

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Roger E. Henderson, Circuit Court Judge

ELIJAH GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000878

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2015-GS-40-04340
COUNTY OF RICHLAND	)	2016-GS-40-04664
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ELIJAH GREEN,	)	
DEFENDANT.	)	
_____	)	

December 7, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE

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

JOSHUA PAUL GOLSON, ESQ.
Attorney for the Plaintiff

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Reported by:
CRYSTAL HOLMES

Transcribed by:
CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

WHEREUPON,

ELIJAH GREEN

After having been duly sworn, testified as follows:

MR. GOLSON: Thank you, Judge. May it please the Court. Josh Golson for the State.

Before you is Elijah Michael Green. Defense counsel is Rhodes Bailey from the Public Defender's Office.

Mr. Green is here today to plead guilty to two counts of felony DUI with great bodily injury on true billed Indictments 2015-GS-40-04340 and 2016-GS-40-04664. There are two victims in this case, Judge: Bernard Edmonds and Elsie Jordan. Ms. Jordan is aware of the plea, but for personal reasons and the stress related to the matter cannot come into the courtroom. However, Mr. Bernard Edmonds is present along with his friend and advocate Kimberly Cockrell from the Mothers Against Drunk Driving.

There is no recommendation or negotiation for this plea.

THE COURT: All right. Mr. Bailey, is that accurate?

MR. BAILEY: Thank you, Your Honor. Yes, Your Honor, it's correct. And the State is also dropping an unrelated -- an unrelated domestic violence charge.

THE COURT: All right. Mr. Green, you're here to plead guilty to two counts of felony driving under the

1 influence resulting in great bodily injury; is that right?

2 DEFENDANT GREEN: Yes, sir.

3 THE COURT: Are you guilty of these charges?

4 DEFENDANT GREEN: Yes, Your Honor.

5 THE COURT: And you want to waive your right to a
6 jury trial and plead guilty?

7 DEFENDANT GREEN: Yes, Your Honor.

8 THE COURT: All right. Let me take a look at this
9 statute here, Mr. Green.

10 MR. GOLSON: Judge, while you're pulling that up,
11 forgive me, I omitted this portion. There was a request
12 filed by the defense to have a competency evaluation,
13 which was done. And they came back and it was found
14 competence, so we would ask the Court to make a ---

15 THE COURT: Do you have a report for me to look at?

16 MR. GOLSON: Yes, sir. I can hand up my copy.

17 THE COURT: Mr. Green, you were sent for a competency
18 evaluation by order issued by Judge Knox McMahon, and
19 purpose to determine whether you have the capacity to
20 understand the proceedings against you and to assist in
21 your own defense. Do you remember that, going to see
22 doctors for that competency exam?

23 DEFENDANT GREEN: Yes, sir. Yes, Your Honor.

24 THE COURT: And they interviewed you and viewed
25 various information, background information, educational

1 history, employment history, medical history, mental
2 health history, substance abuse history, legal history as
3 well as your current mental status. And they indicated in
4 this report the diagnostic impressions and also other
5 information concerning their belief regarding your
6 competence to stand trial. And their conclusions, that
7 you demonstrated a factual understanding of the courtroom
8 personnel proceedings, you understand your legal
9 situation, evaluate your options and that you are able to
10 assist in your defense. And though it may be you may need
11 some education concerning the legal process, you have the
12 capacity to understand the information to assist in the --
13 in your defense. And they concluded that you have the
14 capacity to understand legal proceedings against you and
15 to assist in your own defense. Do you agree with that
16 conclusion?

17 DEFENDANT GREEN: (No verbal answer.)

18 THE COURT: That you're competent to stand trial and
19 enter this guilty plea?

20 DEFENDANT GREEN: Yes, Your Honor.

21 THE COURT: Okay. And do you have anything else to
22 offer, Mr. Bailey, on this issue?

23 MR. BAILEY: No, Your Honor. I don't have anything
24 else to add.

25 THE COURT: All right. I find that he is competent

1 to proceed -- to stand trial and to proceed with this
2 guilty plea.

3 Under the subsection you're pleading guilty to, it
4 says a person who, while under the influence of drugs or
5 alcohol proximately causes great bodily injury or death to
6 another person is guilty of a felony -- felony driving
7 under the influence and must be punished by the mandatory
8 fine of not less than \$5,100 nor more than \$10,100 and
9 mandatory imprisonment not less than 30 days nor more than
10 15 years when great bodily injury occurs. Is that your
11 understanding of the penalty you're facing?

12 DEFENDANT GREEN: Yes, Your Honor.

13 THE COURT: Has anyone promised you anything to get
14 you to plead guilty?

15 DEFENDANT GREEN: No, Your Honor.

16 THE COURT: And you want to waive your right to a
17 jury trial and plead guilty?

18 DEFENDANT GREEN: Yes, sir. Yes, Your Honor.

19 THE COURT: Tell me about it. What did you do that
20 makes you guilty of this crime?

21 DEFENDANT GREEN: Well, first of all, I ain't had no
22 business getting in the car knowing I'd been drinking. At
23 that time, I had got shot in both of my legs and I was
24 taking medication.

25 THE COURT: You got shot in both of your legs?

1 DEFENDANT GREEN: Yes, sir.

2 THE COURT: And taking medication?

3 DEFENDANT GREEN: Yes, sir.

4 MR. BAILEY: Your Honor, I can elaborate or I can get
5 him to slow down. And I was going to talk about that.

6 Mr. Green was shot in November of 2014, and he was --
7 he says he was still recovering at that time some months
8 later.

9 THE COURT: He got shot under what kind of
10 circumstances?

11 MR. BAILEY: An altercation with a gentleman named
12 Robert -- Robert Graves. He was a victim in a case that
13 actually, the Solicitor's Office prosecuted Mr. Graves. I
14 was just clarifying.

15 THE COURT: Right.

16 MR. GOLSON: Yeah. And ---

17 THE COURT: So now this crime Mr. -- aside, you know,
18 to this night you shouldn't have been driving or day or
19 whatever it was, where were you and what happened?

20 DEFENDANT GREEN: I was at the house, at home. And
21 then the car had broke down at Lowe's and I went and got
22 the car. And me and my neighbor went and got the car.
23 And we stopped by the store and got some beer, so we went
24 back to the house and started drinking beer. And then I
25 went -- and then I went over to my cousin house where I

1 sat over there in the car and we were drinking beers, and
2 I took like two -- took my medication for my leg because I
3 was in pain at the time. It wasn't nothing but pain.

4 THE COURT: Where did the wreck occur?

5 DEFENDANT GREEN: On the Leesburg Road. I was trying
6 to get home.

7 THE COURT: What time of the day or night was it?

8 DEFENDANT GREEN: It was about 8:00 -- about 9:30,
9 10:00.

10 THE COURT: And you were under the influence of what?

11 DEFENDANT GREEN: I was under the influence of
12 alcohol and pain pills.

13 THE COURT: How many pills had you taken? Or how
14 many ---

15 DEFENDANT GREEN: I took several.

16 THE COURT: You took the amount you were supposed to
17 take or you took more than you were supposed to take?

18 DEFENDANT GREEN: I took about two or three pills.

19 THE COURT: How many were you supposed to take?

20 DEFENDANT GREEN: I was supposed to take like one
21 every eight hours. Something like that.

22 THE COURT: And you took more than you were supposed
23 to take?

24 DEFENDANT GREEN: Yes, sir.

25 THE COURT: What's the name of the pills?

1 DEFENDANT GREEN: (No verbal answer.)

2 THE COURT: I mean, they're legal pills or illegal
3 pills?

4 DEFENDANT GREEN: They was legal pills, but they --
5 they gave me a prescription for OxyContin pills, I think
6 about 10 milligram.

7 THE COURT: Do you believe you're guilty of this
8 crime?

9 DEFENDANT GREEN: I ain't -- I ain't planned to do
10 this.

11 THE COURT: Well, it says an accident and accidents.
12 Felony DUI is not for people who intend to be in a wreck,
13 whether they're drinking and cause a wreck. No one
14 usually intends a wreck.

15 Do you believe you're guilty of the crime of felony
16 DUI?

17 DEFENDANT GREEN: Yes, sir. Yes, Your Honor.

18 THE COURT: And do you agree with the guilty plea,
19 Mr. Bailey?

20 MR. BAILEY: I do, Your Honor.

21 THE COURT: All right. Solicitor?

22 MR. GOLSON: Thank you, Judge. May it please the
23 court.

24 This incident occurred about 9:30 -- 8:30 p.m. on
25 April 25th of 2015 at the intersection of Leesburg and

1 Trotter Road. It was a multicar collision, Judge. The
2 defendant was driving a Monte Carlo and sideswiped a
3 vehicle causing some property damage only and then
4 collided with a Chevy truck driven by Bernard Edmonds, who
5 is present here in the courtroom today. He hit that --
6 Mr. Edmonds' vehicle head-on causing significant front-end
7 damage.

8 After the collision occurred, he got out of his
9 vehicle and approached the victim and his passenger. He
10 approached the driver's side door and began hurling a slew
11 of expletives at the victim, Mr. Edmonds. And in the
12 course of yelling at him, accused him of hitting
13 him ---

14 THE COURT: Didn't I have the bond hearing on this
15 case?

16 MR. GOLSON: Yes, sir.

17 THE COURT: Okay.

18 MR. GOLSON: That's correct, Judge.

19 Accused the victim of causing the collision and told
20 him that he was going to kill him, to put it in more mild
21 terms.

22 And the force of the collision pinned Mr. Edmonds and
23 his best friend, Ms. Elsie Jordon, in the vehicle, caused
24 significant injuries to both individuals.
25 Mr. Edmonds sustained a broken hip, multiple broken ribs,

1 lost several teeth, multiple lacerations about his body.
2 Ms. Jordan broke -- had compound fractures in both of her
3 wrists, required surgeries to implant metal rods in her
4 wrists and her hands, underwent several months of physical
5 therapy.

6 The defendant, after the collision, was transported
7 to the Richland ER for treatment of his own injuries.
8 While he was there, Trooper Helen from the South Carolina
9 Highway Patrol arrived, placed him under arrest. They
10 offered him his implied consent rights, and he willingly
11 submitted to a blood sample to test for presence of
12 alcohol and/or drugs. That blood sample was submitted to
13 SLED for testing, and it came back positive for ethanol at
14 .139. That was the only indication of any substances in
15 his bloodstream at the time.

16 THE COURT: .139. So how many -- what is that?

17 MR. GOLSON: It's three one hundredths of one percent
18 shy of double the limit. The legal limit is .08.

19 THE COURT: The legal limit .08, and he blew what?

20 MR. GOLSON: It was a .139.

21 THE COURT: So point -- like .13.

22 MR. GOLSON: Yes, sir.

23 THE COURT: He blew a 13.

24 MR. GOLSON: Yes, sir.

25 THE COURT: Oh, okay.

1 Is all that true, you think, Mr. Green, everything he
2 said?

3 DEFENDANT GREEN: Yes, sir. Yes, Your Honor.

4 THE COURT: All right. I accept the guilty plea.
5 What kind of rap sheet does he have?

6 MR. GOLSON: Possession of marijuana in 1981;
7 housebreaking, 1982; shoplifting, resisting arrest, 1982;
8 shoplifting, 1983; petit larceny, 1985; simple assault,
9 1985; simple assault and SPMJ 1985; drunkenness, resisting
10 arrest, disorderly conduct and trespassing in September of
11 1985; then in January 1986, there were three convictions
12 for housebreaking and grand larceny, housebreaking and
13 petit larceny, conspiracy, burglary first -- three counts
14 of burglary first, actually; and then the final most
15 recent conviction is a 1996 conviction for voluntary
16 manslaughter in which he received an 18-year sentence.

17 THE COURT: When did you get out of prison?

18 DEFENDANT GREEN: I've been out of prison since 2007.

19 THE COURT: Okay. All right. Be happy to hear from
20 anyone who has anything to say.

21 MR. GOLSON: I believe Mr. Edmonds would like to
22 address the court, judge.

23 THE COURT: Okay.

24 MR. EDMONDS: I'm Bernard Edmonds.

25 THE COURT: Yes sir.

1 MR. EDMONDS: I remember the day Mr. Green crashed
2 into my truck, and when it happened, I thought he had
3 killed my friend Marie, Ms. Jordan. And he came out to my
4 window and threatened to F me up several different times,
5 and I was trapped in the truck. And it was this witness
6 behind me, young lady, God bless her soul, she came up and
7 told him they didn't hit you. You ran into them. And
8 then I thought that I was in pain and trying to get her,
9 but I couldn't reach her. And I tried to open the door to
10 get out and it was jammed, like I said. Mr. Green kept on
11 and on about how he was going to F me up. Look what I
12 did. I ran into his car, and he was in our lane the whole
13 time.

14 But, again, Mr. Green, these are the things that I
15 used, these curtain rods, to get dressed for about ten
16 months. My underwear, socks, and pants because of pain,
17 and I'm still with a limp today I didn't have until I met
18 you.

19 But I don't know what's going to happen here today,
20 but you definitely should not be behind nothing as far as
21 driving or to damage or hurt anybody else as far as I'm
22 concerned. And if you do still want to F me up, I would
23 like to meet you sometime in an alley, and we can settle
24 that there. But now it's out of my hands, in somebody
25 else's.

1 Thank you, Your Honor.

2 THE COURT: Yes, sir. Thank you.

3 Mr. Bailey?

4 MR. BAILEY: Thank you very much, Your Honor.

5 First of all, Your Honor, I've had this case for some
6 time. I've gotten to know Mr. Green, I've gotten to know
7 his wife Caroline for -- very well in about the last year
8 and a half. And I know Mr. Green feels deep regret for
9 what's happened to Mr. Edmonds and what's happened to the
10 other victim.

11 We've discussed the fact -- we've discussed the fact
12 that he yelled at Mr. Edmonds at the time of this
13 incident, and he feels bad for that, you know. From my
14 conversations with him, he feels very bad for that on top
15 of the incident that in the moment he was under shock,
16 adrenaline, he got into a car accident and he lashed out
17 at Mr. Edmonds. And he realizes that it was an extremely
18 highly inappropriate thing to do.

19 He certainly doesn't -- he feels bad about
20 Mr. Edmonds feeling threatened on top of already injured.
21 Clearly, Mr. Edmonds has been through a whole lot, and we,
22 in no way, want to one-up, take away from the severity of
23 what Mr. Edmonds went through.

24 Mr. Green has had some substantial health problems.
25 As I told you, he was shot by a man named Robert Graves in

1 November of 2014. I -- you know, he -- you know, he was
2 coalescing, he was hurting, he was in chronic pain, which
3 he says he still has. He -- that caused him, he says, to,
4 you know, consume more alcohol, to behave sort of more
5 irresponsibly. That obviously is not an excuse for -- you
6 know, for this, and he's certainly lucky that no one was
7 killed.

8 But I think it gives just general explanations. If
9 you look for answers, I think it explains why a man can do
10 something so careless, sort of so reckless. He was going
11 through a tough -- you know, a tough time.

12 He has other health problems. He's got a very large
13 cyst on his neck, which is probably pretty -- you know,
14 pretty visible in the court. They've been watching him in
15 Alvin S. Glenn, but no -- nothing other than just general
16 treatment has been sort of taken there. I know that it's
17 a mass. I believe it's a mass on one of his glands. It
18 makes it very hard for him to talk. You can kind of hear
19 him. He's a quiet talker. It makes it hard for him to
20 talk and hard -- and hard for him to swallow.

21 Getting to know him, he grew up in a house of alcohol
22 abuse. He was abused as a child. I know this happens to
23 a lot of people, but I -- he frequently has problems
24 communicating. He has kind of a standoffish personality.
25 But I've also seen the -- you know, I've seen good in him.

1 I've seen him be very appreciative to me trying to help
2 him.

3 He was diagnosed by the Department of Mental Health
4 records with posttraumatic stress back when he was in
5 there for almost two weeks in 1996. I'm not a
6 psychological expert, Your Honor, but, you know, the
7 screaming, the yelling, the erratic behavior would
8 certainly be sort of indicative of a mental health problem
9 here, Your Honor.

10 He has been working at Affordable Glass for some
11 time. When he does re-enter society, he has a job waiting
12 for him. He was told he had Affordable Glass where he has
13 worked on and off.

14 I'd like -- I'd like for you to hear from
15 Ms. Caroline Green, who is his wife, who'd like to sort of
16 speak on his behalf, Your Honor.

17 THE COURT: Okay.

18 MS. GREEN: Yes, Your Honor.

19 THE COURT: Yes, ma'am.

20 MS. GREEN: My name is Caroline Green.

21 And he's a lovable guy. He really is. He has
22 issues, and his issue is sometimes binge drinking. The
23 night that all of this happened, I was under a new
24 medication myself lying on the couch. He told me where he
25 was going. And -- but anyway, he can do some binge

1 drinking.

2 During the week -- I mean during the weekdays, he
3 mentors young teenage boys in our community that can't do
4 anything for themselves. He keeps their yards done, he do
5 Bible studies with them. He's an overall good guy.

6 Judge, I know my husband needs help with his
7 drinking, and I think a lot of it is -- just listening to
8 his rap sheet over the years, I think 90 percent of them
9 was alcohol related. And I ask you, Judge, to give him
10 the help that he needs.

11 THE COURT: How long have y'all been married?

12 MS. GREEN: We've been married a year and a half.

13 THE COURT: A year and a half?

14 MS. GREEN: Uh-huh.

15 THE COURT: So when did this happen?

16 MS. GREEN: We got married ---

17 THE COURT: Well, this is ---

18 MR. GOLSON: April ---

19 THE COURT: --- 4/25 of 2015.

20 MS. GREEN: This was before we was married. We were
21 dating when the accident happened. Is that what you're
22 asking me?

23 THE COURT: Yeah. I asked when you got married.
24 What's the date of marriage?

25 MS. GREEN: Oh, seven ---

1 THE COURT: No. You've got to -- you've got to
2 answer.

3 MS. GREEN: 7 -- 7/5/15 -- 7/3/15.

4 THE COURT: Was he in jail or out of jail?

5 MS. GREEN: He was out.

6 THE COURT: All right. Because this happened
7 4/25/2015.

8 MS. GREEN: Yes.

9 THE COURT: Well, how did he get back in jail then,
10 Mr. -- when did he go to jail?

11 MR. BAILEY: Your Honor, he was -- he was in jail for
12 about two days back in -- back in August of 2015, and then
13 he was -- he was rearrested on a domestic violence
14 case ---

15 THE COURT: No. He was -- I mean, this offense
16 occurred April the 25th, 2015. Was he arrested at the
17 scene?

18 MR. BAILEY: Yes.

19 THE COURT: Later on?

20 MR. BAILEY: He was arrested right after.

21 THE COURT: When did he get out?

22 MR. BAILEY: He bonded out I believe the next day.
23 And then -- yes, sir. He bonded out the next day. And
24 then when he was rearrested in September, he has -- he has
25 been in a total of 89 days since ---

1 THE COURT: So why was he put back in?

2 MR. BAILEY: His bond was revoked, Your Honor, when
3 he picked -- his bond was revoked, Your Honor, when he
4 picked up a domestic violence charge that actually ---

5 THE COURT: Against this (indicating) lady?

6 MR. BAILEY: Yes, Your Honor.

7 THE COURT: Oh.

8 MR. BAILEY: She may have something she would like to
9 say regarding that.

10 MS. GREEN: Yes. That Sunday when he was picked up,
11 he was ---

12 THE COURT: Well, you don't have to tell me about him
13 being picked up that Sunday. I'm just trying to get an
14 understanding of ---

15 MS. GREEN: Well, you wanted me ---

16 THE COURT: Go ahead. You say what else -- you've
17 got to wrap up what you want to say.

18 MS. GREEN: He was arrested on the domestic violence
19 charge.

20 THE COURT: You can say whatever you want to say
21 about whatever you want to say.

22 MS. GREEN: On that -- on that Sunday, he was
23 drinking early that morning, and he fell at the neighbor's
24 house. He fell and hit his head. He thought that my
25 daughter had pushed him, and he came out of the neighbor

1 house bleeding all over himself and swinging. I ran ---

2 THE COURT: Well, how long have you known him?

3 MS. GREEN: I've been knowing him two years prior to
4 marriage.

5 THE COURT: Okay.

6 MR. BAILEY: And Ms. Green says that that was an
7 accident when he hit her that time.

8 MS. GREEN: Yes, yes.

9 MR. BAILEY: That charge is being dismissed, Your
10 Honor, as part of him pleading to this. I don't want to
11 take up too much of your time, if you have any other
12 questions.

