

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Barnwell County

James R. Barber, III, Circuit Court Judge

RECEIVED

APR 12 2012

S.C. Supreme Court

ORIGINAL

ANTWAN JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

MARY S. WILLIAMS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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State of South Carolina)	Court of General Sessions 09-GS-06-0091
County of Barnwell)	

The State of South Carolina)	Transcript of Record
Plaintiff)	
vs.)	
Antwan Jones)	
Defendant)	

February 24, 2009
Barnwell, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Lauren Maurice, Assistant Solicitor
Attorney for the Plaintiff

De Grant Gibbons, Esq.
Attorney for the Defendant

Lisa H. Davenport
Official Court Reporter

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E X H I B I T S

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

1 (Whereupon, on February 24, 2009 the following
2 proceedings were held:)

3 MS. MAURICE: Indictment 2009-GS-06-091. It is a
4 waiver of presentment. He is represented by Mr. Grant
5 Gibbons.

6 ANTWAN JONES, after being duly sworn, testified
7 as follows:

8 THE COURT: We got a victim present?

9 MS. MAURICE: Your Honor, we were unable to locate
10 the victim.

11 THE VICTIM'S ADVOCATE: Your Honor, the victim has
12 been truly uncooperative with me. He won't return my
13 phonecalls. I have sent out letters. He won't answer me.

14 THE COURT: Do we have any restitution?

15 THE VICTIM'S ADVOCATE: No, sir.

16 THE COURT: Mr. Gibbons, you represent this
17 20-year-old, Mr. Antwan Jones from Barnwell? He is
18 indicted -- not presented to the Grand Jury of assault and
19 battery with intent to kill. Have you advised him of
20 those charges, the fact that it carries 20 years, the fact
21 that it is classified as most serious and what that means
22 by way of strikes and enhancement and the fact that it's
23 classified as violent, the fact that it is a no-parole
24 85 percent sentence, the fact that once released from
25 incarceration he'll be released from a community

1 supervision program, and the fact that he has the right to
2 have this matter sent to the Grand Jury as well as his
3 rights to trial by jury?

4 MR. GIBBONS: Yes, sir.

5 THE COURT: In your opinion does he understand all of
6 that?

7 MR. GIBBONS: He does, Your Honor.

8 THE COURT: How does he wish to handle presentation
9 of the indictment and trial by jury?

10 MR. GIBBONS: He wishes to waive his right to a jury
11 and presentment to the grand jury and go forward today.

12 THE COURT: Mr. Jones, how are you this afternoon?

13 THE DEFENDANT: All right.

14 THE COURT: First of all, this indictment has not
15 been sent to the Barnwell County Grand Jury. You have the
16 right to have it passed upon by the grand jury before we
17 proceed here today. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish to waive or give up that
20 right?

21 THE DEFENDANT: No, sir.

22 THE COURT: Sir?

23 THE DEFENDANT: No, sir.

24 THE COURT: No, sir?

25 (Whereupon, the Attorney Conferred with the Client.)

1 THE DEFENDANT: Yes, sir. I want to --

2 THE COURT: So, you don't want it to go to the grand
3 jury. You want to go ahead --

4 THE DEFENDANT: Plead.

5 THE COURT: -- and plead before me today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You signed a sentence sheet indicating
8 you wish to waive presentment?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. I find your decision to waive
11 presentation of the indictment for the Barnwell County
12 Grand Jury to be freely and voluntarily and with the
13 advice of counsel. Let me make sure you understand what
14 we're taking about. You're charged with assault and
15 battery with intent to kill. That offense carries up to
16 20 years in the State Department of Corrections. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: That offense is classified as a most
20 serious offense which means that if you become involved in
21 criminal activity in the future that is classified as most
22 serious that would be two strikes -- two most serious --
23 and you would be subjecting yourself to life in prison
24 without the possibility of parole. Do you understand
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Or if you got out and got involved in the
3 criminal activity that was classified as serious -- two
4 serious and a most serious, that would be three strikes
5 and likewise you would be subjecting yourself to the
6 possibility of life in prison without the possibility of
7 parole. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Under our current laws this type of
10 offense that you're charged with means that whatever
11 sentence I give you you have to serve 85 percent of it.
12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: For instance, if you would given a
15 ten-year sentence, you would have to serve eight and a
16 half years. If you were given a 20-year sentence, you
17 would have to serve 17 years if my math is correct. Do
18 you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: It is a no-parole sentence. Once you are
21 released from incarceration you'll be released to a
22 community release program where you'll be supervised under
23 that program. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding what you're charged with,

1 the possible punishment, and the classification of serious
2 and the fact that it is a no-parole sentence and the fact
3 that you'll do 85 percent of whatever I give you, the fact
4 that -- and the fact that it's classified as violent, how
5 do you wish to plead, not guilty or guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: Sir, on the front row you need to be
8 quiet, please.

9 UNKNOWN SPEAKER: I'm sorry.

10 THE COURT: No problem. Thank you.

11 Mr. Jones, when you enter a plea of guilty you give
12 up certain constitutional rights that you have. One, you
13 give up your right to remain silent. You will have to
14 admit your guilt. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The other is you give up your right to a
17 trial by jury. If you want a jury trial, the State will
18 give you one at which time you would have the right to
19 confront and cross examine everybody who testified against
20 you through your lawyer. You would have the right to
21 present your own case; your own defense. You can call
22 witnesses on your behalf. You can testify in your own
23 defense. If you chose to exercise your right to remain
24 silent, then I would tell the jury they could not hold the
25 fact that you did not testify against you in any manner

1 whatsoever, and I would instruct them that they couldn't
2 even consider the fact that you did not testify when they
3 deliberated your guilt or innocence.

