteen years of age are a child in the nature of common law. See 20-7-6605(1), 20-7-7605(6), (10). It is established in this state that where there is any doubt as to which of two statutes of limitation applies, the doubt must go in favor of the longer period. State v. Life Ins of Georgia 175 S.E.2d 203 209 (1970).

Furthermore, the applicant being said "child" at the time was under the "Exclusive Jurisdiction" of the family court judge. THEREFORE, being that the slocitor never petition the family court, for waiver of jurisdiction, the court of general session in York County did not have jurisdiction to try the applicant, whereas applicant was denied his 5th and 14th Amendment Right, Due Process, and Equal Protection of the law. Finally general session court lack the subject matter jurisdiction in accepting the applicant guilty plea.

CONCLUSION

Applicant guilty plea should be reversed and afforded a new trial.

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

Yes

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

(a) the specific nature thereof:

i. Post-conviction application

ii. _____

iii. _____

iv. _____

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

i. In the Court of Common Pleas

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 27th 2003

ii. _____

iii. _____

iv. _____

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

i. Dismissed

ii. _____

iii. _____

iv. _____

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

No

14. If you answered "yes" to (1), identify:

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[Signature]

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

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

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

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

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

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

- i. Harry Deest, 1675-3A York Hwy, York SC 29745
D'Agostino "address unknown"
- ii. Tara Dawn Shurling, 3614 Landmark Drive, Suite D, Columbia SC,
29204
- iii. _____

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

- i. Harry Deest Got off case
- ii. D'Agostino Plea and Sentencing
- iii. Tara Dawn Shurling, Post-conviction hearing

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

Vacation of sentence

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

No

STATE OF SOUTH CAROLINA

County of York

VERIFICATION

App. P. 4/17/08
Antonio Gordon
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I, Antonio Gordon, 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.

Antonio Gordon

SWORN to and subscribed before me this 28th

day of JUNE, 2007

[Signature] (L.S.)
Notary Public

My Commission Expires: MAY 5, 2008

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

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

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

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this

28th day of JUNE, 2007

[Signature]
Notary Public

My Commission Expires MAY 5, 2008

APP. P. 44762
388

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Antonio Gordon, S.C.D.C.)
No. 259798)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C.A. No. 2004-CP-46-1700

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief application filed July 6, 2004, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the October, 1998 term of General Sessions for the York County Grand Jury for Murder (count one) and Possession of a Firearm During the Commission of a Violent Crime (count two) (98-GS-46-2847), Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2849), and Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2850). He was represented by Daniel D'Agostino, Esq. On July 16, 1999, the Applicant pled guilty as indicted. On July 19, 1999, he was sentenced by the Honorable John C. Hayes to confinement for a period of thirty (30) years for Murder, ten (10) years for Attempted Armed Robbery, five (5) years for Possession of a Firearm During the

Commission of a Violent Crime, and ten (10) years for Attempted Armed Robbery with one ten year sentence consecutive to the thirty year sentence and the rest concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gordon, Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

The Applicant subsequently filed an application for post conviction relief on June 15, 2000. An evidentiary hearing was convened on July 29, 2001 at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. In addition, a special Order was executed granting jurisdiction to the presiding judge. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel.

The Honorable J. Ernest Kinard denied and dismissed the Applicant's PCR application by written Order on August 18, 2003. The Applicant then filed a timely notice of appeal. The appeal is still pending in the South Carolina Supreme Court.

II.

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

1. "Violation of Due Process of law 5th Amendment";
2. "Violation of Equal Protection of the law 14th Amendment"; and
3. "Lack of Subject Matter Jurisdiction."

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REDACTED
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For the purpose of this Return, the Respondent incorporates the Clerk of Court records,

the South Carolina Department of Corrections' records, the guilty plea transcript, and the prior PCR records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is clearly successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

~~The Applicant could have raised the new grounds for relief in his prior post-conviction~~
relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on July 16, 1999. The South Carolina Court of Appeals decision affirming the Applicant's conviction was filed December 6, 2000. This Application was filed on July 6, 2004 which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the Respondent requests that this Court summarily

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS

APP. P. *M. S. B.*
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2004-CP-46-1700

Antonio Gordon, 259798

Applicant,

vs

State of South Carolina,

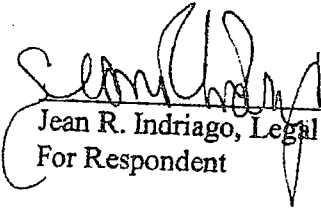
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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

Antonio Gordon, 259798
McCORMICK CORRECTIONAL INSTITUTION
FI-A-181, 386 Redemption Way
McCormick, SC 29899

DATED this 2nd day of December, 2004.


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Antonio Gordon, # 259798,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2004-CP-46-1700

CONDITIONAL ORDER OF DISMISSAL

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BOOK PAGE
DEC 30 3 52 PM '04

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This matter comes before this Court by way of an application for post-conviction relief filed July 6, 2004. The Respondent made its return and motion to dismiss on November 19, 2004.

I. PROCEDURAL HISTORY

The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the October, 1998 term of General Sessions for the York County Grand Jury for Murder (count one) and Possession of a Firearm During the Commission of a Violent Crime (count two) (98-GS-46-2847), Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2849), and Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2850). He was represented by Daniel D'Agostino, Esq. On July 16, 1999, the Applicant pled guilty as indicted. On July 19, 1999, he was sentenced by the Honorable John C. Hayes to confinement for a period of thirty (30) years for Murder, ten (10) years for Attempted Armed Robbery, five (5) years for Possession of a Firearm During the Commission of a Violent Crime, and ten (10) years for Attempted

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ADDITION 391

Armed Robbery with one ten year sentence consecutive to the thirty year sentence and the rest concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gordon, Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

The Applicant subsequently filed an application for post conviction relief on June 15, 2000. An evidentiary hearing was convened on July 29, 2001 at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. In addition, a special Order was executed granting jurisdiction to the presiding judge. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel.

The Honorable J. Ernest Kinard denied and dismissed the Applicant's PCR application by written Order on August 18, 2003. The Applicant then filed a timely notice of appeal. The appeal is still pending in the South Carolina Supreme Court.

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

1. "Violation of Due Process of law 5th Amendment";
2. "Violation of Equal Protection of the law 14th Amendment"; and
3. "Lack of Subject Matter Jurisdiction."

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#1204/1212/1214
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II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra; Arnold v. State/Plath v. State, supra.

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ADAMUS 399

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10, et. seq. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on July 16, 1999. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on December 6, 2000. This Application was filed on July 6, 2004, well after the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

The Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit. A circuit court has subject matter jurisdiction to convict a criminal defendant if: (1) there has been an indictment returned true billed by a grand jury which sufficiently states the offense;

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287 4

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#5 11818
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(2) there has been a waiver of presentment to the grand jury indictment; or (3) the charge is a

lesser included charge of the crime charged in the indictment. Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000). An indictment is sufficient to convey jurisdiction if it apprizes the defendant of the necessary elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. State v. Parker, 344 S.C. 250, 543 S.E.2d 255 (Ct. App. 2001). An indictment passes legal muster if it "charges the crime substantially in the language of the ... statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood" Reddick v. State, 348 S.C. 631, 560 S.E.2d 441 (Ct. App. 2002). The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprizes the defendant of what he must be prepared to meet. Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995).

In the present case, the indictment gave the time, place, and manner of the events in which Applicant was accused of having participated. All of the necessary elements of the crime were included in the indictment. This Court finds the Applicant failed to carry his burden of proof to show that the trial court lacked subject matter jurisdiction. Therefore, this Court finds the trial court had subject matter jurisdiction. Accordingly, this allegation is denied.

III. CONCLUSION

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the

App. P. 401
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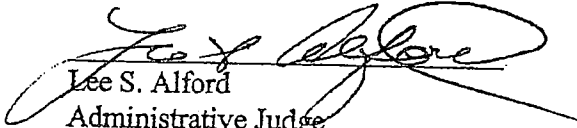
date of service of this Order upon him to show why this Order should not become final by filing

any reasons he may have with the Clerk of Court for York County, South Carolina and shall

serve opposing counsel at the following addresses:

Office of the Attorney General
Attn: Arie D. Bax, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 27 day of December, 2004.


Lee S. Alford
Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina

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B.A.

APP. P. #40
#402

FILED-RECEIVED
STATE OF SOUTH CAROLINA BOOK _____ IN THE COURT OF COMMON PLEAS
COUNTY OF YORK MAY 20 12 05 PM '05 SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon, No. 259798, DAVID HAMILTON 2004-CP-46-1700
Applicant, CLERK OF COURT
YORK COUNTY, SC
v.)
) FINAL ORDER
State of South Carolina,)
)
Respondent.)

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 6, 2004. The Respondent made its Return and Motion to Dismiss on November 19, 2004, requesting that the Application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated December 29, 2004, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated January 19, 2005, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant failed to provide this Court with any reason as to why the Conditional Order of Dismissal should not become final.

Accordingly, the Conditional Order of Dismissal is incorporated herein as if set forth verbatim and becomes a Final Order in this matter.

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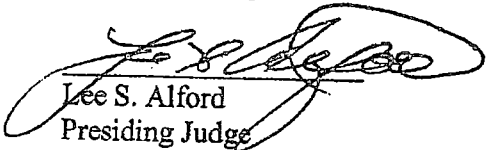
App. P. 403

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 16th day of May, 2005.


Lee S. Alford
Presiding Judge
Sixteenth Judicial Circuit

XOR, South Carolina

#2
2005

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2004-CP-46-1700

Antonio Gordon, #259798

Applicant,

vs

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

May 20 12 07 PM '05

FILED-RECEIVED
BOOK PAGE

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

Antonio Gordon, #259798
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

DATED this 9th day of May, 2005.


Gianandrea A. Maoli, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF YORK

App. P. ~~405~~ 405
COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Antonio Gordon, #259798

Applicant,

vs.

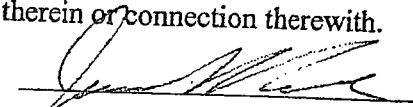
State of South Carolina

Respondent

Case No.: 04-CP-46-1700

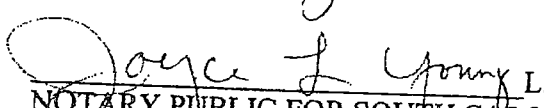
Affidavit of Service

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being first duly sworn, deposes and says that on 19 January, 2005, (s)he served the Conditional Order of Dismissal in this action on Antonio Gordon, #259798 by delivery to personally; that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.


Signature of Deponent

Jamie S. Packer
Printed Name of Deponent

Sworn to and Subscribed before me
This 19 day of Jan, 2005


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 8-28-2011

App. P 406

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)Antonio Gordon, #259798)
Petitioner,)

Vs.)

John Ozmit)

Director of the)
South Carolina Dept.)
of Corrections and the)
Henry D. McMaster,)
Attorney General of)
South Carolina)

IN THE COURT OF COMMON PLEAS

06-CP46-010

PETITIONER FOR WRIT OF HABEAS CORPUS
F-763891, F-763897, F-763898, F-763901, F-763902
F-763914FILED-RECEIVED
2006 JAN -3 PM 4:44
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Petitioner, Antonio Gordon, hereinafter Gordon an inmate of the South Carolina Department of Corrections, is seeking release from incarceration and respectfully requests that this Court grant a writ of habeas corpus and order of the Court requiring the State of South Carolina to vacate Gordon's sentence's and set a new trial. These issues bring into the legality of the Petitioner's detention, and he entreats this Court to weigh this arguments carefully and to not allow the delay in their presentation in inure to this prejudic

JURISDICTION

The Supreme Court of South Carolina held that relief pursuant to a writ of habeas corpus, is appropriate when there has been a violation, which, in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice, Butler v. State 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). "The general and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention". Butler, 468 at 302 S.C. 88 397, S.E.2d (Quoting Walker v. Wainwright, 390 U.S. 335, 88 S.Ct. 962, 1968-1.1215 (1968)).

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
2006 JAN 27 AM 10:21
CERTIFIED TRUE COPY

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QUESTION PRESENTED

1. Is petitioner guilty plea involuntary (a)?
2. Is petitioner guilty plea involuntary (b)?
3. Petitioner was denied due process, petitioner pled guilty without the ability to withdrawn plea where double jeopardy issue was prejudice?
4. Petitioner due process right were violated where statement on appeal was inadmissible if petitioner went to trial rather than plea guilty??
5. Petitioner was denied due process where he was allowed to plea guilty under unambiguous statute children's code of laws?
6. Did General Session Court lack jurisdiction in accepting petitioner guilty plea, where jurisdiction had not been relinquished by the family court?
7. Should a sixteen year old charged with a Class A, B, C, or D felony specified in S.C. Code Ann § 20-7-6605(1), receive a competence hearing under due process of law before the solicitor use's his discretion in trying the child as an adult?
8. Petitioner was denied due process where State psychologist was qualified to testify to petitioner competence to stand trial but was not licenses as a psychologist under South Carolina law and regulation?

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STATEMENT OF CASE

On October 15, 1998, the York County Grand Jury indicted the petitioner for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the petitioner pled guilty to all charges. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the petitioner to thirty years for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, and five years for criminal conspiracy and five years for possession of a weapon under twenty one.

A timely Notice of Appeal was filed on petitioner's behalf and an appeal was perfected. The South Carolina Court of Appeals was dismissed. State v. Antonio and Monta Gordon, Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

Petitioner filed for post-conviction relief June 15, 2000. The respondent made its return on May 2, 2001. An evidentiary hearing into the matter was convened on July 29, 2003, at the Richland County Courthouse. Petitioner post-conviction was denied August 18, 2003, by Honorable J. Ernest Kinard. This Court subsequent denied a petition for writ for certiorari. Petitioner now raises issues that are not cognizable under the PCR act.

APP. P. # 409

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STATEMENT OF FACTS

On July 23, 1998, Gordon got arrested for murder, two counts of attempted armed robbery, three counts of possession of a weapon during the commission of a violent crime, possession of a weapon by a person under twenty-one, and criminal conspiracy. Petitioner's mother retained counsel to represent petitioner on July 23, 1998, counsel requested to see his client which his request were denied. Petitioner made a self-incriminating statement. The first statement petitioner made he denied any involvement in the crime, the second statement petitioner confessed to the alleged crimes.

Petitioner proceeded to pre-trial on the following dates, July 12, 14, & 16, 1999. During the pre-trial petitioner counsel argued to the court several issues that he felt was in violation of petitioner's Constitutional rights. Counsel argued that it should be a separate trial that of his co-defendant's being that petitioner had a low IQ that of 68, The State did not have probable cause to arrest the petitioner, petitioner statement to the police should be suppressed due to petitioner age and his limited of understanding at the time the self-incriminating statement was made, and finally, petitioner statement's should be suppressed due to the police did not have probable cause to arrest.