13 THE COURT: No, no. I'm just trying to get a quick
14 understanding of everything you're telling me and trying
15 to make sure I have them in the right context.

16 MS. GREEN: Right, right.

17 THE COURT: I didn't realize you were newlyweds.

18 MS. GREEN: Yeah.

19 THE COURT: Okay, well, thank you, ma'am.

20 MS. GREEN: Yeah. Your Honor ---

21 THE COURT: All right. Yes, ma'am.

22 MS. GREEN: --- I did want to address my health, too.
23 I apologize for the victim, and I'm very sorry for what
24 happened. But I'm on a lot of medication, too. I once
25 saved my dog that was there home with me. I'll tell you

1 that she died. I'm home alone. It's hard for me to keep
2 up with my own medication.

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

4 MS. GREEN: Thank you.

5 THE COURT: Mr. Green, what do you want to tell me?

6 DEFENDANT GREEN: Your Honor, I apologize for the
7 victim and being involved. I'm going to recognize
8 something. I did not mean to hurt you in no kind of way.
9 Do you understand? I feel in my heart that you don't have
10 -- if I wasn't drinking, it would have never occurred. I
11 know I shouldn't have got up under that wheel if I'd been
12 drinking. But I'm going to let it go. I have no hard
13 feelings. I have no anger towards him.

14 At that particular time, I was under the influence of
15 taking pills and drinking. I don't -- I don't hate nobody
16 in this room. I'm letting him know that, and I apologize,
17 because I was -- I was deeply wrong by drinking and
18 driving. And I have -- as I've been hearing the evidence
19 going, I'm going to classes, I have told people seriously
20 about drinking and driving. And I'm in -- I'm in class
21 now. I'm going through anger management and stuff like
22 that and AA.

23 I ask Your Honor to please take into consideration
24 that I did not plan on this, Your Honor. I've been out of
25 jail for ten years.

1 THE COURT: Well, if you'd planned it, it would be
2 attempted murder.

3 DEFENDANT GREEN: I -- I ain't ---

4 THE COURT: You're not charged with planning it.
5 You're charged with drinking and driving and causing
6 someone to be seriously injured. That's what you're
7 charged with, two counts.

8 All right. Thank you, sir. Anything else?

9 MR. BAILEY: Your Honor, just to add briefly,
10 Mr. Green has been incarcerated for 89 days. And that's
11 kind of important because he was in under two names. The
12 jail screwed up his first name and middle name at some
13 point. But I've calculated both of them.

14 Your Honor, his health is -- it's not -- you know,
15 the cyst thing, I'm still trying to figure out entirely
16 what's going on with it. The jail hasn't diagnosed it,
17 but he's been seen on and off. I think he still suffers
18 from chronic pain with his leg. I'd like that to be a
19 consideration, Your Honor, when you sentence -- when you
20 sentence Mr. Green.

21 You know, when Mr. Green and I spoke, obviously, he
22 had wanted something that would allow him to do sentence
23 outside of prison, you know, house arrest or weekend time
24 or something. I've explained to Mr. Green, you know, the
25 seriousness of the situation, how it can -- you know, and

1 that I think he's going to go to prison for some amount of
2 time.

3 Your Honor, I trust the judgment of the Court. I
4 would ask Your Honor to show -- to consider, you know, his
5 circumstances, his wife, his health and his apologetic
6 nature, Your Honor, when it comes to allowing him to
7 re-enter society when deemed, sir.

8 THE COURT: Well, Mr. Green, an automobile is a
9 deadly weapon depending on how it's used, and anyone who
10 is on the road is a potential victim when someone is
11 drinking and driving and being irresponsible. That's why
12 we have laws as they are. You've committed a serious
13 crime. You have a serious criminal history.

14 The sentence of the Court is that you be committed to
15 the State Department of Corrections for a period of
16 12 years. The sentence is concurrent. You're given
17 credit for 89 days.

18 MR. GOLSON: Thank you, Judge.

19 THE COURT: 12 years each count.

20 MR. BAILEY: All right. Thank you. Thank you, Your
21 Honor.

22 (End of transcript of record.)
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5
6 I, CHERYL A. SMITH, Official Court Reporter for the
7 Thirteenth Judicial Circuit of the State of South
8 Carolina, do hereby certify that the foregoing is a true,
9 accurate and complete Transcript of Record of the
10 proceedings had and evidence introduced in the trial of
11 the captioned case, relative to appeal, in the Court of
12 General Sessions for Richland County, South Carolina, on
13 the 7th day of December, 201, reported by Circuit Court
14 Reporter Crystal Holmes and transcribed by me.

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

17
18 June 10, 2019
19

20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2015-GS-40-04340,
2016-GS-40-04664

The State of South Carolina,)

vs.)

Elijah Green,)
Defendant.)

1 - 4340
MOTION TO RECONSIDER SENTENCE

TO: The Honorable Clifton Newman, Circuit Court Judge

cc: Assistant Solicitor Josh Golson

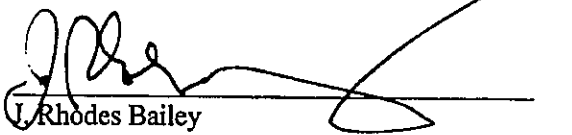
This matter comes on motion of Assistant Public Defender J. Rhodes Bailey, Attorney for the defendant, requesting that this Court reconsider the sentence imposed against the defendant on the indictments above on December 7, 2016.

It appears that the defendant was arrested on or about April 26, 2015 and charged with Felony driving under the influence, great bodily injury results. Defendant was later indicted on a second Felony driving under the influence, great bodily injury results, relating to the same incident.

It further appears that the Defendant pled guilty in front of The Honorable Clifton Newman on December 7, 2016 and was sentenced to twelve years and a \$5,000.00 fine on both charges, with the incarceration sentences to run concurrent.

The defendant respectfully requests that this Court reconsider the sentences imposed in this case. Should the Court grant a hearing in this matter, defense counsel is prepared to be available at whatever date and time the Court schedules it.

Respectfully submitted,


J. Rhodes Bailey
Assistant Public Defender
Attorney for the Defendant

Columbia, South Carolina

This *13* day of *December*, 2016.
JB

FILED
2016 DEC 13 PM 4:41
J. RHOES BAILEY
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2015-GS-40-04340,
2016-GS-40-04664

The State of South Carolina,

vs.

Michael Elijah Green,)
Defendant.)

CERTIFICATE OF SERVICE

I certify that on this date I served the Motion to Reconsider Sentence in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Josh Golson, by delivering said copy to The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with a clerk or other person of authority at said office.

Koaya Rutledge
Paralegal

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 3rd day of December, 2016.

2016 DEC 13 PM 4:44
FILED
FRANKLIN COUNTY
CLERK OF COURT
C.C.P. & G.S.
FRANKLIN COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The State of South Carolina,)
vs.)
Elijah Green,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

Indictment Numbers: 2015-GS-40-04340 *6184661415*
2016-GS-40-04664

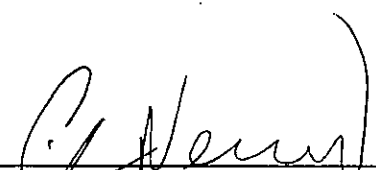
**ORDER DENYING MOTION TO
RECONSIDER SENTENCE**

THIS MATTER comes before the Court on Motion for Reconsideration filed by Defendant. This Court sentenced Defendant on the above referenced indictment on December 7, 2016.

Having carefully considered the arguments of counsel and applicable law, this Court finds that the Motion for Reconsideration should be DENIED and no hearing is necessary.

IT IS THEREFORE ORDERED that the Motion for Reconsideration is DENIED.

AND IT IS SO ORDERED.


Clifton Newman
Presiding Judge

January 24, 2017

RICHLAND COUNTY
FEB 1 2017
2017 JAN 31 PM 3:38
JEANETTE W. LEBRON
C.C.P. & G.S.

Handwritten mark

2017CP400

STATE OF SOUTH CAROLINA

County of

Richland County

In the Court of Common Pleas

2015 GS4004340

2016 GS4004664

APPLICATION FOR
POST-CONVICTION RELIEF

Elijah Green

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

vs.

State of South Carolina

Name of Respondent.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

Place of detention Trenton Correctional InstitutionName and location of Court which imposed sentence Richland County Judicial Center

The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

a) 2015 GS40 04340b) 2016 GS40 04664

c) _____

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

) 12-7-16) 12 years

5. Check whether a finding of guilty was made

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

NO

7. If you answered "yes" to (6), list

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

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

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

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

(c) the date of each such result:

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

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

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Because My Attorney Failed to tell me that I had a Constitutional
- (b) Right to Appeal the plea
- (c) _____

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

- (a) (1) Counsel failed to Investigate and failed to object to the Solicitors.
- (b) (2) Second offense when I was Pleaing to One D(I) and the Solicitor was charging me again
- (c) (3) Counsel's deficient performance prejudice the Petitioner; Making him ineffective

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Each Fact that support each ground will be set out at the
- (b) Evidentiary Hearing
- (c) _____

9 (D) Attorney failed to object to the Solicitors statement about prior time conviction, by the errors of Counsel the proceedings would be different.

(E) In by the Petitioners mental illness or a fundamental misunderstanding of the Attorney's role, by the Attorney failure to request a continuance constituted deficient performance (F) Counsel's failure to request continuance prejudiced defendant.

11. Prior to this application have you filed with respect to this conviction Yes

(a) any petition in a State Court under South Carolina Law? To Reconsider the Sentence

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) These issues CAN ONLY be Raised ON PCR. This is Petitioner's
- (b) Initial Review
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. J. Rhodes Bailey
1701 Main St
- ii. Columbia, SC 29210
- iii. _____

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

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

18. State clearly the relief you seek in filing this application.

Petitioner wishes to be exonerated of All charges Against Him

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

NO

STATE OF SOUTH CAROLINA

County of Richland County

VERIFICATION

I, Elijah Green

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.

Elijah Green Elijah Green
234770

SWORN to and subscribed before me this 22thday of February, 19 2017

[Signature]
Notary Public (L.S.)

My Commission Expires: October 7, 2024

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

I, Elijah Green

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 therefor.

Elijah Green
Applicant

Elijah Green
234770

2017 MAR -1 AM 10:53
JEANETTE M. MCBRIDE
C.C.P. & D.S.

RICHLAND COUNTY
FILED

SWORN or affirmed to and subscribed before me this

22th day of February, 19 2017

[Signature]
Notary Public

Commission Expires October 7, 2024



ALAN WILSON
ATTORNEY GENERAL

November 6, 2017

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
Post Office Box 192
Columbia, South Carolina 29202

Re: Elijah Green, #234770, v. State of South Carolina
2017-CP-40-1200

Dear Ms. McBride:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/fvh
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Elijah Green, #234770,	)	Case No.: 2017-CP-40-1200
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on March 1, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In August 2015, the Richland County Grand Jury indicted Applicant for felony DUI resulting in great bodily injury (2015-GS-40-0430). Applicant was subsequently indicted in July 2016 for another count of felony DUI resulting in great bodily injury (2016-GS-40-4664). The charges resulted from an April 2015 incident in which Applicant side-swiped a vehicle before colliding with a truck in another lane, causing significant injuries to the victims while under the influence. (Tr. p. 7). At the guilty plea hearing, the State noted that they were dropping an unrelated narcotics charge. (Tr. p. 2). Rhodes Bailey, Esquire of the Public Defender's Office represented Applicant. Assistant Solicitor Josh Golson, Esquire prosecuted the case. On December 7, 2016, Applicant pleaded guilty as indicted to both charges before the Honorable Clifton Newman. Judge Newman sentenced Applicant to imprisonment for twelve years for each of the charges, to be served concurrently, along with 89 days of credit for time

served. Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to investigate and failed to object to the solicitors."
 - b. "Counsel's deficient performance prejudiced [Applicant] making him ineffective assistance of counsel by the [officer] not reading his rights."¹
 - c. "Attorney failed to object to the Solicitor's statement about prior time conviction, [but for] the errors of counsel, the proceedings would have been different."
 - d. "By Applicant's mental illness or a fundamental misunderstanding of the attorney's role, the attorney fail[ed] to request a continuance [which] constituted deficient performance."
 - e. "Counsel's failure to request continuance prejudiced Applicant."
2. Involuntary Guilty Plea
 - a. "Second offense when I was pleading to one DUI and the solicitor was charging me again."²

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective

¹ Respondent interprets this to be an allegation that Plea Counsel should have addressed an issue regarding Applicant's Miranda rights.

² Respondent interprets this to be an allegation that Applicant's plea of guilty to two charges of felony DUI resulting in great bodily injury was not knowingly and voluntarily entered.

assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

One of Applicant’s ineffective assistance of counsel allegations raises a question of mental competence. Due process prohibits the conviction of a person who is mentally incompetent, and that

right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

In this case, the record supports the court's finding that Applicant was competent to plead guilty. (Tr. pp. 3-4). At the guilty plea hearing, Applicant testified that he agreed with the court's determination that he was competent. (Tr. p. 4). Furthermore, Applicant testified that he understood his rights as well as the charges against him. (Tr. p. 5). Plea Counsel also testified that he believed Applicant understood. (Tr. p. 4). In addition to both Plea Counsel's and Applicant's testimony that Applicant understood the proceedings, Applicant's extensive experience with the criminal justice process also weighs heavily in favor of Applicant being competent to plead guilty. At the time of his plea, Applicant had an extensive prior record from 1982 to 1996 which included but was not limited to voluntary manslaughter, three counts of first degree burglary, multiple counts of housebreaking, and multiple counts of grand larceny. (Tr. p. 8).

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

IV.

Respondent interprets the application to also allege that Applicant did not plead guilty knowingly and voluntarily. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial

admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, 376 S.C. at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, 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)). “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.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes any allegation that Applicant did not knowingly enter his guilty plea. At the guilty plea hearing, Applicant was advised of the charges and testified that he understood them. (Tr. p. 5). Plea Counsel also testified that he believed Applicant understood. (Tr. p. 4). Applicant was also advised of his rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (Tr. p. 5). Furthermore, Applicant testified he was pleading guilty because he was indeed guilty as charged, and was not promised anything in exchange for his guilty plea. (Tr. p. 3-5).

Respondent therefore submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

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

VI.

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

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

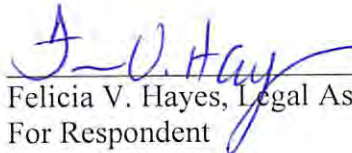
Nov. 6, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2017-CP-40-1200
	)	
Elijah Green, #234770,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
State Of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

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

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 6th day of November, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent



July 11, 2018

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
PO Box 2766
Columbia, SC 29202-2766

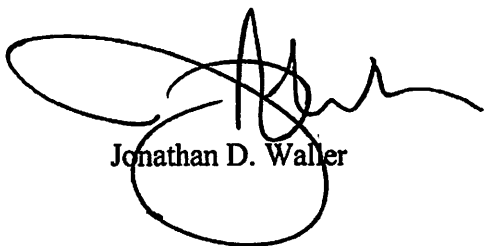
Re: Elijah Green vs. State of South Carolina
C/A No: 2017-CP-40-01200

Dear Madam Clerk:

Please find enclosed one (1) original and one (1) copy of Applicant's Amendment to Application for Post Conviction Relief in the above referenced case. Please file the original and return the clocked copy to me in the enclosed envelope. Please note that Post Conviction Relief matters are **EXEMPT** from the requirements of e-filing.

By copy of this letter I am serving same on counsel for Respondent. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

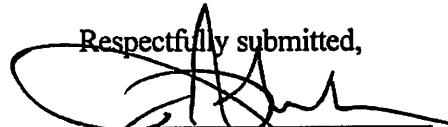
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Elijah Green, #234770,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2017-CP-40-01200
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on March 1, 2017, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by J. Rhodes Bailey, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into.
 - b. Counsel was ineffective for failing to properly investigate the injuries to the alleged victims in order to properly assess whether Applicant was properly charged.
 - c. Counsel was ineffective for failing to properly investigate the testing conducted of Applicant's blood and the facts and circumstances surrounding its taking.

- d. Counsel was ineffective for failing to object to the Richland County Solicitor's Office prosecuting Applicant's case while Applicant was a victim in a crime being prosecuted by the same office.
- e. Counsel was ineffective for failing to object to an improper recitation of Applicant's prior record during the sentencing portion of Applicant's plea.

Respectfully submitted,



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

July 11, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2017-CP-40-01200
COUNTY OF RICHLAND	)	
	)	
	)	
	)	
ELIJAH GREEN,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

August 20, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROGER E. HENDERSON, JUDGE

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

LINDSEY ANN McCALLISTER, ESQ.
Attorney for the Respondent

Transcribed by:
CHERYL A. SMITH
Circuit Court Reporter
from DCRP, Digital
Courtroom Recorder
Project

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(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:51 a.m.)

THE COURT: Yes, ma'am.

MS. McCALLISTER: May it please the Court. Your Honor, this is Elijah Green vs. The State of South Carolina, 2017-CP-40-1200. Your Honor, Mr. Green, in August of 2015, he was indicted by the Richland County grand jury for felony DUI resulting in great bodily injury. He was subsequently indicted in July of 2016 for a second count of felony DUI resulting in great bodily injury. The charges resulted from an incident in April of 2015 in which he sideswiped a vehicle before colliding with a truck in another lane causing significant injuries to the victims while he was under the influence.

Your Honor, at the guilty plea, an unrelated domestic violence charge was dropped in exchange for the plea.

He was represented at that hearing by Rhodes Bailey, and Assistant Solicitor Josh Golson prosecuted the case for the State.

He pleaded guilty on December 7, 2016, as indicted to both counts of the felony DUI. Judge Clifton Newman sentenced him to imprisonment for 12 years on each charge to be served concurrently. He did not appeal the conviction or sentence; however, he did timely file this application for postconviction relief on March 1, 2017.

1 Mr. Jonathan Waller has been appointed to represent
2 Mr. Green. Both Mr. Green and Mr. Waller are present in
3 the courtroom today.

4 Your Honor, Mr. Waller has -- since Mr. Green filed
5 his original application, Mr. Waller has filed some
6 amendments, so I would just ask him to sort of enumerate
7 or clarify which allegations we're going forward on.

