

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Derham Cole, Circuit Court Judge

DAVON A. CLARK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000751

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

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

LILLY MEADOWS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA HEARING TRANSCRIPT DATED AUGUST 25, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF FILED FEBRUARY 22, 2017	35
RETURN FILED SEPTEMBER 6, 2017	44
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 20, 2018...	133
ORDER OF DISMISSAL FILED SEPTEMBER 23, 2020	168
RULE 59(E) MOTION TO RECONSIDER FILED OCTOBER 26, 2020.....	184
RETURN TO RULE 59(E) MOTION TO RECONSIDER FILED FEBRUARY 3, 2022.....	190
FORM 4 ORDER DENYING MOTION TO RECONSIDER FILED APRIL 11, 2022	197
INDICTMENTS AND SENTENCE SHEETS.....	198

Nov 10 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

CIRCUIT COURT
2016-GS-32-02366,
-02369 & -0130

STATE OF SOUTH CAROLINA,

- vs -

TRANSCRIPT OF RECORD

DAVON A. CLARK,
Defendant.

Heard on Thursday, August 25, 2016

Lexington, South Carolina

BEFORE:

THE HONORABLE WILLIAM P. KEESLEY

APPEARANCES:

Counsel on Behalf of the State:
Bradley Pough, Esq.

Counsel on Behalf of the Defendant:
Robert "Theo" Williams, Sr., Esq.

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804-5232

EXHIBIT INDEX

MAR ADM

Court's

1 Three photocopies of texts

33 33

1 ON THURSDAY, AUGUST 25, 2016 AT 11:30 A.M.:

2 THE CLERK: Davon Clark.

3 2016-GS-32-1380, State versus Davon Clark indicted
4 for domestic violence first degree. He is pleading as
5 charged.

6 2016-GS-32-2366, State versus Davon Clark indicted
7 for domestic violence first degree. He is pleading as
8 charged.

9 2016-GS-32-2369, State versus Davon Clark indicted
10 for throwing bodily fluids by a prisoner. He is pleading
11 as charged. He is waiving presentment to the grand jury
12 on all indictments and is represented by Mr. Williams.

13 Raise your right hand, please.

14 (Defendant placed under oath.)

15 (Defendant conferring with counsel.)

16 MR. WILLIAMS: Your Honor, my client just mentioned
17 something to me. He would like to plead no contest to the
18 throwing bodily fluids. He understands it will be treated
19 as a guilty plea. He just wants to do that. If that's
20 all right with the Court, if you'll accept this as
21 no-contest plea, Your Honor.

22 MR. POUGH: Your Honor, the State would object to a
23 no-contest plea.

24 MR. WILLIAMS: He is prepared to go forward with the
25 guilty plea, Your Honor.

1 THE COURT: Well, I don't know that I or the State
2 controls his plea.

3 MR. WILLIAMS: Well, if --

4 THE COURT: Well, there's law about felonies and
5 taking no-contest pleas on felonies. And the way I read
6 it, we're discouraged from doing that. So I don't know
7 that I have to accept a no-contest plea on a felony.

8 But, again, it's not my decision as to what plea he
9 enters.

10 MR. WILLIAMS: He would like to enter that plea, Your
11 Honor, if you would accept it.

12 THE COURT: Bear with me a moment.

13 (Pause.)

14 THE COURT: You're Davon Artjuawn Clark?

15 THE DEFENDANT: Yes, sir, I am.

16 THE COURT: I have an indictment that charges in
17 Lexington County on or about April 9, 2016, you unlawfully
18 caused physical harm or injury to a member of your family
19 or household, specifically Chandrika, C-H-A-N-D-R-I-K-A,
20 Waters, or that you offered or attempted to do so with an
21 apparent present ability under circumstances reasonably
22 creating a fear of imminent peril, you having two or more
23 prior convictions of domestic violence within 10 years
24 from the date of the offense. Upon your arraignment on
25 that charge it appears that you wish to waive presentment

1 to the grand jury and plead guilty to domestic violence
2 first degree; is that right?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Another indictment charges that in
5 Lexington County on or about January 23rd, 2016, you
6 unlawfully caused physical harm or injury to a household
7 member, specifically Lameka, L-A-M-E-K-A, Stevenson or
8 that you offered or attempted to cause physical harm or
9 injury to a household member with a present -- apparent
10 present ability under circumstances reasonably creating
11 fear of imminent peril, you having two or more convictions
12 for domestic violence within 10 years of the date of the
13 offense.

14 Upon your arraignment it appears that you wish to
15 waive presentment to the grand jury and plead guilty to
16 domestic violence first degree; is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Another indictment alleges that in
19 Lexington County on or about May 1, 2016, while you were
20 an inmate in the custody of the Lexington County Detention
21 Center, that you attempted to throw or threw bodily fluids
22 on an employee of that facility, specifically Christopher
23 Meyer.

24 Upon your arraignment on that charge it appears that
25 you wish to waive presentment to the grand jury and plead

1 no contest; is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Williams, have you fully explained to
4 your client the nature and elements of the offenses, the
5 possible punishment and his constitutional rights
6 including trial by jury?

7 MR. WILLIAMS: I have, Your Honor.

8 THE COURT: As to the two guilty pleas are you
9 satisfied there's a factual basis for them?

10 MR. WILLIAMS: I am, Your Honor.

11 THE COURT: Does he understand the nature and
12 ramifications of a no-contest plea?

13 MR. WILLIAMS: He does.

14 THE COURT: Do you agree with his decision to enter
15 these pleas?

16 MR. WILLIAMS: I do, Your Honor.

17 THE COURT: Mr. Clark, are under the influence of any
18 medicine, drug or alcohol or anything that affects your
19 thinking?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you suffer from physical or mental
22 problems that affect your thinking?

23 THE DEFENDANT: No, sir.

24 THE COURT: You're clear headed, you know what you're
25 doing?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: A no-contest plea means what it sounds
3 like; you're not contesting the charge. Do you understand
4 that?

5 THE DEFENDANT: Yes, sir

6 THE COURT: It goes against your criminal record and
7 has all the same consequences as a regular guilty plea.
8 It is a conviction. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Courts are discouraged from allowing
11 people to plead no contest on felony charges. Do you
12 understand that?

13 THE DEFENDANT: I don't -- yes, sir. Yes, sir.

14 THE COURT: Felonies are the more serious charges.

15 THE DEFENDANT: Right.

16 THE COURT: So the courts are discouraged -- some
17 judges won't take a no-contest plea on a felony.

18 THE DEFENDANT: I understand. I understand.

19 THE COURT: Some read the cases that say that the
20 Court should not. I read the cases to say, and I may be
21 wrong, I read the cases to say that we're discouraged from
22 doing it.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words, it's a very serious
25 matter. And if you enter a plea it's a lot harder to get

1 that undone. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You sure you want to enter a no-contest
4 plea to this one charge?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. When you enter these pleas
7 you give up very important rights including your right to
8 remain silent and your right to a jury trial. Do you know
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you wanted a jury trial you would be
12 presumed to be innocent. The State has the entire burden
13 of proof. The State has to prove every essential element
14 of each offense against you beyond a reasonable doubt. Do
15 you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In order for you to be convicted of any
18 offense, the State has to prove you guilty of that offense
19 beyond a reasonable doubt to all 12 jurors. Do you know
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you have defenses to your case you
23 give those up if you plead guilty or if you plead no
24 contest. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Those include self defense. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In a jury trial setting you get to see
5 and hear and have your lawyer cross-examine every witness
6 against you. Do you know that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you enter these pleas you give up that
9 right. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you had a jury trial you would have
12 the ability, if you wanted to do so, to testify, but if
13 you chose not to testify the trial judge would tell the
14 jury they could not hold your silence against you in any
15 way at all. Do you know all of that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you enter these pleas you give up all
18 these rights. You give up your presumption of innocence,
19 you give up your right to remain silent, you give up
20 requiring the State to prove you guilty beyond a
21 reasonable doubt, you give up the right to confront the
22 witnesses against you, and on the guilty pleas you admit
23 the charges are true. Do you understand all of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you want a jury trial on any of these

1 cases?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. I need you to listen to the
4 solicitor, please.

5 MR. POUGH: Thank you, Your Honor.

6 On January 23rd, 2016, deputies with the Lexington
7 County Sheriff's Department responded to the
8 Batesburg-Leesville Police Department in reference to a
9 domestic assault that was being reported that happened in
10 the sheriff's jurisdiction. The victim, Lameka Stevenson,
11 was driving home from work, Your Honor, and the Defendant
12 was waiting for her at the Exxon station at six -- excuse
13 me at 6670 Augusta Highway in Batesburg-Leesville area of
14 Lexington County.

15 The victim is -- excuse me. The Defendant is the
16 victim's former boyfriend and they did live together,
17 cohabitate as boyfriend and girlfriend, Your Honor.

18 The Defendant as I said was waiting for her at the
19 Exxon station and followed her to a dead-end road. The
20 Defendant pulled the victim out of her car, began punching
21 her head and threw her to the ground, took the victim's
22 car keys from her and continued verbally and physically
23 assaulting her.

24 The victim ended up receiving a broken finger,
25 bruising and an abrasion on her elbow as a result of the

1 altercation. The Defendant then took off in the victim's
2 car down the road. The victim started to get into the
3 Defendant's car and used his keys -- to use his car as a
4 mode of transportation since he took off in her car. He
5 sees this. He turns back around, Your Honor, comes back
6 and they struggle again over his car keys. Eventually the
7 Defendant {sic} drives her car into a ditch, then helps
8 her out of the ditch and the victim drives straight to
9 Batesburg-Leesville Police Department after this incident
10 to report.

11 A few days after that, Your Honor, the victim calls
12 back to Lexington County Sheriff's Department, asked to
13 speak to the detective regarding her case and tells a
14 completely different story; essentially, that it was all
15 her fault. The detective could hear a male voice in the
16 background and he asked him -- he asked the victim if the
17 Defendant was there with her and she said no.

18 Two weeks after this particular call, Your Honor, the
19 victim shows up again at the Batesburg-Leesville Police
20 Department and says that she lied to the Lexington County
21 Sheriff's Department detective on the phone because Davon
22 was in fact there with her, beside her when she made that
23 call and was threatening her life and she was afraid to
24 tell the truth.

25 The victim says that the Defendant told her that he

1 drives by every day to make sure that her car is there,
2 and that the victim's sister told her the day before that
3 she had actually seen the Defendant driving by her house.
4 Later that day the victim noticed that two of her tires
5 had been cut. The victim states that the Defendant
6 threatened to harm her when he got out of prison if she
7 didn't lie to the detectives and take her story back.

8 Your Honor, after the bond hearing on that particular
9 case the Defendant ended up sending several threatening
10 text messages to the victim's mother saying that she
11 needed to get the victim out of South Carolina because,
12 and I apologize in advance for the language, that he was
13 "going to kill that bitch". And I actually have copies of
14 the -- photocopies of the text messages that were pulled
15 up on her phone, Your Honor, if you'd like to see them.

16 THE COURT: Sure.

17 MR. POUGH: Permission to approach.

18 THE COURT: Yes.

19 (Documents handed to the Court.)

20 MR. POUGH: And, Your Honor, those are essentially
21 the facts on the first domestic violence charge.

22 On the second one, it occurred on April 9th of 2016.
23 On this date at approximately, about four o'clock in the
24 morning, officers with the Batesburg-Leesville Police
25 Department received a phone call from the complainant --

1 excuse me, the victim, Chandrika Waters who was also a
2 former paramour or girlfriend or possibly even current at
3 that time, Your Honor, who cohabitated together. And she
4 stated to the officers that she needed somebody to come
5 out to her residence. At -- that she was at a party in
6 Saluda County where the Defendant was also present and at
7 that party he possibly saw her with another individual and
8 got jealous. When she got home from that party the victim
9 stated that the Defendant ended up arriving at her
10 residence, asked to speak with her. Says the Defendant
11 saw the victim talking with other people, got -- that he
12 was in fact jealous and he ended up assaulting her in the
13 front yard.

14 The victim told the Batesburg-Leesville Police
15 Department Officer that the Defendant did have a gun on
16 him but he did not use that in a threatening manner
17 against her, didn't hit her with it or point or present
18 it.

19 Your Honor, between the time that this incident
20 occurred on April 9th, the Defendant, which is the charge
21 that we're dismissing pursuant to this plea, had another
22 domestic violence charge that the State wanted the Court
23 to be aware of in which he had a bond hearing where he
24 ended up receiving a million dollar bond at the bond
25 hearing because he made some threats to the Court and I

1 believe officers who are here today were also at that bond
2 hearing and who may wish to speak and could tell you more
3 about that.

4 But the throwing bodily fluids charge, Your Honor,
5 this took place after this bond hearing when he was in
6 LCDC. And this was the one that took place on May 1st of
7 2015.

8 Your Honor, while he was an inmate there correction
9 officers were walking by his cell on May 1st, and at that
10 point he told the officers that he -- his left hand was
11 hurting and he wished to see the nurse. They bring the
12 nurse up there. She takes a look at his hand, everything
13 seems to be okay with his hand. He says that he wants to
14 see an outside doctor. The nurse lets him know that he
15 won't be able to see an outside doctor at which point he
16 tells the nurse that he either is going to see an outside
17 doctor or he's going to be leaving here in a body bag
18 soon.

19 At that point the correction officers, based upon
20 their prior history with him, believed that he may be a
21 threat against his own life so they decided to bring him
22 downstairs in the booking area and so that they could
23 better easily observe him to make sure that he doesn't
24 harm himself.

25 While he's in the cell there in the booking area,

1 Your Honor, he uses, I believe, part of his articles of
2 clothing that he was provided by the detention center and
3 a roll of toilet paper to clog the toilet to flood his
4 cell. He does this while he is cursing and threatening
5 the officers within earshot.

6 The officers asked him to back up against the wall.
7 He refuses. He puts his hand into the toilet when they
8 pull out their taser. He says, "You can't tase me because
9 I'm wet". The officers assured him that that didn't
10 matter at which point he did comply, stepped back to the
11 rear of the cell. The officers entered the cell, detained
12 the Defendant, put him in the adjacent cell while they
13 attended to cleaning up the cell that he had flooded.

14 When they put him and strapped him into the
15 restraining chair in the adjacent cell he began beating
16 his head against the wall. At that point they had to lay
17 him flat on ground, Your Honor, and that was when he tried
18 to spit on the officer, the corrections officer, as they
19 were laying his chair down.

20 They were able to block his head with his arm, Your
21 Honor. One of the officers were able to block his head
22 and they didn't get spit on at that particular point in
23 time. As they finished cleaning up and they came back I
24 believe was when he spitted {sic} on Officer Todd, I
25 believe was his name, Your Honor. And, he ended up

1 getting spit on in his arm. At that point they were
2 trying to remove him from the restraining chair and he
3 again refused. He ended up having to be tased twice
4 essentially to make a very long story a little bit
5 shorter, Your Honor.

6 He also has multiple other incidents as you are aware
7 that we're dismissing stemming from his stay in the
8 Lexington County Detention Center, Your Honor.

9 THE COURT: I don't know anything about any of those.

10 MR. POUGH: Your Honor, in regard to his prior
11 criminal history, he has, in 2003, an interference with a
12 law enforcement officer and a parole violation; in 2004,
13 he has a trespass after notice, a burglary third and a
14 possession of marijuana; in 2005, he has a strong arm
15 robbery, interference with law enforcement officer; in
16 2006, he has a burglary third, a threatening the life of
17 an official and possession with intent to distribute
18 cocaine. He received a YOA sentence, Your Honor, on all
19 three of those charges in 2006.

20 2007, he had a DUI, a failure to stop for blue light,
21 hit and run, DUS and contempt of court; in 2007 -- in
22 2008, he had a petty larceny and violation of parole --
23 excuse me, of probation; in 2009, he had another failure
24 to stop and assault upon a corrections employee and a
25 parole revocation; in 2010, he had another DUS; 2011, he

1 had a DUS third or subsequent, two CDVs and another
2 probation violation.

3 Your Honor, pursuant to this plea we are dismissing
4 one domestic violence charge against the initial victim
5 that I spoke about, Lameka Stevenson, and also two
6 throwing -- additional throwing bodily fluid charges.

7 Your Honor, earlier today we did have two corrections
8 officers that were here that wished for me to speak on
9 their behalf. They have -- they needed to leave because
10 they're shorthanded so they're no longer present.

11 However, Your Honor, and the State echoes these
12 sentiments, they essentially believe that Mr., that
13 Mr. Clark deserves a significant amount of jail time
14 because of his behavior both in and out of the Lexington
15 County Detention Center.

16 And, Your Honor, I also have the Batesburg-Leesville
17 Police Department, their officers -- well, Batesburg-
18 Leesville Police Department here with me as well as the
19 chief. I don't know if they wish to address the Judge at
20 all or not.

21 I don't believe they do, Your Honor.

22 THE COURT: Okay. Mr. Clark, do you admit you're
23 guilty of these charges that you're pleading guilty to?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And on the no-contest plea in regard to

1 the throwing bodily fluids, do you understand what the
2 State would intend to prove if you went to trial?

3 MR. WILLIAMS: Do you understand what they would show
4 the Court? And that's why you're pleading no contest, is
5 that if they prove that then you could possibly be found
6 guilty. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 MR. WILLIAMS: Okay.

9 THE COURT: Has anybody forced you, threatened you,
10 coerced you in any way to get you to plead against your
11 will?

12 THE DEFENDANT: No, sir.

13 THE COURT: Any plea bargains the State might have
14 said, that includes agreements about dropping the charge,
15 reducing the charge, recommending a sentence, anything
16 like that, they have to tell me about on the record in
17 open court or you lose what they don't tell me. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are all plea agreements on the record,
21 Mr. Williams?

22 MR. WILLIAMS: They are, Your Honor.

23 THE COURT: Other than what's on the record,
24 Mr. Clark, has anybody promised you anything or offered
25 you any hope of reward to get you to plead?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you fully satisfied with your
3 attorney?

4 THE DEFENDANT: Yes, sir, I am.

5 THE COURT: Is there anything else you want him to do
6 on the case he hasn't done?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have any complaint of any kind
9 against your attorney, law enforcement officials or
10 anybody who's dealt with your case?

11 THE DEFENDANT: Yes, sir, I do. Not my attorney
12 though.

13 THE COURT: What's your complaint?

14 THE DEFENDANT: Well, I understand he said I had a
15 charge against an officer but he got it backwards. I
16 don't have a charge against that officer. What he said,
17 the spitting charge, I don't -- I never -- they say I
18 tried to spit on somebody. They never said I spit on
19 nobody. I got my motion. That's why I plead no content
20 {sic} to it. And he said Sergeant Todd, he charged me
21 with assault and battery third. I went to court on that
22 and got time served. I never caught a spitting charge.
23 That's why I -- I don't understand what he's talking
24 about.

25 THE COURT: You don't understand or you disagree?

1 THE DEFENDANT: Sir?

2 THE COURT: You don't understand or you disagree?

3 THE DEFENDANT: Disagree.

4 THE COURT: Okay. Do you have any other complaints?

5 THE DEFENDANT: No, sir, I don't.

6 THE COURT: So you're pleading guilty and no contest
7 to these charges of your own free will?

8 THE DEFENDANT: Yes, sir, I am.

9 THE COURT: Has anybody forced you, threatened you,
10 coerced you in any way to get you to enter any plea
11 against your will?

12 THE DEFENDANT: No, sir.

13 THE COURT: These cases have not been to the grand
14 jury. If you want the grand jury to review them at least
15 12 out of 18 grand jurors must agree you're probably
16 guilty or the case would stop there. Do you understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The papers indicate you're giving up that
20 right. Is that your own decision made of your own free
21 will?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The throwing bodily fluids by an inmate
24 is a felony that carries up to 15 years in prison. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: The sentences are required to be
3 consecutive. Do you understand that?

4 THE DEFENDANT: Huh?

5 MR. WILLIAMS: He may not understand that issue, Your
6 Honor.

7 THE COURT: Okay.

8 MR. WILLIAMS: (Conferring with Defendant.)

9 THE COURT: Do you understand?

10 MR. WILLIAMS: Your Honor, I would think so.

11 THE COURT: Do you want to stand aside?

12 MR. WILLIAMS: We'll go back and we'll talk some
13 more.

14 THE COURT: Court's in recess for 10 minutes.

15 (Recess taken at 11:50 a.m. After break at
16 11:55 a.m., the hearing of this cause resumed:)

17 MR. WILLIAMS: I think we're good, Judge.

18 THE COURT: All right. Mr. Clark, you're still under
19 oath. Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I was indicating to you that throwing
22 bodily fluids is a felony that carries up to 15 years in
23 prison and is required that the sentence be consecutive.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you still want to enter this plea of
3 no contest to this charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Domestic violence first degree is a
6 felony, each count of which carries up to 10 years in
7 prison. Do you understand that?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: It's classified by the legislature as a
10 violent crime. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that inmates are
13 treated differently at the Department of Corrections if
14 they have a violent offense?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're not eligible for programs and
17 placement that a non-violent offender would be eligible
18 for. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you have a second violent crime or if
21 this is a second violent crime, you have to serve the time
22 without early release. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The legislature has also classified this
25 under what's commonly called two strikes you're out, three

1 strikes you're out. Those things are really called
2 most-serious offenses and serious offenses. Domestic
3 violence first degree is a serious offense. It's a
4 strike. If you get the right combination of strikes you
5 have to do life without parole. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All of these require you to have your DNA
8 sample entered into the central computer registry if
9 you're not already in the registry. Do you understand?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: With regard to the domestic violence
12 graduated offense if you violate that law again you face
13 higher punishment because this will be on your record. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Do you understand that you are prohibited
17 from transporting, shipping, receiving, possessing, having
18 any kind of connection with any type of firearm or
19 ammunition?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Understanding everything we've been over,
22 are you sure you want to give up your rights and enter
23 these pleas?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Clark's made a free, knowing,

1 voluntary and intelligent decision to waive his rights
2 including his right of presentment to the grand jury and
3 enter his pleas of guilty and no contest. He's made his
4 decisions upon the advice of counsel with whom he's fully
5 satisfied. There's a factual basis for each plea
6 including the no-contest plea.

7 All right. Anything else from the State?

8 MR. POUGH: No, sir, Your Honor.

9 THE COURT: All right. Mr. Williams?

10 MR. WILLIAMS: Your Honor, I guess, first I'd like to
11 remark on, yesterday I spent some time over at the
12 solicitor's office. And I went over what the victims
13 would say if they were here. Because I think a lot, a lot
14 of the way this thing has been pitched or told to the
15 Court is that everything that they said was because of
16 they were under duress or they, you know, they changed
17 their stories because my client was somehow going to be a
18 violent man or something like that.

19 And it was interesting to note that in the
20 solicitor's notes when they talked to the
21 victims/witnesses that one of the victims who has a child
22 by my client said that she didn't want him to go to jail.
23 She didn't -- you know, he has a child. She doesn't want
24 anything bad to happen to him. She understands that he's,
25 you know, they've had problems but she doesn't want him to

1 go to jail. She's not afraid of him and what have you.

2 The other victim, Your Honor, said that she's just as
3 glad not knowing where he's at, that she doesn't want to
4 have any contact with him. But that was essentially it.
5 She didn't want to have any contact with him, you know.
6 If he's not around her, that's just fine.

7 There is a relationship between the two victims, Your
8 Honor. The two victims are cousins. I'm sure the Court
9 probably picked up on a little of that. And my client had
10 had a child with one cousin and then was dating the other
11 cousin. Then that's -- then he sees -- it's an awful lot
12 of drama.

13 It doesn't change one thing which is clearly, clearly
14 evident when you look at the record of my client and when
15 you look at the charges that he's had, and when you look
16 at what's gone on in his life. I don't doubt that
17 Batesburg police officers or whomever may have had trouble
18 at some point in time with Davon.

19 I have known Davon for probably 15 years.
20 Represented his brother. And there's one thing about
21 Davon which unfortunately is true which Your Honor sees
22 every day. You see it in court every day. He is manic
23 depressive. He is schizophrenic. He has issues, I guess,
24 dealing with life sometimes when he's stressed. He's
25 tried to commit suicide twice, Your Honor.

1 You'll note that this episode about the throwing the
2 bodily fluids comes after he is arrested, placed in jail.
3 He has -- they were concerned that he was going to kill
4 himself because he made that threat.

5 So he gets strapped down, put in a chair, he gets
6 taken downstairs. And then this is not -- and I don't
7 want the Court to take this the wrong way. I'm hoping the
8 Court will open up its mind and look at what I'm trying to
9 say here. Is that you take this gentleman who's going to
10 try to kill himself, you take him downstairs, you strap
11 him down like an animal, you put him in a chair and you're
12 trying to help him. He doesn't understand that.