4 You would be presumed to be innocent throughout the
5 trial and the State of South Carolina would have the
6 burden of proving you guilty beyond a reasonable doubt to
7 a jury of 12 people, and in order for that jury to convict
8 you all 12 people would have to unanimously agree that you
9 were, in fact, guilty, and even if you were found guilty
10 you would still have the right to an appeal.

11 Do you, sir, understand your rights to trial by jury?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Understanding your rights to trial by
14 jury, do you still wish to plead guilty or do you want me
15 to set your case for trial?

16 THE DEFENDANT: Plead guilty.

17 THE COURT: Has anybody promised you anything, held
18 out any hope of reward, or threatened you in any manner --

19 THE DEFENDANT: No, sir.

20 THE COURT: -- in order to make you plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you satisfied with Mr. Gibbons'
23 representation of you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In your opinion has he had enough time to

1 spend with you, to investigate the facts, research the law
2 so that he can properly defend you here today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything else you want him to do
5 for you today before we proceed other than speak up on
6 your behalf?

7 THE DEFENDANT: No, sir.

8 THE COURT: I ask you once again, sir, are you
9 totally and completely satisfied with his representation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Sir, are you today under the influence of
12 any alcoholic beverages, drugs, or prescription
13 medication?

14 THE DEFENDANT: No, sir.

15 THE COURT: Sir, are you today aware of any mental,
16 nervous, or emotional condition which would keep you from
17 understanding my questions?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you understood everything I've said?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Jones, are you pleading guilty of
22 your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Jones, did you here in Barnwell
25 County on or about December 15 of last year 2008 shoot a

1 person named Rick Barnes in the leg?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Pleading guilty because you are guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Pleading guilty because you shot Rick
6 Barnes in the leg?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Pleading guilty because you broke the
9 law?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Pleading guilty because you are, in fact,
12 guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, Mr. Jones. I find your
15 decision to plead guilty to be freely, voluntarily, and
16 intelligently made. You've had the representation of a
17 very competent lawyer Mr. Grant Gibbons with whom you say
18 you're satisfied, and I will accept your plea. If you
19 disagree with my sentence here today or these proceedings
20 you have 10 days from today's date to file a notice of
21 intent to appeal. Do you understand that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you. Ma'am?

24 MS. MAURICE: Thank you, Your Honor. This is a
25 Barnwell Police Department case and was investigated by

1 detective Glenn Rice. On December 15, 2008 officers
2 responded to 127 Fifth street in reference to a shooting
3 call. Upon arrival the officers found the victim Mr. Rick
4 Barnes lying on the porch holding his left leg. The
5 victim was transported by ambulance to MCG. The detective
6 went with him and interviewed the victim at MCG and the
7 victim stated that Antwan Jones and two other
8 co-defendants had pulled into his yard and rushed him,
9 knocked him to the ground, and robbed him of \$60.

10 THE COURT: How old a fellow is this guy? How old is
11 the Defendant?

12 MS. MAURICE: The victim?

13 THE COURT: Yes, ma'am.

14 MS. MAURICE: Your Honor, I got the impression that
15 he was young -- about their age.

16 THE COURT: Your age?

17 THE DEFENDANT: Twenty-five.

18 MR. GIBBONS: He is a little older than them. My
19 client is 20.

20 MS. MAURICE: While he was on the ground Mr. Jones
21 was holding a revolver over him and then shot him in the
22 leg.

23 THE COURT: As far as priors, the only priors he has
24 is a juvenile record in 2004 that was attempted armed
25 robbery. We are dismissing the armed robbery charges in

1 the case and the unlawful carrying of a pistol --
2 possession of a weapon.

3 MR. GIBBONS: Your Honor, it's another sad situation.
4 The young guy makes a dumb mistake.

5 THE COURT: What is going on? Why guns? Why rob
6 people? Why shoot them?

7 MR. GIBBONS: I can't get an answer that makes any
8 sense, Your Honor.

9 THE COURT: Mr. Jones, why?

10 THE DEFENDANT: Sir, I ain't robbed him.

11 THE COURT: Well, why shoot him?

12 THE DEFENDANT: I was drinking.

13 THE COURT: You were what?

14 THE DEFENDANT: I was drinking, sir.

15 MS. MAURICE: There were some drugs found around
16 there, too, Your Honor.

17 MR. GIBBONS: From what I --

18 THE COURT: Is this his family back there? You got
19 family here?

20 THE DEFENDANT: No, sir.

21 MR. GIBBONS: Your Honor, his mom is Shirley Jones.

22 His Dad the Leroy Workman. He has no children. He got to
23 the tenth grade and he got expelled for fighting. He did
24 spend some time at DJJ. He tells me he also spent some
25 time in fostercare. He was trying to get his GED and he

1 missed it by a couple of points. He's also been to
2 Denmark Tech and got some training in the barbering trade
3 and says that's what he wants to do.

4 The victim in this case -- what the report reflects,
5 they thought he had some money because he was passing out
6 marijuana on the the street and they robbed him. I can't
7 make any heads or tails out of the shooting incident. The
8 robbing, I can see --

9 THE COURT: He said he didn't rob him.

10 MR. GIBBONS: Well, there are two other people
11 charged with the same offense, and I have explained to him
12 that the hand of one is the hand of all.

