

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Michael G. Nettles, Circuit Court Judge

TEVIN HART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001379

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
State of South Carolina,	)	CASE NO. 2012-GS-18-00714
	)	2012-GS-18-00715
	)	2012-GS-18-00716
	)	2012-GS-18-00717
	)	2012-GS-18-00718
	)	2012-GS-18-00719
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
Tevin Hart,	)	
	)	
DEFENDANT.	)	

October 7, 2013

St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy

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

Don Sorenson, Esquire
for the Solicitor's Office

Lisa Gay, Esquire
for the Defendant

I N D E X

HEARING -- 3

PLEA -- 4

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 18

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1 MR. SORENSON: May it please the court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SORENSON: Before you is Tevin Shaquille Hart,
4 H-A-R-T. He is represented by Ms. Lisa Gay.

5 Mr. Hart, Your Honor, is entering guilty pleas on six
6 indictments. They are all 2012-GS-18; they have all
7 been true billed: 714 for one count of burglary in the
8 first-degree, 719 for one count of armed robbery; and then
9 715, 716, 717, and 718 which are four counts of kidnapping.

10 Your Honor, what we are going to ask Your Honor to do
11 is just to accept his plea today and then withhold
12 sentencing until a later date.

13 (WHEREUPON, the witness was duly sworn.)

14 MS. GAY: His aunt wanted to stand by him if that was
15 okay.

16 THE COURT: That is fine. Ms. Gay, you represent the
17 defendant in this matter?

18 MS. GAY: I do.

19 THE COURT: And have you explained to your client the
20 charges contained in the indictments, the possible
21 punishment and his constitutional rights?

22 MS. GAY: Ad nauseam, Your Honor.

23 THE COURT: All right, sir.

24 MS. GAY: Much, much. This was a potential trial. So,
25 yes, ma'am.

1 THE COURT: In your opinion does your client understand
2 the charge, the punishment, and his rights?

3 MS. GAY: Yes.

4 THE COURT: And how does your client wish to plead?

5 MS. GAY: Guilty.

6 THE COURT: Do you agree with your client's decision to
7 plead guilty?

8 MS. GAY: Yes.

9 THE COURT: From your investigation of the facts and
10 circumstances of the case do you feel the State could
11 produce sufficient evidence to convince a jury of your
12 client's guilt beyond a reasonable doubt and that if your
13 client were to stand trial his conviction would be probable?

14 MS. GAY: Yes.

15 THE COURT: All right. Mr. Hart, I am going to ask you
16 certain questions. And make sure that you complete, answer
17 audibly, so the court reporter can take down what you are
18 saying.

19 MR. HART: Yes, ma'am.

20 **BY THE COURT OF MR. HART:**

21 Q. How old are you, sir?

22 A. Nineteen.

23 Q. And how far did you go in school?

24 A. Eleventh grade.

25 Q. Did you get your GED?

1 A. No, ma'am.

2 Q. Do you have a job?

3 A. No, ma'am.

4 Q. Are you married?

5 A. No, ma'am.

6 Q. Any children?

7 A. No, ma'am.

8 Q. Have you ever been treated for the abuse of alcohol,
9 drugs, or any mental illness?

10 A. No, ma'am.

11 Q. Within the last 24 hours have you taken any medication,
12 drugs or alcohol that would prevent you from understanding
13 what you are doing here today?

14 A. No, ma'am.

15 Q. Are you aware of any physical, emotional or nervous
16 problem that might keep you from understanding what you are
17 doing here today?

18 A. No, ma'am.

19 Q. And you are pleading guilty to several different
20 offenses which I will go through here with you. Burglary in
21 the first-degree, this charge carries a potential penalty of
22 15 years to life in prison; do you understand that?

23 A. Yes, ma'am.

24 Q. Armed robbery carries 10 to 30 years; do you understand
25 that that is the potential punishment?

1 A. Yes, ma'am.

2 Q. Kidnapping charge you have four of these charges which
3 carry up to thirty years each; do you understand that?

4 A. Yes, ma'am.

5 Q. So you understand the potential nature that quite
6 frankly obviously you could be looking at a life sentence if
7 you are convicted of these charges?

8 A. Yes, ma'am.

9 Q. And you have gone through that with your attorney?

10 A. Yes, ma'am.

11 THE COURT: All right. Solicitor, please tell me the
12 facts.

13 MR. SORENSON: Thank you. May it please the court,
14 Your Honor. I start off just kind of -- I don't think there
15 is any real need for you to hear from them today because it
16 would be more towards sentencing. But the victim in this
17 case is Ms. Laura Smith. She is in the second row all the
18 way to the left. Additionally her husband and sister-in-law
19 are in the courtroom along with Sergeant Peters with the
20 Dorchester County Sheriff's Office.

21 Your Honor, this incident occurred in the early morning
22 hours of March the 29th of last year of 2012. Laura had
23 gone to bed that night with her three small children;
24 **Minor 1**, **Minor 3**, and **Minor 2**. They were two, ten, and five at
25 the time in the order I just gave them.

1 Additionally, she was pregnant at the time with her
2 what is now her fourth child. Her husband was working night
3 shift and was at work. She had gone to bed. I think had
4 just gotten -- gotten home from being in the hospital due to
5 some issues she was having with her pregnancy. But gone to
6 bed that night kind of mid evening and was awoken about 4:15
7 or so in the morning by her dog growling. The dog was in
8 the bed with her and had hopped down and was growling.

9 At that point in time she had looked at her phone
10 thinking possibly that it was her husband. Realized it was
11 too early for him to be home from work yet but had got up
12 and was going to the door when she observed her dog
13 basically going out in the hallway growling and saw that her
14 laundry room door which is across from her bedroom was
15 closed and it wasn't that way when she went to bed.

16 Almost immediately after that the door came flying
17 open. She observed initially an individual with face
18 covered with a gun. She retreated with her dog back into --
19 pulling her dog back into her bedroom, slammed her door and
20 attempted to call 911 when her door got kicked in.

21 An individual came in with a bandanna over his face,
22 snatched her phone away from her and forced her to the
23 ground at gunpoint.

24 She ultimately was taken out into the living room area
25 and made basically to put the dog out in the backyard.

1 It was during the course of this initially that she
2 observed that there were two people in her home, both armed,
3 both with their faces covered.

4 While going down the hallway a third individual came
5 out of the bathroom area. I would note that from her
6 description that person was shorter than her. The other two
7 individuals were closer to her height. She is about 5'10,
8 5'11.

9 She ultimately was held at gunpoint then out in her
10 living room area. And she had her child, her daughter
11 **Minor 1** who was the youngest of the three kids, who was two,
12 she was actually in the bedroom with her when this happened
13 initially and had her with her the entire time out in the
14 living room.

15 During the course of this she indicates that one of the
16 individuals went into her son's room. She could hear her
17 two sons in there basically calling out for help.

18 They ultimately ended up, Your Honor, taking it was a
19 gun safe, a jewelry box that had a lot of old jewelry of her
20 grandmother in it, along with a tablet, her cell phone, and
21 basically just kind of dumped her purse out on the floor.
22 And then I think they took a diaper bag or something of that
23 nature also.

24 The three of them ultimately ended up fleeing at that
25 point in time. She ended up running next to her neighbor,

1 woke them up.

2 Police responded out there. Got - you know, the
3 description at that point in time was basically just three
4 black males. All three of them were armed; one of them with
5 a long gun, the other two with pistols or handguns. She
6 didn't know what way they had left on foot. Never heard a
7 vehicle take off or anything of that nature.

8 A short time later Detective Melendez - who was I
9 believe he was a deputy at the time but now he was an
10 investigator - was over in the Haven Oaks which is an
11 apartment complex right next to -- this happened -- I am not
12 sure if I had indicated; it was [REDACTED] Apache Drive which is in
13 the Indian Springs Subdivision.

14 They were out patrolling that area when Deputy Melendez
15 came upon it was a Chevy trailblazer that had several
16 individuals kind of standing around the outside of it. As
17 he attempted to approach them they all ended up scattering,
18 taking off running.

19 A subsequent -- nobody was caught at that point in
20 time. They went back and ultimately looked and just looking
21 in the vehicle you could see a blue bandanna in the back
22 seat.

23 Additionally on the floorboard in the back seat was a
24 small, little pink -- pink and black handgun which matched
25 the description of one of the guns. There were ultimately

1 there were two weapons in the gun safe that were taken.
2 That matched upon -- they were initially looking at the
3 description of one of those guns and ultimately upon later
4 on securing it from the vehicle was one of the guns that was
5 taken during the incident.

6 That vehicle belonged to a young lady by the name of
7 Dominique Davis who lived in Haven Oaks. She initially gave
8 a statement to law enforcement basically making up a name of
9 an individual that allegedly had taken -- had borrowed her
10 vehicle.

11 She subsequent down the road ended up giving a
12 statement that ultimately would implicate this defendant and
13 the two codefendants, a Martin Young, and Mr. Manigault who
14 was before you a few minutes ago, as basically all kind of
15 hanging out in her apartment and having access to having
16 borrowed her vehicle that evening.

17 A subsequent search of that vehicle not only recovered
18 the bandanna, recovered the gun, also recovered a kind of a
19 little half mask which matched the description of one of the
20 individuals, a pair of gloves, and also a cell phone which
21 turned out to be Mr. Hart's cell phone.

22 That stuff was, all the clothing items, were all sent
23 off to State Law Enforcement Division and we ultimately
24 ended up getting DNA off of the bandanna in the back seat
25 which matched Mr. Hart and DNA off of the gloves and the

1 little half mask which matched the codefendant Martin Young.

2 The third bandanna that was allegedly worn by Mr.
3 Manigault was not in the vehicle. There were no other
4 clothing items found.

5 Ultimately, Your Honor, about a month later Mr. -- Mr.
6 Young initially had given a statement not having any
7 knowledge of it. Ultimately they served him with warrants
8 at that point in time and he ultimately gave a statement
9 implicating himself, Mr. Manigault and Mr. Hart as being
10 involved.

11 Basically that it was Mr. Young and Mr. Manigault that
12 had planned to go rob -- they talked about going to rob a
13 drug dealer that they had had some issues with that lived --
14 ultimately turns out lived on Apache Drive two doors down
15 from the victim's home and that when they got in the house
16 they basically realized they were in the wrong house when
17 they started seeing pictures and stuff of that nature on the
18 wall inside the house.

19 But he also implicated Mr. Hart. Mr. Hart was arrested
20 the following day or so. Initially told law-enforcement he
21 didn't know what -- what -- have any idea what they were
22 talking about.

23 They ultimately allowed him to talk to his mother for a
24 short period of time with law-enforcement present and
25 ultimately he ended up giving a statement yet again

1 admitting to his involvement in this, being armed. Actually
2 indicated that he was the one that had the assault rifle in
3 the home and also implicating his other two codefendants.

4 I believe that would basically be the facts as to Mr.
5 Hart. And obviously a little more kind of detail will
6 probably come out down the road if you do hear the trial.
7 But I think that is the basis of the facts.

8 And four kidnappings would be for Laura and her three
9 children that were in the home.

10 THE COURT: All right, sir. Thank you, Mr. Sorenson.

11 **BY THE COURT OF MR. HART:**

12 Q. Mr. Hart, do you agree with the facts as stated by the
13 State?

14 A. Yes, ma'am.

15 Q. And are you in fact guilty of these charges?

16 A. Yes, ma'am.

17 Q. And do you understand -- you have discussed with your
18 attorney ---

19 THE COURT: Ms. Gay, I will ask you. You have
20 discussed with your client the nature of these charges
21 regarding them all being violent and most serious offences?

22 MS. GAY: Yes.

23 THE COURT: And you have discussed with him the
24 consequences of that?

25 MS. GAY: Yes.

1 THE COURT: And in your opinion does he understand
2 that?

3 MS. GAY: Yes.

4 **BY THE COURT OF MR. HART:**

5 Q. And is that correct, Mr. Hart, have you been advised
6 that these charges are violent and most serious?

7 A. Yes, ma'am.

8 Q. And you understand the consequences of such?

9 A. Yes, ma'am.

10 Q. Do you understand that by pleading guilty you are
11 waiving certain constitutional rights?

12 A. Yes, ma'am.

13 Q. Such as the right to a trial by jury?

14 A. Yes, ma'am.

15 Q. And basically you are waiving the right to a trial by a
16 jury in that the State would have to produce sufficient
17 evidence to find you guilty beyond a reasonable doubt.

18 A. Yes, ma'am.

19 Q. Do you understand that?

20 A. Yes, ma'am.

21 Q. And that the State would presume that you are innocent,
22 you are also waiving the right to have any witnesses on your
23 own behalf and waiving the right to cross-examine them; you
24 are also waiving the right to remain silent and I would
25 instruct the jury that you -- they could not use it against

1 you, that you would remain silent?

2 A. Yes, ma'am.

3 Q. And also if you made any incriminating statements you
4 would have the right to challenge those statements; do you
5 understand that?

6 A. Yes, ma'am.

7 Q. By pleading guilty you are waiving all of these rights.

8 THE COURT: And the plea negotiations are to withhold
9 sentencing upon the trial of this case; is that correct?

10 MR. SORENSON: Yes, Your Honor. And just to put on the
11 record also, I mean just there have been no negotiations
12 regarding any sentence. That would be up to Your Honor's
13 discretion at the appropriate time.

14 THE COURT: All right, sir.

15 And Ms. Gay, is this the correct understanding of your
16 agreement?

17 MS. GAY: Yes. I would also that -- I don't know if it
18 is reflected on the sentencing sheet at this point or not,
19 but this is not a kidnapping that would result with the
20 registry.

21 THE COURT: Okay.

22 MS. GAY: You know, I don't know how that is designated
23 whether it is an other section or what; but it does not --
24 it is not about any kind of assault -- I mean even though
25 there is a female involved it would not qualify him for any

1 type of registry upon release if he ever were to be
2 released.

3 THE COURT: And certainly I think that would be
4 indicated through the facts and the testimony at the trial
5 and that the court would make a finding of that fact at
6 sentencing.

7 MS. GAY: Okay.

8 THE COURT: All right.

9 **BY THE COURT OF MR. HART:**

10 Q. And Mr. Hart, are you satisfied with how your lawyer
11 has advised you and represented you in this case?

12 A. Yes, ma'am.

13 Q. Have you talked with her as often and for as long as
14 you feel necessary for her to properly represent you?

15 A. Yes, ma'am.

16 Q. Do you need any more time to talk to your lawyer?

17 A. No, ma'am.

18 Q. Have you understood your talks with your lawyer?

19 A. Yes, ma'am.

20 Q. Has she done everything for you that you feel she could
21 or should have done?

22 A. Yes, ma'am.

23 Q. Are you completely satisfied with her services?

24 A. Yes, ma'am.

25 Q. Has anyone promised you anything or held out any hope

1 of a reward to get you to plead guilty?

2 A. No, ma'am.

3 Q. Has anyone threatened you or used force to get you to
4 plead guilty?

5 A. No, ma'am.

6 Q. Has anyone mistreated you in any way, the police
7 officers, solicitor's office, anyone?

8 A. No, ma'am.

9 Q. And have you had enough time to make up your mind as to
10 whether or not you want to plead guilty?

11 A. Yes, ma'am.

12 Q. You are pleading guilty of your own free will?

13 A. Yes, ma'am.

14 Q. Have you understood my questions?

15 A. Yes, ma'am.

16 Q. Is there anything that you would like to ask me about
17 what we have just been over?

18 A. No, ma'am.

19 Q. Has anyone suggested to you how to answer my questions?

20 A. No, ma'am.

21 Q. All right, sir. Have you been absolutely truthful in
22 each and every answer you have given to the court?

23 A. Yes, ma'am.

24 Q. Do you understand that upon sentencing you can appeal
25 the guilty plea and the sentence of the court but you must

1 do so within 10 days after that time and if you can't afford
2 an attorney one will be appointed at no cost to you?

3 A. Yes, ma'am.

4 THE COURT: Solicitor, I find that there is a
5 substantial factual basis for the plea and that the
6 defendant's decision to plead guilty is freely, voluntarily,
7 knowingly and intelligently made and that the defendant has
8 had the advice and counsel of an attorney with whom he is
9 satisfied. So I will withhold sentencing and accept your
10 plea.

11 MS. GAY: Thank you, Your Honor.

12 THE COURT: Thank you. And I will mark on the sentence
13 sheet that I will retain jurisdiction.

14 MR. SORENSON: Okay. Thank you.

15 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in General Sessions for Dorchester County, South Carolina, on October 7, 2013.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: January 29, 2015

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF DORCHESTER 2012-GS-18-00714-00719

3

4 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
5)
6 VS.)
7)
8) JANUARY 23, 2014
9 TEVIN HART) ST. GEORGE, SC

10

B E F O R E:

11

HONORABLE MAITÉ MURPHY

12

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

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Attorney for the Defendant

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Ruth L. Mott, RPR, CRR
Official Court Reporter

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1 MR. SORENSON: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SORENSON: Before you is Tevin Hart, here with his
4 lawyer, Lisa Gay. We're here for purpose of a sentencing
5 hearing, Your Honor. Mr. Hart plead guilty back on October
6 7th of 2013 on indictments 2012-GS-18-714 through 719, one
7 count of burglary in the first degree, one count of armed
8 robbery and four counts of kidnapping.

9 THE COURT: Thank you.

10 MS. GAY: Your Honor, I'd like to put on the record the
11 stuff that we had discussed this morning, or today earlier
12 about this situation. Mr. Hart is 20 years old. This
13 incident happened when he was 18, and his mother, whose name
14 is Rosemary Mazyck, is very, very involved in his life and
15 has been integrally involved in hiring me for him and has
16 every -- has been my point of contact for his entire case. I
17 notified her earlier this week of this sentencing time today,
18 23rd of January at 2:00. Mr. Sorenson notified her on
19 Monday. She called him and talked to him about the date.
20 Unfortunately, last night, at approximately 7:30 at night
21 some DSS problem ensued, and she became a defendant in a DSS
22 abuse and neglect case as of last evening. As of today she
23 was told sometime -- sometime between 11:00 and 12:00 that
24 she was required to appear as a defendant, you know,
25 subpoenaed defendant, in the DSS action in the family court

1 in Summerville today at 2:00, January 23rd. I then contacted
2 Mr. Sorenson. I contacted your office. I contacted Judge --
3 I can't remember her name, starts with an M, who's the Judge
4 in Dorchester County Family Court. I spoke to their office.
5 They took the position that she was in fact required to
6 appear in their Court because she was the defendant. I
7 believe it's a violation of my client's due process rights to
8 do this sentencing hearing without her being able to come.
9 She is an important mitigating witness for him. She is the
10 most important person in his life. We, in my presentation
11 that I prepared to do today for his sentencing and in my
12 conversations with him, she is integral I believe to
13 indicating -- to setting forth what we need to put forth
14 today. I can't do what she would be able to do. It's her
15 son. It's his mother. She was prepared to -- she didn't
16 have enough time today to give me anything in writing or any
17 type of supplemental way to present her position. There are
18 other family members here for Mr. Hart, but they're not his
19 mom; and I believe, as a defendant, having a due process
20 right to justice and the process, that he's entitled to have
21 his mother present at sentencing. And I would ask that the
22 sentencing be continued.

23 THE COURT: Ms. Gay, I'm going to respectfully deny your
24 motion. Mr. Hart is certainly an adult, and he pled as an
25 adult, and I don't see anything that gives him some due

1 process right to have his mother at sentencing. I'll be
2 happy to hear from you regarding any mitigation witnesses
3 that you may have. You've obviously had a close relationship
4 with her, and although you cannot portray it exactly like his
5 mother, maybe you'll be able to portray how she feels about
6 mitigation regarding her son. I'll be happy to place
7 whatever you feel is necessary on the record regarding what
8 you may have relayed to the Court, but this will not be
9 continued based upon his mother not being able to be present.

10 MS. GAY: I would just add, Your Honor, she's not
11 capable of being present. This is not willful on her part.
12 She's a defendant in another action, and that Court has
13 specifically told me over the phone that she can't leave that
14 building; and so this is not a situation where she chose not
15 to come or had -- even that she's sick. She's physically
16 incapable of leaving the Dorchester County Family Court.

17 THE COURT: I certainly understand that. I understand
18 that that's the family court's position and Judge McLin's
19 position, and they're right. If they subpoenaed her to be a
20 defendant there for an emergency protective custody case,
21 that's beyond my purview. I'm not taking the position that
22 she's willfully not here. I'm taking the position that I'm
23 allowing you to say, she would say this in mitigation, or
24 whatever you may want to put on the record regarding
25 mitigation, and taking the position that she would be here if

1 she could capably be here. I certainly recognize that a
2 parent would want to be here in a sentencing hearing, but I
3 don't think it's just cause to continue this proceeding.

4 MS. GAY: Yes, ma'am.

5 THE COURT: Solicitor, you may proceed on the State's
6 position.

7 MR. SORENSON: Thank you, Your Honor, may it please the
8 Court. Mr. Hart, I'll start off initially by saying he does
9 not have any prior record. I think you did hear that during
10 his testimony, when he testified in his codefendant's trial.
11 As I told you yesterday with Mr. Young, Mr. Hart -- I guess I
12 approached Ms. Gay several months ago now about whether --
13 what Mr. Hart wanted to do. After kind of a little bit of
14 back and forth ultimately came to the decision that he was
15 going to be willing to plead guilty to these charges and
16 agree to meet with me and then testify against Mr. Manigault.
17 I have had opportunity, as I had with Mr. Young, to meet with
18 Mr. Hart on somewhere around three occasions to actually sit
19 and kind of go over his testimony with him. Possibly one or
20 two other times just briefly here in the Courthouse.

21 As with Mr. Young, Mr. Hart has been for the most part
22 very cooperative with me. Specifically, the last time I met
23 with him, I really felt that that was probably the -- leading
24 up to the trial was probably about the most cooperative he
25 had been at that point in time. But as Your Honor heard, at

1 no point in time did we ever come to any kind of
2 recommendation; and ultimately he knew, and it was put on the
3 record at the time of his plea, that it was a straight-up
4 plea and ultimately, as was told to the jury during his
5 testimony, that his sentencing would be up to Your Honor.
6 That's obviously still the position that we're in at this
7 point in time. I will say I've had a chance to talk to Ms.
8 Smith here yesterday for Mr. Young's sentencing. She was
9 intending on coming today, had some issues come up with two
10 of her children, one of them some behavioral stuff that I
11 think has kind of stemmed basically out of this incident
12 still; and another medical issue that came up with her
13 daughter that she had to ultimately end up dealing with but
14 did know of this hearing and told us -- she's at this point
15 in time ready for this all to be over with, so she did not
16 wish it to be delayed because of her being unable to be here.
17 But as she told you yesterday with Mr. Young, wanted me to
18 basically just kind of relay again at this hearing just kind
19 of the effect that this has had on her family, not only her
20 but her small children. You know, she's got a ten-year-old
21 that she's dealing with some behavioral issues that she
22 didn't have before this all happened; and the fact that, I
23 think as she told you yesterday, that this has forever
24 changed basically her whole family dynamics. Other than
25 that, I mean, obviously as was put forth to the jury in Mr.

1 Manigault's trial, sentencing is up to Your Honor. As I
2 said, he does not have a prior record. That is something
3 that obviously is a little different than his codefendant,
4 Mr. Young.

5 THE COURT: Ms. Gay, I'll be happy to hear from you.

6 MS. GAY: Thank you, Your Honor. As I said, Mr. Hart is
7 20 years old. He didn't have a high school diploma. His
8 testimony at trial would -- kind of described a little bit
9 about what was happening in his life. He had been having
10 some basic adjustment issues, like he wasn't getting along
11 very well with his mother; so he went down and started living
12 with this woman who was a friend, not any type of
13 relationship with him or anything, just a person who took him
14 in and was helpful to him. During the course of living with
15 her and hanging out in that household, he met these other men
16 that were involved in other criminal activity. We -- I
17 firmly believe that the man who went to trial was guilty. I
18 believe he also has been guilty of doing other awful things
19 in and around the Colleton and Dorchester County area. He --
20 my client was a young boy at that time, as I said, barely 18
21 years old, and he was, I guess being groomed is maybe the
22 best way to put it, by this man who was taking him and kind
23 of saying, hey come with me, come with me. I think they, in
24 some of the police reports and the way it was described is he
25 called him little brother or something like that. He sort

1 of, you know, kind of adopted him or kind of wanted to get
2 him involved in what was going on.

3 On the night in question my client -- he was there. He
4 participated. You heard him testify. But he did not know
5 what they were going to do. He was told, get up, let's go.
6 He gets up and goes because the older defendant -- I mean, I
7 think the codefendant you sentenced yesterday was now 26 or
8 27, and then the other man that went to trial was older, mid
9 20s as well. He's the little bro who's just being told to
10 come with them. Now, obviously we don't know what would have
11 happened if Mr. Hart had not been arrested in this incident.
12 I've had many conversations with him and his mother about the
13 fact that whatever else could have occurred in life, you
14 know, it was a good thing that Mr. Hart had been arrested
15 this night and that this relationship or this pattern was
16 ended. Mr. Hart believed firmly that the man he testified
17 against was going to hurt his family. There was -- and
18 that's one of the things that his mother would tell you, that
19 genuinely he had fear for her and for other family members
20 that if he did in fact testify, that something would happen
21 to her. As Mr. Sorenson said, there was many conversations
22 back and forth to try to figure out what Mr. Hart's intention
23 was going to be in terms of testifying, and also what he was
24 saying along the way because I don't know how much of it came
25 out at the trial, but there was a document that was generated

1 by someone else in the jail that Mr. Hart was asked to sign
2 that was not helpful to the State that he signed because he
3 felt pressure from inside the jail; and he said that people
4 would come into the jail and say things to him, like people
5 off the street just had come in for a disorderly or some kind
6 of small arrest that they were sort of passing through the
7 jail and back out, and he was getting messages sent through
8 the jail about how much of a threat it was going to be to him
9 and his family if he chose to testify. To this day his
10 mother has -- we talked with Mr. Sorenson about that, and she
11 would tell you that to this day, even now, as he, you know,
12 has in fact testified in this trial, that they're afraid.
13 You know, she's afraid that something might happen to her,
14 that something might happen to him, and that it was -- you
15 know, he was very, very concerned about her. And they are
16 very close, and she would tell you -- I mean, I can't cry,
17 obviously, over this situation because it's not my child; but
18 I told Mr. Sorenson yesterday that he should have EMS
19 personnel here if Ms. Mazyck was going to be here because she
20 might drop out. I mean, she's just extremely emotional about
21 the case. She's been extremely emotional about all of it
22 ever since. I mean, she was terrified for him to testify.
23 She has -- we've had just any number of conversations. He
24 had to talk with her and say being, you know, it's going to
25 be okay. I've decided to do this. And she's just fearful

1 for him. He has other family members that are here on his
2 behalf, some aunts and uncles and some cousins, different
3 people that have come to support him. At one point, and I
4 know this because I talked to Mr. Sorenson and the detective
5 in this case, because of his age and lack of record -- I mean
6 they can't recommend the minimum sentence, but I always
7 talked to him about the possibility of ending up in the low
8 end or very low end of the sentencing scale because of how
9 scared he was to come in and testify and what his -- you
10 know, the fact that he has no record, and he was a kid at the
11 time. But I will let the other family members talk on his
12 behalf, Your Honor.

