

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Pickens County

Honorable R. Scott Sprouse, Circuit Court Judge

MATTHEW BENNINGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001073

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF PICKENS)	THIRTEENTH JUDICIAL CIRCUIT
)	
State of South Carolina,	)	Case No(s) .: 2018CP3901746,
	)	2018CP3903379
Plaintiff,)	
)	
-VS-	)	TRANSCRIPT OF GUILTY PLEA
)	
Matthew Frank Benninger,)	
)	
Defendant.)	
)	

January 24, 2019
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

SHANNON ODOM, Esquire
Attorney for the Plaintiff

R. ASHER WATSON, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Realtime Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via
AudioScribe



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EXHIBITS PAGENO.DESCRIPTIONID EV**PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 24th day of January 2018,
at approximately 11:34 a.m.)

THE CLERK: All right. This is Docket No.
2018-GS-39-3379, the State versus Matthew Frank
Benninger, indictment for assault and battery by a
mob second degree, and Docket No. 2018-GS-39-1746,
indictment for domestic violence first degree.

If you could, raise your right hand, sir.
(The defendant is first duly sworn.)

THE DEFENDANT: Yes.

THE CLERK: Thank you.

THE COURT: Mr. -- is it Benninger?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. You are here today to plead
to domestic violence first degree, that carries up
to 10 years, that is a violent offense and a
serious offense; and assault and battery by a mob
second degree, that is a serious offense that
carries three years up to 25 years. Is that your
understanding?

THE DEFENDANT: Yes, ma'am.

THE COURT: And have you discussed these
charges with your lawyer?

THE DEFENDANT: Yes, ma'am.

1 **THE COURT:** Are you happy with what your
2 lawyer's done for you?

3 **THE DEFENDANT:** Yes, ma'am.

4 **THE COURT:** Are you under the influence of
5 drugs or alcohol here today?

6 **THE DEFENDANT:** No, ma'am.

7 **THE COURT:** Has anyone forced you to plead
8 guilty?

9 **THE DEFENDANT:** No, ma'am.

10 **THE COURT:** Has anybody promised you anything
11 to get you to plead guilty?

12 **THE DEFENDANT:** No, ma'am.

13 **THE COURT:** When you plead guilty, you give
14 up certain constitutional rights: One is your right
15 to remain silent about these charges. Do you know
16 that?

17 **THE DEFENDANT:** Yes, ma'am.

18 **THE COURT:** You also give up your right to a
19 jury trial. You were set, in fact, today, for a
20 jury trial. At that trial, your attorney could call
21 witnesses for you, cross examine witnesses against
22 you, and the state would have to prove your guilt
23 beyond a reasonable doubt. But when you plead
24 guilty, you give up your right to a jury trial. Do
25 you know that?

1 **THE DEFENDANT:** Yes, ma'am.

2 **THE COURT:** The assault and battery by a mob,
3 that case has not been indicted by the grand jury.
4 You want to give up that right and plead guilty
5 today anyway?

6 **THE DEFENDANT:** Yes, ma'am.

7 **THE COURT:** Okay. And how do you plead on
8 both these charges: guilty or not guilty?

9 **THE DEFENDANT:** I'm pleading guilty.

10 **THE COURT:** Okay. You've got 10 days from
11 today's date to appeal this plea, if you so choose,
12 but you must do so in writing to this Court.

13 Yes, ma'am.

14 **MS. ODOM:** Thank you, Your Honor. Shannon
15 Odom on behalf of the state. On Mr. Benninger's
16 domestic violence charge, this happened on June 6,
17 2018, in Pickens County. The defendant did strike
18 the victim in her face. This was witnessed by a
19 third party.

20 The defendant and the victim were having
21 trouble with their moped. They had pulled over into
22 a parking lot and a bystander witnessed the
23 incident. The bystander pulled over and -- to check
24 on the situation. Mr. Benninger left the scene.

25 Law enforcement did respond. They got a

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written statement from the victim, where she stated the defendant had hit her, as well as body cam footage has her stating that he did hit her.

He does have two prior convictions for domestic violence within the last 10 years. They're actually from last year. He was arrested last year and earlier this year; plead on two domestic violence charges; and then, eight days after being released, got picked up on this offense. So he does have those priors to up it to a DV first degree.

Your Honor, as was stated, this -- this charge was on the trial docket, so the state's not making a recommendation to time on this charge. The victim is here. I'm not sure if she wants to address the Court or not at the appropriate time.

Now, on the facts on the other charge, on the assault and battery by a mob, this occurred on August 3, 2018. While incarcerated at the Pickens County jail, a co-defendant struck the victim, Michael Lecroy, in the back of the head, causing him to fall to the ground. And then Mr. Benninger, along with several co-defendants, hit and kicked the victim. The victim did have a broken nose and had to be taken to the hospital for treatment.

The state's recommending a six-year sentence

1 on the assault charge and asking that the domestic
2 violence charge run concurrently with the assault
3 charge sentence.

4 **THE COURT:** All right. And you said that the
5 victim might want to speak?

6 **MS. ODOM:** Yes, ma'am. I do believe she does.

7 **THE COURT:** Okay. Tell me your name please.

8 **THE VICTIM:** D.C.

9 **THE COURT:** Uh-huh.

10 **THE VICTIM:** I just want to say that nothing
11 happened that day. I did lie. And I -- I would -- I
12 called the Easley Police and lied after the fact. I
13 don't know why the witness said that he hit me,
14 because he did not. I was angry with him for
15 something he had done, you know. But I really don't
16 think he deserves to go to prison. I really don't.
17 It's just going to make him an angry person. He's
18 not a bad person.

19 **THE COURT:** Well, yeah. Okay. I got you. I
20 mean, you understand the recommendation on the
21 other charge is for six years. So okay.

22 All right. Yes, sir.

23 **MR. WATSON:** Thank you, Your Honor. May it
24 please the Court. Before you is Mr. Matthew Frank
25 Benninger. He's 58 years old. He spent time in --

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or lived in Florida before. He's on SSI right now. This is something that we would ask the Court, if you're so inclined, to run the same time on both charges ---

THE COURT: I am.

MR. WATSON: --- concurrently. Okay. This is something he does not dispute. To be crystal clear, this is something that Mr. Benninger does not dispute, despite any other statements here today. And we just don't want anything to be jeopardized in that regard, Your Honor.

This was a recommendation for five years off the -- before it was put on the trial docket. And we're not even going to bark up the tree of something at or below that. We feel it is fair resolution.

THE COURT: All right. I'll give him six years on each, run it concurrent, credit for 233 days. All right.

MR. WATSON: Thank you, Your Honor.

THE COURT: Thank you.

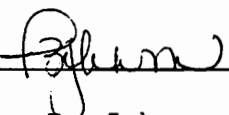
MS. ODOM: Thank you, Your Honor.

(Proceedings conclude at approximately 11:40 a.m.)

C E R T I F I C A T E

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens, South Carolina, on this 20th day of March 2020.

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



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
GREGNVILLE/)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Matthew Benninger)

2019-CP-39- 920

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

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

APPLICATION FOR

v.

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MAC DOUGALL CORRECTION 1516 Old Gilliard Rd., Ridgeville SC 29472
2. Name and location of Court which imposed sentence PICKENS 13th Judicial Circuit
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-G5-1746 DOMESTIC VIOLENCE 1ST DEGREE
 - (b) 2018-G5-3379 ASSAULT BATTERY BY MOB 2ND DEGREE
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 24th 2019 SIX YEAR CONCURRENT TERMS
 - (b) _____

- (c) _____
- 6 Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7 Did you appeal from the judgment of conviction or the imposition of sentence?
NO

- 8 If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) HAD NO KNOWLEDGE OF LAW OR DUE PROCESS VIOLATION COMMITTED BY COUNSEL AND STATE SOLICITOR AT THAT TIME.
- (b) DID NOT KNOW AT THAT TIME THAT BOTH COUNSEL AND SOLICITOR HAD VIOLATED SC RULES OF PROFESSIONAL CONDUCT.
- (c) _____

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

- (a) PLAIN ERROR PURSUANT S.C. PROFESSIONAL RULE OF CONDUCT when DEFENSE COUNSEL fail to CONDUCT RULE 2 AND EVIDENTIARY HEARINGS.
 - (b) PLAIN ERROR OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN COUNSEL fail to SERVE A 911 CALL, EMS Report, Bodily Injuries
 - (c) PLAIN ERROR OF INEFFECT COUNSEL who did not obtain the A BENCH WARRANT CHARGES, ELUDE preliminary HEARINGS, cell, fail to QUASH indictment and, fail to provide Exonerating phone recordings.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) DEFENSE ATTORNEY AND SOLICITOR VIOLATED DEFENDANTS RIGHTS UNDER SC ARTICLE I SECT. 7, 5, 15-20 FOR 9 MONTHS.
 - (b) FOUR OFFICIALS VIOLATED DEFENDANTS 5th, 14th, 6th, 8th, 1st, 9th AMENDMENT RIGHTS TO DUE PROCESS.
 - (c) COUNSEL VIOLATED 6th, 14th, 5th and 14th AMENDMENT when COUNSEL willfully EXCLUDED FACULATORY Bodily COMMUNICATIONS FOOTAGES, Jail phone recordings, and Victims statements in his favor.
12. Prior to this application have you filed with respect to this conviction:

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

N/A

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

- (a) which grounds have been presented
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) PLEASE SEE SENTENCES (9), (10) and (11) AS TO CLARIFY.
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Asher WATSON, 2nd FLOOR 416 EAST North, St.,
 - GREENVILLE, SC 29601
 - Bar # 101006
- (b) the proceedings at which each such attorney represented you:
- TOTALLY INEFFECTIVE AT JULY 2018 BOND HEARING.
 - CONDUCTED NO MOTIONS FOR DISMISSAL AT RULE 284 HEARINGS.
 - COERCED DEFENDANT INTO PLEA JANUARY 21, 2019.
19. State clearly the relief you seek in filing this application:
DISMISSAL OF CHARGES OR A JURY TRIAL BASED ON UNEDITED, 911 CALL AUDIO, BODYCAM COMMUNICATION INVESTIGATION FOOTAGES, EXONERATING JAIL PHONE CONVERSATIONS, AND VICTIMS RECENTED STATEMENTS.
20. Are you now under sentence from any other court that you have not challenged?
N/A

2019-CP-39- 920

STATE OF SOUTH CAROLINA)
)
County of PICKENS)

VERIFICATION

Matthew Benninger
I, Matthew Benninger, 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.

Matthew Benninger

SWORN to and subscribed before me this 11
day of July, 2019

Francis Johnson (L.S.)
Notary Public

My Commission Expires: 11/10/2024

2019 JUL 15 A 10 43
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2019-CP-39- 920

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

Matthew Benninger

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

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

Matthew Benninger
Matthew Benninger
Applicant

SWORN or affirmed to and subscribed before me this
11 day of July, 2019

Francis Johnson
Notary Public

My Commission Expires: 11/10/2024

2019 JUL 15 A 0 43
CLERK OF COURT
SIOUX COUNTY
SOUTH CAROLINA

2019 JUL 15 A 10:58

CLERK OF COURT
DICKENS COUNTY
SOUTH CAROLINA

PAT WELBORN
Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671

X emailed to
Taylor Smith
7/15/19 MB

✓ Mailed
Matthew Benninger # 378932
MacDougal C.I.
1516 Old Gilliard Rd.
Ridgeville 1 Sc 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	IN THE THIRTEENTH JUDICIAL CIRCUIT
)	
)	
Matthew Benninger, #378932,	)	Case No.: 2019-CP-39-0920
Applicant,)	
)	
v.	)	RETURN AND MOTION FOR
	)	A MORE DEFINITE STATEMENT
State of South Carolina,)	
Respondent.)	
_____)	

The State (Respondent), making its return to the application for post-conviction relief filed by Matthew Benninger (Applicant) on July 15, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. During its September of 2018 term, the Pickens County Grand Jury indicted Applicant for first-degree criminal domestic violence (2018-GS-39-1746). Applicant was represented by Robert Asher Watson, Esquire (plea counsel), and Assistant Solicitor Shannon Swords Odom of the Thirteenth Circuit Solicitor's Office prosecuted the case. On January 24, 2019, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty as indicted. Applicant also waived presentment of an indictment for second-degree assault and battery by mob (2018-GS-39-3379) and pleaded guilty to that offense as well. The State did not make a sentencing recommendation as to the criminal domestic violence offense, recommended that Applicant be imprisoned for six years for the assault and battery by mob offense, and recommended that the sentences for both offenses be run concurrently. Judge Verdin sentenced Applicant to imprisonment for six years for each offense, with the sentences running concurrently, and with credit for Applicant's time served.