13 THE COURT: Sure.

14 MR. GIBBONS: It doesn't make any sense. It is just
15 like the fellow we had yesterday -- a young kid, could
16 have accomplished the same thing without the gun, but the
17 gun came into play and he realizes he made a mistake.

18 THE COURT: Where did you get the gun?

19 THE DEFENDANT: Sir, it was one of the co-defendants'
20 gun.

21 THE COURT: Where are the co-defendants?

22 MS. MAURICE: We haven't brought them to court yet,
23 Your Honor.

24 THE COURT: They're incarcerated or awaiting trial?

25 MS. MAURICE: They made bond.

1 MR. GIBBONS: I think they made bond. Your Honor, I
2 don't know if there is a whole lot else I can say. Antwan
3 has been very straightforward with me. He seems to be
4 intelligent. He understands what we're talking about. He
5 communicates well, never had any problems with talking
6 with him or anything that would indicate that he would for
7 no reason shoot somebody, but it did happen. He is sorry
8 it happened and he wants to move on and try to put this
9 behind him and pay his debt to society and get on with his
10 life. I would just ask you to give consideration to his
11 age.

12 THE COURT: Anything you want to tell me, Mr. Jones?

13 THE DEFENDANT: I just want to say I apologize, sir,
14 and if you can give me another chance I will go out there
15 and show you I can be a better man.

16 THE COURT: I got to send you to jail for a while. I
17 got to punish you. You just can't shoot somebody and
18 don't get punished. You know that, don't you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You know, a young man was in here
21 yesterday and shot somebody. You know how long he got?
22 I'm sure y'all heard about it in jail last night.

23 THE DEFENDANT: Oh, yes, sir.

24 THE COURT: How long did he get?

25 THE DEFENDANT: Fifteen.

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THE COURT: Why should I treat you any different?

THE DEFENDANT: My victim was a drug dealer.

THE COURT: Sentence of the court is that you be committed to the State Department of Corrections for 12 years. Good luck to you.

(End of transcript of record.)

CERTIFICATE OF REPORTER

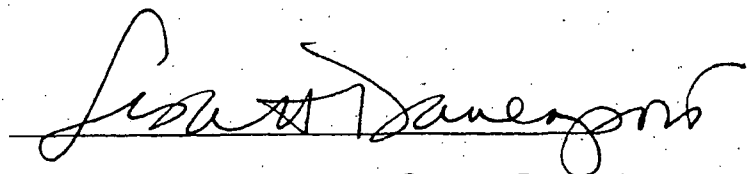
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State of South Carolina)
)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Barnwell County, South Carolina, on the 24th day of February, 2009.

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

September 7, 2009



Lisa H. Davenport, Court Reporter

FORM 5

MIC-AG
MIC-PIK

STATE OF SOUTH CAROLINA)
County of Barnwell)
Antwan Jones 333377)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2009 - CP - 06 - 168

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

FILED FOR RECORD
2009 JUL 14 PM 4:12
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution in Bishopville, S.C.; LEE County
2. Name and location of Court which imposed sentence Court of General Sessions in Barnwell, S.C.
3. Name(s) of co-defendant(s) (if any) Marcus Jacobs and Johnny Hardy
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Arrest Warrant # K-197575
 - (b) Indictment # 2008GS06 - Unlawful Poss. Weapon

★ Per clerk of court:
2009-GS-06-091
ABWIK
12 years

1
#861226
Unlawful Carrying of Pistol
Dismissed 2/24/09

K197577
Armed Robbery
Dismissed 2/24/09

(c) Armed Robbery - Assault + Battery w/intent to Kill

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

(a) 24 February 2009

(b) 20 Years Suspended to 12 Years

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Dismiss Per Plea

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

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

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Inappropriate Sentence

(c) Breach of Truth in Sentencing Statute

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

(a) Attorney did not fully investigate/Represent.

(b) Codefendants Received less time than I did

(c) I was not sentenced correctly according to Law.

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. DeGrant Gibbons
P.O. Box 2247 Aiken, SC 29802
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

In this relief I'm seeking a time cut.

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

No

STATE OF SOUTH CAROLINA)
County of Barnwell)

VERIFICATION

I, Artwan Jones, 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.

Artwan Jones

SWORN to and subscribed before me this 13
day of July, 2009.
Al Brady Jones (L.S.)
Notary Public

My Commission Expires: 5-16-11

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

I, Antwan Jones, 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.

Antwan Jones
Applicant

SWORN or affirmed to and subscribed before me this
13 day of July, 2009.
J. Braasf. Sims
Notary Public

My Commission Expires: 5-16-11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
)
)
 Antwan Jones, #333377,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2009-CP-06-0168

RETURN
(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 14, 2009, 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 Barnwell County Clerk of Court. The Applicant was indicted for Assault and Battery with Intent to Kill (2009-GS-06-0091).¹ Applicant was represented by D. Grant Gibbons, Esquire. On February 24, 2009, the Applicant pled guilty before the Honorable Doyet A. Early, III. Applicant was sentenced to twelve (12) years incarceration. Applicant did not appeal his conviction and sentence.

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

¹ Applicant waived presentment to the Grand Jury.

II.

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

1. "Ineffective assistance of counsel."
 - a. "Attorney did not fully investigate/represent."
2. "Inappropriate Sentence."
 - a. "Codefendants received less time than I did."
3. "Breach of truth in sentencing statute."
 - a. "I was not sentenced correctly according to law."