13 THE COURT: All right. I'll be happy to hear from them.

14 MS. GAY: If you'd like to come forward and identify
15 yourself.

16 FAMILY MEMBER: Hi. My name is Laverne Glover. I'm the
17 aunt of Tevin Hart. I've got my husband with me, Roosevelt
18 Glover, but he couldn't take it. He's in a wheelchair. He
19 had to go outside. We practically raised Tevin from a little
20 boy. We know he made a mistake. We want to say also sorry
21 for the family, you know, for what he did; and if you could
22 just, please, have a little mercy on him today. He made a
23 bad mistake, and I know he didn't mean to do all that, what
24 he had did, but we stood by his side from day one. Like I
25 said, his mama, she's on dialysis. My husband on dialysis,

1 and this kind of like a big blow to us today. And I know
2 that ain't no excuse. He did wrong, but if you can just
3 please take all that into consideration and just be lenient
4 on him.

5 THE COURT: Thank you, Ms. Glover. Thank you for being
6 here.

7 MS. GLOVER: Thank you.

8 MS. GAY: Anybody else? Any other aunt, cousin, friend?

9 FAMILY MEMBER: I'm his auntie, and ever since we was
10 family we never did have no problem with him. He's a good
11 boy. He really is a good boy.

12 THE COURT: Yes, ma'am, thank you.

13 FAMILY MEMBER: He just happened to hang with the wrong
14 crowd.

15 MS. GAY: Your Honor, he's written a letter that I can
16 read. "First I would like to start off by saying that I'm
17 truly sorry for the pain and the heartache that I've caused
18 for the victim and her family. Not a day goes by that I
19 don't think about the mistake that I've made and how the time
20 has come that I have to face the consequences of my actions
21 and ask -- and I ask the victim if she can forgive me with
22 the goodness of her heart and so that I am not a bad person,
23 not trying to cover up for what I did, but I have" -- I can't
24 read that.

25 Do you want to read the rest? You've got to read loud.

1 THE DEFENDANT: I believe in my background shows that I
2 am not a bad person at all. I just picked the wrong friends
3 to call friends and ended up in a bad situation that I never
4 thought I'd be in. The nature of my charges, people put a
5 face on me of being a bad guy, but I have a big heart and
6 wouldn't wish harm on anybody. I know that I have caused a
7 lot of time, tears and money in the 20 months that I've been
8 locked up, and I ask that if the victim -- ask the victim, if
9 the victim would believe my words, I'm trying to tell her
10 today, I'm not a good speaker, you know what I'm saying, but
11 I would ask her just if she could please forgive me for the
12 pain and heartache I've caused on her part. And I also ask
13 that Mr. Sorenson, the victim, and you of course, Your Honor,
14 if you would show leniency on me. I really am a good person.

15 MS. GAY: I think, in terms of the facts, Your Honor, I
16 know you remember, he did all the things that he did and
17 basically went in the bathroom and was in the back of the
18 bathroom when the other gentlemen came out and said, you
19 know, stay here with the victim, you know, stay here with
20 her; and that's what he did, and he openly admitted that.
21 One of the things that was interesting about his testimony
22 was he admitted to having the biggest gun, even though she
23 believed and her testimony was that the person with the
24 biggest gun was the person who came out of her bedroom, but
25 that wasn't my client. He was, as Mr. Sorenson said, he was

1 the shorter gentleman, shorter man, who was in the bathroom,
2 who was I think completely overwhelmed by the circumstances.
3 Doesn't make any of it right. Doesn't make any of it
4 tolerable in a decent society. It just is something that we
5 would ask you to please consider allowing him to have some
6 kind of future or some kind of life after he serves time for
7 this, Your Honor. He's just a little guy. He was 18 years
8 old.

9 THE COURT: Anything further from anyone?

10 (No response.)

11 THE COURT: Mr. Hart, these are difficult cases to
12 sentence people on, especially people who have family that
13 obviously loves and supports them, and they state that you've
14 exemplified some good virtues; however, you didn't exercise
15 those on that night.

16 THE DEFENDANT: No, I didn't.

17 THE COURT: And whether or not this victim forgives you
18 or not, she's never going to forget. Those children are
19 never going to forget --

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: -- what you did to them. To hold a pregnant
22 woman at gunpoint with her two children present, not knowing
23 if they're going to be murdered, your attorney's right, that
24 is not tolerable in our society. It's not as if you went not
25 knowing that there were guns present. You were in the home

1 that didn't belong to you with an AK-47.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And I understand that you don't have a prior
4 criminal record, but those are the types of cases that our
5 State can just not tolerate and be lenient upon. It's
6 something that you had an opportunity to back away from.
7 Your codefendant clearly testified that you all were in the
8 wrong house. What's also troubling is the fact that, after
9 you all stole this gun and did this to this poor family, you
10 were going back out, armed again. I have no idea what you
11 planned on doing then, but I'm glad you got stopped.

12 On Indictment 2012-GS-18-0715 for kidnapping, you're
13 hereby committed to the State Department of Corrections for
14 30 years. On Indictment 2012-GS-18-0716 for kidnapping
15 you're hereby committed to the State Department of
16 Corrections for 30 years. On 2012-GS-18-0717 for kidnapping
17 you're hereby committed to the State Department of
18 Corrections for a period of 30 years. On Indictment
19 2012-GS-18-0718 for kidnapping you're hereby committed to the
20 State Department of Corrections for 30 years. On Indictment
21 2012-GS-18-0719 for armed robbery you're hereby committed to
22 the State Department of Corrections for 30 years. And on
23 indictment 2012-GS-18-0714 for burglary in the first degree
24 you're hereby committed to the State Department of
25 Corrections for a period of 40 years. These are all

1 concurrent to each other.

2 MS. GAY: How many?

3 THE COURT: 40.

4 MR. SORENSON: Your Honor, could you make a notation as
5 on the kidnapping indictments that it's not -- sex offender
6 registry is not --

7 THE COURT: Yes, I will.

8 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 23rd of January, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 February 18, 2015

16

17 *Ruth L. Mott*

18 Official Court Reporter

19

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FORM 5

STATE OF SOUTH CAROLINA

County of DorchesterFILED - RECORDED COPY
IN THE COURT OF COMMON PLEAS
2016 NOV 21 PM 3:32 PM 3:342016-CP-18-2182Kevin S Hart 358579
Full name and prison number (if any) of ApplicantCHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY

11-21-16Cheryl Graham
Clerk of Court
Dorchester County

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Dorchester County Detention Center
2. Name and location of Court which imposed sentence General Session Court
5200 E. Jim Billen BLW
3. Name(s) of co-defendant(s) (if any) Martin Yang
Joshua Manigault
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012 - GS - 18 - 0715, 2012 - GS - 18 - 0716,

- (b) 2012 - GS - 18 - 0717 , 2012 - GS - 18 - 0718
- (c) 2012 - GS - 18 - 0719 , 2012 - GS - 18 - 0714
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 23, 2014
- (b) Kidnapping X 4 30 yrs.
- (c) Armed Robbery X 1 , Burglary First X 1 40 yrs.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty After
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Imposition of Sentence
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of General Session
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Motion to Reconsideration was Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. On January 30, 2014 - Filed Motion to Reconsideration
- ii. On April 3, 2014 - Motion was denied
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____

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

- (a) Abuse of Discretion by Judge Denying Motion to Recons
- (b) Counsel was ~~was~~ Ineffective ~~in~~ ~~of~~ plea agreement
- (c) I was a witness for the State and also Testified

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

- (a) Judge Sentencing did not take heed that I was a States witness
- (b) My Attorney and solicitor stated that I would receive a lesser sentence if I testified against my co-defendant.
- (c) Judge did not take into consideration that I have no prior record.

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? Yes

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

(a) the specific nature thereof:

- i. I filed a Motion to Reconsideration
- ii. _____
- iii. _____
- iv. _____

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

- i. General Session Court - 5200 E. Jim Billon ~~Room~~
- ii. B.W.
- iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. April 3, 2014

ii. _____

iii. _____

iv. _____

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

i. An Index Brief was entered by Mr. Benjamin

ii. J. Tripp

iii. _____

iv. _____

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

Yes

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

(a) which grounds have been presented:

- i. Abused Discretion by Sentencing Judge my
 ii. motion to Reconsideration because my record
 iii. shows that I was less culpable than my Co-Defendant
 (b) on whom the Judge gave the exact same sentence.
 the proceedings in which each ground was raised:

i. No Prior Record

ii. I've met with my lawyer and state 5 times (3 of

iii. which we sat and went over my testimony.)

I was only 18 at the time.

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

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

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

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

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

(a) the name and address of each attorney who represented you:

i. Melisa W. Gay LLC
P.O. Box 2144, Mt. Pleasant, SC 29465
 ii. Benjamin J. Tripp
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Ms. Gay was my trial lawyer and Motion lawyer
 ii. Mr. Tripp was my Anders Brief Attorney
 iii. _____

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

15 yrs is the relief that I seek

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Tevin S. Hart, 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.

Tevin Hart

SWORN to and subscribed before me this 15
day of November, 2016.

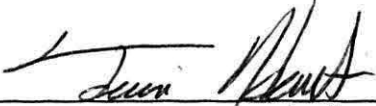
[Signature] (L.S.)
Notary Public

My Commission Expires: 9/16/2026

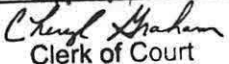
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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

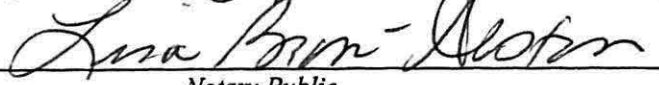

Applicant

CERTIFIED COPY

11-21-16

Clerk of Court
Dorchester County

SWORN or affirmed to and subscribed before me this

20th day of September, 2016.


Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

FILED - RECORD
2016 NOV 21 PM 3:33
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	IN THE FIRST JUDICIAL CIRCUIT
	)	
	)	
Tevin Hart, #358579,	)	Case No.: 2016-CP-18-2182
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION TO
	)	DISMISS
State of South Carolina,	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 21, 2016, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In July 2012, the Dorchester County Grand Jury indicted Applicant for burglary, first degree (2012-GS-18-0714), four counts of kidnapping (2012-GS-18-0715, -0716, -0717, -0718), and armed robbery (2012-GS-18-0719). Lisa Gay, Esquire, represented Applicant. Don Sorenson, Esquire, prosecuted the case. On October 7, 2013, Applicant pleaded guilty as indicted to all charges before the Honorable Maite Murphy. On January 23, 2014, Judge Murphy sentenced Applicant to imprisonment for concurrent terms of forty years for burglary, first degree, and thirty years for each count of kidnapping and armed robbery.

Applicant filed a timely notice of appeal. Benjamin John Tripp, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on February 24, 2016. State v. Hart, Op. No. 2016-UP-085 (S.C. Ct. App. filed February 24, 2016). The remittitur was returned to the circuit court on March 21, 2016.

Attached to this Return and incorporated by reference are the records of the Dorchester

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel was ineffective of plea agreement"
 - b. "[Applicant's] attorney and solicitor stated that [Applicant] would receive a lesser sentence if [Applicant] testified against [his] co-defendant"
2. "Abuse of Discretion by Judge"
 - a. The judge abused his discretion by "denying motion to reconsider"
 - b. "Sentencing judge did not take heed that [Applicant] was a State's witness"
 - c. "Judge did not take into consideration that [Applicant had] no prior record"

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624,

625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. JUDICIAL MISCONDUCT

Respondent interprets Applicant's second allegation as judicial misconduct. A trial judge generally has wide discretion in determining what sentence to impose. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. U.S. v. Magliano, 336 F.2d 817

(4th Cir. 1964); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). The State is correct in its assertion that this Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. State v. Goodall, 221 S.C. 175, 178, 69 S.E.2d 915, 916 (1952). 'It does not appear here that the trial court's discretion was exercised arbitrarily, or for reasons clearly untenable or unreasonable.' State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976)

A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 272 S.C. 563, 257 S.E.2d 748 (1979). Applicant has failed to show his sentence was a result of any of these factors. Accordingly, this Court should summarily dismiss this allegation as being without merit.

V. 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 §§ 17-27-10 to -160 of the South Carolina Code of Laws 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. See Rule 11, SCRPC. Pro se filings will not be considered at the

PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI. PARTIAL MOTION TO DISMISS

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

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VII. CONCLUSION

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

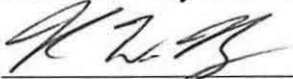
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
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July 26, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2016-CP-18-2182
TEVIN HART, #358579,	)	
Applicant,	)	
	)	
vs.	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	
	)	

The Applicant, TEVIN S. HART, now having the benefit of appointed counsel alleges the following, in addition to the grounds previously stated:

1. Tevin Hart is detained at Broad River Correctional Institution under Inmate Number: 358579.
2. Applicant, by and through undersigned counsel, submits this Amended Application for Post Conviction Relief, and alleges the following errors by trial counsel in addition to those already alleged, which rendered trial counsel's assistance ineffective and but for which, there is a reasonable probability that the result of the proceeding would have been different:
 - a. Trial counsel provided ineffective assistance of counsel in failing to seek specific performance of an oral plea agreement;
 - b. Trial counsel failed to conduct adequate investigation into possible defenses and failed to share with Applicant the results of any investigation that may have been performed;
 - c. Trial counsel and the Assistant Solicitor prosecuting the case led Applicant to believe that he would receive a specific sentence rather than that he would be subject to the potential statutory maximum penalties; and

d. Trial counsel failed to have an expert perform a mental health evaluation of Applicant to determine whether Applicant was mentally ill at the time of commission of the acts alleged.

Wherefore, based on this Amended Application as well as all grounds previously alleged, the Applicant requests that a hearing on the merits be scheduled.

Respectfully submitted.

A handwritten signature in cursive script, appearing to read "Leslie Sarji", is written over a horizontal line.

Leslie T. Sarji
Sarji Law Firm, LLC
P.O. Box 20248
Charleston, South Carolina 29413
(843)722-5354

Attorney for Applicant

Charleston, South Carolina
August 6, 2020

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF DORCHESTER

4 -----x

5 TEVIN HART,)

)

6 Applicant,)

)

7 vs.)

Transcript of Record

2016-CP-18-02182

8 STATE OF SOUTH CAROLINA)

)

9 -----x

10 -----x

11 April 26, 2018

12 POST-CONVICTION RELIEF HEARING/MOTION TO RELIEVE COUNSEL

13
14 B E F O R E:

15 The Honorable Edgar W. Dickson, Presiding Judge

16
17 A P P E A R A N C E S:

18 Rodney D. Davis, Esq.
Attorney for the Applicant

19
20 Christian Saville, Esq.
Attorney for the State

21
22
23
24 COURT REPORTER: Hilda Jordan

25 TRANSCRIBED BY: Bobbi Fisher, RPR, CET

1

I N D E X

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Post-Conviction Relief Hearing

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E X H I B I T S

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P R O C E E D I N G S

(Whereupon, the following proceedings commenced as follows:)

MR. SAVILLE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. SAVILLE: This is Tevin Hart vs. The State of South Carolina, Docket No. 2016-CP-18-2182.

In July 2012, the Dorchester County grand jury indicted Applicant for first-degree burglary, four counts of kidnapping, and armed robbery.

Melissa Gay, Esquire, represented Applicant. Don Sorenson prosecuted the case.

On October 7, 2013, Applicant pled guilty as indicted to all charges before the Honorable Maite Murphy. Pursuant to negotiations, the sentencing was deferred.

On January 23, 2014, Judge Murphy sentenced him to imprisonment for concurrent terms of 40 years for burglary, 30 years for each count of kidnapping and armed robbery.

Applicant did appeal. Benjamin John Tripp, Esquire, of the Office of Appellant Defense perfected the appeal. This matter was dismissed and the remittitur was returned to the circuit court on March 21st, 2016.

Applicant filed a timely PCR application on November 21st, 2016. He is present here today, and he is represented by Mr. Rodney Davis, Esquire. And I will turn it over to Mr. Davis. Thank you.

1 THE COURT: Mr. Davis?

2 MR. DAVIS: Good morning, Your Honor. I was appointed to
3 Mr. Hart's case to represent him on this PCR. We have
4 discussed or attempted to discuss his case on several
5 occasions, but it's been very difficult, Your Honor. Most
6 recently culminated on April 12th of this year when I made a
7 call to speak with him about the upcoming -- about today's
8 hearing.

9 He had previously mentioned this but reiterated on that
10 phone call that he wanted me relieved. His quotes to me were
11 that I hadn't visited or talked to him enough. On the other
12 hand, he indicated that I was talking too much to him. The
13 phone call concluded with him hanging up the phone about five
14 minutes into the conversation.

15 I'll be happy to get some more background, but I would
16 like to say two things first. This would be, obviously, based
17 on his comments, his motion to relieve, but I will tell the
18 Court it is not the situation where sometimes we just have an
19 aggravated witness but we're able to kind of work through
20 that. This is one where there's been multiple attempts, and
21 we have hit a wall a few times.

22 With that being said, anything you'd like to hear from
23 me, I'll be happy to add now or at the end, but certainly it
24 would be in Mr. Hart's motion. I want to make sure he's fully
25 heard with any complaints he has.

1 THE COURT: All right. Mr. Hart?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Just one second, Mr. Hart. If you'd raise
4 your right hand as best you can and I'll swear you in.

5 TEVIN HART,

6 the defendant, after having been duly sworn, was examined and
7 testified to as follows:

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

9 THE DEFENDANT: Mr. Davis, he hasn't represented me
10 properly. He's showing me the same qualities as Melissa Gay
11 did, the lack of protocol. And I have heard from Mr. Mann at
12 least about five times -- four times. Out of the whole time
13 he's contacted me, it's a week before I have to come to court.
14 I have sent him three letters: One to the clerk of court, his
15 office, and him personally. I got no response.

16 My moms -- when I first was aware of him being my
17 attorney, my moms called him for a year straight. I have no
18 phone calls. No return. No phone -- no return, no nothing.
19 Only heard from him a week prior to us coming to court. I
20 have arguments that I have raised that I didn't -- my own
21 research, my own homework that I would like to present.

22 When I had discussion -- that discussion that he was
23 speaking about, he was talking and he didn't let me talk. He
24 wouldn't let me talk. He continued to speak, but I was just
25 overtalking him and he didn't hear it.

1 So, yes, that's when I said, You're doing way too much
2 more talking and you're not listening. This is my life on the
3 line. When he was not trying to understand that, then I hung
4 up. And I told the officers that, if he were to call again, I
5 do not like to speak with him.

6 I sent him letters: One to the Dorchester County clerk
7 of court, his place of business wherever he works at, and to
8 him. He received all three. If he received all three, why
9 haven't you contacted me back in response to that? You know,
10 if your client is having a disagreement with you about his
11 life, you know what I'm saying, and he ain't trying to listen
12 to that, what do I need you for? No disrespect but that's
13 how -- that's what it -- that's how I feel.

14 THE COURT: All right. Mr. Hart, what do you expect this
15 Court to do? What do you want me to do?

16 THE DEFENDANT: I expect -- if you could please relieve
17 Mr. Davis off my case and please appoint me someone that will
18 help me. You know what I'm saying? Help me and understand
19 where I'm coming from and work with me in a timely --
20 attorney-client, you know, conversation, you know, whatever,
21 however it is. I'm just trying to get somebody to understand
22 that. This is my life on the line. Yeah, I committed a
23 crime, but I'm not an animal, and I do have rights. I have
24 family out there that love me and want to see me back out
25 there. I just made a mistake. I ain't looking for sympathy.

1 I'm just looking for justice the right way.

2 Yeah, I committed a crime, but I pleaded to -- I did
3 that. I'm paying for it right now. But I was asking don't be
4 hard for me. I'm trying to get somebody that can help me to
5 break it down to you and whatever other court, whoever other
6 judge that can understand that, you know, I made a mistake.
7 But this -- somebody that's going to represent me and speak to
8 me the way that I need them to, in a way that I can.

9 THE COURT: Okay. You did indicate that you heard from
10 him four or five times?

11 THE DEFENDANT: Yeah, but that was -- he contacted me a
12 week prior and he did most of the talking, which I did not
13 understand nothing that he was saying because he was speaking
14 the whole time. You know what I'm saying?

15 THE COURT: All right. Anything else you want to tell
16 me?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Anything from you, Mr. Davis?

19 MR. DAVIS: Judge, just one thing, so you can have a full
20 picture on this. If the Court is not inclined to not relieve
21 me, I understand that; I'll do my best to --

22 THE COURT: To use typical legal language, I'm not not
23 inclined.

24 MR. DAVIS: One final issue on that -- a major issue that
25 I know Mr. Hart wants to be heard on, it was a situation --

1 just a very quick thumbnail. He provided corroboration
2 against a co-defendant, and it's very clear in the appeal
3 paperwork, in discussions we have had and in correspondence
4 from him the fact that the State did not vocalize that in a
5 way that he believed they should have in his sentencing, is a
6 major concern.

7 One of the issues that I know he's had a hard time
8 hearing is that, in a PCR, if we are successful in showing
9 that, that he expected something from the State at the plea at
10 sentencing. Even if we're successful in doing that, he wants
11 specific relief. Unfortunately, my advice, based on our case
12 law, is he would get general relief. It wouldn't overturn the
13 convictions. He would start over with his three charges for
14 burglary first, armed robbery, and kidnapping.

15 It's not that Your Honor or anyone sitting in a PCR
16 hearing, given the factual nature of this -- it's unlike
17 Lafler or the Supreme Court case, it's in common sentencing,
18 and I know that's been difficult an issue for him to
19 understand, because as he just expressed to you, he certainly
20 feels remorse about what he's been through but feels that the
21 sentence is too harsh.

22 I do understand that, but legally, that's something that
23 I have had difficulty explaining to him, just so you'll have a
24 full picture of that.

25 THE COURT: Thank you.

1 THE DEFENDANT: Your Honor, I don't have a full -- I
2 understand that completely. Everything he just said, I
3 understood that. When he was telling me that the first time,
4 the second time, the third time -- the same thing over and
5 over -- I understood exactly what he's saying. That's not the
6 case here. The case here, this man right here has not
7 represented me to his full capability. He doesn't care. You
8 know what I'm saying? He's doing everything his way. You
9 know what I'm saying? Whatever I say, whatever I got,
10 whatever that I have, it don't matter. When I try to bring it
11 to him, it didn't matter. So that's why I want him relieved.

12 THE COURT: Mr. Hart, let me tell you, I'm going to do
13 something I don't usually do, but what I'm going to do is I
14 will order that you proceed with new PCR counsel. Okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, let me -- but I'm going to make sure you
17 understand a couple of things.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay? This is appointed counsel. Okay? I
20 don't believe that there is a constitutional right to have
21 appointed counsel in PCR cases, even though the State of South
22 Carolina has determined that that is the method which we want
23 to go through to provide assistance to applicants in the hopes
24 that their application for PCR can be done properly and
25 everything that they have an issue with can be brought before

1 the Court.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So I'm going to appoint new PCR counsel for
4 you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I want to make sure you understand, whoever
7 that is, is your counsel.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If you are dissatisfied with your PCR counsel
10 that is appointed, you are not going to receive another
11 appointed counsel.

12 THE DEFENDANT: I understand.

13 THE COURT: If you wish to have other counsel after that,
14 it will be necessary for you to hire that counsel. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. All right. Mr. Davis, I'm going to
18 let you do this order.

19 MR. DAVIS: Yes, Your Honor.

20 THE COURT: Be sure to include that wording in there.

21 MR. DAVIS: Yes, sir.

22 THE COURT: Okay. All right. Good luck to you.

23 MR. SAVILLE: Thank you, Your Honor.

24 (The above PCR hearing concluded.)

25

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Tevin Hart v. State of South Carolina

3 2016-CP-18-2182

4 DATE OF PROCEEDING: April 26, 2018

5 COURT REPORTER: Hilda Jordan

6

7 I, Bobbi J. Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; that said proceedings were transcribed
10 to the best of my ability from the audio recording and
11 supporting information from former court reporter, Hilda
12 Jordan; and that I am neither counsel for, related to, nor
13 employed by any of the parties to this case, and I have no
14 interest, financial or otherwise, in its outcome.

15

16



18

19 Bobbi J. Fisher, RPR, CET

20

NCRA Registered Professional Reporter (RPR)

21

AAERT Certified Electronic Transcriber No. CET-1148

22

Prepared: November 9, 2019

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
2016-CP-18-2182

Tevin Shaquille Hart,)

Applicant) TRANSCRIPT OF RECORD

-vs-)

) September 1, 2020

State of South Carolina,)

Respondent) St. George, South Carolina

) (Via WebEx)

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Leslie T. Sarji, Esquire
Attorney for the Applicant

Taylor Z. Smith, Esquire
Attorney for the Respondent

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

NO EXHIBITS INTRODUCED

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1 THE COURT: Good morning, everyone. I will
2 recognize the applicant here shortly, but I'm going to
3 ask the attorney general if he would place the
4 procedural history on the record.