Applicant did not appeal his convictions or sentences.

II. Current Application

In his application for post-conviction relief, Applicant claims he is entitled to post-conviction relief based on multiple grounds, which Respondent interprets as follows: (1) plea counsel was constitutionally ineffective assistance of counsel for failing to conduct an adequate investigation by not obtaining a recording of a 911 call, obtaining a copy of an EMS report, obtaining a copy of the recording from a police officer's body camera, obtaining recordings of jail phone calls, and obtaining the victim's statements in Applicant's favor, (2) plea counsel was constitutionally ineffective for failing to obtain a bond for Applicant on the charges, (3) plea counsel was constitutionally ineffective for failing to "conduct Rule 2 and Evidentiary Hearings," (4) plea counsel was constitutionally ineffective for failing to request a preliminary hearing, (5) plea counsel was constitutionally ineffective for failing to move to quash the indictment, (6) plea counsel was constitutionally ineffective for failing "to provide Exonerating police recordings," (7) Applicant did not knowingly and voluntarily plead guilty but was coerced by plea counsel, and (8) plea counsel and the solicitor violated Applicant's constitutional rights. Applicant prays that the Court would grant post-conviction relief and dismiss the indictments or grant him a jury trial.

Attached to this return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's plea hearing, and the post-conviction relief application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Applicant's Claims

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, she would not have pleaded guilty

and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea."

Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701,

706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014). An “applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.” Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court’s finding that Dempsey was prejudiced by trial counsel’s failure to call an expert at trial to rebut the State’s expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

“The purpose of a preliminary examination is to determine whether probable cause exists to believe that the defendant committed the crime and to warrant the defendant’s subsequent trial.” South Carolina Dept. of Motor Vehicles v. McCarson, 391 S.C. 136, 148, 705 S.E.2d 425, 431 (2011) (quoting State v. Ramsey, 381 S.C. 375, 376, 673 S.E.2d 428, 428-29 (2009)). A preliminary hearing shall not be held . . . if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held. Rule 2(b), SCRCrimP. The South Carolina Court of Appeals has found no error in a trial court’s denying a defendant’s motion to quash an indictment made on the basis that the defendant did not receive a requested preliminary hearing because, despite the fact that “[t]he record [was] unclear about the timing of the [defendant’s] request,” . . . “the defendant was indicted by the grand jury before a preliminary hearing was held.” State v. Hawkins, 310 S.C. 50, 54-55, 425 S.E.2d 50, 52-53 (S.C. Ct. App. 1992).

Respondent submits that Applicant cannot meet his burden in showing he is entitled to post conviction relief based upon his claims. Applicant affirmed to Judge Verdin during his plea hearing that he was happy with plea counsel's representation of him. Plea Tran. 5. Applicant affirmed that no one was forcing him to plead guilty or had promised anything in exchange for the entry of his guilty pleas. Plea Tran. 5. After being informed by Judge Verdin of the rights he would be waiving by pleading guilty, Applicant affirmed that he wanted to plead guilty. Plea Tran. 5-6. The victim recanted during the plea hearing her statements to police about being stuck by Applicant, and plea counsel informed Judge Verdin, without any contrary statement from Applicant, that Applicant was not disputing that he was guilty of criminal domestic violence despite the victim's recantation. Plea Tran. 8-9. Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's claims. Applicant fails to set forth with specificity any facts and circumstances upon which many of the claims are based. For example, Applicant claims plea counsel was constitutionally ineffective for failing to conduct an adequate investigation, but fails to explain how counsel's alleged failure to investigate these items influenced Applicant's decision to plead guilty rather than proceeding to trial and fails to explain the supposed exculpatory value of these items. Applicant claims plea counsel was constitutionally ineffective for failing to secure a bond for Applicant, but fails to explain how this influenced Applicant's decision to plead guilty rather than proceeding to trial. Applicant claims

plea counsel was constitutionally ineffective for failing to “conduct Rule 2 and Evidentiary Hearings,” but fails to explain what value would have accrued had plea counsel taken these actions and how these supposed failure’s influenced Applicant’s decision to plead guilty rather than proceeding to trial. Applicant claims plea counsel was constitutionally ineffective for failing to request a preliminary hearing, but fails to explain how this alleged failure influenced his decision to plead guilty rather than proceeding to trial. Applicant claims plea counsel was constitutionally ineffective for failing to move to quash the indictment, but fails to explain how this alleged failure influenced Applicant’s decision to plead guilty rather than proceeding to trial, particularly when Applicant admitted during his plea hearing that he was guilty of the offenses and waived indictment as to one of the offenses. Applicant claims he did not knowingly and voluntarily plead guilty but was coerced into pleading guilty, but does not explain what plea counsel did to allegedly coerce Applicant. Applicant claims plea counsel and the solicitor colluded to violate Applicant’s constitutional rights, but fails to explain how they did so, what constitutional rights these actions allegedly violated, and how these actions influenced Applicant’s decision to plead guilty rather than proceeding to trial.

The Uniform Post-Conviction Procedure Act requires that Applicant must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon an applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The

bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Denial of All Other Allegations

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

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRPC. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to file an amended application in order to provide a more definite statement as outlined in this return and then hold an evidentiary hearing regarding Applicant's claims.

Respectfully submitted,

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Attorney General

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June 22, 2020

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS)	
)	
	)	2019-CP-39-0920
)	
MATTHEW BENNINGER, 378932)	
)	
Applicant,)	
)	
vs	)	CERTIFICATE 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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Don A. Thompson, Esquire
107 Smithwood Court
Simpsonville, SC 29681

DATED this 22nd day of June, 2020.

Camille Henry
 Legal Assistant
 For Respondent

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State of South Carolina)	Court of Common Pleas
County of Pickens)	Thirteenth Judicial Circuit
Matthew Benninger,	)	Transcript of Record
)	
Applicant,)	
vs.	)	2019-CP-39-00920
)	
State of South Carolina,)	
)	
Respondent.)	

January 28, 2022
 Greenville, South Carolina
 Via WebEx Videoconferencing

B E F O R E:

The Honorable R. Scott Sprouse, Judge

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

Don A. Thompson, Esquire
On behalf of the Applicant

Taylor Z. Smith, Assistant Attorney General
On behalf of the State of South Carolina

Reported by: Stacy S. Johnson,
Circuit Court Reporter

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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held January 28,
2 2022, beginning at 2:58 PM.)

3 THE COURT: All right, Mr. Smith. Why don't you
4 call the case.

5 MR. SMITH: Sure.

6 This is the case of Matthew Benninger v. State.
7 The case number is 2019-CP-39-0920.

8 On January 24, 2019, Mr. Benninger appeared before
9 Judge Verdin and pleaded guilty as indicted to first
10 degree criminal domestic violence and he also pled
11 guilty that day to second degree assault and battery
12 by mob.

13 Asher Watson, who's joining us today, represented
14 Mr. Benninger at that hearing, and Assistant Solicitor
15 Shannon Odom represented the State. Ms. Odom did not
16 make a sentencing recommendation as to the CDV, but did
17 recommend that Mr. Benninger be imprisoned for six years
18 on the assault and battery by mob and recommended that
19 both sentences be run concurrently. Judge Verdin
20 followed that recommendation and then sentenced
21 Mr. Benninger to six years for each offense with them
22 running concurrently.

23 Mr. Benninger did not appeal, then filed his
24 Application for Post-Conviction Relief and raised eight
25 independent claims.

1 I've talked with Mr. Thompson recently and he told
2 me that Mr. Benninger may withdraw his application today
3 and, if not, I'd be happy to list the grounds that I
4 think we'll be dealing with today.

5 THE COURT: All right. Mr. Thompson, what's the
6 status?

7 MR. THOMPSON: Judge, I have -- over the course
8 of representing Mr. Benninger, I have tried on three
9 occasions to schedule an appointment with the Department
10 of Corrections to visit with him and all three occasions
11 they were under COVID lockdown, but I have been able to
12 talk with him on the phone on several occasions.

13 I talked with him a couple of weeks ago and we
14 really went into detail on the case. I told him what my
15 thoughts were. At that point in time he was hesitant
16 whether or not he was going to withdraw. He had somebody
17 he wanted me to talk with, which I did talk to. I talked,
18 again, by phone with Mr. Benninger yesterday. We, again,
19 discussed the pros and cons of going forward and he has
20 advised me yesterday that he does intend to withdraw.

21 And he's shaking his head no.

22 THE COURT: Okay.

23 THE APPLICANT: I'm sorry.

24 THE COURT: All right.

25 All right. Well, hold on one second.

1 Mr. Benninger, raise your right hand.

2 (Whereupon, Matthew Benninger was duly sworn by
3 the Court.)

4 THE COURT: All right. Mr. Benninger, what is
5 your wish today? Do you wish to withdraw or do you wish
6 to go forward?

7 THE APPLICANT: The only thing I can do is be honest,
8 and I am afraid to go forward, but at the same time I
9 feel it would be -- at least I think I should be able
10 to at least state my case and (in audible) I think that
11 on the first one, from that point, on I believe
12 Mr. Thompson has represented me as best he can and I've
13 been -- I've been scared through this whole thing and --
14 but I also don't believe I should leave myself on the
15 alter and remain that way.

16 My wife was supposed to be on here today. I guess
17 she is not. We just spoke twenty minutes ago and -- I
18 could go further, but I don't know whether to shut up or
19 not until you allow me to speak.

20 THE COURT: Well, Mr. Benninger, you -- you
21 understand that when you seek post-conviction relief,
22 and I'm sure Mr. Thompson has been over this with you,
23 but -- but for the Court's purpose I'm gonna -- gonna
24 reiterate. The relief that you seek in post-conviction
25 relief is to -- to obtain a new trial and if you were --

1 if you were successful and you obtained a new trial, it
2 does not mean that you would be limited to the sentence
3 that you received originally.

4 Do you understand me?

5 THE APPLICANT: Yes, sir. And I have an argument,
6 what I've written down. I've got all my arguments in
7 place, but I don't -- I want -- before I try to present
8 them, I want your permission to present them --

9 THE COURT: Well, I --

10 THE APPLICANT: -- for ineffective assistance of
11 counsel because that was my argument.

12 THE COURT: Again, I'm just asking you these
13 questions because you are entitled to have a hearing on
14 your PCR application, which that's -- that's why we're
15 here today and we're ready to go forward and --

16 THE APPLICANT: Okay.

17 THE COURT: -- and that's -- but that's entirely
18 up to you.

19 Now Mr. Thompson can tell you what he thinks and
20 can give you legal advice, but you make that ultimate
21 decision.

22 Do you understand that?

23 THE APPLICANT: Yes, sir.

24 THE COURT: All right. So -- so with that, do you
25 wish to go forward today or do you wish to withdraw your

1 application?

2 THE APPLICANT: I guess I can only say -- pardon
3 me. I'd like to move forward, but at the same time if
4 it's gonna take another year and a half or two years
5 for me to get in Court, and that's the problem I was
6 told, then I'll have done five years before I ever get
7 in front of a judge again and my time will be up except
8 the only difference is I'll have a record for these two,
9 so -- and that seems to me like, you know, five years
10 in prison before you get to even appeal the case due
11 to ineffective counsel, that's why -- to me it's just
12 like -- I don't what it is. As far as -- as far as I'm
13 concerned, I could rot in here. I feel like I'm in a
14 concentration camp. That's how I feel. My wife is gonna
15 divorce me and I never did -- in three and a half years
16 I've been in here (transmission interruption) I have no
17 choice but to go forward on it.