13 You can look at his face, Your Honor, and I invite
14 you to look at his eyes because sometimes people's -- you
15 see what's inside of them by looking at them. He's got
16 problems.

17 If he had been a sane human being, Your Honor, number
18 one, he wouldn't have been losing his temper, he wouldn't
19 have gotten this big bond. Subsequently Judge Griffith, I
20 think, ended up reducing that million dollar bond to,
21 like, \$50,000. I mean, he wouldn't have done all that
22 crazy stuff. I mean, he just wouldn't have done it.

23 There was a time period from 2010 up until 2016 we
24 had no problems, there weren't any convictions, didn't get
25 in trouble for anything. The reason for that, Your Honor,

1 is because he wasn't living in Batesburg. The law will
2 tell you, didn't have any trouble over in Batesburg
3 because he wasn't there.

4 That doesn't necessarily mean that my client is a
5 one-armed string of trouble in Batesburg. He wasn't
6 around everybody he grew up with. He wasn't around -- and
7 I know who he grew up with. And, unfortunately, it's the
8 same situation sometimes when you're in that same
9 environment, you're pushed back to the use of drugs,
10 you're pushed back to not being able to control yourself.
11 You're running with the same -- I mean, who dates two
12 cousins? He's got five children. Who's got five
13 children? I only have three.

14 And, I don't mean that to be funny, Your Honor, but
15 he's over there living over in Columbia. He gets -- he
16 gets washed away by the flood of all things, and he has to
17 move back to Batesburg because he doesn't have a place to
18 stay. So there he is. He's back in Batesburg and then
19 he's doing all of this stuff.

20 He told me that if I do anything -- he's afraid.
21 He's up here shaking and he said -- you know, he's nervous
22 and he's hoping that he doesn't get a bunch of jail time
23 which everybody should be in front of, you know, when
24 they're facing judgment day. But one thing he did tell me
25 is that he hopes that the Court will help him with his

1 mental issues.

2 THE DEFENDANT: (Nods head.)

3 MR. WILLIAMS: I seriously think that at some point
4 in time if he doesn't get some sort of help with his
5 mental issues then I guess it will solve everybody's
6 problem because I think he will kill himself eventually if
7 he doesn't change and if he doesn't have some sort of
8 coping mechanisms. He's not crazy. He understands what
9 he's doing. You notice I've had conversations with him.
10 And that same raving behavior in jail was not the guy that
11 I know. Davon will tell you -- I mean -- I mean, I know
12 him. I walk in, we'll talk, we'll do all kind of things.
13 But, I have no magic answer for him, Your Honor. I'm
14 hoping that Your Honor can help him. That's what I'm
15 hoping for, that you can help him.

16 The two domestic violences, Your Honor, were with
17 women who he shouldn't have been acting that way and who
18 knows what the real truth is there. I actually had a
19 phone call from one of them. I took him down to
20 Batesburg, he got a PR bond from the judge, because I live
21 in Batesburg, and one of the victims is calling me on the
22 phone saying, "Is he out yet," and then lo and behold next
23 thing I hear is he's back in jail again because, I don't
24 know, he got in trouble with one of the other victims.

25 His real issue, I think it really is mental issues,

1 Your Honor. If we could get him on medications. He knows
2 what he's doing. He understands what's wrong, what's
3 right. He understands what he's doing here today.

4 Not much I can say, Your Honor, except that's what
5 the true deal is with Davon.

6 THE COURT: When you made that remark about no sane
7 person would do things, are you trying to say he was
8 not --

9 MR. WILLIAMS: I am not saying that, Your Honor. And
10 sometimes I run my mouth and I shouldn't have.

11 THE COURT: So, there's no issue about his
12 competency?

13 MR. WILLIAMS: There is no issue about his
14 competence, Your Honor.

15 THE COURT: There's no need to explore whether
16 M'Naghten would apply?

17 MR. WILLIAMS: It would not apply. It would not
18 apply. I've known him long enough to know he can -- you
19 can talk to him now, Your Honor. He's quiet.

20 THE COURT: He hasn't given me any concerns about
21 competency but you're talking about no sane person would
22 do this and I'm trying to figure out if you really mean
23 that or if you're just being hyperbolic.

24 MR. WILLIAMS: I was probably being hyperbolic, Your
25 Honor, and I apologize for that because sometimes the

1 record doesn't show when you're hyperbolic or not.

2 THE COURT: No, the record is pretty sterile.

3 MR. WILLIAMS: Yes, sir.

4 THE COURT: That's why I'm asking you right now to
5 clear it up.

6 MR. WILLIAMS: Yes, sir. No, there's no issue about
7 whether or not he knows right from wrong and things of
8 that nature. The question is whether or not sometimes he
9 can control it.

10 THE COURT: Well, that's the same issue.

11 MR. WILLIAMS: Your Honor, he knew what he was
12 doing. There's nothing wrong with him.

13 THE COURT: All right. But if he can't control his
14 behavior because of some mental disease or defect, do you
15 need to explore that?

16 MR. WILLIAMS: I do not. I do not. I've known
17 him -- how long have I known you, Davon?

18 THE DEFENDANT: 15 years.

19 MR. WILLIAMS: 15 years.

20 THE COURT: Did you want to say anything, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I'm sorry?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Go ahead.

25 THE DEFENDANT: You know, like, from -- he was

1 saying, you know, like, I've been away from Batesburg for
2 a long time. I grew up with a bunch of people, you know,
3 and used to get in trouble a lot because I was easily
4 influenced, you know, used to use drugs a lot. Easily
5 influenced. Around the wrong people, used to do stuff
6 that let people think I'm cool but it was wrong. But I
7 moved away and I ain't been in Batesburg in years. And up
8 in last year I lost my son. I was with him with one of
9 the victims. We have a child but I lost a son August the
10 10th of last year. And after that I lost everything, all
11 this stuff I was working good for, everything. The flood,
12 I lost everything. And I have to go back to Batesburg and
13 living with one of the victims and her mother. I'm 31
14 years old, you know. Like, I have a record. I had a job
15 at the time, but I lost that because of the flood when it
16 did its damages. It messed my job up, too. So I couldn't
17 go back to work or nothing.

18 So end up back in Batesburg. Back at square one.
19 Back around the same people. Just, I just made a mistake
20 and I apologize for what I did, but a bunch of that stuff,
21 they exaggerating on, you know. But I'm not going to
22 trial about it, but I have done some wrong and I am guilty
23 for the CDV but a lot of this stuff that they read off is
24 a bunch of exaggeration. But I am guilty because I did do
25 wrong to this. I am guilty.

1 But I ask you to just help me. I have -- I have
2 tried to kill myself a couple times. They even sent the
3 police to come surround my house to get me from trying to
4 kill myself. I cut my wrists. I was -- I went to the
5 hospital. I have tried to kill myself a couple times all
6 because I'm just depressed. Like, I don't have nothing.
7 I really don't have nobody. All I got is me. It's just
8 hard when everything is gone. And those women, that's all
9 I really had and when you kind of lose them it's just back
10 to nothing.

11 I just ask you to have mercy and help me instead of
12 punish me. I just ask you to help me.

13 MR. WILLIAMS: Your Honor, I don't know that I said
14 that he's been in jail five months.

15 THE COURT: Thank you.

16 Hearing nothing further, the Court accepts the plea.
17 The Court makes a specific finding with relation to the
18 two offenses that are violent and felonies, that they are
19 violent crimes and felonies and that the Defendant is
20 prohibited from possessing, shipping, transporting or
21 receiving any firearm or ammunition.

22 This is a very difficult situation, very troubling.
23 I wish I had more options.

24 THE SENTENCE OF THE COURT ON INDICTMENT 2366 IS THAT
25 YOU BE COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF

1 CORRECTIONS FOR 10 YEARS PLUS COSTS AND ASSESSMENTS, GIVEN
2 CREDIT FOR JAIL TIME UNDER SECTION 24-13-40 TO BE
3 CALCULATED AND APPLIED BY THE DEPARTMENT OF CORRECTIONS.
4 I'M RECOMMENDING MENTAL HEALTH TREATMENT. PAY YOUR COURT
5 COSTS WITHIN TWO YEARS OF BEING RELEASED FROM PRISON.

6 ON INDICTMENT 777, WHICH IS THE THROWING BODILY
7 FLUIDS, THE SENTENCE IS THAT YOU BE COMMITTED TO THE SOUTH
8 CAROLINA DEPARTMENT OF CORRECTIONS FOR ONE YEAR PLUS COSTS
9 AND ASSESSMENTS, CONSECUTIVE TO 2366.

10 INDICTMENT 1380, SENTENCE IS YOU BE COMMITTED TO THE
11 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
12 10 YEARS PLUS COSTS AND ASSESSMENTS, CONSECUTIVE TO 2366
13 AND 2369.

14 The intent is 21 years. Good luck.

15 MR. WILLIAMS: Thank you, Your Honor.

16 (Court's Exhibit No. 1, three photographs, received
17 into evidence.)
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Lexington County, on the 25th day of August, 2016.

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

I have hereunder set my hand this 5th day of May, 2017.

Cheri L. Young, RPR
Official Court Reporter

ORIGINAL 35

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Davon A. Clark #314335
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2017 FEB 22 PM 12:44 IN THE COURT OF COMMON PLEAS

2017 CP 32 00590

CLERK OF COURT
LEXINGTON, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
General Sessions Court
2. Name and location of Court which imposed sentence East Main St. Lexington SC
29072
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-32-02366 (Domestic Violence 1st)
 - (b) 2016-GS-32-02369 (Throwing Bodily Fluids)
 - (c) 2016-GS-32-01380 (Domestic Violence 1st)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-25-16 Ten(10) years consecutive
 - (b) 8-25-16 One(1) years consecutive

A TRUE COPY

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

- (c) 8-25-16 Ten(10) years consecutive
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Check
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel did not advise applicant of his right to appeal.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

A TRUE COPY

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

This is pertaining to question's
10 and 11 on the PCR application.
The reason why I'm saying
ineffective council is because
when I signed my plea my
lawyer did not explain to
me that I can receive consecutive
sentencing on all 3 of my charges
I was only told that I could
receive a consecutive sentence
for one charge and they gave me
consecutive sentencing for all 3
so this is why I would like
to go back to court I would have
never signed that type of plea
agreement if I would have
known what they were saying
so please take this into consideration
that I was misled on my plea
agreement.

Damon Ortiz

A TRUE COPY

Dee Carter
Lex. Co. C.C.C.P., G.S. & F.C.

- (a) See memorandum of law.
- (b) _____
- (c) _____

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

- (a) See memorandum of law.
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. Motion for reconsideration of sentence.
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. General Sessions Court 205 East Main St. Lexington SC 29072
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Motion denied.
 - ii. _____
 - iii. _____

A TRUE COPY

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

- iv. _____
- (d) the date of each such disposition:
- i. November 23, 2016
- ii. _____
- iii. _____
- iv. _____

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

- (a) This is Applicant's first PCR.
- (b) _____
- (c) _____

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

A TRUE COPY

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Robert T. Williams Sr. P.O. Box 2390 Lexington SC 29071
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Plea, Sentencing, and Motion for Reconsideration
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- Re-Sentencing
20. Are you now under sentence from any other court that you have not challenged?
- No

A TRUE COPY

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

STATE OF SOUTH CAROLINA)

)

VERIFICATION

County of Lexington)

I, Davon A. Clark, 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.

Davon Clark

SWORN to and subscribed before me this 13
day of February, 2017.

JC Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

A TRUE COPY

Jodi Connor
Lex. Co. C.C.C.P., G.S. & F.C.

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

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

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

Davon Clark
Applicant

SWORN or affirmed to and subscribed before me this
13 day of February, 2017.

J. C. Franklin
Notary Public

My Commission Expires: 12-16-2019

A TRUE COPY

J. C. Franklin
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2017 SEP 26

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Davon A. Clark, #314335,

Applicant,

v.

State of South Carolina,

Respondent.

LISA H. COHER
CLERK OF COURT
LEXINGTON, SC

Case No. 2017-CP-32-00590

RETURN

In making its Return to the *pro se* application for post-conviction relief filed February 22, 2017, by the above-captioned Applicant, Respondent, the State, would respectfully show this Court:

I. Conviction and Sentence

Applicant Davon Clark is presently confined at Broad River Correctional Institution pursuant to orders of commitment from the Lexington County Clerk. (Attachment 1: SCDC Records).

Applicant waived presentment to the Lexington County Grand Jury and pled guilty to two charges of first degree domestic violence and one charge of throwing bodily fluids by a prisoner on August 25, 2016. (Attachment 2: Indict. 2016-GS-32-1380, -2366, -2369). Theo Williams, Esq., represented Applicant and Assistant Solicitor Bradley Pogue appeared on behalf of the Eleventh Circuit Solicitor's Office. The Honorable William P. Keesley presided. (Attachment 3: Plea Tr.). At the plea, Applicant pled guilty to both domestic violence charges and pled no contest to the throwing bodily fluids charge.

Judge Keesley found a substantial factual basis for each charge as pled and accepted the plea as being knowingly and voluntarily made. (*Id.*). He sentenced Applicant as follows: ten years on indictment 2016-GS-32-2366 for first degree domestic violence; one year on indictment 2016-GS-

32-1380 for throwing bodily fluids, to be served consecutive to the prior sentence; and another ten years on indictment 2016-GS-32-2369 for first degree domestic violence, to be served consecutive to both prior sentences. (Attachment 4: Sentencing Sheets). The trial court clarified that his intent was for a sentence totaling 21 years. (Attachment 3, Plca Tr. at 33).

The next day, Applicant's counsel filed a motion to reconsider the sentence rendered. (Attachment 5¹: Mot. to Reconsider). The plea court stated that it would rule upon written submissions and ordered the parties to provide memoranda in support of their respective positions. (Attachment 5: Sept. 28 Or.). Applicant's counsel filed a memorandum delineating the positions of the victims to the domestic violence charges as well as mitigating factors pertaining to Applicant's personal life. (Attachment 5: Def. Memo.). The State opposed the motion. Assistant Solicitor Pogue filed a memorandum stating that Applicant received fourteen years less than the maximum potential sentence he faced; stating that as part of the plea agreement he had two charges dismissed upon which he faced a potential additional forty years of incarceration; and rebutting Applicant's mitigation by detailing callous and violent acts committed by Applicant pertaining to the crimes pled and in retaliation against one victim after sentencing. (Attachment 5: State's Memo.). The plea court denied the Motion to Reconsider in an Order filed November 29, 2016. (Attachment 5: Nov. 29 Or.).

Applicant did not appeal his convictions or sentence.

II. Facts as Pled

As presented at the plea, Applicant's domestic violence charges stemmed from two separate incidents occurring on January 23, 2016, and April 9, 2016. (Attachment 2: Indictments). In the January incident, the victim, Applicant's ex-girlfriend, was approached by Applicant at a gas station

¹ Attachment 5 is comprised of the chronological compilation of filed-stamped documents pertaining to the Motion to Reconsider, including the Order ruling upon that Motion.

in the Batesburg-Leesville area. Applicant followed the victim to a dead-end road, pulled her from her car, physically and verbally assaulted her and took her keys and her car. When Applicant saw that the victim had taken Appellant's own car to escape from the scene, he turned around and again engaged in a struggle with her over his own car keys. Applicant drove the victim's car into a ditch before helping the victim out of the ditch. She reported the incident to law enforcement immediately but recanted her story when Applicant threatened her life and slashed her tires a few days later. (Attachment 3: Plea Tr. at 10-12). In the April incident, Applicant confronted his live-in girlfriend when she returned home from a party one night and assaulted her in the front yard. (Attachment 3: Plea Tr. at 12-13).

While Applicant was in custody at the Lexington County Detention Center awaiting disposition of these domestic violence charges, he incurred the throwing bodily fluids charge. It resulted from an incident in which Applicant was removed from general population to the booking area to receive medical treatment. He flooded that cell and became hostile. While officers were trying to restrain Applicant, he spit on them. The record indicates that this was not the only such incident while in the Lexington Detention Center (Attachment 3: Plea Tr. at 14-16).

II. The Instant Application

Applicant commenced the present action by filing his application with the Lexington County Clerk of Court on February 22, 2017. S.C. Code. Ann. § 17-27-40. Applicant timely filed within the one-year statute of limitations. S.C. Code. Ann. § 17-27-45(A).

Within his *pro se* application, Applicant alleges that he is being held in custody unlawfully and seeks relief premised upon the following reasons, enunciated in a brief memorandum attached to his post-conviction relief (hereinafter "PCR") application and copied verbatim below:

10(A) Applicant was denied the right to effective assistance of counsel guaranteed by

the Six and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution- during a plea of guilty.

11(A) Counsel's performance during the guilty plea phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but not limited to, the following:

- a. Counsel failed to inform the Applicant that he could be sentenced to as much as twenty-one (21) years if his sentence as ran consecutive

(Attachment 6: PCR App.). Applicant included an additional memorandum in support of this claim, specifying that:

. . . when I signed my plea my lawyer did not explain to me that I can receive consecutive sentencing on all 3 of my charges I was only told that I could receive a consecutive sentence for one charge and they gave me consecutive sentencing for all 3 so this is why I would like to go back to court I could have never signed that type of plea agreement . . .

(*Id.*).

Arthur K. Aiken, Esq., has been appointed to represent Applicant in the present application.

III. Standard for Post-Conviction Relief

"A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency." *Stalk v. State*, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985) (adopting seminal ineffective assistance of counsel standard from *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984), and applying to cases resolved via guilty plea)). In order to satisfy the prejudice requirement, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." *Hill v. Lockhart*, *supra* at 59, 106 S.Ct. at 370. At all times during the proceeding, the Applicant maintains the burden of establishing that he is entitled to relief. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d

884, 886 (2007). Moreover, the proceeding is coupled with “a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgement in making all significant decisions in the case.” *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006).

IV. Request for the Resolution of Applicant’s Claims

The State makes its Return pursuant to S.C. Code. Ann. § 17-27-70(a). Respondent denies the single allegation of ineffective assistance of counsel raised herein and demands strict proof thereof.

As an initial consideration, the instant claim may express a subjective desire for a lesser sentence. “Courts naturally look with a jaundiced eye upon any defendant who seeks to withdraw a guilty plea after sentencing on the ground that he expected a lighter sentence.” *United States v. Crusco*, 536 F.2d 21, 24 (3rd Cir. 1976). “Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.” *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

Additionally, the record refutes any allegation that plea counsel did not advise Applicant that each of his sentences may be issued consecutively. Any alleged deficiency in plea counsel’s representation can be cured by the plea colloquy. *Holden v. State*, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); *Bennett v. State*, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) (reversing grant of PCR and stating that “even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range”); *Burnett v. State*, 352 S.C. 589, 576 S.E.2d 144 (2003) (reversing grant of PCR and holding that even if plea counsel erroneously informed defendant that his sentence would only be three years, the information conveyed at the plea hearing cured any misconception caused by counsel’s alleged inaccurate

advice); *Moorehead v. State*, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (reversing grant of PCR on the ground that there was no evidence to support the PCR judge's finding that applicant received ineffective assistance of counsel due to erroneous sentencing advice where "any misconception was cured at the plea hearing"); *Wolfe v. State*, 326 S.C. at 165, 485 S.E.2d at 370 (reversing grant of PCR and recognizing that in considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

During Applicant's plea, counsel answered affirmatively when the plea court inquired whether he had "fully explained to [Applicant] the nature and elements of the offenses, the possible punishment and his constitutional rights." (Attachment 3: Plea Tr. at 6). The plea court specifically informed Applicant that the throwing bodily fluids charge carried up to fifteen years, and that "the sentences are required to be consecutive." (*Id.* at 20-21). S.C. Code Ann. § 24-13-470 (Throwing of bodily fluids . . . "A sentence under this provision must be served consecutively to any other sentence the inmate is serving."). He asked Applicant if he understood, and plea counsel interjected Applicant "may not understand that issue." (*Id.* at 21). Counsel and Applicant were permitted to stand down from the plea and confer regarding consecutive sentences requirement. (*Id.*). The conference lasted five minutes. (*Id.*). Afterwards, Applicant told the court he understood the sentence for the bodily fluids charge would be consecutive, and told the court he still wished to enter his plea. (*Id.* at 21-22).

Then, the plea court informed Applicant that each count of domestic violence first degree

carries up to ten years in prison. (*Id.* at 22). The court additionally explained that it is classified as a violent crime, meaning that he would not be eligible for certain programs, placement, or time credits within SCDC, as well as a host of other enumerated restrictions. (*Id.* at 22-23).

Not only does the plea record indicate that counsel and the plea court both informed Applicant of the potential for consecutive sentences, but Applicant cannot establish prejudice from the sentences issued. He faced a maximum of thirty-five years if sentenced to the maximum on each of the domestic violence charges, and the throwing bodily fluids charge. S.C. Code Ann. §§ 16-25-20(B); 24-13-470. As part of the plea agreement, one additional domestic violence charge and two additional throwing bodily fluids charges were dismissed, which totaled another potential twenty-five years. (*Id.* at 17). Instead, Applicant received the benefit of the plea bargain by accepting responsibility and receiving a sentence of twenty-one years, fourteen years less than the maximum. (Attachment 4: Sentencing Sheet). Of further note, counsel moved for the court to reconsider the sentence given the day after Applicant entered his plea. (Attachment 5: Motion, Memoranda, and Order). Though that motion was ultimately denied, counsel put forth specific facts in support of his motion for sentence reduction in the manner ordered by the Court. (*Id.*).

Considering the totality of the record pertaining to the plea hearing, it appears that counsel indeed advised his client of the consecutive sentence requirement, as well as the maximums he faced on the totality of the charges. On this record, Applicant cannot succeed in demonstrating that he pled guilty in an unknowing, involuntary manner, or that but-for deficient advice by counsel, he would have insisted on proceeding to trial. *See Hill v. Lockhart, supra*.

V. Standard for Evidentiary Hearing

Our courts have determined that some PCR claims may not be conclusively refuted by the record, thus raising a question of fact and requiring an evidentiary hearing. *Sharper v. State*, 279 S.C.

264, 266, 305 S.E.2d 247, 249 (1983). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

Respondent submits that an evidentiary hearing may be necessary to fully develop factual support in furtherance of the instant ineffective assistance allegation. S.C. Code Ann. § 17-27-80. However, Respondent maintains that Applicant cannot satisfy either requirement of the standard defined within *Hill v. Lockhart*, *supra*.

VI. Right to Amend

Respondent additionally notes that prior to such time as a hearing is called in this case, Applicant, by and through his appointed PCR counsel, must specify any claims he intends to raise. See Rules 11, 71.1, SCRCP. All claims should be made well in advance of any hearing.

Respondent additionally hereby reserves the right to amend its Return to the extent Petitioner may file amended pleadings in accord with S.C. Code Ann. § 17-27-70(a), or to the extent the allegations in this proceeding are otherwise altered in accord with the appropriate procedures and laws of this State.

VII. Conclusion

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

WHEREFORE, having made the Return, Respondent requests the Court hold an evidentiary hearing on the issue of ineffective assistance of counsel.