5 MR. SMITH: Of course, Your Honor. This is
6 the case of Tevin Hart v. State. Case number is
7 2016-CP-18-2182. I see that Ms. Sarji is representing
8 Mr. Hart today, and I'm representing the State. My name
9 is Taylor Smith.

10 Looks like Mr. Hart has not joined us yet,
11 but the rest of us are here remotely via WebEx because
12 of the pandemic. And I'll just add too that the State
13 doesn't have any problem with having hearings this way.
14 I know we've been before Your Honor already yesterday.
15 And I would just ask Your Honor to confirm with
16 Ms. Sarji and Mr. Hart that they have no problem
17 with this as well.

18 Mr. Hart is in prison due to his convictions
19 in Dorchester County in July of 2012. The Dorchester
20 County grand jury indicted him for first-degree
21 burglary, armed robbery, and four counts of kidnapping.
22 Melissa Gay represented him, and assistant solicitor
23 Don Sorenson of the first circuit solicitor's office
24 prosecuted the case.

25 On October 7, 2013, Mr. Hart pleaded guilty,

1 as indicted, before Judge Murphy. At that time,
2 Mr. Hart admitted to the following facts: Breaking
3 into the victim's home around 4:00 a.m. with two
4 co-defendants, possibly mistaking the victim's home
5 for that of a drug dealer to rob instead. The victim
6 was a pregnant woman who was home with her three kids
7 at the time. All the kids were under the age of ten,
8 and they were home alone because her husband was working
9 the nightshift.

10 The intruders broke into the victim's
11 bedroom door, held her at gunpoint while they robbed
12 her of jewelry, firearms, and other personal property.
13 Mr. Hart did testify as a witness for the State at the
14 trial of one of his co-defendants. On January 23, 2014,
15 Mr. Hart reappeared before Judge Murphy, who I believe
16 also presided over the co-defendant's trial and
17 sentencing.

18 She sentenced him to imprisonment for
19 concurrent terms of 40 years for burglary, 30 years
20 for kidnapping, and 30 years for armed robbery, so all
21 aggravated together would be a 40-year sentence.

22 On appeal, the South Carolina Court
23 of Appeals -- he appealed after there was an Anders
24 brief filed. A remittitur was issued in March of 2016,
25 and this application for post-conviction relief

1 followed.

2 That's the procedural history of the case,
3 Your Honor. And on top of that, I believe Ms. Sarji
4 has told me that Mr. Hart may also wish to move to have
5 her relieved this morning, but I'll let her get into
6 the details of that.

7 THE COURT: Now when will Mr. Hart
8 be joining us?

9 MR. SMITH: It's my understanding,
10 Your Honor, that SCDC should have him online already.
11 So, I think your law clerk ---

12 THE COURT: Okay. Go ahead.

13 MR. SMITH: I know that we forwarded any
14 link we had, and I think your law clerk has their e-mail
15 address and talked with them as well. I have no idea
16 why he has not joined us yet.

17 THE COURT: All right. Well, do you have
18 the phone number of who was supposed to line this up?

19 MR. SMITH: I have the phone number
20 of someone else who coordinates with the individual
21 at his specific institution.

22 THE COURT: All right. Let's take this
23 opportunity to call him.

24 MR. SMITH: Okay. I will step away for
25 a minute to get my phone, and I'll be right back.

1 THE COURT: Very good.

2 (Pause.)

3 THE COURT: Mr. Smith, were you able to
4 locate them?

5 MR. SMITH: I'm on hold now, Your Honor.

6 THE COURT: Okay, good.

7 MR. SMITH: I'll update you as soon as
8 I know something.

9 (Pause.)

10 MS. SARJI: Your Honor, I believe that may
11 be my client's mother that just called in.

12 THE COURT: Okay.

13 MS. HART: Yeah.

14 MS. SARJI: Ms. Hart, you'll want to keep
15 your phone on mute, please, okay?

16 MS. HART: All right. Thank you.

17 MS. SARJI: Uh-huh.

18 (Pause.)

19 MR. SMITH: Just updating you, Judge.
20 I have not been able to get in touch with our contact
21 person at SCDC, but I'm now attempting to call Broad
22 River.

23 THE COURT: Okay, let's do that.

24 MR. SMITH: Okay.

25 (Off the record.)

1 (Back on the record.)

2 MR. SMITH: Judge, I don't know if you would
3 want to bring this up with Mr. Hart. It just occurred
4 to me that should we really get into things today,
5 he does have the potential, if he's successful with PCR,
6 of being sentenced to life in prison. A 40-year
7 sentence is significant, but it is still better than
8 life.

9 THE COURT: I'm sure his lawyer has spoken
10 to him about that. Is this Mr. Hart?

11 THE DEFENDANT: Yes, sir, it is.

12 THE COURT: Mr. Hart, good morning to you.

13 THE DEFENDANT: Good morning.

14 THE COURT: All right. Let me speak with
15 Ms. Bracey [ph.] for one moment, the lady who brought
16 you in there.

17 THE DEFENDANT: Okay. Hold on. Give me
18 a second.

19 (Off the record.)

20 (Back on the record.)

21 THE COURT: If we can speak to Mr. Hart once
22 again.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Hart, sorry about
25 the confusion, but we have you here, and we're ready

1 to proceed forward. And before we move forward,
2 I'm going to recognize your lawyer, Ms. Sarji.
3 I understand there's some preliminary matters that
4 we need to address.

5 MS. SARJI: Yes, Your Honor. Mr. Hart
6 wished to have me relieved as counsel. I'm joining
7 in his motion just because he grieved me with the bar.
8 He has a number of reasons. He doesn't believe that
9 I communicate with him as much.

10 He says that I don't return calls to
11 his mother, although, her voice mailbox is not set up.
12 And I have responded to her messages that I have gotten,
13 but I'm unable to leave a message for her because of her
14 voice mailbox not being set up.

15 But there's just been a general breakdown
16 in communication between me and Mr. Hart, to the extent
17 that he did not even want to prep for this hearing
18 when I called him because he wanted to have his motion,
19 you know, he wanted to get me off the case, or know
20 whether he could get me off the case before we could
21 prep for this hearing.

22 So, I don't know if I've left anything out,
23 Mr. Hart, that you would like the judge to know, but he
24 has had counsel relieved in the past. He originally had
25 Rodney Davis as his PCR lawyer. He did a motion to be

1 relieved for substantially the same issues.

2 He feels that counsel is not responsive
3 to him, although, there's nothing new to relay to him.
4 And so -- that was back in 2018 that he did have
5 Mr. Davis relieved, and I was appointed at that time.

6 THE COURT: Okay. Ms. Sarji, could you sort
7 of enumerate your efforts to communicate with Mr. Hart.

8 MS. SARJI: I'm happy to sign into my system
9 and let you know exactly what I have done and on what
10 dates. But, I mean, I will say that we do have trouble
11 with SCDC sometimes setting up calls. I was not able
12 to even talk to one of my other clients for this week.
13 I was able to schedule a call with Mr. Hart and spoke
14 to him last week.

15 If you'll give me just one second to get
16 into my billing system so that I can see exactly all
17 of the times that I have talked to him. But I think
18 he's upset because he wrote to me in March and April.
19 And I admit, and I admitted in my response to the bar,
20 that I have not responded to those as timely as I would
21 have liked. I did respond to those at the end of July,
22 but I don't have anything new to tell him, and so --
23 my system is going a little bit slow, Judge. I'm sorry.

24 THE COURT: While you're looking that up,
25 Mr. Smith, I've practiced law for 20 years and been

1 on the bench for 16, and I believe this is the very
2 first occasion in a post-conviction relief setting where
3 the applicant has actually filed a grievance against his
4 lawyer.

5 That certainly puts her in an adversarial
6 position with that to some extent. What is the State's
7 position as to whether or not she should be relieved?
8 And I understand from what Ms. Sarji has indicated that
9 he has already had one lawyer relieved, and Ms. Sarji
10 is the second one.

11 And, you know, under these circumstances,
12 thank the Lord we live in a country where we'll afford
13 inmates that cannot afford counsel free counsel under
14 these circumstances. But they can't have the particular
15 lawyers that they want. What is your position on that?

16 MR. SMITH: Your Honor, the State does not
17 take a position on whether Ms. Sarji should be relieved.
18 I'll leave that to Your Honor. I don't like to get
19 involved in issues like this. But I will say, given
20 some background, I guess, generally back when Ms. Sarji
21 was substituted in for Mr. Rodney Davis, Judge Dickson
22 did issue an order that said that if she were relieved,
23 Mr. Hart would have to proceed pro se or hire private
24 counsel.

25 However, I believe at the time the issue

1 was that Mr. Hart was dissatisfied with Mr. Davis's
2 services. I think this may be a slightly different
3 situation because she's joining the motion because
4 he's grieved her. So, I could see drawing a distinction
5 between an issue where he is merely dissatisfied with
6 Ms. Sarji verses one where she may have some conflicting
7 issues there due to the grievance filed. I leave that
8 to Your Honor.

9 I just point that out as background just
10 for the record. But, again, it is a slightly different
11 situation. But there is case law out there saying that
12 PCR applicants don't get to decide who their attorney
13 is. And, at the same time, you know, if Ms. Sarji
14 has been grieved, I could see -- I would not take issue
15 with that if Your Honor were to decide that she should
16 be relieved. That's the State's position.

17 THE COURT: Mr. Hart, I'll be glad to hear
18 from you before I make my decision.

19 THE DEFENDANT: Yes, sir. First and
20 foremost, I am not here to make anybody lose their job
21 or get disbarred or anything of that nature. I'm not
22 that cruel, okay? I'm just basically going off of the
23 evidence that I have and the actions that my attorney --
24 my current attorney and previous attorney have shown me.

25 Now, I have different letters from

1 3/15/2020, 2/18, December of 2019, September 2nd,
2 7/9/20, all of these different letters that I --
3 even one for Tuesday, December 3rd, writing Ms. Gay,
4 my previous attorney, for some assistance, and really
5 asking her just to be honest with what really transpired
6 when I was back in -- back when I was 17 and 18 years
7 old.

8 But as far as Ms. Sarji goes, she's shown
9 the same characteristics as Mr. Davis did, not returning
10 phone calls, not returning letters. She said that my
11 mom's voicemail is not set up. Okay, it's not set up,
12 but she has her phone 24/7. That's who was calling;
13 that's who makes all my calls. I can't make them from
14 back here in prison. That's who makes all my calls;
15 that's who moves everything for me, accordingly.

16 Speaking of Ms. Sarji, or any lawyer,
17 or anybody for that matter, Ms. Sarji and Mr. Davis,
18 they showed no interest in my case. She told my mother
19 that it was \$235 just for a conference call. So when
20 my mom told me that, I was like, well, if that's --
21 I put that in the -- I got that in the grievance that
22 I filed with the Office of Disciplinary Counsel,
23 everything that I sent to her. She has a copy of every
24 letter, everything. She should have a copy of all
25 of that. I have copies.

1 But she -- and it's almost like they don't
2 care about my wellbeing. If you're charging me --
3 if it's \$235 for a conference call, that's basically
4 like saying you're my attorney, you understand.
5 That's paying attorney fees. We don't have that.
6 You are an appointed attorney for me. I understand
7 all that. I don't have the fees for that.

8 The only thing I'm seeking is for somebody
9 to represent me and do their job to the fullest,
10 and look at me the same as if I was paying them instead
11 of pro bono wise, you see what I'm saying. That's how
12 I look at it.

13 And, like I said, I've been contacting her
14 since 2018. This is the first physical meeting -- well,
15 visual meeting. This is the first time I've ever seen
16 Ms. Sarji or received a letter that she sent that she's
17 saying she responded to. She only responded to those
18 letters after the complaint of the Office of
19 Disciplinary Counsel. She only responded to those
20 after, and I got, like, three or four letters.

21 And the only phone call that she actually
22 scheduled was the one saying -- the only thing she
23 called for, she was like, she said, Mr. Hart the only
24 reason why I'm calling you, or speaking to you at this
25 moment, is to verify that you wanted me relieved

1 as counsel. I was like, yes, ma'am. She was like,
2 okay, well, that's all I wanted to hear, you know what
3 I'm saying. So she basically just wanted to confirm
4 that, you know.

5 Now, I've been asking for all these phone
6 calls, asking for her to respond, all of my finding
7 facts that I did my work on my own, not just depending
8 on her, putting it all on her. This is my case; this is
9 my life, not hers. She's just representing me, you know
10 what I'm saying, because that's what I'm entitled to.
11 I understand all of that.

12 But if I'm doing the work, you know what
13 I'm saying, to try to get out of here, to try to show
14 the world and society, the judge, that I'm a changed
15 individual, the only thing I'm asking is for you
16 to help me. I made a mistake when I was young, okay,
17 but I feel as though I was done wrong.

18 So that's where you come in. That's where
19 Ms. Sarji comes in at, you know what I'm saying. And
20 I feel as though she does not have that, she does not
21 care, she does not -- being that, you know -- not being
22 disrespectful, or trying to make it sound any way.

23 My case was an easy open and shut case.
24 Real simple, you know what I'm saying. Young, doesn't
25 have -- parents, family doesn't have that much money.

1 Easy open and shut case, very simple and clean.
2 I understand that, and I was sort of dumbfounded
3 to the law back then. I didn't know all of my rights,
4 and I was misguided, you know, and led to believe
5 something else, you know what I'm saying. So that's
6 all.

7 I'm not really here to try to make nobody
8 look bad. I'm here to tell the truth of what's going
9 on. If you care about my situation as much as I do,
10 show me that. Do the work. You're asking me for the
11 information, all of my finding facts. You asked me for
12 that. I sent those to you, you know what I'm saying.
13 Even after that, I've been writing, constantly writing,
14 sending more letters just to let her know what's going
15 on.

16 I have copies of everything, everything,
17 you know what I'm saying. So, it's not like I'm making
18 it up, or coming in here just to try to make it sound
19 good. I know what I'm speaking about, you know.
20 And it's not -- like I said, I'm not here to make nobody
21 look bad or to get anybody disbarred. All I'm asking
22 for simply is somebody, I'm not picky, somebody that's
23 going to do their job as if I was paying them as a paid
24 attorney. That's all.

25 THE COURT: Ms. Sarji, let me ask you,

1 are you in a position where you can -- do you feel
2 as though you're prepared to go forward here today?

3 MS. SARJI: Yes, sir. I mean, this was
4 a guilty plea, you know. It's -- I think part of the
5 breakdown in communications with Mr. Hart is that I see
6 his case as a very simple case. It was a guilty plea;
7 it was straight up. There were no negotiations as far
8 as a negotiated plea goes. And after testifying for
9 a co-defendant, sort of threw himself on the mercy
10 of the court.

11 It is not complicated in terms of the
12 legal issues involved or anything like that, Judge.
13 But I do -- I would ask to have the opportunity to speak
14 with him. He may have misunderstood my conversation
15 with him, but I asked him whether he wanted to have
16 me relieved. And then I said, do you want to go ahead
17 and prepare for this case in case the judge says no?
18 And he told me, no, you know.

19 So, at that time -- as far as charging
20 \$300 -- I bill at \$325 an hour in cases in which
21 I am retained in family court. I do family court;
22 I do federal and state criminal work appointed, and I do
23 have some retained cases. But I do this appointed work
24 because I do care, and this is my way of offering public
25 service to people like Mr. Hart because it does matter

1 to me.

2 If there was a miscommunication with
3 my answering staff that told him it was \$325 an hour
4 for a conference call, that was a mistake. That would
5 have been only in a family court case.

6 That said, Judge, I have responded to -- and
7 I have an independent third party that takes messages
8 for me. I have a virtual receptionist. I get an e-mail
9 with all of my calls that come in. The last telephone
10 call that I have from his mother, I responded to and
11 could not leave a message.

12 And I did pull up in my billing system
13 all of the contacts that we've had with Mr. Hart,
14 with me or a member of my office, since May 18th of 2018
15 that I'm happy to read into the record, if Your Honor
16 would like to hear that.

17 I have admitted to the bar that when
18 COVID started, my paralegal that I have, her disabled
19 daughter was at home with her. She couldn't do work,
20 and so I did start to get behind in things, Judge.
21 And I admitted that to the bar, and I apologized
22 to Mr. Hart for that period of time when he was awaiting
23 correspondence that he should have received and that
24 I did not send because I was doing my best to keep my
25 head above water without support staff in these strange

1 times that we're living in right now.

2 Michelle is back working with me again,
3 things have gotten better, and so I hope that there
4 wouldn't continue to be any kind of issue. But if
5 Your Honor is interested to hear about the contacts
6 that we have had with him, I'm happy to read that in.
7 I know that's not the question that you asked me.

8 But my preparation for his PCR is done,
9 and no matter how much Mr. Hart wants the facts to apply
10 to the law in a different way, I can't make that happen.
11 There's no rabbit I can pull out of a hat for him.

12 THE COURT: I'm going to ask you to do
13 two things, first of which is I'm going to ask you
14 to delineate the contacts we had initially talked about.
15 Then I want you to contemplate the question as to
16 whether or not the fact that he has filed a grievance,
17 does that compromise your loyalty to him, and can you
18 represent him? Let's do those two things, then we'll
19 move forward.

20 MS. SARJI: Certainly, Judge. So the case
21 was opened in my office on May 18th of 2018. I had
22 a telephone call actually -- I'm sorry. Michelle,
23 with my office, had listed a telephone call with the
24 client on May 30th, 2018. On August 29, 2018, there
25 was a telephone call with his mother regarding the

1 status of the PCR hearing. On September 21, 2018,
2 there was a telephone call with the mother of the
3 client.

4 On October 22, 2018, we sent a letter to
5 SCDC and Broad River Correctional Institution requesting
6 a telephone conference with Mr. Hart. We had a
7 telephone conference with his mother on that same day
8 advising her of the same. On October 23, 2018, there
9 was a telephone call back to the correctional facility
10 with Ms. Brown to confirm the call that was requested.
11 They rescheduled it for October the 26th.

12 There was a call on October the 24th
13 to client's mother with the rescheduled date and time
14 of the call. On October 26, 2018, I had a telephone
15 conference with the client. On October 26, 2018,
16 it looks like we were -- that's not relevant to
17 communication. We were having trouble getting his
18 file released to us. There were some more, just
19 administrative stuff related to getting his file.

20 January 17, 2019, there was a telephone
21 call with his mother regarding the status of the case
22 and releases for him to sign so that we can get a copy
23 of his general sessions file. We received the releases
24 on February 6, 2019. February 7, 2019, there was a call
25 returned to the client's mother, but no conversation

1 is reflected.

2 On February 22, 2019, again we were
3 following up to get a copy of his general sessions
4 file from who had the file at that time. It looks like
5 we ended up getting the file -- we were still working
6 on getting the file February 25, 2019.

7 May 1st -- March 1st, 2019, we were still
8 sending the letter to get a copy of his file. On March
9 31st, 2019, a letter was sent to the client with a
10 status update. On May 14th, 2019, his mother was spoken
11 to. The message reflects that the voicemail was full.
12 That's what it says.

13 May 23, 2019, there was a telephone call
14 with the mother -- the client's mother. July 3, 2019,
15 we were arranging another call with the client. We had
16 to talk to SCDC to do that. July 10, 2019, there
17 was a telephone call with the client. On July 26, 2019,
18 there was another -- I'm sorry. July 16, 2019, there
19 was another telephone call with the client.

20 August the 9th, 2019, there was a letter
21 sent to the client. That's August 9th, 2019. I have
22 to get into another screen to keep going. I'm sorry,
23 Judge. I'm having to look at -- it's on my iPad because
24 I've got you on the screen, so it's a little bit of
25 a different setup than what I am used to.

1 THE COURT: Okay. Well, take your time.

2 MS. SARJI: Okay. So July 16, 2019,
3 I had a call with the client. There was a return call
4 to Rosemary Hart. Again, the voice mailbox was not
5 set up. This was December 13, 2019. There was another
6 call in February of 2020 that was returned to Mother
7 and no ability to leave a message.

8 Then there were the letters that I got from
9 him after everything shut down. But I honestly just
10 dropped the ball on responding to those, Mr. Hart,
11 and I apologize. There were some extenuating
12 circumstances. And then July 26th, that's -- my billing
13 kind of fell off at that point, Judge, because I was
14 responding to the grievance and whatnot.

15 And then I did have a call scheduled for
16 the client August 13th, 2020. That was the call that
17 I spoke to him before this. And hang on, I can get into
18 my system and tell you the other letters that have been
19 sent in July when I became aware that I had not
20 responded to him. Okay.

21 So once I got the grievance from the bar,
22 I realized I had gotten two letters from Mr. Hart
23 that I had not responded to, and I immediately sent
24 a response to those; that was July 25, 2020. I also
25 contacted Lisa Gay based on what Mr. Hart's letter

1 had said to confirm her position regarding whether
2 she had rendered ineffective assistance of counsel.
3 And I believe that was the following day.

4 THE COURT: All right, Ms. Sarji, you're
5 familiar with the case, you've done a lot of work,
6 talked with Mr. Bracey [sic.]. Clearly, based on what
7 you've presented to the Court, do you feel as though
8 there's anything else you can do in preparation for
9 this hearing if we were to go forward today?

10 MS. SARJI: Talk to Mr. Hart and prepare him
11 with my hearing outline and make sure that the facts are
12 fresh in his mind as well. I mean, it is my practice
13 before any PCR hearing to go through my hearing outline
14 with them so that they know what to expect.

15 And if there's an issue that he feels like
16 I should be asking him about that I don't have included,
17 it gives me the opportunity to flush out my outline
18 a little bit more for my questioning of him. And I was
19 not able to do that because of this issue between us.

20 THE COURT: Okay. With that caveat,
21 do you feel as though you're prepared to go forward?

22 MS. SARJI: Yes, Your Honor.

23 THE COURT: Okay. And do you feel as though
24 the fact that he's filed a grievance against you will
25 affect your ability to zealously represent him?

1 MS. SARJI: No, Your Honor. I mean, I think
2 I can put my personal feelings aside. And, as I've
3 said, I did -- there was a lag in response time to him.
4 That is true.

5 THE COURT: All right. Mr. Bracey [sic],
6 you have had Mr. Rodney Davis, and the previous judge --
7 was it Judge Dickson, correct? I believe indicated that
8 he was going to relieve Mr. Davis and appoint Ms. Sarji,
9 and that if there was a motion to relieve her that
10 you would have a choice of proceeding forward without
11 a lawyer or proceed forward with her. And that makes
12 sense because even though our courts appoint lawyers
13 free of charge to you, and under these circumstances,
14 you can't pick the lawyer that you want.

15 We can't, you know, endlessly go forward
16 relieving lawyers and not going forward. And under
17 these circumstances, you know, if we were to just
18 automatically relieve someone because you filed
19 a grievance, that would encourage everybody to file
20 a grievance, and then we would never get anything
21 resolved. That's a concern of mine.

22 But what I'm -- I'm going to give you
23 the choice of proceeding forward here today with
24 the assistance of Ms. Sarji, or you can proceed forward
25 pro se. What is your choice?

1 THE DEFENDANT: I will proceed with
2 Ms. Sarji.

3 THE COURT: Okay, very good. And what
4 I'm going to do is I'm going to allow Ms. Sarji,
5 who I'm confident based on the work that she's done
6 in this case, and the nature of this case, it's a guilty
7 plea, and she tells me that she's prepared with
8 necessary arguments, factual and legal, to proceed
9 forward here today. I'm convinced she's in a position
10 to do that.

11 However, at the conclusion of this hearing,
12 I'm going to confer with Ms. Sarji on the record to
13 determine whether or not there's anything else that we
14 need to keep the record open for. And if there's any
15 evidence that y'all need to look at further, or legal
16 issues that need to be looked at further, we'll afford
17 you that opportunity. Does that sound fair, Mr. Hart?

18 THE DEFENDANT: Yes, sir, it does.

19 THE COURT: All right. Mr. Hart, in order
20 for us to proceed forward under these times with COVID,
21 we're having to proceed forward by WebEx, which is very
22 unusual. Our court system has never done that before.
23 If we were to have this, say maybe 15 years ago, we
24 couldn't have gone forward with WebEx because we didn't
25 have the technology to do it. These are unusual times.

1 In order for you to have your application,
2 the civil action heard, we're going to have to do
3 it by WebEx. Do you have an objection to that?

4 THE DEFENDANT: No, sir, I do not.

5 THE COURT: All right. I'm going to ask
6 at this time, Ms. Sarji, if you could point, delineate
7 the grounds for post-conviction relief as best you can,
8 and then I'm going to allow you to call your first
9 witness.

10 MS. SARJI: Certainly, Your Honor.
11 In his original application for post-conviction relief,
12 he ---

13 MS. GAY: Your Honor, I just have one thing.
14 I need to use the restroom. It's been about an hour
15 since I've been just sitting here, and I'm her first
16 witness. Can we just take a quick break and let me
17 go do that?

18 THE COURT: We certainly can. Let's take
19 a five-minute break.

20 MS. GAY: Okay. Thank you, sir.

21 THE COURT: A five-minute recess. Mr. Hart,
22 are you fine sitting where you are right there?

23 THE DEFENDANT: Very much.

24 THE COURT: Let's hang tight, and we'll take
25 about a three-minute recess. Three minutes.

1 (Recess taken.)

2 (Back on the record.)

3 THE COURT: Ms. Sarji, I'm going to ask you
4 if we can continue on. You could delineate the grounds
5 for which we're going forward, and your first witness
6 will be back by the time we conclude that.

7 MS. SARJI: I was actually planning to call
8 Mr. Hart first, so we can go.

9 THE COURT: Okay. We can go ahead
10 and start. That way the record will be clear
11 to what the grounds are.

12 MS. SARJI: Yes, Your Honor. In the
13 original application for post-conviction relief,
14 the applicant indicated he believes that there have been
15 an abuse of discretion by the judge denying the motion
16 to reconsider, that counsel was ineffective as to plea
17 agreement, and that he was a witness for the State
18 and also testified.

19 I filed an amended application for
20 post-conviction relief, which was sent to the clerk for
21 filing August the 9th of 2020. I actually don't believe
22 I have a filed copy of that back yet. But Ben Limbaugh
23 [sp.], from the attorney general's office, was counsel
24 of record for the State.

