

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 30 2022

S.C. SUPREME COURT

—————
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge
—————

OMAR RICK WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001264
—————

APPENDIX
—————

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ATTORNEYS FOR RESPONDENT

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INDICTMENT AND SENTENCE SHEET83

State of South Carolina)	Court of General Sessions
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2018-GS-21-1096
)	
)	
The State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
Omar Rick Williams,)	
)	
Defendant.)	
)	

January 23, 2019
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Susan McGill, Esquire
Attorney for the Plaintiff

Daniel Jordan, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit 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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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JANUARY 23, 2019

2 (WHEREUPON, the proceedings began at 10:14 a.m.)

3 THE COURT: All right. Go ahead, Ms. McGill. I'm
4 sorry.

5 MS. MCGILL: Yes, sir. Thank you, Your Honor.

6 This is the State versus Omar Rick Williams. It's true-
7 billed Indictment 2018-GS-21-1096 for assault and battery of
8 a high and aggravated nature. He is pleading under *Alford*,
9 Your Honor. The recommendation from the State is a cap of 10
10 years. Pursuant to this plea, the State is going to dismiss
11 all remaining indictments in the office.

12 THE COURT: All right. Thank you, ma'am.

13 THE CLERK: Sir, please raise your right hand. Do you
14 swear to tell the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Sir, you are Omar Rick Williams; is that
18 correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Mr. Williams, Indictment 2018-GS-21-
21 1096, that is a true-billed indictment charging you with
22 assault and battery of a high and aggravated nature. That
23 charge, Mr. Williams, carries a maximum penalty of up to 20
24 years and is classified under South Carolina law as a violent
25 and a serious offense. Do you understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And the reason I mentioned that it's
3 classified as a serious offense is because -- and I don't
4 know -- I don't know if you have any prior record at all or
5 not, but under South Carolina law if a person gets convicted
6 of three serious offenses in their lifetime, on that third
7 serious offense the State could seek life without parole.

8 Sometimes they call it the three-strike rule. This
9 would be one strike as far as that rule goes. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And am I correct? It is my
13 understanding that to that charge you are pleading guilty
14 under *North Carolina v. Alford*? Is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, sir. And you've talked with Mr.
17 Jordan about what it means to plead guilty under *Alford*?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right, sir.

20 All right. Mr. Jordan, you represent Mr. Williams?

21 MR. JORDAN: I do, Your Honor.

22 THE COURT: And have you discussed with him the charge
23 that he's before the Court on, his constitutional rights to a
24 trial, and the provisions of pleading guilty under *Alford*?

25 THE DEFENDANT: I have, Your Honor, and I also discussed

1 with him the collateral consequences in terms of pleading to
2 this charge as being serious and violent.

3 THE COURT: All right. Mr. Williams, am I correct, sir,
4 that you're 31 years of age?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How long have you spent in jail on this
7 charge, sir?

8 THE DEFENDANT: 403 days.

9 THE COURT: I'm going to go over some things with you,
10 Mr. Williams. I know you've already discussed probably a lot
11 of -- most of this with Mr. Jordan, but I'm just going to
12 briefly go over some things with you. If -- during the
13 course of our conversation, if you -- if there's any time
14 that you need to stop and talk with Mr. Jordan, you let me
15 know and I'll stop and give you whatever time you need.
16 Okay?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Any -- well, let me first -- we'll talk
19 about the *Alford* plea, and probably the easiest way to do
20 that is I'm going to tell you my understanding of an *Alford*
21 plea and you let me know if it matches your understanding.
22 Okay?

23 THE DEFENDANT: Okay.

24 THE COURT: Any time someone enters a guilty plea under
25 *North Carolina v. Alford*, basically what they're saying is

1 this. Judge, I know what the State alleges that I did. I
 2 know the allegations that the State has made and if this case
 3 were to go to a jury trial, I know what the State is going to
 4 present to a jury. I know what they're going to say to a
 5 jury.

6 Even though I disagree with the State, I don't admit to
 7 any wrongdoing, because of what -- because of the allegations
 8 that I believe they're going to show to a jury during a
 9 trial, it causes me some degree of concern that I could
 10 likely be convicted and to avoid that possibility, the State
 11 has made me a plea offer and, even though I don't agree with
 12 what they say I've done, I am willing to take responsibility
 13 to be able to take advantage of that plea offer.

14 That's essentially what an Alford plea is. I don't
 15 agree with what they say, but I'm really not in a position to
 16 prove my innocence and so rather than take that risk of
 17 trial, the State has made me a plea offer and I would like to
 18 take advantage of that opportunity. Is that your
 19 understanding of an Alford plea?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Now, you understand that whether
 22 someone pleads guilty straight up or whether they plead under
 23 Alford, either way, whatever sentence the Court would impose,
 24 whether it be time served, probation, active time, no matter
 25 what it is, entering a plea under Alford has no effect on the

1 sentence one way or the other. You would serve whatever
2 sentence the same way you would serve it as if you pled
3 guilty straight up. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And on your -- on your criminal record where
6 it lists assault and battery of a high and aggravated nature,
7 it would -- it would just simply be listed as a conviction
8 just as it would if you had pled guilty straight up. Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Now, anytime anyone pleads guilty,
12 whether it's under *Alford* or whether it's straight up, you
13 give up certain constitutional rights as it relates to your
14 plea.

15 All of us have the right to remain silent, we have the
16 right to a jury trial, but when you plead guilty under
17 *Alford*, you waive or you give up those two important
18 constitutional rights as it relates to this charge. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: And when you give up your right to a jury
22 trial, you give up other rights that are connected to that.
23 For example, if you were to have a jury trial, you would be
24 presumed innocent of this charge and that would place the
25 burden of proof on the State.

1 The State, in an effort to prove your guilt, would call
 2 witnesses. Those witnesses would come into court and they
 3 would testify. You would have the right through your
 4 attorney to question those witnesses or to cross-examine
 5 them. That's your right of confrontation under the
 6 Constitution.

7 But when you plead under *Alford*, you give up that
 8 presumption of innocence, you relieve the State of their
 9 burden of proof, and since they don't have to prove your
 10 guilt, they don't have to bring those witnesses into court
 11 and so you give up the right to confront those folks. Do you
 12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, the State is not the only one
 15 that could call witnesses. If you had a jury trial, you
 16 could call witnesses in your defense. You, yourself, could
 17 testify. You could do either one of those things or you
 18 could do both of those things, but the important thing to
 19 understand is is that you don't have to do anything. In
 20 other words, you could remain silent because the burden of
 21 proof is on the State, not on you.

22 And if you chose to remain silent, I would instruct the
 23 jury that that is your constitutional right and that they
 24 could not hold it against you in any way. Do you understand,
 25 sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: As a matter of fact, I would tell them that
3 the fact that you chose to remain silent could not be
4 discussed in the jury room at all. The State, as I
5 indicated, has the burden of proof and they would have to
6 prove your guilt to a unanimous decision. In other words,
7 they would have to convince all twelve members of the jury
8 that you were guilty.

9 If they were to convict you --

10 (WHEREUPON, a telephone rings on the bench.)

11 THE COURT: Y'all need to take this phone away from this
12 guy. He doesn't know what he's doing.

13 MR. HANK ANDERSON: If you want to pay me the \$50, I'll
14 take it.

15 THE COURT: The State, as I said, they have to prove
16 guilt to a unanimous decision and, if they were to do that,
17 if you were to be convicted, you could appeal that conviction
18 to a higher court, if you felt that was appropriate. Do you
19 understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, you also have an appellate right as it
22 relates to this plea. If you wish to appeal this Court's
23 decision, you may do that as well, but you would have to file
24 a notice of intent to appeal within 10 days of today's date.
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Mr. Williams, you have all of these
3 rights, but when you plead under *Alford*, then for purposes of
4 your plea, you waive or you give up those rights, you will
5 not have a jury trial, and your case will be resolved
6 pursuant to your plea here today. Understanding that, do you
7 still wish to go forward with your plea under *Alford*?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Now, the State has recommended that
10 whatever sentence the Court impose that it be not more than
11 10 years. So anywhere from zero to 10. That's the
12 recommendation by the State. Is that your understanding of
13 their recommendation?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Other than that recommendation I just
16 mentioned, has anyone promised you anything, held out any
17 hope of reward or threatened you in any way to get you to
18 enter this plea?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you satisfied with the representation
21 and the advice that Mr. Jordan has provided?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Williams, as you stand before the Court
24 here this morning, are you under the influence of any
25 substance that would affect your ability to understand what

1 you're doing here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you entering your plea under *Alford* of
4 your own free will, sir? Are you entering your plea here
5 today under *Alford* -- is that your own free will? Are you --
6 you're not under any coercion --

7 THE DEFENDANT: No, sir.

8 THE COURT: -- or any threats?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. I'm going to ask Ms. McGill to go
11 over the facts as the State alleges and, if you'd listen
12 carefully, I'll get back with you in just a moment.

