

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

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S.C. Supreme Court

LEROY FOLKES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF LEXINGTON

4
5 THE STATE,

6 V.

7 LEROY FOLKES,

8 DEFENDANT.

9
10 B E F O R E: THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

11
12 A P P E A R A N C E S:

13 FOR THE STATE: DAYTON RIDDLE, DEPUTY SOLICITOR

14 FOR THE DEFENDANT: SALLY HENRY, ASSISTANT PUBLIC DEFENDER

15
16 COURT REPORTER: SMOKEY PERRY

17
18 OCTOBER 20, 2006

19
20 06-GS-32-1915

21
22
23
24
25

2

1 (THE DEFENDANT WAS SWORN TO TELL THE TRUTH.)

2 MS. HENRY: YOUR HONOR, BEFORE WE BEGIN, THERE IS A BLAIR HEARING THAT
3 NEEDS TO BE CONDUCTED.

4 THE COURT: OKAY.

5 MS. HENRY: I'VE PASSED UP TO THE COURT FINDINGS OF THE DEPARTMENT OF
6 MENTAL HEALTH.

7 THE COURT: YOU'RE LEROY AUGUSTUS FOLKES?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: MR. FOLKES, I HAVE AN INDICTMENT THAT CHARGES THAT IN
10 LEXINGTON COUNTY ON OR ABOUT APRIL 30TH 2006, WHILE ARMED WITH A DEADLY
11 WEAPON OR WHILE ALLEGING EITHER BY ACTIONS OR WORDS THAT YOU WERE ARMED
12 WHILE USING A REPRESENTATION OF A DEADLY WEAPON OR AN OBJECT THAT A
13 PERSON PRESENT DURING THE COMMISSION OF THE ROBBERY REASONABLY BELIEVED
14 TO BE A DEADLY WEAPON, SPECIFICALLY, A PISTOL OR A REPRESENTATION OF A PISTOL
15 COVERED BY A PIECE OF CLOTH, TAKE FROM THE PERSON OR PRESENCE OF ADAM
16 STIEBLING S-T-I-E-B-I-N-G STIEBING I GUESS, STIEBING, AN EMPLOYEE OF THE CIRCLE K
17 CONVENIENCE STORE BY FORCE, THREATS OR INTIMIDATION, GOODS OR MONIES
18 BELONGING TO HIM OR THE CIRCLE K DESCRIBED AS APPROXIMATELY \$87 WITH THE
19 INTENT TO DEPRIVE THE OWNER OF THE PROPERTY.

20 UPON YOUR ARRAIGNMENT ON THIS CHARGE: ARMED ROBBERY, IT APPEARS
21 THAT YOU WISH TO WAIVE PRESENTMENT TO THE GRAND JURY AND PLEAD GUILTY TO
22 ATTEMPTED ARMED ROBBERY. IS THAT CORRECT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: NOW THEY'VE HANDED ME UP SOME PAPERS INDICATING THAT YOU
25 WERE EVALUATED OVER AT THE DEPARTMENT OF MENTAL HEALTH AND I'VE READ THIS

1 REPORT. THE REPORT INDICATES A CONCLUSION THAT AT THE TIME OF THE INCIDENT
2 YOU PROBABLY WERE UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR A COMBINATION
3 OF THOSE THINGS, BUT THEY DON'T FIND ANY MENTAL ILLNESS, DISEASE OR DEFECT
4 THAT AFFECTS YOUR ABILITY TO MAKE RATIONAL CHOICES CONCERNING YOUR CASE
5 NOW OR TO HELP YOUR LAWYER IN YOUR CASE. SO THEY DETERMINED THAT YOU'RE
6 COMPETENT TO STAND TRIAL; COMPETENT TO MAKE RATIONAL DECISIONS ABOUT
7 WHETHER TO PLEAD GUILTY OR NOT GUILTY AND THINGS LIKE THAT.

8 AND THEY ALSO DETERMINED -- THEY EVALUATED TO SEE IF YOU HAD ANY
9 MENTAL DISEASE OR DEFECT AT THE TIME OF THE OFFENSE THAT WOULD'VE
10 PREVENTED YOU FROM KNOWING RIGHT FROM WRONG OR WOULD HAVE PREVENTED
11 YOU FROM CONFORMING YOUR CONDUCT TO WHAT THE LAW REQUIRES IF YOU DID
12 KNOW RIGHT FROM WRONG. AND THEY DETERMINED THAT YOU DIDN'T HAVE EITHER
13 OF THOSE CONDITIONS. I NEED -- WHENEVER ANYBODY GOES OVER TO BE EVALUATED,
14 I HAVE TO HAVE WHAT MS. HENRY CALLED A BLAIR HEARING. THAT'S THE NAME OF
15 THE CASE THAT ESTABLISHED THAT WE NEED TO GO THROUGH THIS TYPE OF
16 PROCEEDING, SO I NEED TO ASK YOU SOME QUESTIONS. ALL RIGHT? DID THE CLERK
17 SWEAR YOU IN?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: OKAY. YOU UNDERSTAND WHY YOU'RE HERE TODAY?

20 THE DEFENDANT: YES, YOUR HONOR.

21 THE COURT: YOU KNOW WHAT YOU'RE CHARGED WITH?

22 THE DEFENDANT: YES, YOUR HONOR.

23 THE COURT: CAN YOU TELL ME.

24 THE DEFENDANT: I'M BEIN' CHARGED WITH VIOLATION OF MY PROBATION,
25 STRONG ARM ROBBERY THAT OCCURRED. I GOT 2 YEARS PRISON TIME AND 10 YEARS

4

1 SUSPENDED. AND I'M ALSO CHARGED WITH STRONG -- ATTEMPT -- WITH ARMED
2 ROBBERY THAT WAS REDUCED, YOU KNOW, WITH ENTER A PLEA OF GUILTY TO ATTEMPT
3 ARMED ROBBERY.

4 THE COURT: OKAY.

5 THE DEFENDANT: AT THE MERCY OF THE COURT.

6 THE COURT: THAT'S RIGHT. THAT'S EXACTLY RIGHT. NOW YOU KNOW WHO
7 THAT IS TO YOUR RIGHT?

8 THE DEFENDANT: YES, SIR. THAT'S MS. SALLY HENRY MY LAW -- MY ATTORNEY.

9 THE COURT: OKAY. YOU KNOW WHAT HER JOB IS?

10 THE DEFENDANT: REPRESENT INDIGENT PAUPER PERSON LIKE ME.

11 THE COURT: OKAY. MR. RIDDLE OVER THERE WORKS FOR SOLICITOR MYERS.
12 HE'S OVER THERE BY THE RAIL. YOU KNOW WHAT HIS JOB IS?

13 THE DEFENDANT: YES. YES, SIR.

14 THE COURT: TELL ME WHAT -- JUST IN YOUR OWN WORDS WHAT---

15 THE DEFENDANT: HIS JOB IS TO REPRESENT THE STATE, YOU KNOW, THE -- YOU
16 KNOW, SEE IF A PERSON GIVE A PLEA OR MAKE SOME TYPE OF DEAL WITH THE
17 ATTORNEY. BASICALLY, TO SEE WHAT THE PERSON, YOU KNOW, IS---

18 THE COURT: ALL RIGHT. AND YOU KNOW WHAT A JURY DOES?

19 THE DEFENDANT: THE JURY DETERMINE, YOU KNOW, DETERMINE EVIDENCE;
20 FIND A PERSON GUILTY OR NOT GUILTY.

21 THE COURT: THAT'S EXACTLY RIGHT. YOU KNOW WHAT MY JOB IS?

22 THE DEFENDANT: YES, SIR. YOU THE PRESIDIN' JUDGE.

23 THE COURT: OKAY.

24 THE DEFENDANT: HONORABLE PRESIDING JUDGE.

25 THE COURT: IF YOU PLEAD GUILTY, WHAT WILL I DO?

1 THE DEFENDANT: I'M HOPIN' THAT YOU SHOW SOME LENIENCY
2 CONSIDERATION. I'M PLEADIN' GUILTY, AT MERCY OF THE COURT, AND I'M 48 YEARS
3 OLD, AND HAD A ROUGH TIME AND SINCE MY FATHER PASSED A FEW YEARS BACK I
4 JUST BEEN GOIN' DOWNHILL BUT I DO HAVE A HISTORY OF BEING MENTALLY
5 INSTITUTIONALIZED SINCE '83.

6 THE COURT: ALL RIGHT. I READ THROUGH THAT.

7 THE DEFENDANT: YES, SIR.

8 THE COURT: BUT YOU UNDERSTAND I WOULD SENTENCE YOU.

9 THE DEFENDANT: YES, I UNDERSTAND THAT.

10 THE COURT: OKAY. ANYTHING ELSE FROM THE STATE ON COMPETENCY?

11 MR. RIDDLE: NO, SIR. I'M SORRY.

12 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

13 MS. HENRY: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. WE'LL MAKE THE REPORT A PART OF THE RECORD. I
15 GOT ONE FROM EACH OF YOU. WHICH ONE -- THAT'S THE SAME THING. YOURS JUST
16 HAS A COVER LETTER ON IT. JUST MAKE THAT PART OF THE RECORD. AND THIS ONE'S
17 YOURS, MR. RIDDLE. I FIND BEYOND A REASONABLE DOUBT MR. FOLKES IS COMPETENT
18 TO STAND TRIAL, COMPETENT TO MAKE RATIONAL DECISIONS CONCERNIN' THE CASES
19 AGAINST HIM, COMPETENT TO ASSIST COUNSEL IN HIS DEFENSE. HE UNDERSTANDS THE
20 ROLES OF THE VARIOUS COURT OFFICIALS. HE UNDERSTANDS THE CHARGE AGAINST
21 HIM, AND HE IS ABLE TO MAKE A DETERMINATION AS TO WHETHER HE WISHES TO
22 PLEAD GUILTY OR NOT GUILTY AND TO WAIVE HIS RIGHTS IF HE DOES WISH TO PLEAD
23 GUILTY. ALL RIGHT. MR. FOLKES, DO THEY HAVE YOU ON ANY MEDICATIONS NOW?

24 THE DEFENDANT: YES, SIR. I'M ON JERADOL (PHONETIC) AND SERAQUIL
25 (PHONETIC). THAT'S HELPIN' ME OUT A LOT WITH MY VOICE, YOU KNOW, AND I'M GLAD

1 FOR THAT. YOU KNOW.

2 THE COURT: ALL RIGHT. SO THEY'RE GIVIN' YOU MEDICINES. YOU TAKIN' 'EM
3 LIKE YOU'RE SUPPOSED TO?

4 THE DEFENDANT: YES, SIR, AND I'M CURRENTLY ON MENTAL WATCH RIGHT
5 NOW IN THE LEXINGTON DETENTION CENTER.

6 THE COURT: OKAY. YOU FEEL LIKE YOU'RE CLEARHEADED TODAY; YOU KNOW
7 WHAT YOU'RE DOING?

8 THE DEFENDANT: YES, SIR, I FEEL LIKE I KNOW WHAT I'M DOIN'. I WANT TO GET
9 EVERYTHING BEHIND ME, YOU KNOW, AND, YOU KNOW---

10 THE COURT: OKAY.

11 THE DEFENDANT: ---MOVE ON WITH IT, SIR.

12 THE COURT: ALL RIGHT. NOW IF YOU PLEAD GUILTY TO ATTEMPTED ARMED
13 ROBBERY YOU'RE GONNA BE GIVIN' UP SOME VERY IMPORTANT RIGHTS INCLUDING
14 YOUR RIGHT TO REMAIN SILENT AND YOUR RIGHT TO A JURY TRIAL. YOU KNOW THAT?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: IF YOU WANTED A JURY TRIAL YOU WOULD BE PRESUMED TO BE
17 INNOCENT. YOU WOULDN'T HAVE TO PROVE ANYTHING. THE STATE HAS THE ENTIRE
18 BURDEN OF PROOF, AND THE STATE WOULD HAVE TO PROVE THAT YOU'RE GUILTY
19 BEYOND A REASONABLE DOUBT TO ALL 12 JURORS. IN ORDER FOR YOU TO BE
20 CONVICTED. YOU UNDERSTAND?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: IF YOU HAD A JURY TRIAL YOU WOULD GET TO SEE AND HEAR AND
23 HAVE YOUR LAWYER CROSS EXAMINE ALL THE WITNESSES AGAINST YOU. YOU KNOW
24 THAT?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: IF YOU PLEAD GUILTY YOU GIVE UP ALL THOSE RIGHTS. YOU GIVE
2 UP THE PRESUMPTION OF INNOCENCE; YOU GIVE UP ANY DEFENSES YOU MAY HAVE;
3 YOU GIVE UP ANY CHALLENGES TO TRY TO GET SOME OF THE EVIDENCE THROWN OUT,
4 AND YOU ADMIT THAT THE CHARGE IS TRUE. YOU UNDERSTAND ALL THAT?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: DO YOU WANT A JURY TRIAL ON THIS?

7 THE DEFENDANT: NO, SIR. I'D LIKE TO CONTINUE BECAUSE I, YOU KNOW, AS THE
8 RECORD WILL REFLECT, FROM THE MINUTE I WAS ARRESTED I CONFESSED TO THIS
9 CRIME. OF COURSE, ME AND MY BROTHER HAD JUST HAD A BIG FIGHT AND, YOU KNOW,
10 HE HAD DISRESPECTED MY MOM AND I FELT I WAS GONNA GO HURT HIM AND I JUST
11 FELT, YOU KNOW, -- YOU KNOW, I CHOSE PRISON. YOU KNOW I -- UNFORTUNATELY IT
12 WASN'T -- IT WASN'T OUT OF DESPERATION FOR THE MONEY. I JUST -- I JUST DIDN'T
13 WANNA SEE HIM AND BE AROUND HIM NO MORE IN LIFE.

14 THE COURT: YES, SIR.

15 THE DEFENDANT: SO, LIKE I SAY, I'M PLEADIN' AT THE MERCY OF THE COURT.
16 AND I DIDN'T HAVE THE WEAPON, I DIDN'T TRY TO HARM, BUT I'M GLAD -- I'M GLAD
17 NOBODY WAS HARMED. YOU KNOW, BUT I JUST WANTED TO GET AWAY FROM HIM AND-
18 --

19 MS. HENRY: DO YOU WANT A JURY TRIAL?

20 THE DEFENDANT: NO, SIR. NO, SIR.

21 THE COURT: OKAY. I UNDERSTAND. YOU'RE GLAD NOBODY WAS HARMED AND
22 YOU DIDN'T MEAN TO HARM ANYBODY.

23 THE DEFENDANT: I DID CONFESS TO THIS CRIME FROM THE START.

24 THE COURT: RIGHT. I READ THAT IN YOUR REPORT TOO. ALL THAT STUFF ABOUT
25 YOUR BROTHER, I READ THAT.

1 THE DEFENDANT: YES, SIR.

2 THE COURT: ALL RIGHT. NOW WHERE DID MR. RIDDLE GO?

3 MR. RIDDLE: I'M RIGHT HERE, YOUR HONOR.

4 THE COURT: OKAY. THE STATE'S GONNA TELL ME THEIR VERSION OF WHAT
5 HAPPENED.

6 THE DEFENDANT: YES, SIR.

7 THE COURT: WHEN THEY FINISH I'M GONNA ASK YOU IF IT'S TRUE, SO YOU NEED
8 TO LISTEN CAREFULLY TO WHAT HE TELLS ME. OKAY?