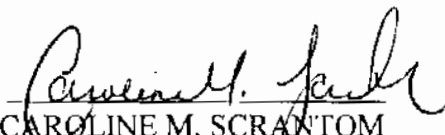
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE M. SCRANTOM
Assistant Attorney General

By: 
CAROLINE M. SCRANTOM
S.C. Bar No. 101357

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

September 5, 2017
Columbia, South Carolina

FILED
2017 SEP -6 AM 11:00
LISA M. CONER
CLERK OF COURT
JUDICIAL BRANCH SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
))
))
Davon A. Clark, #314335,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2017-CP-32-00590

RETURN

Attachment 1

14:42:03 Tuesday, April 11, 2017

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	04/11/17
OMCOMITA	RELEASE DATE SCREEN	C023981
SCDC# > 314335	LOC: MCCORMICK	
CLARK, DAVON ARTJUAWN	SCDC CLASSIFICATION...: VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY...: N	
	SEXUAL PREDATOR...: NOT APP	
	DNA STATUS...: COMPLETED	
	GPS REQUIREMENT...: N	
	PREA DECISION...:	
PREA VICTIM...: HIGH VULNERABLE	PREA PERP...: NONE	
CURRENT SENTENCE: 021-00-000	CONSECUTIVE SENTENCE ...: Y	
021-00-000	CURRENT SENT START DATE: 04/27/2016	
PROJECTED COMPLETION DATES		
MAXOUT DATE ...: 06/25/2027	CURRENT EWC .: 3 F 5	
YOA SIX YEAR DATE: / /	CURRENT EEC .: NOT CURRENTLY EARNING EEC	
INITIAL PAROLE DATE: 01/14/2022	NEXT PAROLE HEARING DATE: 01/14/2022	
TOTAL GT DAYS EARNED ...: 000220	LABOR CREW/WORK PROG DATE: 99/99/9999	
TOTAL EARNED WORK CREDITS ...: 000039	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS ...: 000000	CATEGORY 4 OR 5 OFFENSE	
TOTAL EXTRA EARNED CREDITS .: 000	SUPERVISED REENTRY DATE...: 12/27/26	
TOTAL SERVICE TIME EARNED ...: 000346	ISS.....:	
PFKEYS: 5:HISTORY OF DATE CHANGES		

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, April 11, 2017

Classification Summary Reports				
Inmate Number	SCDC ID	Name	Sex/Race	Status
314335	00314335	CLARK, DAVON ARTJUAWN	M B	INCARCERATED
Submit	Y 00314335	CLARK, DAVON	M B	YOA PAROLE - CONDITIONAL

Classification Summary Report for CLARK, DAVON ARTJUAWN :		
Create PDF		
CLASSIFICATION SUMMARY REPORT DATED 04/11/2017		
SCDC# 00314335	CLARK, DAVON ARTJUAWN	FBI# 583516AC0
OFFENDER ADULT-STRAIGHT TYPE: SENTENCE		RESIDENT STABILITY: NA
INSTITUTION: MCCORMICK		DORMROOMBUNK_CODE: F3 0229 B
SECURITY/CUST: 3 MINIMUM IN		PROJ MAXOUT DATE: 06/25/2027
CURR INCARC 21 YRS 0 MOS 0 SENT: DAYS		PROJ PAROLE DATE: 01/14/2022
VICTIM WITNESS: SEPREQ		EWC JOB: GENERAL WORKER
MED ~~RECEIVED~~ CLASS: ~~RECEIVED~~		ASSIGNMENT: BLDING DETAIL BLDG. #3
INST RESTRICT: ~~RESTRICTED~~		EWC LEVEL: 3F5 EEC LEVEL:
MENTAL ~~RECEIVED~~ CLASS: ~~RECEIVED~~		EDUC PGM: NO CURR EDUC PROGRAM
CURRENT NO CURRENT PROGRAM: PROGRAM		
SEX REGISTRY: N		
DNA: C		
AGE: 32		

PREVIOUS NUMBERS:		
Y00314335		
SENTENCE		SENTENCE

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
THROW BODY FL. CORR. EMP	1	0	0	LEXINGTON	04/28/2016	N	4	16GS3202369
DV, 1ST DEGREE	10	0	0	LEXINGTON	04/28/2016	V	4	16GS3202366
DV, 1ST DEGREE	10	0	0	LEXINGTON	04/27/2016	V	4	16GS3201380

COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
ASSLT CORRECT'L EMPLOYEE	1	0	0	LEXINGTON	08/16/2008	N	4	09GS32-0155
FAIL TO STOP FOR OFFICER	2	0	0	LEXINGTON	08/16/2008	N	2	08GS32-2032

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

PREVIOUS OFFENSES	PREVSCDCID	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
COMMON LAW ROBBERY	Y00314335	4	0	0	LEXINGTON	10/11/2005	N	3	05GS321649
BURGLARY-3RD DEGREE	Y00314335	4	0	0	LEXINGTON	03/13/2006	N	2	04GS324249
COCAINE DIST PROX SCHOOL	Y00314335	4	0	0	LEXINGTON	03/04/2006	N	2	06GS32554
THREAT LIFE/FAM PUBL OFFT	Y00314335	4	0	0	LEXINGTON	10/11/2005	N	4	05GS322371
DRIVING UNDER SUSPENSION	Y00314335	0	0	90	RICHLAND	04/18/2012	N	1	

DETAINERS (HOLD,WANTED,NOTIFY):

ARMED ROBBERY	NOTIFY	OPEN ARREST NOTIFICATION	CATEG:4
---------------	--------	--------------------------	---------

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

05/30/2009	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
------------	------------------------	-----------	---------------------	---

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

01/28/2010	OUT OF PLACE	DISMISSED	ADMINISTRATIVE RESOLUTION
07/30/2009	THREATENING TO INFLICT HARM,ON INMATE	CONVICTED	MAJOR DISC. HEARING
06/25/2009	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
04/18/2009	POSSESSION OF CONTRABAND	CLOSED	OTHER ACTION TAKEN/INFORM
09/27/2006	USE OBSCENE,VULGAR,PROFANE LANG/GESTURES	CONVICTED	MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

10/20/2016	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/26/2016	KIRKLAND	INCARCERATED	NEW ADMISSION
07/01/2010	UNK	RELEASE	EXPIRATION OF SENTENCE
07/14/2009	ALLEDALE	INCARCERATED	ADMINISTRATIVE
07/14/2009	KIRKLAND	INCARCERATED	MEDICAL
07/08/2009	ALLEDALE	INCARCERATED	ADMINISTRATIVE
07/08/2009	RIDGELAND	INCARCERATED	COURT/PAROLE HEARING VIA
06/26/2009	ALLEDALE	INCARCERATED	LOCKUP-ADJUSTMENT COMM.

05/14/2009	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
03/05/2009	MACDOUGALL	INCARCERATED	ADMINISTRATIVE
01/16/2009	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	10/25/2016	-		3F5
CUSTODIAL WORKER	01/07/2010	07/01/2010	RELEASED/PAROLED	3F5
CUSTODIAL WORKER	09/23/2009	01/06/2010	CUSTODY REVIEW	5F5
FOOD SERVICE AIDE	07/02/2009	07/30/2009	PLACED IN ST/SP CUSTODY	5F5
SENIOR COOK	06/05/2009	06/24/2009	PLACED IN ST/SP CUSTODY	3F7
SENIOR COOK	06/01/2009	06/04/2009	ASLT/DRUG/MAJOR DISC	2F7
FOOD SERVICE AIDE	05/20/2009	05/31/2009	PROMOTION	2F5
LANDSCAPE LABORER	03/13/2009	05/14/2009	INSTIT TRANSFER	2F5
LANDSCAPE LABORER	03/10/2009	03/12/2009	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	10/06/2006	02/15/2007	RELEASED/PAROLED
LVL 3 - FULL TIME(NO EWC)	05/26/2006	10/05/2006	ASLT/DRUG/MAJOR DISC
LVL 3 - FULL TIME(NO EWC)	05/22/2006	05/25/2006	MI ELIGIBLE FOR LEVEL 2

***** END OF REPORT *****

[Create PDF](#)

Source : SummaryReport.jsp

Copyright © 2007-2017 South Carolina Department of Corrections. All rights reserved.
 [Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 02:46:24 PM]

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Davon A. Clark, #314335,

C/A No. 2017-CP-32-00590

Applicant,

Y.

RETURN

State of South Carolina,

Respondent.

Attachment 2

WITNESSES

Lexington County Sheriff's Department

S. K. Black

Law Enforcement Case #: 16-001476

BPP

ARREST WARRANT NUMBER

2016A3211000046

ACTION OF GRAND JURYForeperson of Grand Jury
Date:VERDICTForeperson of Petit Jury
Date:DOCKET NO. 2016GS3201380The State of South CarolinaCounty of LexingtonCOURT OF GENERAL SESSIONSSEPTEMBER TERM 2016THE STATEvs.Davon Artjuawn ClarkCDR #: 3811Indictment forDomestic Violence, 1st Degree§ 16-25-0020(B)DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT	
x <u>Davon Clark</u>	DEFENDANT
<u>SEP 25, 2016</u>	DATE
<u>[Signature]</u>	WITNESS

A TRUE COPY[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Domestic Violence, 1st Degree

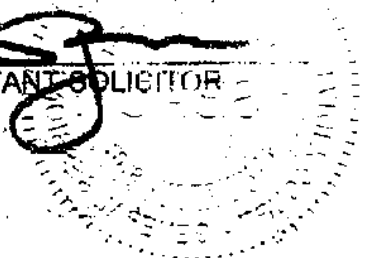
§ 16-25-0020(B)

At a Court of General Sessions, convened on September 2016, the Grand Jurors of Lexington County present upon their oath:

That **Davon Artjuawn Clark** did in Lexington County, South Carolina on or about **January 23, 2016**, unlawfully cause physical harm or injury to a household member namely **Lameka Stevenson**, or offer or attempt to cause physical harm or injury to a household member with apparent present ability, under circumstances reasonably creating fear of imminent peril; and the defendant has two or more prior convictions of domestic violence within ten years of the date of the current offense in violation of Section 16-25-20 of the South Carolina Code of Laws (1976), as amended

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


 ASSISTANT SOLICITOR



ARREST WARRANT

2016A3211000046

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE
against

Devon Artjuawn Clark

Address:
Batesburg, SC 29006-Phone:
Sex: M Race: B Height: 6 Weight: 210DL #
SC -30 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: S. K. Black - 0577

Offense: Domestic / Domestic Violence, 2nd degree

Offense Code: 3812
Code/Ordinance Sec: 16-25-0020(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Devon Clark
on 2-26-16

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Summary Court
139 East Main Street
Lexington, SC 29072

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant S. K. Black who
being duly sworn deposes and says that defendant Devone Artjuawn Clark
did within this county and state on or about 1/23/2016 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)
in the following particulars:

DESCRIPTION OF OFFENSE: Domestic / Domestic Violence, 2nd degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On 01-23-16 at approximately 6:19 pm the defendant, Devon Artjuawn Clark, assaulted the victim, Lameka Stevenson, by pulling
her out of the car and punching her in the head. The defendant also broke the victim's finger and pushed her on the ground causing
an abrasion on her elbow. The victim and defendant have previously cohabitated. The defendant has a prior CDV 1st conviction in
2011. Law Enforcement obtained a voluntary written statement from the victim and photographed her injuries. This incident
occurred at 6670 Augusta Hwy., which is in the Batesburg/Leesville area of Lexington County South Carolina. The case number for
this incident is 16001476

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-
Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/23/2016 defendant Devone Artjuawn Clark
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Domestic / Domestic Violence, 2nd degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as
soon thereafter as is practicable
sworn to and subscribed before me
on 2/16/2016

Signature of Issuing Judge

Scott D. Whittle

Judge Code: 5886

Judge's Address Swansea, SC 29160-
Judge's Telephone (803)796-7100Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2009
SCCA 518

TRUE COPY

Lex. Co. C.C.C.P., G.S. & E.C.

Judge BWB
on 2/26/16
Type and Amount: \$15,000⁰⁰
Name of Surety: GB

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, not pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



2016 MAR -4 PM 2:02
CLERK OF COURT
JANUARY 2016

BAIL set by

Judge BWB

on 2/26/16

Type and Amount: \$15,000⁰⁰

Name of Surety: EB

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



2016 MAR -4 PM 2:02
CLERK OF COURT
CLERK OF COURT

A TRUE COPY

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

WITNESSES

Batesburg Leesville Police Department

Ptl. Harpalani

Law Enforcement Case #: 16-0612

BPP

ARREST WARRANT NUMBER

2016A3220200106

ACTION OF GRAND JURYForeperson of Grand JuryDate:VERDICTForeperson of Petit JuryDate:DOCKET NO. 2016GS3202368The State of South CarolinaCounty of LexingtonCOURT OF GENERAL SESSIONSSEPTEMBER TERM 2016THE STATEvs.Davon Artjuawn ClarkCDR #: 3811Indictment forDomestic Violence, 1st Degree§ 16-25-0020(B)DONALD V. MYERS, SOLICITORI DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT*Davon Clark*
DEFENDANTSept 16, 2016
DATE*[Signature]*
WITNESS**A TRUE COPY***[Signature]*
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

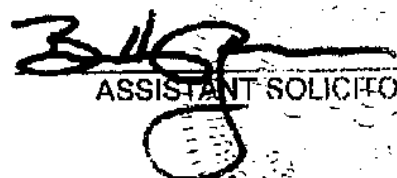
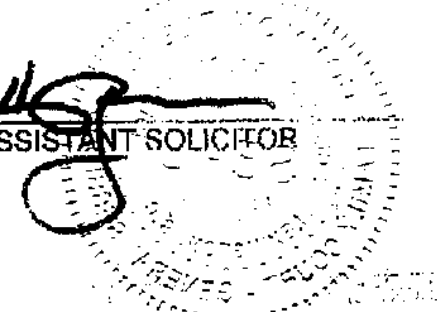
INDICTMENT FOR
 Domestic Violence, 1st Degree

§ 16-25-0020(B)

At a Court of General Sessions, convened on September 2016, the Grand Jurors of Lexington County present upon their oath.

That **Davon Artjuawn Clark** did in Lexington County, South Carolina on or about **April 9, 2016**, unlawfully cause physical harm or injury to a household member; namely **Chandrika Waters**, or offer or attempt to cause physical harm or injury to a household member with apparent present ability, under circumstances reasonably creating fear of imminent peril; and the defendant has two or more prior convictions of domestic violence within ten years of the date of the current offense; in violation of Section 16-25-20 of the South Carolina Code of Laws (1976), as amended

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


 ASSISTANT SOLICITOR


BAIL set by

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

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

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

CLERK OF COURT
JULY 10 2016

2016 APR 25 PM 4:14

A TRUE COPY

[Signature]
Lex. C.C. C.C.P., G.S. & F.C.

WITNESSES

Lexington County Sheriffs Department

H. Livingston

Law Enforcement Case #: 16008714

BPP

ARREST WARRANT NUMBER

2016A3210200777

ACTION OF GRAND JURYForeperson of Grand Jury
Date:VERDICTForeperson of Petit Jury
Date:DOCKET NO. 2016GS3202369The State of South Carolina
County of LexingtonCOURT OF GENERAL SESSIONSSEPTEMBER TERM 2016THE STATE

vs.

Davon Artjuawn Clark

CDR #: 2526Indictment for

Throwing Bodily Fluids by Prisoner

§ 24-13-0470

DONALD V. MYERS, SOLICITORI DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENTDEFENDANTDATEWITNESS**A TRUE COPY**

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

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Throwing Bodily Fluids by Prisoner

§ 24-13-0470

At a Court of General Sessions, convened on September 2016, the Grand Jurors of Lexington County present upon their oath:

That **Davon Artjuawn Clark** did in Lexington County, South Carolina, on or about May 1, 2016, while he was an inmate, detainee, a person taken into custody, or person under arrest, attempted to throw or threw body fluids, including but not limited to, urine, blood, feces, vomit, saliva, or semen, on an employee of a state or local correctional facility, such person being Christopher Myers, employed at the Lexington County Detention Center, in violation of §24-13-470 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

ARREST WARRANT

2016A3210200777

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE OF SOUTH CAROLINA
against

008714

Davon Artjuawn Clark

Address:

Batesburg, SC 29006-

Phone: (803)220-8797

SSN: [REDACTED]

Sex: M Race: B Height: 6 2 Weight: 210

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency Code: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: H. Livingston - LIVING

Offense: Prisoners / Throwing of bodily fluids by prisoner,
detainee on state corrections or local law

Offense Code: 2526

Code/Ordinance Sec: 24-13-0470

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Davon A. Clark
on 05-09-16M. R. Gorman
Signature of Detainable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Summary Court Center
139 East Main Street
Lexington, SC 29072

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant H. Livingston whobeing duly sworn deposes and says that defendant Davon Artjuawn Clarkdid within this county and state on or about 5/1/2016State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)

in the following particulars

DESCRIPTION OF OFFENSE: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law
enforcement officer, corrections employee, or visitorI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on 5-1-2016, the defendant, Davon Clark, did commit the crime of throwing saliva on a local law enforcement officer while at
521 Gibson Rd. (LCDC) in the Lexington area of Lexington County, SC, while being an inmate in the jail. While Officer Myers was
attempting to restrain the defendant following an altercation, the defendant willfully spit saliva on the detaining officer (Myers)
striking him in the left hand, left arm, left leg and chest area. This occurred in the presence of Sgt. Todd. Case # 16-008714.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address

Lexington, SC

Affiant's Telephone

(803)785-2421

ARREST WARRANT

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

If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/1/2016defendant Davon Artjuawn Clark

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington) as set forth below:DESCRIPTION OF OFFENSE: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law
enforcement officer, corrections employee, or visitor

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

Sworn to and subscribed before me

on 5/9/2016Brian Norman Buck
Signature of Issuing Judge

Brian Norman Buck

Judge Code: 7322

Judge's Address

Lexington, SC 29072-

Judge's Telephone

(803)951-2518

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2013
SCCA 318RECEIVED
MAY 09 2016
Lexington Co. Sheriff's Dept.A TRUE COPY
Lex. Co. C.C.P., G.S. & F.C.

BAIL set by
Judge
on 5/19/76
Type and Amount: \$10,000.00
Name of Surety:

PRELIMINARY HEARING held by

Judge
on
Defendant Attorney:
Decision:

DISPOSITION before

Judge
on
by
(indicate jury trial, bench trial, plea, not. pros., etc.)
Disposition:
Sentence:

JURORS

WITNESSES

Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:

CODEFENDANTS



CLERK OF COURT
OFFICE OF THE CLERK
JULY 12 1976

JULY 12 1976

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
))
))
Davon A. Clark, #314335,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2017-CP-32-00590

RETURN

Attachment 3

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

CIRCUIT COURT
2016-GS-32-02366,
-02369 & -0130

3
4
5 STATE OF SOUTH CAROLINA,

6 -vs-

TRANSCRIPT OF RECORD

7 DAVON A. CLARK,
8 Defendant.

9
10 Heard on Thursday, August 25, 2016

11 Lexington, South Carolina

12
13 BEFORE:

14 THE HONORABLE WILLIAM P. KEESLEY

15
16 APPEARANCES:

17 Counsel on Behalf of the State:
18 Bradley Pough, Esq.

19 Counsel on Behalf of the Defendant:
20 Robert "Theo" Williams, Sr., Esq.

21
22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 5232
Aiken, SC 29804-5232

1	EXHIBIT INDEX			
2			MAR ADM	
3	Court's			
4	1	Three photocopies of texts	33	33
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 ON THURSDAY, AUGUST 25, 2016 AT 11:30 A.M.:

2 THE CLERK: Davon Clark.

3 2016-GS-32-1380, State versus Davon Clark indicted
4 for domestic violence first degree. He is pleading as
5 charged.

6 2016-GS-32-2366, State versus Davon Clark indicted
7 for domestic violence first degree. He is pleading as
8 charged.

9 2016-GS-32-2369, State versus Davon Clark indicted
10 for throwing bodily fluids by a prisoner. He is pleading
11 as charged. He is waiving presentment to the grand jury
12 on all indictments and is represented by Mr. Williams.

13 Raise your right hand, please.

14 (Defendant placed under oath.)

15 (Defendant conferring with counsel.)

16 MR. WILLIAMS: Your Honor, my client just mentioned
17 something to me. He would like to plead no contest to the
18 throwing bodily fluids. He understands it will be treated
19 as a guilty plea. He just wants to do that. If that's
20 all right with the Court, if you'll accept this as
21 no-contest plea, Your Honor.

22 MR. POUGH: Your Honor, the State would object to a
23 no-contest plea.

24 MR. WILLIAMS: He is prepared to go forward with the
25 guilty plea, Your Honor.

1 THE COURT: Well, I don't know that I or the State
2 controls his plea.

3 MR. WILLIAMS: Well, if --

4 THE COURT: Well, there's law about felonies and
5 taking no-contest pleas on felonies. And the way I read
6 it, we're discouraged from doing that. So I don't know
7 that I have to accept a no-contest plea on a felony.

8 But, again, it's not my decision as to what plea he
9 enters.

10 MR. WILLIAMS: He would like to enter that plea, Your
11 Honor, if you would accept it.

12 THE COURT: Bear with me a moment.

13 (Pause.)

14 THE COURT: You're Davon Artjuawn Clark?

15 THE DEFENDANT: Yes, sir, I am.

16 THE COURT: I have an indictment that charges in
17 Lexington County on or about April 9, 2016, you unlawfully
18 caused physical harm or injury to a member of your family
19 or household, specifically Chandrika, C-H-A-N-D-R-I-K-A,
20 Waters, or that you offered or attempted to do so with an
21 apparent present ability under circumstances reasonably
22 creating a fear of imminent peril, you having two or more
23 prior convictions of domestic violence within 10 years
24 from the date of the offense. Upon your arraignment on
25 that charge it appears that you wish to waive presentment

1 to the grand jury and plead guilty to domestic violence
2 first degree; is that right?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Another indictment charges that in
5 Lexington County on or about January 23rd, 2016, you
6 unlawfully caused physical harm or injury to a household
7 member, specifically Lameka, L-A-M-E-K-A, Stevenson or
8 that you offered or attempted to cause physical harm or
9 injury to a household member with a present -- apparent
10 present ability under circumstances reasonably creating
11 fear of imminent peril, you having two or more convictions
12 for domestic violence within 10 years of the date of the
13 offense.

14 Upon your arraignment it appears that you wish to
15 waive presentment to the grand jury and plead guilty to
16 domestic violence first degree; is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Another indictment alleges that in
19 Lexington County on or about May 1, 2016, while you were
20 an inmate in the custody of the Lexington County Detention
21 Center, that you attempted to throw or threw bodily fluids
22 on an employee of that facility, specifically Christopher
23 Meyer.

24 Upon your arraignment on that charge it appears that
25 you wish to waive presentment to the grand jury and plead

1 no contest; is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Williams, have you fully explained to
4 your client the nature and elements of the offenses, the
5 possible punishment and his constitutional rights
6 including trial by jury?

7 MR. WILLIAMS: I have, Your Honor.

8 THE COURT: As to the two guilty pleas are you
9 satisfied there's a factual basis for them?

10 MR. WILLIAMS: I am, Your Honor.

11 THE COURT: Does he understand the nature and
12 ramifications of a no-contest plea?

13 MR. WILLIAMS: He does.

14 THE COURT: Do you agree with his decision to enter
15 these pleas?

16 MR. WILLIAMS: I do, Your Honor.

17 THE COURT: Mr. Clark, are under the influence of any
18 medicine, drug or alcohol or anything that affects your
19 thinking?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you suffer from physical or mental
22 problems that affect your thinking?

23 THE DEFENDANT: No, sir.

24 THE COURT: You're clear headed, you know what you're
25 doing?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: A no-contest plea means what it sounds
3 like; you're not contesting the charge. Do you understand
4 that?

5 THE DEFENDANT: Yes, sir

6 THE COURT: It goes against your criminal record and
7 has all the same consequences as a regular guilty plea.
8 It is a conviction. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Courts are discouraged from allowing
11 people to plead no contest on felony charges. Do you
12 understand that?

13 THE DEFENDANT: I don't -- yes, sir. Yes, sir.

14 THE COURT: Felonies are the more serious charges.

15 THE DEFENDANT: Right.

16 THE COURT: So the courts are discouraged -- some
17 judges won't take a no-contest plea on a felony.

18 THE DEFENDANT: I understand. I understand.

19 THE COURT: Some read the cases that say that the
20 Court should not. I read the cases to say, and I may be
21 wrong, I read the cases to say that we're discouraged from
22 doing it.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words, it's a very serious
25 matter. And if you enter a plea it's a lot harder to get

1 that undone. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You sure you want to enter a no-contest
4 plea to this one charge?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. When you enter these pleas
7 you give up very important rights including your right to
8 remain silent and your right to a jury trial. Do you know
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you wanted a jury trial you would be
12 presumed to be innocent. The State has the entire burden
13 of proof. The State has to prove every essential element
14 of each offense against you beyond a reasonable doubt. Do
15 you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In order for you to be convicted of any
18 offense, the State has to prove you guilty of that offense
19 beyond a reasonable doubt to all 12 jurors. Do you know
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you have defenses to your case you
23 give those up if you plead guilty or if you plead no
24 contest. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Those include self defense. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In a jury trial setting you get to see
5 and hear and have your lawyer cross-examine every witness
6 against you. Do you know that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you enter these pleas you give up that
9 right. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you had a jury trial you would have
12 the ability, if you wanted to do so, to testify, but if
13 you chose not to testify the trial judge would tell the
14 jury they could not hold your silence against you in any
15 way at all. Do you know all of that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you enter these pleas you give up all
18 these rights. You give up your presumption of innocence,
19 you give up your right to remain silent, you give up
20 requiring the State to prove you guilty beyond a
21 reasonable doubt, you give up the right to confront the
22 witnesses against you, and on the guilty pleas you admit
23 the charges are true. Do you understand all of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you want a jury trial on any of these

1 cases?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. I need you to listen to the
4 solicitor, please.

5 MR. POUGH: Thank you, Your Honor.

6 On January 23rd, 2016, deputies with the Lexington
7 County Sheriff's Department responded to the
8 Batesburg-Leesville Police Department in reference to a
9 domestic assault that was being reported that happened in
10 the sheriff's jurisdiction. The victim, Lameka Stevenson,
11 was driving home from work, Your Honor, and the Defendant
12 was waiting for her at the Exxon station at six -- excuse
13 me at 6670 Augusta Highway in Batesburg-Leesville area of
14 Lexington County.