13 Ms. McGill?

14 MS. MCGILL: Thank you, Your Honor.

15 This incident occurred on November the 26th of 2017 at
16 2606 W. Emory Lane here in Florence County. Your Honor,
17 officers received 9-1-1 calls in reference to a male
18 individual lying in a driveway bleeding and crying for help.
19 When deputies responded to that location, they made contact
20 with the victim in this case, Mr. Walter Treadway.

21 Just by way of background, Your Honor, there had been an
22 earlier altercation between this defendant and this victim
23 and when this victim got back to his residence from receiving
24 medical treatment on an earlier incident, this defendant was
25 at this location waiting on him. He demanded that Mr.

1 Treadway give him a bag. It was a bag that the State is
2 under the impression was filled with drugs, Your Honor.

3 Mr. Treadway did not have that bag. He called his
4 father for money to help him to give to this defendant to try
5 to squash this beef between the two of them. When he could
6 not produce that bag or the money, this defendant armed
7 himself with a gun and did shoot the defendant -- I mean the
8 victim in his foot.

9 Your Honor, as a result of that, he did seek medical
10 attention and was later referred to an orthopedic surgeon.
11 Your Honor, had the State moved forward with this trial, the
12 doctor was going to come and testify regarding the impairment
13 of this defendant's -- I mean this victim's foot.

14 Mr. Treadway -- he still has bullet fragments in his
15 foot. He has some impairment regarding his mobility and
16 sensation in his foot, Your Honor. He has inability to put
17 pressure on it and for those reasons, Your Honor, he has not
18 been capable to secure employment because he cannot stand up
19 on his feet.

20 Your Honor, also, the State would have been able to
21 provide that the gun that was used in this incident was
22 retrieved from a home in that neighborhood that this -- the
23 home that this victim was located at. Ms. Carol Pernel --
24 it was her gun. This defendant did retrieve that gun from
25 her home and then proceeded to shoot this victim in his foot,

1 Your Honor.

2 That's the basis of the State's case regarding the
3 assault and battery of a high and aggravated charge.

4 THE COURT: Okay.

5 MS. MCGILL: Your Honor, as it relates to his prior
6 record, he has a forgery from 2005, as well as possession of
7 a stolen pistol.

8 He has a possession of a cocaine base from 2007.

9 Two counts of disorderly conduct from 2009.

10 He has a DUI and a DUS conviction from 2011, as well as
11 a shoplifting.

12 From 2014, he has a DUS conviction, petty larceny, DUS
13 third or greater, as well as a DUI.

14 From 2015, he has a CDVHAN that he pled down -- that was
15 pled down to an assault and battery in the second degree.

16 And from 2018, he has an unlawful neglect conviction.

17 Your Honor, the victim is seated here in the courtroom
18 to your right. He has the black jacket on this first row.

19 He does not wish to address the Court, Your Honor. He
20 understands what we're doing here today and, Your Honor, I
21 would just ask that you hear from the State regarding
22 sentencing.

23 THE COURT: Sure. I'll hear from everyone in just a
24 moment, but let me -- first, let me go back.

25 Mr. Williams, now, you heard the allegations that Ms.

1 McGill has presented to the Court. Is it your understanding
2 that if this case were to go to a jury trial that those are
3 the allegations that the State would present to a jury that
4 caused you concern that if you were to go to trial you could
5 likely have been convicted? Is that your understanding that
6 that's what they would've presented to a jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. In other words, I understand
9 that you disagree with that.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: But it's your understanding that that's what
12 they would present to a jury if the case had gone to trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. All right. I find that the State has
15 presented allegations that do support the charge that Mr.
16 Williams has pled guilty to under *North Carolina v. Alford*.
17 I believe that Mr. Williams' plea under *Alford* has been
18 entered into knowingly, intelligently, and voluntarily.

19 Mr. Williams has had the advice and counsel of an
20 outstanding attorney in Mr. Jordan and he has indicated that
21 he understands -- that he is satisfied with that
22 representation.

23 I've discussed with Mr. Williams what it means to enter
24 a plea under *Alford* and I think that Mr. Williams understands
25 what an *Alford* plea is and what it means to enter a plea

1 under *Alford* and that his decision to enter that plea has
2 been done voluntarily and willfully, and I'm going to accept
3 his plea under *North Carolina v. Alford*.

4 Mr. Jordan, I'll be happy to hear from you and anyone
5 else that would like to address the Court.

6 MR. JORDAN: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. JORDAN: Your Honor, as Mr. Williams stated earlier,
10 he is 31 years old. He's been held continuously for 400 --
11 well, 403 days, Your Honor. In the intervening time, there
12 was the unlawful conduct charge that -- or conviction that
13 Ms. McGill mentioned, but he's never been bonded out and he's
14 been continuously on hold for that.

15 THE COURT: Okay.

16 MR. JORDAN: I would ask that any sentence you give him
17 give him credit for that.

18 Your Honor, Mr. Williams was born and raised here in
19 Florence. He graduated -- well, Florence County. He
20 graduated from Timmonsville High School. Your Honor, he's
21 married. His wife was here earlier and I spoke with her.
22 She has to -- had to go to work, but they -- he has two
23 children.

24 Your Honor, Mr. Williams, you know, was working through
25 Olsten Staffing and had various different jobs. I mean he

1 was trying to be a useful member of society.

2 Obviously, there are some -- the facts in this case and
3 the allegations, you know, were they presented to the jury,
4 obviously caused us some concern. That's the reason for the
5 plea. Mr. Williams understands *Alford*. He understands, you
6 know, what he is admitting to as he's maintaining his
7 innocence.

8 Your Honor, I would ask that you be as lenient as
9 possible when it comes to sentencing Mr. Williams. He would,
10 obviously, very much would like to be placed on probation,
11 but I'm not -- I'll let you hear from him on that, Your
12 Honor, but otherwise I would ask that you be as lenient as
13 possible.

14 Obviously, this is a -- you know, as Ms. McGill kind of
15 laid out, this is a -- sort of a nefarious situation all the
16 way around that has just gone wrong, Your Honor. And that's
17 not anything that I'm asking you to condone, but, Your Honor,
18 I would just ask that you be as lenient and merciful as
19 possible with Mr. Williams.

20 THE COURT: Sure. I'll be happy to hear, Mr. Williams,
21 anything you want to share with the Court, sir.

22 THE DEFENDANT: Yes, sir. Your Honor, I just want to
23 apologize to Mr. Treadway for any wrongdoing that happened to
24 him and, Your Honor, I've been locked up for 403 days. I
25 honestly feel like I've been punished long enough for a crime

1 that I feel like I've been wrongfully accused of, but if I
2 took it to trial, as I talked to my lawyer, I would -- I
3 probably could -- I could have lost, you know.

4 THE COURT: Yeah.

5 THE DEFENDANT: And I could have been facing more time
6 than zero to 10. Like, getting probation, I probably
7 wouldn't have had that chance. So I'm willing to accept this
8 plea and move forward with my life and get out there and find
9 another job, I guess, because I'm quite sure this one is
10 gone.

11 THE COURT: Okay.

12 THE DEFENDANT: So I'm ready to go forward taking care
13 of my kids and my family.

14 THE COURT: All right. Thank you, Mr. Williams.

15 Ms. McGill, I'd be happy to hear from anyone that would
16 like to address the Court.

17 MS. MCGILL: Your Honor, the victim still does not wish
18 to address the Court, Your Honor.

19 THE COURT: Okay. That's fine.

20 MS. MCGILL: It's just been a very traumatic incident
21 for him. Mr. Williams is not pleading to the previous
22 incident, but in the same day, Your Honor, this victim was
23 attacked with a hammer. So he did suffer injuries from that
24 event and then, like I said, he was waiting on him when he
25 got home to shoot him, to the offense that he's pleading

1 guilty to.

2 Your Honor, Mr. Williams did have a violation of parole
3 -- I mean probation it appears from 2015. The State doesn't
4 believe that this is a probation-type case.

5 Your Honor, I would ask that you would sentence him on
6 the upward scale of the cap, Your Honor. I think it's
7 appropriate. To attack someone twice in a day and ultimately
8 end up shooting him, it could have cost him his life. He
9 could have been paralyzed. There are a number of things are
10 possibilities that could have occurred, Your Honor.

11 But, you know, I don't know exactly what exactly
12 transpired to cause Mr. Williams to react this way, but, Your
13 Honor, it's just not acceptable to beat folks with weapons
14 and then continue to shoot them. Your Honor, I don't care if
15 it is over drugs. It's just unacceptable. So, Your Honor, I
16 would just ask you to take that into consideration.