8 THE COURT: Mr. Waller?

9 MR. WALLER: Thank you, Your Honor. May it please
10 the Court. Judge, I filed amendments back in July,
11 goodness, it might have been July of last year, Judge.
12 But we've -- in addition to the allegations raised by
13 Mr. Green, after meeting with him after investigating the
14 case, Judge, we have allegations that counsel Rhodes
15 Bailey was ineffective for failure to properly investigate
16 the facts and circumstances surrounding the allegations
17 against Mr. Green and that resulted in his plea being
18 unknowingly and involuntarily entered into; that
19 Mr. Bailey was ineffective for failing to properly
20 investigate any injuries to the alleged victims or
21 improperly assess whether he was -- Mr. Green was properly
22 charged; that Mr. Bailey was ineffective for failing to
23 properly investigate the testing done of the applicant's
24 blood, Mr. Green's blood, and the facts and circumstances
25 surrounding its taking; that Mr. Bailey was ineffective

1 for failing to object to the Richland County Solicitor's
2 Office prosecuting the case as Mr. Green was a victim of a
3 crime that was being prosecuted at the same time that he
4 was being -- that he was being prosecuted; and that
5 counsel was ineffective for failing to object to improper
6 recitation of Mr. Green's prior record during the
7 sentencing portion of his plea.

8 So those are the allegations we're proceeding
9 forward.

10 THE COURT: All right, sir. Okay.

11 MR. WALLER: Your Honor, at this time the applicant
12 would call Elijah Green.

13 WHEREUPON,

14 ELIJAH GREEN,

15 After having been duly sworn, testified as follows:

16 THE CLERK: Thank you. Have a seat in the witness
17 stand, please.

18 THE COURT: Mr. Green, please speak loudly and
19 clearly when you respond to the questions, and answer
20 questions with a "yes" or "no" response. Don't say
21 "hu-uh" or "uh-huh," understand?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay.

24 THE CLERK: Would you state your name for the record,
25 please.

1 THE WITNESS: My name is Elijah Green.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q All right. Good morning, Mr. Green. How are you
6 today?

7 A Under the circumstance, I thank God to be alive. I'm
8 all right.

9 Q Yes, sir. All right. Mr. Green, I want to go back
10 to when you were -- when you got in this accident, you
11 were arrested. Do you remember that?

12 A Yeah. I remember. Yes.

13 Q Do you remember the -- what was going on in your life
14 other than that? Anything? Were you hurt?

15 A At that particular time, I was -- I was shot in both
16 of my legs. I'm going through -- trying ---

17 Q So you were shot in both of your legs.

18 A Yes, sir.

19 Q Okay. And who shot you?

20 A Mr. Robert Gray.

21 Q Okay. Was Mr. Gray -- to your knowledge, was
22 Mr. Gray prosecuted for that?

23 A He was prosecuted for it. I went and talked to
24 Ms. Nicole Simpson, I think that's her name, at the
25 solicitor's office. I had talked to her pertaining to

1 this issue about Mr. Gray. And they had told -- she had
2 told me -- well, when we talked -- and when we talked, my
3 wife was also with me when we -- when we had talked with
4 Ms. Simpson.

5 Q Okay. Did you ever talk to anyone else from the
6 solicitor's office, anybody, a victim advocate or anything
7 like that?

8 A I really can't -- I really can't recall that.

9 Q Okay. Were you -- did Mr. Gray go to trial? Did he
10 plead guilty? Do you know what the outcome of his charges
11 were?

12 A When I went to the solicitor's office, I had -- they
13 had talked to me, and they asked me how -- what I was
14 going to do pertaining to the issue because Mr. Gray had
15 shot me. And they said, well, how I feel, and I told them
16 how I feel, and I worked with the solicitor's office
17 pertaining to Mr. Gray threat -- threatening a murder
18 charge on me.

19 Q Okay. When you got in this car wreck, all right, was
20 -- do you know if Mr. Gray's charges had been resolved at
21 that point or were they still pending?

22 A They were still pending, if I recall.

23 Q Okay. Had you -- closer in time to the car wreck,
24 had you been in contact with anybody at the solicitor's
25 office, Ms. Simpson or anybody else?

1 A I was in contact, a victim advocate, something like
2 that. And they were telling me about, you know,
3 pertaining to, you know, what benefit me because I was the
4 victim of a -- of a hostile crime.

5 Q Okay. All right. I want to forward a little bit to
6 the actual car wreck itself. Okay. When you were in that
7 wreck, did you -- did you go to the hospital or did you go
8 straight to jail after you were arrested?

9 A I went to the hospital.

10 Q Okay. What were -- what were your injuries? Do you
11 remember?

12 A I had something on my throat, a lump on my throat.
13 But I went through surgery. I had a big lump on my
14 throat, and I think I had like a big knot in the back of
15 my head.

16 Q All right. Now, that lump on your throat, was that
17 related to the car accident or was that something you had
18 going on before?

19 A It -- it had been increased when I -- what I mean, it
20 was small, but after -- when I got in the car wreck, it
21 had grown after that.

22 Q Okay. So you had -- you already had some sort of
23 medical issue on your -- on your neck.

24 A Yes, sir.

25 Q And then after you got in the car wreck, it got

1 worse.

2 A Yes, sir.

3 Q But it was there before.

4 A Yes.

5 Q Okay. All right. When you were -- when you were
6 arrested, how long after you were arrested did you get a
7 lawyer?

8 A Probably about six months to nine months, something
9 like that.

10 Q Okay. Do you remember who that was?

11 A Mr. -- Mr. Bailey, Rhodes Bailey.

12 Q All right. When you and Mr. Bailey -- do you
13 remember when y'all first met?

14 A Bailey told me to come to his office. It had been
15 about -- about six -- about six, seven months after this
16 crime had taken place.

17 Q Okay. And you were out. You weren't in the county
18 detention center.

19 A No. I was out. I was out on bond.

20 Q Okay. All right. When you and Mr. Bailey met, do
21 you remember what y'all talked about?

22 A (Indiscernible) tell him about how I had talked to
23 Ms. Simpson pertaining to the issue of the solicitor's
24 offer, that, you know, I asked him what they going to do
25 because I feel I hadn't told -- she had asked me was -- I

1 had a pending charge pertaining ---

2 MS. McCALLISTER: Your Honor, I just -- I would
3 object to anything that he says Ms. Simpson told him.

4 THE COURT: I agree.

5 MS. McCALLISTER: I -- I understand that he's -- he's
6 alleging they had some conversations, but the substance of
7 the conversations I would object to.

8 THE COURT: All right. I agree. I'll sustain the
9 objection.

10 BY MR. WALLER:

11 Q All right. Mr. Green, did you and Mr. Bailey discuss
12 that you were -- that you were a victim of a crime?

13 A Yes.

14 Q Okay. What -- what was your understanding of how
15 that would affect your current charges, the DUI charges?

16 A Since I helped out in this -- in this crime, the
17 victim of this crime, I helped out in the solicitor
18 office, I feel like it going to help me on the charge
19 right here.

20 Q So that's what you thought based on your
21 conversations, or did you just think that's what should
22 happen?

23 A Based on conversation I talked with the solicitor.

24 Q Okay. All right. When you and Mr. Bailey met, did
25 y'all -- what did y'all talk about about these two DUI

1 charges?

2 A He said I had one DUI charges at that time.

3 Q Okay. Did he explain why you only had one?

4 A Because he said the solicitor want me to plead guilty
5 to this once -- one charge, DUI charge.

6 Q Okay. Did you and Mr. Bailey discuss the potential
7 penalties of the DUI charge?

8 A No. We never discussed the penalty. I -- he was
9 saying, well, if I plead guilty to this one charge, the
10 other charge won't be brought against me.

11 Q Okay. Did y'all discuss the evidence the State had
12 against you?

13 A He just said that the doul State charge me with DUI.
14 We wouldn't -- wouldn't get in full detail on discussing
15 it.

16 Q Okay. Did y'all discuss the elements of felony DUI
17 with great bodily injury, what the State would have to
18 prove and show for you to be convicted of that?

19 A He told me I had a DUI of great bodily injury. He
20 wouldn't full detail of it.

21 Q Okay. Did y'all discuss your constitutional rights?

22 A He asked me did they read my constitutional right
23 when I was at the hospital. I told him they did not read
24 me my constitutional rights.

25 Q Okay. There was -- your blood was tested in this

1 case. Did you and Mr. Bailey discuss the testing of your
2 blood, how it was taken from you and the results of that
3 test?

4 A We did not discuss nothing like that.

5 Q Okay. Did you -- you obviously found out, you know,
6 what your blood alcohol level was.

7 A Once again, Mr. Bailey said I was charged with DUI.
8 If I didn't plead guilty to this one charge, the solicitor
9 going to bring the other charge against me. That's what
10 he told me.

11 Q Okay.

12 A He did not went into full detail of the investigation
13 of my blood level, the witness -- what happened to the
14 witness and that.

15 Q Okay. You obviously pled guilty to two counts of
16 felony DUI. What -- what changed?

17 A I didn't want to plead guilty to (indiscernible)
18 count because I really didn't fully knew, you know what
19 I'm saying? Because they said they're going to drop a
20 charge. First they say they were going to drop, say, a
21 domestic charge. I really didn't know that if they're
22 going to tell (indiscernible) is going to like have the
23 judge thinking like that I'm a bad person in
24 (indiscernible) stuff like this. I thought they would
25 say, well, we're going to drop the domestic charge. But

1 then he said was it the first degree, second degree or
2 third degree domestic charge? Was it my first offense or
3 second offense? Since they didn't say what defense [sic]
4 it was and how bad the domestic charge was, I felt like
5 that kind of mislead the judge, you know what I'm saying,
6 at the time of the charge.

7 Q So you had an unrelated domestic violence charge; is
8 that right?

9 A That's what they said. Not -- not -- that was not
10 told to the judge. What was told to the judge is when I
11 got this first transcript, on the first transcript in
12 front of the judge, they said I had a narcotic charge.
13 This is what was said. And this is what was -- this is
14 what was said on that. And they gave me the return from
15 the solicitor's office. He said the same thing, that I
16 had a narcotic charge. Then they brought me the
17 transcript from -- from the same trial date and
18 everything. Then they said it was a domestic charge.

19 Q Okay. Mr. Green, you remember the trouble we had
20 with the transcript in this case; is that right?

21 A Yeah. Of course I do.

22 Q Okay. So Judge Henderson understands, you didn't
23 have a pending drug charge that was dropped; is that
24 right?

25 A Yep. Yes. I did not have a pending drug charge.

1 Q Okay. Just to be clear. So that second transcript
2 that we have that Judge Henderson has a copy of is
3 accurate; is that right?

4 A Pertaining to the issue of this transcript, the
5 transcript is not accurate according to the first
6 transcript due to the circumstance of the situation that
7 they had said from narcotic charge. If you go to a judge
8 and say it was a narcotic charge, you already made that
9 statement. That's already in the judge mind. That is
10 misleading the judge to a certain degree that you don't
11 know what the narcotic is. You don't know if it was
12 marijuana, heroin, cocaine or what kind of pills or
13 something, if it was a plain, simple marijuana charge for
14 this narcotic charge. The narcotic charge happened in
15 1985. This -- this -- this was ---

16 Q Hold on. Hold on, Mr. Green. Mr. Green, hold on.

17 A Yeah.

18 Q You didn't have any pending narcotics charge; is that
19 right?

20 A Yeah. That what I'm saying.

21 MR. WALLER: Judge, the transcript that is certified
22 on June 10th of 2019 is the one that is corrected. Judge,
23 I believe that we're in agreement that that is accurate.

24 MS. McCALLISTER: Correct.

25 MR. WALLER: And the first one is very inaccurate.

1 MS. McCALLISTER: I didn't -- I didn't put the first
2 one in the packet, only the corrected -- he only has the
3 corrected one.

4 MR. WALLER: Okay.

5 THE COURT: Yeah. I only have one transcript.

6 MR. WALLER: Okay. The transcript you have is
7 accurate, Your Honor.

8 BY MR. WALLER:

9 Q Okay. All right. Mr. Green, ultimately, you ended
10 up pleading guilty. What did you and Mr. Bailey talk
11 about that led you to plead guilty?

12 A Mr. Bailey told me and my wife at that particular
13 time that since I have helped out the solicitor, things
14 should be in my favor, the solicitor office should help
15 out me. That's what I -- that's who I really thinking,
16 you know, how he told my wife. If I knew I was going to
17 get 12 years, I wouldn't have plead guilty to this charge.

18 Q Would you have gone to trial?

19 A Yeah. I would have went to trial because you ain't
20 got no more 15 years (indiscernible) three more years. I
21 would have -- I would have took my chance at a trial.

22 Q Okay. Did y'all discuss at all about the
23 circumstances surrounding how your blood was taken from
24 you?

25 A We did not discuss the witness or how my blood was

1 taken [sic] or what -- what was taken from the
2 witness ---

3 Q Okay.

4 A --- or what was taken from me.

5 Q Did y'all discuss the injuries that both of the
6 victims had that led to the other charges?

7 A Only time I heard what the injury was to the victim
8 was when the solicitor had stated in the trial.

9 Q Okay. Did y'all discuss -- you said you thought it
10 would help you that you were a victim of a crime at the
11 same time you're being prosecuted, or Mr. Bailey told you
12 that; is that right?

13 A Due to the circumstances that I was a victim of a
14 crime and I had the solicitor's office out, I -- I was
15 really thinking the solicitor's office going to help me
16 out on this charge.

17 Q Okay. Did you ask -- did you ever ask Mr. Bailey if
18 it was okay for you -- for them to be sort of representing
19 you as a victim but also prosecuting you as a defendant?

20 A Personally, I can't really recall that I -- that I
21 said that.

22 Q Mr. Green, I think I've asked you all the questions
23 that I have for you. Is there anything you think I've
24 left out that Judge Henderson needs to be aware of with
25 Mr. Bailey's representation of you or the solicitor's

1 office in prosecuting your case or as a victim?

2 A With all due respect, I feel like when it come to my
3 mental, I was diagnosed for posttraumatic syndrome in
4 1996, and I felt like they should have been -- and when
5 they had me to that competent test, that mental competent
6 test, I feel like the judge should have read the whole
7 mental evaluation so he can get a -- more of who I'd be,
8 you know what I'm saying ---

9 Q Okay.

10 A --- on a mental level. And at the time I was so in
11 trauma doing with -- when I got shot, I was still under
12 trauma and distress. Man, I'm all kind of really messed
13 up at the time of the trial.

14 Q Okay. How long -- how long after you were shot did
15 this accident happen?

16 A I'd say within, what, six months, something like
17 that.

18 Q You were shot in November of 2014; is that right?

19 A Yeah.

20 Q Okay. And this -- the accident happened in April?

21 A April, yes.

22 Q So pretty short amount of time.

23 A Yeah. About six months.

24 MR. WALLER: Okay. All right. Mr. Green, I don't
25 have any further questions for you. Please answer any

1 questions Ms. McCallister has.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: Ms. McCallister.

4 MS. McCALLISTER: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MS. McCALLISTER:

7 Q Okay. Mr. Green, you -- you testified just a minute
8 ago, and I want to make sure that I understood exactly
9 what you said. You testified that you didn't really --
10 you and Mr. Bailey did not really discuss sort of the
11 elements of these charges, what the State would have to
12 prove against you or what evidence they had against you,
13 correct?

14 A We discussed it, but we ain't discuss it in full
15 detail, you know.

16 Q Okay, okay. When you say you didn't discuss it in
17 full detail, what do you mean by that?

18 A I'm saying, you know, how you go in and investigate a
19 case and tell you about what the witness you got this, and
20 then what was on a -- how much -- when -- what was in the
21 witness' blood screen, how much was in my blood screen.
22 Well ---

23 Q Okay. So you didn't -- you didn't -- your testimony
24 is that you didn't talk to Mr. Bailey about the results of
25 your blood tests and what your blood alcohol level was?

1 A We did not talk in full detail about how this would
2 affect my -- my judgment of this case.

3 Q Okay. Did he tell you what the results of the blood
4 test was on you?

5 A I really can't say.

6 Q Okay. And you're saying -- you mentioned witnesses.
7 You didn't talk about what any witnesses had seen?

8 A He didn't really -- when he came to the witnesses, he
9 said I had like two witnesses against me, the one who been
10 involved.

11 Q Okay.

12 A Okay. Then I would tell him about how long they --
13 he wouldn't tell me how long they stayed in the hospital
14 or what was the result of their injuries, you know what
15 I'm saying?

16 Q Okay. So he didn't discuss with you how long the
17 victims in the case were hospitalized and what injuries
18 they had.

19 A Yeah.

20 Q You're saying -- you're saying Mr. Bailey did not
21 talk about that with you.

22 A He did not. And he did not tell me about that, you
23 know.

24 Q Okay. Did you -- did you ever ask him about that?

25 A I asked him, because due to the point that they was

1 saying they going to add on another charge. But here I've
2 got this paper right here, and they add on -- they had add
3 on this other DUI in July.

4 Q Okay.

5 A You know what I'm saying? I was saying that how can
6 they add on? What kind of puzzle me with all this happen
7 at the same day, and they going to wait because I did not
8 plead -- I would not plead guilty to one charge, how can
9 you kind of -- to me, that like you push me, you forcing
10 me to plead guilty to this one charge because you've got
11 this other charge over my head saying if I don't plead
12 guilty, that they going to bring me another charge. That
13 kind of confused me.

14 Q Okay. So just to be clear for the judge, there were
15 two people in the car that were injured, correct?

16 A I really -- I'm saying I -- I don't really ---

17 Q Okay.

18 A I don't really know.

19 Q You don't know.

20 A No. No, ma'am. I do not know.

21 Q Okay. And so your testimony is then that you -- you
22 ended up deciding to plead guilty because of the second
23 charge? Or why did you end up deciding to plead guilty?
24 I don't want -- I don't want to put words in your mouth.

25 A Due to the fact my lawyer, he was telling me, he

1 said, well, you plead guilty, you're going to help the
2 solicitor out, you know what I'm saying? You're going --
3 you ain't going to get -- really what he told my wife, he
4 said I'm going to get three to five years. That's what me
5 and my wife been thinking.

6 Q Okay. That was Mr. Bailey who said ---

7 A That's what -- that's what was discussed between me
8 and Mr. Bailey and my wife.

9 Q Okay. Did he promise you that or did he tell you he
10 thought that's what you could get?

11 A Due to the fact I help the solicitor off, I thought
12 he should know.

13 Q Okay. You recall the day of the plea and going in
14 the courtroom in front of Judge Newman?

15 A Not a hundred percent.

16 Q Okay. You've -- you've seen a copy of your
17 transcript, though, correct, the new one, the corrected
18 one?

19 A This -- you could have -- this kind of got me
20 puzzled, because if you've got a transcript saying -- two
21 transcript, one saying one thing and one saying another
22 thing, how do you know which one is the truth?

23 Q Okay. Can you -- would you please just answer my
24 question. Do you have a copy of the corrected transcript
25 from June of 2019? Have you seen it?

1 A I don't know which one corrected.

2 Q The one -- do you have a copy of a transcript in
3 front of you?

4 A Yes, ma'am. I got -- I got -- I got a transcript, a
5 new one and an old one.

6 Q Okay. The one that is dated June 10th of 2019, do
7 you have a copy of that in front of you?

8 A Yes, ma'am.

9 Q Okay. In that transcript, you agree with me that
10 that transcript reflects that you came in front of Judge
11 Clifton Newman, and he answered some -- he asked you some
12 questions and you answered some questions back to him,
13 correct?

14 A No. I really don't agree with this one. I -- I
15 don't agree with this transcript right here.

16 Q Okay. You don't agree with the transcript, but you
17 -- do you recall that happening?

18 A No.

19 Q You don't recall ever going in front of the judge?

20 A No. I -- I really don't -- I really -- because they
21 saying one thing. I really ain't got no full
22 understanding.