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

III.

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

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

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

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

IV.

The Respondent submits that the remaining allegations should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds, and Applicant's sentence was a legal sentence for Assault and Battery with Intent to Kill. Therefore, the Court should summarily dismiss these allegations.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegation of ineffective assistance of counsel.

[Signatures on next page.]

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Sept. 26, 2009.

1 STATE OF SOUTH CAROLINA
2 COUNTY OF BARNWELL

CIRCUIT COURT
2009-CP-06-00168

3
4 ANTWAN JONES,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9
10 Post Conviction Relief Hearing

11 Heard on Monday, July 11, 2011

12 Aiken, South Carolina

13 BEFORE:

14 THE HONORABLE JAMES R. BARBER III
15

16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
19 Marie V. Young, Esq.

20 Counsel on Behalf of the Respondent, State of SC:
21 Robert Corney, Esq.

22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

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1 ON MONDAY, JULY 11, 2011 AT 9:56 A.M.:

2 MR. CORNEY: Antwan Jones. Your Honor, did we
3 hand up a packet to you?

4 THE COURT: Pardon me?

5 MR. CORNEY: Did I hand up a packet --

6 THE COURT: On Antwan Jones?

7 MR. CORNEY: -- for Frankie Gantt?

8 THE COURT: I got the county file here from the
9 clerk of court. I think that's the clerk's file.

10 MR. CORNEY: Did you want me to hand up
11 something?

12 THE COURT: On Mr. Gantt?

13 MR. CORNEY: Yes, sir. I'll bring it up with
14 Antwan Jones.

15 THE COURT: They have a transcript in the --

16 MR. CORNEY: Oh, they did. Okay.

17 THE COURT: You can submit it to me if you want.

18 MR. CORNEY: No, that's fine. If you already
19 read it, Your Honor, then that's fine with me. I just
20 wanted to make sure.

21 THE COURT: Do you have a package on Antwan
22 Jones?

23 MR. CORNEY: (No response.)

24 THE COURT: Mr. Corney, do you have a package on
25 Antwan Jones?

ANTWAN JONES - DIRECT

1 MR. CORNEY: I'm sorry, Your Honor. May it
2 please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. CORNEY: This is Antwan Jones, case 2009-CP-
5 06-0168.

6 Mr. Jones waived presentment to the grand jury on
7 an assault and battery with intent to kill charge. He
8 pled guilty before Judge Early, February 24th, 2009, was
9 sentenced to 12 years.

10 And pursuant to that plea, unlawful carrying of a
11 pistol and an armed robbery charge were both nolle
12 prossed. He is represented today by Ms. Marie Young.

13 THE COURT: Ms. Young?

14 MS. YOUNG: Your Honor, Mr. Jones is here today
15 to assert his claim of ineffective assistance of counsel,
16 Mr. Gibbons. He believes he should have -- he
17 involuntarily pled and that had he not been coerced in
18 some way, he would have gone to trial and possibly had a
19 better outcome.

20 So I'd just like to go ahead and call Mr. Jones.

21 THE COURT: All right. Mr. Jones, if you'll step
22 up here, please.

23 ANTWAN JONES, having been duly sworn, was
24 examined and testified as follows: Jones.

25 THE CLERK: Please have a seat in the box and

ANTWAN JONES - DIRECT

1 state your full name for the Court.

2 THE APPLICANT: Antwan Jones.

3 DIRECT EXAMINATION

4 BY MS. YOUNG:

5 Q. All right. Mr. Jones, where are you currently
6 incarcerated?

7 A. Kershaw Correctional Facility.

8 Q. And where are you incarcerated, for what reason?

9 A. Assault and battery intent to kill.

10 Q. Okay. Do you recall what your original charges were
11 in the underlying case?

12 A. Talking about all the charges?

13 Q. Yes, sir.

14 A. Assault and battery intent to kill, armed robbery and
15 unlawful possession of a firearm.

16 Q. Okay. Who was your attorney?

17 A. De Grant Gibbons.

18 Q. How many times were you able to meet with your
19 attorney?

20 A. Two.

21 Q. And how long was that each time?

22 A. Both together weren't even an hour.

23 Q. Okay. Where did you meet with him at?

24 A. Barnwell County Detention Center.

25 Q. Okay. What did you discuss when you met with

ANTWAN JONES - DIRECT

1 Mr. Gibbons?

2 A. He just, he just asked me happened and he tell me, he
3 was like, ah, first he came with a plea for, a plea for, I
4 think, for like 15 to 30. I told him no.

5 So the second time he came back he was like uh, well,
6 she decided to drop the armed robbery and unlawful
7 possession of a firearm and, you know what I'm saying,
8 plead to assault and battery intent to kill.

9 And I asked him how much time it carry. He said,
10 like, zero to 20. So, he was like, ah, this being your
11 first time more than likely you'll probably get probation
12 or something like that.

13 Q. All right. And did you discuss the actual incident,
14 that led you to being charged, with Mr. Gibbons? Did
15 you -- were you able to tell him what happened? What did
16 you discuss? What was your, I guess, what was your side
17 of the story?

18 A. What did he -- I told him I was with a couple of
19 friends and we went to the dude, the victim house. And me
20 and him got into a little argument. Me and him got into a
21 argument. Next thing you know, we had a little tussle and
22 I shot him.