15 The victim is -- excuse me. The Defendant is the
16 victim's former boyfriend and they did live together,
17 cohabitate as boyfriend and girlfriend, Your Honor.

18 The Defendant as I said was waiting for her at the
19 Exxon station and followed her to a dead-end road. The
20 Defendant pulled the victim out of her car, began punching
21 her head and threw her to the ground, took the victim's
22 car keys from her and continued verbally and physically
23 assaulting her.

24 The victim ended up receiving a broken finger,
25 bruising and an abrasion on her elbow as a result of the

1 altercation. The Defendant then took off in the victim's
2 car down the road. The victim started to get into the
3 Defendant's car and used his keys -- to use his car as a
4 mode of transportation since he took off in her car. He
5 sees this. He turns back around, Your Honor, comes back
6 and they struggle again over his car keys. Eventually the
7 Defendant {sic} drives her car into a ditch, then helps
8 her out of the ditch and the victim drives straight to
9 Batesburg-Leesville Police Department after this incident
10 to report.

11 A few days after that, Your Honor, the victim calls
12 back to Lexington County Sheriff's Department, asked to
13 speak to the detective regarding her case and tells a
14 completely different story; essentially, that it was all
15 her fault. The detective could hear a male voice in the
16 background and he asked him -- he asked the victim if the
17 Defendant was there with her and she said no.

18 Two weeks after this particular call, Your Honor, the
19 victim shows up again at the Batesburg-Leesville Police
20 Department and says that she lied to the Lexington County
21 Sheriff's Department detective on the phone because Davon
22 was in fact there with her, beside her when she made that
23 call and was threatening her life and she was afraid to
24 tell the truth.

25 The victim says that the Defendant told her that he

1 drives by every day to make sure that her car is there,
2 and that the victim's sister told her the day before that
3 she had actually seen the Defendant driving by her house.
4 Later that day the victim noticed that two of her tires
5 had been cut. The victim states that the Defendant
6 threatened to harm her when he got out of prison if she
7 didn't lie to the detectives and take her story back.

8 Your Honor, after the bond hearing on that particular
9 case the Defendant ended up sending several threatening
10 text messages to the victim's mother saying that she
11 needed to get the victim out of South Carolina because,
12 and I apologize in advance for the language, that he was
13 "going to kill that bitch". And I actually have copies of
14 the -- photocopies of the text messages that were pulled
15 up on her phone, Your Honor, if you'd like to see them.

16 THE COURT: Sure.

17 MR. POUGH: Permission to approach.

18 THE COURT: Yes.

19 (Documents handed to the Court.)

20 MR. POUGH: And, Your Honor, those are essentially
21 the facts on the first domestic violence charge.

22 On the second one, it occurred on April 9th of 2016.
23 On this date at approximately, about four o'clock in the
24 morning, officers with the Batesburg-Loesville Police
25 Department received a phone call from the complainant --

1 excuse me, the victim, Chandrika Waters who was also a
2 former paramour or girlfriend or possibly even current at
3 that time, Your Honor, who cohabitated together. And she
4 stated to the officers that she needed somebody to come
5 out to her residence. At -- that she was at a party in
6 Saluda County where the Defendant was also present and at
7 that party he possibly saw her with another individual and
8 got jealous. When she got home from that party the victim
9 stated that the Defendant ended up arriving at her
10 residence, asked to speak with her. Says the Defendant
11 saw the victim talking with other people, got -- that he
12 was in fact jealous and he ended up assaulting her in the
13 front yard.

14 The victim told the Batesburg-Leesville Police
15 Department Officer that the Defendant did have a gun on
16 him but he did not use that in a threatening manner
17 against her, didn't hit her with it or point or present
18 it.

19 Your Honor, between the time that this incident
20 occurred on April 9th, the Defendant, which is the charge
21 that we're dismissing pursuant to this plea, had another
22 domestic violence charge that the State wanted the Court
23 to be aware of in which he had a bond hearing where he
24 ended up receiving a million dollar bond at the bond
25 hearing because he made some threats to the Court and I

1 believe officers who are here today were also at that bond
2 hearing and who may wish to speak and could tell you more
3 about that.

4 But the throwing bodily fluids charge, Your Honor,
5 this took place after this bond hearing when he was in
6 LCDC. And this was the one that took place on May 1st of
7 2015.

8 Your Honor, while he was an inmate there correction
9 officers were walking by his cell on May 1st, and at that
10 point he told the officers that he -- his left hand was
11 hurting and he wished to see the nurse. They bring the
12 nurse up there. She takes a look at his hand, everything
13 seems to be okay with his hand. He says that he wants to
14 see an outside doctor. The nurse lets him know that he
15 won't be able to see an outside doctor at which point he
16 tells the nurse that he either is going to see an outside
17 doctor or he's going to be leaving here in a body bag
18 soon.

19 At that point the correction officers, based upon
20 their prior history with him, believed that he may be a
21 threat against his own life so they decided to bring him
22 downstairs in the booking area and so that they could
23 better easily observe him to make sure that he doesn't
24 harm himself.

25 While he's in the cell there in the booking area,

1 Your Honor, he uses, I believe, part of his articles of
2 clothing that he was provided by the detention center and
3 a roll of toilet paper to clog the toilet to flood his
4 cell. He does this while he is cursing and threatening
5 the officers within earshot.

6 The officers asked him to back up against the wall.
7 He refuses. He puts his hand into the toilet when they
8 pull out their taser. He says, "You can't tase me because
9 I'm wet". The officers assured him that that didn't
10 matter at which point he did comply, stepped back to the
11 rear of the cell. The officers entered the cell, detained
12 the Defendant, put him in the adjacent cell while they
13 attended to cleaning up the cell that he had flooded.

14 When they put him and strapped him into the
15 restraining chair in the adjacent cell he began beating
16 his head against the wall. At that point they had to lay
17 him flat on ground, Your Honor, and that was when he tried
18 to spit on the officer, the corrections officer, as they
19 were laying his chair down.

20 They were able to block his head with his arm, Your
21 Honor. One of the officers were able to block his head
22 and they didn't get spit on at that particular point in
23 time. As they finished cleaning up and they came back I
24 believe was when he spitted {sic} on Officer Todd, I
25 believe was his name, Your Honor. And, he ended up

1 getting spit on in his arm. At that point they were
2 trying to remove him from the restraining chair and he
3 again refused. He ended up having to be tased twice
4 essentially to make a very long story a little bit
5 shorter, Your Honor.

6 He also has multiple other incidents as you are aware
7 that we're dismissing stemming from his stay in the
8 Lexington County Detention Center, Your Honor.

9 THE COURT: I don't know anything about any of those.

10 MR. POUGH: Your Honor, in regard to his prior
11 criminal history, he has, in 2003, an interference with a
12 law enforcement officer and a parole violation; in 2004,
13 he has a trespass after notice, a burglary third and a
14 possession of marijuana; in 2005, he has a strong arm
15 robbery, interference with law enforcement officer; in
16 2006, he has a burglary third, a threatening the life of
17 an official and possession with intent to distribute
18 cocaine. He received a YOA sentence, Your Honor, on all
19 three of those charges in 2006.

20 2007, he had a DUI, a failure to stop for blue light,
21 hit and run, DUS and contempt of court; in 2007 -- in
22 2008, he had a petty larceny and violation of parole --
23 excuse me, of probation; in 2009, he had another failure
24 to stop and assault upon a corrections employee and a
25 parole revocation; in 2010, he had another DUS; 2011, he

1 had a DUS third or subsequent, two CDVs and another
2 probation violation.

3 Your Honor, pursuant to this plea we are dismissing
4 one domestic violence charge against the initial victim
5 that I spoke about, Lameka Stevenson, and also two
6 throwing -- additional throwing bodily fluid charges.

7 Your Honor, earlier today we did have two corrections
8 officers that were here that wished for me to speak on
9 their behalf. They have -- they needed to leave because
10 they're shorthanded so they're no longer present.
11 However, Your Honor, and the State echoes these
12 sentiments, they essentially believe that Mr., that
13 Mr. Clark deserves a significant amount of jail time
14 because of his behavior both in and out of the Lexington
15 County Detention Center.

16 And, Your Honor, I also have the Batesburg-Leesville
17 Police Department, their officers -- well, Batesburg-
18 Leesville Police Department here with me as well as the
19 chief. I don't know if they wish to address the Judge at
20 all or not.

21 I don't believe they do, Your Honor.

22 THE COURT: Okay. Mr. Clark, do you admit you're
23 guilty of these charges that you're pleading guilty to?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And on the no-contest plea in regard to

1 the throwing bodily fluids, do you understand what the
2 State would intend to prove if you went to trial?

3 MR. WILLIAMS: Do you understand what they would show
4 the Court? And that's why you're pleading no contest, is
5 that if they prove that then you could possibly be found
6 guilty. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 MR. WILLIAMS: Okay.

9 THE COURT: Has anybody forced you, threatened you,
10 coerced you in any way to get you to plead against your
11 will?

12 THE DEFENDANT: No, sir.

13 THE COURT: Any plea bargains the State might have
14 said, that includes agreements about dropping the charge,
15 reducing the charge, recommending a sentence, anything
16 like that, they have to tell me about on the record in
17 open court or you lose what they don't tell me. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are all plea agreements on the record,
21 Mr. Williams?

22 MR. WILLIAMS: They are, Your Honor.

23 THE COURT: Other than what's on the record,
24 Mr. Clark, has anybody promised you anything or offered
25 you any hope of reward to get you to plead?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you fully satisfied with your
3 attorney?

4 THE DEFENDANT: Yes, sir, I am.

5 THE COURT: Is there anything else you want him to do
6 on the case he hasn't done?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have any complaint of any kind
9 against your attorney, law enforcement officials or
10 anybody who's dealt with your case?

11 THE DEFENDANT: Yes, sir, I do. Not my attorney
12 though.

13 THE COURT: What's your complaint?

14 THE DEFENDANT: Well, I understand he said I had a
15 charge against an officer but he got it backwards. I
16 don't have a charge against that officer. What he said,
17 the spitting charge, I don't -- I never -- they say I
18 tried to spit on somebody. They never said I spit on
19 nobody. I got my motion. That's why I plead no content
20 {sic} to it. And he said Sergeant Todd, he charged me
21 with assault and battery third. I went to court on that
22 and got time served. I never caught a spitting charge.
23 That's why I -- I don't understand what he's talking
24 about.

25 THE COURT: You don't understand or you disagree?

1 THE DEFENDANT: Sir?

2 THE COURT: You don't understand or you disagree?

3 THE DEFENDANT: Disagree.

4 THE COURT: Okay. Do you have any other complaints?

5 THE DEFENDANT: No, sir, I don't.

6 THE COURT: So you're pleading guilty and no contest
7 to these charges of your own free will?

8 THE DEFENDANT: Yes, sir, I am.

9 THE COURT: Has anybody forced you, threatened you,
10 coerced you in any way to get you to enter any plea
11 against your will?

12 THE DEFENDANT: No, sir.

13 THE COURT: These cases have not been to the grand
14 jury. If you want the grand jury to review them at least
15 12 out of 18 grand jurors must agree you're probably
16 guilty or the case would stop there. Do you understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The papers indicate you're giving up that
20 right. Is that your own decision made of your own free
21 will?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The throwing bodily fluids by an inmate
24 is a felony that carries up to 15 years in prison. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: The sentences are required to be
3 consecutive. Do you understand that?

4 THE DEFENDANT: Huh?

5 MR. WILLIAMS: He may not understand that issue, Your
6 Honor.

7 THE COURT: Okay.

8 MR. WILLIAMS: (Conferring with Defendant.)

9 THE COURT: Do you understand?

10 MR. WILLIAMS: Your Honor, I would think so.

11 THE COURT: Do you want to stand aside?

12 MR. WILLIAMS: We'll go back and we'll talk some
13 more.

14 THE COURT: Court's in recess for 10 minutes.

15 (Recess taken at 11:50 a.m. After break at
16 11:55 a.m., the hearing of this cause resumed:)

17 MR. WILLIAMS: I think we're good, Judge.

18 THE COURT: All right. Mr. Clark, you're still under
19 oath. Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I was indicating to you that throwing
22 bodily fluids is a felony that carries up to 15 years in
23 prison and is required that the sentence be consecutive.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you still want to enter this plea of
3 no contest to this charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Domestic violence first degree is a
6 felony, each count of which carries up to 10 years in
7 prison. Do you understand that?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: It's classified by the legislature as a
10 violent crime. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that inmates are
13 treated differently at the Department of Corrections if
14 they have a violent offense?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're not eligible for programs and
17 placement that a non-violent offender would be eligible
18 for. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you have a second violent crime or if
21 this is a second violent crime, you have to serve the time
22 without early release. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The legislature has also classified this
25 under what's commonly called two strikes you're out, three

1 strikes you're out. Those things are really called
2 most-serious offenses and serious offenses. Domestic
3 violence first degree is a serious offense. It's a
4 strike. If you get the right combination of strikes you
5 have to do life without parole. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All of these require you to have your DNA
8 sample entered into the central computer registry if
9 you're not already in the registry. Do you understand?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: With regard to the domestic violence
12 graduated offense if you violate that law again you face
13 higher punishment because this will be on your record. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Do you understand that you are prohibited
17 from transporting, shipping, receiving, possessing, having
18 any kind of connection with any type of firearm or
19 ammunition?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Understanding everything we've been over,
22 are you sure you want to give up your rights and enter
23 these pleas?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Clark's made a free, knowing,

1 voluntary and intelligent decision to waive his rights
2 including his right of presentment to the grand jury and
3 enter his pleas of guilty and no contest. He's made his
4 decisions upon the advice of counsel with whom he's fully
5 satisfied. There's a factual basis for each plea
6 including the no-contest plea.

7 All right. Anything else from the State?

8 MR. POUGH: No, sir, Your Honor.

9 THE COURT: All right. Mr. Williams?

10 MR. WILLIAMS: Your Honor, I guess, first I'd like to
11 remark on, yesterday I spent some time over at the
12 solicitor's office. And I went over what the victims
13 would say if they were here. Because I think a lot, a lot
14 of the way this thing has been pitched or told to the
15 Court is that everything that they said was because of
16 they were under duress or they, you know, they changed
17 their stories because my client was somehow going to be a
18 violent man or something like that.

19 And it was interesting to note that in the
20 solicitor's notes when they talked to the
21 victims/witnesses that one of the victims who has a child
22 by my client said that she didn't want him to go to jail.
23 She didn't -- you know, he has a child. She doesn't want
24 anything bad to happen to him. She understands that he's,
25 you know, they've had problems but she doesn't want him to

1 go to jail. She's not afraid of him and what have you.

2 The other victim, Your Honor, said that she's just as
3 glad not knowing where he's at, that she doesn't want to
4 have any contact with him. But that was essentially it.
5 She didn't want to have any contact with him, you know.
6 If he's not around her, that's just fine.

7 There is a relationship between the two victims, Your
8 Honor. The two victims are cousins. I'm sure the Court
9 probably picked up on a little of that. And my client had
10 had a child with one cousin and then was dating the other
11 cousin. Then that's -- then he sees -- it's an awful lot
12 of drama.

13 It doesn't change one thing which is clearly, clearly
14 evident when you look at the record of my client and when
15 you look at the charges that he's had, and when you look
16 at what's gone on in his life. I don't doubt that
17 Batesburg police officers or whomever may have had trouble
18 at some point in time with Davon.

19 I have known Davon for probably 15 years.
20 Represented his brother. And there's one thing about
21 Davon which unfortunately is true which Your Honor sees
22 every day. You see it in court every day. He is manic
23 depressive. He is schizophrenic. He has issues, I guess,
24 dealing with life sometimes when he's stressed. He's
25 tried to commit suicide twice, Your Honor.

1 You'll note that this episode about the throwing the
2 bodily fluids comes after he is arrested, placed in jail.
3 He has -- they were concerned that he was going to kill
4 himself because he made that threat.

5 So he gets strapped down, put in a chair, he gets
6 taken downstairs. And then this is not -- and I don't
7 want the Court to take this the wrong way. I'm hoping the
8 Court will open up its mind and look at what I'm trying to
9 say here. Is that you take this gentleman who's going to
10 try to kill himself, you take him downstairs, you strap
11 him down like an animal, you put him in a chair and you're
12 trying to help him. He doesn't understand that.

13 You can look at his face, Your Honor, and I invite
14 you to look at his eyes because sometimes people's -- you
15 see what's inside of them by looking at them. He's got
16 problems.

17 If he had been a sane human being, Your Honor, number
18 one, he wouldn't have been losing his temper, he wouldn't
19 have gotten this big bond. Subsequently Judge Griffith, I
20 think, ended up reducing that million dollar bond to,
21 like, \$50,000. I mean, he wouldn't have done all that
22 crazy stuff. I mean, he just wouldn't have done it.

23 There was a time period from 2010 up until 2016 we
24 had no problems, there weren't any convictions, didn't get
25 in trouble for anything. The reason for that, Your Honor,

1 is because he wasn't living in Batesburg. The law will
2 tell you, didn't have any trouble over in Batesburg
3 because he wasn't there.

4 That doesn't necessarily mean that my client is a
5 one-armed string of trouble in Batesburg. He wasn't
6 around everybody he grew up with. He wasn't around -- and
7 I know who he grew up with. And, unfortunately, it's the
8 same situation sometimes when you're in that same
9 environment, you're pushed back to the use of drugs,
10 you're pushed back to not being able to control yourself.
11 You're running with the same -- I mean, who dates two
12 cousins? He's got five children. Who's got five
13 children? I only have three.

14 And, I don't mean that to be funny, Your Honor, but
15 he's over there living over in Columbia. He gets -- he
16 gets washed away by the flood of all things, and he has to
17 move back to Batesburg because he doesn't have a place to
18 stay. So there he is. He's back in Batesburg and then
19 he's doing all of this stuff.

20 He told me that if I do anything -- he's afraid.
21 He's up here shaking and he said -- you know, he's nervous
22 and he's hoping that he doesn't get a bunch of jail time
23 which everybody should be in front of, you know, when
24 they're facing judgment day. But one thing he did tell me
25 is that he hopes that the Court will help him with his

1 mental issues.

2 THE DEFENDANT: (Nods head.)

3 MR. WILLIAMS: I seriously think that at some point
4 in time if he doesn't get some sort of help with his
5 mental issues then I guess it will solve everybody's
6 problem because I think he will kill himself eventually if
7 he doesn't change and if he doesn't have some sort of
8 coping mechanisms. He's not crazy. He understands what
9 he's doing. You notice I've had conversations with him.
10 And that same raving behavior in jail was not the guy that
11 I know. Davon will tell you -- I mean -- I mean, I know
12 him. I walk in, we'll talk, we'll do all kind of things.
13 But, I have no magic answer for him, Your Honor. I'm
14 hoping that Your Honor can help him. That's what I'm
15 hoping for, that you can help him.

16 The two domestic violences, Your Honor, were with
17 women who he shouldn't have been acting that way and who
18 knows what the real truth is there. I actually had a
19 phone call from one of them. I took him down to
20 Batesburg, he got a PR bond from the judge, because I live
21 in Batesburg, and one of the victims is calling me on the
22 phone saying, "Is he out yet," and then lo and behold next
23 thing I hear is he's back in jail again because, I don't
24 know, he got in trouble with one of the other victims.

25 His real issue, I think it really is mental issues,

1 Your Honor. If we could get him on medications. He knows
2 what he's doing. He understands what's wrong, what's
3 right. He understands what he's doing here today.

4 Not much I can say, Your Honor, except that's what
5 the true deal is with Davon.

6 THE COURT: When you made that remark about no sane
7 person would do things, are you trying to say he was
8 not --

9 MR. WILLIAMS: I am not saying that, Your Honor. And
10 sometimes I run my mouth and I shouldn't have.

11 THE COURT: So, there's no issue about his
12 competency?

13 MR. WILLIAMS: There is no issue about his
14 competence, Your Honor.

15 THE COURT: There's no need to explore whether
16 M'Naghten would apply?

17 MR. WILLIAMS: It would not apply. It would not
18 apply. I've known him long enough to know he can -- you
19 can talk to him now, Your Honor. He's quiet.

20 THE COURT: He hasn't given me any concerns about
21 competency but you're talking about no sane person would
22 do this and I'm trying to figure out if you really mean
23 that or if you're just being hyperbolic.

24 MR. WILLIAMS: I was probably being hyperbolic, Your
25 Honor, and I apologize for that because sometimes the

1 record doesn't show when you're hyperbolic or not.

2 THE COURT: No, the record is pretty sterile.

3 MR. WILLIAMS: Yes, sir.

4 THE COURT: That's why I'm asking you right now to
5 clear it up.

6 MR. WILLIAMS: Yes, sir. No, there's no issue about
7 whether or not he knows right from wrong and things of
8 that nature. The question is whether or not sometimes he
9 can control it.

10 THE COURT: Well, that's the same issue.

11 MR. WILLIAMS: Your Honor, he knew what he was
12 doing. There's nothing wrong with him.

13 THE COURT: All right. But if he can't control his
14 behavior because of some mental disease or defect, do you
15 need to explore that?

16 MR. WILLIAMS: I do not. I do not. I've known
17 him -- how long have I known you, Davon?

18 THE DEFENDANT: 15 years.

19 MR. WILLIAMS: 15 years.

20 THE COURT: Did you want to say anything, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I'm sorry?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Go ahead.

25 THE DEFENDANT: You know, like, from -- he was

1 saying, you know, like, I've been away from Batesburg for
2 a long time. I grew up with a bunch of people, you know,
3 and used to get in trouble a lot because I was easily
4 influenced, you know, used to use drugs a lot. Easily
5 influenced. Around the wrong people, used to do stuff
6 that let people think I'm cool but it was wrong. But I
7 moved away and I ain't been in Batesburg in years. And up
8 in last year I lost my son. I was with him with one of
9 the victims. We have a child but I lost a son August the
10 10th of last year. And after that I lost everything, all
11 this stuff I was working good for, everything. The flood,
12 I lost everything. And I have to go back to Batesburg and
13 living with one of the victims and her mother. I'm 31
14 years old, you know. Like, I have a record. I had a job
15 at the time, but I lost that because of the flood when it
16 did its damages. It messed my job up, too. So I couldn't
17 go back to work or nothing.

18 So end up back in Batesburg. Back at square one.
19 Back around the same people. Just, I just made a mistake
20 and I apologize for what I did, but a bunch of that stuff,
21 they exaggerating on, you know. But I'm not going to
22 trial about it, but I have done some wrong and I am guilty
23 for the CDV but a lot of this stuff that they read off is
24 a bunch of exaggeration. But I am guilty because I did do
25 wrong to this. I am guilty.

1 But I ask you to just help me. I have -- I have
2 tried to kill myself a couple times. They even sent the
3 police to come surround my house to get me from trying to
4 kill myself. I cut my wrists. I was -- I went to the
5 hospital. I have tried to kill myself a couple times all
6 because I'm just depressed. Like, I don't have nothing.
7 I really don't have nobody. All I got is me. It's just
8 hard when everything is gone. And those women, that's all
9 I really had and when you kind of lose them it's just back
10 to nothing.

11 I just ask you to have mercy and help me instead of
12 punish me. I just ask you to help me.

13 MR. WILLIAMS: Your Honor, I don't know that I said
14 that he's been in jail five months.

15 THE COURT: Thank you.

16 Hearing nothing further, the Court accepts the plea.
17 The Court makes a specific finding with relation to the
18 two offenses that are violent and felonies, that they are
19 violent crimes and felonies and that the Defendant is
20 prohibited from possessing, shipping, transporting or
21 receiving any firearm or ammunition.

22 This is a very difficult situation, very troubling.
23 I wish I had more options.

24 THE SENTENCE OF THE COURT ON INDICTMENT 2366 IS THAT
25 YOU BE COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF

1 CORRECTIONS FOR 10 YEARS PLUS COSTS AND ASSESSMENTS, GIVEN
2 CREDIT FOR JAIL TIME UNDER SECTION 24-13-40 TO BE
3 CALCULATED AND APPLIED BY THE DEPARTMENT OF CORRECTIONS.
4 I'M RECOMMENDING MENTAL HEALTH TREATMENT. PAY YOUR COURT
5 COSTS WITHIN TWO YEARS OF BEING RELEASED FROM PRISON.

6 ON INDICTMENT 777, WHICH IS THE THROWING BODILY
7 FLUIDS, THE SENTENCE IS THAT YOU BE COMMITTED TO THE SOUTH
8 CAROLINA DEPARTMENT OF CORRECTIONS FOR ONE YEAR PLUS COSTS
9 AND ASSESSMENTS, CONSECUTIVE TO 2366.

10 INDICTMENT 1380, SENTENCE IS YOU BE COMMITTED TO THE
11 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
12 10 YEARS PLUS COSTS AND ASSESSMENTS, CONSECUTIVE TO 2366
13 AND 2369.