17 THE COURT: All right. Thank you, ma'am.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 SENTENCE

21 THE COURT: All right. On Indictment 2018-GS-21-1096,
22 as to the charge of assault and battery of a high and
23 aggravated nature, the sentence of the Court is that you be
24 committed to the State Department of Corrections for a period
25 of eight years. I'll give you credit for the 403 days that

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you have served.

Good luck to you, sir.

MS. MCGILL: Thank you, Your Honor.

MR. JORDAN: Thank you, Your Honor.

(WHEREUPON, the proceedings ended at 10:38 a.m.)

--- END REQUESTED TRANSCRIPT ---

1 State of South Carolina)
 2) Certificate
 3 County of Florence)
 4
 5 I, the undersigned, Krystal J. Smith, Notary Public and
 6 Official Court Reporter for the Twelfth Judicial Circuit of
 7 the State of South Carolina, do hereby certify that the
 8 foregoing pages, numbered 1 through 20, constitute a true,
 9 accurate, and complete Transcript of Record of all the
 10 proceedings had and evidence introduced in the hearing of the
 11 above captioned case, relative to appeal, in the Court of
 12 General Sessions for Florence County, South Carolina, on the
 13 23rd day of January, 2019.
 14 I do further certify that I am neither of kin, counsel,
 15 nor interest to any party hereto.
 16
 17 Krystal J. Smith
 18 Court Reporter
 19
 20 Florence, South Carolina
 21 January 13, 2020
 22
 23
 24
 25

FORM 5

20 19 CP 21 875

STATE OF SOUTH CAROLINA)

COUNTY OF Florence)

Omar Dick Williams SR.)
SCDC # 322531)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 KCI R+E 4344 Broadriver Rd -
2. Name and location of Court which imposed sentence Columbia S.C. 29110 12th Judicial Circuit Court
3. Name(s) of co-defendant(s) (if any) None Florence S.C. 29501
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-21-01096
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-23-2019 - 8 years
 - (b) _____

2019 MAR 28 PM 1:01
DORIS POULOS O'HARA
CLERK
C.C.P. & G.S.
FLORENCE COUNTY, SC

FILED

Revised 3/2003
SCANNED

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Nolo Contendere / Alford 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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Judicial misconduct
- (b) Plea was entered involuntarily, and unknowingly, Plead under duress
- (c) Trial court was/lacked subject matter jurisdiction

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

- (a) _____
- (b) _____
- (c) _____

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

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

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. Motion For Court to Arrest Judgement Rule (34) Fed R Crim P
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. 12th Judicial Circuit court Florence S.C 29501
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A

- 11.(A) Judicial misconduct resulted when the trial court having fore knowledge of the state holding over the Applicants head the state having Applicants wife and informing applicant that if we proceed to trial detective McTadden would bring false charges against her.
- (B) Applicant Plea was entered under duress wherein the state used the possibility of falsely incrating Applicants wife if he didn't plead guilty. Applicant was also denied a preliminary hearing subsequent to requesting one. In violation of Due process.
- (C) Applicant alleges that there was not a Grand Jury convened during the month of June as indicated on his indictment. Thereby depriving the court of subject matter jurisdiction.

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
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. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
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) Jurisdictional Issue.
- (b) Jurisdictional Issue
- (c) Jurisdictional Issue.
17. Were you represented by an attorney at any time during the course of:

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

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. Daniel Jordan Public Defender Office 180 N. Irby St Florence
 - ii. Sic 29501
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Sentencing and Alford Plea
 - ii. _____
 - iii. _____

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

Sentence vacated and Remand For New Trial.

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

NO

STATE OF SOUTH CAROLINA)

County of Florence S.C)

VERIFICATION

I, _____, 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.

[Signature]

SWORN to and subscribed before me this 26th
day of March, 2019.

[Signature] (L.S.)
Notary Public

My Commission Expires: BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

2019 MAR 28 PM 1:01
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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



 Applicant

SWORN or affirmed to and subscribed before me this
26th day of March, 2019.



 Notary Public

BETH A. MANGOLD
 Notary Public, State of South Carolina
 My Commission Expires 8/10/2028

2019 MAR 28 PM 1:01
 DORIS POULOS O'HARA
 C-CP & GS
 FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	FOR THE TWELFTH JUDICIAL CIRCUIT
)	
Omar Rick Williams, Sr., #322531,)	2019-CP-21-875
)	
Applicant,)	
)	
v.)	RETURN
)	(Counsel Appointed)
State of South Carolina,)	
)	
Respondent,)	
)	

In response to Omar Williams’s (Applicant) action for post-conviction relief (PCR) commenced March 28, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2018 term of the Florence County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2018-GS-21-01096), and second-degree assault and battery (2018-GS-21-1092). Applicant was represented by Daniel Jordan, Esquire (Counsel). Assitant Solicitor Susan McGill prosecuted the case.

Applicant entered an *Alford* plea to ABHAN as indicted on January 23, 2019, before Judge Thomas A. Russo. Applicant pleaded with a negotiated ten-year sentencing cap, and the State dropped Applicant’s second-degree assault and battery charge. Judge Russo accepted Applicant’s plea and sentenced him to serve eight years imprisonment. Applicant appealed.

Counsel filed a notice of appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on January 31, 2019. The Court of Appeals dismissed the appeal on April 18, 2019.

State v. Williams, S.C. Ct. App. Order filed April 18, 2019. The Case was remitted back to the circuit court on May 7, 2019.

Applicant timely commenced this PCR action on March 28, 2019.

II. Facts

Applicant's charge stems from an incident that occurred on November 26, 2017. Officers responded to a call in reference to a man lying in the driveway bleeding and crying for help. Plea Tr. 12. When deputies arrived at that location they made contact with the victim, Walter Treadway. Plea Tr. 12.

Apparently, there was an earlier altercation between Applicant and Treadway, and when Treadway got back to his residence from receiving medical treatment due to the earlier incident, Applicant was waiting. Plea Tr. 12. Applicant demanded that Treadway give him a bag. Plea Tr. 12-13. The State was under the impression was filled with drugs. Plea. Tr. 13. Treadway did not have the bag with him. Plea. Tr. 13. Treadway called his father for money to help settle the disagreement. Plea Tr. 13. When Treadway could not produce the bag or the money, Applicant armed himself with a gun and shot Treadway in the foot. Plea Tr. 13.

III. Current Application

Applicant alleges he is being held in custody unlawfully, alleging:

1. Judicial misconduct:
 - a. Judicial misconduct resulted when the trial court having fore knowledge of the State holding over the Applicant's head the State having Applicant's wife and informing Applicant that if we proceed to trial detective McFadden would bring false charges against her.
2. Plea was entered involuntarily and unknowingly plead under duress:
 - a. Applicant plea was entered under duress wherein the State used the possibility of falsely incarcerating Applicant's wife if he didn't plead guilty. Applicant was also denied a preliminary hearing subsequent to requesting one. In violation of due process.
3. Trial court was/lacked subject matter jurisdiction:

- a. Applicant alleges [sic] that there was not a Grand Jury convened during the month of June as indicated on his indictment. Thereby depriving the court of subject matter jurisdiction.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the plea transcript, and the records of this PCR action.

IV. Response to Allegation of Involuntary Plea

The State interprets Applicant's allegations as ineffective assistance of counsel rendering his guilty plea unknowing and involuntary. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (stating a defendant who entered a guilty plea with the advice of counsel, may only attack the voluntary and intelligent nature of the plea). Applicant's allegation is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

A defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

To prove prejudice, the applicant must show a reasonable probability he would not have pled guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Applicant's allegations 1 and 2 both assert his guilty plea was involuntary. However, this allegation is refuted by the record. At the plea hearing, Applicant was sworn in. PCR Tr. 4. Applicant informed the plea court he was not coerced or threatened into entering his *Alford* plea. Plea Tr. 12.

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of Counsel to the extent his action should be summarily dismissed; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Response to Allegation of Lack of Subject Matter Jurisdiction

Applicant's allegation that the plea court lacked subject matter jurisdiction is without merit. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003).

Here, Applicant was indicted by the Florence County Grand Jury. That indictment was true-billed and signed by the foreman of the grand jury. The indictment contains all the necessary elements of the offense, and further cites the applicable statute. Additionally, a presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, Pringle v. State*, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) ("In the absence of evidence to the contrary, the regularity of the proceedings of

a court of general jurisdiction will be assumed.”). Applicant cannot show any irregularity because the indictment in question is sufficient on its face; therefore, the plea court had subject matter jurisdiction.