9 MR. RIDDLE: YOUR HONOR, THE INCIDENT TOOK PLACE ON THE 30TH OF APRIL AT
10 ABOUT A QUARTER OF 5 IN THE MORNING. HE WENT TO THE CIRCLE K CONVENIENCE
11 STORE ON BUSH RIVER ROAD HERE IN LEXINGTON COUNTY.

12 YOUR HONOR, AT THAT TIME ACCORDING TO HIS STATEMENT, HE HAD A STICK,
13 SOME FORM OF A STICK WRAPPED UP IN A T-SHIRT OR A CLOTH WHICH HE PRESENTED
14 TO THE CLERK AS A GUN. HE WENT IN AND DEMANDED THE MONEY FROM THE CLERK.
15 HE JUMPED OVER THE STORE, YOUR HONOR, AND DID PUNCH THE CLERK IN THE FACE
16 KNOCKING HIM TO THE GROUND. STOLE \$87. HE THEN FLED THE STORE. LAW
17 ENFORCEMENT CALLED THE DEPUTIES PATROLLING THE AREA. LOCATED MR. FOLKES.
18 HE THEN, BASICALLY, JUST LIKE HE SAID, HE CONFESSED. HE LED THE DEPUTIES BACK
19 TO THE CLOTHES HE WAS WEARING THAT WERE PRESENT IN THE STORE VIDEO, AND HE
20 WAS TAKEN TO JAIL AT THAT TIME. HE WAS ARRESTED WITHIN AN HOUR OF THE TIME
21 THAT THIS MURDER -- OR EXCUSE ME -- THIS ROBBERY WENT DOWN. YOU WANT HIS
22 PRIOR RECORD AT THIS TIME OR DO YOU WANT THAT LATER?

23 THE COURT: I'LL GET IT IN A MINUTE. ALL RIGHT, MR. FOLKES, IS WHAT HE TOLD
24 ME TRUE?

25 THE DEFENDANT: YES, SIR, YOUR HONOR.

1 THE COURT: HAS ANYBODY FORCED YOU OR THREATENED YOU OR COERCED
2 YOU IN ANY WAY TO GET YOU TO PLEAD GUILTY AGAINST YOUR WILL?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: IF THEY MADE ANY DEALS WITH YOU, ANY PLEA BARGAINS, THEY
5 GOTTA TELL ME ABOUT THAT ON THE RECORD 'CAUSE I DON'T KNOW ANYTHING ABOUT
6 YOUR CASE OR WHAT Y'ALL HAVE BEEN TALKIN' ABOUT. SO THE LAW SAYS UNLESS
7 THEY TELL ME ABOUT IT OUT HERE AND THAT LADY TAKES IT DOWN THAT YOU LOSE
8 WHAT THEY DON'T TELL ME. YOU UNDERSTAND?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: NOW THEY'RE DROPPIN' ARMED ROBBERY TO ATTEMPTED ARMED
11 ROBBERY AND THE PAPERS SAY NO OTHER NEGOTIATIONS OR RECOMMENDATIONS. IS
12 THAT CORRECT, MS. HENRY?

13 MS. HENRY: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: SO OTHER THAN WHAT'S ON THE RECORD, MR. FOLKES, HAS
15 ANYBODY PROMISED YOU ANYTHING TO GET YOU TO PLEAD?

16 THE DEFENDANT: NO, SIR, YOUR HONOR.

17 THE COURT: ARE YOU FULLY SATISFIED WITH YOUR LAWYER?

18 THE DEFENDANT: YES, I'M SATISFIED WITH HER.

19 THE COURT: ANYTHING ELSE YOU WANT MS. HENRY TO DO ON YOUR CASE THAT
20 SHE HASN'T DONE FOR YOU?

21 THE DEFENDANT: WELL, I ASK EVERYTHING BEEN, YOU KNOW, BE RUN
22 CONCURRENT, YOU KNOW. POSSIBLY EVERYTHING GONNA GET RUN CONCURRENT. GET
23 IT OVER WITH, YOU KNOW. I JUST WANT TO GET EVERYTHING OVER WITH. I HAVE
24 ANYTHING PENDING, YOU KNOW.

25 THE COURT: OKAY. NOW YOU UNDERSTAND SHE CAN ASK FOR THAT, BUT

1 THAT'S MY DECISION TO MAKE.

2 THE DEFENDANT: YES, SIR. YES, SIR.

3 THE COURT: ANYTHING ELSE YOU WANT HER TO DO?

4 THE DEFENDANT: NO, SIR.

5 THE COURT: ALL RIGHT. DO YOU HAVE ANY COMPLAINTS TO MAKE AGAINST
6 THE LAW ENFORCEMENT OFFICERS, THE -- YOUR ATTORNEY, ANYBODY WHO'S DEALT
7 WITH YOUR CASE?

8 THE DEFENDANT: NO, SIR, I HAVE NO COMPLAINTS TO MAKE AGAINST NO ONE. I
9 THINK EVERYBODY, YOU KNOW, FOLLOWED PROCEDURE AND EVERYTHING ELSE. MY
10 RIGHT WAS READ AND I WAIVED MY RIGHT, YOU KNOW, AND CONFESSED TO THE
11 CRIME. I JUST -- LIKE I SAY, I KNOW ME AND I KNOW I JUST -- I HAVE NO CHILDREN, NO
12 WIFE, YOU KNOW, AND LIKE I SAY, I JUST ---

13 THE COURT: OKAY.

14 THE DEFENDANT: I DON'T WANT TO SEE THAT MAN AGAIN IN LIFE, SIR.

15 THE COURT: ALL RIGHT. AND THIS CASE -- YOU WERE CHARGED WITH ARMED
16 ROBBERY. YOU'RE PLEADING TO SOMETHING LESS: ATTEMPTED ARMED ROBBERY, AND
17 IT INDICATES YOU'RE WAIVING PRESENTMENT TO THE GRAND JURY. I DON'T REALLY
18 KNOW IF THAT'S NECESSARY, BUT I'LL GO OVER IT WITH YOU. YOU HAVE A RIGHT TO
19 HAVE THE ATTEMPTED ARMED ROBBERY CHARGE BE REVIEWED BY THE GRAND JURY.
20 IF YOU WANTED THAT DONE, AT LEAST 12 OF THE 18 GRAND JURORS WOULD HAVE TO
21 AGREE -- THEY'D ONLY HEAR FROM THE STATE, BUT THEY'D HAVE TO AGREE YOU'RE
22 PROBABLY GUILTY OR THE CASE WOULD STOP AT THAT POINT. UNDERSTAND?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: NOW THESE PAPERS THEY'VE HANDED ME INDICATE YOU'RE
25 GIVING UP THAT RIGHT.

1 THE DEFENDANT: YES, SIR.

2 THE COURT: IS THAT YOUR OWN DECISION MADE OF YOUR OWN FREE WILL?

3 THE DEFENDANT: MY OWN DECISION; MY OWN FREE WILL, YOUR HONOR.

4 THE COURT: OKAY. NOW LET ME GO OVER THESE POSSIBLE PENALTIES WITH
5 YOU. ALL RIGHT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: ATTEMPTED ARMED ROBBERY IS A FELONY AND IT CARRIES UP TO
8 20 YEARS IN PRISON. YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR, I UNDERSTAND.

10 THE COURT: IT'S CLASSIFIED BY THE LEGISLATURE AS A VIOLENT CRIME. YOU
11 UNDERSTAND THAT?

12 THE DEFENDANT: I UNDERSTAND.

13 THE COURT: IT FALLS UNDER THE 2 STRIKES YOU'RE OUT AND 3 STRIKES YOU'RE
14 OUT LAW. IT'S A MOST SERIOUS OFFENSE. IT'S A STRIKE. YOU UNDERSTAND THAT?

15 THE DEFENDANT: YES, SIR, YOUR HONOR.

16 THE COURT: YOU GET THE RIGHT COMBINATION OF STRIKES, YOU HAVE TO DO
17 LIFE WITHOUT PAROLE. YOU UNDERSTAND THAT?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: IT IS UNDER THE TRUTH IN SENTENCING LAW WHICH MEANS THAT
20 YOU HAVE TO DO AT LEAST 85 PERCENT OF WHATEVER SENTENCE I GIVE YOU.

21 THE DEFENDANT: YES, SIR.

22 THE COURT: THAT'S NO GUARANTEE YOU GET OUT IN 85 PERCENT. THAT'S THE
23 LEAST TIME YOU CAN DO. YOU UNDERSTAND?

24 THE DEFENDANT: I UNDERSTAND.

25 THE COURT: NOW WHEN YOU DO COME OUT, YOU AUTOMATICALLY WILL BE ON

1 COMMUNITY SUPERVISION, AND IT'S WRITTEN INTO THE LAW. IT'S SORTA LIKE
2 PROBATION OR PAROLE, BUT IT'S A LITTLE DIFFERENT ANIMAL.

3 THE DEFENDANT: YES, SIR.

4 THE COURT: AND YOU HAVE TO DO THAT UNDER THE CURRENT VERSION OF THE
5 LAW FOR 2 YEARS. IF YOU DON'T DO WHAT YOU'RE SUPPOSED TO DO DURING THAT 2-
6 YEAR PERIOD, YOU CAN GET UP TO A YEAR IN PRISON JUST FOR VIOLATIN' THE
7 SUPERVISION, AND THEN YOU HAVE TO START A NEW 2-YEAR PERIOD. AND THE WAY
8 THAT LAW IS WRITTEN, YOU CAN WIND UP DOIN' DOUBLE THE AMOUNT OF THE
9 ORIGINAL SENTENCE IF YOU DON'T EVER COMPLETE SUCCESSFULLY THE COMMUNITY
10 SUPERVISION. YOU UNDERSTAND?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: ALL RIGHT. NOW I WANT MR. RIDDLE TO TELL ME YOUR PRIOR
13 RECORD TO MAKE SURE WHETHER YOU GOT ANOTHER VIOLENT CRIME IN YOUR PAST
14 OR NOT.

15 MR. RIDDLE: YOUR HONOR, HE HAS A OPERATIN' UNINSURED AND A D.U.S. FROM
16 SOUTH CAROLINA BACK IN '99. A SHOPLIFTING FROM SOUTH CAROLINA IN '99. HE HAS
17 STRONG ARM ROBBERY FROM RICHLAND COUNTY. THAT WAS IN 2003 AND I THINK THAT
18 IS WHAT HE IS ON PROBATION FOR AT THIS TIME. HE GOT -- ON THAT CHARGE, YOUR
19 HONOR, HE GOT IT APPEARS 10 YEARS SUSPENDED ON 2 YEARS AND THEN PROBATION
20 TO FOLLOW. HE ALSO HAS OUT OF NEW YORK, YOUR HONOR, RESISTING ARREST BACK
21 IN '74 AND WHAT'S LISTED AS A ROBBERY FIRST FORCIBLE THEFT FROM '75 IN NEW
22 YORK THAT HE RECEIVED AN 8-YEAR SENTENCE ON. AND HE ALSO HAS, YOUR HONOR,
23 FLORIDA AND THAT WAS IN 1984. IT IS CLASSIFIED AS HOMICIDE WILLFUL KILLING
24 SECOND DEGREE THAT HE RECEIVED A 17-YEAR SENTENCE ON IN 1984. AND IT APPEARS
25 THAT HE WAS DISCHARGED FROM FLORIDA IN 13 OF THAT 17 YEARS. SO HE WAS IN

1 FROM '84 TO '97.

2 THE COURT: OKAY. MR. FOLKES---

3 THE DEFENDANT: YES, SIR.

4 THE COURT: ---LIKE I TOLD YOU, YOU'RE UNDER THIS 85 PERCENT LAW.

5 THE DEFENDANT: YES, SIR.

6 THE COURT: AND THERE'S -- I TOLD YOU IT'S A VIOLENT CRIME TOO. AND I'M
7 JUST GONNA TELL YOU THIS. I DON'T KNOW HOW IT'LL ALL PLAY OUT OR WORK
8 TOGETHER, BUT ON A SECOND VIOLENT CRIME, A PERSON'S REQUIRED TO DO ALL OF
9 THE AMOUNT OF TIME. YOU UNDERSTAND THAT?

10 THE DEFENDANT: YES, SIR, YOUR HONOR.

11 THE COURT: OKAY. YOU SURE YOU WANNA GIVE UP YOUR RIGHTS AND PLEAD
12 GUILTY?

13 THE DEFENDANT: I WANNA GIVE 'EM UP AND PLEAD GUILTY, YOUR HONOR.

14 THE COURT: ALL RIGHT. MR. FOLKES HAS MADE A FREE, KNOWING AND
15 VOLUNTARY AND INTELLIGENT DECISION TO WAIVE PRESENTMENT TO THE GRAND JURY
16 AND PLEAD GUILTY. HE'S DONE SO UPON THE ADVICE OF COUNSEL WITH WHOM HE'S
17 FULLY SATISFIED. THERE'S A FACTUAL BASIS FOR HIS PLEA.

18 NOW THEY'VE HANDED ME SOME PAPERS FROM PROBATION INDICATING THAT
19 YOU WERE SENTENCED BY JUDGE WILLIAMS IN DECEMBER OF 2003 FOR STRONG ARM
20 ROBBERY OR COMMON LAW ROBBERY. YOU GOT A SENTENCE OF 10 YEARS SUSPENDED
21 ON 2 YEARS SERVICE WITH 18 MONTHS OF PROBATION AND THEY INDICATE IN THESE
22 PAPERS THAT YOU HAD ONE PRIOR VIOLATION WHERE YOU LEFT THE STATE WITHOUT
23 PERMISSION AND THEY GAVE -- JUST GAVE YOU A VERBAL REPRIMAND. AND YOU'RE
24 BEFORE THE COURT NOW ON ALLEGATIONS THAT YOU DID NOT REPORT JULY THE 21ST,
25 SEPTEMBER THE FIRST, NOVEMBER THE THIRD OF 2005 OR FEBRUARY THE 2ND, APRIL THE

1 -TH OF 2006; THAT YOU DID NOT PROVIDE THEM WITH A VALID RESIDENCE, AND THAT
2 YOU WERE BEHIND SOME ON YOUR MONEY. THEY RECOMMENDED THAT YOUR
3 PROBATION BE REVOKED. YOU WENT BEFORE THE ADMINISTRATIVE HEARING OFFICER
4 WHO ALSO RECOMMENDED A REVOCATION AND THAT THERE BE A RECOMMENDATION
5 THAT YOU RECEIVE MENTAL HEALTH TREATMENT WHILE YOU'RE INCARCERATED.
6 ANYTHING ELSE ON HIS CASE?