Counsel requested that petitioner be evaluated by Dr. Jonathan Venn, which he testified that he could not come to an opinion to whether the petitioner was competent to stand trial, or whether the petitioner was mentally retarded. Dr. Jonathan Venn, testified that he did not have no back-ground information, nor did he get the chance to speak with petitioner family members to try and see if he could have came up with any helpful information. However, the State requested that petitioner under-go evaluation to determine whether petitioner was competent to stand trial. Dr. Leslie N. Sandler rendered an opinion that petitioner was competent to stand trial, and that petitioner was not mentally retarded.

The trial judge ruled that he agree with the State's opinion that petitioner was competent to stand trial. The trial judge also ruled that petitioner statement's was allowed into trial and that they will not be admissible at trial. Thereafter the judge ruled that

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petitioner was competent to waive his Miranda rights, and that the police had probable cause to arrest. Thereafter, the petitioner pled guilty to all charges. Petitioner received a letter from the South Carolina Board of Examiners in Psychology dated January 9, 2002 stating that "DR. LESLIE N. SANDLER" is not and has not been "licensed" as a psychologist in "South Carolina."

APP. P. # 411
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INVOLUNTARY GUILTY PLEA(A)

Entering a guilty plea results in a waiver of several constitution rights, therefore the due process clause requires that guilty pleas are entered into voluntarily knowingly and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709. The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial and the right to confront one's accusers. This court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 433, 271 S.E.2d. 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d. 39 (1991). In addition to the requirements of BOYKIN, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived. Id. [3-5]

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the P.C.R. hearing. Harres v. Leeké, 282 S.C. 131, 318 S.E.2d. 360 (1984). In this case, the transcripts of Gordon's plea on its face provides enough evidence to hold Gordon's plea was not entered into voluntarily or knowing. A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea "may be accomplished by colloquy between the court and the defendant, between the court and defendant's counsel or both". State v. Ray, 360 S.C. 431, 437,

App. P. 4/12
ANDREWS

427 S.E.2d.171,174 (1993).Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver,the record should indicate the defendant was fully aware of the consequences of his guilty plea.State v. Lambert,206 S.C. 574,225 S.E.2d.340 (1975).The court failure to inform Gordon that the murder charge carried a mandatory minnum sentence of thirty years without the possibility of earning "good behavior" and "work credits",rendered the plea invalid.The mandatory minnum was only mention in passing by the judge.

The judge informed Gordon that the offense did not allow for parole,but he failed to inform Gordon that he would not be eligible for any "good time" or "earn work credits".

§ 24-13-100(B) states in part:"a prisoner convicted of a "no parole offense" against this State as defined in section § 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by section § 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution...is entitled to deduction from the term of his sentenc...However,no prisoner serving a sentence for life imprisonment or a mandatory minnum term of imprisonment for thirty years pursuant to section § 16-3-20 is entitled to credits under this provision.

Gordon also pled guilty to attempted armed robbery.The judge explained to him that he would have to serve 85% of his sentence. Therefore,Gordon was under the impression that he would have to do only 85% of both sentences,if he exhibited good behavior.Gordon was under the impression that he could reduce his total time actually serving by six years,when actually it could only be

App. p. 8
Revised 4/3

reduced by 1½ years. Involving as it does, a liberty interest, the court should scrutinize the transcript closely to determine if Gordon's constitutional rights were violated.

App. P. # 414
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INVOLUNTARY GUILTY PLEA(B)

The petitioner contends that his guilty plea was involuntary and unintelligently made, and in violation of due process due to the fact that petitioner suffered from a psychological chemical imbalance which had [NOT] yet been thoroughly examined nor dispositioned of before the petitioner was called for plea and sentencing in the York County Court of General Session on the date of July 19 1999. Trans. Pg. 194(9-19): See Trans. Pg. 194(9-21)

Quote from the transcript of the record to show the court of the error of law:

9. You heard about his "limited mental capacity although he's not retarded" because nobody's had the opportunity to do a (full examination) Dr. Venn [did'nt] get to speak with the family members, they didn't know much about him but the records from DJJ from 1998 and 1995 psychological check indicate borderline functional IQ's, 1995 psychological shows an IQ 68. Dr. Venn IQ examination shows IQ 68, he is a individual that's easily lead around.

Absent a "thorough psychological examination being allowed to have been conducted on the petitioner the petitioner contends that his guilty plea was involuntarily unintelligently and in violation of due process, and therefore, petitioner's guilty plea and time sentence should be vacated as a result of this action. Boykin v. Alabama, Supra, Moody v. United States, 469 F.2d. at 700; Durant v. United States 410 F.2d. 689. As the record clearly violated Rule 11 Federal Rules of criminal procedures and U.S. Constitution laws as defined by the

U.S.C.A. 6th & 14th Amendments as determined by the United States Supreme Court, and on that IPSO FACTO, counsel should have withdrawn

App. P. 14
~~XXXXXXXXXX~~ 4/5

the petitioner's guilty plea and trial judge erred in allowing the petitioner to enter into a plea of guilty, absent a adequate and thorough psychological examination which would have determined if petitioner was competent to enter a plea of guilty. Tolliver v. U.S., 563 F.2d.1117 (4th.cir.1997); U.S. v. Cain, 653 F.2d.883 (4th. cir.1981).

Based on the alleged due process violation and all the above mentioned facts petitioner request that his case be vacated and a new trial set.

A.P.P. 416
ANDREW

PETITIONER WAS DENIED DUE PROCESS, PETITIONER
PLED GUILTY WITHOUT THE ABILITY TO WITHDRAWN
PLEA, WHERE DOUBLE JEOPARDY ISSUE WAS PREJUDICE.

South Carolina statute § 16-23-490 provides that any person who commits any felony under the laws of the state through the use of a dangerous or deadly weapon is also guilty of the crime of "Possession of a weapon during the commission of a violent crime" punishment by imprisonment for not more than five years, which punishment shall be in addition to any punishment provided by law for the felony. Another S.C. statute provides that any person convicted of the felony of attempted armed robbery while armed with a deadly weapon shall be punished by imprisonment for not more than twenty years. Petitioner, as the result of an attempted armed robbery in which he used a firearm, was convicted in S.C. State Court of both "attempted armed robbery and possession of a weapon during the commission of a violent crime and pursuant to the statutes was sentenced to five years for possession of a firearm during the commission of a violent crime and ten years consecutive for attempted armed robbery.

The petitioner seeks reversal of his convictions and sentence for attempted armed robbery on the ground that his sentence for both Possession of a weapon during the commission of a violent crime and attempted armed robbery violated due process and violated the protection against multiple punishment for the same offense provided by the Double Jeopardy Clause of the Fifth Amendment as made applicable to the States by the Fourteenth Amendment. The petitioner construes the commission of a violent crime as defining the "same

APP. P. 10
MAGNUS 417

offense" under the test announced in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306., where the same act or transaction constitutes a violation of two distinct statutes, the test for determining whether there are two offenses or only one, is whether each statute requires proof of a fact which the other does not.

Most recently, in State v. Haggard, the Missouri Supreme Court reexamined its decisions in Sours I, Supra, and Sours II, Supra. In light of the 1981 holding in Albernaz v. U.S., 450 U.S. 333, 101 S.Ct. 1137, 67 L.Ed.2d 275. The Missouri Court, however, remained unpersuaded, stating:

Until such time as the Supreme Court of the United States declares clearly and unequivocally that the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution does not apply to the legislative branch of government, we cannot do other than what we perceive to be our duty to refuse to enforce multiple punishments for the same offense arising out of a single transaction "619 S.W. 2d at 51.

The Double Jeopardy Clause forbids either multiple prosecutions or multiple punishment for the same offense. See E.g., North Carolina v. Pearce, 395 U.S. 711, 711-718, 89 S.Ct. 2072, 2076-2077, 23 L.Ed.2d 656 (1969); United States v. Benz, 282 U.S. 304, 307-308, 51 S.Ct. 113 114, 75 L.Ed. 354 (1931), Ex Parte Lange 18 Wall, 163, 169 173-175 21 L.Ed. 872 (1874). Petitioner was convicted of both attempted armed robbery and possession of a weapon during the commission of a violent crime, and sentenced for both crimes. Had petitioner been tried for these two crimes in separate trials he would plainly have been subjected to multiple prosecutions for "the same offense" in violation of the Double Jeopardy Clause. See Harris v. Oklahoma,

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433 U.S. 682, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977) (Persuriam):
Brown v. Ohio, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977), for the reasons stated below, I do not believe that the phrase "the same offense" should be interpreted to mean one thing for purposes of the prohibition against multiple prosecutions and something else for purpose of the prohibition against multiple punishment.

Attempted Armed Robbery and Possession of a weapon during the commission of a violent crime constitute the same offense under the test set forth in Blockburger V. United States, Supra. To punish petitioner for possession of a weapon during the commission of a violent crime, the state was not required to prove a single fact in addition to what it had to prove to punish him for attempted armed robbery. The punishment imposed for possession of a firearm was not predicted upon proof of any act, state of mind, or result different from that required to establish attempted armed robbery, petitioner was thus punished twice for the elements of attempted armed robbery: once when he was convicted and sentenced for possession of a weapon during the commission of a violent crime. A State has wide latitude to define crime and prescribe the punishment for a given crime. For example, a State is free to prescribe two different punishments (e.g.; a fine and a prison term) for a single offense. But the Constitution does not permit a State to punish as two crimes conduct that only constitutes one "offense" within the meaning of double jeopardy clause, for whenever a person is subject to the risk that he will be convicted of a crime under State law, he is "put in jeopardy of life or limb" for the same offense is to have any real meaning, a State cannot be allowed to convict a defendant two, three or more times simply by enacting separate statutory provisions.

defining nominally distinct crimes, if the Double Jeopardy Clause imposed no restrictions on legislature's power to authorize multiple punishment, there would be no limit to the number of conviction that a State could obtain on the basis of the same act, state of mind, and result. A State would be free to create substantively identical crimes differing only in name, or to create a series of greater and lesser included offense of the second, the second lesser included offense of the third, and so on.

Contrary to the assertion of the United States in its Amicus Brief for United States as Amicus Curiae 18-19, the entry of two convictions and the imposition of two sentence cannot be justified on the ground that the legislature could have simply created one crime but prescribed harsher punishment for that crime. This argument incorrectly assumes that the total sentence imposed is all that matters, and the number concerns underlying the Double Jeopardy Clause when multiple charges are brought, the defendant is "put in jeopardy" as each charge. To retain his freedom, the defendant must obtain an acquittal on all charges; to put the defendant in prison, the prosecution need only obtain a single guilty verdict. The prosecution's ability to bring multiple charges increases the risk that the defendant will be convicted on one or more charges. The very fact that a defendant has been arrested, charged and brought to trial on several charges may suggest to the jury that he must be guilty of at least one of those crimes. Moreover, where the prosecution's evidence is weak, its ability to bring multiple charges may substantially enhance the possibility that, even though innocent, the defendant may be found guilty on one or more charges as a result of a compromise verdict. The submission of two charges rather than one gives the prosecution

APP. P. 40
430
H. W. M. B. B.

"the advantage of offering the jury a choice-a situation which is apt to induce a doubtful jury to find the defendant guilty of the less serious offense rather than to continue the debate as to his innocence." Cichos v. Indiana, 87 S.Ct. 271 (1966).

However, in petitioner case he was denied due process, petitioner pled guilty without the ability to withdrawn plea, where double jeopardy issue was prejudice. In violation of the Fifth, Sixth, and Fourteenth Amendment to the United States Constitutional.

For the foregoing reason's the petitioner should be granted a new trial.

App. P. 16

~~App. P. 16~~ 421

PETITIONER DUE PROCESS RIGHT WERE VIOLATED WHERE
STATEMENT ON APPEAL WAS INADMISSIBLE IF PETITIONER
WENT TO TRIAL RATHER THEN PLEA GUILTY.

Defense counsel testified he told Gordon he could go to trial and still challenge "all this". However, defense counsel also told Gordon he did not have a defense and "even if we win on the issue of the statement being kept out, the fact of the matter is you have got your three co-defendants [who are] going to testify against you". You can't testify. You've got this other person out there, the victim. App. 477, 1.1-0 478, 1.5. Gordon unequivocally testified he would not have pled guilty and would have insisted on going to trial if he knew he was waiving the right on appeal to challenge the issue of his statement being involuntary and coerced.

In Shirely v. State, 306 S.C. 241, 411 S.E.2d.215 (1991), this court held defense counsel was ineffective for failing to advise petitioner prior to his guilty plea that his statements may have been involuntary because the investigating officer promised him a four-year cap. The court noted that statements are inadmissible at trial when they are involuntary, or the result of a promise. State v. Franklin, 299 S.C. 133 382 S.E.2d.911 (1989).

As here, Shirely, testified he would have insisted on going to trial to challenge his involuntary statement had he been properly advised. Shirely v. State, 411 S.E.2d.216

Furthermore, defense counsel's argument in this case that Gordon's statement was involuntary was meritorious. The Fifth Amendment guarantees the right to speak with counsel upon request in a custodial setting. Edward v. Arizona, 451 U.S. 477 101 S.Ct.1880 (1981). It is true that where a suspect, such as Gordon, is indecisive in his request for counsel, the police need not always cease questioning. Davis v. United States, 512 U.S. 452, 114 S.Ct.2350 (1994). Yet this is an unusual case. Gordon was a juvenile and as a juvenile he did not possess the authority to waive his right to counsel without his parent or legal guardian's consent.

The U.S. Supreme Court has held that a person accused of crime "required the guiding hands of counsel at every step in the proceeding

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against him, Powell v. Alabama, 287 U.S. 45 (1932) and that constitutional principle is not limited to the presence of counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. United States v. Wade, 338 U.S. 218 (1967). According, "the principle of Powell and succeeding cases requires that we scrutinize any pretrial confrontation of the accused to determine whether the presence of his counsel is necessary to preserve the defendant's basic right to a fair trial as affected by his right meaningfully to cross-examine the witness against him and to have effective assistance of counsel at trial itself. It calls upon us to analyze whether potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice."