VI. Any Future Amendments & Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Id.* at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love, supra.*

VII. Any and All other Allegations

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

VIII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

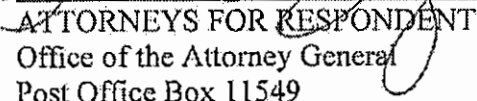
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

July 15, 2020

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	2019-CP-21-00875
)	
)	
)	
Omar Rick Williams)	TRANSCRIPT OF RECORD
vs.)	
State of South Carolina)	
)	August 30, 2021
DEFENDANT))	Florence, South Carolina

B E F O R E:

THE HONORABLE GEORGE M. MCFADDIN, JR.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

YASMEEN E. KLEIN, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KESHIA REED
Official Court Reporter

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Omar Williams				
Mr. Waller	4		24	
Ms. Klein		15		
Daniel Jordan				
Ms. Klein	26			
Mr. Waller		30		
Certificate of Reporter	34			

1 MS. KLEIN: Your Honor, would you like me to
2 call the case?

3 THE COURT: I'm sorry, yes, ma'am.

4 MS. KLEIN: Okay. May it please the Court, this
5 is the case of Omar Williams vs. State of South Carolina
6 docket number 2019-CP-21-875. Applicant was indicted in
7 June 2018 for assault and battery of a high and aggravated
8 nature and second degree assault and battery. Applicant
9 entered an Alford plea pursuant to a negotiation of a ten
10 year cap on the sentence on April 23rd 2019 before Judge
11 Thomas Russo. Judge Russo sentenced applicant as
12 negotiated to eight years imprisonment. Applicant
13 appealed and the appeal was dismissed April 18th of 2019
14 and a remittitur was issued May 7th 2019.

15 This PCR was filed on March 28th 2019.
16 Applicant is present and he is represented by Mr. Jonathan
17 Waller. And at this time your Honor I believe Mr. Waller
18 intends to place the allegations on the record.

19 THE COURT: Mr. Waller, sir.

20 MR. WALLER: Thank you, your Honor. May it
21 please the Court. Judge, the main issue regarding Mr.
22 Williams it was a plea your Honor. The main issue
23 regarding that is Mr. Williams has allege that he was
24 coerce and pressured into pleading guilty by the actions
25 of the State as well as those of his lawyer specifically

1 that charges were going to be brought against his wife if
2 he did not plead guilty, that's why he entered the plea
3 and we are alleging that it was involuntarily entered
4 into.

5 THE COURT: Yes, sir. All right. I am ready.

6 MR. WALLER: I will call Omar Williams, your
7 Honor.

8 THE CLERK: Place your left hand on the Bible
9 and raise your right hand as much as you can. Do you
10 swear or affirm that the testimony you give will be the
11 truth, whole truth and nothing but the truth so help you
12 God?

13 MR. WILLIAMS: I do.

14 THE CLERK: Thank you.

15 THE COURT: Mr. Williams, may I kindly ask that
16 you remove your mask when you speak because I really got
17 to hear what say and she has to hear what you say also.
18 All right, sir. Thank you.

19 Whenever you ready.

20 MR. WALLER: Thank you, your Honor. May it
21 please the Court.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Good afternoon, Mr. Williams. How are you today?

1 A I'm doing good. You?

2 Q I'm doing well. Thank you for asking. Mr. Williams,
3 when you were -- I want to take you back to when you were
4 first arrested on the charges that brought us here today.
5 Do you remember that?

6 A Yes, sir.

7 Q Okay. What charges were you facing at that time?
8 What were you arrested on?

9 A Assault and battery high and aggravated nature and
10 assault and battery second.

11 Q Okay. And who was your attorney in those charges?

12 A Daniel Jordan.

13 Q All right. And about how long after you were
14 arrested did Mr. Jordan come to be your lawyer?

15 A He was my lawyer as soon as I was arrested because he
16 was my lawyer on the other charges.

17 Q Okay. So he was already representing you on
18 something else?

19 A Yes.

20 Q Okay. And did you hire him or was he appointed
21 because he's a public defender?

22 A He was appointed.

23 Q Okay. So when you picked up the new charges
24 Mr. Jordan's already representing you. What was that
25 conversation like? What did you all talk about?

1 A Well, he came -- I came to see him here like six
2 months after I caught those charges, the new charges.

3 Q The new charges, okay.

4 A Yes. And the first thing that he said to me when I
5 sat down was you shot that boy, that was the first words
6 he said. I was like I didn't shoot anybody. He said so
7 if I look at the camera, I'm not going to see a smiling
8 face of you up there. I was like, no, sir. And he said
9 okay and that was it.

10 Q Okay. At that point when you met with him did you
11 have any discovery in your case or anything like that at
12 that point?

13 A No, sir.

14 Q Okay. And we say two charges were they against the
15 same victim -- allege victim, is that right?

16 A Yes.

17 Q Did they take place at the exact same time or were
18 they separated by a little bit of time?

19 A From what I read on the paperwork, it was
20 different -- two different occasions.

21 Q Okay. And you pled under North Carolina vs. Alford,
22 is that right?

23 A Yes.

24 Q Okay. So you maintain your innocence then and to
25 this day?

1 A Yes.

2 Q Okay. But the State allege that the victim,
3 Mr. Treadway, I believe was assaulted earlier in the day
4 and then he was shot in the foot later on that day?

5 A Yes.

6 Q Okay. Might have been a continuing altercation, but
7 it was a gap in time, is that right?

8 A Yes.

9 Q Okay. So when Mr. Jordan is representing you, your
10 Alford plea was obviously only to these set of charges, is
11 that right?

12 A Yes.

13 Q What happened with your other charges?

14 A The two charges that I currently had there was -- I
15 had a paid lawyer for those charges.

16 Q Okay.

17 A And then the assault and battery second charge that
18 got dismissed when I pled to the Alford.

19 Q Okay. But the charge that Mr. Jordan already had for
20 you, that he was already your lawyer on the first charge,
21 what happened to that?

22 A We went to trial on that one.

23 Q Okay. So it wasn't wrapped up in this situation?

24 A No.

25 Q Okay. All right. So you were talking about a video

1 a second ago. Was there any video in this case?

2 A No.

3 Q Okay. Do you know if Mr. Jordan was just asking a
4 question just to ask it or?

5 A It was never a video on my paperwork and my paperwork
6 didn't say a video.

7 Q Okay. All right. There was some -- there was
8 discovery in your case though, is that right? Did you
9 receive discovery in this case? The paperwork you're
10 talking about?

11 A Yes.

12 Q Okay. Did you have a chance to review that?

13 A Yes, I did.

14 Q Okay. There were some statements of different people
15 in there?

16 A If I'm not -- yes, it was.

17 Q Okay. Were there any reports from doctors or
18 anything like that that you saw or you remember?

19 A Well, I seen what the allege victim said that he
20 didn't know who shot him.

21 Q Okay. Okay. Did you and Mr. Jordan have a chance to
22 discuss the discovery, the paperwork in these specific
23 charges?

24 A No.

25 Q Okay. Y'all were focus on the first charge or...

1 A He didn't realize he had this case until -- because
2 when I came and talk to him the first time, I ask him what
3 was they offering me and he was like four years. And I
4 was like for all my charges. He was like, no, the child
5 neglect charge. And he didn't know that he had these two
6 new charges, but the public defender's office knew it
7 already, but he didn't know it.

8 Q Okay. When did y'all have a chance to go over the
9 paperwork from this case just you and Mr. Jordan talking
10 about it?

11 A After I went to trial, I say within the -- it had to
12 been probably about two weeks before I pled -- a week or
13 two before I pled to the charge.

14 Q Okay. And just to clarify, that trial you're talking
15 about was on -- not on these charges something different?

16 A No.

17 Q Okay. All right. So y'all did have a chance to talk
18 about your paperwork in this case. Did you talk about,
19 you know, the charges and what they essentially carried as
20 far as sentences?

21 A Yes, we did talk about that.

22 Q Okay. Did you talk about your constitutional right
23 to remain silent?

24 A Yes, we did.

25 Q Okay. Had you talked to law enforcement at all about

1 this case?

2 A No.

3 Q Okay. Did y'all talk about potentially going to
4 trial on this case?

5 A I talk to Thomas McFadden. He came to the county
6 jail to see me, but I didn't say anything. I didn't have
7 anything to say.

8 Q Who's Thomas McFadden?

9 A I think he was the investigating officer on the case.

10 Q Okay. For the sheriff's department?

11 A Yes.

12 Q Okay. Did -- were you represented at that time by
13 Mr. Jordan?

14 A He was my attorney, but he wasn't there.

15 Q Okay. He wasn't there at that meeting?

16 A Uh-uh.

17 Q Okay. Ultimately, you ended up pleading under North
18 Carolina vs. Alford?

19 A Yes.

20 Q How did that come about? What did you and Mr. Jordan
21 talk about to get to that point?

22 A We was going to trial on this charge. The day of the
23 trial he call me into the little booth that they have back
24 there to tell me that -- he was like, well, they -- if I
25 didn't take this plea, that they was going to lock my wife

1 up. And I was like where is she. He said that she was
2 being held across the street at the old courthouse. And
3 he said that Thomas McFadden said that he was going to
4 press charges on her if I didn't accept the plea.