7 PROBATION OFFICER: NO, YOUR HONOR.

8 THE COURT: MS. HENRY?

9 MS. HENRY: THANK YOU VERY MUCH, YOUR HONOR. HE'S NOW 48 YEARS OLD.
10 HE COMPLETED THE 8TH GRADE IN TERMS OF HIS EDUCATION, AND I THINK HE CAME TO
11 THE UNITED STATES FROM JAMAICA ORIGINALLY---

12 THE DEFENDANT: YES, SIR. YES, MA'AM.

13 MS. HENRY: --BY WAY OF NEW YORK. ENDED UP HERE WITH HIS FAMILY, AND I
14 THINK AT THE TIME HE WAS PUT ON PROBATION FROM RICHLAND COUNTY HE WAS
15 LIVIN' WITH HIS MOTHER AND HIS BROTHER. BUT LEFT THERE DURING THAT PERIOD OF
16 TIME. HE WAS -- HE'S BEEN IN MENTAL HEALTH TREATMENT, AS THE REPORT FROM THE
17 DEPARTMENT OF MENTAL HEALTH RECOGNIZES, AT LEAST 3 DIFFERENT TIMES THAT WE
18 HAVE RECORDS FOR. HE'S HAD ADMISSIONS TO THE BRYAN PSYCHIATRIC UNIT. AND
19 HE'S, BASICALLY, OVER THE PAST, I GUESS, 5 OR 6 YEARS AT LEAST THAT WE CAN
20 TRACK BEEN ON SOME TYPE OF MEDICATION TO HELP HIM DEAL WITH HIS MENTAL
21 HEALTH ISSUES ALTHOUGH HE'S NOT BEEN FOUND TO BE INCOMPETENT, AND I DO NOT
22 BELIEVE HIM TO BE BECAUSE WE HAVE HAD INTELLIGENT CONVERSATIONS INDICATING
23 TO ME HE UNDERSTANDS FULLY WHAT'S GOING ON. I DO THINK HE HAS POSSIBLY SOME
24 MENTAL HEALTH ISSUES. HE'S CURRENTLY ON MEDICATION HE'S TOLD YOU. AND OVER
25 THE YEARS HE'S BEEN ON DEPAKOTE (PHONETIC), SERAQUIL (PHONETIC), SAUPREXIA

1 (PHONETIC), CLONAPINE (PHONETIC), A NUMBER OF MEDICATIONS. I THINK THIS
2 INCIDENT HAPPENED, HE HAD BEEN RELEASED FROM THE FACILITY AT THE
3 DEPARTMENT OF CORRECTIONS. HE WAS ON SOME MEDICATION BUT HE'D RUN OUT,
4 AND HE WAS NOT ACTIVELY ON MEDICATION AT THE TIME THIS INCIDENT HAPPENED. I
5 THINK THAT PROBABLY PLAYED A PART IN HIS ACTIONS AT THE TIME, BUT FROM THE
6 BEGINNING, AS HE'S TOLD THE COURT, HE'S ADMITTED TO WHAT HE DID. AND SAYS
7 THAT THE PURPOSE OF HIS ACTIONS IS SO HE WOULDN'T HARM HIS BROTHER. AND HE
8 KNEW THAT A PRISON SENTENCE WOULD BE THE LIKELY OUTCOME OF THIS AND HAS
9 BEEN FORTHCOMING WITH ME ON THAT FROM THE BEGINNING OF MY RELATIONSHIP
10 WITH HIM.

11 YOUR HONOR, WE'D LIKE TO REQUEST OF THE COURT IN IMPOSING A PRISON
12 SENTENCE CONSIDER THE FACTS THAT HAVE BEEN PRESENTED TO YOU: HIS HISTORY OF
13 MENTAL HEALTH CONDITIONS. AND GIVE HIM A SENTENCE THAT IS NOT DRACONIAN,
14 ONE THAT WOULD RUN CONCURRENT WITH ANY TYPE OF REVOCATION YOU SEE FIT TO
15 IMPOSE UNDER HIS PROBATION VIOLATION. HE KNOWS THAT HE'S GONNA DO 85
16 PERCENT OF WHATEVER IT IS THAT HE GETS HERE TODAY AND HE HAS ASKED ME TO
17 REQUEST THE COURT IMPOSE A SENTENCE IN THE 5 TO 8-YEAR RANGE. I THINK THAT'S
18 REASONABLE. AS I SAY, HE'S 48 YEARS OF AGE. HE'S GONNA BE IN HIS 50'S AT LEAST
19 BEFORE HE'S RELEASED UNDER THOSE CIRCUMSTANCES, AND IF HE RECEIVES SOME
20 TYPE OF MENTAL HEALTH TREATMENT WHILE HE'S AT THE DEPARTMENT OF
21 CORRECTIONS, AND, YOU KNOW, RECEIVES MEDICATION, I THINK HE CAN BE
22 STABILIZED. HE IS, YOU KNOW, HE'S BEEN VERY FORTHRIGHT, FORTHCOMING WITH ALL
23 OF THIS. JUST ASK THE COURT TO HAVE MERCY ON HIM, YOUR HONOR.

24 THE COURT: ALL RIGHT. ANYTHING ELSE YOU WANNA TELL ME, MR. FOLKES?

25 THE DEFENDANT: THAT UNFORTUNATELY I STARTED OUT AT A VERY YOUNG AGE

1 JUVENILE DELINQUENT, YOU KNOW, ALL THE WAY OVER 20 YEARS INCARCERATION
2 LIKE I SAID. MY MENTAL PROBLEM AND EVERYTHING ELSE. UNFORTUNATELY I JUST
3 HOPE THAT I SHOULD, YOU KNOW, I'M HOPIN' THAT ALL THIS SINCE YOU DONE HEAR
4 FROM MY, YOU KNOW, I CAN LEARN FROM ME, MY EXPERIENCE, YOU KNOW, STATE
5 CRIME DOESN'T PAY AT ALL, AND YOU KNOW IT'S LIKE -- I DON'T KNOW -- I'M NOT
6 GONNA SAY I'M INSTITUTIONALIZED, YOUR HONOR, BUT IT'S LIKE, YOU KNOW, IT'S -- TO
7 ME IT'S LIKE IT'S EASY FOR A PERSON LIKE ME TO COP OUT, YOU KNOW, THIS MAN, YOU
8 KNOW, YOU GOIN' BACK. YOU KNOW, IT'S EASY, AND, YOU KNOW, UNFORTUNATELY IT
9 IS. YOU KNOW, BUT LIKE I SAY, I'M -- I'M ALWAYS CONSCIOUS NO MATTER WHAT, AND
10 YOU KNOW, I TRY NOT TO, YOU KNOW, AND I -- LIKE I SAY, I'M AT THE MERCY OF THE
11 COURT, YOUR HONOR.

12 THE COURT: YES, SIR.

13 MS. HENRY: AND, YOUR HONOR, I DID NOT SPECIFICALLY ADDRESS HIS
14 VIOLATION. HE DOES ADMIT THAT HE DID NOT REPORT ON THOSE OCCASIONS. THE ONE
15 INSTANCE WHERE HE WAS NOT ABLE TO REPORT WAS THE NOVEMBER 3RD OF '05. HE
16 WAS AT THE BRYAN CENTER AT THAT TIME. WE HAVE THE PAPERWORK ON THAT. HE
17 WAS HOMELESS FOR A LOT OF THIS AND LIVIN' PRETTY MUCH, I THINK, HAND TO
18 MOUTH. BUT HE DOES ADMIT THE VIOLATION.

19 THE COURT: ALL RIGHT. WELL, MR. FOLKES, ---

20 THE DEFENDANT: YES, SIR, YOUR HONOR.

21 THE COURT: YOU SEEM LIKE A VERY INTELLIGENT MAN; YOU'RE VERY WELL
22 SPOKEN. I REALLY HATE IT'S COME TO THIS. I REALLY DO. I AM GLAD IF YOU FELT LIKE
23 YOUR 2 OPTIONS WERE TO KILL YOUR BROTHER OR COMMIT THE ATTEMPTED ARMED
24 ROBBERY THAT YOU CHOSE THE ATTEMPTED ARMED ROBBERY WHERE NOBODY GOT
25 PHYSICALLY HURT OTHER THAN -- SAID HE WAS PUNCHED.

1 THE DEFENDANT: YES, SIR.

2 THE COURT: WITH YOUR RECORD AND WITH YOUR CONDITION AND WITH THE
3 RESOURCES THAT I'VE GOT AVAILABLE TO ME WHICH ARE PRETTY LIMITED---

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ---I FEEL LIKE I GOTTA DO SOMETHIN' ON THIS. THE COURT FINDS
6 THAT YOU HAVE WILLFUL -- FIRST OF ALL, I ACCEPT YOUR PLEA OF GUILTY. AND THEN I
7 FIND THAT YOU WILLFULLY VIOLATED PROBATION BY FAILING TO FOLLOW THE ADVICE
8 AND INSTRUCTIONS OF THE AGENT, FAILING TO REPORT AS DIRECTED. I'M GOING TO
9 SENTENCE YOU ON THE ATTEMPTED ARMED ROBBERY TO 20 YEARS PLUS COST AND
10 ASSESSMENTS; RECOMMEND MENTAL HEALTH TREATMENT WHILE INCARCERATED
11 INCLUDING MEDICATIONS; PAY YOUR COURT COST WHILE ON COMMUNITY SUPERVISION
12 AT A RATE SET BY PROBATION, PAROLE AND PARDON. REVOKE HIM IN FULL ON HIS
13 PROBATION. RUN IT CONCURRENTLY. TERMINATE HIM FROM SUPERVISION.

14 PROBATION OFFICER: THANK YOU, YOUR HONOR.

15 THE COURT: GOOD LUCK, SIR.

16 THE DEFENDANT: I GOT 20 YEARS. ?

17 THE COURT: YES, SIR. THAT MIGHT BE THE BEST PLACE FOR YOU, MR. FOLKES.

18 THE DEFENDANT: IT MIGHT AS WELL BE, YOUR HONOR.

19 THE COURT: I UNDERSTAND.

20 MS. HENRY: THANK YOU, YOUR HONOR.

21 THE COURT: THANK YOU. I'M SORRY.

22 MR. RIDDLE: THANK YOU, YOUR HONOR.

23 *****ENDOFTRANSCRIPT*****
24
25

CERTIFICATE

I, THE UNDERSIGNED, SMOKEY PERRY, OFFICIAL AND CERTIFIED COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF RECORD TO THE BEST OF MY ABILITY AND SKILL.

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

Smoky Perry

11-20-06

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Leroy Folkes,

Appellant.

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2008-UP-460
Submitted August 1, 2008 – Filed August 8, 2008

APPEAL DISMISSED

Appellate Defender Katherine H. Hudgins, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

all of Columbia; Solicitor Donald V. Myers, of Lexington, for Respondent.

PER CURIAM: Leroy Folkes appeals his guilty plea for attempted armed robbery for which he received a sentence of twenty years. He argues the trial judge abused his discretion in imposing the maximum sentence. After a thorough review of the record, counsel's brief, and Folkes' pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

KONDUROS, J., CURETON, A.J., and GOOLSBY, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2008CP3204048

FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA

FILED

COUNTY OF

Lexington

2008 OCT -3 A 10:38

IN THE COURT OF COMMON PLEAS

Mr. Leroy Folkes #298608
Full name and prison number (if any) of Applicant.CLERK
JULY
2008

v.

APPLICATION FOR

State of South Carolina

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 a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correction Inst, SMU-N-12, 990. W. Sackey Hwy
Bishopville SC. 29810
2. Name and location of Court which imposed sentence Lexington County Courthouse
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-32-1915 ; Armed Robbery §16-11-330 A
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October. 20. 2006 ; 06-GS-32-1915 20.years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- 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. August. 26. 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. See Attachment The South Carolina Court of Appeals, Remittitur
- ii. and SC. Court of Appeal Unpublished Opinion No 2008-UP-41
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel of trial counsel and Appellant Counsel of calling Bryan Psychiatric Center Doctor.

- (b) ~~Trial Judge abuse his discretion at applicant sentence and did not have proper Blair Hearing from~~
 (c) ~~The Plea hearing was not held in compliance w/ the Mandate of Rule 11, of Federal Rule of Criminal Procedures 18 U.S.C.A.~~
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 Trial Counsel & Appellant Counsel are Ineffective assistance of counsel
 (a) for Bryan Psychiatric Center Doctor or file of applicant wasn't use at
 (b) Trial Judge abuse his discretion of not getting Bryan Psychiatric Center Doctor or files, only using State Psychiatric file is error by Blair Hearing
 (c) Judge did not go by mandates of Rule 11, of Federal Rule of Criminal Procedure 18 U.S.C.A. which judge didn't review Bryan Psychiatric Center file.
12. Prior to this application have you filed with respect to this conviction:
- any petition in a State Court under South Carolina Law? yes
 - any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- the specific nature thereof:
 - Initial Anders Brief of Appellant
 - Leroy A. Folkes Brief
 - _____
 - _____
 - the name and location of the Court in which each was filed:
 - South Carolina in the Court of Appeals
 - _____
 - _____
 - _____
 - the disposition thereof:
 - Appeal Dismissed
 - _____
 - _____
 - _____
 - the date of each such disposition:

i. August. 26. 2008

ii. _____

iii. _____

iv. _____

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

i. review attachment of Remittitur August 26. 2008 on
 ii. South Carolina Court of Appeals. "Opinion".

iii. _____

iv. _____

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

Yes.

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

(a) which grounds have been presented:

i. By Katherine Hudgins
Did the judge abuse his discretion in imposing the maximum sentence
 ii. By Leroy Folkes.
Did the judge abuse his discretion in imposing the maximum sentencing
filing to consider applicable special sentencing statute?
 iii. 2) Did the judge make an informed decision in accepting Appellant's
despite possible incompetence?

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

i. Both to S.C. Court of Appeal.

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? YES. Ms. Sally Henry. "Assistant Public

(b) your trial, if any? N/A

(c) your sentencing? YES. Ms. Sally Henry.

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Ms. Sally Henry; Assistant Public Defender "Public Defender Off
is unknown to me
 - Ms. Katherine Hudgin; Appellate Defender, S.C. Commission o
Indigent Defense, Division of Appellate Defense, P.O. Box 1158
Columbia SC. 29211-1589
 - the proceedings at which each such attorney represented you:
- Ms. Sally Henry Esq. Arraignment & plea; sentencing
 - Ms Katherine Hudgin. Initial Anders Brief of Appellant to
 - South Carolina Court of Appeals.
19. State clearly the relief you seek in filing this application:
Vacate Conviction & Sentencing or grant New Trial
20. Are you now under sentence from any other court that you have not challenged?
NO

21) PCR application will be amended.

2008CP3204048

ORIGINAL

STATE OF SOUTH CAROLINA

County of

Lexington

VERIFICATION

FILED

I, Leroy Folles, 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.

CLERK OF COURT
LEXINGTON SC

SWORN to and subscribed before me this 29th
day of September, 2008.

Jarvis S. Melton (L.S.)
Notary Public

My Commission Expires: 4-26-2014

Application To Proceed Without Payment Of Cost and Affidavit In Support Thereof.

I, Leroy Folles, 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 cost of said proceeding or give security thereof.

Leroy Folles
Applicant

Sworn or affirmed to and subscribed before me this 29th day of Sept, 2008

Jarvis S. Melton Notary Public

4-26-2014 My Commission Expires

CLERK OF COURT
LEXINGTON SC

2008 OCT - 3 A 10:43

FILED

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2008-CP-32-4048
	)	
Leroy Folkes, #298608,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND REQUEST FOR
	)	APPOINTMENT OF COUNSEL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 3, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2006 term of the Lexington County Grand Jury for Armed Robbery (2006-GS-32-1915). He was represented by Sally Henry, Esquire. On October 20, 2006, the Applicant pled guilty to Attempted Armed Robbery. He was sentenced by the Honorable William P. Keesley to confinement for a period of twenty (20) years.