Applying this test, the Court has held that "critical stages" including the pre-trial type of arraignment where certain rights may be sacrificed or lost, Hamilton v. Alabama, (1961) and the pre-trial line up, United States v. Wade, ; Miranda v. Arizona, (1966) where the court held that the privilege against compulsory self-incrimination includes a right to counsel at a pre-trial custodial interrogation. The question arises.... may a suspect who has retained or been appointed counsel and or been indicted (or had other "adversary criminal proceedings initiated against , e.g., appeared at preliminary hearing be questioned or allowed to talk) in the absence of counsel so long as he is given the Miranda warnings and waives his rights? The difficulties raised by the interplay of Massiah, supra, and Miranda are illustrated by United States v. Durham, 475 F.2d.208 (7th Cir. 1973), where a three judge panel "split" three ways. Swgert, C.J., maintained that even though defendant had been informed of and waived his Miranda rights, Massiah barred the admissibility of statements obtained from him in the absence of counsel, since the police knew that defendant had a lawyer and that the lawyer had already represented him at the preliminary hearing. Dissenting judge Castle stressed that the facts demonstrate defendant's clear and knowing waiver of any right to have his counsel notified of the interview and contended that Massiah and McLeod, supra, are "irrelevant to

situations involving a waiver of the right to have counsel present, "for both cases involved the deliberate acquisition of information under circumstances preventing an effective exercise or waiver of rights to counsel. Pell, J., concurring in part, agreed with the dissent that a defendant already represented by counsel "may waive the presence and assistance of that counsel, provided it very clearly appears that the accused deliberately and understandingly chose to forego that assistance" but disagreed that the record demonstrated defendant had done so.

A.B.A., Code of Professional Responsibility DR 7-104 (A)(1) (1970), provided that during the course of his representation as lawyer "shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or by law is authorized to do so. "Considering United States v. Thomas, 474 F.2d.110 (10th Cir.1973), viewing law enforcement officials as agents of the prosecution attorney for purposes of this canon and deeming the canon violated even though defendant requested the interview with the Federal agents and then read and signed a Miranda waiver of rights form before making a statement. "[The Canon] is obviously not something which the defendant alone can waive."

The Thomas case, however, reflects a distinctly minority view. Most courts take the position that the police may question a prisoner known to be represented by counsel without notifying his lawyer of their purpose. See e.g., United States v. Vasquez, 476 F.2d.730 (5th Cir.1973); Coughlam v. United States, 391 F.2d.371 (9th Cir.1968) (forceful dissent by Hamley, J.), sharply criticized in note, 1968 Duke, L.J.816; People v. Patterson, 39 Mich.App.467, 198 N.W.2d.175 (1971) (forceful dissent by Levin, J.); State v. Graham, 59 N.J.365, 283 A.2d 321 (1971). Most courts have even less trouble upholding the admissibility of the statement when the person represented by counsel initiated the conversation or request an interview with particular officer. See e.g. United States v. Crisp, 435 F.2d.354 (7th Cir.1970); Reinke v. U.S., 405 F.2d.228 (9th Cir.1969); State v. Sample, 107 Ariz 407, 489 P.2d.44 (1971).

People v. Arthur, 22 N.Y.2d.325, 239 N.E.2d.537 (1968), holds that

App. p. 424
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"once an attorney enters the proceeding, the police may not question the defendant in the absence of counsel unless there is an affirmative waiver, in the presence of the attorney, it is the defendant's right to counsel, and that "there is no requirement that the attorney or the defendant request the police to respect this right."

Footnote 35 to the Miranda opinion and the lawyer's right to assist a "cleint" who does not ask for, or says he doesn't want any, assistance. Section 140.7(1) of the 1974 Model Code provides that counsel who informs the station officer that he represents an arrested person shall have prompt access to such person, by telephone, and in person on counsel's arrival at any place where such person is detained "and, further that "if no counsel for the arrested person isn't present, similar privileges must be accorded to a relative or friend of the arrested person." Consider also in footnote 35 to Miranda the court looked back on ESCO BEDO as follows: The police also prevented the attorney from consulting with his client independent of any other constitutional proscription, this action constitutes a violation of the Sixth Amendment right to the assistance of counsel and excludes any statements obtained in its wake."

Furthermore, the public defender, upon his request and with due regard for reasonable law enforcement administrative procedures, shall be permitted to communicate with any person in custody to determine whether that person has counsel and, if such person desires that the public defender represent him or her, to make an initial determination as to whether the person is indigent. Gordon's due process right were violated when the Rock Hill Police Department refused to allow Gordon's counsel to interview him at counsel request, and finally Gordon's due process right were violated when counsel allowed Gordon to plea guilty and waive on appeal the right to challenge a Fifth Amendment issue to the United States Constitutional.

For the foregoing reasons and facts Gordon case should be vacated and a new trial set.

App. P. 42
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PETITIONER WAS DENIED DUE PROCESS WHERE HE WAS ALLOWED TO PLEA GUILTY UNDER UNAMBIGUOUS STATUTE CHILDREN'S CODE OF LAWS.

The Supreme Court directed that, prior to transfer, a hearing must be held in which certain rights are afforded to juveniles. In an appendix to its opinion in Kent, the Supreme Court quoted, with approval, a District of Columbia policy memorandum which recited eight factors to be considered by the Juvenile Court in making a transfer decision. Although the Supreme Court did not explicitly hold that these factors must be followed by lower courts. In Patton v. Toy, 867 F.Supp. 356 (D.S.C. 1994), at 362 the Court held, this court believes that these factors provided excellent general guidance quoting the eight factors in Kent.

However, a juvenile waiver hearing must measure up to the essential of due process and fair treatment. Application of Gault, 387 U.S. 1, 30, 87 S.Ct. 1428 (1967), quoting from Kent v. United States, 86 S.Ct. 1045 (1966). "Kent and Gault make it unquestionably clear that Juvenile Court proceedings affect a young person's substantial rights must measure up to the essential of due process and fair treatment. See Kempen v. Maryland, 428 F.2d 172 (4th Cir. 1970). However, In the Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522, 526 (1980), the Court encourages Family Court judges in South Carolina to apply the principles of the Kent case when making the decision of whether to transfer a child to adult court. With the increases participation of juveniles in more serious crimes, the Family Court judge will be called upon to make even more transfer decisions, and the Kent case will provide excellent guidance in assisting the Family Court judge to present records which a review court can consider in a meaningful manner.

With the onset of more of these cases, the burden on Family Court judges will be even greater, but it must be remembered that the objective of the Family Court

App. P. 424
[Handwritten signature]

is to provide measures of guidance and rehabilitation for the child and to protect society, not fix criminal responsibility, guilt or punishment. Each "child" is entitled to due process a transfer to adult court, and any reviewing court must ensure that each "child" receives such process.

See section § 20-7-7605(1) and (10) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this state, it is ascertained that the child was under the age of "seventeen" years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the Family Court of competent jurisdiction, "However, under the same statutory subsection (10) authorize waiver on the basis of ages fourteen years or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, committed magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

In the case at bar, petitioner contends that his due process right to a juvenile transfer hearing were violated when the prosecutor failed to motion the court for proper jurisdiction, and obtain a waiver prior to petitioner taking a guilty plea. Petitioner was sixteen years of age and turn seventeen while awaiting on trial in the detention center, and was ultimately tried as an adult upon turning seventeen years of age. However, the solicitor in the present case failed to look to subsection § 20-7-400 and 20-7-7605(1), (10)

App. P. 204
HARRIS 43

§ 40-55-55 "It is unlawful for a person to engage in the practice of psychology in this State without obtaining a license from the board, except as otherwise authorized by this chapter.

As in the case at bar, the psychologist who evaluated petitioner was not licensed in the State of South Carolina. The psychologist in this case rendered an opinion that the petitioner was competent to stand trial and waive his Fifth Amendment right to remain silent. For the foregoing reasons, the petitioner's due process right to the United States Constitutional and South Carolina Constitution were violated.

For the foregoing reasons, the petitioner should receive a new trial and be afforded a new evaluation.

App. P. 204 432
~~ADDENDUM~~

CONCLUSION

For the forgoing reasons stated above, Gordon submits that he is entitled to a writ of habeas corpus and an order directing the State of South Carolina to vacate and set a new trial.

Respectfully Submitted

/s/ Antonio Gordon

A. Gordon #259798

December 16, 2005

App. P. 1218
~~App. P. 1218~~ 4/33

MEMORANDUM OF LAW

Gordon argues that a decision by a Court not to entertain a request is not a final judgement on the merits. Rather it is a decision only as to whether the court should entertain a case on the merits. "Entertain has been defined as "To bear in mind or consider; esp., to give judicial consideration to [the court then entertained motions for continuance]." Black's Law Dictionary (7th, Ed. 1999), entertain.

Further they Key, opinion itself refutes the State's position. The Court stated in Key:

Although article V § 5, of the South Carolina Constitution vests this Court with authority to issue extraordinary writs and entertain actions in it's original jurisdiction, this Court's primary function is to act as an appellate Court to review appeals from the trial courts. In rule 229, SCACR, this Court indicated it will not entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State. Only when there is an extraordinary reason such as eaction of significant public interest or an emergency will this court excersise its original jurisdiction. Key, 305 S.C. at 116 406 S.E.2d, at 357 (emphasis added).

Gordon submits that the Supreme Courts dismissal of his application pursuant to Key is based upon the Court's determination that the matter could be entertained in the trial courts and that no sigini- cant public interest nor emergency existed. No mention of the merits of Gordon's request for relief was made (see Wilson v. Moore, 999 F. Supp)...

SWORN TO AND SUBSCRIBED BEFORE

ME THIS 16th DAY OF December 05

NOTARY: [Signature]

EXP: MAY 5, 2008

151 Antonia Gordon



06CP46-10

App. P. 824
434

CLERK OF COURT'S OFFICE

P.O. Box 649, York, South Carolina 29745

January 30, 2006

Antonio Gordon 259798
McCormick Correctional Institute F-1-A-164
386 Redemption Way
McCormick, South Carolina 29899

Re: Petition for Habeas Corpus

Dear Mr. Gordon:

The documents referenced above have already been filed in the Clerk of Courts office as a Post Conviction Relief and therefore cannot be returned to you. If you are trying to file your document elsewhere you will need to prepare the appropriate paperwork and forward it to the correct office in which you would like it filed. The Clerk of Courts office does not forward documents and would not be able to forward this anyway because it has been filed in our office and we are awaiting direction from the Attorney General as to whether or not we are to appoint an attorney for you.

The copies of your documents were mailed to you the week of January 23, 2006 so you should receive them within the next week or so.

Sincerely,

Lisa Bennefield

Lisa Bennefield
Associate Deputy Clerk

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435

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Antonio Gordon, SCDC No. 259798,

Petitioner,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2006-CP-46-010

~~RETURN AND MOTION TO DISMISS~~

RETURN AND MOTION TO DISMISS
PETITION FOR WRIT OF
HABEAS CORPUS

This matter comes before the Court by way of a document filed January 3, 2006, and captioned "Petitioner for Writ of Habeas Corpus." The Respondent submits the petition should be summarily dismissed because it fails to support the requested relief.

I. PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, with one consecutive to the murder sentence, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

The Petitioner timely filed a notice of appeal and an Anders brief was submitted on his behalf. The Supreme Court of South Carolina affirmed the Petitioner's convictions and sentence.

~~CONFIDENTIAL~~ App. P. 244
436

The Petitioner subsequently filed his first PCR application on June 19, 2000.¹ (2001-CP-46-1414). The Respondent made its return on May 4, 2001, and an evidentiary hearing was convened at the Moss Justice Center in York County on July 29, 2003. The application was denied and dismissed by the Honorable J. Ernest Kinard by Order dated August 19, 2003.

The Applicant filed a timely notice of appeal and a Johnson petition was submitted on his behalf. The South Carolina Supreme Court denied the petition for writ of certiorari.

The Applicant then filed a second PCR application on July 6, 2004. The Respondent made its return and motion to dismiss on December 12, 2004. The Application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The Order of Dismissal was dated May 20, 2005. The Applicant did not appeal the denial of his second PCR application.

The Applicant also has a pending petition for writ of habeas corpus in federal court (2:05-3327-MBS-R). This petition was filed on December 12, 2005.

For the purpose of this return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections records, and petition for writ of habeas corpus. The Respondent reserves the right to amend this return upon receipt of any relevant materials.

II. APPLICABLE LAW

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, supra.

¹ The Respondent notes that the Applicant filed a second PCR application on August 21, 2001, (2001-CP-46-1866) but that it was merged with 2001-CP-46-1414.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, supra; Hunter, supra; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, supra.

Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Gibson, supra. PCR is not rendered "unavailable or inadequate" merely because the petitioner's application might be dismissed as successive. In fact, any matter which is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (1976 & Supp. 1995), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998) (emphasis added); Gibson, supra; Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998). The Uniform Post Conviction Procedure Act (the Act) is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, supra. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler v. Mauney, supra. Thus, "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, supra. "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5." Id.²

² Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only issue when there has been a constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Gibson, supra; Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994).

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The Respondent submits that Petitioner's allegations fail to meet the standards required for the issuance of this extraordinary writ. Gibson, supra; Butler, supra. Therefore, the petition should be dismissed.

In addition, the Respondent submits that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post conviction relief application, and to a large extent were raised in his PCR application. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed.

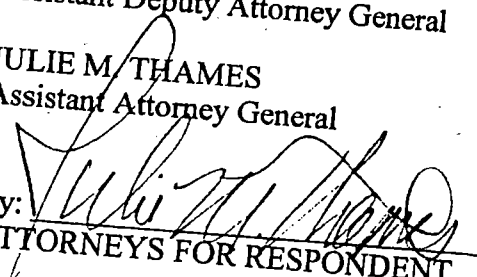
Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
4/28, 2006.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

439

Antonio Gordon, #259798

Applicant,

vs

State of South Carolina,

Respondent.

2006-CP-46-010

AFFIDAVIT OF SERVICE BY MAIL

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

Antonio Gordon, #259798
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

DATED this 28th day of April, 2006.


Gianandrea A. Maoli, Legal Assistant
For Respondent

(Attachment (3))

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FILED FOR THE 16TH JUDICIAL CIRCUIT
Case No.: 2006-CP-46-0010

App. P. 108

440

2007 JUN -1 AM 8:40

Antonio Gordon, #259798,

Petitioner,

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

[Handwritten signature]

v.

ORDER OF DISMISSAL
WITH PREJUDICE

State of South Carolina,

Respondent.

This matter comes before the Court by way of a document filed January 3, 2006, and captioned "Petitioner for Writ of Habeas Corpus." The South Carolina Post Conviction Procedure Act (the Act) comprehends and takes the place of all other common laws, statutory or other remedies theretofore available for challenging the validity of a conviction or sentence and it must be used exclusively in place of them. S.C. Code Ann. §17-27-10 et seq. (Supp. 2001).

I. PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, with one consecutive

[Handwritten initials]

APP. P. 441
~~441~~

to the murder sentence; five years for criminal conspiracy; and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

The Petitioner timely filed a notice of appeal and an Anders brief was submitted on his behalf. The Supreme Court of South Carolina affirmed the Petitioner's convictions and sentence.