5 Q Okay. Let me back you up just a little bit. So you
6 say y'all were preparing for trial?

7 A Uh-huh. I was dressed out.

8 Q Okay. So you had already -- you were in the
9 detention center, but you had already put on street
10 clothes to start your trial?

11 A Uh-huh.

12 Q What had y'all done to get ready for the trial at
13 that point?

14 A Well, that day -- that's the day that I got my
15 discovery because I never had it. I was putting in for
16 it, but I never did get it. But they gave it to me the
17 day of the trial.

18 Q Okay.

19 A So when I sat down and talk with him, I haven't even
20 looked over it yet. So that's when he just told me that
21 about the -- my wife being detained across the street and
22 if I didn't take the plea. So the first plea that he had
23 offered the day before that was zero to ten nonviolent and
24 I wouldn't take it. And then the next day of the trial
25 that's when he offered -- he said that it was gone be a

1 zero to ten with a cap. And I ask him I said, well, is it
2 still nonviolent when he told me about my wife. I was
3 like was it still nonviolent. He was like, no. He said
4 that's no longer -- he said that was a mistake. He said
5 that wasn't suppose to be -- it suppose to be violent the
6 whole time.

7 Q What was the basis supposedly going to charge your
8 wife with ---

9 A I have no idea.

10 Q --- something involved with this or something
11 different?

12 A I guess with this.

13 Q Okay. How did she even come into the situation with
14 your trial?

15 A Because he said that one of the victims said that she
16 was there.

17 Q Okay.

18 A One of the witnesses said she was there.

19 Q Okay. Had she been arrested at that point?

20 A No.

21 Q And who did you hear from that she was going to be
22 charged if you did not plea?

23 A Mr. Jordan told me that.

24 Q Okay. And if you know, that's fine. If you don't
25 know, that's fine also. Do you know who he received that

1 information from?

2 A Mr. McFadden, Thomas McFadden.

3 Q Okay. All right. And you said you were dressed out
4 and ready start the trial?

5 A Yes, sir.

6 Q Okay. If it hadn't been for that issue, would you
7 have pled guilty or pled under North Carolina vs. Alford?

8 A No.

9 Q You would have gone to trial?

10 A Yes.

11 Q Okay. Mr. Williams, you have raised allegations
12 against -- that your constitutional rights were violated,
13 that your due process rights were violated, that you were
14 coerced into pleading guilty. Is there anything that you
15 want the Court to know or anything that I haven't asked
16 you about particularly about Mr. Jordan's representation
17 of you?

18 A No, other than -- I think I submitted that paperwork
19 to you that -- I been had wrote disciplinary counsel to --
20 about Mr. Jordan to try to get him off my case and I have
21 those copies and updates that I sent those. And those
22 were like, I think, March of 2018.

23 Q What do you think he did wrong in your case?

24 A Poor representation. He -- like I said, the first
25 thing he said to me when -- was that you shot the guy.

1 Like, he didn't talk with me or nothing. He just said you
2 shot the guy. And I was like I didn't shoot anybody. And
3 he said, well, when I look at the tape, I'm not gone see a
4 big smiling face of you up there. And from my
5 understanding, it was never a tape.

6 Q Okay. Now, was your -- you were ready to go to trial
7 that day?

8 A The day of my trial, yes, I was dressed out ready.

9 Q Was your wife going to be on trial next to you at the
10 table?

11 A No, she was about to head back to work. She just
12 came and drop my clothes off.

13 Q Okay. So if you had gone forward with trial, she
14 wouldn't have been on trial that day?

15 A No.

16 Q Okay. Is there anything else you can think of that
17 you need the Court to understand about Mr. Jordan's
18 representation of you?

19 A No. No, sir.

20 Q Okay. You pled guilty because your wife was going to
21 be charged or you were told your wife was going to be
22 charged, is that right?

23 A Yes.

24 MR. WALLER: I have nothing further. Please
25 answer any questions Ms. Klein has for you.

1 THE COURT: Ms. Klein.

2 MS. KLEIN: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MS. KLEIN:

5 Q Good afternoon, Mr. Williams. How are you?

6 A I'm fine. Are you?

7 Q I'm doing well. I just have a few more questions for
8 you. So you testified that Mr. Jordan was appointed to
9 represent you?

10 A Yes.

11 Q Okay. And he was also representing you on a separate
12 set of charges?

13 A Yes, ma'am.

14 Q And you said you went to trial on those charges?

15 A Yes.

16 Q What was the outcome of those charges?

17 A It was a hung jury.

18 Q A hung jury?

19 A Yes.

20 Q Okay. So you didn't enter a guilty plea prior to the
21 end of that trial?

22 A Yes, I did.

23 Q Okay. So did you enter a guilty plea or was it a
24 hung jury?

25 A It was a hung jury. Then they -- the judge call

1 Mr. Jordan and the Solicitor up front and they spoke with
2 each other. And then he came back to me and he said,
3 well, the Solicitor's willing to give you -- drop the
4 sentence down to eight months if I would take the plea.
5 And I was under the impression if I took the eight months,
6 that the charges would have been dropped on my wife
7 because they had charge her with child negligent as well,
8 but she was at work. My son was at the house with me.

9 Q Okay. So it was essentially you pled to eight months
10 is that how you resolved the other offenses?

11 A No, it wasn't another offense, it was just child
12 neglect.

13 Q But those charges when you did the guilty plea was
14 what you ended up -- that was the negotiation -- that's
15 the amount of time that you got?

16 A Eight months.

17 Q Okay. And then you got the charges that you're here
18 on today. When were you arrested for those?

19 A I was out on bond on the child negligent charge and I
20 got arrested on, I think, it was December of 2017.

21 Q Okay.

22 A So I was sitting in the county -- I never got a bond.
23 I was sitting in the county the whole time, so I end up
24 going to trial for the child negligent charge while I was
25 sitting in the county on these charges as well.

1 Q Do you remember for these charges do you remember how
2 many times you met with Mr. Jordan to discuss the charges?

3 A For the two charges now?

4 Q Yes, sir.

5 A Well, around the trial that week, that week that the
6 trial was suppose to -- well, we was about to go to trial,
7 that week I came up here like four times that week, four
8 times. The first time I didn't speak with them. The
9 second time I didn't speak with them. Then the third time
10 I did speak with them, that's when the decision -- that's
11 when he ask me was I -- did I -- that's when he told me
12 that I shot that boy, that's when he said that.

13 Q When you met with Mr. Jordan, did you discuss the
14 elements of the charges that were against you, so what you
15 were being charged with what that meant?

16 A Well, we discuss the charges and he seem like he
17 believe me like he knew I didn't do it.

18 Q Did you discuss possible sentences what you might get
19 in time for those charges?

20 A Yeah, he said it was zero to 20.

21 Q Okay. Do you remember talking about any possible
22 defenses with him while you prepared for trial?

23 A No, ma'am.

24 Q What were your version of the facts that you told
25 Mr. Jordan?

1 A About what happened?

2 Q Did you ever tell him what happened or did you have a
3 discussion with him beyond what was included in the
4 discovery or the police report?

5 A No, I told them that I was at work the day of the
6 incident. I was at work.

7 Q Okay. Did you discuss him getting -- doing any kind
8 of investigation into having an alibi?

9 A Oh, yes, yes, yes, because he -- that was with Mr.
10 McKenzie though the -- his investigator, that's who did
11 all that the investigator.

12 Q So you didn't talk to Mr. Jordan about that?

13 A No, I talk with Mr. McKenzie.

14 Q Okay. And when you did talk -- did you talk to
15 Mr. Jordan about your constitutional rights including your
16 right to a trial jury?

17 A Yes.

18 Q All right. Did you talk about your right to testify?

19 A Yes.

20 Q Okay. And then you also have the right to challenge
21 any evidence against you?

22 A Uh-huh.

23 Q And so you ultimately did plead and you testified
24 that the reason why you took a plea was because Mr. Jordan
25 told you that if you didn't plead, the State was going to

1 bring charges against your wife?

2 A Yes, ma'am.

3 Q Is that what you testified to?

4 A Yes, ma'am.

5 Q And where were you when you had this conversation
6 with Mr. Jordan?

7 A We was in the back.

8 Q Where in the back? Can you describe where you were?

9 A Like back there they have a glass up and you can get
10 on one phone and he on the other side with his phone and
11 you just sit down and you talk to your attorney.

12 Q Okay. So you were in a courtroom or courthouse?

13 A Yes.

14 Q And your testimony is that Mr. Jordan told you take a
15 plea or your wife is going to be -- have charges brought
16 against her?

17 A He said if I don't take the plea, she was going to be
18 charged.

19 Q Did he say what she was going to be charged with?

20 A No, he just said it was a -- it was one of the
21 witnesses was going to testify that she was there.

22 Q Okay. Do you remember your plea hearing? So when
23 you went forward and you entered an Alford plea, do you
24 remember the proceeding in general?