18 THE COURT: If you go forward, again, we don't have
19 any idea how long an appellate court would take.

20 THE APPLICANT: Right.

21 THE COURT: That's a -- that's a different forum,
22 but as far as your petition goes that's why we're here
23 today.

24 THE APPLICANT: Let's go forward.

25 THE COURT: All right. Mr. Thompson, maybe you can

1 put on the record --

2 MR. THOMPSON: Your Honor, the only thing I'd do
3 is put on the record he is scheduled to be released
4 next year and I did advise him that if he won the PCR
5 and the State appealed it, he would still be appealing
6 the sentence before anything would happen whether he's
7 released down the road -- I mean, whether he's actually
8 -- charges are dismissed down the road or not, and
9 that's -- that's kind of the situation if -- if he were
10 to win, he would still finish up -- I think it's about
11 seventeen months he's got left now. He's still got to
12 finish that up if the State appealed and then once the
13 appeal was over with, if it were upheld, he would be
14 back at square one starting over again, and I just really
15 don't think it was worth it to him, and that's what I
16 tried to explain to him. He's not gonna get out today.
17 That's -- that's what I'm trying to explain to him.

18 THE COURT: Do you understand that, Mr. Benninger?

19 THE APPLICANT: Oh, yes, I understand I won't get
20 out today.

21 THE COURT: Okay. Okay. Well, Mr. -- he --
22 Mr. Benninger's indicated he wishes to go forward.

23 So, Mr. Thompson, why don't -- to -- to save
24 time tell me the issues on which --

25 THE APPLICANT: You know what, Judge? Judge?

1 Let's just drop it. Forget it. I mean, I'm gonna be
2 here and I'm gonna get out. Justice is never gonna be
3 served as far as I'm concerned in this case anyway.
4 The defendant {sic} stated in open court that I didn't
5 do it and I don't understand that. My lawyer was a
6 piece of crap, and he's always gonna be, and he's doing
7 the same thing there. And I don't believe -- he's a
8 prosecutor, he's not an attorney. Asher Watson, he's
9 not -- he did nothing for me whatsoever.

10 THE COURT: Well -- well, Mr. --

11 THE APPLICANT: He told me from day one --

12 THE COURT: Mr. Benninger? Hold on, Mr. Benninger.

13 THE APPLICANT: Yes, sir.

14 THE COURT: You understand this is your opportunity
15 to go forward. If you are alleging ineffective
16 assistance of counsel in this application, this is
17 your opportunity.

18 Do you want to go forward or do you want to drop
19 it?

20 THE APPLICANT: I want to move it forward.

21 THE COURT: Okay. All right.

22 THE APPLICANT: I do want to go forward. I'm sorry
23 I'm vacillating. I do want to move forward.

24 THE COURT: Okay. All right.

25 Mr. Thompson, state the issues before the Court.

1 MR. THOMPSON: Judge, he had several issues listed
2 in his petition. I actually told him that I didn't
3 think they had any validity, but he may still wish to
4 go forward on those that's in the petition. But in
5 addition to those, there were three that I talked with
6 Mr. Smith about that Mr. Benninger wished to raise,
7 the first one being that he indicated at the time of
8 his plea he was off of his medication, and it's my
9 understanding that he has some psychiatric problems and
10 is on medication for that, but he tells me at the time
11 of his plea he was off that.

12 The second issue is, as he's re -- alluded to, that
13 the victim -- in the guilty plea, the victim told the
14 Court that she had lied. He says that he raised that
15 issue with his attorney and that his attorney told him
16 that if he tried to pursue that at the time that they
17 would lock the victim up, which was his girlfriend,
18 wife, whatever, at the time, that she would get locked
19 up for lying, so he went forward with the plea
20 involuntarily because of that threat to the victim.

21 And the third thing he wishes to pursue on is his
22 -- and there's been some confusion on this and I'll --
23 the young lady was supposed to be here, but the solicitor
24 is here and she can probably speak to this, he tells me
25 that there was an offer made that was not relayed to

1 him. The girlfriend or the victim tells me that it's her
2 understanding the offer was relayed to him, but was --
3 there was a counteroffer that was not relayed back to the
4 State. I discussed that with him in detail yesterday and
5 he tells me that well, if that -- she's probably right
6 because of his -- his mental problems that he -- he may
7 just remembered it wrong.

8 But that -- that would be the three issues that we
9 would go forward on.

10 THE COURT: Okay. All right.

11 Call your first witness.

12 MR. THOMPSON: Thank you.

13 We call Matthew Benninger.

14 THE APPLICANT: Yes, sir.

15 THE COURT: Mr. Benninger, you're already under
16 oath, so answer any questions Mr. Thompson has for you.

17 MATTHEW BENNINGER,

18 having been previously sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q. Mr. Benninger --

22 A. I'm gonna have to lean forward because I do not hear
23 well. That's why I'm not looking into your camera, so I
24 can hear it.

25 THE COURT: Okay.

1 BY MR. THOMPSON:

2 Q. Mr. Benninger, you are at MacDougall Correctional; is
3 that correct?

4 A. Yes, sir.

5 Q. And you were sentenced to an assault and battery by a
6 mob and to a domestic violence; is that correct?

7 A. Yes, sir.

8 Q. And what type sentences did you receive?

9 A. I believe it was six years.

10 Q. Okay. Were you represented by an -- well, did you go
11 to a jury trial or a guilty plea?

12 A. I went to a plea.

13 Q. Okay. Now that guilty plea was just prior to them
14 start -- starting a domestic violence trial, right?

15 A. Yes, I believe so. I'm not sure, but I believe so.

16 Q. I mean, you were set for trial that day and you pled
17 rather than go to trial?

18 A. I did not know I was set for trial that day.

19 Q. Okay. Were you represented by an attorney on these
20 charges?

21 A. No.

22 Q. You were not?

23 A. He's not an attorney. I don't know what he is, but
24 he's not an attorney. No, I was not. He might be a
25 prosecutor, but he -- but he ain't no attorney.

1 Q. Well, who represented you on these charges? His name.

2 A. Asher Watson, I guess. If that's what he -- who he
3 is. I don't know. I don't -- he never opened his mouth,
4 so I don't think he represented anything.

5 Q. Now in your tri -- in your guilty plea, let's -- let's
6 deal with this one first. Who is the victim in -- in that
7 domestic violence?

8 A. The suggested victim would have been my wife.

9 Q. And what's her name?

10 A. D.C.

11 Q. Okay. Was she present at the plea?

12 A. Yes.

13 Q. Did she speak to the Court during the plea?

14 A. Yes.

15 Q. Did she tell the Court that she had lied about the
16 domestic violence?

17 A. Yes.

18 Q. Okay. Was there anything done about that at the time?

19 A. No, nobody said a word.

20 Q. Okay. Do you know whether or not your wife was
21 interviewed by Mr. Watson?

22 A. From my understanding, everybody refused to talk to
23 her on the phone because they did not want her to recant
24 anything.

25 Q. Okay. When she said that she had lied to the judge --

1 had lied during the guilty plea, was any action taken by
2 your attorney?

3 A. No, none at all. Never said a word.

4 Q. Okay. Now prior to the guilty plea, were you on
5 medication?

6 A. No.

7 Q. Were you supposed to be?

8 A. I -- I was before I went to jail, but they refused
9 me. I don't know why you didn't get any medication in
10 jail, but --

11 Q. What kind of medication were you supposed to be on?

12 A. I was on Risperdal.

13 Q. Hang on. Hang -- okay. The judge is back. We lost
him for a minute.

A. Okay.

Q. What medication were you supposed to be on?

A. I took Risperdal for hearing voices and seeing things,
Celexa, Abilify for manic depressive, I took Xanax for
anxiety and panic attacks. There's been several other
medicines I've been on over the years. I've been on
disability now probably fifteen years for mental health.
I'm a hundred percent mentally disabled.

Q. Okay. Now how long were you in jail from the time you
were arrested before you went into court?

A. If I remember by looking at the dates, probably about

-- I want to say almost eight months.

Q. Okay. And you were off your medication that whole eight months?

A. Yes, sir.

Q. All right. Did you make your attorney aware of that?

A. Yes, I did.

Q. Was anything done about it?

MR. SMITH: Your -- Your Honor, I'm sorry to interrupt, but Mr. Benninger testified that he's a hundred percent mentally disabled. I -- I question at that point does that mean that we need to have his mental competency evaluated?

THE COURT: Well, let's -- let's do this.

Mr. Thompson, do you have concerns about your client's ability to proceed?

MR. THOMPSON: I don't about his ability to proceed today. He's been pretty clear --

THE APPLICANT: I understand what's going on.

MR. THOMPSON: Yeah, he's been pretty clear and pretty consistent with what he's told me over the two years.

THE COURT: His testimony indicates that he's on his medication now; is that correct?

MR. THOMPSON: Are you on medication now, Mr. Benninger?

THE APPLICANT: Yes, I am.

MR. THOMPSON: Okay.

THE APPLICANT: I take mine every day.

MR. THOMPSON: All right. I have no concern with his mental capacity, Judge.

THE COURT: All right. Well -- and Mr. Benninger's able to answer the questions and he indicates that he is on his medication, so I -- I'm ruling that we can proceed.

THE APPLICANT: Thank you, Your Honor. Thank you.

THE COURT: Okay. Go ahead.

BY MR. THOMPSON:

Q. But -- but now, Mr. Benninger, let's -- let's recap for a second. You were in -- in jail about eight months before you went to court?

A. Yes.

Q. And you were not on medication at all during that period of time?

A. No, I was not.

Q. And people were made aware of it?

A. Yes.

Q. Did -- and you made your attorney aware of it; is that correct?

A. Yes.

Q. Do you feel that you knew what you were doing when you

entered the guilty plea?

A. No, I didn't understand what was going on with the whole thing. I -- well, my point is I still don't.

Q. Okay. Now let's -- let's look at your third issue. Was an offer made to you in this case?

A. My lawyer by the time we went to court refused to talk to me. He would walk right by me when he first met me. I don't know else to say this but say it. He told me straight out day one he met me that I was going to prison; that I could this, this and this, and that's the way he proceeded the whole time. One time I think he talked to me, the next time he walked by me. He wouldn't even speak to me.

Q. My -- my question is did you ever receive an offer in this case?

A. I believe the only offer that I ever received is the one that when we went into the courtroom when I went in the judge with. That's the only time he ever made any contact with me. Whenever he offered that, we went into the courtroom. I think it was that day. That was it.

Q. Okay. Well, now we've covered the three issues that -- that we've got. Are there any other issues that you want to raise?

A. Yes. There was three and a half -- I was in jail eight months and I informed -- and I hate to say this

because the ladies present, but I want you to understand, my wife would call me on the phone and she wanted to have phone sex and I did that. Although that is not what I wanted to do or anything, but I was appeasing in those situations. My lawyer didn't bring me that message. When I spoke to him, I said, well, on these occasions she recanted, and what she stated was she went to prison when she was seventeen years old for killing --

MR. SMITH: Objection to hearsay.

A. -- for beating her mother.

THE COURT: Excuse me. What -- what was the --

MR. SMITH: Objection to hearsay.

THE COURT: Overruled.

Go ahead.

THE APPLICANT: Thank you.

It's on -- but these are on the cameras there and I stated to him, my attorney, the dates that things were stated when I didn't do it and as that and he told me -- first he says, well, I don't have time to listen to phone conversations, do you know when it happened, and I said yes, and I gave him the dates and he told me I don't have time to listen to that either, but he had a time to deliver a message from the prosecutor right away and there's eight months of phone conversations. If it's still at Pickens county, they're still there. In

three and a half years she has never said I put my hands on her. She has said there's been mental or emotional abuse, but not once has she ever stated I put my hands on her. Never.

MR. THOMPSON: I don't have anything -- I don't have anything further, Judge.

THE APPLICANT: The phone lines are there, they're open, and the phones here are open, too, so I believe they would exonerate me also.

THE COURT: All right. Mr. Benninger, answer any questions Mr. Smith may have for you.

Mr. Smith.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Mr. Benninger, you testified that Mr. -- Mr. Watson never opened his mouth. What do you mean he didn't open his month?

A. He never defended me. He never defended me.

Q. Okay. Did you tell Mr. Watson what medications you were on or supposed to be on?

A. I told Mr. Watson the first time that I met him what medications I were on. The only thing Mr. Watson had to tell me that day was that you're going to prison; you did this, you did this and you did this, and I said to him on that day, and we argued, I said you sound like -- I said

who the hell are you, you sound like a prosecutor, you don't sound like no defense attorney to me, and we got in an argument and he threatened to withdraw from my case at that point and after that we just didn't have any conversation.

Q. Okay.

A. I told him that day that he was a worthless attorney. Honestly, that's what I told him. I said it's all around in the jail that you don't represent anybody, you just sell us down the river, and that's the way it is.