The Petitioner subsequently filed his first PCR application on June 19, 2000¹ (2000-CP-46-1414). Tara D. Shurling, Esquire, represented the Petitioner. The Respondent made its return on May 4, 2001, and venue was changed due to judicial conflicts. An evidentiary hearing was convened in Richland County on July 29, 2003. The application was denied and dismissed by the Honorable J. Ernest Kinard by Order dated August 19, 2003.

The Applicant filed a timely notice of appeal and a Johnson petition was submitted on his behalf. The South Carolina Supreme Court denied the petition for writ of certiorari.

The Applicant then filed a second PCR application on July 6, 2004. The Respondent made its return and motion to dismiss on December 12, 2004. The application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The Order of Dismissal was dated May 20, 2005. The Applicant did not appeal the denial of his second PCR application.

The Applicant filed a petition for writ of habeas corpus in federal court (2:05-3327-MBS-R) on December 22, 2005. This petition was denied by order dated February 16, 2007.

Before this Court are the Clerk of Court records, the South Carolina Department of

¹ The Respondent notes that the Applicant filed a second PCR application on August 21, 2001, (2001-CP-46-1866) but that it was merged with 2001-CP-46-1414.

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~~XXXXXXXXXX~~ 442

Corrections records, and the petition for writ of habeas corpus. Incorporated by reference are the Clerk's records for all previous PCR actions.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the Clerk of Court records, the South Carolina Department of Corrections records, the records of the prior proceedings, and the petition for writ of habeas corpus.

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, supra.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, supra; Hunter, supra; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, supra.

Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Gibson, supra. PCR is not rendered "unavailable or inadequate" merely because the petitioner's application might be dismissed as successive. In fact, any matter which is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. "17-27-10 to -120 (1976 & Supp. 1995), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998) (emphasis added); Gibson.

App. p. 443

supra; Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998). The Uniform Post Conviction Procedure Act (the Act) is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, supra. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler v. Mauney, supra. Thus, "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, supra. "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court, S.C. Const. Art. V, '5.'" Id.²

This Court finds that the Petitioner's allegations fail to meet the standards required for the issuance of this extraordinary writ. Gibson, supra; Butler, supra. Therefore, the petition should be dismissed.

In addition, this Court finds that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post conviction relief application, and to a large extent were raised in his PCR application. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

III. CONCLUSION

This Court finds that the allegations raised by Petitioner are cognizable under the Act; therefore, they may not be raised in this Writ for Habeas Corpus. Simpson, supra; Gibson, supra.

² Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S. Ct. 442, 112 L.Ed.2d 425 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only issue when there has been a constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Gibson, supra; Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994).

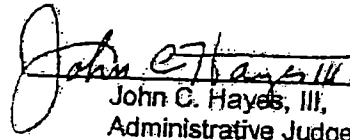
App. P. 444
~~444~~

Keeler v. Mauney, supra. This Court finds that the Petitioner is barred from bringing a Writ of Habeas Corpus in the circuit court. Keeler v. Mauney, supra. The Respondent's Motion to Dismiss the Petitioner's Writ of Habeas Corpus is granted.

IT IS THEREFORE ORDERED THAT:

1. The habeas corpus petition is DENIED AND DISMISSED WITH PREJUDICE;
2. The Petitioner is remanded to the Respondent's custody for the completion of his sentence.

AND IT IS SO ORDERED!


John C. Hayes, III, #5
Administrative Judge
Sixteenth Judicial Circuit

April 30th, 2007
York, South Carolina.

APP. P 444

State of South Carolina
York County
Antonio Gordon 259798
Applicant

V.

State of South Carolina
Respondent

In the Court of Common Pleas 444 B
Motion for relief from order
Pursuant to 60 B.S.C.R.CIV.Pro.

Attachment (4)

To: Honorable John C. Hayes III, and Ashley A. McMahan: Attorney Gen.

This matter is presently before the court where the Applicant seeks for Honorable John C. Hayes III, to recuse himself from the pending habeas corpus due to the court's inability to make conclusions and facts of law to All issues raised upon the record for review due to conflict of Interest with Honorable John C. Hayes III, which prejudice the Applicant. Applicant's habeas corpus was denied review of those issues raised and presented to this Honorable court, therein depriving this applicant of a fair "adjudication" of the issues properly raised in the habeas corpus.

History

The applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitments of the Clerk of Court for York County. On October 16, 1998, the York County Grand Jury indicted the Applicant for murder, two counts of Attempted Armed robbery, three counts Possession of a weapon during the commission of a violent crime, Possession of a weapon by a person under twenty-one, and Criminal Conspiracy.

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~~Amended~~ 445B

On July 16, 1999, the applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes III, sentenced the applicant to thirty years imprisonment for murder, five years for each count of Possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, with one consecutive to the murder sentence, five years for criminal conspiracy, and five years for a weapon by a person under twenty-one years of age. Robert D'Agastino, Esquire, represented the Applicant.

The Applicant timely filed Notice of Appeal and an Anders brief was submitted on his behalf. The Supreme Court of South Carolina affirmed the Applicant's convictions and sentence.

The Applicant subsequently filed his first PCR application on June 14, 2000. (2001-CP-46-1444). The respondents made its return on May 4, 2001, and an evidentiary hearing was convened at the Richland County Courthouse on July 29, 2003. The application was denied and dismissed by the Honorable J. Ernest Kinard by order dated August 1, 2003.

The Applicant filed a timely notice of appeal and Johnson Petition was submitted on his behalf. The South Carolina Supreme Court denied and dismissed the Petition - Writ of Habeas Corpus.

APP. P. ~~446~~

446B

The applicant then filed a second PCR application on July 6, 2004. The respondent made its return and motion to dismissed on December 12, 2004. The application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The order of dismissal was dated May 20, 2006. The applicant did not appeal the denial of his second PCR application. Applicant's Federal Habeas was dismissed without Prejudice to allow applicant to exhaust All state remedies.

Statement of facts

Rule 60 B of the S.C. Rules of Civil Procedure allows any party to seek relief from judgement or order after a demonstration of mistake, inadvertance, surprise, excusable, neglect, fraud, misrepresentation, or other misconduct if an adverse party has been brought before the court, specially where such a judgement has been imposed through conflict of Interest upon the court. Such conflict upon the court places the judiciary's integrity into serious Question and jeopardizes the machinery of Judicial decision-making y causing it to become unfair and fundamentally flawed; See: Hewning V. Ford Motor Co., 354 S.C. 72, 78, 579 S.E. 2d 605, 08 (S.C. 2003).

It is recongnizable that there is usually a one year statute of limitations on Rule 60 B, S.C.-R. CIV, Proc., so that the preservation of final judgement can be strictly

APP. P. 44

~~XXXXXXXXXXXX~~ 447 B

enforced. However, no limitations exist when a party seeks to set aside judgement due to a conflict of interest with the Judicial Judges. *Hayy v. Pruitt*, 339 S.C. 425, 529 S.E.2d 714 (S.C. 2000).

Consent order changing venue was issued on June 26, 2003 by Honorable John C. Hayes III, the Honorable Lee S. Alford, has recused himself due to a conflict. Judge Alford heard oral arguments and ruled on discovery issues in the Applicant's case before his trial occurred. Because both judges for the sixteenth circuit are unable to hear this case, this case should be transferred to Richland County for the PCR hearing to be heard in a more timely manner.

It is apparent through the language of Rule 60(B) that such order of Dismissal with Prejudice should be void, especially where there exists evidence presented either by direct or implied consent that supports the party's claims, and such ability to void the ruling is allowed even after judgement has been rendered.

The purpose of the applicable statutes and procedural rules is to preserve all available claims that have merit in order to guarantee a complete adjudication of the facts and issues relevant to the proceedings. This Court has competent jurisdiction and is vested with the authority to entertain this motion pursuant to Rule 60(B) of the S.C. Rules of Civil Procedure, where the claim is conflict of interest with a

App. P. 448

B

~~XXXXXXXXXX~~

Judicial Honorable Judge who signed a consent to change venue order stating that it will be a conflict with the Honorable himself.

Furthermore, even after the order was signed to dismiss applicant's habeas corpus with prejudice, in the order applicant was not advised of his appeal rights. Applicant should be entitled to an evidentiary hearing on the state habeas corpus pursuant to S.C. Code Ann § 17-17-10 to 17-17-12 17-27-10 to 17-27-120 and Rule 60(B), to determine the facts, merits and constitutional rights properly raised in the state habeas corpus.

Finally, the applicant is entitled to his evidentiary hearing by and through the rights granted in the S.C. Rules of Civil Procedure, S.C. Code of laws, and due process protection of the South Carolina and United States Constitutions, and now seeks such relief from this court. I so pray that Honorable John C. Hayes III, recuse himself from the 'order of Dismissal with Prejudice' and that an Honorable who are not in conflict with the case hear the pending habeas.

Respectfully Submitted

Antonio Gordon

Antonio Gordon 254798

McCorm. Corr. Inst

386 Redemption Way

McCormick, SC 29899

Filed before

C. A. Young 07

8/28/2011

State of South Carolina
County of York

Antonio Gordon 259798
Applicant

State of South Carolina
Respondent

In the Court of Common Plea

Motion for Go B ~~XXXXXX~~

Affidavit of service by ^{449B}
Mail

I, Antonio Gordon 259798, place in the hands
of McCormick Correction Institution mail-room hands,
one motion for Go B, pursuant to Rule Go B, on
August 7, 2001. This is a sworn affidavit and the
information enclosed in the motion is to be facts
and the truth.

/s/ Antonio Gordon

Antonio Gordon 259798

McCorm. Corr. Inst.

386 Redemption Way

McCormick, SC 29899

sworn to me and subscribed
before me this 7 day of Aug or
Notary: Joyce L Young
XP: 8 28 2011

sworn to and sub
scribed this
day of
Aug

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2006-CP-46-010

Antonio Gordon, SCDC No. 259798,)

Petitioner,)

v.)

State of South Carolina,)

Respondent.)

ORDER GRANTING
RULE 60(b) MOTION

DEPT. OF PROBATION
& CORRECTIONS
C.C.C.P. & GS
YORK COUNTY, SC

2008 FEB -6 PM 12:42

App. p. 450

This matter comes before me on a Motion for Reconsideration under Rule 60(b). The Petitioner, Antonio Gordon, requested an amendment and clarification of Judge John C. Hayes, III.'s Order dated April 30, 2007, filed June 1, 2007.

The Petitioner claims that the manner in which Judge Hayes' Order reads might prejudice him from filing a State Habeas Corpus Petition in the original jurisdiction of the Supreme Court. Judge Hayes' Order recites a quotation from Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998), but does not recite in the Order that the Petitioner is not prejudiced to bring a Habeas Corpus Petition in the South Carolina Supreme Court.

The State's representative, Ashley McMahan, does not dispute the Petitioner's right to file a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court.

Therefore, I grant the Petitioner's Motion to Reconsider and amend and clarify Judge Hayes' Order that the Petitioner is without prejudice to bring a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court.

AND IT IS SO ORDERED.



Roger L. Couch

 _____, South Carolina

1/31, 2008.

Antonio Gordon # 259798

A.C.I. SMU 8242

P.O. Box 1151

Fairfax, SC 29827

February 2, 2015

App. P. ~~44~~

451

RE: Gordon v. State, Case No: 2006-CP-46-010

Dear clerk:

Please find enclosed a S.O. R. Civ. Proc. Rule 60 (b) motion I am filing in this Courts jurisdiction. Can you please stamp file and send me a stamped true copy back for my records?

Furthermore, Can you please provide Judge Alford or Rogers L. Couch with a copy? Judge Hayes recused himself from this case due to a conflict of interest. Thanks.

Sincerely,

Antonio Gordon

FILED-RECEIVED
2015 MAR -9 PM 3:15
DAVID HAMILTON
C.C.P. & CS
YORK COUNTY, SC

State of South Carolina
County of York

Antonio Gordon #259198,
Petitioner,

vs.

State of South Carolina,
Respondent.

Attachment (A)

IN THE COURT OF Common PLEAS
Sixteenth Judicial Circuit

Case No: 2006 - CP - 46 - 010

Motion for relief from Judgment Pursuant to S.C.P.
Civ. Proc. Rule 60(b)(5) - Austin v. State, 409 S.E.2d
395 (1991)

App. 8
2016 MAR -9 PM 3:11
FILED-RECEIVED
452
DAVID HAMILTON
CC, CP & ES
YORK COUNTY

Now Comes the Petitioner in the above - captioned matter respectfully moving this Honorable Court to grant a motion ~~for~~ relief from Judgment Pursuant to S.C.P. Rule 60(b)(5) - Austin v. State, supra. The Petitioner would show unto this Honorable Court the following:

Statement of the Case

The Petitioner filed a statutory habeas corpus January 3, 2006. Gordon v. State, Case No: 2006 - CP - 46 - 010. In the Petition Gordon asserted "General Sessions was without jurisdiction" in accepting his guilty plea because "jurisdiction had not been relinquished by Family Court". See FN¹ The Honorable John C. Hayes, III, dismissed with Prejudice without holding an evidentiary hearing. See Attachment (A) (order of dismissal dated April 30, 2007, filed June 1, 2007).

On August 7, 2007 Petitioner filed a S.C.P. Rule 60(b) motion asserting Honorable John C. Hayes, III, was a conflict of interest and asked that a different Honorable Preside over the Habeas Corpus. See Attachment (b)(1) page 5 (Rule 60(b) motion). Charles B. Burnette, III, was appointed to represent Gordon. On January 31, 2008, the Honorable Rogers L. Couch issued an order granting the Rule 60(b) motion amending and clarifying Judge Hayes' original order. See Attachment (b)(2). Thus the Court did not reach the merits of Petitioner's claim. See FN² Petitioner asked Counsel to file a Rule 59E motion and notice of appeal and Counsel failed to do so. See Attachment (c)(1)(2)(3) (Letters written to attorney)

FN¹ In the case sub judice petitioner was 16 yrs of age with an IQ 68 when he was taken into custody July 23, 1998, for murder, two counts of attempted armed robbery, three counts of poss of a weapon during the commission of a violent crime, poss of a weapon by a person under twenty-one and criminal conspiracy. The York County Grand Jury indicted the petitioner as charged on October 15, 1998. On July 16, 1999, the petitioner pled guilty in "General Sessions" without "first" being waived to General Sessions jurisdiction as those similarly situated less than seventeen years of age charged with a class A, B, C, or D felony. On July 19, 1999 the Honorable Court John C. Hayes, III, sentenced the petitioner to forty years of imprisonment.

FN² Lack of subject matter jurisdiction of the cause or subject matter jurisdiction can be raised at any time. See State v. Funderburk, 191 S.E.2d 520 (1972).