25 In the amended application, I included

1 the original grounds for relief and also specified
2 that he would be alleging that trial counsel provided
3 ineffective assistance of counsel in failing to seek
4 specific performance of an oral plea agreement; that
5 trial counsel failed to conduct adequate investigation
6 into possible defenses, and failed to share with
7 applicant the results of any investigation that may have
8 been performed; that trial counsel and the assistant
9 solicitor prosecuting the case led applicant to believe
10 that he would receive a specific sentence, rather than
11 that he would be subject to the potential statutory
12 maximum penalties; and that trial counsel failed to have
13 an expert perform a mental health evaluation of
14 applicant to determine whether he was mentally ill
15 at the time of the commission of the acts alleged.

16 And so that would be -- those would complete
17 the grounds that Mr. Hart wishes to proceed on today,
18 I believe.

19 THE COURT: All right. And I will --
20 you can call your first witness.

21 MS. SARJI: Thank you, Your Honor.
22 I'll call Tevin Hart to testify.

23 THE COURT: Mr. Hart, I'm going to ask if
24 you could raise your right hand at this time, please,
25 sir.

DIRECT EXAMINATION - BY MS. SARJI

1 MR. TEVIN HART was called as a witness,
2 being duly sworn, was examined and testified as follows:

3 THE COURT: All right. I'm going to ask
4 if you could speak clearly and slowly so we can hear
5 everything that you have to say. And, Ms. Sarji,
6 you're recognized.

7 MS. SARJI: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. SARGI:

10 Q. Mr. Hart, could you please state your full name
11 for the record?

12 A. Tevin Shaquille Hart.

13 Q. And where are you currently housed?

14 A. Broad River Correctional Institution, Columbia,
15 South Carolina.

16 Q. And was that the result of a guilty plea
17 or a trial?

18 A. Result of a guilty plea.

19 Q. And what did you plead guilty to?

20 A. I pled guilty to an open plea for four
21 kidnappings, burglary, first, and armed robbery.

22 Q. Okay. When you say an open plea, what do you
23 mean by that?

24 A. From my understanding, an open -- well,
25 back then I didn't have no understanding of what

DIRECT EXAMINATION - BY MS. SARJI

1 an open plea was. When Ms. Sarji -- not Ms. Sarji.
2 I apologize. When Ms. Gay took me downstairs -- well,
3 when I went downstairs and met with Ms. Gay, she showed
4 me some papers. Before she handed me the papers --
5 well, what I know now to be my sentencing sheet
6 and for me to sign off on everything, all right.

7 Before prior to that, my conversation with
8 Ms. Gay was, first thing that came out of her mouth,
9 I'm going to see if we can get you 15 years, if we can
10 get you the minimum sentence. I believe this is your
11 first time, you know, young, same thing as, you know,
12 being my first record, no criminal history, I'll be
13 getting a lesser sentence, being that my co-defendants
14 are older than me, have criminal backgrounds. That was
15 my understanding, you know.

16 An open -- all these plea negotiations,
17 open plea, I was unaware of what any of those were
18 at the time. I never had any trouble with the law.
19 No run-ins. And she stated, as you could see on my
20 record, I have none, except for this.

21 So, at the time, my thoughts, I'm going to open
22 plea. What I thought that was, I'm going to go in
23 there, and, you know, the judge is going to -- it's up
24 to the judge's discretion to give me a plea, you know.

25 Q. Okay. So you pled guilty to these things.

DIRECT EXAMINATION - BY MS. SARJI

1 Were these reductions of your original charges,
2 or did you plead straight up to all this as indicted?

3 A. At the time, I didn't -- at the time, I didn't
4 know. But now I pled guilty to it -- I pled straight
5 up to all of them.

6 Q. Okay. And so, to your knowledge, were there
7 any plea negotiations that you're -- that Ms. Gay
8 engaged in on your behalf with the solicitor?

9 A. To my knowledge, when we were -- to my knowledge,
10 when me, Ms. Gay, and Don Sorenson, all of us was in one
11 of our meetings when we were actually together, she said
12 -- him and her stated that we were going to give you --
13 you'll come out better than your co-defendant, you will
14 have less time than your co-defendant, that we are
15 trying to get you the minimum sentence.

16 Q. Okay. And so to back up just a little bit,
17 you pled guilty, but then you went and you testified
18 in a co-defendant's trial; is that right?

19 A. Yes, ma'am.

20 Q. Okay. Had you already pled guilty before
21 you went and testified?

22 A. They said they were going to hold off sentencing
23 until after the trial.

24 Q. Okay. But you did plead guilty before you went
25 in to testify?

DIRECT EXAMINATION - BY MS. SARJI

1 A. Yes, ma'am.

2 Q. Okay. And you referenced that you had one
3 meeting with Ms. Gay and the solicitor. Is that
4 Don Soreson?

5 A. That was one meeting that I had, one of the
6 meetings. It was a total, like -- it was a total of
7 three that I could honestly say -- two that I could
8 honestly say that I was there for.

9 Q. Okay. So did you go in and cooperate with law
10 enforcement and the prosecutor to tell them about what
11 had happened during this crime?

12 A. Yes, ma'am.

13 Q. And was it your understanding that as a result
14 of that cooperation and your later testimony, that you
15 would be given a more favorable sentence?

16 A. Yes, ma'am.

17 Q. And what did you believe the sentence was that
18 everybody had agreed to?

19 A. The 15 years.

20 Q. Okay. And did your attorney ever discuss with
21 you that the 15 years was only a possibility, and that
22 the judge could give you up to -- you could have gotten
23 30 on the kidnapping, you could have gotten 30 on the
24 armed robbery? Did she tell you ---

25 A. The judge ---

DIRECT EXAMINATION - BY MS. SARJI

1 Q. --- that you could have gotten a lot more time?

2 A. The judge simplified those details -- clarified
3 those details. From my understanding ---

4 Q. Did she tell you that at the time of your plea,
5 or at the time of your sentencing?

6 A. No, at the time -- no, she told me that at
7 the time of, like, actually when she was sentencing me.

8 Q. So was it -- after your sentencing, was that
9 the first time that the judge, or your attorney, or the
10 solicitor, had told you that you were actually facing
11 the maximum possible penalties on each of those charges?

12 A. No, ma'am, they did not tell me. No. From my
13 understanding, I was supposed to get 15.

14 Q. Okay. So, I guess, what I'm trying to clarify
15 here is at the time of your plea, before sentencing,
16 had your lawyer or Mr. Sorenson, or even the judge
17 during sentencing, told you what the maximum possible
18 penalties would be for you if you pled guilty?

19 A. The judge said that I could receive a life
20 sentence.

21 Q. Okay. But you understood from your lawyer --
22 did you understand from your lawyer and Mr. Sorenson
23 something different?

24 A. Yes, based on my trial counsel's advice.
25 That's why I pled guilty in the first place.

DIRECT EXAMINATION - BY MS. SARJI

1 Q. Now did your lawyer ever talk to you about
2 a negotiated plea and what that would be?

3 A. No, not in detail.

4 Q. She never explained that to you?

5 A. No, ma'am. She was, like, just basically if you
6 go ahead and cooperate, you will -- your co-defendants,
7 they're way older than you, they've got long criminal
8 histories and criminal records than you have. You have
9 none, you know what I'm saying. You were just a little
10 guy, this, that and the third, and you will receive
11 a lesser sentence than they will, you know what
12 I'm saying. You will not get no more than they would.
13 You will not get no more than they would. We're seeking
14 that 15 years because you have no prior record.
15 You have no criminal record.

16 Q. Okay. And what happened at the trial where
17 you testified? Did those co-defendants get sentenced?

18 A. One of them beat it. And I was the last --
19 as a matter of fact, I was actually the last one to
20 go to court to get sentenced. The first one, Martin,
21 he received -- if I'm not mistaken, he received the
22 mandatory. Joshua Manigault, he was acquitted of all
23 charges.

24 Q. Okay. So the trial that you testified in,
25 the person that was on trial got acquitted and didn't

DIRECT EXAMINATION - BY MS. SARJI

1 get sentenced; is that right?

2 A. Yes, ma'am.

3 Q. Okay. And so would you have pled guilty and done
4 all of this if you had known that the 15-year sentence
5 was not a done deal?

6 A. No, ma'am, I would not have pled guilty.

7 Q. Was it both Lisa Gay and Don Sorenson who assured
8 you that you would get the 15 years?

9 A. Don Sorenson assured me that -- this was his
10 words. He said that you will get a lesser time than
11 your co-defendants. You will come out of this before
12 you're an old man.

13 Q. Did Don Sorenson ---

14 A. That's ---

15 Q. I'm sorry. Go ahead.

16 A. Go ahead. Go ahead.

17 Q. Did Mr. Sorenson ever tell you that number
18 of 15 years was what you would get?

19 A. No, ma'am. He didn't say -- no, he didn't say
20 15, no.

21 Q. Okay. In the one meeting where all of you guys
22 were present that you testified to earlier, my
23 understanding was that the two of them told you they
24 would see what they could do to get you the 15 years.
25 Did I misunderstand that?

DIRECT EXAMINATION - BY MS. SARJI

1 A. No. Ms. Gay was preaching the 15 years to
2 me from the jump, you know. Don Sorenson, he stated
3 that I would receive a lesser time and possibly come
4 out of this on the better end way before I'm an old
5 man, receive less time than your co-defendants.
6 He never out of his mouth said 15 years.

7 Q. Okay.

8 A. That was Ms. Gay.

9 Q. Okay. And so did you -- you didn't have
10 a written plea agreement or anything like that?

11 A. No, ma'am. No, ma'am.

12 Q. Okay. Did they talk to you about why you
13 couldn't go ahead and get something in writing about
14 that 15 years? Was that ever discussed?

15 A. No, ma'am, not even from Ms. Gay. That's
16 who I was really trying to get, you know -- that's
17 who I was seeing the most of, that's who was pushing
18 the issue and stating the 15 years. So, I don't...

19 Q. Okay. So did you believe that there was some
20 kind of a plea agreement or an understanding in your
21 case as to what your sentence would be?

22 A. Yes, ma'am. I was under the impression that
23 if I go ahead and cooperated, being that I have no prior
24 record, that I would get 15 years. So, I did that based
25 off of what Ms. Gay assured me.

DIRECT EXAMINATION - BY MS. SARJI

1 Q. Okay. And one of the grounds for relief that
2 you're asking is you're -- where you're alleging that
3 she failed to seek specific performance of an oral plea
4 agreement. Can you tell us how?

5 A. Basically when it becomes, like, an oral plea
6 agreement, it's basically her stating, not anything
7 written down. It's her stating that -- how do I say
8 this? A spoken agreement that, man, listen, if you
9 testify over here, cooperate, you will get 15 years.
10 You're young, you don't have no prior record, you know
11 what I'm saying.

12 All I'm asking is that be amended, you know
13 what I'm saying. From what I know now, if it's not --
14 anything that's written in paper, it's better. Anything
15 that's on paper with a cap sentence, signed and dated
16 by the solicitor, my lawyer, judge, all of that, that's
17 what makes the agreement, or any agreement, certified,
18 you know what I'm saying.

19 But based on this oral agreement that I have
20 right there that she stated, that's what I'm pushing,
21 you know what I'm saying. But as far as, like ---

22 Q. And so this was your first time going in front
23 of a judge to be sentenced; is that right?

24 A. Yes, ma'am.

25 Q. Okay. And did Ms. Gay know that you have

DIRECT EXAMINATION - BY MS. SARJI

1 relatively little experience, or no experience,
2 with the criminal justice system when she was
3 representing you?

4 A. Yes, ma'am.

5 Q. Okay. Did she talk to you about possible
6 defenses in your case?

7 A. No, ma'am.

8 Q. Okay. Did you tell her that you might have
9 some defense that you wanted for her to investigate?

10 A. That I was young, that my life was being
11 threatened, my family was being threatened, you know
12 what I'm saying. I was going through all types of --
13 yes, yes, I was going through all kinds of psychiatric
14 problems. She didn't advise me on none of that.

15 Q. Did you tell her that there was some defense,
16 that you believed that you had a legal defense to this
17 case that you wanted for her to investigate?

18 A. Like a legal -- can you elaborate more, please?

19 Q. Okay. So when you and Ms. Gay were talking,
20 did you tell her that -- anything that might have tended
21 to indicate that you really didn't have the criminal
22 intent to commit this crime?

23 A. Yes.

24 Q. Did you relay any of this to Ms. Gay?

25 A. Yes. I told her that I was sleeping, that I was

DIRECT EXAMINATION - BY MS. SARJI

1 not -- that I was forced to do this. She knows this.
2 She stated this in court; she knows this herself.

3 Q. Okay. So you told her that you were forced to do
4 this. Did she talk to you about the defense of duress
5 or anything like that?

6 A. No, ma'am.

7 Q. Okay. Did you fully understand everything that
8 you and your attorney discussed?

9 A. As far as the plea agreement, yeah. That's
10 basically all we were speaking about or the 15 years.
11 That's basically all we -- cooperate and 15 years,
12 cooperate and 15 years. That's the only thing we
13 discussed.

14 Q. Okay. And did you -- we've also alleged that
15 she didn't have you evaluated for a mental illness
16 or any of that kind of thing. Did you tell her that
17 you had a mental health history?

18 A. No. I told her that I was threatened. I was,
19 you know what's I'm saying -- she knows that they tried
20 to get me transferred to Berkeley County, you know.
21 I told them no because that would have put me in
22 a position that I'm not trying to be in.

23 Okay, yeah, I'm protected, you see what
24 I'm saying, but what about my family. They're
25 vulnerable. They had no knowledge of the streets.

DIRECT EXAMINATION - BY MS. SARJI

1 They don't do that, you know what I'm saying.
2 So protecting me -- I'm telling her -- I wasn't
3 concerned about my safety. I was concerned about
4 theirs, my family.

5 So, I told her, she knows this, you know.
6 And, at the time, I was so confused to where I was even
7 -- I was trying to recant my statement. I didn't know
8 what that was. Other people were telling me to recant
9 my statement. When I told her about me recanting
10 my statement, she said, man, if you recant your
11 statement, I'm going to quit. Period. You know
12 what I'm saying.

13 So, I was like, whoa. So that made me,
14 like, push back, you know. I'm not trying to lose,
15 you know, an attorney based off of my actions, something
16 I'm doing. I'm thinking I'm doing the right thing,
17 but I'm just trying to deescalate the situation,
18 how to make it stop.

19 Q. So you told her that you wanted to back off
20 on what you had told the police. She told you that
21 if you did that she would quit as your lawyer?

22 A. Yeah, she would quit as my lawyer, as my
23 attorney. She would stop representing me.

24 THE COURT: Mr. Hart, I'm going to interrupt
25 you just a little bit. I want to ask just a few

DIRECT EXAMINATION - BY MS. SARJI

1 questions, then we're going to recognize Ms. Sarji.
2 Have you ever been to a psychiatrist?

3 THE DEFENDANT: Yes. Does family therapy
4 count?

5 THE COURT: Tell me what kind of -- you had
6 indicated that you should have been evaluated for
7 a mental health difficulty. What is your mental health,
8 and what is your mental health treatment history?

9 THE DEFENDANT: Well, I was seeing a
10 counselor. Besides the family counselor, I was seeing
11 another individual counselor. I was molested when I was
12 younger. I had trouble, like, basically just figuring
13 out who I was or what I liked, you know what I'm saying.
14 I was appointed to, like, a private -- I guess, a
15 private mental or counselor, talked with me through
16 these things.

17 Through our family, there was one in Mount
18 Pleasant -- there was a lady in Mount Pleasant who
19 we used to go see every morning. That was a group.
20 That was with me and my mom and my sister, you know what
21 I'm saying. That was a therapy session. We discussed
22 the same issues, or how I think, my thought process,
23 or what was going on in my head, the things that I be --
24 the reasons why I do certain situations, and just
25 basically, you know, getting my thoughts together,

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1 you know what I'm saying, before I got older.

2 THE COURT: Very good. Ms. Sarji,
3 you're recognized.

4 MS. SARJI: Thank you, Judge.

5 BY MS. SARJI:

6 Q. Did you tell -- do you recall telling Ms. Gay
7 that you had ADHD and that you had taken medicine for
8 it in the past?

9 A. She was aware of all of this. She was aware
10 of all of it.

11 Q. Of all the stuff that you just told the judge?

12 A. ADHD -- no, not as far as the psychiatrist,
13 the psychiatric health, none of that. I didn't tell
14 her any of that. But as far as me taking medicine ---

15 Q. Did she ask you about it?

16 A. No, ma'am, not at all.

17 Q. I'm sorry?

18 A. No, ma'am, not at all. She didn't ask me
19 anything about my psychiatric behavior, what I was
20 taking, that I was seeing a shrink or a counselor
21 or any of that, ADHD, none of that. She didn't ask
22 me any of those questions.

23 The only thing that she stated when -- our very
24 first meeting was in the county jail. She was in the
25 visiting room, and we wasn't face to face. We were

DIRECT EXAMINATION - BY MS. SARJI

1 through a booth, glass at that time. And the first
2 thing she said, she was like, did you write a statement
3 to the police? I said, yeah. She was like, oh, well,
4 the only thing you can do now is cooperate. It's not
5 funny, but, you know, I can -- it's crazy.

6 Q. Okay. Do you believe that if she had had you
7 evaluated that would have made a difference in your
8 case?

9 A. I believe -- yes, yes. Yes, ma'am. Yes, ma'am.
10 The whole psychiatric evaluation, my whole case, the
11 whole miscommunication, and the whole false hope of me
12 receiving 15 years, my whole representation of her was
13 not -- is not that of a lawyer. And that's not being
14 disrespectful, that's just telling the truth.

15 Q. So how old are you now?

16 A. I'm 26. I will be 27 in December.

17 Q. And how old were you at the time of the alleged
18 -- at the time of this crime that you pled guilty to?

19 A. I had just turned 18, just turned 18.

20 Q. Okay. So this has been a full eight years ago;
21 is that right ---

22 A. Yes, ma'am.

23 Q. --- pretty much? And you -- when you were
24 talking to Ms. Gay, was that back in, looks like, 2012;
25 does that sound right?

DIRECT EXAMINATION - BY MS. SARJI

1 A. Yes, ma'am, it does. That's correct.

2 Q. Okay. Is there anything else that you want to
3 tell the judge about what Ms. Gay did or didn't do that
4 you think amounts to, you know, what has changed -- what
5 happened in your case?

6 A. Okay. I feel as though that -- like I said, when
7 she came into court -- like I said, when I told her that
8 -- when she came in there, she was confident. I felt as
9 though she was confident in my case, like she knows what
10 she was doing when she first met me. But when she asked
11 the question whether I gave a statement to the police,
12 her whole demeanor changed. It was like, oh, well,
13 basically it's over, ain't nothing I could do,
14 and basically all you can do is cooperate.

15 When she came in the courtroom, she wasn't
16 dressed appropriately. She read books. She just
17 read a book like she was not concerned, you know.
18 She stuttered over her words, constantly just calling
19 my mother just asking her for money, you know. That's
20 it. Money, money, money, money, money. That's it,
21 you know. And when -- leading my mother on to believe
22 that I was going to receive ---

23 MR. SMITH: Objection, Your Honor,
24 on the grounds of relevancy to the issues ---

25 THE COURT: I'll allow it. Go ahead.

DIRECT EXAMINATION - BY MS. SARJI

1 THE DEFENDANT: Me?

2 THE COURT: Yes.

3 THE DEFENDANT: But, yeah -- she really
4 just don't care, you know, like this wasn't fit to be
5 my attorney, you know. She didn't show any interest.
6 She didn't, like I said, there were numerous things.
7 The only thing I needed -- we had, like, three or four
8 conversations, you know, as far as conversing face
9 to face, all of which she was mostly just trying to get
10 me to cooperate with the solicitor's office, you know.
11 That's basically what she was -- not nothing for me.

12 The only thing, as far as defense wise,
13 in what she was trying to do for me, on my behalf,
14 was put out there the little 15-year plea. That's it.
15 The false hope of me receiving 15 years. I guess,
16 because we couldn't pay her enough or my family wasn't
17 wealthy. We only paid her \$6,000.

18 A case such as mine, a high profile,
19 four kidnappings, burglary first, and armed robbery,
20 I know that case is well over \$20,000, probably \$10,000
21 just for even a conversation with her just to even take
22 my case.

23 So, I was already going out -- we was
24 already working on what we had, you know. And once
25 I gave it to her, it was more so that this is what we've

DIRECT EXAMINATION - BY MS. SARJI

1 got to do, what we've got to work with, and hope for the
2 best. And with me thinking that she's a paid attorney,
3 I'm thinking that she's going to represent me to the
4 fullest, to her ability, put all personal feelings aside
5 or personal thoughts aside. She's going to represent
6 me to the fullest, you know what I'm saying. But that's
7 not what I got. I got the exact opposite.

8 I got somebody who showed no interest,
9 came into the courtroom reading books, tried to, like,
10 say me and my mother had problems, we were going through
11 issues. Me and my mother wasn't going through no
12 issues. That was just something she put in there
13 to show sympathy for the Court. I didn't need that.

14 Q. So, Mr. Hart, something that you just said that
15 made me think of another question I needed to ask you.
16 Once Ms. Gay found out that you had talked to the police
17 and given a statement, did she ever talk to you about
18 the possibility of going to trial and asking the Court
19 to suppress that statement?

20 A. When you mean suppress, do you mean like ---

21 Q. Throw it out.

22 A. No, ma'am. She didn't talk about none of that
23 at all. She didn't mention that. Like I said, when
24 I said I wanted to recant my statement, she flipped.
25 She said she was going to quit, so I backed off.

CROSS-EXAMINATION - BY MR. SMITH

1 I said, no, I don't need her to quit, that would leave
2 me in a bind. It is money wasted. There's no refund.
3 So, like I said, you know, I stopped doing it.

4 Q. So if you had known that you could challenge
5 your confession and that you were potentially going
6 to be subjected to the maximum statutory penalty,
7 would you have pled guilty in your case, or would
8 you have gone to trial?

9 A. I would not have pled guilty; I would have
10 gone to trial. I would have taken my chance.

11 MS. SARJI: Judge, I don't have anything
12 further for this witness.

13 THE COURT: Cross-examination.

14 MR. SMITH: Yes. Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. Mr. Hart, I don't have any questions.
18 But I'm going to ask you -- most of them are going
19 to focus on your hearings with Ms. Murphy -- with
20 Judge Murphy. I apologize. During your plea hearing,
21 didn't Judge Murphy explain to you the possible
22 punishment you can get if you pled guilty?

23 A. Judge Mattie -- yes, she did. Yes, she did.

24 Q. Okay. And you told her during that hearing,
25 you said, yes, I understand, Judge?

CROSS-EXAMINATION - BY MR. SMITH

1 A. Yes, based off of my trial counsel's advice.

2 Q. Now what do you mean by that because ---

3 A. What I mean ---

4 Q. --- what I asked you was the judge said do
5 you understand -- here are the sentences I could give
6 you, do you understand what that means, and you said,
7 yes?

8 A. Yes, I understand completely on what you just
9 said. And what I'm saying is, yes, I said, yes, based
10 off of my trial counsel's advice. I didn't know --
11 before I went in there, before I went in the courtroom,
12 and actually speak to Ms. Mattie Murphy, me and Ms. Gay
13 -- Ms. Gay got me to sign on the sentencing sheet.

14 She was basically saying, this is what's going
15 on, see what I'm saying. She got me to sign on the
16 sentencing sheet. Once I signed the sentencing sheet,
17 then I went in the courtroom, and Ms. Mattie Murphy
18 asked me all the questions that she asked me.
19 My transcript is going to see -- is going to show you
20 and reflect that I said yes to all of the questions that
21 she asked me, making it seem as though I understood it.

22 But, like I said, the only reason why I said
23 yes to all of those questions was based off of my trial
24 counsel's advice and me thinking that, okay, she's
25 asking -- these are normal court questions from the

CROSS-EXAMINATION - BY MR. SMITH

1 judge, and she wants to get that out of the way.

2 I'm going to get my 15 years, you know.

3 Q. Okay. So what you're telling me is when Judge
4 Murphy said, if you plead guilty today, I can sentence
5 you for life in prison, do you understand that, and you
6 answered yes, you're telling me you did not understand
7 that you could get life in prison?

8 A. Yes, that's basically -- yes, yes, that's what
9 I'm saying because -- I was expecting to get 15 years
10 from Ms. Gay. I wasn't thinking that that's what --
11 I was going to get 40 years.

12 Q. Okay. But here is the problem, Mr. Hart.
13 Isn't it true that Ms. Gay and Solicitor Sorenson
14 said at the hearing that the State would not make
15 any sentencing recommendation, but was leaving
16 sentencing up to Judge Murphy?

17 A. Yeah, Mr. Sorenson said that, not Ms. Gay.
18 But Mr. Sorenson said that he was not making any
19 recommendations before he even went in the courtroom.
20 He said that. Mr. Sorenson said -- he said that
21 he was going to leave the discretion up to the judge.

22 What Ms. Gay -- Ms. Gay was right here speaking
23 on this 15 years. From my understanding, that's what
24 I thought. The meeting that she had without me with
25 him, that's what I'm thinking that's what was discussed

CROSS-EXAMINATION - BY MR. SMITH

1 -- that's what was going to be discussed.

2 And to be honest with you, like I said,
3 when he did -- when Mr. Sorenson did say he had no
4 recommendations, it kind of really did -- it stopped me
5 for a little bit because I was like, whoa, things wasn't
6 going like -- I'm hearing all kinds of life sentence.

7 I'm hearing the maximum she could give me, life
8 sentence for this, life sentence for that, and I don't
9 hear anything about no 15 years from what my lawyer
10 was talking about, what my lawyer advised me and advised
11 my family. I didn't hear any of those. So, yes,
12 I didn't understand. I couldn't understand.

13 Q. So you're saying you started to question things
14 once you heard the solicitor say that the State would
15 not make any recommendation. Well, right after that,
16 then did you tell Judge Murphy that no one had promised
17 you anything to plead guilty?

18 A. Yes, I did.

19 Q. You said that I agreed with her that no one had
20 promised anything, right?

21 A. Yes, I was agreeing to every -- I said yes to all
22 of the questions. I said yes to all of her questions.
23 I have the transcript right here.