Q. Okay. So that day in court when you pled guilty, you heard the State's accusations and you told the judge you were guilty, right?

A. Excuse me?

Q. You told the judge that you were guilty and wanted to plead guilty, right?

A. I had no other choice. I mean, my attorney's not representing me and as far as I was concerned if -- if they had both -- the prosecution and everybody heard it, my wife stated it in court, and none of it mattered to anybody because regard -- my understanding of the law was that the accused gets the benefit of the doubt, but not here. I mean, I'm not being sarcastic, but that's the way it seems because she's still stating three and a half years later that I didn't do anything. She has no TV, no cable and she

pors -- supports me every month, my finances. \$60 a month phone, 150 a month -- she sits at home with nothing, so there's no justice in it because we're both still --

Q. When Judge -- when Judge Verdin asked you were you happy with what Mr. Watson had done for you, you answered that you were happy, right?

A. I don't even know if she said that. I don't even really remember being in there. I was so traumatized and everything going on as far as being thrown under the bus. I don't really remember hardly anything that was going on. I had no idea what I was pleading to.

Q. Well, hold on. You just told us you were remembering that she said you were innocent. Is that --

A. My wife?

Q. -- the only part you remember?

A. No, I remember my wife has told me that consistently. She told them the next day I was innocent. She told --

Q. What about the plea in court? You don't remember anything about that day in court?

A. I don't remember anything because he told me that he was going through another case that was up there that there's no codefendants or nothing on. I don't know how you get an assault by mob when nobody else is there but me, one person.

Q. Well, how do you remember that? How do you remember

that part?

A. Because I've got my arguments and everything right here that I've been working on for three and a half years.

Q. Okay. So you did look at the transcript then, right?

A. Actually somebody else did my law work for me, but I have enough here. It doesn't do anything good in here, but I have some knowledge anyway now.

Q. Okay.

MR. SMITH: All right. No questions -- no more questions, Your Honor.

THE COURT: Any further questions? Any redirect, Mr. Thompson?

MR. THOMPSON: No, sir.

THE COURT: Okay.

All right. Thank you, Mr. Benninger.

(Witness excused.)

THE COURT: Mr. Thompson, call your next witness.

MR. THOMPSON: That's our -- our case, Judge.

THE COURT: Okay.

All right. Applicant has rested.

Mr. Smith, call the State's witness.

MR. SMITH: Your Honor, I would call Mr. Asher Watson.

THE COURT: All right. Mr. Watson, raise your right hand.

(Whereupon, Robert Asher Watson was duly sworn by the Court.)

THE COURT: All right. State your name for the record.

THE WITNESS: Robert Asher Watson.

THE APPLICANT: Yeah, I didn't even remember what he looked like. I wouldn't have known him if I'd seen him again.

THE COURT: All right, Mr. Smith.

MR. THOMPSON: You need to be quiet, Mr. Benninger.

THE APPLICANT: Yes, sir. Yes.

ROBERT ASHER WATSON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Watson, where do you practice law now?

A. In Greenville, South Carolina.

Q. Okay. When were you admitted to practice?

A. 2013. May 2013.

Q. Okay. What approximate percentage of your legal experience been devoted to the practice of criminal law?

A. Almost exclusively. There was three -- I was at the solicitor's office in Greenville, the Thirteenth Circuit, from September 17, 2000 and -- no, no, no, I actually started a little bit earlier before I passed the bar and so

my time there we'll say May 2013 to June 30, 2017. I went out into private practice, tried to build a practice up -- or varied with elder law a little bit, but my cup runneth over with criminal defense work that I ended up leveraging that, and that's been my bread and butter. So I'd say 99.5 percent has been criminal justice.

Q. Okay. So you've worked in prosecution and defense?

A. Yes, sir.

Q. Okay. On how many occasions did you meet with Mr. Benninger during the course of your representation of him?

A. I don't recall the exact number. I know that I visited him at the old LEC in Pickens multiple times and there was one in particular meeting that stands out further at the stockade. Presently there's just the one LEC where I believe all Pickens inmates are housed now that's on South Catherine Street, but in that last meeting I was going to bring -- or I did, in fact, bring my laptop with all the video coverage, which I've given to you, to discuss with my client in determining whether he was, you know, going to plead or go to trial.

Q. Okay. So you said you don't remember the exact number. Would it be between one and five, five to ten?

A. I'd give between like four and six total.

Q. Okay. Okay. Outside of those meetings, did you

communicate with him by phone, mail or e-mail?

A. Yes. Well, not by e-mail except that he -- I do have records where he had passed messages onto my paralegal and those e-mails were pas -- or his messages were passed along by me by e-mail and some of them may be of relevance in this hearing.

Q. Okay. Have you -- did you ever refuse to speak to Mr. Benninger during your meetings or walked past him?

A. I don't understand what he means by walked past. Like seeing him at the jail when I had a scheduled meeting for him and then just ignoring him? No. If there was a time where -- you know, there's occasions where in court there may be multiple defendants that are in lockup and I might walk past one or two to talk to another one. Did I ever try to deliberately blow him off? No.

Q. Okay. Can you summarize the facts of Mr. Benninger's crimes?

A. Yes. He -- the -- or a responding officer had come to see where an independent witness had saw an assault between Mr. Benninger and **D.C.** I believe there was an allegation that a blade of sorts was used. She had made a report to the police. And this is all from the video that I've provided to you. She was very distraught, she had described in detail where he had grabbed a weapon from, he had fled the scene. There was an independent witness who

had seen it and my understanding was prepared to go to trial the day that he was scheduled for trial.

Q. Okay. So let me ask you a few questions about that video --

A. Sure.

Q. -- since you mentioned it. Isn't it true that the video shows the victim giving a statement that Mr. Benninger had struck her and had cut her with a blade?

A. Yes.

Q. Okay. And did she show on the video the bleeding wound on her arm?

A. Yes, she did.

Q. And a swollen -- swollen place on her head?

A. Yes. To my recollection, yes.

Q. Okay. And she showed the officer where the blade was?

A. Yes.

Q. Okay. And didn't that independent witness on camera give a written statement to the officer?

A. I do believe so. One random detail I remember about the witness is he was wearing a soccer jersey of a particular team and I remember him being ready to go to trial after talking with Ms. Odom about that. A random detail, but. . .

Q. And -- and **D.C.** told the officer in that video that she wanted Mr. Benninger to go to jail?

A. Yes, she did.

Q. Okay. Did you ever show that video to Mr. Benninger or discuss it with him?

A. Yes, I did. I brought it to him at least once, and that was at the stockade. I might have brought it to him another time as well. I know that a lot -- I never had any competency issues or detected any competency issues with Mr. Benninger, but there were disconnects in communication and I think as it happens with many clients in delivering news that they may not want to hear or an offer they may not agree with or just even sometimes presenting the State's evidence to them which they may not have seen since the day that it actually happened and they can get distraught and Mr. Benninger tends to get distraught. I'm not trying to say this in a mean way or say that he's weak in any way, but he began weeping and did not want to view the video much further that we got into it and I implored him to watch the video -- I need to pull my notes -- very hard, I know this is difficult to relive, but, you know, this is very important that you look at this evidence that the State has against you so you can make a fully informed decision about whether you want to plead guilty or go to trial and he said that he wanted to plea.

Q. Okay. Did you ever talk to **D.C.** directly?

A. No, I did not.

Q. Okay.

A. I don't -- she might have called, but I don't recall any conversations at length with her. I know that Mr. -- that she may have called the office a few times, but I did not talk with her at length about anything.

Q. Okay. If -- if you have a case where you have an independent witness and the immediate aftermath of assault caught on video, do you normally try to contact the victim?

A. Yeah, and in -- in this case, I was more apprehensive just because after seeing that in the video I knew she was very angry and upset and I -- I don't recall to what extent I spoke with her, but I do know that when she called she was very upset and I was warned of such fact before speaking with her.

Q. All right. Did you ever tell Mr. Benninger that you did not have time to -- or you refused to listen to some recordings or something like that?

A. I don't have access to those recordings explicitly, but I do have an e-mail where I -- where some of these dates were made reference to and I do remember talking to Solicitor Odom about them, and I'm looking at the e-mail from my paralegal where -- talking about where his call logs would be, and I don't know to what extent our conversations went with Ms. Odom. All I know is that there -- there was discussions about -- you know, there -- there

was concern that he was contacting the victim anyway, I know that was discussed, but in terms of the specific dates that were mentioned and whether that was forwarded to me, I don't think any of those phone calls were forwarded to me.

Q. Okay. So on your first meeting with Mr. Benninger, did you tell him that he was going to prison?

A. I would not say something like that. That's not something I'd do --

THE APPLICANT: You can end this now. You can shut this off. I'm good. Let him go. He's a liar. That's a lie. That's a lie.

THE WITNESS: I did not.

THE COURT: Mr. Benninger, I'm muting you. You are not blurting out in the middle of proceedings.

THE COURT: Mr. Thompson. Anything for the record on your client?

MR. THOMPSON: No, sir. I think earlier I had told him he needed to be quiet.

THE COURT: Okay. All right. Go ahead.

BY MR. SMITH:

Q. Okay. So --

A. I want to say -- I -- I apologize. I wanted to say something if I can go back or I feel like I said something that might have sounded wrong, throwing Ms. Odom under the bus. When I said that she did not send any of the calls

to me, I'm not saying that. I don't recall if I asked specifically will you send me those and then she elected not to or decided not to or forgot or anything like that. They just never made it my way one way or the other. I'm not trying to say that Ms. Odom was trying to blow me off or anything like that. I'm sorry.

Q. I appreciate your clarification.

I want to ask you questions about Mr. Benninger's competency. You mentioned it a moment ago, but you mentioned these meetings you had with him and talking on the phone. Did you feel like you had a good chance to observe his speech and behavior?

A. Yes, very much so.

Q. Okay. Did you ever see anything that made you question his mental competency?

A. Competency, no. I had questions about, you know, if there were some clinical abnormal psych diagnosis that he may have, but did I ever at any point get the impression that he did -- that he couldn't help me with his defense, that he didn't understand what my job role was, did I ever think he didn't understand what he was being charged with, the procedures, what everyone's roles were, that I never had a concern with.

Q. Okay.

A. Including on the day of his plea.

Q. When the two of you would meet, what sorts of things would you discuss?

A. The things we've talked about so far, you know, the offer, his prospects, his -- of going to prison or not going to prison, counteroffers, which I did convey, the discovery, what a plea colloquy or soliloquy was going to look like should he plead guilty. When he decided that he was going to plead guilty, I went through -- I knew that this was going before Judge Verdin and I've gotten to know different judges' soliloquies when they are advising litigants or defendants of their constitutional rights, so I went over all of those with him before he -- and I can't remember how many days before he pled guilty, but in previous meetings with him I went over that with him in detail and he definitely seemed to understand all of that.

Q. Okay. When he would answer you or engage you with conversation in those meetings, were his statements or questions clear and responsive to what you were talking about?

A. Yes.

Q. Okay. Do you think if you had gone to trial he would have been able to assist you and prepare a defense?

A. Yes.

Q. Okay. If you had noticed something from Mr. Benninger that made you question his competency, what would you have

done?

A. If I did see something to question his competency, then I would have discussed with the Solicitor that I have a concern, that it's something that I would probably want to approach and get, you know, moving for a competency evaluation for him, and that I -- you know, I would move for a competency evaluation.

Q. Okay. On the day of his guilty plea hearing, was his behavior on that day -- can you describe his demeanor, behavior, method of speech?

A. It was not -- it was not in any way remarkably different from how it was any other day except he actually seemed more composed. It seemed that he was, you know, at peace with the decision. After -- before where he could get worked up and weepy sometimes, he did not exhibit those kind of behaviors.

Q. Okay. Did his behavior and his answers at the guilty plea hearing make you think that he understood Judge Verdin's questions?

A. Absolutely.

Q. Okay. If you had noticed something unusual in his behavior that was worrisome, would you have stopped the guilty plea hearing?

A. Absolutely. I have a duty of candor to the Court and I have a duty to protect my client. Yes, I would have

absolutely stopped the proceedings. I would tell the judge we need to stand this down and call inaudible from there.