25 A I remember what the judge was saying and stuff, yes,

1 I do.

2 Q Did you remember the judge asking you if you
3 understood what an Alford plea meant?

4 A Yes.

5 Q Okay. And do you remember them saying that, you
6 know, this is what you been charged with and this is what
7 the sentencing range is?

8 A Yes.

9 Q How many years you could get?

10 A Yes.

11 Q Do you remember telling the plea judge that you were
12 satisfied with Mr. Jordan's service?

13 A Yes, I did, and I discuss that with my attorney as
14 well because -- if I had said otherwise, I done seen the
15 judge do it. If I say otherwise, he could have stop the
16 case and wouldn't have accepted my plea.

17 Q So you wanted to go to trial though, correct?

18 A Yes, I did, but I did want my wife to get arrested
19 for something she had nothing to do with.

20 Q Okay. And so you said you told the judge that you
21 were satisfied with Mr. Jordan's services ---

22 A Yes, I did.

23 Q --- because you were concerned that if you said, no,
24 he was going to just stop the plea proceeding?

25 A Uh-huh.

1 Q Okay. Do you remember the judge asking if anyone had
2 promised you anything or threatened you in any way to take
3 a plea?

4 A Yes, ma'am.

5 Q Do you remember telling the judge no?

6 A Yes, ma'am.

7 Q At that point why didn't you tell the judge the
8 conversation that had happened with Mr. Jordan that you
9 were so concerned about?

10 A He would have stop the trial. He would have stop the
11 proceedings.

12 Q Okay. Do you remember being asked a separate time by
13 the Court whether you were pleaing under your own freewill
14 and you were not under any coercion?

15 A I don't know if they ask a second time. I just
16 remember when the judge ask me.

17 Q Okay. So the judge asked you first if you were being
18 threatened in any way to enter the plea and you said no?

19 A Yes, I did.

20 Q The judge asked you shortly afterwards if you were
21 entering it of your own freewill and asked if you were
22 under any coercion and you said no?

23 A Yes.

24 Q Okay. And then after that the judge also said you
25 were under no threats and you said no again?

1 A Yes, I did.

2 Q So there were three separate times during your guilty
3 plea that the Court asked you directly if there was
4 anything going on that would have pressured you to enter
5 this plea, right?

6 A Yes.

7 Q And every single time you said no?

8 A Yes, ma'am.

9 Q So today you're testifying that we should be
10 considering this conversation, that there was something
11 going on, but you just didn't want to tell the judge at
12 the time?

13 A Yes, ma'am.

14 Q You didn't think it was important to the judge, the
15 judge would have wanted to know that they were threatening
16 you?

17 A Yes, he would have wanted to know. At the same time
18 I know he would have stopped the proceedings.

19 Q But did you not think that if the judge knew that
20 that was a condition you were being forced to plead
21 because they were allegedly threatening you that there
22 would have been some stop to the threat?

23 A I don't know. To be honest, I do not know what would
24 have happened, but I wasn't gone chance it.

25 Q Do you have any correspondence or anything to

1 corroborate the conversation that you had with Mr. Jordan?

2 A No, ma'am.

3 Q Okay. And ultimately you were sentenced to eight
4 years, is that right?

5 A Yes, ma'am.

6 Q Okay. And then did you submit an appeal on that
7 sentence?

8 A Mr. Jordan submitted an appeal.

9 Q Okay. And so if Mr. Jordan did you -- what was your
10 relationship with him like after he had this conversation
11 with you? So did you trust him? Did you like him?

12 A What you mean by the conversation that we had? After
13 the trial, after the proceeding was over, that was it.

14 Q Sir, I'm referring to the conversation that you
15 allege happen between you and Mr. Jordan where he told you
16 that your wife was going to be charged?

17 A I felt like he turned his back on me.

18 Q Okay. But you still asked him or requested that he
19 submit an appeal and asked for further representation?

20 A He said he was going to do all that. He said that
21 after we was sitting down talking. He said, well, I'm
22 going to file for an appeal for you this and that, you
23 know.

24 Q Okay.

25 A He said -- we was in the back talking before we even

1 came up for me to plea.

2 Q Was anyone else present during that conversation that
3 you had with him?

4 A It was just me and him. He was on one side of the
5 glass and I was on the other side of the glass.

6 Q Okay.

7 MS. KLEIN: All right, Mr. Williams, I don't
8 believe I have any more questions for you.

9 THE COURT: Any redirect, Mr. Waller?

10 MR. WALLER: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Mr. Williams, you testified that you -- you knew the
14 judge would stop the proceedings if you said you been
15 threatened in any way. I believe you said you had seen
16 it?

17 A Yes.

18 Q Okay. Where had you seen?

19 A It was done in a case in 2018 when I was -- I think
20 it was '18 and I was sitting in the courtroom and it was a
21 guy he had a purse snatching and he said he didn't do it,
22 but he was going to plead guilty. And when he got up here
23 the judge ask him did he do it and he said no. And the
24 judge said, well, why are you pleading guilty. And he
25 didn't say nothing else after that, so the judge stop the

1 whole case and sent him back.

2 Q Okay. So having seen that you thought that if you
3 didn't answer the judge's questions in a way that would
4 get the plea done, the judge would stop the proceedings?

5 A Yes.

6 Q And if he stop the proceedings, you thought your wife
7 would be charged?

8 A Yes.

9 Q Okay. Because you would have been able to plea that
10 day?

11 A No.

12 MR. WALLER: Okay. Nothing further. Thank you,
13 Mr. Williams.

14 THE COURT: Ms. Klein.

15 MS. KLEIN: Nothing further, your Honor.

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

18 (WHEREUPON, the witness leaves the witness
19 stand.)

20 THE COURT: Mr. Waller.

21 MS. KLEIN: Nothing further from the applicant,
22 your Honor.

23 THE COURT: Ms. Klein.

24 MS. KLEIN: Your Honor, the State would call Mr.
25 Daniel Jordan.

1 THE CLERK: Do you swear or affirm that the
2 testimony you give will be the truth, the whole truth, and
3 nothing but the truth so help you God?

4 MR. JORDAN: Yes, ma'am.

5 THE CLERK: Thank you.

6 WHEREUPON,

7 Daniel Jordan,
8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. KLEIN:

11 Q Afternoon, Mr. Jordan.

12 A Good afternoon.

13 Q So you heard Mr. Williams' testimony just now that
14 you were appointed to represent him on multiple occasions,
15 is that correct?

16 A Yes, ma'am.

17 Q All right. And so the first were -- charges that
18 resulted -- they started as a trial, but ended in a guilty
19 PLEA?

20 A That's right. They were unlawful conduct toward a
21 child charges, yes.

22 Q And then the charges that you represented him on that
23 are at issue today those occurred -- how much longer after
24 he received or went for the first set of charges?

25 A Well, I think they were pending. I can't remember

1 the amount of time between that unlawful conduct charge
2 and the assault and battery charges, but I think there was
3 about six months in between those two.

4 Q Okay. Did you get all of the relevant discovery in
5 this case?

6 A Yes.

7 Q Do you recall what was included in the discovery
8 materials you received?

9 A The incident reports, witness statements. There were
10 some medical records regarding the condition of the victim
11 who is shot in the foot. Mr. Williams says that I asked
12 him about whether I see him on camera. I may have because
13 the second incident took place in or around the hospital.
14 There were some nurses who claim to have witness that, but
15 I never got any video footage. I don't think there was
16 any video footage.

17 Q All right. Do you remember how many times you met
18 with Mr. Williams?

19 A We met a number of times over the course of my
20 representation and we always talked about all three of the
21 cases. I know Matt Swilley was involved some where in
22 there. I think he may have represented Mr. Williams or
23 either his wife on some other charges, but we talked quite
24 a number of times about all of it.

25 Q And with regards to the charges at issue today, do

1 you recall what his inclination was for how to resolve
2 those and did he want to go to trial, was he interested in
3 a plea?

4 A Well, he wanted to go to trial and he was right he
5 wanted to go to trial until it came time to go to trial,
6 which is when they located the victim who was going to be
7 here to testify. Up until that point, the victim had been
8 in the wind so to speak, but they had located the victim.
9 He was under subpoena. He was coming to testify. And he
10 was expected to testify consistently with one of the
11 statements that he gave to law enforcement which was that
12 Mr. Williams was the perpetrator.

13 Q And when you say that they, are you referring to the
14 Solicitor's office or, you know, the sheriff's department,
15 who was it that located the witness?

16 A The sheriff's department I believe.

17 Q And when they did locate the witness, did the
18 Solicitor's office inform you that they had been found?

19 A Yes.

20 Q And that they plan to have that individual testify?

21 A Yes.

22 Q Did you convey that information to Mr. Williams?

23 A Yes.

24 Q And what was his response?

25 A It was a mixture of belief and disbelief over what

1 the witness would inevitably say on the stand.