14 The intent is 21 years. Good luck.

15 MR. WILLIAMS: Thank you, Your Honor.

16 (Court's Exhibit No. 1, three photographs, received
17 into evidence.)
18
19
20
21
22
23
24
25

1 ***

2 CERTIFICATE OF REPORTER

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)

5 I, Cheri L. Young, Registered Professional Reporter
6 and Official Court Reporter for the State of South
7 Carolina, Second Circuit-At Large, do hereby certify that
8 the foregoing proceedings were written stenographically by
9 me using computer-aided translation; further, that the
10 foregoing is a true, accurate and complete record, to the
11 best of my skill and ability, of all the proceedings had
12 and evidence introduced in the hearing of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, on the 25th day of August, 2016.

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

17 I have hereunder set my hand this 5th day of May,
18 2017.

19
20
21 -----
22 Cheri L. Young, RPR
23 Official Court Reporter
24
25

C/A No. 2017-CP-32-00590

RETURN

Attachment 4

0-10 yrs

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

Davon Artjuawn Clark

AKA:

Race: Black Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Baresburg, SC 29006-2212

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: Domestic / Domestic Violence, 1st degree

INDICTMENT/CASE#: 2016GS3201380

A/W#: 2016A3211000046

Date of Offense: 1/23/2016

S.C. Code §: 16-25-0020(B)

CDR Code #: 3811

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-25-0020(B) of the S.C. Code of Laws, bearing CDR Code # 3811

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury, *PC* (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

102096

SC Bar#

[Signature]
Defendant*[Signature]*
Attorney for Defendant6145
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 day/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: 2016-GS-32-02366 & 2016 GS 32 02369☐ 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 § 17-25-135Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition. *[initials]*

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 \$100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def./Probation) \$500 \$

§ 14-1-212 (Law Enforced. Funding) \$25 \$25.00

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

§ 50-21-114 (DUI Breath Test Fee) \$30 \$

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

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

TOTAL \$125.00

Clerk of Court/County Clerk *[Signature]*Court Reporter *[Signature]*

SCCA# [REDACTED]

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

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/F 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: Pay Court Costs within 2 yrs. orrelease from prison☐ Appointed PD or appointed other counsel.§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge *[Signature]*Judge Code: 2052Sentence Date: AUGUST 25, 2016FINDING MADE ABOVE: FIREARM & AMMO
POSSESSION AS SET OUT ON 2016-GS 32-02366

0-10 yrs

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Davon Artjuawn Clark

AKA:

Race: Black Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address:

City/State/Zip: Batesburg, SC 29006-2212

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: Domestic / Domestic Violence, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202366

A/W#: 2016A3220200106

Date of Offense: 4/9/2016

S.C. Code §: 16-25-0020(B)

CDR Code #: 3811

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-25-0020(B) of the S.C. Code of Laws, bearing CDR Code # 3811

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. *KDC* (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor102096
SC Bar#*[Signature]*
Defendant*[Signature]*
Attorney for Defendant6145
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RECOMMEND MENTAL HEALTH
TREATMENT. *KDC*☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def't Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% in County (if paid in installments)	\$	

TOTAL \$125.00

Clerk of Court, Deputy Clerk *[Signature]*Court Reporter *[Signature]*

Sec. 10-1-1000-10

_____ 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: *Pay court costs w/in 2 yrs. of
release from prison*☐ Appointed PD or appointed other counsel,
§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge *[Signature]*Judge Code: *2050*Sentence Date: *AUGUST 25, 2016*SPECIFIC FINDING OF THE RECORD THAT THIS IS A FALSA
& A VIOLATION OF THE RECORD THAT FROM 10.75 THE DEF. FROM POSSESSION,
SHIPPING, TRANSPORTING, OR RECEIVING FROM A COURT ORDER.

0-15 yrs

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

Davon Anjuawn Clark

AKA:

Race: Black Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Batesburg, SC 29006

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

☐ CONVICTED OF or ☒ PLEADS

TO: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law enforcement officer, corrections emp

INDICTMENT/CASE#: 2016GS3202369

A/W#: 2016A3210200777

Date of Offense: 5/1/2016

S.C. Code §: 24-13-0470

CDR Code #: 2526

SENTENCE SHEET

In violation of § 24-13-0470 of the S.C. Code of Laws, bearing CDR Code # 2526

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 102096 [Signature] [Signature] 6145
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 1 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: 2016-GS-32-02366☐ 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 (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	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BLI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/en	\$

3% to County (if paid in installments)

TOTAL

A TRUE COPY

Clerk of Court/Deputy Clerk: [Signature]

Court Reporter: [Signature]

sec Lex 1000 O.C.C.P., G.S. & P.C.

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: Pay court costs w/in 2 yrs. & release from prison

☐ Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2050

Sentence Date: AUGUST 25, 2016

C/A No. 2017-CP-32-00590

RETURN

Attachment 5

 ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

DAVON ARTJUAWN CLARK,

Defendant.

Indictment No(s). 2016GS3202368,
2016GS3202389, 2016GS3201380

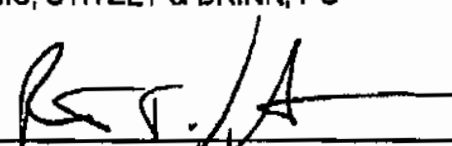
NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF
SENTENCE

TO: BRADLEY POGUE, ASST. SOLICITOR, ELEVENTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Davon Artjuawn Clark, by and through his undersigned attorney, hereby moves for a reconsideration of the sentence imposed upon the Defendant on the above captioned charge on the grounds that, under all the facts and circumstances, a lesser sentence should have been imposed.

WILLIAMS, STITELY & BRINK, PC

By:


Robert T. Williams, Sr.
200 East Main Street
Post Office Box 2390
Lexington, South Carolina 29071
(803) 359-9000

Attorneys for the Defendant

Lexington, South Carolina

August 26, 2016

2016 AUG 26 PM 5:05
BETH A. VARRIGG
CLERK OF COURT
LEXINGTON SC

2016 A 32 20200106
 2016 A 32 10200777
 2016 A 32 11000046

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS
 SEP 28) P 1:18

BETH A. CARRIGG
 The State of South Carolina) CLERK OF COURT
)
) LEXINGTON, SC)

-vs-

Davon Artjuawn Clark,

Defendant.

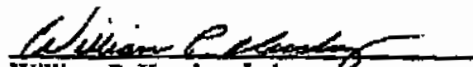
ORDER REGARDING MOTION
 FOR RECONSIDERATION
 Case Numbers: 2016-GS-32-02366,
 2016-GS-32-02369, & 2016-GS-32-01380

A motion for reconsideration of the sentence has been filed by the defense. Rule 29(a), SCRCrimP, provides that the court, in its discretion, may decide the motion based on briefs without oral argument. The court has elected to determine the issue on written submissions. Written submissions are not required by the non-moving party, but will be considered. The moving party may choose to rely upon what has already been filed or may supplement it.

The defendant and the State may file with the Clerk of Court's office written briefs and any supporting affidavits or documentation by 5:00 P.M. on Friday, October 7, 2016. A copy of any documents filed must be forwarded to the undersigned judge and to opposing counsel. The copies to the judge shall be sent by mail to P.O. Box 10, Edgefield, SC 29824, and a copy by email to wkeesleyi@sccourts.org and wkeesleyjc@sccourts.org.

AND IT IS SO ORDERED.

September 26, 2016


 William P. Keesley, Judge

 **ORIGINAL**

STATE OF SOUTH CAROLINA

2016 SEP 30 PM 12:27

COUNTY OF LEXINGTON

SETH L. CANNIGG
CLERK OF COURT

THE STATE OF SOUTH CAROLINA

Plaintiff,

vs.

DAVON ARTJUAWN CLARK,

Defendant.

IN THE COURT OF GENERAL SESSIONS

 2016A3220200106
 Indictment No(s). 2016GS3202366,
 2016GS3202369, 2016GS3201380
 2016A321020011 2016A321000046

**MEMORANDUM IN SUPPORT OF
 DEFENDANT'S MOTION FOR
 RECONSIDERATION OF SENTENCE**

In support of the Defendant's Motion to Reconsider Sentence, the Defendant would ask the Court to consider the following factors:

1. On August 25, 2016, Defendant was sentenced to consecutive sentences of ten (10) years for Domestic Violence, 1st Degree, one (1) year for Throwing Bodily Fluids and ten (10) years for Domestic Violence, 1st Degree.
2. Neither one of the domestic violence alleged victims appeared and requested that the Defendant go to jail, one (1) alleged victim informed the solicitor that she did not wish for him to go to jail.
3. Defendant had been incarcerated in the Lexington jail for over four (4) months prior to being sentenced having gotten a million dollar bond reduced to \$50,000.00 the week before he entered his plea.
4. Defendant had had no problems in the City of Batesburg for an extended period of time when he was living in Columbia, until the floods forced him to lose all of his belongings and made him move back to Batesburg where, unfortunately, a lot of his prior friends and acquaintances lived.
5. Defendant additionally suffered the loss of a child which created extra stress

on him and may have contributed to how he acted on those three (3) occasions that he pled to. 2016 SEP 30 PM 12:27

6. Defendant is and was remorseful for the problems that his actions caused to law enforcement and the two (2) ladies that he was seeing.
7. Defendant will, according to SCDC regulation have to do over twelve (12) years of the twenty-one (21) year sentence before he is released.
8. Defendant will not be around to help raise and support his kids until they are grown.
9. Exhibits showing sentences and SCDC print out are attached and are part of this memorandum.

Respectfully submitted by:



Robert T. Williams, Sr.
Williams, Stitely & Brink, PC
200 East Main Street
Post Office Box 2390
Lexington, South Carolina 29071
(803) 359-9000
Email: twilliams@wsblegal.com

Attorneys for the Defendant

Lexington, South Carolina

September 29, 2016

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

THE JUDICIAL COURT OF GENERAL SESSIONS

BETH A. CARRIGG
CLERK OF COURT

THE STATE OF SOUTH CAROLINA,)

Indictment No(s): 2016-GS-32-02366,
2016-GS-32-02369,
2016-GS-32-01380.

v.)

DAVON ARTJUAWN CLARK,)

Defendant.)

**STATE'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR RECONSIDERATION OF
SENTENCE**

In opposition to the Defendant's Motion for Reconsideration of Sentence, the State offers the following in reply to the factors outlined by the Defendant in his Memorandum in support of his motion:

1. On August 25, 2016, the Defendant pleaded guilty to two (2) counts of Domestic Violence, 1st Degree, and pleaded *nolo contendere* to one (1) count of Throwing Bodily Fluids by a Prisoner. As a result, the Defendant could have been sentenced to a maximum of thirty-five (35) years in prison for the three (3) charges, but was only sentenced by the Court to twenty-one (21) years. Additionally, per the plea agreement between the State and the Defendant, the State also dismissed two additional counts of Throwing Bodily Fluids by a Prisoner, and one (1) additional count of Domestic Violence, 1st Degree for which the Defendant could have potentially faced an additional forty (40) years of incarceration.
2. Two of the victims employed with the Lexington County Detention Center (LCDC) came to the courthouse the morning of the Defendant's plea hearing

and expressed to Assistant Solicitor, Bradley Pogue, that they believed a substantial active prison sentence was appropriate in this case.

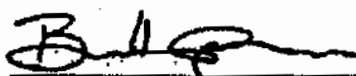
3. The State does not believe that the length of time the Defendant was incarcerated in the Lexington County Detention Center, nor the fact that the Defendant's bond was reduced during the pendency of the above-captioned matters are relevant in regard to the Defendant's motion for the Court to reconsider or reduce its sentence. The Defendant was given credit by the Court for the time he served in LCDC, pursuant to S.C. Code § 24-13-40, to be applied by the State Department of Corrections. Furthermore, the Defendant's bond on his third domestic violence charge was set at \$1,000,000, in part, because of the death threats made by the Defendant toward the victim, Lameka Stevenson, as well as the Defendant's violent behavior and threats made toward the bond court during the bond hearing.
4. The State believes that the Defendant's claim that he "had no problems with the City of Batesburg . . . when he was living in Columbia" is of no moment, and that the Defendant's violent behavior has persisted regardless of his place of residence. The Defendant was convicted of Criminal Domestic Violence in Aiken County in 2011. Additionally, the Defendant's criminal behavior while incarcerated in the Lexington County Detention Center during the pendency of this case, as well as the Defendant's 2009 conviction for Assault Upon a Correctional Facility Employee, which was committed by the Defendant when he was a prior inmate at LCDC, all occurred away from the

City of Batesburg, and, presumably, in the absence of the Defendant's "prior friends and acquaintances" in Batesburg.

5. While the State certainly sympathizes with any parent that suffers the loss of a child, the Defendant has a concerning history of violent criminal behavior that began long before his infant son passed away on August 10, 2015. In addition, during a phone interview on July 27, 2016, domestic violence victim, Lameka Stevenson, who is the mother of the Defendant's late infant son, informed the Eleventh Circuit Solicitor's Office that when the Defendant was arrested, the Defendant told Ms. Stevenson that he was glad that she had lost their baby. According to Ms. Stevenson, she delivered the baby four (4) months early due to stress. Ms. Stevenson claims that the Defendant left her when she was five (5) months pregnant for another woman that lived in the same residential complex as she and the Defendant.
6. The Defendant claims in his Memorandum that he "is and was remorseful for the problems that his actions caused to law enforcement and the two (2) ladies" that are victims in these cases. However, shortly after the Court sentenced the Defendant on the above-captioned indictments on August 25, 2016, the Defendant called victim Lameka Stevenson when he arrived back at LCDC, and told her that he had just been sentenced to twenty-one (21) years in prison and that it was all her fault. The State has attached to this Memorandum as an exhibit an email that Assistant Solicitor Pogue received from Victim Advocate, Teresa Akins, regarding this matter.

In light of all of the facts presented at the Defendant's plea hearing, in conjunction with the Defendant's lengthy criminal history and his acute lack of remorse, the State believes that the Court's sentence is appropriate.

Respectfully submitted by,



Bradley P. Pogue
Assistant Solicitor
Eleventh Judicial Circuit

Lexington, South Carolina
October 7, 2016

ORIGINAL

STATE OF SOUTH CAROLINA)

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

The State of South Carolina,

2016 NOV 29 A 9:14

-vs-

BETH A. CANNON
CLERK OF COURT
LEXINGTON, SC
ORDER DENYING MOTION
FOR RECONSIDERATION

Davon Artjuawn Clark,

Defendant.

Case Numbers:Indictment 2016-GS-32-02366 / Warrant 2016A3220200106 - Domestic Violence, 1st Degree

Indictment 2016-GS-32-02369 / Warrant 2016A3210200777 - Throwing Bodily Fluids

Indictment 2016-GS-32-01380 / Warrant 2016A3211000046 - Domestic Violence, 1st Degree

WAC #1

The defendant filed a motion for reconsideration of the sentences imposed. Pursuant to Rule 29(a), SCR CrimP, the court notified the attorneys that it would decide this motion on written submissions. Having reconsidered the matter, the motion is denied.

Mr. Clark was sentenced on August 25, 2016, on two charges of Domestic Violence, 1st Degree, and a charge of Throwing Bodily Fluids. The court imposed sentences of 10 years on the Domestic Violence offenses, consecutive to each other, with a consecutive 1-year sentence for Throwing Bodily Fluids. The court recommended mental health counseling.

The memorandum in support of the motion to reduce these sentences states the following grounds:

- 1) The sentences were run consecutively;
- 2) Neither of the victims appeared in court to ask that the defendant go to prison, and one of the victims informed the Solicitor that she did not want the defendant to go to prison;

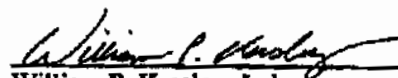
because the State asserts that he demonstrated violent behavior while in jail on these charges and in 2009;

- 5) The State disagrees with the assertion that the loss of a child was a contributing factor, based on statements allegedly made to the mother of the child by the defendant;
- 6) The State argues that the defendant is not remorseful, as demonstrated by his allegedly calling one of the victims of the domestic violence after sentencing and telling her that it was all her fault.

The court does not believe that the information supplied warrants any modification of the sentences imposed. The motion is denied.

AND IT IS SO ORDERED.

November 23, 2016


William P. Keesley, Judge

#3

FILED
2016 NOV 29 A 9 14
DEBRA A. CARTER
CLERK OF COURT
LEXINGTON, SC

Pogue, Bradley

To: Akins, Teresa
Subject: RE: DAVON CLARK

From: Akins, Teresa
Sent: Thursday, August 25, 2016 7:30 PM
To: Pogue, Bradley
Subject: DAVON CLARK

You won't believe this.....vic Lameka Stevenson called me.....
DAVON has already called her from jail today He told her that the Judge sentenced him to 21 years in prison and that it was all her fault – and went on and on blaming her

She was just calling to see if he was telling the truth.....I told her that he did receive 21 years but it certainly was not just because of her.....he had other charges

She said his family is putting all kind of things on facebook and pretty much blaming her also.....She wanted to make sure she knew what she was talking about if she has to set them straight.....said that his family was nowhere around helping def when he didn't have a place to go/live and no money for anything.....

I told her that if anyone gives her any problems for her to please call law enforcement to report it.....She promised she would

Teresa Akins
Victim Advocate
11th Circuit Lexington County Solicitor's O...
205 E. Main Street, Rm 309
Lexington, SC 29072

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2017-CP-32-00590

RETURN

Y.

RETURN

Respondent.

Attachment 6

ORIGINAL

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

2017 FEB 22 PM 12:44 IN THE COURT OF COMMON PLEAS

2017 CP 3200590

Davon A. Clark #314335
Full name and prison number (if any) of Applicant.LISA COOPER
CLERK OF COURT
COURT HOUSE, SC

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court
East Main St. Lexington SC
3. Name(s) of co-defendant(s) (if any) N/A 29072
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-32-02366 (Domestic Violence 1st)
 - (b) 2016-GS-32-02369 (Throwing Bodily Fluids)
 - (c) 2016-GS-32-01380 (Domestic Violence 1st)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-25-16 Ten(10) years consecutive
 - (b) 8-25-16 One(1) years consecutive

A TRUE COPY

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

- (c) 8-25-16 Ten(10) years consecutive
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Check
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel did not advise applicant of his right to appeal.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

A TRUE COPY

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

This is pertaining to question's
#10 and 11 on the PCR application.
The reason why I'm saying
ineffective counsel is because
when I signed my plea my
lawyer did not explain to
me that I can receive consecutive
sentencing on all 3 of my charges.
I was only told that I could
receive a consecutive sentence
for one charge and they gave me
consecutive sentencing for all 3
so this is why I would like
to go back to court I would have
never signed that type of plea
agreement if I would have
known what they were saying
so please take this into consideration
that I was misled on my plea
agreement.

Damon Ortiz

A TRUE COPY

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

- (a) See memorandum of law.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See memorandum of law.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for reconsideration of sentence.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. General Sessions Court 205 East Main St. Lexington SC 29072
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Motion denied.
- ii. _____

A TRUE COPY

- iv. _____
- (d) the date of each such disposition:
- i. November 23, 2016
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is Applicant's first PCR.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

A TRUE COPY

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Robert T. Williams Sr. P.O. Box 2390 Lexington SC 29071
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Plea, Sentencing, and Motion for Reconsideration
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- Re-Sentencing
20. Are you now under sentence from any other court that you have not challenged?
- No

A TRUE COPY

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

STATE OF SOUTH CAROLINA

)

)

VERIFICATION

County of Lexington

)

Davon A. Clark
 I, Davon A. Clark, 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.

Davon Clark

SWORN to and subscribed before me this 13
 day of February, 2017.

JC Franklin (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

A TRUE COPY

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

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

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

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

Davon Clark
Applicant

SWORN or affirmed to and subscribed before me this
13 day of February, 2017.

J. C. Franklin
Notary Public

My Commission Expires: 12-16-2019

A TRUE COPY

J. C. Franklin
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

County of Lexington

Davon Artjuawn Clark

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

MEMORANDUM OF LAW

- 10(A) Applicant was denied the right to effective assistance of counsel-
guaranteed by the Sixth and Fourteenth Amendments to the United States
Constitution and by Article 1, §§ 3 and 14 of the South Carolina
Constitution- during a plea of guilty.
- 11(A) Counsel's performance during the guilty plea phase was both unreasonable
and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984).
Counsel's acts or omissions included, but not limited to, the following:
- (1) Counsel failed to inform the Applicant that he could be sentenced to
as much as twenty-one (21) years if his sentence was ran consecutive.

A TRUE COPY


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

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Davon A. Clark, #314335,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No. 2017-CP-32-00590

PROOF OF SERVICE BY MAIL

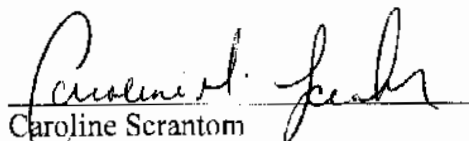
I have this day served a copy of the **Return, with attachments**, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
2231 Devine St., Ste. 201
Columbia, SC 29205

RETURN ATTACHMENT LIST:

- (1) SCDC Records
- (2) Indictments and Arrest Warrants
- (3) Plea Transcript
- (4) Sentencing Sheets
- (5) Motion to Reconsider Sentence, Memoranda from Parties, and
Orders from Court Regarding Motion
- (6) *Pro Se* PCR Application

I further certify that all parties required by Rule to be served have been served this 5th day of September, 2017.


Caroline Scrantom
Assistant Attorney General
SC Bar No. 101357

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3 Davon A. Clark,) Case No.: 2017-CP-32-00590
4 Applicant/Plaintiff,)
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8 _____)

9

10 February 20, 2018
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable J. Derham Cole, Judge

14

15 APPEARANCES:

16

17 Arthur K. Aiken, Esquire
18 Attorney for the Applicant/Plaintiff

19 Caroline Scrantom, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21

22 ALSO PRESENT:

23 Davon A. Clark

24

25

1	INDEX		
2	PCR HEARING		
3	WITNESS		PAGE
4	DAVON A. CLARK		
5	Direct Examination by Mr. Aiken		6
6	Cross Examination by Ms. Scrantom		10
7	Redirect Examination by Mr. Aiken		18
8	APPLICANT RESTS		19
9			
10	ROBERT THEODORE WILLIAMS, SENIOR		
11	Direct Examination by Ms. Scrantom		19
12	Cross Examination by Mr. Clark		28
13	RESPONDENT RESTS		32
14			
15	Certificate of Reporter		35
16			
17	EXHIBITS		
18	NO. DESCRIPTION	ID	EVDS.
19	NONE		
20			
21			
22			
23			
24			
25			

1 Thereupon, the following proceedings were had,

2 THE COURT: I believe, okay, this is Davon Clark.

3 MS. SCRANTOM: Yes, Your Honor. This is Davon Clark
4 versus State. 2017-CP-32-590. On August 25th, 2016 Mr.
5 Clark waived presentment to the grand jury and pled
6 guilty to two counts of first degree domestic violence
7 and to one count of throwing bodily fluids by a prisoner.
8 Mr. Clark pled no contest to the throwing bodily fluids
9 charge. Judge Keesley presided, sentenced Mr. Clark to
10 10 years for each of the domestic violence charges and to
11 one year for throwing bodily fluids. The sentences were
12 issued consecutively for a total sentence of 21 years.

13 Mr. Theo Williams of the Lexington County Bar
14 represented Mr. Clark at the plea and after the plea he
15 filed some subsequent motions to reconsider the sentence.
16 On behalf of the State I filed the return and attachments
17 on September 5th, 2017. The PCR in this case was filed
18 on February 22nd, 2017 and Mr. Aiken has been appointed
19 counsel.

20 THE COURT: All right. Mr. Aiken.

21 MR. AIKEN: Your Honor, this is a case of inadequate
22 advice to Mr. Clark before his plea. First of all, he
23 was not advised that he was looking at consecutive time
24 on the two domestic violence first charges and I think,
25 Your Honor, if you look at the guilty plea transcript,

1 the judge advised Mr. Clark that he was looking at
2 consecutive time on the throwing bodily fluids but not
3 that he was looking at consecutive time on the DV first
4 charges and the judge never indicated that he was looking
5 at 35 years which would have been the total amount of the
6 potential sentences. As well, Your Honor, the statute on
7 throwing bodily fluids makes the sentence on throwing
8 bodily fluids consecutive to an existing sentence.
9 Mr. Clark at the time of the alleged throwing bodily
10 fluids was not serving a sentence. He was actually in
11 pretrial detention on one of the domestic violence
12 charges. So the consecutive time on that charge should
13 not have been applied and the judge indicated during the
14 plea that he was going to give consecutive time on the
15 throwing the bodily fluids and Mr. Theo Williams who was
16 Mr. Clark's attorney and Mr. Clark actually had to spend
17 some time discussing that.