Q. Okay. Did Mr. Benninger ever tell you that he was on any specific psychiatric medications?

A. I believe so. I don't remember what the medications were. I don't remember offhand. The ones that he describes, I'm not disputing that those were ones that he was probably on. I have no reason to dispute that. But when I would meet with him, I would make sure that, you know, he understood what was going on and ask him things of that nature because I knew that that was a question that the judge was gonna have, you know, no matter if we would have pled or went to trial.

Q. Okay. Did you have a chance at the guilty plea hearing to talk to Mr. Benninger before it started?

A. I believe so just to ask if he had any concerns and it might have been as -- as a quick as in the back lockup, which is here in the Pickens courthouse is -- there's a few areas they can stay on the same floor where pleas are held. I can't remember which holdup he was in. But, I mean, I always try to talk to my clients and ask if there's any questions that they have before we go forward just to make sure they're addressed and also tell them that during the plea hey, if you ever have a question or if you have a question about what the judge is asking or if you feel

spooked in any way, I'm there, tug on my shirt. I can gladly tell the judge Court's indulgence, I need to step back and confer with my client real quick and we would do that, and that did not happen.

Q. Okay. Did Mr. Benninger ask you to try to work out a plea deal for him?

A. He did have some proposals for counteroffers and I did convey them to Ms. Odom. I know that I have from an e-mail that he wanted to try to push for two years nonviolent for his plea and I knew that would be a no-go and I probably would have advised him, you know, this is probably a no-go, but whatever you want to come back as a counteroffer I will at least approach and do that. What I always say to clients, too, if it's something that I think, you know, they may come back -- you know, I'll say they may come back with a -- a new offer that is in between -- like in this case, in between six and two and what you're saying and you'll have to think about what your answer to that is going to be.

Obviously we ended up getting on the trial docket and what happened now is that he was given the six-year recommendation on the A and B by mob and no recommendation on the domestic violence first degree, but I asked to have them run, you know, concurrent with the judge.

Q. Okay. So what -- what offers did Ms. Odom make?

A. I remember -- hold on. I want to make sure I -- I

know she had made an initial offer on the DV and then when he got the new charge, that recommendation I believe was withdrawn, and then he had the recommendation just to the A and B by mob, but I believe it was six years.

Q. Okay. And Mr. Benninger told you he didn't want to take that offer?

A. That's correct.

Q. Okay. So you mentioned a counteroffer. Did you tell Ms. Odom about all the counteroffers?

A. Yes, I did.

Q. Okay. And how many counteroffers were there? Just one?

A. There was only one to my recollection.

Q. Okay. And what was that again?

A. Again, it was two years for something that would be designated as nonviolent.

Q. Okay.

A. I can't remember -- obviously there's the element of what -- the charge they plead to and then what the penal aspect was. I just know that, I had come back saying whatever the charge would be that he pled to the penalty being two years and the calculation being nonviolent in nature.

Q. Okay. So was there any plea offer from Ms. Odom that you did not tell Mr. Benninger about?

A. No.

Q. Was there any counteroffer from Mr. Benninger that you did not tell Ms. Odom about?

A. No.

Q. Okay.

A. I would not do that.

Q. Okay. So I want to talk about Mr. Benninger's relationship with the victim in this case. What did you observe about the nature of their relationship --

A. It was very --

Q. -- and what did he tell you about it, too?

A. From my impressions, it was one that was very toxic. I -- I don't -- I mean, I'm not a relationship counselor. I don't want to -- if you ask more specific questions about how their relationship is, I may be able to answer.

Q. Okay. Did he express positive feelings toward her to you?

A. Yes, he did.

Q. Okay. Did you have a reason to believe that based off of something Mr. Benninger may have told you or that you heard from her that she was considering recanting?

A. Yes, and this was something that I was very apprehensive about, especially coming off of a trial recently where someone had tried to recant on the stand and they were -- the client was eventually found guilty,

my client, and I told Mr. Benninger about the pitfalls of that and that, A, I knew he was hung up at one point saying that oh, well, if she's saying it didn't happened, then they are compelled to dismiss it and I -- there was a lot of discussion about how that is not, in fact, the case. There -- that the solicitor is not compelled to just dismiss something on that account, on that --

Q. Okay.

A. -- on that statement.

Q. Did Ms. Odom tell you that she would prosecute the victim for filing a false police report --

A. No.

Q. -- if Mr. Benninger did not plead guilty?

A. She -- I don't think she said that she would. I just knew that is a possibility. Recently I've seen it happen in my own practice since this -- since this case happened. I know that the solicitor takes seriously filing of false police reports of a felony and if that's the way they see it and wish to direct indict for something like that, then it's something they could do. I made it clear when I told Mr. Benninger that. I said look, I'm not doing this to try to leverage you into a plea, I'm just letting you know I know you care about this lady and it's a distinct possibility that that would happen. I -- I did not know for sure. Shannon never threatened me to my recollect --

not me, but threatened that prospect to my recollection, but I did talk about that with Mr. Benninger.

Q. Okay. So that scenario would have been if Mr. Benninger went to trial and then the victim said on the stand that she made it all up, it didn't happen, is that the scenario you're talking about?

A. Yes.

Q. Okay. And even then there was an independent witness, right?

A. There was an independent witness who was interviewed on-scene.

Q. And Ms. Odom could have impeached the victim with her previous statement which was recorded on the officer's body camera, right?

A. Yes, she could have.

Q. All right.

MR. SMITH: Okay. I think that's all the questions I have now. Thank you.

THE COURT: All right. Mr. Thompson.

MR. THOMPSON: Thank you, Judge.

Mr. Benninger's got his hand up.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q. Mr. Odom {sic}, you -- I believe in dealing with whether or not there was a -- a threat to charge the

victim, I believe you told -- said -- testified that you told Mr. Benninger that there was a distinct possibility the State may do that; is that correct?

A. Yeah, there's a possibility.

Q. I believe you used the word "distinct" possibility.

A. Yeah, I -- I guess so.

Q. Could that be -- given Mr. Benninger's state of mind, could that be deemed as a -- a coercive threat to get him to plead guilty?

A. No, I don't think by using "distinct" as the term -- I wasn't trying to say it was imminent or that it was likely, it's just a possibility. My -- I might have misused the word, but I did not try to say that he was like in a clear and present -- she was in a clear and present danger of that happening.

Q. Okay. Now did you know that she had recanted her statement prior to the guilty plea?

A. Yes, I did.

Q. Okay. So when she recanted during the plea or told the judge that she had lied, that was not a surprise?

A. That was not a surprise, but it's something that I had discussed with Mr. Benninger that if she's there and she's trying to claim that it didn't happen, if you're gonna be -- you know, I -- I went over that prospect with that happening at the plea with Mr. Benninger.

Q. Okay. Now you -- you testified, I believe, that you knew he was on medication and you --

A. I --

Q. -- you don't dispute that -- that he was supposed to be on medication and you don't dispute the medications he just listed?

A. I have no reason to dispute them, no.

Q. Okay. Did he tell you he had not been provided those medications since being put in the Pickens County Detention Center?

A. I don't recall him saying that he had not been put on the medications since he has been in the Pickens County Detention Center.

Q. If you had learned that he had been off those medications for eight months, would you have done something different?

A. I would have contacted the -- the jail to -- you know, to investigate into that and -- but at no point did I feel that it was impacting our ability to craft a defense and it's something that I asked him every time I saw him, are you feeling okay, do you feel like you can talk to me today. Because I know that we had some -- not disconnects, but disagreements, disagreeable attitudes, sometimes, but it wasn't to the point where I thought we were -- it was jeopardizing our ability to craft a defense, for him to

make a well informed decision on what he wanted to do.

Q. Okay. Now in dealing with offers between you and Ms. Odom, I believe you said that they off -- made an offer and that Mr. Benninger wanted to counteroffer with two years?

A. Yes.

Q. And I believe you testified that you knew that was a no-go?

A. I knew that was likely a no-go. I mean, when I say no, I'm not saying I dug into the brain of Shannon Odom without her being in front of me, but I knew that she would be very likely not to be inclined to do that.

Q. Okay. But my question dealing with that is you saying you knew it was no-go, did you relay the offer to Ms. Odom or not?

A. I did. I mean, I -- any counteroffer that I get from my client, I'm gonna relay it to the solicitor. I mean, I'll talk to them about -- you know, if they say well, all I want to do is get out of jail today, well, an analogy I often use is well, if you go to a car dealership for a new car, a nice new Lexus or something and say hey, will you do that for \$10, they're gonna say get off my lot and then all the negotiations break down, and I didn't want something like that to happen to Mr. Benninger. So, you know, I knew that it might have been a no-go, but I'm still going to --

after giving that analogy and warning about, you know, throwing yourself out of the negotiating table by making an offer that isn't gonna work, do you still want to make that kind of counteroffer, and if they say yes, then I'm gonna do it.

Q. Okay. After you made the two-year counteroffer to Ms. Odom, was there any offer coming back from Ms. Odom?

A. No, sir. Not to my recollection.

Q. Okay.

A. Any different than her knowledge offer, no.

Q. Okay.

MR. THOMPSON: Thank you. I have no further questions.

THE COURT: Any redirect?

MR. SMITH: Only a few questions, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Watson, when you -- Mr. Thompson questioned you about your use of distinct possibility, did you use the word "distinct" when you talked to Mr. Benninger or is that something you said today to summarize what you said?

A. It's more of a -- I don't know if the word "colloquial" is what I'm looking for, but it is -- you know, I don't remember me saying "distinct" word for word to him, and the way I mean it now and the way I would mean

it then is it is a possibility, it's a real possibility. Did I mean that it was -- did I give a metric to it? Does that imply 50 percent, 75 percent? No.

Q. Okay. When you gave that advice, was it based on the fact that you knew that Mr. Benninger's relationship with the victim, you know, from Mr. Benninger's own words were -- was important to him?

A. I'm sorry, could you -- could you rephrase the question?

Q. Yeah. I'm sorry about that. When you discussed that with Mr. Benninger, were you telling him that because you knew that he still cared for the victim or had feelings for her?

A. Yes, I -- I did say that. Yes.

Q. Okay. When he was discussing that with you, was it sort of like he was weighing out -- was he weighing out those options over whether to go to trial or plead guilty?

A. Yes. I mean, it wasn't something that I was trying to say -- you know, I knew he cared about it. It might have been a question that he had brought to me, I don't remem -- I don't know for sure, but I know that he cared about her and I wanted to bring that up because I knew he had cared about her, but I did say explicitly this is not to try to leverage a plea out of you, it's just the -- just the way of things.

MR. SMITH: Okay. Thank you.

THE COURT: All right. Anything further from this witness?

MR. THOMPSON: No, sir.

THE COURT: All right. Thank you, Mr. Watson.
(Witness excused.)

THE COURT: All right. Call your next witness.

MR. SMITH: The State calls Shannon Odom.

THE COURT: Ms. Odom, raise your right hand.

(Whereupon, Shannon Swords Odom was duly sworn by the Court.)

THE COURT: All right. State your name for the record, please, ma'am.

THE WITNESS: Shannon Swords Odom.

THE COURT: Your witness.

SHANNON SWORDS ODOM,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Okay. Ms. Odom, where do you work now?

A. The Pickens solicitor's office.

Q. How long have you been practicing law?

A. Since November of 2009.

Q. Okay. What portion of your legal experience has been devoted to the field of criminal law?

A. The majority of it. I clerked for a judge out of law school and then I started working as an assistant solicitor.

Q. Okay. How early on in Mr. Benninger's criminal case for CDV did you become involved?

A. Pretty much immediately. I believe I was initially contacted by law enforcement just because I had prosecuted Mr. Benninger for three other domestic violence cases two weeks prior and he had pled to two of the three. In dealing with those, I had done a motion to revoke, so I was very involved with law enforcement with Mr. Benninger, so when he was rearrested I was immediately notified. And I had also dealt with Mr. Benninger on a different charge for those other three domestic violence charges, so I was involved pretty early on.

Q. Okay. Were you able to observe Mr. Benninger's behavior at the guilty plea hearing?

A. I did.

Q. Did you have clear line of sight and were able to hear him clearly?

A. I was.

Q. Okay. Did you notice any behavior on his part that made you question his mental competency?

A. No. No. On -- on the prior charges, I'd spoken with Mr. Benninger several times over a long -- months' long

period, he was initially pro se, and so I -- I was familiar with him, and his demeanor and behavior the day of his guilty plea was consistent with his prior demeanor.