24 Q. Let me ask you another question. You testified
25 at co-defendant's trial, didn't you, for the State,

CROSS-EXAMINATION - BY MR. SMITH

1 right?

2 A. Yes, ma'am -- yes, sir.

3 Q. Okay. At that trial, didn't you testify that you
4 were not receiving any plea deal in exchange for your
5 testimony?

6 A. Yes, I did.

7 Q. Okay. And that trial was after you pled guilty,
8 right?

9 A. Yes, sir.

10 Q. Okay.

11 MR. SMITH: Your Honor, I have no more
12 questions. Thank you.

13 THE COURT: Any redirect?

14 MS. SARJI: None, Your Honor. Thank you.

15 THE COURT: Very good. You may call your
16 next witness.

17 MS. SARJI: Judge, I would rest on
18 Mr. Hart's testimony. I think that he has given ample
19 evidence certainly of ineffective assistance from
20 Ms. Gay in assuring him of one sentence that it wasn't
21 hers to promise.

22 THE COURT: Okay, good. All right.
23 Mr. Smith, you're recognized. You may call any witness
24 that you might have.

25 MR. SMITH: Yes, Your Honor. I would call

DIRECT EXAMINATION - BY MR. SMITH

1 first Ms. Lisa Gay.

2 THE COURT: Ms. Gay, please raise your right
3 hand.

4 MS. MELISSA GAY was called as a witness,
5 being duly sworn, was examined and testified as follows:

6 THE COURT: All right. Speak loudly,
7 clearly, and slowly.

8 MS. GAY: Okay. My name is Melissa Gay,
9 spelled G-A-Y.

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q. Ms. Gay, can you tell me how you came
13 to be involved in Mr. Hart's criminal case?

14 A. I was hired by Mr. Hart's mother. And, Mr. Hart,
15 as he has testified, was only 17 years old when this
16 happened. So when Ms. Sarji called me about Mr. Hart,
17 even though it's been eight years ago, I immediately
18 knew who she was talking about.

19 This was a -- the best way to say it is
20 a traumatic sentence after a very long case. I see
21 Mr. Sorenson on the video here. I don't know if he's
22 going to testify or not, but he and I had extensive
23 communication about this case. And I'm really familiar
24 with everything that happened.

25 I know Mr. Hart said that I didn't care about

DIRECT EXAMINATION - BY MR. SMITH

1 his case, but I really did, and it was astonishing
2 to me how he was sentenced. I thought it was wrong,
3 but, you know, obviously, I don't get to decide what
4 sentences are. But I just thought it was a terrible
5 situation.

6 Q. Okay. Did you enter plea negotiations on
7 Mr. Hart's behalf?

8 A. Hang on a second. Yes, I did.

9 Q. Okay. And did you ---

10 A. Mr. Hart had come in with -- he had talked to
11 the police. Eventually, I believe, gave the police --
12 I don't have my phone. Ms. Sarji has my phone, but
13 I believe he gave the police three separate statements,
14 and they were all different. That was part of the
15 problem with the case.

16 Q. Okay. Did Mr. Sorenson extend any plea offers
17 to you?

18 A. The co-defendant of Mr. Hart was a bad guy,
19 the guy that was acquitted. He was a real bad guy,
20 and he had prior history of being violent and committing
21 criminal offenses. And I think my general impression
22 was that the goal was to try to work towards getting him
23 convicted for this because he was somebody that needed
24 to be off the streets.

25 And so what happened is that my -- what happened

DIRECT EXAMINATION - BY MR. SMITH

1 between Mr. Sorenson and I is that we were working
2 towards having Mr. Hart be a witness against this
3 co-defendant who we all sort of believed deserved
4 to go to jail for life.

5 Because he was older, and Mr. Hart was a young
6 man, and from my understanding of the facts and what
7 Mr. Hart told me, the other person had planned it and
8 had done some pretty horrible things during the course
9 of the robbery, and it was like a home invasion.
10 And so he -- Mr. Hart was just kind of the young kid
11 that went along with him.

12 So in my negotiations with Mr. Sorenson,
13 I was promoting the fact that he was not the planner,
14 that he was not the person who was the bad guy really.
15 And so in the course of doing that, we met with --
16 Mr. Hart and I met with the detectives in Dorchester
17 County a number of times.

18 But Mr. Hart has alluded to the fact that
19 he was young, and he was concerned about his family's
20 safety. And he never -- he did a poor job of being
21 straightforward and forthright about the facts. And
22 so when you say did Mr. Sorenson and I enter into plea
23 negotiations, he chose to plea with the understanding
24 that it would be helpful to him, that he would be
25 working with the State to try to convict this other guy.

DIRECT EXAMINATION - BY MR. SMITH

1 Shooting ahead, when it got to be time for him
2 to testify in the trial, he did everything he could
3 to convict the guy. He did. He was, I believe,
4 a really good State's witness at that point.

5 The problem was that he had done some damage
6 to his credibility along the way with this multiple
7 statements that he had given. And he had, I think,
8 written a letter -- if I remember, maybe somebody has
9 my file so I can confirm, that he had written a letter
10 maybe to the co-defendant, saying that he was lying,
11 something like that, something that was pretty damaging
12 to his credibility.

13 So though I believe he was testifying truthfully
14 at that time, because of his age and his lack of
15 understanding of the system, and his fear for his
16 family, and the fact that he had been involved with
17 the crime with this really bad dude, his testimony
18 did not carry the day.

19 So when he was -- when the other guy was
20 acquitted, which made me sick, you know, we had expected
21 Judge Murphy to be sympathetic to the fact that he had
22 chosen to testify, which was ---

23 Q. Ms. Gay, I don't mean to cut you off, but my
24 question was, did Mr. Sorenson extend any plea offers?

25 A. Well, he let him plea. I mean, what is an offer?

DIRECT EXAMINATION - BY MR. SMITH

1 Over and over again, he said to Mr. Hart, he said to
2 me, he said it in front of the sheriff deputies, well,
3 I can't recommend the sentence to the judge. I want
4 you to understand that, you know, it's going to be up
5 to you and your testimony and what happens, and your
6 lawyer, and all this stuff to try to get the bottom
7 of the sentence, which is, of course, 15 years mandatory
8 minimum.

9 But I don't ever recall Don saying that he's
10 going to offer a specific sentence. I do know that
11 he was just as disgusted as I was at the time of the
12 acquittal and at the time of the sentencing. I remember
13 that. But, I mean, it wasn't as if -- if you read
14 the transcript, I think it's pretty clear that he said
15 we didn't offer him a specific plea. We can't do that.

16 THE COURT: Did you tell Mr. Hart that
17 it was a guarantee of 15 years?

18 MS. GAY: No. I did tell Mr. Hart that
19 I believe he should get 15 years, and that we would work
20 towards that based on -- I think it would have if the
21 guy had been convicted. That's the part that made me
22 sick. But he wasn't. And so at the point in the
23 transcript where the judge was saying, well, that guy
24 was found not guilty, so he's innocent, and as far
25 as I know, you're the one who's pled guilty, and you're

DIRECT EXAMINATION - BY MR. SMITH

1 the one who's not innocent.

2 And there was -- you know, it was -- I never
3 told him he would get 15 years. I did tell him that
4 I would work towards getting him 15 years, and that
5 I don't think that the State had a problem with him
6 getting 15 years, but they were not willing to actually
7 negotiate that with him.

8 But he was very young, and he was very,
9 very confused about this process. I don't recall
10 anything about knowing about some kind of mental
11 health history that would require me to go get a mental
12 health evaluation. I've done that hundreds of times
13 for my clients, and I just don't remember having enough
14 information. Maybe Leslie has my file, and I had some
15 notes on that.

16 But I personally don't remember anything
17 about him needing a mental health evaluation. He may
18 have needed it. I just don't recall that being
19 something his mother and I -- he was very
20 noncommunicative with me at this point. This man right
21 here is a great, you know, mature man. But the guy
22 I was dealing with was a 17-year-old kid who was
23 completely freaked out.

24 MS. SARJI: Judge, I'm getting some really
25 weird feedback, like a clicking or something, and it's

DIRECT EXAMINATION - BY MR. SMITH

1 hard for me to understand what's being said. I don't
2 know if somebody can mute themselves maybe. I hate to
3 ask, but it's very -- competing with Ms. Gay's testimony
4 and my hearing.

5 MR. SMITH: I think I'm making that noise,
6 and I'll switch to writing instead of typing.

7 MS. SARJI: Oh, I'm sorry. Thank you.

8 BY MR. SMITH:

9 Q. Ms. Gay, at any point, did you tell Mr. Hart
10 that Mr. Sorenson had promised 15 years?

11 A. I don't recall saying a promise. I do recall
12 saying I think that this is what should happen for all
13 the reasons that he said; he was young, the other people
14 were older. The problem is when the other guy was
15 acquitted, you know, he was left guilty, and the other
16 guy was older, 25-year-old bad guy was walking free.
17 And so, you know, it just turned south.

18 Q. Okay. I'm sorry, just checking my notes here.
19 Let me ask you about this: Mr. Hart has testified about
20 you coming into court and slurring your words or being
21 sloppily dressed. Can you address that? Do you know
22 what he's referring to there, reading a book during
23 his court hearings?

24 A. Well, he was a testifying witness in someone
25 else's trial, and I was sitting through the trial.

DIRECT EXAMINATION - BY MR. SMITH

1 So, I mean, it is possible that I had something that
2 I was doing. I was just sitting, not even beyond
3 the bar, you know. I was sitting in the audience.

4 And so I may have been looking at a book
5 or something while I was listening to the trial.
6 I certainly don't believe -- remember that I was
7 looking at a book when he was testifying because
8 that was important for my case.

9 In terms of sloppily dressed, I don't -- I'm not
10 very skinny, and so sometimes I, you know, have to wear
11 clothes that some other people might not choose to wear,
12 but I don't remember any of that. That's kind of
13 personally insulting to me. So, I don't know. I don't
14 have pictures of me -- of what I was looking like that
15 day, maybe Mr. Sorenson did, you know, what he
16 remembers, but I have no idea what I was wearing.

17 He seems to want to say something. But I am --
18 I would maybe -- it is possible that I had a book while
19 I was watching the trial. That is possible.

20 Q. Okay, okay. And did you tell Mr. Hart when
21 he was in the plea hearing before Judge Murphy that
22 he had to answer yes to all of her questions?

23 A. No. I mean, obviously, in my 30 years of doing
24 this, at that point it would have been 22, you know,
25 the defendants are up there talking to the judge

DIRECT EXAMINATION - BY MR. SMITH

1 on their own. They have to answer the questions.
2 Rarely, do they ever even ask me anything during
3 the plea colloquy. They just, you know, are talking
4 to the judge.

5 I mean, again, he was very young. He may not
6 have understood anything that was going on. I mean,
7 I was trying to help him negotiate this big, giant
8 charge. This was also a really, really bad armed
9 robbery, kidnapping situation. I believe the woman
10 was pregnant, and it was just a bad situation.

11 And so in my doing so, I would have explained
12 to him as to what happens, that you plea before
13 you testify, and you're sentenced after you testify.
14 And, again, I firmly believe that if there had been
15 a conviction, we would have had a completely different
16 sentence.

17 Q. Okay. You affirmed to Judge Murphy during
18 Mr. Hart's plea hearing that you had discussed potential
19 defenses and possible punishments with Mr. Hart.
20 Can you tell us what discussions you had about potential
21 defenses in this case?

22 A. Factually, Mr. Hart had been picked up sort
23 of in the middle of the night or late at night by these
24 guys that were older than him and taken out to do
25 this robbery. So he was not at all part of, you know,

DIRECT EXAMINATION - BY MR. SMITH

1 where it was going to happen, how they were going
2 to enter the house, what was going to happen inside
3 the house. There were some people with guns. I mean,
4 one of the people put up a gun to the pregnant lady's
5 head, who's holding her little small child, you know,
6 minor child with her.

7 And so our defense would have -- I mean, he never
8 denied doing it. He just said that it wasn't his idea,
9 and he had no idea, you know, what was actually going
10 to happen. The part about him being under duress,
11 I don't remember that being an issue necessarily.
12 It could have been. It could be in my notes that
13 there was more duress involved.

14 But, you know, I have -- I think that these guys
15 were dangerous. And so, you know, Mr. -- we would have
16 discussed the fact that Mr. Hart might not have believed
17 he could get out of the car and run away or something
18 like that.

19 And then part of the problem was that once
20 he knew this happened, he was very concerned about how
21 they would treat his family if he didn't, you know --
22 if he ended up telling on them. But he eventually did.
23 He eventually did give statements that were -- that
24 pointed the finger more at them.

25 And so as far as a defense that would have been

DIRECT EXAMINATION - BY MR. SMITH

1 the defense, that he was young, immature, sucked into
2 it, not his plan, and that's what he testified to at
3 trial. So, I mean, he himself could have had a trial
4 where he argued that, but I don't believe, personally,
5 that it would have prevailed in his trial. That's my
6 personal opinion.

7 And so it seemed to me after what I knew, that
8 it was better for him to be the young kid, saying, hey,
9 this is what happened, and I'm testifying against these
10 people, somewhat of a, you know, strategic decision
11 to try to help him get through it and get the smallest
12 sentence possible. But, unfortunately, the defendant
13 didn't get convicted.

14 I mean, it seems very punitive that once
15 the defendant didn't get convicted over, you know,
16 the State's case, then he was punished tri-fold to what
17 I believe he should have been punished. And it wasn't
18 his fault that he didn't get convicted. He testified.

19 But the problem was he had given multiple
20 statements ahead of time, only because he did not
21 know that he wasn't supposed to be, that it didn't help
22 to, you know, send a letter to the co-defendant saying
23 I'm not going to testify against you or to change your
24 story a couple of different times.

25 He was not understanding at that point that that

CROSS-EXAMINATION - BY MS. SARJI

1 was not helpful. And I kept trying to say to him, well,
2 you just, you know, try to come up with one version
3 of the facts, one truthful version of the facts
4 and stick to it.

5 Q. Okay. Thank you.

6 MR. SMITH: No more questions, Your Honor.

7 THE COURT: All right. Cross-examination.

8 MS. SARJI: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. SARJI:

11 Q. Ms. Gay, you just testified that you knew that
12 he wasn't understanding that giving multiple versions
13 of events was not helping him. Did I hear you correctly
14 in that?

15 A. I told him that multiple times that it wasn't
16 helping him. But he really had -- he was a -- what's
17 the right way to describe it? He seems to be a very
18 intelligent 27-year-old man. Maybe he was an
19 intelligent 17-year old also. He seemed to be trying
20 to hide the ball is the best way to say it. You know,
21 he was not forthright in the first couple of versions
22 of his statement.

23 And so by the time we kind of got, maybe
24 there was a level of trust there, or maybe he finally
25 understood what the realities of his case were, in the

CROSS-EXAMINATION - BY MS. SARJI

1 end when he testified, I think he was testifying very
2 honestly what happened. The problem was is he had
3 created other things, including this document,
4 if I could recall, that they can impeach him with.
5 And the jury didn't choose to believe his testimony,
6 or the jury believed they couldn't convict the guy.

7 Q. Okay. And, I guess, what the thrust of my
8 question is that you knew that Mr. Hart was not
9 understanding what you were telling him.

10 A. I knew that Mr. Hart was choosing not to
11 understand what I was telling him. Whether it was
12 some cognitive problem or not, I don't know. I can't
13 remember. I do remember that I thought everything
14 was on track, and then all of a sudden I received,
15 if I recall, it was like a letter that he had mailed
16 maybe even out of the jail to somebody or just some
17 document that popped up. And, you know ---

18 Q. Well, you've testified on direct a couple
19 of times about your impression, that he had a lack
20 of understanding about the system. That was one
21 of the first things that I wrote down. Do you recall
22 testifying to that a moment ago?

23 A. Yes, and it would be my job to explain that
24 system to him, which I tried to do. And so, you know
25 -- and I did, I believe, eventually tried to explain

CROSS-EXAMINATION - BY MS. SARJI

1 to him that, you know, there was going to be this trial,
2 that he was going to be the State's witness, and that
3 was to convict this -- to try to convict this older,
4 more violent guy, that was going to help him in the long
5 run.

6 And it was -- you know, he did enter a plea.
7 I believe there's a specific line during the plea where
8 Mr. Sorenson says we didn't promise him anything,
9 Your Honor. That's not our policy. We have to do it
10 a certain way. I remember that because I -- that was
11 the truth of what he said.

12 And then so, you know, it seemed to be that,
13 you know -- and then I still kept telling the judge,
14 you know, he's only 17, please give him a baby sentence,
15 you know, please be understanding of the fact that
16 he did testify, he was a State's witness, did the best
17 he could, and then she just slammed him with this giant
18 sentence.

19 Q. Okay. So three different times I have written
20 down that in your direct you indicated that Mr. Hart
21 lacked understanding. You said that -- and I just
22 brought the first one up. He had a lack of
23 understanding of the system.

24 You testified also just a moment ago he was very
25 young and may not have understood anything that was

CROSS-EXAMINATION - BY MS. SARJI

1 going on. And then, finally, you testified that you
2 knew he wasn't understanding that things that he was
3 doing weren't helping him.

4 In light of all of those statements that you
5 made on direct, and your belief that he had a lack of
6 understanding, of general understanding of the system,
7 the process, and things that he should not be doing that
8 were hurtful to his defense, did it not occur to you in
9 light of that lack of understanding that you should have
10 had him evaluated to determine whether he was, in fact,
11 able to understand what you were telling him?

12 A. Cumulatively looking back, I can answer all those
13 questions. At the time, I just did not think that was
14 -- I mean, I was dealing with a person who could -- who
15 acted like he understood what I was saying, you know,
16 based on that. But, you know, then he would do
17 something else.

18 At the time that he was -- okay. When he made
19 his last and final statement, I guess, to the State,
20 which we thought was going to be the one he was going
21 to use, you know, what he was actually going to say
22 during the trial, I did not believe that he would need
23 an incompetent defense or anything like that because
24 I thought that he was going to go testify.

25 And, you know, honestly, I believe they had good

CROSS-EXAMINATION - BY MS. SARJI

1 evidence, and I believe Mr. Sorenson did too. They had
2 good evidence against this bad guy, and it was very
3 disappointing that they didn't get -- he didn't get
4 a conviction for all of us. And so, I guess, you could
5 say it sort of fell apart at the last minute.

6 And, you know, in retrospect, yes, maybe
7 I should have done that. But at the time, I was moving
8 in a different direction, trying to get him to be
9 a cooperating State's witness, and all -- if they had
10 a conviction, she would have given him a better
11 sentence, and that's just -- that was gross to me.

12 Q. Okay. And so the answer to my question is, yes,
13 in light of all of these things, you probably should
14 have had him evaluated?

15 A. Yes.

16 Q. And you mentioned at the very beginning of your
17 testimony -- of your direct testimony that you and Don
18 Sorenson were working hard towards having this violent
19 co-defendant get convicted. Do you recall that
20 testimony?

21 A. Well, yes, I do. And they, obviously, do all
22 the convicting part. I just did the -- my client would
23 be the witness, and my client would be cooperative,
24 and my client would be available to testify at
25 their trial. And so, you know, I think that he --

CROSS-EXAMINATION - BY MS. SARJI

1 Mr. Sorenson was very surprised that the defendant
2 didn't get convicted. That's my opinion.

3 Q. Okay. But from the outset when you heard
4 that Mr. Hart had given a statement, did you ever talk
5 to him about what rights he had in terms of trial, what
6 the, you know, research is as far as false confessions,
7 or seeking to have these suppressed at trial?
8 Did you go through all of those sort of procedural
9 things that he could have done versus pleading guilty
10 and testifying?

11 A. Probably. You have my file. So sometimes in
12 my file I do write down notes about things, sometimes
13 I make copies of cases, and different things like that.
14 But it is my general practice to discuss those types
15 of things with people who have made statements and don't
16 want to -- and want to have a trial.

17 With Mr. Hart, he would be -- initially, he was
18 appearing that he wanted to testify for the State,
19 and then he would do something that was -- particularly
20 this piece of paper that came out. And I said to him,
21 well, do you want to be a defendant in the trial?
22 Because if you want to be a defendant in the trial this
23 would be what happens to you, and you have, in fact,
24 given these statements already.

25 And, you know, if we have a trial, and we made

CROSS-EXAMINATION - BY MS. SARJI

1 the argument that it could be suppressed, that if they
2 don't, then they're coming in against you. And then
3 he had to think about it some more. We had to wait
4 a couple more weeks or whatever. I had to talk to
5 him again to see, and that's when he said no, he wanted
6 to continue to be a State's witness. And so it would
7 be my position that I did talk to him, honestly.
8 I don't have my file.

9 Q. That's the hard part about doing this remotely,
10 I suppose. And so it's your practice to do that,
11 but absent your notes, you have no independent
12 recollection of doing that?

13 A. I do have an independent recollection of talking
14 to him about the fact that he would be the one at trial
15 if he did not want to testify, and he wanted to not
16 plea. Yeah, I do have definitely an independent
17 recollection of talking to him about what would happen
18 to him if he went to trial.

19 And that could be where he's getting this idea
20 that I told him he's going to get 15 years because when
21 I routinely talk to people I say, you know, if you plead
22 guilty, you'll usually get the low end of the stick.
23 And if you don't, usually you get the high end of
24 the stick of the sentence of what the range is.

25 And I would have certainly believed that I would

CROSS-EXAMINATION - BY MS. SARJI

1 have told him that I thought he would get a worse
2 sentence if he did not. That's why when he keeps
3 saying that he would get less than the co-defendant,
4 or he would get, you know, 15 years, there were lots
5 of discussions about asking the judge for those kinds
6 of sentences for him, you know.

7 But the problem was that it wasn't a negotiated
8 situation, and I was being told over and over by the
9 sheriff's department that they couldn't make any
10 promises to him. And Mr. Sorenson said, well, we can't
11 work anything out. Specifically, he would just have
12 to plea, and it would be up to the judge, and I would
13 have explained that to him.

14 Q. Did you tell him what he would get in terms
15 of a sentence having gone to trial? Did you tell him
16 that he would be punished for exercising his trial
17 rights?

18 A. Yes. Well, I mean, you call it punished.
19 I mean, that's not the right word. I would have told
20 him what the sentencing range was if he were to go
21 to trial and get convicted by a jury. This was a really
22 bad case with really bad facts. And I would have
23 definitely told him that if he went to trial and got
24 convicted, I believe he would get a much worse sentence
25 than if he pled guilty and worked out, you know,

CROSS-EXAMINATION - BY MS. SARJI

1 became a State's witness.

2 I firmly believe that if he was willing and able
3 to testify in a State's case, that he would get benefit
4 from that. I mean, there was no doubt that I told him,
5 you know, I believe he would get benefit from that,
6 and that I was going to ask for 15 years because of
7 his age, because of his circumstances, because he would
8 be testifying against this person who was a bad guy,
9 who's in his 20s. But it didn't work out that way
10 because they acquitted the guy.

11 And then what happened after they acquitted
12 him is that the victim, who was very sympathetic,
13 who was pregnant at the time, came to his sentencing
14 and just was, you know, like a really sympathetic
15 person, and the judge gave him a terrible sentence.

16 Q. Okay.

17 MS. SARJI: Judge, normally at this point,
18 I would ask Mr. Hart if there was anything that I need
19 to ask Ms. Gay that I have left out. Obviously, I can't
20 do that. I think that this would be a point where if
21 I have left something out, I can speak to him about it
22 later, and perhaps hold the record open on this specific
23 line of questioning. I'm not sure how else to handle
24 it, unless there's a phone at SCDC that I could call him
25 on that they can make available right now for a private,

REDIRECT EXAMINATION - BY MR. SMITH

1 quick, little talk to make sure ---

2 THE COURT: I think ---

3 MS. SARJI: Mr. Hart, is there anything
4 else that you would like for me to ask Ms. Gay?
5 Just nod yes or no.

6 THE COURT: Is that a yes or a no?

7 THE DEFENDANT: It was correct. Everything
8 you were saying is correct.

9 MS. SARJI: Okay. Is there anything else
10 that you need to talk to me about?

11 THE DEFENDANT: The lower button keeps going
12 in and out. The lower red button keeps clicking off
13 and on. That's probably why you couldn't hear me just
14 now.

15 MS. SARJI: We're good. Okay. Thank you,
16 Judge. I don't have any further questions.

17 THE COURT: Very good. All right.

18 MR. SMITH: Your Honor, can I have a brief
19 redirect on a few of those questions?

20 THE COURT: You sure may.

21 MR. SMITH: Okay.

22 REDIRECT EXAMINATION

23 BY MR. SMITH:

24 Q. Ms. Gay, I just wanted to ask you about
25 this. Did you tell Mr. Hart that he would be punished

REDIRECT EXAMINATION - BY MR. SMITH

1 if he went to trial?

2 A. No.

3 Q. Was it more that you said that he may get
4 leniency if he were to cooperate with the State?

5 A. That he would get leniency, in my professional
6 opinion, if he were to cooperate with the State.
7 And that if he were to go to trial and get convicted,
8 it was my professional opinion that his sentence would
9 be bigger than if he pled guilty.

10 Q. Okay.

11 A. So, I mean, however you perceive that, punished
12 for going to trial, or these could be the consequences
13 if you get convicted. I mean, that's not punished for
14 going to trial. It's just you have to tell your clients
15 what the consequences of conviction would be under
16 the circumstances.

17 Q. Okay. Ms. Gay, are you aware of any reason
18 that diagnosis of ADD or ADHD would render a defendant
19 incompetent to stand trial?

20 MS. SARJI: Objection, Your Honor.
21 She's not an expert in ---

22 THE WITNESS: I couldn't answer that.

23 MS. SARJI: --- psychological diagnosis.

24 THE COURT: She can answer as to what her
25 view of the circumstances are and whether she should

REDIRECT EXAMINATION - BY MR. SMITH

1 have asked for an evaluation. Yes, sir, Mr. Smith.

2 MR. SMITH: Yes, Your Honor. I'm not
3 asking her to evaluate whether he has ADHD. I'm asking
4 whether knowing that a defendant has ADHD would cause
5 her to think that he is -- that the defendant would
6 be incompetent to stand trial.