The Applicant filed a timely Notice of Appeal, and an appeal was thereafter perfected. On appeal, he was represented by Katherine Hudgin, Esquire. The South Carolina Court of Appeals dismissed the appeal and filed its remittitur on August 8, 2008.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript¹. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. "Trial Counsel and Appellant Counsel are Ineffective assistance of counsel for Bryan Psychiatric Center Doctor or file of applicant wasn't use at sentencing."
2. "Trial Judge abused his discretion of not getting Bryan Psychiatric Center Doctor or files, only using State Psychiatric file is error by Blair Hearing."
3. "Judge did not go by mandates of Rule 11 of Federal Rule of Criminal Procedures 18 U.S.C.A. which judge didn't review Bryan Psychiatric Center file."

III.

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

¹ At the time of this mailing, the guilty plea transcript has not yet been received by this office. It will be forwarded upon receipt.

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

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

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

IV.

Respondent submits that the Applicant's second and third allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

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

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 29, 2009.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	2008-CP-32-04048

LEROY FOLKES	)	
APPLICANT	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

September 14, 2010
Lexington, South Carolina

B E F O R E:

HON. R. KNOX MCMAHON, Judge.

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

MATTHEW MCGUIRE, ESQ.
Attorney for the Applicant

A. WEST LEE, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

WITNESSES: PAGE

LEROY FOLKES

Direct Examination by Mr. McGuire 4

Cross Examination by Mr. Lee 18

Redirect Examination by Mr. McGuire 19

Recross Examination by Mr. Lee 20

SALLY HENRY:

Direct Examination by Mr. Lee 21

Cross Examination by Mr. McGuire 28

EXHIBITS

Respondent's Exhibit

		ID	EVD
Exhibit 1	Report of 7-10-06	26	26

1 THE COURT: All right. Mr. Lee.

2 MR. LEE: Thank you, Your Honor. May it please
3 the Court.

4 This is Leroy Folkes versus the State of South
5 Carolina. It's 2008-CP-32-4048. And it comes to the
6 Court by way of application for post-conviction relief
7 filed October 3rd, 2008.

8 The applicant was indicted at the July 2006 term
9 of the Lexington County Grand Jury for armed robbery. He
10 was represented by Ms. Sally Henry and on October 20th,
11 2006, the applicant pled guilty to attempted armed
12 robbery. He was sentenced by the Honorable William
13 Keesley to confinement for a period of 20 years.

14 The applicant timely filed a notice of appeal
15 and the South Carolina Court of Appeals subsequently
16 dismissed the appeal and filed its remittitur on
17 August 8th, 2008.

18 In his current application, the applicant
19 alleged that he's being held in custody unlawfully for
20 ineffective assistance of counsel; specifically, that
21 trial counsel and appellate counsel are -- and I'm
22 reading -- this is a direct quote from his application so
23 there may need to be some clarification -- "trial counsel
24 and appellate counsel are ineffective assistance of
25 counsel for Bryan Psychiatric Center doctor, for file of

1 applicant wasn't used at sentencing."

2 And then his second claim is "Trial judge abused
3 his discretion of not getting Bryan Psychiatric Center
4 doctor or file knowing using State's psychiatric file is
5 error by Blair hearing."

6 And thirdly, "Judge did not go by mandates of
7 Rule 11 of Federal Rules of Criminal Procedures, 18 USCA,
8 which judge didn't review Bryan Psychiatric Center file."

9 At this time I will turn it over to the
10 applicant's attorney, Mr. Matthew McGuire, to expand upon
11 those claims.

12 THE COURT: Mr. McGuire.

13 MR. MCGUIRE: Thank you, Your Honor.

14 The petitioner would call Leroy Folkes.

15 THE COURT: All right. Come around, Mr. Folkes,
16 and be sworn.

17 THE CLERK: Raise your right hand.

18 LEROY FOLKES, after being duly sworn, testified
19 as follows:

20 THE CLERK: Thank you. Have a seat and state
21 your name.

22 DIRECT EXAMINATION

23 BY MR. MCGUIRE:

24 Q Mr. Folkes, just as a matter of background, you and I
25 have corresponded back and forth for about the last year

1 and a half; is that correct?

2 A Yes, sir.

3 Q And I came and saw you at Pelzer a couple of weeks
4 ago for about an hour and discussed your case?

5 A That's correct.

6 Q The Court has a copy of the transcript from your
7 plea. But just briefly, can you describe what you pled to
8 and what sentence you received?

9 A I pled to attempt (sic) armed robbery under the
10 impression that I was going to get five to eight years.

11 THE COURT: Slow down a little bit for me.

12 You pled to attempted armed robbery?

13 THE WITNESS: Yes, I did. They dropped it from
14 armed robbery to attempt armed robbery. I waived my right
15 to a grand jury for a new charge.

16 I came for a probation violation originally and
17 Ms. Henry brought it to my attention that the deal's, you
18 know, off the table; I would get five years as opposed to
19 20. And I plead guilty involuntarily really because, like
20 I say, I was under the impression that, you know, I was
21 going to get five to eight years.

22 BY MR. McGUIRE:

23 Q Okay. We're getting a little bit ahead of where we
24 were.

25 A Yes, sir.

1 Q But let me backtrack.

2 You were originally indicted for armed robbery,
3 correct?

4 A Yes, sir.

5 Q Facing up to 30 years?

6 A I believe. I don't know the statute. I think, you
7 know, I was facing --

8 Q Well, Ms. Henry worked out a negotiation where you
9 were allowed to plead to attempted armed robbery carrying
10 up to 20 years, correct?

11 A Yeah. She didn't tell me about what the statute was
12 or how much it carried because she told me they was going
13 to drop it to attempt armed robbery and I waived my right
14 to a grand jury.

15 Q Well, prior to your entering that plea before Judge
16 Keesley, how many times had you met Ms. Henry?

17 A Only once when she introduced herself, came to the
18 county jail and introduced herself and told me that she
19 was going to represent me in my case, and I haven't seen
20 her after that until that day that I plead.

21 Q How much before the actual plea date did she come see
22 you, weeks, months?

23 A Never. Only, like I say, when she first introduced
24 herself, that was it.

25 Q It was the day of the actual plea?

1 A No. Well, that's the second time I saw her.

2 Q Okay.

3 A And we spoke for around a couple of minutes and she
4 told me about, you know, the alleged deal that was made.

5 Q And what I'm asking you is when prior to the day of
6 your plea did you meet her previously?

7 A Once when I first got arrested and I was in the
8 county jail. The first week I was in the county jail she
9 came to see me.

10 Q Seven months before your plea?

11 A Yes, sir.

12 Q Okay. Now, prior to you going in and doing your
13 actual plea before Judge Keesley, had you discussed with
14 Ms. Henry where you had been living or where you had been
15 housed?

16 A Yes. I discussed with her that I was under crisis
17 intervention, I was being observed because I had attempted
18 suicide, cut myself, and I was told that I was at
19 Lexington County Jail and they had me under observation.

20 Q Okay. Well, prior to that, had you been under
21 psychiatric care?

22 A Yes, sir. In fact, during my whole incarceration
23 I've been under psychiatric care, on medication and
24 everything. I thought I was on medication at the time,
25 you know, the day that I plead guilty.

1 Q Where had you been under psychiatric care?

2 A Bryan Psychiatric Hospital. I was there three times.
3 And Just Care, Columbia Care Center. That was on Marshall
4 Street. And I was also at Morris Village for substance
5 abuse, mixing my medication with drugs.

6 Q But the last place you'd been prior to being arrested
7 was Bryan Psychiatric Center?

8 A Exactly. That's what I was trying to get back to.

9 Q Okay. Now, while you were there, were you under the
10 care of a doctor?

11 A Yes, sir.

12 Q Do you recall that doctor's name?

13 A No, sir, I cannot recall the doctor's name.

14 Q Would the name Cheryl Wright Brown ring a bell?

15 A Yeah, that was my counsel, sir.

16 Q Okay. Did you inform Ms. Henry of your treatment
17 from Dr. Wright Brown?

18 A Yes. I explained to her that I had been in the
19 institution and I was being treated and I was trying to
20 get back to Bryan Psychiatric Hospital at the time that I
21 committed the crime. My only objective was to get back to
22 the hospital as opposed to coming to jail because I ran
23 out of my medication.

24 Q Did you explain to Ms. Henry that you had run out of
25 the medication being supplied to you by Bryan Psychiatric

1 Hospital?

2 A Yes, sir.

3 Q And what were those medications?

4 A It was Seroquel and Geodon for people with
5 schizophrenic, bipolar and other mental diseases. I've
6 been suffering with this illness for years now.

7 Q Okay.

8 A There's times when I hear voices.

9 Q Okay. I'm going to jump around a bit here, but the
10 date you actually committed your crime, the armed robbery
11 or attempted armed robbery, were you under the -- were you
12 using those medications?

13 A I was using drugs. I ran out of my medication. I
14 was using drugs. I was using cocaine and reefer at the
15 time.

16 Me and my brother had just had a fight, you
17 know, he had a dispute with my mom, and I felt like if I
18 go back around there that me and him was going to get in a
19 conflict and I didn't want to see no one no more. I was
20 trying to get back in Bryan Psychiatric Hospital.

21 Q Okay. And again, you explained to Ms. Henry that you
22 were not on your proper medication, correct?

23 A Yes, sir.

24 Q And you asked her to contact Dr. Wright Brown to
25 discuss those medications?

1 A Yes, sir.

2 Q Okay. Now, at the time you actually entered your
3 plea before Judge Keesley, Judge Keesley asked you on the
4 record what medications you were taking. Do you recall
5 what those were?

6 A Yes, sir. I told him Seroquel and Geodon and
7 Cogentin.

8 Q I know you're not a doctor, but are those the normal
9 medications you received for your schizophrenia?

10 A Yes, sir. Those medications I've used for years now.

11 I used to receive Thorazine and Haldol, but I
12 was having adverse effects on me. I finally get some
13 medication that would work, you know, to help me with the
14 voices and help me calm and, you know, things like that.

15 Q Okay. But those were not the same, the exact same
16 medications you'd been on at Bryan, correct?

17 A Yes, sir.

18 Q They were?

19 A Well, they were, but the Seroquel was missing. The
20 county jail was providing me with Geodon and Cogentin but
21 they wasn't providing me with Seroquel because they said
22 it didn't really mix with the Geodon.

23 Q Okay. Now, while you were locked up in Lexington
24 County, do you recall being taken for a psychiatric
25 evaluation, a Blair examination and a McNaughton

1 examination?

2 A Yes, sir. I recall being taken to a psychiatric --
3 to be interviewed for evaluation and I met two
4 supposed-to-be psychiatrists, and they asked me was I able
5 or was I willing to be interviewed, and I told them yes.
6 So they had called Ms. Henry and told Ms. Henry that they
7 had me there and they was going to evaluate me and I told
8 Ms. Henry that if it was all right, that I would go along
9 with the interview.

10 Q Did you explain to the doctors or psychologists or
11 psychiatrists who evaluated you that at the time you
12 committed your crime, that you had not been on your proper
13 medications?

14 A Yes. I explained that to them and also explained
15 that I had just left Bryan. Two or three weeks prior to
16 the incident I had just left Bryan Psychiatric Hospital
17 and Morris Village a week. Because Morris Village,
18 instead of sending me to Bryan, they had to send me to
19 Morris Village because they felt like, you know, with the
20 drugs and it affected me while I was cutting on myself and
21 getting the poison out of my system.

22 Q Okay. To your knowledge, did the doctors who
23 evaluated you through the State contact Dr. Wright Brown
24 at the Bryan Psychiatric Center to discuss your case?

25 A Well, according to the file they said that they

1 had -- I don't know whether or not they obtained Bryan
2 Psychiatric Hospital files and Just Care, but I know
3 they -- I brought it to their attention. And I don't know
4 whether or not they had followed up on it and they had
5 obtained it, but I know it was missing from the file when
6 I plead guilty. And I don't think Ms. Henry had a chance
7 to even see the Bryan Psychiatric Hospital, because if she
8 did, she wouldn't have allowed me to plead because it
9 explained my symptoms, you know, that I'd been suffering
10 from, which is bipolar and schizo-affective.

11 Q And I may have already asked you this, but let me
12 clarify. Did you, in fact, at any time ask Ms. Henry to
13 try to subpoena or bring in Dr. Wright Brown to testify on
14 your behalf --

15 A Well, sir --

16 Q -- either at a trial or a plea?

17 A Let me tell you. Like I say, I was ignorant to the
18 law. I was ignorant. And at the time, I was also -- you
19 know, I was also incoherent.

20 You know, there was a lot of things that I
21 couldn't really express. My last grade I attended was
22 seventh grade, sir. And I'm not familiar with the court
23 and court procedures.

24 But I did mention being at Bryan and, you know,
25 and I told her I was trying to get back to Bryan.

1 Q Now, prior to the day that Ms. Henry met you and
2 brought you forward for your plea, had you ever discussed
3 the possibility of going to trial?

4 A Yes, I wanted go to trial because, like I said, I
5 plead guilty -- I sat there. In fact, when the officers
6 and them was -- you know, after the crime's committed, I
7 came to the officer and gave him the money and gave him
8 everything and totally explained to him that I was trying
9 to get back to Bryan Psychiatric Hospital and that's why I
10 did what I did. I didn't do it for the money, I didn't do
11 it to harm nobody, you know what I'm saying.

12 I'm glad nobody got harmed. And, like I said, I
13 came back and, you know, I gave them the money and I told
14 them where the clothes was at and I confessed to the
15 crime.

16 But at the same time, I was looking for -- I was
17 hoping to get, you know, institutionalized, you know, get
18 to the institution so I could deal with my problems
19 instead of incarceration.

20 Q So, in other words, from the outset, you discussed
21 with Ms. Henry the possibility -- or not the
22 possibility -- the idea that you would plead guilty, you
23 had confessed, you'd cooperated with the police?

24 A Yes, sir, I told her that, too, really.

25 Q Now, on the date she saw you on your actual plea, did

1 she discuss with you an actual promise or guarantee a
2 particular amount of time you would receive if you agreed
3 to plead guilty?

4 A Well, my interpretation -- when she mentioned five to
5 eight years, I was under the impression that that was on
6 the table and -- I was under the impression that that was
7 on the table off the record. But she did mention five to
8 eight years to me, you know, possibly that's what I would
9 get, you know, a possible five to eight years and for me
10 to keep it, you know -- in other words, you know, not to
11 mention it because, you know, that's an under-the-table
12 deal.

13 Q So I don't want to put words in your mouth. You're
14 saying she told you you'd get five to eight but not to say
15 anything about it?

16 A What's that, sir?

17 Q She told you you would get five to eight years but
18 not to say anything before the Court about that?

19 A Yes, sir. Yes, sir. That was my impression. And,
20 you know, like I said, I cooperated all the way to the
21 fullest.

22 Q Now, had you thought you would receive something
23 greater than five to eight years, would you have entered
24 your guilty plea?

25 A No, sir. If I knew that I was going to get the

1 maximum sentence that that crime carried, I wouldn't plead
2 guilty, I would have went to trial, you know, and take my
3 chances of getting 20 years, which is the maximum, or even
4 30 years. Even if they didn't drop the armed robbery to
5 attempt armed robbery, see, I would go to trial. Because,
6 like I say, my whole reason, everything that I did, I was
7 trying to get back to Bryan Hospital.

8 And I plead guilty at the mercy of the Court as
9 well as when I surrendered to the officers, I begged them
10 to get me to Bryan Psychiatric Hospital. They told me
11 that they couldn't because I committed a felony and they
12 was going to take me to jail.

