

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 12 2022

Certiorari to Florence County

S.C. SUPREME COURT

Honorable Eugene C. Griffith, Circuit Court Judge

EDWIN SMALL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000467

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA HEARING TRANSCRIPT DATED OCTOBER 2, 2018	1
APPLICATION FOR POST-CONVICTION RELIEF	24
RETURN & PARTIAL MOTION TO DISMISS	31
AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF	39
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 17, 2020 ...	41
ORDER OF DISMISSAL	95
INDICTMENTS AND SENTENCE SHEET	111

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2018-GS-21-01976
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Edwin Small, Jr.,	)	
	)	
Defendant.	)	
	)	

October 2, 2018
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:

J. Ryan White, Esquire
Attorney for the Plaintiff

Marshall Weaver, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Rights.....	4
Guilty Plea.....	7
Facts.....	17
Findings.....	20
Sentence.....	22
Court Reporter Certification.....	23

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(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 OCTOBER 2, 2018

2 (WHEREUPON, the proceedings began at 9:52 a.m.)

3 THE COURT: All right. Folks, those of you up here up
4 front, as well as those in the audience, if there's anyone
5 here in the courtroom that thinks you may want to resolve
6 your case by way of a guilty plea, I need to have your
7 attention.

8 I'm going to go over with you your constitutional
9 rights. I'm going to go over them with you as a group
10 because these are rights that are common to all of us. All
11 of us have these same rights. It doesn't matter who you are
12 or what you're charged with or whether you're charged with
13 anything or not.

14 We all have these rights and they're the same for
15 everybody. So rather than repeat it 25 times, I'm going to
16 go over it with you once as a group. If you have any
17 questions about anything that I go over, I will give you
18 whatever time you need to talk to your lawyer and have those
19 questions answered.

20 Also, the fact that I'm going over these rights with you
21 as a group does not bind you or commit you to do anything.
22 In other words, if, when I get done going over these rights,
23 the State calls your case and you've changed your mind and
24 you do not want to go forward, that's fine. That's your
25 decision. No one is going to force you to do anything

1 against your will.

2 But if you do decide you want to go forward and resolve
3 your case by way of a plea, it's important that you
4 understand these rights because, for purposes of your plea,
5 you waive or you give up these rights by entering a guilty
6 plea.

7 All of us have the right to remain silent. We all have
8 the right to a jury trial. When you plead guilty though, you
9 give up both of those important constitutional rights as they
10 relate to your case.

11 When you give up that right to a jury trial, you give up
12 other rights that are connected to that or associated with
13 that. For example, if you were to have a jury trial, you
14 would be presumed innocent of the charge or charges that
15 you're facing. That presumption of innocence places the
16 burden of proof on the State.

17 The State has the burden of proving guilt during a --
18 during the course of a jury trial. The way they would
19 attempt to do that is during that trial they would bring
20 witnesses into court. Those witnesses would testify under
21 oath and they more than likely would testify against your
22 best interest.

23 Now, the Constitution of the United States says that
24 every person that's charged with a criminal offense has the
25 right to face their accusers or to confront their accusers.

1 What that means is during the course of that jury trial,
2 through your attorney, you would have the right to question
3 those State's witnesses, cross-examine them as to their
4 testimony. That's your right of confrontation under the
5 Constitution.

6 But when you plead guilty, by entering that plea of
7 guilt, you give up that presumption of innocence that I spoke
8 about. You relieve the State of their burden of proof and,
9 since they don't have to prove your guilt, they don't have to
10 bring their witnesses into court, and so you give up the
11 right to confront those witnesses.

12 Now, the State is not the only one that can call
13 witnesses in a jury trial. If you were to have a jury trial,
14 you could call witnesses in your defense. You, yourself,
15 could testify, if you chose to. You could do either one of
16 those things or you could do both of those things, but the
17 important thing to understand is this. You don't have to do
18 anything.

19 In this country, a person charged with a criminal
20 offense is never required to prove themselves innocent. The
21 burden of proof, as I said earlier, is on the State. You
22 could remain silent and, if you chose to remain silent, I
23 would instruct the jury that that is your constitutional
24 right and that they could not in any way consider the fact
25 that you've exercised that right to remain silent in their

1 deliberations. As a matter of fact, I would tell them that
2 the fact that you chose to remain silent could not even be
3 discussed in the jury room. They are not to give it any
4 consideration at all.

5 Now, as I said, the State has the burden of proof and
6 they have to prove guilt to a unanimous decision. In other
7 words, all twelve members of the jury would have to agree
8 that you are guilty or they could not convict you.

9 But if you did have a jury trial and if you were
10 convicted, you could appeal that conviction to a higher
11 court, if you felt that was appropriate.

12 Now, these are the rights that we all have, but if you
13 decide to go forward with a guilty plea, then for purposes of
14 your plea, you waive or you give up these rights, you will
15 not have a jury trial, and your case will be resolved
16 pursuant to your plea here today.

17 Now, as I said, if you have any questions about anything
18 that I just went over, I'll give you whatever time you need
19 to talk to your lawyer and have those questions answered.
20 All right?

21 So, Solicitor, whatever order you want to call them in.

22 MR. WHITE: Edwin Small. Your Honor, may it please the
23 Court.

24 THE COURT: Yes, sir.

25 MR. WHITE: Standing before you is Edwin Evander Small

1 on Indictment 2018-GS-21-01976. Your Honor, this is a waiver
2 of presentment to the grand jury.

3 Mr. Small is pleading guilty to one count of accessory
4 after the fact to murder. The State's recommendation in this
5 case is 10 years, negotiated.

6 THE COURT: Thank you, sir.

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

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Sir, you are Edwin Evander Small?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Small, Indictment 2018-GS-21-1976 is an
14 indictment charging you with accessory after the fact to
15 murder or an A, B or C felony. That charge, Mr. Small,
16 carries a maximum penalty of up to 15 years. Do you
17 understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Understanding the nature of the charge
20 against you and the possible punishment that is associated
21 with that offense, how do you plead to that charge, sir?
22 Guilty or not guilty?

23 THE DEFENDANT: I understand the plea. I'm going to an
24 Alford plea.

25 MR. WEAVER: Your Honor, may -- may we approach, please?

1 THE COURT: Yeah.

2 (WHEREUPON, a bench conference was held off the record,
3 after which the pleadings resumed as follows.)

4 THE COURT: All right. Mr. Small, I'm going to just
5 step this case aside just for a little bit and let you talk
6 with Mr. Weaver.

7 (WHEREUPON, there was a break in these proceedings from
8 10:03 a.m. until 10:28 a.m., after which the proceedings
9 resumed as follows.)

10 MR. WHITE: Edwin Small. Your Honor, may it please the
11 Court.

12 THE COURT: Yes, sir.

13 MR. WHITE: Judge, we're back on the record with Edwin
14 Evander Small, Indictment 2018-GS-21-01976. Your Honor, Mr.
15 Small is going to plead guilty under North Carolina v.
16 Alford. The State just needed a moment to --

17 THE COURT: Sure.

18 MR. WHITE: -- talk that over with the victim's family.

19 THE COURT: Oh, yeah. All right.

20 Mr. Small, I think we went through the initial questions
21 that I had with you regarding the fact that this indictment
22 charges you with accessory after the fact to an A, B, C or
23 murder felony, and I think I mentioned to you that it carries
24 a maximum penalty of up to 15 years. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And then -- so am I correct then you are
2 entering a guilty plea under North Carolina v. Alford to that
3 charge? Is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Mr. Weaver, you represent Mr. Small?

6 MR. WEAVER: Yes, Your Honor.

7 THE COURT: Have you discussed with him the charge that
8 he's before the Court on, his constitutional rights, the fact
9 that this charge, the accessory charge, has not been
10 presented to the grand jury, as well as the meaning of
11 entering a plea under Alford?

12 MR. WEAVER: I have, Your Honor.

13 THE COURT: You've discussed those things with him?

14 MR. WEAVER: Yes, Your Honor, I have.

15 THE COURT: Is it your belief that he understands your
16 conversations?

17 MR. WEAVER: Yes, Your Honor.

18 THE COURT: Okay. Mr. Small, am I correct that you're
19 31 years of age, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, Mr. Weaver, have you got the number of
22 days Mr. Small has --

23 MR. WEAVER: 710 days, Your Honor.

24 THE COURT: 710?

25 MR. WEAVER: Yes, Your Honor.

1 THE COURT: Does that sound right, Mr. Small?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Small, earlier when I went over the
4 constitutional rights with everybody, you were present for
5 that; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you understand those rights, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any question about those rights?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you understand that by entering your
12 plead under Alford that you waive or you give up those rights
13 and that you will not have a jury trial? Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, let me talk to you, which I
17 didn't talk to the group about because it doesn't apply to
18 everybody, but in this case, this charge, accessory after the
19 fact of murder or to murder, that charge has not been
20 presented to the Florence County Grand Jury. You've
21 discussed that with Mr. Weaver?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Now, everyone that has a case here in
24 General Sessions Court has the right for the grand jury of
25 Florence County to review that charge, to review the evidence

1 to determine whether or not there's probable cause for the
2 case to go forward.

3 Now, a grand jury is different from a trial jury. As we
4 all know, a trial jury decides whether or not someone is
5 guilty or not guilty, but they hear all of the evidence. A
6 grand jury doesn't hear all of the evidence.

7 A grand jury is made up of 18 people. They meet every
8 month and they review cases. And what -- the only people
9 they hear from -- you're not at a grand jury hearing. Your
10 lawyer is not there. The State's attorney is not there.
11 There's no judge there.

12 The people that typically appear before the grand jury
13 are the agency that brought the case. In other words, a
14 representative, in this case from the Florence County
15 Sheriff's Department, would appear before the grand jury and
16 they would basically set forth this is the evidence that we
17 have regarding this case.

18 The grand jury looks at that evidence. They review it
19 and what they're looking to see is, is there probable cause
20 for this case to come into court. In other words, probable
21 cause is a very low standard. All they're looking to see is,
22 is there some indication in this evidence that Mr. Small may
23 have been involved in this activity.

24 If 12 of the 18 members of the grand jury find probable
25 cause, then the indictment is stamped as a true bill, it

1 comes into court, and you deal with it just as you're dealing
2 with it here today. If they do not find probable cause, then
3 the indictment is set aside and the charge is dismissed.

4 Everyone has the right for the grand jury to review a
5 charge to determine if there's probable cause for that case
6 to come into court, but a person can waive presentment to the
7 grand jury. In other words, a person can take the position,
8 Judge, I understand I have that right, but I don't want to go
9 through that process. I'm here before you now. I'm asking
10 you to accept my plea. And if I feel that that has been your
11 decision and that no one has forced you to make that
12 decision, then that gives me jurisdiction and I can hear your
13 case and we can proceed.

14 Now, it's indicated here that you wish to waive
15 presentment to the grand jury and enter your plea under
16 Alford today. Is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Small, has anyone forced you or
19 threatened you in any way to get you to waive presentment to
20 the grand jury?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has that been your decision, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Now, let me talk to you briefly about
25 an Alford plea. I know you've discussed it with Mr. Weaver,

1 but I think maybe the easiest way to do this is I'm going to
2 tell you what my understanding is of an Alford plea and you
3 let me know if it matches your understanding.

4 When someone comes before the Court and enters a guilty
5 plea under North Carolina v. Alford, basically what they're
6 saying is this. Judge, I'm willing to take responsibility
7 for this charge. However, I don't agree with the State. I
8 don't admit to this wrongdoing, but what I am willing to do
9 is I'm willing to take responsibility for it because I've
10 heard or I understand all of the evidence that the case --
11 that the State would present to a jury if I were to go to
12 trial.

13 And so it causes me some degree of concern that if I
14 were to go to trial, I would likely be convicted of a greater
15 charge. The State has made a plea offer and I would like to
16 take advantage of that plea offer. So even though I don't
17 admit to this wrongdoing, I am willing to take responsibility
18 for it and enter my plea.