Q. Okay. Did Mr. Watson engage you in plea negotiations?

A. He did.

Q. Okay. What -- what offers did you make?

A. I know I initially made a five-year offer on the domestic violence first degree and then within a week or two he picked up the assault and battery by mob while in the jail, so I rescinded that five-year offer, and then we began negotiating again. Now those are in my notes in the file and I don't have notes on the back and forth negotiations after that because Mr. Benninger would be brought to the courthouse for Mr. Watson to speak with him and so how that used to work in Pickens county before COVID an inmate would come to the courthouse, would speak to their defense attorney, the defense attorney and prosecutor would speak in the courtroom, and it's kind of a madhouse during court and so sometimes files aren't adequately kept up with as far as counteroffers back and forth, but negotiations broke down. An inmate isn't sent back to the jail unless there's just no chance of them pleading and so if Mr. Watson came to me with a subpar offer or what I thought wasn't an adequate offer, I would have said well, I'm done negotiating and the inmate would go back to the

jail.

So I don't have notes on what our counteroffers back and forth were, but I know that Mr. Benninger was brought to the courthouse in November and December and he was on our jail list, so I'm assuming we spoke both months.

Q. Okay. So you do remember Mr. Watson telling you about counteroffers?

A. I -- I do because this one was a little bit of a contested case.

THE COURT: Hold on. We've lost Mr. Watson -- I mean, we've lost Mr. Thompson.

Are you are you there, Mr. Thompson?

Can you hear us, Mr. Thompson?

MR. THOMPSON: Your Honor, I'm sorry. I -- I got frozen out somehow. The last thing I heard was --

THE COURT: What was the last question that you heard?

MR. THOMPSON: The last thing I heard was Ms. Odom testifying that he had been brought to the courthouse in November and December and that negotiations broke down at that point.

THE COURT: Okay.

All right. Mr. Smith, ask the next question over again.

MR. SMITH: Okay.

BY MR. SMITH:

Q. Do you remember Mr. Watson making counteroffers?

A. I don't specifically remember what the counteroffers were, but I know we went back and forth several times just because it -- this was kind of a contested case. It's one I had -- I had dealt with Mr. Benninger before and I had dealt with his victim before and so it just kind of one that sticks out to me a little, so I do remember Mr. Watson and I going back and forth on it, but I just don't remember the specifics of what the -- the counteroffers were.

Q. Okay. Did you ever tell Mr. Watson that you would prosecute the victim for filing a false police report unless Ms. Benninger plead -- Mr. Benninger plead guilty?

A. No, I -- I didn't say that and I -- I wouldn't have said it. Different prosecutors do it differently as far as pushing for a victim to be prosecuted for filing a false police report, but that's something that I don't do at least on domestic violence cases.

Q. How much domestic violence -- how many domestic violence cases do you take? Like do you have a lot of exposure to those kinds of cases?

A. I have a -- a good bit. We have a lot of that in Pickens county.

Q. Is it uncommon for CDV victims to recant?

A. It's very common. Almost all -- I'd say nine out of

ten cases they recant.

Q. Okay.

MR. SMITH: Okay. Those are the only questions I have. Thank you.

THE COURT: All right. Mr. Thompson.

MR. THOMPSON: Thank you.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q. Now, Ms. Odom, there was some testimony before, I think it came from Mr. Watson, about a request for phone records from the jail. Did you receive a request from him for those?

A. I -- I don't recall and that's not in my file, so I -- I can't say if I did or not, but it's not something I provided.

Q. Okay.

A. And --

Q. But you don't remember whether you received a request or not?

A. I -- I don't. I don't remember if I did, but if the purpose of the request would have been to provide proof that the victim said she was lying, she told me she was lying, so -- she told me and two victim advocates and the judge, so. But as far as jail records, I don't remember Mr. Watson requesting them.

Q. All right. Was it ever brought to your attention that Mr. Benninger was supposed to be on medication?

A. No.

Q. Okay. Would you have done anything had it been?

A. I would have let the jail know, but I probably would have e-mailed the jail and just copied Mr. Watson on it, but I don't want to put myself in the middle of -- of that.

Q. I understand. But you were not aware that he was supposed to be on medication and not receiving it?

A. No.

Q. Okay. And I believe you already testified to these offers, but let me make sure. You made offers and there were counteroffers; is that correct?

A. Yes, sir.

Q. Okay. And nothing was ever worked out on them?

A. That's right.

Q. Did it actually reach the point to where you just felt it was hopeless and no need making any other offers, no negotiations?

A. It did. I did not think Mr. Benninger was gonna plea. The victim was extremely uncooper -- uncooperative. I felt like the only way to move the case was to put it on the trial docket.

Q. Okay. And do you remember a two-year counteroffer?

A. I don't specifically remember that.

Q. Okay.

A. I -- I would have declined that, but I don't remember it being made.

Q. Okay.

A. Not to say it wasn't.

Q. I understand. This was several years ago.

MR. THOMPSON: I don't believe I have any further questions, Judge.

THE COURT: Any redirect?

MR. SMITH: One or two, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Ms. Odom, would you have tried to prosecute Mr. Benninger even if the victim recanted on the stand?

A. Oh, yes. I would have definitely prosecuted him. I would have impeached her with her written statement, with her body cam statement. I would also have questioned her about the multiple statements she made to my office recanting. So, yes. And I've done that before. I've had recanting domestic violence victims during trial.

Q. What -- what things from the officer -- responding officer's body camera video would you have pointed out in trial if she had recanted on the stand?

A. Well, I would have pointed out how she said he punched her in the face, I would have pointed out how she said he

cut her, her arm bleeding, her showing the officer that, her demeanor, her crying, being upset, and then I would have pointed out in the body cam the third-party independent witness viewing the crime, his statements to law enforcement, but also he was -- I think he was actually on his way to the courthouse during the plea and I had to call him afterwards and tell him he didn't have to come all the way to court, so I would have had him testify as well.

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

THE COURT: Mr. Thompson, anything in response to that redirect?

MR. THOMPSON: No, sir, Your Honor.

THE COURT: All right. Thank you, Ms. Odom.

(Witness excused.)

MR. SMITH: The State rests.

THE COURT: Okay. Mr. Thompson, do you have any reply testimony?

MR. THOMPSON: No, sir.

THE COURT: All right. The parties have rested. I'll allow each side to make a brief summation. We'll begin with Mr. Smith and then Mr. Thompson can go.

MR. SMITH: Your Honor, on the issue of competency, the case law says that a defense attorney may reasonably rely upon his own perceptions of his client and the standard is, is the client able to communicate with

his lawyer and essentially help prepare a defense. Mr. Watson testified that he was able to communicate with Mr. Benninger and Mr. Benninger's communications were coherent and logical, although sometimes emotional. Maybe he had some awareness of some psychiatric issues, but that's not necessarily a bar to competency because of the competency standard being about communication and assisting in the defense. Mr. Benninger has presented no independent evidence of his mental situation today anyway, but I think Ms. Odom's testimony about having experience with Mr. Benninger and observing his behavior inside the courtroom and out I think goes to show that he was competent on the day of his guilty plea hearing and had given no one any reason to doubt that. If you look at the transcript, his answers are -- to Judge Verdin are logical and responsive to what she was asking, so a review of the transcript shows there was no reason to question his competency.

Turning to the issue of plea offers, Mr. Watson's testimony was that he shared every plea offer from the State with Mr. Benninger and that every counteroffer Mr. Benninger made or that they discussed he shared with Ms. Odom. In the end, the ultimate plea offer was global with the CDV and the assault and battery cases.

And as far as Mr. Benninger being forced to plea

because of being worried about the victim, you know, Mr. Watson's advice in that regard was undoubtedly true that it was possible that the victim could be prosecuted if she recanted or gave false testimony on the stand and Mr. Benninger knowing all of that and knowing his chances of success at trial clearly contemplating whether she would or would not recant decided to plead guilty anyway and to waive his right to a trial, to put her up as a witness, and regardless of that it was clear from the context that the State could have prosecuted him even without favorable testimony from the victim because they had her at the scene crying, being injured and making statements against Mr. Benninger and they had an independent witness.

And then I believe -- I believe that -- I believe that covers all the issues, Your Honor.

THE COURT: All right, Mr. Thompson.

MR. THOMPSON: Thank you, Judge.

As to the issue of failing to relay offers or counteroffers, I'm gonna let the record just stand on that.

As to the issue of competency, Mr. Benninger testified that he was on medication prior to being arrested. He -- he described to the Court what those medications were and what they were for. I believe

Mr. Watson testified that he was aware that Mr. Benninger was supposed to be on medication. I don't think he said he realized that he was not getting it, but Mr. Benninger has testified that for eight months prior to the guilty plea he was off of his medication and that he didn't fully understand what was going on.

As to the threats to the victim, Mr. Benninger has testified that he was told that the young lady, the victim, would be prosecuted if he were to change his plea or it did not go forward. Mr. Watson did testify that -- and his words were he told Mr. Benninger it was a distinct possibility. And I realize maybe the word "distinct" may or may not have been used at that point in time, but that was his testimony today, and I think given the fact that Mr. Benninger was off his medication, had a problem understanding about what exactly was going on, that he could have reasonably taken that to mean that -- that there would be a prosecution of the young lady and -- and Mr. Watson testified that Mr. Benninger appeared to really care for the young lady.

So given that, that would be our argument, Judge.

THE COURT: Thank you, Mr. Thompson.

All right. I'm gonna take this matter under advisement. I'm gonna read the transcripts and materials submitted. I thank you, Counsel, and I will have my law

clerk e-mail you a decision when -- when I have reached one.

I hope everyone has a good weekend.

And, Mr. Thompson, I believe your client wishes to talk to you.

MR. THOMPSON: Okay.

THE COURT: All right. We'll close the record.

MR. SMITH: Thank you, Your Honor. Have a good weekend.

(Whereupon, the proceedings were concluded at 4:08 PM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 28th day of January, 2022, recorded via WebEx Videoconferencing, and transcribed by me to the best of my ability.

This transcript may contain quoted material. Such material is reproduced as read by the speaker. This transcript may also contain transmission interruptions and/or technical difficulties and inaudible or unintelligible indications due to being conducted remotely via videoconferencing.

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

October 10, 2022

Stacy S. Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Matthew Benninger, #378932,

Case No. 2019-CP-39320

Applicant,

v.

RECEIVED ORDER OF DISMISSAL

State of South Carolina,

AUG 01 2022

Respondent

SC Court of Appeals

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2022 JUL -1 A 10:52

This matter comes before this Court by way of an application for post-conviction relief filed by Matthew Benninger ("Applicant") on July 15, 2019. The State's ("Respondent") return to the application, which was served on June 22, 2020, included a motion for a more definite statement. An evidentiary hearing in this matter was held before the undersigned via the WebEx virtual platform on January 28, 2022. Everyone who participated did so remotely via WebEx. Applicant was present and was represented by Don A. Thompson. Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent. Following a thorough review of the record in its entirety and the testimony presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. On January 24, 2019, Applicant appeared before the Honorable Letitia H. Verdin ("the plea court") and pleaded guilty as indicted for first-degree criminal domestic violence (2018-GS-39-1746), and waived presentment of an indictment for second-degree assault and battery by mob (2018-GS-39-3379) and pleaded guilty to that offense, too. Robert Asher Watson ("plea counsel") represented

WJS

Applicant at that guilty plea hearing, and Shannon Swords Odom ("the solicitor") of the Thirteenth Circuit Solicitor's prosecuted him. At the plea hearing, the solicitor presented the following recitation of facts:

On [Applicant's] domestic violence charge, this happened on June 6, 2018, in Pickens County. [Applicant] did strike the victim in her face. This was witnessed by a third party.

[Applicant] and the victim were having trouble with their moped. They had pulled over into a parking lot and a bystander witnessed the incident. The bystander pulled over and – to check on the situation. [Applicant] left the scene.

Law enforcement did respond. They got a written statement from the victim, where she stated [Applicant] had hit her, as well as body cam footage has her stating that he did hit her.

...

Now, on the facts of the other charge, on the assault and battery by a mob, this occurred on August 3, 2018. While incarcerated at the Pickens County jail, a co-defendant struck the victim, Michael Lecroy, in the back of the head, causing him to fall to the ground. And then [Applicant], along with several co-defendants, hit and kicked the victim. The victim did have a broken nose and had to be taken to the hospital for treatment.