13 Q Okay. So were you under the impression that you
14 might actually be going to a psychiatric hospital?

15 A Yes, sir, I was under that impression. I was also
16 under the impression that I was going to get five to eight
17 years. That's why. Otherwise, I wouldn't have plead.

18 MR. McGUIRE: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. McGUIRE:

22 Q Now, I know you testified a few minutes ago that when
23 you actually entered your plea before Judge Keesley you
24 were taking most of the same drugs you were given at
25 Bryan.

1 A Yes, sir. Correct.

2 Q However, were you in your -- I wouldn't call it your
3 right mind -- but were you in a stable mental state when
4 you were giving answers to Judge Keesley?

5 A Well, if you could see the transcript, I've forgotten
6 the exact number, but I was rambling on and I just kept
7 saying yes.

8 It seemed, like I said, this disease that I
9 have, it comes and goes, you know, but at the time I was
10 feeling like, you know, I had to keep everything quiet,
11 everybody was against me and I just wanted to, you know,
12 get everything over with at the time.

13 But whether I was incoherent or, you know, had
14 the proper understanding of what was going on, I would say
15 no, I didn't quite understand what was going on.

16 I noticed that, you know, the district attorney
17 was shooting signs and so and so and I didn't really -- I
18 felt -- well, let's say I cooperated because, like I say,
19 I just wanted to get everything over with and possibly get
20 institutionalized so I could get medication and get
21 treatment.

22 Q Okay. Mr. Folkes, is there anything further that you
23 want to tell the Court regarding your post-conviction
24 relief application?

25 A I have some briefs there that I'd like to mention

1 that, you know, that the reason I felt that Ms. Henry was
2 ineffective is because she didn't, you know, properly
3 prepare my case and, you know, she -- you know, I was
4 coerced into making this plea. And, you know, like I say,
5 she didn't get familiar with my case, get familiar with
6 any type of witnesses or anything of that nature. And she
7 didn't mention to the Court that the Bryan file was
8 missing as well as Just Care and the file from Creedmoor
9 Hospital of New York. I was also institutionalized in New
10 York. And I felt, you know, her representation fall
11 below -- whereas it was ineffective.

12 Q Okay.

13 A These briefs that I have, you know -- see, right now
14 I'm institutionalized, I'm getting treatment and
15 everything, and I had an individual help me file this PCR.
16 So, you know, personally, like I say, with my education
17 and my disease I don't comprehend a lot of things.

18 A lot of times I hear things and I get confused
19 by some of the things that I hear. Like I said, you know,
20 this disease is real, sir.

21 Q You've submitted all those handwritten briefs to me
22 over the last year and a half and I've got a stack of
23 them.

24 A Yes, sir.

25 Q I'll submit those to the Court on your behalf --

1 A Yes, sir.

2 Q -- for their review.

3 A Yes, sir.

4 MR. McGUIRE: Unless you have anything further,
5 that will be all we have, Your Honor.

6 THE COURT: Thank you.

7 Mr. Lee.

8 MR. LEE: Thank you, Your Honor. I have a few
9 questions for him.

10 CROSS-EXAMINATION

11 BY MR. LEE:

12 Q Mr. Folkes, you stated that you confessed to the
13 crime and helped the authorities by returning a lot of the
14 items to them, correct?

15 A Exactly.

16 Q Okay. Secondly, do you recall at the guilty plea
17 hearing when the judge explained to you that you could get
18 up to 20 years in prison, do you remember that?

19 A Yeah, he mentioned something like that, but I didn't
20 quite understand what it meant. I think he's just doing
21 that as just a formality, you know, to get everything on
22 the record. I felt the eight years, you know, was still
23 up in the air.

24 Q Do you recall him asking if you wanted a trial and
25 saying no?

1 A I recall him asking me, but at the time, like I said,
2 I felt like, you know, I just wanted to get it over with
3 and that's why I said no.

4 Q Do you recall the judge asking you if anyone promised
5 you anything and you said no?

6 A I believe I recall that. I believe that's what I
7 stated. But, like I said, that was supposed to be
8 something discreet, that I'm not supposed to mention it,
9 it was under the table.

10 Q Do you recall the judge asking if you were under the
11 influence of drugs and your admitting that you were on
12 medication but also saying that you understood what was
13 going on?

14 A Yes, that's what I said.

15 Q Okay. Do you recall saying that you were satisfied
16 with the services of your attorney?

17 A I do recall saying that, but, you know, like I say,
18 I'm a layman, I'm very ignorant to the law. I have
19 limited education and sometimes I comprehend things -- you
20 know, my comprehension is not correct.

21 MR. LEE: No further questions for this witness,
22 Your Honor. Thank you.

23 THE COURT: Redirect, Mr. McGuire?

24 MR. MCGUIRE: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q Mr. Folkes, you told the Court that you didn't want a
3 trial, isn't it true, because you thought you were
4 receiving five to eight years?

5 A Yes, sir, exactly. That's the reason why I plead.

6 Q And by the same token, why did you not tell the Court
7 that you had received any promises regarding possible
8 sentence?

9 A Like I say, Your Honor, I was -- basically that day
10 that I plead, you know, everything just came down sudden.
11 You know, I came for a probation violation and I felt
12 that, you know, that's what they were going to deal with.
13 Ms. Sally Henry brought it to my attention that they was
14 going to drop the charge if I'd plead. Like I said, I
15 wasn't aware -- you know, the judge told me about the
16 maximum and minimum that the charge carried. I felt like
17 the five to eight years, you know, was on the table. And
18 I just wanted to get everything over with, like I said,
19 and just, you know, get everything over with.

20 MR. MCGUIRE: Nothing further, Your Honor.

21 THE COURT: Recross?

22 MR. LEE: Beg the Court's indulgence just one
23 second, Your Honor.

24 (Pause.)

25 RECROSS-EXAMINATION

1 BY MR. LEE:

2 Q Mr. Folkes, do you recall at the guilty plea hearing
3 the judge saying, "Any plea bargains, any deals have to be
4 put on the record, and if they're not on the record,
5 they're dropped?" Do you recall that?

6 A I heard him say something to that effect, sir.

7 MR. LEE: That would be all my questions. Thank
8 you.

9 THE COURT: Thank you, Mr. Folkes. You may step
10 down.

11 THE WITNESS: Yes, sir.

12 MR. MCGUIRE: Those are all the witnesses the
13 applicant has, Your Honor.

14 THE COURT: Thank you, Mr. McGuire.
15 Mr. Lee.

16 MR. LEE: Thank you, Your Honor.

17 The State would call Sally Henry.

18 THE COURT: All right. Ms. Henry.

19 THE CLERK: Raise your right hand.

20 SALLY HENRY, after being duly sworn, testified
21 as follows:

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. LEE:

25 Q I understand you're not feeling well, so I'll try to

1 make this short and sweet.

2 A Thank you.

3 Q How long have you been practicing law?

4 A Seventeen years.

5 Q How much of that has been in the area of criminal
6 law?

7 A Pretty much the entire time.

8 Q Okay. Now, you're appointed to represent this
9 applicant?

10 A I was.

11 Q Okay. And subsequent to your being appointed, did
12 you have the occasion to meet with the applicant to
13 discuss his case?

14 A I did.

15 I got the case on the 9th of May of 2006 and I
16 met with him on the 24th of May, 2006. And at that time
17 we discussed what he was charged with.

18 My normal procedure, which I do with every
19 client I have, is to explain what they have been charged
20 with, what the elements are, what the possible punishment
21 is, their constitutional rights, including their right to
22 a trial by jury, and I go into some detail on that.

23 I also explain any collateral consequences that
24 may occur as a result of the conviction of the particular
25 crime they're charged with.

1 And I discussed all that with Mr. Folkes and
2 then listened to what he had to say about why he was
3 charged with this crime.

4 Q Okay. And at that time did you discuss -- did he
5 assert to you that he wished to proceed to trial?

6 A No. He -- from the get-go, you know, he said that he
7 admitted what he did, he cooperated with the authorities,
8 and the reason behind his actions was he had had a
9 disagreement with his brother and did not want to act on
10 that, felt like that if he committed another crime that he
11 would be taken to a mental hospital as a result of, you
12 know, whatever consequences came from that.

13 Q Okay. So if I'm hearing you correctly, was he sort
14 of always wanting to plead guilty?

15 A That's correct.

16 Q So, and this is probably part of the same question,
17 but then did you discuss any defenses or witnesses that
18 might be asserted on his behalf?

19 A That's normally what I go through with each client
20 that I represent, and I'm sure I went through that with
21 Mr. Folkes.

22 Q Now, did you receive the discovery in the case?

23 A Yes, I did.

24 Q Okay. And did you review that discovery with the
25 applicant?

1 A Yes. We sent him a copy of it and it dovetailed with
2 his explanation as he gave it to me initially when I met
3 with him about what happened.

4 Q And just to back up a little bit, do you recall how
5 many times you met with the applicant?

6 A According to my notes, I met with him initially on
7 the 24th of May, and it appears that he was -- in the
8 interim I was securing records and so forth because we did
9 ask for a McNaughton and a competency evaluation.

10 On the 1st of August he was brought to court for
11 a probation violation hearing and at that time I met with
12 him and I requested the Court continue it because we did
13 not have any evaluation results from Mental Health and
14 then again, at the -- it looks like the beginning of
15 October.

16 Q Okay. As part of your investigation, you just
17 mentioned that you had a McNaughton examination done?

18 A That's correct.

19 MR. LEE: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes. Certainly.

22 BY MR. LEE:

23 Q Could you just briefly describe for the Court what
24 that is.

25 A This is the findings of the Department of Mental

1 Health forensic evaluation that was conducted on
2 July 10th, and it dealt with his capacity to conform his
3 conduct and criminal responsibility.

4 Q And what were the findings as they relate to this
5 capacity to conform and to his criminal responsibility?

6 A The findings were he did not appear to lack, due to
7 mental disease or defect, sufficient capacity to conform
8 conduct and he did not appear to lack, due to mental
9 disease or defect, the ability to distinguish between
10 moral right or legal right or moral or legal wrong or to
11 be able to recognize the wrongfulness of his particular
12 acts.

13 Q And did it actually make a diagnosis of any sort of
14 psychosis or --

15 A The diagnosis indicated here is that he had
16 malingered of psychotic symptoms; psychosis, not
17 otherwise specified by history; and polysubstance
18 dependence by history. Also, a personality disorder, not
19 otherwise specified.

20 Q So there's no specified finding of schizophrenia?

21 A No.

22 Q Did you submit that to the Court at the time of the
23 guilty plea?

24 A We did. We requested a Blair hearing. The report
25 was entered into the Court's documents and Judge Keesley

1 also conducted his own questioning of the defendant.

2 Q And after Judge Keesley questioned the defendant, was
3 he again found competent?

4 A Yes, he was.

5 MR. LEE: The State would move to have this
6 marked and admitted into evidence, Your Honor.

7 MR. MCGUIRE: No objection, Your Honor.

8 THE COURT: All right. It's in evidence as
9 Respondent's 1 without objection.

10 (WHEREUPON, Respondent's Exhibit No. 1 was
11 marked for identification and received into
12 evidence.)

13 BY MR. LEE:

14 Q Now, backtracking just a little bit, you mentioned
15 that you would have gone over potential defenses or
16 witnesses. Do you recall him ever mentioning any
17 witnesses he wanted you to interview?

18 A No.

19 Q Okay. Now, you -- I guess at a certain point did the
20 two of you come to an -- I guess, did he assert to you
21 that he wished to explore his options as it related to a
22 guilty plea?

23 A When I told him that there was an offer from the
24 State for attempted armed robbery, initially -- well, he
25 had been asking to enter a plea from the beginning.

1 Q Okay.

2 A So the negotiations from the State were dropping it
3 down to an attempted armed robbery. I explained to him
4 that he could get anything from zero or a suspended
5 sentence to 20 years. I also explained to him it was an
6 85-percent crime and that it was considered a most serious
7 crime. The judge went over all that with him.

8 But I felt like -- and he was on probation at
9 the time and he had, I believe, eight years remaining on
10 that probationary sentence. And I felt like if we asked
11 the Court for a sentence in the range of five to eight
12 years, that that would be considered, and that's what I
13 did.

14 Q And, in fact, you put it on the record, correct?

15 A Yes.

16 Q But did you ever promise the applicant that he would
17 receive between five and eight years?

18 A No. I never promise a client anything. In fact, I
19 make sure they understand that that is not my decision.
20 That's what I would certainly like to have happen, but
21 it's a decision of the judge.

22 Q Thank you. Just one more question.

23 With regards to the Bryan Psychiatric Center
24 records and/or doctors, did he ever ask you to introduce
25 the Bryan records into evidence or subpoena any doctors to

1 testify on his behalf?

2 A No, not that I recall.

3 MR. LEE: No further questions. Thank you, Your
4 Honor.

5 THE COURT: Thank you, Mr. Lee.

6 Mr. McGuire.

7 CROSS-EXAMINATION

8 BY MR. MCGUIRE:

9 Q Ms. Henry, were you, in fact, aware that Mr. Folkes
10 had been in the Bryan Psychiatric Center shortly before
11 committing these crimes?

12 A He told me when I first met with him that he had been
13 released from Bryan's a few weeks before this incident
14 happened.

15 Q Okay. Did he provide you the names of any of his
16 physicians or anyone who treated him there?

17 A Not at that time. What we did at that point, though,
18 was subpoena records on him, on his commitments, which
19 necessitated getting releases from him, of course. But
20 no, he never mentioned a specific physician's name to me.

21 Q And those records ostensibly were turned over to the
22 State's psychiatrist?

23 A Yes, sir, that's correct.

24 Q Did you do the same thing for his New York treatment?

25 A He did not mention to me, at least from my notes, and

1 I don't recall that he mentioned being treated in New
2 York.

3 Q I, of course, saw in the transcript where you did ask
4 for the five to eight years because of the revocation.
5 Are you telling the Court today that you did not promise
6 Mr. Folkes that he would receive five to eight years?

7 A That's correct.

8 Q After Judge Keesley imposed his sentence of 20
9 years -- of course, the maximum -- did you a file motion
10 for reconsideration?

11 A I did not. We appealed the decision. I did not file
12 a motion for reconsideration. I did not feel that we had
13 sufficient grounds to do so.

14 MR. MCGUIRE: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Pause.)

17 BY MR. MCGUIRE:

18 Q Ms. Henry, were you aware of the fact that Mr. Folkes
19 had attempted to commit suicide and had been under a
20 suicide watch at the Lexington County Detention Center
21 prior to entering the plea?

22 A No, I was not.

23 Q Okay. Had you known that he had attempted suicide
24 and was under a watch, would you have mentioned that to
25 the Court?

1 A I'm not certain. I felt like we had had him
2 evaluated by professional psychiatrists. They're the ones
3 who determine, you know, his mental state and so forth.
4 And he was in front of the judge who also had a discourse
5 with him. I'm not certain I would have.

6 Q Okay. Had you known about the suicide attempt and
7 the suicide watch, would you have been more hesitant to
8 allow him to enter his guilty plea on that day?