Argument

App. p. 453

The movant in a motion for relief from Judgment under Rule 60(b) bears the burden of presenting evidence proving the facts essential to entitle him to relief. See BB & T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006). A party requesting relief from judgment may not invoke Rule 60(b) for relief from judgment where the issue could have been pursued on appeal. Tench v. South Carolina Dept of Educ, 347 S.C. 117, 553 S.E.2d 451 (2001).

In the instant case the petitioner filed a Rule 60(b) motion alleging Judge Hayes was a conflict of interest and could not preside over his statutory habeas corpus and also requested that a different Honorable Preside over the habeas corpus. See Attachment (b)(1) Page 5. However, the Honorable Rogers L. Couch erroneously construed Petitioner's Rule 60(b) as a motion for reconsideration under Rule 59(c), stating Gordon requested an amendment and clarification of Judge Hayes Order dated April 30, 2007, filed June 1, 2007. See FN 1 Judge Hayes order is a nullity void ab initio. Judge Couch dismissed the habeas corpus without prejudice. See FN 2 without deciding the merits of Gordon's "Jurisdiction" claim. Petitioner did not voluntarily and knowingly waive his statutory right and Constitutional remedy to seek release from unlawful custody as those similarly situated. See Attachment (D) Affidavit of Antonio Gordon

Furthermore, Petitioner was denied his right to appellate review on Judge Couch Order which he failed to reach the merits of his "Jurisdiction" claim. See FN 3 As a result of ineffective assistance of Counsel, (failing to file a Rule 59(c) and notice of Appeal) at Gordon's request. See Attachment (c)(1)(2)(3) In violation of Austin v. State, supra, where the Supreme Court held Applicant has a right to appellate counsel's assistance in seeking review of the denial of Post-Conviction Relief. Rule 71.1 (g) SCRPC, provides that if the applicant wishes to seek appellate review, Post-Conviction relief Counsel must serve and file a notice of appeal on applicant's behalf. See FN 4

Wherefore, Gordon's case is inopposit that of Tench and he have met his burden of presenting evidence proving the facts essential to entitle him to relief. BB & T v. Taylor, supra and he is entitled to an Austin Belated Appeal.

FN1 A motion to amend and reconsideration is in actuality a Rule 59(c) motion to alter or amend Judgment.

FN2 Lack of subject matter jurisdiction may not be waived and should be taken notice of by the Court. Anderson v. Anderson, 382 S.E.2d 897 (1989).

FN3 A judgment by a Court without jurisdiction of the subject matter is a nullity and must be so treated by the Court's whenever and for whatever purpose it is presented and relied on. Brown v. Malloy, 546 S.E.2d 195 (2001).

FN4 Petitioner's jurisdiction claim was the first time it could be appealed as of right because Post-Conviction relief was unavailable or inadequate because he was entitled to his immediate release.

General Sessions was without "Jurisdiction" in accepting Gordon's guilty plea to the charges where "Jurisdiction" had not been relinquished by Family Court.

Petitioner asserts that section 20-7-6605 (1) (Supp. 1998) statutory define a "child" as a person less than seventeen years of age but arbitrarily "exclude" sixteen year old children's charged with a class A, B, C, or D felony as defined in section 16-1-20 from the definition of being a "child" is penal in nature and must be construed strictly against the state and in favor of him Pursuant to William V. State, 306 S.E. 2d 89, 410 S.E. 2d 563 (S.C. 1991) (When a statute is penal in nature, it must be construed strictly against the state and in favor of the defendant.).

However, because section 20-7-6605 (1) is penal in nature and must be construed strictly against the state, Gordon was considered "Person" under Family Court's exclusive original jurisdiction Pursuant to S.C. Code Ann § 20-7-400 (a) (3) (Supp. 1998) title "Exclusive Original Jurisdiction of Family Court"; When he pled guilty in General Sessions and since "Jurisdiction" had not been relinquished by Family Court his indictment and conviction is a nullity Void ab initio Pursuant to State v. McClure, 289 S.E. 2d 158 (S.C. 1982) (No indictments may be true billed by Grand Jury when Circuit Court lacks jurisdiction.) - And State v. England, 245 S.E. 2d 608 (S.C. 1978) (Defendant was a "person" under Family Court's exclusive original jurisdiction and since jurisdiction had not been relinquished in favor of another court under applicable statute, that section states that. . . . such person shall be dealt under § 14-21-620.)

Therefore, Petitioner is being illegally held in custody in violation of his due process rights under S.C. Const Art I, § 3 and the 14th Amendment to the United States Constitution and he is entitled to his immediate release de jure. See Gibson v. Bechtold, 1245 S.E. 2d 258 (W. Va. 1978) (The juvenile law governs and the Circuit Court was without Criminal Jurisdiction over the relator, he is being illegally restrained of his liberty.)

The constitutionality of a statute under which petitioner held in custody can be tested on habeas corpus

Petitioner asserts the constitutionality of a statute under which defendant held in custody may be tested on habeas corpus. See Ex parte Hollman, 160 S.E. 19 (The constitutionality of a statute under which defendant held in custody may be tested on habeas corpus.)

Petitioner asserts that S.C. Code Ann § 20-7-6605 (1) is unconstitutional under the equal protection clause because it arbitrarily "exclude" children's sixteen years of age charged with a class A, B, C, or D felony from being a "child" as those similarly situated less than seventeen years of age charged with a class A, B, C, or D felony. This is inconsistent with rudimentary demands of justice and renders the provision "void" and constitutionally defective, as there is no rational justification for singling out "sixteen year old children's charged with a class A, B, C, or D felony from being a "child" as others similarly situated less than seventeen years of age

charged with a class A, B, C, or D Felony, thus in violation of the equal protection clause under S.C. Const Art I. § 3 and the 14th Amendment to the United States Constitution also in violation of Gordon's right to equal protection of the law under S.C. Const. Art I. § 3 and the 14th Amendment to the United States Constitution. See Marley v. Kirby, 245 S.E.2d 604 (S.C. 1978) (all persons similarly situated should be treated alike.); Barbier v. Connolly, 113 U.S. 27 (1885) (same).

Therefore, the unconstitutional provision deprived the York County Grand Jury and General Sessions of its jurisdiction and renders Gordon's indictments and conviction a nullity and void ab initio. Petitioner is being illegally held in custody in violation of his due process rights under S.C. Const. Art. I. § 3 and the 14th Amendment to the United States Const and he is entitled to his immediate release De Jure.

Post-Conviction Relief is unavailable and inadequate where the "only" relief available is to release Gordon immediately

Petitioner asserts that Post-Conviction Relief is unavailable and inadequate because he is entitled to his immediate release and habeas corpus is his "only" remedy. See McCall v. State, 244 S.C. 15, 145 S.E.2d 419 (1965) (The purpose of habeas corpus is to test the legality of the Prisoner's Present detention. The "only" remedy that can be granted is release from custody.)

It is clear Gordon was sixteen years of age and family court did not issue an order relinquishing its exclusive jurisdiction to General Sessions as those similarly situated less than seventeen years of age charged with a class A, B, C, or D Felony, its clear section 20-7-605(c) is penal in nature and must be construed strictly against the state, its clear that section 20-7-605(c) is unconstitutional which deprived the York County Grand Jury and the General Sessions of its jurisdiction which all entitle Gordon to his immediate release and therefore, renders PCN remedy unavailable and inadequate. Gibson v. State, 445 S.E.2d 426 (1998); McCall v. State, supra.

Conclusion

It is respectfully asked that this Court grant Petitioner's Rule 60(b)(5) - Austin v. State, supra, belated Notice of Appeal and decide the merits of his claims and release him immediately from unlawful confinement.

This 2nd day of February, 2015

Respectfully submitted

Antonio Gordon

Antonio Gordon #259798

A.C.T. JMU B-242

P.O. Box 1151

Fairfax, VA 22027

Antonio Gordon #254748
McCormick Correctional Inst
386 Redemption Way
McCormick, SC 29899
February 21, 2008

App. P. #56

RE: Antonio Gordon #254748 v. State of South Carolina
Case No: 2006-CP-46-0010

Attachment (c) (1)

Dear Mr. Burnette:

I received the Order Granting Rule 60(b) motion signed by Judge Couch on January 31, 2008. However, I am requesting that you file a Rule 54(c) motion and notice of Appeal because I wish to have my claims decided on the merits.

Antonio Gordon

App. # 457

Antonio Gordon #259798
McCormick Correctional Inst
386 Redemption Way
McCormick, SC 29899

March 13, 2009

Attachment (c) (2)

Dear Mr. Burnette:

I wrote to you concerning a Rule 54(c) motion and appealing Judge Couch's order granting the Rule 60(b) motion. As you know I did not wish to have my claims waived. Have you filed the Rule ~~60(b)~~ 54(c) motion and notice of Appeal. Please write me back. Thanks.

Antonio Gordon

Dear Mr. Burnette:

I've written to you twice concerning filing a Rule 59(e) motion and notice of appeal from Judge Leach order and I have not heard back from you or no one. I am requesting the status of the 59(e) and notice of Appeal.

Antonio Gordon

July 18, 2010

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP4600010

Antonio Gordon

John Ozmit
South Carolina State Of

Henry D McMaster

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: ORDER

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ John C. Hayes, III.

2049

3/4/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

460
App. P. 880

This judgment was entered on March 9, 2015, and a copy mailed first class or placed in the appropriate attorney's box on March 9, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Anotoio Gordon ACI SMU B 242 PO Box 1151 Fairfax SC
29827

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashley Anne McMahan PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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

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

App. P. 461

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No.: 2006-CP-46-0010

Antonio Gordon, #259798,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

FILED-RECEIVED
2015 MAR -9 PM 3:18
DAVID HAMILTON
C.C. CP. & GS
YORK COUNTY, SC

Petitioner seeks to file with the Court a "Motion for Relief from Judgment Pursuant to S.C.R. Civ. Proc. Rule 60(b)(5) – Austin v. State, 409 S.E. 2d 395 (1991)" (The Motion).

Petitioner alleges the undersigned has recused himself from matters dealing with Petitioner due to a "conflict of interest." There is nothing in the file, nor in the motion, which supports this claim. In fact, the undersigned has addressed prior filings in this proceeding. The undersigned is unaware of any "conflict of interest" and therefore, will address Petitioner's motion as I am the Chief Judge for Administrative Purposes for the Sixteenth Judicial Circuit.

The last activity in this file is an Order of the Honorable Roger L. Couch granting Petitioner relief pursuant to rule 60(b) SCRCPP. The relief was, in effect, a finding that Petitioner could pursue a Habeas Corpus in the original jurisdiction of the Supreme Court.¹

The file does not reflect whether or not Petitioner filed a Habeas Corpus petition in the Supreme Court subsequent to the issuance of the Order of Judge Couch (January 31, 2008).

A review of the file reflects that the issue the current motion raises, namely that the jurisdiction of his case was in the Family Court due to his age and not in the Court of General

¹ The undersigned's Order of April 30, 2007, notes the presence of some "judicial conflicts," but obviously such did not pertain to the undersigned as the author of said Order.

gch #1

Sessions, was raised in this proceeding previously in his initial filing, dated December 16, 2005, in this case.

I find that Petitioner now seeks to raise for at least the second time, an issue regarding Family Court/General Sessions jurisdiction and therefore, the current proceeding on this issue is dismissed as it is a subsequent request for relief which has been previously ruled on and unappealed.

Petitioner also has claimed a right to an Austin review regarding his prior counsel's failure to appeal Judge Couch's Order of January 31, 2008.

Attached to the instant motion are copies of letters from Petitioner to prior counsel regarding an appeal of Judge Couch's Order which granted petitioner the relief he sought in his Rule 60(b) SCRCF Motion. As stated above, the relief was acknowledgment that Petitioner could file a Habeas Corpus proceeding in the South Carolina Supreme Court. This Order is the law of the case and is not a ruling which would appear to generate an appeal by the prevailing party. However, to the extent Petitioner has been denied his right to appeal, the undersigned has conducted an Austin review.

I find that the failure to appeal a ruling, which granted petitioner the relief he sought, resulted in no prejudice to Petitioner. Petitioner asked to and was granted the right to file a Habeas Corpus proceeding in the Supreme Court of South Carolina. Therefore, there existed no grounds upon which an appeal favorable to Petition could be predicated.

Therefore, Petitioner's Motion is to be filed, without costs, and by this Order Dismissed without Prejudice.

JCH 2

IT IS SO ORDERED.

App. P. ~~464~~
463

John C. Hayes, III
John C. Hayes, III
Chief Judge for Administrative Purposes
Sixteenth Judicial Circuit

March ~~2~~¹², 2015
York, South Carolina

#3

Antonio Gordon # 259748

App. P. 117

464

Kershaw CI Snu Room 46

4848 Goldmine Hwy

Kershaw, SC 29067

March, 23, 2015

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
CPC
23 MAR 25 PM 4:02

RE: Gordon v. State, Case No: 2006-CP-46-0010

Dear clerk:

Please find enclosed A motion TO Reconsider, Alter and amend

Judgment Pursuant TO S.C.R. Civ. Proc. Rule 59(c) I am
filing with the Court in the order issued March 4, 2015. Attachment
(b)(1) goes with the Rule 59(c) motion.

Also find enclosed A petition for Belated Notice of
Appeal In the original ^{Petitioner's} ~~original~~ order issued in this case
on April 30, 2007, Filed June 1, 2007, signed by Judge Hayes.
These Are Attachments. ~~Thanks~~ Can you please Stamp file
And send me a certified true copy back? Thanks

Antonio Gordon

State of South Carolina)
County of York)

Antonio Gordon #259998)
Petitioner,)

v.)

State of South Carolina)
Respondent.)

Attachment (8)

In The Court of Common Pleas
Sixteenth Judicial Circuit
Case No: 2006-CP-46-0010

App. P. 118

465

Motion To Reconsider, Alter and Amend Judgment
Pursuant To S.C. R. Civ. Proc. Rule 59(c)

FILED-RECEIVED
MAR 25 PM 4:02
CLERK OF COURT
SOUTH CAROLINA

Now Comes Antonio Gordon, the Petitioner in the above caption-matter moving in this Honorable Court on a Motion to Reconsider, Alter and Amend Judgment Pursuant To S.C. R. Civ. Proc. Rule 59(c). This motion arises from the Order of dismissal entered by the Court on March 9, 2015 and received by the Petitioner on March 19, 2015.

It is asked that this Honorable Court recuse himself from the case due to a motion to change venue due to a conflict of interest signed by Honorable Hayes himself in Antonio Gordon v. State, Case No: 2000-CP-46-1414 which is law of the case. Therefore, this Court should reconsider, alter and amend its Judgment, see Attachment (b) (1) (Letter from Attorney Charles B. Burnette to Judge Hayes showing he recused himself from Case No: 2006-CP-46-0010)

It is asked that this Honorable Court reconsider, alter and amend its finding, conclusion of law and judgment and grant a evidentiary hearing on Petitioner's [Jurisdiction] claim, claim "B". This Court found that Petitioner seeks to raise for at least the second time, an issue regarding Family Court / General Sessions Jurisdiction and therefore, the current proceeding on this issue is dismissed as it is a subsequent request for relief which has been previously ruled on and unappealed.