Plea Tran. 6-7. The solicitor did not make a sentencing recommendation as to the criminal domestic violence offense, recommended that Applicant be imprisoned for six years for the assault and battery by mob offense, and recommended that the sentences for both offenses be run concurrently. The plea court sentenced Applicant to imprisonment for six years for each offense, with the sentences running concurrently, and with credit for time served.

Applicant did not appeal his convictions or sentences.

CURRENT PROCEEDING

In his application for post-conviction relief, filed on July 15, 2019, Applicant raised multiple claims, which this Court interprets as follows: (1) plea counsel was constitutionally ineffective for conducting an inadequate investigation by not obtaining a recording of a 911 call, an EMS report, the recording from a law enforcement officer's body worn camera, recordings of jail phone calls, and the victim's statements in Applicant's favor; (2) plea counsel was constitutionally ineffective for not obtaining a bond for Applicant on the charges; (3) plea counsel was constitutionally ineffective for not "conduct[ing] Rule 2 and Evidentiary Hearings"; (4) plea counsel was constitutionally ineffective for not requesting a preliminary hearing; (5) plea counsel was constitutionally ineffective for not moving to quash the indictment; (6) plea counsel was constitutionally ineffective for not "provid[ing] Exonerating police Recordings"; (7) Applicant did not knowingly and voluntarily plead guilty, but was coerced into doing so by plea counsel; and (8) plea counsel and the solicitor violated Applicant's constitutional rights.

At the start of the January 28, 2022, hearing before this Court, Applicant, through counsel, clarified that he would be moving forward on three claims only: (1) that plea counsel was constitutionally ineffective for not communicating all plea offers to Applicant; (2) that Applicant did not knowingly and voluntarily plead guilty because he had not been taking his psychiatric medication at the time of the guilty plea hearing; and (3) that Applicant's guilty pleas were not knowing and voluntary because plea counsel told Applicant that the solicitor would charge the victim, who was Applicant's romantic partner, with submitting a false police report unless Applicant pleaded guilty. This Court finds that Applicant has abandoned and waived all claims but these three, and will address only these three in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Pickens County Clerk of Court for Applicant's convictions and sentences; Applicant's records from the Department of Corrections; the transcript from Applicant's guilty plea hearing; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that plea counsel was constitutionally ineffective for not communicating all plea offers to Applicant.

Applicant testified before this Court. When asked on direct examination if the solicitor extended a plea offer to him, Applicant answered that plea counsel was refusing to speak with Applicant by the time of the guilty plea hearing and that plea counsel told him that he was going to prison, among other things. He testified that the only plea offer that he received was the one that he accepted.

Plea counsel testified before this Court that he met with Applicant on four to six occasions during the course of his representation, though he could not remember the exact number. He testified that, outside of those meetings, he communicated with Applicant by mail and phone. He testified that there were no times at which he had refused to speak with Applicant. He testified that Applicant had been charged originally with the domestic violence offense only, that the solicitor had extended a plea offer related to that charge, that the solicitor had rescinded that original offer when Applicant was subsequently charged with the assault and battery offense, that the solicitor had then extended another offer for six years for the assault and battery offense, and that Applicant had rejected that second plea offer. He testified that he communicated all plea offers to Applicant. He testified that Applicant made counter-offers, which plea counsel communicated to the solicitor,

and that the solicitor did not accept those counter-offers. He testified that he communicated all of Applicant's counter-offers to the solicitor.

The solicitor testified before this Court that she became involved in the prosecution of Applicant for domestic violence immediately after he was charged because she had prosecuted Applicant for multiple domestic violence charges only a couple of weeks beforehand. She testified that she initially extended a five-year plea offer to Applicant for first-degree criminal domestic violence. She testified that Applicant had picked up the assault and battery charge within a week of her extension of the first offer, so she rescinded her first offer, and the plea negotiations began again. She testified that she does not remember all of the details of her negotiations with plea counsel after that point, and that her file does not contain all of those details, but testified that she knows that she and plea counsel had multiple instances of back-and-forth negotiations and that Applicant was brought to the courthouse on two occasions. She testified that her impression was that Applicant would not plead guilty, and that she had felt that the only way to move Applicant's case was to put it on the trial docket. She testified that she does not remember hearing from plea counsel specifically about a two-year counter-offer from Applicant, but she testified that she knows that she would have rejected such an offer, if it had been made.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of

ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took

an approach that no competent lawyer would have chosen.” *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for [the lawyer’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. “Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted). With respect to a guilty plea counsel, an 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*, 474 U.S. at 59. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) that counsel was deficient and (2) that there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466

U.S. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. *Id.* at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” *Jamison*, at 468, 765 S.E.2d at 129 (citations omitted).

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his communication of plea offers to Applicant. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." *Bell v. State*, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)). A defense attorney "has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Id.* (quoting *Missouri v. Frye*, 566 U.S. 134 (2012)). Applicant's own testimony before this Court that the only plea offer was the one that he accepted serves to defeat this claim. Plea counsel credibly testified that he communicated all of the solicitor's plea offers to Applicant and that he communicated to the solicitor all of Applicant's counter-offers. The solicitor's credible testimony corroborated plea counsel's testimony about the plea offers that were actually extended.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not communicating all plea offers to Applicant because he has failed to prove that there was any deficiency in plea counsel's performance with respect to plea negotiations. Since Applicant's claim fails on the deficiency prong of *Strickland*, no prejudice analysis is required. This claim is denied and dismissed with prejudice.

Applicant's claim that he did not knowingly and voluntarily plead guilty because he had not been taking his psychiatric medication at the time of the guilty plea hearing.

Applicant testified before this Court that he was supposed to have been taking an assortment of medications before his guilty plea hearing, but that those medications had not been administered to him while he was in the detention center. He testified that he had been in the detention center for eight months before his guilty plea hearing, and that he had been off of his medications for that entire time. He testified that he had told plea counsel about his being on the

medications. He testified that he had not understood what was happening at his guilty plea hearing. He testified that he never had conversations with plea counsel after their first meeting because, despite the fact that Applicant told plea counsel about his being on medications, plea counsel had told him that he was going to prison and threatened to withdraw from the representation. He testified that he did not remember affirming his satisfaction with plea counsel to the plea court, and testified that he had no idea what he was pleading guilty to. He testified that he remembers that the victim told the plea court that he was innocent, but denied that he remembered anything else about the plea hearing.

Plea counsel testified before this Court that he never refused to speak with Applicant. He testified that he did not tell Applicant during their first meeting that Applicant was going to prison. He testified that he was able to observe Applicant's behavior during their interactions, and had no concerns that Applicant lacked mental competency. He testified that he was concerned about some of Applicant's mental issues, but was never concerned that Applicant did not understand plea counsel's role, the court's role, and similar things. He testified that, in his meetings with Applicant, they discussed the solicitor's plea offer, Applicant's likelihood of success at a trial, counter-offers, discovery, and the anticipated details of the plea court's colloquy with Applicant. He testified that Applicant appeared to understand the substance of those discussions. He testified that Applicant was able to engage with him in those discussions and that Applicant's responses or questions were clear and on subject. He testified that he would have moved for a mental competency evaluation if he had seen anything that had made him question Applicant's competency. He testified that he thinks that Applicant told him about being on psychiatric medications, but he could not remember what those medications were. He testified that he could not remember Applicant's telling him that his medications had not been administered to him at the detention center. He testified that, had he

known that Applicant's medications were not being administered at the detention center, he would have called someone at the center, but that he never had any reason to believe that Applicant did not understand what was happening.

He testified that Applicant's behavior was not remarkably different from his behavior on any other day; in fact, he felt that Applicant had been more composed on that day than on others. He testified that he had not noticed anything about Applicant's behavior at the guilty plea hearing that raised a competency question, and that he would have stopped the hearing if he had seen something like that.

The solicitor testified before this Court that she did not notice any behavior on Applicant's part at the guilty plea hearing that made her question his mental competency. She testified that she had spoken with Applicant on multiple occasions before he was charged with the underlying crimes because he had had prior charges, and that she had been familiar with Applicant. She testified that his behavior at the guilty plea hearing had been consistent with his previous behavior. She testified that, had she known that Applicant's medications were not being administered to him at the detention center, she would have contacted someone at the center about it.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his conclusion that there was no reason to question Applicant's mental competency. In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." *Ramirez v. State*, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (Ct. App. 2015) (citing *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992)), *rev'd on other grounds*, *Ramirez v. State*, 419 S.C. 14, 22, 795 S.E.2d 841, 845 (2017); *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam)

(internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. *Jeter*, at 233, 417 S.E.2d at 596. Plea counsel credibly testified that he thinks that Applicant told him during the course of the representation that Applicant had been prescribed psychiatric medications, but that he never had any reason to doubt Applicant's competency. He credibly testified about the details of his interactions with Applicant, and Applicant's behavior. Plea counsel's judgment that Applicant was mentally competent was reasonable and justified under the circumstances, which have been established by plea counsel's credible testimony. Plea counsel credibly testified that Applicant's behavior at the guilty plea hearing was not unusual, and the solicitor's testimony corroborated his testimony on this point, as she had developed a familiarity with Applicant's behavior due to prior interactions with him. There is no indication from the transcript from the guilty plea hearing that Applicant was behaving abnormally or in a way that would have caused someone, or should have caused plea counsel, to question Applicant's competency. Applicant's testimony that he did not understand what was happening at his guilty plea hearing is not credible.

This Court finds that Applicant has failed to prove that there was any resulting prejudice from the alleged deficiency in plea counsel's performance. If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. *See Ramirez*, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial but another concluded applicant was severally mentally retarded) (citation omitted). Applicant has not proven that there is a reasonable likelihood that he was incompetent at the time of his guilty

plea hearing. It may be true that Applicant had been prescribed some psychiatric medication previous to plea counsel's representation of him, as Applicant so testified, and plea counsel agreed that Applicant may have told him about taking medications, but Applicant has not proven that he was supposed to have been taking those medications at the time of his guilty plea hearing. Applicant produced no evidence to corroborate his testimony that employees at the detention center were withholding any medications from him or that, if they were doing so, that they were doing so wrongfully or against the orders of a medical provider. Further, Applicant has not proven that he lacked "sufficient . . . ability to consult with [plea counsel] with a reasonable degree of relational understanding" or lacked a "rational as well as factual understanding of the proceedings against him." *Ramirez*, at 366, 776 S.E.2d at 110. Applicant affirmed at the guilty plea hearing that he had discussed the charges with plea counsel, that he was happy with plea counsel's representation of him, that he was not under the influence of drugs or alcohol, that he had not been forced to plead guilty, that the entry of his pleas had not been elicited by promises from anyone, and that he understood his trial rights. Plea Tran. 4-6. As already noted, Applicant's testimony that he did not understand what was happening at his guilty plea hearing is not credible.

This Court finds that Applicant has failed to prove that his guilty pleas were not entered knowingly, voluntarily, and intelligently because he has failed to prove that there was any deficiency in trial counsel's performance with respect to his perception that Applicant was mentally competent and he has failed to prove that he was not mentally competent at the time of his guilty plea hearing. This claim is denied and dismissed with prejudice.

Applicant's claim that he did not knowingly and voluntarily plead guilty because plea counsel told him that the solicitor would charge the victim with submitting a false police report unless Applicant pleaded guilty.

Applicant testified before this Court that the victim was his wife. He testified that she attended his guilty plea hearing, and that she told the plea court that she had lied when she gave her statement to the law enforcement officer. He testified that plea counsel did nothing to make use of the victim's recanting. He testified that the victim had called him while he had been in the detention center in order to ask him to engage in "phone sex" with her, and that he did so to appease her. He testified that he alerted plea counsel to that fact, but plea counsel told him that he did not have time to listen to the recordings of Applicant's jail phone calls. He testified that his wife has never alleged that he put his hands on her.

Plea counsel testified before this Court that Applicant's violence against the victim had been seen by an independent witness, who reported it to the police. He testified that the victim's interaction with the officer responding to the 911 call had been recorded. He agreed that the victim had said in that video that she wanted Applicant to go to jail. He testified that he played that video for Applicant on at least one occasion. He testified that Applicant became distraught when watching the video, refused to finish watching it, and said that he wanted to plead guilty. He testified that he did not talk with the victim at length, although he agreed that he was aware at the time that she wanted to recant, and that she was angry and upset. He testified that he remembers discussing with Applicant and the solicitor the recordings of Applicant's jail phone calls with the victim, but he did not remember ever receiving those recordings from the solicitor. He testified that he had previously represented a client at a trial during which the victim had recanted on the witness stand, that that client had been found guilty regardless, and that he told Applicant about that fact and the pitfalls of going to trial anticipating an acquittal based on the victim's recanting.