9 A Probably not.

10 Q Would you have brought that to the Court's attention?

11 A Again, I think I just answered that.

12 MR. MCGUIRE: Nothing further, Your Honor.

13 THE COURT: Any follow-up, Mr. Lee?

14 MR. LEE: No further questions from the State,
15 Your Honor.

16 THE COURT: Thank you. You may step down,
17 Ms. Henry.

18 You can call your next witness, Mr. Lee.

19 MR. LEE: No further witnesses from the State,
20 Your Honor.

21 THE COURT: Anything additional by way of
22 witnesses, Mr. McGuire?

23 MR. MCGUIRE: No, Your Honor.

24 THE COURT: Mr. McGuire, I'll be glad to hear
25 from you.

1 MR. MCGUIRE: Your Honor, I'll be brief.

2 I think it's clear from Mr. Folkes' testimony
3 that he's under the impression that in exchange for
4 voluntarily entering the plea on the day he met Ms. Henry
5 for the probation revocation, that he was under the
6 impression that he would receive something concurrent or
7 close to eight years and that had he been under the
8 impression that it would have been something greater than
9 that, he would not have agreed to have pled on that date.
10 I know, of course, this is based purely upon his
11 credibility, but he is stating that he essentially was
12 guaranteed that he would receive something lesser or
13 somewhere in the range of eight -- five to ten years, was
14 told to not say anything to the Court.

15 Additionally, I do believe that although he did
16 pass the McNaughton and the Blair examinations, his
17 psychological state shortly prior to the plea strongly
18 affected his ability to enter that plea and had Ms. Henry
19 known about it, she was under an obligation to reschedule
20 the plea to have him further evaluated.

21 THE COURT: All right. Thank you, Mr. McGuire.
22 Mr. Lee.

23 MR. LEE: Thank you, Your Honor.

24 With regard to the two specific allegations that
25 the applicant made, one, and first being the contention

1 that there was a promise for a sentence of five to eight
2 years, based on the testimony presented today from
3 Ms. Henry, it sounds like it was more likely that she told
4 him that she would ask for it and thought it might be
5 considered as a result of the also overhanging sentence on
6 his probation revocation. That is very different,
7 however, than promising him that he would receive it.

8 You know, I can understand that it's possible
9 that sometimes people hear differently than what they're
10 told, but being told that it would be asked for and
11 promising are two very different things. The State would
12 contend that she did not promise anything. And she did,
13 in fact, ask for it. She attempted to get it for him.

14 With regards to his -- the applicant's mental
15 state and the failure to introduce any documentation from
16 the Bryan Psychiatric Center, the State would submit that
17 there was a McNaughton evaluation done prior to the guilty
18 plea hearing in which he was found to have capacity to
19 conform and to be criminally responsible, and there was a
20 Blair hearing done at the outset of the guilty plea
21 hearing, a very thorough Blair hearing, in which Judge
22 Keesley asked the applicant several questions and
23 ultimately determined him to be competent to go ahead and
24 enter his guilty plea.

25 As a result, the State would submit that there's

1 no prejudice shown today by Ms. Henry's alleged failure to
2 introduce these documents. The State would also submit
3 that these documents in question have not been submitted
4 to the Court here today.

5 As a result, the State would contend that the
6 applicant has not met his burden of proof and his
7 application for post-conviction relief should be denied.

8 Thank you.

9 THE COURT: Thank you, Mr. Lee.

10 This Respondent's 1 is a copy of a document
11 that's been provided to Judge Keesley at the time of the
12 plea?

13 MR. LEE: Yes, Your Honor.

14 THE COURT: What was the name of the facility in
15 New York?

16 THE APPLICANT: Creedmoor, sir. Creedmoor
17 Psychiatric Hospital located in Queens, New York.

18 That was in 1983. I'd just got out of prison.
19 I was on medication while I was incarcerated. I took over
20 a bus and I wanted to kill everybody and myself.

21 THE COURT: You don't need to tell me anything
22 further. I just wanted to know where the facility was.

23 THE APPLICANT: Yes, sir, Bryan Psychiatric
24 Hospital.

25 THE COURT: It's in Queens?

1 THE APPLICANT: Yes, sir. And Just Care.

2 THE COURT: Where is Marshall Street
3 Stabilization Unit?

4 THE APPLICANT: That's in Columbia, right across
5 from --

6 THE COURT: That's out by Richland Memorial or
7 Palmetto Richland?

8 THE APPLICANT: Yes, sir.

9 THE COURT: I forgot that was Marshall Street.
10 It looks like to me on this report that they had
11 the records from Bryan Psychiatric Hospital. It's got
12 listed a review of records from the Bryan Psychiatric
13 Hospital pertaining to an admission from January 31 to
14 March 11 of '03; October 31, '05 to December 9 of '05; and
15 February 17th of '06 to March 30th of '06.

16 MR. LEE: The treating facility that did the
17 McNaughton evaluation maybe had those documents.

18 THE COURT: They've got them listed, that this
19 evaluation consisted of the following, which Judge Keesley
20 indicates he reviewed this report and was aware of the
21 records from these various facilities.

22 All right. Please prepare a proposed order
23 within 30 days. E-mail them to my law clerk. I will take
24 it under advisement.

25 Thank you very much. Good luck to you,

1 Mr. Folkes.

2 THE APPLICANT: Yes, sir.

3 MR. McGUIRE: Thank you, Your Honor.

4 (The proceedings were concluded.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

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4 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
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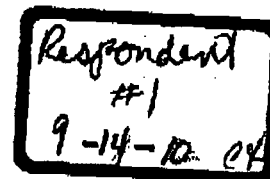
8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 14th day of
15 September, 2010.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 January 6, 2012

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25



FORENSIC EVALUATION SERVICE OF SCDMH

DATE OF INTERVIEW: July 10, 2006

EXAMINERS: Pratap Narayan, M.D.
Carol David, LISW

DIAGNOSES: **AXIS I:** Malingering of Psychotic Symptoms
 Psychosis, Not Otherwise Specified (Substance-Induced) by history
 Polysubstance Dependence by History
 AXIS II: Personality Disorder, Not Otherwise Specified (Antisocial and Borderline
 Traits) by History
 AXIS III: History of Hypertension

CRIMINAL RESPONSIBILITY: Did not appear to have lacked (due to mental disease or defect) the ability to distinguish between moral or legal right and moral or legal wrong or to recognize the wrongfulness of the particular acts charged at the times of the alleged offenses.

CAPACITY TO CONFORM: Did not appear to have lacked (due to mental disease or defect) sufficient capacity to conform conduct to the requirements of the law at the times of the alleged offenses.

DISPOSITION: Mr. Folkes returned to the Lexington County Detention Center (LCDC) following completion of the interview.

IDENTIFYING DATA: Leroy Folkes is a 47-year-old African-American male seen at our institution as part of an evaluation pursuant to an order from the Lexington County Court of General Sessions. The court order directed an evaluation to determine whether he was criminally responsible pursuant to the McNaughten standard for his actions on or about April 30, 2006, and if found responsible, whether he lacked sufficient capacity to conform his conduct to the requirements of the law because of mental disease or defect. He is currently charged with Armed Robbery, according to the order.

This evaluation consisted of the following:

1. Review of order from the Lexington County Court of General Sessions dated June 6, 2006.
2. Review of arrest warrant # J-050556 dated April 30, 2006 on charge of Armed Robbery With Deadly Weapon, numbering two pages.
3. Review of incident report by Officer Jones dated April 30, 2006, numbering three pages.
4. Review of investigative report from the Lexington County Sheriff's Office by Officer Davis dated April 30, 2006.
5. Review of supplemental incident report by Officer Amick dated April 30, 2006.
6. Review of records from the Columbia Care Center pertaining to Mr. Folkes' admission from November 12, 2003 - November 27, 2003.
7. Review of medical records from the Lexington County Detention Center.

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8. Review of records from the Morris Village pertaining to his admission there from April 14, 2006-April 18, 2006.
9. Review of records from the Bryan Psychiatric Hospital pertaining to his admissions from January 31, 2003-March 11, 2003, October 31, 2005-December 9, 2005, and February 17, 2006 - March 30, 2006.
10. Review of some records from the Marshall Street Stabilization Unit.
11. Review of social history obtained by Ms. Carol David and by Tracie Bodfield/Traylor Jowers.
12. Review of report of psychological assessment by Dr. Musick, dated 07/27/06.
13. Review of records from the Palmetto Baptist Medical Center.
14. Review of records from the South Carolina Department of Corrections.
15. A two-hour twenty-minute forensic clinical interview.

CONDUCT OF THE INTERVIEW: Mr. Folkes came willingly for the interview and was able to read and understand the contents of information sheet. He asked to speak to his attorney, Ms. Sally Henry, and a telephone call was placed to the Lexington County Public Defender's Office. Ms. Henry was reportedly in court, but Mr. Folkes agreed to speak with Ms. Henry's paralegal. After having done so, he signed the form, voluntarily electing to proceed with the interview.

PERTINENT HISTORY: Mr. Folkes was reportedly born the fifth of seven siblings (actually the third of five siblings - he has two older stepbrothers) raised by his parents and grandparents. He reported good interpersonal relationships with family members and said that he moved to the United States in 1968 (from Jamaica) along with his family and lived in New York until 1983 when he moved to South Carolina. He reportedly lived in Charleston from 1983 until 1994 and then moved to Columbia.

He reported a seventh grade education and said he was placed in a reformatory school (juvenile detention) after he reportedly stabbed a teacher. He stated that he was in special schools for not being able to "cope," "I was hyper... getting into trouble... fighting... stay out and drink" and said that he did not graduate, or obtain a GED. He reported a history of suspensions (for having a knife at school and for sniffing glue), running away on two occasions at the age of 13 or 14, cruelty to animals, and truancy. He denied a history of stealing or fire setting.

He reported he has held at least thirty to forty different jobs in construction but that he never held a job for more than one or two weeks because of "temper" and tardiness. He also reported working in a restaurant as a dishwasher. He said that he last worked four or five years ago, and since that time has been doing "yard work under the table." He reportedly applied for Disability but was turned down, and said that he was living "on the street" at the time of his arrest, although he used his mother's address for mail.

He has never been married and has no children. Besides his juvenile history of legal problems, he has reportedly been arrested mostly for "misdemeanors - Shoplifting, Loitering, Simple Possession of Cocaine, Public Drunk." He was also reportedly convicted in 2003 on a charge of Armed Robbery and was incarcerated at the Lee Correctional Institution for two years; he was reportedly released in 2005.

He reported a family history of possible mental illness in an uncle and suicide in an aunt. He reported a history of arthritis, diabetes, and hypertension in his mother and that his father died in 2001 due to some "stomach virus"

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or ulcer." He also reported a substance use problem in one brother. He denied significant illnesses except for hypertension. He endorsed a history of gunshot injuries to his abdomen and his leg and that he has also been injured in his head with loss of consciousness on at least three occasions. He also stated that he used to have "seizures up to three years ago" and that they spontaneously stopped.

He endorsed a history of extensive substance use. He said he began sniffing glue at the age of 11 or 12 and drinking alcohol in his early teens. He stated that he continued to drink into his adult years and was drinking approximately a twelve-pack of beer per week at the time of his arrest (although he stated earlier that he drank a six- to twelve-pack of beer two or three times a week). He said his last drink was on the day of his arrest. He reported using marijuana since the age of 9 or 10 initially; after abstaining, he reportedly began smoking marijuana again some years later. He said that he began smoking marijuana laced with cocaine in 2001 and that he last used marijuana on the day of his arrest. He reported that he began using cocaine in 2001 and said that he initially started with snorting powder and later smoking crack cocaine. He stated that that he continued to use both powder and crack cocaine, despite the cocaine making him "paranoid... hallucinate... hearing voices, seeing things... I didn't like that," he reportedly last used cocaine "earlier that night" on the day of his arrest. His pattern of use suggested tolerance, although he did not report withdrawal symptoms.

He reported using prescription pain pills such as Percocet and OxyContin "when I couldn't... when I ran out..." of his psychotropic medications. He said that he has also tried opium, crystal meth and heroin, but denied continued use. He also denied using acid, PCP, or Ecstasy. He was reportedly hospitalized at the Morris Village in 2006, and discharged twelve days prior to the present arrest. His diagnoses at the time of discharge there were Cocaine/Alcohol Dependence, Mood Disorder secondary to Chemical Dependence, and "history of malingering psychotic symptoms, Personality Disorder, NOS with Antisocial and Borderline Traits." He indicated that he had been in substance abuse programs on three or four occasions and said that his longest period of abstinence was for a period of four years from 1990-1994 or so; he said that he was also abstinent during his incarceration from 2003-2005.

He endorsed a history of being "hyper" at the age of 9 or 11 and that he started "hearing voices" two or three years before his father died in 2001. He reported hospitalizations at the Creedmoor Hospital in New York, with a history of being paranoid and "suicidal and homicidal." He also said that he was admitted to a hospital attached to the Bellevue Medical Center in New York in 1982 or so. In South Carolina, he has reportedly been admitted to the Bryan Psychiatric Hospital on three occasions, the Marshall Street Stabilization Center once, the Columbia Care Center once, the Palmetto Baptist Medical Center on two occasions, and to LRADAC on one occasion.

He has a history of numerous self-inflicted lacerations in the past: he said that on about three of these occasions, he was genuinely suicidal, but that on the other occasions he was trying to relieve stress, and to get the "poison (drugs and alcohol) out of my system." He also stated that on one or two occasions when he cut himself it was with the intention of trying to "get help." He reported that he has had impoverished relationships and that his longest relationship was for three years or so, "on and off." He reported a history of under-valuation and over-idealization in his relationships with people, and that he had chronic feelings of "lonely, depressed and empty." He said that he frequently thinks about what might have been had he not become addicted to drugs - "I could have been a lawyer... whatever" - and feels sad about his present circumstances. He stated, "I relapse" (in terms

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of his self-injurious behavior and depression) whenever he uses drugs. He also noted poor anger control and impulsivity, especially in the context of his substance use.

He stated that he began "hearing voices" in 2000 or so, and also reported "seeing things"; however, his description of these was not typical of genuine psychotic hallucinations and suggested malingering of psychotic symptoms. He endorsed a history of occasional episodes of losing time, but was unable to provide additional information. He stated that he was currently in maximum security observation at the LCDC owing to his "suicide attempts" and that he is currently prescribed three tablets of Geodon per day. Psychological assessment by Dr. Musick also supported the clinical impression of malingering of psychotic symptoms.

MENTAL STATUS EXAM: He was an unshaven but clean African-American male dressed in red LCDC garb, in no apparent distress. His speech was within normal limits, and his thinking was logical and goal-directed. He was pleasant and cooperative and his affect was euthymic, with good reactivity. He endorsed 'seeing things and hearing voices', but as mentioned, his description of these was atypical and not suggestive of true psychotic hallucinations. He denied suicidal or homicidal ideation, intent or plan at the time of the interview but said that he had thought about suicide the previous night by hanging. He was oriented to time, place, person, and situation, and his attention and concentration were intact. His immediate and recent memory were good, and his abstract thinking on tests of similarities and proverb interpretation was adequate. His fund of general information and test judgment were good.

OPINION REGARDING CRIMINAL RESPONSIBILITY: Mr. Folkes was aware that his present charges resulted from incidents that occurred earlier this year.

On the day in question, he reportedly got offended by his brother who "disrespected my mom in the street." He reportedly had a physical altercation with his brother earlier that evening and said that he then "left and went down the road to a hotel." He stated that he "kept having thoughts about going back and hurting him" (his brother).