19 That's basically what an Alford plea is. Is that your
20 understanding?

21 THE DEFENDANT: Yes, sir. Only for this charge, Your
22 Honor, only for this charge; right?

23 THE COURT: On this -- on this charge.

24 THE DEFENDANT: Yes.

25 THE COURT: The accessory charge.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Right. And -- and so you're -- you're
3 entering your plea under Alford to this accessory charge; is
4 that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Any other charges are being dismissed or
7 nolle prossed?

8 MR. WHITE: Yes, sir. That's correct, Judge.

9 THE COURT: Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Now, the thing that's important to
12 understand, Mr. Small, about an Alford plea is an Alford plea
13 doesn't have any effect on -- on the sentence, whatever
14 sentence the Court imposes. You'd serve that sentence the
15 exact same way as you would as if you pled guilty straight
16 up. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And then as far as your criminal record
19 goes, it would just appear as a conviction. It doesn't
20 notate that it's an Alford conviction or anything like that.
21 It just shows up as a conviction, as it would if you pled
22 guilty straight up. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Understanding these things, do
25 you still wish to go forward with your plea under Alford?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. Now, the State has entered
3 into negotiations and my understanding of those negotiations
4 is that, if the Court follows those negotiations, I would
5 sentence you to 10 years on this charge, giving you credit
6 for the 710 days that you have served, and then any remaining
7 charges that the State has pending would be dismissed as a
8 result of your plea here today. Is that your understanding
9 of the negotiations?

10 THE DEFENDANT: Yes, sir.

11 MR. WEAVER: Your Honor, he would like for you to state
12 on the record that it's not a violent offense.

13 THE COURT: It isn't, and that is correct. Accessory
14 after the fact, what you're pleading under Alford to, is a
15 non-violent offense, yes.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, Mr. Small, other than the negotiation
18 that we just talked about, has anybody threatened you in any
19 way, forced you in any way, offered -- promised you anything,
20 held out any hope of reward for your plea here today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you satisfied with the representation
23 and the advice that Mr. Weaver has provided?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Sir, as you stand before the Court here

1 today, are you under the influence of any substance that
2 would affect your ability to understand what you're doing
3 here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you entering your plea under North
6 Carolina v. Alford of your own free will, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I'm going to ask Mr. White to
9 give me a brief rundown on the facts that support this charge
10 and then I'll get back with you in just a moment.

11 Mr. White?

12 MR. WHITE: Thank you, Judge.

13 In September of 2016 in Timmonsville, a drug dealer was
14 robbed, Your Honor, of about 50 pounds of marijuana. The
15 evidence would show, Judge, that at some point thereafter,
16 the victim in this case, Bobby Evans, Jr., was believed to
17 have been responsible for the theft. The drug dealer in
18 question, along with his associates, all believed that he was
19 responsible.

20 On September 24th, 2016, which is the incident date, Your
21 Honor, one of the associates, Raheem Williams, who Your Honor
22 will meet later on in this week, was given a gun by Mr.
23 Small. He was told to take care of this marijuana situation,
24 and he proceeded to do that. Judge, he picked up Mr. Evans.
25 He drove him out to a field in Timmonsville and shot him one

1 time in the back of the head.

2 Judge, after that incident, he returned to the residence
3 where he was living. Waiting for him there were the drug
4 dealer, his associates, along with Mr. Small. Mr. Small held
5 Mr. Raheem Williams at gunpoint. He made him get in the
6 shower, take a cold shower, made him strip his clothes off
7 before he did so. Those clothes were then burned in a burn
8 pile out back. Judge, he took his cell phone, everybody that
9 was involved, and then put the cell phones in a bag. Those
10 cell phones were never seen again.

11 It's believed, Judge, and I believe the evidence would
12 show that these individuals believed that not only Bobby
13 Evans, Jr., was involved in the theft, but they also believed
14 that Raheem Williams may have been involved in the theft of
15 this marijuana. At this point, after he exits the shower,
16 he's beat about for some time, a couple hours, and they
17 question him as to whether or not he had anything to do with
18 the marijuana being stolen.

19 They then try to attempt to put him in a vehicle to take
20 him to some undisclosed location. When they're putting him
21 in the vehicle, at that time Mr. Small has two pistols on
22 him. Somehow, Mr. Williams, Raheem Williams, is able to
23 escape, and that's how we get the testimony that would be
24 proffered at trial.

25 Judge, he does have an extensive criminal history.

1 Because this is negotiated, I don't have to go into it, but
2 it is a lengthy criminal history.

3 Judge, the victim's family -- they are here. I wanted
4 to speak to them about the Alford plea. That's one --

5 THE COURT: Yeah.

6 MR. WHITE: -- reason we stood it down.

7 THE COURT: I have no problem with that.

8 MR. WHITE: They are onboard, Judge. They don't wish to
9 address the Court, but they just wanted me to let you know
10 that they are present here today.

11 THE COURT: Okay. All right.

12 All right. Mr. Small, is it your understanding -- you
13 heard what the -- what Mr. White shared with the Court, and I
14 understand that you don't agree with those facts, but is it
15 your understanding that, if this case would have gone to a
16 jury trial, that those were the facts that the State would
17 have put in front of a jury that caused you some degree of
18 concern that -- that you would be convicted if you had gone
19 to trial? Is that your understanding of the case that the
20 State would have put in front of a jury?

21 THE DEFENDANT: I ain't -- I wasn't concerned about that
22 at all.

23 THE COURT: Well --

24 THE DEFENDANT: I just didn't want to take the risk of
25 life.

1 THE COURT: What I'm asking is, is that your
2 understanding that, if this case had gone to trial, those are
3 the facts that the State would have given to a jury? Is that
4 your understanding?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. All right. I find that the State has
7 provided a substantial factual basis to support the charge
8 that Mr. Small has pled to under North Carolina v. Alford. I
9 believe that his decision to enter this plea under North
10 Carolina v. Alford has been done freely, voluntarily, and
11 intelligently. He has had the advice and counsel of an
12 outstanding attorney in Mr. Weaver, and Mr. Small has
13 indicated that he is satisfied with the representation and
14 the advice that Mr. Weaver has provided.

15 I think he understands his rights with regards to this
16 case being presented to the grand jury, and I think that his
17 waiver of that right is a knowing and voluntary waiver.

18 I think he understands his rights with regards to
19 entering a plea under North Carolina v. Alford, and I think
20 that also was a knowing and voluntary decision to enter his
21 plea under Alford, and I'm going to accept his plea.

22 Mr. Weaver?

23 MR. WEAVER: Yes, Your Honor. Very briefly.

24 My client is 31 years old, Your Honor, and he has two
25 children. Here today to support him are his mother and

1 father and I believe a couple of other family members that
2 came in further assistance and his brother and sister, who
3 also came to support him today. So he does have supportive
4 family.

5 Usually, he works as a -- as a shorthand cook and as a
6 musician is what he tells me, and he does have some college
7 at Salem University. I believe it is Salem University online,
8 where he did attend some college. In my discussions with
9 him, I have found him to be a very intelligent young man.

10 I'm not going to address the facts, Your Honor. As the
11 Court has stated, my client doesn't agree with the facts.

12 THE COURT: Right.

13 MR. WEAVER: He just knows that those are the facts that
14 are going to be presented to the jury and that is his
15 concern.

16 But I would ask that the Court accept the negotiation
17 and allow Mr. -- allow Mr. Small to go ahead and be sentenced
18 to the South Carolina Department of Corrections and come home
19 and be able to live the rest of his life. Hopefully, this is
20 the last time he appears before any court.

21 THE COURT: All right. Thank you, sir.

22 Anything further, Mr. Small?

23 THE DEFENDANT: I just ask that you go with the
24 negotiated plea, if you would.

25 THE COURT: Okay. All right. I will do that.

SENTENCE

THE COURT: On Indictment 2018-GS-21-1976, the sentence of the Court is that you be committed to the State Department of Corrections for a period of 10 years. You'll be given credit for the 710 days that you have served.

Good luck to you, sir.

THE DEFENDANT: Thank you.

MR. WEAVER: Thank you, Your Honor.

(WHEREUPON, the proceedings ended at 10:45 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 22, 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 2nd day of October, 2018.

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 July 19, 2019

22

23

24

25

FORM 5

20 19 CP 21 1249

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Florence)

Full name and prison number (if any) of Applicant.)

Edwin Evander Smoll Jr. 323402)
v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

DOUGLAS O'HARA
JUDGE
CCP & CS
FLORENCE COUNTY, SC

2019 MAY -15 PM 3:22

FILED

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 SCDC Evans Correctional Institution
2. Name and location of Court which imposed sentence General Sessions 13th Judicial Circuit
3. Name(s) of co-defendant(s) (if any) Antonio McColister, Rodney Jackson, Kevin Rogers, Brian Williams
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016A2110200967
 - (b) 2016A2110200976
 - (c) 2016A2110200978
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10/2/18
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) ☒ after a plea of nolo contendere "Alfred Plea"
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) did not no I could appeal after Alfred vs North Carolina plea
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective counsel
- (b) no evidence
- (c) _____

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

- (a) after seeing that there was no evidence other than hear say - appointed attorney told me it was best to take a negotiated plea sentence. He was not getting paid
- (b) to represent me and did not want to go to trial, even after my co-defendant
- (c) was found "Not Guilty"

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) I did not know what to do - I am illiterate to such legal matters
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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:
- Marshal Walker
 - 2137-B, Hoffmeyer Rd,
 - Plumtree SC 29502
- (b) the proceedings at which each such attorney represented you:
- bond hearing
 - negotiated plea sentencing
 - _____
19. State clearly the relief you seek in filing this application:
I would like to be relieved of this 10 yr sentence by a time reduction or immediate release with time served
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Florence)

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.

Edwin E. Eversden, Jr. _____

SWORN to and subscribed before me this 7th
day of May, 2019

S. Outlaw _____ (L.S.)
Notary Public

My Commission Expires: 2/17/24

2019 MAY - 6 PM 3: 22
FILED
BORIS POULOS CHARA
CCCP & GS
FLORENCE COUNTY, SC

**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.

Edwin Evander Small Jr.
Applicant

SWORN or affirmed to and subscribed before me this

1st day of May, 2019

S. O. [Signature]
Notary Public

My Commission Expires: 2/17/24

FILED

2019 MAY - 6 PM 3: 22

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Edwin Small, Jr., #323402,	)	2019-CP-21-1249
	)	
Applicant,	)	
	)	
v.	)	RETURN & PARTIAL MOTION TO DISMISS
	)	(COUNSEL APPOINTED)
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

In response to Edwin Small's (Applicant) action for post-conviction relief (PCR) commenced May 6, 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 November 2017 term of the Florence County Grand Jury for attempted murder, accessory before the fact to a felony, and kidnapping (2017-GS-21-1585). Applicant was represented by Marshall S. Weaver, Esquire. Assistant Solicitor J. Ryan White prosecuted the case. On October 2, 2018, Applicant waived presentment of an indictment for one count of accessory after the fact of murder (2018-GS-21-01976) and pleaded pursuant to *North Carolina v. Alford*¹ before the Honorable Thomas A. Russo. Applicant pleaded with a negotiated sentence of ten years,' and the State dropped Applicant's other charges in exchange for his plea. Judge Russo accepted Applicant's plea and sentenced him as negotiated.² Applicant did not appeal.

¹ 400 U.S. 25 (1970).

² The plea court informed Applicant his ten-year sentence was non-violent and the sentencing sheet is marked as non-violent. (Plea Tr. 16); Sentencing Sheet.

II. Facts

Applicant's charges stem from an incident, and the aftermath of the incident, that occurred on September 24, 2016. Early in September 2016, a drug dealer was robbed of fifty pounds of marijuana. On September 24, Applicant gave Raheem Williams a gun and told Williams to take care of the marijuana situation. Williams then went and picked up Bobby Evans, Jr., who Applicant believed to have stolen the marijuana. If the case had proceeded to trial, the State would have argued Applicant believed Williams was also involved in the marijuana theft. (Plea Tr. 18). Unaware of Applicant's suspicion, Williams picked up Evans, drove out to a field in a rural area, and executed Evans by shooting him one time in the back of the head. (Plea Tr. 17). After executing Evans, Williams returned to his residence. (Plea Tr. 18).