Petitioner will point out the difference on the two (2) separate "[Jurisdiction]" claims, claim "A" in which Gordon asserted Section 20-7-660.5(1) is "penal" in nature and must be construed strictly against respondent are totally inopposit that of claim "B". Yes claim "A" was attached to the initial habeas but however its obvious that Gordon are asserting in claim "B" that section 20-7-660.5 (1) is unconstitutional under the equal protection clause of S.C. Const Art I. 13 and the 14th Amendment To the United States Constitution, which the unconstitutional provision deprive York County grand Jury and General Sessions of its [Jurisdiction] over Gordon's Person and renders his indictments, conviction, and custody all a nullity and void ab initio. See ENI Its clear from Petitioner's ENI
Petitioner asserts this [Jurisdiction] claim could be raised at any time Pursuant to State v. Funderburk, 191 S.E.2d (Lack of subject matter jurisdiction of the cause or subject matter jurisdiction can be raised at any time), And should be taken notice of by the Court Pursuant To Anderson v. Anderson, 382 S.E.2d 897 (1989)

initial filing this "Jurisdiction" claim was "not" included and what this Court is doing is trying to sweep Gordon's claim under the rug to avoid ruling on the merits of the claim put before it, which is obvious the claim does have merits.

APP. P.

808

466

Petitioner will also point out he did ~~not~~ make a claim that the "Constitutionality of a statute" under which a defendant held in "custody" may be tested on Habeas Corpus Pursuant to Ex Parte Hollman, 100 S.E. 19. It's clear Petitioner asserted Section 20-7-6605(1) was unconstitutional which deprived Respondent of its [custody] and Petitioner also asserted he was entitled to his immediate release. Therefore, it's clear these claims were not in the initial Habeas Corpus.

To the contrary Petitioner did make an assertion in the initial Petition that Section 20-7-6605(1) was unconstitutional because it gave no set guidelines in which the Solicitor must go by in trying sixteen year old defendants which rendered the Statutory unconstitutional under due Process of law.

Wherefore, Petitioner asserts his Jurisdiction claim that Section 20-7-6605(1) is unconstitutional under the "Equal Protection Clause" requires an evidentiary hearing Pursuant to Ex Parte Hollman, supra, State v. Funderburk, supra, and was "not" filed in the initial Petition and this Court should reconsider, alter, amend its finding of fact and conclusion of law and Judgment.

Petitioner will ask that the Court reconsider, alter and amend its Judgment to find Petitioner did "not" ask to have Judge Hayes "Original" Order dated April 30, 2007, filed June 1, 2007 "reconsidered amended and clarified". The relief Petitioner asked for in his Rule 60(b) motion states: "I do pray that Honorable John C. Hayes, III, recuse himself from the order of dismissal with Prejudice and that a Honorable who are not in conflict with the case hear the pending habeas." Note: The record in the case of Antonio Gordon v. State, Case No. 2000-CP-46-1414 reflects Honorable Hayes signed a change of venue order alleging he was a conflict of interest which is law of the case. See Attachment (b)(1)

However, Petitioner's Rule 60(b) motion speaks for itself; there is "nowhere" therein Petitioner asked to have Judge Hayes Order amended and clarified. See Rule 60(b) motion on file. Gordon's Rule 60(b) motion was to have Judge Hayes Order "Reopen" and a different Judge considered the habeas on the merits and when Judge Couch granted relief in which Petitioner did "not" ask for in his motion was controlled by abuse of discretion and error of law. See Ena Therefore, Gordon was Prejudice and Counsel was ineffective in failing to seek appellate review at Gordon's request. This Court should reconsider its Austin review.

this 23rd day of March 2015.

Respectfully Submitted
Antonio Gordon

Ena - Generally, a moving party should be confined to the relief asked for in his motion. See Coastal v. California Ins. Co of San Francisco, 15 S.E.2d 459 (S.C. 1939). And Judge Couch granted his Rule 60(b) motion under Rule 59(c) analysis which time had laps ~~was~~ this error of law too was appealable, as the Court was without jurisdiction.

BURNETTE & PAYNE, P.A.

Attorneys at Law

Charles B. Burnette III
Connie H. Payne

414 E. Main Street
P.O. Box 12186
Rock Hill, SC 29731

Telephone (803) 328-1800
Fax (803) 328-9494
INTERNET E-MAIL
burnettelaw@Comporium.Net

APP. P. 120
467

September 11, 2007

The Honorable John C. Hayes, III.
1675-1H York Highway
York, SC 29745

RE: Antonio Gordon, #259798 v. State of South Carolina
Case No.: 2006-CP-46-0010

Dear Judge Hayes:

I have recently been appointed on the above captioned case. It is my understanding that you have recused yourself in this matter. I have been in communication with Ashley McMahon regarding a CLE conflict along with the fact that I have no file materials to date.

Ashley has agreed to schedule this matter for the week of December 3, 2007 in Spartanburg. Therefore, it is respectfully requested that the matter set before Judge Patterson on October 24, 2007 be continued to the week of December 3, 2007.

Hopefully by then, I will have received a copy of the Application, Return, prior transcripts and orders in order to properly prepare for the hearing.

With best wishes, I am

Sincerely,



Charles B. Burnette, III.

CBBIII/jow

cc Ashley McMahon, Asst. Atty. Gen.
cc Antonio Gordon ✓

State of South Carolina
County of York

Antonio Gordon #259798
Petitioner,
V.

State of South Carolina
Respondent,

In The Court of Common Pleas
Sixteenth Judicial Circuit
CASE NO: 2006 - ~~46~~^{CP} - 46-0010

App.P.
64
468

Certificate of service

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2015 MAR 25 PM 4:02

FILED-RECORDS

I, Antonio Gordon, hereby Certify that I served Petitioner
S.C. R. Civ. Proc. Rule 54(c) motion on opposing counsel at:

Attorney General office
Ashley Anne McMahon
P.O. Box 11549
Columbia, SC 29211

by depositing one copy in the mail with sufficient postage
this 23 day of March 2015.

Antonio Gordon

APP. P. 469

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Antonio Gordon,)
S.C.D.C. No. 259798,)
Petitioner,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO: 2006-CP-46-0010

ORDER

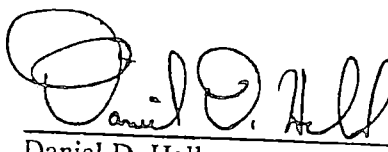
FILED-RECEIVED
2015 APR 20 AM 11:21
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before this Court by way of Antonio Gordon's ("Petitioner") Motion to Reconsider, Alter, and Amend Judgment pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure.

This Court received a handwritten post-trial motion on April 8, 2015. This case was fully adjudicated, complete with an Order granting a Rule 60(b). The Petitioner then had a second PCR action, complete with a full evidentiary hearing (2008-CP-46-4951) and an appeal.

This handwritten motion requests that the court reconsider "for at least a second time" the jurisdictional issues previously brought before the court. These issues have been litigated and orders issued. Also, as per S.C.R. Civ.P. 59(e) mandates, the motion must be made "not later than 10 days after the receipt of written notice of entry of judgment." Since these issues have been previously heard and ruled on, and since these issues are untimely, the Defendant's motions are DENIED.

AND IT IS SO ORDERED.



Daniel D. Hall
Sixteenth Judicial Circuit

April 14, 2015
York, South Carolina

FORM 5

App. P. 470

STATE OF SOUTH CAROLINA)
County of YORK)

IN THE COURT OF COMMON PLEAS

CR-CP46-4951

Antonio Gordon #259798)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

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 particular question on the reverse side of the page or on an additional page. Applicant shall indicate on which question any such continued answer refers.

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

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

1. Place of detention McCormick Corr. Inst, 386 Redemption way
McCormick, South Carolina, 29899
2. Name and location of Court which imposed sentence York County Moss Justice
Center, York, South Carolina, 29745
3. Name(s) of co-defendant(s) (if any) Monta Gordon, Gary Moffit, Terrence
McCreary
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) murder, two counts attempted armed robbery, three counts
of possession of a weapon during the commission of a
violent crime, poss of weapon under 21 and criminal consp

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CLERK OF COURT
YORK COUNTY, SC

CERTIFIED TRUE COPY

APP. P. 471

- (b) _____
- (c) _____

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

- (a) July 19, 1999, 30 years for murder, ten for attempted
- (b) armed robbery, with ten consecutive for attempted armed
- (c) robbery, with all other charges ran concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty pled 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?
SEE ATTACH BACK-GROUND AND HISTORY

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

- (a) the name of each Court to which you appealed:
 - i. SEE ATTACH BACK-GROUND AND HISTORY
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. SEE ATTACH BACK-GROUND AND HISTORY
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. SEE ATTACH BACK-GROUND AND HISTORY
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. SEE ATTACH BACK-GROUND AND HISTORY
 - ii. _____
 - iii. _____

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

- (a) _____

App. D. 472

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACH BackGround And History
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACH BACKGround AND History
- (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? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (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? Yes
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. Writ of Federal Habeas Corpus
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SEE ATTACH BackGround And History
- ii. _____
- iii. _____

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

I, Antonio Gordon, 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.

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this
16 day of December, 2008.

James C Frankl
Notary Public

My Commission Expires: 01-31-2010

App. P. 477

Antonio Gordon#259798

McCorm.Corr.Inst Fl-A-276

386 Redemption Way

McCormick, South Carolina, 29899

2008/10/19 PM 2:45
CLERK
FBI
SOUTH CAROLINA

RE:Filing of PCR

Dear Clerk:

I enclosed a post-conviction relief application in which I am filing in your office to be filed. However, Clerk, could your office please send me a certified stamp true copy back of the same. I thank you for the time you have put in this matter.

Sincerely Your's

/s/ Antonio Gordon

Sworn to and subscribed

before me this 20 Day of November 2008

Notary: Jennifer (Frank)

Exp: My Commission Expires
January 31, 2010

Date: 11-20-08

App. P. 478

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon, #259798)
Applicant,) MOTION FOR FUNDS FOR AN INVESTIGATOR
v.)
State of South Carolina)
Respondent,)

I, Antonio Gordon, will request that the Court authorize and order the release of 5,000 from the INDIGENT DEFENSE FUND of another such appropriate fund for an investigator to obtain the service of INVESTIGATING the underlying case which resulted in a guilty plea of applicant. I firmly believes the service of and investigator are needed to conduct investigation based upon:

(1) Investigator Whiteside and Steward discovered for the first time on January 20, 2008, that "Chyneca Dixon" a minor at the time and possible others including applicant were threaten, intimidated, coerced and denied the "RIGHT" to speak with her mother/counsel at her request until she signed a "SWORN AFFIDAVIT IMPLICATING APPLICANT IN THE CRIME".

(2) Evidence that solicitor had "misrepresented facts" at guilty plea IN RE: to alleged placement of palm print on victim vehicle was misplaced/lost/destroyed by PCR counsel Tara D. Shurling (Esq) causing her to withdraw this issue. Her malpractice /complicity with the State to cover Fact that solicitor alleged false facts deprived applicant of his day in Court at his first PCR hearing. This needs to be investigated by the PCR investigator.

(3) Palm print unidentified on victim's car door, two subject were standing by the door, thus both vehicles were process the same day and all latent lifts could be mislabeled, thus since it appears that two subjects were standing by the victim's car door the orientation of the print does not necessarily make applicant the shooter as the solicitor represented during the guilty plea, especially when live victim ID Monta Gordon as shooter and I Antonio Gordon was merely present. Applicant alleges that he should be entitled to Indigent Defense Funds for an Investigator to prevent a grave injustice.

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Antonio Gordon
/s/ Antonio Gordon
Antonio Gordon

Date: 12/3/08

Sworn to and subscribed before
me this 04 Day of December 2008
Notary: Seunika Franka
Exp: 01.31.2010

App. P. 1.
480

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon, #259798
Applicant,)
v.) MOTION FOR FUNDING OF EXPERT
State of South Carolina)
Respondent)

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CLERK OF COURT

I, Antonio Gordon, will request that the Court authorize and order the release of 5,000 from the Indigent Defense Fund or another such appropriate fund for expert fees to obtain the service of a fingerprint expert to examine the fingerprint in the underlying case which resulted in a guilty plea of Antonio Gordon, for the following reasons:

(1) Unidentified palm print on victim's car door, since it appears that two subjects were standing by the car, thus both vehicles were recovered and processed the same day, it could be possible that the latent lifts from the vehicles could be mislabeled, since it appears that two subjects were standing by the car the orientation of the print does not necessarily make applicant Antonio Gordon, the shooter as the solicitor represented in his facts. especially when a live victim ID Monta Gordon as the shooter and stated that applicant was merely present.

Applicant alleges that the palm print was never tested by his own expert, that this was ineffective assistance of trial counsel, that he was coerced into waiving this issue at the initial PCR in this matter by Tara D. Shurling, Esquire, and therefore did not get his full "one bite at the apple", and that, in the event that this palm print was not applicant, Antonio Gordon, or it was planted or otherwise fabricated, applicant alleges that he should be entitled to Indigent Defense Funds for expert to prevent a grave injustice.

/s/ Antonio Gordon

Antonio Gordon, #259798

McCorm. Corr. Inst. F-1-A-276

386 Redemption Way

McCormick, S.C. 29899

Sworn to and subscribed
before me this 04 Day of
December 20, 08

Notary: Jennifer C. Frank
Exp: 01-31-2010

Antonio Gordon

State of South Carolina
County of York

Antonio Gordon 259798
Applicant,

v.

State of South Carolina
Respondent

In The Court of Common Pleas
Sixteenth Judicial Circuit

Amendment to Post-Conviction Relief
08-CP46-4951, Filed December 19, 2008

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812

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Applicant Antonio Gordon, Pro SE filed an action for Post-Conviction Relief filed December 19, 2008 (08-CP46-4951). The respondent has not made its return and response to the Pending Post-conviction Relief. In Applicants original Post-Conviction Relief which was filed on June 19, 2000 (2000-CP-46-1414), and a Evidentiary hearing was convened in the Richland County Courthouse on July 29, 2003, the application was Dismissed without ALL issues being raised, adjudicated, misconstrued, and addressed by Honorable J. Ernest Sinar by written order Dated August 19, 2003. Applicant has several meritorious defenses to the claims of the Respondent. Applicant pro SE moves the court an order granting him leave to amend the Pending Post-conviction to include the following grounds for Relief.