He reportedly then went drinking and used marijuana laced with cocaine with some friends following which he was walking home when he "heard the voices telling me to go kill the son of a bitch... then the voice told me I had to go to Bryan to get my medication... that I should rob the Circle K and they would take me back to Bryan... and that it was wrong to kill my brother." He stated that he "robbed it... I don't remember exactly how... I know I jumped over the counter... I didn't have no gun or nothing... everything happened so fast, it was like the voices took over saying just get the money and leave and go to Bryan." Afterwards he reportedly left the store and went across the street.

He said that he watched the police for some time, and that he then 'heard a voice' telling him it what he did was bad, and to "return the money... I was walking towards there" (the store) when the officers arrested him. He stated "I didn't really care whether I went to Bryan or I went to prison," but that he just wanted to get to some place where he could get treatment.

Mr. Folkes reports experiencing hallucinations around the time of the alleged offense; the available information indicates that he had used a considerable amount of alcohol, marijuana and cocaine prior to the alleged incident.

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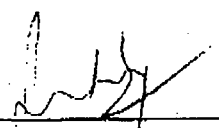
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However, there is no evidence that either his substance use or his mental illness (even if he experienced genuine psychotic hallucinations) if any, impaired his ability to distinguish moral or legal right from moral or legal wrong, or to recognize the wrongfulness of the specific actions charged. (In fact, according to him, his motive for committing the crime was to go someplace where he could get treatment, whether it was in hospital or in prison). Therefore it is my opinion, with reasonable medical certainty, that Mr. Folkes did not appear to have lacked criminal responsibility pursuant to the McNaughten standard for his actions on or about April 30, 2006 (if his charges are proven as alleged).

OPINION REGARDING CAPACITY TO CONFORM: According to Mr. Folkes's statement, he was under the influence of cocaine, marijuana, and alcohol at the time of the alleged incident; consequently, it is possible that he may have experienced impaired judgment and impulsivity due to substance use. However, at the present time, there is no evidence to suggest that he lacked the ability to demonstrate lawful behavior because of a mental illness. Therefore, it is my opinion, with reasonable medical certainty, that Mr. Folkes did not lack sufficient capacity to conform his conduct to the requirements of the law due to mental disease at the time of the alleged incident.

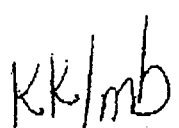
RECOMMENDATIONS: Return to court.

This report is based on information available to us at the present time and is subject to change should new information become available. Records have been requested from the Creedmoor Hospital in New York, and LRADAC, but have not yet been received.


Pratap Narayan, M.D.
Forensic Psychiatrist

PN/lb

D: 07/11/06
RT/EM: 07/11/06
F/EM: 09/12/06


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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Leroy Folkes, # 298608,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS FILED
FOR THE ELEVENTH JUDICIAL CIRCUIT
Case No.: 2008-CP-32-4048

2011 MAR 16 P 4:

LEON A. CARRIG
CLERK OF COURT
LEXINGTON SC

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 3, 2008. The Respondent made its return on or about June 29, 2009. An evidentiary hearing into the matter was convened on September 14, 2010, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Matthew McGuire, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Respondent presented testimony of Applicant's Plea Counsel, Sally Henry, Esquire. This Court also had before it a copy of the transcript from the Applicant's guilty plea proceedings, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the State's Return, and evidence presented during the hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

indicted at the July 2006 term of the Lexington County Grand Jury for Armed Robbery (2006-GS-32-1915). He was represented by Sally Henry, Esquire. On October 20, 2006, the Applicant pled guilty to Attempted Armed Robbery. He was sentenced by the Honorable William P. Keesley to confinement for a period of twenty (20) years.

The Applicant filed a timely Notice of Appeal, and an appeal was thereafter perfected. On appeal, he was represented by Katherine Hudgin, Esquire. The South Carolina Court of Appeals dismissed the appeal and filed its remittitur on August 8, 2008.

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

- 1) Ineffective Assistance of Counsel
 - a. Failure to adequately present Applicant's mental state as mitigation prior to sentencing.
 - b. Failure to investigate or prepare case for trial.
 - c. Failure to call witnesses.
- 2) Involuntary Guilty Plea
 - a. Counsel's advice as to length of sentencing coerced Applicant's guilty plea

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of Counsel is alleged as a ground for relief, the Applicant must prove that "Counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within

the range of competence required in criminal cases. Courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of Counsel. First, the Applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty Plea Counsel, the Applicant must show that there is a reasonable probability that, but for Counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

An Applicant who enters a plea on the advice of Counsel may only attack the voluntary and intelligent character of the plea by showing that trial Counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial Counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v.

State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of Counsel, and it will be treated as such.

Involuntary Guilty Plea

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

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by U.S. v. Whitley*, 759 F.2d 327 (4th Cir.1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective

standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

SUMMARY OF TESTIMONY PRESENTED AT THE HEARING

Leroy Folkes

Applicant testified that he only met with his attorney on one occasion. He stated the during that meeting he informed her that he was in the psych center for crisis intervention and that he had been on suicide watch. Applicant further alleged that he told Counsel of his mental problems generally. Applicant testified that he only committed the armed robbery in this case to get back to jail because he was not receiving treatment for his mental problems outside the jail and he felt as if he might be a danger to his brother, who he had a falling out with earlier that day, if he did not go back to the psych ward. He further testified that he had been using cocaine and marijuana regularly during that time.

Applicant went on to testify that he explained to counsel that he was not on the appropriate medication. He asserted that as far as he knew she did not subpoena any of the doctors who treated him or the records of the psychiatric facilities in which he was housed. Applicant also stated that Counsel told him the trial court might consider a sentence between five and eight years, but admitted that she did not promise him a particular sentence. Applicant also admitted that he confessed, and led police back to the clothes he wore during the robbery which

were identified on the video surveillance of the store. Applicant went on to say he did not feel Counsel adequately investigated, interviewed witnesses, or prepared his case for trial. He also testified that he felt Counsel coerced him into pleading guilty by telling him she thought he may be able to get a sentence between five and eight years.

Sally Henry, Esquire

Counsel testified that she met with the Applicant on multiple occasions. She testified that during those meetings she discussed with the Applicant the charges against him, the elements of those charges and the possible punishments associated with them. She further testified that she discussed the Applicant's constitutional rights. Counsel testified that she received the State's evidence in the case, and reviewed it with the Applicant. She testified that the evidence, which included the video identification, and the Applicant's confession, weighed heavily against the Applicant.

Counsel testified that she discussed the benefits and drawbacks of going to trial or entering a plea. She stated that she told the Applicant that she thought she could get the court to consider a shorter sentence on the Applicant's behalf but insisted that she never promised the Applicant any particular sentence. Counsel asserted that she felt, with the evidence, that a plea was in the Applicant's best interest, but was adamant that it was the Applicant's own free and voluntary decision to plead guilty. She also testified that during her mitigating statement to the court, she discussed the Applicant's mental health issues. Finally, she testified that because the Applicant wished to plead guilty, she did not interview witnesses, but added that she did not know of any witnesses that might have been helpful to the Applicant's case.

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 (2003).

Involuntary Guilty Plea

With respect to the Applicant's claim that his guilty plea was entered involuntarily, this Court finds that the Applicant has failed to sustain his burden of proof. This Court finds Counsel's testimony that she never promised the Applicant any particular sentence and that the Applicant chose to plead guilty to be credible, while simultaneously finding the Applicant's testimony on this issue not to be credible. This court further finds that the guilty plea transcript reflects the intelligent and voluntary nature of the Applicant's guilty plea.

The plea court informed the Applicant of the potential sentences he was facing, so he had knowledge that he may get a sentence other than what Counsel allegedly told him he would get. (Tr. p. 11, lines 7-24). The court asked the Applicant how he wished to plead and he replied that he wished to plead guilty. (Tr. p. 13, lines 11-13). The Applicant testified that no one had pressured him or promised him anything to secure his guilty plea. (Tr. p. 9, lines 1-17). He further testified that he was giving his guilty plea freely and voluntarily. (Tr. p. 11, lines 2-3).

Further, Applicant testified that even though he was on medication, he understood what was going on. (Tr. p. 6, lines 2-11). He also agreed with the statement of facts as read by the

solicitor. (Tr. p. 8, lines 9-25). Finally, Applicant testified that he was fully satisfied with the services of his attorney. (Tr. p. 9, lines 17-18).

This Court finds that the transcript of the guilty plea hearing clearly reflects the knowing and voluntary nature of the Applicant's guilty plea. The only evidence presented at the PCR Hearing to contradict the record is the Applicant's own testimony, which this Court does not find to be credible. Therefore, this Court finds that the Applicant's guilty plea was knowingly voluntarily entered, and accordingly denies and dismisses this allegation.

Failure to Investigate and Prepare an Adequate Defense

With respect to this claim, this Court finds that Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that she received the State's evidence in the case and reviewed it with the Applicant to be credible, while simultaneously finding the Applicant's testimony on this issue not to be credible. Further, because the Applicant voluntarily entered a guilty plea, this Court finds that Counsel was under no duty to undertake additional investigation. As such, this Court finds that the Applicant is unable to prove either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

Failure to Call Witnesses

With respect to this claim, this Court finds that Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that she was not aware of any witnesses who would have been beneficial to the Applicant's case to be credible. Further, because the Applicant voluntarily entered a guilty plea, this Court finds that Counsel was under no duty to undertake additional investigation into finding witnesses. As such, this Court finds that the Applicant is

unable to prove either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

Failure to Adequately Present Mental Health Issues

With respect to this claim, this Court again finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that she presented arguments relating to the Applicant's mental health in her mitigating statement to the plea court to be credible, as it is supported by the record of the guilty plea hearing. At the same time, this Court finds Applicant's testimony on the issue not to be credible. As such, this Court finds that the Applicant is unable to prove ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

All Other Claims

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

CONCLUSION

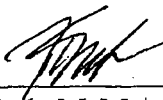
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate Counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

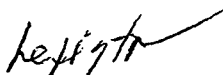
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of March, 2011.



 R. Knox McMahon
 Presiding Judge
 Eleventh Judicial Circuit

 , South Carolina.

ORIGINAL 83

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
2011 JUL -16 A 9 25

MR. LEROY FOLKS #295608
Full name and prison number (if any) of Applicant
BETH A CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

State of South Carolina

WW

APPLICATION FOR
POST-CONVICTION RELIEF

2011CP3202503

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 concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention PERRY CI - BXC - 430 COLUMBIA RD. - PELZER, S.C.
29649
2. Name and location of Court which imposed sentence LEXINGTON COUNTY COURTHOUSE
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-32-1915; ARMED ROBBERY § 16-11-330 A
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 20, 2006, 06-GS-32-1915 20 YEARS
 - (b) _____

A TRUE COPY Revised 3/2003

POCA
Lex. Co. C.C.C.P., G.S. & F.C.

ORIGINAL

FILED

2011 JUL -6 A 9:25

BETH A. CARRIGG
CLERK OF COURT
STON CC

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. Court of Common Pleas 14th Judicial Circuit
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. PCR Dismissed
- iii. _____
- (c) the date of each such result:
- i. August 26, 2008
- ii. March 14, 2011
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Remittitur
- ii. Order of dismissal of P.C.R.
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) My attorney never notified me of P.C.R. being dismissed
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2011CP3202503

ORIGINAL

- (a) Ineffective assistance of counsel of trial counsel and Appellant Counsel of Calling Bryan Psychiatric Center Doctor. (See attached page)
- (b) Ineffective Assistance of Counsel, A Failure to adequately present Applicant's mental state as mitigation prior to sentencing. B) Failure (See attached page)
- (c) _____

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

- in (10):
- (a) Trial counsel & Appellant Counsel are ineffective assistance of counsel for Bryan Psychiatric Center Doctor or file of application wasn't (See attached page)
 - (b) Ineffective Assistance of counsel (A) Failure to adequately present Applicant's mental state as mitigation prior to sentencing B) Failure (See attached page)
 - (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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
 - i. Initial Anders brief of Appellant
 - ii. Pro se Brief (Levy Folles)
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. South Carolina court of Appeals
 - ii. Court of Common Pleas 11th circuit pct.
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Appeal dismissed (direct)
 - ii. Appeal dismissed (P.C.R.)
 - iii. _____

2011CP3202503

FILED
2011 JUL - 6 A 9:25
BETH A. CARRIG
CLERK OF COURT
LEXINGTON CO

ORIGINAL

FILED

2011 JUL -6 A 9:25

BETH A. CARRIGG
CLERK OF COURT
WINSTON-SALEM, NCiv. _____
(d) the date of each such disposition:i. August 26, 2008ii. March 11, 2011

iii. _____

iv. _____

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

i. Remittitur dismissed August 26, 2008ii. Order dismissed March 11, 2011

iii. _____

iv. _____

2011CP3202503

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

Yes

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

(a) which grounds have been presented:

i. By: Katherine Hudginsii. Did the Judge abuse his discretion in imposing the maximum sentence. (see attached page)iii. Ineffective assistance of Counsel, Involuntary Guilty Plea.

iv. _____

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

i. Both to S.C. Court of Appeals.ii. Court of Common Pleas 14th Circuit PCR

iii. _____

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

(a) He neglected to raise and argue all my Allegations(b) He failed to investigate all my claims(c) He violated my 14th & 6th Amendment rights and Due process rights by failing to file my notice of appeal from dismissed PCR or notify me.

17. Were you represented by an attorney at any time during the course of: 711-13

87
ORIGINAL

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

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

- (a) the name and address of each attorney who represented you:
i. Sally Henry, Asst. Public Defender (address unknown) Public Def. Office
ii. Katherine Hudgins, Appellate defender SC commission on indigent defense
iii. Division PO Box 11589 Columbia, SC 29211-1589
(b) the proceedings at which each such attorney represented you:
i. Sally Henry Esq. Arraignment & Plea, sentencing.
ii. Katherine Hudgins, Initial Anders Brief of Appellant to SC Court
iii. of Appeals.

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

Resentencing or New Trial or vacate conviction

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

NO

2011CP3202503

RETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011 JUL -6 A 9:25

FILED

- #10 (A) 2 Trial Judge abuse his discretion at application sentence and did not have proper Blair hearing from. The plea hearing was not held in compliance w/ the mandates of Rule 11 of Federal Rule of Criminal Procedure 18 U.S.C.A.
- #10 (B) to investigate or prepare case for trial (c) Failure to call witnesses. (2) Involuntary Guilty Plea (1) Counsel's advice as to length of sentence coerced Applicant's guilty plea.
- #11 (A) use out sentencing. (B) Trial Judge abuse his discretion of not getting Bryan Psyc. Center Doctor or files, only using state Psychiatric file is error by Blair. Hearing Judge did not go by mandate of Rule #11 of Federal Rule of Criminal Procedure (c) 18 USC which Judge didn't review Bryan Psyc. Center file.
- #11 (B) to investigate or prepare case for trial (c) Failure to call witnesses (2) Involuntary Guilty Plea (1) Counsel's advice as to length of sentence coerced Applicant's guilty plea.
- #15 (A)(1)(B) By Leroy Folks Did Judge abuse his discretion in imposing the maximum sentencing at Ailing to consider applicable special sentencing statute. (c) Did Judge make an informed decision in accepting Applicant's despite possible incompetence.

ORIGINAL

FILED

2011 JUL -6 A 9:25

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011CP3202503

ORIGINAL

2011CP3202503
STATE OF SOUTH CAROLINA

VERIFICATION

County of Lexington

I, Leroy Folks, 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.