23 THE COURT: Sir, what's the last thing you said?

24 THE WITNESS: Sir?

25 THE COURT: What's the last thing you said?

1 THE WITNESS: What the last ---

2 THE COURT: I didn't understand you.

3 THE WITNESS: I said I feel because of these -- this
4 transcript, as I read, Your Honor, with all due respect,
5 Your Honor, I don't know what transcript really did said
6 and I am defending myself on, because I have two
7 transcripts. You've got one transcript. I've got two
8 transcripts.

9 THE COURT: Are you disputing both of the
10 transcripts?

11 THE WITNESS: No -- no -- no, sir. I'm not disputing
12 both of the transcripts, sir.

13 THE COURT: Well, they indicated to you, and your
14 attorney has agreed that the most recent transcript is the
15 accurate transcript, correct, Mr. Waller?

16 MR. WALLER: That's correct, Your Honor.

17 THE COURT: And that's the one -- I don't have a date
18 on mine. You said it's dated July the ---

19 MS. MCCALLISTER: I think the court reporter signed
20 it July 10, 2019. It's the one that's signed by Cheryl
21 Smith. The first one was done by a different reporter.
22 That should be the one that you have, Your Honor.

23 THE COURT: All right. The one I have is by Cheryl
24 Smith. Do you have the one by Cheryl Smith?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Do you understand that
2 everybody stated that that's the correct transcript?

3 THE WITNESS: I understand what you're saying.

4 THE COURT: Okay. So you can discard the first one
5 if you've got two transcripts in front of you. We're
6 working off the Cheryl Smith transcript. And that's the
7 one Ms. McCallister is questioning you on. Just set aside
8 the first one if you've got two in front of you. Have you
9 got the Smith transcript in front of you?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. That's the one we're using.

12 MS. McCALLISTER: Thank you, Your Honor.

13 BY MS. McCALLISTER:

14 Q Okay. So, Mr. Green, the transcript that was
15 prepared by Ms. Cheryl Smith reflects that you were in
16 front of Judge Clifton Newman for a plea, and he went and
17 he asked you some questions about your case and about the
18 representation of Mr. Bailey. You agree with me that that
19 transcript at least reflects that that happened, correct?

20 A Yes, sir -- yes.

21 Q Okay. And at that time Judge Newman told you that
22 the sentencing range for this charge, that he could
23 sentence you anywhere from 30 days to 15 years, correct?
24 Do you see that on page 6?

25 A Yes.

1 Q Okay. And you told him -- on page 6 it reflects that
2 you said you understood that, correct?

3 A Yes.

4 Q Okay. And then the next question that he asked you
5 was whether anyone had promised you anything to get you to
6 enter this -- that guilty plea, and you -- you told him
7 that no one had, correct?

8 A At that particular time, right? I didn't understand
9 what he mean by promising me something. (Indiscernible)
10 my -- my lawyer had told me only going to get three to
11 five years.

12 Q Okay. At any point did you tell Judge Newman of your
13 expectation that you were only going to get three to five
14 years?

15 A Nope.

16 Q Okay. And you spoke to the judge several times,
17 correct? At least twice you kind of spoke up and
18 explained yourself, correct?

19 A If you go back to page -- page 5 on line 17, it says,
20 "Defendant Green: No verbal answer." Some things I did
21 not answer at that particular time because I really fully
22 didn't understand.

23 Q Okay, okay. But you -- do you recall speaking to the
24 judge and sort of telling him what had happened and then
25 telling -- you know, kind of apologizing to the victims?

1 Do you remember doing that?

2 A I tried to explain myself to the judge and apologize,
3 because really, this issue right here I really didn't go
4 out and, say, planned this or nothing. It just happened.

5 Q Right.

6 A You know what I'm saying?

7 Q And the judge gave you a chance to explain that,
8 correct? He gave you a chance to talk.

9 A At the particular time, I was still -- I was still
10 like in trauma because of my gunshot wound.

11 Q Okay. And your attorney explained to the judge about
12 your gunshot wound and the fact that you were still in
13 pain and you were still dealing with that, correct?

14 A Yes.

15 Q Okay, okay. And you -- you mentioned, I think, to
16 Mr. Waller that you were shot in November of 2014 and then
17 this car accident occurred in April of 2015, correct?

18 A Yes.

19 Q Okay. And you -- you were charged pretty immediately
20 after the accident, correct? At least with the first
21 charge.

22 A Yeah. They gave -- they gave me a ticket on the --
23 on the first charge.

24 Q Okay. And I think you testified to Mr. Waller that
25 the prosecution of Mr. Gray who shot you was still ongoing

1 at the time that the accident occurred; is that right?

2 A Yes.

3 Q Okay. But by the time you pleaded guilty in December
4 of 2016, the case with Mr. Gray had been resolved,
5 correct?

6 A I don't know. I can't say that.

7 Q You don't know? Okay.

8 A No, ma'am.

9 Q He didn't go to trial, did he?

10 A I'm saying I don't -- truly, I really don't know.
11 Pertaining to the only thing I know that when the
12 solicitor talked to me pertaining to Mr. Gray, we had
13 talked, and they wrote down some notes and stuff like
14 that. I don't know what his trial day was or what -- what
15 -- what happened at his trial.

16 Q Okay. Maybe I should -- that's a bad question. You
17 didn't testify at a trial for Mr. Gray, did you?

18 A I wrote a statement on his -- on his -- on his part.
19 What I mean by that, I told him that I had forgave him,
20 and I feel like he shouldn't be incarcerated because he
21 was in a wheelchair.

22 Q Okay. But you didn't go to court and testify ---

23 A No, ma'am.

24 Q --- at a trial? Is that a no?

25 A That's -- I said no, ma'am.

1 Q Okay. And you -- but you -- your testimony is you
2 just don't know when that -- when his case was resolved.

3 A No, ma'am.

4 MS. McCALLISTER: Okay. Beg the Court's indulgence,
5 Your Honor.

6 THE COURT: Yes, ma'am.

7 BY MS. McCALLISTER:

8 Q In exchange for your guilty plea to these charges,
9 the State did end up dropping a domestic violence charge
10 against you, correct?

11 A If you're saying -- what I'm saying is this, like if
12 you're going to say you dropping a domestic violence
13 charge, you ain't said what degree it was. Was it first
14 degree, second degree, third degree or how many time I had
15 went up for the domestic violence charge. Was it my first
16 domestic violence charge or my second or my third domestic
17 violence charge? They had -- the -- I mean, they -- the
18 lawyer had the judge thinking like, well, it probably --
19 if it was a simple domestic violence charge, that ain't
20 but 30 days. But how we left the -- well, he did not
21 explain the domestic violence charge, that feel like to me
22 he misled the judge in thinking that it was the worst
23 domestic violence charge.

24 Q Okay. Did you have more than one domestic violence
25 charge at the time?

1 A No, ma'am.

2 Q Okay.

3 A I ain't never had no domestic violence charge on my
4 record.

5 Q You had one pending domestic violence charge at the
6 time you entered your guilty plea, correct?

7 A Well, as a -- as I've got it right here -- let me
8 see. I've got some paperwork where the person who I had
9 the domestic violence charge went to the solicitor office
10 and dropped the charge.

11 Q Well, and do you agree with me that your -- your wife
12 indicated that she was the victim of the domestic violence
13 charge ---

14 A Yeah.

15 Q --- and that she said that it was an accident and
16 that -- and that -- at the plea she told that to the
17 judge, correct?

18 A She did not have to go to no hospital, no marks were
19 on her.

20 Q Right.

21 A As the police report, anybody could see that it
22 really wasn't no -- no reason for me to have the domestic
23 violence charge.

24 Q Okay. And -- and that was explained to the judge,
25 and that was the charge that was dropped in exchange for

1 your plea, correct?

2 A But it's still misleading the judge when he said he
3 did not know what degree of the domestic violence charge
4 was.

5 MS. McCALLISTER: Okay. Your Honor, I think that's
6 all the questions I have for Mr. Green.

7 THE COURT: Mr. Waller?

8 MR. WALLER: Just very briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. WALLER:

11 Q Mr. Green, Ms. McCallister asked you about when
12 Mr. Gray's charges were resolved. Were Mr. Gray's charges
13 still pending while your charges were pending at any time?
14 Did they overlap?

15 A Yes.

16 MR. WALLER: Okay. Nothing further. Thank you.

17 THE COURT: Anything else, Ms. McCallister?

18 MS. McCALLISTER: No, Your Honor.

19 THE COURT: You can step down, Mr. Green.

20 MR. WALLER: Judge, I would call Josh Golson, Joshua
21 Golson.

22 WHEREUPON,

23 JOSHUA GOLSON,

24 After having been duly sworn, testified as follows:

25 THE CLERK: Thank you. Have a seat in the witness

1 Stand, please. State your name for the record.

2 THE WITNESS: Joshua Golson.

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q Good morning, Mr. Golson. How are you?

6 A Good. How are you?

7 Q Doing well.

8 Mr. Golson, where do you work currently?

9 A Presently I work at the Morrison Law Firm here in
10 Columbia.

11 Q Where did you formerly work?

12 A Here at the Richland County Solicitor's Office.

13 Q Were you the prosecutor on the July charges against
14 Mr. Green?

15 A I was.

16 Q Did you -- at the time you were prosecuting cases,
17 did you have any knowledge of he was a victim of a crime
18 at the time he was being prosecuted?

19 A At the time the -- the ---

20 Q While you were prosecuting him, were you also aware
21 that he was a victim of a case being handled by your
22 office as well?

23 A Not that I recall in terms of any overlap. I think I
24 found out about it at the end.

25 Q Okay. Did you have any discussions with Ms. Nicole

1 Simpson regarding Mr. Green or Mr. Henry Gray.

2 DEFENDANT GREEN: Robert Gray.

3 BY MR. WALLER:

4 Q Robert Gray. I apologize.

5 A I don't -- we never discussed the case while she was
6 prosecuting Mr. Gray that I can recall.

7 Q Okay.

8 A I'm confident of that.

9 MR. WALLER: Beg the Court's indulgence, please.

10 THE COURT: Yes, sir.

11 (Pause in proceedings.)

12 MR. WALLER: Thank you, Mr. Golson. I have no
13 further questions.

14 MS. McCALLISTER: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, ma'am.

17 (Pause in proceedings.)

18 MS. McCALLISTER: Your Honor, I don't think I have
19 any questions for Mr. Golson.

20 THE COURT: All right. You can step down,
21 Mr. Golson. Thank you.

22 (Pause in proceedings.)

23 MR. WALLER: Your Honor, I guess just for some
24 background and to clarify, the first transcript that we
25 keep talking about, Judge, it had transposed what

1 Mr. Golson and Mr. Bailey had said, you know. It
2 attributed something to Mr. Golson that Mr. Bailey said
3 and vice versa. The charges being dropped against
4 Mr. Green were listed as a narcotics charge when it was
5 actually a domestic violence charge. Mrs. Green,
6 Ms. Caroline Green was not even listed in the transcript,
7 and she -- she spoke on her husband's behalf. So there
8 were some serious errors.

9 MS. McCALLISTER: The victim as well. The victim's
10 testimony that he gave was essentially just all -- she
11 said it was inaudible, but now -- so now we have that as
12 well. So those were kind of the four, I think, major
13 things.

14 MR. WALLER: Correct. Judge, I mean, this was
15 obviously a felony DUI plea that was -- you know, they're
16 always emotionally charged. And it was a very, very short
17 transcript because entire sections were left out. Just so
18 you know some of the background.

19 Judge, I think we're out of witnesses for a few
20 minutes. If we -- I think it might be best if we take a
21 break.

22 THE COURT: How many more witnesses do you have,
23 Mr. Waller?

24 MR. WALLER: I just have one more witness today, Your
25 Honor. And then the issue with the unavailable witness

1 that we're going to have to either come back later this
2 week or -- or depose. But just one more today: the
3 defense counsel, Rhodes Bailey.

4 THE COURT: Okay.

5 MS. McCALLISTER: Yes.

6 THE COURT: Ms. Simpson is the one who is
7 unavailable, right?

8 MR. WALLER: Yes, sir.

9 MS. McCALLISTER: Yes. Mr. -- Mr. Bailey is doing
10 pleas this morning, but he knows to come up here as soon
11 as he's finished. Ms. Simpson is in trial as far as I
12 know. I did email her this morning, and she hasn't
13 answered me yet. So I assume that's because she's -- her
14 trial actually went forward and she's in trial this
15 morning.

16 THE COURT: Okay. All right.

17 MS. McCALLISTER: So we can try to locate -- I'll --
18 I can call Mr. Bailey and maybe get an ETA on him. And
19 then we have -- we also have that one motion. That inmate
20 should be here shortly. So if we could just take a break.
21 But we will have Mr. Bailey to testify today.

22 THE COURT: Okay. All right. We'll take a short
23 break. Just let me know whenever we're ready to proceed.

24 (WHEREUPON, proceedings concluded at 10:33 a.m.)
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5
6 I, CHERYL A. SMITH, Official Court Reporter for the
7 Thirteenth Judicial Circuit of the State of South
8 Carolina, do hereby certify that the foregoing is a true,
9 accurate and complete Transcript of Record, to the best of
10 my ability based on the audio and notes provided, of the
11 digitally recorded proceedings had from the DCRP, Digital
12 Courtroom Recorder Project, and evidence introduced in the
13 trial of the captioned case, relative to appeal, in the
14 Court of Common Pleas for Richland County, South Carolina,
15 on the 20th day of August, 2019.

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

18
19 April 16, 2022

20
21
22 Cheryl A. Smith

23 Cheryl A. Smith, CVR-M

24 Court Reporter

25

Respondents.)

COLUMBIA, SOUTH CAROLINA

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

Attorney for the Applicant

Attorney for the Respondents

REGISTERED PROFESSIONAL REPORTER

REGISTERED PROFESSIONAL REPORTER

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Rhodes Bailey

Mr. Waller	3		27	
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Ms. McCallister		17		
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Certificate of Reporter		31		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
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(NO EXHIBITS)

1 THE COURT: Yes, ma'am.

2 MS. MCCALLISTER: May it Please the Court, Your
3 Honor. Elijah Green verses the State of South Carolina,
4 2017-CP-40-1200. Your Honor, this is the case that we
5 started yesterday and took some testimony and we are
6 back on the record, and, I believe, it's still
7 Mr. Waller's case at this time.

8 THE COURT: Mr. Waller.

9 MR. WALLER: Your Honor, I would call Rhodes Bailey.

10 RHODES BAILEY,
11 being first duly sworn, was examined and testified as
12 follows:

13 THE CLERK: Thank you. Have a seat in the witness
14 stand. State your name for the record.

15 MR. BAILEY: John Rhodes Bailey. I go by Rhodes.

16 DIRECT EXAMINATION BY MR. WALLER:

17 Q Good morning, Mr. Bailey. How are you today?

18 A Good morning. Fine, thank you.

19 Q Mr. Bailey, do you recall your representation of
20 Elijah Green?

21 A Yes.

22 Q How did you first -- how did you come to represent
23 him?

24 A I was transferred -- his file was transferred to me
25 by Adam Ruffin. And by my recollection or notes, it

1 looks like that was about August of 2015. Although, I
2 did not -- he didn't schedule an appointment with me
3 until November of 2015.

4 Q Okay. During the course of your representation of
5 him, was he -- was the case in which he was a victim
6 still pending, do you recall?

7 A I can give you -- by the time I represented him in
8 -- or sorry. By the time I first met him which was
9 November 17, 2015, the victim case was not pending
10 anymore. I can give you the quick timeline on that.
11 And I'll try to do it slowly.

12 So, Mr. Green was shot and a victim in a case
13 involving a Defendant named Robert Gray who was an older
14 gentleman in a wheelchair who had gotten in a fight with
15 him. And that was November 7, 2014 unrelated to our
16 case.

17 Then about five months later, April 25, 2015 was
18 the accident -- the felony DUI accident that Mr. Green
19 was involved in that we came to represent him on. That
20 was April.

21 Then in September -- I guess it was September 16,
22 2015, about a few months after that, Mr. Gray, the man
23 in the wheelchair that was the Defendant, was sentenced
24 to 15 years suspended on three years probation. It was
25 -- they pulled it down to an ABHAN from attempted

1 murder.

2 And then after that, I met Mr. Green in November of
3 2015 after he called -- after he scheduled an
4 appointment with me or had an appearance or something.
5 But I think it was a scheduled appointment. So by the
6 time I met him that was disposed of. And actually, I
7 think -- yeah, that sounds about -- is that clear?
8 Actually probably not, but I tried to make it clear.

9 Q It is. He was represented by your office prior to
10 your representation; is that right?

11 A That's true. And so at some point, the case of him
12 as a victim was still pending when we were represented
13 by him -- when he was on bond. I don't think there was
14 a lot contact. You know -- yeah. I mean, if I had had
15 any contact with him, you know, by the time I talked to
16 him that case was closed.

17 Q Okay. Did you receive any notes or any prior work
18 product or anything on the case from the other
19 individuals in your office that might have handled it
20 before you were assigned the case?

21 A I don't think so because I think Mr. Ruffin had it
22 for a few months and it was a -- the only notes I had
23 from him was that he spoke to him about a prelim in June
24 of 2015, Mr. Ruffin the prior attorney. And that he
25 talked to him a couple of times on the phone. Or he had

1 tried to call him on the phone and the number didn't
2 work.

3 Q Okay. Did you ever have any conversations with
4 Mr. Green about him being a victim at the same time you
5 represented him?

6 A Yeah. He brought it up a few times. So we would
7 meet and he said, well, I'm the victim in this other
8 case, so they should give me -- they should give me a
9 break on my charges because I'm a cooperating witness
10 against the man that shot me. So, therefore, they need
11 to dismiss my charges or give me a better deal.

12 Q Okay. Did you ever have any conversations about a
13 potential conflict of interest or anything like that
14 with him?

15 A Well, I tried to -- I was actually sort of thinking
16 more along the lines of, you know, his sentence and he
17 kept saying Nicole Simpson was gonna -- she knew this
18 and she was going to make sure he got a better deal,
19 something to that effect. I tried to reach Ms. Simpson
20 just to follow-up. And because it didn't really seem
21 logical that you cooperating in a case where you are the
22 victim would therefore entitle you to be immune from
23 another prosecution to get a deal. But I tried to
24 follow-up. And Ms. Simpson wouldn't return my calls and
25 then she had moved to Greenville to prosecute up there

1 for a while.

2 And she -- and then I -- I mean, that's, you know,
3 I tried to reach her, but I couldn't reach her. But
4 even then it didn't really make a lot of sense. Because
5 I've never had a situation where the prosecutor's office
6 went easier on somebody because he had cooperated and
7 not, you know, not a cooperating government way or
8 providing information. I've never had them say, well,
9 we like this guy because he's a victim in another case;
10 therefore, we're going to give him an easier time on his
11 own separate case where he got into trouble and arrested
12 months later.

13 Q Did you have any concerns about him being not
14 officially represented by the solicitor's office as a
15 victim, but also being prosecuted at the same time?

16 A You know, every time I try to talk about it, they
17 kind of -- the case was -- I mean, I guess you could
18 argue that the conflict was over because the man had
19 been sentenced months before I ever sort of met him.
20 Also, if there was a conflict, in theory, it would
21 actually, I think it would work more in his favor than
22 hurt him. I mean, if the solicitor's office was, you
23 know, if they knew him as a victim where they were
24 working for him which that was sort of what he wanted.
25 He never said it's a conflict. He said -- or he never

1 seemed concerned about that. He was always thinking
2 that because he had been a victim, he had been shot,
3 that he was entitled to a better deal in this other
4 case.