7 THE WITNESS: Well, in response to that,
8 I have a client now who I believe has ADHD, and I think
9 that's part of his issues. And I'm having difficulty
10 communicating with him on some level, and I'm actually
11 going to have him be evaluated by the Department
12 of Disabilities.

13 You know, eight years ago, I guess,
14 the Department of Disabilities did it the same.
15 But, I mean, at one point in time it was where you
16 just had to send them to Columbia, then they figured
17 out, and then the Department of Disabilities kind
18 of started doing a lot more of these evaluations
19 on their own.

20 So, I don't know whether they had
21 a Department of Disabilities evaluation going
22 on in 2012 or not. They do now. And so I do have
23 one right now that I'm going to have evaluated because,
24 you know, he's making me nuts on trying to have these
25 proceedings, what's going on.

REDIRECT EXAMINATION - BY MR. SMITH

1 But in terms of whether or not it creates
2 a problem with competency or -- yeah, I mean, I think
3 there could be. I mean, there's usually -- it's not
4 usually just that one thing. I mean, there might
5 be other things also, you know, cognitive deficiencies,
6 a lot of times it's IQ, things like that, you know.
7 That would be my answer.

8 MR. SMITH: Judge, I have no more questions.
9 Thank you.

10 THE COURT: Based on your discussions
11 with Mr. Hart, did you have concerns about his
12 competency at the time of the plea?

13 THE WITNESS: I don't recall it being
14 competency. Hardheadedness might be what my thoughts
15 were at the time. Now that could have been intellectual
16 deficiency; that could have been ADHD; that could have
17 been some other things that might have been maybe
18 I should have perceived differently.

19 But there was definitely a point where
20 he just didn't do things that I thought were in his
21 best interest, I guess, is the best way to say it.
22 And, again, right now I have a client who's acting
23 very similar, and I am choosing to have an evaluation
24 of that person with the Department of Disabilities.

25 So, I don't recall -- that person

DIRECT EXAMINATION - BY MR. SMITH

1 is obviously -- the new guy is, obviously, not going
2 to be a witness for the State, so he doesn't have the
3 same options that Mr. Hart had. I think that because
4 I saw that as an option for him, and once he thought,
5 yes, I will do that, then I moved in that direction,
6 as opposed to any type of competency situation.

7 THE COURT: Anything further, Mr. Smith?

8 MR. SMITH: No, Your Honor.

9 THE COURT: No further witnesses?

10 MR. SMITH: Oh, I apologize, Your Honor.
11 Yes, I do want to call Mr. Sorenson as a witness.

12 THE COURT: Okay. Mr. Sorenson.

13 MR. DON SORENSON was called as a witness,
14 being duly sworn, was examined and testified as follows:

15 THE COURT: Very good.

16 DIRECT EXAMINATION

17 BY MR. SMITH:

18 Q. Mr. Sorenson, can you tell us where you work now,
19 and how you came to be involved in Mr. Hart's case?

20 A. Yes, sir. I'm the assistant solicitor in the
21 first judicial circuit, which encompasses Dorchester
22 County, and I was the assigned prosecutor in this case
23 back in 2012.

24 Q. Okay. Did you or Ms. Gay ever enter into plea
25 negotiations regarding Mr. Hart?

DIRECT EXAMINATION - BY MR. SMITH

1 A. No, sir. Ms. Gay and I had, as she has
2 indicated, and also I believe as Mr. Hart has indicated,
3 numerous conversations leading up to the ultimate
4 resolution in this case. I'm almost 100 percent
5 positive from the get-go with Ms. Gay, and then
6 also in my conversations with Mr. Hart with Ms. Gay,
7 that I pretty much was consistent from the get-go that
8 I was not going to be in a position to ever recommend
9 or negotiate any specific sentence, and that,
10 ultimately, that would be up to the Court.

11 The only thing I really can recall, and Mr. Hart
12 said this, and I can see myself probably telling him
13 this, was that, I mean, in my opinion, the only way
14 he was going to come out of this -- come out of prison
15 before being an old man would be to cooperate because
16 I do think these facts probably warranted, if he had
17 not cooperated, in going to trial of being convicted,
18 where he probably would be looking at a life sentence.

19 So -- but as far as any kind of negotiating
20 or recommending a specific sentence, that was never --
21 not only did I not do that, but I would have explained
22 to them pretty much every time I talked to them that
23 I could not do that. Even though, I do believe that's
24 something Ms. Gay made multiple attempts of trying
25 to get me to do.

DIRECT EXAMINATION - BY MR. SMITH

1 Q. Okay. Did you ever witness Ms. Gay informing
2 Mr. Hart that he would get a lesser sentence -- that
3 he would definitely get a lesser sentence if he were to
4 testify in the State's trial against the co-defendant?

5 A. I mean, yet again, I'm sure that -- I mean,
6 I don't have any specific recollection of this.
7 But I would imagine during our conversations, and her
8 conversations with Mr. Hart that I would have been
9 present for, that it would have been stressed upon
10 him that, you know -- that he would get some benefit
11 for cooperating.

12 I mean, obviously, the judge would know that
13 we were doing this all in front of -- the judge he pled
14 in front of, ultimately, was the judge that we tried
15 the co-defendant in front of, and then came back and
16 sentenced him. But I don't recall her ever telling him
17 that he was getting a specific sentence in my presence.

18 Q. Okay. Mr. Sorenson, you testified earlier
19 about having meetings with both Ms. Gay and Mr. Hart
20 at the same time. So in those meetings, you had
21 a chance to personally observe Mr. Hart, right?

22 A. Yes, sir.

23 Q. Okay. Did you see any behavior, or hear any
24 statements from Mr. Hart, that gave you reason to
25 believe that he did not understand that the sentence

DIRECT EXAMINATION - BY MR. SMITH

1 would ultimately be up to Judge Murphy?

2 A. No, sir. And, you know, I've been doing this
3 for almost 25 years now. You know, Mr. Hart is probably
4 the defendant that I've had the opportunity to spend
5 the most time with, quite frankly, just because we ended
6 up meeting multiple times because he kind of kept going
7 back and forth. We sat down, talked, and then he would
8 change his mind and would want a trial.

9 So that led to us probably meeting, I'm guessing,
10 probably three to five occasions. And I don't at any
11 point in time recall anybody -- I mean, the specific
12 sentence ever being discussed. And, you know, part
13 of the issue with Mr. Hart was his age.

14 I mean, the fact that he was young and,
15 obviously, I think there was a little disconnect with
16 him kind of really understanding the whole procedure
17 at times, and that probably took -- probably is why
18 it took us more than one occasion to get him to the
19 point where he was willing to plead and cooperate.

20 Q. Okay. Did you observe any behavior on Mr. Hart
21 personally that made you think that he -- made you
22 question his mental competency?

23 A. No, sir.

24 Q. Okay. Mr. Sorenson, did you prosecute
25 the co-defendant who was tried in this case?

DIRECT EXAMINATION - BY MR. SMITH

1 A. I did.

2 Q. Okay. During that trial, did you question
3 Mr. Hart?

4 A. I did.

5 Q. Okay. Did you ask him any questions about
6 whether the State has extended some sort of plea
7 offer to him in exchange for his testimony?

8 A. Yes, sir. I don't have that transcript in front
9 of me, but I'm almost 100 percent sure that was covered
10 during his testimony, and that's born out by the -- I do
11 have the transcript from his sentencing hearing a couple
12 of weeks later, and that is referenced.

13 I referenced that to Judge Murphy when I kind
14 of -- you know, basically reiterated the fact that there
15 were no negotiations, and the fact that was actually put
16 before the jury also, and that is on Page 7 -- the top
17 of Page 7 of the sentencing transcript.

18 Q. Okay. Is it your common practice when
19 questioning a State's witness at trial, who's
20 a co-defendant or the defendant, to ask them about
21 whether they've been offered anything in exchange
22 for their testimony?

23 A. Yes, sir.

24 Q. Okay. Now, I'll just ask this final question
25 just to sum up. At any time, did you say that Mr. Hart

CROSS-EXAMINATION - BY MS. SARJI

1 would get any particular sentence if he were to plead
2 guilty?

3 A. No, sir.

4 Q. Okay.

5 MR. SMITH: No more questions. Thank you.

6 THE COURT: Ms. Sarji, you're recognized.

7 Cross-examination.

8 MS. SARJI: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MS. SARJI:

11 Q. Mr. Sorenson, was there a proffer letter
12 in the case?

13 A. I don't believe we did one, no, ma'am.

14 Q. And so initially when you were first talking to
15 Mr. Hart, was it ever explained to him that statements
16 that he made to you in the presence of counsel would
17 not be privileged and could come back to be used against
18 him later?

19 A. I don't recall if we addressed that with
20 him or not. I don't have any recollection of that.
21 He had given -- I mean, as Ms. Gay referenced,
22 he's given multiple statements that were incriminating.
23 So, I'm not really too sure there's a whole lot that
24 he could have said to me that would have made it any
25 worse for himself between his statements and the

CROSS-EXAMINATION - BY MS. SARJI

1 forensic evidence that we had in the case.

2 Q. But, to your personal knowledge, there was never
3 any explanation by you or by Ms. Gay in your presence
4 that statements that Mr. Hart made to you, as an agent
5 of the government, would not be protected by
6 attorney/client privilege?

7 A. I don't specifically remember us actually talking
8 to him about that.

9 Q. And so he talked to you without the benefit
10 of a proffer letter or a proffer agreement. And after
11 talking to you, you said he then sort of reneged
12 and said he wanted to go to trial; is that right?

13 A. We spent quite a bit of time going back and
14 forth between whether he wanted to cooperate or wanted
15 a trial. And as Ms. Gay referenced, I do believe
16 he actually wrote a letter, may have actually written
17 that to me. I don't have my file, but I know he sent
18 a letter at some point in time after we had met the
19 first time, I believe, basically indicating that
20 he wanted a trial.

21 Q. Okay. So based on your receipt of that letter,
22 do you think that Mr. Hart probably didn't understand
23 that statements that he was making to you could be
24 brought up against him?

25 MR. SMITH: Objection. Cause for

CROSS-EXAMINATION - BY MS. SARJI

1 speculation as to Mr. Hart's mental state.

2 MS. SARJI: I'm asking for Mr. Sorenson's
3 impression.

4 THE COURT: I'll allow that.

5 THE WITNESS: Ms. Sarji, as far as --
6 the more I think about it, actually, I think that letter
7 may have been a letter that was sent to a co-defendant
8 that then made its way to me, I believe. But, yet
9 again, I don't have that in front of me, so I'm not
10 100 percent sure on that.

11 You know, my initial meetings with him,
12 he was less than cooperative, I guess, would be the best
13 way to put it. So, at that point in time, it really
14 didn't shock me a whole lot that he was kind of waffling
15 back and forth. And I think it's even referenced in
16 either the plea hearing or the sentencing hearing that
17 it really wasn't until kind of right before we got ready
18 for court that he had gotten to the point where I felt
19 like he was being, you know, not only cooperative but
20 also 100 percent truthful with me at that point in time.

21 Q. And so it took more than one meeting with him to
22 finally land on the decision that he wanted to cooperate
23 and go testify; is that right?

24 A. Yes, ma'am. I mean, I'm pretty sure that
25 I met with Mr. Hart, with his attorney, at the sheriff's

CROSS-EXAMINATION - BY MS. SARJI

1 office on probably two or three occasions, and then
2 probably even up in the courthouse one or two occasions
3 also.

4 Q. And on each of those occasions that you met
5 with him, did you tell him that he would receive
6 likely some benefit from the judge for testifying
7 against his co-defendant at trial?

8 A. I'm not sure that -- I mean, I'm sure that
9 was said to him at some point in time. But I'm not sure
10 that would be something I would have said to him every
11 time I met with him.

12 Q. But certainly something that you relaid to him
13 at some point in time?

14 A. I mean, that -- yet again, I think it would
15 be in his best interest to cooperate, that he obviously
16 would get some benefit from that.

17 Q. And that was also your expectation, right?
18 As Ms. Gay testified, you both were sort of dumbfounded
19 by the judge's sentence in the case?

20 A. I mean, I think Ms. Gay used the word
21 "disgusted." I don't think I would use that same
22 word. I'm not going to lie to you. I mean, I think
23 I was a little shocked at the time when he got 40 years.
24 But, yet again, I mean, that's, you know, is in Judge
25 Murphy's prerogative. I mean, you know, probably

REDIRECT EXAMINATION - BY MR. SMITH

1 shocked me a little more that he got the same amount
2 of time as his co-defendant did, and didn't get a little
3 bit less than the co-defendant.

4 But, I mean, we've never had -- we've never
5 had any discussion about how much time he was looking
6 at. I've never had any discussion with Judge Murphy
7 prior to her sentencing both the co-defendant,
8 Mr. Young, and Mr. Hart. So, I mean -- so, I would
9 not use the word "disgusted" that Ms. Gay would use.

10 I probably wouldn't use that word as far
11 as the acquittal of the co-defendant. But, I mean,
12 shocked a little bit, yes. But, yet again, I mean,
13 there was nothing that was ever presented to Mr. Hart
14 from me or in my presence that, you know, didn't say
15 that wasn't a possible outcome.

16 I mean, these facts were bad enough that I think
17 -- the jury convicted the co-defendant. I think he was
18 given life. I think if either Mr. Young or Mr. Hart
19 had wanted a trial, and didn't accept responsibility
20 and had been convicted, they probably would have been
21 looking at life in prison also.

22 MS. SARJI: I don't have anything further.

23 THE COURT: All right. Any redirect?

24 MR. SMITH: Yes, just a few, Your Honor,
25 not many.

REDIRECT EXAMINATION - BY MR. SMITH

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Sorenson, you testified about negotiations that went on with you, Mr. Hart, and Ms. Gay.

And I believe earlier you were asked whether it was explained to Mr. Hart in your presence that things discussed in those meetings would be protected.

In the absence of anything Mr. Hart may have said during those meetings, you believe you would have attempted to try him anyway?

Let me rephrase the question. What evidence did you have that you would have attempted to admit at trial of Mr. Hart's guilt?

A. Mr. Hart, we had a statement that he had given that implicated himself, along with his co-defendants, at least one statement. As I've said, I believe he gave multiple statements. We had a co-defendant that testified against his other co-defendant that theoretically could have testified against him.

Additionally, after this incident occurred, there was -- law enforcement had basically come upon a vehicle that Mr. Hart was, we believed, being one of the individuals that fled from that vehicle, that had evidence from our crime in that vehicle.

REDIRECT EXAMINATION - BY MR. SMITH

1 We had found some items in there that we ended
2 up with DNA matching Mr. Hart. And then there were
3 a couple of other witnesses that testified that
4 basically put our three co-defendants together before
5 and afterwards.

6 Q. Okay. Let me ask you -- I believe that you
7 were questioned on cross about statements you may
8 have made during ---

9 A. Can everybody hear me because I ---

10 THE COURT: I can hear you.

11 THE WITNESS: Taylor, I just want to make
12 -- okay, because I'm not seeing anybody but you, Judge
13 Nettles, right now. Everybody else has got a little
14 traffic cone. I just want to make sure that everybody
15 else is hearing me.

16 THE COURT: Very good. Everybody can hear
17 you. Go ahead.

18 MR. SMITH: Okay.

19 THE WITNESS: Thank you, Judge.

20 BY MR. SMITH:

21 Q. Did you ever say to Mr. Hart during these
22 negotiation meetings that he would get some benefit
23 if he were to plead guilty and testify at the
24 co-defendant's trial, or that he may get a benefit?

25 A. Mr. Smith, I don't remember what exact words

REDIRECT EXAMINATION - BY MR. SMITH

1 I can use -- I may have used. I mean, Mr. Hart made the
2 comment during his testimony that I said that, you know,
3 it's his only chance to come out before he was an old
4 man. I mean, I also can see myself saying that to him.
5 But in looking at when he's going to get out, I mean,
6 he'll be my age when he gets out of prison, so I think
7 that, you know.

8 Q. Okay. Thank you.

9 MR. SMITH: No more questions.

10 THE WITNESS: Thank you.

11 THE COURT: Very good. Anything further
12 from anybody?

13 MS. SARJI: I'm sorry. Mr. Hart has
14 indicated he's raised his hand.

15 MR. SMITH: I don't know if Ms. Sarji
16 would like to talk to Mr. Hart. It was my understanding
17 that there was some way that the two of them could speak
18 privately, even though we are all in a WebEx call.
19 I don't know if Your Honor knows anything about that.

20 THE COURT: I would have no way of knowing
21 how to do that.

22 MS. SARJI: In other hearings that
23 I've had, but not PCR hearings, but other hearings
24 in criminal cases, there's been a telephone made
25 available, and we just put you guys on mute,

RECROSS-EXAMINATION - BY MS. SARJI

1 and then I would call him, and we could talk.

2 THE COURT: Let's do that. Let's do that.

3 THE DEFENDANT: We could do that.

4 THE COURT: Let's do that.

5 MS. SARJI: Okay.

6 THE COURT: Ask Ms. Bracey if she would come
7 in.

8 MS. BRACEY: Hello.

9 MS. SARJI: Do you have a way for him to
10 talk to me, a telephone number that I can call directly
11 so that I can have a brief conference with my client?

12 MS. BRACEY: Yes. Hold on one second.
13 Let me get the number first.

14 MS. SARJI: Thank you.

15 (Off the record.)

16 (Back on the record.)

17 MS. SARJI: And, Judge, I've had a chance
18 to talk to Mr. Hart, so we're ready to go. I just have
19 one statement -- one question for Mr. Sorenson.

20 THE COURT: Okay, very good. Mr. Sorenson.

21 THE WITNESS: Yes, sir.

22 THE COURT: Ms. Sarji, has one question
23 for you.

24 THE WITNESS: Yes, sir.

25 MS. SARJI: Thank you.

RECROSS-EXAMINATION - BY MS. SARJI

1 RECROSS-EXAMINATION

2 BY MS. SARJI:

3 Q. Mr. Sorenson, do you recall that the letter
4 that you're talking about Mr. Hart having written
5 was actually a letter from his co-defendant threatening
6 him if he testified at trial?

7 A. I don't -- I don't. I mean, that might
8 be correct. I just know there was some letter
9 that came up, and I don't have my file to go through.
10 I know there was some letter that came up after we
11 met the first time that led to him changing his mind
12 and potentially wanting a trial instead, so it could
13 very well be the case. I don't -- I was thinking it
14 was a letter he had written, but it could be a letter
15 from a co-defendant.

16 MS. SARJI: I don't have anything further,
17 Judge. Thank you.

18 THE COURT: Very good. Anything ---

19 MR. SMITH: I did have an objection
20 there. I apologize. And since Mr. Sorenson did answer
21 the question, I will say I move to strike the question
22 and answer because it asked about an item not in
23 evidence. That's the objection.

24 THE COURT: Your objection is on the record,
25 and you're protected. Anything else from anybody?

1 MS. SARJI: Nothing from the applicant,
2 Judge. Thank you.

3 THE COURT: Anything from the State?

4 MR. SMITH: Your Honor, I wanted to see --
5 would you like just a brief closing from the parties?

6 THE COURT: If the spirit moves you,
7 I'll be glad to hear from you.

8 MR. SMITH: Okay.

9 THE COURT: And since the applicant
10 has the burden of proof, I will recognize Ms. Sarji,
11 if she would like to summarize. One of the things
12 I would like for you to touch on is that one of the
13 original grounds was the investigation, and that really
14 -- I'll ask that you address that as well. Go ahead.

15 MS. SARJI: Your Honor, in talking about
16 the investigation, I think that -- it sounded like
17 from Ms. Gay's testimony, and I think that she was
18 pretty clear about it, and it sort of -- supports
19 what Mr. Hart is saying, that when she heard that
20 he had made a statement, her focus became the only
21 path that she saw available to Mr. Hart to benefit
22 himself was for his cooperation and testimony
23 for the State.

24 And so regardless of any other potential
25 theories that could have been advanced, or avenues

1 of investigation that could have been done, that was
2 sort of disregarded. And her sole pursuit at that
3 point, in trying to do what she believed was best
4 for her client, was to focus on the cooperation
5 and the prosecution of the adult, bad guy co-defendant,
6 as she put it.

7 And so there's been no testimony
8 from Ms. Gay about her having talked to witnesses,
9 no gathering of mental health records, despite her
10 recognizing that he may not have understood anything
11 that was going on, and that her practice now
12 in a current case that she has encountered with
13 a defendant who is sort of presenting in a similar
14 manner as Mr. Hart, she is having that individual
15 evaluated by the Department of Disabilities and
16 Special Needs, which she doesn't believe was available
17 to her at the time when Mr. Hart was a client.

18 So, I think that all of that lends
19 credibility to his assertion that there was not
20 adequate investigation done because it doesn't
21 sound like that there was any investigation done.
22 I think that, in addition to that, Judge, and again
23 I'm going to draw on Ms. Gay's own testimony, that
24 he was 17 -- my client was 17 years old at the time
25 of the commission of this crime, and this was his

1 first encounter with the criminal justice system.

2 Ms. Gay indicated that she did not think
3 that he -- three separate times she testified she
4 didn't think that he was understanding what it was
5 that she was talking to him about in terms of his
6 defense and in terms of what would be good for him
7 and what wouldn't be good for him.

8 She also testified that -- I believe that
9 she said that there weren't really plea negotiations
10 they were engaged in by her, that he came in and had
11 talked to the police, he had given three different
12 statements, and that she and Mr. Sorenson began working
13 hard towards having the co-defendant get convicted.
14 Those are the notes I have from her direct.

15 So, I think that we have a young client
16 who has no prior experience, who has a history of some
17 mental health diagnosis and participation in counseling,
18 who is not communicating effectively with counsel,
19 and she indicated that he is much more communicative
20 and able to express himself now than he was at the time,
21 that he's not communicating with her, and she saw
22 a clear path towards resolution for him, and perhaps
23 overstressed the 15 years, is what stuck with him in
24 his belief that he would get 15 years and get a benefit
25 for cooperating.

1 I think that -- and Ms. Gay also testified,
2 which references Mr. Hart's argument, that he was told
3 that if he went to trial -- when I first asked Ms. Gay,
4 I said, did you tell him he would get punished for
5 exercising his trial rights? Her first response
6 was yes. She then backed off of it a little bit.
7 And when asked again by the attorney general, she said,
8 no, and sort of qualified it.

9 But the practical reality of the situation
10 is that she said you do have to advise your client
11 that if they go to trial they are probably going to get
12 a worse sentence.

13 THE COURT: I'll tell you that's
14 really semantics because if a person goes to trial,
15 the conventional wisdom is he gets what he deserves.
16 But if he pleads guilty, he gets the benefit of
17 cooperating. But I think it's -- you're in error
18 if you don't advise your client that the punishment
19 would be worse if you go to trial. I think that's
20 a reality, and I think it needs to be told.

21 MS. SARJI: And I agree with you, Judge.
22 But there is case law out there, and I'm not prepared
23 to cite it to you, although, I would be happy to pull
24 it for you and send it to you later. There is case law
25 out there that -- where courts have invalidated guilty

1 pleas where their counsel had indicated to them that
2 they would be punished for exercising their trial
3 rights.

4 So, I agree with you. I think we do,
5 as criminal defense lawyers, have to advise our clients
6 that the likelihood is that they will receive a greater
7 sentence for not having accepted responsibility.

8 But the flip side of that is that when
9 it ends up rendering the guilty plea involuntary,
10 and I think in Mr. Hart's individual case, when you
11 look at all of those factors about him as an individual
12 client that Ms. Gay was presented with, that his
13 individual will was overcome, and his understanding
14 very limited about the consequences.

15 And I think that the entirety of this
16 situation indicates that his conviction should be
17 reversed and remanded for new disposition, Judge.
18 Although, I think this would be a perfect opportunity
19 to explain to Mr. Hart again that he is facing the
20 original penalties should Your Honor grant his requested
21 relief. I have stressed that to him in the past ---

22 THE COURT: You've explained that to him,
23 and he understands it?

24 MS. SARJI: I believe so, Judge. But I just
25 want to make -- I would like to make clear on the record

1 that Mr. Hart understands that this would put him back
2 at the starting line.

3 THE COURT: Mr. Hart, you do understand
4 that if I grant your request for relief that you will
5 be facing the charges and could ultimately end up
6 getting a life sentence. Do you understand that?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Very good. All right,
9 Mr. Smith, you're recognized.

10 MR. SMITH: Thank you, Your Honor. I will
11 say first that there has been assertion that Ms. Gay
12 didn't engage in any sort of investigation or strategy.
13 She focused only on cooperation. In terms of blaming
14 the co-defendant, that's a common defense strategy
15 to say my client is innocent or less culpable than
16 this other person.

17 And she did not testify that she didn't do
18 any sort of investigation. There weren't many questions
19 about the investigation because Mr. Hart's testimony
20 focused mostly on the alleged plea offer. But the --
21 also I'll point out that Mr. Hart has not presented any
22 evidence today that would have resulted in a different
23 outcome had it been introduced or pursued.

24 In terms of other witnesses or other
25 strategies and potential mental health issues, Mr. Hart

1 has merely speculated that these things would have
2 helped him. Of course, Your Honor knows in
3 post-conviction relief he has the burden to actually
4 show that evidence or demonstrate his position, and not
5 merely say something could have come out of further
6 investigation.

7 So, I think the fact that he hasn't
8 presented any sort of evidence that he had psychiatric
9 issues that would have rendered him incompetent at trial
10 is itself a bar to relief here. I will also say that
11 the testimony today, both Ms. Gay and Mr. Sorenson
12 testified that they did not promise Mr. Hart a specific
13 sentence or say that he would get one. They both said
14 that they felt he might or that he may.

15 In Ms. Gay's case, she said she hoped
16 and pursued a lesser sentence. And if Your Honor
17 reviews the transcript from sentencing and from
18 the plea hearing, you could see that she did pursue
19 that. I think Mr. Hart even testified that Mr. Sorenson
20 did not tell him a specific sentence.

21 So, I think on the whole, the evidence today
22 tends to show that no one ever told Mr. Hart that
23 he would get a lesser sentence if he cooperated with
24 the State or a specific sentence. And even if they had,
25 there is case law that I can cite for Your Honor,

1 such as Holden v. State, 393 S.C. 565. It says
2 that a judge's colloquy cures any defects like
3 this in an attorney's advice to clients.