18 As well, Your Honor, the throwing bodily fluids
19 statute indicates that it does not apply to a person who
20 is a patient as defined in the series of statutes having
21 to do with mental health and that statute says that a
22 patient means a person who seeks hospitalization or
23 treatment under the provisions of various chapters having
24 to do with mental health or any person for whom such
25 hospitalization or treatment is sought.

1 In the State's statement of the case during the
2 plea, the State said that Mr. Clark had been moved from
3 his cell to the holding area so that he would be on
4 suicide watch and when the alleged throwing bodily fluids
5 occurred, Mr. Clark was being strapped into a restraining
6 chair presumably because he was considered a threat to
7 himself and he was, like I indicated, under suicide watch
8 and in their return, the State's return in this case the
9 State says that Mr. Clark at the time this happened was
10 receiving medical treatment.

11 So our position is first of all, Mr. Clark was never
12 advised that he was looking at consecutive time on the
13 domestic violence first charges. He was not given
14 correct advice concerning whether he had consecutive time
15 on the throwing bodily fluids and he was also given
16 incorrect advice as to whether he could possibly have
17 been guilty of the throwing bodily fluids charge because
18 he was under suicide watch and receiving medical
19 treatment. Thank you, Judge.

20 THE COURT: Okay.

21 MR. AIKEN: The applicant calls Davon Clark.

22 Thereupon,

23 DAVON CLARK

24 after having been first duly sworn, testified as follows,

25

1 DIRECT EXAMINATION

2 BY MR. AIKEN:

3 Q. Good morning, Mr. Clark.

4 A. Good morning.

5 Q. You're the applicant in this post conviction relief
6 case?

7 A. Yes, sir. I am.

8 Q. And I believe that you pled guilty to two counts of
9 domestic violence in the first degree; is that correct?

10 A. Yes, sir. I did.

11 Q. And you pled guilty to one count of throwing bodily
12 fluids; is that correct?

13 A. Yes, sir.

14 Q. All right. And I believe you received a sentence of
15 a total of 21 years?

16 A. Yes, sir.

17 Q. Ten years on each of the domestic violence charges
18 and one year on the throwing bodily fluids --

19 A. Yes, sir.

20 Q. -- is that right?

21 A. Yes, sir.

22 Q. All concurrent, right?

23 A. Say that again.

24 Q. Excuse me. All consecutive, right?

25 A. Yes, sir.

DAVON CLARK - DIRECT BY MR. AIKEN

7

1 Q. For a total of 21 years?

2 A. Yes, sir.

3 Q. Now, let me ask you this: Before you pled guilty,
4 did your lawyer ever advise you that you could get consecutive
5 time on the two domestic violence first degree charges?

6 A. No, sir.

7 Q. Now, if you had been told that, would you have pled
8 guilty?

9 A. No, sir. I wouldn't.

10 Q. Now, I think during the plea the judge indicated
11 that you were going to get consecutive time on the throwing
12 bodily fluids; is that right?

13 A. Yes, sir.

14 Q. And at that time Mr. Williams asked -- Your lawyer
15 was Theo Williams, right?

16 A. Yes, sir.

17 Q. Mr. Williams asked for some time to talk to you
18 about that; is that right?

19 A. Yes, sir. To explain it.

20 Q. All right. And what did he explain to you?

21 A. That I could receive a year consecutive to the 10
22 year sentence.

23 Q. So he told you you were looking at 10 years on both
24 of the domestic violence first charges?

25 A. Yes, sir.

1 Q. But you might get consecutive time on throwing
2 bodily fluids?

3 A. Yes, sir. That's correct.

4 Q. Now, did Mr. Williams ever tell you that -- Well,
5 let me ask you this: When you were in - when the throwing
6 bodily fluids charge arose, were you in the Lexington County
7 Detention Center?

8 A. Yes, sir. I was awaiting trial.

9 Q. Were you serving a sentence at that time?

10 A. No, sir.

11 Q. Did Mr. Williams ever explain to you that the time
12 wouldn't be consecutive unless you were serving a sentence?

13 A. No, sir.

14 Q. If he had explained that to you, would you have pled
15 guilty?

16 A. No, sir.

17 Q. Now, I'm going to read something to you and ask you
18 if you agree with this. At that point the corrections
19 officers based upon their prior history with him believed that
20 he may be a threat against his own life referring to you.

21 A. Yes, sir.

22 Q. Do you remember them saying that at your plea?

23 A. Yes, sir. I do.

24 Q. So they decided to bring him downstairs in the
25 booking area so that they could better easily observe him to

DAVON CLARK - DIRECT BY MR. AIKEN

9

1 make sure that he doesn't harm himself. Do you remember them
2 saying that?

3 A. Yes, sir.

4 Q. Now, at some point they put you in a restraining
5 chair; is that correct?

6 A. Yes, sir.

7 Q. All right. And at the plea the government said when
8 they put him and strapped him into the restraining chair in
9 the adjacent cell, he began beating his head against the wall.
10 Do you remember them saying that?

11 A. Yes, sir.

12 Q. Were you doing that?

13 A. Yes, sir.

14 Q. And then they said as they finished cleaning up and
15 came back, I believe is when he spit on Officer Todd I believe
16 was his name. They said that at your plea?

17 A. Yes, sir.

18 Q. So the government said at your plea that you were on
19 suicide watch?

20 A. Yes, sir.

21 Q. Did Mr. Williams ever explain to you that if you
22 were considered a patient, a mental health patient at the time
23 of the alleged throwing bodily fluid you could not be guilty
24 of that offense?

25 A. No, sir. I was never explained.

1 Q. If that was explained to you, would you have pled
2 guilty?

3 A. No, sir. I wouldn't.

4 MR. AIKEN: Thank you, Mr. Clark. Answer any
5 questions the government may have.

6 A. Yes, sir.

7 CROSS EXAMINATION

8 BY MS. SCRANTOM:

9 Q. Good afternoon, Mr. Clark.

10 A. How you doing?

11 Q. Good. Do you recall your plea hearing in this
12 case?

13 A. Say that one more time.

14 Q. Do you recall your guilty plea hearing in this
15 case?

16 A. What do you mean by that?

17 Q. Do you remember pleading guilty?

18 A. Yes.

19 Q. Were you -- Are you presently on any medication or
20 anything?

21 A. No, ma'am. Not at this time.

22 Q. Were you at the time of the plea hearing?

23 A. No, ma'am. I wasn't.

24 Q. Okay. Do you remember the judge asking you at the
25 plea hearing if you understood what the charges were against

1 you?

2 A. Yes. I remember.

3 Q. Do you remember telling him that you did understand
4 them?

5 A. Yeah. I understood the charge.

6 Q. Did you remember telling the judge that you did want
7 to plead guilty to two domestic violence first degree charges
8 and one throwing bodily fluids charge?

9 A. I pled guilty to first degree criminal domestic
10 violence charges but I pled no contest to throwing bodily
11 fluids. That's not a guilty plea.

12 Q. Okay. And the judge accepted your no contest plea;
13 is that correct?

14 A. Yes, ma'am.

15 Q. Okay. Were you -- How far in advance did you make
16 that decision to plead guilty?

17 A. What do you mean by that?

18 Q. The day that you pled guilty, did you decide that
19 day that you were going to plead guilty or did you decide to
20 plead guilty some day before that?

21 A. I decided to plead guilty five minutes before I went
22 and seen the judge because I got tired of sitting in the
23 county getting tortured. That's why.

24 Q. Did you talk about that decision with your attorney
25 before you made it?

1 A. For a couple seconds. Yeah.

2 Q. Had your attorney told you the maximum amount of
3 time that you were facing?

4 A. Not at the time. No.

5 Q. Okay. Had you had discussions with your attorney
6 prior to that guilty plea hearing?

7 A. I had.

8 Q. Did he discuss the charges against you?

9 A. Yeah.

10 Q. Did he tell you how much time you could potentially
11 serve?

12 A. At the moment, no.

13 Q. But prior to in prior discussions he had told you
14 that?

15 A. I don't remember. No.

16 Q. Okay. Do you remember that there was a maximum
17 sentence of 15 years for throwing bodily fluids?

18 A. Now that you say it. Yes.

19 Q. Okay. Do you recall the judge asking you if you
20 were aware of the maximum amount of time that you were facing
21 during the plea hearing?

22 A. No. I don't.

23 Q. Okay. Do you remember the judge giving you some
24 time to step down from the plea hearing and talk to your
25 attorney about the potential sentences that you faced?

1 A. He gave me some time to discuss about throwing
2 bodily fluids the consecutive sentence but not on the other
3 charges. That's what he did.

4 Q. So did you take some time to discuss that with your
5 attorney at that point?

6 A. -Yes. We talked about the throwing bodily fluids
7 could be consecutive to the 10 year sentence. Yes. We did
8 talk about that.

9 Q. Were you aware during the guilty plea hearing at
10 that point when you stepped aside that you could have
11 withdrawn your intention to plead guilty at that time?

12 A. No. Not really. I wasn't aware. I thought I had
13 to go forward with it.

14 Q. Okay. Do you remember your attorney, or excuse me,
15 do you remember the plea judge telling you that you were
16 waiving a number of rights by pleading guilty?

17 A. Yes.

18 Q. Do you remember agreeing that you were going to
19 waive those rights and enter into that guilty plea?

20 A. Yes.

21 Q. Were you satisfied with your attorney at the time
22 that you entered the plea?

23 A. At the time I entered the plea? Yes. I was
24 satisfied with him.

25 Q. Do you feel like there was anything else that he

1 could have done for you prior to entering the plea?

2 A. Yes.

3 Q. Do you remember telling the judge that you were
4 satisfied with your attorney during the plea hearing?

5 A. Yes.

6 Q. Do you remember taking any opportunity during the
7 plea hearing to ask for your attorney to do anything else for
8 you?

9 A. Repeat that question one more time.

10 Q. Do you remember during the plea hearing asking at
11 any point for your attorney to do anything else for you?

12 A. I just asked him to do what was best for me.

13 Q. Do you feel that he did do his best for you?

14 A. No. I don't.

15 Q. Was Mr. Williams appointed to you or did you hire
16 Mr. Williams?

17 A. I hired him.

18 Q. Okay. Do you have any type of history with Mr.
19 Williams? Has he represented you?

20 A. He's a great man.

21 Q. Okay. How do you know him?

22 A. My family deals with him a lot.

23 Q. Okay.

24 A. He's from around my area so, you know...

25 Q. Okay. Do you remember prior to sentencing Mr.

DAVON CLARK - CROSS BY MS. SCRANTOM

15

1 Williams explaining to the judge kind of about your personal
2 circumstances and your family history?

3 A. Yes. I do.

4 Q. Do you feel like he made a good presentation trying
5 to get the judge to give you a lower sentence?

6 A. I got some things -- I wouldn't - I wouldn't - I
7 wouldn't say so, you know. No. Because I got some issues I
8 think he could have raised, you know, talk a little more about
9 that he didn't.

10 Q. Okay. Were there multiple plea offers in your case
11 or was there just this one?

12 A. Only one.

13 Q. Okay. Do you recall disagreeing in any way with the
14 facts of the crimes that were presented during your guilty
15 plea hearing?

16 A. Yes. Yes. I do recall disagreeing with the facts
17 of the crime.

18 Q. Did you take any moment to object to those facts as
19 they were stated on the record?

20 A. I - I was just told to be quiet.

21 Q. Okay. Do you recall representing to the plea court
22 that you were in agreement with the facts except that you were
23 pleading no contest to the throwing bodily fluids charge?

24 A. Repeat that one more time for me please.

25 Q. Do you remember telling the plea court that you had

1 no objection to the facts but that you were still maintaining
2 that you pled no contest to the throwing bodily fluids
3 charge?

4 A. I never was asked did I have anything to say about
5 it. I don't remember.

6 Q. Okay. But you didn't raise any objections to it?

7 A. No, ma'am. I thought maybe once you pled in plea
8 court you just pleading and that's it.

9 Q. Okay. Did you review the evidence in your case with
10 your attorney?

11 A. The evidence in my case? I just basically just pled
12 really. I didn't really review nothing really.

13 Q. Did you meet with your attorney before you pled
14 guilty?

15 A. Yeah. That day. I talked to him that day but I
16 have had visits with him before then. Yes.

17 Q. Okay. During those visits before then did he share
18 with you the discovery or any documents?

19 A. Not that I remember.

20 Q. Okay. The facts leading up to the throwing bodily
21 fluids charge, you were in the booking area of the county
22 detention center when this occurred?

23 A. Yes. I was on suicide watch.

24 Q. Okay. Were you under observation by any type of
25 medical personnel?

DAVON CLARK - CROSS BY MS. SCRANTON

17

1 A. I was put in a chair, a restraint chair.

2 Q. Did a detention center officer put you in that
3 position?

4 A. Three or four of them did.

5 Q. So it wasn't like a doctor or a nurse or anything
6 like that?

7 A. The nurse came to check on me after they restrained
8 me in the chair. Yes.

9 Q. Okay. Were you ever transported to a medical
10 facility for follow up treatment?

11 A. No, ma'am. I wasn't.

12 Q. Okay. How long would you say that you were in that
13 booking area in that position?

14 A. I was in that chair for three days, ma'am.

15 Q. Okay. But you never were transported from the
16 detention center elsewhere as a result of that?

17 A. No, ma'am.

18 Q. Did you ever undergo any mental health evaluations
19 in preparation for your case?

20 A. No, ma'am. I wasn't.

21 Q. Okay. Have you ever been committed to any type of
22 institution for mental health treatment?

23 A. Yes, ma'am. On and off all my life ever since I was
24 a child.

25 Q. Okay. Do you remember your attorney explaining that

1 to the judge during your guilty plea hearing?

2 A. No, ma'am. I don't.

3 Q. Okay. Did your attorney advise you to plead guilty?

4 A. He didn't advise me. I wouldn't say he advised me.
5 He just showed me my plea.

6 Q. So he presented it to you as an option that the
7 State had made available?

8 A. Yes, ma'am.

9 Q. And you accepted that guilty plea?

10 A. I accepted 10 years, not 21.

11 Q. But were you aware at the time that you pled guilty
12 that you could get more than 10 years?

13 A. No, ma'am. I wasn't aware.

14 MS. SCRANTOM: Okay. I don't have any further
15 questions. Thank you.

16 MR. AIKEN: Just very quickly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. AIKEN:

19 Q. You were in the restraint chair for three days?

20 A. Yes, sir. I was.

21 Q. Did a nurse regularly come by and check on you?

22 A. I only seen the nurse twice, the day they put me in
23 and the day they let me out.

24 MR. AIKEN: Okay. Thank you.

25 THE COURT: You may step down.

ROBERT WILLIAMS - DIRECT BY MS. SCRANTOM

19

1 MR. AIKEN: Nothing further from the applicant.

2 MS. SCRANTOM: The respondent would call Mr. Theo
3 Williams.

4 Thereupon,

5 ROBERT THEODORE WILLIAMS, SENIOR

6 after having been first duly sworn, testified as follows,

7 DIRECT EXAMINATION

8 BY MS. SCRANTOM:

9 Q. Good afternoon, Mr. Williams. Could you please
10 state your name for the record.

11 A. It's Robert Theodore williams, Senior.

12 Q. Where do you practice law?

13 A. Lexington.

14 Q. How long have you been practicing law?

15 A. This November will be 42 years.

16 Q. What percentage of your practice is devoted to
17 criminal defense?

18 A. 95 percent.

19 Q. Okay. How did you come to know Mr. Clark?

20 A. I have known Davon and his brother, both his
21 brothers, his grandma, his cousins, his uncles. I know the
22 whole family.

23 Q. So were you retained or appointed to represent
24 him?

25 A. I was. I want to say his daddy paid me.

1 Q. Okay. And what do you recall about how his case
2 came to be?

3 A. Uhm, he had some girlfriends or women acquaintances
4 who had accused him of domestic abuse.

5 Q. Okay. And so he had two first degree domestic
6 violence charges?

7 A. He had two. I want to say he actually had three at
8 some point in time but he only went to court on two.

9 Q. So how did the throwing bodily fluids charge come
10 up? What was the timing there?

11 A. That was while he was in jail. He was - the
12 magistrate who was setting bond on him -- When Davon was
13 getting bond set on him, the local Batesburg/Leesville
14 magistrate, basically Davon might have been a little loud or a
15 little rowdy or something and he set a large bond on him and
16 Davon did not respond well to that. Just said probably
17 something off the cuff and it increased about three or four
18 times as I understand it to over a million dollars. And then
19 after he had the million dollars something bond on it, then we
20 filed a motion to reduce bond and it took several months until
21 we could have that heard and finally Judge Griffith signed a
22 bond and I think it was like 50,000 and his father would have
23 been able to pay for the bond.

24 Q. Okay. So did you meet with Mr. Clark to discuss
25 this bundle of charges against him?

ROBERT WILLIAMS - DIRECT BY MS. SCRANTOM

21

1 A. I did.

2 Q. How many times would you say that you met with
3 him?

4 A. Several times. Talked to him over the phone. He
5 sent me letters. He basically sent me a lot of letters, a lot
6 of letters and in every one of the letters he was saying that
7 he did not like being in the jail. He was suffering from
8 being in the jail.

9 Q. Okay. Would you say that you were responsive to his
10 contacting you?

11 A. I was.

12 Q. Okay. Did you share with him the discovery that
13 came in --

14 A. I did.

15 Q. -- in his case? Okay. Did you review the number of
16 charges against him and the elements of those charges?

17 A. I did.

18 Q. Did you review with him the maximum sentencing
19 exposure that he could have?

20 A. I did. This is an example of "Cool Hand Luke" I
21 believe which is the big line in that movie is "what we have
22 here is a failure to communicate." Davon understood that the
23 charges carried 10 years a piece. He also understood that
24 throwing the bodily fluids carries up to 15 years. The
25 problem I believe occurred -- Well, do you want me to continue

1 of what the problem really is? I can continue.

2 Q. Well --

3 A. Davon was sitting there. He was brought over
4 because the Solicitor was trying to move his case and
5 essentially the Batesburg/Leesville police department were
6 trying to get Davon off the streets of Batesburg/Leesville.
7 So they brought him over and I sat down and explained to Davon
8 what the situation was and how much time he was facing and I
9 also explained to him that Judge Griffith had just signed that
10 day an order and I showed him a copy of an order where he had
11 reduced a bond down to \$50,000.00. So essentially he had been
12 sitting in jail and he had been suffering and he had been
13 writing letters trying to get it over with and I was
14 explaining to Davon that, Davon, you can now get out of jail
15 and Davon did not listen to me.

16 Q. So there was a plea offer communicated by the State
17 contemporaneous kind of to this bond hearing. Is that what
18 I'm understanding?

19 A. No. No. They were unrelated. The bond hearing was
20 held before Judge Griffith at some time prior to this and it
21 took a minute before we actually got the order. Once we got
22 the order, they had transported him over there and I was
23 trying to explain to Davon that, Davon, you don't have to
24 plead now. You can now post bond. You don't have to sit in
25 jail anymore and he didn't listen to me.

1 Q. Okay. So was there a plea offer already on the
2 table at this point?

3 A. There had been a plea offer.

4 Q. And you had communicated that to your client?

5 A. I had.

6 Q. And so did you advise him to plea?

7 A. I told him not to.

8 Q. But did you tell him what he would be pleading to if
9 he did plea?

10 A. I did.

11 Q. Did you tell him what the sentences were that he was
12 potentially facing?

13 A. I did.

14 Q. Was there any type of negotiated sentence or cap
15 offered as part on this plea deal?

16 A. No. The Solicitor as well as the
17 Batesburg/Leesville individuals did not. There was not really
18 anything they would do for him in terms of that. He was
19 facing pleading to two counts of domestic violence, one count
20 of throwing bodily fluids, and I explained each one of those
21 carried, two carried 10, one carried 15. I guess that's as
22 far as you want me to answer the question.

23 Q. Did you explain to him the judge's discretionary
24 role in the sentencing and how those sentences may be added up
25 or matched up or run concurrent?

1 A. I told him that he had two charges which carried 10
2 years, he had one charge which carried 15, and I told him that
3 maybe now is not the time to enter a plea for two reasons.
4 Number 1, if he could get out of jail on bond for a little
5 while, maybe things might change. My experience with some of
6 the alleged victims in Bateburg/Leesville is sometimes they
7 change their mind. Sometimes they change their stories, too.
8 And he might have a better go at it if he waited some time and
9 then maybe entered a plea if he had to enter a plea.

10 Q. Were you aware if his case was coming up on a trial
11 docket at any point?

12 A. No.

13 Q. Do you think it was fast approaching?

14 A. No. Not that I'm aware.

15 Q. Okay. So ultimately it was Mr. Clark's decision to
16 enter that guilty plea that day?

17 A. It absolutely was.

18 Q. And did you honor his decision?

19 A. I did what he told me to do.

20 Q. And did you represent him at the guilty plea?

21 A. I did.

22 Q. Did you put forward an extensive case in favor of
23 mitigation at sentencing?

24 A. I thought I had presented a sufficient one. I said
25 everything good thing I could say about him.

1 Q. Did you have any reason to question the mental
2 health of Mr. Clark in making this decision to enter this
3 guilty plea?

4 A. Unfortunately since I have been a lawyer for 42
5 years I understand the distinction between mentally ill and
6 having issues, and the issues he had were not sufficient to
7 constitute a mental problem with entering a plea, trying the
8 case or anything like that. He's as rationale as you or I.

9 Q. So you had no questions about his competency prior
10 to?

11 A. No. No.

12 Q. Okay. Do you recall detailing that mental health
13 history and your knowledge of Mr. Clark to the plea judge
14 during sentencing?

15 A. I did.

16 Q. Did you believe that there was a substantial factual
17 basis for each charge to which he pled?

18 A. There was a basis for the charge but the one that we
19 pled no contest to or we pled under North Carolina versus
20 Alford, we pled that way on purpose because there were three
21 officers who were accusing him of doing things. Two accused
22 him of trying to bite them, and the other one accused him of
23 spiting. He said I didn't really didn't spit on him. You
24 know, it was almost like if it happened, it was by accident.
25 So the only way he was going to get the plea done in reference

1 to all the charges would be if he actually pled on it so he
2 was getting a basis meaning that I want to say they might have
3 - I want to say they might have dismissed another charge on
4 that but I didn't think he ought to plead so it doesn't matter
5 what I think about that.

6 Q. In your experience does the court always accept a no
7 contest plea?

8 A. I don't know why they don't but sometimes judges
9 don't like them and I think Judge Keesley in his sentencing
10 said he didn't particularly like a no contest plea to a
11 felony.

12 Q. But we got one, right?

13 A. But we got one.

14 Q. After the guilty plea hearing, did you file any
15 motions on behalf of your client?

16 A. I did. I filed a motion for reconsideration of the
17 sentence because I thought it was too much.

18 Q. Okay. Do you remember briefing that motion for the
19 plea judge?

20 A. I did.

21 Q. What did the plea judge ultimately rule upon that
22 motion?

23 A. He, I think he basically decided that he could have
24 given him 35 so giving him 21 would have been okay. He turned
25 us down.

1 Q. Do you recall what the State's position was?

2 A. They were totally opposed to any type of
3 consideration on that.

4 Q. Are you aware of any post plea threats or text
5 messages that were being circulated that the State might have
6 represented in opposition to that motion to reconsider?

7 A. There was a call to the victim's representative from
8 the Solicitor's Office and, it was maybe either a call or a
9 text and the alleged victim was stating something like -- No.
10 No. I'm thinking about the flip side of that. I'm sorry.
11 That was the person who actually thought the time was too
12 much. There was a text. There was some sort of communication
13 with the Solicitor's Office indicating that Davon had had a
14 phone call with one of the victims and had threatened them
15 which was something we had no control over. That's something
16 that happened after the plea allegedly and I'm sure it was
17 used as a basis for the Solicitor to prevent him from getting
18 a reduction in time.

19 Q. Okay. Mr. Clark waived presentment to those
20 domestic violence charges --

21 A. He certainly did.

22 Q. -- at the plea. That was his decision to do that?

23 A. It's further evidence that he didn't have to do it
24 but he insisted on going forward with it.

25 Q. So he had not yet been - he was not up for trial any

1 time soon if he hadn't been indicted I guess is what I'm
2 trying to ask?

3 A. He wasn't. He was fragile. He wanted to get out of
4 jail. Well, he wanted the charges over with is maybe more
5 accurate.

6 Q. Sure. If I may ask you, if your client had any
7 particular reaction to the sentence after it was issued, what
8 was the immediate feedback?

9 A. A lot of times clients blame their lawyers for
10 whatever bad thing happens but I had this conversation with
11 him. I told him, I said, if we go ahead and plea, you better
12 be nice to me after it's over with. You better shake my hand
13 and you better not blame me for this and he was a perfect
14 gentleman. He did exactly that. He shook my hand and said I
15 don't blame you, Theo.