When Williams arrived home, the drug dealer, his associates, and Applicant were waiting for Williams to return. Applicant held Williams at gun-point and commanded Williams to strip off his clothes and shower. Williams complied, and his clothes were burned behind the residence. Simultaneously, Applicant took everyone present's, including Williams's, cell-phones and put the phones in a bag. The cell-phones were never discovered. After exiting the shower, Williams was beaten and interrogated about his involvement in the theft for several hours. After interrogating Williams, Applicant and the others attempted to force Williams into the trunk of a car. Remarkably, Williams escaped. Williams would have testified for the State at trial. (Plea Tr. 18).

Applicant did not agree with the State's version of the facts, as he was pleading under *Alford*; however, Applicant stated, "I wasn't concerned about [the facts] at all. . . . *I just didn't want to take the risk of life.*" (Plea Tr. 19) (emphasis added). The plea court accepted Applicant's plea and found: the facts supported Applicant's plea; Applicant knowingly and voluntarily pleaded

guilty pursuant to *Alford*; and Applicant knowingly and voluntarily waived presentment to the grand jury. (Plea Tr. 20).

III. Current Application

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

1. Ineffective assistance of counsel:
 - a. After seeing that there was no concrete evidence other than hearsay, [plea counsel] told [Applicant] it was best to take a negotiated plea sentence. [Plea counsel] was not getting paid to represent [Applicant] and did not want to go to trial, even after [Applicant's] codefendants were found "Not Guilty."
2. No evidence.

Applicant requests relief in the form of a sentence reduction or immediate release for time served.³

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, the plea transcript, and the records of this PCR action.

IV. Motion to Dismiss No Evidence Allegation

Applicant's allegation of no evidence should be summarily dismissed because it is not a cognizable claim under the Post-Conviction Procedure Act.⁴ PCR is not a proper avenue to challenge the sufficiency of evidence. Section 17-27-20(a)(6) instructs, "[Section 17-27-20] shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction." "It is uniformly held that an application for post-conviction relief is not a substitute for an appeal." *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974); *see also State v. Munsch*, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) (quoting *U.S. v. Broce*, 488 U.S. 563, 569 (1989)) ("[W]hen the judgment of conviction upon a guilty plea has become final

³ Applicant will max-out his sentence on June 17, 2022.

⁴ S.C. Code Ann. §§ 17-27-10 to -160 (2014).

and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Applicant’s no evidence allegation is an allegation of insufficient evidence which is specifically barred by section 17-27-20(a)(6). Therefore, pursuant to Rule 12(b)(6), SCRPC, the Court should dismiss the allegation for failure to state a cognizable claim for which relief can be granted under the Post-Conviction Procedure Act.

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of plea counsel are 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 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). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “[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). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*,

474 U.S. 52, 56 (1985). Further, to prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Id.* at 59.

Strickland requires counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.” *Strickland*, 466 U.S. at 689.

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not conclusively refute or disprove Applicant's allegations of ineffective assistance of plea counsel; 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”).

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Procedure Act and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRPC. 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. Rule 11, SCRPC. Further, appointed counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary. Rule 71.1(d), SCRPC. However, *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. *See* Rule 15(a), SCRPC.

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 Applicant’s no evidence allegation be summarily dismissed, and an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

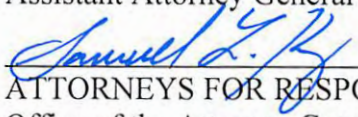
ALAN WILSON
Attorney General

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

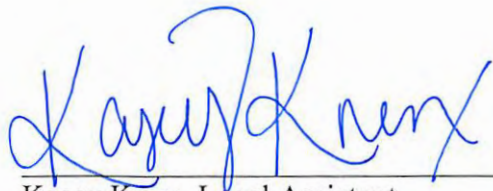
8/7, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2019-CP-21-1249
	)	
EDWIN SMALL, JR., #323402	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return & Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201

DATED this the 7th day of August, 2019.



Kasey Knox, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
Edwin Evander Small, Jr.,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2019-CP-21-01249
	)	
State of South Carolina	)	
	)	
Respondent.	)	

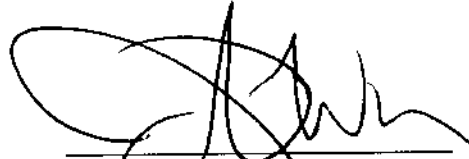
Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed May 6, 2019, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Marshall Weaver, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into.
2. As to the prayer for relief contained in paragraph 19 of Applicant's Application:
 - a. Applicant amends his requested relief to only the vacation of his conviction.

[SIGNATURE PAGE TO FOLLOW]

FILED
 20 SEP 11 AM 11:51
 DORIS FOLLOWS O'HARA
 CCOP & GS
 FLORENCE COUNTY, SC

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

September 9, 2020

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

COURT OF COMMON PLEAS

EDWIN SMALL)
#323402)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
19-CP-21-1249

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

September 17, 2020
WEBEX HEARING

B E F O R E :

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE

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

JONATHAN D. WALLER, ESQ.
Attorney for the Petitioner

SAMUEL L. KEY, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

INDEX

	Page
Edwin Smalls:	
Direct examination by Mr. Waller	3
Cross-examination by Mr. Key	22
Marshall Weaver:	
Direct examination by Mr. Key	30
Cross-examination by Mr. Waller	42
Closing remarks by Mr. Waller	49
Closing remarks by Mr. Key	51

(There were no exhibits submitted.)

1 MR. KEY: May it please the Court,
2 this is Edwin Small, Jr., v. State of South
3 Carolina, case number 2019-CP-21-1249. Mr. Small
4 commenced this PCR action on May 6, 2019. He's
5 currently confined in the South Carolina
6 Department of Corrections pursuant to orders of
7 commitment of the Florence County Clerk of Court.
8 He was indicted at the November 2017 term of the
9 Florence County grand jury for attempted murder,
10 accessory before the fact to a felony, and
11 kidnapping. He was represented by Mr. Marshall
12 Weaver, and Assistant Solicitor Ryan White
13 prosecuted the case. On October 2nd, 2018, he
14 waived presentment of an indictment for one count
15 of accessory after the fact of murder and pleaded
16 pursuant to North Carolina v. Alford before Judge
17 Russo. He pleaded with a negotiated sentence of
18 ten years, and the State dropped his other charges
19 in exchange for his plea. Judge Russo accepted
20 his plea and sentenced him as negotiated. He did
21 not appeal.

22 In his original PCR application, he
23 alleged ineffective assistance of counsel alluding
24 to involuntary guilty plea, and he also made
25 allegation of no evidence. Last week through

1 Mr. Waller, he amended his PCR application to --
2 to include ineffective assistance of counsel for
3 failing to properly investigate and rendering his
4 guilty plea unknowing and involuntarily entered
5 into. Mr. Small is present today, and he is
6 represented by Mr. Jonathan Waller. I would just
7 ask if Mr. Waller -- or if the applicant plans on
8 going forward on all the allegations or just the
9 allegation in the amendment?

10 THE COURT: All right, Mr. Waller.

11 MR. WALLER: Judge, my amendment
12 was -- was really a clarification of the
13 ineffective assistance of counsel that he raised
14 previously. I think it's all -- all kind of goes
15 together obviously in the advice, advice that he
16 was given following, you know, counsel's
17 investigation into the facts of the case. The
18 other thing that -- that is contained in my
19 amendment was clarification to the prayer for
20 relief, and I know the Attorney General's office
21 is always concerned about that. And I just did --
22 I amended that to just to clarify that the
23 requested relief he is seeking is the vacation of
24 his conviction, nothing having to do with his
25 sentence or a reduction of sentence. He

PW - E. SMALL - DIRECT

1 understands that is not an available option. He
2 also understands that no evidence is not a valid
3 allegation for PCR. We've discussed that and that
4 it all is going to be encompassed in ineffective
5 assistance of counsel allegations.

6 THE COURT: Okay. Mr. Key, you
7 understand that Mr. Waller believes part and
8 parcel it's all ineffective. It's just a
9 clarification of ---

10 MR. KEY: Yes, sir, Your Honor. At
11 this time the State would hand the case over to
12 Mr. Waller.

13 THE COURT: All right, Mr. Waller,
14 your case.

15 MR. WALLER: All right. Thank you,
16 Your Honor. Judge, I would call -- the Applicant
17 would call Edwin Small. When we would call him to
18 the stand, I'm not exactly sure what we want to
19 call it here at this hearing, but I would -- I
20 would take the testimony of Mr. Small here this
21 morning.

22 DIRECT EXAMINATION

23 BY MR. WALLER:

24 Q Good morning, Mr. Small. How are you
25 today?

PW - E. SMALL - DIRECT

1 (There was no response.)

2 MR. WALLER: We need to unmute
3 Mr. Small, if possible.

4 THE WITNESS: I'm good. How are
5 y'all?

6 BY MR. WALLER:

7 Q Doing well. Thanks for asking. All
8 right, Mr. Small, you have filed an application
9 for post-conviction relief; is that right?

10 A Yes, sir.

11 Q Okay. And you've been anxious to get
12 in to court here today, right?

13 A Yes, sir.

14 Q Okay. I want to, if I can, take you
15 back to when you were first arrested ---

16 A Yes, sir.

17 Q --- and ask you a few questions about
18 that. You -- when you were first arrested, do you
19 recall what your original charges were on the
20 warrant?

21 A Yes, sir. Accessory before the fact
22 -- you ready?

23 Q Yes, sir, go ahead.

24 A Accessory before the fact of a felony
25 a, b, c, or d, kidnapping, and attempted murder.

PW - E. SMALL - DIRECT

1 Q Okay. And you were ultimately
2 indicted for those three charges that -- you were
3 indicted for those same three charges, correct?

4 A Right.

5 Q Okay. The accessory before the fact
6 that you were indicted for was for the murder, if
7 you look at the actual indictment. Is that -- is
8 that your understanding?

9 A Yes, sir.

10 THE COURT: Hold on a minute. Did we
11 place him under oath before he testifies?

12 THE COURT REPORTER: No, sir.

13 MR. WALLER: We did not, I don't
14 think, Your Honor.

15 THE COURT: The clerk is on the line.
16 She's not ---

17 MR. WALLER: She is.

18 THE COURT: Ms. Pappas, will you place
19 Mr. Smalls under oath for me.

20 (There was no response.)

21 THE COURT: All right. So she does
22 not have audio on.

23 Madam court reporter, I'm going to
24 place Mr. Small under oath.

25 Mr. Small, you swear or affirm the

PW - E. SMALL - DIRECT

1 testimony you're providing to this Court will be
2 the truth, so help you God.

3 THE PETITIONER: Yes, sir.

4 THE COURT: He is now under oath.

5 WHEREUPON,

6 **EDWIN SMALL, JR.,**

7 having been duly sworn by the Court, testified
8 as follows:

9 MR. WALLER: Thank you, Your Honor.

10 BY MR. WALLER:

11 Q Mr. Small, the questions that I asked
12 you just a moment ago, are your answers -- now
13 that you're under oath, your answers to those
14 questions the same?

15 A Yes, sir. Yes, sir.

16 MR. WALLER: Judge, do you want me to
17 re-ask all of them, or would that suffice for you?

18 (No verbal response.)

19 BY MR. WALLER:

20 Q Mr. Small, when you were arrested, who
21 was your lawyer?

22 A I was appointed, appointed a court
23 appointed attorney because of conflict, conflict
24 with my co-defendants. I was appointed Mr.
25 Weaver, Mr. Marshall Weaver.