4 So in other words, even if Ms. Gay had
5 said if you cooperate, you definitely will get a 15-year
6 sentence, the fact that Judge Murphy then told him
7 I'm in charge of your sentencing and you could get
8 life should clear that up. There's no longer any issue.
9 What Ms. Gay told him at that point is irrelevant.
10 The Court's colloquy would have cleared that.

11 And I'll just say that I think that there
12 are lots of things that was said at that plea hearing
13 that are -- should have closed the book on this matter.

14 Ms. Gay affirmed to Judge Murphy that she
15 had gone over possible defenses and possible sentences
16 with Mr. Hart, and that she believed he understood.
17 Mr. Hart affirmed that Ms. Gay had done so and that
18 he understood. Mr. Hart affirmed to Judge Murphy
19 that he understood the possible sentences and that
20 he would be waiving his trial rights and possible
21 defenses by pleading guilty. He affirmed that he --
22 the facts of the crime as presented by the State
23 were true and that he had participated.

24 The facts, by the way, Mr. Sorenson
25 presented testimony that could have landed to

1 a conviction, even in the absence of any discussions
2 that Mr. Hart had with the State.

3 So, I think this is a case where
4 they cooperated hoping for leniency from the Court.
5 Maybe they didn't get it or maybe they did, I don't
6 know. It's possible. In the absence of his
7 cooperation, Judge Murphy may have sentenced him
8 to life.

9 But what is the case is that Mr. Hart
10 has not met his burden. No one told him that he would
11 get a particular sentence. On the contrary, the Court
12 explicitly said, you know, there are no offers.
13 So the State would just ask for the Court to deny
14 the application.

15 THE COURT: All right. The first ground
16 that was brought up deals essentially with the sentence,
17 that there was an abuse of discretion for the judge
18 to sentence him to 40 years.

19 First and foremost, the 40 years is within
20 the legal sentence. He could have gotten up to life.
21 Whether or not -- I can't be called upon to substitute
22 my judgment for what an appropriate sentence would be.
23 Mr. Sorenson seems to indicate that it was excessive,
24 Ms. Sarji has, and Ms. Gay has as well.

25 The question for me to determine is whether

1 or not it was an illegal sentence. And based on the
2 fact that he received a 40-year sentence, he was exposed
3 to life, one could argue that he did receive the benefit
4 of his cooperation.

5 The second issue has to do with specific
6 performance of a plea agreement. I find, as a matter
7 of fact, that there was indeed no plea agreement.
8 That's substantiated by the plea transcript,
9 number one. It's substantiated by Mr. Hart's testimony,
10 who indicated that Mr. Sorenson never said that to him.
11 There was no plea agreement, no written plea agreement.
12 And Mr. Sorenson indicates that it was his position
13 on the case from the very beginning that he was not
14 going to recommend or negotiate a sentence.

15 And I think it's important to look
16 at the details of the plea transcript where it was
17 clearly set forth that he was exposed to a life
18 sentence, and that it was up to Judge Murphy to sentence
19 him.

20 As far as the investigation goes, it is
21 the state of the law in a post-conviction relief hearing
22 that if there was a -- following the investigation,
23 it's incumbent upon the applicant to do the
24 investigation and to proffer that type of testimony.

25 I think it's important to look at the trial

1 transcript and the plea transcript. It indicates that
2 there were three separate statements that inculcated
3 the Defendant. The trial transcript -- I mean,
4 the plea transcript certainly indicates his guilt,
5 agreement as to the facts. And if it were any
6 different, it would be incumbent upon him to gather
7 that information and present it to the Court,
8 which has not been done.

9 I specifically find that there was never
10 a promise as to a specific sentence. As far as the
11 mental health evaluation, there's been some mention
12 of ADHD and the fact that he might have received
13 some counseling. But once again the burden is on
14 the applicant to show that he was indeed incompetent.

15 I think we, first of all, need to look at
16 the plea transcript, which indicates there did not seem
17 to be any position taken by the applicant that there
18 was any mental conformity that would have inhibited his
19 ability to understand the plea and what was transpiring.
20 Once again, the burden -- the proof is on the applicant,
21 and there's been no evidence presented here today that
22 would allow me to do that.

23 Mr. Hart, it is a very unfortunate
24 circumstance. You're going to have the absolute
25 right to appeal my ruling, and I wish you the best

1 of luck. Good luck to you.

2 THE DEFENDANT: Thank you.

3 THE COURT: All right. Very good.

4 MS. SARJI: Thank you, Your Honor.

5 MR. SMITH: I have one more question.

6 I'm assuming I'm going to send Your Honor the proposed
7 order?

8 THE COURT: Yeah, that's correct.

9 And send it to Ms. Sarji to ensure that the order
10 accurately reflects my ruling here today.

11 MS. SARJI: Your Honor, can I just put
12 one exception to your ruling on the record for purposes
13 of appeal? That we are effectively -- our hands
14 are tied with regards to presenting an evaluation
15 of Mr. Hart at this point, given that it's been eight
16 years since the time of his plea.

17 There's no way to recreate the
18 circumstances. I believe that would give rise
19 to a situation anticipated by United States v. Cronin,
20 466 U.S. 648. It's a 1984 case, and that it essentially
21 would render the situation in which he found himself
22 so procedurally invalid as to give him a basis for
23 reversal, just for the record, Judge.

24 THE COURT: You're protected on the record.
25 Thank you very much.

1 MR. SMITH: Your Honor, may I make
2 one comment as to that? Mr. Hart's application
3 was filed in November of 2016. Although it's 2020
4 today, we were substantially closer to the time
5 of his guilty plea then than we are today.

6 THE COURT: Thank you. Thank you to each
7 of y'all. Good luck to you.

8 MS. SARJI: Thank you, Judge.

9 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

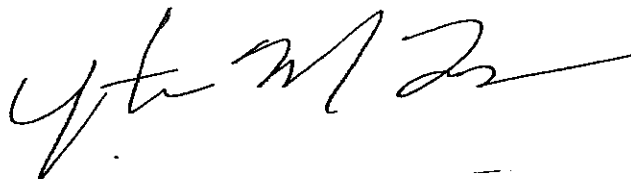
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State of South Carolina)
County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 1st of September, 2020.

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

January 4, 2021



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Tevin Hart, #358579,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2016-CP-18-2182

ORDER OF DISMISSAL

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DORCHESTER COUNTY

This matter comes before this Court by way of an application for post-conviction relief filed on November 21, 2016, by Tevin Hart ("Applicant"). The State ("Respondent") filed its return on August 1, 2017, in which it moved for the summary dismissal of one of Applicant's claims and requested an evidentiary hearing in order to resolve the remaining claims raised in the application. On August 12, 2020, Applicant, through counsel, filed an amended application incorporating the claims raised in the application and pleading new claims. On Tuesday, September 1, 2020, an evidentiary hearing in this matter was convened before the undersigned. Leslie Therese Sarji, Esquire, represented Applicant,¹ and Assistant Attorney General Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent. Because the COVID-19 pandemic has made in-person hearings difficult and the transportation of those imprisoned within the South Carolina Department of Corrections inadvisable, the hearing was

¹ At the start of the hearing, Applicant moved to have Sarji relieved and another attorney appointed. The record shows Applicant's last appointed attorney in this matter was also relieved at Applicant's request. Sarji joined in Applicant's motion because Applicant filed a grievance against her with the South Carolina Supreme Court's Office of Disciplinary Counsel. After hearing from Applicant and Sarji on the matter, this Court gave Applicant the choice to proceed in this PCR action as a pro se litigant or else with Sarji as his counsel. Applicant agreed to proceed with Sarji as counsel, and Sarji agreed that she would set aside any personal feelings and represent Applicant to the best of her ability. This Court denied the motions and the parties proceeded with the evidentiary hearing.

conducted remotely. Both parties agreed that they were willing to proceed with the hearing over Webex. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Melisa White Gay, Esquire, and Assistant Solicitor Donald Neils Sorenson of the First Circuit Solicitor's Office. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. During its July of 2012 term, the Dorchester County Grand Jury indicted Applicant for first-degree burglary (2012-GS-18-0714), armed robbery (2012-GS-18-0719), and four counts of kidnapping (2012-GS-18-0715). Gay ("plea counsel") represented Applicant, and Sorenson prosecuted the case. On October 7, 2013, Applicant appeared before the Honorable Maite Murphy and pleaded guilty as indicted. At that hearing, Applicant affirmed as true the following facts: Applicant, armed with an assault rifle, and two codefendants broke into the victim's home at approximately 4:00 a.m., possibly after mistaking the victim's home for that of a drug dealer who lived nearby and whom the intruders meant to rob instead; the victim was pregnant at the time, and was home alone with her three kids—all under ten years old—while her husband was working the night shift; and the intruders kicked in the victim's bedroom door and held her at gunpoint while they took jewelry, firearms, and other items of personal property. Plea Transcript 6-12. Though Judge Murphy accepted the entry of Applicant's guilty pleas at that hearing, sentencing was deferred so that Applicant could testify as a witness for the State at the trial of one of his codefendants. On January 23, 2014, which came after the conclusion of the codefendant's trial, Applicant again appeared before Judge

Murphy for sentencing. Judge Murphy sentenced Applicant to imprisonment for forty years for burglary, thirty years for each count of kidnapping, and thirty years for armed robbery, with all sentences running concurrently.

On January 30, 2014, plea counsel filed a motion for reconsideration, arguing the forty- and thirty-year sentences were excessive because Applicant did not have a prior criminal record, had participated in the State's prosecution of his codefendant, and was deprived of the due process of law when Judge Murphy denied plea counsel's motion to continue the sentencing hearing until Applicant's mother could attend. On April 3, 2014, Judge Murphy issued an order denying plea counsel's motion for reconsideration, finding her denial of plea counsel's for a motion for a continuance was justified because Applicant was an adult at the time of sentencing and enjoyed the opportunity to present mitigation statements at his sentencing through his other family members who were present. Judge Murphy also found that Applicant's sentences were justified in light of the facts and circumstances and that the sentences were within the range of sentences authorized by law.

Plea counsel filed a notice of appeal. In accordance with Rule 203(d)(1)(B)(iv), SCACR, plea counsel argued that the appellate courts should review allow Applicant's appeal to proceed, despite the fact that he pleaded guilty, because the sentences issued by Judge Murphy were excessive under the circumstances, Judge Murphy's denial of plea counsel's motion to reconsider Applicant's sentences was an abuse of discretion, and Applicant's decision to plead guilty was tainted by Sorenson's misrepresentations to Applicant; Applicant filed a pro se explanation, too, arguing that Sorenson tricked him into pleading guilty and cooperating with the State in its prosecution of Applicant's codefendant by telling him that his cooperation would help him get out of prison before he became an old man. The South Carolina Court of Appeals allowed Applicant's

direct appeal to proceed.

Appellate Defender Benjamin John Tripp ("appellate counsel") of the South Carolina Commission on Indigent Defense then began representing Applicant. Interim Senior Assistant Deputy Attorney General John Benjamin Aplin of the South Carolina Attorney General's Office represented Respondent on appeal. Appellate counsel filed a motion to be relieved as counsel and a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing therein that Judge Murphy abused her discretion in denying plea counsel's motion to reconsider Applicant's sentences because Applicant was younger than his codefendant, did not have a prior criminal record, and was pressured by his codefendant into committing the crime. Applicant did not file a pro se response to appellate counsel's Anders brief. The South Carolina Court of Appeals granted appellate counsel's motion to be relieved and dismissed the appeal. State v. Hart, Op. No. 2016-UP-085 (S.C. Ct. App. filed February 24, 2016) (per curiam). The remittitur was issued on March 21, 2016.

CURRENT PROCEEDING

On November 21, 2016, Applicant filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

1. Applicant received the ineffective assistance of plea counsel:
 - a. Because of her performance with regard to Applicant's plea agreement; and
 - b. By informing Applicant, in conjunction with Sorenson, that Applicant would receive a lesser sentence if he testified against his codefendant; and
2. Judge Murphy abused her discretion by:
 - a. Denying plea counsel's motion to reconsider Applicant's sentences;
 - b. Not taking into consideration the fact that Applicant testified at his codefendant's trial on the State's behalf; and
 - c. Not taking into consideration that Applicant did not have a prior criminal record.

On August 12, 2020, Applicant, through counsel, filed an amended application, incorporating the claims raised in the application and asserting additionally that Applicant was entitled to post-conviction relief because:

1. Applicant received the ineffective assistance of counsel because trial counsel:
 - a. Failed to seek the specific performance of an oral plea agreement;
 - b. Failed to conduct an adequate investigation into possible defenses available to Applicant;
 - c. Failed to share with Applicant the results of any investigation that may have been performed;
 - d. Along with Sorenson, lead Applicant to believe that he would receive a specific sentence rather than being subjected to the potential maximum sentences; and
 - e. Failed to have an expert perform a mental health evaluation of Applicant in order to assess whether he was mentally ill at the time of the commission of the crimes.

At the start of the evidentiary hearing before the undersigned on September 1, 2020, this Court requested that Applicant specify for the record the grounds upon which he would move forward. Applicant specified that he would be moving forward only upon the grounds specifically articulated in the application for post-conviction relief and in the amended application. This Court finds that all allegations other than these have been waived by Applicant and they will not be addressed in this order.

Testimony at PCR Hearing

Applicant testified on his own behalf at the PCR hearing. He entered an "open plea" for the underlying criminal offenses. He did not understand at the time of the entry of his guilty pleas what an open plea was, but he has since learned what the term means. At his plea hearing, plea counsel had him sign the sentencing sheets without explaining the meaning of an open plea.

Before his plea hearing, plea counsel told him that she wanted to try to get Judge Murphy to sentence him to imprisonment for fifteen years because he was a young man, younger than his codefendants, and did not have a prior criminal history. He did not understand what was happening

during plea negotiations because his lack of a criminal record meant that he did not have any experience with the criminal justice system. He thought that Judge Murphy, who accepted the entry of his guilty pleas and sentenced him, would have had the discretion to "give [him] a plea." He was pleading "straight up" to the indicted offenses, although he did not understand that at the time.

When he, Sorenson, and plea counsel met together, he understood their conversations to mean that, if he testified on the State's behalf against his codefendant, he would come out better than his codefendants and the State and plea counsel would ask Judge Murphy for the minimum sentence. He testified on the State's behalf in his codefendant's trial, but pleaded guilty before Judge Murphy before testifying in that other trial. He had multiple meetings—perhaps two or three—with plea counsel and Sorenson. He cooperated with Sorenson and law enforcement officers by telling them what had happened during the robbery. His understanding was that he would be given a more favorable than his codefendants due to his cooperation with the State. He thought that everyone agreed that he should receive a fifteen-year sentence. When asked if plea counsel had informed him that he could potentially receive a sentence greater than fifteen years, he answered that Judge Murphy clarified those details during his sentencing hearing. When asked if, at the time of his plea hearing, anyone had informed him of the maximum possible penalties, he answered that Judge Murphy told him that he could receive the sentence of life in prison. He pleaded guilty based upon the advice given to him by plea counsel. Plea counsel did not discuss with him the meaning of a "negotiated plea," or whether one such plea was available to him. Plea counsel told him that he would not get any greater of a sentence than his codefendants because he did not have a criminal record. The codefendant against whom he testified was acquitted by the

jury. He would not have pleaded guilty if he had known that the fifteen-year sentence was not a certainty.

Sorenson told him that he would receive a shorter sentence than his codefendants and that he would get out before he aged into an old man. Sorenson did not say "fifteen years" exactly, though; plea counsel said "fifteen." He did not have a written plea agreement. Neither plea counsel nor Sorenson gave him any reason that he could not be sentenced to prison for fifteen years at the time of his plea hearing in advance of his codefendant's trial. He pleaded guilty based off of plea counsel's assurances. Applicant thought that he had something like an oral plea agreement that he would receive a lighter sentence if he pleaded guilty. He thinks plea counsel should have tried to enforce a fifteen-year sentence as an oral plea agreement. Pleading guilty before Judge Murphy was his first time ever appearing before a judge and he did not know how the legal process worked. Plea counsel knew that he had little to no experience with the system. When asked if plea counsel had discussed with him possible defenses that could be raised at trial, he answered that he wanted plea counsel to investigate whether he was young and being threatened—perhaps by his codefendants—and had psychiatric problems. He thought he had a legal defense because he was forced to do the crime. Plea counsel did not discuss the defense of duress with him. He did not fully understand everything that he and plea counsel discussed.

He was not concerned with his safety, but was concerned about the safety of his family. Others told him that he should recant his statements to police, but plea counsel said she would quite representing him if he did so. He did not want to lose his attorney, so he decided not to recant his statements to police. He told plea counsel that he wanted to back out of what he told police, but she threatened to quit if he did.

Applicant admitted that, during his codefendant's trial, he had testified in response to questioning from Sorenson that the State had not offered him any plea deal in exchange for his testimony.

Respondent called plea counsel as its first witness. She was retained to represent Applicant by Applicant's mother. Applicant was seventeen-years-old at the time of the underlying crime. It was traumatic for him to receive the sentences that he did after such a long criminal defense case. She and Sorenson communicated extensively about the case and she has a good memory about everything that happened. She cared deeply about Applicant's defense and believed his sentence to be terrible.

She entered plea negotiations on Applicant's behalf. There was a problem with Applicant's defense because he had given three separate statements to police that were all different. She thought that Manigault, one of Applicant's codefendants to be "a bad guy." That codefendant was the only of the three codefendants to have been acquitted. That codefendant had a history of violence and other criminal activity. Her goal in the representation was to shift the blame from Applicant onto the codefendant. She and Sorenson were working to have Applicant testify against that other codefendant, whom they believed should have been imprisoned for life because he was older than Applicant. Manigault planned the crime and did bad things during the course of the home invasion. On the other hand, Applicant was a young kid who went along with the plans. She was advocating to Sorenson the idea that Applicant was not the planner or the bad guy in the situation. She and Applicant met with detectives in Dorchester County many times during the representation.

Applicant was concerned about the safety of his family and was not forthright with the State about facts of the crime initially. He pleaded guilty with the understanding that he would be working together with the State to convict his codefendant. Applicant did the best that he could in

testifying on the State's behalf, but his multiple statements to law enforcement called into question his credibility during the codefendant's trial. Applicant's testimony did not carry the day during Manigault's trial. Manigault's acquittal made her feel sick.

Sorenson made it clear that he would not make a sentencing recommendation. He told them that it would be up to plea counsel to make the case to Judge Murphy that Applicant should get any specific sentence. Sorenson was disgusted with Applicant's lengthy sentence. She did not tell Applicant that his sentence would be for fifteen years, but she did tell him that they would work to get a fifteen-year sentence. She does not think the State had any problem with or objection to her asking for a fifteen-year sentence. She believes that Applicant was very young and confused.

She does not know anything about Applicant's mental health history that would have required her to seek an evaluation. She has had hundreds of clients and does not recall anything happening during the course of her representation of Applicant that caused her to question Applicant's mental competency. She did think that he was a bad listener, though.

She wore loose clothing when in court because of her body type, and was insulted by Applicant's testimony that she looked sloppy. She did not recall ever slurring her words in court. It was possible that she was reading something during Manigault's trial, but would not have done so either when they were in court for Applicant's case or when Applicant was on the stand.

She did not instruct Applicant to answer affirmatively to all of the questions asked during Applicant's plea hearing. She explained to Applicant that his plea and sentencing hearings would be bifurcated, with the codefendant's trial coming in between the two. She discussed with Applicant potential defenses. Applicant did not deny being involved in the crime, but said that he felt that he had no choice but to participate or was under duress from his codefendants. Applicant maintained that he had no idea that they were going to rob the victim, but felt that he could not run

away once the crime began. She did not think that any of those defenses would have been successful had they pursued them at trial. She asked Applicant to stick to the true version of events.

Applicant cross-examined plea counsel at the PCR hearing. Plea counsel testified that perhaps Applicant did not understand that it would not have helped him to talk to the police about the crime. When asked if plea counsel knew that Applicant did not understand the consequences of his actions during her representation of him, plea counsel answered that she believes that Applicant chose not to understand rather than being unable to due to some mental issue, and testified that she was not aware of any cognitive problems on Applicant's part. She agreed that it was her job to explain to Applicant the workings of the criminal justice system. She told Applicant that he would be the State's witness and hope for a good sentence from Judge Murphy.

Applicant questioned plea counsel about testimony she had given during direct examination in which she testified that Applicant did not understand certain things, and asked if this indicated that Applicant was in need of a competency evaluation. Plea counsel answered that she thought that there was no reason to worry about Applicant's mental competency once it became clear that he would testify against Manigault. In light of everything she knows now, though, she questions whether she should have had Applicant's mental health evaluated. She does not think that Applicant lacked the mental competency to stand trial, but she thinks he suffered from hard-headedness.

When asked if plea counsel discussed with Applicant his trial rights, she answered that she could not remember and did not have her criminal defense file to refer to, but thinks that she did because that is her general practice. She offered Applicant the opportunity to back out of his cooperation plea deal before he testified at his codefendant's trial, but Applicant decided that he wanted to stay the course. She told him that defendants who cooperate with the State usually get

lower sentences that they would if they did not cooperate, but she was aware that the State would not negotiate about recommending a specific sentence. She told Applicant that he might receive a tougher sentence if he were to go to trial instead of cooperating with the State and pleading guilty.

On re-direct, plea counsel testified that she did not tell Applicant that he would be punished by Judge Murphy if he were to assert his right to a trial, but did tell him that he was more likely to receive mercy during sentencing if he admitted his guilt and cooperated with the State in convicting the more culpable codefendant. Since representing Applicant, she has had another client with attention deficit disorder or attention deficit hyperactivity disorder, and has had that client's mental competency evaluated.

Respondent called Sorenson as its final witness. He is an assistant solicitor at the First Circuit Solicitor's Office, and he prosecuted Applicant. He did not enter into plea negotiations with plea counsel. He and plea counsel had many conversations and he made it clear that he could not request or recommend any particular sentence for Applicant if Applicant pleaded guilty. Plea counsel wanted him to agree to a negotiated sentence. He probably told Applicant and plea counsel that Applicant's cooperating would maybe result in Applicant's getting out of prison before he aged into an old man.

He tried Manigault, Applicant's codefendant. During that trial, he questioned Applicant. Although he does not have a transcript of that trial, he feels confident that he questioned Applicant about the fact that Applicant was not being offered any special plea deal in exchange for his testimony against Manigault. It is his normal practice to ask those sorts of questions when questioning a codefendant who is testifying as a State's witness during a defendant's trial.

He did not personally witness anything that made him question Applicant's mental competency to stand trial.

Applicant cross-examined Sorenson. He testified he does not remember witnessing plea counsel explain to Applicant that anything Applicant said during their plea negotiation meetings would be inadmissible at trial. Applicant was waffling back-and-forth about whether to plead guilty or go to trial. Either Applicant or Applicant's codefendant may have sent a letter to him at some point with information about the crime, but he is not sure.

He may have said to Applicant that he would get some benefit for pleading guilty and testifying during the codefendant's trial. He does not remember whether he said that Applicant would get some benefit or that he may get some benefit, and referred to Applicant's testimony that Sorenson had never promised any particular sentence as an indication that he did not use the definite phrasing. He was shocked at the sentence Judge Murphy gave to Applicant, but his reaction did not reach the level of disgust because he was aware of the nature of the crime. He reiterated that there was evidence of Applicant's guilty independent of Applicant's statements to law enforcement officers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, at 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, at 690). Applicant must overcome this presumption to receive relief. Cherry, at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see 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"). The South Carolina Supreme Court has instructed that:

The longstanding 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. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel.

The claims raised by Applicant are addressed more fully below:

Trial counsel was constitutionally ineffective because of her performance with regard to Applicant’s plea agreement; for informing Applicant that he would receive a lesser sentence if he testified against his codefendant; for failing to seek the specific performance of an oral plea agreement; and for, along with Sorenson, leading Applicant to believe that he would receive a specific sentence rather than being subjected to the potential maximum sentences.

Applicant claims that plea counsel was constitutionally ineffective for misadvising him that, if he pleaded guilty and cooperated with the State in its prosecution of his codefendant, he would receive a fifteen-year sentence, and for failing to move during the sentencing hearing for the enforcement of an oral plea agreement to a fifteen-year sentence. Applicant testified that he would not have pleaded guilty if plea counsel and Sorenson had not mislead him into believing that he would receive a fifteen-year prison sentence in exchange for his pleading guilty and testifying for the State.

This Court finds that Applicant has failed to show that there was any fifteen-year plea agreement to be enforced. At Applicant’s plea hearing, Sorenson put on the record that “there [had] been no negotiations regarding any sentence. That would be up to [Judge Murphy’s] discretion at the appropriate time.” Plea Transcript 14. Applicant confirmed at the PCR hearing that he heard Sorenson make that statement on the record. When Judge Murphy asked at Applicant’s plea hearing if plea counsel had the same understanding of the agreement as Sorenson, plea counsel

answered, "Yes." Plea Transcript 14. Plea counsel informed Judge Murphy that she had explained to Applicant, among other things, the possible punishments "[a]d nauseam," and that she believed that Applicant understood them. Plea Transcript 3-4. Both Sorenson and Applicant confirmed at the PCR hearing that Sorenson questioned Applicant during the State's case at his codefendant's trial about the circumstances of his pleading guilty, and that Applicant confirmed during the questioning that the State did not extend any specific offers to him or promise him anything in exchange for his testimony. At the PCR hearing, plea counsel testified that she did not tell Applicant that he would receive a specific sentence if he pleaded guilty and testified on the State's behalf, and that she did not tell him that he would receive a fifteen-year sentence. Sorenson testified at the PCR hearing that he did not tell Applicant that he would receive a fifteen-year sentence if he pleaded guilty and testified on the State's behalf. All of this leads to the conclusion that neither plea counsel nor Sorenson told Applicant in private or before Judge Murphy that Applicant would receive a specific sentence in exchange for his pleas and testimony. There was no oral plea agreement for plea counsel to enforce.