5 Q Did you ever talk to -- I think you said you tried
6 to reach Ms. Simpson, were you able to ever --

7 A No, I texted her and I called her. I think at that
8 point she was in Greenville. And, you know, she came
9 back eventually, but it was after this case was over.

10 Q Did you ever have any conversations with Mr. Golson
11 regarding the fact that Mr. Green was a victim?

12 A I think that -- I think that I spoke with Josh
13 Golson and said that Mr. Green was hoping that the State
14 would consider a lighter sentence or a reduction in
15 charges because he was a victim. I think it came up in
16 conversation. I don't know if Mr. Golson would remember
17 it or not because it wouldn't have been in an official
18 sort of offer or counter offer scenario.

19 It wouldn't have been a big focus of conversation.
20 It probably -- I would think that I would have brought
21 it up with Mr. Golson. I don't know if he would
22 remember it or not. It wasn't a thing I was, you know,
23 hitting on over and over again because it wasn't really
24 logical.

25 Q All right. Turn more, I guess, to the kind of meat

1 of the case. When you -- when you were appointed or
2 assigned the case of Mr. Green, what investigation did
3 you do into the kind of facts and circumstances
4 surrounding the accident?

5 A Well, obviously, I read discovery. I went through
6 it. I looked at his blood draw. And the blood draw, I
7 think, said that his -- I think his blood alcohol level
8 was .139. And, you know, I just -- I reviewed the
9 discovery sort of the general way I normally do.

10 Q Okay. Did you -- speaking of the blood draw, did
11 you do any research or any investigation into the
12 circumstances of the blood draw?

13 A I don't remember a lot of the specifics there.
14 But, you know, you look at the law and how it applies
15 there. Felony DUI's are kind of funny because the
16 current law is a little different from what's allowed
17 procedurally under the Supreme Court. I don't know if
18 you've done a lot of federal death penalty -- I mean,
19 excuse me. I don't know if you've looked at a lot of
20 felony DUI cases. But there is a consent issue.

21 I believe there was -- there used to be a law -- it
22 used to be mandated by statute that it was an automatic
23 draw whether or not you consented to it; right. But
24 there problems with that and the Supreme Court case
25 stepped in. I remember going through all that and I

1 remember comparing it to his case and I remember looking
2 at the procedure. If there had been something that I
3 would have recognized as improper in the procedure, I
4 would have fixated that even and focused on that and
5 challenged it and made that the brunt of the case. I
6 remember looking at it and seeing that things checked
7 out legally and then kind of moving into mitigation.

8 Q Okay. Did you -- I guess, got to go through that a
9 little more detail. Mr. Green was taken to the hospital
10 instead of directly to jail or to the detention center.
11 Did you have any of his medical records from the jail --
12 or from the hospital? Excuse me.

13 A I don't remember. I mean, it was 2015 at that
14 time. I don't remember. I looked at what I had.

15 Q Okay. Did you have anything from any medical
16 professional that he wasn't able to either give a breath
17 test or that he was -- that required to draw his blood?

18 A I just don't remember.

19 Q Okay.

20 A I know I did try to get a lot of medical records
21 for him because he said he was really injured. And for,
22 you know, mitigation purposes I kept trying to get him
23 to give me medical records. I counted my notes probably
24 eight or nine times and he never would give them to me.
25 And then I finally got a release signed and I tried to

1 get a few of them himself because he said he was treated
2 in a variety of places. But I had real problems getting
3 him to help me with cooperation on getting his medical
4 records.

5 Q Okay. This accident took place relatively shortly
6 after he was shot; is that right?

7 A Right. About four months.

8 Q Several months?

9 A Yeah.

10 Q Okay. What information did you have about the
11 injuries of the victims?

12 A Okay. So I think I've got that here. Give me a
13 second. Okay. The victims -- one of the drivers was a
14 guy named -- last name Evans and he broke both of his
15 wrists. And I think the dashboard banged up his knees
16 and his left hip and he broke five ribs. And I remember
17 him showing up -- I think he showed up and had these
18 like little coat hangers and he said to the judge, I've
19 had to put my clothes on with these coat hangers because
20 my wrists are broken. So his wrists were banged up
21 pretty bad. His knees and, I guess, some ribs too.

22 Q Okay. How about the other victim?

23 A I don't remember the specifics. I think she wasn't
24 as badly beaten up as him if I remember correctly. Her
25 name was Marie and they were on like an ice cream date

1 or something.

2 Q Okay. Did you discuss their injuries with
3 Mr. Green and how that would apply to the felony DUI
4 with great bodily injury?

5 A When I could. Mr. Green wasn't really interested
6 in hearing what I had to say a lot of times. When I
7 tried to explain things to him, he would frequently
8 change the subject to something else.

9 Q Okay. Did you -- stepping back for just a second.
10 Did you discuss the blood sample, the circumstances of
11 his taking and also the level with Mr. Green?

12 A Every time I met with him I would try to talk about
13 the case and he wasn't really interested in the facts.
14 He was interested in the fact that he thought the
15 solicitor's office should be treating him better. And
16 then he would say, oh, you know, I'm really injured so
17 they can't put me in prison. And so that was -- so most
18 were meetings were me saying, well, tell me more about
19 your injuries. Well, you know, sign this release for
20 me. Let's try and get the medical things. And he would
21 either be in like an okay mood or he would start
22 screaming at me and leaving and trying to fire me which
23 happened about half a dozen times.

24 Q Okay.

25 A There wasn't a lot of discussion for nuance in the

1 case whenever we met.

2 Q Okay. He was originally charged with one count,
3 what led it being him pleading to two counts?

4 A Well, the prosecutor said that, you know, wanted to
5 call him in for third appearance for a play or put him
6 on the trial docket. And, you know, Mr. Green sometimes
7 said he wanted to plead guilty, sometimes he didn't.
8 And one day the prosecutor said, all right, he's got to
9 plead guilty or I'm going to directly present another
10 felony DUI charge to the jury. So that was, you know,
11 or the grand jury.

12 And he didn't want to plead guilty. I remember it
13 was set up for August of 2016. There was a pretty good
14 -- a judge for this kind of charge. Meaning, I thought
15 that the judge might be open to a sentence that would be
16 pretty favorable on this type of case. But Mr. Green
17 didn't want to plead guilty which is certainly fine, he
18 didn't want to do that. But I did tell him that the
19 prosecutor was threatening to add another charge and
20 then try him on both charges. And that's what happened.

21 Q Okay. Were y'all preparing to go to trial at any
22 point?

23 A Well, he would say he was going to hire somebody
24 else and he wouldn't talk to me. Then maybe a few weeks
25 later he would call me and be, you know, pleasant. And

1 then he might start yelling at me and hanging up again.
2 If I had him on speakerphone, the people in the hall
3 kind of heard him yelling a lot. But he always showed
4 up. He never skipped out of court.

5 If the prosecutor noticed him for a third
6 appearance, I mean, he certainly was smart about that.
7 He knew better than to not show up. And it was kind of
8 sort of open, I mean, I didn't know it was going to
9 happen with him, but I was preparing for a trial even
10 though he wasn't cooperating with me. Then he got
11 rearrested on a domestic violence charge and he went to
12 jail.

13 Q Okay. What preparations have you done to get ready
14 for trial?

15 A You know, he hadn't cooperated with me much. There
16 wasn't really a lot that I could do. He didn't say he
17 wanted a trial, let's put it that way. He wanted -- he
18 wanted assurance that he wouldn't go to prison. But he
19 never told me he wanted a trial and so he wouldn't
20 really cooperate with me about it. So we would talk
21 mitigation. I would say, you know, Mr. Green, let's get
22 your medical records. You know, let's do our best to go
23 in front of a judge and say why you shouldn't go to
24 prison or we should give you the smallest amount of
25 prison possible. And, you know, why he shouldn't do a

1 substantial amount of time in prison.

2 And then I became pretty focused on his medical
3 records. He would say I've got these problems and the
4 judge shouldn't put me in jail. I'd say, well, let's
5 go, you know, where were you treated? Sometimes he
6 would give me a place and they might not have any
7 records. I asked him, can you talk to your doctor for
8 me? Can you give me more information? And I documented
9 that tirelessly because I really had problems getting
10 the medical records from him.

11 Q Okay. Any of the records you received either his
12 records or the victim's records or just general
13 discovery in the case, was he provided with those
14 documents?

15 A Well, let's see. I've got -- anything my clients
16 asked for me especially if they're on bond, I just
17 photocopy it and give it to them. So if he would have
18 asked me for them, I would have given it to him.

19 Q Okay. During the plea and the recitation of the
20 facts, it was stated that Mr. Green had alcohol in his
21 system, obviously, that he had been taking pain pills.
22 Which were prescribed, but he was taking them, I guess,
23 more than he had been prescribed. His blood test didn't
24 match up with that. There were no other -- nothing else
25 in the system other than the alcohol. Did you have a

1 chance to discuss that with him? Did you know about
2 that?

3 A If I remember correctly, he said he was on pills
4 and drinking because he was in pain and he was coping
5 with the pain from his previous shooting.

6 Q Right. My question is about the discrepancy in no
7 residue of the pills being found in his system. Were
8 you aware of that or did it matter?

9 A I don't think the pill thing really mattered
10 because he was over the limit. And, you know, I felt
11 like any pill discussion -- I remember it coming up in
12 our discussion, but didn't really help our position and
13 it also wasn't really relevant to whether or not he had
14 consumed over the legal amount when this accident
15 happened.

16 Q Okay. What was your plan for mitigation? What did
17 you prepare?

18 A Okay. Well, I tried to get the medical records I
19 could which were not very many. I actually saved the
20 letters I sent to -- where did I send them to? I saved
21 the letters I sent to Palmetto Richland Health. I saved
22 the letters I sent to -- and then at some -- then he got
23 rearrested about that time. And he got rearrested for
24 an alleged domestic violence of a high and aggravated
25 nature with his wife and he was in jail.

1 And then at that point, he just wanted to get into
2 court. He was like, I want to go to court. I want to
3 go to court. I want to go to court. And I want them to
4 drop the aggravated domestic violence charge. And it
5 got to the point where the prosecutor did drop the
6 aggravated domestic violence in exchange for him to
7 plead to the felony DUI charges.

8 At that point I just tried -- I tried my best to
9 piece together what his health problems were. And, you
10 know, I mean, if you read the transcript, you know, I do
11 my best to say he was in a rough position. He was shot.
12 You know, that kind of thing. Because he never really
13 asserted that he wasn't under the influence when it
14 happened.

15 MR. WALLER: Beg the Court's indulgence, please.

16 THE COURT: Sure.

17 Q Nothing further, Mr. Bailey. Thank you.

18 THE COURT: Ms. McCallister?

19 CROSS EXAMINATION BY MS. MCCALLISTER:

20 Q Mr. Bailey, do you have a copy of the transcript
21 with you?

22 A Yes, I do.

23 Q Could you turn to page 10 for me. 10 and 11, I
24 guess.

25 A Okay. I'm here.

1 Q Just to sort of clarify. I think you testified you
2 weren't sure exactly what all the injuries are, but the
3 solicitor sort of listed out the injuries on both
4 victims. Both victims had broken bones. One victim
5 required surgery. Does that match up with what you
6 recall the victim's injuries being?

7 A On page 11?

8 Q Yes. And page 10 and beginning of page 11.

9 A Right. It says Mr. Edmonds had a broken hip,
10 multiple broken ribs, lost several teeth, multiple
11 lacerations on his body. And then Ms. Jordan, the
12 woman, had compound fractures in both of her wrists.
13 Required surgeries to implant metal rods in her wrists
14 and her hands. Underwent several months of physical
15 therapy.

16 Q Does that sort of recitation by the solicitor, that
17 comports with what you remember the injuries being or
18 what you had in discovery?

19 A Yes. And I may have by accident said that
20 Mr. Edmonds had the broken wrists. But I remember there
21 were some broken wrists in there.

22 Q Okay. So your recollection is that both victims
23 had broken bones and had fairly serious -- sustained
24 fairly serious injuries from the crash?

25 A Right. Right. And I was actually surprised they

1 didn't charge him with two. Because frequently law
2 enforcement tries to hit you with as many as they can
3 when you're arrested. I was surprised originally he was
4 only charged with one of them.

5 Q Do you know -- did you have the medical records of
6 the victims when you first met with Mr. Green or is that
7 something that maybe you received later in the case?

8 A I don't really remember it. I'm sorry.

9 Q Okay. But you testified to Mr. Waller that he
10 wasn't necessarily really interested in sort of sitting
11 down and going over discovery sort of piece by piece or
12 page by page?

13 A Right. I mean, that's something I like to do. I
14 would frequently sit down with -- especially if a client
15 is curious about it, I want to sit down and go over
16 every page with them so that they have an understanding
17 and they can ask me questions right now. But frequently
18 the meetings would end quickly and Mr. Green would -- if
19 he wasn't really pleased with, you know, what he was
20 hearing, he would just want to leave.

21 Q Okay. And so in terms of a defense, I think you
22 testified to Mr. Waller that Mr. Green never asserted to
23 you or denied that he was under the influence at the
24 time of the crash?

25 A No. I don't remember him ever saying, you know,

1 I'm not under the influence of it. I want to say he's
2 the one who brought up pills, but I can't remember.

3 Q Okay. And you testified earlier that you reviewed
4 the circumstances of the blood draw and you reviewed the
5 case law and in your opinion there was not an issue that
6 you saw there?

7 A Well, as a defense lawyer you've -- over years you
8 get better at spotting things. I mean, I've been
9 practicing about 12 years and you go through discovery
10 and when you see something like a warrant problem, you
11 say this is it, this is the case, and you hone in on it
12 and then you hammer on that one thing and then maybe you
13 find a real weakness in the State's case and that's what
14 you focus on. And in felony DUI's and DUI's, that, you
15 know, it's procedure. It's all about did they do this
16 procedure right or not. So that's one of the first
17 things you sort of look at. And if the procedure seems
18 kind of clean, you kind of move on to the next thing and
19 you kind of forget about that.

20 And I remember -- I don't remember the specifics,
21 every single thing I looked at in this case, but I
22 remember thinking it's not looking good on the draw and
23 the procedure, this is a mitigation case meaning I need
24 to make Mr. Green look as favorable as possible to a
25 judge so that they go light on a sentence. There's not

1 much to take to trial here when it comes to pretrial
2 procedures or factual. Although, I would go to trial if
3 he had expressed interest in that. That I just remember
4 early on kind of looking at it and saying, all right,
5 moving to the next thing because it didn't seem to be
6 substantive. Maybe I'm wrong. Maybe a DUI, someone
7 who's done other felony DUI law cases would have looked
8 at it and found something different.

9 Q Okay. But from your review of the file and your
10 review at the time, you thought this was a mitigation
11 case and that's why you tended to focus kind of more on
12 the medical issues and the fact that he had been shot
13 and had other additional medical issues as well?

14 A Right.

15 Q Okay. And I think you testified that he never told
16 you he wanted a trial, but he never also really said he
17 wanted to plead necessarily, he just -- he was focused
18 on, I think you said he eventually got focused on
19 getting the solicitor to drop the aggravated or the
20 DVHAN charges; is that right?

21 A Right. Near the end that was sort of what he was
22 fixated on.

23 Q Okay. And so the State agreed to drop those
24 charges in exchange for the plea to both counts of the
25 felony DUI?

1 A That's right.

2 Q Okay. And you explained that offer to Mr. Green?

3 A Right. I explained to him that it wasn't small
4 that they were dismissing a 0 to 20 year felony in the
5 aggravated DV case in exchange for him pleading to the
6 others. I said, you know, it would be one thing -- I
7 was like now you've got more charges, now we're fighting
8 kind of the two front war. We're fighting this domestic
9 violence case and we're fighting, you know, the felony
10 DUI case. And this makes things a little simpler
11 because they're agreeing to dismiss this other felony
12 case.

13 Q Okay. So he was arrested on a DVHAN charge and a
14 few months before, he ended up pleading guilty to the
15 DUI's; correct?

16 A That's right.

17 Q And he had been out on bond, but his bond was
18 revoked because of the new charge?

19 A That's correct.

20 Q Okay. On the day of the plea, whose idea was it
21 for Mr. Green to plead guilty or whose decision was it
22 to plead guilty?

23 A I mean, it would have been pretty hard -- Mr. Green
24 is an opinionated energetic guy and it would have been
25 hard to arm twist him into pleading guilty. I mean, if

1 he didn't want to do it, I certainly wouldn't be able to
2 make him do it.

3 Q Okay. Did you have any concern that he was not
4 pleading guilty voluntarily?

5 A No. I was concerned about how he would act in
6 front of the judge or what he would say, so I tried --
7 we worked and I tried really hard to ask him to be calm.
8 Because I was worried about his demeanor or I was
9 worried he would get angry with the victims.

10 Q Okay. And I don't think we touched on that. But
11 the issue about getting angry at the victims, do you
12 recall that that was sort of an issue that happened at
13 the accident scene?

14 A Yeah. The victims said that after he hit him or
15 after there was a collision that he jumped out of the
16 car and said I'm going to fuck you up mother fucker or
17 something like that. That he was yelling at the driver
18 of the other car.

19 Q Okay. So your concern in trial was essentially
20 mitigation -- I mean, in the plea was essentially
21 mitigation and controlling as best you could Mr. Green's
22 demeanor in front of the judge in the hopes of reducing
23 his sentences as much as possible?

24 A I was worried about that. And I tried to play down
25 the aggressiveness as, you know, being upset or in shock

1 or adrenaline after a car accident.

2 Q And you also had his wife present to speak on his
3 behalf as well; correct?

4 A That's right. She was the alleged victim in that
5 case and she wanted him to come out -- she wanted him
6 out of jail and to come back with her. And I had her
7 there because I thought it was, you know, convincing
8 that she had her own medical issues and that she needed
9 him to care for her.

10 Q Okay. And when you say she was the victim in that
11 case, do you mean the DUI or the DV case?

12 A Sorry, the DV case. They were reconciled. I don't
13 think they were ever not together --

14 Q Okay.

15 A -- romantically. She called me quite a bit and I
16 went -- that was part of our mitigation was to have her
17 there and say she wanted him home with him. And
18 although I didn't know -- I didn't think it was probably
19 realistic that they would send him home right away, I
20 thought that this could get us a shorter sentence
21 hopefully.

22 Q Okay. Going back to sort of the first issue that
23 Mr. Waller talked to you about this issue of the
24 solicitor's office prosecuting him and him being a
25 victim. You testified earlier that you reached out to

1 Ms. Simpson based on some statements that Mr. Green made
2 to you; is that right?

3 A Yes.

4 Q And you were never able to get in touch with her?

5 A I wasn't able to reach her.

6 Q And she had left the office at some point maybe by
7 the time you were trying to reach out to her?

8 A Yes. Because I remember calling her and leaving
9 her a message. I remember texting her. At lest the
10 number I had. I mean, I had her cell phone number and I
11 think it was correct.

12 Q So you never spoke to Ms. Simpson about these
13 particular -- these DUI charges?

14 A No. I was trying to -- I was trying to reach out
15 and communicate with her though because I thought maybe
16 she, you know, maybe she did like him or had compassion
17 for him or something like that and would put in a word
18 with the other prosecutor. I mean, I had -- really I
19 was just trying to verify it. I was really trying to
20 fat check it more than anything. And then I did
21 eventually find -- I forgot how I dug it up, but I did
22 find the sentencing sheet for Mr. Gray. Who I was told
23 and I didn't really know much about it was that he was
24 an older guy in a wheelchair and then they had been in a
25 fight and that's one reason why he ended up with

1 probation and why that defendant in that case didn't get
2 prison time.