PW - E. SMALL - DIRECT

1 Q Okay. Was he --- did you have anyone
2 from the Public Defender's Office first, or was it
3 always Mr. Weaver?

4 A Always Mr. Weaver.

5 Q Okay. And I think you just mentioned
6 you had several co-defendants; is that right?

7 A Yes, sir.

8 Q Okay. Do you remember how many there
9 were?

10 A It was three. It's three, and I guess
11 one you can say he was trying to be a victim.

12 Q Okay. And you're talking about
13 Briheem Williams; is that right?

14 A Yes, sir.

15 Q Okay. We're gonna circle back to him
16 in just a minute. With --- with Mr. Weaver being
17 appointed to represent you, about how long after
18 you were arrested did you have a chance to meet
19 with him?

20 A Maybe a year. It was over a year.

21 Q Okay. Where --- where did you meet
22 with him?

23 A I met with him in the county
24 detention, Florence County Detention Center.

25 Q Okay. Did you ever meet him before

PW - E. SMALL - DIRECT

1 that at all? Did you have any hearings or
2 anything at the courthouse that you had a chance
3 to meet with him?

4 A No, sir. I met with him -- the first
5 time I met with him was the Florence County
6 Detention Center.

7 Q Okay. Do you recall what y'all
8 discussed in your -- in your first meeting?

9 A In the first meeting we were just
10 discussing trying to get me a bond, if I'm
11 remembering accurately.

12 Q All right. At that time you had the
13 three charges: The accessory before the fact, the
14 attempted murder. Did y'all discuss the elements
15 of those crimes?

16 A You mean the basis on what they stand?

17 Q Well, did y'all discuss what the
18 State -- the elements of those crimes not -- not
19 related to you specifically, but what the State
20 would have to show in order to find anyone guilty
21 of those offenses?

22 A I do remember we had some previous
23 discussion, but not in depth. I actually -- I
24 still wasn't -- I still wasn't sure.

25 Q Okay. Okay. Did y'all have a chance

PW - E. SMALL - DIRECT

1 to discuss what the State had as evidence or they
2 said they had as evidence against you?

3 A I don't think not the first time, not
4 the first time.

5 Q Okay. You testified that it was about
6 a year before you were able to meet with him. Do
7 you know at that point how much discovery either
8 you had or he had?

9 A I got my motion to discovery right
10 around the time I met him.

11 Q Okay. Did y'all have a chance to
12 discuss your constitutional rights?

13 A Yes, sir.

14 Q Okay. Now several -- you testified a
15 second ago that you had -- you had at least three
16 or four co-defendants, right?

17 A Yes, sir.

18 Q Okay. Some of those co-defendants
19 gave statements to law enforcement; is that
20 correct?

21 A Just Briheem.

22 Q Okay. Now he was -- we're going to
23 circle back to him again, but he was technically a
24 co-defendant of yours; is that right?

25 A Yes, sir.

PW - E. SMALL - DIRECT

1 Q Okay. Did you and Mr. Weaver have a
2 chance to discuss his statement?

3 A Yes, sir, we did.

4 Q Okay. He gave way more than one
5 statement, right?

6 A Yes, sir.

7 Q Okay. How many times overall do you
8 think you met with Mr. Weaver?

9 A Maybe five times. Maybe five times.

10 Q Okay, all right. Your case was -- was
11 put on a trial roster. It was actually set for a
12 date certain trial; is that right?

13 A Yes, sir.

14 Q Okay. How -- how far in time from the
15 date you pled till -- till that trial was
16 scheduled to start?

17 A Approximately two weeks. I was
18 scheduled to go to trial October the 15th or 16th,
19 and I pled on October the 17th. Almost two weeks.

20 Q Okay. All right. And so that's the
21 time you met with Mr. Weaver approximately five
22 times?

23 A Yes, sir.

24 Q Okay. There was some forensic
25 evidence in your case. You recall that?

PW - E. SMALL - DIRECT

1 A Yes, sir.

2 Q Okay. Did you and Mr. Weaver have a
3 chance to discuss some of the forensic evidence?

4 A No, sir, because none of it was
5 pertaining to me.

6 Q All right. You -- there were some
7 shell casings recovered from -- from a location.
8 Did y'all have a chance to discuss that?

9 A No, sir, because at the location, the
10 location we did come across ex-- but the location,
11 I never been to that location before. We never
12 ----

13 Q Okay. Okay. Let's do this,
14 Mr. Small. Judge Griffith has a copy of the plea
15 transcript.

16 A Yes.

17 Q He has a copy of the Clerk of Court's
18 file with the warrants and the indictment, so he
19 does have some background. What was your
20 understanding of evidence the State had against
21 you, or kind of the overall situation?

22 A That they didn't have anything. They
23 didn't have anything but a -- later right before
24 trial, right before my trial was scheduled, there
25 were some other people who were coming and

PW - E. SMALL - DIRECT

1 submitting statements saying that I talked to them
2 about my case, but it wasn't -- it wasn't relevant
3 to me.

4 Q Okay. All right, let me -- let me ask
5 you this way. You were originally charged with
6 three offenses, right? Okay. You pled guilty to
7 a completely separate accessory after the fact to
8 a felony?

9 A Yes, sir.

10 Q Okay. What is your understanding of
11 which crime you were supposedly an accessory after
12 the fact here? You were charged as an accessory
13 before the fact to the murder. What -- what about
14 the one you pled to?

15 A See, we nev-- I never really
16 understood that. After I found out that the plea
17 that I was taking was the best thing was probably
18 going to happen to me. After I took that plea I
19 didn't -- it was nothing else to talk about.

20 Q Okay. There were almost -- according
21 to the State, there were over two sets of crimes
22 involved in this. There was the murder committed
23 by Briheem Williams.

24 A Yes, sir.

25 Q Is that right?

PW - E. SMALL - DIRECT

1 A Yes, sir.

2 Q And that's what you were charged as an
3 accessory before the fact to?

4 A (There was no response.)

5 Q Correct?

6 A (There was no verbal response.)

7 Q Is that a yes?

8 A Yes. See, that's why I, I -- you got
9 me mixed up now. Now -- now I'm not sure whether
10 I pled to that first set of crimes or the crime
11 that allegedly happened with Mr. Williams. I'm
12 not sure which crime I was pleading to.

13 Q Well, I'm not trying to mix you up.
14 I'm trying to actually clarify for Judge Griffith
15 so he can understand what's going on.

16 A Yes, sir.

17 Q There was that murder that took place,
18 and there was also the allegation that Briheem
19 Williams had been beaten up and shot at and
20 kidnapped; is that right?

21 A Yes, sir.

22 Q So he went from being a co-defendant
23 in the murder to a victim in the second set; is
24 that your understanding?

25 A Yes, sir.

PW - E. SMALL - DIRECT

1 Q Okay. And during your plea when the
2 facts of the case were read, all those -- all
3 those facts were all read together?

4 A Yes, sir.

5 Q Is that right?

6 A Yes, sir.

7 Q Okay. It's not clarified as to what
8 you were pleading to as an accessory after the
9 fact which part?

10 A Right.

11 Q What was your understanding of what
12 you were pleading to?

13 A I just -- I just knew that I was
14 taking an Alford plea. I really didn't
15 understand. I just knew that if I would have went
16 to trial, they were gonna give me 30 years so I
17 did what my lawyer recommended be best that I felt
18 was best. I went with what he said and didn't go
19 to trial. I'm really not sure which -- which one
20 I was pleading to, but that's with the plea I
21 took. That's the Alford plea I took.

22 Q Okay. Mr. Small, you have filed this
23 application alleging that your counsel was
24 ineffective.

25 A Right.

PW - E. SMALL - DIRECT

1 Q Right?

2 A Yes.

3 Q What -- what are you saying that he
4 did wrong?

5 A He trick me into taking this plea
6 instead of going to trial like my co-defendants,
7 and I would be at home right now.

8 Q Okay.

9 A I got tricked into taking a plea
10 because he wasn't getting paid. He was
11 representing me for---

12 Q Hold on, Mr. Small.

13 A --- on the murder.

14 Q Hold on, Mr. Small. Let me back up.
15 I gotta -- I gotta make sure everybody understands
16 here. A second ago you said that you -- you pled
17 because they're gonna give you 30 years if you
18 didn't plead.

19 A Right.

20 Q Now you're saying that your attorney
21 tricked you into taking a plea?

22 A Right.

23 Q Okay. Please clarify what you mean
24 by -- what did he do to trick you?

25 A He told me -- I signed my paperwork.

PW - E. SMALL - DIRECT

1 He made me sign some paperwork showing me -- it
2 really scared me. I won't say tricked me, scared
3 me, because I signed some paperwork and telling me
4 what each charge carries and how much each car --
5 how much each charge carry, and if I was found
6 guilty on one of these charges this is what it
7 carry, if I'm found guilty of the next charge,
8 this is what it carry. I was scared. I -- who
9 wouldn't take ten years, instead of ---

10 Q Okay.

11 A --- basically 30 years. I was just --
12 I was scared. I'll rephrase it. I won't say
13 trick me, but I don't feel like he trick me,
14 but...

15 Q Okay. I mean, you were facing life
16 plus a significant amount of time; is that right?
17 Is that your understanding?

18 A Yes, sir.

19 Q Okay. All right. At some point in
20 your conversations with Mr. Weaver -- and I know
21 we just talked about this a little bit -- but what
22 ultimately led to you deciding to enter a plea
23 pursuant to North Carolina v. Alford or otherwise?
24 Why did you choose to plead to not -- not go to
25 trial?

PW - E. SMALL - DIRECT

1 A Well, 'cause I see the transformation
2 in my lawyer. I went from a lawyer ready to fight
3 for me, ready to go, ready to go. I was telling
4 him everything that was in the paperwork. I
5 wasn't worried about none of that, nothing the
6 solicitor had, nothing the prosecution had,
7 because they didn't have anything on me or my
8 co-defendants to lead evidence to any crime. Once
9 they beat their trial and the prosecution started
10 coming up with other people trying to testify on
11 me, it seem like he didn't want to fight for me no
12 more. He didn't want to fight with me no more so
13 I didn't go to trial with a lawyer who is not
14 gonna represent me all the way if he lost his
15 drive in -- to fight for me. Then he was telling
16 me the worse, what the worse gonna be.

17 Q Mr. Small, you -- you had some
18 co-defendants went to trial and were found not
19 guilty; is that right?

20 A All of them.

21 Q Okay. Did that happen before or after
22 you pled?

23 A This is before I pled.

24 Q Okay. Why -- why were you not tried
25 with -- at the same time as them?

PW - E. SMALL - DIRECT

1 A This is what we found out. I let
2 somebody read my paperwork, and they tried to jump
3 on the case to get them a time reduction.

4 Q Okay. So you had some people that you
5 had talked to in the detention center that were
6 gonna testify against you?

7 A Yes, it was a -- it was a uproar about
8 the case that was going on, and everybody want to
9 know what going on. They had -- so I let them
10 read my paperwork and show them, and this is what
11 going on, nobody don't know what going on. This
12 is what they -- this is what they talking about.
13 And by me showing them that, yes, sir.

14 Q All right. Just a few more questions
15 I have for you. Your -- the charge you pled
16 guilty to -- or excuse me. The charge you pled
17 pursuant to North Carolina v. Alford had not been
18 presented to the grand jury and Judge Russo went
19 over that with you, but did you and Mr. Weaver
20 have a chance to discuss what that meant and what
21 the grand jury process is?

22 A Yes, sir. I waived it.

23 Q Okay. It was also -- I'm sorry, go
24 ahead.

25 A Yeah, I was telling you I was saying

PW - E. SMALL - DIRECT

1 yes, sir, I had waived that part. I think I
2 waived it.

3 Q Okay. It was also a negotiated
4 sentence. Did you and Mr. Weaver have a chance to
5 discuss what that meant?

6 A That it means that the judge, if he
7 was to go with it, that he wouldn't go over or
8 under. He would just accept what the State was
9 recommending.

10 Q Okay. All right. A second ago you
11 testified that -- that you pled because you --
12 your lawyer lost his drive to represent you and
13 that's -- I'm trying to quote you, and I'm doing
14 the best that I recall. Is that right?