1). Lack of subject Matter Jurisdiction,

2). Involuntary Guilty Plea,

and moves for an Evidentiary hearing Pursuant to S.C. Code Ann 3 17-27-10 to 17-27-120. I support this application Applicant show the following Error of Law.

Amendment OF Facts / History

In applicant's original PCR application applicant allege that he was being held unlawful in custody and cited "Lack of Subject matter Jurisdiction", Issue (2) Page 409, amendment was made and stipulated in the record at Page 414. This issue was not addressed with the PCR Court in regards to S.C. Code Ann 17-27-10 to 17-27-120, PCR Judge DID NOT ADDRESS And make

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YORK COUNTY, SC

specific Finding Fact and conclusion of Law, and was not ^{App. D. 84 482} address in the Attorney General Order of Dismissal Date August 19, 2003.

It appears that PCR Counsel Tara D. Shurling, Esquire misconstrued / Destroyed / waived applicants "Lack of Subject matter Jurisdiction", issue on Record at Page 444 Line 15 - Page 448 Line 11, to allege 6th Amendment claim, (Failure to make concerted Effort to Get the Solicitor's office to Remand Case to Family Court), issue 5 of the order of Dismissal, Thus prohibiting applicant the "one bite at the Apple", in regards to the Subject matter Jurisdiction issue.

Applicant Points to the Record for Physical Evidence of NOT Voluntarily waiving this "Lack of Subject Matter Jurisdiction Due Process issue on record, and PCR Counsel misconstrued waived applicant's issue. Pruitt v. State.

OTE 1

Applicant are asserting that the Failure of the Solicitor to "Petition" the Family Court for Jurisdiction Pursuant to S.C. Code Ann. § 20-7-400; Exclusive original Jurisdiction of Family Court, History: 1990 Act No. 511 § 2 eff June 12, 1990 (Not Repeal), and 20-7-7605 (1), and (6) "Transfer of Jurisdiction", which specifically deals with when a child has been charged with "murder", and contain no age Limitation under subsection 6 of the Transfer Jurisdiction Statute, and that 20-7-6605 (1) "Definition of child", statutory violates Due Process of Law under the 14th amendment and conflict with other children code of Laws specifically 20-7-400 and 20-7-7605 (1), (6), that General session Court was without subject matter Jurisdiction to accept Applicants guilty Plea without solicitor "Petition" Family Court for its original Jurisdiction.

Applicant was Denied his "one bite at the Apple", in regards to his "Involuntary Guilty Plea" issue which is attach to the original Post-conviction Relief Application (2000-CP-46-1414), and this issue was misconstrued to allege (Failure to advise of community supervision) issue 9 of the order of dismissal. Thus applicant was not alleging anything about community supervision as applicant Point out that Counsel Tara D. Shurling misconstrued this Involuntary Guilty Plea issue. Pruitt v. State, Failure of the PCR Judge to Rule on original issue attach to the PCR application.

Applicant move for an Evidentiary Hearing to Determine the merit of issues Presented to this Court that was timely raised according to the PCR statute and was not knowingly waived by applicant. In applicant's original PCR Application.

NOTE 2

Applicant Guilty Plea was Involuntary made as the Judge did not ask Gordon for affirmative Guilt and Sentence Gordon under 16-3-20 when Gordon was indicted for 16-3-10 and failed to inform Gordon that the murder Charge was mandatory and did NOT Warrant for 85 Percent under 24-21-640, and did not warrant any work credits, good behavior Credits, and that it was 30 Years Day for DAY. Boykin v. Alabama, Pittman v. State. Thus Sentencing Judge did NOT have subject matter Jurisdiction to sentence applicant under 16-3-20 when indicted for 16-3-10.

Conclusion

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UPon the Error of Law which has been brought to this Court's Attention Applicant should be granted an evidentiary hearing to reach conclusion of Law.

K. Antonio Gordon

sworn to and subscribed before

me this 12 DAY OF May 09

Notary: Penny G. Motta

EXP: Feb 28, 2018

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Antonio Gordon, #259798
Applicant,

v.

State of South Carolina
Respondent,

) IN THE COURT OF COMMON PLEAS

) SIXTEENTH JUDICIAL CIRCUIT

) POST-CONVICTION RELIEF PURSUANT

) TO S.C. Code Ann §17-27-10 to
17-27-120,

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CLERK OF COURT
JULY 19 2003

Applicant filed an action for Post-Conviction Relief on June 19, 2000, (2000-CP-46-1414). The respondent made its return on May 4, 2001, and venue was changed due to judicial conflicts. An evidentiary hearing was convened in the Richland County Courthouse on July 29, 2003, the application was dismissed without ALL issues being raised adjudicated and addressed by Honorable J. Ernest Kinard, by written order dated August 19, 2003. Applicant has several meritorious defenses to the claims of the respondent and moves for an evidentiary hearing pursuant to S.C. Code Ann §17-27-10 to 17-27-120. I support this application applicant shows the following.

BACKGROUND

The record before this Court indicates that applicant is presently confined in the South Carolina Department of Correction pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the York County Grand Jury for murder, two counts of attempted armed robbery, three counts of possession of a weapon during the commission of a violent crime, possession of a weapon by a person under twenty-one, and criminal conspiracy.

Applicant was a child sixteen years of age with an IQ that of 68 which placed applicant in the range of borderline function, arrested without an arrest warrant nor probable cause. Probable cause was provided by a minor (Chyneca Dixon), who was held against her will, coerced, manipulated, threaten, intimidated, and denied the right to speak with her mother/counsel until she signed an affidavit implicating applicant in the alleged crime, this minor made two hearsay statements, the first statement taken under a

false identification and the second statement under the minor (Chyneca Dixon) legal name. This minor hearsay coerced, intimidated, threaten, manipulated, and denied the right to speak with her mother/counsel statement's was not taken to a magistrate judge to determine probable cause to make the warrantless arrest upon this minor's hearsay statement's.

However, during the illegal arrest applicant's made two self incriminating statement's which applicant's mother retained attorney Christopher Welborn to represent applicant who at the time was under-age also, and asserted the "RIGHT" to speak with counsel, Attorney Christopher Welborn, demanded that questioning cease of applicant and that he be allowed the right to speak with his juvenile client in which the parent had asserted the right. Rock Hill Police Department denied applicant the right to speak with counsel during important stages of the judicial proceedings. See Miranda v. Arizona, Foote Note 35

A Jackson v. Denno, hearing was held in which trial counsel argued before Honorable John C. Hayes III, that there was no probable cause for the arrest of applicant. Honorable John C. Hayes III, denied the motion on probable cause to make the warrantless arrest. During applicant's first PCR hearing applicant challenge that trial counsel was ineffective for failing to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that the statement's was the fruit of the poisonous tree with regard to the illegal arrest. This claim has been raised by the applicant in his first PCR. See transcript pg 454 line 21-25. However, the Court has failed to address this issue and rule on it, thus applicant has NOT had his "one bite at the apple", particularly in regards to this issue. See Pruitt v. State.

Applicant was sixteen years of age with an IQ that of 68 which placed applicant in the range of borderline function and immediately tried as an adult without "FAMILY COURT" relinquishing "JURISDICTION", to the Court of General Sessions. Applicant arguing to the Court that his sentence as an adult is faulty because "jurisdiction" had not been relinquished from "family court", pursuant to S.C. Code Ann §20-7-7605(1), (6), and

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(10), and that S.C. Code Ann §20-7-6605(1), "Definition of a Child" violates procedural due process and statutory rights under the 14th Amendment to the United States Constitution, both State and Federal Constitutions, and also conflict with other statutory children's code of laws. South Carolina Code Ann §20-7-6605(1), "Definition of a Child", specifically conflict with statute 20-7-400, "EXCLUSIVE ORIGINAL JURISDICTION OF FAMILY COURT", and 20-7-7605(1), (6), and (10), "TRANSFER OF JURISDICTION", and that applicant should have been provided a waiver hearing pursuant to due process of law. Thus General Sessions Court was without personal jurisdiction in accepting Gordon's guilty plea which resulted in a huge miscarriage of justice. Kent

Daniel D. D'Agostino, Esquire represented applicant on the charges, on July 16, 1999, applicant pled guilty to all charges and received 30 years for murder, ten years for attempted armed robbery, 5 years for each count of possession of a weapon during the commission of a violent crime, and 5 years for possession of a weapon by a person under twenty-one, and five years for criminal conspiracy. A Notice of Appeal was filed and an Anders Brief was submitted on applicant's behalf. The Court of Appeal affirmed applicant's conviction and sentence's.

FIRST POST-CONVICTION RELIEF APPLICATION

Applicant subsequently filed his first Post-Conviction Relief Application on June 19, 2000, (2000-CP-46-1414). An evidentiary hearing was convened on July 23, 2003, at the Richland County Courthouse, at which applicant was present and represented by Tara D. Shurling, Esquire. Applicant raised the following issues in his first PCR:

1.. Defense counsel failure to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant's statement's was the fruit of the

1. Lack of Subject Matter Jurisdiction was raised in applicant's original post-conviction, but PCR counsel waived applicant's issue to allege trial counsel was ineffective for failing to make an concerted effort to get the solicitor to remand applicant's case back to family court, thus denying PCR Court to make specific finding, fact and conclusion of law pursuant to 17-27-80, Pruitt v. State, Now applicant alleges that General Sessions Court are without "PERSONAL JURISDICTION" in accepting applicant's guilty

poisonous tree with regard to the illegal arrest,

2.. Lack of Subject Matter Jurisdiction,

3.. Involuntary guilty plea.

Honorable J.Ernest Kinard denied and dismissed applicant's PCR by written order on August 19, 2003. However the order failed to address applicant's claim of "defense counsel ineffective for failing to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant's statement's was the fruit of the poisonous tree with regard to the illegal arrest."

Tara D. Shurling, Esquire, filed a "motion" for "59(e)", this motion was filed on November 25, 2003, on the same day counsel filed a "Notice of Appeal" in the South Carolina Supreme Court. The South Carolina Supreme Court was without jurisdiction to entertain the Notice of Appeal when the motion for 59(e) still pending in the lower Court for Reconsideration of the Facts. See Aice v. State, Pruitt v. State, Anthony Marlar, Supra, thus applicant has not had his "one bite at the apple", particularly in regards to these issues.

THE SECOND POST-CONVICTION RELIEF APPLICATION

Because applicant has not had his "one bite at the apple", applicant filed a second application for post-conviction relief on July 6, 2004. The respondent made its return and motion to dismiss on December 6, 2004, which applicant asserted "lack of subject matter jurisdiction". The application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The Order of dismissal was dated May 20, 2005. Applicant did not appeal due to motion for 59(e) still pending before the lower Court.

Applicant filed a "Petition for Writ of habeas Corpus", in Federal Court, (2:05-3327-MBS-R), on December 22, 2005. This

2. Extrinsic fraud is fraud that induce a person not to present case or claim and deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud because applicant is seeking redress is prevented from fully exhibiting and presenting their case, as there has never been real contest before the Court on subject matter. Hilton Head Center of S.C. v. Public Service Commission, 294 S.C. 9, 11, 362 S.E.2d 176 (S.C. 1987). (3) Intrinsic fraud, on the other hand, is fraud which was presented and **Considered** by the Court. Hagy v. Pruitt, It is fraud which leads a Court in determining issues and induces that Court to find for a party.

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~~AMENDED~~ 489

"Petition" was dismissed without prejudice to allow applicant to "EXHAUST ALL STATE REMEDIES", on February 16, 2007

On January 3, 2006, applicant filed a "Petition" for State "Writ of Habeas Corpus", in the York County Clerk of Court. Honorable John C. Hayes III, denied and dismissed the "habeas corpus" on April 30, 2007. Applicant then file a "Motion" for "60(b)", pursuant to South Carolina Rules of Civil Procedure alleging that Honorable Hayes III was in conflict with the case and an evidentiary hearing should be held on the merits of the issues presented to that Court. An evidentiary hearing was held before Honorable Roger L. Couch, who dismissed the State habeas corpus "without prejudice", on January 31, 2008, to allow applicant to file State habeas corpus in the original jurisdiction of the South Carolina Supreme Court. Article 5 section 5.

THE CURRENT POST-CONVICTION RELIEF APPLICATION AND AMENDED APPLICATION

Because applicant has "NOT HAD", his "one bite at the apple", in his current application and amended application thereof, the applicant alleges that he is being held in custody unlawfully for the following reasons:

1.. Newly Discovered Evidence/Ineffective Assistance Of Trial Counsel/Prosecutorial Misconduct/Brady Violation/Involuntary Guilty Plea,

2.. Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant statement's was the fruit of the poisonous tree with regard to the illegal arrest,

3.. Lack Of Personal Jurisdiction, ("JURISDICTION CAN BE RAISED AT ANY TIME, INCLUDING FOR THE FIRST TIME ON APPEAL OR PCR.")

Applicant relies on the aforementioned case authority, the South Carolina Rules of Civil Procedure, United State Constitution, State and Federal Constitution, in bringing this action and declaring his "RIGHT TO APPEAL" all claims properly presented to the Court in applicant's July 29, 2003 PCR. Applicant believes he is entitled to an evidentiary hearing pursuant to Pruitt v. State, McCray v. State, and hayden v. State, "NEWLY DISCOVERED EVIDENCE".

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490

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon, #259798)
Applicant,)
v.) POST-CONVICTION RELIEF, Pursuant to
State of South Carolina) NEWLY DISCOVERED EVIDENCE, 17-27-45
Respondent,) (c)

Applicant, Antonio Gordon, pursuant to South Carolina Code Ann. §17-27-45(c) and Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854 (1983), move for a New Trial based on "NEWLY DISCOVERED EVIDENCE"/INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, which by due diligence could NOT have been discovered in time to move for a new trial under Rule 52, 59(b) based on the following facts;

1. Applicant discovered for the first time that probable cause provider "Chyneca Dixon" did on January 20, 2008, provide a "sworn affidavit" to INVESTIGATOR WHITESIDE AND STEWARD, This "sworn affidavit" "Chyneca Dixon" sworn to on January 20, 2008, has relevance to the applicant's case.