He testified that Applicant had thought that the solicitor would be required to dismiss the charge if the victim recanted, and that he had explained to Applicant that that was not true. He testified that the solicitor did not tell him that she would prosecute the victim for filing a false police report if Applicant did not plead guilty, but he believed that the solicitor takes false reports seriously. He testified that he told Applicant that he was not trying to put pressure on Applicant to plead guilty, but he told him about all of that to let Applicant know what could happen if the victim recanted because he knew that Applicant cared for the victim. He said that he did not tell Applicant that it was likely that the solicitor would prosecute the victim, only that it was possible that she would do so. He agreed that the solicitor could have impeached the victim's credibility at trial with her previous statement even if the victim had recanted on the stand. He testified that it had not been a surprise that the victim told the plea court during that plea hearing that her police report had been a lie, and that he had gone over that potential scenario with Applicant in advance.

The solicitor testified before this Court that she did not tell plea counsel that she would prosecute the victim for filing a false police report if Applicant did not plead guilty. She testified that she does not prosecute victims who recant in domestic violence cases. She testified that it is very common for domestic violence victims to recant, and estimated that that happens in 90% of the domestic violence cases. She testified that she did not remember plea counsel requesting recordings of Applicant's jail phone calls, and that she did not provide any to plea counsel. She testified that she would have tried Applicant even if the victim had recanted on the stand, and said that she would have impeached the victim with the victim's written statement, the victim's oral statement as captured on the officer's body camera footage, and the victim's multiple statements made at the Solicitor's Office. She testified that she had done the same in past cases. She testified that the officer's body camera recording showed that the victim told the officer that Applicant had

struck her in the face, that the victim told the officer that Applicant cut her arm and showed him the cut, that the victim cried at the scene, and showed that there was an independent witness who gave a statement to the officer. She testified that she would have called the independent witness to the stand at trial, too.

This Court finds that Applicant has failed to prove that he did not knowingly, voluntarily, and intelligently plead guilty. The Due Process Clause requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). The defendant must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. *Id.* (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each . . . [A]n enumeration of specific rights waived is not required where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." *State v. Lambert*, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (internal citation omitted). It appears that Applicant, plea counsel, and the solicitor all knew or either had reason to suspect that the victim might have recanted her multiple statements if Applicant had gone to trial; however, it appears that Applicant pleaded guilty anyway. Applicant's allegation that the solicitor threatened to prosecute the victim for filing a false police report, and that plea counsel told him such, is not credible. Applicant's testimony that the victim had never said that he had abused her is not credible in light of the testimony of plea counsel and the solicitor. Applicant has not proven that the possibility that the victim would have recanted on the witness stand in any way rendered his guilty pleas unknowing, involuntary, or unintelligent. As already

mentioned, Applicant's affirmations to the plea court are further evidence of the knowing and voluntary nature of the entry of his pleas. Instead of going to trial in order to see whether the victim would recant on the witness stand and to see what effect that may have had on the jury's verdict, Applicant decided to plead guilty, and he did so knowingly and voluntarily.

Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to the possibility that the victim could recant at trial. Plea counsel credibly testified that he knew that the victim was considering recanting, that he discussed that possibility with Applicant, and that he advised Applicant that such would not cause the solicitor to dismiss the charges and likely would not result in an acquittal at trial. That advice was reasonable under the circumstances. Applicant has not proven that trial counsel had any obligation to listen to alleged recordings of Applicant and the victim engaging in acts of sexual self-pleasure while on the phone, and has failed to prove that plea counsel would have gained any helpful information by listening to them that he had not already gained merely by knowing of their alleged existence and of Applicant's explanations of them.

This Court finds that Applicant has failed to prove that he did not knowingly, intelligently, and voluntarily plead guilty because the record is clear that Applicant knew of the possibility—before he pleaded guilty and waived his trial rights—that the victim might recant at trial, and because Applicant has failed to prove that trial counsel's advice about the low likelihood of success for Applicant should he have gone to trial was unreasonable under the circumstances. This claim is denied and dismissed with prejudice.


CONCLUSION

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

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of July, 2022.



 R. Scott Sprouse
 Presiding Judge

Wendell, South Carolina

2022 JUL -1 A 0 51
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

WITNESSES

Timothy J Sargent

Easley Police Department

6/6/2018

ARREST WARRANT NUMBER
2018A3920400580

ACTION OF GRAND JURY

TRUE BILL

Date

SEP 25 2018

Beatrice Phillips
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-39-SSO 1746
The State of South Carolina
County of Pickens

COURT OF GENERAL SESSIONS
SEP 25 2018 TERM 2018

THE STATE

vs.

MATTHEW FRANK BENNINGER

Indictment for

3811

DOMESTIC VIOLENCE 1ST DEGREE

VIOLATION § 16-25-0020(A)

Certified Copy

Harold P. Vallentyne
Clerk of Court
Pickens County, SC
Dated *July 2019*

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DOMESTIC VIOLENCE 1ST DEGREE

At a Court of General Sessions, convened on **SEP 25 2018** the Grand Jurors of Pickens

County present upon their oath:

That MATTHEW FRANK BENNINGER did in Pickens County on or about the 6th day of June 2018, did unlawfully cause physical harm or injury to **D. C.** a household member or did unlawfully offer or attempt to cause physical harm or injury to D.C. , a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril and after having been previously convicted two times for domestic violence in the past ten years from the current offense. This is in violation of § 16-25-0020 of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Walker
Clerk of Court MB
Pickens County, SC

Dated *July 2018*

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

Shirley J. Odom

SOLICITOR BAR # 0077891

COUNTY OF Pickens VS. Matthew Frank Benninger

INDICTMENT/CASE#: 2018GS39 1746 A/W#: 2018A3920400580 Date of Offense: 6/6/2018 S.C. Code §: 16-25-0020(A) CDR Code #: 3811

AKA: Race: WHITE Sex: M Age: 57 DOB: 1960 SS#: Address: City, State, Zip: Easley, SC 29642 DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Domestic / Domestic Violence, 1st degree

SENTENCE SHEET

10 years CONVICTED OF or PLEADS

in violation of § 16-25-0020(A) of the S.C. Code of Laws, bearing CDR Code # 3811 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 Prosecution to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. AFFEST: Odora, Shannon SC Bar# 0077891 x Matthew Benninger Defendant Asher Watson SC Bar# 101006

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP. 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(a) is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Set by SCDPPPS Recipient:

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

Table with 3 columns: Description, Amount, Total. Rows include §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §36-5-2993 (DUI Assessment) \$12, §36-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §36-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 3.75, TOTAL \$ 128.75

Other: Victim does not want to prosecute Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk Cheryl Johnson Court Reporter: Tameka Johnson

Presiding Judge Judge Code: Sentence Date: 7/24/19

Handwritten signature: Harold P. Walker Clerk of Court Pickens County, SC Dated July 2019 03

WITNESSES

Zachary K Blanton

Pickens County Sheriff's Office

8/4/2018

ARREST WARRANT NUMBER
2018A3910100912

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-39-^{SSO} 3379

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2018

THE STATE

vs.

MATTHEW FRANK BENNINGER

Indictment for

3432

**ASSAULT AND BATTERY BY MOB SECOND
DEGREE**

VIOLATION § 16-03-0210(C)

Certified Copy

Harold P. Walker

Clerk of Court *MB*
Pickens County, SC

Dated *July 2019*

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
ASSAULT AND BATTERY BY MOB SECOND DEGREE

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That MATTHEW FRANK BENNINGER did in Pickens County on or about the 3rd day of August 2018, willfully and unlawfully participate as part of a mob that inflicted serious bodily injury upon Michael Lecroy. This is in violation of §16-03-0210 of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Walker

Clerk of Court

Pickens County, SC

Dated *July 20/18*

MB

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

Shirley S. Olson

SOLICITOR BAR # 0077891

COUNTY OF Pickens
STATE VS.
Matthew Frank Benninger
AKA:
Race: WHITE Sex: M Age: 58
DOB: 1960 SS#
Address:
City, State, Zip: Easley, SC 09642
DL#: SID#:

INDICTMENT/CASE#: 2018-GS-39-3379
A/W#: 2018A3910100912
Date of Offense: 8/3/2018
S.C. Code § : 16-03-0210(C)
CDR Code #: 3432

SENTENCE SHEET

3-25 years

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Assault/Assault and Battery by Mob/2nd Degree

in violation of § 16-03-0210(C) of the S.C. Code of Laws, bearing CDR Code # 3432
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Shannon SC Bar# 0077891 Defendant WATSON, ASHER Attorney for Defendant SC Bar# 101006

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 6 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 SCDOC.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-20 (Firearm Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$

Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like Assessments 107.5%, Conv. Surcharge, DUI Surcharge, DUI Assessment, DUI Breath Test, Public Def/Probation, Law Enforce. Funding, Drug Court Surcharge, BUI Breath Test Fee, Vehicle Assessment, and 3% to County.

Handwritten signature: Harold P. Walker
Clerk of Court
Pickens County, SC
Dated July 2019

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, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Cheryl Watson
Court Reporter: Teressa Johnson

Presiding Judge
Judge Code: 2162
Sentence Date: 1/24/2019

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by a lawyer, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire a lawyer to represent you in every case. If you cannot afford a lawyer, you may be eligible for a free lawyer. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to contact the court and ask for the procedure to be screened for appointment of counsel. If you do not hire a lawyer or go to be screened, then you may be found to have waived your right to a lawyer at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that a lawyer would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and sentenced to a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain a lawyer, either by hiring one or by being screened and found eligible for a court-appointed lawyer prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

ARREST WARRANT

2018A3910100912

STATE OF SOUTH CAROLINA

County/ Municipality of

Pickens

THE STATE
against

Matthew Frank Benninger

Address:
Easley, SC 09642-

Phone: _____ SSN: _____
Sex: M Race: W Height: _____ Weight: _____
DL State: _____ DL #: _____
DOB: 1/1960 Agency ORI #: SC0390000
Prosecuting Agency: Pickens County Sheriff
Prosecuting Officer: Zachary K Blanton - S00468
Offense: Assault / Assault & Battery by Mob, 2nd degree
(Serious bodily injury results)
Offense Code: 3432
Code/Ordinance Sec: 16-03-0210(C)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Benninger, Matthew Frank
on 8-4-18

[Signature] 366
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Pickens Summary Court
310 West Main Street (Hwy. 93)
Liberty, SC 29657

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Pickens)

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Zachary K Blanton who
being duly sworn deposes and says that defendant Matthew Frank Benninger
did within this county and state on or about 8/3/2018 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Pickens)
in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 2nd degree (Serious bodily injury results)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on August 3, 2018 in the county of Pickens, one Matthew Frank Benninger, along with Levi Chappell, Philip Martin, and
Jonathon Rackley, did knowingly act and participate as a mob that inflicted serious bodily injury to the victim, Michael Lecroy. The
incident occurred at the Pickens County Detention center. The defendants hit the victim repeatedly with their fists about his head
and body, and also kicked him about the head and back multiple times. The victim was transported to the hospital where he was
treated for a broken nose and received treatment for his injuries. Affiant witnessed the incident by video surveillance and positively
identified the defendant and the other co-defendants. Probable cause is based on: 1. Incident report .2 Hospital records. 3. BCSO
Detention Center video.

Signature of Affiant

[Signature]
Certified Copy
Theresa P. Walker
Clerk of Court
Pickens County, SC
Date: 8/17/18

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Pickens)

Affiant's Address 216 C. David Stone Rd.
Pickens, SC 29671-

Affiant's Telephone _____

ARREST WARRANT

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

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

on or about 8/3/2018 defendant Matthew Frank Benninger
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Pickens) as set forth below.

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 2nd degree (Serious bodily injury results)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me)
on 8/4/2018)

[Signature])
Signature of Issuing Judge)
Bruce Earl Anders (Magistrate))
Judge Code: 7064)

(L.S.)

Judge's Address 310 West Main Street
Liberty, SC 29657-

Judge's Telephone (864)898-5551

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

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