15 A Yes, sir.

16 Q Okay. If that hadn't happened, would
17 you have still pled or would you have gone to
18 trial?

19 A I was going to trial. I was going to
20 trial.

21 Q Okay. All right. Mr. Small, I don't
22 think I have any -- any further questions for you
23 at this time. Is there anything you think I've
24 left out or neglected to ask that Judge Griffith
25 needs to be aware of Mr. Weaver's representation

PW - E. SMALL - DIRECT

1 of you? Not about the fact of the cases, but his
2 representation.

3 A No, sir, that's good.

4 Q Okay. Thank you. Please answer any
5 questions Mr. Key has.

6 **C R O S S - E X A M I N A T I O N**

7 BY MR. KEY:

8 Q Good morning, Mr. Small.

9 A Good morning.

10 Q So Mr. Weaver was appointed to
11 represent you in this case because, I guess, the
12 Public Defender's Office represented your
13 co-defendants?

14 A Yes, sir.

15 Q Okay. And you testified y'all did not
16 consult about a year after you had been arrested?

17 A Yes, sir.

18 Q Okay. Before y'all met, did -- did
19 y'all ever have phone conversations, or did you
20 write letters to each other or anything like that?

21 A Yes, sir. When I found out he was my
22 attorney, I said -- I called, I wrote, till I got
23 in touch with him.

24 Q Okay. And did he write you back?

25 A Yes, sir.

PW - E. SMALL - DIRECT

1 Q Okay. Okay. I believe you testified
2 that Mr. Weaver explained to you your
3 constitutional rights?

4 A Yes, sir.

5 Q And he explained to you the charges
6 you were facing?

7 A Yes, sir.

8 Q Okay. And you mentioned he had you
9 look over some paperwork and sign it, and that's
10 what got you scared?

11 A Yes, sir.

12 Q Okay. And in that paperwork, he had
13 explained to you the sentences that you could
14 receive if you were convicted at trial?

15 A Yes, sir.

16 Q Okay. So you tested that -- you
17 testified that you and Mr. Weaver did not go over
18 forensic evidence in the case?

19 A Right.

20 Q Okay. And you testified y'all did not
21 go over it because none of it was connected to
22 you?

23 A Right.

24 Q Okay. But you -- so even though y'all
25 did not discuss it, you knew that forensic

PW - E. SMALL - DIRECT

1 evidence wasn't connected?

2 A Right. I had paperwork. I had a copy
3 of all my paperwork.

4 Q Okay. Did Mr. Weaver provide that --
5 the discovery to you?

6 A If I'm not mistaken, I'm quite sure it
7 was him.

8 Q Did you ask him for your discovery?

9 A Yes. That's the first thing I asked
10 for because I was -- I was locked up for so long
11 with nothing. That's the first thing I asked for.

12 Q Okay. Did -- did he ever indicate to
13 you that you should not have your discovery with
14 you?

15 A No.

16 Q No. But you did ask for it?

17 A Yes, sir.

18 Q Okay. Didn't you testify y'all -- the
19 trial was approaching; is that correct?

20 A Yes, sir.

21 Q Okay. Did you ever ask Mr. Weaver to
22 enter into any plea negotiations with the State?

23 A No, he cal-- he introduced a plea to
24 me and told me that this -- that was what they
25 were offering. He introduced that to me. I guess

PW - E. SMALL - DIRECT

1 they offered him something to talk to me about,
2 and he came and talked to me about it.

3 Q Okay. So it's your understanding the
4 State made an offer and then Mr. Weaver brought
5 the offer to you?

6 A Yes, sir.

7 Q Okay. Do you recall what that offer
8 was?

9 A It was a -- at first it was 12 years.
10 They were gonna drop the charges and give me 12
11 years for the accessory, and we didn't go with
12 that. And before -- before -- two weeks before
13 trial, they came back and said they'll do ten, and
14 I was convinced that that would be the best thing
15 for me.

16 Q Okay. So you knew about the 12 year
17 offer and you didn't want to take the 12 year
18 offer, but you took the ten year offer?

19 A Yes, sir.

20 Q Okay. Do you ever -- do you recall
21 there being any pretrial motions or going to court
22 with Mr. Weaver regarding this case before your
23 guilty plea?

24 A Yes, sir, we had a pretrial hearing.
25 That's when I was offered the 12, 12 years.

PW - E. SMALL - DIRECT

1 Q Okay. Did the jury selection process
2 ever start?

3 A No. We were supposed to start back in
4 October and the storm -- something happened, and
5 it pushed us back. It pushed us back.

6 Q Okay. And how did you learn of the
7 State's ten year offer?

8 A I was -- I was consulted again with my
9 attorney Mr. Weaver.

10 Q Okay. Okay. I believe you -- you
11 testified on direct that you were not tried at the
12 same time as your co-defendants because you let
13 somebody see your discovery?

14 A Right.

15 Q Okay. Was it your understanding that
16 you would be tried at the same time as your
17 co-defendants?

18 A We were all scheduled to go to trial
19 at the same time, and then once that -- once that
20 happened, they separated it. They did a motion to
21 separate our trial.

22 Q Okay. Did -- do you know if your
23 attorney moved for the -- for the trial
24 separation?

25 A One of my co-defendants' attorney did.

PW - E. SMALL - DIRECT

1 Q Okay.

2 A One of -- Hank Anderson did.

3 Q Okay. And you testified you
4 understood what waiver of presentment to the grand
5 jury means?

6 A Yes, sir. And not in depth, but I --
7 overall, yes, sir.

8 Q Okay. And you understood what a
9 negotiated plea means, that the judge can either
10 accept it, but he couldn't go more or less than
11 that sentence?

12 A Yes, sir.

13 Q Okay. And you -- you pled. You took
14 an Alford plea. That's correct?

15 A Right.

16 Q Okay. So you never had to admit to
17 the State's facts; is that correct?

18 A Right. In fact, they asked me about
19 that in my hearing, and I told them I wasn't -- I
20 wasn't concerned at all about the State's facts,
21 that I was entering an Alford plea and that I know
22 what it entailed. I know the basis of what it
23 entailed.

24 Q And why did you enter the Alford plea?

25 A Because I was told that that was -- I

PW - E. SMALL - DIRECT

1 was convinced that that would be the best that I'd
2 have.

3 Q Okay. Do you recall telling Judge
4 Russo that you were entering the Alford plea in
5 order to avoid a life sentence?

6 A Right. That's what -- before he took
7 the recess when I told him that I'm entering an
8 Alford plea, that I wasn't -- my word verbatim,
9 they don't have it in the transcript as I said it.
10 But I said it verbatim that I wasn't worried about
11 no State's evidence, I just would rather do ten
12 years in lieu (ph) of my life.

13 Q Okay. There is a little something
14 about that in the transcript, but not that much in
15 depth.

16 A Right.

17 Q Is that what you're saying?

18 A Right, yes, sir.

19 MR. KEY: And, Judge, I believe that's
20 page 17 of the plea transcript.

21 BY MR. WALLER:

22 Q Okay. And just to finish up, I
23 believe you testified that you knew you were
24 pleading to accessory after the fact ---

25 A Right.

PW - E. SMALL - DIRECT

1 Q --- but you did not know what you were
2 an accessory to?

3 A Right, whether it was a kidnapping,
4 attempted murder, a murder. It just says
5 accessory after the fact of a felony. It doesn't
6 describe which one.

7 Q Okay. But, again, when you were asked
8 when you pled under Alford you said you weren't
9 worried about the facts, you were taking the plea
10 to avoid a harsher sentence?

11 A Right.

12 Q Okay.

13 MR. KEY: No further questions, Your
14 Honor.

15 THE COURT: Anything else back from
16 you, Mr. Waller?

17 MR. WALLER: Page 19 of the transcript
18 is where, that provision was in there, if
19 everybody heard that. But no further questions,
20 Your Honor.

21 THE COURT: Okay. Call your next
22 witness.

23 MR. WALLER: Your Honor, the applicant
24 rests.

25 THE COURT: Mr. Key, do you have any

RW - M. WEAVER - DIRECT

1 witnesses from the State?

2 MR. KEY: Yes, sir, Your Honor. The
3 State would call Mr. Marshall Weaver. And if you
4 could swear him in.

5 WHEREUPON,

6 **MARSHALL WEAVER,**
7 having been duly sworn by the Court, testified as
8 follows:

9 THE COURT: He is under oath. He's
10 your witness, Mr. Key.

11 **D I R E C T E X A M I N A T I O N**

12 BY MR. KEY:

13 Q Good morning, Mr. Weaver. Thank you
14 for being here today.

15 A Good morning.

16 Q Mr. Weaver, how long have you been
17 practicing law?

18 A Since 2008, so 12 years.

19 Q Okay. And what does your law practice
20 consist of?

21 A Auto accidents, workers compensation,
22 social security disability, and criminal defense.
23 I'm -- I'm a sole practitioner. I have four
24 paralegals.

25 Q Okay. So you do a little bit of

RW - M. WEAVER - DIRECT

1 everything?

2 A No. No real estate, no family law.
3 There's still -- there's still a whole lot out
4 there I don't do, but those are my areas.

5 Q Okay. How much of your practice is
6 focused on criminal law?

7 A Around 20 to 25 percent.

8 Q Okay. How did you come to represent
9 Mr. Small?

10 A I was appointed on this case. I heard
11 Mr. Small's testimony about -- about me not coming
12 to see him for a year, but there was a reason for
13 that. His -- his initial attorney was attorney
14 Scott Floyd. He was initially appointed. And
15 then on April the 6th of 2017, a conflict petition
16 was entered by attorney Scott Floyd and Judge
17 Craig Brown signed a order of appointment
18 appointing me to the case. So I think maybe that
19 was some type of miscommunication, maybe he didn't
20 know when I got appointed, but I didn't get
21 appointed to his case until that following year in
22 April.

23 Q Do you recall if Scott Floyd was the
24 Chief Public Defender at that time?

25 A I believe that he was.

RW - M. WEAVER - DIRECT

1 Q Okay. And so then there is a -- a
2 conflict arose and you, I guess, were you on a
3 contract list with Florence?

4 A At the time I was on a 608. At the
5 time I was on the contract 608 list and next man
6 up, it was my turn.

7 Q Okay. Did -- do you recall how many
8 times you met with Mr. Small approximately?

9 A Yes. As Mr. Small indicated, I
10 communicated with him through written
11 correspondence prior to actually meeting him, but
12 the first time I met him was November 30th of
13 2017. And now, Mr. Small probably remembers,
14 whenever I met with him I would have a pad in
15 front of me and I would always write down the date
16 and the time that the meeting started so I have
17 some of the dates. But I met with him a lot more
18 than what I actually have written here, but just
19 on the -- just from what I have written, I met
20 with him on November 30th, 2017, February 9th
21 2018, May 25th, 2018, June 8th, 2018, May 12th,
22 August 24th -- and I didn't even put the year on
23 these. I must have just -- June 13th and August
24 29th. So for what I have written is eight times.
25 However, I can assure you it was more than that.

RW - M. WEAVER - DIRECT

1 I would -- whenever I go down to see other
2 clients, he's a very insistent individual and I
3 found him to be pretty intelligent, somewhat of a
4 likable guy, so whenever I went down to see other
5 clients, I would just stop by and see what he
6 wanted that day to be frank with you. So I didn't
7 even write all of them down.

8 Q Okay. Do you recall receiving the
9 discovery in this case?

10 A Yes, I do.

11 Q Okay. And you were present for
12 Mr. Small's testimony earlier?

13 A Yes, I was.

14 Q Okay. Did he ask you for his
15 discovery?

16 A Yes, he did, and I did provide it.

17 Q You did provide it? Okay.

18 A Yes, sir. One -- just one caveat.
19 Whenever I provide discovery I always have a
20 conversation about safekeeping it and safeguarding
21 it. So I did provide it along with that
22 conversation to, you know, don't let anybody in
23 your cell and to read your discovery, be careful
24 what you do with it, for someone can read it and
25 use it against you. So that's my normal speech

RW - M. WEAVER - DIRECT

1 every time I give an inmate discovery that's
2 incarcerated.