23 Q. Right. And what happened when you told Mr. Gibbons
24 that? What did he say? What -- did you claim you had a
25 defense to this?

ANTWAN JONES - DIRECT

1 A. Say it again.

2 Q. What did Mr. Gibbons say to you when you explained
3 your side of the story?

4 A. I really don't remember.

5 Q. You don't remember?

6 A. No, ma'am.

7 Q. Did you discuss going to trial since -- did he tell
8 you you could go to trial?

9 A. Yes, ma'am.

10 Q. And you chose to do so because -- you chose to plead
11 guilty instead since you claim you have a self-defense --

12 A. Yes, ma'am.

13 Q. -- claim? You know, what led you to do that?

14 A. What led me to plea? Because when he said probation,
15 you know what I'm saying, I'm going to jump on this plea.

16 Q. So your attorney told you you would probably serve
17 probation and that's why you pled?

18 A. Yeah.

19 Q. Okay. Do you believe you would have been better off
20 with a trial or why do you think a trial would have been
21 better for you?

22 A. Because, for one, with the robbery, he said we robbed
23 him. I ain't robbed nobody. And then with the assault
24 and battery intent to kill, I ain't had no intention of
25 killing nobody.

ANTWAN JONES - DIRECT

1 Q. Okay. So, do you recall anything about your actual
2 plea hearing?

3 A. Do I?

4 Q. Your plea hearing?

5 A. No, ma'am.

6 Q. You don't. Well, what was mentioned about your
7 previous record?

8 A. Oh they brought up my juvenile record saying I had a,
9 a -- what -- attempted armed robbery.

10 Q. And what did you think about your juvenile offense
11 being mentioned? Did you feel that that was appropriate
12 during your sentencing?

13 A. No, ma'am.

14 Q. Did you express that to your attorney?

15 A. No, ma'am.

16 Q. What difference in sentencing do you think there would
17 have been if your attorney had objected to the assistant
18 solicitor mentioning your juvenile record?

19 A. I don't know.

20 Q. You don't know?

21 A. No, ma'am.

22 Q. Well, what reasons do you believe, any other reasons
23 that made Mr. Gibbons' representation ineffective or
24 deficient?

25 A. Because he ain't had time, he ain't had time to

ANTWAN JONES - DIRECT

1 investigate my case in less than an hour.

2 Q. Okay. What else did you want him to investigate?

3 A. Wanted him to investigate everything. He -- then the
4 police report, the police report saying one thing then the
5 court report stated something else.

6 Q. Like -- and could you go into detail about that? What
7 did the police report say?

8 A. Like the police report saying I robbed the guy for a
9 large amount of money. And the court report say I robbed
10 him for like \$60 or something like that right there.

11 Q. Right. And did you voluntarily waive presentment to
12 the grand jury for your indictments?

13 A. I don't understand. I don't understand.

14 Q. You didn't understand that when you went to plead you
15 were waiving your presentment to a grand jury?

16 A. Oh. Yes, ma'am.

17 Q. Did you understand that?

18 A. Yes, ma'am.

19 Q. Okay. Are you asking for a new trial, or what relief
20 are you asking the Court for today?

21 A. Really asking for a new trial.

22 Q. Is there anything else you want to tell the Court
23 about this case, how you feel about it and what else
24 constitutes Mr. Gibbons' ineffective assistance?

25 A. No, that's about it.

ANTWAN JONES - CROSS

1 Q. That's it. Are you sure?

2 A. Yes, ma'am.

3 Q. All right. Your Honor. I have no further questions.

4 THE COURT: All right. Mr. Corny?

5 CROSS-EXAMINATION

6 BY MR. CORNY:

7 Q. Mr. Jones, Judge Early asked you at your plea hearing
8 if you were satisfied with Mr. Gibbons' representation
9 during your representation and you said you were; right?

10 A. Yes, sir.

11 Q. Okay. And he even specifically asked if you felt he
12 had enough time to investigate the facts of your case and
13 you said you had; right? You told the Judge that on the
14 record at your plea hearing?

15 A. Yeah. And the reason why I said that is because with
16 him being my lawyer I'm thinking he trying to help me, you
17 know what I'm saying. I just answer all the questions how
18 he told me to answer the questions.

19 Q. Okay. But that wasn't truthful at the time you
20 answered that? You didn't think he investigated your
21 case?

22 A. I answered the questions how he told me to answer
23 them.

24 Q. And you did in fact shoot Rick Barnes in the leg;
25 right?

1 A. Yes. Yes, sir.

2 Q. And took \$60 from him?

3 A. No, I ain't took nothing from him.

4 Q. But you only pled guilty to the assault and battery
5 with intent to kill; right?

6 A. Yes, sir.

7 Q. You didn't plead guilty to armed robbery?

8 A. No, sir.

9 Q. So you were -- with all these charges, you were facing
10 a potential, a lot of time in prison; right? Something
11 like 50 years --

12 A. Yes, sir.

13 Q. -- if they ran consecutively? And you thought you
14 were going to get probation on these charges?

15 A. Yes, sir.

16 Q. All right. I think that's all I have, your Honor.

17 THE COURT: Anything, Ms. Young?

18 MS. YOUNG: Nothing further.

19 THE COURT: All right. Thank you. You may step
20 down. Anything further, Ms. Young?

21 MS. YOUNG: No, sir.

22 THE COURT: Anything from the State?

23 MR. CORNEY: Yeah. We'd like to call Mr. Grant
24 Gibbons again.

25 THE COURT: All right. Mr. Gibbons, you're under

DE GRANT GIBBONS - DIRECT

1 oath from a previous swearing.