2 Q Okay. You heard Mr. Williams' testimony that the day
3 he was suppose to start trial that the two of you had a
4 conversation in which you informed him that if he did not
5 plea, the State was going to bring charges against his
6 wife. Did that conversation occur?

7 A Not that I can recall.

8 Q Do you have any knowledge now or at that time whether
9 his wife was being held under some sort of assumption of
10 charges being brought?

11 A The only thing that I know about his wife in terms of
12 criminal charges is in regard to the unlawful neglect case
13 that we tried. She did have charges pending out of the
14 same circumstances there that were dropped as a result of
15 his guilty plea, but I don't recall her having anything in
16 regard to these two charges.

17 Q So this individual McFadden never told you that
18 someone was going to testify? She was present in order to
19 additionally have her charged?

20 A I don't believe so.

21 Q Okay. And you never told Mr. Jordan (sic) that he
22 need to take a plea because of that reason?

23 A I don't recall having that conversation.

24 Q Okay. Is it your impression that Mr. Williams wanted
25 to enter a plea at that point?

1 A Yes.

2 Q And did he go before the Court and inform the Court
3 on several occasions that it was his choice to plead and
4 he was doing so voluntarily and without coercion?

5 A Yes.

6 Q Did you have conversations with Mr. Williams about
7 the rights that he was giving up if he accepted a plea?

8 A Yes, ma'am.

9 Q And he was informed of what an Alford plea meant?

10 A He was.

11 Q Okay. Did you have any reason to suspect at the time
12 he entered the plea that he was doing so because of duress
13 and coercion?

14 A No, ma'am.

15 MS. KLEIN: Your Honor, I don't have any more
16 questions.

17 THE COURT: Mr. Waller.

18 MR. WALLER: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. WALLER:

21 Q Mr. Jordan, the unlawful neglect of a child charge
22 that went to trial that I believe the testimony was the
23 jury was hung and then Mr. Williams ultimately entered
24 into a plea to resolve his charge, is that right?

25 A Well, we think the jury was on -- they been out for

1 quite sometime. They come back. They asked a question
2 and they were back out.

3 Q So they were still deliberating?

4 A They were still deliberating. It was painfully
5 obvious they weren't coming to a consensus.

6 Q Okay. He received eight months as part of his plea.
7 Had he done the eight months? Was going to be
8 incarcerated after that, do you recall?

9 A I don't recall.

10 Q How did you come to eight months?

11 A The Solicitor made that offer.

12 Q Okay. Do you know of any reason why it was eight
13 months instead of a year or six months?

14 A I don't.

15 Q Okay. Were his wife's charges from those same --
16 were they resolved at that time?

17 A There wasn't any quid pro quo if that's where you
18 going. I don't recall there being any discussion with the
19 Solicitor that they would definitely drop the charges that
20 were pending against her. I think it was assume they
21 might.

22 Q Was his wife part of that same trial?

23 A She was not part of that trial.

24 Q Okay. How long after that trial ended or did
25 Mr. Williams plea to these charges that we're here on

1 today?

2 A I don't have the days in front of me, Mr. Waller.

3 I'm not sure.

4 Q Okay. Do you have any knowledge of whether his
5 wife's unlawful negligent charges were still pending?

6 A I don't know. I didn't represent her.

7 Q Okay.

8 MR. WALLER: Beg the Court's indulgence please.

9 THE COURT: Yes, sir.

10 (WHEREUPON, a pause in the proceedings.)

11 MR. WALLER: Thank you, Mr. Jordan. I have
12 nothing further.

13 THE COURT: Ms. Klein.

14 MS. KLEIN: Nothing from the State, your Honor.

15 THE COURT: You may step down, sir. Thank you.

16 (WHEREUPON, the witness leaves the witness
17 stand.)

18 THE COURT: You have any other witnesses, Ms.
19 Klein?

20 MS. KLEIN: No, Your Honor.

21 THE COURT: All right. As I stated after the
22 end of the last hearing before this one, I've taken
23 copious notes. I'm aware of the issue or allegation in
24 this matter. I don't like to issue what I call fast-food
25 rulings or driveby rulings. So if you will bear with me,

1 give me a chance to go back over my notes and the
2 information that's been provided to me. I will send out
3 my ubiquitous e-mail ruling within a day or two.

4 MR. WALLER: Thank you.

5 THE COURT: Oh, and by the way, I heard the name
6 Thomas McFadden mention several times in this trial. The
7 only Thomas McFadden I know in my kinship history was
8 Thomas McFadden was born and died in Scotland nine
9 generations ago.

10 MR. WALLER: I think we're all right, Judge.

11 THE COURT: I think it's far beyond three-degree
12 kinship. All right. Thank you all for your patience.

13 END OF REQUESTED TRANSCRIPT

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

2021 OCT 16 PM 12:37
DORIS JOSE O'HARA

Omar Rick Williams, #322531) C.C.P. & G.S. 2019-CP-21-875
FLORENCE COUNTY, SC)

Applicant)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Omar Rick Williams on March 28, 2019. Respondent made its Return on July 15, 2020. An evidentiary hearing into the matter was convened on August 30, 2021 at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Yasmeeen E. Klein, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Daniel T. Jordan, Esquire.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. During the June 2018 term, the Florence County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (ABHAN) (2018-GS-21-1096) and second-degree assault and battery (2018-GS-21-1092). Applicant was represented by Daniel T. Jordan, Esquire (Plea Counsel). Assistant Solicitor Susan McGill prosecuted the case.



CERTIFIED: A TRUE COPY

Doris Jose O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Applicant entered an *Alford*¹ plea to ABHAN as indicted on January 23, 2019, before Judge Thomas A. Russo. Applicant pled to a negotiated sentence of a ten-year cap, with the State dismissing Applicant's remaining second-degree assault and battery charge. Judge Russo accepted Applicant's plea and sentenced him to serve eight years' imprisonment. Applicant appealed.

Plea Counsel filed a notice of appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on January 31, 2019. The Court of Appeals dismissed the appeal by written Order on April 18, 2019. The Case was remitted back to the circuit court on May 7, 2019.

FACTS

Applicant's charge stems from an incident that occurred on November 26, 2017. Officers responded to a call in reference to a man lying in the driveway of his home bleeding and crying for help. (Plea Tr. 12). When deputies arrived at the location they made contact with the victim, Walter Treadway. (Plea Tr. 12). Earlier that day, an altercation involving Applicant and Treadway occurred, and as a result Treadway sought medical treatment. (Plea Tr. 12). Later, Treadway returned to his residence where he found Applicant waiting for him. (Plea Tr. 12). Applicant demanded Treadway give him a bag, which the State believed was filled with drugs. (Plea. Tr. 12-13). Treadway did not have the bag and called his father for money to help settle the disagreement between himself and Applicant. (Plea Tr. 13). When Treadway could not produce the bag or the money, Applicant armed himself with a gun and shot Treadway in the foot. (Plea Tr. 13).

ISSUES RAISED

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

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).



1. Judicial misconduct:
 - a. Judicial misconduct resulted when the trial court having fore knowledge of the State holding over the Applicant's head the State having Applicant's wife and informing Applicant that if we proceed to trial detective McFadden would bring false charges against her.
2. Plea was entered involuntarily and unknowingly plead under duress:
 - a. Applicant plea was entered under duress wherein the State used the possibility of falsely incarcerating Applicant's wife if he didn't plead guilty. Applicant was also denied a preliminary hearing subsequent to requesting one. In violation of due process.
3. Trial court was/lacked subject matter jurisdiction:
 - a. Applicant alleges [sic] that there was not a Grand Jury convened during the month of June as indicated on his indictment. Thereby depriving the court of subject matter jurisdiction.

At the evidentiary hearing, PCR counsel for Applicant proceeded solely on the second pled allegation, that Applicant claims his guilty plea was involuntary due to duress.

SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

At the evidentiary hearing, Applicant testified Plea Counsel represented him as soon as he was arrested because Plea Counsel had already represented Applicant on a different set of charges. Applicant claimed the first thing Plea Counsel said when he met with Applicant was "you shot that boy" and Applicant told Plea Counsel he did not shoot anyone. Applicant testified the charges occurred from two separate incidents. Applicant acknowledged he pled pursuant to *Alford* and testified he still maintains his innocence. Applicant testified no video of the incident was included in his paperwork. Applicant admitted he received discovery including statements from the victim. Applicant testified he and Plea Counsel never discussed the discovery and claimed Plea Counsel was not aware he had the case. Applicant indicated he went to speak to Plea Counsel to ask what the State was offering and that Plea Counsel told him four years, but this amount was for the other charges Plea Counsel represented Applicant on. Applicant testified there was a hung jury on those charges which occurred before Applicant was indicted with the current charges. Applicant stated



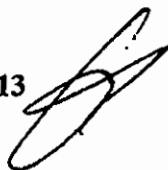
he and Plea Counsel discussed possible sentencing exposure and the right to remain silent. Applicant testified the day of his guilty plea, he and Plea Counsel spoke in a separate room of the courthouse where Applicant alleges Plea Counsel told him the Solicitor had Applicant's wife across the street and the State would bring false charges and incarcerate her unless Applicant pled guilty. Applicant claimed he intended to go to trial on the charge, and when this conversation happened the morning of the trial, he felt forced to accept the plea out of fear for his wife. Applicant testified he has seen judges refuse to accept a plea before when the defendant did not admit guilt, and Applicant did not want the judge to refuse his plea.