At the plea hearing, Applicant affirmed to Judge Murphy that he understood that the potential penalty for first-degree burglary could be as much as life in prison, that he could be sentenced to as much as thirty years in prison for armed robbery, and that he could be sentenced to as much as thirty years in prison for each count of kidnapping. Plea Transcript 5-6. When Judge Murphy asked if Applicant understood that he "could be looking at a life sentence if [he were] convicted," Applicant answered, "Yes, ma'am." Plea Transcript 6. Applicant affirmed that he had discussed that possibility with plea counsel. Plea Transcript 6. Applicant affirmed that no one had promised him anything or held out the possibility of a reward in order to get Applicant to plead guilty. Plea Transcript 15-16. Applicant affirmed that he had not been threatened or coerced to

plead guilty by anyone. Plea Transcript 16. Applicant affirmed that no one had suggested that he give certain answers in response to Judge Murphy's questions and that his answers were "absolutely truthful" Plea Transcript 16. Even if plea counsel had misadvised Applicant as to the possible sentences he would face if he pleaded guilty, Judge Murphy's colloquy would have cured that error. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds that Applicant has failed to show that plea counsel was constitutionally ineffective for misadvising Applicant as to the potential sentences he would face if he pleaded guilty and for allowing Applicant to be misinformed about the potential sentences to which he would be exposed after pleading guilty because Applicant has not shown any deficiency in plea counsel's performance and has not shown any resulting prejudice. This claim for post-conviction relief is denied and dismissed with prejudice.

Judge Murphy abused her discretion by denying plea counsel's motion to reconsider Applicant's sentences, not taking into consideration the fact that Applicant testified at his codefendant's trial on the State's behalf, and not taking into consideration that Applicant did not have a prior criminal record.

Applicant argues that Judge Murphy abused her discretion in sentencing Applicant and by denying plea counsel's motion to reconsider. Applicant's arguments fail because Judge Murphy had the discretion to issue the sentences. First-degree burglary is punishable by imprisonment for at least fifteen years and for as much as life. S.C. Code Ann. § 16-11-311(B). Armed robbery is punishable for a term of imprisonment of ten to thirty years. S.C. Code Ann. § 16-11-330(A). Kidnapping is punishable for a term of imprisonment of up to thirty years. S.C. Code Ann. § 16-3-910. A trial court has broad discretion to sentence a defendant within the limits authorized by

statute. In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (citing Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997)). In sentencing, the trial court must be permitted to consider “any and all information that reasonably might bear on the proper sentence” the defendant before it. Id. (citing State v. Hicks, 377 S.C. 322, 659 S.E.2d 499 (S.C. Ct. App. 2008)). An appellate court will not overturn a sentence absent an abuse of discretion when the sentence is based upon an error of law of a factual conclusion that lacks evidentiary support. Id. (citing State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (S.C. Ct. App. 2007), overruled on other grounds by State v. Byers, 392 S.C. 438, 392 S.E.2d 55 (2011)).

The sentence issued by Judge Murphy for each of Applicant’s offenses was within the range authorized by its respective statute. There was nothing in the length of the sentences that supports an argument that the sentences fell outside the bounds allowed by statute. Applicant has failed to show that Judge Murphy took into consideration any fact that she should not have when she issued the sentences, failed to take into account anything that she was required to, or improperly weighed the circumstances of Applicant’s case. Though Applicant certainly hoped to receive a more favorable sentence, Judge Murphy did not abuse her discretion in sentencing him. Applicant has failed to show that he is entitled to post-conviction relief upon these claims, and the claims are denied and dismissed with prejudice.

Plea counsel was constitutionally ineffective for failing to conduct an adequate investigation into possible defenses available to Applicant and for failing to share with Applicant the results of any investigation that may have been performed.

Applicant argues that the defense of duress may have been available to him and that plea counsel was constitutionally ineffective for failing to properly discuss with him the possibility of raising the defense at trial. Applicant’s testimony at the PCR hearing was that he did not set out with the intention to break into the victim’s home and rob her with his codefendants; instead, he

testified, he went along with his codefendants because he was afraid to refuse them. Applicant also alleges that plea counsel did not share with him the results of any investigation that she conducted.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014). An “applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.” Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court’s

finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds that Applicant has failed to show that plea counsel's investigation was inadequate. With the exception of his quite brief testimony about the possibility that his statements to law enforcement officers would be suppressed if he had proceeded to trial, the possibility that he could have raised a defense of duress had he proceeded to trial, and his belief that the outcome of his case may have been different had his mental competency been evaluated before he pleaded guilty, which will be addressed later in this order, Applicant did not present any argument before this Court as to additional investigation that plea counsel should have done that she did not.

Applicant testified at the PCR hearing that he participated in the crime because he was too afraid of his codefendants to refuse to go along with them. Plea counsel agreed it was possible that Applicant did not feel free to refuse to go along with his codefendants in their plans to break into the home of a drug dealer and rob him, and did not feel free to persist in their crimes despite breaking into the victim's home instead of the dealer's. Plea counsel did not believe that Applicant would be successful in raising the defense of duress at trial, though. She affirmed to Judge Murphy at Applicant's plea hearing that, based upon her investigation, she believed the State would be able to satisfy a jury of Applicant's guilt beyond a reasonable doubt. Plea Transcript 4. Applicant has failed to show that her estimation of the likelihood of being successful in raising that defense at trial was unreasonable.

The South Carolina Supreme Court has suggested that trial courts instructing a jury on the defense of duress charge the jury as follows:

To establish duress which will excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded

apprehension of death or serious bodily harm if the act is not done.

...
The fear of injury must be reasonable.

State v. Benjamin, 345 S.C. 470, 475, 549 S.E.2d 258, 260 (2001), fn.3. At his PCR hearing, Applicant testified as to being scared of his codefendants, concerned for his safety and for his family's, but did not present evidence that would require a trial court to instruct the jury on the defense of duress. The most specific, and likely only, justification that Applicant gave for being afraid of his codefendants was their being older than he. Applicant's general apprehension of his codefendants' reactions if he had declined to join with them in the crimes did not establish the presence of any degree of coercion, much less one that was imminent and of such a nature that it would have induced in Applicant a "well-grounded" apprehension of death or serious bodily harm if he did not help the codefendants commit the crimes. Our appellate courts have required defendants requesting that their juries instructed on the defense of duress to make a stronger and more particular showing than Applicant has done so here. Benjamin, at 474, 549 S.E.2d at 260 (finding that a trial court's instruction that duress "could be" a defense was proper because the jury could reasonably have concluded the defense was applicable only to its deliberations as to the offense of armed robbery and not to the offense of murder when Benjamin testified that he participated in the robbery of a gas station only because his codefendant threatened to shoot him if he did not); State v. Holliday, 333 S.C. 585, 586-88, 510 S.E.2d 436, 437-38 (S.C. Ct. App. 1998) (finding that the trial court properly refused to instruct the jury on the defense of coercion over Holliday's argument that the victim coerced him into driving away with him in the victim's car at gunpoint, leading him to fear that the victim would shoot him if he attempted to exit the car, because the facts did not support the instruction and because Holliday did not offer evidence that "anyone . . . actually compelled [Holliday] to take the car."); State v. Robinson, 294 S.C. 120, 122-

23, 363 S.E.2d 104, 104-05 (1987) (finding the trial court did not err in refusing to instruct the jury on the defense of duress when Robinson helped his codefendant load a victim's body into a car, helped his codefendant jump-start the car, and gave to the codefendant the rifle the codefendant used to kill the second victim because the codefendant "had [his] gun towards" him and looked at him "for a few seconds," and because Robinson "didn't know" what the codefendant would do but was scared that the codefendant would have followed him had he run away).

Furthermore, even if there had been a threat of harm to Applicant, he has failed to show that there was not reasonable way, other than committing the crime, in which he could have escaped it. The lack of an alternative way of avoiding the threat of harm is required if a defendant is to successfully raise the defense of duress. E.g., Benjamin, at 475, 549 S.E.2d at 260, fn.3 ("Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm."). Rather than painting Applicant as an unwilling bystander or a hostage-accomplice hybrid, the facts show that Applicant was a participant in the crimes. Applicant was in the victim's home armed with an assault rifle, even though his codefendants had handguns only. Plea Transcript 9, 12. Applicant masked himself with a bandana before entering the victim's home. Plea Transcript 7, 10. When a law enforcement officer patrolling the area came upon the intruders' getaway vehicle after the robbery, all of the intruders scattered. Plea Transcript 9. Applicant has failed to show that plea counsel's conclusion that raising the defense of duress at trial would likely have not helped Applicant was unreasonable or that plea counsel's investigation of the supporting facts and consideration of the issue was inadequate in any way.

Applicant also claims plea counsel was constitutionally ineffective because she did not share with him the results of any investigation that she conducted. Applicant bears the burden of demonstrating that there is some additional investigation that plea counsel should have done and

that he would not have pleaded guilty had that additional investigation been done. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead, at 334, 496 S.E.2d at 417. An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome, Skeen, at 214, 481 S.E.2d at 132. Applicant has failed to meet that burden because he has not presented evidence in support of the claim, but has merely speculated that the outcome of his case may have been different had plea counsel done some more investigation and shared the results thereof with him. In this case, Applicant admitted to police that he participated in the underlying crimes. Plea Transcript 11-12. At his plea hearing, Applicant agreed with the State's recitation of facts and affirmed that plea counsel had done everything for him that he felt she could have or should have done and that he was "completely satisfied" with plea counsel's services. Plea Transcript 12, 15. Applicant affirmed that he understood that, by pleading guilty, he was waiving his trial rights, including the right to a trial by jury, the right to require the State to convince a jury of his guilt beyond a reasonable doubt, the right to the presumption of innocence, the right to remain silent, the right to challenge the State's evidence and present his own evidence, and the right to seek the suppression of any incriminating statements he had already made to law enforcement. Plea Transcript 13-14. Applicant's own testimony at his plea hearing indicates he was aware that he was waiving his rights to make his own case by pleading guilty, and explicitly indicates he was aware that his waiver would have precluded him from challenging the admissibility of his statements to law enforcement.

This Court finds Applicant has failed to demonstrate that plea counsel was constitutionally ineffective for failing to conduct an adequate investigation or to properly inform Applicant of the

results of any investigation and of potential defenses because Applicant has failed to show any deficiency in his attorney's performance and resulting prejudice. These claims are denied and dismissed with prejudice.

Plea counsel was constitutionally ineffective for failing to have an expert perform a mental health evaluation of Applicant in order to assess whether he was mentally ill at the time of the commission of the crimes. Plea counsel was constitutionally ineffective for failing to have an expert perform a competency evaluation in order to assess whether he was competent to stand trial.

Applicant's claim as pleaded concerns plea counsel's alleged ineffectiveness for failing to have Applicant's mental health evaluated for the purpose of determining whether he was mentally ill at the time of the crimes. Presumably, this claim concerned whether Applicant would have been entitled to raise the defense of insanity. See State v. Simpson, 425 S.C. 522, 536, 823 S.E.2d 229, 267 (S.C. Ct. App. 2019) (instructing that, in the case of the affirmative defense of insanity, the jury decides whether a defendant knew right from wrong based upon expert testimony, lay testimony, or both) (citing State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997)). Applicant did not present any evidence or argument as to this claim at the PCR hearing. The burden was on Applicant to prove this claim. Therefore, the claim is denied and dismissed with prejudice. Although he did not plead the claim in his application for post-conviction relief or his amended application, Applicant did argue at the PCR hearing that plea counsel should have had his mental competency evaluated in order to determine whether he was competent to stand trial. This is a claim distinct from the one pleaded and abandoned; since Applicant argued in support of the mental competency claim at the PCR hearing, this Court will address it here.

In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230,

417 S.E.2d 594 (1992)), rev'd on other grounds, Ramirez, at 22, 795 S.E.2d at 845; Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596. If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial but another concluded applicant was severally mentally retarded) (citation omitted).

This Court finds Applicant has failed to show any deficiency in plea counsel's not requesting that Applicant's mental competence to stand trial be evaluated because Applicant has not introduced evidence that plea counsel's decision not to request an evaluation fell below an objective standard of reasonableness. At Applicant's plea hearing, plea counsel affirmed to Judge Murphy that she believed that Applicant understood the charges against him, the punishments to which he could be exposed if he were convicted, and his rights. Plea Transcript 4. Plea counsel affirmed to Judge Murphy that she had discussed with Applicant the fact that the offenses to which he was pleading guilty were considered violent and most serious and that, in her opinion, Applicant understood the content of that discussion. Plea Transcript 12-13. Plea counsel's testimony before this Court indicates that she believed that Applicant was hard headed and did not always heed her legal advice, not that she believed that he lacked the ability to understand their conversations or to understand the proceedings. Applicant affirmed to Judge Murphy at the plea hearing, in plea counsel's presence, that he had never been treated for "any mental illness," and was not aware of

“any physical, emotional or nervous problem that might [have kept him] from understanding what [he] was doing” in court that day. Plea Transcript 5. Applicant agreed that he understood Judge Murphy’s questions and did not have any questions at the plea hearing. Plea Transcript 16. Plea counsel testified before this Court that she had no reason to believe that Applicant suffered from any mental deficiency. Plea counsel reasonably relied upon her own perception that Applicant’s mental competency was not questionable when she did not request an evaluation. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding that plea counsel reasonably relied upon his own perceptions of his client’s competency because, based on plea counsel’s interactions with his client, he believed that a competency evaluation was not needed, believed that his client was competent at the time of his plea hearing, and continued to believe that his client was competent). Applicant asserted at the PCR hearing that plea counsel instructed him to agree with Judge Murphy’s questions even if he did not agree, Applicant explicitly and unequivocally affirmed to Judge Murphy at the plea hearing that no one had suggested answers that he should give in response to her questions and that he had “been absolutely truthful in each and every answer” he gave. Plea Transcript 16.² Applicant asserted at his PCR hearing that his confusion about the nature of his cooperation with the State’s prosecution of his codefendant and whether he would realize any benefit therefrom led him to plead guilty; however, the manifest focus of Applicant’s testimony was that plea counsel and Sorenson mislead him into believing that he would receive a fifteen-year sentence if he pleaded guilty and cooperated with the State, not that he lacked the ability to understand their explanations to him or to understand the proceedings. Applicant simply

² For this Court to accept as true Applicant’s testimony at the PCR hearing that he merely recited answers to Judge Murphy that were given to him by plea counsel, it would have to accept the testimony as a sworn admission that Applicant provided false testimony while under oath before Judge Murphy.

has not shown that plea counsel should have questioned his mental competency at the time of his plea hearing.

This Court finds Applicant has failed to show any resulting prejudice from plea counsel's not having Applicant's mental competency evaluated. Applicant has not demonstrated that there was a reasonable probability that he would have been found incompetent if his competency had been evaluated before he pleaded guilty. Applicant's testimony did not establish that he lacked the sufficient ability at the time to consult with plea counsel with a reasonable degree of relational understanding about his criminal case or the consequences of pleading guilty. He did testify at the PCR hearing that he had attended counseling when he was younger after suffering sexual abuse, but his testimony made the counseling sound more like family therapy than psychiatric treatment. When asked directly by this Court if he had ever undergone psychiatric treatment, Applicant was unable to answer in the affirmative. Although he testified that he suffers from some sort of attention deficit disorder, he produced no evidence that that would have affected his competency at the time of his plea hearing. Applicant's argument that he suffered prejudice from the lack of a competency examination is purely speculative. See Garren, at 13, 813 S.E.2d at 711 (finding that there was no evidence to support the PCR court's finding that Garren suffered prejudice from his defense attorney's failure to have Garren's mental competency evaluated because Garren did not introduce evidence at his PCR hearing that there was a reasonable likelihood that he would have been found incompetent to plead guilty if the evaluation had been conducted).

This Court finds that Applicant has failed to show that plea counsel was constitutionally ineffective for not having Applicant's mental competency evaluated because he has failed to show any deficiency in plea counsel's performance and resulting prejudice. This claim for post-conviction relief is denied and dismissed with prejudice.

CONCLUSION

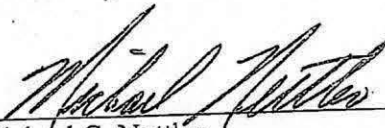
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of Sept., 2020.


Michael G. Nettles
Presiding Judge

Source, South Carolina

WITNESSES

D Peters

Dorchester County Sheriff

12-003395

ARREST WARRANT NUMBER
M473265

Arrested: May 8, 2012

ACTION OF GRAND JURY

TRUE BILL

Charlean P. Shirley
Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0714

The State of South Carolina

County of DORCHESTER

CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

THE STATE
vs.

Tevin Shaquille Hart

Indictment for
BURGLARY - FIRST DEGREE

SC Code: 16-11-311

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 JUL 12 PM 3:12
CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0714

**At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of
Dorchester County present upon their oath:**

BURGLARY - FIRST DEGREE

That in Dorchester County, South Carolina, on or about March 29, 2012, the Defendant, Tevin Shaquille Hart, did willfully and unlawfully enter the dwelling of Laura Barber-Smith, without consent and with the intent to commit a crime therein and the defendant did enter without permission during hours of darkness, while armed with a weapon. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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

megh jale

Meghan Hall, Solicitor

WITNESSES

D Peters

Dorchester County Sheriff

12-003395

ARREST WARRANT NUMBER
M473266

Arrested: May 8, 2012

ACTION OF GRAND JURY

TRUE BILL

Charleen P. Shirley
Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0715

FILED - RECORDED
2012 JUL 12 PM 3:13
The State of South Carolina
County of DORCHESTER

CHERYL GRADY
CLERK OF COURT
DORCHESTER COUNTY

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

THE STATE
vs.

Tevin Shaquille Hart

Indictment for
KIDNAPPING

SC Code: 16-3-910

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 JUL 12 PM 3:13
CHERYL GRADY
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0715

At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of
Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about March 29, 2012, the
Defendant, Tevin Shaquille Hart, unlawfully did seize, confine, inveigle, decoy,
kidnap, abduct or carry away the victim, Laura Barber-Smith, without authority of
law. This offense in violation of Section 16-03-910, of the South Carolina Code of
Laws, as amended.

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


Meghan Hall, Solicitor

WITNESSES

D Peters

Dorchester County Sheriff

12-003395

ARREST WARRANT NUMBER
M473267

Arrested: May 8, 2012

ACTION OF GRAND JURY

TRUE BILL

Charleen P. Shirley
Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0716

FILED - RECORDED
The State of South Carolina
2012 JUL 12 PM 3:13
County of DORCHESTER

CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

THE STATE
vs.

Tevin Shaquille Hart

Indictment for
KIDNAPPING

SC Code: 16-3-910

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 JUL 12 PM 3:13
CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

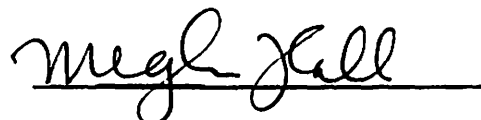
INDICTMENT
 2012GS18-0716

At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of
 Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about March 29, 2012, the
 Defendant, Tevin Shaquille Hart, unlawfully did seize, confine, inveigle, decoy,
 kidnap, abduct or carry away the victim, **Minor 1**, without authority of law.
 This offense in violation of Section 16-03-910, of the South Carolina Code of
 Laws, as amended.

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


 Meghan Hall, Solicitor

WITNESSES

D Peters

Dorchester County Sheriff

12-003395

ARREST WARRANT NUMBER

M473268

Arrested: May 8, 2012

ACTION OF GRAND JURY

TRUE BILL

Charleen P Shirley
Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0717

FILED - RECORDS
The State of South Carolina
2012 JUL 12 PM 3:13
County of DORCHESTER

CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

THE STATE
vs.

Tevin Shaquille Hart

Indictment for
KIDNAPPING

SC Code: 16-3-910

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDS
2012 JUL 12 PM 3:13
CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0717

At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of
Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about March 29, 2012, the
Defendant, Tevin Shaquille Hart, unlawfully did seize, confine, inveigle, decoy,
kidnap, abduct or carry away the victim, **Minor 2**, without authority of law.
This offense in violation of Section 16-03-910, of the South Carolina Code of
Laws, as amended.

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



Meghan Hall, Solicitor

WITNESSES

D Peters

Dorchester County Sheriff

12-003395

ARREST WARRANT NUMBER
M473269

Arrested: May 8, 2012

ACTION OF GRAND JURY

TRUE BILL

Charleen P. Shirley
Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

202

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0718

The State of South Carolina

2012 JUL 18 5 11 PM
County of DORCHESTER

CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

THE STATE
vs.

Tevin Shaquille Hart

Indictment for
KIDNAPPING

SC Code: 16-3-910

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 JUL 12 PM 3:13
CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

INDICTMENT
 2012GS18-0718

At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of
 Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about March 29, 2012, the
 Defendant, Tevin Shaquille Hart, unlawfully did seize, confine, inveigle, decoy,
 kidnap, abduct or carry away the victim, **Minor 3**, without authority of law.
 This offense in violation of Section 16-03-910, of the South Carolina Code of
 Laws, as amended.

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



Meghan Hall, Solicitor

TRUE BILL

WITNESSES

D Peters

Dorchester County Sheriff

12-003395

ARREST WARRANT NUMBER
M473271

Arrested: May 8, 2012

ACTION OF GRAND JURY

TRUE BILL

Charles P. Shively
Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

204

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0719

The State of South Carolina

2012 JUL 12
County of DORCHESTER

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

THE STATE
vs.

Tevin Shaquille Hart

Indictment for
ARMED ROBBERY

SC Code: 16-11-330(A)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2012 JUL 12 PM 3:13
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

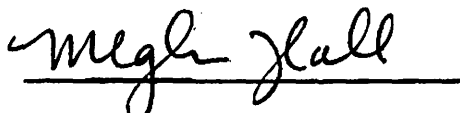
INDICTMENT
2012GS18-0719

At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of
Dorchester County present upon their oath:

ARMED ROBBERY

That on or about March 29, 2012, in Dorchester County, the defendant, Tevin Shaquille Hart did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Laura Barber-Smith, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a gun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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


Meghan Hall, Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Tevin Shaquille Hart
AKA:
Race: BLACK Sex: M Age: 19
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Ridgeville, SC 29472
DL#: [REDACTED] SID#: [REDACTED]
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary - First Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS18-0714
A/W#: M473265
Date of Offense: 3/29/2012
S.C. Code § : 16-11-311
CDR Code #: 0079

CERTIFIED COPY

SENTENCE SHEET

☐ CONVICTED OF or

11-21-16
Cheryl Graham
Clerk of Court
Dorchester County

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] 9512 [Signature] 03773
Sorenson, Donald N. SC Bar# [REDACTED] 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 40 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: 11/23/14
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

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

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Plea: Phyllis Norton
SCCA/217 (03/2011) Sentencing: Ruth Mott

Presiding Judge Marti Mump
Judge Code: 2144
Sentence Date: 10/7/13

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Tevin Shaquille Hart
AKA:
Race: BLACK Sex: M Age: 19
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Ridgeville, SC 29472
DL#: [REDACTED] SID#: [REDACTED]
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

207 -
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 2012GS18-0715
A/W#: M473266
Date of Offense: 3/29/2012
S.C. Code § : 16-3-910
CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.
ATTEST: [Signature] 9512 [Signature] [Signature] 603773
Sorenson, Donald N 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/23/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. NO self offender registr
☐ 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Plea: Phyllis Norton
SCCA/217 (03/2011) Sentencing: Ruth Mott

Presiding Judge Maite Murphy
Judge Code: 2146
Sentence Date: 10/7/13 - plea
Sentencing with help

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Tevin Shaquille Hart
AKA: _____
Race: BLACK Sex: M Age: 19
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Ridgeville, SC 29472
DL#: _____ SID#: _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS18-0716
A/W#: M473267
Date of Offense: 3/29/2012
S.C. Code § : 16-3-910
CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] 9512 [Signature] [Signature] 63773
Sorenson, Donald N 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/23/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. No sex offender registry
☐ 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 (Criminal
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: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$3.90
TOTAL	\$133.90

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

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Plea: Phyllis Norton
SCCA/217 (03/2011) Sentencing: Ruth mott

Presiding Judge Maite' Murphy
Judge Code: 2166
Sentence Date: 10/17/13 - plea
sentencing withheld

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Tevin Shaquille Hart
AKA:
Race: BLACK Sex: M Age: 19
DOB: SS#
Address:
City, State, Zip: Ridgeville, SC 29472
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS ²⁰⁹

INDICTMENT/CASE#: 2012GS18-0717
A/W#: M473268
Date of Offense: 3/29/2012
S.C. Code § : 16-3-910
CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Sorenson, Donald M. 9512 SC Bar# Defendant Attorney for Defendant 63773 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/23/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. NO sex offender registr
☐ 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Plea: Phyllis Norton
SCCA/217 (03/2011) Sentencing: Ruth Mott

Presiding Judge Maite Murphy
Judge Code: 2146
Sentence Date: 10/11/13 - plea
sentencing with help

210
STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Tevin Shaquille Hart
AKA:
Race: BLACK Sex: M Age: 19
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Ridgeville, SC 29472
DL#: [REDACTED] SID#: [REDACTED]
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS18-0718
A/W#: M473269
Date of Offense: 3/29/2012
S.C. Code § : 16-3-910
CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

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

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

ATTEST: [Signature] 9512 [Signature] 63773
Sorenson, Donald N. 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/23/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. NO sex offender register
☐ 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
§ 14-1-206 (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Cheryl Graham
Plea: Phyllis Norton
Sentencing: Ruth Mott

Presiding Judge

Judge Code: 216

Sentence Date: 6/21/13

Maite Murphy
with held

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Tevin Shaquille Hart
AKA:
Race: BLACK Sex: M Age: 19
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Ridgeville, SC 29472
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] 9512 X [Signature] [Signature] 63773
Sorenson, Donald N. 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/23/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. MM - prior sexual abuse registry
☐ 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS ²¹¹

INDICTMENT/CASE#: 2012GS18-0719
A/W#: M473271
Date of Offense: 3/29/2012
S.C. Code § : 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Plea: Phyllis Norton
SCCA/217 (03/2011) Sentencing: Ruth Mott

Presiding Judge Kate Murphy
Judge Code: 2164
Sentence Date: 10/7/13
Plea accepted - sentencing