3 Q Okay. Do you recall specifically
4 telling Mr. Small that?

5 A I do not, but I do it every single
6 time. I'm sure he would -- I'm sure he recalls
7 it. I do it every single time religiously so I'm
8 certain that I did out of habit and routine.

9 Q Okay. So it's your general practice?

10 A Yes.

11 Q Okay.

12 A Whenever I give them their discovery
13 in there, I know to -- I know what can happen, so
14 I always warn them.

15 Q Okay. And were -- were y'all planning
16 to go to trial in this case?

17 A Yes. We were -- we were going to
18 trial. We -- the jury had already been qualified
19 and we were about to begin jury selection. I
20 believe the date was October the 2nd, and the
21 Hurricane Matthew was coming. It hadn't -- it
22 hadn't arrived yet, but the governor had already
23 started issuing evacuation orders for Charleston
24 and things of that nature and we knew that this
25 trial was going to be several days. And rather

RW - M. WEAVER - DIRECT

1 than proceed with the trial, even though we
2 already qualified the jury, Judge Russo decided
3 not to go forward with the trial because we
4 just -- it was inevitable that we weren't going to
5 be able to -- to finish it.

6 And the way that the plea actually
7 came about, if I may elaborate, is when Judge
8 Russo said that, the State was offering ten
9 violent to me. They wouldn't -- to give Edwin
10 credit, they wouldn't budge off ten violent for
11 me. But when Judge Russo said that we weren't
12 gonna go forward with the trial, then Edwin turned
13 to Ryan White, who is the assistant solicitor, and
14 said, I'll plead to ten nonviolent. And Ryan
15 White said yes. And, you know, just in
16 retrospect, I believe the reason he said, yes,
17 because he would have had to subpoena all those
18 people again and do all that work again so he went
19 ahead and said, okay, I'll allow you to plead to
20 ten nonviolent. So he actually, he actually
21 brokered the plea himself with the -- with the
22 State.

23 Q Okay. Were you previously in plea
24 negotiations with the State though?

25 A Certainly, yeah.

RW - M. WEAVER - DIRECT

1 Q Okay. Is that -- did Mr. Small ask
2 you to enter into negotiations, or did the State
3 just come to you with a deal?

4 A The State -- the State began making
5 deals, and I would take them back to Edwin and we
6 would make counters. He would tell me what -- he
7 would tell me what he would accept and what he
8 wouldn't, and I would go back and counter, counter
9 what the State's offer was with them.

10 Q Okay. So it wasn't Mr. Small who told
11 you, hey, I want a plea deal. It just came about
12 naturally. The State made an offer, you took it
13 to Mr. Small, and then y'all went back with a
14 counter?

15 A Of course, I fulfilled my ethical
16 obligation as an attorney to present my client
17 with any offer that was made on his case, and
18 that's what I did.

19 Q Okay. Did you explain to Mr. Small
20 the elements of accessory after the fact?

21 A I don't recall doing so actually. I
22 know I explained to him the initial charges, the
23 accessory before the fact. I explained to him the
24 conspiracy and the kidnapping charge, but I don't
25 recall explaining to him the accessory after the

RW - M. WEAVER - DIRECT

1 fact. The reason was because it came about in the
2 manner that it came about. I mean, when we
3 decided to go ahead and plead, we didn't even
4 leave the courtroom from where we were standing at
5 that moment. We went ahead and pled. He brokered
6 it, and Ryan went and got -- got him a sentencing
7 sheet and filled it out and we moved forward with
8 it. So I don't recall -- I don't recall sitting
9 down with him and going over it. I do recall
10 informing him that it was going to be nonviolent
11 which is what he was looking for, so I do recall
12 that.

13 Q Okay. When the -- so you explained
14 that there wasn't really a break. It was just the
15 offer was made and you went straight into a plea?

16 A Yes. I believe Ryan had to make some
17 adjustments to the sentencing sheet or he had to
18 write out the sentencing sheet, but we didn't
19 leave the courtroom. I didn't have anymore
20 time -- I didn't -- I didn't have anymore time
21 with him other than sitting right there in the
22 courtroom, and I prepared him for the plea as we
23 sat at the counsel's table.

24 Q Okay. During the plea hearing did he
25 ever, you know, ask to stop and say, hey, can you

RW - M. WEAVER - DIRECT

1 explain this to me further?

2 A No, he did not.

3 Q Okay. Did -- did you explain to him
4 what an Alford plea meant?

5 A Yes, I did.

6 Q Okay.

7 A He -- he actually had knowledge of it.
8 He already had prior knowledge of it, and I
9 re-enforced what he already understood.

10 Q Okay. I believe he testified that you
11 two sat down and you went over his exposure for
12 the charges he originally faced?

13 A Certainly.

14 Q Okay. And you explained to him, you
15 know, the mandatory -- did you explain to him the
16 mandatory minimums that he faced?

17 A Absolutely.

18 Q And the maximums he could face?

19 A Absolutely.

20 Q Okay. Did y'all -- you were preparing
21 to go to trial. Did y'all formulate any defenses
22 for trial?

23 A Yes, I -- yes, I did. And I
24 discussed -- I discussed it with him. And he was
25 very -- he was very integral in that process. He

RW - M. WEAVER - DIRECT

1 was very involved in any defense that we were
2 going to present.

3 Q Okay. Was -- did you recommend for
4 him to plead guilty, or was -- did it just come up
5 at that plea hearing or after the jury was
6 dismissed?

7 A If I recall, I told him that I think
8 if he could get down to ten, that he should accept
9 it or either seriously consider accepting it. I
10 believe when it -- when the offer was -- when the
11 offer was just completely -- when the offer was
12 too high I don't recall telling him at that time
13 to accept it; but they came down, I believe I did
14 tell him to accept it because, as he stated, he
15 said initially I was geared up to fight and then
16 he said it had tapered off. I wouldn't think -- I
17 wouldn't say that it tapered off at all. I would
18 say that the State continued to accumulate
19 evidence, and I had to present that evidence to
20 him and I had to tell him the impact that that
21 evidence had -- would have on a trial.

22 Specifically, we actually had a
23 pretrial motion on this case as well, and the
24 pretrial motion was a motion to suppress the video
25 statement of Mr. Randy Shaw, and I believe Edwin

RW - M. WEAVER - DIRECT

1 probably forgot some of this stuff. But Mr. Randy
2 Shaw was an individual who was at the residence of
3 Briheem Williams on the time -- at the time that
4 he states that he was beaten. And Mr. Randy
5 Shaw's testimony, his video testimony was going to
6 be that Edwin Small was the enforcer and that he
7 was a shooter, which I thought was, you know,
8 very, very damaging to the case so we did have a
9 pretrial motion on that to suppress that based on
10 the confrontation clause because Mr. Shaw was
11 predeceased. So he gave a video statement, he
12 later deceased, and I thought that the video
13 statement should be kept out based on
14 confrontation clause. Judge Russo disagreed with
15 me and he was allowing that statement to come in.
16 That was one piece of evidence that -- that came
17 up later on that I had to talk to Edwin about and
18 tell him how that impacts his trial.

19 Another piece of evidence that came up
20 was a young lady by the name of Felicia Coltrane,
21 and she was going to testify that Edwin told her
22 that he quit his job because he had to go handle
23 some business at the trap -- using her exact
24 words -- handle some business at the trap. And
25 that was that -- and that he quit his job the day

RW - M. WEAVER - DIRECT

1 before the individual, the victim, Bobby Evans,
2 Jr., disappeared. I thought that that was
3 problematic, and I informed him of the impact that
4 would have on his trial.

5 Another young lady who made another
6 statement I informed him of -- her name was
7 Wakeshia Brooks. I had -- you know, I explained
8 to him everything that was negative. And I also
9 told him the positive. And the positive was
10 clearly, was clearly that they didn't have any
11 physical evidence, that the only thing they had
12 were going to be -- they didn't have any direct
13 evidence. All the evidence they had was going to
14 be circumstantial, and I even told him that his
15 case would -- the trial would depend on my ability
16 to properly impeach these individuals. So we, we
17 discussed all that, and we discussed all the
18 witnesses. We discussed the theory of the case.
19 I went over it -- I went over it at length with
20 him.

21 One other thing I'd just like to add
22 very briefly. In the tenth hour the State
23 produced the two inmates, and which is why his
24 co-defendants end up going to trial without him,
25 and the two inmates were going to testify that

RW - M. WEAVER - CROSS

1 Edwin had had conversations with them about all
2 the events that took place; and I had to discuss
3 that with him as well. You know, I wouldn't be
4 doing my job if I didn't discuss these things and
5 tell him these are the things that are going to
6 hurt you. It's not that you lose your fervor for
7 a case. It's that you have to have a real
8 conversation with your client and tell him this is
9 what's gonna happen in this courtroom, these are
10 our pros, and these are our cons. So that's what
11 happened.

12 Q Okay. I don't believe I have anymore
13 questions for you. Thank you, Mr. Weaver.

14 THE COURT: All right. Mr. Waller.

15 MR. WALLER: Thank you, Your Honor.
16 May it please the Court.

17 **CROSS - EXAMINATION**

18 BY MR. WALLER:

19 Q Good afternoon now, Mr. Weaver, how
20 are you?

21 A I'm doing well. I hope you are too.

22 Q I am. Thank you for asking. This
23 trial was set -- I know it was continued or going
24 to be continued because of weather; but it was set
25 for a date certain, a date certain trial. That

RW - M. WEAVER - CROSS

1 actually got moved at least once. How did that
2 come about?

3 A How did the date certain get moved?

4 Q Well, no, how did it get set for a
5 date certain?

6 A Well, I had taken -- I'm not 100
7 percent certain. You know, of course -- of
8 course, setting a date certain would be at the
9 court, the court's discretion, usually at the
10 request of the Solicitor's Office but, so I'm not
11 100 percent certain. But I do know that I took
12 him for a bond hearing several times, and at the
13 last time we went for a bond hearing the judge did
14 set him a bond. I believe it was at \$150,000, and
15 I feel pretty -- I feel pretty certain when they
16 set that bond, they went ahead and set a date
17 certain at that time. So, yeah.

18 Q How did -- what's your
19 understanding -- why did the trial get severed?
20 Why did his trial get severed from his -- not
21 Briheem Williams, but the other co-defendant?

22 A My understanding is just what he said,
23 was that they, they got -- they had two other
24 individuals that were gonna testify that those
25 individuals were not at the detention center.

RW - M. WEAVER - CROSS

1 They had to be brought in. And because of that,
2 it was more expedient for the State to proceed
3 forward with the others and save his till last.
4 Yeah, and he -- he was just not -- he wasn't
5 similarly situated as the other individuals. He
6 just had different evidence that was going to be
7 presented, including the statement of the victim
8 Briheem Williams. It was -- it was clear that
9 Briheem Williams really intended to damage Edwin
10 above all others with his statement.

11 Q Okay. To your recollection, was the
12 State going to try Edwin for all of the offenses
13 related to Mr. Evans, as well as Mr. Williams, or
14 were they gonna kind of separate the two out?

15 A Separate the two out. He was getting
16 tried for -- yeah, he was getting tried for
17 attempted murder, accessory before the fact,
18 kidnapping, and they -- they tied something else
19 in there too. At the last moment there was a
20 threatening communications over the telephone
21 where they were alleging that he had contacted a
22 witness and had threatened them, and they were
23 gonna -- and that was going forward as well. And
24 they allege that it happened in the days leading
25 up to the trial.

RW - M. WEAVER - CROSS

1 Q Okay. Let me ask you this, and I know
2 it's been a long time. The attempted murder
3 charge as indicted was related to Briheem
4 Williams. The accessory ---

5 A That's right.

6 Q --- before the fact to a felony was
7 the felony of murder, so that one would go to
8 Mr. Evans committed by Mr. Williams?