3 Q Okay. And so if you were unable to speak to
4 Ms. Simpson then Mr. Golson is the only solicitor that
5 you dealt with as far as disposing these felony DUI
6 charges; correct?

7 A Right. From what I remember, yes.

8 Q Okay.

9 MS. MCCALLISTER: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 Q Okay. So just sort of on the issue of whether
12 there was a conflict or not. I mean, you were aware --
13 by your testimony, you were aware of the fact that he
14 was a victim in the previous case and in your judgement
15 you didn't see that as an issue to have the solicitor's
16 office prosecuting him on this felony DUI?

17 A Right. I mean, I didn't see it. I guess you could
18 call John Freeman or an ethics professional in. But
19 first, by the time I was dealing with this case,
20 Mr. Gray had already pled guilty and those charges
21 weren't pending anymore. And, second, you know, if
22 anything, you know, maybe the solicitor's office
23 familiarity with him would be positive as opposed to
24 negative. I don't see why the prosecutor's office would
25 want to go harder on him because he was a victim in

1 another case. So I didn't really see it as a concern.

2 Q Okay.

3 A Also, in my experience, if it had been conflicted
4 to something like the attorney general's office, we
5 usually get offers that are not as good from the
6 attorney general's office, but they're most likely to
7 drop charges. That's kind of the thought in retrospect.

8 MS. MCCALLISTER: Your Honor, I think that's all the
9 questions I have for Mr. Bailey.

10 THE COURT: Mr. Waller?

11 MR. WALLER: Just briefly, Your Honor.

12 REDIRECT EXAMINATION BY MR. WALLER:

13 Q Mr. Bailey, just to clarify, Ms. McCallister asked
14 you -- your answer was that Mr. Green didn't
15 specifically tell you he wanted to go to trial; is that
16 right?

17 A I don't remember him ever saying, you know, I
18 absolutely want a trial, you know. I want to challenge
19 this. It was always, I want a better deal or I don't
20 want to go to prison.

21 Q He did specifically tell you he wasn't going to
22 plead at some point; is that right?

23 A Right. And then I said, well, I need you to meet
24 with me so we can prepare for a trial. Then he said,
25 I'm getting somebody else, you're fired.

1 Q Okay. Is it because if he's not going to plead
2 there's no -- and short of dismissing the charges there
3 are no other options?

4 A That's what I try to tell clients. Sometimes they
5 want a third option which is nonexistent.

6 Q Okay. Just followup briefly on the issue of the
7 blood draw. Did you ever see or in possession of any
8 search warrant for that blood draw?

9 A I don't remember. I don't recall.

10 Q Did you ever have any signed consent or anything?

11 A I just don't remember.

12 Q Nothing further. Thank you.

13 THE COURT: Anything else, Ms. McCallister?

14 MS. MCCALLISTER: No, Your Honor.

15 THE COURT: All right. You can step down.

16 MR. BAILEY: Thank you, Your Honor.

17 THE COURT: Thank you, sir.

18 MR. WALLER: Your Honor, we -- I think we're going
19 to have pause again. We're still missing one witness.
20 I'm not sure for scheduling purposes when that witness
21 is going to be available as we previously discussed.

22 MS. MCCALLISTER: Yes. Your Honor, she did respond
23 to my email yesterday, they are in trial. She doesn't
24 know when the trial will finish, but she said she
25 anticipated it taking all week long. So I think we'll

1 have to just maybe -- I'll coordinate with her next week
2 once she's out of trial and we'll try to figure out
3 maybe if there's a way we can come in front of you
4 somewhere, wherever you may be in the next couple of
5 weeks, if all three of us can get there, or if we just
6 need to do a quick deposition.

7 THE COURT: Okay.

8 MS. MCCALLISTER: Do you have a presence?

9 THE COURT: It doesn't matter to me. And I'm sure
10 we don't mind taking testimony, you know, wherever I may
11 be. But if it's more convenient for everybody to do it
12 by deposition we can just do it that way.

13 MR. WALLER: Your Honor, I think we need to look at
14 it. It may not be more convenient for a deposition.
15 Mr. Green is housed at Evans, I certainly think he has
16 the right to be at and attend the deposition. So I
17 don't know that all of us packing up and going to
18 Bennettsville is the easiest solution. But I just don't
19 know at this point. I certainly will need to consult
20 with her at this point. But we will do that and we'll
21 get back to the Court as to what may be easiest.

22 THE COURT: I have a term of general sessions in
23 Marlboro County the week of September 9th. And Evans is
24 there, so that might be.

25 MR. WALLER: Judge, I don't know --

1 THE COURT: I know you need to check your calendar
2 and everything.

3 MR. WALLER: Yes, sir. I don't know the problem is
4 transporting Mr. Green to court. I think if we're -- I
5 don't know how from a security prospective they would
6 handle transporting for a deposition. It might have to
7 be -- take place at the facility. I know they do that
8 in cases involving SCDC. I just don't -- if we need to
9 come to you, we can. I don't think that would be a
10 problem. But I think we need to look at scheduling
11 before we can make that determination.

12 THE COURT: Well, you need to talk to Ms. Simpson
13 and see what, you know -- I throw that out. I can
14 probably work it in sometime during that week of
15 September 9th pretty easily.

16 MS. MCCALLISTER: Okay. I'll see -- I will check
17 with her about that week and see if we can't just get
18 back in front of you. That sounds like that might be
19 the easiest and the quickest way to do it.

20 THE COURT: That's what I'm thinking too, so.

21 MR. WALLER: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 21st of August, 2019.

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

October 6, 2021

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

State of South Carolina)
County of Richland)

In Circuit Court of the
Fifth Judicial Circuit
2017-CP-40-01200

ELIJAH GREEN,
Plaintiff,
vs.
THE STATE,
Defendant.

Transcript of Record

Columbia, South Carolina
December 8, 2021

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Jonathan D. Waller, Esquire
Attorney for Plaintiff

Ms. Yasmeen E. Klein, Esquire
Attorney for Defendant

Lisa Carter
Court Reporter

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EXHIBITS

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NO.DESCRIPTIONEV.

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(NO EXHIBITS INTRODUCED DURING HEARING)

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1 THE COURT: All right. Go ahead and identify the
2 case Ms. Klein

3 MS. KLEIN: Thank you, Your Honor. May it please,
4 the Court? This is the case of Elijah Green versus The
5 State of South Carolina, docket number 2017-CP-40-1200.
6 Applicant was indicted in August of 2015 and July of 2016
7 for two counts of felony DUI resulting in great bodily
8 injury. Applicant pled guilty as indicted on December 7,
9 2016 before the Honorable Clifton Newman. Judge Newman
10 sentenced applicant to concurrent in terms of 12 years
11 imprisonment on these charges. This PCR was filed in March
12 1, 2017 and this case was partially heard before Your Honor
13 during the August term of 2019 with the record left opened
14 to allow parties to take the testimony of witness, Nicole
15 Simpson. Applicant is present and he is represented by Mr.
16 Jonathan Waller. Your Honor, the State is ready to proceed
17 and I believe in is Mr. Waller's witness.

18 THE COURT: Okay.

19 MS. SIMPSON: I'm having technical difficulties.

20 THE COURT: Can you hear us now?

21 MS. SIMPSON: Yes, Your Honor.

22 THE COURT: Okay. Do you swear or affirm the
23 testimony you're about to give will be the truth so help
24 you God?

25 MS. SIMPSON: I do.

1 THE COURT: All right. Mr. Waller?

2 MR. WALLER: Judge, actually and just a little bit
3 of background to refresh your memory I know you had to
4 file. But Mr., Mr. Green, we have alleged that Mr. Green
5 was a victim of a crime at the same time he was being
6 prosecuted by the Fifth Circuit Solicitor's Office. And we
7 allege that either through promise or implication that
8 there was a conflict of interest with the Solicitor's
9 Office handling both cases and that either, like I said,
10 through promise or implication that he was lead to believe
11 that he would get some assistance on his conviction due to
12 him being a victim at the time. Ms. Simpson, I believe,
13 prosecuted the case where Mr. Green was the victim so she
14 was not involved in his actual prosecution. So that's,
15 that's kind of the procedural history.

16 Your Honor, I actually believe that it was the State's
17 witness, I'll be happy to proceed, but I believe it was the
18 State's witness. I'll handle it either way, Your Honor.

19 THE COURT: Ms. Klein?

20 MS. KLEIN: Your Honor, I don't have a preference.
21 I was not the attorney of record at the first PCR hearing
22 so I was operating off of the assumption that we had not
23 completed Mr. Green's case prior to moving into the State
24 calling witnesses. I can proceed if that's easier for the
25 parties.

N. Simpson- Direct Examination by Ms. Klein

6

1 THE COURT: All right. Since it's your witness I'm
2 gonna let you go first and then Mr. Waller.

3 MS. KLEIN: Okay. Alright.

4 NICOLE SIMPSON, first being
5 duly sworn, testified as follows:

6 **Direct Examination by Ms. Klein:**

7 Q. Good morning, Ms. Simpson. How are you today?

8 A. I'm doing well. How are you?

9 Q. Good. Thank you so much for being here. I appreciate
10 it. So I just wanted to go over a few questions with you.
11 So how long have you been practicing law?

12 A. I have been practicing, let's see, I graduated 2008.

13 Q. And has that time been primarily in criminal law?

14 A. Yes. And primarily prosecution until the past three
15 years or so.

16 Q. Okay. So at the time that these events were occurring,
17 and I believe that would have been the 2014 to 2016 range,
18 where were you employed?

19 A. Well, two places during that range. I have been
20 employed with the Fifth Circuit Solicitor's Office from,
21 let's see, I stopped clerking for the judge, 2009 to 2015
22 and then I went to Thirteenth Circuit where I prosecuted

23 Q. Okay. So in 2014, were you working at the Fifth
24 Circuit Solicitor's Office?

25 A. I was.

1 Q. Okay. And do you recall the case of Robert Gray?

2 A. I sincerely have no independent recollection of that
3 case.

4 Q. Okay. Do you remember having conversations with Mr.
5 Green being a victim in a case that you prosecuted?

6 A. Do I recall the actual conversations, I do not. And
7 just for the record, since I'm no longer at Solicitor's
8 Office I don't have a physical file or notes regarding any
9 conversations that may have been had by myself or the
10 victim advocate. He would have been the primary person,
11 probably reaching out to Mr. Green during that time.

12 Q. Okay. So the Solicitor's Office has an individual
13 whose job is to interact with victims of crimes?

14 A. Correct. I did as well, especially, if we're preparing
15 for trial or anything of that nature, um, depends on the
16 case. At that time, I was prosecuting a number of cases and
17 I as I state and not having anything before me except for
18 the transcripts of the PCR hearing and information you
19 provided, I really don't have any independent recollection
20 of interacting with Mr. Green.

21 Q. Okay. And you don't have any independent recollection
22 of the prosecution for the crime in which Mr. Green was the
23 victim?

24 A. With Mr. Gray?

25 Q. Mr. Mr. Gray , yes?

N. Simpson- Cross-Examination by Mr. Waller

8

1 A. No.

2 Q. Okay. Do you have any recollection of the
3 relationship between Mr. Gray and Mr. Green outside of the
4 fact that Mr. Green was a victim of a crime?

5 A. I do not.

6 Q. Okay. And to your knowledge, you said that you don't
7 have any independent recollection of speaking to Mr. Green,
8 is it possible that you would have given him any sort of
9 idea that he would receive favorable treatment from the
10 solicitor's office by virtue of the fact that he was a
11 victim in a separate crime?

12 A. Absolutely not. I will say this in my years of
13 prosecution, the fact that he was a victim in the crime
14 would not have any impact on any other matter whatsoever.
15 Either he would be cooperative or he would not.

16 Q. Have, in your experience, has that situation come up
17 before in the solicitor's office where the victim of a
18 crime may then be charged separately and prosecuted by a
19 different solicitor?

20 A. I can't say specifically, but I'm pretty certain in my
21 years of experience we've had both victims and defendants
22 at the same time.

23 Q. Okay. And in your experience or I guess to your
24 knowledge when that happens, are there certain protocols
25 that are met with regards to making sure the solicitors

1 don't have conversations about those cases in tandem or
2 anything of that nature?

3 A. With respect to the policies and protocols back then,
4 of course, Richland County has a number of cases on our
5 docket. So what I can speak to is, if I had become aware of
6 it, we would have made the supervisors aware, and then a
7 decision would have been made. But, quite frankly, I'm not
8 certain that I was ever aware that Mr. Green was actually
9 at one point became a defendant.

10 Q. Okay. And did you ever speak to I think it was a
11 Solicitor Goldson (ph), are you familiar with that
12 individual?

13 A. Yes, I am familiar with him.

14 Q. Did you ever speak to him about Mr. Greens case?

15 A. I personally don't recall any conversation regarding
16 Mr. Green.

17 Q. Okay. All right, Ms. Simpson, I believe that maybe all
18 the questions I have for you right now. Please answer any
19 questions that Mr. Waller has.

20 A. Okay. Thank you.

21 THE COURT: Mr. Waller?

22 **Cross-Examination by Mr. Waller:**

23 Q. Good morning, Ms. Simpson, how are you today?

24 A. I'm doing well. How are you?

25 Q. I'm doing well. It's been a long time.

N. Simpson- Cross-Examination by Mr. Waller

10

1 A. Not enough.

2 Q. Ms. Simpson, how would your office handle conflicts of
3 interest when one arises?

4 A. As a general rule that's probably a better question
5 for, it would've been the deputy solicitor, but if we have
6 been aware of it we would have met our supervisor, which at
7 that time we were kind, I'm having to think back a little
8 bit I apologize, there was a lot of cases.

9 Q. Sure.

10 A. We were on teams so we had team leaders based on the
11 regions plus we interacted together with certain lawyers.
12 But the conflict would have been brought to, like I said,
13 one of our supervisors, ultimately, to the deputy and
14 probably then to the solicitor, himself. And it would, a
15 decision would've been made as to whether there was an
16 actual conflict. I can tell you based on the information
17 that I received regarding this case even if it had come to
18 my attention, I would not have seen a conflict in this
19 case.

20 Q. Okay. If, if there was an actual conflict, what, what
21 steps would you or your office had taken?

22 A. As far as myself if there was an actual conflict, like
23 I said, I would have made it clearly, I would have made
24 everyone who needed to know where and I would have followed
25 their instructions. It's kind of a broad question. If you

1 don't mind me saying because depending upon the nature of
2 the case we depend on how it was handled.

3 Q. Okay. If, I'll move on. In prosecuting Mr. Gray, or
4 any criminal defendant where there's a victim involved,
5 what is your responsibility as the prosecutor to that
6 victim?

7 A. The victim, is to make sure that I comply with the
8 victim's bill of rights which, of course, we have our
9 victims advocates in the office. I typically was a very,
10 very interactive with my victims as a general, especially
11 if it was preparing for trial. But certain cases it would
12 just be reaching out to the victim, being myself or the
13 advocate to see in the case of a plea, whether they were in
14 agreement, not in an agreement, things of that nature.

15 Q. Okay. And I know you testified you don't have any
16 independent recollection of prosecuting Mr. Robert Gray. Do
17 you recall if there was a trial in his case? Assuming you
18 would recall a trial since they're less frequently than the
19 number of pleas you can handle, I'm sure.

20 A. They are, but by that time I was prosecuting a number
21 of trials as well as preparing, each week we worked in
22 teams. So I was preparing cases the next week and the next
23 week. I believe, Mr. Gray ended up in a plea. Like I
24 said, that is based on the information that was provided to
25 me by the Attorney General's Office. Like I said, I do not

1 have the physical file in front of me so whether Mr. Gray
2 was actually going to try, I'm not certain of that. But we
3 typically prepare for trial.

4 Q. Sure. If there was a plea offer extended to Mr. Gray
5 or, or any defendant, what, what would you do regarding
6 that offer as it relates to the victim in a case?

7 A. As it relates to the victim and the defendant or just
8 the victim?

9 Q. Just as it relates to the victim before you make that
10 offer or when you make that offer, what, what conversation
11 do you have with the victim regarding a plea offer?

12 A. I will generally conveyed to the victim what the offer
13 is and my reasons for making that offer. A lot of times
14 there are mitigating circumstances especially if we are
15 reducing or dismissing a charge. But in any case, I will
16 attempt to contact the victim, reach out, make sure the
17 victim is notified of the time and date of the hearing and
18 whether they, I will personally want to know whether they
19 want to be present, especially, in the case of Mr. Green,
20 such as that may be where there is a victim case where I
21 believe the charges were actually reduced.

22 Q. Okay. And certainly in your case, the prosecuting, so
23 you don't have to, you don't have to listen to the victim
24 when you make an offer or dismiss a charge or things like
25 that, is that correct?

1 A. To wouldn't say that, that's correct. Because I think
2 it is my obligation or my duty as prosecutor, at that time,
3 to reach out to the victim. And if the victim chooses to
4 speak to me, which sometimes we can't reach them. They've
5 been multiple occasions where they just don't want to
6 cooperate or whatever the case might be. But if the victim
7 wants to be involved, it's my duty and I made every attempt
8 along with my advocates, or whatever other prosecuting
9 attorneys may have been involved, to reach out to the
10 victim.

11 Q. I apologize. I might have asked a poor question
12 there. Do you don't have to get approval from the victim
13 for making an offer or dismissing a charge, is that right?

14 A. That is correct.

15 Q. Okay. All right. Thank you, Ms. Simpson. I don't have
16 any further questions. Thank you.

17 A. Thank you.

18 THE COURT: Ms. Klein?

19 MS. KLEIN: Just briefly, Your Honor.

20 **Redirect Examination by Ms. Klein:**

21 Q. Ms. Simpson, I wanted to ask you to elaborate, I
22 believe you just testified earlier in Mr. Waller's
23 questioning that with just regards to whether there was an
24 actual conflict, I believe you testified that having
25 reviewed, you know, the facts of this case and also from

1 what you can recall, if you can recall anything about Mr.
2 Gray that you can't say that even, you know, there would
3 have been a conflict in this case. Can you elaborate as to
4 what you meant by that?

5 A. Yeah, I can. As far as the simple fact that he was a
6 victim in a case doesn't mean that there would be any offer
7 on an unrelated case or that there would be a conflict just
8 because he was later charged with a completely separate
9 incident not involving any of the individuals involved in
10 the case that he was a victim in. In that case, we may have
11 had issues but it's my understanding based on the
12 information that we had that, that was not the case. And I
13 would just note too, I left the Solicitor's Office for the
14 Fifth Circuit probably in about November of 2015 and I
15 believe Mr. Gray had pled at that time. But it's my
16 understanding that Mr. Green, whatever happened with his
17 case, which was, I believe, a felony DUI based on what I
18 read, did not get resolved until after that. And as I
19 stated, there were no conversations between me and Mr.
20 Goldson (ph) that I'm aware of about Mr. Green.

21 Q. Thank you, Ms. Simpson.

22 MS. KLEIN: I have nothing else, Your Honor.
23 (Whereupon, there was interruption on the internet on
24 WebEx)

25 THE COURT: If the State would like to make some

1 sort of closing statement and the defendant, I'll be glad
2 to hear from you.