2. After gain of access to the "NEWLY DISCOVERED EVIDENCE" and reading the "sworn affidavit", applicant "discovered for the first time" that Rock Hill police officer's use bad tactics, manipulated, coerced, threaten, intimidated, and denied ("Chyneca Dixon") a MINOR at that time the right to speak with her mother/counsel until she signed a written "sworn affidavit" implicating applicant in the allege crime. See Sworn Affidavit January 20, 2008 (EXHIBIT 3),

3. Trial counsel was ineffective for failing to conduct a pre-trial investigation and interview a "key witness" who implicated applicant in a crime through the use of coerce, threats, intimidation, manipulation, and denying ("MINOR CHYNECA DIXON") the right to speak with her mother counsel until she implicated applicant in the allege crime, See Strickland v. Washington, Supra

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4. Through no lack of due diligence could this evidence previously brought to the Courts attention but through counsel conducting a pre-trial investigation and interviewing "Chyneca Dixon" before pre-trial and plea. Officer Cabiniss and John Thickens withheld information favorable to applicant to make an unlawful arrest a valid arrest, and testified to some of the bad tactics during applicant's pre-trial Jackson v. Denno, hearing, the officer's continue to produce bad agency practice by denying applicant the right to consult with counsel, at counsel demand that questioning cease of his juvenile client in which applicant's mother retained. See Miranda v. Arizona, Strickland v. Washington, Brady v. Maryland, State v. Hill, and State v. Kennerly, Supra.

Applicant made two self-incriminating statement's, the first statement applicant denied any involvement in the allege crime, the second statement applicant confessed to the allege crime which the statement's are fruit of the poisonous tree with regard to the illegal arrest, through the use of manipulation, threats, coercing, intimidation and denying ("MINOR Chyneca Dixon") the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime, by the Rock Hill Police Department.

Applicant contends he would NOT have entered a plea of guilty had he known of ("MINOR CHYNECA DIXON") and "Geraldine Dixon" statements and the possible defense of intimidation of witness "Minor Chyneca Dixon" in order to establish probable cause for arrest by police. State v. Williams, CF: Gibson v. State. The act of police threaten, manipulating, coercing, intimidating, and denying ("MINOR CHYNECA DIXON") the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime, amounts to prosecutorial misconduct. State v. Williams, Supra and violation of due process, and was a legitimate defense that applicant was not aware of until the recent statement made by "Chyneca Dixon"/"G. Dixon" to "INVESTIGATOR WHITESIDE AND STEWARD" and rendered applicant's plea INVOLUNTARY.

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~~APP. P. 44~~ 492

Applicant asserts had he been informed ("MINOR CHYNECA DIXON") had been held against her will threaten, coerced, intimidated, manipulated, and denied the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime, applicant could have made a informed decision about whether to take case to trial based on intimidation of a key witness MINOR Chyneca Dixon question without parent/counsel. U.S. v. Bagley, See Fact witness 3 times has changed her statement (See exhibits 1,2,3,...

5. Further, this is cumulative evidence that trial counsel did not indepently investigate witness, facts or circumstances of case. See Ard v. Catoe, (March 2007 S.C Supreme Court). Counsel had duty to indepently investigate case. See exhibit PCR issue Antonio Gordon v. State, PCR (2000-CP-46-1414) where applicant alleged "Defense counsel failure to challenge applicant's statement's on the ground that there was no probable cause for applicant's arrest and that applicant's statement's were the fruit of the poisonous tree with regard to the illegal arrest". Threats, coercing, intimidating, manipulating, and denying "MINOR Chyneca Dixon" the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime is further evidence sole probable cause affidavit of "Chyneca Dixon" based on threats, manipulation, intimidation, coercing, and denying a "MINOR

Note:

1. Issue, DEFENSE COUNSEL FAILURE TO CHALLENGE APPLICANT'S STATEMENT'S ON THE GROUND THAT THERE WAS NO PROBABLE CAUSE FOR APPLICANT ARREST AND THAT APPLICANT STATEMENTS WERE THE FRUIT OF POISONOUS TREE, WITH REGARD TO THE ILLEGAL ARREST, WAS NOT RULED ON PURSUANT TO 17-27-80, In the first PCR. Also, this "NEWLY DISCOVERED EVIDENCE" of "C. Dixon" statement and G. Dixon are cumulative evidence in support of this same issue, which require further Judicial Analysis under the 4th, 5th, 6th, and 14th Amendment USCA.

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Chyneca Dixon" the right to speak with her mother/counsel until she signed a written affidavit implicating applicant in the allege crime must be considered in totality of circumstances. U.S. v. Bagley, Supra

BRADY VIOLATION

Further, the State withheld favorable evidence of Cabiniss, and John Thickens, threaten, intimidating, coercing, manipulating, and denying ("key witness minor Chyneca Dixon") the right to speak with her mother/counsel until she signed a written affidavit implicating applicant in the crime in order to establish probable cause for arrest. These facts meet requirements of Gibson v. State, (1) the evidence was known to agents of prosecution (Cabiniss/Thickens) Etal. and by the solicitor. State v. Kennerly, 503 S.E.2d 214 (S.C. App 1998) (knowledge of State agents imputed Id at 220), and suppressed by police/silicitor.

Further, this evidence was "material" as preparation of defense strategy was effected, as a (2) "TRIAL DEFENSE COULD HAVE BEEN FOUNDED UPON" that this was a case of witness intimidation/prosecutorial misconduct where police was using illegal tatics to coerce, threaten, intimidate witnesses, including "key witness Chyneca Dixon" who was a minor and not allowed to speak with her mother/counsel until she signed a sworn affidavit implicating applicant in the allege crime, eve though at jail. See U.S. v. Bagley, 473 U.S. 667 at 682-83 (1985) (Court may assess effect of suppressed evidence on trial strategy).

Due to the miscarriage of justice applicant guilty plea should be vacated and a new trial set.

Note 2,

This evidence could have also been used in the Pre-Trial Suppressing hearing upon applicant statement's based on Prosecutorial/misconduct witness intimidation to establish probable cause for arrest, and subsequent statement's was thus "FRUIT OF THE POISONOUS TREE" See Wong Sun v. US,

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CONCLUSION

Due to the failure of applicant's counsel conducting a pre-trial investigation, rendered applicant guilty plea involuntary made, which have NOW been discovered that applicant was arrested through the use of police officer's threaten, coercing, intimidating, manipulating, and denying "Chyneca Dixon" a minor at that time the right to speak with her mother/counsel until she signed a written affidavit implicating applicant in the allege resulted in a "huge miscarriage of justice", and therefore, Gordon's guilty plea should be set aside and a new trial set.

NEW TRIAL SHOULD BE GRANTED.

/s/ Antonio Gordon

A. Gordon, #259798

386 Redemption Way

Mc. Cormick, SC. 29899

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AFFIDAVIT

RE: Antonio Gordon v. State (Pending York County) C/A No. _____

I, Antonio Gordon, hereby attests and affirms foregoing is true and correct statement of the facts to the best of my knowledge and belief, that,

1. I was arrested by the Rock Hill Police Department for murder, two counts of attempted armed robbery, three counts of possession of a weapon during the commission of a violent crime, possession of a weapon by a person under twenty-one, and criminal conspiracy along with Monta Gordon, Terrance McCreary, and Garry Moffatt on July 23, 1998.

2. I was interrogated by detective J. Thickens other detectives, when Antonio Gordon mother retained attorney Christopher Welborn, who demanded that questioning cease of his juvenile client, in which the Rock hill police department denied me the right to consult with C. Welborn, esquire. See Chyneca Dixon Affidavit attach hereto, and threaten and denied opportunity to meet with counsel/parent.

3. Investigator Whiteside and Stewart discovered on January 20, 2008 that Chyneca Dixon and possibly others including affiant were threaten, intimidated, manipulated, and coerced into making material false statements to establish probable cause to make warrantless arrest.

4. I, would have elected to go to trial with a defense of witness intimidation/prosecutorial misconduct had I known of Chyneca Dixon affidavit that she had been threaten, intimidated, and coerced as a minor. And not allowed to meet with parent/counsel EXACTLY IN THE SAME MANNER AS I ANTONIO GORDON.

5. I would have assisted on my right to a jury trial on the facts heretofore stated herein especially since the victim had stated he could have only ID Monta Gordon as the shooter that I, Antonio Gordon was merlely present at sence.

6. At no time did the York County solicitor's office disclosed any of the above facts to the defense in this case.

7. I firmly believe the service of investigators are needed

2008 DEC 19 PM 2:45
CLERK OF COURT
YORK COUNTY

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a. Evidence that silicitor had "misrepresented facts" at guilty plea IN RE: to alleged placement of palm print on victim vehicle was misplaced/lost/destroyed by PCR counsel Tara D. Shurling (Esq) causing her to withdraw this issue. Her malpractice/complicity with State to cover Fact that solicitor alleged false facts deprived affiant of his day in court at his first PCR hearing. This needs to be investigated by the PCR investigator.

b. Affiant asserts had he known his palm print was NOT on vehicle of victim as FALSELY REPRESENTED BY SOLICITOR AT PLEA he would have NOT pled guilty but would have went to trial. (1) Also the affiant relied upon the solicitor representation that the palm print of affiant was on the victim vehicle as presented by the solicitor at the guilty plea

/s/ Antonia Gordon

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 20 DAY OF November 2008
NOTARY: Jeunette Franklin
EXP: My Commission Expires
January 31, 2010

Note: (1)

See Gibson v. State, 513 S.E.2d 320 (1999), Involuntary guilty plea

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DEFENSE COUNSEL FAILURE TO CHALLENGE APPLICANT'S STATEMENTS ON THE GROUND THAT THERE WAS NO PROBABLE CAUSE FOR APPLICANT'S ARREST AND THAT APPLICANT STATEMENTS WERE THE FRUIT OF THE POISONOUS TREE WITH REGARD TO THE ILLEGAL ARREST. Transcript pg 456 LINE 21-25..

Applicant asserts that trial counsel failed to challenge applicant's statement's on the ground that there was no probable cause for applicant's arrest and that applicant's statement's were the fruit of the poisonous tree with regard to the illegal arrest. In this case the police relied upon a statement from a minor which was not reliable, to establish probable cause, Said statement was not the first statement the minor made, the minor made the initial statement under a fictitious name. The aforementioned statement given under a false identification was obtained by the police refusing to allow the minor to speak with her mother/counsel until the minor made a sworn written affidavit. This statement did not serve to incriminate the applicant, but rather excluded the applicant from having any possibility of involvement in the alleged crime.

The second statement, however, did implicate the applicant as being involved in the alleged crime. This second statement was made under the minor legal name, which is "Chyneca Dixon", this second statement was contradictory to the first statement, in that it implicated the applicant in the alleged crime. See transcript book 2 line 8-pg 88, This minor should not have been deemed credible, nor the alleged information she provided reliable, when the police use illegal tactics to establish probable cause, the police relied upon this minor statements to establish probable cause to make the warrantless arrest of the applicant.

The Fourth Amendment to the United States Constitution and article I, § 10 of the South Carolina Constitution protect citizens from warrantless arrest, both State and Federal constitutions provide that arrest warrants may not be issued except upon "probable cause", supported by oath of affirmation, "U.S. Const. Amend. IV; S.C. Const. art I, § 10; See also State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997)

cause").

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Hearsay may be the basis for issuance of the warrant so long as there [is] a substantial basis for crediting the hearsay [Emphasis added]. See Jones v. United States, 80 S. ct 736, however, in the instant case the hearsay given by the minor was proved unreliable and ultimately discredited as such. In United States v. Campell, 920 F.2d 793, 796-97 (11th Cir. 1991), the Court held that "no probable cause" to arrest defendant nor search defendant's vehicle when confidential informant proved unreliable and no other or suspicious activity took place during police investigatory stop. Although this is a Federal Court case the context and language still apply to the instant case. However, the case of Campell, Supra, does deal with search and seizures, but in Giordenello, Id. U.S., at 485-486, 78 S. ct, at 1250, it is said, although the Court construed the requirement of "Probable cause" contained in Rule 4 of the Federal Rule of criminal Procedure, it did so "in light of the constitutional" requirement of probable cause which that rule implements. Id., 357 U.S. at 485 78 S. ct 1250, The case also involved an arrest warrant rather than a search warrant, but the Court said, "The language of the Fourth Amendment that *** no warrant shall issue, but upon probable cause *** of course applies to arrest as well as search warrants."

Moreover, the arrest were made without a warrant, probable cause, nor exception of exigent circumstance. The police had no other probable cause (see transcript pg 78 line 23-pg 79 line 3). Government agents may conduct a warrantless search seizure [or arrest] when exigent circumstances justify the intrusion. Exigent

(1) Applicant has cumulative new evidence supporting that there was no legal probable cause for the warrantless arrest, and that trial counsel failed to conduct a pre-trial investigation and interview key witness minor ("Chyneca Dixon") who was threatened, manipulated, coerced, intimidated and denied the right to speak with her mother/counsel at her request until she signed a written affidavit implicating applicant in the alleged crime. Thus applicant's statement's are fruit of the poisonous tree with regard to the illegal arrest. See Wong Sun v. United States. (2) The pre-trial period constitutes a "critical period" in criminal proceedings because it encompasses counsel's constitutionally imposed duty to investigate the case. Mitchell v. Mason, 325 F.3d 732 (6th Cir. 2003). (3) Further during the illegal arrest in

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circumstances exist when there is "probable cause" for search seizure, or arrest and evidence is in imminent danger of destruction. See Cupp v. Murphy, 412 U.S. 291, 294-96 (1973). In fact, applicant's counsel attempted to address the exigent circumstances, but was only argued against which no further action to the subject aroused. See transcript pg 136-138 line 10. the arrest was made without a warrant in this case, nor probable cause, because the officer knew that in order for an arrest warrant to be issued upon hearsay information provided by a minor, who was held against her will coerced, threaten, intimidated manipulated and denied the right to speak with her mother/counsel until she signed a sworn affidavit implicating applicant in the alleged crime, the minor's report must first be measured against standards of the Supreme Court decision that (1) affidavit for arrest must set forth underlying circumstances necessary to enable magistrate independently to judge on validity of minor's conclusion and that (2) affiant-officers [must] support their claim that "Chyneca Dixon", was credible of her information reliable, so that probative value of report can be assessed [Emphasis added]. See Spinelli v. United States, 89 S. Ct 584.

In the instant case there was no probable cause for the warrantless arrest of applicant and there was no exigent circumstances admitted for the record for a warrantless arrest. Cupp v. Murphy, Supra, Accord U.S. v. Reed, 935 F.2d 641, 643 (4th Cir.). An officer has reasonable time to obtain a warrant because a "MAGISTRATE" were at their immediate disposal. See transcript pg 79 line 22-pg 83 line 21. An unlawful arrest is one made without probable cause, See United States v. Weston, 96 S. Ct 820 (1976). Because there was no probable cause for

a
counsel until applicant signed an affidavit confessing to the allege crime why an attorney demanding that questioning cease of his juvenile client, though applicant was threaten, coerce intimidated, manipulated and denied the right to parent/counsel in the same manner as probable cause provider minor "Chyneca Dixon" was, thus warrant suppression of applicant's statement's inviolation of applicant's 5th, 6th, and 14th amendment right to the United States Constitution denial of counsel during custodial interrogation. Mirand v. Arizona, Foote Note 35