16 MS. SCRANTOM: Okay. I have no further questions.

17 Thank you.

18 CROSS EXAMINATION

19 BY MR. AIKEN:

20 Q. Now, the throwing bodily fluids charge arose at the
21 Lexington County Detention Center?

22 A. It did.

23 Q. And it allegedly occurred while Mr. Clark was an
24 inmate there?

25 A. Correct.

1 Q. Okay. And at that time he was in pretrial
2 detention, right?

3 A. Yes. He was being detained at the jail.

4 Q. He was not serving a sentence?

5 A. No. He was not serving a sentence. Well, that's an
6 interesting statement actually. No. He wasn't serving a
7 sentence. That's true.

8 Q. All right. And you recall what the government said
9 at the plea, right?

10 A. I do.

11 Q. They said that they took Davon down to booking,
12 right?

13 A. Yes.

14 Q. And they put him on suicide watch; is that right?

15 A. Yes.

16 Q. And Davon did have a mental health history, right?

17 A. He did.

18 Q. Apparently they were aware of that because they put
19 him on suicide watch, right?

20 A. I want to say that when he was arrested by
21 Batesburg/Leesville, he had threatened to kill himself then.
22 I want to say they became excited with a bunch of cars because
23 of that. Yes. This is not the first time that Davon has
24 threatened to kill himself. I think it's the second time or
25 third time.

1 Q. He had actually attempted it a couple of times,
2 hadn't he?

3 A. I don't know about that. Probably.

4 Q. Now, did you ever tell Davon that he couldn't get
5 consecutive time because he was not serving a sentence at the
6 time of the alleged throwing bodily fluids?

7 A. No. But I like your argument. Because I checked
8 the statute and the statute gives an exception and then it
9 goes onto the statute dealing with mental health and if you go
10 to that section, it actually calls it a mental health
11 institution. So I guess the question is if you're simply
12 having mental issues and you throw bodily fluids, whether or
13 not that constitutes a violation or I guess maybe you have to
14 be mentally ill. The problem we had with Davon is that he had
15 never been diagnosed or wasn't diagnosed at that time as being
16 a mental patient suffering from problems that required
17 medication so that he knew what he was doing. I think it's a
18 legislative problem with the way I read that statute.

19 Q. Since he wasn't serving a sentence he couldn't get
20 consecutive time, could he?

21 A. Unless, unless, unless they found him guilty.
22 Unless he pled guilty to one offense. I'm not sure that's
23 true. I think if you're in jail, then you might be able to
24 serve a consecutive sentence on that.

25 Q. But you never told him at any time that there was

ROBERT WILLIAMS - CROSS BY MR. AIKEN

31

1 some legal issue about whether he could receive a consecutive
2 sentence?

3 A. No. But what I think got him hung up on it was the
4 judge used the word consecutive and I'm not really sure Davon
5 understood what consecutive meant so we took five minutes and
6 we went outside and we talked about consecutive means you do
7 one sentence, then you do another sentence. But the one thing
8 the judge didn't do which would have solved all of this would
9 have been if he had simply said that he was facing a total of
10 35 years on the record and that he could get a total. I mean,
11 I told him but, you know, it's big walk from in there to out
12 here.

13 Q. So during the plea colloquy the judge never said
14 you're looking at 35 years?

15 A. No.

16 Q. And he never said you're looking at 10 years on each
17 of these domestic violence first charges and I can give you a
18 total of 20 years? He never said that to Mr. Clark --

19 A. Never said that.

20 Q. -- during the plea?

21 A. True.

22 MR. AIKEN: Thank you very much.

23 MS. SCRANTOM: No redirect. Thank you, Mr.
24 Williams.

25 THE COURT: You may step down.

1 MS. SCRANTOM: Nothing further from the respondent.

2 THE COURT: Any argument?

3 MR. AIKEN: I'll rely on the opening argument I
4 gave, Your Honor.

5 MS. SCRANTOM: Your Honor, the allegations are
6 controlled in this case by Strickland versus Washington
7 and also Hill versus Lockhart. Applying the Strickland
8 standard to instances where a guilty plea has occurred I
9 believe that the record developed today reflects that
10 Mr. Clark entered a knowing and voluntary and intelligent
11 plea. I believe that plea counsel testified he had
12 advised Mr. Clark of his options and of the charges and
13 of the penalties that those charges carried.

14 Looking specifically at the throwing bodily fluids
15 statute which is Code Section 24-13-470 it says that the
16 sentence under that provision must be served
17 consecutively to any other sentence the inmate is
18 serving. He pled guilty to two other charges.

19 THE COURT: What sentence was he serving when he
20 threw the bodily fluids?

21 MS. SCRANTOM: I do believe that he was only in the
22 detention center at that time and so my comprehension of
23 the statute at this point would be that he plead guilty
24 in a bundle to those three charges so that it could be
25 construed as a consecutive sentences at that point.

1 THE COURT: Well, it was a consecutive sentence but
2 the issue is it says in this section, it says a sentence
3 under this provision must be served consecutively to any
4 other sentence the inmate is serving which appears to be
5 the kind of thing he's an inmate that's serving a
6 sentence, then he does something so he gets a consecutive
7 sentence on top of what he's doing, not he's in pretrial
8 detention and does that.

9 MS. SCRANTON: Other than at the time the sentence
10 is imposed in this case it's being imposed as a bundle of
11 sentences on a bundle of charges so he is - I believe
12 arguable another interpretation would be that it's
13 consecutive to what he's getting at this guilty plea
14 hearing. And then going to the subsection (c) of that
15 statute I think the testimony establishes today that
16 while he was moved down to booking and he was being
17 monitored, he was never admitted to any type of medical
18 facility or institution as a result of that incident for
19 follow up treatment anyway. So I believe that the guilty
20 plea was knowingly, intelligently and voluntarily
21 entered. I don't think that any of the testimony today
22 refutes the voluntariness of that plea such that it could
23 be overridden under the Strickland and Lockhart
24 standards.

25 THE COURT: Mr. Aiken, any reply?

1 MR. AIKEN: Nothing further from me, Your Honor.

2 THE COURT: Let me ask y'all, are y'all aware of any
3 case, I assume you would have given it to me if you were,
4 that interprets 24-13-470 subsection (a) regarding the
5 consecutive portion?

6 MR. AIKEN: I'm not aware of any cases, Your Honor.

7 MS. SCRANTON: I am not at this time.

8 THE COURT: Maybe this will be one. We'll see. All
9 right. I'll review the transcript and issue an order.
10 We are in recess until 2:15.

11 WHEREUPON, THE HEARING WAS CONCLUDED.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 20th day of February, 2018.

11 I FURTHER CERTIFY that the forgoing 34 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 8th day of April, 2019.

17

18

By:s/ Steven E. LeBlanc

19

20

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

21

22

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Davon A. CLARK, SCDC #314335,)
Applicant,)
v.)
The STATE of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

ORDER OF DISMISSAL

Civil Action No. 2017-CP-32-00590

LISA M. COMERT
CLERK OF COURTS
LEXINGTON SC

2020 SEP 23 PM 3:29

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 22, 2017 by Applicant Davon Clark. An evidentiary hearing into the matter was convened on February 20, 2018, at the Lexington County Courthouse. Applicant was present and represented by his counsel Arthur K. Aiken, Esquire. Assistant Attorney General Caroline Scrantom appeared on behalf of Respondent.

PROCEDURAL HISTORY

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

A. The Underlying Prosecution

Applicant waived presentment to the Lexington County Grand Jury and pled guilty to two charges of first degree domestic violence and one charge of throwing bodily fluids by a prisoner on August 25, 2016. (Indictments 2016-GS-32-1380, -2366, -2369).

**Page 2 of 16*

As presented at his guilty plea, Applicant's domestic violence charges stemmed from two separate incidents occurring on January 23, 2016, and April 9, 2016. (Plea Tr. at 10-13). Applicant incurred the throwing bodily fluids charge while in custody at the Lexington County Detention Center awaiting disposition of these domestic violence charges. (Plea Tr. at 14-16). Theo Williams, Esquire, represented Applicant and Assistant Solicitor Bradley Pogue prosecuted the case on behalf of the Eleventh Circuit Solicitor's Office. Judge William P. Keesley presided over Applicant's plea hearing. Applicant pled guilty to both domestic violence charges. He pled no contest to the throwing bodily fluids charge.

Judge Keesley found a substantial factual basis for each charge as pled and accepted the plea as being knowingly and voluntarily made. He sentenced Applicant as follows: ten years on first degree domestic violence indictment 2016-GS-32-2366; one year on throwing bodily fluids indictment 2016-GS-32-1380, to be served consecutive to the sentence on indictment 2016-GS-32-2366; and another ten years on first degree domestic violence indictment 2016-GS-32-2369, to be served consecutive to both prior sentences. Judge Keesley clarified that his intent was for Applicant to serve a sentence totaling 21 years. (Plea Tr. at 33).

The following day, Applicant's plea counsel filed a motion to reconsider the sentence rendered which was denied in an Order filed November 29, 2016. Applicant did not appeal his convictions or sentence.

B. The Instant PCR Action

In his *pro se* PCR application, which was accompanied by a brief memorandum, Applicant alleged that he was denied the effective assistance of plea counsel guaranteed by the Six and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the

South Carolina Constitution. He alleged plea counsel failed to inform him “that he could be sentenced to as much as twenty-one (21) years if his sentence ran consecutive” on all three charges. He argued in his memorandum that counsel only told him that he “could receive a consecutive sentence for one charge. . . .” (PCR App.).

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following claims:

1. Applicant’s guilty plea was not made with or based on advice of competent counsel;
2. Applicant’s guilty plea was not intelligently made;
3. Trial counsel did not discuss the evidence with Clark;
4. Trial counsel did not prepare Clark’s case for trial, and Clark was left with no choice but to plead guilty;
5. Trial counsel did not advise Clark of the elements of the offense charged and did not discuss potential defenses with Clark;
6. Trial counsel never reviewed the pretrial discovery with Clark;
7. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Clark so that Clark could make an informed choice of whether to enter a plea or try his case; and
8. Trial counsel did not investigate Clark’s case.

At the outset of the evidentiary hearing, Applicant, by and through counsel, represented that he would primarily be proceeding on the claim of “inadequate advice to Mr. Clark before his plea.” (PCR Tr. p. 3).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the evidentiary hearing, this Court had before it the amended application and the State’s Return, which included as attachments the Lexington County Clerk of Court records pertaining to Applicant’s indictments and sentencing, Applicant’s South Carolina Department of Corrections records, Applicant’s *pro se* application, the transcript of Applicant’s guilty plea and sentencing,

~~16~~ Page 4 of 16

and the written memoranda and order pertaining to plea counsel's motion to reconsider the sentence. This Court was provided the transcript of the evidentiary hearing convened in this matter.

A. Standard of Review

"A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency." *Stalk v. State*, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 58–59, 106 S.Ct. 366, 370 (1985) (adopting seminal ineffective assistance of counsel standard from *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984), and applying to cases resolved via guilty plea)). In order to satisfy the prejudice requirement, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." *Hill v. Lockhart*, *supra* at 59, 106 S.Ct. at 370. At all times during the proceeding, the Applicant maintains the burden of establishing that he is entitled to relief. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

The proceeding is coupled with "a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065; *Edwards v. State*, 392 S.C. 449, 456–57, 710 S.E.2d 60, 64 (2011).

B. Initial Findings

At the outset, this Court finds Applicant waived and abandoned all claims raised in either application but not pursued through the testimony and arguments presented at the evidentiary hearing. S.C. Code Ann. § 17-27-90. Based on Petitioner's presentation at the outset of the evidentiary hearing in addition to those pled in the amended PCR application, this Court interprets Petitioner's claims going forward as allegations that Petitioner's plea counsel:

- a. Failed to discuss consecutive sentencing;
- b. Failed to discuss the evidence;
- c. Failed to prepare for trial;
- d. Failed to discuss the elements of the offenses and potential defenses;
- e. Failed to discuss the advantages and disadvantages of proceeding to trial versus pleading guilty; and
- f. Failed to investigate the case.

(PCR Tr. pp. 3-5).

As a matter of general impression, this Court finds credible and persuasive the testimony of plea counsel Theo Williams, who presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of Applicant's trial. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland, supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052; see *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

C. Ineffective Assistance of Plea Counsel Allegations on the Merits

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's Return, this Court proceeds to the merits of the claims raised in the amended application and finds that the claims should be denied and the PCR action dismissed. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

*(a) Counsel's alleged failure to advise Petitioner he could receive a
Consecutive Sentence*

As reflected by the record of the guilty plea and sentencing hearing, Petitioner received consecutive sentences on each charge, totaling 21 years. Petitioner received credit for time served in pre-hearing detention upon indictment 2016-GS-32-2366 for first degree domestic violence. (Plea Tr. pp. 32-33). Applicant contends counsel was ineffective for failing to accurately advise Applicant that he faced, or could face, consecutive sentences.

Applicant testified before this Court that knew he faced ten years on both of the domestic violence charges, and that he knew that he would receive consecutive time on the throwing bodily fluid charge, but that he was never advised that he could receive consecutive time on all three of the charges. (PCR Tr. pp. 7-8). Plea counsel testified that he was certain that Applicant understood that the domestic violence charges carried ten years a piece and the throwing bodily fluids charge carried fifteen years—he advised him accordingly. (Plea Tr. pp. 21, 23). Counsel testified that he discussed with Applicant that “consecutive means you do one sentence, then you do another sentence.” (PCR Tr. p. 31). The plea record similarly evidences that the plea judge informed Applicant of the maximum sentence faced on each charge. (Plea Tr. pp. 21-22). The plea record

further demonstrates that prior to the entry of guilty plea, Applicant and counsel were given time to consult about the consecutive sentence required by the throwing bodily fluids charge. (Plea Tr. pp. 20-21). At the PCR hearing, Applicant recollected the same, specifically testifying that he knew he faced fifteen years on the throwing bodily fluids charge. (PCR Tr. pp. 12-13).

This Court finds Applicant has failed to establish any deficiency on the part of plea counsel in regard to this allegation as presented at the PCR hearing. This Court finds Applicant received complete and well-founded advice by counsel in advance of, and during, the plea hearing itself. Applicant testified he was aware of the maximum penalty on each charge. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). As for the consecutive nature of the sentences issued, this Court finds Applicant has wholly failed to establish deficient performance or prejudice as a result of the alleged deficiency in counsel's advice to Applicant. Counsel advised Applicant of the sentencing range and took time before, during, and after the plea to discuss the consecutive requirement of the sentence on the throwing bodily fluids charge.

Applicant has also failed to meet his burden on the point of prejudice. *See Strickland v. Washington, supra*. In particular, Applicant has wholly failed to provide this Court with any credible evidence that he would not have pled guilty and instead would have proceeded to trial on the throwing bodily fluids or either domestic violence charge. *See Hill v. Lockhart, supra*. Interestingly, plea counsel advised Applicant that it was not the best time to enter a guilty plea, but Applicant himself adamantly requested to plead, waiving presentment of his indictments in order

~~17~~ Page 8 of 16

to do so. (PCR Tr. p. 20-24). It is apparent from the record before this Court that Applicant was aware of the penalties he faced by pleading guilty rather than by working to post bond and waiting to proceed to trial, but instead “decided to plead guilty five minutes before . . . because [he] got tired of sitting in the county getting tortured.” (PCR Tr. pp. 11, 21-24). Accordingly, Applicant failed to demonstrate that he was prejudiced by counsel’s advice regarding sentencing because the catalyst for Applicant’s plea was not the advice of counsel, but rather some other factor. *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013).

Further as to prejudice, 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 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*, 259 S.C. 378, 192 S.E.2d 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Applicant cannot prove, nor does he allege, any of these types of deficiencies in the sentence issued. Applicant was sentenced to three consecutive terms of imprisonment totaling 21 years. The sentence Applicant received was well within the sentencing range prescribed by law and described by counsel. Nothing precludes the sentencing judge from issuing each of Applicant’s sentences to run in a consecutive fashion regardless of whether S.C. Code Ann. § 24-13-470(A) required it or not. Applicant’s consecutive sentence on the throwing bodily fluids charge complied with the statute. *Id.*; see *Garvin v. State*, 365 S.C. 16, 615 S.E.2d 453 (2005) (concluding “a mandatory consecutive sentence is required for both escapees serving a prison sentence and escapees who are pretrial detainees”); *Bing v.*

Harvey, 274 S.C. 216, 262 S.E.2d 42 (1980) (reading S.C. Code Ann. § 24-13-410 to require consecutive sentence upon escape from any “lawful confinement” including from pretrial custody).

Accordingly, Applicant’s ineffective assistance claim (a) pertaining to counsel’s advising Petitioner of the sentence faced is **DENIED**.

(b), (c), (e), and (f) Counsel’s Alleged Failure to Investigate, Discuss the Evidence, Prepare for Trial, and Advise Applicant of the Advantages and Disadvantages of Proceeding to Trial Versus Pleading Guilty

In support of this conglomerate of allegations, Applicant testified only that counsel met with him numerous times but did not share discovery or other documents with him. (PCR Tr. p. 16). However, as Applicant testified, Counsel “didn’t advise” him to plead guilty, “[h]e just showed [Applicant the] plea.” (PCR Tr. p. 18). Applicant himself decided to plead guilty “five minutes before [he] went [before] the judge because [he] got tired of sitting in the county [jail].” (PCR Tr. p. 11). Applicant also testified that he was satisfied with counsel at the time that he pled guilty. (PCR Tr. pp. 13).

This Court finds that as to counsel’s alleged failure to investigate, discuss the evidence, and prepare for trial (claims (b), (c), and (f)), Applicant has failed to establish any deficient performance by counsel or that the decision to plead guilty caused him prejudice. *See Hill v. Lockhart, supra*. A PCR applicant must produce facts or testimony in support of each individual allegation in order to establish that the claim meets the standard warranting relief. S.C. Code. Ann. § 17-27-50. Otherwise, the applicant has failed to meet his burden of proof and dismissal is appropriate. *Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005); *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998); *see Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)

~~#~~ Page 10 of 16

(mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden); *see also Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992). Here, Applicant has not put forth evidence sufficient to establish that counsel failed to investigate the evidence, discuss it with Applicant, or prepare for trial, and this Court accordingly **DENIES** claims (b), (c), and (f), finding Applicant has not established either deficient performance or prejudice.

Furthermore, as to counsel's advising Applicant of the advantages and disadvantages of entering a guilty plea rather than proceeding to trial (claim (e)), Applicant has failed to establish that counsel rendered any deficient advice. *See Hill v. Lockhart, supra*. Both Applicant and Counsel testified that Counsel did not advise Applicant to plead guilty. (PCR Tr. p. 18). Rather, Counsel advised Applicant that it was not the best time to plead and that Applicant should wait and avail himself of his newly obtained opportunity to bond out of the county detention center (which Counsel assisted with). (PCR Tr. pp. 20-23). Against his own advice, Counsel then honored Applicant's decision to enter the plea the State had offered by that stage. (PCR Tr. p. 24). Counsel testified that Applicant decided to plead guilty because he "was suffering from being in jail" and wanted to get out. Counsel testified that, in his over forty years of experience, that "some of the alleged victims in the Batesburg/Leesville [area] is sometimes they change their mind [and] their stories," and Applicant may have benefitted had he waited some time before deciding to plea or proceed to trial. However, despite counsel's advice on this point, Applicant insisted on accepting the plea offer the State had produced at that time.¹ (Plea Tr. pp. 20-24, 31). Accordingly,

¹ After the plea, counsel moved for the court to reconsider the sentence as being too hefty. In opposition, the State presented some evidence that Applicant had threatened one of the victims in

Applicant's ineffective assistance claim (e) pertaining to counsel's advising Petitioner of the advantages and disadvantages of entering a guilty plea is **DENIED**.

This Court further finds Applicant's guilty plea was freely and voluntarily made. Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.'" *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

a phone call placed after the plea. The court declined to rule in Applicant's favor. (Plea Tr. pp. 26-27).

 Page 12 of 16

The record before this Court reflects that the plea court thoroughly reviewed all of Applicant's constitutional rights with him, including his right to indictment by grand jury and to a jury trial. Applicant indicated he understood his constitutional rights and waived them in favor of the guilty plea. Applicant also indicated he understood the implications of pleading guilty under South Carolina's three strikes provision which was explained to him by the plea court. Applicant was not merely passive during the plea, himself insisting he wished to plead no contest to the throwing bodily fluids charge. Applicant further indicated no one had promised him anything, threatened him, coerced him, or tricked him in order to get him to plead guilty, and that he was not on any medication or was somehow unable to appreciate the purpose of the hearing. Applicant at all times indicated he was pleading guilty, and no contest, of his own free will. (Plea Tr. pp. 3-24). When the plea court specifically informed Applicant that the throwing bodily fluids charge carried up to fifteen years and must be served consecutive to the other sentence(s), plea counsel interjected Applicant may not have understood that part. Counsel and Applicant were permitted to stand down from the plea and confer regarding consecutive sentences requirement. The conference lasted five to ten minutes. Afterwards, Applicant told the court he understood the sentence for the bodily fluids charge would be consecutive, and told the court he still wished to enter his plea. (Plea Tr. at 20-22). Accordingly, this Court finds any challenge to the knowing, voluntary, and intelligent nature of his guilty plea without merit. *Boykin v. Alabama, supra; Dalton v. State, supra.*

*(d) Counsel's Alleged Failure to Discuss the Elements of the Offenses
and Potential Defenses*

Applicant testified at the PCR hearing that he understood the charges at the time of the plea hearing. (PCR Tr. at 10-11). Applicant instead challenged counsel's advice regarding the

applicability of the sentence received for the charge of throwing bodily fluids. That statute reads: “[a] sentence under this provision must be served consecutively to any other sentence the inmate is serving,” and which precludes applicability “to a person who is a ‘patient’ as defined in § 44-23-10(3).” S.C. Code Ann. § 24-13-470. “Patient” as defined by that statute at the time of Applicant’s plea meant “a person who seeks hospitalization or treatment” within the State Department of Mental Health or its local or federal affiliates. S.C. Code Ann. § 44-23-10. The maximum sentence for that charge is fifteen years. *Id.* Upon each of his remaining first degree domestic violence charges, Petitioner faced a maximum of ten years. S.C. Code Ann. § 16-25-20(B).

This Court declines to find that plea counsel failed to advise Applicant or argue to the court that Applicant was a “patient” precluded from prosecution under S.C. Code Ann. § 24-13-470(C). Applicant testified that he incurred the throwing bodily fluids charge from an incident at the Lexington Connty Detention Center in which he was restrained in a chair in the booking area and placed on suicide watch. (PCR Tr. pp. 8-9, 16-17). Petitioner testified that he only saw a nurse twice: “the day they put [him] in and the day they let [him] out.” (PCR Tr. pp. 16-18). He testified that he was never transported to any medical facility for treatment, nor was he transported from the detention center for any reason as a result of the incident leading to the restraint. (PCR Tr. p. 16).

Counsel explained Applicant incurred the charge while in pre-trial detention, and that he pled no contest because he did not really spit on the three officers, but he tried to bite them and any concurrent spitting essentially occurred by accident. He testified Applicant had a history of threatening to officers he would kill himself, he did so at the time of his arrest as well, but that

Applicant was “as rational as you or I” and was not mentally ill. Counsel expounded that Applicant had never been diagnosed as a mental patient, that he did not suffer from problems requiring medication at the time the charge was incurred, and that he was cognizable of what he was doing. (PCR Tr. pp. 25, 29-30). With his 42 years of experience as a lawyer, Counsel understood “the distinction between mentally ill and having issues, and the issues [Applicant] had were not sufficient to constitute a mental problem with entering a plea, trying a case or anything like that.” (PCR Tr. p. 25). Lending credibility to counsel’s assessment are Counsel and Applicant’s independent testimonies which demonstrate they were personally familiar with each other prior to Counsel’s representing Applicant in this matter. (PCR Tr. pp. 14, 19).

This Court finds Applicant has failed to meet his burden of establishing that counsel’s failure to advise him that he was a “patient” as defined by S.C. Code § 44-23-10 and that he was therefore precluded from prosecution under S.C. Code Ann. § 24-13-470(C) was neither deficient or prejudicial within the meaning of *Strickland* and the Sixth Amendment. As previously discussed, the record refutes any allegation that plea counsel misadvised Applicant of the penalty he faced by pleading guilty to the charge and Applicant entered a knowing, intelligent, and voluntary guilty plea on his own accord. Moreover, counsel did not render inadequate representation in regards to Applicant’s culpability for throwing bodily fluids pursuant to § 24-13-470(C), as Applicant cannot establish that he was a mental health patient as defined by the statute. By Applicant’s own admission, he was not hospitalized or treated by the South Carolina Department of Mental Health. He was not admitted to a mental health or any other healthcare facility. He was twice “checked on” by a nurse but he was not treated by any medical doctor.