3 MS. KLEIN: Your Honor, I guess just with regards
4 to the unusual nature of this proceeding, I mean, the State
5 would argue that Mr. Green has not been able to meet his
6 burden of proving ineffective assistance of counsel or any
7 constitutional deficiencies on any of these claims. The
8 State would request some time, perhaps to submit proposed
9 orders with regards to this hearing since so much time has
10 lapsed since the original PCR hearing with all Mr. Green's
11 previous counsel present. But we would respectfully request
12 that you find that Mr. Green has not met his burden and
13 that his PCR application should be denied.

14 THE COURT: Okay. Thank you, ma'am. Mr. Waller?

15 MR. WALLER: Judge, I would, I guess I would second
16 what Ms. Klein asked regarding being able to submit
17 proposed orders. I believe the transcript of the first
18 proceeding has been ordered. I may have a copy, if not,
19 I'd just asked they provide me with one so that we can get
20 that to you. And I'd just you to review everything, all
21 the filings, the amendments. Certainly the record, the
22 clerk of court's file from his conviction and issue a
23 ruling regarding his application following that review. I
24 know Ms. Klein was not participating in the original
25 hearing. So certainly she's got to get up to speed. So I'm

1 fine with that, Your Honor.

2 THE COURT: Okay. All right. I certainly would
3 receive from you, proposed orders. I have a copy of the
4 transcript from the first hearing, Ms. Klein has already
5 provided that to me by way of email so I have that myself,
6 which you needed you say, right?

7 MR. WALLER: I, judge, I might have it. I didn't
8 even, I didn't even look in preparation for today so very
9 well may have that in my file.

10 THE COURT: If not, I'm sure Ms. Klein will provide
11 you with a copy so it shouldn't be a problem.

12 MR. WALLER: Yes, Your Honor.

13 MS. KLEIN: And, Your Honor, I believe that the
14 transcript was sent, that the first PCR hearing was
15 actually split into two days, and so our office is gonna,
16 it's going to check and confirm whether that transcript has
17 both days of testimony, but I think it might just contain
18 the second day. So I will make sure that we have the full
19 transcript and send it to all parties.

20 THE COURT: Okay. All right. I certainly would
21 appreciate that. All right, anything else from anyone?

22 MR. WALLER: No further, Your Honor.

23 MS. KLEIN: No, Your Honor.

24 THE COURT: Okay. Wait a minute, Mr. Green, it
25 looks like -- I can't control it so. Mr. Green wants to

1 say something, can you let him in Ms. Simpson?

2 MS. SIMPSON: I will. I believe he's un-muted now.

3 THE COURT: Mr. Green, did you have something you
4 wanted to say?

5 MR. GREEN: Yes, with all due respect, thank you,
6 Your Honor. I want to let you to be aware that on this PCR
7 case they gave me two PCR's, you know, what I'm saying.
8 And I got this paper that's signed right here an order for
9 producing a correct plea transcript. And one time when I
10 was in court they was saying, the State was saying they
11 were dropping an unrelated narcotics charge. Then they
12 came back and said they was dropping a domestic violence
13 charge. This right here had caused them, you know, you
14 was, you was the judge that was ruling on this case. And
15 someone was to say well, a narcotics case, you know what
16 I'm saying, all these played a role in my sentencing, you
17 know what I'm saying, because I felt like if the State
18 didn't know what they were dropping that was kind of
19 misleading the judge in a way, you know. Because if
20 somebody say well, Your Honor, Mr. Green we're dropping the
21 narcotic charge. Then you come back and they say they
22 dropping the domestic violence charge that kind of like,
23 boom, that kind I like well if they not very sure, 100%
24 sure about what they dropping that kind of like misleading,
25 misleading the judge, you know what I'm saying. That's kind

1 of like misleading the sentencing, judge.

2 THE COURT: I mean, I'll, I'll consider that ---

3 MR. GREEN: Yes, sir.

4 THE COURT: --- in my ---

5 MR. GREEN: And I done did over, like, 80% of my
6 time on this case, on this time, you know what I'm saying.
7 Like this right -- I got this paper this "amended to
8 application post-conviction relief", you probably have
9 received a copy of it. And you can see that it says, how
10 the counsel was -- how my counsel at the time was
11 ineffective to properly investigate the injury that I had
12 that they said that I had caused in this, in this incident,
13 you know. And all of it, it was like, it was like he
14 didn't conduct, my counsel didn't conduct in a proper
15 manner how he should go by to investigate the injuries and
16 the blood testing of who they said I had injuries, you know
17 what I'm saying. And he failed to do that.

18 THE COURT: Okay. And I've seen all those
19 objections you made so I'll consider everything.

20 MR. WALLER: Thank you, judge. I'll be happy to
21 discuss that with Mr. Green.

22 THE COURT: Sure. Okay.

23 MR. WALLER: Thank you.

24 THE COURT: Okay. If there's nothing else, then we
25 will conclude this hearing.

1 MS. KLEIN: Thank you, Your Honor.

2 MS. SIMPSON: Thank you, Your Honor.

3 MR. WALLER: Thank you, Your Honor.

4 THE COURT: Thank you all.

5 (CONCLUSION OF THE HEARING ON DECEMBER 8, 2021)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Ninth Circuit of the Circuit Court for Richland County, South Carolina, on the 8th day of December, 2021. This hearing was conducted through WebEx.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

February 3, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Elijah Green, #234770

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) CASE NO. 2017-CP-40-1200

ORDER OF DISMISSAL

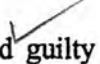
RICHLAND COUNTY
FILED
2022 JUN 15 AM 9:56
JASON E. GILBERT, CLERK
CIR. CLERK, G.S. 8-1-10

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant Elijah Green on March 1, 2017. Respondent made its Return on November 7, 2017. Evidentiary hearings into the matter were convened on August 20 – 21, 2019, and December 8, 2021, at the Richland County Courthouse before the Honorable Roger E. Henderson. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey Ann McCallister and Yasmeen E. Klein, Esquires, of the South Carolina Attorney General's Office, represented Respondent.

On August 20, 2019, Applicant testified on his own behalf at the hearing, and testimony was additionally provided by Assistant Solicitor Joshua Golson of the Fifth Circuit Solicitor's Office. On August 21, 2019, testimony was provided by J. Rhodes Bailey, Esquire, of the Richland County Public Defender's Office. On December 8, 2021, testimony was provided by Assistant Solicitor Nicole Simpson of the Fifth Circuit Solicitor's Office. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the August 2015 term of the Richland County Grand Jury for Felony Driving Under the Influence, Great Bodily Injury Results. (2015-GS-40-04340). Also, Applicant was indicted at the July 2016 term of the Florence County Grand Jury for Felony Driving Under the Influence, Great Bodily Injury Results. (2016-GS-40-04664). Applicant was represented by J. Rhodes Bailey, Esquire, of the Richland County Public Defender's Office. Assistant Solicitor Joshua Golson of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pleaded  guilty to two counts of Felony Driving Under the Influence, Great Bodily Injury Results, on December 7, 2016, before the Honorable Clifton Newman.¹ Judge Newman sentenced Applicant to twelve years imprisonment for each count to run concurrently. Applicant did not appeal.

FACTS

On April 25, 2015, at the intersection of Leesburg Road and Trotter Road, Applicant caused a multicar collision. (Plea Tr. pp. 9, l. 24 – 10, l. 1). Applicant sideswiped one vehicle causing property damage, and then collided with a Chevrolet truck head-on, causing significant injuries to the driver and passenger of the truck. (Plea Tr. p. 10, ll. 1 – 7). Solicitor Goldson provided the following:

After the collision occurred, [Applicant] got out of his vehicle and approached the victim and his passenger. [Applicant] approached the driver's side door and began hurling a slew of expletives at the victim, Mr. Edmonds. And in the course of yelling at him, accused him of hitting him --- him that [Applicant] was going to kill him, to put it in more mild terms. And the force of the collision pinned

¹ The State dropped an unrelated criminal domestic violence charge.

Mr. Edmonds and his best friend, Ms. Elsie Jordon, in the vehicle, caused significant injuries to both individuals. Mr. Edmonds sustained a broken hip, multiple broken ribs, lost several teeth, multiple lacerations about his body. Ms. Jordan broke -- had compound fractures in both of her wrists, required surgeries to implant metal rods in her wrists and her hands, underwent several months of physical therapy. [Applicant], after the collision, was transported to the Richland ER for treatment of his own injuries. While he was there, Trooper Helen from the South Carolina Highway Patrol arrived, placed him under arrest. They offered him his implied consent rights, and he willingly submitted to a blood sample to test for presence of alcohol and/or drugs. That blood sample was submitted to SLED for testing, and it came back positive for ethanol at .139. That was the only indication of any substances in his bloodstream at the time.

(Plea Tr. pp. 10, l. 8 – 11, l. 15).

ISSUES RAISED

Applicant *timely* commenced this post-conviction relief action on March 1, 2017. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to investigate and failed to object to the solicitors."
 - b. "Counsel's deficient performance prejudiced [Applicant] making him ineffective assistance of counsel by the [officer] not reading his rights."
 - c. "Attorney failed to object to the Solicitor's statement about prior time conviction, [but for] the errors of counsel, the proceedings would have been different."
 - d. "By Applicant's mental illness or a fundamental misunderstanding of the attorney's role, the attorney fail[ed] to request a continuance [which] constituted deficient performance."
 - e. "Counsel's failure to request continuance prejudiced Applicant."
2. Involuntary Guilty Plea
 - a. "Second offense when I was pleading to one DUI and the solicitor was charging me again."

On July 11, 2018, Applicant's counsel filed amendments to his PCR application, adding the following allegations:

1. As to representation rendered by J. Rhodes Bailey, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into.
 - b. Counsel was ineffective for failing to properly investigate the injuries to the alleged victims in order to properly assess whether Applicant was properly charged.
 - c. Counsel was ineffective for failing to properly investigate the testing conducted of Applicant's blood and the facts and circumstances surrounding its taking.
 - d. Counsel was ineffective for failing to object to the Richland County Solicitor's Office prosecuting Applicant's case while Applicant was a victim in a crime being prosecuted by the same office.
 - e. Counsel was ineffective for failing to object to an improper recitation of Applicant's prior record during the sentencing portion of Applicant's plea.

At the evidentiary hearing, PCR counsel for Applicant proceeded on Applicant's allegations in his original application for post-conviction relief and counsel's amended allegations.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that he was involved in a shooting where he was wounded in both legs around the time of the auto accident. Applicant testified that he was in contact with Assistant Solicitor Nicole Simpson² and a victim advocate from the Fifth Circuit Solicitor's Office regarding the case against Mr. Robert Gray, who shot Applicant. Applicant

² Ms. Simpson was prosecuting Robert Gray's case and was not involved with Applicant's case.



testified that Mr. Gray's charges were pending when the vehicle accident occurred. Applicant testified that he was taken to the hospital after the wreck. Applicant testified that he was appointed counsel six to nine months after being arrested.

Applicant testified that Plea Counsel asked him to come to his office six to seven months after the accident. Applicant testified that he and Plea Counsel discussed that he was a victim of a crime the Solicitor's Office was prosecuting. Applicant testified that because he helped in the case against Mr. Gray, he felt like it would help him out on his felony DUI charges. Applicant testified that he thought this because of his conversations with the Solicitor. Applicant testified that Plea Counsel explained to him that he had one DUI charge, and the Solicitor wanted him to plead to the one DUI charge. Applicant testified that Plea Counsel never discussed the potential penalties of the DUI charge, and if he pleaded guilty to the one DUI, he would not be charged with the second DUI. Applicant testified that Plea Counsel never discussed the evidence against him in this case in full detail.

Applicant testified that Plea Counsel never discussed the elements in full detail of felony DUI with great bodily injury. Applicant testified that Plea Counsel asked if he was read his constitutional rights at the hospital, and he replied that the police did not read him his constitutional rights. Applicant testified Plea Counsel never discussed the hospital blood draw and subsequent testing. Applicant then testified that Plea Counsel told him that if he did not plead guilty to the one DUI, the Solicitor would bring the second DUI charge against him. Applicant testified that Plea Counsel never went into full detail of his blood-alcohol level investigation.

Applicant testified that he did not want to plead guilty because he did not fully understand what would happen with the charges. Applicant further provided that if there was a domestic violence charge, he was concerned they would have the judge thinking he was a bad person.

Applicant testified that he did not know whether it was a first-, second-, or third-degree domestic violence charge, and he did not know whether they were dropping it.

Applicant testified about the plea transcript issues that resulted in incorrect transcribing in the first plea transcript. Applicant testified that because there was a narcotics charge in the first transcript, this charge was already in the judge's mind and misleading. Applicant testified that the first transcript was inaccurate, but the second transcript was correct. Applicant testified that Plea Counsel told him and his wife since he helped the Solicitor, things should be in his favor, and the Solicitor should help him out. Applicant testified that he would not have pled and gone to trial if he knew he would get twelve years. Applicant testified that he was facing only three more years at trial than the twelve he got from pleading guilty.

Applicant testified that Plea Counsel did not discuss the circumstances surrounding how his blood was taken at the hospital. Applicant testified that Plea Counsel did not discuss the injuries that the victims sustained in the accident until the plea hearing. Applicant testified, again, that he really thought that the Solicitor's Office would help him out because he was a victim in an unrelated case. PCR Counsel asked Applicant if Plea Counsel ever said it was okay for the Solicitor's Office to represent him as a victim and prosecute him as a defendant, to which he replied he could not recall.

Applicant further provided that the plea court should have considered the whole mental evaluation because he was diagnosed with posttraumatic syndrome in 1996. Applicant testified that he was still under trauma and distress from being shot six months prior to the automobile accident. Applicant testified that he was kind of really messed up at the time of the trial.

On cross-examination, Applicant testified that Plea Counsel did not really discuss the elements of his charges, what the State would have to prove, and what evidence they had against

him. Applicant testified that Plea Counsel did not discuss in detail the blood test results and how that would affect the judgment in his case. Applicant testified that he could not recall if Plea Counsel discussed his blood test results. Applicant testified that Plea Counsel told him there were two witnesses against him, the ones involved, but did not discuss how long they were in the hospital or what injuries they sustained. Applicant testified that he asked Plea Counsel about the victims' injuries because the Solicitor's Office indicated they would add a second felony DUI charge.

Applicant testified that he felt like he was being forced to plead guilty to the one felony DUI charge because they had the other charge over his head, saying that if he did not plead guilty, they would add the second charge. Applicant testified that he did not know how many people were injured in the accident. Applicant testified that he was under the impression that he would get three to five years, and that is what Plea Counsel discussed with him.

Applicant testified that the plea transcript reflected that he went in front of Judge Clifton Newman for a plea, and the judge asked him questions about his case and the representation of Plea Counsel. Applicant agreed that Judge Newman told him that the sentencing range for his charges was anywhere from thirty days to fifteen years imprisonment. Applicant agreed that he told Judge Newman he understood the sentencing range. Applicant testified that he really did not understand the plea judge's question about whether he had been promised anything to enter the guilty plea. Applicant then added, again, Plea Counsel told him that he would only get three to five years. Applicant testified that he never informed Judge Newman of his expectation to get only three to five years.

Applicant testified that he did not answer some questions because he did not fully understand. Applicant testified that he tried to explain himself to the judge and apologize because



he did not plan to do it – it just happened. Applicant testified that at that time, he was still in trauma because of his gunshot wounds. Applicant testified that he wrote a letter for the court in the Gray case but did not testify at court on that case. Applicant testified that the State did drop the domestic violence charge for his guilty plea, but the judge was misled because he did not know the degree of the domestic violence charge.

JOSHUA GOLSON'S TESTIMONY

On direct examination, Joshua Golson (Golson) testified that he worked for the Richland County Solicitor's Office and was the prosecutor in Applicant's felony DUI case. Golson testified that he was not aware that Applicant was a victim of a crime when he was prosecuted. Golson testified that he found out about the gunshot case at the end. Golson testified that he did not recall ever speaking with Nicole Simpson about the Robert Gray case.

PLEA COUNSEL J. RHODES BAILEY'S TESTIMONY

On direct examination, J. Rhodes Bailey (Plea Counsel) testified that Applicant's case was transferred from Adam Ruffin to him in November 2015. Plea Counsel testified that by the time he first met Applicant, which was November 17, 2015, the Robert Gray case was not pending anymore. Plea Counsel provided a timeline as follows: (1) On November 7, 2014, Applicant was shot and a victim in a case involving a Defendant named Robert Gray, who was an older gentleman in a wheelchair who had gotten in a fight with him; (2) Approximately five months later, April 25, 2015, was the felony DUI accident that Applicant was involved in that a public defender was appointed; (3) On September 16, 2015, about a few months after that, Mr. Gray, the man in the wheelchair that was the Defendant, was sentenced to 15 years suspended on three years' probation. Mr. Gray's charge was pulled down to an ABHAN from attempted murder; and (4) Plea Counsel



met Applicant in November of 2015, so Mr. Gray's case was disposed of before Plea Counsel met Applicant.

Plea Counsel testified that he and Applicant discussed being a victim in the Gray case. Plea Counsel testified that Applicant would say he is the victim in this other case, so the Solicitor should give him a break on his charges because he is a cooperating witness against the man that shot him. Plea Counsel testified that Applicant would say the Solicitor needs to dismiss his charges or give him a better deal. Plea Counsel testified that he tried to talk to he attempted to reach out to Nicole Simpson to discuss the potential conflict with her office, but she never returned his calls. Plea Counsel testified that Applicant told him that Ms. Simpson would make sure he got a better deal in his DUI case because he helped in the Gray case. Plea Counsel testified that it did not seem logical that Applicant was cooperating in an unrelated case where he would get immunity from prosecution in another case just because he was the victim in the unrelated case.

Plea Counsel testified that the conflict if there was any, was over when he started representing Applicant because Mr. Gray was sentenced months before he came to represent Applicant. Plea Counsel testified that Applicant was always thinking that he was entitled to a better deal in his case because he had been a victim. Plea Counsel testified that he may have casually brought up Applicant wanted a lighter sentence because he was a victim with Mr. Golson, but he was not sure.

Plea Counsel testified that he did the typical investigation in a case like this and reviewed the discovery and the blood draw. Plea Counsel testified that he looked into the law regarding blood draws in felony DUI cases. Plea Counsel testified that if he had seen anything procedurally improper in the blood draw, he would have fixated on it, challenged it, and made it the brunt of his case. However, Plea Counsel testified that everything checked out legally, so he moved into

mitigation. Plea Counsel testified that he did not remember if he had medical records regarding the blood draw. Plea Counsel testified that he requested Applicant turn over his medical records to him multiple times, but Applicant would never give him those records. Plea Counsel said he finally got consent signed by Applicant, but Plea Counsel had real problems getting Applicant to help him get medical records.

Plea Counsel testified that he attempted to discuss the victims' injuries, but Applicant would frequently change the subject to something else. Plea Counsel testified that every time he met with Applicant, he would try to talk about the case, and Applicant was not interested in the facts. Plea Counsel testified that Applicant was interested in the fact that he thought the Solicitor's Office should be treating him better. Plea Counsel testified that Applicant would say, oh, you know, I'm really injured, so they can't put me in prison. Plea Counsel testified that most meetings with Applicant involved Applicant telling Plea Counsel more about Applicant's injuries. Plea Counsel testified that sometimes Applicant was in a good mood and others Applicant would start screaming at him and leaving and trying to fire him, which happened about half a dozen times.