On cross-examination, Applicant confirmed he and Plea Counsel discussed his rights including the right to a jury trial, testify, and challenge the evidence against him. Applicant testified Plea Counsel told him in the room at the courthouse that if Applicant did not take the plea, the Solicitor was going to charge his wife because a witness would testify she was involved. Applicant acknowledged he did not have any additional record or corroborating documentation of this alleged conversation. Applicant testified he understood what pleading pursuant to *Alford* meant, and understood the charges and his possible sentencing exposure. Applicant additionally acknowledged portions of the plea colloquy where he told Judge Russo he was satisfied with Plea Counsel's performance; however, Applicant claimed he only said this because if he indicated otherwise he believed Judge Russo would stop the proceedings and he did not want the Judge to reject his plea. Applicant acknowledged that during the colloquy Judge Russo asked him three separate times whether he was pleading freely and voluntarily, whether Applicant had been promised anything or threatened to enter the plea, and whether Applicant was under any coercion or threats. (Plea Tr. 11-12). Applicant admitted he told the Judge his plea was voluntary and denied being under any threats or coercion at the time of the plea. Applicant testified that he did not tell

Judge Russo about the threats against his wife because he believed Judge Russo would have stopped the proceeding. Aside from his continued statement that he did not want to stop the proceedings, Applicant could not articulate why he did not believe bringing the issue to the Judge's attention would have prevented the alleged threat from occurring, or why that information would have been important for the Judge to know in consideration of the plea.

Plea Counsel's testimony

Plea Counsel testified he represented Applicant on a number of charges from different incidents. Plea Counsel testified he received discovery including incident reports, medical records, and statements from the victim which he reviewed with Applicant. Plea Counsel testified that Applicant originally wanted to go to trial because the State was unable to locate the victim. However, when the victim was located and indicated he would testify against Applicant, Plea Counsel testified he conveyed this to Applicant, who was concerned about how the victim would testify. Plea Counsel indicated Applicant then became interested in a plea. Plea Counsel testified Applicant was not thrilled about taking a plea deal, but Applicant knew he would not get a better offer than ten years and wanted to negotiate to the lower end of ten years. Plea Counsel testified he kept Applicant updated throughout plea negotiations and accepted the Solicitor's offer of a ten year cap. Plea Counsel denied any conversation occurred between himself and Applicant where Plea Counsel told Applicant his wife was being held. Plea Counsel testified he had no knowledge of any pending or possible charges against Applicant's wife. Plea Counsel denied ever telling Applicant he had to enter a plea to stop the State from falsely charging his wife. Plea Counsel testified that Applicant told Judge Russo several times his plea was free and voluntary. Plea Counsel testified he and Applicant discussed Applicant's rights and waivers by pleading guilty. Plea Counsel additionally testified he explained the nature and meaning of an *Alford* plea with



Applicant. On cross-examination, Plea Counsel testified the jury on Applicant's previous charges was not "hung" they had just been out for a long time and seemed to be unable to reach a decision. Plea Counsel testified while the jury was out, Applicant accepted and entered a plea from the Solicitor for eight months on those charges. Plea Counsel confirmed he had no knowledge of anything regarding possible pending charges against Applicant's wife, and denied any quid pro quo. Plea Counsel testified Applicant's wife was not a part of his second charges and could not recall whether Applicant's wife's charges on the first offenses were resolved when Applicant entered his plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and his plea was freely and voluntarily entered. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF COUNSEL & INVOLUNTARY GUILTY PLEA

Applicant alleges that he received 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), SCRPC; *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 (1984); *Butler*, 286 S.C. 441, 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. As such, an applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC.

Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may

have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, 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, 59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of

conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Given Applicant’s burden of proof and the analysis to be applied to this claim, Applicant’s claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and will be treated as such.

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on his allegation of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant’s plea was entered freely and voluntarily. “[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App.



1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid

reasons why he should be allowed to depart from the truth of his statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir.1975).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755. The standard for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

To ensure the defendant understands the consequences of his guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434-35, 405 S.E.2d 391, 392 (1991). However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998). The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

This Court finds Applicant failed to present any valid reason why he should be able to depart from the truth of his statements made during his guilty plea. *See Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874. Applicant's testimony regarding his plea is found to be wholly not credible.



Applicant alleges he did not plead guilty freely and voluntarily because before he entered the plea, Plea Counsel told him that the Solicitor had his wife and the State would incarcerate his wife unless he entered a guilty plea. Applicant provided no evidence to corroborate this account aside from his own self-serving testimony. By contrast, this Court finds Plea Counsel's explicit denial this interaction occurred to be credible. Plea Counsel credibly testified no conversation occurred between him and Applicant regarding possible pending charges against Applicant's wife, and Plea Counsel did not tell Applicant he had to enter a plea or else his wife would go to prison. Plea Counsel additionally credibly testified that while Applicant was initially interested in a trial, once Applicant learned the victim planned to testify, Applicant wanted to enter a plea. Plea Counsel credibly testified that it was Applicant's choice to enter a plea to the negotiated ten year cap for his charges. Moreover, this Court finds the plea colloquy is dispositive as to the issue of voluntariness. Applicant was asked on three separate occasions by Judge Russo whether his plea was voluntary, whether Applicant had been promised or threatened to enter the plea, and whether Applicant was pleading under threat or coercion. (Plea Tr. 11-12). At each instance, Applicant gave no indication to the plea court his plea was not voluntarily and intelligently given. Applicant's claim of threats and duress are unsubstantiated.

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. Any deficiency regarding Plea Counsels alleged "threats" to plead guilty was cured by the plea colloquy. See *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). The plea transcript reflects Applicant entered his plea knowingly and voluntarily,



engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

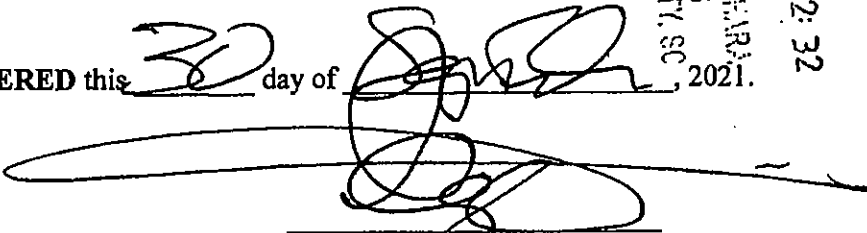
CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. The Court finds Applicant knew the meaning and consequences of pleading guilty to the charge against him. The Court further finds Applicant voluntarily pled guilty. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing. The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 30 day of October, 2021.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

2021 OCT -6 PM 12:32
 CLERK OF COURTS
 COCP & CS
 TWELFTH JUDICIAL CIRCUIT, SC
FILED

WITNESSES

Thomas J. Mcfadden Florence County Sheriff

DOCKET NO. 2018-GS-21-01096

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2018

THE STATE

vs.

OMAR RICK WILLIAMS

Susan C. McGill

ARREST WARRANT NUMBER

2017A2110201058

ACTION OF GRAND JURY

Indictment for

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

TRUE BILL

Foreperson of Grand Jury

Date: 6-7-18

Sra. McGill

VERDICT

Foreperson of Petit Jury

Date:

2018 JUN -7 PM 2:59
DORIS POULOS OJIHARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE VS.

Omar Rick Williams

INDICTMENT/CASE#: 2018-GS-21-01096

A/W#: 2017A2110201058

Date of Offense: 11/26/2017

S.C. Code §: 16-03-0600(B)(1)

CDR Code #: 3411

AKA:

Race: Black Sex: M Age: 31

DOB: SS#: Address: Ave

City, State, Zip: Timmonsville, SC 29161

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Assault / Assault & Battery of a High & Aggravated Nature

SENTENCE SHEET

Alford

CONVICTED OF or PLEADS

0-20 years

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, No Recommendation by the State.

ATTEST: Solicitor, Defendant, Attorney for Defendant, SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 8 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 SCDOC.

Credit for 403 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCPPPS

PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, 3% to County (if paid in installments) \$ 3.75. TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: E. Rogin Court Reporter: Crystal Smith SCCA217 (04/2018)

Appointed PD or appointed other counsel. § Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. Presiding Judge: Judge Code: 2141 Sentence Date: 1-23-2019