Rather, he was restrained to the booking area of the detention center for surveillance because he made a verbal threat to kill himself and bit officers who rendered aid.

Therefore, plea counsel, whose PCR testimony demonstrated a longtime and personal familiarity with Applicant and his family, was not deficient for failing to advise Applicant of the cited provision of the throwing bodily fluids statute and Applicant has at no time demonstrated that he would have instead proceeded to trial rather than plead guilty to the charge. Accordingly, Applicant's ineffective assistance claim (d) pertaining to counsel's advising Petitioner of the elements of the charges is **DENIED**.

CONCLUSION

Upon consideration of the testimony presented at the evidentiary hearing, a review of the pertinent portions of the file made part of this record by way of attachment to the State's Return, and the applicable case law, the undersigned finds that Applicant has failed to meet his burden to establish error and prejudice as to all claims raised at the evidentiary hearing. Applicant has not put forth sufficient evidence to demonstrate plea counsel's performance was unreasonable under prevailing professional norms. This Court further finds Applicant wholly failed to demonstrate that he was prejudiced by counsel's advice and performance in regards to Applicant's entry of a knowing, intelligent, and voluntary guilty plea.

IT IS THEREFORE ORDERED THAT:

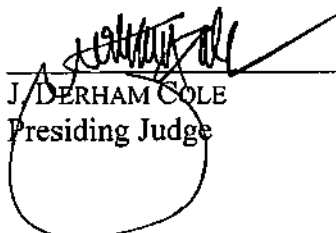
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

 Page 16 of 16

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

This Court additionally notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), 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 that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

AND IT IS SO ORDERED this the 16th day of September, 2020.



J. DERHAM COLE
Presiding Judge

_____, South Carolina

FILED		COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case Number: 2017-CP-32-00590 MOTION TO ALTER OR AMEND AND FOR RECONSIDERATION WITH ANNEXED MEMORANDUM IN SUPPORT
STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Davon A. Clark #314335, Applicant, vs. State of South Carolina Respondent.	2020 OCT 26 AM 9:56 LISA M. COMER CLERK OF COURT LEXINGTON SC	

MOTION

The Applicant, Davon A. Clark (Clark), hereby moves, in accordance with Rule 59(e) SCRCF, to alter and amend and for reconsideration of this Court's Order dismissing his Application in the above captioned post-conviction relief (PCR) case. (Exhibit 1, Order filed September 23, 2020) This Court heard the PCR on February 20, 2018. The subject Order was filed with the Clerk on September 23, 2020, and Clark's counsel received written notice of the entry of the subject Order by email on October 8, 2020.

Clark bases this Motion on the general grounds that in the Order to be reconsidered, this Court erred in its application of the law to the facts and that the Order does not rule upon significant argument made by Clark's counsel in support of his PCR. For specific grounds for this Motion, Clark relies on the issues raised in the Memorandum in Support annexed to this Motion.

WHEREFORE, Clark prays that this Court alter its Order dismissing his PCR to rule upon all issues raised in support of his PCR, reconsider that Order, and amend that Order to grant his PCR.

MEMORANDUM IN SUPPORT

FACTS

This is a guilty plea PCR. The pleas involved two first degree domestic violence charges, and a throwing bodily fluids charge. Clark received two ten-year maximum sentences on the domestic violence charges to run consecutively and a one-year sentence on the throwing bodily fluids charge to run consecutively to the consecutive sentences on the domestic violence charges.

It was the plea judge's opinion that Clark faced mandatory consecutive time on the throwing bodily fluids charge. In fact, the plea judge paused the plea to permit defense counsel to explain to Clark that he faced this mandatory consecutive time. At the time that the throwing bodily fluids charge arose, Clark was a pretrial detainee; he was not serving any sentence.

ARGUMENT

I. THE PURPOSES FOR A MOTION UNDER RULE 59(e) SCRPC

A motion under Rule 59(e) SCRPC serves two purposes. First, the motion must be made to preserve for appellate review arguments of the moving party that were made to the trial court but were not explicitly addressed in the trial court's order. Elam v SC DOT, 361 S.C. 9, 602 S.E.2d 772 (2004). Second, the motion may be made to convince the trial court to reconsider the result reached in its order and rule in favor of the moving party. Elam, supra. Clark make his Rule 59(e) SCRPC Motion for both purposes.

II. THIS COURT SHOULD ALTER THE SUBJECT ORDER TO RULE MORE CLEARLY ON ONE ARGUMENT THAT CLARK'S PCR COUNSEL RAISED AT THE FEBRUARY 20, 2018 HEARING.

At the PCR hearing, Clark's PCR counsel argued that Clark's counsel afforded Clark ineffective assistance of counsel when he advised Clark during the plea that the throwing bodily fluids charge under SC Code § 24-13-470 carried mandatory, consecutive jail time. SC Code § 24-13-470 states, in pertinent part, that "[A] sentence under this provision must be served

consecutively to any other offense that the inmate is serving.” Given a plain meaning reading, this statutory language imposes mandatory consecutive time only if the inmate was serving another sentence at the time of the throwing bodily fluids offense.

At the time that Clark incurred the throwing bodily fluids charge, Clark was not serving a sentence; he was a pretrial detainee. Therefore, Clark’s defense counsel gave him erroneous advice when he advised Clark that he faced mandatory, consecutive jail time on his throwing bodily fluids charge. This erroneous advice rendered Clark’s plea counsel’s performance deficient.

Deficient performance alone is insufficient to warrant a grant of PCR in a guilty plea case involving erroneous legal advice by plea counsel; the applicant must go further and allege and prove prejudice. To prove prejudice in a guilty plea case involving erroneous advice from plea counsel, the applicant shows prejudice by demonstrating that but for the erroneous advice, the applicant would not have pleaded guilty. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

At the February 20, 2018 hearing, Clark testified without hesitation that had he known that the throwing bodily fluid charge was not mandatory consecutive, he would not have pleaded guilty. (Transcript February 20, 2018 hearing p. 8, ll. 11-16). This makes logical sense because with an argument against consecutive time, Clark would have less inclination to plead guilty with a certainty of consecutive time.

III. THIS COURT SHOULD RECONSIDER ITS DECISION, AMEND ITS ORDER AND GRANT CLARK’S PCR.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel’s representation was deficient, which is

measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698).

In the preceding section of this Memorandum, Clark has demonstrated that his defense counsel's representation was deficient in that defense counsel gave him the erroneous advice that he faced mandatory, consecutive time on the throwing bodily fluids charge. It merely remains to show that Clark suffered prejudice because of that deficient representation. Clark demonstrated prejudice at the February 20, 2018 hearing as shown by the above reference to the Transcript of that hearing. Since Clark has demonstrated both deficiency and prejudice, this Court should reconsider its ruling made in the Order filed September 23, 2020 and amend that Order to grant Clark's PCR.

CONCLUSION

This Court should reconsider its decision and enter an amended order granting Clark's PCR. Short of that, this Court should alter or amend the Order filed to address more clearly the important arguments set forth above.

Respectfully submitted,

AIKEN & HIGHTOWER, PA

By: _____

Arthur K. Aiken

PO Box 90707

Columbia, SC 29290

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPLICANT

Columbia, South Carolina
October 19, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)
FILED) SEVENTH JUDICIAL CIRCUIT

Davon A. Clark #314335

2020 OCT 26

AM 9:56

Case No.: 2017-CP-32-00590

Applicant

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

vs.

CERTIFICATE OF SERVICE

State of South Carolina,

Respondent.

I, Arthur K. Aiken, certify that on this date, October 19, 2020, I served Applicant's Motion to Alter or Amend and for Reconsideration in this case on the State's attorney, Lillian L. Meadows, by US Mail addressed to the South Carolina Attorney General's Office, PO Box 11549 Columbia, SC 29211 and on the trial judge Circuit Judge J. Derham Cole by US Mail addressed to PO Box 1744 Spartanburg, SC 29304-1744.



Arthur K. Aiken
Aiken & Hightower, PA
PO Box 90707
Columbia, SC 29290
Tel 803-799-5205
Fax 803-799-5206
art@aikenandhightower.com

Columbia, South Carolina
October 19, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Davon A. Clark, SCDC #314355,	)	Case No. 2017-CP-32-0590
	)	
Applicant,	)	
	)	
v.	)	RETURN TO APPLICANT'S
	)	RULE 59(E), SCRCP MOTION
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

This comes before the Court by way of a post-conviction relief (PCR) action commenced by Davon A. Clark (Applicant) on February 22, 2017. On February 20, 2018, this Court convened an evidentiary hearing at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Arthur K. Aiken, Esquire. Assistant Attorney General Caroline Scrantom represented the State. Applicant testified on his own behalf at the hearing, as did his plea counsel, Robert Theodore Williams, Sr., Esquire.

Following the hearing, this Court took the matter under advisement. After carefully considering the testimony presented at the hearing, the arguments presented by the parties, and the records pertaining to this action, this Court issued a Form 4 order on May 14, 2020, denying and dismissing this action with prejudice and instructing the State to submit a proposed order of dismissal. The State submitted its proposed order on June 23, 2020. After conducting a full review of the PCR evidentiary hearing transcript and the records submitted to this Court at the time of the evidentiary hearing, this Court issued an order of dismissal on September 23, 2020. Applicant

subsequently filed a timely motion to alter or amend pursuant to Rule 59(e), SCRCP, on October 19, 2020. In response, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. On August 25, 2016, Applicant appeared before the Honorable William P. Keesley, waived presentment to the grand jury, and pleaded guilty to two charges of first-degree domestic violence (2016-GS-32-2366, 2369) and no contest to one charge of throwing bodily fluids by a prisoner (2016-GS-32-1380) without negotiations or recommendations from the State as to sentencing. However, the State dismissed an additional domestic violence charge and two throwing bodily fluid charges in exchange for Applicant's plea. (Plea Tr. 17). Robert Theodore Williams, Sr., Esquire (Counsel) represented Applicant and Assistant Solicitor Bradley Pogue prosecuted the case. Judge Keesley sentenced Applicant to consecutive terms of ten years' imprisonment for each count of first-degree domestic violence and one year imprisonment for throwing bodily fluids.

Subsequently, Applicant filed a motion to reconsider the sentence rendered. By order filed November 29, 2016, Judge Keesley denied Applicant's motion. Applicant did not appeal his convictions or sentence.

II. CURRENT ACTION

On February 22, 2017, Applicant filed an application for post-conviction relief (PCR) in which he alleged that he was denied the effective assistance of plea counsel guaranteed by the Six and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution. He alleged plea counsel failed to inform him "that he could be sentenced to as much as twenty-one (21) years if his sentence ran consecutive" on all three charges.

He argued in his memorandum that counsel only told him that he “could receive a consecutive sentence for one charge. . . .” (PCR App.). Pursuant to Rule 71.1, SCRCPP, Applicant, through PCR counsel, amended his application to include the following claims:

1. Applicant’s guilty plea was not made with or based on advice of competent counsel;
2. Applicant’s guilty plea was not intelligently made;
3. Trial counsel did not discuss the evidence with Clark;
4. Trial counsel did not prepare Clark’s case for trial, and Clark was left with no choice but to plead guilty;
5. Trial counsel did not advise Clark of the elements of the offense charged and did not discuss potential defenses with Clark;
6. Trial counsel never reviewed the pretrial discovery with Clark;
7. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Clark so that Clark could make an informed choice of whether to enter a plea or try his case; and
8. Trial counsel did not investigate Clark’s case.

At the outset of the evidentiary hearing, Applicant, by and through counsel, represented that he would primarily be proceeding on the claim of “inadequate advice to Mr. Clark before his plea.” (PCR Tr. 3).

III. APPLICANT’S MOTION TO ALTER OR AMEND

In his motion to alter or amend, Applicant argues this Court failed to rule on all issues presented at the evidentiary hearing while failing to specify which issues this Court allegedly did not rule on. Rather, Applicant argues that the PCR Court erred in “its application of the law to the facts.” In support of this claim, Applicant asserts that Counsel improperly advised Applicant that he would receive a mandatory, consecutive sentence for throwing bodily fluids because the plain meaning of section 24-13-470 of the South Carolina Code imposes a mandatory and consecutive sentence only if the inmate was serving another sentence at the time Applicant committed the offense of throwing bodily fluids. Accordingly, Applicant argues that this statutory provision did not apply to him due to his status as a pretrial detainee at the time of the offense, and therefore trial

counsel's advice was erroneous. He further claims that he would not have pleaded guilty had he known the throwing bodily fluids charge was not mandatory nor consecutive.

As an initial matter, Applicant cannot show prejudice because he ultimately received a one-year consecutive sentence on the throwing a bodily fluids charge. Further, counsel's advice was not erroneous because it is clear from the language of the statute that the legislature intended for the requirement of a consecutive sentence contained in section 24-13-470(A) to apply to pretrial detainees. For example, the statute applies to "[a]n inmate, a *detainee*, a person taken into custody, or a person under arrest" who throws bodily fluids upon a "an employee of a state correctional facility or *local detention facility*, a state or local law enforcement officer, a visitor of a state correctional facility or *local detention facility*, or any other person authorized to be present in a state correctional facility or *local detention facility* in an official capacity. S.C. Code Ann. § 24-13-470(A). Additionally, the consecutive sentence provision provides that "[a] sentence under this provision must be served consecutively to any other sentence the inmate is serving." *Id.* Contrary to Applicant's claim, it does not specify that the inmate must be serving another sentence at the time he or she *committed* the throwing bodily fluids offense. Coupled with the previous language including detainees, it appears that the consecutive sentence requirement applies also to those who are *sentenced* for throwing bodily fluids at the same time they are sentenced for another offense.

Further as to prejudice, 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). As this Court notes in its order of dismissal, Applicant's aggregate twenty-one year was well within the sentencing range prescribed by law and described by counsel. Nothing precludes the sentencing judge from issuing each of Applicant's sentences to run in a consecutive fashion regardless of whether S.C. Code Ann. § 24-13-470(A)

required it or not. Applicant's consecutive sentence on the throwing bodily fluids charge complied with the statute. *Id.*; see *Garvin v. State*, 365 S.C. 16, 615 S.E.2d 453 (2005) (concluding "a mandatory consecutive sentence is required for both escapees serving a prison sentence and escapees who are pretrial detainees"); *Bing v. Harvey*, 274 S.C. 216, 262 S.E.2d 42 (1980) (reading S.C. Code Ann. § 24-13-410 to require consecutive sentence upon escape from any "lawful confinement" including from pretrial custody).

Further, the plea judge ensured that Applicant had a full understanding of the maximum penalty of each charge. Applicant testified both at the plea hearing and PCR hearing that he was aware of the maximum penalty of each charge. *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (explaining that "[w]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). Accordingly, this Court correctly concluded that Applicant failed to establish either deficiency or prejudice based on counsel's advice that Applicant would receive a consecutive sentence on the throwing bodily fluids charge.

[Conclusion and signature on following page]

IV. CONCLUSION

Accordingly, the State submits this Court's order of dismissal contains the required finding of facts and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; *see also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). . Thus, this Court should deny Applicant's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRCP.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 1, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Davon A. Clark, SCDC #314355	)	
	)	Case No.: 2017-CP-32-0590
Applicant,	)	
	)	
v.	)	Certificate of Service
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. Undersigned is counsel of record for Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), as amended August 27, 2021, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return to Applicant's Rule 59(e), SCRCF Motion** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Arthur K. Aiken, Esquire
art@aikenandhightower.com

DATED this 1st day of February 2022

s/LillianMeadows

LILLIAN L. MEADOWS
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
LillyMeadows@scag.gov

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

FILED

CASE NO. 2017-CP-32-00590

Davon A. CLARK, SCD CID #314335

The STATE of South Carolina,

Applicant,
2022 APR 11 PM 2:08

Respondent,

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ PCR-failure to meet burden.
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ Formal order to follow; ☒ Statement of Judgment by the Court:

This matter came before this court on an application for post-conviction relief filed pursuant to *South Carolina Code Annotated Section 17-27-10 et seq.* Applicant makes a claim of ineffective assistance of counsel for trial counsel's failure to (1) discuss consecutive sentencing, (2) discuss the evidence, (3) prepare for trial, (4) discuss elements of the offenses and potential defenses, (5) discuss advantages and disadvantages of trial vs guilty plea, and (6) investigate the case.

Based upon the record of the case, the evidence presented at the evidentiary hearing held in this matter, the argument of counsel, and consideration of the applicable statutory and case law, this court found that the applicant's request for **POST-CONVICTION** relief should be and **WAS** therefore **DENIED** and the **APPLICATION DISMISSED WITH PREJUDICE** for failure of the applicant to establish any deficient performance on the part of counsel and/or that but for counsel's performance he would not have pled guilty and insisted on going to trial. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989)

Applicant filed a motion to alter, amend, and for reconsideration of the Court's ruling dismissing the application pursuant to Rule 59(e), SCRPC.

Upon a review of the record in this case this Court finds that the order of dismissal previously filed sets forth sufficient findings and conclusions required by S. C. Code Ann. Section 17-27-80 and Rule 52(a), SCRPC. Applicant's **MOTION** to alter, amend, and for reconsideration pursuant to **RULE 59(e)**, SCRPC, should be and **IS** therefore **DENIED**.

Dated at Spartanburg, South Carolina, this 6th day of April, 2022.


PRESIDING JUDGE,

J. Derham Cole

This judgment was entered on the _____ day of MAY, 2020, and a copy mailed first class this _____ day of MAY, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

ARTHUR K. AIKEN, Esq.
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

LILLIAN L. MEADOWS, Esq.
SUSANNAH R. COLE, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549

ATTORNEY(S) FOR THE APPLICANT

ATTORNEY(S) FOR THE RESPONDENT

CLERK OF COURT, LISA M. COMER

WITNESSES

Batesburg Leesville Police Department

Ptl. Harpalani

Law Enforcement Case #: 16-0612

BPP

ARREST WARRANT NUMBER

2016A3220200106

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

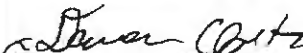
DOCKET NO. 2016GS3202366**The State of South Carolina**

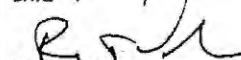
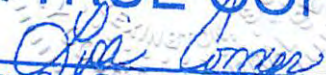
County of Lexington

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2016**THE STATE****vs.****Davon Artjuawn Clark****CDR #: 3811****Indictment for**

Domestic Violence, 1st Degree

§ 16-25-0020(B)

DONALD V. MYERS, SOLICITOR
**I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT**

 DEFENDANT

 DATE Aug 25, 2016

 WITNESS
A TRUE COPY

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Domestic Violence, 1st Degree

§ 16-25-0020(B)

At a Court of General Sessions, convened on September 2016, the Grand Jurors of Lexington County present upon their oath.

That **Davon Artjuawn Clark** did in Lexington County, South Carolina on or about **April 9, 2016**, unlawfully cause physical harm or injury to a household member; namely **Chandrika Waters**, or offer or attempt to cause physical harm or injury to a household member with apparent present ability, under circumstances reasonably creating fear of imminent peril; and the defendant has two or more prior convictions of domestic violence within ten years of the date of the current offense; in violation of Section 16-25-20 of the South Carolina Code of Laws (1976), as amended

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


 ASSISTANT SOLICITOR



WITNESSES

Lexington County Sheriffs Department

H. Livingston

Law Enforcement Case #: 16008714

BPP

ARREST WARRANT NUMBER

2016A3210200777

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3202369The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2016

THE STATE

vs.

Davon Artjuawn Clark

CDR #: 2526Indictment for

Throwing Bodily Fluids by Prisoner

§ 24-13-0470

DONALD V. MYERS, SOLICITORI DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

DEFENDANT

DATE

WITNESS

A TRUE COPY

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

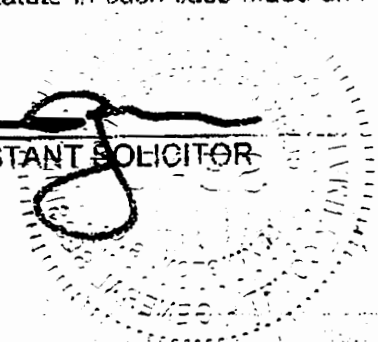
INDICTMENT FOR
Throwing Bodily Fluids by Prisoner

§ 24-13-0470

At a Court of General Sessions, convened on September 2016, the Grand Jurors of Lexington County present upon their oath:

That **Davon Artjuawn Clark** did in Lexington County, South Carolina, on or about May 1, 2016, while he was an inmate, detainee, a person taken into custody, or person under arrest, attempted to throw or threw body fluids, including but not limited to, urine, blood, feces, vomit, saliva, or semen, on an employee of a state or local correctional facility, such person being Christopher Myers, employed at the Lexington County Detention Center, in violation of §24-13-470 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR


0-15 yrs

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

Davon Artjuawn Clark

AKA:

Race: Black Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] St

City, State, Zip: Batesburg, SC 29006

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: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law enforcement officer, corrections emp

in violation of § 24-13-0470 of the S.C. Code of Laws, bearing CDR Code # 2526

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor102096
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant6145
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 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: 2016-GS-32-02366☐ 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 (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 \$100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

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

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

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

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

TOTAL \$125

Clerk of Court/Deputy Clerk: [Signature]

Court Reporter: [Signature]

Section 100-100-100 C.C.P., G.S. & P.C.

INDICTMENT/CASE#: 2016GS3202369

A/W#: 2016A3210200777

Date of Offense: 5/1/2016

S.C. Code § : 24-13-0470

CDR Code #: 2526

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSNO
CONTEST
D C☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)☐ Negotiated Sentence, ☐ Recommendation by the State.[Signature]
Attorney for Defendant6145
SC Bar#

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: Pay court costs w/in 2 yrs. &
release from prison☐ Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2050

Sentence Date: AUGUST 25, 2016

WITNESSES

Lexington County Sheriffs Department

S. K. Black

Law Enforcement Case #: 16-001476

BPP

ARREST WARRANT NUMBER

2016A3211000046

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2016GS3201380

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2016

THE STATE
vs.

Davon Artjuawn Clark

CDR #: 3811

Indictment for

Domestic Violence, 1st Degree

§ 16-25-0020(B)

DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT	
☒	<u>Davon Clark</u> DEFENDANT
DATE	<u>SEP 25, 2016</u>
	<u>[Signature]</u> WITNESS

A TRUE COPY


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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

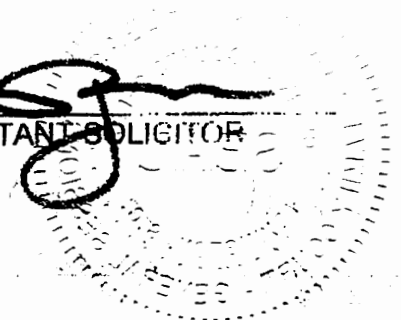
INDICTMENT FOR
 Domestic Violence, 1st Degree
 § 16-25-0020(B)

At a Court of General Sessions, convened on September 2016, the Grand Jurors of Lexington County present upon their oath:

That **Davon Artjuawn Clark** did in Lexington County, South Carolina on or about **January 23, 2016**, unlawfully cause physical harm or injury to a household member namely **Lameka Stevenson**, or offer or attempt to cause physical harm or injury to a household member with apparent present ability, under circumstances reasonably creating fear of imminent peril; and the defendant has two or more prior convictions of domestic violence within ten years of the date of the current offense in violation of Section 16-25-20 of the South Carolina Code of Laws (1976), as amended

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


 ASSISTANT SOLICITOR



0-10 yrs

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
 STATE VS.
Davon Artjuawn Clark

AKA: _____
 Race: Black Sex: M Age: 31
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] St _____
 City, State, Zip: Batesburg, SC 29006-2212
 DL#: [REDACTED] SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
 TO: Domestic / Domestic Violence, 1st degree

INDICTMENT/CASE#: 2016GS3201380A/W#: 2016A3211000046Date of Offense: 1/23/2016S.C. Code §: 16-25-0020(B)CDR Code #: 3811

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-25-0020(B) of the S.C. Code of Laws, bearing CDR Code # 3811

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

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

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

ATTEST:

[Signature] 102096 [Signature] [Signature] 6145
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2016-GS-32-02366 & 2016-GS-32-02369
☐ 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition. WPE

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 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 61.6 (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (DUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____
 3% to County (if paid in installments) \$ _____

TOTAL

\$12.50
 Clerk of Court Deputy Clerk [Signature]

Court Reporter [Signature]

LEX. CP. C.C.C.P., G.S. & F.C.

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/F 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: Pay court costs w/in 2 yrs. &
release from prison

☐ Appointed PD or appointed other counsel.

§Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]Judge Code: 2050Sentence Date: AUGUST 25, 2016

FINDING MADE ABOUT FIREARM & AMMO
 POSSESSION AS SET OUT ON 2016-GS-32-02366