Plea Counsel testified that the prosecutor wanted to call Applicant for a third appearance and plead or put the case on the trial docket. Plea Counsel testified that Applicant sometimes said he wanted to plead guilty, sometimes he didn't. Plea Counsel testified that one day the prosecutor said, all right, he's got to plead guilty, or I'm going to directly present another felony DUI charge to the grand jury. Plea Counsel testified that Applicant still did not want to plead guilty. Plea Counsel testified that the case was called for pleas in August of 2016, and the judge might be open to a sentence that would be pretty favorable to Applicant. Plea Counsel testified that Applicant did not want to plead guilty. Plea Counsel testified that he informed Applicant that the prosecutor threatened to add another charge and try him on both charges.



Plea Counsel testified that it was difficult to prepare for trial because Applicant would say he would hire somebody else and he would not talk to him. Plea Counsel testified that Applicant would call him and be pleasant after a few weeks, then he might start yelling at him and hanging up again. Plea Counsel testified that even though Applicant was not cooperating, he still prepared for trial, and then Applicant was arrested for domestic violence. Plea Counsel testified that there was not much he could do to prepare for trial, and Applicant just wanted assurance he would not go to prison. Plea Counsel testified that Applicant would tell him he has these problems and the judge should not send him to prison. Plea Counsel testified that he documented tirelessly that Applicant was not very helpful in attaining his medical records.

Plea Counsel testified that if Applicant asked him for any discovery, he would give it to him. Plea Counsel testified that the pill discrepancy in the blood draw did not really matter because he was over the limit, and the pills would not be relevant. Plea Counsel testified that once Applicant was arrested for the criminal domestic violence of a high and aggravated nature (CDVHAN), Applicant just wanted to get into court. At that point, Plea Counsel testified that the prosecutor decided to drop the CDVHAN in exchange for his plea to the felony DUI charges.

On cross-examination, Plea Counsel testified that the driver of the vehicle Applicant hit had a broken hip, multiple broken ribs, lost several teeth, and multiple lacerations on his body. Plea Counsel testified that the passenger in the vehicle Applicant hit had compound fractures in both of her wrists that required surgeries to implant metal rods in her wrists and her hands. Plea Counsel testified that the victims sustained serious injuries, and he was surprised that law enforcement did not charge him with two felony DUIs because they usually hit a person with as many as they can when they arrest them. Plea Counsel testified that he did not remember if he had the victim's medical records when he first met with Applicant.

Plea Counsel testified that Applicant never asserted that he was not under the influence at the time of the crash. Plea Counsel testified that in his twelve years of experience as a trial lawyer, the blood draw was procedurally clean. Plea Counsel testified that this case turned into a mitigation case, meaning he needed to make Applicant look as favorable as possible to receive a lighter sentence. Plea Counsel testified that Applicant never really said he wanted to go to trial or to plead, but when he was charged with CDVHAN, he became fixated on pleading and having that charge dropped. Plea Counsel testified that he explained to Applicant that the CDVHAN was a zero to twenty-year felony, and it was a big deal for them to drop it. Plea Counsel testified that they would be fighting a two-front war on the CDVHAN and felony DUI charges.

Plea Counsel testified that, on the day of the plea, Applicant chose to plead guilty and that no one could have made him do it. Plea Counsel testified that he was not concerned that Applicant was pleading guilty voluntarily. Plea Counsel testified that his concern was how Applicant would act in front of the judge and how he would act towards the victims. Plea Counsel testified that his concerns were based on the witness accounts of Applicant's demeanor at the accident scene. Plea Counsel testified that he had Applicant's wife there to provide mitigation.

On redirect examination, Plea Counsel testified that Applicant never specifically said he wanted to go to trial; rather, he wanted a better deal. Plea Counsel testified that Applicant did specifically say he did not want to plead at some point, so he requested Applicant meet with him to prepare for trial, and Applicant fired Plea Counsel.

NICOLE SIMPSON'S TESTIMONY³

On direct examination, Nicole Simpson (Simpson) testified that she did not recall the Robert Gray case. Simpson testified that she did not recall having conversations with Applicant,

³ Nicole Simpson was a former Assistant Solicitor at the Fifth Circuit Solicitor's Office.



who was a victim in a case that she prosecuted. Simpson testified that because she is no longer at the Solicitor's Office, she did not have a physical file or notes regarding any conversations that may have been had by herself or the victim advocate. Simpson testified that the victim advocate would have been the primary person, probably reaching out to Applicant during that time. Simpson testified that the Solicitor's Office has an individual whose job is to interact with victims of crimes, but she interacted with victims too.

Simpson testified that she had no recollection of interacting with Applicant. Simpson testified that she did not recall interacting with Mr. Robert Gray. Simpson testified that she had no recollection of the relationship between Mr. Gray and Mr. Green outside of the fact that Mr. Green was a victim of a crime. Simpson testified that she would absolutely not give anyone some sort of idea that they would receive favorable treatment from the Solicitor's Office because they were a victim of a separate crime. Simpson testified that the Solicitor's Office would have protocols in place where a person is a victim in one crime and the defendant in a separate crime.

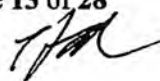
Simpson testified that she did not recall speaking to Joshua Golson about Applicant's case.

On cross-examination, Simpson testified that if there was an actual conflict in a case, there was a protocol in place to handle the situation, but it would depend on the situation. Simpson testified that her responsibility as a prosecutor to the victim was to make sure that she complied with the victim's bill of rights, which, of course, they had victim's advocates in the office.

On redirect examination, Simpson testified that if there had been any conflict, that conflict was cured when Applicant's case happened because Mr. Gray's case had already concluded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the



evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the trial transcript, and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided

representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

"Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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

2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). 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 counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince



the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting the high bar of Strickland is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harris, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice

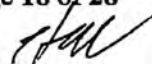
suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claim is addressed below:

Involuntary Guilty Plea

Applicant alleges his plea was unknowingly and involuntarily entered into as a result of Counsel's ineffective assistance. Specifically, Applicant asserts Counsel failed to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into. This Court disagrees and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v.



United States, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. at 34, 528 S.E.2d at 421 (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

At his evidentiary hearing, on direct examination, Applicant testified that Plea Counsel never discussed the potential penalties of the DUI charge. Applicant testified that Plea Counsel never discussed the evidence against him in this case in full detail. Applicant testified that Plea Counsel never discussed the elements in full detail of felony DUI with great bodily injury. Applicant testified that he did not want to plead guilty because he did not fully understand what would happen with the charges.

On cross-examination, Applicant testified that Plea Counsel did not really discuss the elements of his charges, what the State would have to prove, and what evidence they had against him. Applicant testified that the plea transcript reflected that he went in front of Judge Clifton Newman for a plea, and the judge asked him questions about his case and the representation of Plea Counsel. Applicant agreed that Judge Newman told him that the sentencing range for his charges was anywhere from thirty days to fifteen years imprisonment. Applicant agreed that he told Judge Newman he understood the sentencing range. Applicant testified that he really did not understand the plea judge's question about whether he had been promised anything to enter the guilty plea. Applicant then added, again, Plea Counsel told him that he would only get three to five years. Applicant testified that he never informed Judge Newman of his expectation to get only three to five years.

Applicant testified that he did not answer some questions because he did not fully understand. Applicant testified that he tried to explain himself to the judge and apologize because he did not plan to do it – it just happened. Applicant testified that at that time, he was still in trauma because of his gunshot wounds.

On direct examination, Plea Counsel testified that he did the typical investigation in a case like this and reviewed the discovery and the blood draw. Plea Counsel testified that he looked into the law regarding blood draws in felony DUI cases. Plea Counsel testified that if he had seen anything procedurally improper in the blood draw, he would have fixated on it, challenged it, and made it the brunt of his case. However, Plea Counsel testified that everything checked out legally, so he moved into mitigation. Plea Counsel testified that he did not remember if he had medical records regarding the blood draw. Plea Counsel testified that he requested Applicant turn over his medical records to him multiple times, but Applicant would never give him those records. Plea

Counsel said he finally got consent signed by Applicant, but Plea Counsel had real problems getting Applicant to help him get medical records.

Plea Counsel testified that Applicant was interested in the fact that he thought the Solicitor's Office should be treating him better. Plea Counsel testified that Applicant would say, "'oh, you know, I'm really injured, so they can't put me in prison-'" Plea Counsel testified that most meetings with Applicant involved Applicant telling Plea Counsel more about Applicant's injuries. Plea Counsel testified that sometimes Applicant was in a good mood and others Applicant would start screaming at him and leaving and trying to fire him, which happened about half a dozen times.

Plea Counsel testified that Applicant sometimes said he wanted to plead guilty, sometimes he didn't. Plea Counsel testified that the prosecutor informed him that Applicant either had to plead or he was going to directly present another felony DUI charge to the grand jury. Plea Counsel testified that Applicant still did not want to plead guilty. Plea Counsel testified that the case was called for pleas in August of 2016, and the judge might be open to a sentence that would be pretty favorable to Applicant. Plea Counsel testified that Applicant did not want to plead guilty. Plea Counsel testified that he informed Applicant that the prosecutor threatened to add another charge and then try him on both charges.

Plea Counsel testified that this case turned into a mitigation case, meaning he needed to make Applicant look as favorable as possible to receive a lighter sentence. Plea Counsel testified that Applicant never really said he wanted to go to trial or to plead, but when he was charged with CDVHAN, he became fixated on pleading and having that charge dropped. Plea Counsel testified that he explained to Applicant that the CDVHAN was a zero-to-twenty-year felony, and it was a big deal for them to drop it. Plea Counsel testified that they would be fighting a two-front war on the CDVHAN and felony DUI charges.

Plea Counsel testified that, on the day of the plea, Applicant chose to plead guilty and that no one could have made him do it. Plea Counsel testified that he was not concerned that Applicant was pleading guilty voluntarily. Plea Counsel testified that his concern was how Applicant would act in front of the judge and how he would act towards the victims. Plea Counsel testified that his concerns were based on the witness accounts of Applicant's demeanor at the accident scene. Plea Counsel testified that he had Applicant's wife there to provide mitigation.

On redirect examination, Plea Counsel testified that Applicant never specifically said he wanted to go to trial; rather, he wanted a better deal. Plea Counsel testified that Applicant did specifically say he did not want to plead at some point, so he requested Applicant meet with him to prepare for trial, and Applicant fired Plea Counsel.

This Court finds Applicant has failed to establish how his plea was not freely and voluntarily entered. During Applicant's guilty plea, Applicant's competency evaluation was read into the record, and Applicant was found to be competent to proceed with his guilty plea. (Plea Tr. pp. 4, l. 17 – 6, l. 2). Applicant was informed of his constitutional right to a jury trial. (Plea Tr. p. 4, ll. 5 – 7; p. 6, ll. 16 – 18). Applicant affirmed he was there to plead guilty to two counts of felony driving under the influence resulting in great bodily harm. (Plea Tr. pp. 3, l. 24 – 4, l. 2). Applicant stated he was guilty of those charges. (Plea Tr. p. 4, ll. 3 – 4). Applicant stated he understood the penalties he was facing with those charges. (Plea Tr. p. 6, ll. 3 – 12). Applicant stated no one had promised him anything to plead, and he waived his right to a jury trial. (Plea Tr. p. 6, ll. 13 – 18).

Applicant provided that he was under the influence of alcohol and Oxycontin at the time of the accident. (Plea Tr. p. 8, ll. 11 – 12; p. 9, ll. 4 – 6). Applicant stated he was taking more pills that he was prescribed to take at the time of the accident. (Plea Tr. p. 8, ll. 13 – 24). Applicant



stated that he believed he was guilty of the crime of felony DUI. (Plea Tr. p. 9, ll. 15 – 17). Applicant agreed with the Solicitor's recitation of the facts and affirmed that those facts were true. (Plea Tr. pp. 9, l. 24 – 12, l. 3).

The record clearly shows that Applicant's plea was made voluntarily, and the testimony shows that Applicant decided to plead guilty after a thorough review of the case. Applicant has failed to show that, but for Plea Counsel's performance he would have proceeded to trial. Further, Applicant has failed to show that he was unaware of the charges he was pleading guilty to, the evidence the State was prepared to use against him at trial, or the possible penalties Applicant could receive if he went to trial or if he pleaded guilty. Therefore, Applicant has failed to show that his guilty plea was not freely, voluntarily, or intelligently entered. As such, this allegation must be **denied and dismissed with prejudice.**

Failure to Investigate

Applicant alleges Plea Counsel failed to properly investigate the facts and circumstances surrounding the allegations against Applicant. Specifically, Plea Counsel failed to: (1) properly investigate the injuries to the alleged victims in order to properly assess whether Applicant was properly charged; and (2) failed to properly investigate the testing conducted of Applicant's blood and the facts and circumstances surrounding its taking. This Court finds these allegations are without merit.

On direct examination, Applicant testified that Plea Counsel never discussed the elements in full detail of felony DUI with great bodily injury. Applicant testified that Plea Counsel asked if he was read his constitutional rights at the hospital, and he replied that the police did not read him his constitutional rights. Applicant testified Plea Counsel never discussed the hospital blood draw and subsequent testing. Applicant testified that Plea Counsel never went into full detail of

his blood-alcohol level investigation. Applicant testified that Plea Counsel did not discuss the circumstances surrounding how his blood was taken at the hospital. Applicant testified that Plea Counsel did not discuss the injuries that the victims sustained in the accident until the plea hearing.

On cross-examination, Applicant testified that Plea Counsel did not discuss in detail the blood test results and how that would affect the judgment in his case. Applicant testified that he could not recall if Plea Counsel discussed his blood test results. Applicant testified that Plea Counsel told him there were two witnesses against him, the ones involved, but did not discuss how long they were in the hospital or what injuries they sustained. Applicant testified that he asked Plea Counsel about the victims' injuries because the Solicitor's Office indicated they would add a second felony DUI charge. Applicant testified that he did not know how many people were injured in the accident.

On direct examination, Plea Counsel testified that he did the typical investigation in a case like this and reviewed the discovery and the blood draw. Plea Counsel testified that he investigated the law regarding blood draws in felony DUI cases. Plea Counsel testified that if he had seen anything procedurally improper in the blood draw, he would have fixated on it, challenged it, and made it the brunt of his case. However, Plea Counsel testified that everything checked out legally, so he moved into mitigation. Plea Counsel testified that he did not remember if he had medical records regarding the blood draw. Plea Counsel testified that he requested Applicant turn over his medical records to him multiple times, but Applicant would never give him those records. Plea Counsel said he finally got a medical records consent signed by Applicant, but Plea Counsel had genuine issues with Applicant not providing information to help him get medical records.

Plea Counsel testified that he attempted to discuss the victims' injuries, but Applicant would frequently change the subject to something else. Plea Counsel testified that every time he

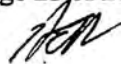


met with Applicant, he would try to talk about the case, and Applicant was not interested in the facts. Plea Counsel testified that Applicant was interested in the fact that he thought the Solicitor's Office should be treating him better. Plea Counsel testified that most meetings with Applicant involved Applicant telling Plea Counsel more about Applicant's injuries. Plea Counsel testified that he documented tirelessly that Applicant was not very helpful in attaining his medical records. Plea Counsel testified that the pill discrepancy in the blood draw did not really matter because he was over the limit, and the pills would not be relevant.

On cross-examination, Plea Counsel testified that he did not remember if he had the victim's medical records when he first met with Applicant. Plea Counsel testified that Applicant never asserted that he was not under the influence at the time of the crash. Plea Counsel testified that in his twelve years of experience as a trial lawyer, the blood draw was procedurally clean.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331-32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, our Supreme Court has cautioned reviewing courts not to lose sight of the



reasonableness standard regarding counsel's duty to investigate. See id. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

To prevail on a claim of ineffective assistance based on failure to investigate or prepare for trial, a PCR applicant must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial").

Applicant has not presented any evidence that would suggest Plea Counsel could have further prepared for Applicant's case. Plea Counsel discussed the discovery with Applicant prior to Applicant's plea hearing. Plea Counsel discussed all possible issues with Applicant, including the CDVHAN and the potential impact it would have on his case. Applicant has failed to present any evidence that Plea Counsel did not investigate, nor has Applicant presented any information

or rights that Plea Counsel failed to discuss with Applicant. As Applicant has failed to present any additional information or evidence that Plea Counsel could have discovered if he were to have prepared further, this Court finds Applicant has failed to show how Plea Counsel's performance was deficient, or how Applicant was prejudiced by Plea Counsel's performance. Therefore, this allegation is **denied and dismissed with prejudice.**

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be denied and dismissed with prejudice.**

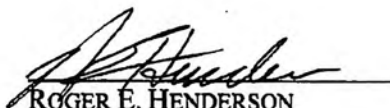
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.



IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1st day of June, 2022.


ROGER E. HENDERSON
Presiding Judge
Fifth Judicial Circuit

RECEIVED

JUN 27 2022

S.C. SUPREME COURT

WITNESSES

(S) H P Helland
- S C Highway Patrol

Herring

ARREST WARRANT NUMBER

G184661Y15

**ACTION OF GRAND JURY
TRUE BILL**

Deann Hardner
Foreperson of Grand Jury
Date: **AUG 13 2015**

VERDICT

DOCKET NO. 2015-GS-40-04340

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2015

147

**THE STATE
vs.**

Elijah Green

**Indictment for
DUI / FELONY DRIVING UNDER THE
INFLUENCE, GREAT BODILY INJURY
RESULTS**

**SC Code: 56-05-2945(A)(1)
CDR Code: 0406**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

60

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 12, 2015, the
Grand Jurors of Richland County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE
GREAT BODILY INJURY

That Elijah Green did in Richland County, on or about April 25, 2015, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused great bodily injury to BERNARD EDMONDS, in violation of Section 56-05-2945(A)(1), S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

162
STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Elijah Green

AKA:

Race: BLACK Sex: M Age: 52

DOB: 1963 SS#: [REDACTED]

Address: [REDACTED] Tree Drive

City, State, Zip: Hopkins, SC 29061

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: DUI / Felony driving under the influence, great bodily injury results

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4004340

A/W#: G184661Y15

Date of Offense: 4/25/2015

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

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

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

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

ATTEST: [Signature] 100618 X [Signature] 76145
Golson, Josh 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 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (89 days credit)

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Nolmes

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2127

Sentence Date: December 7, 2016

WITNESSES

(S) H P Helland
- S C Highway Patrol

Mc Fadden

ARREST WARRANT NUMBER

DP16147

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date:

Ayesha Hasan
JUL 20 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS-40-04664

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2016

147

THE STATE
vs.

Elijah Green

Indictment for
DUI / FELONY DRIVING UNDER THE
INFLUENCE, GREAT BODILY INJURY
RESULTS

SC Code: 56-05-2945(A)(1)
CDR Code: 0406

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 20, 2016, the
Grand Jurors of Richland County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE
GREAT BODILY INJURY

CDR: 0406 56-05-2945(A)(1)

That Elijah Green did in Richland County, on or about April 25, 2015, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused great bodily injury to Else Jordan, in violation of Section 56-05-2945(A)(1), S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Elijah Green

AKA:

Race: Se 52DOB: 1963 SS SSAddress: 1 DriveCity, State, Zip: Hopkins, SC 29061DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, great bodily injury resultsin violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Golson, Josh 100618 X Elijah Green J. [Signature] 76175
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 12 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (89 days credit)☐ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: Holmes

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS ¹⁶⁵INDICTMENT/CASE#: 2016GS4004664A/W#: DP16147Date of Offense: 4/25/2015 - 4/25/2015S.C. Code § : 56-05-2945(A)(1)CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ 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: 2127Sentence Date: Dec 7, 2016