9 A That's right.

10 Q Is that right? Is that your
11 understanding?

12 A Yeah.

13 Q And then the kidnapping was ---

14 A That's my understanding.

15 Q --- incorporated to Briheem Williams
16 as well?

17 A Yes, that's correct.

18 Q So they were kind of doing almost
19 everything that they said Mr. Small was involved
20 in in this trial, okay.

21 A That's correct.

22 Q You testified that -- that you
23 prepared a defense and were ready to present that.
24 On direct I don't believe you actually stated what
25 your defense or what your theory of the case was.

RW - M. WEAVER - CROSS

1 Could you tell us what you planned to present as
2 your defense?

3 A The number one thing that hurt our
4 case was Briheem Williams' statement. The other
5 individuals were not as strong a witness as the
6 actual victim in the case, naturally. They could
7 testify that Edwin told me this, Ed-- you know,
8 they could testify Edwin told them things, but
9 Briheem Williams was actually going to testify as
10 to what happened to him. So I was going to use
11 and what I labeled it -- and what I labeled it at
12 the time for my theme of the case was a fruit of
13 -- a fruit of the poisonous tree defense, which
14 was going to present the defense that he made
15 several statements prior to, prior to implicating
16 Edwin Small, that everything he was saying was
17 self-serving, that he had committed murder,
18 coldblooded murder, and that there was nothing
19 that you could believe that he says, that -- that
20 the jury was dealing with a murderer who was out
21 there to save himself. That was going to be the
22 defense that I was going to present. And I felt
23 that -- I felt that if I could -- if I could
24 damage Briheem, the others -- the others I could
25 deal with. Briheem was the main issue that I --

RW - M. WEAVER - CROSS

1 Briheem was the bulk; the others were just the
2 glue, if I may, if I may say. You know, he was
3 the one that was going to tell the story, but the
4 others were going to plug in the holes. If I
5 could shatter him, I thought the others -- the
6 others would be able to fall apart.

7 Q Okay. At the time, I know y'all were
8 on the verge of going to trial when they got
9 canceled, had the other co-defendants -- and their
10 trials had already taken place; is that right?

11 A Yes.

12 Q Okay. Were any of them going to be
13 called to testify against Edwin?

14 A I believe that the State had them.
15 I'm not sure if they were on the State's witness
16 list at this time or not.

17 Q Okay.

18 A I can't recall, can't recall.

19 Q Okay. And obviously I'm not talking
20 about Briheem Williams when I say there are other
21 co-defendants. I'm talking about the ones that
22 went to trial. All right. You testified on
23 direct that you don't believe or you don't recall
24 whether you went over the element of accessory
25 after the fact because everything kind of came

RW - M. WEAVER - CROSS

1 together so quickly.

2 A That's right.

3 Q What was your understanding of what --
4 what felony he was supposedly an accessory to?

5 A I thought it was accessory after the
6 fact to the murder.

7 Q Okay.

8 A That was my understanding, but I
9 think -- I think ---

10 Q That's your understanding?

11 A I be-- yeah, that's my understanding.
12 But I believe it was a -- I believe he actually
13 pled -- if you look at the sentencing sheet, it's
14 on there. But I believe it was he pled to a
15 general provision of accessory after the fact; but
16 the State never, that I recall, the State never
17 specified the underlying offense. I think -- I
18 believe the State just said a general provision of
19 accessory after the fact.

20 Q That's correct. That's why I was
21 asking what your recollection was ---

22 A Yeah.

23 Q -- of what it was, okay.

24 A Yeah. Now that I think of it, like,
25 I'm sure -- I -- I don't recall the State giving

RW - M. WEAVER - CROSS

1 me a underlying offense. It was just under the
2 general provision.

3 Q Did you and Mr. Small have a chance to
4 discuss what -- you know, the general provision
5 what he was actually pleading to?

6 A We discussed the sentence. I went
7 over -- I went over -- after the -- after the deal
8 was brokered I entered into a plea counseling
9 stage wherein I told him his constitutional rights
10 that the judge was going to be reading to him. I
11 told him what the negotiated plea was, which he
12 already knew, but I reaffirmed what he already
13 knew. I answered -- I answered questions
14 regarding the actual plea at that stage.

15 Q Okay. Thank you, Mr. Weaver. I don't
16 have any further questions for you.

17 A Thank you.

18 MR. KEY: Nothing further from the
19 State.

20 THE COURT: Is that the State's case?

21 MR. KEY: Yes, Your Honor.

22 THE COURT: All right. Mr. Waller,
23 you want to summarize anything of -- and, Mr. Key,
24 the same question when he gets done?

25 MR. WALLER: Judge, just very briefly.

1 I would ask -- obviously you have the entire
2 packet in front of you, or in your possession. I
3 would ask that you -- that you review that.
4 Judge, I think it's under -- it's important that
5 Mr. Small did not have an understanding, or the
6 testimony is he didn't have an understanding the
7 facts that he was pleading to. At best, I think
8 it's a legal fiction which is it's certainly
9 allowable, but I think it would be incumbent upon
10 Mr. Weaver to make sure that he understood what,
11 what the legal fiction was -- was accomplishing.
12 I don't think that we -- I don't think he had an
13 understanding of that. I think we ended up at the
14 wrong -- I think the finish line was unclear and
15 so you have to look back at how we got there, and
16 I think that that was not the case.

17 Mr. Weaver did testify that he had
18 prepared to go to trial and, ultimately, that --
19 that obviously changed. But I think Mr. Small has
20 to understand what he's looking at before he can
21 knowingly and intelligently enter into a plea so I
22 ask you to review everything, including the
23 application and the amendment, before reaching
24 your decision.

25 THE COURT: Okay. Mr. Key, anything

1 you need?

2 MR. KEY: Yes, Your Honor. This --
3 this case essentially boils down to exactly what
4 Mr. Smalls said at the guilty plea, which is shown
5 in the transcript, and what he elaborated on in
6 his testimony. He -- his attorney explained to
7 him the charges he was facing and the mandatory
8 minimums and maximum sentences he was facing.
9 He -- that got him scared because he was looking
10 at life plus, essentially. He -- he got a ten
11 year nonviolent offer and he decided to take that.
12 Yes, it was unclear to him whether it was
13 accessory after the fact of which crime, but he --
14 he could have clarified that at the guilty plea
15 hearing after the State had presented its facts
16 and Judge Russo asked him, is that your
17 understanding of the State's case against you, and
18 he responded, I'm not worried about that, I want
19 to take this plea to avoid a life sentence. So
20 whether or not Mr. Weaver should have explained
21 the elements of accessory after the fact to
22 Mr. Small, would not have changed his mind whether
23 or not he was going to enter that plea hearing.
24 He -- I believe Mr. Small testified today I was
25 looking at either life or ten years, who wouldn't

1 take that deal so. The State's -- the State's
2 position is not that Mr. Weaver was deficient in
3 any respect; but even if he were deficient in not
4 explaining exactly what accessory after the fact
5 crime he was pleading to, Mr. Small didn't care
6 and he was going to take that plea deal no matter
7 what.

8 THE COURT: All right, understood.
9 Gentlemen, I'm going to give everything a look and
10 review the transcript, the application, and
11 testimony today, and I'll let y'all know my
12 decision.

13 MR. WALLER: Thank you, Your Honor.
14 Judge, if I could, if I could just place one quick
15 thing on the record.

16 THE COURT: Go ahead. Sure.

17 MR. WALLER: Judge, I -- Mr. Small and
18 I discussed -- discussed this hearing, proceeding,
19 via Webex prior to -- prior to it happening.
20 Obviously, Judge, he knows and I informed him that
21 it's ultimately your decision; but we did discuss
22 it and he had no objection and did not want me to
23 place any objection on the record and so I wanted
24 to let the Court know that. Also, he understands
25 that the -- the potential risks involved should we

1 be successful today result in the original charges
2 coming back and having to face those charges
3 should he be -- should we be successful today. He
4 understands that and we've discussed that. I just
5 wanted to place those two things on the record.

6 THE COURT: Okay. Well, and you know,
7 also, I believe there's been another memoranda,
8 and order from Supreme Court that we can go via
9 Webex now without consent, but that would be prior
10 to today's hearing. I think that starts Monday.
11 But anyway, the Webex seems to be thorough and I'm
12 glad Mr. Smalls understood, but it does expedite
13 the hearing in light of the fact that the COVID
14 restrictions will apply for everybody. But I'll
15 give everything a look, see what I can do, and let
16 you know my decision.

17
18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 16th day of February, 2022.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Edwin Evander Small, Jr., #323402

Applicant,

v.

State of South Carolina,

Respondent.

FILED

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT

2022 MAR 30 AM 10:41

CASE NO. 2019-CP-21-1249

DORIS FLORES O'HARA

REC'D & GS

REC'D & GS

ORDER OF DISMISSAL

This matter comes before this Court by way of Edwin Evander Small, Jr.'s (Applicant) application for post-conviction relief (PCR) commenced May 6, 2019. The State made its return on August 7, 2019, requesting an evidentiary hearing to resolve the issues set forth in the application. Applicant, through PCR Counsel, amended his application on September 11, 2020. This Court convened an evidentiary hearing into the matter on September 17, 2020, in this Court's virtual courtroom on the Cisco Webex platform. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Samuel L. Key, Esquire, of the South Carolina Attorney General's Office, appeared on behalf of the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Marshall S. Weaver, Sr., Esquire. ("Counsel") also testified. Also before the Court was the Florence County Clerk of Court records for the underlying conviction, Applicant's records from the South Carolina Department of Corrections (SCDC), a copy of the original plea transcript, and the records of this PCR action.

After observing the testimony presented and a full review of the record before the Court, this Court finds, for the reasons discussed below, Counsel was not constitutionally ineffective, and

CERTIFIED: A TRUE COPY

Donna Parks Ottens
CLERK OF COURT C.F. & G.S.
FLORENCE COUNTY S.C.

Page 1 of 14

[Signature]

2019-CP-21-1249

Applicant knowingly and voluntarily pleaded guilty. Therefore, the Court denies relief and dismisses the action with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in SCDC pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the November 2017 term of the Florence County Grand Jury for attempted murder, accessory before the fact to a felony, and kidnapping (2017-GS-21-1585). Applicant was represented by Marshall S. Weaver, Esquire. Assistant Solicitor J. Ryan White of the Twelfth Circuit Solicitor's Office prosecuted the case.

On October 2, 2018, Applicant appeared before the Honorable Thomas A. Russo and waived presentment to the grand jury to enter a plea pursuant to North Carolina v. Alford¹ for accessory after the fact to murder. Pursuant to negotiations entered into between Applicant and the State for a determinate ten year sentence and the dismissal of all related charges, Judge Russo accepted Applicant's plea and sentenced him to incarceration for ten years..² Applicant did not appeal.

II. STATEMENT OF FACTS

Applicant's charges stem from an incident, and the aftermath of the incident, that occurred on September 24, 2016. Early in September 2016, a drug dealer was robbed of fifty pounds of marijuana. On September 24, Applicant gave Raheem Williams a gun and told Williams to take care of the marijuana situation. Williams then went and picked up Bobby Evans, Jr., who Applicant believed to have stolen the marijuana. If the case had proceeded to trial, the State would

¹ 400 U.S. 25 (1970).

² The plea court informed Applicant his ten-year sentence was non-violent, and the sentencing sheet is marked as non-violent. (Plea Tr. 16); Sentencing Sheet.

have argued Applicant believed Williams was also involved in the marijuana theft. (Plea Tr. 18). Unaware of Applicant's suspicion, Williams picked up Evans, drove out to a field in a rural area, and executed Evans by shooting him one time in the back of the head. (Plea Tr. 17). After executing Evans, Williams returned to his residence. (Plea Tr. 18).