X Leroy Folks

SWORN to and subscribed before me this _____
day of _____, 2_____.

Notary Public (L.S.)

My Commission Expires: _____

I Affirm That The Fore going
ENCLOSED IS TRUE as written
Witness my hand under
The penalties of perjury the
27 day of June 2011

FILED

2011 JUL -6 A 9:25

BETH A. CARRIG
CLERK OF COURT
LEXINGTON S

2011CP3202505

ORIGINAL

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

I, ^{FOLKS} ~~Leroy~~, 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.

X Leroy Folks

Applicant

SWORN or affirmed to and subscribed before me this

_____ day of _____, 2011.

Notary Public

My Commission Expires: _____

I AFFIRM THAT THE FOREGOING
ENCLOSED IS TRUE AS WRITTEN
WITNESS MY HAND UNDER THE
PENALTY OF PERJURY THIS 2
DAY OF JUNE 2011

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011 JUL -6 A 9:25

FILED

DEFENSE OF INDIGENTS ACT

Form No. IV

ORIGINAL

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

County of LEXINGTON

Docket No. _____

VS.

Levoy Folks # 298608
DEFENDANT

ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

2011CF3202503

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

_____, Attorney at law is appointed as counsel for the defendant.

This 27 day of June, 2011

at Prison Corr Inst.

Clerk of Court, Lexington County.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011 JUL -6 A 9:25

FILED

92

Levy Folks #298608 JUL 01 2
Remy C.I. BY6
430 Oaklawn Rd.
Pelzer, S.C. 29669

FILED

ORIGINAL

County of Lexington

Beth A. Carrigg

Clerk of Court

205 East Main St. Suite 200

Lexington, S.C. 29072

2011 JUL -6 A 9:25

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

RE: Filing of Post Conviction Relief.

2011CP3202503

Dear Honorable Beth Carrigg,

Ma'am, can you please send me a copy of this Post Conviction Relief Application and attached paperwork back to me after you clock/file and give a civil action number.

If there are any situations of you doing so, please write me at the above address.

Sincerely,

Jenny Folks

STATE OF SOUTH CAROLINA **FILED**
 COUNTY OF LEXINGTON 2011 JUL 19 A 10:02

IN THE COURT OF COMMON PLEAS

Leroy Folkes, #298608

Full name and prison number (if any) of Applicant

2011-CP-32-_____

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3202728

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry CI
2. Name and location of Court which imposed sentence Lexington Co. General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-32-1915
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 20, 2006
 - (b) 20 years

Revised 3/2003

C: Matthew McGuire

- (c) _____
6. 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 _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 8, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED

2011 JUL 19 A 10:02

ETHA CARRICO
CLERK OF COURT

- (a) My PCR attorney failed to file an appeal from the denial of my previous PCR
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My PCR was denied by an Order filed March 16, 2011
- (b) Despite my prior request that an appeal be filed in the event of my application being denied, my attorney failed to do so.
- (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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR application; 2008-CP-32-4048
- ii. Heard September 14, 2010
- iii. Denied by Order filed March 16, 2010
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Lexington County Court of Common Pleas
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Denied
- ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. March 16, 2011

ii. _____

iii. _____

iv. _____

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

i. Written Order filed with Lexington Clerk of Court

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) I learned of my attorney's failure to file an appeal from my PCR after the 30 day period to file expired.

(b) _____

FILED

2011 JUL 19 A 10:02

DETHA. CARRIGG
CLERK OF COURT
LEXINGTON, KY

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? Salley Henry
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Katherine Hudgins
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Matthew M. McGuire
- ii. PCR attorney
- iii. 600 Columbia Ave, Lexington, SC 29072
- (b) the proceedings at which each such attorney represented you:
- i. PCR
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- A belated PCR appeal pursuant to Austin v. State
20. Are you now under sentence from any other court that you have not challenged?
- No

FILED

2011 JUL 19 A 10:02

BETH A. CARRIG
CLERK OF COURT

2011CP3202728

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Anderson)

I, Leroy Folkes, 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.

Leroy Folkes

SWORN to and subscribed before me this 13th
day of July, 2011.

Dupe - Mike (L.S.)
Notary Public

My Commission Expires: May 28, 2018

FILED
2011 JUL 19 A 10:02
JETH A. CARRICO
CLERK OF COURT
DISTRICT 1

2011CP3202728

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

I, Leroy Folkes, 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.

Leroy Folkes
Applicant

SWORN or affirmed to and subscribed before me this
13 day of July, 2011.

Dwight Russell
Notary Public

My Commission Expires: Jan 28, 2018

WETH A. CARRICO
CLERK OF COURT
JUL 19 2011

2011 JUL 19 A 10:02

FILED

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Leroy Folkes, #298608,

2011-CP-32-2503

2011-CP-32-2728

Applicant.

vs.

ORDER OF MERGER

State of South Carolina,

Respondent.

WPK
#1

The applicant in the above-captioned matters has filed two applications for post conviction relief, one which was filed on July 6, 2011(2011-CP-32-2503) and another filed on July 19, 2011 (2011-CP-32-2728). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See, Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. §17-27-90), this Court hereby orders that the two proceedings be merged. The application for post-conviction relief filed on July 19, 2011 (2011-CP-32-2728) will be considered an amendment to the initial application for post conviction relief filed on July 6, 2011 (2011-CP-32-2503).

The Clerk of Court is therefore ordered to merge the two cases, with docket number 2011-CP-32-2503 being the surviving case. Hereafter, the word "Application" will refer to docket number 2011-CP-32-2503; the word "Amendment" will refer to docket number 2011-CP-32-2728, which will be considered as an amendment to the application for post conviction relief.

IT IS THEREFORE ORDERED that the Lexington County Clerk of Court merge docket number 2011-CP-32-2728 into docket number 2011-CP-32-2503, with file 2011-CP-32-2503 being the surviving file and all future pleadings bearing docket number 2011-CP-32-2503. Docket number 2011-CP-32-2728 will be dismissed upon the merger.

AND IT IS SO ORDERED this 16th day of AUG, 2011.

William P. Keesley
William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina.

#2

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Leroy Folkes, #298608,

2011-CP-32-2503

Applicant,

**RETURN AND CONSENT TO
AUSTIN REVIEW ONLY**

vs.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed July 6, 2011, 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 Lexington County Clerk of Court. The Applicant was indicted at the July 2006 term of the Lexington County Grand Jury for Armed Robbery (2006-GS-32-1915), however Applicant waived presentment. He was represented by Sally Henry, Esquire. On October 20, 2006, the Applicant pled guilty to Attempted Armed Robbery. He was sentenced by the Honorable William P. Keesley to confinement for a period of twenty (20) years.

The Applicant filed a timely Notice of Appeal, and an appeal was thereafter perfected. On appeal, he was represented by Katherine Hudgin, Esquire. The South Carolina Court of Appeals dismissed the appeal and filed its remittitur on August 8, 2008.

On October 3, 2008, the Applicant filed an application for post-conviction relief (2008-CP-32-4048). The Respondent made its Return on June 29, 2009. An evidentiary hearing into the matter

was convened on September 14, 2010, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Matthew McGuire, Esquire. On March 11, 2011, the Honorable R. Knox McMahon issued an Order denying and dismissing Applicant's application for PCR. The Applicant did not appeal the denial of his PCR application.

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. Ineffective Assistance of Counsel
 - a) "of calling Bryan Psychiatric Center Doctor;"
 - b) failure to adequately present Applicant's mental state as mitigation prior to sentencing;
 - c) failure to investigate or prepare case for trial;
 - d) failure to call witnesses
2. Involuntary Guilty Plea - counsel's advice as to length of sentence coerced Applicant's guilty plea
3. Ineffective Assistance of Appellate Counsel – "of calling Bryan Psychiatric Center Doctor"
4. Trial Judge abused his discretion at Applicant's sentencing and did not have proper Blair hearing; the plea hearing was not held in compliance with mandates of Rule 11, FRCP

The Applicant filed an amendment to his application for post-conviction relief on July 19, 2011, alleging:

5. Ineffective Assistance of PCR Counsel in that despite Applicant's prior request that an appeal be filed in the event of Applicant's PCR application (2008-CP-32-4048), my attorney failed to do so.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department

of Corrections, the guilty plea transcript, Applicant's first application for PCR (2008-CP-32-4048) and the Order denying Applicant's first PCR. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Upon information and belief the Respondent does not request an evidentiary hearing on the matter of the Applicant's entitlement to an Austin Review. Austin, 305 S.C. 453, 409 S.E.2d 395. Respondent consents to an Austin Review.

IV.

The State submits that the current Application for PCR, except for the Austin v. State review, must be summarily dismissed because it is successive to Applicant's prior application for PCR. The

Uniform Post Conviction Procedure Act (the Act) provides that:

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.

S.C. Code Ann. § 17-27-90 (1985). Successive applications for post-conviction relief 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. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits Applicant's allegations were previously raised and ruled upon in Applicant's first PCR case (2008-CP-32-4048). The Respondent submits 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). The Respondent submits the Applicant in his current PCR Application has failed to provide a sufficient reason why his allegations were not properly raised in his previous application. Applicant's allegations were, in fact, raised and ruled upon in the Applicant's previous proceedings. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent further submits that this Application for Post-Conviction Relief should also be summarily dismissed, except for the Austin v. State review, for failure to comply with the filing

procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003)

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 judgment 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 offense(s) he challenges in this Application on October 20, 2006. The South Carolina Court of Appeals issued a Remittitur on August 26, 2008. This Application was filed on July 6, 2011, 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 judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

VI.

The Respondent moves to consent to an Austin Review and allow the Applicant to submit a proposed order outlining the underlying reasoning and granting the relief of an Austin Review.

VII.

WHEREFORE, with the exception of the State's consent to an Austin Review, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and successive to Applicant's prior PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaelon E. May
ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

September 26, 2011.

COPY

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2011 SEP 28 A 10:38

2011-CP-32-2503

Leroy Folkes, #298608,

Applicant,

v.

State of South Carolina,

Respondent.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC**ORDER OF DISMISSAL AND
CONSENT ORDER TO APPEAL
PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed July 6, 2011. The Respondent made its Return on or about September 26, 2011, requesting that all allegations except for Applicant's belated PCR appeal claim be summarily dismissed.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2006 term of the Lexington County Grand Jury for Armed Robbery (2006-GS-32-1915), however Applicant waived presentment. He was represented by Sally Henry, Esquire. On October 20, 2006, the Applicant pled guilty to Attempted Armed Robbery. He was sentenced by the Honorable William P. Keesley to confinement for a period of twenty (20) years.

The Applicant filed a timely Notice of Appeal, and an appeal was thereafter perfected. On appeal, he was represented by Katherine Hudgin, Esquire. The South Carolina Court of Appeals dismissed the appeal and filed its remittitur on August 8, 2008.



On October 3, 2008, the Applicant filed an application for post-conviction relief (2008-CP-32-4048). The Respondent made its Return on June 29, 2009. An evidentiary hearing into the matter was convened on September 14, 2010, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Matthew McGuire, Esquire. On March 11, 2011, the Honorable R. Knox McMahon issued an Order denying and dismissing Applicant's application for PCR. The Applicant did not appeal the denial of his PCR application.

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

1. Ineffective Assistance of Counsel
 - a) "of calling Bryan Psychiatric Center Doctor;"
 - b) failure to adequately present Applicant's mental state as mitigation prior to sentencing;
 - c) failure to investigate or prepare case for trial;
 - d) failure to call witnesses
2. Involuntary Guilty Plea - counsel's advice as to length of sentence coerced Applicant's guilty plea
3. Ineffective Assistance of Appellate Counsel - "of calling Bryan Psychiatric Center Doctor"
4. Trial Judge abused his discretion at Applicant's sentencing and did not have proper Blair hearing; the plea hearing was not held in compliance with mandates of Rule 11, FRCP

The Applicant filed an amendment to his application for post-conviction relief on July 19, 2011, alleging:

5. Ineffective Assistance of PCR Counsel in that despite Applicant's prior request that an appeal be filed in the event of Applicant's PCR application (2008-CP-32-4048), my attorney failed to do so.



II.

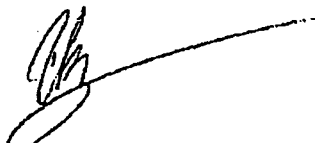
In the Applicant's current PCR application, he argues that his PCR counsel, Mr. McGuire, failed to file a timely notice of appeal from Judge McMahon's order denying post-conviction relief dated March 11, 2011 and filed March 16, 2011. Mr. McGuire states that the failure to file the appeal was an oversight and does not contest that Applicant desired to appeal. Based on Mr. McGuire's representations, the Applicant and Respondent consent to the belated review. I therefore find that the Applicant did not knowingly and voluntarily waive his right to appellate review and is therefore entitled to a belated review of the denial of his first PCR application. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). The Applicant's denial of an appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) with regard to C.A. No. 2008-CP-32-4048.

III.

This Court finds that the current application for post-conviction relief must be summarily dismissed, except for the Austin v. State review, because it is successive to Applicant's 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 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 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. 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, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed, except for the Austin v. State review, for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). 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 judgment 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). Applicant was convicted of the offense(s) he challenges in this Application on October 20, 2006. The South Carolina Court of Appeal's decision was filed and remittitur sent, after Applicant's unsuccessful appeal, on August 26, 2008. This Application was filed on July 6, 2011, 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) (2003) 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 judgment 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.

IV.

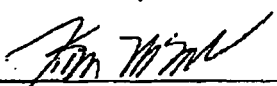
It appearing that counsel for both parties consent to the dismissal of his Application for Post-Conviction Relief and the grant of a belated PCR appeal, and in light of the fact that this Court has not been made aware of any violations of the Applicant's constitutional rights, this Application for Post-Conviction Relief is dismissed.

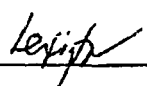


IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief is **denied and dismissed with prejudice.**
2. That the Applicant is granted a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243 for the appropriate procedure for a belated appeal.
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of Sept, 2011


 R. Knox McMahon
 Presiding Judge
 Eleventh Judicial Circuit


 Lexip, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 Armed Robbery

§16-11-330(A)

At a Court of General Sessions, convened on JULY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Leroy Agustas Folkes, did in Lexington County on or about April 30, 2006, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a pistol, or a representation of a pistol, covered by a piece of cloth, take from the person or presence of Adam Stiebing, an employee of the Circle K convenience store, by means of force, threats, or intimidation, goods or monies of Adam Stiebing and/or the Circle K convenience store, being described as approximately eight seven dollars (\$87.00) in U. S. currency, with the intent to deprive the owner thereof, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY

[Signature]
 Lex. Co. C.C.C.P., G.S. & E.C.

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

[Signature]
 ASSISTANT SOLICITOR

WITNESSES

LCSD
Mefford, R

DOCKET NO. 2006-GS-32-1915

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2006

THE STATE

vs.

Leroy Agustas Folkes

A-2006-32-01243

6/12/2006 10:34 AM

ARREST WARRANT NUMBER

1050556

ACTION BY GRAND JURY

TRUE BILL

Barry A. Lucas
Foreperson of Grand Jury
Date: 10 July 06
VERDICT

Foreperson of Petit Jury

Date:

CDR# 0139

Indictment for

Armed Robbery

§16-11-330(A)

DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

L. Folkes
DEFENDANT

10/20/06
DATE

[Signature]
WITNESS