2 THE WITNESS: Yes, sir.

3 DE GRANT GIBBONS, having been duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CORNEY:

7 Q. Mr. Gibbons, do you recall Mr. Antwan Jones' case and
8 your representation of him?

9 A. I do.

10 Q. Have you had a chance to review his file?

11 A. I have.

12 Q. Do you remember the number of times you met with
13 Mr. Jones?

14 A. I know it was at least three times.

15 Q. And you had an opportunity to go over the indictments
16 and charges with him and the possible punishments?

17 A. I did.

18 Q. And his constitutional rights?

19 A. I did.

20 Q. Okay. Were you able to get his version of the facts
21 from him during these meetings?

22 A. He did tell me what happened.

23 Q. Did you discuss -- you said you discussed potential
24 sentences he was facing on these three charges; right?

25 A. I did.

DE GRANT GIBBONS - DIRECT

1 Q. So he was aware that he was facing very serious jail
2 time on these charges?

3 A. He was. And we did have a lengthy discussion. There
4 were two co-defendants in the case and they indicated that
5 there was a robbery. And he was hung up on the fact that
6 he didn't actually take the money from the victim although
7 he was standing there with a gun.

8 And there was a lot of discussion about the hand of
9 one, hand of all and how they could, they could easily
10 convict him of the robbery as well.

11 Q. Okay. Were you able to review the discovery with
12 him --

13 A. I did.

14 Q. -- when you got a copy of it?

15 A. I did.

16 Q. Did you ever discuss with him the possibility of him
17 getting just probation on these charges?

18 A. No. He kept asking me is probation an option in
19 these, on this charge. And I said, well, you know,
20 anything's possible but I don't think you're going to get
21 it.

22 Q. All right. Were you able to investigate the
23 co-defendants that were involved in this case?

24 A. I did get statements from them implicating themselves
25 as well as Mr. Jones.

DE GRANT GIBBONS - DIRECT

1 Q. Beg the Court's indulgence for one minute, Your Honor.

2 (Pause.) All right.

3 The solicitor offered to drop two charges if he pled
4 guilty; right? The armed robbery and the possession of a
5 pistol?

6 A. That's correct.

7 Q. What was his mind set as far as entering the guilty
8 plea?

9 A. Well --

10 Q. As far as from your discussions?

11 A. It kind of flip-flopped. You know, one minute he
12 wanted to try a plea. The next minute he wanted a trial.
13 The next minute he wanted a plea.

14 And so I made sure that when we actually did get to
15 court that that's what he wanted to do.

16 He had hopes after he talked to the Judge the Judge
17 was going to do wonderful things for him. And I never, I
18 never encouraged that thought process because this was a
19 shooting case and it just wasn't in the cards.

20 And I told him that. But his discussions was, yeah,
21 but if the Judge wanted to he could. And I'd say, yeah,
22 if he wanted to, but I don't think it's going happen. It
23 kind of went back and forth like that.

24 Q. In the end it was his decision to enter this plea?

25 A. Absolutely.

DE GRANT GIBBONS - CROSS

1 Q. Did you have any concerns with the solicitor
2 introducing these juvenile charges as far as his prior
3 record?

4 A. Well, I've had judges request that. I've had judges
5 make us go and get that. I don't know that that made any
6 difference whatsoever to the Judge or not.

7 But there's nothing I can do about what happened when
8 he was a juvenile if the Judge wants to know, if the
9 solicitor has access and tells him, you know. It is what
10 it is.

11 Q. Okay. And did you ever come across this difference in
12 the police report and the court report during your review
13 of this case in the amount of money that was stolen?

14 A. Yeah. There was a lot of indications of this being a
15 drug deal. And so, the dollars and the drugs, that did
16 change during the course of their investigation.

17 But as far as it having a big affect on the case, I
18 mean, on an armed robbery case one penny is the same as,
19 you know, \$500 for the armed robbery part.

20 Q. In the end he didn't plead to an armed robbery charge
21 anyway; right?

22 A. He did not.

23 MR. CORNEY: That's all I have, Your Honor.

24 THE COURT: All right. Ms. Young?

25 CROSS-EXAMINATION

1 BY MS. YOUNG:

2 Q. Mr. Gibbons, did you discuss a possible self defense
3 going into a trial with Mr. Jones?

4 A. I don't recall that story ever coming up that I heard
5 here today.

6 Q. Okay. And was he ever on the trial list, trial
7 docket?

8 A. No, he was not.

9 Q. Was he scheduled for trial?

10 A. (Shakes head.)

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

12 Thank you.

13 THE COURT: All right. Mr. Gibbons, you may step
14 down. Thank you.

15 THE WITNESS: Thank you.

16 MR. CORNEY: That's all from the State, Your
17 Honor.

18 THE COURT: All right. Take it under
19 advisement.

20 END OF PROCEEDINGS: 10:15 A.M.

21 * * * *

22 CERTIFICATE OF REPORTER

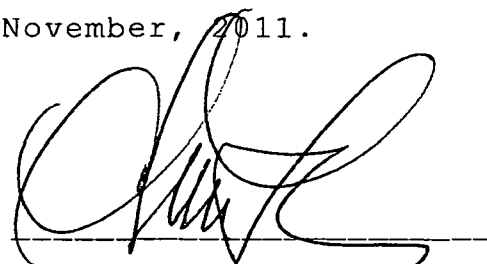
23 I, Cheri L. Young, Registered Professional
24 Reporter, and Official Court Reporter for the State of
25 South Carolina, do hereby certify that the foregoing

1 transcript of proceedings heard on Monday, July 11, 2011,
2 in Aiken, South Carolina, was reported by me using machine
3 shorthand and realtime computer-aided translation and is a
4 true, accurate and complete transcript of the proceedings
5 had and evidence introduced in the hearing of the matter.

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

8 I have hereunto set my hand this Friday,
9 Veterans' Day, the 11th day of November, 2011.

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Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2009-CP-06-0168

Antwan Jones, # 333377,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED FOR RECORD
2011 AUG 31 PM 3:50
RHONDA D. MCLELLYEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 14, 2009. The Respondent made its Return on September 26, 2009. An evidentiary hearing into the matter was convened on Monday, July 11, 2011, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Marie V. Young, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Applicant's plea counsel, Grant Gibbons, Esquire, ('counsel') was present at the hearing and testified as well. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Barnwell County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant appeared before the Honorable Doyet A. Early, III, on February 24, 2009, where he waived presentment on a charge of Assault and Battery with Intent to Kill (2009-GS-06-0091). He was represented by Grant Gibbons, Esquire. The Applicant pled guilty as indicted and was sentenced to a period of twelve (12) years imprisonment. An Unlawful Carrying of a Pistol and an Armed Robbery charge were *nolle prossed* as part of the plea. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel
 - a. "Attorney did not fully investigate/represent";
2. Inappropriate Sentence
 - a. "Co-defendants received less time than I did"; and
3. "Breach of truth in sentencing statute"
 - a. "I was not sentenced correctly according to law"

At the hearing, Applicant brought forth additional allegations stating counsel misadvised him in regards to the sentence which he could expect to receive upon the entry of his plea for these charges and counsel failed to properly investigate discrepancies between the police report and the documents introduced at the plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

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

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

First, the Applicant must prove that counsel’s performance was deficient. Under 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, supra). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186,

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

Failure to Object to Improper Sentence/Erroneous Sentencing Advice

The Court will interpret Applicant's allegation concerning the inappropriate sentence as a claim of ineffective assistance of counsel in regards to counsel's advice concerning potential sentences Applicant could expect to receive based on the plea. Counsel testified he met with Applicant at least three times prior to the entry of this plea during which he reviewed the charges against Applicant, Applicant's Constitutional rights, potential sentences the Applicant was facing based on the charges and Applicant's version of the facts giving rise to the charges. Counsel went on to articulate that, based on his discussions with Applicant, he believed Applicant fully understood that he was facing up to fifty years in jail and that jail time was a likely outcome of a plea. Applicant testified that Counsel had advised him of an offer from the Solicitor where if Applicant entered a guilty plea, the armed robbery and weapon charge would be dropped and he would definitely not receive more than a twenty year sentence, and it was likely he would receive probation only.

Counsel went on to testify that although he did request the court impose probation only, he did so only at Applicant's request and repeatedly told Applicant that a sentence of probation alone was not a likely outcome. Counsel went on to say Applicant held out a hope that Judge Early would give him only probation once he entered his plea, but counsel never encouraged that hope and, in fact, even told Applicant it was very unlikely to actually happen. Applicant went on to testify he knew he was facing up to fifty years in prison on the charges as advised by counsel

and agreed that the court had advised him of potential sentences prior to the entry of his plea. Applicant also testified that counsel had discussed a potential self-defense strategy if they proceeded to trial, but advised Applicant to enter a plea because it was likely he would receive probation only.

This Court finds counsel's testimony to be credible. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). Counsel properly advised Applicant of potential sentences, entered into plea negotiations which he presented to Applicant for Applicant to decide whether to accept, and gave Applicant sound advice concerning the realistic sentence he should expect to be imposed against him. Further, the Court advised Applicant at his plea hearing of the same, with all potential sentences within the range allowed by law. The fact that Applicant erroneously held out the hope that the court would impose a probation only sentence does not negate that he fully understood the sentences he was facing and had been advised by counsel that he should expect to serve additional jail time. Therefore, this Court finds counsel acted within the range of reasonableness based on professional norms in regards to advising Applicant of likely sentence he would receive and in no way improperly coerced or misadvised Applicant into entering his plea. Applicant's allegation with regards to counsel's failure to object to a supposed "invalid sentence" is denied.

Failure to Investigate

Applicant has also made an allegation of ineffective assistance of counsel based on counsel's failure to investigate discrepancies between police reports and court documents in reference to the amount of money stolen during this alleged robbery. Applicant alleges that

police reports stated there was “a large amount” of money stolen from the victim in this case, while the court documents, including the solicitor’s statements when reciting the facts, alleged only sixty dollars was stolen from the victim. Counsel testified that although he did see the discrepancies in the amount that was stolen, it didn’t make any difference as money was still stolen. Further, as the “armed robbery” charge against Applicant was dropped as part of the plea, Applicant ultimately was not convicted of the charge involving the money stolen, so it was somewhat irrelevant.

Finally, because this case never proceeded to trial, counsel did not get the chance to challenge the armed robbery charge based on these discrepancies as perhaps he would have at trial. The Court, for these reasons, finds Counsel’s representation fell well within the range of competence required in a criminal case and the Applicant has failed to overcome the presumption that such adequate assistance was rendered. *See Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). Further, Applicant has failed to prove any prejudice resulted from this supposed failure to investigate. “Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Breach of Truth in Sentencing

The Applicant’s final contention is that he was not sentenced properly according to the law. Pursuant to S.C. Code Ann. § 16-1-20(A)(3), the range of potential penalties for a Class C felony is from zero to twenty years imprisonment. Assault and Battery with Intent to Kill is classified as a violent, Class C felony within that category, and therefore carries a potential sentence of zero to twenty years. Applicant was fully advised on the potential sentences he was

facing by the plea judge on the record at the plea hearing and by counsel prior to entering his plea. Therefore, this Court finds not only was Applicant sentenced to a lawful and valid sentence on this charge, but additionally he was fully advised of the range of sentences he was facing prior to entering his plea.

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. This Court finds Counsel's testimony to be credible and finds that Counsel appropriately advised Applicant of all matters relevant to his charges, plea and sentencing, as well as conducted all necessary investigation into the matter to provide competent representation. Additionally, Applicant was sentenced within the lawful range allowed for Assault and Battery with Intent to Kill pursuant to our State's code. After careful review based on the standard discussed above, the Applicant has failed to prove by the preponderance of the evidence that his trial/plea counsel was ineffective. Therefore, this Court finds that the application must be denied and dismissed.

Except as discussed above, this Court finds that the Applicant failed to raise any remaining allegations and has, thereby, waived them. 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

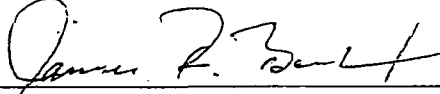
address any such issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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 2 day of August, 2011.



 JAMES R. BARBER, III
 Presiding Judge
 Second Judicial Circuit

Columbia, South Carolina.

DOCKET NO. 2009-GS-06-091

WITNESSES

Rice - B.P.D.

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

FEBRUARY 23, TERM 2009

ARREST WARRANT NUMBER

K197575

THE STATE

vs.

ANTWAN JONES

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

Indictment for

**ASSAULT AND BATTERY WITH
INTENT TO KILL**

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

ARREST WARRANT

K-197575

STATE OF SOUTH CAROLINA

County/ Municipality of Barnwell

THE STATE against

Antwan Jones

Address: Barnwell S.C. 29812

Phone: SSSN

Sex: M Race: B Height: 5'11 Weight: 142

State: DL#:

JOB: 02-03-89 Agency ORI#: SC0060100

Prosecuting Agency: Barnwell Police Dept

Prosecuting Officer: Det. Glen Rice

Offense: Assault & Battery with intent to kill

Offense Code: 14

Code/Ordinance Sec. 16-3-620

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

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

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Antwan Jones on 12-17-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ Municipality of Barnwell

AFFIDAVIT

008-12-7795

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

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Personally appeared before me the affiant Det. Glen Rice who being duly sworn deposes and says that defendant Antwan Jones did within this county and state on 12-15-08 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Barnwell) in the following particulars:

DESCRIPTION OF OFFENSE: Assault & Battery with intent to kill 16-3-620

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 12/15/08, one Antwan Jones did with Malice Afore thought and with the intent to kill, commit a battery upon Rick Barnes by shooting him with a handgun, causing the victim to lose a substantial amount of blood, placing the victims life in danger. This crime taking place at 127 5th street, located within the city limits of Barnwell, SC. This act being a violation of the SC code of laws as Amended.

Signature of Affiant

Det. Glen Rice

STATE OF SOUTH CAROLINA

County/ Municipality of Barnwell

Affiant's Address 100 Burr St. Barnwell, SC 29812

Affiant's Telephone 803-259-1838

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 12-15-08 defendant Antwan Jones did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Barnwell) as set forth below:

DESCRIPTION OF OFFENSE: Assault & Battery with intent to kill 16-3-620

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

Sworn to and subscribed before me

on 12/16/08

Signature of Issuing Judge (L.S.)

Signature of Judge Judge Code: 957

Judge's Address 599 Joey Zorn Boulevard Barnwell, SC 29812

Judge's Telephone 803-541-1035

Issuing Court: Magistrate Municipal Circuit

FILED FOR RECORD 2008 DEC 19 AM 11:35 GEORGE K. FICKLING JR. CLERK OF COURT BARNWELL COUNTY, S.C.

ORIGINAL

BAIL set by

Judge J. J. [Signature]

on 12/18/08

Type and Amount: \$25000.00 CR

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

by _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

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Name: _____

Address: _____

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Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

60
STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09-GS-06-91

VS.

Antwan Jones

AW#: K-197575

AKA:
Race: Black Sex: male Age: 20

Date of Offense: 12/15/08

DOB: 2-3-1989 SS#:

S.C. Code §: 16-3-620

Address:

CDR Code #: 0014

City, State, Zip: Barnwell, SC 29812

SENTENCE SHEET

≤ 20 years

DL# SID#

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

TO: Assault & Battery w/ Intent to Kill

in violation of 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0014

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. AJ (defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST: Sam Maurice (Solicitor), Antwan Jones (Defendant), [Signature] (Attorney for Defendant), 64124 (SC Bar #)

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90

§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Sheron H. Bitchin
Clerk of Court/ Deputy Clerk

Presiding Judge

Court Reporter: Lisa Hicklin

Judge Code: 0156

Sentence Date: Feb 24, 2009