When Williams arrived home, the drug dealer, his associates, and Applicant were waiting for Williams to return. Applicant held Williams at gunpoint and ordered Williams to strip off his clothes and shower. Williams complied, and his clothes were burned behind the residence. Simultaneously, Applicant collected all cell phones of everyone present, including Williams' cellphone, and put the phones in a bag. The cellphones were never recovered. After exiting the shower, Williams was beaten and interrogated about his involvement in the marijuana theft for several hours. After interrogating Williams, Applicant and the others attempted to force Williams into the trunk of a car. Remarkably, Williams escaped. Williams would have testified for the State at trial. (Plea Tr. 18).

Applicant disagreed with the State's version of the facts, as he was pleading under Alford; however, Applicant stated, "I wasn't concerned about [the facts] at all. . . . *I just didn't want to take the risk of life.*" (Plea Tr. 19) (emphasis added). The plea court accepted Applicant's plea and found: the facts supported Applicant's plea; Applicant knowingly and voluntarily pleaded guilty pursuant to Alford; and Applicant knowingly and voluntarily waived presentment to the grand jury. (Plea Tr. 20).

III. ISSUES BEFORE THIS COURT

In Applicant's original application, timely commenced on May 6, 2019, , Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective Assistance of Counsel

- a. After seeing that there was no concrete evidence other than hearsay, [plea counsel] told [Applicant] it was best to take a negotiated plea sentence. [Plea counsel] was not getting paid to represent [Applicant] and did not want to go to trial, even after [Applicant's] codefendants were found "Not Guilty."

2. No evidence.

On September 20, 2020, pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel

- a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into.

Applicant proceeded forward on the allegation of ineffective assistance of counsel raised in his original and amended PCR applications. At the PCR hearing, counsel advised this Court that the amended PCR application was a clarification on the ineffective assistance of counsel allegation and Applicant knew that the evidence allegation was not proper for PCR. All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

- 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2. That the court was without jurisdiction to impose sentence;
- 3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that an evidentiary hearing can only determine. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so defective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a 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. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of [competence]” demanded of attorneys in criminal cases. Strickland, 466 U.S. at 690. To prove prejudice, the applicant must establish “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Id. Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the range of competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. Specifically, when an applicant

claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372.

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.



A. Involuntary Guilty Plea

Applicant further alleges his plea was involuntary as a result of Counsel's ineffective assistance. This Court disagrees and finds the combined record from the plea hearing, and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

1. Plea Testimony

Near the outset of the plea colloquy, Judge Russo explained to Applicant the constitutional rights he would waive by pleading guilty; including his right to remain silent, his right to a jury trial, to challenge the State's evidence, and to present a defense. (Plea Tr. 5 – 7). Judge Russo further advised Applicant that if he elected to continue with his trial, the burden of proof would be upon the State to prove every element of every charge against him. (Plea Tr. 5 – 7). Applicant informed Judge Russo he was knowingly, voluntarily, and freely waiving his constitutional rights by pleading guilty. (Plea Tr. 8 – 17).

Judge Russo confirmed that Applicant understood the potential maximum sentence for the charge of accessory after the fact to murder or an A, B, or C felony. (Plea Tr. 8). Judge Russo confirmed that Applicant's Counsel had discussed with Applicant his charges, constitutional rights, that his indictment had not been presented to the grand jury, and the meaning of an Alford plea. (Plea Tr. 10). Judge Russo further detailed the grand jury process, and Applicant affirmed his understanding of waiver and his doing so voluntarily. (Plea Tr. 11 – 13). Judge Russo then detailed the meaning of an Alford plea in which Applicant affirmed that he understood and was doing so voluntarily. (Plea Tr. 13 – 16). Judge Russo confirmed that Applicant was pleading guilty under Alford to the accessory charge, and all other charges would be dismissed or *nolle prossed*. (Plea Tr. 15).

Applicant then pled guilty pursuant to North Carolina v. Alford of his own free will. (Plea Tr. 17). Applicant advised the court he had not been threatened, coerced, or promised anything in exchange for his guilty plea. (Plea Tr. 16). Applicant further indicated he was satisfied with the representation and advice that his Counsel had provided. (Plea Tr. 16).

2. PCR Testimony

At the PCR hearing, Applicant was asked about the portion of the plea proceeding where Applicant told Judge Russo that his Counsel explained to him his constitutional rights. (PCR Tr. 23, ll. 1 – 4). Applicant testified that plea Counsel explained the sentences he could receive if they were to proceed to trial. (PCR Tr. 23). Applicant testified that he understood what waiver of presentment of his indictments to the grand jury meant. (PCR Tr. 27). Applicant testified that he understood the meaning of a negotiated plea and that a judge may accept or deny it. (PCR Tr. 27). Applicant further testified that he took the Alford plea because he knew what it was and he was “convinced that that would be the best [he would get].” (PCR Tr. 27-28). Applicant recalled that he was not worried about the State’s evidence against him; instead, he was more concerned with receiving a 30-year sentence versus the negotiated 10-year sentence³. (PCR Tr. 28; Trial Tr. 19).

Prior to Applicant entering his Alford plea, Counsel testified that Judge Russo decided not to proceed with trial because hurricane evacuation orders were being issued in the area, and they would not finish the trial before the storm arrived. (PCR Tr. 34-35). Counsel further testified that the State was willing to offer ten years violent and would not budge from that offer. (PCR Tr. 35). However, after Judge Russo announced the decision to continue the trial, Counsel testified that Applicant turned to Ryan White, the assistant solicitor, and said, “I’ll plead to ten nonviolent.”

³ Applicant’s PCR testimony stated, “I would rather do 10 years in lieu (ph) of my life.” (PCR Tr. 28).

(PCR Tr. 35). Counsel testified that Mr. White agreed to the plea and produced a plea agreement. (PCR Tr. 35).

Further, Counsel testified that he reviewed with Applicant the initial charges, explained an Alford plea, and discussed the mandatory minimum and maximum sentences he potentially faced at trial. (PCR Tr. 36-39). Counsel indicated that he told Applicant that if he could get the State to agree to 10 years, he should seriously consider taking it. (PCR Tr. 39). Counsel testified that the State continued to gather evidence against Applicant, and he presented that evidence and the impact it potentially would have at trial. (PCR Tr. 39). Specifically, Counsel testified to a damaging video of a deceased State's witness that the court was allowing into evidence against counsel's objection. (PCR Tr. 40). Counsel testified that in this video, the witness claims to have been at the house and that Applicant was the "enforcer" and the "shooter." (PCR Tr. 40).

Counsel further testified that he provided the negatives and the positives regarding the State's case. (PCR Tr. 41). Counsel provided that while the evidence was circumstantial, their defense would be on his ability to impeach the witnesses. (PCR Tr. 41). Counsel also testified that "in the tenth hour," the State produced two inmates who were going to testify that Applicant had conversations with them and told them all about the events that took place. (PCR Tr. 42).

3. Discussion

"[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 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; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test 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). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37 (1970); cf. United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (“It is . . . well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” (citing Brady, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may “only attack the voluntary and intelligent character of a 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) (citing Hill, 474 U.S. 52).

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 v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised 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, the 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).

This 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. The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Moreover, the information conveyed at the plea hearing cured any possible deficiency or error by counsel.

Because a guilty plea is a “solemn, judicial admission of the truth of the charges against an individual . . . , 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, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456,

469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). This Court finds Applicant failed to “present[] [any] valid reasons why he should be allowed to depart from the truth of [the] statements” made during the plea proceeding. Dalton, 376 S.C. at 137–38, 654 S.E.2d 874; see Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975) (finding that the accuracy and truth of an accused’s statements at a guilty plea proceeding are “conclusively” established unless he makes some reasonable allegation why this should not be so), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967; cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’ ”). Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant’s plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant’s request for relief by way of this allegation is DENIED.

VI. CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

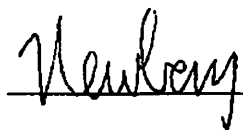
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 23rd day of March, 2022.



 EUGENE C. GRIFFITH, JR.
 Presiding Judge
 Twelfth Judicial Circuit


 _____, South Carolina

2022 MAR 30 AM 10:41
 DORIS POLOS O'HARA
 SCJP 863
 REC'D - CIVIL DIV. 12

FILED

FORM 4
FILEDSTATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP21012492022 MAR 30 AM 11:15
South Carolina State Of

DORIS POULOS O'HARA

PLAINTIFF(S)

CCCCP & GOS DEFENDANT(S)

FLORENCE COUNTY, SC

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

3/30/2022

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on March 30, 2022, and a copy mailed first class or placed in the appropriate attorney's box on March 31, 2022, to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

Jonathan D Waller 210 Newberry Street, NW Aiken, SC
29801

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Roger W Tilton

Florence County Sheriff

Ryan White

ARREST WARRANT NUMBER

2018GS2101976

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **2018-GS-21-01976**

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2018

THE STATE

vs.

EDWIN EVANDER SMALL

Indictment for

**ACCESSORY AFTER THE FACT
TO MURDER**

2018 OCT -2 PM 1:06
DOCKET # 2018 GS 2101976
FILED

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

ACCESSORY AFTER THE FACT TO MURDER

At a Court of General Sessions, convened on OCTOBER 02, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ACCESSORY AFTER THE FACT TO MURDER

CDR: 2413

16-01-0055

That EDWIN EVANDER SMALL did in Florence County on or about September 24, 2016, by aiding and abetting and rendering assistance after the fact to a felon, namely Briheem Anthony Williams, who on or about September 24, 2016 committed the felony of the Murder of one Bobby Evans, Jr.; in violation of Section 16-01-0055, S.C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
Edwin Evander Small

AKA: _____
 Race: Black Sex: M Age: 31
 DOB: [REDACTED] SS#: [REDACTED]
 Address: 550 W Darlington St Unit 206
 City, State, Zip: Florence, SC 29501-2477
 DL#: [REDACTED] SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Accessory / Accessory after the fact to Felony A, B, C or Murder

in violation of § 16-01-0055 of the S.C. Code of Laws, bearing CDR Code # 2413

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. ES (defendant's initials)

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

ATTEST: [Signature] 162584 Edwin Small [Signature] 78752
 Solicitor SC Bar# 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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ 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.

☐ 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 PTUP _____

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

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 550

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk E. Rasm

Court Reporter: K Smith

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

113

INDICTMENT/CASE#: 2018-GS-21-01976A/W#: 2018GS2101976Date of Offense: 9/24/2016S.C. Code § : 16-01-0055CDR Code #: 2413

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS
(0-15)

L, 10 yrs

☐ 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 [Signature]

Judge Code: 2141

Sentence Date: 10-2-2018

WITNESSES

Roger W Tilton Florence County Sheriff

DOCKET NO. 2017-GS-21-01585

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

November TERM 2017

THE STATE

vs.

EDWIN EVANDER SMALL

Nolte pressed
pursuant to
plea. 4-23-18



John W. Holt, IV

ARREST WARRANT NUMBER

2016A2110200967 2016A2110200976
2016A2110200978

ACTION OF GRAND JURY

TRUE BILL

Hildi Deaso

Foreperson of Grand Jury

Date: 11-21-17

VERDICT

Foreperson of Petit Jury

Date:

Indictment for
ATTEMPTED MURDER
ACCESSORY BEFORE THE FACT TO A
FELONY
KIDNAPPING

2017 NOV 21 PM 2:27
DORIS POULOS OLMSTEAD
CCCP & CS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ATTEMPTED MURDER
 ACCESSORY BEFORE THE FACT TO A FELONY
 KIDNAPPING

At a Court of General Sessions, convened on November 21 2017 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Edwin Evander Small did in Florence County on or about September 24 2016 with intent to kill Briheem Williams, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

COUNT TWO- ACCESSORY BEFORE THE FACT TO A FELONY

CDR: 0002 16-01-0040, 0050

That Edwin Evander Small did in Florence County on or about September 24, 2016, advised or agreed with or urged or hired or in some way aided, counseled or encouraged the principal felon to commit the felony of Murder, but was not present when the crime was committed, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

COUNT THREE - KIDNAPPING

CDR: 0095 16-03-0910

That Edwin Evander Small did in Florence County on or about September 24, 2016, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Briheem Williams, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR